

Calendar No. 79108TH CONGRESS
1ST SESSION**S. 14**

To enhance the energy security of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 30, 2003

Mr. DOMENICI introduced the following bill; which was read the first time

MAY 1, 2003

Read the second time and placed on the calendar

A BILL

To enhance the energy security of the United States, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “The Energy Policy Act
5 of 2003”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—OIL AND GAS

Subtitle A—Production Incentives

- Sec. 101. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs.
- Sec. 102. Study on inventory of petroleum and natural gas storage.
- Sec. 103. Program on oil and gas royalties in kind.
- Sec. 104. Marginal property production incentives.
- Sec. 105. Comprehensive inventory of OCS oil and natural gas resources.
- Sec. 106. Royalty relief for deep water production.
- Sec. 107. Alaska offshore royalty suspension.
- Sec. 108. Orphaned, abandoned, or idled wells on Federal lands.
- Sec. 109. Incentives for natural gas production from deep wells in the shallow waters of the Gulf of Mexico.
- Sec. 110. Alternate energy-related uses on the Outer Continental Shelf.
- Sec. 111. Coastal impact assistance.
- Sec. 112. National Energy Resource Database.
- Sec. 113. Oil and gas lease acreage limitation.
- Sec. 114. Assessment of dependence of State of Hawaii on oil.

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- Sec. 121. Office of Federal Energy Permit Coordination.
- Sec. 122. Pilot Project to improve Federal permit coordination.
- Sec. 123. Federal onshore leasing programs for oil and gas.
- Sec. 124. Estimates of oil and gas resources underlying onshore Federal lands.
- Sec. 125. Split-Estate Federal oil and gas leasing and development practices.
- Sec. 126. Coordination of Federal agencies to establish priority energy transmission rights-of-way.

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- Sec. 131. Short title.
- Sec. 132. Definitions.
- Sec. 133. Issuance of certificate of public convenience and necessity.
- Sec. 134. Environmental reviews.
- Sec. 135. Pipeline expansion.
- Sec. 136. Federal coordinator.
- Sec. 137. Judicial review.
- Sec. 138. State jurisdiction over in-state delivery of natural gas.
- Sec. 139. Study of alternative means of construction.
- Sec. 140. Clarification of ANGTA status and authorities.
- Sec. 141. Sense of Congress.
- Sec. 142. Participation of small business concerns.
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- Sec. 202. Project criteria.
- Sec. 203. Reports.
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- Sec. 211. Repeal of the 160-acre limitation for coal leases.
- Sec. 212. Mining plans.
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- Sec. 215. Application of amendments.

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- Sec. 221. Resolution of Federal resource development conflicts in the Powder River Basin.

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- Sec. 302. Office of Indian energy policy and programs.
- Sec. 303. Indian energy.

“TITLE XXVI—INDIAN ENERGY

- “Sec. 2601. Definitions.*
- “Sec. 2602. Indian tribal energy resource development.*
- “Sec. 2603. Indian tribal energy resource regulation.*
- “Sec. 2604. Leases, business agreements, and rights-of-way involving energy development or transmission.*
- “Sec. 2605. Federal Power Marketing Administrations.*
- “Sec. 2606. Indian mineral development review.*
- “Sec. 2607. Wind and hydropower feasibility study.*

- Sec. 304. Four Corners transmission line project.
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- Sec. 988. Mobility of scientific and technical personnel.
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Subtitle E—Provisions Regarding the Public Utility Holding Company Act of 1935

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- Sec. 1191. Technical amendments.

1 **TITLE I—OIL AND GAS**
 2 **Subtitle A—Production**
 3 **Incentives**

4 **SEC. 101. PERMANENT AUTHORITY TO OPERATE THE STRA-**
 5 **TEGIC PETROLEUM RESERVE AND OTHER**
 6 **ENERGY PROGRAMS.**

7 (a) AMENDMENT TO TITLE I OF THE ENERGY POL-
 8 ICY AND CONSERVATION ACT.—Title I of the Energy Pol-
 9 icy and Conservation Act (42 U.S.C. 6211 et seq.) is
 10 amended—

11 (1) by striking section 166 (42 U.S.C. 6246)
 12 and inserting—

13 “AUTHORIZATION OF APPROPRIATIONS

14 “SEC. 166. There are authorized to be appropriated
 15 to the Secretary such sums as may be necessary to carry
 16 out this part and part D, to remain available until ex-
 17 pended.”;

18 (2) by striking section 186 (42 U.S.C.
 19 6250(e)); and

20 (3) by striking part E (42 U.S.C. 6251); relat-
 21 ing to the expiration of title I of the Act).

1 (b) AMENDMENT TO TITLE II OF THE ENERGY POL-
 2 ICY AND CONSERVATION ACT.—Title II of the Energy
 3 Policy and Conservation Act (42 U.S.C. 6271 et seq.) is
 4 amended—

5 (1) by striking section 256(h) (42 U.S.C.
 6 6276(h)) and inserting—

7 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
 8 are authorized to be appropriated to the Secretary such
 9 sums as may be necessary to carry out this part, to remain
 10 available until expended.”;

11 (2) by inserting before section 273 (42 U.S.C.
 12 6283) the following:

13 “PART C—SUMMER FILL AND FUEL BUDGETING
 14 PROGRAMS”;

15 (3) by striking section 273(e) (42 U.S.C.
 16 6283(e)); relating to the expiration of summer fill
 17 and fuel budgeting programs); and

18 (4) by striking part D (42 U.S.C. 6285); relat-
 19 ing to the expiration of title II of the Act).

20 (c) TECHNICAL AMENDMENTS.—The table of con-
 21 tents for the Energy Policy and Conservation Act is
 22 amended—

23 (1) by amending the items relating to part D
 24 of title I to read as follows:

“PART D—NORTHEAST HOME HEATING OIL RESERVE

“Sec. 181. Establishment.

1 (1) historical normal ranges for petroleum and
2 natural gas inventory levels;

3 (2) historical and projected storage capacity
4 trends;

5 (3) estimated operation inventory levels below
6 which outages, delivery slowdown, rationing, inter-
7 ruptions in service or other indicators of shortage
8 begin to appear;

9 (4) explanations for inventory levels dropping
10 below normal ranges; and

11 (5) the ability of industry to meet U.S. demand
12 for petroleum and natural gas without shortages or
13 price spikes, when inventory levels are below normal
14 ranges.

15 (d) REPORT TO CONGRESS.—Not later than one year
16 from enactment of this Act, the Secretary of Energy shall
17 submit a report to Congress on the results of the study,
18 including findings and any recommendations for pre-
19 venting future supply shortages.

20 **SEC. 103. PROGRAM ON OIL AND GAS ROYALTIES IN KIND.**

21 (a) APPLICABILITY OF SECTION.—Notwithstanding
22 any other provision of law, the provisions of this section
23 shall apply to all royalties-in-kind accepted by the Sec-
24 retary (referred to in this section as “Secretary”) under
25 any Federal oil or gas lease or permit under section 36

1 of the Mineral Leasing Act (30 U.S.C. 192), section 27
2 of the Outer Continental Shelf Lands Act (43 U.S.C.
3 1353), or any other mineral leasing law beginning on the
4 date of the enactment of this Act through September 30,
5 2013.

6 (b) TERMS AND CONDITIONS.—All royalty accruing
7 to the United States under any Federal oil or gas lease
8 or permit under the Mineral Leasing Act (30 U.S.C. 181
9 et seq.) or the Outer Continental Shelf Lands Act (43
10 U.S.C. 1331 et seq.) shall, on the demand of the Sec-
11 retary, be paid in oil or gas. If the Secretary makes such
12 a demand, the following provisions apply to such payment:

13 (1) Delivery by, or on behalf of, the lessee of
14 the royalty amount and quality due under the lease
15 satisfies the lessee's royalty obligation for the
16 amount delivered, except that transportation and
17 processing reimbursements paid to, or deductions
18 claimed by, the lessee shall be subject to review and
19 audit.

20 (2) Royalty production shall be placed in mar-
21 ketable condition by the lessee at no cost to the
22 United States.

23 (3) The Secretary may—

24 (A) sell or otherwise dispose of any royalty
25 production taken in kind (other than oil or gas

1 transferred under section 27(a)(3) of the Outer
2 Continental Shelf Lands Act (43 U.S.C.
3 1353(a)(3)) for not less than the market price;
4 and

5 (B) transport or process (or both) any roy-
6 alty production taken in kind.

7 (4) The Secretary may, notwithstanding section
8 3302 of title 31, United States Code, retain and use
9 a portion of the revenues from the sale of oil and
10 gas royalties taken in kind that otherwise would be
11 deposited to miscellaneous receipts, without regard
12 to fiscal year limitation, or may use royalty produc-
13 tion, to pay the cost of—

14 (A) transporting the royalty production;

15 (B) processing the royalty production;

16 (C) disposing of the royalty production; or

17 (D) any combination of transporting, proc-
18 essing, and disposing of the royalty production.

19 (5) The Secretary may not use revenues from
20 the sale of oil and gas royalties taken in kind to pay
21 for personnel, travel, or other administrative costs
22 of the Federal Government.

23 (6) Notwithstanding the provisions of para-
24 graph 5, the Secretary may use a portion of the rev-
25 enues from the sale of oil royalties taken in kind,

1 without fiscal year limitation, to pay transportation
2 costs, salaries, and other administrative costs di-
3 rectly related to filling the Strategic Petroleum Re-
4 serve.

5 (c) REIMBURSEMENT OF COST.—If the lessee, pursu-
6 ant to an agreement with the United States or as provided
7 in the lease, processes the royalty gas or delivers the roy-
8 alty oil or gas at a point not on or adjacent to the lease
9 area, the Secretary shall—

10 (1) reimburse the lessee for the reasonable costs
11 of transportation (not including gathering) from the
12 lease to the point of delivery or for processing costs;
13 or

14 (2) allow the lessee to deduct such transpor-
15 tation or processing costs in reporting and paying
16 royalties in value for other Federal oil and gas
17 leases.

18 (d) BENEFIT TO THE UNITED STATES REQUIRED.—
19 The Secretary may receive oil or gas royalties in kind only
20 if the Secretary determines that receiving such royalties
21 provides benefits to the United States greater than or
22 equal to those likely to have been received had royalties
23 been taken in value.

24 (e) REPORT TO CONGRESS.—

1 (1) No later than September 30, 2005, the Sec-
2 retary shall provide a report to Congress that ad-
3 dresses—

4 (A) actions taken to develop business proc-
5 esses and automated systems to fully support
6 the royalty-in-kind capability to be used in tan-
7 dem with the royalty-in-value approach in man-
8 aging Federal oil and gas revenue; and

9 (B) future royalty-in-kind business oper-
10 ation plans and objectives.

11 (2) For each of the fiscal years 2004 through
12 2013 in which the United States takes oil or gas
13 royalties in kind from production in any State or
14 from the Outer Continental Shelf, excluding roy-
15 alties taken in kind and sold to refineries under sub-
16 sections (h), the Secretary shall provide a report to
17 Congress describing—

18 (A) the methodology or methodologies used
19 by the Secretary to determine compliance with
20 subsection (d) , including performance standard
21 for comparing amounts received by the United
22 States derived from such royalties-in-kind to
23 amount likely to have been received had roy-
24 alties been taken in value;

1 (B) an explanation of the evaluation that
2 led the Secretary to take royalties-in-kind from
3 a lease or group of leases, including the ex-
4 pected revenue effect of taking royalties-in-kind;

5 (C) actual amounts received by the United
6 States derived from taking royalties-in-kind and
7 cost and savings incurred by the United States
8 associated with taking royalties-in-kind, includ-
9 ing but not limited to administrative savings
10 and any new or increased administrative costs;
11 and

12 (D) an evaluation of other relevant public
13 benefits or detriments associated with taking
14 royalties-in-kind.

15 (f) DEDUCTION OF EXPENSES.—

16 (1) Before making payments under section 35
17 of the Mineral Leasing Act (30 U.S.C. 191) or sec-
18 tion 8(g) of the Outer Continental Shelf Lands Act
19 (43 U.S.C. 1337(g)) of revenues derived from the
20 sale of royalty production taken in kind from a
21 lease, the Secretary of the Interior shall deduct
22 amounts paid or deducted under subsections (b)(4)
23 and (c), and shall deposit such amounts to miscella-
24 neous receipts.

1 (2) If the Secretary allows the lessee to deduct
2 transportation or processing costs under subsection
3 (c), the Secretary may not reduce any payments to
4 recipients of revenues derived from any other Fed-
5 eral oil and gas lease as a consequence of that de-
6 duction.

7 (g) CONSULTATION WITH STATES.—The Secretary
8 shall consult—

9 (1) with a State before conducting a royalty-in-
10 kind program under this section within the State,
11 and may delegate management of any portion of the
12 Federal royalty in-kind program to such State ex-
13 cept as otherwise prohibited by Federal law; and

14 (2) annually with any State from which Federal
15 oil or gas royalty is being taken in kind to ensure
16 to the maximum extent practicable that the royalty-
17 in-kind program provides revenues to the State
18 greater than or equal to those likely to have been re-
19 ceived had royalties been taken in value.

20 (h) PROVISIONS FOR SMALL REFINERIES.—

21 (1) If the Secretary determines that sufficient
22 supplies of crude oil are not available in the open
23 market to refineries not having their own source of
24 supply for crude oil, the Secretary may grant pref-
25 erence to such refineries in the sale of any royalty

1 oil accruing or reserved to the United States under
2 Federal oil and gas leases issued under any mineral
3 leasing law, for processing or use in such refineries
4 at private sale at not less than the market price.

5 (2) In disposing of oil under this subsection, the
6 Secretary may prorate such oil among such refin-
7 eries in the area in which the oil is produced.

8 (i) DISPOSITION TO FEDERAL AGENCIES.—

9 (1) Any royalty oil or gas taken by the Sec-
10 retary in kind from onshore oil and gas leases may
11 be sold at not less than market price to any depart-
12 ment or agency of the United States.

13 (2) Any royalty oil or gas taken in kind from
14 Federal oil and gas leases on the outer Continental
15 Shelf may be disposed of only under section 27 of
16 the Outer Continental Shelf Lands Act (43 U.S.C.
17 1353).

18 (j) PREFERENCE FOR FEDERAL LOW-INCOME EN-
19 ERGY ASSISTANCE PROGRAMS.—In disposing of royalty oil
20 or gas taken in kind under this section, the Secretary may
21 grant a preference to any person, including any State or
22 Federal agency, for the purpose of providing additional re-
23 sources to any Federal low-income energy assistance pro-
24 gram.

1 **SEC. 104. MARGINAL PROPERTY PRODUCTION INCENTIVES.**

2 (a) MARGINAL PROPERTY DEFINED.—Until such
3 time as the Secretary of the Interior issues rules under
4 subsection (e) that prescribe a different definition, for pur-
5 poses of this section, the term “marginal property” means
6 an onshore unit, communitization agreement, or lease not
7 within a unit or communitization agreement that produces
8 on average the combined equivalent of less than 15 barrels
9 of oil per well per day or 90 million British thermal units
10 of gas per well per day calculated based on the average
11 over the three most recent production months, including
12 only those wells that produce more than half the days in
13 the three most recent production months.

14 (b) CONDITIONS FOR REDUCTION OF ROYALTY
15 RATE.—Until such time as the Secretary of the Interior
16 promulgates rules under subsection (e) that prescribe dif-
17 ferent thresholds or standards, the Secretary shall reduce
18 the royalty rate on—

19 (1) oil production from marginal properties as
20 prescribed in subsection (c) when the spot price of
21 West Texas Intermediate crude oil at Cushing, Okla-
22 homa, is, on average, less than \$15 per barrel for 90
23 consecutive trading days; and

24 (2) gas production from marginal properties as
25 prescribed in subsection (c) when the spot price of
26 natural gas delivered at Henry Hub, Louisiana, is,

1 on average, less than \$2.00 per million British ther-
2 mal units for 90 consecutive trading days.

3 (c) REDUCED ROYALTY RATE.—

4 (1) When a marginal property meets the condi-
5 tions specified in subsection (b), the royalty rate
6 shall be the lesser of—

7 (A) 5 percent; or

8 (B) the applicable rate under any other
9 statutory or regulatory royalty relief provision
10 that applies to the affected production.

11 (2) The reduced royalty rate under this sub-
12 section shall be effective on the first day of the pro-
13 duction month following the date on which the appli-
14 cable price standard prescribed in subsection (b) is
15 met.

16 (d) TERMINATION OF REDUCED ROYALTY RATE.—

17 A royalty rate prescribed in subsection (d)(1)(A) shall ter-
18minate—

19 (1) on oil production from a marginal property,
20 on the first day of the production month following
21 the date on which—

22 (A) the spot price of West Texas Inter-
23 mediate crude oil at Cushing, Oklahoma, on av-
24 erage, exceeds \$15 per barrel for 90 consecutive
25 trading days, or

1 (B) the property no longer qualifies as a
2 marginal property under subsection (a); and

3 (2) on gas production from a marginal prop-
4 erty, on the first day of the production month fol-
5 lowing the date on which—

6 (A) the spot price of natural gas delivered
7 at Henry Hub, Louisiana, on average, exceeds
8 \$2.00 per million British thermal units for 90
9 consecutive trading days, or

10 (B) the property no longer qualifies as a
11 marginal property under subsection (a).

12 (e) RULES PRESCRIBING DIFFERENT RELIEF.—

13 (1) The Secretary of the Interior, after con-
14 sultation with the Secretary of Energy, may by rule
15 prescribe different parameters, standards, and re-
16 quirements for, and a different degree or extent of,
17 royalty relief for marginal properties in lieu of those
18 prescribed in subsections (a) through (d).

19 (2) The Secretary of the Interior, after con-
20 sultation with the Secretary of Energy, and within
21 1 year after the date of enactment of this Act, shall,
22 by rule,—

23 (A) prescribe standards and requirements
24 for, and the extent of royalty relief for, mar-

1 ginal properties for oil and gas leases on the
2 outer Continental Shelf; and

3 (B) define what constitutes a marginal
4 property on the outer Continental Shelf for pur-
5 poses of this section.

6 (3) In promulgating rules under this subsection,
7 the Secretary of the Interior may consider—

8 (A) oil and gas prices and market trends;

9 (B) production costs;

10 (C) abandonment costs;

11 (D) Federal and State tax provisions and
12 their effects on production economics;

13 (E) other royalty relief programs; and

14 (F) other relevant matters.

15 (f) SAVINGS PROVISION.—Nothing in this section
16 shall prevent a lessee from receiving royalty relief or a roy-
17 alty reduction pursuant to any other law or regulation that
18 provides more relief than the amounts provided by this
19 section.

20 **SEC. 105. COMPREHENSIVE INVENTORY OF OCS OIL AND**
21 **NATURAL GAS RESOURCES.**

22 (a) IN GENERAL.—The Secretary of the Interior shall
23 conduct an inventory and analysis of oil and natural gas
24 resources beneath all of the waters of the United States

1 Outer Continental Shelf (“OCS”). The inventory and
2 analysis shall—

3 (1) use available data on oil and gas resources
4 in areas offshore of Mexico and Canada that will
5 provide information on trends of oil and gas accu-
6 mulation in areas of the OCS;

7 (2) use any available technology, except drilling,
8 but including 3–D seismic technology to obtain accu-
9 rate resource estimates;

10 (3) analyze how resource estimates in OCS
11 areas have changed over time in regards to gath-
12 ering geological and geophysical data, initial explo-
13 ration, or full field development, including areas
14 such as the deepwater and subsalt areas in the Gulf
15 of Mexico;

16 (4) estimate the effect that understated oil and
17 gas resource inventories have on domestic energy in-
18 vestments; and

19 (5) identify and explain how legislative, regu-
20 latory, and administrative programs or processes re-
21 strict or impede the development of identified re-
22 sources and the extent that they affect domestic sup-
23 ply, such as moratoria, lease terms and conditions,
24 operational stipulations and requirements, approval
25 delays by the federal government and coastal states,

1 and local zoning restrictions for onshore processing
2 facilities and pipeline landings.

3 (b) REPORTS.—The Secretary of Interior shall sub-
4 mit a report to the Congress on the inventory of estimates
5 and the analysis of restrictions or impediments, together
6 with any recommendations, within six months of the date
7 of enactment of the section. The report shall be publically
8 available and updated at least every five years.

9 **SEC. 106. ROYALTY RELIEF FOR DEEP WATER PRODUC-**
10 **TION.**

11 (a) IN GENERAL.—For all tracts located in water
12 depths of greater than 400 meters in the Western and
13 Central Planning Area of the Gulf of Mexico, including
14 that portion of the Eastern Planning Area of the Gulf of
15 Mexico encompassing whole lease blocks lying west of 87
16 degrees, 30 minutes West longitude, any oil or gas lease
17 sale under the Outer Continental Shelf Lands Act (43
18 U.S.C. 1331 et seq.) occurring within 5 years after the
19 date of the enactment of this Act shall use the bidding
20 system authorized in section 8(a)(1)(H) of the Outer Con-
21 tinental Shelf Lands Act (43 U.S.C. 1337(a)(1)(H)), ex-
22 cept that the suspension of royalties shall be set at a vol-
23 ume of not less than—

24 (1) 5 million barrels of oil equivalent for each
25 lease in water depths of 400 to 800 meters;

1 (2) 9 million barrels of oil equivalent for each
2 lease in water depths of 800 to 1,600 meters; and

3 (3) 12 million barrels of oil equivalent for each
4 lease in water depths greater than 1,600 meters.

5 **SEC. 107. ALASKA OFFSHORE ROYALTY SUSPENSION.**

6 Section 8(a)(3)(B) of the Outer Continental Shelf
7 Lands Act (43 U.S.C. 1337), is amended with the fol-
8 lowing: add “and in the Planning Areas offshore Alaska”
9 after “West longitude” and before “the Secretary”.

10 **SEC. 108. ORPHANED, ABANDONED OR IDLED WELLS ON**
11 **FEDERAL LANDS.**

12 (a) IN GENERAL.—The Secretary of the Interior, in
13 cooperation with the Secretary of Agriculture, shall estab-
14 lish a program within 1 year after the date of enactment
15 of this Act to remediate, reclaim, and close orphaned,
16 abandoned, or idled oil and gas wells located on lands ad-
17 ministered by the land management agencies within the
18 Department of the Interior and Agriculture. The program
19 shall—

20 (1) include a means of ranking orphaned, aban-
21 doned, or idled well sites for priority in remediation,
22 reclamation and closure, based on public health and
23 safety, potential environmental harm, and other land
24 use priorities;

1 (2) provide for identification and recovery of
2 the costs of remediation, reclamation and closure
3 from persons or other entities currently providing a
4 bond or other financial assurance required under
5 State or Federal law for an oil or gas well that is
6 orphaned, abandoned or idled; and

7 (3) provide for recovery from the persons or en-
8 tities identified under paragraph (2), or their sure-
9 ties or guarantors, of the costs of remediation, rec-
10 lamation, and closure of such wells.

11 (b) COOPERATION AND CONSULTATIONS.—In car-
12 rying out this program, the Secretary of the Interior shall
13 work cooperatively with the Secretary of Agriculture and
14 the States within which the Federal lands are located and
15 consult with the Secretary of Energy and the Interstate
16 Oil and Gas Compact Commission.

17 (c) PLAN.—Within 1 year after the date of enactment
18 of the section, the Secretary of the Interior, in cooperation
19 with the Secretary of Agriculture, shall prepare a plan for
20 carrying out the program established under subsection (a)
21 and transmit copies of the plan to the Congress.

22 (d) TECHNICAL ASSISTANCE PROGRAM FOR NON-
23 FEDERAL LANDS.—

24 (1) The Secretary of Energy shall establish a
25 program to provide technical assistance to the var-

1 ious oil and gas producing States to facilitate State
2 efforts over a 10-year period to ensure a practical
3 and economical remedy for environmental problems
4 caused by orphaned or abandoned oil and gas explo-
5 ration or production well sites on State or private
6 lands.

7 (2) The Secretary shall work with the States,
8 through the Interstate Oil and Gas Compact Com-
9 mission, to assist the States in quantifying and miti-
10 gating environmental risks of onshore orphaned
11 abandoned oil or gas wells on State and private
12 lands.

13 (3) The program shall include—

14 (A) mechanisms to facilitate identification,
15 if possible, of the persons or other entities cur-
16 rently providing a bond or other form of finan-
17 cial assurance required under State or Federal
18 law for an oil or gas well that is orphaned or
19 abandoned;

20 (B) criteria for ranking orphaned or aban-
21 doned well sites based on factors such as public
22 health and safety, potential environmental
23 harm, and other land use priorities; and

1 (C) information and training programs on
2 best practices for remediation of different types
3 of sites.

4 (e) DEFINITION.—For purposes of this section, a well
5 is idled if it has been non-operational for 7 years and there
6 is no anticipated beneficial use of the well.

7 (f) AUTHORIZATION.—To carry out this section there
8 is authorized to be appropriated to the Secretary of the
9 Interior \$25,000,000 for each of the fiscal years 2004
10 through 2008. Of the amounts authorized, \$5,000,000 is
11 authorized for activities under subsection (d).

12 **SEC. 109. INCENTIVES FOR NATURAL GAS PRODUCTION**
13 **FROM DEEP WELLS IN THE SHALLOW WA-**
14 **TERS OF THE GULF OF MEXICO.**

15 (a) ROYALTY INCENTIVE REGULATIONS.—Not later
16 than 90 days after enactment, the Secretary of the Inte-
17 rior shall promulgate final regulations providing royalty
18 incentives for natural gas produced from deep wells, as
19 defined by the Secretary, on oil and gas leases issued
20 under the Outer Continental Shelf Lands Act (43 U.S.C.
21 1331 et seq.) and issued prior to January 1, 2001, in shal-
22 low waters of the Gulf of Mexico, wholly west of 87 de-
23 grees, 30 minutes West longitude that are less than 200
24 meters deep.

1 (b) ROYALTY INCENTIVE REGULATIONS FOR ULTRA-
2 DEEP GAS WELLS.—

3 (1) No later than 90 days after the date of en-
4 actment of this Act, in addition to any other regula-
5 tions that may provide royalty incentives for natural
6 gas produced from deep wells on oil and gas leases
7 issued pursuant to the Outer Continental Shelf
8 Lands Act (43 U.S.C. 1331 et seq.), the Secretary
9 of the Interior shall promulgate new regulations
10 granting royalty relief suspension volumes of not less
11 than 35 billion cubic feet with respect to the produc-
12 tion of natural gas from ‘ultra deep wells’ on leases
13 issued prior to January 1, 2001, in shallow waters
14 less than 200 meters deep located in the Gulf of
15 Mexico wholly west of 87 degrees, 30 minutes West
16 longitude. For purposes of this subsection, the term
17 ‘ultra deep wells’ means wells drilled with a per-
18 forated interval, the top of which is at least 20,000
19 feet true vertical depth below the datum at mean sea
20 level.

21 (2) The Secretary shall not grant the royalty
22 incentives outlined in this subsection if the average
23 annual NYMEX natural gas price exceeds for one
24 full calendar year the threshold price of \$5 per mil-
25 lion Btu, adjusted from the year 2000 for inflation.

1 (3) This subsection shall have no force or effect
2 after the end of the 5-year period beginning on the
3 date of the enactment of this Act.

4 **SEC. 110. ALTERNATE ENERGY-RELATED USES ON THE**
5 **OUTER CONTINENTAL SHELF.**

6 (a) AMENDMENT TO OUTER CONTINENTAL SHELF
7 LANDS ACT.—Section 8 of the Outer Continental Shelf
8 Lands Act (43 U.S.C. 1337) is amended by adding at the
9 end the following new subsection:

10 “(p) EASEMENTS OR RIGHTS-OF-WAY FOR ENERGY
11 AND RELATED PURPOSES.—

12 “(1) The Secretary may grant an easement or
13 right-of-way on the outer Continental Shelf for ac-
14 tivities not otherwise authorized in this Act, the
15 Deepwater Port Act of 1974 (33 U.S.C. 1501 et
16 seq.), or the Ocean Thermal Energy Conversion Act
17 of 1980 (42 U.S.C. 9101 et seq.), or other applica-
18 ble law when such activities—

19 “(A) support exploration, development, or
20 production of oil or natural gas, except that
21 such easements or rights-of-way shall not be
22 granted in areas where oil and gas preleasing,
23 leasing and related activities are prohibited by
24 a Congressional moratorium or a withdrawal
25 pursuant to section 12 of this Act;

1 “(B) support transportation of oil or nat-
2 ural gas;

3 “(C) produce or support production, trans-
4 portation, or transmission of energy from
5 sources other than oil and gas; or

6 “(D) use facilities currently or previously
7 used for activities authorized under this Act.

8 “(2) The Secretary shall promulgate regulations
9 to ensure that activities authorized under this sub-
10 section are conducted in a manner that provides for
11 safety, protection of the environment, conservation
12 of the natural resources of the outer Continental
13 Shelf, appropriate coordination with other Federal
14 agencies, and a fair return to the Federal govern-
15 ment for any easement or right-of-way granted
16 under this subsection. Such regulations shall estab-
17 lish procedures for—

18 (A) public notice and comment on pro-
19 posals to be permitted pursuant to this sub-
20 section;

21 (B) consultation and review by State and
22 local governments that may be impacted by ac-
23 tivities to be permitted pursuant to this sub-
24 section;

1 (C) consideration of the coastal zone man-
2 agement program being developed or adminis-
3 tered by an affected coastal State pursuant to
4 section 305 or section 306 of the Coastal Zone
5 Management Act of 1972 (16 U.S.C. 1454,
6 1455); and

7 (D) consultation with the Secretary of De-
8 fense and other appropriate agencies prior to
9 the issuance of an easement or right-of-way
10 under this subsection concerning issues related
11 to national security and navigational obstruc-
12 tion.

13 (3) The Secretary shall require the holder of an
14 easement or right-of-way granted under this sub-
15 section to furnish a surety bond or other form of se-
16 curity, as prescribed by the Secretary, and to comply
17 with such other requirements as the Secretary may
18 deem necessary to protect the interests of the United
19 States.

20 “(4) This subsection shall not apply to any area
21 within the exterior boundaries of any unit of the Na-
22 tional Park System, National Wildlife Refuge Sys-
23 tem, or National Marine Sanctuary System, or any
24 National Monument.

1 “(2) The term ‘coastal population’ means the
2 population of all political subdivisions, as determined
3 by the most recent official data of the Census Bu-
4 reau, contained in whole or in part within the des-
5 ignated coastal boundary of a State as defined in a
6 State’s coastal zone management program under the
7 Coastal Zone Management Act (16 U.S.C. 1451 et
8 seq.).

9 “(3) The term ‘Coastal State’ has the same
10 meaning as provided by subsection 304(4) of the
11 Coastal Zone Management Act (16 U.S.C. 1453(4)).

12 “(4) The term ‘coastline’ has the same meaning
13 as the term ‘coast line’ as defined in subsection 2(c)
14 of the Submerged Lands Act (43 U.S.C. 1301(c)).

15 “(5) The term ‘distance’ means the minimum
16 great circle distance, measured in statute miles.

17 “(6) The term ‘leased tract’ means a tract
18 maintained under section 6 or leased under section
19 8 for the purpose of drilling for, developing, and pro-
20 ducing oil and natural gas resources.

21 “(7) The term ‘Producing Coastal State’ means
22 a Coastal State with a coastal seaward boundary
23 within 200 miles from the geographic center of a
24 leased tract other than a leased tract within any
25 area of the Outer Continental Shelf where a morato-

1 rium on new leasing was in effect as of January 1,
2 2002 unless the lease was issued prior to the estab-
3 lishment of the moratorium and was in production
4 on January 1, 2002.

5 “(8) The term ‘qualified Outer Continental
6 Shelf revenues’ means all amounts received by the
7 United States from each leased tract or portion of
8 a leased tract lying seaward of the zone defined and
9 governed by section 8(g) of this Act, or lying within
10 such zone but to which section 8(g) does not apply,
11 the geographic center of which lies within a distance
12 of 200 miles from any part of the coastline of any
13 Producing Coastal State, including bonus bids,
14 rents, royalties (including payments for royalties
15 taken in kind and sold), net profit share payments,
16 and related late payment interest. Such term shall
17 only apply to leases issued after January 1, 2003
18 and revenues from existing leases that occurs after
19 January 1, 2003. Such term does not include any
20 revenues from a leased tract or portion of a leased
21 tract that is included within any area of the Outer
22 Continental Shelf where a moratorium on new leas-
23 ing was in effect as of January 1, 2002, unless the
24 lease was issued prior to the establishment of the

1 moratorium and was in production on January 1,
2 2002.

3 “(9) The term ‘Secretary’ means the Secretary
4 of Interior.”

5 “(b) AUTHORIZATION.—For fiscal years 2004
6 through 2009, an amount equal to not more than 12.5
7 percent of qualified Outer Continental Shelf revenues is
8 authorized to be appropriated for the purposes of this sec-
9 tion.

10 “(c) IMPACT ASSISTANCE PAYMENTS TO STATES AND
11 POLITICAL SUBDIVISIONS.—The Secretary shall make
12 payments from the amounts available under this section
13 to Producing Coastal States with an approved Coastal Im-
14 pact Assistance Plan, and to coastal political subdivisions
15 as follows:

16 “(1) Of the amounts appropriated, the alloca-
17 tion for each Producing Coastal State shall be cal-
18 culated based on the ratio of qualified Outer Conti-
19 nental Shelf revenues generated off the coastline of
20 the Producing Coastal State to the qualified Outer
21 Continental Shelf revenues generated off the coast-
22 lines of all Producing Coastal States for each fiscal
23 year. Where there is more than one Producing
24 Coastal State within 200 miles of a leased tract, the
25 amount of each Producing Coastal State’s allocation

1 for such leased tract shall be inversely proportional
2 to the distance between the nearest point on the
3 coastline of such State and the geographic center of
4 each leased tract or portion of the leased tract (to
5 the nearest whole mile) that is within 200 miles of
6 that coastline, as determined by the Secretary.

7 “(2) Thirty-five percent of each Producing
8 Coastal State’s allocable share as determined under
9 paragraph (1) shall be paid directly to the coastal
10 political subdivisions by the Secretary based on the
11 following formula:

12 “(A) Twenty-five percent shall be allocated
13 based on the ratio of such coastal political sub-
14 division’s coastal population to the coastal pop-
15 ulation of all coastal political subdivisions in the
16 Producing Coastal State.

17 “(B) Twenty-five percent shall be allocated
18 based on the ratio of such coastal political sub-
19 division’s coastline miles to the coastline miles
20 of a coastal political subdivision in the Pro-
21 ducing Coastal State except that for those
22 coastal political subdivisions in the State of
23 Louisiana without a coastline, the coastline for
24 purposes of this element of the formula shall be

1 the average length of the coastline of the re-
2 maining coastal subdivisions in the state.

3 “(C) Fifty percent shall be allocated based
4 on the relative distance of such coastal political
5 subdivision from any leased tract used to cal-
6 culate the Producing Coastal State’s allocation
7 using ratios that are inversely proportional to
8 the distance between the point in the coastal
9 political subdivision closest to the geographic
10 center of each leased tract or portion, as deter-
11 mined by the Secretary, except that in the State
12 of Alaska, the funds for this element of the for-
13 mula shall be divided equally among the two
14 closest coastal political subdivisions. For pur-
15 poses of the calculations under this subpara-
16 graph, a leased tract or portion of a leased
17 tract shall be excluded if the leased tract or
18 portion is located in a geographic area where a
19 moratorium on new leasing was in effect on
20 January 1, 2002, unless the lease was issued
21 prior to the establishment of the moratorium
22 and was in production on January 1, 2002.

23 “(3) Any amount allocated to a Producing
24 Coastal State or coastal political subdivision but not
25 disbursed because of a failure to have an approved

1 Coastal Impact Assistance Plan under this section
2 shall be allocated equally by the Secretary among all
3 other Producing Coastal States in a manner con-
4 sistent with this subsection except that the Secretary
5 shall hold in escrow such amount until the final res-
6 olution of any appeal regarding the disapproval of a
7 plan submitted under this section. The Secretary
8 may waive the provisions of this paragraph and hold
9 a Producing Coastal State’s allocable share in es-
10 crow if the Secretary determines that such State is
11 making a good faith effort to develop and submit, or
12 update, a Coastal Impact Assistance Plan.

13 “(4) For purposes of this subsection, calcula-
14 tions of payments for fiscal years 2004 through
15 2006 shall be made using qualified Outer Conti-
16 nental Shelf revenues received in fiscal year 2003,
17 and calculations of payments for fiscal years 2007
18 through 2009 shall be made using qualified Outer
19 Continental Shelf revenues received in fiscal year
20 2006.

21 “(d) COASTAL IMPACT ASSISTANCE PLAN.—

22 “(1) The Governor of each Producing Coastal
23 State shall prepare, and submit to the Secretary, a
24 Coastal Impact Assistance Plan. The Governor shall
25 solicit local input and shall provide for public partici-

1 pation in the development of the plan. The plan
2 shall be submitted to the Secretary by July 1, 2004.
3 Amounts received by Producing Coastal States and
4 coastal political subdivisions may be used only for
5 the purposes specified in the Producing Coastal
6 State’s Coastal Impact Assistance Plan.

7 “(2) The Secretary shall approve a plan under
8 paragraph (1) prior to disbursement of amounts
9 under this section. The Secretary shall approve the
10 plan if the Secretary determines that the plan is
11 consistent with the uses set forth in subsection (f)
12 of this section and if the plan contains—

13 “(A) the name of the State agency that
14 will have the authority to represent and act for
15 the State in dealing with the Secretary for pur-
16 poses of this section;

17 “(B) a program for the implementation of
18 the plan which describes how the amounts pro-
19 vided under this section will be used;

20 “(C) a contact for each political subdivi-
21 sion and description of how coastal political
22 subdivisions will use amounts provided under
23 this section, including a certification by the
24 Governor that such uses are consistent with the
25 requirements of this section;

1 “(D) certification by the Governor that
2 ample opportunity has been accorded for public
3 participation in the development and revision of
4 the plan; and

5 “(E) measures for taking into account
6 other relevant Federal resources and programs.

7 “(3) The Secretary shall approve or disapprove
8 each plan or amendment within 90 days of its sub-
9 mission.

10 “(4) Any amendment to the plan shall be pre-
11 pared in accordance with the requirements of this
12 subsection and shall be submitted to the Secretary
13 for approval or disapproval.

14 “(e) AUTHORIZED USES.—Producing Coastal States
15 and coastal political subdivisions shall use amounts pro-
16 vided under this section, including any such amounts de-
17 posited in a State or coastal political subdivision adminis-
18 tered trust fund dedicated to uses consistent with this sub-
19 section, in compliance with Federal and State law and only
20 for one or more of the following purposes—

21 “(1) projects and activities for the conservation,
22 protection or restoration of coastal areas including
23 wetlands;

24 “(2) mitigating damage to fish, wildlife or nat-
25 ural resources;

1 “(3) planning assistance and administrative
2 costs of complying with the provisions of this sec-
3 tion;

4 “(4) implementation of federally approved ma-
5 rine, coastal, or comprehensive conservation manage-
6 ment plans; and

7 “(5) mitigating impacts of Outer Continental
8 Shelf activities through funding onshore infrastruc-
9 ture and public service needs.

10 (f) COMPLIANCE WITH AUTHORIZED USES.—If the
11 Secretary determines that any expenditure made by a Pro-
12 ducing Coastal State or coastal political subdivision is not
13 consistent with the uses authorized in subsection (e) of
14 this section, the Secretary shall not disburse any further
15 amounts under this section to that Producing Coastal
16 State or coastal political subdivision until the amounts
17 used for the inconsistent expenditure have been repaid or
18 obligated for authorized uses.

19 **SEC. 112. NATIONAL ENERGY RESOURCE DATABASE.**

20 (a) SHORT TITLE.—This section may be cited as the
21 “National Energy Data Preservation Program Act of
22 2003”.

23 (b) PROGRAM.—The Secretary of the Interior (in this
24 section, referred to as “Secretary”) shall carry out a Na-

1 tional Energy Data Preservation Program in accordance
2 with this section—

3 (1) to archive geologic, geophysical, and engi-
4 neering data and samples related to energy re-
5 sources including oil, gas, coal, and geothermal re-
6 sources;

7 (2) to provide a national catalog of such archi-
8 val material; and

9 (3) to provide technical assistance related to the
10 archival material.

11 (c) ENERGY DATA ARCHIVE SYSTEM.—

12 (1) The Secretary shall establish, as a compo-
13 nent of the Program, an energy data archive system,
14 which shall provide for the storage, preservation,
15 and archiving of subsurface, and in limited cases
16 surface, geological, geophysical and engineering data
17 and samples. The Secretary, in consultation with the
18 Association of American State Geologists and inter-
19 ested members of the public, shall develop guidelines
20 relating to the energy data archive system, including
21 the types of data and samples to be preserved.

22 (2) The system shall be comprised of State
23 agencies and agencies within the Department of the
24 Interior that maintain geological and geophysical
25 data and samples regarding energy resources and

1 that are designated by the Secretary in accordance
2 with this subsection. The Program shall provide for
3 the storage of data and samples through data re-
4 positories operated by such agencies.

5 (3) The Secretary may not designate a State
6 agency as a component of the energy data archive
7 system unless it is the agency that acts as the geo-
8 logical survey in the State.

9 (4) The energy data archive system shall pro-
10 vide for the archiving of relevant subsurface data
11 and samples obtained during energy exploration and
12 production operations on Federal lands—

13 (A) in the most appropriate repository des-
14 igned under paragraph (2), with preference
15 being given to archiving data in the State in
16 which the data was collected; and

17 (B) consistent with all applicable law and
18 requirements relating to confidentiality and pro-
19 prietary data.

20 (5)(A) Subject to the availability of appropria-
21 tions, the Secretary shall provide financial assistance
22 to a State agency that is designated under para-
23 graph (2) for providing facilities to archive energy
24 material.

1 (B) The Secretary, in consultation with the As-
2 sociation of American State Geologists and inter-
3 ested members of the public, shall establish proce-
4 dures for providing assistance under this paragraph.
5 The procedures shall be designed to ensure that
6 such assistance primarily supports the expansion of
7 data and material archives and the collection and
8 preservation of new data and samples.

9 (d) NATIONAL CATALOG.—

10 (1) As soon as practicable after the date of the
11 enactment of this section, the Secretary shall develop
12 and maintain, as a component of the Program, a na-
13 tional catalog that identifies—

14 (A) energy data and samples available in
15 the energy data archive system established
16 under subsection (c);

17 (B) the repository for particular material
18 in such system; and (C) the means of accessing
19 the material.

20 (2) The Secretary shall make the national cata-
21 log accessible to the public on the site of the Survey
22 on the World Wide Web, consistent with all applica-
23 ble requirements related to confidentiality and pro-
24 prietary data.

1 (3) The Secretary may carry out the require-
2 ments of this subsection by contract or agreement
3 with appropriate persons.

4 (e) TECHNICAL ASSISTANCE.—

5 (1) Subject to the availability of appropriations,
6 as a component of the Program, the Secretary shall
7 provide financial assistance to any State agency des-
8 ignated under subsection (c)(2) to provide technical
9 assistance to enhance understanding, interpretation,
10 and use of materials archived in the energy data ar-
11 chive system established under subsection (c).

12 (2) The Secretary, in consultation with the As-
13 sociation of American State Geologists and inter-
14 ested members of the public, shall develop a process,
15 which shall involve the participation of representa-
16 tives of relevant Federal and State agencies, for the
17 approval of financial assistance to State agencies
18 under this subsection.

19 (f) COSTS.—

20 (1) The Federal share of the cost of an activity
21 carried out with assistance under subsections (c) or
22 (e) shall be no more than 50 percent of the total
23 cost of that activity.

24 (2) The Secretary—

1 (A) may accept private contributions of
2 property and services for technical assistance
3 and archive activities conducted under this sec-
4 tion; and (B) may apply the value of such con-
5 tributions to the non-Federal share of the costs
6 of such technical assistance and archive activi-
7 ties.

8 (g) REPORTS.—

9 (1) Within year after the date of the enactment
10 of this Act, the Secretary shall submit an initial re-
11 port to the Congress setting forth a plan for the im-
12 plementation of the Program.

13 (2) Not later than 90 days after the end of the
14 first fiscal year beginning after the submission of
15 the report under paragraph (1) and after the end of
16 each fiscal year thereafter, the Secretary shall sub-
17 mit a report to the Congress describing the status
18 of the Program and evaluating progress achieved
19 during the preceding fiscal year in developing and
20 carrying out the Program.

21 (3) The Secretary shall consult with the Asso-
22 ciation of American State Geologists and interested
23 members of the public in preparing the reports re-
24 quired by this subsection.

25 (h) DEFINITIONS.—As used in this section, the term:

1 (1) “Association of American State Geologists”
2 means the organization of the chief executives of the
3 State geological surveys.

4 (2) “Secretary” means the Secretary of the In-
5 terior acting through the Director of the United
6 States Geological Survey.

7 (3) “Program” means the National Energy
8 Data Preservation Program carried out under this
9 section.

10 (4) “Survey” means the United States Geologi-
11 cal Survey.

12 (i) MAINTENANCE OF STATE EFFORT.—It is the in-
13 tent of the Congress that the States not use this section
14 as an opportunity to reduce State resources applied to the
15 activities that are the subject of the Program.

16 (j) AUTHORIZATION OF APPROPRIATIONS.—There is
17 authorized to be appropriated to the Secretary
18 \$30,000,000 for each of fiscal years 2003 through 2007
19 for carrying out this section.

20 **SEC. 113. OIL AND GAS LEASE ACREAGE LIMITATION.**

21 Section 27(d)(1) of the Mineral Leasing Act (30
22 U.S.C. 184(d)(1)) is amended by inserting after “acreage
23 held in special tar sands area” the following: “as well as
24 acreage under any lease any portion of which has been
25 committed to a federally approved unit or cooperative plan

1 or communitization agreement, or for which royalty, in-
2 cluding compensatory royalty or royalty-in-kind, was paid
3 in the preceding calendar year,”.

4 **SEC. 114. ASSESSMENT OF DEPENDENCE OF STATE OF HA-**
5 **WAI ON OIL.**

6 (a) ASSESSMENT. The Secretary of Energy shall as-
7 sess the economic implication of the dependence of the
8 State of Hawaii on oil as the principal source of energy
9 for the State, including—

10 (1) the short- and long-term prospects for crude
11 oil supply disruption and price volatility and poten-
12 tial impacts on the economy of Hawaii;

13 (2) the economic relationship between oil-fired
14 generation of electricity from residual fuel and re-
15 fined petroleum products consumed for ground, ma-
16 rine, and air transportation;

17 (3) the technical and economic feasibility of in-
18 creasing the contribution of renewable energy re-
19 sources for generation of electricity, on an island-by-
20 island basis, including—

21 (A) siting and facility configuration;

22 (B) environmental, operational, and safety
23 considerations;

24 (C) the availability of technology;

1 (D) effects on the utility system including
2 reliability;

3 (E) infrastructure and transport require-
4 ments;

5 (F) community support; and

6 (G) other factors affection the economic
7 impact of such an increase and any effect on
8 the economic relationship described in para-
9 graph (2);

10 (4) the technical and economic feasibility of
11 using liquefied natural gas to displace residual fuel
12 oil for electric generation, including neighbor island
13 opportunities, and the effect of such displacement on
14 the economic relationship described in paragraph (2)
15 including—

16 (A) the availability of supply;

17 (B) siting and facility configuration for on-
18 shore and offshore liquefied natural gas receiv-
19 ing terminals;

20 (C) the factors described in subparagraphs
21 (B) through (F) of paragraph (3); and

22 (D) other economic factors;

23 (5) the technical and economic feasibility of
24 using renewable energy sources (including hydrogen)
25 for ground, marine, and air transportation energy

1 applications to displace the use of refined petroleum
2 products, on an island-by-island basis, and the eco-
3 nomic impact of such displacement on the relation-
4 ship described in (2); and

5 (6) an island-by-island approach to—

6 (A) the development of hydrogen from re-
7 newable resources; and

8 (B) the application of hydrogen to the en-
9 ergy needs of Hawaii

10 (b) CONTRACTING AUTHORITY.—The Secretary of
11 Energy may carry out the assessment under subsection
12 (a) directly or, in whole or in part, through one or more
13 contracts with qualified public or private entities.

14 (c) REPORT.—Not later than 300 days after the date
15 of enactment of this Act, the Secretary of Energy shall
16 prepare, in consultation with agencies of the State of Ha-
17 waii and other stakeholders, as appropriate, and submit
18 to Congress, as report detailing the findings, conclusions,
19 and recommendations resulting from the assessment.

20 (d) APPROPRIATION.—The are authorized to be ap-
21 propriated such sums as are necessary to carry out this
22 section.

1 **Subtitle B—Access to Federal**
2 **Lands**

3 **SEC. 121. OFFICE OF FEDERAL ENERGY PERMIT COORDI-**
4 **NATION.**

5 (a) **ESTABLISHMENT.**—The President shall establish
6 the Office of Federal Energy Permit Coordination (in this
7 section, referred to as “Office”) within the Executive Of-
8 fice of the President in the same manner and mission as
9 the White House Energy Projects Task Force established
10 by Executive Order 13212.

11 (b) **STAFFING.**—The Office shall be staffed by func-
12 tional experts from relevant federal agencies and depart-
13 ments on a nonreimbursable basis to carry out the mission
14 of this office.

15 (c) **REPORTING.**—The Office shall provide an annual
16 report to Congress, detailing the activities put in place to
17 coordinate and expedite Federal decisions on energy
18 projects. The report shall list accomplishments in improv-
19 ing the federal decision making process and shall include
20 any additional recommendations or systemic changes
21 needed to establish a more effective and efficient federal
22 permitting process.

1 **SEC. 122. PILOT PROJECT TO IMPROVE FEDERAL PERMIT**
2 **COORDINATION.**

3 (a) CREATION OF PILOT PROJECT.—The Secretary
4 of the Interior (in this section, referred to as “Secretary”)
5 shall establish a Federal Permit Streamlining Pilot
6 Project. The Secretary shall enter into a Memorandum of
7 Understanding with the Secretary of Agriculture, Admin-
8 istrator of the Environmental Protection Agency, and the
9 Chief of the Corps of Engineers within 90 days after en-
10 actment of this Act. The Secretary may also request that
11 the Governors of Wyoming, Montana, Colorado, and New
12 Mexico be signatories to the Memorandum of Under-
13 standing.

14 (b) DESIGNATION OF QUALIFIED STAFF.—Once the
15 Pilot Project has been established by the Secretary, all
16 Federal signatory parties shall assign an employee on a
17 nonreimbursable basis to each of the field offices identified
18 in section (c), who has expertise in the regulatory issues
19 pertaining to their office, including, as applicable, par-
20 ticular expertise in Endangered Species Act section 7 con-
21 sultations and the preparation of Biological Opinions,
22 Clean Water Act 404 permits, Clean Air Act regulatory
23 matters, planning under the National Forest Management
24 Act, and the preparation of analyses under the National
25 Environmental Policy Act. Assigned staff shall report to
26 the Bureau of Land Management (BLM) Field Managers

1 in the offices to which they are assigned, and shall be re-
2 sponsible for all issues related to the jurisdiction of their
3 home office or agency, and participate as part of the team
4 of employees working on proposed energy projects, plan-
5 ning, and environmental analyses.

6 (c) FIELD OFFICES.—The following BLM Field Of-
7 fices shall serve as the Federal Permit Streamlining Pilot
8 Project offices:

- 9 (1) Rawlins, Wyoming;
- 10 (2) Buffalo, Wyoming;
- 11 (3) Miles City, Montana;
- 12 (4) Farmington, New Mexico;
- 13 (5) Carlsbad, New Mexico; and
- 14 (6) Glenwood Springs, Colorado.

15 (d) REPORTS.—The Secretary shall submit a report
16 to the Congress 3 years following the date of enactment
17 of this section, outlining the results of the Pilot Project
18 to date and including a recommendation to the President
19 as to whether the Pilot Project should be implemented na-
20 tionwide.

21 (e) ADDITIONAL PERSONNEL.—The Secretary shall
22 assign to each of the BLM Field Offices listed in sub-
23 section (c) such additional personnel as is necessary to en-
24 sure the effective implementation of—

- 25 (1) the Pilot Project; and

1 (2) other programs administered by such of-
2 fices, including inspection and enforcement related
3 to energy development on federal lands, pursuant to
4 the multiple use mandate of the Federal Land Policy
5 and Management Act of 1976 (43 U.S.C. 1701 et
6 seq.).

7 (f) SAVINGS PROVISION.—Nothing in this section
8 shall affect the operation of any federal or state law or
9 any delegation of authority made by a Secretary or head
10 of an Agency whose employees are participating in the
11 program provided for by this section.

12 (g) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated such sums as may be
14 necessary to implement this section.

15 **SEC. 123. FEDERAL ONSHORE LEASING PROGRAMS FOR**
16 **OIL AND GAS.**

17 (a) TIMELY ACTION ON LEASES AND PERMITS.—To
18 ensure timely action on oil and gas leases and applications
19 for permits to drill on lands otherwise available for leasing,
20 the Secretary of the Interior shall—

21 (1) ensure expeditious compliance with the re-
22 quirements of section 102(2)(C) of the National En-
23 vironmental Policy Act of 1969 (42 U.S.C.
24 4332(2)(C));

1 (2) improve consultation and coordination with
2 the States; and

3 (3) improve the collection, storage, and retrieval
4 of information related to such leasing activities.

5 (b) IMPROVED ENFORCEMENT.—The Secretary shall
6 improve inspection and enforcement of oil and gas activi-
7 ties, including enforcement of terms and conditions in per-
8 mits to drill.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—For each
10 of the fiscal years 2004 through 2007, in addition to
11 amounts otherwise authorized to be appropriated for the
12 purpose of carrying out section 17 of the Mineral Leasing
13 Act (30 U.S.C. 226), there are authorized to be appro-
14 priated to the Secretary of the Interior—

15 (1) \$40,000,000 for the purpose of carrying out
16 paragraphs (1) through (3) of subsection (a); and

17 (2) \$20,000,000 for the purpose of carrying out
18 subsection (b).

19 **SEC. 124. ESTIMATES OF OIL AND GAS RESOURCES UNDER-**
20 **LYING ONSHORE FEDERAL LANDS.**

21 Section 604 of the Energy Act of 2000 (42 U.S.C.
22 6217) is amended by striking “(a) IN GENERAL” and all
23 thereafter and inserting

24 “(a) IN GENERAL.—The Secretary of the Interior, in
25 consultation with the Secretaries of Agriculture and En-

1 ergy, shall conduct an inventory of all onshore Federal
2 lands and take measures necessary to update and revise
3 this inventory. The inventory shall identify for all federal
4 lands

5 “(1) the United States Geological Survey esti-
6 mates of the oil and gas resources underlying these
7 lands;

8 “(2) the extent and nature of any restrictions
9 or impediments to the exploration, production and
10 transportation of such resources, including

11 “(A) existing land withdrawals and the un-
12 derlying purpose for each withdrawal;

13 “(B) restrictions or impediments affecting
14 timeliness of granting leases;

15 “(C) post-lease restrictions or impediments
16 such as conditions of approval, applications for
17 permits to drill, applicable environmental per-
18 mits;

19 “(D) permits or restrictions associated
20 with transporting the resources; and

21 “(E) identification of the authority for
22 each restriction or impediment together with
23 the impact on additional processing or review
24 time and potential remedies; and

1 “(3) the estimates of oil and gas resources not
2 available for exploration and production by virtue of
3 the restrictions identified above.

4 “(b) REPORTS.—The Secretary shall provide a
5 progress report to the Congress by October 1, 2006 and
6 shall complete the inventory by October 1, 2010.

7 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated such sums as may be
9 necessary to implement this section.

10 **SEC. 125. SPLIT-ESTATE FEDERAL OIL AND GAS LEASING**
11 **AND DEVELOPMENT PRACTICES.**

12 (a) REVIEW.—In consultation with affected private
13 surface owners, oil and gas industry and other interested
14 parties, the Secretary of the Interior shall undertake a re-
15 view of the current policies and practices with respect to
16 management of Federal subsurface oil and gas develop-
17 ment activities and their effects on the privately owned
18 surface. This review shall include

19 (1) a comparison of the rights and responsibil-
20 ities under existing mineral and land law for the
21 owner of a Federal mineral lease, the private surface
22 owners and the Department;

23 (2) a comparison of the surface owner consent
24 provisions in section 714 of the Surface Mining Con-
25 trol and Reclamation Act (30 U.S.C. 1304) con-

1 cerning surface mining of federal coal deposits and
2 the surface owner consent provisions for oil and gas
3 development, including coalbed methane production;
4 and

5 (3) recommendations for administrative or leg-
6 islative action necessary to facilitate reasonable ac-
7 cess for Federal oil and gas activities while address-
8 ing surface owner concerns and minimizing impacts
9 to private surface.

10 (b) REPORT.—The Secretary of the Interior shall re-
11 port the results of such review to the Congress no later
12 than 180 days after enactment of this section.

13 **SEC. 126. COORDINATION OF FEDERAL AGENCIES TO ES-**
14 **TABLISH PRIORITY ENERGY TRANSMISSION**
15 **RIGHTS-OF-WAY.**

16 (a) DEFINITIONS.—For purposes of this section:

17 (1) The term “utility corridor” means any lin-
18 ear strip of land across Federal lands of approved
19 width, but limited by technological, environmental,
20 and topographical factors for use by a utility facility.

21 (2) The term “Federal authorization” means
22 any authorization required under Federal law in
23 order to site a utility facility, including but not lim-
24 ited to such permits, special use authorizations, cer-

1 tifications, opinions, or other approvals as may be
2 required, issued by a Federal agency.

3 (3) The term “Federal lands” means all lands
4 owned by the United States, except

5 (A) lands in the National Park System;

6 (B) lands held in trust for an Indian or In-
7 dian tribe; and

8 (C) lands on the Outer Continental Shelf.

9 (4) The term “Secretary” means the Secretary
10 of Energy.

11 (5) The term “utility facility” means any pri-
12 vately, publicly, or cooperatively owned line, facility,
13 or system (A) for the transportation of oil and nat-
14 ural gas, synthetic liquid or gaseous fuels, any re-
15 fined product produced therefrom, or for transpor-
16 tation of products in support of production, or for
17 storage and terminal facilities in connection there-
18 with; or (B) for the generation, transmission and
19 distribution of electric energy.

20 (b) UTILITY CORRIDORS.—

21 (1) No later than 24 months after the date of
22 enactment of this section, the Secretary of the Inte-
23 rior, with respect to public lands, and the Secretary
24 of Agriculture, with respect to National Forest Sys-

1 tem lands, in consultation with the Secretary,
2 shall—

3 (A) designate utility corridors pursuant to
4 section 503 of the Federal Land Policy and
5 Management Act (43 U.S.C. 1763) in the elev-
6 en contiguous Western States, as identified in
7 section 103(o) of such Act (43 U.S.C. 1702(o));
8 and

9 (B) incorporate the utility corridors des-
10 ignated under paragraph (A) into the relevant
11 departmental and agency land use and resource
12 management plans or their equivalent.

13 (2) The Secretary shall coordinate with the af-
14 fected Federal agencies to jointly identify potential
15 utility corridors on Federal lands in the other States
16 and jointly develop a schedule for the designation,
17 environmental review and incorporation of such util-
18 ity corridors into relevant departmental and agency
19 land use and resource management plans or their
20 equivalent.

21 (c) FEDERAL PERMIT COORDINATION.—The Sec-
22 retary, in consultation with the Secretary of the Interior,
23 the Secretary of Agriculture, and the Secretary of De-
24 fense, shall develop a memorandum of understanding
25 (“MOU”) for the purpose of coordinating all applicable

1 Federal authorizations and environmental reviews related
2 to a proposed or existing utility facility. To the maximum
3 extent practicable under applicable law, the Secretary
4 shall coordinate the process developed in the MOU with
5 any Indian tribes, multi-State entities, and State agencies
6 that are responsible for conducting any separate permit-
7 ting and environmental reviews of the affected utility facil-
8 ity to ensure timely review and permit decisions. The
9 MOU shall provide for—

10 (1) the coordination among affected Federal
11 agencies to ensure that the necessary Federal au-
12 thorizations are conducted concurrently with applica-
13 ble State siting processes and are considered within
14 a specific time frame to be identified in the MOU;

15 (2) an agreement among the affected Federal
16 agencies to prepare a single environmental review
17 document to be used as the basis for all Federal au-
18 thorization decisions; and

19 (3) a process to expedite applications to con-
20 struct or modify utility facilities within utility cor-
21 ridors.

Subtitle C Alaska Natural Gas Pipeline

3 SEC. 131. SHORT TITLE.

4 This subtitle may be cited as the “Alaska Natural
5 Gas Pipeline Act”.

6 SEC. 132. DEFINITIONS.

7 In this subtitle, the following definitions apply:

8 (1) The term “Alaska natural gas” means nat-
9 ural gas derived from the area of the State of Alas-
10 ka lying north of 64 degrees North latitude.

11 (2) The term “Alaska natural gas transpor-
12 tation project” means any natural gas pipeline sys-
13 tem that carries Alaska natural gas to the border
14 between Alaska and Canada (including related facili-
15 ties subject to the jurisdiction of the Commission)
16 that is authorized under either

17 (A) the Alaska Natural Gas Transpor-
18 tation Act of 1976 (15 U.S.C. 719 et seq.); or

19 (B) section 133.

20 (3) The term “Alaska natural gas transpor-
21 tation system” means the Alaska natural gas trans-
22 portation project authorized under the Alaska Nat-
23 ural Gas Transportation Act of 1976 and designated
24 and described in section 2 of the President’s deci-
25 sion.

1 (4) The term “Commission” means the Federal
2 Energy Regulatory Commission.

3 (5) The term “President’s decision” means the
4 decision and report to Congress on the Alaska nat-
5 ural gas transportation system issued by the Presi-
6 dent on September 22, 1977, pursuant to section 7
7 of the Alaska Natural Gas Transportation Act of
8 1976 (15 U.S.C. 719(e) and approved by Public
9 Law 95 158 (91 Stat.1268)).

10 **SEC. 133. ISSUANCE OF CERTIFICATE OF PUBLIC CON-**
11 **VENIENCE AND NECESSITY.**

12 (a) **AUTHORITY OF THE COMMISSION.**—Notwith-
13 standing the provisions of the Alaska Natural Gas Trans-
14 portation Act of 1976 (15 U.S.C. 719 et seq.), the Com-
15 mission may, pursuant to section 7(c) of the Natural Gas
16 Act (15 U.S.C. 717f(c)), consider and act on an applica-
17 tion for the issuance of a certificate of public convenience
18 and necessity authorizing the construction and operation
19 of an Alaska natural gas transportation project other than
20 the Alaska natural gas transportation system.

21 (b) **ISSUANCE OF CERTIFICATE.**—

22 (1) The Commission shall issue a certificate of
23 public convenience and necessity authorizing the
24 construction and operation of an Alaska natural gas
25 transportation project under this section if the appli-

1 cant has satisfied the requirements of section 7(e) of
2 the Natural Gas Act (15 U.S.C. 717f(e)).

3 (2) In considering an application under this
4 section, the Commission shall presume that—

5 (A) a public need exists to construct and
6 operate the proposed Alaska natural gas trans-
7 portation project; and

8 (B) sufficient downstream capacity will
9 exist to transport the Alaska natural gas mov-
10 ing through such project to markets in the con-
11 tiguous United States.

12 (c) EXPEDITED APPROVAL PROCESS.—The Commis-
13 sion shall issue a final order granting or denying any ap-
14 plication for a certificate of public convenience and neces-
15 sity under section 7(c) of the Natural Gas Act (15 U.S.C.
16 717f(c)) and this section not more than 60 days after the
17 issuance of the final environmental impact statement for
18 that project pursuant to section 134.

19 (d) PROHIBITION ON CERTAIN PIPELINE ROUTE.—
20 No license, permit, lease, right-of-way, authorization, or
21 other approval required under Federal law for the con-
22 struction of any pipeline to transport natural gas from
23 lands within the Prudhoe Bay oil and gas lease area may
24 be granted for any pipeline that follows a route that tra-
25 verses—

1 (1) the submerged lands (as defined by the
2 Submerged Lands Act) beneath, or the adjacent
3 shoreline of, the Beaufort Sea; and

4 (2) enters Canada at any point north of 68 de-
5 grees North latitude.

6 (e) OPEN SEASON.—Except where an expansion is
7 ordered pursuant to section 135, initial or expansion ca-
8 pacity on any Alaska natural gas transportation project
9 shall be allocated in accordance with procedures to be es-
10 tablished by the Commission in regulations governing the
11 conduct of open seasons for such project. Such procedures
12 shall include the criteria for and timing of any open sea-
13 sons; promote competition in the exploration, development,
14 and production of Alaska natural gas; and, for any open
15 season for capacity beyond the initial capacity, provide the
16 opportunity for the transportation of natural gas other
17 than from the Prudhoe Bay and Point Thompson units.
18 The Commission shall issue such regulations not later
19 than 120 days after the date of enactment of this Act.

20 (f) PROJECTS IN THE CONTIGUOUS UNITED
21 STATES.—Applications for additional or expanded pipeline
22 facilities that may be required to transport Alaska natural
23 gas from Canada to markets in the contiguous United
24 States may be made pursuant to the Natural Gas Act.
25 To the extent such pipeline facilities include the expansion

1 of any facility constructed pursuant to the Alaska Natural
2 Gas Transportation Act of 1976, the provisions of that
3 Act shall continue to apply.

4 (g) **STUDY OF IN-STATE NEEDS.**—The holder of the
5 certificate of public convenience and necessity issued,
6 modified, or amended by the Commission for an Alaska
7 natural gas transportation project shall demonstrate that
8 it has conducted a study of Alaska in-State needs, includ-
9 ing tie-in points along the Alaska natural gas transpor-
10 tation project for in-State access.

11 (h) **ALASKA ROYALTY GAS.**—The Commission, upon
12 the request of the State of Alaska and after a hearing,
13 may provide for reasonable access to the Alaska natural
14 gas transportation project for the State of Alaska or its
15 designee for the transportation of the State’s royalty gas
16 for local consumption needs within the State; except that
17 the rates of existing shippers of subscribed capacity on
18 such project shall not be increased as a result of such ac-
19 cess.

20 (i) **REGULATIONS.**—The Commission may issue regu-
21 lations to carry out the provisions of this section.

22 **SEC. 134. ENVIRONMENTAL REVIEWS.**

23 (a) **COMPLIANCE WITH NEPA.**—The issuance of a
24 certificate of public convenience and necessity authorizing
25 the construction and operation of any Alaska natural gas

1 transportation project under section 133 shall be treated
2 as a major Federal action significantly affecting the qual-
3 ity of the human environment within the meaning of sec-
4 tion 102(2)(c) of the National Environmental Policy Act
5 of 1969 (42 U.S.C. 4332(2)(c)).

6 (b) DESIGNATION OF LEAD AGENCY.—The Commis-
7 sion shall be the lead agency for purposes of complying
8 with the National Environmental Policy Act of 1969, and
9 shall be responsible for preparing the statement required
10 by section 102(2)(c) of that Act (42 U.S.C. 4332(2)(c))
11 with respect to an Alaska natural gas transportation
12 project under section 133. The Commission shall prepare
13 a single environmental statement under this section, which
14 shall consolidate the environmental reviews of all Federal
15 agencies considering any aspect of the project.

16 (c) OTHER AGENCIES.—All Federal agencies consid-
17 ering aspects of the construction and operation of an Alas-
18 ka natural gas transportation project under section 133
19 shall cooperate with the Commission, and shall comply
20 with deadlines established by the Commission in the prep-
21 aration of the statement under this section. The statement
22 prepared under this section shall be used by all such agen-
23 cies to satisfy their responsibilities under section 102(2)(c)
24 of the National Environmental Policy Act of 1969 (42
25 U.S.C. 4332(2)(c)) with respect to such project.

1 (d) EXPEDITED PROCESS.—The Commission shall
2 issue a draft statement under this section not later than
3 12 months after the Commission determines the applica-
4 tion to be complete and shall issue the final statement not
5 later than 6 months after the Commission issues the draft
6 statement, unless the Commission for good cause finds
7 that additional time is needed.

8 **SEC. 135. PIPELINE EXPANSION.**

9 (a) AUTHORITY.—With respect to any Alaska natural
10 gas transportation project, upon the request of one or
11 more persons and after giving notice and an opportunity
12 for a hearing, the Commission may order the expansion
13 of such project if it determines that such expansion is re-
14 quired by the present and future public convenience and
15 necessity.

16 (b) REQUIREMENTS.—Before ordering an expansion,
17 the Commission shall—

18 (1) approve or establish rates for the expansion
19 service that are designed to ensure the recovery, on
20 an incremental or rolled-in basis, of the cost associ-
21 ated with the expansion (including a reasonable rate
22 of return on investment);

23 (2) ensure that the rates as established do not
24 require existing shippers on the Alaska natural gas

1 transportation project to subsidize expansion ship-
2 pers;

3 (3) find that the proposed shipper will comply
4 with, and the proposed expansion and the expansion
5 of service will be undertaken and implemented based
6 on, terms and conditions consistent with the then-ef-
7 fective tariff of the Alaska natural gas transpor-
8 tation project;

9 (4) find that the proposed facilities will not ad-
10 versely affect the financial or economic viability of
11 the Alaska natural gas transportation project;

12 (5) find that the proposed facilities will not ad-
13 versely affect the overall operations of the Alaska
14 natural gas transportation project;

15 (6) find that the proposed facilities will not di-
16 minish the contract rights of existing shippers to
17 previously subscribed certificated capacity;

18 (7) ensure that all necessary environmental re-
19 views have been completed; and

20 (8) find that adequate downstream facilities
21 exist or are expected to exist to deliver incremental
22 Alaska natural gas to market.

23 (c) REQUIREMENT FOR A FIRM TRANSPORTATION
24 AGREEMENT.—Any order of the Commission issued pur-
25 suant to this section shall be null and void unless the per-

1 son or persons requesting the order executes a firm trans-
2 portation agreement with the Alaska natural gas transpor-
3 tation project within a reasonable period of time as speci-
4 fied in such order.

5 (d) LIMITATION.—Nothing in this section shall be
6 construed to expand or otherwise affect any authorities of
7 the Commission with respect to any natural gas pipeline
8 located outside the State of Alaska.

9 (e) REGULATIONS.—The Commission may issue reg-
10 ulations to carry out the provisions of this section.

11 **SEC. 136. FEDERAL COORDINATOR.**

12 (a) ESTABLISHMENT.—There is established, as an
13 independent office in the executive branch, the Office of
14 the Federal Coordinator for Alaska Natural Gas Trans-
15 portation Projects.

16 (b) FEDERAL COORDINATOR.—The Office shall be
17 headed by a Federal Coordinator for Alaska Natural Gas
18 Transportation Projects, who shall—

19 (1) be appointed by the President, by and with
20 the advice and consent of the Senate;

21 (2) for a term equal to the period required to
22 design, permit and construction the project plus one
23 year; and

24 (3) be compensated at the rate prescribed for
25 level III of the Executive Schedule (5 U.S.C. 5314).

1 (c) DUTIES.—The Federal Coordinator shall be re-
2 sponsible for—

3 (1) coordinating the expeditious discharge of all
4 activities by Federal agencies with respect to an
5 Alaska natural gas transportation project; and

6 (2) ensuring the compliance of Federal agencies
7 with the provisions of this subtitle.

8 (d) REVIEWS AND ACTIONS OF OTHER FEDERAL
9 AGENCIES.—

10 (1) All reviews conducted and actions taken by
11 any Federal officer or agency relating to an Alaska
12 natural gas transportation project authorized under
13 this section shall be expedited, in a manner con-
14 sistent with completion of the necessary reviews and
15 approvals by the deadlines set forth in this subtitle.

16 (2) No Federal officer or agency shall have the
17 authority to include terms and conditions that are
18 permitted, but not required, by law on any certifi-
19 cate, right-of-way, permit, lease, or other authoriza-
20 tion issued to an Alaska natural gas transportation
21 project if the Federal Coordinator determines that
22 the terms and conditions would prevent or impair in
23 any significant respect the expeditious construction
24 and operation, or an expansion, of the project.

1 (3) Unless required by law, no Federal officer
2 or agency shall add to, amend, or abrogate any cer-
3 tificate, right-of-way, permit, lease, or other author-
4 ization issued to an Alaska natural gas transpor-
5 tation project if the Federal Coordinator determines
6 that such action would prevent or impair in any sig-
7 nificant respect the expeditious construction and op-
8 eration of, or an expansion of, the project.

9 (4) The Federal Coordinator's authority shall
10 not include the ability to override—

11 (A) the implementation or enforcement of
12 regulations issued by the Commission pursuant
13 to Section 133(e); or

14 (B) an order by the Commission to expand
15 the project pursuant to Section 135.

16 (5) Nothing in this section shall give the Fed-
17 eral Coordinator the authority to impose additional
18 terms, conditions or requirements beyond those im-
19 posed by the Commission or any agency with respect
20 to construction and operation, or an expansion of,
21 the project.

22 (e) STATE COORDINATION.—The Federal Coordi-
23 nator shall enter into a Joint Surveillance and Monitoring
24 Agreement, approved by the President and the Governor
25 of Alaska, with the State of Alaska similar to that in effect

1 during construction of the Trans-Alaska Oil Pipeline to
2 monitor the construction of the Alaska natural gas trans-
3 portation project. The Federal Government shall have pri-
4 mary surveillance and monitoring responsibility where the
5 Alaska natural gas transportation project crosses Federal
6 lands and private lands, and the State government shall
7 have primary surveillance and monitoring responsibility
8 where the Alaska natural gas transportation project
9 crosses State lands.

10 (f) **TRANSFER OF FEDERAL INSPECTOR FUNCTIONS**
11 **AND AUTHORITY.**—Upon appointment of the Federal Co-
12 ordinator by the President, all of the functions and au-
13 thority of the Office of Federal Inspector of Construction
14 for the Alaska Natural Gas Transportation System vested
15 in the Secretary of Energy pursuant to section 3012(b)
16 of Public Law 102–486 (15 U.S.C. 719e(b)), including all
17 functions and authority described and enumerated in the
18 Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33,663),
19 Executive Order No. 12142 of June 21, 1979 (44 Fed.
20 Reg. 36,927), and section 5 of the President’s decision,
21 shall be transferred to the Federal Coordinator.

22 **SEC. 137. JUDICIAL REVIEW.**

23 (a) **EXCLUSIVE JURISDICTION.**—Except for review by
24 the Supreme Court of the United States on writ of certio-
25 rari, the United States Court of Appeals for the District

1 of Columbia Circuit shall have original and exclusive juris-
2 diction to determine—

3 (1) the validity of any final order or action (in-
4 cluding a failure to act) of any Federal agency or of-
5 ficer under this subtitle;

6 (2) the constitutionality of any provision of this
7 subtitle, or any decision made or action taken under
8 this subtitle; or

9 (3) the adequacy of any environmental impact
10 statement prepared under the National Environ-
11 mental Policy Act of 1969 with respect to any action
12 under this subtitle.

13 (b) DEADLINE FOR FILING CLAIM.—Claims arising
14 under this subtitle may be brought not later than 60 days
15 after the date of the decision or action giving rise to the
16 claim.

17 (c) EXPEDITED CONSIDERATION.—The United
18 States Court of Appeals for the District of Columbia Cir-
19 cuit shall set any action brought under subsection (a) for
20 expedited consideration, taking into account the national
21 interest of enhancing national energy security by providing
22 access to the significant gas reserves in Alaska needed to
23 meet the anticipated demand for natural gas.

24 (d) AMENDMENT TO ANGTA.—Section 10(c) of the
25 Alaska Natural Gas Transportation Act of 1976 (15

1 U.S.C. 719h) is amended by inserting after paragraph (1)
2 the following:

3 “(2) The United States Court of Appeals for
4 the District of Columbia Circuit shall set any action
5 brought under this section for expedited consider-
6 ation, taking into account the national interest de-
7 scribed in section 2.”.

8 **SEC. 138. STATE JURISDICTION OVER IN-STATE DELIVERY**
9 **OF NATURAL GAS.**

10 (a) LOCAL DISTRIBUTION.—Any facility receiving
11 natural gas from the Alaska natural gas transportation
12 project for delivery to consumers within the State of Alas-
13 ka shall be deemed to be a local distribution facility within
14 the meaning of section 1(b) of the Natural Gas Act (15
15 U.S.C. 717(b)), and therefore not subject to the jurisdic-
16 tion of the Commission.

17 (b) ADDITIONAL PIPELINES.—Nothing in this sub-
18 title, except as provided in section 133(d), shall preclude
19 or affect a future gas pipeline that may be constructed
20 to deliver natural gas to Fairbanks, Anchorage,
21 Matanuska-Susitna Valley, or the Kenai peninsula or
22 Valdez or any other site in the State of Alaska for
23 consumption within or distribution outside the State of
24 Alaska.

1 (c) RATE COORDINATION.—Pursuant to the Natural
2 Gas Act, the Commission shall establish rates for the
3 transportation of natural gas on the Alaska natural gas
4 transportation project. In exercising such authority, the
5 Commission, pursuant to section 17(b) of the Natural Gas
6 Act (15 U.S.C. 717p(b)), shall confer with the State of
7 Alaska regarding rates (including rate settlements) appli-
8 cable to natural gas transported on and delivered from the
9 Alaska natural gas transportation project for use within
10 the State of Alaska.

11 **SEC. 139. STUDY OF ALTERNATIVE MEANS OF CONSTRUC-**
12 **TION.**

13 (a) REQUIREMENT OF STUDY.—If no application for
14 the issuance of a certificate or amended certificate of pub-
15 lic convenience and necessity authorizing the construction
16 and operation of an Alaska natural gas transportation
17 project has been filed with the Commission not later than
18 18 months after the date of enactment of this Act, the
19 Secretary of Energy shall conduct a study of alternative
20 approaches to the construction and operation of the
21 project.

22 (b) SCOPE OF STUDY.—The study shall consider the
23 feasibility of establishing a Government corporation to
24 construct an Alaska natural gas transportation project,
25 and alternative means of providing Federal financing and

1 ownership (including alternative combinations of Govern-
2 ment and private corporate ownership) of the project.

3 (c) CONSULTATION.—In conducting the study, the
4 Secretary of Energy shall consult with the Secretary of
5 the Treasury and the Secretary of the Army (acting
6 through the Commanding General of the Corps of Engi-
7 neers).

8 (d) REPORT.—If the Secretary of Energy is required
9 to conduct a study under subsection (a), the Secretary
10 shall submit a report containing the results of the study,
11 the Secretary's recommendations, and any proposals for
12 legislation to implement the Secretary's recommendations
13 to Congress.

14 **SEC. 140. CLARIFICATION OF ANGTA STATUS AND AU-**
15 **THORITIES.**

16 (a) SAVINGS CLAUSE.—Nothing in this subtitle af-
17 fects any decision, certificate, permit, right-of-way, lease,
18 or other authorization issued under section 9 of the Alaska
19 Natural Gas Transportation Act of 1976 (15 U.S.C.
20 719(g)) or any Presidential findings or waivers issued in
21 accordance with that Act.

22 (b) CLARIFICATION OF AUTHORITY TO AMEND
23 TERMS AND CONDITIONS TO MEET CURRENT PROJECT
24 REQUIREMENTS.—Any Federal officer or agency respon-
25 sible for granting or issuing any certificate, permit, right-

1 of-way, lease, or other authorization under section 9 of
2 the Alaska Natural Gas Transportation Act of 1976 (15
3 U.S.C. 719(g)) may add to, amend, or abrogate any term
4 or condition included in such certificate, permit, right-of-
5 way, lease, or other authorization to meet current project
6 requirements (including the physical design, facilities, and
7 tariff specifications), so long as such action does not com-
8 pel a change in the basic nature and general route of the
9 Alaska natural gas transportation system as designated
10 and described in section 2 of the President's decision, or
11 would otherwise prevent or impair in any significant re-
12 spect the expeditious construction and initial operation of
13 such transportation system.

14 (c) UPDATED ENVIRONMENTAL REVIEWS.—The Sec-
15 retary of Energy shall require the sponsor of the Alaska
16 natural gas transportation system to submit such updated
17 environmental data, reports, permits, and impact analyses
18 as the Secretary determines are necessary to develop de-
19 tailed terms, conditions, and compliance plans required by
20 section 5 of the President's decision.

21 **SEC. 141. SENSE OF CONGRESS.**

22 It is the sense of Congress that an Alaska natural
23 gas transportation project will provide significant eco-
24 nomic benefits to the United States and Canada. In order
25 to maximize those benefits, Congress urges the sponsors

1 of the pipeline project to make every effort to use steel
2 that is manufactured or produced in North America and
3 to negotiate a project labor agreement to expedite con-
4 struction of the pipeline.

5 **SEC. 142. PARTICIPATION OF SMALL BUSINESS CONCERNS.**

6 (a) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that an Alaska natural gas transportation project
8 will provide significant economic benefits to the United
9 States and Canada. In order to maximize those benefits,
10 Congress urges the sponsors of the pipeline project to
11 maximize the participation of small business concerns in
12 contracts and subcontracts awarded in carrying out the
13 project.

14 (b) STUDY.—

15 (1) The Comptroller General shall conduct a
16 study on the extent to which small business concerns
17 participate in the construction of oil and gas pipe-
18 lines in the United States.

19 (2) Not later than 1 year after the date of en-
20 actment of this Act, the Comptroller General shall
21 transmit to Congress a report containing the results
22 of the study.

23 (3) The Comptroller General shall update the
24 study at least once every 5 years and transmit to

1 Congress a report containing the results of the up-
2 date.

3 (4) After the date of completion of the con-
4 struction of an Alaska natural gas transportation
5 project, this subsection shall no longer apply.

6 (c) SMALL BUSINESS CONCERN DEFINED.—In this
7 section, the term “small business concern” has the mean-
8 ing given such term in section 3(a) of the Small Business
9 Act (15 U.S.C. 632(a)).

10 **SEC. 143. ALASKA PIPELINE CONSTRUCTION TRAINING**
11 **PROGRAM.**

12 (a) ESTABLISHMENT OF PROGRAM.—The Secretary
13 of Labor (in this section referred to as the “Secretary”)
14 may make grants to the Alaska Department of Labor and
15 Workforce Development to—

16 (1) develop a plan to train, through the work-
17 force investment system established in the State of
18 Alaska under the Workforce Investment Act of 1998
19 (112 Stat. 936 et seq.), adult and dislocated work-
20 ers, including Alaska Natives, in urban and rural
21 Alaska in the skills required to construct and oper-
22 ate an Alaska gas pipeline system; and

23 (2) implement the plan developed pursuant to
24 paragraph (1).

1 (b) REQUIREMENTS FOR PLANNING GRANTS.—The
2 Secretary may make a grant under subsection (a)(1) only
3 if—

4 (1) the Governor of Alaska certifies in writing
5 to the Secretary that there is a reasonable expecta-
6 tion that construction of an Alaska gas pipeline will
7 commence within 3 years after the date of such cer-
8 tification; and

9 (2) the Secretary of the Interior concurs in
10 writing to the Secretary with the certification made
11 under paragraph (1).

12 (c) REQUIREMENTS FOR IMPLEMENTATION
13 GRANTS.—The Secretary may make a grant under sub-
14 section (a)(2) only if—

15 (1) the Secretary has approved a plan developed
16 pursuant to subsection (a)(1);

17 (2) the Governor of Alaska requests the grant
18 funds and certifies in writing to the Secretary that
19 there is a reasonable expectation that the construc-
20 tion of an Alaska gas pipeline system will commence
21 within 2 years after the date of such certification;
22 and

23 (3) the Secretary of the Interior concurs in
24 writing to the Secretary with the certification made
25 under paragraph (2) after considering—

1 (A) the status of necessary State and Fed-
2 eral permits;

3 (B) the availability of financing for the
4 pipeline project; and

5 (C) other relevant factors and cir-
6 cumstances.

7 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
8 authorized to be appropriated to the Secretary such sums
9 as may be necessary, but not to exceed \$20,000,000, to
10 carry out this section.

11 **SEC. 144. LOAN GUARANTEES.**

12 (a) AUTHORITY.—

13 (1) The Secretary may enter agreements with 1
14 or more holders of a certificate of public convenience
15 and necessity issued under section 133(b) of this Act
16 or section 9 of the Alaska Natural Gas Transpor-
17 tation Act of 1976 (15 U.S.C. 719g) to issue Fed-
18 eral guarantee instruments with respect to loans and
19 other debt obligations for a qualified infrastructure
20 project.

21 (2) Subject to the requirements of this section,
22 the Secretary may also enter into agreements with
23 1 or more owners of the Canadian portion of a
24 qualified infrastructure project to issue Federal
25 guarantee instruments with respect to loans and

1 other debt obligations for a qualified infrastructure
2 project as though such owner were a holder de-
3 scribed in paragraph (1).

4 (3) The authority of the Secretary to issue Fed-
5 eral guarantee instruments under this section for a
6 qualified infrastructure project shall expire on the
7 date that is 2 years after the date on which the final
8 certificate of public convenience and necessity (in-
9 cluding any Canadian certificates of public conven-
10 ience and necessity) is issued for the project. A final
11 certificate shall be considered to have been issued
12 when all certificates of public convenience and neces-
13 sity have been issued that are required for the initial
14 transportation of commercially economic quantities
15 of natural gas from Alaska to the continental United
16 States.

17 (b) CONDITIONS.—

18 (1) The Secretary may issue a Federal guar-
19 antee instrument for a qualified infrastructure
20 project only after a certificate of public convenience
21 and necessity under section 133(b) of this Act or an
22 amended certificate under section 9 of the Alaska
23 Natural Gas Transportation Act of 1976 (15 U.S.C.
24 719g) has been issued for the project.

1 (2) The Secretary may issue a Federal guar-
2 antee instrument under this section for a qualified
3 infrastructure project only if the loan or other debt
4 obligation guaranteed by the instrument has been
5 issued by an eligible lender.

6 (3) The Secretary shall not require as a condi-
7 tion of issuing a Federal guarantee instrument
8 under this section any contractual commitment or
9 other form of credit support of the sponsors (other
10 than equity contribution commitments and comple-
11 tion guarantees), or any throughput or other guar-
12 antee from prospective shippers greater than such
13 guarantees as shall be required by the project own-
14 ers.

15 (c) LIMITATIONS ON AMOUNTS.—

16 (1) The amount of loans and other debt obliga-
17 tions guaranteed under this section for a qualified
18 infrastructure project shall not exceed 80 percent of
19 the total capital costs of the project, including inter-
20 est during construction.

21 (2) The principal amount of loans and other
22 debt obligations guaranteed under this section shall
23 not exceed, in the aggregate, \$18,000,000,000,
24 which amount shall be indexed for United States

1 dollar inflation from the date of enactment of this
2 Act, as measured by the Consumer Price Index.

3 (d) LOAN TERMS AND FEES.—

4 (1) The Secretary may issue Federal guarantee
5 instruments under this section that take into ac-
6 count repayment profiles and grace periods justified
7 by project cash flows and project-specific consider-
8 ations. The term of any loan guaranteed under this
9 section shall not exceed 30 years.

10 (2) An eligible lender may assess and collect
11 from the borrower such other fees and costs associ-
12 ated with the application and origination of the loan
13 or other debt obligation as are reasonable and cus-
14 tomary for a project finance transaction in the oil
15 and gas sector.

16 (e) REGULATIONS.—The Secretary may issue regula-
17 tions to carry out this section.

18 (f) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated such sums as may be
20 necessary to cover the cost of loan guarantees, as defined
21 by section 502(5) of the Federal Credit Reform Act of
22 1990 (2 U.S.C. 661a(5)). Such sums shall remain avail-
23 able until expended.

24 (g) DEFINITIONS.—In this section, the following defi-
25 nitions apply:

1 (1) The term “Consumer Price Index” means
2 the Consumer Price Index for all-urban consumers,
3 United States city average, as published by the Bu-
4 reau of Labor Statistics, or if such index shall cease
5 to be published, any successor index or reasonable
6 substitute thereof.

7 (2) The term “eligible lender” means any non-
8 Federal qualified institutional buyer (as defined by
9 section 230.144A(a) of title 17, Code of Federal
10 Regulations (or any successor regulation), known as
11 Rule 144A(a) of the Securities and Exchange Com-
12 mission and issued under the Securities Act of
13 1933), including—

14 (A) a qualified retirement plan (as defined
15 in section 4974(c) of the Internal Revenue Code
16 of 1986 (26 U.S.C. 4974(c)) that is a qualified
17 institutional buyer; and

18 (B) a governmental plan (as defined in
19 section 414(d) of the Internal Revenue Code of
20 1986 (26 U.S.C. 414(d)) that is a qualified in-
21 stitutional buyer.

22 (3) The term “Federal guarantee instrument”
23 means any guarantee or other pledge by the Sec-
24 retary to pledge the full faith and credit of the
25 United States to pay all of the principal and interest

1 on any loan or other debt obligation entered into by
2 a holder of a certificate of public convenience and
3 necessity.

4 (4) The term “qualified infrastructure project”
5 means an Alaskan natural gas transportation project
6 consisting of the design, engineering, finance, con-
7 struction, and completion of pipelines and related
8 transportation and production systems (including
9 gas treatment plants), and appurtenances thereto,
10 that are used to transport natural gas from the
11 Alaska North Slope to the continental United
12 States.

13 (5) The term “Secretary” means the Secretary
14 of Energy.

15 **SEC. 145. SENSE OF CONGRESS ON NATURAL GAS DEMAND.**

16 It is the sense of Congress that:

17 (1) North American demand for natural gas
18 will increase dramatically over the course of the next
19 several decades.

20 (2) Both the Alaska Natural Gas Pipeline and
21 the McKenzie Delta Natural Gas project in Canada
22 will be necessary to help meet the increased demand
23 for natural gas in North America.

24 (3) Federal and state officials should work to-
25 gether with officials in Canada to ensure both

1 projects can move forward in a mutually beneficial
2 fashion.

3 (4) Federal and state officials should acknowl-
4 edge that the smaller scope, fewer permitting re-
5 quirements and lower cost of the McKenzie Delta
6 project means it will most likely be completed before
7 the Alaska Natural Gas Pipeline.

8 (5) Lower 48 and Canadian natural gas pro-
9 duction alone will not be able to meet all domestic
10 demand in the coming decades.

11 (6) As a result, natural gas delivered from
12 Alaska's North Slope will not displace or reduce the
13 commercial viability of Canadian natural gas pro-
14 duced from the McKenzie Delta nor production from
15 the Lower 48.

16 **TITLE II—COAL**
17 **Subtitle A—Clean Coal Power**
18 **Initiative**

19 **SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

20 CLEAN COAL POWER INITIATIVE.—There is author-
21 ized to be appropriated to the Secretary of Energy (in this
22 subtitle, referred to as “Secretary”) to carry out the ac-
23 tivities authorized by this subtitle \$200,000,000 for each
24 of the fiscal years 2003 through 2011, to remain available
25 until expended.

1 **SEC. 202. PROJECT CRITERIA.**

2 (a) IN GENERAL.—The Secretary shall not provide
3 funding under this subtitle for any project that does not
4 advance efficiency, environmental performance, and cost
5 competitiveness well beyond the level of technologies that
6 are in operation or have been demonstrated as of the date
7 of the enactment of this Act.

8 (b) TECHNICAL CRITERIA FOR GASIFICATION.—In
9 allocating the funds made available under section 201, the
10 Secretary shall ensure that at least 80 percent of the
11 funds are used for coal-based gasification technologies or
12 coal-based projects that include gasification combined
13 cycle, gasification fuel cells, gasification co-production, or
14 hybrid gasification/combustion. The Secretary shall set
15 technical milestones specifying emissions levels that coal
16 gasification projects must be designed to and reasonably
17 expected to achieve. The milestones shall get more restric-
18 tive through the life of the program. The milestones shall
19 be designed to achieve by 2020 coal gasification projects
20 able to—

- 21 (1) remove 99 percent of sulfur dioxide;
- 22 (2) emit no more than .05 lbs of NO_x per mil-
23 lion BTU;
- 24 (3) achieve substantial reductions in mercury
25 emissions; and
- 26 (4) achieve a thermal efficiency of—

1 (A) 60 percent for coal of more than 9,000

2 Btu;

3 (B) 59 percent for coal of 7,000 to 9,000

4 Btu; and

5 (C) 57 percent for coal of less than 7,000

6 Btu.

7 (c) TECHNICAL CRITERIA FOR OTHER PROJECTS.—

8 For projects not described in subsection (b), the Secretary

9 shall set technical milestones specifying emissions levels

10 that the projects must be designed to and reasonably ex-

11 pected to achieve. The milestones shall get more restrictive

12 through the life of the program. The milestones shall be

13 designed to achieve by 2010 projects able to—

14 (1) remove 97 percent of sulfur dioxide;

15 (2) emit no more than .08 lbs of NO_x per mil-

16 lion BTU;

17 (3) achieve substantial reductions in mercury

18 emissions; and

19 (4) achieve a thermal efficiency of—

20 (A) 45 percent for coal of more than 9,000

21 Btu;

22 (B) 44 percent for coal of 7,000 to 9,000

23 Btu; and

24 (C) 42 percent for coal of less than 7,000

25 Btu.

1 (d) EXISTING UNITS.—In the case of projects at ex-
2 isting units, in lieu of the thermal efficiency requirements
3 set forth in paragraphs (b)(4) and (c)(4), the projects
4 shall be designed to achieve an overall thermal design effi-
5 ciency improvement compared to the efficiency of the unit
6 as operated, of not less than—

7 (A) 7 percent for coal of more than 9,000
8 Btu;

9 (B) 6 percent for coal of 7,000 to 9,000
10 Btu; or

11 (C) 4 percent for coal of less than 7,000
12 Btu.

13 (e) PERMITTED USES.—In allocating funds made
14 available in this section, the Secretary may allocate funds
15 to projects that include, as part of the project, the separa-
16 tion and capture of carbon dioxide.

17 (f) CONSULTATION.—Before setting the technical
18 milestones under subsections (b) and (c), the Secretary
19 shall consult with the Administrator of the Environmental
20 Protection Agency and interested entities, including coal
21 producers, industries using coal, organizations to promote
22 coal or advanced coal technologies, environmental organi-
23 zations, and organizations representing workers.

24 (g) FINANCIAL CRITERIA.—The Secretary shall not
25 provide a funding award under this title unless the recipi-

1 ent has documented to the satisfaction of the Secretary
2 that—

3 (1) the award recipient is financially viable
4 without the receipt of additional Federal funding;

5 (2) the recipient will provide sufficient informa-
6 tion to the Secretary for the Secretary to ensure
7 that the award funds are spent efficiently and effec-
8 tively; and

9 (3) a market exists for the technology being
10 demonstrated or applied, as evidenced by statements
11 of interest in writing from potential purchasers of
12 the technology.

13 (h) FINANCIAL ASSISTANCE.—The Secretary shall
14 provide financial assistance to projects that meet the re-
15 quirements of this section and are likely to—

16 (1) achieve overall cost reductions in the utiliza-
17 tion of coal to generate useful forms of energy;

18 (2) improve the competitiveness of coal among
19 various forms of energy; and

20 (3) demonstrate methods and equipment that
21 are applicable to 25 percent of the electricity gener-
22 ating facilities that use coal as the primary feedstock
23 as of the date of the enactment of this Act.

1 (i) FEDERAL SHARE.—The Federal share of the cost
2 of a coal or related technology project funded by the Sec-
3 retary shall not exceed 50 percent.

4 (j) APPLICABILITY.—No technology, or level of emis-
5 sion reduction, shall be treated as adequately dem-
6 onstrated for purposes of section 111 of the Clean Air Act,
7 achievable for purposes of section 169 of that Act, or
8 achievable in practice for purposes of section 171 of that
9 Act solely by reason of the use of such technology, or the
10 achievement of such emission reduction, by one or more
11 facilities receiving assistance under this title.

12 **SEC. 203. REPORTS.**

13 (a) TEN-YEAR PLAN.—By September 30, 2004, the
14 Secretary shall transmit to Congress a report, with respect
15 to section 202(a), a 10-year plan containing—

16 (1) a detailed assessment of whether the aggre-
17 gate funding levels provided under section 201 are
18 appropriate funding levels for that program;

19 (2) a detailed description of how proposals will
20 be solicited and evaluated, including a list of all ac-
21 tivities expected to be undertaken;

22 (3) a detailed list of technical milestones for
23 each coal and related technology that will be pur-
24 sued; and

1 (4) a detailed description of how the program
2 will avoid problems enumerated in General Account-
3 ing Office reports on the Clean Coal Technology
4 Program, including problems that have resulted in
5 unspent funds and projects that failed either finan-
6 cially or scientifically.

7 (b) TECHNICAL MILESTONES.—Not later than 1 year
8 after the date of the enactment of this Act, and once every
9 2 years thereafter through 2011, the Secretary, in con-
10 sultation with other appropriate Federal agencies, shall
11 transmit to the Congress, a report describing—

12 (1) the technical milestones set forth in section
13 212 and how those milestones ensure progress to-
14 ward meeting the requirements of subsections (b)
15 and (c) of section 212; and

16 (2) the status of projects funded under this
17 title.

18 **SEC. 204. CLEAN COAL CENTERS OF EXCELLENCE.**

19 As part of the program authorized in section 211,
20 the Secretary shall award competitive, merit-based grants
21 to universities for the establishment of Centers of Excel-
22 lence for Energy Systems of the Future. The Secretary
23 shall provide grants to universities that can show the
24 greatest potential for advancing new clean coal tech-
25 nologies.

1 **Subtitle B—Federal Coal Leases**

2 **SEC. 211. REPEAL OF THE 160-ACRE LIMITATION FOR COAL** 3 **LEASES.**

4 Section 3 of the Mineral Leasing Act (30 U.S.C. 203)
5 is amended by striking all the text in the first sentence
6 after “upon” and inserting the following: “a finding by
7 the Secretary that it (1) would be in the interest of the
8 United States, (2) would not displace a competitive inter-
9 est in the lands, and (3) would not include lands or depos-
10 its that can be developed as part of another potential or
11 existing operation, secure modifications of the original coal
12 lease by including additional coal lands or coal deposits
13 contiguous or cornering to those embraced in such lease,
14 but in no event shall the total area added by such modi-
15 fications to an existing coal lease exceed 320 acres, or add
16 acreage larger than that in the original lease.”.

17 **SEC. 212. MINING PLANS.**

18 Section 2(d)(2) of the Mineral Leasing Act (30
19 U.S.C. 202a(2)) is amended—

20 (1) by inserting “(A)” after “(2)”; and

21 (2) by adding at the end the following:

22 “(B) The Secretary may establish a period of
23 more than forty years if the Secretary determines
24 that the longer period will ensure the maximum eco-
25 nomic recovery of a coal deposit, or the longer period

1 is in the interest of the orderly, efficient, or eco-
2 nomic development of a coal resource.”.

3 **SEC. 213. PAYMENT OF ADVANCE ROYALTIES UNDER COAL**
4 **LEASES.**

5 Section 7(b) of the Mineral Leasing Act of 1920 (30
6 U.S.C. 207(b)) is amended by striking all after “Sec-
7 retary.” through to “a lease.” and inserting: “The aggre-
8 gate number of years during the period of any lease for
9 which advance royalties may be accepted in lieu of the con-
10 dition of continued operation shall not exceed twenty. The
11 amount of any production royalty paid for any year shall
12 be reduced (but not below 0) by the amount of any ad-
13 vance royalties paid under such lease to the extent that
14 such advance royalties have not been used to reduce pro-
15 duction royalties for a prior year.”.

16 **SEC. 214. ELIMINATION OF DEADLINE FOR SUBMISSION OF**
17 **COAL LEASE OPERATION AND RECLAMATION**
18 **PLAN.**

19 Section 7(c) of the Mineral Leasing Act (30 U.S.C.
20 207(c)) is amended by striking “and not later than three
21 years after a lease is issued,”.

22 **SEC. 215. APPLICATION OF AMENDMENTS.**

23 The amendments made by this Act apply with respect
24 to any coal lease issued on or after the date of enactment
25 of this Act, and, with respect to any coal lease issued be-

1 fore the date of enactment of this Act, upon the date of
 2 readjustment of the lease as provided for by section 7(a)
 3 of the Mineral Leasing Act, or upon request by the lessee,
 4 prior to such date.

5 **Subtitle C—Powder River Basin** 6 **Shared Mineral Estates**

7 **SEC. 221. RESOLUTION OF FEDERAL RESOURCE DEVELOP-** 8 **MENT CONFLICTS IN THE POWDER RIVER** 9 **BASIN.**

10 The Secretary of the Interior shall—

11 (1) undertake a review of existing authorities to
 12 resolve conflicts between the development of Federal
 13 coal and the development of Federal and non-Fed-
 14 eral coalbed methane in the Powder River Basin in
 15 Wyoming and Montana; and

16 (2) not later than 6 months after the enactment
 17 of this Act, report to the Congress on alternatives to
 18 resolve these conflicts and identification of a pre-
 19 ferred alternative with specific legislative language,
 20 if any, required to implement the preferred alter-
 21 native.

22 **TITLE III—INDIAN ENERGY**

23 **SEC. 301. SHORT TITLE.**

24 This title may be cited as the “Indian Tribal Energy
 25 Development and Self-Determination Act of 2003”.

1 **SEC. 302. OFFICE OF INDIAN ENERGY POLICY AND PRO-**
2 **GRAMS.**

3 (a) IN GENERAL.—Title II of the Department of En-
4 ergy Organization Act (42 U.S.C. 7131 et seq.) is amend-
5 ed by adding at the end the following:

6 “OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

7 “SEC. 217. (a) ESTABLISHMENT.—There is estab-
8 lished within the Department an Office of Indian Energy
9 Policy and Programs (referred to in this section as the
10 ‘Office’). The Office shall be headed by a Director, who
11 shall be appointed by the Secretary and compensated at
12 a rate equal to that of level IV of the Executive Schedule
13 under section 5315 of title 5, United States Code.

14 “(b) DUTIES OF DIRECTOR.—The Director shall in
15 accordance with Federal policies promoting Indian self-de-
16 termination and the purposes of this Act, provide, direct,
17 foster, coordinate, and implement energy planning, edu-
18 cation, management, conservation, and delivery programs
19 of the Department that—

20 “(1) promote Indian tribal energy development,
21 efficiency, and use;

22 “(2) reduce or stabilize energy costs;

23 “(3) enhance and strengthen Indian tribal en-
24 ergy and economic infrastructure relating to natural
25 resource development and electrification; and

1 “(4) electrify Indian tribal land and the homes
2 of tribal members.

3 “COMPREHENSIVE INDIAN ENERGY ACTIVITIES

4 “SEC. 218. (a) INDIAN ENERGY EDUCATION PLAN-
5 NING AND MANAGEMENT ASSISTANCE.—

6 “(1) The Director shall establish programs
7 within the Office of Indian Energy Policy and Pro-
8 grams to assist Indian tribes in meeting energy edu-
9 cation, research and development, planning, and
10 management needs.

11 “(2) In carrying out this section, the Director
12 may provide grants, on a competitive basis, to an In-
13 dian tribe or tribal consortium for use in carrying
14 out—

15 “(A) energy, energy efficiency, and energy
16 conservation programs;

17 “(B) studies and other activities sup-
18 porting tribal acquisition of energy supplies,
19 services, and facilities;

20 “(C) planning, construction, development,
21 operation, maintenance, and improvement of
22 tribal electrical generation, transmission, and
23 distribution facilities located on Indian land;
24 and

25 “(D) development, construction, and inter-
26 connection of electric power transmission facili-

1 ties located on Indian land with other electric
2 transmission facilities.

3 “(3)(A) The Director may develop, in consulta-
4 tion with Indian tribes, a formula for providing
5 grants under this section.

6 “(B) In providing a grant under this sub-
7 section, the Director shall give priority to an applica-
8 tion received from an Indian tribe with inadequate
9 electric service (as determined by the Director).

10 “(4) The Secretary may promulgate such regu-
11 lations as the Secretary determines are necessary to
12 carry out this subsection.

13 “(5) There is authorized to be appropriated to
14 carry out this section \$20,000,000 for each of fiscal
15 years 2004 through 2011.

16 “(b) LOAN GUARANTEE PROGRAM.—

17 “(1) Subject to paragraph (3), the Secretary
18 may provide loan guarantees (as defined in section
19 502 of the Federal Credit Reform Act of 1990 (2
20 U.S.C. 661a)) for not more than 90 percent of the
21 unpaid principal and interest due on any loan made
22 to any Indian tribe for energy development.

23 “(2) A loan guaranteed under this subsection
24 shall be made by—

1 “(A) a financial institution subject to ex-
2 amination by the Secretary; or

3 “(B) an Indian tribe, from funds of the In-
4 dian tribe.

5 “(3) The aggregate outstanding amount guar-
6 anteed by the Secretary at any time under this sub-
7 section shall not exceed \$2,000,000,000.

8 “(4) The Secretary may promulgate such regu-
9 lations as the Secretary determines are necessary to
10 carry out this subsection.

11 “(5) There are authorized to be appropriated
12 such sums as are necessary to carry out this sub-
13 section, to remain available until expended.

14 “(6) Not later than 1 year from the date of en-
15 actment of this section, the Secretary shall report to
16 the Congress on the financing requirements of In-
17 dian tribes for energy development on Indian land.

18 “(c) INDIAN ENERGY PREFERENCE.—

19 “(1) In purchasing electricity or any other en-
20 ergy product or byproduct, a Federal agency or de-
21 partment may give preference to an energy and re-
22 source production enterprise, partnership, consor-
23 tium, corporation, or other type of business organi-
24 zation the majority of the interest in which is owned
25 and controlled by 1 or more Indian tribes.

1 “(2) In carrying out this subsection, a Federal
2 agency or department shall not—

3 “(A) pay more than the prevailing market
4 price for an energy product or byproduct; and

5 “(B) obtain less than prevailing market
6 terms and conditions.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) The table of contents of the Department of
9 Energy Organization Act (42 U.S.C. prec. 7101) is
10 amended—

11 (A) in the item relating to section 209, by
12 striking “Section” and inserting “Sec.”; and

13 (B) by striking the items relating to sec-
14 tions 213 through 216 and inserting the fol-
15 lowing:

“Sec. 213. Establishment of policy for National Nuclear Security Administra-
tion.

“Sec. 214. Establishment of security, counterintelligence, and intelligence poli-
cies.

“Sec. 215. Office of Counterintelligence.

“Sec. 216. Office of Intelligence.

“Sec. 217. Office of Indian Energy Policy and Programs.

“Sec. 218. Comprehensive Indian Energy Activities.”.

16 (2) Section 5315 of title 5, United States Code,
17 is amended by inserting “Director, Office of Indian
18 Energy Policy and Programs, Department of En-
19 ergy.” after “Inspector General, Department of En-
20 ergy.”.

1 **SEC. 303. INDIAN ENERGY.**

2 Title XXVI of the Energy Policy Act of 1992 (25
3 U.S.C. 3501 et seq.) is amended to read as follows:

4 **“TITLE XXVI—INDIAN ENERGY**

5 **“SEC. 2601. DEFINITIONS.**

6 “For purposes of this title:

7 “(1) The term ‘Director’ means the Director of
8 the Office of Indian Energy Policy and Programs.

9 “(2) The term ‘Indian land’ means—

10 “(A) any land located within the bound-
11 aries of an Indian reservation, pueblo, or
12 rancheria;

13 “(B) any land not located within the
14 boundaries of an Indian reservation, pueblo, or
15 rancheria, the title to which is held—

16 “(i) in trust by the United States for
17 the benefit of an Indian tribe;

18 “(ii) by an Indian tribe, subject to re-
19 striction by the United States against
20 alienation; or

21 “(iii) by a dependent Indian commu-
22 nity; and

23 “(C) land conveyed to a Native Corpora-
24 tion under the Alaska Native Claims Settlement
25 Act (43 U.S.C. 1601 et seq.).

26 “(3) The term ‘Indian reservation’ includes—

1 “(A) an Indian reservation in existence in
2 any State or States as of the date of enactment
3 of this paragraph;

4 “(B) a public domain Indian allotment;

5 “(C) a former reservation in the State of
6 Oklahoma;

7 “(D) a parcel of land owned by a Native
8 Corporation under the Alaska Native Claims
9 Settlement Act (43 U.S.C. 1601 et seq.); and

10 “(E) a dependent Indian community lo-
11 cated within the borders of the United States,
12 regardless of whether the community is lo-
13 cated—

14 “(i) on original or acquired territory
15 of the community; or

16 “(ii) within or outside the boundaries
17 of any particular State.

18 “(4) The term ‘Indian tribe’ has the meaning
19 given the term in section 4 of the Indian Self-Deter-
20 mination and Education Assistance Act (25 U.S.C.
21 450b).

22 “(5) The term ‘Native Corporation’ has the
23 meaning given the term in section 3 of the Alaska
24 Native Claims Settlement Act (43 U.S.C. 1602).

1 “(6) The term ‘organization’ means a partner-
2 ship, joint venture, limited liability company, or
3 other unincorporated association or entity that is es-
4 tablished to develop Indian energy resources.

5 “(7) The term ‘Program’ means the Indian en-
6 ergy resource development program established
7 under section 2602(a).

8 “(8) The term ‘Secretary’ means the Secretary
9 of the Interior.

10 “(9) The term ‘tribal consortium’ means an or-
11 ganization that consists of 2 or more entities, at
12 least 1 of which is an Indian tribe.

13 “(10) The term ‘tribal land’ means any land or
14 interests in land owned by any Indian tribe, band,
15 nation, pueblo, community, rancheria, colony or
16 other group, title to which is held in trust by the
17 United States or which is subject to a restriction
18 against alienation imposed by the United States.

19 “(11) The term ‘vertical integration of energy
20 resources’ means any project or activity that pro-
21 motes the location and operation of a facility (in-
22 cluding any pipeline, gathering system, transpor-
23 tation system or facility, or electric transmission fa-
24 cility), on or near Indian land to process, refine,

1 generate electricity from, or otherwise develop en-
2 ergy resources on, Indian land.

3 **“SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**
4 **MENT.**

5 “(a) IN GENERAL.—To assist Indian tribes in the de-
6 velopment of energy resources and further the goal of In-
7 dian self-determination, the Secretary shall establish and
8 implement an Indian energy resource development pro-
9 gram to assist Indian tribes and tribal consortia in achiev-
10 ing the purposes of this title.

11 “(b) GRANTS AND LOANS.—In carrying out the Pro-
12 gram, the Secretary shall

13 “(1) provide development grants to Indian
14 tribes and tribal consortia for use in developing or
15 obtaining the managerial and technical capacity
16 needed to develop energy resources on Indian land;

17 “(2) provide grants to Indian tribes and tribal
18 consortia for use in carrying out projects to promote
19 the vertical integration of energy resources, and to
20 process, use, or develop those energy resources, on
21 Indian land; and

22 “(3) provide low-interest loans to Indian tribes
23 and tribal consortia for use in the promotion of en-
24 ergy resource development and vertical integration
25 or energy resources on Indian land.

1 “(A) are engaged in the development of en-
2 ergy resources on Indian land; or

3 “(B) are responsible for protecting the en-
4 vironment.

5 “(c) OTHER ASSISTANCE.—To the maximum extent
6 practicable, the Secretary and the Secretary of Energy
7 shall make available to Indian tribes and tribal consortia
8 scientific and technical data for use in the development
9 and management of energy resources on Indian land.

10 **“SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-**
11 **OF-WAY INVOLVING ENERGY DEVELOPMENT**
12 **OR TRANSMISSION.**

13 “(a) LEASES AND AGREEMENTS.—Subject to the
14 provisions of this section—

15 “(1) an Indian tribe may, at its discretion,
16 enter into a lease or business agreement for the pur-
17 pose of energy development, including a lease or
18 business agreement for—

19 “(A) exploration for, extraction of, proc-
20 essing of, or other development of energy re-
21 sources on tribal land; and

22 “(B) construction or operation of an elec-
23 tric generation, transmission, or distribution fa-
24 cility located on tribal land; or a facility to

1 process or refine energy resources developed on
2 tribal land; and

3 “(2) a lease or business agreement described in
4 paragraph (1) shall not require the approval of the
5 Secretary under section 2103 of the Revised Stat-
6 utes (25 U.S.C. 81) or any other provision of law,
7 if—

8 “(A) the lease or business agreement is ex-
9 ecuted in accordance with a tribal energy re-
10 source agreement approved by the Secretary
11 under subsection (e);

12 “(B) the term of the lease or business
13 agreement does not exceed—

14 “(i) 30 years; or

15 “(ii) in the case of a lease for the pro-
16 duction of oil and gas resources, 10 years
17 and as long thereafter as oil or gas is pro-
18 duced in paying quantities; and

19 “(C) the Indian tribe has entered into a
20 tribal energy resource agreement with the Sec-
21 retary, as described in subsection (e), relating
22 to the development of energy resources on tribal
23 land (including an annual trust asset evaluation
24 of the activities of the Indian tribe conducted in
25 accordance with the agreement).

1 “(b) RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC
2 TRANSMISSION OR DISTRIBUTION LINES.—An Indian
3 tribe may grant a right-of-way over tribal land for a pipe-
4 line or an electric transmission or distribution line without
5 specific approval by the Secretary if—

6 “(1) the right-of-way is executed in accordance
7 with a tribal energy resource agreement approved by
8 the Secretary under subsection (e);

9 “(2) the term of the right-of-way does not ex-
10 ceed 30 years;

11 “(3) the pipeline or electric transmission or dis-
12 tribution line serves—

13 “(A) an electric generation, transmission,
14 or distribution facility located on tribal land; or

15 “(B) a facility located on tribal land that
16 processes or refines energy resources developed
17 on tribal land; and

18 “(4) the Indian tribe has entered into a tribal
19 energy resource agreement with the Secretary, as de-
20 scribed in subsection (e), relating to the development
21 of energy resources on tribal land (including an an-
22 nual trust asset evaluation of the activities of the In-
23 dian tribe conducted in accordance with the agree-
24 ment).

1 “(c) RENEWALS.—A lease or business agreement en-
2 tered into or a right-of-way granted by an Indian tribe
3 under this section may be renewed at the discretion of the
4 Indian tribe in accordance with this section.

5 “(d) VALIDITY.—No lease, business agreement, or
6 right-of-way under this section shall be valid unless the
7 lease, business agreement, or right-of-way is authorized in
8 accordance with tribal energy resource agreements ap-
9 proved by the Secretary under subsection (e).

10 “(e) TRIBAL ENERGY RESOURCE AGREEMENTS.—

11 “(1) On promulgation of regulations under
12 paragraph (9), an Indian tribe may submit to the
13 Secretary for approval a tribal energy resource
14 agreement governing leases, business agreements,
15 and rights-of-way under this section.

16 “(2)(A) Not later than 180 days after the date
17 on which the Secretary receives a tribal energy re-
18 source agreement submitted by an Indian tribe
19 under paragraph (1) (or such later date as may be
20 agreed to by the Secretary and the Indian tribe), the
21 Secretary shall approve or disapprove the tribal en-
22 ergy resource agreement.

23 “(B) The Secretary shall approve a tribal en-
24 ergy resource agreement submitted under paragraph
25 (1) if—

1 “(i) the Secretary determines that the In-
2 dian tribe has demonstrated that the Indian
3 tribe has sufficient capacity to regulate the de-
4 velopment of energy resources of the Indian
5 tribe; and

6 “(ii) the tribal energy resource agreement
7 includes provisions that, with respect to a lease,
8 business agreement, or right-of-way under this
9 section—

10 “(I) ensure the acquisition of nec-
11 essary information from the applicant for
12 the lease, business agreement, or right-of-
13 way;

14 “(II) address the term of the lease or
15 business agreement or the term of convey-
16 ance of the right-of-way;

17 “(III) address amendments and re-
18 newals;

19 “(IV) address consideration for the
20 lease, business agreement, or right-of-way;

21 “(V) address technical or other rel-
22 evant requirements;

23 “(VI) establish requirements for envi-
24 ronmental review in accordance with sub-
25 paragraph (C);

1 “(VII) ensure compliance with all ap-
2 plicable environmental laws;

3 “(VIII) identify final approval author-
4 ity;

5 “(IX) provide for public notification of
6 final approvals;

7 “(X) establish a process for consulta-
8 tion with any affected States concerning
9 potential off-reservation impacts associated
10 with the lease, business agreement, or
11 right-of-way; and

12 “(XI) describe the remedies for
13 breach of the lease, agreement, or right-of-
14 way.

15 “(C) Tribal energy resource agreements sub-
16 mitted under paragraph (1) shall establish, and in-
17 clude provisions to ensure compliance with, an envi-
18 ronmental review process that, with respect to a
19 lease, business agreement, or right-of-way under this
20 section, provides for—

21 “(i) the identification and evaluation of all
22 significant environmental impacts (as compared
23 with a no-action alternative), including effects
24 on cultural resources;

1 “(ii) the identification of proposed mitiga-
2 tion;

3 “(iii) a process for ensuring that the public
4 is informed of and has an opportunity to com-
5 ment on any proposed lease, business agree-
6 ment, or right-of-way before tribal approval of
7 the lease, business agreement, or right-of-way
8 (or any amendment to or renewal of the lease,
9 business agreement, or right-of-way); and

10 “(iv) sufficient administrative support and
11 technical capability to carry out the environ-
12 mental review process.

13 “(D) A tribal energy resource agreement nego-
14 tiated between the Secretary and an Indian tribe in
15 accordance with this subsection shall include—

16 “(i) provisions requiring the Secretary to
17 conduct an annual trust asset evaluation to
18 monitor the performance of the activities of the
19 Indian tribe associated with the development of
20 energy resources on tribal land by the Indian
21 tribe; and

22 “(ii) in the case of a finding by the Sec-
23 retary of imminent jeopardy to a physical trust
24 asset, provisions authorizing the Secretary to
25 reassume responsibility for activities associated

1 with the development of energy resources on
2 tribal land.

3 “(3) The Secretary shall provide notice and op-
4 portunity for public comment on tribal energy re-
5 source agreements submitted under paragraph (1).

6 “(4) If the Secretary disapproves a tribal en-
7 ergy resource agreement submitted by an Indian
8 tribe under paragraph (1), the Secretary shall—

9 “(A) notify the Indian tribe in writing of
10 the basis for the disapproval;

11 “(B) identify what changes or other ac-
12 tions are required to address the concerns of
13 the Secretary; and

14 “(C) provide the Indian tribe with an op-
15 portunity to revise and resubmit the tribal en-
16 ergy resource agreement.

17 “(5) If an Indian tribe executes a lease or busi-
18 ness agreement or grants a right-of-way in accord-
19 ance with a tribal energy resource agreement ap-
20 proved under this subsection, the Indian tribe shall,
21 in accordance with the process and requirements set
22 forth in the Secretary’s regulations adopted pursu-
23 ant to subsection (e)(9), provide to the Secretary—

24 “(A) a copy of the lease, business agree-
25 ment, or right-of-way document (including all

1 amendments to and renewals of the document);
2 and

3 “(B) in the case of a tribal energy resource
4 agreement or a lease, business agreement, or
5 right-of-way that permits payment to be made
6 directly to the Indian tribe, documentation of
7 those payments sufficient to enable the Sec-
8 retary to discharge the trust responsibility of
9 the United States as appropriate under applica-
10 ble law.

11 “(6) The Secretary shall continue to have a
12 trust obligation to ensure that the rights of an In-
13 dian tribe are protected in the event of a violation
14 of the terms of any lease, business agreement or
15 right-of-way by any other party to the lease, busi-
16 ness agreement, or right-of-way.

17 “(7)(A) The United States shall not be liable
18 for any loss or injury sustained by any party (includ-
19 ing an Indian tribe or any member of an Indian
20 tribe) to a lease, business agreement, or right-of-way
21 executed in accordance with tribal energy resource
22 agreements approved under this subsection.

23 “(B) On approval of a tribal energy resource
24 agreement of an Indian tribe under paragraph (1),
25 the Indian tribe shall be stopped from asserting a

1 claim against the United States on the grounds that
2 the Secretary should not have approved the Tribal
3 energy resource agreement.

4 “(8)(A) In this paragraph, the term ‘interested
5 party’ means any person or entity the interests of
6 which have sustained or will sustain a significant ad-
7 verse impact as a result of the failure of an Indian
8 tribe to comply with a tribal energy resource agree-
9 ment of the Indian tribe approved by the Secretary
10 under paragraph (2).

11 “(B) After exhaustion of tribal remedies, and in
12 accordance with the process and requirements set
13 forth in regulations adopted by the Secretary pursu-
14 ant to subsection (e)(9), an interested party may
15 submit to the Secretary a petition to review compli-
16 ance of an Indian tribe with a tribal energy resource
17 agreement of the Indian tribe approved under this
18 subsection.

19 “(C) If the Secretary determines that an Indian
20 tribe is not in compliance with a tribal energy re-
21 source agreement approved under this subsection,
22 the Secretary shall take such action as is necessary
23 to compel compliance, including—

24 “(i) suspending a lease, business agree-
25 ment, or right-of-way under this section until

1 an Indian tribe is in compliance with the ap-
2 proved tribal energy resource agreement; and

3 “(ii) rescinding approval of the tribal en-
4 ergy resource agreement and reassuming the re-
5 sponsibility for approval of any future leases,
6 business agreements, or rights-of-way associ-
7 ated with an energy pipeline or distribution line
8 described in subsections (a) and (b).

9 “(D) If the Secretary seeks to compel compli-
10 ance of an Indian tribe with an approved tribal en-
11 ergy resource agreement under subparagraph (C)(ii),
12 the Secretary shall—

13 “(i) make a written determination that de-
14 scribes the manner in which the tribal energy
15 resource agreement has been violated;

16 “(ii) provide the Indian tribe with a writ-
17 ten notice of the violation together with the
18 written determination; and

19 “(iii) before taking any action described in
20 subparagraph (C)(ii) or seeking any other rem-
21 edy, provide the Indian tribe with a hearing and
22 a reasonable opportunity to attain compliance
23 with the tribal energy resource agreement.

1 “(E)(i) An Indian tribe described in subpara-
2 graph (D) shall retain all rights to appeal as pro-
3 vided in regulations promulgated by the Secretary.

4 “(ii) The decision of the Secretary with respect
5 to an appeal described in clause (i), after any agency
6 appeal provided for by regulation, shall constitute a
7 final agency action.

8 “(9) Not later than 180 days after the date of
9 enactment of the Indian Tribal Energy Development
10 and Self-Determination Act of 2003, the Secretary
11 shall promulgate regulations that implement the pro-
12 visions of this subsection, including—

13 “(A) criteria to be used in determining the
14 capacity of an Indian tribe described in para-
15 graph (2)(B)(i), including the experience of the
16 Indian tribe in managing natural resources and
17 financial and administrative resources available
18 for use by the Indian tribe in implementing the
19 approved tribal energy resource agreement of
20 the Indian tribe; and

21 “(B) a process and requirements in accord-
22 ance with which an Indian tribe may—

23 “(i) voluntarily rescind an approved
24 tribal energy resource agreement approved
25 by the Secretary under this subsection; and

1 “(ii) return to the Secretary the re-
2 sponsibility to approve any future leases,
3 business agreements, and rights-of-way de-
4 scribed in this subsection.

5 “(f) NO EFFECT ON OTHER LAW.—Nothing in this
6 section affects the application of—

7 “(1) any Federal environmental law;

8 “(2) the Surface Mining Control and Reclama-
9 tion Act of 1977 (30 U.S.C. 1201 et seq.); or

10 “(3) except as otherwise provided in this title,
11 the Indian Mineral Development Act of 1982 (25
12 U.S.C. 2101 et seq.).

13 **“SEC. 2605. FEDERAL POWER MARKETING ADMINISTRA-**
14 **TIONS.**

15 “(a) DEFINITIONS.—In this section:

16 “(1) The term ‘Administrator’ means the Ad-
17 ministrator of the Bonneville Power Administration
18 and the Administrator of the Western Area Power
19 Administration.

20 “(2) The term ‘power marketing administra-
21 tion’ means

22 “(A) the Bonneville Power Administration;

23 “(B) the Western Area Power Administra-
24 tion; and

1 “(C) any other power administration the
2 power allocation of which is used by or for the
3 benefit of an Indian tribe located in the service
4 area of the administration.

5 “(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY
6 DEVELOPMENT.—Each Administrator shall encourage In-
7 dian tribal energy development by taking such actions as
8 are appropriate, including administration of programs of
9 the Bonneville Power Administration and the Western
10 Area Power Administration, in accordance with this sec-
11 tion.

12 “(c) ACTION BY THE ADMINISTRATOR.—In carrying
13 out this section, and in accordance with existing law—

14 “(1) each Administrator shall consider the
15 unique relationship that exists between the United
16 States and Indian tribes;

17 “(2) power allocations from the Western Area
18 Power Administration to Indian tribes may be used
19 to meet firming and reserve needs of Indian-owned
20 energy projects on Indian land;

21 “(3) the Administrator of the Western Area
22 Power Administration may purchase power from In-
23 dian tribes to meet the firming and reserve require-
24 ments of the Western Area Power Administration;
25 and

1 “(4) each Administrator shall not pay more
2 than the prevailing market price for an energy prod-
3 uct nor obtain less than prevailing market terms and
4 conditions.

5 “(d) ASSISTANCE FOR TRANSMISSION SYSTEM
6 USE.—

7 “(1) An Administrator may provide technical
8 assistance to Indian tribes seeking to use the high-
9 voltage transmission system for delivery of electric
10 power.

11 “(2) The costs of technical assistance provided
12 under paragraph (1) shall be funded by the Sec-
13 retary of Energy using nonreimbursable funds ap-
14 propriated for that purpose, or by the applicable In-
15 dian tribes.

16 “(e) POWER ALLOCATION STUDY.—Not later than 2
17 years after the date of enactment of the Indian Tribal En-
18 ergy Development and Self-Determination Act of 2003,
19 the Secretary of Energy shall submit to the Congress a
20 report that—

21 “(1) describes the use by Indian tribes of Fed-
22 eral power allocations of the Western Area Power
23 Administration (or power sold by the Southwestern
24 Power Administration) and the Bonneville Power

1 Administration to or for the benefit of Indian tribes
2 in service areas of those administrations; and

3 “(2) identifies—

4 “(A) the quantity of power allocated to In-
5 dian tribes by the Western Area Power Admin-
6 istration;

7 “(B) the quantity of power sold to Indian
8 tribes by other power marketing administra-
9 tions; and

10 “(C) barriers that impede tribal access to
11 and use of Federal power, including an assess-
12 ment of opportunities to remove those barriers
13 and improve the ability of power marketing ad-
14 ministrations to facilitate the use of Federal
15 power by Indian tribes.

16 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
17 is authorized to be appropriated to carry out this section
18 \$750,000, which shall remain available until expended and
19 shall not be reimbursable.

20 **“SEC. 2606. INDIAN MINERAL DEVELOPMENT REVIEW.**

21 “(a) IN GENERAL.—The Secretary shall conduct a
22 review of all activities being conducted under the Indian
23 Mineral Development Act of 1982 (25 U.S.C. 2101 et
24 seq.) as of that date.

1 “(b) REPORT.—Not later than 1 year after the date
2 of enactment of the Indian Tribal Energy Development
3 and Self-Determination Act of 2003, the Secretary shall
4 submit to the Congress a report that includes—

5 “(1) the results of the review;

6 “(2) recommendations to ensure that Indian
7 tribes have the opportunity to develop Indian energy
8 resources; and

9 “(3) an analysis of the barriers to the develop-
10 ment of energy resources on Indian land (including
11 legal, fiscal, market, and other barriers), along with
12 recommendations for the removal of those barriers.

13 **“SEC. 2607. WIND AND HYDROPOWER FEASIBILITY STUDY.**

14 “(a) STUDY.—The Secretary, in coordination with
15 the Secretary of the Army and the Secretary of the Inte-
16 rior, shall conduct a study of the cost and feasibility of
17 developing a demonstration project that would use wind
18 energy generated by Indian tribes and hydropower gen-
19 erated by the Army Corps of Engineers on the Missouri
20 River to supply firming power to the Western Area Power
21 Administration.

22 “(b) SCOPE OF STUDY.—The study shall—

23 “(1) determine the feasibility of the blending of
24 wind energy and hydropower generated from the

1 Missouri River dams operated by the Army Corps of
2 Engineers;

3 “(2) review historical purchase requirements
4 and projected purchase requirements for firming and
5 the patterns of availability and use of firming en-
6 ergy;

7 “(3) assess the wind energy resource potential
8 on tribal land and projected cost savings through a
9 blend of wind and hydropower over a 30-year period;

10 “(4) determine seasonal capacity needs and as-
11 sociated transmission upgrades for integration of
12 tribal wind generation; and

13 “(5) include an independent tribal engineer as
14 a study team member.

15 “(c) REPORT.—Not later than 1 year after the date
16 of enactment of this Act, the Secretary and Secretary of
17 the Army shall submit to Congress a report that describes
18 the results of the study, including—

19 “(1) an analysis of the potential energy cost or
20 benefits to the customers of the Western Area Power
21 Administration through the blend of wind and hy-
22 dropower;

23 “(2) an evaluation of whether a combined wind
24 and hydropower system can reduce reservoir fluctua-
25 tion, enhance efficient and reliable energy produc-

1 tion, and provide Missouri River management flexi-
2 bility;

3 “(3) recommendations for a demonstration
4 project that could be carried out by the Western
5 Area Power Administration in partnership with an
6 Indian tribal government or tribal consortium to
7 demonstrate the feasibility and potential of using
8 wind energy produced on Indian land to supply firm-
9 ing energy to the Western Area Power Administra-
10 tion or any other Federal power marketing agency;
11 and

12 “(4) an identification of—

13 “(A) the economic and environmental costs
14 or benefits to be realized through such a Fed-
15 eral-tribal partnership; and

16 “(B) the manner in which such a partner-
17 ship could contribute to the energy security of
18 the United States.

19 “(d) FUNDING.—

20 “(1) There is authorized to be appropriated to
21 carry out this section \$500,000, to remain available
22 until expended.

23 “(2) Costs incurred by the Secretary in car-
24 rying out this section shall be nonreimbursable.”.

1 **SEC. 304. FOUR CORNERS TRANSMISSION LINE PROJECT.**

2 The Dine Power Authority, an enterprise of the Nav-
3 ajo Nation, shall be eligible to receive grants and other
4 assistance as authorized by section 302 of this title and
5 section 2602 of the Energy Policy Act of 1992, as amend-
6 ed by this title, for activities associated with the develop-
7 ment of a transmission line from the Four Corners Area
8 to southern Nevada, including related power generation
9 opportunities.

10 **SEC. 305. ENERGY EFFICIENCY IN FEDERALLY ASSISTED**
11 **HOUSING.**

12 (a) IN GENERAL.—The Secretary of Housing and
13 Urban Development shall promote energy conservation in
14 housing that is located on Indian land and assisted with
15 Federal resources through—

16 (1) the use of energy-efficient technologies and
17 innovations (including the procurement of energy-ef-
18 ficient refrigerators and other appliances);

19 (2) the promotion of shared savings contracts;
20 and

21 (3) the use and implementation of such other
22 similar technologies and innovations as the Secretary
23 of Housing and Urban Development considers to be
24 appropriate.

25 (b) AMENDMENT.—Section 202(2) of the Native
26 American Housing and Self-Determination Act of 1996

1 (25 U.S.C. 4132(2)) is amended by inserting ‘improve-
 2 ment to achieve greater energy efficiency,’ after ‘plan-
 3 ning,’.

4 **SEC. 306. CONSULTATION WITH INDIAN TRIBES.**

5 In carrying out this Act and the amendments made
 6 by this Act, the Secretary of Energy and the Secretary
 7 shall, as appropriate and to the maximum extent prac-
 8 ticable, involve and consult with Indian tribes in a manner
 9 that is consistent with the Federal trust and the govern-
 10 ment-to-government relationships between Indian tribes
 11 and the United States.

12 **TITLE IV—NUCLEAR MATTERS**
 13 **Subtitle A—Price-Anderson Act**
 14 **Amendments**

15 **SEC. 401. SHORT TITLE.**

16 This subtitle may be cited as the “Price-Anderson
 17 Amendments Act of 2003”.

18 **SEC. 402. EXTENSION OF INDEMNIFICATION AUTHORITY.**

19 (a) INDEMNIFICATION OF NUCLEAR REGULATORY
 20 COMMISSION LICENSEES.—Section 170c. of the Atomic
 21 Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

22 (1) in the subsection heading, by striking “LI-
 23 CENSES” and inserting “LICENSEES”;

1 (2) by striking “licenses issued between August
2 30, 1954, and December 31, 2003” and inserting
3 “licenses issued after August 30, 1954”; and

4 (3) by striking “With respect to any production
5 or utilization facility for which a construction permit
6 is issued between August 30, 1954, and December
7 31, 2003, the requirements of this subsection shall
8 apply to any license issued for such facility subse-
9 quent to December 31, 2003.”

10 (b) INDEMNIFICATION OF DEPARTMENT OF ENERGY
11 CONTRACTORS.—Section 170d.(1)(A) of the Atomic En-
12 ergy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended
13 by striking “, until December 31, 2004,”.

14 (c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL
15 INSTITUTIONS.—Section 170k. of the Atomic Energy Act
16 of 1954 (42 U.S.C. 2210(k)) is amended—

17 (1) by striking “licenses issued between August
18 30, 1954, and August 1, 2002” and replacing it
19 with “licenses issued after August 30, 1954”; and

20 (2) by striking “With respect to any production
21 or utilization facility for which a construction permit
22 is issued between August 30, 1954, and August 1,
23 2002, the requirements of this subsection shall apply
24 to any license issued for such facility subsequent to
25 August 1, 2002.”

1 **SEC. 403. MAXIMUM ASSESSMENT.**

2 Section 170 of the Atomic Energy Act of 1954 (42
3 U.S.C. 2210) is amended—

4 (1) in the second proviso of the third sentence
5 of subsection b.(1)—

6 (A) by striking “\$63,000,000” and insert-
7 ing “\$94,000,000”; and

8 (B) by striking “\$10,000,000 in any 1
9 year” and inserting “\$15,000,000 in any 1 year
10 (subject to adjustment for inflation under sub-
11 section t.)”; and

12 (2) in subsection t.(1)—

13 (A) by inserting “total and annual” after
14 “amount of the maximum”;

15 (B) by striking “the date of the enactment
16 of the Price-Anderson Amendments Act of
17 1988” and inserting “July 1, 2003”; and

18 (C) by striking “such date of enactment”
19 and inserting “July 1, 2003”.

20 **SEC. 404. DEPARTMENT OF ENERGY LIABILITY LIMIT.**

21 (a) INDEMNIFICATION OF DEPARTMENT OF ENERGY
22 CONTRACTORS.—Section 170d. of the Atomic Energy Act
23 of 1954 (42 U.S.C. 2210(d)) is amended by striking para-
24 graph (2) and inserting the following:

25 “(2) In an agreement of indemnification en-
26 tered into under paragraph (1), the Secretary—

1 “(A) may require the contractor to provide
2 and maintain financial protection of such a type
3 and in such amounts as the Secretary shall de-
4 termine to be appropriate to cover public liabil-
5 ity arising out of or in connection with the con-
6 tractual activity; and

7 “(B) shall indemnify the persons indem-
8 nified against such liability above the amount of
9 the financial protection required, in the amount
10 of \$10,000,000,000 (subject to adjustment for
11 inflation under subsection t.), in the aggregate,
12 for all persons indemnified in connection with
13 the contract and for each nuclear incident, in-
14 cluding such legal costs of the contractor as are
15 approved by the Secretary.”.

16 (b) CONTRACT AMENDMENTS.—Section 170d. of the
17 Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further
18 amended by striking paragraph (3) and inserting the fol-
19 lowing—

20 “(3) All agreements of indemnification under
21 which the Department of Energy (or its predecessor
22 agencies) may be required to indemnify any person
23 under this section shall be deemed to be amended,
24 on the date of enactment of the Price-Anderson
25 Amendments Act of 2003, to reflect the amount of

1 indemnity for public liability and any applicable fi-
2 nancial protection required of the contractor under
3 this subsection.”.

4 (c) LIABILITY LIMIT.—Section 170e.(1)(B) of the
5 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is
6 amended by:

7 (1) striking “the maximum amount of financial
8 protection required under subsection b. or”; and

9 (2) striking “paragraph (3) of subsection d.,
10 whichever amount is more” and inserting “para-
11 graph (2) of subsection d.”.

12 **SEC. 405. INCIDENTS OUTSIDE THE UNITED STATES.**

13 (a) AMOUNT OF INDEMNIFICATION.—Section
14 170d.(5) of the Atomic Energy Act of 1954 (42 U.S.C.
15 2210(d)(5)) is amended by striking “\$100,000,000” and
16 inserting “\$500,000,000”.

17 (b) LIABILITY LIMIT.—Section 170e.(4) of the Atom-
18 ic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended
19 by striking “\$100,000,000” and inserting
20 “\$500,000,000”.

21 **SEC. 406. REPORTS.**

22 Section 170p. of the Atomic Energy Act of 1954 (42
23 U.S.C. 2210(p)) is amended by striking “August 1, 1998”
24 and inserting “August 1, 2013”.

1 **SEC. 407. INFLATION ADJUSTMENT.**

2 Section 170t. of the Atomic Energy Act of 1954 (42
3 U.S.C. 2210(t)) is amended—

4 (1) by redesignating paragraph (2) as para-
5 graph (3); and

6 (2) by adding after paragraph (1) the following:

7 “(2) The Secretary shall adjust the amount of
8 indemnification provided under an agreement of in-
9 demnification under subsection d. not less than once
10 during each 5–year period following July 1, 2003, in
11 accordance with the aggregate percentage change in
12 the Consumer Price Index since—

13 “(A) that date, in the case of the first ad-
14 justment under this paragraph; or

15 “(B) the previous adjustment under this
16 paragraph.”.

17 **SEC. 408. TREATMENT OF MODULAR REACTORS.**

18 Section 170b. of the Atomic Energy Act of 1954 (42
19 U.S.C. 2210(b)) is amended by adding at the end the fol-
20 lowing:

21 “(5)(A) For purposes of this section only, the
22 Commission shall consider a combination of facilities
23 described in subparagraph (B) to be a single facility
24 having a rated capacity of 100,000 electrical kilo-
25 watts or more.

1 “(B) A combination of facilities referred to in
2 subparagraph (A) is 2 or more facilities located at
3 a single site, each of which has a rated capacity of
4 100,000 electrical kilowatts or more but not more
5 than 300,000 electrical kilowatts, with a combined
6 rated capacity of not more than 1,300,000 electrical
7 kilowatts.”.

8 **SEC. 409. APPLICABILITY.**

9 The amendments made by sections 403, 404, and 405
10 do not apply to a nuclear incident that occurs before the
11 date of the enactment of this Act.

12 **SEC. 410. CIVIL PENALTIES.**

13 (a) REPEAL OF AUTOMATIC REMISSION.—Section
14 234Ab.(2) of the Atomic Energy Act of 1954 (42 U.S.C.
15 2282a(b)(2)) is amended by striking the last sentence.

16 (b) LIMITATION FOR NOT-FOR-PROFIT INSTITU-
17 TIONS.—Subsection d. of section 234A of the Atomic En-
18 ergy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read
19 as follows:

20 “d.(1) Notwithstanding subsection a., in the case of
21 any not-for-profit contractor, subcontractor, or supplier,
22 the total amount of civil penalties paid under subsection
23 a. may not exceed the total amount of fees paid within
24 any one-year period (as determined by the Secretary)
25 under the contract under which the violation occurs.

1 “(2) For purposes of this section, the term “not-for-
2 profit” means that no part of the net earnings of the con-
3 tractor, subcontractor, or supplier inures to the benefit of
4 any natural person or for-profit artificial person.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall not apply to any violation of the Atomic
7 Energy Act of 1954 occurring under a contract entered
8 into before the date of enactment of this section.

9 **Subtitle B—Deployment of New** 10 **Nuclear Plants**

11 **SEC. 421. SHORT TITLE.**

12 This subtitle may be cited as the “Nuclear Energy
13 Finance Act of 2003.”

14 **SEC. 422. DEFINITIONS.**

15 For purposes of this subtitle:

16 (1) The term “advanced reactor design” means
17 a nuclear reactor that enhances safety, efficiency,
18 proliferation resistance, or waste reduction compared
19 to commercial nuclear reactors in use in the United
20 States on the date of enactment of this Act.

21 (2) The term “eligible project costs” means all
22 costs incurred by a project developer that are rea-
23 sonably related to the development and construction
24 of a project under this subtitle, including costs re-
25 sulting from regulatory or licensing delays.

1 (3) The term “financial assistance” means a
2 loan guarantee, purchase agreement, or any com-
3 bination of the foregoing.

4 (4) The term “loan guarantee” means any
5 guarantee or other pledge by the Secretary to pay all
6 or part of the principal and interest on a loan or
7 other debt obligation issued by a project developer
8 and funded by a lender.

9 (5) The term “project” means any commercial
10 nuclear power facility for the production of elec-
11 tricity that uses one or more advanced reactor de-
12 signs.

13 (6) The term “project developer” means an in-
14 dividual, corporation, partnership, joint venture,
15 trust, or other entity that is primarily liable for pay-
16 ment of a project’s eligible costs.

17 (7) The term “purchase agreement” means a
18 contract to purchase the electric energy produced by
19 a project under this subtitle.

20 (8) The term “Secretary” means the Secretary
21 of Energy.

22 **SEC. 423. RESPONSIBILITIES OF THE SECRETARY.**

23 (a) FINANCIAL ASSISTANCE.—Subject to the require-
24 ments of the Federal Credit Reform Act of 1990 (2 U.S.C.
25 661 et seq.), the Secretary may, subject to appropriations,

1 make available to project developers for eligible project
2 costs such financial assistance as the Secretary determines
3 is necessary to supplement private-sector financing for
4 projects if he determines that such projects are needed to
5 contribute to energy security, fuel or technology diversity,
6 or clean air attainment goals. The Secretary shall pre-
7 scribe such terms and conditions for financial assistance
8 as the Secretary deems necessary or appropriate to protect
9 the financial interests of the United States.

10 (b) REQUIREMENTS.—Approval criteria for financial
11 assistance shall include—

12 (1) the creditworthiness of the project;

13 (2) the extent to which financial assistance
14 would encourage public-private partnerships and at-
15 tract private-sector investment;

16 (3) the likelihood that financial assistance
17 would hasten commencement of the project; and,

18 (4) any other criteria the Secretary deems nec-
19 essary or appropriate.

20 (c) CONFIDENTIALITY.—The Secretary shall protect
21 the confidentiality of any information that is certified by
22 a project developer to be commercially sensitive.

23 (d) FULL FAITH AND CREDIT.—All financial assist-
24 ance provided by the Secretary under this subtitle shall

1 be general obligations of the United States backed by its
2 full faith and credit.

3 **SEC. 424. LIMITATIONS.**

4 (a) FINANCIAL ASSISTANCE.—The total financial as-
5 sistance per project provided by this subtitle shall not ex-
6 ceed fifty percent of eligible project costs.

7 (b) GENERATION.—The total electrical generation ca-
8 pacity of all projects provided by this subtitle shall not
9 exceed 8,400 megawatts.

10 **SEC. 425. REGULATIONS.**

11 Not later than 12 months from the date of enactment
12 of this Act, the Secretary shall issue regulations to imple-
13 ment this subtitle.

14 **Subtitle C—Advanced Reactor**
15 **Hydrogen Co-Generation Project**

16 **SEC. 431. PROJECT ESTABLISHMENT.**

17 The Secretary is directed to establish an Advanced
18 Reactor Hydrogen Co-Generation Project.

19 **SEC. 432. PROJECT DEFINITION.**

20 The project shall conduct the research, development,
21 design, construction, and operation of a hydrogen produc-
22 tion co-generation testbed that, relative to the current
23 commercial reactors, enhances safety features, reduces
24 waste production, enhances thermal efficiencies, increases

1 proliferation resistance, and has the potential for improved
2 economics and physical security in reactor siting. This
3 testbed shall be constructed so as to enable research and
4 development on advanced reactors of the type selected and
5 on alternative approaches for reactor-based production of
6 hydrogen.

7 **SEC. 433. PROJECT MANAGEMENT.**

8 (a) **MANAGEMENT.**—The project shall be managed
9 within the Department by the Office of Nuclear Energy
10 Science and Technology.

11 (b) **LEAD LABORATORY.**—The lead laboratory for the
12 program, providing the site for the reactor construction,
13 shall be the Idaho National Engineering and Environ-
14 mental Laboratory (“INEEL”).

15 (c) **STEERING COMMITTEE.**—The Secretary shall es-
16 tablish a national steering committee with membership
17 from the national laboratories, universities, and industry
18 to provide advice to the Secretary and the Director of the
19 Office of Nuclear Energy, Science and Technology on
20 technical and program management aspects of the project.

21 (d) **COLLABORATION.**—Project activities shall be con-
22 ducted at INEEL, other national laboratories, univer-
23 sities, domestic industry, and international partners.

1 **SEC. 434. PROJECT REQUIREMENTS.**

2 (a) RESEARCH AND DEVELOPMENT.—The project
3 shall include planning, research and development, design,
4 and construction of an advanced, next-generation, nuclear
5 energy system suitable for enabling further research and
6 development on advanced reactor technologies and alter-
7 native approaches for reactor-based generation of hydro-
8 gen.

9 (1) The project shall utilize, where appropriate,
10 extensive reactor test capabilities resident at
11 INEEL.

12 (2) The project shall be designed to explore
13 technical, environmental, and economic feasibility of
14 alternative approaches for reactor-based hydrogen
15 production.

16 (3) The industrial lead for the project must be
17 a United States-based company.

18 (b) INTERNATIONAL COLLABORATION.—The Sec-
19 retary shall seek international cooperation, participation,
20 and financial contribution in this program.

21 (1) The project may contract for assistance
22 from specialists or facilities from member countries
23 of the Generation IV International Forum, the Rus-
24 sian Federation, or other international partners
25 where such specialists or facilities provide access to
26 cost-effective and relevant skills or test capabilities.

1 (2) International activities shall be coordinated
2 with the Generation IV International Forum.

3 (3) The Secretary may combine this project
4 with the Generation IV Nuclear Energy Systems
5 Program.

6 (c) DEMONSTRATION.—The overall project, which
7 may involve demonstration of selected project objectives
8 in a partner nation, must demonstrate both electricity and
9 hydrogen production and may provide flexibility, where
10 technically and economically feasible in the design and
11 construction, to enable tests of alternative reactor core
12 and cooling configurations.

13 (d) PARTNERSHIPS.—The Secretary shall establish
14 cost-shared partnerships with domestic industry or inter-
15 national participants for the research, development, de-
16 sign, construction and operation of the demonstration fa-
17 cility, and preference in determining the final project
18 structure shall be given to an overall project which retains
19 United States leadership while maximizing cost sharing
20 opportunities and minimizing federal funding responsibil-
21 ities.

22 (e) TARGET DATE.—The Secretary shall select tech-
23 nologies and develop the project to provide initial testing
24 of either hydrogen production or electricity generation by

1 2010 or provide a report to Congress why this date is not
2 feasible.

3 (f) WAIVER OF CONSTRUCTION TIMELINES.—The
4 Secretary is authorized to conduct the Advanced Reactor
5 Hydrogen Co-Generation Project without the constraints
6 of DOE Order 413.3 as deemed necessary to meet the
7 specified operational date.

8 (g) COMPETITION.—The Secretary may fund up to
9 two teams for up to one year to develop detailed proposals
10 for competitive evaluation and selection of a single pro-
11 posal and concept for further progress. The Secretary
12 shall define the format of the competitive evaluation of
13 proposals.

14 (h) USE OF FACILITIES.—Research facilities in in-
15 dustry, national laboratories, or universities either within
16 the United States or with cooperating international part-
17 ners may be used to develop the enabling technologies for
18 the demonstration facility. Utilization of domestic univer-
19 sity-based testbeds shall be encouraged to provide edu-
20 cational opportunities for student development.

21 (i) ROLE OF NUCLEAR REGULATORY COMMISSION.—
22 The Secretary shall seek active participation of the Nu-
23 clear Regulatory Commission throughout the project to
24 develop risk-based criteria for any future commercial de-
25 velopment of a similar reactor architecture.

1 (j) REPORT.—A comprehensive project plan shall be
2 developed no later than April 30, 2004. The project plan
3 shall be updated annually with each annual budget sub-
4 mission.

5 **SEC. 435. AUTHORIZATION OF APPROPRIATIONS.**

6 (a) RESEARCH, DEVELOPMENT AND DESIGN PRO-
7 GRAMS.—The following sums are authorized to be appro-
8 priated to the Secretary for all activities under this sub-
9 title except for reactor construction:

10 (1) For fiscal year 2004, \$35,000,000;

11 (2) For each of fiscal years 2005–2008,
12 \$150,000,000; and

13 (3) For fiscal years beyond 2008, such funds as
14 are needed are authorized to be appropriated.

15 (b) REACTOR CONSTRUCTION.—The following sum is
16 authorized to be appropriated to the Secretary for all
17 project-related construction activities, to be available until
18 expended, \$500,000,000.

19 **Subtitle D—Miscellaneous Matters**

20 **SEC. 441. URANIUM SALES AND TRANSFERS.**

21 Section 3112 of the USEC Privatization Act (42
22 U.S.C. 2297h–10) is amended by striking subsections (d)
23 and (e) and inserting the following:

24 “(d)(1)(A) The aggregate annual deliveries of ura-
25 nium in any form (including natural uranium con-

1 concentrates, natural uranium hexafluoride, enriched ura-
2 nium, and depleted uranium) sold or transferred for com-
3 mercial nuclear power end uses by the United States Gov-
4 ernment shall not exceed 3,000,000 pounds U_3O_8 equiva-
5 lent per year through calendar year 2009. Such aggregate
6 annual deliveries shall not exceed 5,000,000 pounds U_3O_8
7 equivalent per year in calendar years 2010 and 2011.
8 Such aggregate annual deliveries shall not exceed
9 7,000,000 pounds U_3O_8 equivalent in calendar year 2012.
10 Such aggregate annual deliveries shall not exceed
11 10,000,000 pounds U_3O_8 equivalent per year in calendar
12 year 2013 and each year thereafter. Any sales or transfers
13 by the United States Government to commercial end users
14 shall be limited to long-term contracts of no less than 3
15 years duration.

16 “(B) The recovery and extraction of the uranium
17 component from contaminated uranium bearing materials
18 from United States Government sites by commercial enti-
19 ties shall be the preferred method of making uranium
20 available under this subsection. The uranium component
21 contained in such contaminated materials shall be counted
22 against the annual maximum deliveries set forth in this
23 section, provided that uranium is sold to end users.

1 “(C) Sales or transfers of uranium by the United
2 States Government for the following purposes are exempt
3 from the provisions of this paragraph—

4 “(i) sales or transfers provided for under exist-
5 ing law for use by the Tennessee Valley Authority in
6 relation to the Department of Energy’s high-en-
7 riched uranium or tritium programs;

8 “(ii) sales or transfers to the Department of
9 Energy research reactor sales program;

10 “(iii) the transfer of up to 3,293 metric tons of
11 uranium to the United States Enrichment Corpora-
12 tion to replace uranium that the Secretary trans-
13 ferred, prior to privatization of the United States
14 Enrichment Corporation in July 1998, to the Cor-
15 poration on or about June 30, 1993, April 20, 1998,
16 and May 18, 1998, and that does not meet commer-
17 cial specifications;

18 “(iv) the sale or transfer of any uranium for
19 emergency purposes in the event of a disruption in
20 supply to end users in the United States;

21 “(v) the sale or transfer of any uranium in ful-
22 fillment of the United States Government’s obliga-
23 tions to provide security of supply with respect to
24 implementation of the Russian HEU Agreement;
25 and

1 “(vi) the sale or transfer of any enriched ura-
2 nium for use in an advanced commercial nuclear
3 power plant in the United States with nonstandard
4 fuel requirements.

5 “(D) The Secretary may transfer or sell enriched ura-
6 nium to any person for national security purposes, as de-
7 termined by the Secretary.

8 “(2) Except as provided in subsections (b) and (c),
9 and in paragraph (1)(B), clauses (i) through (iii) of para-
10 graph (1)(C), and paragraph (1)(D) of this subsection, no
11 sale or transfer of uranium in any form shall be made
12 by the United States Government unless—

13 “(A) the President determines that the material
14 is not necessary for national security needs;

15 “(B) the price paid to the Secretary, if the
16 transaction is a sale, will not be less than the fair
17 market value of the material, as determined at the
18 time that such material is contracted for sale;

19 “(C) prior to any sale or transfer, the Secretary
20 solicits the written views of the Department of State
21 and the National Security Council with regard to
22 whether such sale or transfer would have any ad-
23 verse effect on national security interests of the
24 United States, including interests related to the im-
25 plementation of the Russian HEU Agreement; and

1 “(D) neither the Department of State nor the
2 National Security Council objects to such sale or
3 transfer.

4 The Secretary shall endeavor to determine whether a sale
5 or transfer is permitted under this paragraph within 30
6 days. The Secretary’s determinations pursuant to this
7 paragraph shall be made available to interested members
8 of the public prior to authorizing any such sale or transfer.

9 “(3) Within 1 year after the date of enactment of
10 this subsection and annually thereafter the Secretary shall
11 undertake an assessment for the purpose of reviewing
12 available excess Government uranium inventories, and de-
13 termining, consistent with the procedures and limitations
14 established in this subsection, the level of inventory to be
15 sold or transferred to end users.

16 “(4) Within 5 years after the date of enactment of
17 this subsection and biennially thereafter the Secretary
18 shall report to the Congress on the implementation of this
19 subsection. The report shall include a discussion of all
20 sales or transfers made by the United States Government,
21 the impact of such sales or transfers on the domestic ura-
22 nium industry, the spot market uranium price, and the
23 national security interests of the United States, and any
24 steps taken to remediate any adverse impacts of such sales
25 or transfers.

1 “(5) For purposes of this subsection, the term
2 ‘United States Government’ does not include the Ten-
3 nessee Valley Authority.”.

4 **SEC. 442. DECOMMISSIONING PILOT PROGRAM.**

5 (a) PILOT PROGRAM.—The Secretary shall establish
6 a decommissioning pilot program to decommission and de-
7 contaminate the sodium-cooled fast breeder experimental
8 test-site reactor located in northwest Arkansas in accord-
9 ance with the decommissioning activities contained in the
10 August 31, 1998 Department of Energy report on the re-
11 actor.

12 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
13 authorized to be appropriated to carry out this section
14 \$16,000,000.

15 **TITLE V—RENEWABLE ENERGY**

16 **Subtitle A—General Provisions**

17 **SEC. 501. ASSESSMENT OF RENEWABLE ENERGY RE-**
18 **SOURCES.**

19 (a) RESOURCE ASSESSMENT.—Not later than 6
20 months after the date of enactment of this title, and each
21 year thereafter, the Secretary of Energy shall review the
22 available assessments of renewable energy resources with-
23 in the United States, including solar, wind, biomass, ocean
24 (tidal and thermal), geothermal, and hydroelectric energy
25 resources, and undertake new assessments as necessary,

1 taking into account changes in market conditions, avail-
2 able technologies, and other relevant factors.

3 (b) CONTENTS OF REPORTS.—Not later than 1 year
4 after the date of enactment of this title, and each year
5 thereafter, the Secretary shall publish a report based on
6 the assessment under subsection (a). The report shall con-
7 tain—

8 (1) a detailed inventory describing the available
9 amount and characteristics of the renewable energy
10 resources; and

11 (2) such other information as the Secretary be-
12 lieves would be useful in developing such renewable
13 energy resources, including descriptions of sur-
14 rounding terrain, population and load centers, near-
15 by energy infrastructure, location of energy and
16 water resources, and available estimates of the costs
17 needed to develop each resource, together with an
18 identification of any barriers to providing adequate
19 transmission for remote sources of renewable energy
20 resources to current and emerging markets, rec-
21 ommendations for removing or addressing such bar-
22 riers, and ways to provide access to the grid that do
23 not unfairly disadvantage renewable or other energy
24 producers.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—For the
2 purposes of this section, there are authorized to be appro-
3 priated to the Secretary of Energy \$10,000,000 for each
4 of fiscal years 2004 through 2008.

5 **SEC. 502. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

6 (a) INCENTIVE PAYMENTS.—Section 1212(a) of the
7 Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is
8 amended by striking “and which satisfies” and all that
9 follows through “Secretary shall establish.” and inserting
10 “. If there are insufficient appropriations to make full pay-
11 ments for electric production from all qualified renewable
12 energy facilities in any given year, the Secretary shall as-
13 sign 60 percent of appropriated funds for that year to fa-
14 cilities that use solar, wind, geothermal, or closed-loop
15 (dedicated energy crops) biomass technologies to generate
16 electricity, and assign the remaining 40 percent to other
17 projects. The Secretary may, after transmitting to the
18 Congress an explanation of the reasons therefor, alter the
19 percentage requirements of the preceding sentence.”.

20 (b) QUALIFIED RENEWABLE ENERGY FACILITY.—
21 Section 1212(b) of the Energy Policy Act of 1992 (42
22 U.S.C. 13317(b)) is amended—

23 (1) by striking “a State or any political” and
24 all that follows through “nonprofit electrical cooper-
25 ative” and inserting “a not-for-profit electric cooper-

1 ative, a public utility described in section 115 of the
2 Internal Revenue Code of 1986, a State, Common-
3 wealth, territory, or possession of the United States
4 or the District of Columbia, or a political subdivision
5 thereof, or an Indian tribal government of subdivi-
6 sion thereof,”; and

7 (2) by inserting “landfill gas,” after “wind, bio-
8 mass,”.

9 (c) ELIGIBILITY WINDOW.—Section 1212(c) of the
10 Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is
11 amended by striking “during the 10-fiscal year period be-
12 ginning with the first full fiscal year occurring after the
13 enactment of this section” and inserting “after October
14 1, 2003, and before October 1, 2013”.

15 (d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of
16 the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1))
17 is amended by inserting “landfill gas,” after “wind, bio-
18 mass,”.

19 (e) SUNSET.—Section 1212(f) of the Energy Policy
20 Act of 1992 (42 U.S.C. 13317(f)) is amended by striking
21 “the expiration of” and all that follows through “of this
22 section” and inserting “September 30, 2023”.

23 (f) AUTHORIZATION OF APPROPRIATIONS.—Section
24 1212(g) of the Energy Policy Act of 1992 (42 U.S.C.
25 13317(g)) is amended to read as follows:

1 “(g) AUTHORIZATION OF APPROPRIATIONS.—

2 “(1) IN GENERAL.—Subject to paragraph (2),
3 there are authorized to be appropriated such sums
4 as may be necessary to carry out this section for fis-
5 cal years 2003 through 2023.

6 “(2) AVAILABILITY OF FUNDS.—Funds made
7 available under paragraph (1) shall remain available
8 until expended.”.

9 **SEC. 503. RENEWABLE ENERGY ON FEDERAL LANDS.**

10 (a) REPORT.—Within 24 months after the date of en-
11 actment of this Act, the Secretary of the Interior, in co-
12 operation with the Secretary of Agriculture, shall develop
13 and report to the Congress recommendations on opportu-
14 nities to develop renewable energy on public lands under
15 the jurisdiction of the Secretary of the Interior and Na-
16 tional Forest System lands under the jurisdiction of the
17 Secretary of Agriculture. The report shall include—

18 (1) 5-year plans developed by the Secretary of
19 the Interior and the Secretary of Agriculture, re-
20 spectively, for encouraging the development of re-
21 newable energy consistent with applicable law and
22 management plans; and

23 (2) an analysis of—

1 (A) the use of rights-of-way, leases, or
2 other methods to develop renewable energy on
3 such lands;

4 (B) the anticipated benefits of grants,
5 loans, tax credits, or other provisions to pro-
6 mote renewable energy development on such
7 lands; and

8 (C) any issues that the Secretary of the
9 Interior or the Secretary of Agriculture have
10 encountered in managing renewable energy
11 projects on such lands, or believe are likely to
12 arise in relation to the development of renew-
13 able energy on such lands;

14 (3) a list, developed in consultation with the
15 Secretary of Energy and the Secretary of Defense,
16 of lands under the jurisdiction of the Department of
17 Energy or Defense that would be suitable for devel-
18 opment for renewable energy, and any recommended
19 statutory and regulatory mechanisms for such devel-
20 opment; and

21 (4) any recommendations pertaining to the
22 issues addressed in the report.

23 (b) NATIONAL ACADEMY OF SCIENCES STUDY.—

24 (1) Not later than 90 days after the date of the
25 enactment of this section, the Secretary of the Inte-

1 rior shall contract with the National Academy of
2 Sciences to—

3 (A) study the potential for the development
4 of wind, solar, and ocean (tidal and thermal)
5 energy on the Outer Continental Shelf;

6 (B) assess existing Federal authorities for
7 the development of such resources; and

8 (C) recommend statutory and regulatory
9 mechanisms for such development.

10 (2) The results of the study shall be trans-
11 mitted to the Congress within 24 months after the
12 date of the enactment of this section.

13 **SEC. 504. FEDERAL PURCHASE REQUIREMENT.**

14 (a) REQUIREMENT.—The President, acting through
15 the Secretary of Energy, shall seek to ensure that, to the
16 extent economically feasible and technically practicable, of
17 the total amount of electric energy the Federal Govern-
18 ment consumes during any fiscal year, the following
19 amounts shall be renewable energy—

20 (1) not less than 3 percent in fiscal years 2005
21 through 2007,

22 (2) not less than 5 percent in fiscal years 2008
23 through 2010, and

24 (3) not less than 7.5 percent in fiscal year 2011
25 and each fiscal year thereafter.

1 (b) DEFINITION.—For purposes of this section—

2 (1) the term “biomass” means any solid, non-
3 hazardous, cellulosic material that is derived from—

4 (A) any of the following forest-related re-
5 sources: mill residues, precommercial thinnings,
6 slash, and brush, or nonmerchantable material;

7 (B) solid wood waste materials, including
8 waste pallets, crates, dunnage, manufacturing
9 and construction wood wastes (other than pres-
10 sure-treated, chemically-treated, or painted
11 wood wastes), and landscape or right-of-way
12 tree trimmings, but not including municipal
13 solid waste (garbage), gas derived from the bio-
14 degradation of solid waste, or paper that is
15 commonly recycled; or

16 (C) agriculture wastes, including or-
17 chard tree crops, vineyard, grain, legumes,
18 sugar, and other crop by-products or residues,
19 and livestock waste nutrients; or

20 (D) a plant that is grown exclusively as
21 a fuel for the production of electricity.

22 (2) the term “renewable energy” means elec-
23 tric energy generated from solar, wind, biomass, geo-
24 thermal, municipal solid waste, or new hydroelectric
25 generation capacity achieved from increased effi-

1 ciency or additions of new capacity at an existing
2 hydroelectric project.

3 (c) CALCULATION.—For purposes of determining
4 compliance with the requirement of this section, the
5 amount of renewable energy shall be doubled if—

6 (1) the renewable energy is produced and
7 used on-site at a Federal facility;

8 (2) the renewable energy is produced on Fed-
9 eral lands and used at a Federal facility; or

10 (3) the renewable energy is produced on In-
11 dian land as defined in Title XXVI of the Energy
12 Policy Act of 1992 (25 U.S.C. 3501 et seq.) and
13 used at a Federal facility.

14 (d) REPORT.—Not later than April 15, 2005, and
15 every 2 years thereafter, the Secretary of Energy shall
16 provide a report to the Congress on the progress of the
17 Federal Government in meeting the goals established by
18 this section.

19 **SEC. 505. INSULAR AREA RENEWABLE AND ENERGY EFFI-**
20 **CIENCY PLANS.**

21 The Secretary of Energy shall update the energy
22 surveys, estimates, and assessments for the insular areas
23 of Puerto Rico, the Virgin Islands, Guam, American
24 Samoa, the Commonwealth of the Northern Mariana Is-
25 lands, the Republic of the Marshall Islands, the Federated

1 States of Micronesia, and the Republic of Palau under-
2 taken pursuant to section 604 of Public Law 96–597 (48
3 U.S.C. 1492) and revise the comprehensive energy plan
4 for the insular areas to reduce reliance on energy imports
5 and increase use of renewable energy resources and energy
6 efficiency opportunities. The update and revision shall by
7 undertaken in consultation with the Secretary of the Inte-
8 rior and the chief executive officer of each insular area
9 and shall be completed and submitted to Congress and to
10 the chief executive officer of each insular area by Decem-
11 ber 31, 2005.

12 **Subtitle B—Hydroelectric**

13 **Licensing**

14 **SEC. 511. ALTERNATIVE CONDITIONS AND FISHWAYS.**

15 (a) FEDERAL RESERVATIONS.—Section 4(e) of the
16 Federal Power Act (16 U.S.C. 797(e)) is amended by in-
17 serting after “adequate protection and utilization of such
18 reservation.” at the end of the first proviso the following:
19 “The license applicant shall be entitled to a determination
20 on the record, after opportunity for an agency trial-type
21 hearing of any disputed issues of material fact, with re-
22 spect to such conditions.”.

23 (b) FISHWAYS.—Section 18 of the Federal Power
24 Act (16 U.S.C. 811) is amended by inserting after “and
25 such fishways as may be prescribed by the Secretary of

1 Commerce.” the following: “The license applicant shall be
2 entitled to a determination on the record, after oppor-
3 tunity for an agency trial-type hearing of any disputed
4 issues of material fact, with respect to such fishways.”.

5 (c) ALTERNATIVE CONDITIONS AND PRESCRIP-
6 TIONS.—Part I of the Federal Power Act (16 U.S.C. 791a
7 et seq.) is amended by adding the following new section
8 at the end thereof:

9 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

10 “(a) ALTERNATIVE CONDITIONS.—

11 “(1) Whenever any person applies for a li-
12 cense for any project works within any reservation
13 of the United States, and the Secretary of the De-
14 partment under whose supervision such reservation
15 falls (referred to in this subsection as ‘the Sec-
16 retary’) deems a condition to such license to be nec-
17 essary under the first proviso of section 4(e), the li-
18 cense applicant may propose an alternative condi-
19 tion.

20 “(2) Notwithstanding the first proviso of sec-
21 tion 4(e), the Secretary shall accept the proposed al-
22 ternative condition referred to in paragraph (1), and
23 the Commission shall include in the license such al-
24 ternative condition, if the Secretary determines,
25 based on substantial evidence provided by the license

1 applicant or otherwise available to the Secretary,
2 that such alternative condition—

3 “(A) provides for the adequate protec-
4 tion and utilization of the reservation; and

5 “(B) will either—

6 “(i) cost less to implement; or

7 “(ii) result in improved operation of
8 the project works for electricity production,
9 as compared to the condition initially
10 deemed necessary by the Secretary.

11 “(3) The Secretary concerned shall submit into
12 the public record of the Commission proceeding with
13 any condition under section 4(e) or alternative con-
14 dition it accepts under this section, a written state-
15 ment explaining the basis for such condition, and
16 reason for not accepting any alternative condition
17 under this section. The written statement must dem-
18 onstrate that the Secretary gave equal consideration
19 to the effects of the condition adopted and alter-
20 natives not accepted on energy supply, distribution,
21 cost, and use; flood control; navigation; water sup-
22 ply; and air quality (in addition to the preservation
23 of other aspects of environmental quality); based on
24 such information as may be available to the Sec-
25 retary, including information voluntarily provided in

1 a timely manner by the applicant and others. The
2 Secretary shall also submit, together with the afore-
3 mentioned written statement, all studies, data, and
4 other factual information available to the Secretary
5 and relevant to the Secretary's decision.

6 “(4) Nothing in this section shall prohibit other
7 interested parties from proposing alternative condi-
8 tions.

9 “(5) If the Secretary does not accept an appli-
10 cant's alternative condition under this section, and
11 the Commission finds that the Secretary's condition
12 would be inconsistent with the purposes of this part,
13 or other applicable law, the Commission may refer
14 the dispute to the Commission's Dispute Resolution
15 Service. The Dispute Resolution Service shall con-
16 sult with the Secretary and the Commission and
17 issue a non-binding advisory within 90 days. The
18 Secretary may accept the Dispute Resolution Service
19 advisory unless the Secretary finds that the rec-
20 ommendation will not adequately protect the res-
21 ervation. The Secretary shall submit the advisory
22 and the Secretary's final written determination into
23 the record of the Commission's proceeding.

24 “(b) ALTERNATIVE PRESCRIPTIONS.—

1 “(1) Whenever the Secretary of the Interior or
2 the Secretary of Commerce prescribes a fishway
3 under section 18, the license applicant or licensee
4 may propose an alternative to such prescription to
5 construct, maintain, or operate a fishway. The alter-
6 native may include a fishway or an alternative to a
7 fishway.

8 “(2) Notwithstanding section 18, the Secretary
9 of the Interior or the Secretary of Commerce, as ap-
10 propriate, shall accept and prescribe, and the Com-
11 mission shall require, the proposed alternative re-
12 ferred to in paragraph (1), if the Secretary of the
13 appropriate department determines, based on sub-
14 stantial evidence provided by the licensee or other-
15 wise available to the Secretary, that such alter-
16 native—

17 “(A) will be no less protective of the fish
18 resources than the fishway initially prescribed
19 by the Secretary; and

20 “(B) will either—

21 “(i) cost less to implement; or

22 “(ii) result in improved operation of
23 the project works for electricity production,
24 as compared to the fishway initially
25 deemed necessary by the Secretary.

1 “(3) The Secretary concerned shall submit into
2 the public record of the Commission proceeding with
3 any prescription under section 18 or alternative pre-
4 scription it accepts under this section, a written
5 statement explaining the basis for such prescription,
6 and reason for not accepting any alternative pre-
7 scription under this section. The written statement
8 must demonstrate that the Secretary gave equal con-
9 sideration to the effects of the condition adopted and
10 alternatives not accepted on energy supply, distribu-
11 tion, cost, and use; flood control; navigation; water
12 supply; and air quality (in addition to the preserva-
13 tion of other aspects of environmental quality);
14 based on such information as may be available to
15 the Secretary, including information voluntarily pro-
16 vided in a timely manner by the applicant and oth-
17 ers. The Secretary shall also submit, together with
18 the aforementioned written statement, all studies,
19 data, and other factual information available to the
20 Secretary and relevant to the Secretary’s decision.

21 “(4) Nothing in this section shall prohibit other
22 interested parties from proposing alternative pre-
23 scriptions.

24 “(5) If the Secretary concerned does not accept
25 an applicant’s alternative prescription under this

1 section, and the Commission finds that the Sec-
2 retary's prescription would be inconsistent with the
3 purposes of this part, or other applicable law, the
4 Commission may refer the dispute to the Commis-
5 sion's Dispute Resolution Service. The Dispute Res-
6 olution Service shall consult with the Secretary and
7 the Commission and issue a non-binding advisory
8 within 90 days. The Secretary may accept the Dis-
9 pute Resolution Service advisory unless the Sec-
10 retary finds that the recommendation will not ade-
11 quately protect the fish resources. The Secretary
12 shall submit the advisory and the Secretary's final
13 written determination into the record of the Com-
14 mission's proceeding.”.

15 **Subtitle C—Geothermal Energy**

16 **SEC. 521. COMPETITIVE LEASE SALE REQUIREMENTS.**

17 (a) IN GENERAL.—Section 4 of the Geothermal
18 Steam Act of 1970 (30 U.S.C. 1003) is amended by strik-
19 ing the text and inserting the following:

20 “(a) NOMINATIONS.—The Secretary shall accept
21 nominations at any time from companies and individuals
22 of lands to be leased under this Act.

23 “(b) COMPETITIVE LEASE SALE REQUIRED.—The
24 Secretary shall hold a competitive lease sale at least once
25 every 2 years for lands in a State in which there are nomi-

1 nations pending under subsection (a) where such lands are
2 otherwise available for leasing.

3 “(c) NONCOMPETITIVE LEASING.—The Secretary
4 shall make available for a period of 2 years for non-
5 competitive leasing any tract for which a competitive lease
6 sale is held, but for which the Secretary does not receive
7 any bids in the competitive lease sale.”.

8 (b) PENDING LEASE APPLICATIONS.—It shall be a
9 priority for the Secretary of the Interior and, with respect
10 to National Forest lands, the Secretary of Agriculture, to
11 ensure timely completion of administrative actions nec-
12 essary to conduct competitive lease sales for lands with
13 pending applications for geothermal leasing as of the date
14 of enactment of this section where such lands are other-
15 wise available for leasing.

16 **SEC. 522. GEOTHERMAL LEASING AND PERMITTING ON**
17 **FEDERAL LANDS.**

18 (a) IN GENERAL.—Not later than 180 days after the
19 date of the enactment of this section, the Secretary of the
20 Interior and the Secretary of Agriculture shall enter into
21 and submit to the Congress a memorandum of under-
22 standing in accordance with this section regarding leasing
23 and permitting for geothermal development of public lands
24 and National Forest System lands under their respective
25 jurisdictions.

1 (b) LEASE AND PERMIT APPLICATIONS.—The memo-
2 randum of understanding shall—

3 (1) identify known geothermal resources areas
4 on lands included in the National Forest System
5 and, when necessary, require review of management
6 plans to consider leasing under the Geothermal
7 Steam Act of 1970 (30 U.S.C. 1001 et seq.) as a
8 land use; and

9 (2) establish an administrative procedure for
10 processing geothermal lease applications, including
11 lines of authority, steps in application processing,
12 and time limits for application processing.

13 (c) DATA RETRIEVAL SYSTEM.—The memorandum
14 of understanding shall establish a joint data retrieval sys-
15 tem that is capable of tracking lease and permit applica-
16 tions and providing to the applicant information as to
17 their status within the Departments of the Interior and
18 Agriculture, including an estimate of the time required for
19 administrative action.

20 **SEC. 523. LEASING AND PERMITTING ON FEDERAL LANDS**
21 **WITHDRAWN FOR MILITARY PURPOSES.**

22 Not later than 1 year after the date of the enactment
23 of this Act, the Secretary of the Interior and the Secretary
24 of Defense, in consultation with interested states, coun-
25 ties, representatives of the geothermal industry, and inter-

1 ested members of the public, shall submit to the Congress
2 a joint report concerning leasing and permitting activities
3 for geothermal energy on Federal lands withdrawn for
4 military purposes. Such report shall—

5 (1) describe any differences, including dif-
6 ferences in royalty structure and revenue sharing
7 with states and counties, between—

8 (A) the implementation of the Geothermal
9 Steam Act of 1970 (30 U.S.C. 1001 et seq.)
10 and other applicable Federal law by the Sec-
11 retary of the Interior; and

12 (B) the administration of geothermal leas-
13 ing under section 2689 of title 10, United
14 States Code, by the Secretary of Defense;

15 (2) identify procedures for interagency coordi-
16 nation to ensure efficient processing and administra-
17 tion of leases or contracts for geothermal energy on
18 federal lands withdrawn for military purposes, con-
19 sistent with the defense purposes of such with-
20 draws; and

21 (3) provide recommendations for legislative or
22 administrative actions that could facilitate program
23 administration, including a common royalty struc-
24 ture.

1 **SEC. 524. REINSTATEMENT OF LEASES TERMINATED FOR**
2 **FAILURE TO PAY RENT.**

3 Section 5(c) of the Geothermal Steam Act of 1970
4 (30 U.S.C. 1004(c)), is amended in the last sentence by
5 inserting “or was inadvertent,” after “reasonable dili-
6 gence,”.

7 **SEC. 525. ROYALTY REDUCTION AND RELIEF.**

8 (a) RULEMAKING.—Within one year after the date of
9 enactment of this Act, the Secretary shall promulgate a
10 final regulation providing a methodology for determining
11 the amount or value of the steam for purposes of calcu-
12 lating the royalty due to be paid on such production pursu-
13 ant to section 5 of the Geothermal Steam Act of 1970
14 (30 U.S.C. 1004). The final regulation shall provide for
15 a simplified methodology for calculating the royalty. In
16 undertaking the rulemaking, the Secretary shall consider
17 the use of a percent of revenue method and shall ensure
18 that the final rule will result in the same level of royalty
19 revenues as the regulation in effect on the date of enact-
20 ment of this provision.

21 (b) LOW TEMPERATURE DIRECT USE.—Notwith-
22 standing the provisions of section 5(a) of the Geothermal
23 Steam Act of 1979 (30 U.S.C. 1004(a)), with respect to
24 the direct use of low temperature geothermal resources for
25 purposes other than the generation of electricity, the Sec-
26 retary shall establish a schedule of fees and collect fees

1 pursuant to such schedule in lieu of royalties based upon
2 the total amount of geothermal resources used. The sched-
3 ule of fees shall ensure that there is a fair return to the
4 public for the use of the low temperature geothermal re-
5 source. With the consent of the lessee, the Secretary may
6 modify the terms of a lease in existence on the date of
7 enactment of this Act in order to reflect the provisions
8 of this subsection.

9 **Subtitle D—Biomass Energy**

10 **SEC. 531. DEFINITIONS.**

11 For the purposes of this subtitle:

12 (1) The term “eligible operation” means a facil-
13 ity that is located within the boundaries of an eligi-
14 ble community and uses biomass from federal or In-
15 dian lands as a raw material to produce electric en-
16 ergy, sensible heat, transportation fuels, or sub-
17 stitutes for petroleum-based products.

18 (2) The term “biomass” means pre-commercial
19 thinnings of trees and woody plants, or non-mer-
20 chantable material, from preventative treatments to
21 reduce hazardous fuels, or reduce or contain disease
22 or insect infestations.

23 (3) The term “green ton” means 2,000 pounds
24 of biomass that has not been mechanically or artifi-
25 cially dried.

1 (4) The term “Secretary” means—

2 (A) with respect to lands within the Na-
3 tional Forest System, the Secretary of Agri-
4 culture; or

5 (B) with respect to Federal lands under
6 the jurisdiction of the Secretary of the Interior
7 and Indian lands, the Secretary of the Interior.

8 (5) The term “eligible community” means any
9 Indian Reservation, or any county, town, township,
10 municipality, or other similar unit of local govern-
11 ment that has a population of not more than 50,000
12 individuals and is determined by the Secretary to be
13 located in an area near federal or Indian lands which
14 is at significant risk of catastrophic wildfire, disease,
15 or insect infestation or which suffers from disease or
16 insect infestation.

17 (6) The term “Indian tribe” has the meaning
18 given the term in section 4(e) of the Indian Self-De-
19 termination and Education Assistance Act (25
20 U.S.C. 450b(e)).

21 (7) The term “person” includes—

22 (A) an individual;

23 (B) a community;

24 (C) an Indian tribe;

1 (D) a small business or a corporation that
2 is incorporated in the United States; or

3 (E) a nonprofit organization.

4 **SEC. 532. BIOMASS COMMERCIAL UTILIZATION GRANT PRO-**
5 **GRAM.**

6 (a) IN GENERAL.—The Secretary may make grants
7 to any person that owns or operates an eligible operation
8 to offset the costs incurred to purchase biomass for use
9 by such eligible operation with priority given to operations
10 using biomass from the highest risk areas.

11 (b) LIMITATION.—No grant provided under this sub-
12 section shall be paid at a rate that exceeds \$20 per green
13 ton of biomass delivered.

14 (c) RECORDS.—Each grant recipient shall keep such
15 records as the Secretary may require to fully and correctly
16 disclose the use of the grant funds and all transactions
17 involved in the purchase of biomass. Upon notice by the
18 Secretary, the grant recipient shall provide the Secretary
19 reasonable access to examine the inventory and records
20 of any eligible operation receiving grant funds.

21 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
22 purposes of this section, there are authorized to be appro-
23 priated \$12,500,000 each to the Secretary of the Interior
24 and the Secretary of Agriculture for each fiscal year from
25 2004 through 2008, to remain available until expended.

1 **SEC. 533. IMPROVED BIOMASS UTILIZATION GRANT PRO-**
2 **GRAM.**

3 (a) IN GENERAL.—The Secretary may make grants
4 to persons in eligible communities to offset the costs of
5 developing or researching proposals to improve the use of
6 biomass or add value to biomass utilization.

7 (b) SELECTION.—Grant recipients shall be selected
8 based on the potential for the proposal to—

9 (1) develop affordable thermal or electric energy
10 resources for the benefit of an eligible community;

11 (2) provide opportunities for the creation or ex-
12 pansion of small businesses within an eligible com-
13 munity;

14 (3) create new job opportunities within an eligi-
15 ble community, and

16 (4) reduce the hazardous fuels from the highest
17 risk areas.

18 (c) LIMITATION.—No grant awarded under this sub-
19 section shall exceed \$500,000.

20 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
21 purposes of this section, there are authorized to be appro-
22 priated \$12,500,000 each to the Secretary of the Interior
23 and the Secretary of Agriculture for each fiscal year from
24 2004 through 2008, to remain available until expended.

1 **SEC. 534. REPORT.**

2 Not later than 3 years after the date of enactment
 3 of this subtitle, the Secretary of the Interior and the Sec-
 4 retary of Agriculture shall jointly submit to the Congress
 5 a report that describes the interim results of the programs
 6 authorized under this subtitle.

7 **TITLE VI—ENERGY EFFICIENCY**
 8 **Subtitle A—Federal Programs**

9 **SEC. 601. ENERGY MANAGEMENT REQUIREMENTS.**

10 (a) ENERGY REDUCTION GOALS.—Section 543(a)(1)
 11 of the National Energy Conservation Policy Act (42
 12 U.S.C. 8253(a)(1)) is amended by striking “its Federal
 13 buildings so that” and all that follows through the end
 14 and inserting “the Federal buildings of the agency (includ-
 15 ing each industrial or laboratory facility) so that the en-
 16 ergy consumption per gross square foot of the Federal
 17 buildings of the agency in fiscal years 2004 through 2013
 18 is reduced, as compared with the energy consumption per
 19 gross square foot of the Federal buildings of the agency
 20 in fiscal year 2000, by the percentage specified in the fol-
 21 lowing table:

“Fiscal Year	Percentage reduction
2004	2
2005	4
2006	6
2007	8
2008	10
2009	12
2010	14
2011	16

2012	18
2013	20.”.

1 (b) EFFECTIVE DATE.—The energy reduction goals
 2 and baseline established in paragraph (1) of section
 3 543(a) of the National Energy Conservation Policy Act,
 4 as amended by subsection (a) of this section, supersede
 5 all previous goals and baselines under such paragraph,
 6 and related reporting requirements.

7 (c) REVIEW OF ENERGY PERFORMANCE REQUIRE-
 8 MENTS.—Section 543(a) of the National Energy Con-
 9 servation Policy Act (42 U.S.C. 8253(a)) is further
 10 amended by adding at the end the following:

11 “(3) Not later than December 31, 2011, the
 12 Secretary shall review the results of the implementa-
 13 tion of the energy performance requirement estab-
 14 lished under paragraph (1) and submit to Congress
 15 recommendations concerning energy performance re-
 16 quirements for fiscal years 2014 through 2022.”.

17 (d) EXCLUSIONS.—Section 543(c)(1) of the National
 18 Energy Conservation Policy Act (42 U.S.C. 8253(c)(1))
 19 is amended by striking “An agency may exclude” and all
 20 that follows through the end and inserting—

21 “(A) An agency may exclude, from the en-
 22 ergy performance requirement for a fiscal year
 23 established under subsection (a) and the energy
 24 management requirement established under

1 subsection (b), any Federal building or collec-
2 tion of Federal buildings, if the head of the
3 agency finds that—

4 “(i) compliance with those require-
5 ments would be impracticable;

6 “(ii) the agency has completed and
7 submitted all federally required energy
8 management reports;

9 “(iii) the agency has achieved compli-
10 ance with the energy efficiency require-
11 ments of this Act, the Energy Policy Act
12 of 1992, Executive Orders, and other Fed-
13 eral law; and

14 “(iv) the agency has implemented all
15 practicable, life-cycle cost-effective projects
16 with respect to the Federal building or col-
17 lection of Federal buildings to be excluded.

18 “(B) A finding of impracticability under
19 subparagraph (A)(i) shall be based on—

20 “(i) the energy intensiveness of activi-
21 ties carried out in the Federal building or
22 collection of Federal buildings; or

23 “(ii) the fact that the Federal build-
24 ing or collection of Federal buildings is

1 used in the performance of a national secu-
2 rity function.”.

3 (e) REVIEW BY SECRETARY.—Section 543(c)(2) of
4 the National Energy Conservation Policy Act (42 U.S.C.
5 8253(c)(2)) is amended—

6 (1) by striking “impracticability standards” and
7 inserting “standards for exclusion”; and

8 (2) by striking “a finding of impracticability”
9 and inserting “the exclusion”.

10 (f) CRITERIA.—Section 543(c) of the National En-
11 ergy Conservation Policy Act (42 U.S.C. 8253(c)) is fur-
12 ther amended by adding at the end the following:

13 “(3) Not later than 180 days after the date of
14 enactment of this paragraph, the Secretary shall
15 issue guidelines that establish criteria for exclusions
16 under paragraph (1).”.

17 (g) RETENTION OF ENERGY SAVINGS.—Section 546
18 of the National Energy Conservation Policy Act (42
19 U.S.C. 8256) is amended by adding at the end the fol-
20 lowing new subsection:

21 “(e) RETENTION OF ENERGY SAVINGS.—An agency
22 may retain any funds appropriated to that agency for en-
23 ergy expenditures, at buildings subject to the requirements
24 of section 543(a) and (b), that are not made because of
25 energy savings. Except as otherwise provided by law, such

1 funds may be used only for energy efficiency or unconven-
2 tional and renewable energy resources projects.”.

3 (h) REPORTS.—Section 548(b) of the National En-
4 ergy Conservation Policy Act (42 U.S.C. 8258(b)) is
5 amended—

6 (1) in the subsection heading, by inserting
7 “THE PRESIDENT AND” before “CONGRESS”; and

8 (2) by inserting “President and” before “Con-
9 gress”.

10 (i) CONFORMING AMENDMENT.—Section 550(d) of
11 the National Energy Conservation Policy Act (42 U.S.C.
12 8258b(d)) is amended in the second sentence by striking
13 “the 20 percent reduction goal established under section
14 543(a) of the National Energy Conservation Policy Act
15 (42 U.S.C. 8253(a)).” and inserting “each of the energy
16 reduction goals established under section 543(a).”.

17 **SEC. 602. ENERGY USE MEASUREMENT AND ACCOUNT-**
18 **ABILITY.**

19 Section 543 of the National Energy Conservation
20 Policy Act (42 U.S.C. 8253) is further amended by adding
21 at the end the following:

22 “(e) METERING OF ENERGY USE.—

23 “(1) DEADLINE.—By October 1, 2010, in ac-
24 cordance with guidelines established by the Sec-
25 retary under paragraph (2), all Federal buildings

1 shall, for the purposes of efficient use of energy and
2 reduction in the cost of electricity used in such
3 buildings, be metered or submetered. Each agency
4 shall use, to the maximum extent practicable, ad-
5 vanced meters or advanced metering devices that
6 provide data at least daily and that measure at least
7 hourly consumption of electricity in the Federal
8 buildings of the agency. Such data shall be incor-
9 porated into existing Federal energy tracking sys-
10 tems and made available to Federal facility energy
11 managers.

12 “(2) GUIDELINES.—

13 “(A) IN GENERAL.—Not later than 180
14 days after the date of enactment of this sub-
15 section, the Secretary, in consultation with the
16 Department of Defense, the General Services
17 Administration, representatives from the meter-
18 ing industry, utility industry, energy services in-
19 dustry, energy efficiency industry, national lab-
20 oratories, universities, and Federal facility en-
21 ergy managers, shall establish guidelines for
22 agencies to carry out paragraph (1).

23 “(B) REQUIREMENTS FOR GUIDELINES.—

24 The guidelines shall—

25 “(i) take into consideration—

1 “(I) the cost of metering and
2 submetering and the reduced cost of
3 operation and maintenance expected
4 to result from metering and sub-
5 metering;

6 “(II) the extent to which meter-
7 ing and submetering are expected to
8 result in increased potential for en-
9 ergy management, increased potential
10 for energy savings and energy effi-
11 ciency improvement, and cost and en-
12 ergy savings due to utility contract
13 aggregation; and

14 “(III) the measurement and
15 verification protocols of the Depart-
16 ment of Energy;

17 “(ii) include recommendations con-
18 cerning the amount of funds and the num-
19 ber of trained personnel necessary to gath-
20 er and use the metering information to
21 track and reduce energy use;

22 “(iii) establish priorities for types and
23 locations of buildings to be metered and
24 submetered based on cost effectiveness and
25 a schedule of one or more dates, not later

1 than 1 year after the date of issuance of
2 the guidelines, on which the requirements
3 specified in paragraph (1) shall take effect;
4 and

5 “(iv) establish exclusions from the re-
6 quirements specified in paragraph (1)
7 based on the de minimis quantity of energy
8 use of a Federal building, industrial proc-
9 ess, or structure.

10 “(3) PLAN.—No later than 6 months after the
11 date guidelines are established under paragraph (2),
12 in a report submitted by the agency under section
13 548(a), each agency shall submit to the Secretary a
14 plan describing how the agency will implement the
15 requirements of paragraph (1), including—

16 “(A) how the agency will designate per-
17 sonnel primarily responsible for achieving the
18 requirements; and

19 “(B) demonstration by the agency, com-
20 plete with documentation, of any finding that
21 advanced meters or advanced metering devices,
22 as defined in paragraph (1), are not prac-
23 ticable.”.

1 **SEC. 603. FEDERAL BUILDING PERFORMANCE STANDARDS.**

2 Section 305(a) of the Energy Conservation and Pro-
3 duction Act (42 U.S.C. 6834(a)) is amended—

4 (1) in paragraph (2)(A), by striking “CABO
5 Model Energy Code, 1992” and inserting “the 2000
6 International Energy Conservation Code”; and

7 (2) by adding at the end the following:

8 “(3) REVISED FEDERAL BUILDING ENERGY EF-
9 FICIENCY PERFORMANCE STANDARDS.—

10 “(A) IN GENERAL.—Not later than 1 year
11 after the date of enactment of this paragraph,
12 the Secretary of Energy shall establish, by rule,
13 revised Federal building energy efficiency per-
14 formance standards that require that, if cost-ef-
15 fective, for new Federal buildings—

16 “(i) such buildings be designed so as
17 to achieve energy consumption levels at
18 least 30 percent below those of the most
19 recent version of the International Energy
20 Conservation Code, as appropriate; and

21 “(ii) sustainable design principles are
22 applied to the siting, design, and construc-
23 tion of all new and replacement buildings.

24 “(B) ADDITIONAL REVISIONS.—Not later
25 than 1 year after the date of approval of
26 amendments to ASHRAE Standard 90.1 or the

1 2000 International Energy Conservation Code,
2 the Secretary of Energy shall determine, based
3 on the cost-effectiveness of the requirements
4 under the amendments, whether the revised
5 standards established under this paragraph
6 should be updated to reflect the amendments.

7 “(C) STATEMENT ON COMPLIANCE OF NEW
8 BUILDINGS.—In the budget request of the Fed-
9 eral agency for each fiscal year and each report
10 submitted by the Federal agency under section
11 548(a) of the National Energy Conservation
12 Policy Act (42 U.S.C. 8258(a)), the head of
13 each Federal agency shall include

14 “(i) a list of all new Federal buildings
15 owned, operated, or controlled by the Fed-
16 eral agency; and

17 “(ii) a statement concerning whether
18 the Federal buildings meet or exceed the
19 revised standards established under this
20 paragraph.”.

21 **SEC. 604. ENERGY SAVINGS PERFORMANCE CONTRACTS.**

22 (a) PERMANENT EXTENSION.—Section 801(c) of the
23 National Energy Conservation Policy Act (42 U.S.C.
24 8287(c)) is repealed.

1 (b) REPLACEMENT FACILITIES.—Section 801(a) of
2 the National Energy Conservation Policy Act (42 U.S.C.
3 8287(a)) is amended by adding at the end the following
4 new paragraph:

5 “(3)(A) In the case of an energy savings con-
6 tract or energy savings performance contract pro-
7 viding for energy savings through the construction
8 and operation of one or more buildings or facilities
9 to replace one or more existing buildings or facilities,
10 benefits ancillary to the purpose of such contract
11 under paragraph (1) may include savings resulting
12 from reduced life-cycle costs of operation and main-
13 tenance at such replacement buildings or facilities
14 when compared with costs of operation and mainte-
15 nance at the buildings or facilities being replaced,
16 established through a methodology set forth in the
17 contract.

18 “(B) Notwithstanding paragraph (2)(B), aggre-
19 gate annual payments by an agency under an energy
20 savings contract or energy savings performance con-
21 tract referred to in subparagraph (A) may take into
22 account (through the procedures developed pursuant
23 to this section) savings resulting from reduced costs
24 of operation and maintenance as described in that
25 subparagraph.”.

1 (c) ENERGY SAVINGS.—Section 804(2) of the Na-
2 tional Energy Conservation Policy Act (42 U.S.C.
3 8287c(2)) is amended to read as follows:

4 “(2) The term ‘energy savings’ means—

5 “(A) a reduction in the cost of energy or
6 water, from a base cost established through a
7 methodology set forth in the contract, used in
8 an existing federally owned building or build-
9 ings or other federally owned facilities as a re-
10 sult of—

11 “(i) the lease or purchase of operating
12 equipment, improvements, altered oper-
13 ation and maintenance, or technical serv-
14 ices;

15 “(ii) the increased efficient use of ex-
16 isting energy sources by co-generation or
17 heat recovery, excluding any co-generation
18 process for other than a federally owned
19 building or buildings or other federally
20 owned facilities; or

21 “(iii) the increased efficient use of ex-
22 isting water sources; or

23 “(B) in the case of a replacement building
24 or facility described in section 801(a)(3), a re-
25 duction in the cost of energy, from a base cost

1 established through a methodology set forth in
2 the contract, that would otherwise be utilized in
3 one or more existing federally owned buildings
4 or other federally owned facilities by reason of
5 the construction and operation of the replace-
6 ment building or facility.”.

7 (d) ENERGY SAVINGS CONTRACT.—Section 804(3) of
8 the National Energy Conservation Policy Act (42 U.S.C.
9 8287c(3)) is amended to read as follows:

10 “(3) The terms ‘energy savings contract’ and
11 ‘energy savings performance contract’ mean a con-
12 tract which provides for—

13 “(A) the performance of services for the
14 design, acquisition, installation, testing, and,
15 where appropriate, operation, maintenance and
16 repair, of an identified energy or water con-
17 servation measure or series of measures at one
18 or more locations; or

19 “(B) energy savings through the construc-
20 tion and operation of one or more buildings or
21 facilities to replace one or more existing build-
22 ings or facilities. Such contracts shall, with re-
23 spect to an agency facility that is a public
24 building as such term is defined in section
25 13(1) of the Public Buildings Act of 1959 (40

1 U.S.C. 612(1)), be in compliance with the pro-
2 spectus requirements and procedures of section
3 7 of the Public Buildings Act of 1959 (40
4 U.S.C. 606).”.

5 (e) ENERGY OR WATER CONSERVATION MEASURE.—
6 Section 804(4) of the National Energy Conservation Pol-
7 icy Act (42 U.S.C. 8287c(4)) is amended to read as fol-
8 lows:

9 “(4) The term ‘energy or water conservation
10 measure’ means—

11 “(A) an energy conservation measure, as
12 defined in section 551(4) (42 U.S.C. 8259(4));
13 or

14 “(B) a water conservation measure that
15 improves water efficiency, is life-cycle cost-effec-
16 tive, and involves water conservation, water re-
17 cycling or reuse, more efficient treatment of
18 wastewater or stormwater, improvements in op-
19 eration or maintenance efficiencies, retrofit ac-
20 tivities, or other related activities, not at a Fed-
21 eral hydroelectric facility.”.

22 (f) PILOT PROGRAM FOR NON-BUILDING APPLICA-
23 TIONS.—

24 (1) The Secretary of Defense, and the heads of
25 other interested Federal agencies, are authorized to

1 enter into up to 10 energy savings performance con-
2 tracts under Title VIII of the National Energy Con-
3 servation Policy Act (42 U.S.C. 8287 et seq.) for the
4 purpose of achieving energy or water savings, sec-
5 ondary savings, and benefits incidental to those pur-
6 poses, in non-building applications, provided that the
7 aggregate payments to be made by the Federal gov-
8 ernment under such contracts shall not exceed
9 \$100,000,000.

10 (2) The Secretary of Energy, in consultation
11 with the Secretary of Defense and the heads of other
12 interested Federal agencies, shall select projects that
13 demonstrate the applicability and benefits of energy
14 savings performance contracting to a range of non-
15 building applications.

16 (3) For the purposes of this subsection:

17 (A) The term “non-building application”
18 means—

19 (i) any class of vehicles, devices, or
20 equipment that is transportable under its
21 own power by land, sea, or air that con-
22 sumes energy from any fuel source for the
23 purpose of such transportability, or to
24 maintain a controlled environment within
25 such vehicle, device, or equipment; or

1 (ii) any Federally owned equipment
2 used to generate electricity or transport
3 water.

4 (B) The term “secondary savings”, means
5 additional energy or cost savings that are a di-
6 rect consequence of the energy or water savings
7 that result from the financing and implementa-
8 tion of the energy savings performance con-
9 tract, including, but not limited to, energy or
10 cost savings that result from a reduction in the
11 need for fuel delivery and logistical support, or
12 the increased efficiency in the production of
13 electricity.

14 (4) Not later than 3 years after the date of en-
15 actment of this section, the Secretary of Energy
16 shall report to the Congress on the progress and re-
17 sults of the projects funded pursuant to this section.
18 Such report shall include a description of projects
19 undertaken; the energy, water and cost savings, sec-
20 ondary savings and other benefits that resulted from
21 such projects; and recommendations on whether the
22 pilot program should be extended, expanded, or au-
23 thorized permanently as a part of the program au-
24 thorized under Title VIII of the National Energy
25 Conservation Policy act (42 U.S.C. 8287 et seq.).

1 (5) Section 546(c)(3) of the National Energy
2 Conservation Policy Act (42 U.S.C. 8256) is amend-
3 ed by striking the word “facilities”, and inserting
4 the words “facilities, equipment and vehicles”, in
5 lieu thereof.

6 (g) REVIEW.—Within 180 days after the date of the
7 enactment of this section, the Secretary of Energy shall
8 complete a review of the Energy Savings Performance
9 Contract program to identify statutory, regulatory, and
10 administrative obstacles that prevent Federal agencies
11 from fully utilizing the program. In addition, this review
12 shall identify all areas for increasing program flexibility
13 and effectiveness, including audit and measurement
14 verification requirements, accounting for energy use in de-
15 termining savings, contracting requirements, including the
16 identification of additional qualified contractors, and en-
17 ergy efficiency services covered. The Secretary shall report
18 these findings to the Committee on Energy and Commerce
19 of the House of Representatives and the Committee on
20 Energy and Natural Resources of the Senate, and shall
21 implement identified administrative and regulatory
22 changes to increase program flexibility and effectiveness
23 to the extent that such changes are consistent with statu-
24 tory authority.

1 **SEC. 605. PROCUREMENT OF ENERGY EFFICIENT PROD-**
2 **UCTS.**

3 Part 3 of title V of the National Energy Conservation
4 Policy Act is amended by adding at the end the following:

5 **“SEC. 552. FEDERAL PROCUREMENT OF ENERGY EFFI-**
6 **CIENT PRODUCTS.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) The term ‘Energy Star product’ means a
9 product that is rated for energy efficiency under an
10 Energy Star program.

11 “(2) The term ‘Energy Star program’ means
12 the program established by section 324A of the En-
13 ergy Policy and Conservation Act.

14 “(3) The term ‘executive agency’ has the mean-
15 ing given the term in section 4 of the Office of Fed-
16 eral Procurement Policy Act (41 U.S.C. 403).

17 “(4) The term ‘FEMP designated product’
18 means a product that is designated under the Fed-
19 eral Energy Management Program of the Depart-
20 ment of Energy as being among the highest 25 per-
21 cent of equivalent products for energy efficiency.

22 “(b) PROCUREMENT OF ENERGY EFFICIENT PROD-
23 UCTS.—

24 “(1) REQUIREMENT.—To meet the require-
25 ments of an executive agency for an energy con-
26 suming product, the head of the executive agency

1 shall, except as provided in paragraph (2), procure
2 an Energy Star product or a FEMP designated
3 product.

4 “(2) EXCEPTIONS.—The head of an executive
5 agency is not required to procure an Energy Star
6 product or FEMP designated product under para-
7 graph (1) if the head of the executive agency finds
8 in writing that—

9 “(A) an Energy Star product or FEMP
10 designated product is not cost-effective over the
11 life of the product taking energy cost savings
12 into account; or

13 “(B) no Energy Star product or FEMP
14 designated product is reasonably available that
15 meets the functional requirements of the execu-
16 tive agency.

17 “(3) PROCUREMENT PLANNING.—The head of
18 an executive agency shall incorporate into the speci-
19 fications for all procurements involving energy con-
20 suming products and systems, including guide speci-
21 fications, project specifications, and construction,
22 renovation, and services contracts that include provi-
23 sion of energy consuming products and systems, and
24 into the factors for the evaluation of offers received
25 for the procurement, criteria for energy efficiency

1 that are consistent with the criteria used for rating
2 Energy Star products and for rating FEMP des-
3 ignated products.

4 “(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN
5 FEDERAL CATALOGS.—Energy Star products and FEMP
6 designated products shall be clearly identified and promi-
7 nently displayed in any inventory or listing of products
8 by the General Services Administration or the Defense Lo-
9 gistics Agency. The General Services Administration or
10 the Defense Logistics Agency shall supply only Energy
11 Star products or FEMP designated products for all prod-
12 uct categories covered by the Energy Star program or the
13 Federal Energy Management Program, except in cases
14 where the agency ordering a product specifies in writing
15 that no Energy Star product or FEMP designated product
16 is available to meet the buyer’s functional requirements,
17 or that no Energy Star product or FEMP designated
18 product is cost-effective for the intended application over
19 the life of the product, taking energy cost savings into ac-
20 count.

21 “(d) DESIGNATION OF ELECTRIC MOTORS.—In the
22 case of electric motors of 1 to 500 horsepower, agencies
23 shall select only premium efficient motors that meet a
24 standard designated by the Secretary. The Secretary shall
25 designate such a standard within 120 days after the date

1 of the enactment of this section, after considering the rec-
2 ommendations of associated electric motor manufacturers
3 and energy efficiency groups.

4 “(e) REGULATIONS.—Not later than 180 days after
5 the date of the enactment of this section, the Secretary
6 shall issue guidelines to carry out this section.”.

7 (b) CONFORMING AMENDMENT.—The table of con-
8 tents in section 1(b) of the National Energy Conservation
9 Policy Act (42 U.S.C. 8201 note) is amended by inserting
10 after the item relating to the end of the items relating
11 to part 3 of title V the following:

“Sec. 552. Federal procurement of energy efficient products.”.

12 **SEC. 606. CONGRESSIONAL BUILDING EFFICIENCY.**

13 (a) IN GENERAL.—Part 3 of title V of the National
14 Energy Conservation Policy Act is further amended by
15 adding at the end:

16 **“SEC. 553. CONGRESSIONAL BUILDING EFFICIENCY.**

17 “(a) IN GENERAL.—The Architect of the Capitol—
18 “(1) shall develop, update, and implement a
19 cost-effective energy conservation and management
20 plan (referred to in this section as the ‘plan’) for all
21 facilities administered by the Congress (referred to
22 in this section as ‘congressional buildings’) to meet
23 the energy performance requirements for Federal
24 buildings established under section 543(a)(1); and

1 “(2) shall submit the plan to Congress, not
2 later than 180 days after the date of enactment of
3 this section.

4 “(b) PLAN REQUIREMENTS.—The plan shall in-
5 clude—

6 “(1) a description of the life-cycle cost analysis
7 used to determine the cost-effectiveness of proposed
8 energy efficiency projects;

9 “(2) a schedule of energy surveys to ensure
10 complete surveys of all congressional buildings every
11 5 years to determine the cost and payback period of
12 energy and water conservation measures;

13 “(3) a strategy for installation of life-cycle cost-
14 effective energy and water conservation measures;

15 “(4) the results of a study of the costs and ben-
16 efits of installation of submetering in congressional
17 buildings; and

18 “(5) information packages and ‘how-to’ guides
19 for each Member and employing authority of Con-
20 gress that detail simple, cost-effective methods to
21 save energy and taxpayer dollars in the workplace.

22 “(c) ANNUAL REPORT.—The Architect shall submit
23 to Congress annually a report on congressional energy
24 management and conservation programs required under
25 this section that describes in detail—

1 “(1) energy expenditures and savings estimates
2 for each facility;

3 “(2) energy management and conservation
4 projects; and

5 “(3) future priorities to ensure compliance with
6 this section.”.

7 (b) TABLE OF CONTENTS AMENDMENT.—The table
8 of contents in section 1(b) of the National Energy Con-
9 servation Policy Act is amended by adding at the end of
10 the items relating to part 3 of title V the following new
11 item:

 “Sec. 553. Energy and water savings measures in congressional buildings.”.

12 (c) REPEAL.—Section 310 of the Legislative Branch
13 Appropriations Act, 1999 (40 U.S.C. 166i), is repealed.

14 (d) ENERGY INFRASTRUCTURE.—The Architect of
15 the Capitol, building on the Master Plan Study completed
16 in July 2000, shall commission a study to evaluate the
17 energy infrastructure of the Capital Complex to determine
18 how the infrastructure could be augmented to become
19 more energy efficient, using unconventional and renewable
20 energy resources, in a way that would enable the Complex
21 to have reliable utility service in the event of power fluc-
22 tuations, shortages, or outages.

23 (e) AUTHORIZATION.—There are authorized to be ap-
24 propriated to the Architect of the Capitol to carry out sub-

1 section (d), not more than \$2,000,000 for fiscal year
2 2004.

3 **SEC. 607. INCREASED USE OF RECOVERED MINERAL COM-**
4 **PONENT IN FEDERALLY FUNDED PROJECTS**
5 **INVOLVING PROCUREMENT OF CEMENT OR**
6 **CONCRETE.**

7 (a) AMENDMENT.—Subtitle F of the Solid Waste
8 Disposal Act (42 U.S.C. 6961 et seq.) is amended by add-
9 ing at the end the following new section:

10 **“SEC. 6005. INCREASED USE OF RECOVERED MINERAL**
11 **COMPONENT IN FEDERALLY FUNDED**
12 **PROJECTS INVOLVING PROCUREMENT OF**
13 **CEMENT OR CONCRETE.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) AGENCY HEAD.—The term ‘agency head’
16 means—

17 “(A) the Secretary of Transportation; and

18 “(B) the head of each other Federal agen-
19 cy that on a regular basis procures, or provides
20 Federal funds to pay or assist in paying the
21 cost of procuring, material for cement or con-
22 crete projects.

23 “(2) CEMENT OR CONCRETE PROJECT.—The
24 term ‘cement or concrete project’ means a project
25 for the construction or maintenance of a highway or

1 other transportation facility or a Federal, State, or
 2 local government building or other public facility
 3 that—

4 “(A) involves the procurement of cement
 5 or concrete; and

6 “(B) is carried out in whole or in part
 7 using Federal funds.

8 “(3) RECOVERED MINERAL COMPONENT.—The
 9 term ‘recovered mineral component’ means

10 “(A) ground granulated blast furnace slag;

11 “(B) coal combustion fly ash; and

12 “(C) any other waste material or byprod-
 13 uct recovered or diverted from solid waste that
 14 the Administrator, in consultation with an
 15 agency head, determines should be treated as
 16 recovered mineral component under this section
 17 for use in cement or concrete projects paid for,
 18 in whole or in part, by the agency head.

19 “(b) IMPLEMENTATION OF REQUIREMENTS.—

20 “(1) IN GENERAL.—Not later than 1 year after
 21 the date of enactment of this section, the Adminis-
 22 trator and each agency head shall take such actions
 23 as are necessary to implement fully all procurement
 24 requirements and incentives in effect as of the date
 25 of enactment of this section (including guidelines

1 under section 6002) that provide for the use of ce-
2 ment and concrete incorporating recovered mineral
3 component in cement or concrete projects.

4 “(2) PRIORITY.—In carrying out paragraph (1)
5 an agency head shall give priority to achieving great-
6 er use of recovered mineral component in cement or
7 concrete projects for which recovered mineral compo-
8 nents historically have not been used or have been
9 used only minimally.

10 “(3) CONFORMANCE.—The Administrator and
11 each agency head shall carry out this subsection in
12 accordance with section 6002.

13 “(c) FULL IMPLEMENTATION STUDY.—

14 “(1) IN GENERAL.—The Administrator, in co-
15 operation with the Secretary of Transportation and
16 the Secretary of Energy, shall conduct a study to de-
17 termine the extent to which current procurement re-
18 quirements, when fully implemented in accordance
19 with subsection (b), may realize energy savings and
20 environmental benefits attainable with substitution
21 of recovered mineral component in cement used in
22 cement or concrete projects.

23 “(2) MATTERS TO BE ADDRESSED.—The study
24 shall—

1 “(A) quantify the extent to which recov-
2 ered mineral components are being substituted
3 for Portland cement, particularly as a result of
4 current procurement requirements, and the en-
5 ergy savings and environmental benefits associ-
6 ated with that substitution;

7 “(B) identify all barriers in procurement
8 requirements to fuller realization of energy sav-
9 ings and environmental benefits, including bar-
10 riers resulting from exceptions from current
11 law; and

12 “(C)(i) identify potential mechanisms to
13 achieve greater substitution of recovered min-
14 eral component in types of cement or concrete
15 projects for which recovered mineral compo-
16 nents historically have not been used or have
17 been used only minimally;

18 “(ii) evaluate the feasibility of establishing
19 guidelines or standards for optimized substi-
20 tution rates of recovered mineral component in
21 those cement or concrete projects; and

22 “(iii) identify any potential environmental
23 or economic effects that may result from great-
24 er substitution of recovered mineral component
25 in those cement or concrete projects.

1 “(3) REPORT.—Not later than 30 months after
2 the date of enactment of this section, the Adminis-
3 trator shall submit to the Committee on Appropria-
4 tions and Committee on Environment and Public
5 Works of the Senate and the Committee on Appro-
6 priations, Committee on Energy and Commerce, and
7 Committee on Transportation and Infrastructure of
8 the House of Representatives a report on the study.

9 “(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—
10 Unless the study conducted under subsection (c) identifies
11 any effects or other problems described in subsection
12 (c)(2)(C)(iii) that warrant further review or delay, the Ad-
13 ministrators and each agency head shall, within 1 year of
14 the release of the report in accordance with subsection
15 (c)(3), take additional actions authorized under this sec-
16 tion to establish procurement requirements and incentives
17 that provide for the use of cement and concrete with in-
18 creased substitution of recovered mineral component in
19 the construction and maintenance of cement or concrete
20 projects, so as to—

21 “(1) realize more fully the energy savings and
22 environmental benefits associated with increased
23 substitution; and

24 “(2) eliminate barriers identified under sub-
25 section (c).

1 “(e) EFFECT OF SECTION.—Nothing in this section
2 affects the requirements of section 6002 (including the
3 guidelines and specifications for implementing those re-
4 quirements).”.

5 (b) TABLE OF CONTENTS AMENDMENT.—The table
6 of contents of the Solid Waste Disposal Act is amended
7 by adding after the item relating to section 6004 the fol-
8 lowing new item:

“Sec. 6005. Increased use of recovered mineral component in federally funded
projects involving procurement of cement or concrete.”.

9 **SEC. 608. UTILITY ENERGY SERVICE CONTRACTS.**

10 Section 546(c)(1) of the National Energy Conserva-
11 tion Policy Act (42 U.S.C. 8256(c)) is amended to read
12 as follows:

13 “(1) Agencies are authorized and encouraged to
14 participate in programs, including utility energy
15 services contracts, conducted by gas, water and elec-
16 tric utilities and generally available to customers of
17 such utilities, for the purposes of increased energy
18 efficiency, water conservation or the management of
19 electricity demand.”.

20 **SEC. 609. STUDY OF ENERGY EFFICIENCY STANDARDS.**

21 The Secretary of Energy shall contract with the Na-
22 tional Academy of Sciences for a study, to be completed
23 within one year of enactment of this section, to examine
24 whether the goals of energy efficiency standards are best

1 served by measurement of energy consumed, and efficiency
2 improvements, at the actual site of energy consumption,
3 or through the full fuel cycle, beginning at the source of
4 energy production. The Secretary shall submit the report
5 of the Academy to the Congress.

6 **Subtitle B—State and Local**
7 **Programs**

8 **SEC. 611. LOW INCOME COMMUNITY ENERGY EFFICIENCY**
9 **PILOT PROGRAM.**

10 (a) GRANTS.—The Secretary of Energy is authorized
11 to make grants to units of local government, private, non-
12 profit community development organizations, and Indian
13 tribe economic development entities to improve energy effi-
14 ciency, identify and develop alternative, renewable and dis-
15 tributed energy supplies, and increase energy conservation
16 in low income rural and urban communities.

17 (b) PURPOSE OF GRANTS.—The Secretary may make
18 grants on a competitive basis for—

19 (1) investments that develop alternative, renew-
20 able and distributed energy supplies;

21 (2) energy efficiency projects and energy con-
22 servation programs;

23 (3) studies and other activities that improve en-
24 ergy efficiency in low income rural and urban com-
25 munities;

1 (4) planning and development assistance for in-
2 creasing the energy efficiency of buildings and facili-
3 ties; and

4 (5) technical and financial assistance to local
5 government and private entities on developing new
6 renewable and distributed sources of power or com-
7 bined heat and power generation.

8 (c) DEFINITION.—For purposes of this section, the
9 term “Indian tribe” means any Indian tribe, band, nation,
10 or other organized group or community, including any
11 Alaskan Native village or regional or village corporation
12 as defined in or established pursuant to the Alaska Native
13 Claims Settlement Act (43 U.S.C. 1601 et seq.), which
14 is recognized as eligible for the special programs and serv-
15 ices provided by the United States to Indians because of
16 their status as Indians.

17 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
18 purposes of this section there are authorized to be appro-
19 priated to the Secretary of Energy \$20,000,000 for fiscal
20 year 2004 and each fiscal year thereafter through fiscal
21 year 2006.

22 **SEC. 612. ENERGY EFFICIENT PUBLIC BUILDINGS.**

23 (a) GRANTS.—The Secretary of Energy may make
24 grants to the State agency responsible for developing State
25 energy conservation plans under section 362 of the Energy

1 Policy and Conservation Act (42 U.S.C. 6322), or, if no
2 such agency exists, a State agency designated by the Gov-
3 ernor of the State, to assist units of local government in
4 the State in improving the energy efficiency of public
5 buildings and facilities—

6 (1) through construction of new energy efficient
7 public buildings that use at least 30 percent less en-
8 ergy than a comparable public building constructed
9 in compliance with standards prescribed in chapter
10 8 of the 2000 International Energy Conservation
11 Code, or a similar State code intended to achieve
12 substantially equivalent efficiency levels; or

13 (2) through renovation of existing public build-
14 ings to achieve reductions in energy use of at least
15 30 percent as compared to the baseline energy use
16 in such buildings prior to renovation, assuming a 3-
17 year, weather-normalized average for calculating
18 such baseline.

19 (b) ADMINISTRATION.—State energy offices receiving
20 grants under this section shall—

21 (1) maintain such records and evidence of com-
22 pliance as the Secretary may require; and

23 (2) develop and distribute information and ma-
24 terials and conduct programs to provide technical
25 services and assistance to encourage planning, fi-

1 nancing, and design of energy efficient public build-
2 ings by units of local government.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—For the
4 purposes of this section, there are authorized to be appro-
5 priated to the Secretary of Energy such sums as may be
6 necessary for each of fiscal years 2003 through 2012. Not
7 more than 30 percent of appropriated funds shall be used
8 for administration.

9 **SEC. 613. ENERGY EFFICIENT APPLIANCE REBATE PRO-**
10 **GRAMS.**

11 (a) DEFINITIONS.—In this section:

12 (1) The term “eligible State” means a State
13 that meets the requirements of subsection (b).

14 (2) The term “Energy Star program” means
15 the program established by section 324A of the En-
16 ergy Policy and Conservation Act.

17 (3) The term “residential Energy Star product”
18 means a product for a residence that is rated for en-
19 ergy efficiency under the Energy Star program.

20 (4) The term “State energy office” means the
21 State agency responsible for developing State energy
22 conservation plans under section 362 of the Energy
23 Policy and Conservation Act (42 U.S.C. 6322).

1 (5) The term “State program” means a State
2 energy efficient appliance rebate program described
3 in subsection (b)(1).

4 (b) ELIGIBLE STATES.—A State shall be eligible to
5 receive an allocation under subsection (c) if the State—

6 (1) establishes (or has established) a State en-
7 ergy efficient appliance rebate program to provide
8 rebates to residential consumers for the purchase of
9 residential Energy Star products to replace used ap-
10 pliances of the same type;

11 (2) submits an application for the allocation at
12 such time, in such form, and containing such infor-
13 mation as the Secretary may require; and

14 (3) provides assurances satisfactory to the Sec-
15 retary that the State will use the allocation to sup-
16 plement, but not supplant, funds made available to
17 carry out the State program.

18 (c) AMOUNT OF ALLOCATIONS.—

19 (1) Subject to paragraph (2), for each fiscal
20 year, the Secretary shall allocate to the State energy
21 office of each eligible State to carry out subsection
22 (d) an amount equal to the product obtained by mul-
23 tiplying the amount made available under subsection
24 (f) for the fiscal year by the ratio that the popu-
25 lation of the State in the most recent calendar year

1 for which data are available bears to the total popu-
2 lation of all eligible States in that calendar year.

3 (2) For each fiscal year, the amounts allocated
4 under this subsection shall be adjusted proportion-
5 ately so that no eligible State is allocated a sum that
6 is less than an amount determined by the Secretary.

7 (d) USE OF ALLOCATED FUNDS.—The allocation to
8 a State energy office under subsection (c) may be used
9 to pay up to 50 percent of the cost of establishing and
10 carrying out a State program.

11 (e) ISSUANCE OF REBATES.—Rebates may be pro-
12 vided to residential consumers that meet the requirements
13 of the State program. The amount of a rebate shall be
14 determined by the State energy office, taking into consid-
15 eration

16 (1) the amount of the allocation to the State
17 energy office under subsection (c);

18 (2) the amount of any Federal or State tax in-
19 centive available for the purchase of the residential
20 Energy Star product; and

21 (3) the difference between the cost of the resi-
22 dential Energy Star product and the cost of an ap-
23 pliance that is not a residential Energy Star prod-
24 uct, but is of the same type as, and is the nearest
25 capacity, performance, and other relevant character-

1 istics (as determined by the State energy office) to
2 the residential Energy Star product.

3 (f) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section
5 \$50,000,000 for each of the fiscal years 2004 through
6 2008.

7 **Subtitle C—Consumer Products**

8 **SEC. 621. ENERGY CONSERVATION STANDARDS FOR ADDI-** 9 **TIONAL PRODUCTS.**

10 (a) DEFINITIONS.—Section 321 of the Energy Policy
11 and Conservation Act (42 U.S.C. 6291) is amended—

12 (1) in subparagraph (30)(S), by striking the pe-
13 riod and adding at the end the following: “but does
14 not include any lamps specifically designed to be
15 used for special purpose applications, and also does
16 not include any lamp not described in subparagraph
17 (D) that is excluded by the Secretary, by rule.”; and

18 (2) by adding at the end the following:

19 “(32) The term ‘battery charger’ means a de-
20 vice that charges batteries for consumer products.

21 “(33) The term ‘commercial refrigerator, freez-
22 er and refrigerator-freezer’ means a refrigerator,
23 freezer or refrigerator-freezer that—

24 “(A) is not a consumer product regulated
25 under this Act; and

1 “(B) incorporates most components in-
2 volved in the vapor-compression cycle and the
3 refrigerated compartment in a single package.

4 “(34) The term ‘external power supply’ means
5 an external power supply circuit that is used to con-
6 vert household electric current into either DC cur-
7 rent or lower-voltage AC current to operate a con-
8 sumer product.

9 “(35) The term ‘illuminated exit sign’ means a
10 sign that—

11 “(A) is designed to be permanently fixed in
12 place to identify an exit; and

13 “(B) consists of an electrically powered in-
14 tegral light source that illuminates the legend
15 ‘EXIT’ and any directional indicators and pro-
16 vides contrast between the legend, any direc-
17 tional indicators, and the background.

18 “(36)(A) Except as provided in subparagraph
19 (B), the term ‘low-voltage dry-type transformer’
20 means a transformer that—

21 “(i) has an input voltage of 600 volts or
22 less;

23 “(ii) is air-cooled;

24 “(iii) does not use oil as a coolant; and

1 “(iv) is rated for operation at a frequency
2 of 60 Hertz.

3 “(B) The term ‘low-voltage dry-type trans-
4 former’ does not include—

5 “(i) transformers with multiple voltage
6 taps, with the highest voltage tap equaling at
7 least 20 percent more than the lowest voltage
8 tap;

9 “(ii) transformers, such as those commonly
10 known as drive transformers, rectifier trans-
11 formers, auto-transformers, Uninterruptible
12 Power System transformers, impedance trans-
13 formers, harmonic transformers, regulating
14 transformers, sealed and nonventilating trans-
15 formers, machine tool transformers, welding
16 transformers, grounding transformers, or test-
17 ing transformers, that are designed to be used
18 in a special purpose application and are unlikely
19 to be used in general purpose applications; or

20 “(iii) any transformer not listed in clause
21 (ii) that is excluded by the Secretary by rule be-
22 cause the transformer is designed for a special
23 application and the application of standards to
24 the transformer would not result in significant
25 energy savings.

1 “(37)(A) Except as provided in subsection (B),
2 the term ‘distribution transformer’ means a trans-
3 former that—

4 “(i) has an input voltage of 34.5 kilovolts
5 or less;

6 “(ii) has an output voltage of 600 volts or
7 less; and

8 “(iii) is rated for operation at a frequency
9 of 60 Hertz.

10 “(B) The term ‘distribution transformer’ does
11 not include—

12 “(i) transformers with multiple voltage
13 taps, with the highest voltage tap equaling at
14 least 15 percent more than the lowest voltage
15 tap;

16 “(ii) transformers, such as those commonly
17 known as drive transformers, rectifier trans-
18 formers, autotransformers, Uninterruptible
19 Power System transformers, impedance trans-
20 formers, harmonic transformers, regulating
21 transformers, sealed and nonventilating trans-
22 formers, machine tool transformers, welding
23 transformers, grounding transformers, or test-
24 ing transformers, that are designed to be used
25 in a special purpose application, and are un-

1 likely to be used in general purpose applica-
2 tions; or

3 “(iii) any transformer not listed in clause
4 (ii) that is excluded by the Secretary by rule be-
5 cause the transformer is designed for a special
6 application, is unlikely to be used in general
7 purpose applications, and the application of
8 standards to the transformer would not result
9 in significant energy savings.

10 “(38) The term ‘standby mode’ means the low-
11 est amount of electric power used by a household ap-
12 pliance when not performing its active functions, as
13 defined on an individual product basis by the Sec-
14 retary.

15 “(39) The term ‘torchiere’ means a portable
16 electric lamp with a reflector bowl that directs light
17 upward so as to give indirect illumination.

18 “(40) The term ‘transformer’ means a device
19 consisting of two or more coils of insulated wire that
20 transfers alternating current by electromagnetic in-
21 duction from one coil to another to change the origi-
22 nal voltage or current value.

23 “(41) The term ‘unit heater’ means a self-con-
24 tained fan-type heater designed to be installed with-

1 in the heated space, except that such term does not
2 include a warm air furnace.

3 “(42) The term ‘traffic signal module’ means a
4 standard 8-inch (200mm) or 12-inch (300mm) traf-
5 fic signal indication, consisting of a light source, a
6 lens, and all other parts necessary for operation,
7 that communicates movement messages to drivers
8 through red, amber, and green colors.”

9 (b) TEST PROCEDURES.—Section 323 of the Energy
10 Policy and Conservation Act (42 U.S.C. 6293) is amend-
11 ed—

12 (1) in subsection (b), by adding at the end the
13 following:

14 “(9) Test procedures for illuminated exit signs
15 shall be based on the test method used under
16 Version 2.0 of the Energy Star program of the Envi-
17 ronmental Protection Agency for illuminated exit
18 signs.

19 “(10) Test procedures for low voltage dry-type
20 distribution transformers shall be based on the
21 ‘Standard Test Method for Measuring the Energy
22 Consumption of Distribution Transformers’ pre-
23 scribed by the National Electrical Manufacturers As-
24 sociation (NEMA TP 2–1998). The Secretary may
25 review and revise this test procedure.

1 “(11) Test procedures for traffic signal modules
2 shall be based on the test method used under the
3 Energy Star program of the Environmental Protec-
4 tion Agency for traffic signal modules, as in effect
5 on the date of enactment of this paragraph.

6 “(12) Test procedures for medium base com-
7 pact fluorescent lamps shall be based on the test
8 methods used under the August 9, 2001 version of
9 the Energy Star program of the Environmental Pro-
10 tection Agency and Department of Energy for com-
11 pact fluorescent lamps. Covered products shall meet
12 all test requirements for regulated parameters in
13 section 325(bb). However, covered products may be
14 marketed prior to completion of lamp life and lumen
15 maintenance at 40 percent of rated life testing pro-
16 vided manufacturers document engineering pre-
17 dictions and analysis that support expected attain-
18 ment of lumen maintenance at 40 percent rated life
19 and lamp life time.”; and

20 (2) by adding at the end the following:

21 “(f) **ADDITIONAL CONSUMER AND COMMERCIAL**
22 **PRODUCTS.**—The Secretary shall within 24 months after
23 the date of enactment of this subsection prescribe testing
24 requirements for suspended ceiling fans, refrigerated bot-
25 tled or canned beverage vending machines, and commer-

1 cial refrigerators, freezers and refrigerator-freezers. Such
2 testing requirements shall be based on existing test proce-
3 dures used in industry to the extent practical and reason-
4 able. In the case of suspended ceiling fans, such test proce-
5 dures shall include efficiency at both maximum output and
6 at an output no more than 50 percent of the maximum
7 output.”.

8 (c) NEW STANDARDS.—Section 325 of the Energy
9 Policy and Conservation Act (42 U.S.C. 6295) is amended
10 by adding at the end the following:

11 “(u) STANDBY MODE ELECTRIC ENERGY CONSUMP-
12 TION.—

13 “(1) INITIAL RULEMAKING.—

14 “(A) The Secretary shall, within 18
15 months after the date of enactment of this sub-
16 section, prescribe by notice and comment, defi-
17 nitions of standby mode and test procedures for
18 the standby mode power use of battery chargers
19 and external power supplies. In establishing
20 these test procedures, the Secretary shall con-
21 sider, among other factors, existing test proce-
22 dures used for measuring energy consumption
23 in standby mode and assess the current and
24 projected future market for battery chargers
25 and external power supplies. This assessment

1 shall include estimates of the significance of po-
2 tential energy savings from technical improve-
3 ments to these products and suggested product
4 classes for standards. Prior to the end of this
5 time period, the Secretary shall hold a scoping
6 workshop to discuss and receive comments on
7 plans for developing energy conservation stand-
8 ards for standby mode energy use for these
9 products.

10 “(B) The Secretary shall, within 3 years
11 after the date of enactment of this subsection,
12 issue a final rule that determines whether en-
13 ergy conservation standards shall be promul-
14 gated for battery chargers and external power
15 supplies or classes thereof. For each product
16 class, any such standards shall be set at the
17 lowest level of standby energy use that—

18 “(i) meets the criteria of subsections
19 (o), (p), (q), (r), (s) and (t); and

20 “(ii) will result in significant overall
21 annual energy savings, considering both
22 standby mode and other operating modes.

23 “(2) DESIGNATION OF ADDITIONAL COVERED
24 PRODUCTS.—

1 “(A) Not later than 180 days after the
2 date of enactment of this subsection, the Sec-
3 retary shall publish for public comment and
4 public hearing a notice to determine whether
5 any non-covered products should be designated
6 as covered products for the purpose of insti-
7 tuting a rulemaking under this section to deter-
8 mine whether an energy conservation standard
9 restricting standby mode energy consumption,
10 should be promulgated; except that any restric-
11 tion on standby mode energy consumption shall
12 be limited to major sources of such consump-
13 tion.

14 “(B) In making the determinations pursu-
15 ant to subparagraph (A) of whether to des-
16 ignate new covered products and institute
17 rulemakings, the Secretary shall, among other
18 relevant factors and in addition to the criteria
19 in section 322(b), consider—

20 “(i) standby mode power consumption
21 compared to overall product energy con-
22 sumption; and

23 “(ii) the priority and energy savings
24 potential of standards which may be pro-
25 mulgated under this subsection compared

1 to other required rulemakings under this
2 section and the available resources of the
3 Department to conduct such rulemakings.

4 “(C) Not later than 1 year after the date
5 of enactment of this subsection, the Secretary
6 shall issue a determination of any new covered
7 products for which he intends to institute
8 rulemakings on standby mode pursuant to this
9 section and he shall state the dates by which he
10 intends to initiate those rulemakings.

11 “(3) REVIEW OF STANDBY ENERGY USE IN
12 COVERED PRODUCTS.—In determining pursuant to
13 section 323 whether test procedures and energy con-
14 servation standards pursuant to this section should
15 be revised, the Secretary shall consider for covered
16 products which are major sources of standby mode
17 energy consumption whether to incorporate standby
18 mode into such test procedures and energy conserva-
19 tion standards, taking into account, among other
20 relevant factors, the criteria for non-covered prod-
21 ucts in subparagraph (B) of paragraph (2) of this
22 subsection.

23 “(4) RULEMAKING.—

24 “(A) Any rulemaking instituted under this
25 subsection or for covered products under this

1 section which restricts standby mode power con-
2 sumption shall be subject to the criteria and
3 procedures for issuing energy conservation
4 standards set forth in this section and the cri-
5 teria set forth in subparagraph (B) of para-
6 graph (2) of this subsection.

7 “(B) No standard can be proposed for new
8 covered products or covered products in a
9 standby mode unless the Secretary has promul-
10 gated applicable test procedures for each prod-
11 uct pursuant to section 323.

12 “(C) The provisions of section 327 shall
13 apply to new covered products which are subject
14 to the rulemakings for standby mode after a
15 final rule has been issued.

16 “(5) EFFECTIVE DATE.—Any standard promul-
17 gated under this subsection shall be applicable to
18 products manufactured or imported 3 years after the
19 date of promulgation.

20 “(6) VOLUNTARY PROGRAMS.—The Secretary
21 and the Administrator shall collaborate and develop
22 programs, including programs pursuant to section
23 324A (relating to Energy Star Programs) and other
24 voluntary industry agreements or codes of conduct,

1 which are designed to reduce standby mode energy
2 use.

3 “(v) SUSPENDED CEILING FANS, VENDING MA-
4 CHINES, AND COMMERCIAL REFRIGERATORS, FREEZERS
5 AND REFRIGERATOR-FREEZERS.—The Secretary shall
6 within 36 months after the date on which testing require-
7 ments are prescribed by the Secretary pursuant to section
8 323(f), prescribe, by rule, energy conservation standards
9 for suspended ceiling fans, refrigerated bottled or canned
10 beverage vending machines, and commercial refrigerators,
11 freezers and refrigerator-freezers. In establishing stand-
12 ards under this subsection, the Secretary shall use the cri-
13 teria and procedures contained in subsections (l) and (m).
14 Any standard prescribed under this subsection shall apply
15 to products manufactured 3 years after the date of publi-
16 cation of a final rule establishing such standard.

17 “(w) ILLUMINATED EXIT SIGNS.—Illuminated exit
18 signs manufactured on or after January 1, 2005 shall
19 meet the Version 2.0 Energy Star Program performance
20 requirements for illuminated exit signs prescribed by the
21 Environmental Protection Agency.

22 “(x) TORCHIERES.—Torchieres manufactured on or
23 after January 1, 2005—

24 “(1) shall consume not more than 190 watts of
25 power; and

1 “(2) shall not be capable of operating with
2 lamps that total more than 190 watts.

3 “(y) DISTRIBUTION TRANSFORMERS.—The efficiency
4 of low voltage dry-type transformers manufactured on or
5 after January 1, 2005 shall be the Class I Efficiency Lev-
6 els for distribution transformers specified in Table 4–2 of
7 the ‘Guide for Determining Energy Efficiency for Dis-
8 tribution Transformers’ published by the National Elec-
9 trical Manufacturers Association (NEMA TP–1–2002).

10 “(z) TRAFFIC SIGNAL MODULES.—Traffic signal
11 modules manufactured on or after January 1, 2006 shall
12 meet the performance requirements used under the En-
13 ergy Star program of the Environmental Protection Agen-
14 cy for traffic signals, as in effect on the date of enactment
15 of this paragraph, and shall be installed with compatible,
16 electrically-connected signal control interface devices and
17 conflict monitoring systems.

18 “(aa) UNIT HEATERS.—Unit heaters manufactured
19 on or after the date that is three years after the date of
20 enactment of the Energy Policy Act of 2003 shall be
21 equipped with an intermittent ignition device and shall
22 have either power venting or an automatic flue damper.

23 “(bb) MEDIUM BASE COMPACT FLUORESCENT
24 LAMPS.—Bare lamp and covered lamp (no reflector) me-
25 dium base compact fluorescent lamps manufactured on or

1 after January 1, 2005 shall meet the following require-
2 ments prescribed by the August 9, 2001 version of the
3 Energy Star Program Requirements for CFLs, Energy
4 Star Eligibility Criteria, Energy-Efficiency Specification
5 issued by the Environmental Protection Agency and De-
6 partment of Energy: minimum initial efficacy; lumen
7 maintenance at 1000 hours; lumen maintenance at 40 per-
8 cent of rated life; rapid cycle stress test; and lamp life.
9 The Secretary may, by rule, establish requirements for
10 color quality (CRI); power factor; operating frequency;
11 and maximum allowable start time based on the require-
12 ments prescribed by the August 9, 2001 version of the
13 Energy Star Program Requirements for CFLs. The Sec-
14 retary may, by rule, revise these requirements or establish
15 other requirements considering energy savings, cost effec-
16 tiveness, and consumer satisfaction.

17 “(cc) EFFECTIVE DATE.—The provisions of section
18 327 shall apply—

19 “(1) to products for which standards are to be
20 set pursuant to subsection (v) of this section on the
21 date on which a final rule is issued by the Depart-
22 ment of Energy, except that any state or local
23 standards prescribed or enacted for any such prod-
24 uct prior to the date on which such final rule is
25 issued shall not be preempted until the standard set

1 pursuant to subsection (v) for that product takes ef-
2 fect; and

3 “(2) to products for which standards are set in
4 subsections (w) through (bb) of this section on the
5 date of enactment of the Energy Policy Act of 2003,
6 except that any state or local standards prescribed
7 or enacted prior to the date of enactment of the En-
8 ergy Policy Act of 2003 shall not be preempted until
9 the standards set in subsections (w) through (bb)
10 take effect.”.

11 **SEC. 622. ENERGY LABELING.**

12 (a) RULEMAKING ON EFFECTIVENESS OF CONSUMER
13 PRODUCT LABELING.—Paragraph (2) of section 324(a) of
14 the Energy Policy and Conservation Act (42 U.S.C.
15 6294(a)(2)) is amended by adding at the end the fol-
16 lowing:

17 “(F) Not later than 3 months after the
18 date of enactment of this subparagraph, the
19 Commission shall initiate a rulemaking to con-
20 sider the effectiveness of the current consumer
21 products labeling program in assisting con-
22 sumers in making purchasing decisions and im-
23 proving energy efficiency and to consider
24 changes to the labeling rules that would im-
25 prove the effectiveness of consumer product la-

1 bels. Such rulemaking shall be completed within
2 2 years after the date of enactment of this sub-
3 paragraph.”.

4 (b) RULEMAKING ON LABELING FOR ADDITIONAL
5 PRODUCTS.—Section 324(a) of the Energy Policy and
6 Conservation Act (42 U.S.C. 6294(a)) is further amended
7 by adding at the end the following:

8 “(5) The Secretary or the Commission, as ap-
9 propriate, may for covered products referred to in
10 subsections (u) through (aa) of section 325, pre-
11 scribe, by rule, pursuant to this section, labeling re-
12 quirements for such products after a test procedure
13 has been set pursuant to section 323. In the case of
14 products to which TP–1 standards under section
15 325(y) apply, labeling requirements shall be based
16 on the “Standard for the Labeling of Distribution
17 Transformer Efficiency” prescribed by the National
18 Electrical Manufacturers Association (NEMA TP–3)
19 as in effect upon the date of enactment of this
20 Act.”.

21 **SEC. 623. ENERGY STAR PROGRAM.**

22 (a) AMENDMENT.—The Energy Policy and Conserva-
23 tion Act (42 U.S.C. 6201 et. seq.) is amended by inserting
24 the following after section 324:

1 **“SEC. 324A. ENERGY STAR PROGRAM.**

2 “There is established at the Department of Energy
3 and the Environmental Protection Agency a voluntary
4 program to identify and promote energy-efficient products
5 and buildings in order to reduce energy consumption, im-
6 prove energy security, and reduce pollution through vol-
7 untary labeling of or other forms of communication about
8 products and buildings that meet the highest energy effi-
9 ciency standards. Responsibilities under the program shall
10 be divided between the Department of Energy and the En-
11 vironmental Protection Agency consistent with the terms
12 of agreements between the two agencies. The Adminis-
13 trator and the Secretary shall—

14 “(1) promote Energy Star compliant tech-
15 nologies as the preferred technologies in the market-
16 place for achieving energy efficiency and to reduce
17 pollution;

18 “(2) work to enhance public awareness of the
19 Energy Star label, including special outreach to
20 small businesses;

21 “(3) preserve the integrity of the Energy Star
22 label;

23 “(4) solicit the comments of interested parties
24 in establishing a new Energy Star product category,
25 specifications, or criteria, or in revising a product
26 category, and upon adoption of a new or revised

1 product category, specifications, or criteria, publish
 2 a notice of any changes in product categories, speci-
 3 fications or criteria along with an explanation of
 4 such changes, and, where appropriate, responses to
 5 comments submitted by interested parties; and

6 “(5) unless waived or reduced by mutual agree-
 7 ment between the Administrator, the Secretary, and
 8 the affected parties, provide not less than 12 months
 9 lead time prior to implementation of changes in
 10 product categories, specifications, or criteria as may
 11 be adopted pursuant to this section.”.

12 (b) TABLE OF CONTENTS AMENDMENT.—The table
 13 of contents of the Energy Policy and Conservation Act is
 14 amended by inserting after the item relating to section
 15 324 the following new item:

“Sec. 324A. Energy Star program.”.

16 **SEC. 624. HVAC MAINTENANCE CONSUMER EDUCATION**
 17 **PROGRAM.**

18 Section 337 of the Energy Policy and Conservation
 19 Act (42 U.S.C. 6307) is amended by adding at the end
 20 the following:

21 “(c) HVAC MAINTENANCE.—For the purpose of en-
 22 suring that installed air conditioning and heating systems
 23 operate at their maximum rated efficiency levels, the Sec-
 24 retary shall, within 180 days of the date of enactment of
 25 this subsection, carry out a program to educate home-

1 owners and small business owners concerning the energy
2 savings resulting from properly conducted maintenance of
3 air conditioning, heating, and ventilating systems. The
4 Secretary shall carry out the program in a cost-shared
5 manner in cooperation with the Administrator of the Envi-
6 ronmental Protection Agency and such other entities as
7 the Secretary considers appropriate, including industry
8 trade associations, industry members, and energy effi-
9 ciency organizations.

10 “(d) SMALL BUSINESS EDUCATION AND ASSIST-
11 ANCE.—The Administrator of the Small Business Admin-
12 istration, in consultation with the Secretary of Energy and
13 the Administrator of the Environmental Protection Agen-
14 cy, shall develop and coordinate a Government-wide pro-
15 gram, building on the existing Energy Star for Small
16 Business Program, to assist small business to become
17 more energy efficient, understand the cost savings obtain-
18 able through efficiencies, and identify financing options
19 for energy efficiency upgrades. The Secretary and the Ad-
20 ministrator shall make the program information available
21 directly to small businesses and through other Federal
22 agencies, including the Federal Emergency Management
23 Program, and the Department of Agriculture.”.

1 **Subtitle D—Public Housing**

2 **SEC. 631. CAPACITY BUILDING FOR ENERGY-EFFICIENT, AF-** 3 **FORDABLE HOUSING.**

4 Section 4(b) of the HUD Demonstration Act of 1993
5 (42 U.S.C. 9816 note) is amended—

6 (1) in paragraph (1), by inserting before the
7 semicolon at the end the following: “, including ca-
8 pabilities regarding the provision of energy efficient,
9 affordable housing and residential energy conserva-
10 tion measures”; and

11 (2) in paragraph (2), by inserting before the
12 semicolon the following: “, including such activities
13 relating to the provision of energy efficient, afford-
14 able housing and residential energy conservation
15 measures that benefit low-income families”.

16 **SEC. 632. INCREASE OF CDBG PUBLIC SERVICES CAP FOR** 17 **ENERGY CONSERVATION AND EFFICIENCY** 18 **ACTIVITIES.**

19 Section 105(a)(8) of the Housing and Community
20 Development Act of 1974 (42 U.S.C. 5305(a)(8)) is
21 amended—

22 (1) by inserting “or efficiency” after “energy
23 conservation”;

24 (2) by striking “, and except that” and insert-
25 ing “; except that”; and

1 (3) by inserting before the semicolon at the end
2 the following: “; and except that each percentage
3 limitation under this paragraph on the amount of
4 assistance provided under this title that may be used
5 for the provision of public services is hereby in-
6 creased by 10 percent, but such percentage increase
7 may be used only for the provision of public services
8 concerning energy conservation or efficiency”.

9 **SEC. 633. FHA MORTGAGE INSURANCE INCENTIVES FOR**
10 **ENERGY EFFICIENT HOUSING.**

11 (a) SINGLE FAMILY HOUSING MORTGAGE INSUR-
12 ANCE.—Section 203(b)(2) of the National Housing Act
13 (12 U.S.C. 1709(b)(2)) is amended, in the first undesig-
14 nated and indented paragraph beginning after subpara-
15 graph (B)(iii) (relating to solar energy systems)—

16 (1) by inserting “or paragraph (10)” before the
17 first comma; and

18 (2) by striking “20 percent” and inserting “30
19 percent”.

20 (b) MULTIFAMILY HOUSING MORTGAGE INSUR-
21 ANCE.—Section 207(c) of the National Housing Act (12
22 U.S.C. 1713(c)) is amended, in the second undesignated
23 paragraph beginning after paragraph (3) (relating to solar
24 energy systems and residential energy conservation meas-

1 ures), by striking “20 percent” and inserting “30 per-
2 cent”.

3 (c) COOPERATIVE HOUSING MORTGAGE INSUR-
4 ANCE.—Section 213(p) of the National Housing Act (12
5 U.S.C. 1715e(p)) is amended by striking “20 per centum”
6 and inserting “30 percent”.

7 (d) REHABILITATION AND NEIGHBORHOOD CON-
8 SERVATION HOUSING MORTGAGE INSURANCE.—Section
9 220(d)(3)(B)(iii) of the National Housing Act (12 U.S.C.
10 1715k(d)(3)(B)(iii)) is amended by striking “20 per cen-
11 tum” and inserting “30 percent”.

12 (e) LOW-INCOME MULTIFAMILY HOUSING MORT-
13 GAGE INSURANCE.—Section 221(k) of the National Hous-
14 ing Act (12 U.S.C. 1715l(k)) is amended by striking “20
15 per centum” and inserting “30 percent”.

16 (f) ELDERLY HOUSING MORTGAGE INSURANCE.—
17 The proviso at the end of section 231(c)(2) of the National
18 Housing Act (12 U.S.C. 1715v(c)(2)) is amended by strik-
19 ing “20 per centum” and inserting “30 percent”.

20 (g) CONDOMINIUM HOUSING MORTGAGE INSUR-
21 ANCE.—Section 234(j) of the National Housing Act (12
22 U.S.C. 1715y(j)) is amended by striking “20 per centum”
23 and inserting “30 percent”.

1 **SEC. 634. PUBLIC HOUSING CAPITAL FUND.**

2 Section 9 of the United States Housing Act of 1937
3 (42 U.S.C. 1437g) is amended—

4 (1) in subsection (d)(1)—

5 (A) in subparagraph (I), by striking “and”
6 at the end;

7 (B) in subparagraph (J), by striking the
8 period at the end and inserting a semicolon;
9 and

10 (C) by adding at the end the following new
11 subparagraphs:

12 “(K) improvement of energy and water-use
13 efficiency by installing fixtures and fittings that
14 conform to the American Society of Mechanical
15 Engineers/American National Standards Insti-
16 tute standards A112.19.2–1998 and
17 A112.18.1–2000, or any revision thereto, appli-
18 cable at the time of installation, and by increas-
19 ing energy efficiency and water conservation by
20 such other means as the Secretary determines
21 are appropriate; and

22 “(L) integrated utility management and
23 capital planning to maximize energy conserva-
24 tion and efficiency measures.”; and

25 (2) in subsection (e)(2)(C)—

1 (A) by striking “The” and inserting the
2 following:

3 “(i) IN GENERAL.—The”; and

4 (B) by adding at the end the following:

5 “(ii) THIRD PARTY CONTRACTS.—

6 Contracts described in clause (i) may in-
7 clude contracts for equipment conversions
8 to less costly utility sources, projects with
9 resident-paid utilities, and adjustments to
10 frozen base year consumption, including
11 systems repaired to meet applicable build-
12 ing and safety codes and adjustments for
13 occupancy rates increased by rehabilita-
14 tion.

15 “(iii) TERM OF CONTRACT.—The total
16 term of a contract described in clause (i)
17 shall not exceed 20 years to allow longer
18 payback periods for retrofits, including
19 windows, heating system replacements,
20 wall insulation, site-based generations, ad-
21 vanced energy savings technologies, includ-
22 ing renewable energy generation, and other
23 such retrofits.”.

1 **SEC. 635. GRANTS FOR ENERGY-CONSERVING IMPROVE-**
2 **MENTS FOR ASSISTED HOUSING.**

3 Section 251(b)(1) of the National Energy Conserva-
4 tion Policy Act (42 U.S.C. 8231(1)) is amended—

5 (1) by striking “financed with loans” and in-
6 serting “assisted”;

7 (2) by inserting after “1959,” the following:
8 “which are eligible multifamily housing projects (as
9 such term is defined in section 512 of the Multi-
10 family Assisted Housing Reform and Affordability
11 Act of 1997 (42 U.S.C. 1437f note)) and are subject
12 to mortgage restructuring and rental assistance suf-
13 ficiency plans under such Act,”; and

14 (3) by inserting after the period at the end of
15 the first sentence the following new sentence: “Such
16 improvements may also include the installation of
17 energy and water conserving fixtures and fittings
18 that conform to the American Society of Mechanical
19 Engineers/American National Standards Institute
20 standards A112.19.2–1998 and A112.18.1–2000, or
21 any revision thereto, applicable at the time of instal-
22 lation.”.

23 **SEC. 636. NORTH AMERICAN DEVELOPMENT BANK.**

24 Part 2 of subtitle D of title V of the North American
25 Free Trade Agreement Implementation Act (22 U.S.C.

1 290m 290m-3) is amended by adding at the end the fol-
2 lowing:

3 **“SEC. 545. SUPPORT FOR CERTAIN ENERGY POLICIES.**

4 “Consistent with the focus of the Bank’s Charter on
5 environmental infrastructure projects, the Board members
6 representing the United States should use their voice and
7 vote to encourage the Bank to finance projects related to
8 clean and efficient energy, including energy conservation,
9 that prevent, control, or reduce environmental pollutants
10 or contaminants.”.

11 **SEC. 637. ENERGY-EFFICIENT APPLIANCES.**

12 In purchasing appliances, a public housing agency
13 shall purchase energy-efficient appliances that are Energy
14 Star products or FEMP-designated products, as such
15 terms are defined in section 553 of the National Energy
16 Policy and Conservation Act (as amended by this Act),
17 unless the purchase of energy-efficient appliances is not
18 cost-effective to the agency.

19 **SEC. 638. ENERGY EFFICIENCY STANDARDS.**

20 Section 109 of the Cranston-Gonzalez National Af-
21 fordable Housing Act (42 U.S.C. 12709) is amended—

22 (1) in subsection (a)—

23 (A) in paragraph (1)—

24 (i) by striking “1 year after the date
25 of the enactment of the Energy Policy Act

1 of 1992” and inserting “September 30,
2 2003”;

3 (ii) in subparagraph (A), by striking
4 “and” at the end;

5 (iii) in subparagraph (B), by striking
6 the period at the end and inserting “;
7 and”; and

8 (iv) by adding at the end the fol-
9 lowing:

10 “(C) rehabilitation and new construction of
11 public and assisted housing funded by HOPE
12 VI revitalization grants under section 24 of the
13 United States Housing Act of 1937 (42 U.S.C.
14 1437v), where such standards are determined
15 to be cost effective by the Secretary of Housing
16 and Urban Development.”; and

17 (B) in paragraph (2), by striking “Council
18 of American” and all that follows through
19 “90.1–1989’”)” and inserting “2000 Inter-
20 national Energy Conservation Code”;

21 (2) in subsection (b)—

22 (A) by striking “1 year after the date of
23 the enactment of the Energy Policy Act of
24 1992” and inserting “September 30, 2003”;
25 and

1 (B) by striking “CABO” and all that fol-
2 lows through “1989” and inserting “the 2000
3 International Energy Conservation Code”; and
4 (3) in subsection (c)—

5 (A) in the heading, by striking “MODEL
6 ENERGY CODE” and inserting “INTER-
7 NATIONAL ENERGY CONSERVATION
8 CODE”; and

9 (B) by striking “CABO” and all that fol-
10 lows through “1989” and inserting “the 2000
11 International Energy Conservation Code”.

12 **SEC. 639. ENERGY STRATEGY FOR HUD.**

13 The Secretary of Housing and Urban Development
14 shall develop and implement an integrated strategy to re-
15 duce utility expenses through cost-effective energy con-
16 servation and efficiency measures and energy efficient de-
17 sign and construction of public and assisted housing. The
18 energy strategy shall include the development of energy
19 reduction goals and incentives for public housing agencies.
20 The Secretary shall submit a report to Congress, not later
21 than one year after the date of the enactment of this Act,
22 on the energy strategy and the actions taken by the De-
23 partment of Housing and Urban Development to monitor
24 the energy usage of public housing agencies and shall sub-

1 mit an update every two years thereafter on progress in
2 implementing the strategy.

3 **TITLE VII—TRANSPORTATION**
4 **FUELS**
5 **Subtitle A—Alternative Fuel**
6 **Programs**

7 **SEC. 701. USE OF ALTERNATIVE FUELS BY DUAL-FUELED**
8 **VEHICLES.**

9 Section 400AA(a)(3)(E) of the Energy Policy and
10 Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended
11 to read as follows:

12 “(E)(i) Dual fueled vehicles acquired pur-
13 suant to this section shall be operated on alter-
14 native fuels unless the Secretary determines
15 that an agency qualifies for a waiver of such re-
16 quirement for vehicles operated by the agency
17 in a particular geographic area where—

18 “(I) the alternative fuel otherwise re-
19 quired to be used in the vehicle is not rea-
20 sonably available to retail purchasers of
21 the fuel, as certified to the Secretary by
22 the head of the agency; or

23 “(II) the cost of the alternative fuel
24 otherwise required to be used in the vehicle
25 is unreasonably more expensive compared

1 to gasoline, as certified to the Secretary by
2 the head of the agency.

3 “(ii) The Secretary shall monitor compli-
4 ance with this subparagraph by all such fleets
5 and shall report annually to the Congress on
6 the extent to which the requirements of this
7 subparagraph are being achieved. The report
8 shall include information on annual reductions
9 achieved from the use of petroleum-based fuels
10 and the problems, if any, encountered in acquir-
11 ing alternative fuels.”.

12 **SEC. 702. FUEL USE CREDITS.**

13 (a) IN GENERAL.—Section 312 of the Energy Policy
14 Act of 1992 (42 U.S.C. 13220) is amended to read as
15 follows:

16 **“SEC. 312. FUEL USE CREDITS.**

17 “(a) ALLOCATION.—

18 “(1) The Secretary shall allocate one credit
19 under this section to a fleet or covered person for
20 each qualifying volume of alternative fuel or bio-
21 diesel purchased for use in an on-road motor vehicle
22 operated by the fleet that weighs more than 8,500
23 pounds gross vehicle weight rating.

1 “(2) No credits shall be allocated under this
2 section for purchase of an alternative fuel or bio-
3 diesel that is required by Federal or State law.

4 “(3) A fleet or covered person seeking a credit
5 under this section shall provide written documenta-
6 tion to the Secretary supporting the allocation of a
7 credit to such fleet or covered person under this sec-
8 tion.

9 “(b) USE.—At the request of a fleet or covered per-
10 son allocated a credit under subsection (a), the Secretary
11 shall, for the year in which the purchase of a qualifying
12 volume is made, treat that purchase as the acquisition of
13 one alternative fueled vehicle the fleet or covered person
14 is required to acquire under this title, title IV, or title V.

15 “(c) TREATMENT.—A credit provided to a fleet or
16 covered person under this section shall be considered a
17 credit under section 508.

18 “(d) ISSUANCE OF RULE.—Not later than 6 months
19 after the date of enactment of this section, the Secretary
20 shall issue a rule establishing procedures for the imple-
21 mentation of this section.

22 “(e) DEFINITIONS.—For the purposes of this section

23 “(1) the term ‘biodiesel’ means a diesel fuel
24 substitute produced from non-petroleum renewable
25 resources that meets the registration requirements

1 for fuels and fuel additives established by the Envi-
 2 ronmental Protection Agency under section 211 of
 3 the Clean Air Act; and

4 “(2) the term ‘qualifying volume’ means—

5 “(A) in the case of biodiesel, when used as
 6 a component of fuel containing at least 20 per-
 7 cent biodiesel by volume, 450 gallons, or if the
 8 Secretary determines by rule that the average
 9 annual alternative fuel use in light duty vehicles
 10 by fleets and covered persons exceeds 450 gal-
 11 lons or gallon equivalents, the amount of such
 12 average annual alternative fuel use; or

13 “(B) in the case of an alternative fuel, the
 14 amount of such fuel determined by the Sec-
 15 retary to have an equivalent energy content to
 16 the amount of biodiesel defined as a qualifying
 17 volume pursuant to subparagraph (A).”.

18 (b) TABLE OF CONTENTS AMENDMENT.—The table
 19 of contents of the Energy Policy Act of 1992 is amended
 20 by adding at the end of the items relating to title III the
 21 following new item:

“Sec. 312. Fuel use credits.”

22 **SEC. 703. NEIGHBORHOOD ELECTRIC VEHICLES.**

23 Section 301 of the Energy Policy Act of 1992 (42
 24 U.S.C. 13211) is amended—

1 (1) in paragraph (3), by striking “or a dual
2 fueled vehicle” and inserting “, a dual fueled vehicle,
3 or a neighborhood electric vehicle”;

4 (2) by striking “and” at the end of paragraph
5 (13);

6 (3) by striking the period at the end of para-
7 graph (14) and inserting “; and”; and

8 (4) by adding at the end the following:

9 “(15) the term ‘neighborhood electric vehicle’
10 means a motor vehicle—

11 “(A) which meets the definition of a low-
12 speed vehicle, as such term is defined in part
13 571 of title 49, Code of Federal Regulations;

14 “(B) which meets the definition of a zero-
15 emission vehicle, as such term is defined in sec-
16 tion 86.1702–99 of title 40, Code of Federal
17 Regulations;

18 “(C) which meets the requirements of Fed-
19 eral Motor Vehicle Safety Standard No. 500;
20 and

21 “(D) which has a top speed of not greater
22 than 25 miles per hour.”.

1 **SEC. 704. CREDITS FOR MEDIUM AND HEAVY DUTY DEDI-**
2 **CATED VEHICLES.**

3 Section 508 of the Energy Policy Act of 1992 (42
4 U.S.C. 13258) is amended by adding at the end the fol-
5 lowing:

6 “(e) CREDIT FOR PURCHASE OF MEDIUM AND
7 HEAVY DUTY DEDICATED VEHICLES.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) The term ‘medium duty dedicated ve-
10 hicle’ means a dedicated vehicle that has a
11 gross vehicle weight rating of more than 8,500
12 pounds but not more than 14,000 pounds.

13 “(B) The term ‘heavy duty dedicated vehi-
14 cle’ means a dedicated vehicle that has a gross
15 vehicle weight rating of more than 14,000
16 pounds.

17 “(2) CREDITS FOR MEDIUM DUTY VEHICLES.—
18 The Secretary shall issue 2 full credits to a fleet or
19 covered person under this title, if the fleet or covered
20 person acquires a medium duty dedicated vehicle.

21 “(3) CREDITS FOR HEAVY DUTY VEHICLES.—
22 The Secretary shall issue 3 full credits to a fleet or
23 covered person under this title, if the fleet or covered
24 person acquires a heavy duty dedicated vehicle.

25 “(4) USE OF CREDITS.—At the request of a
26 fleet or covered person allocated a credit under this

1 subsection, the Secretary shall, for the year in which
2 the acquisition of the dedicated vehicle is made,
3 treat that credit as the acquisition of 1 alternative
4 fueled vehicle that the fleet or covered person is re-
5 quired to acquire under this title.”.

6 **SEC. 705. ALTERNATIVE FUEL INFRASTRUCTURE.**

7 Section 508 of the Energy Policy Act of 1992 (42
8 U.S.C. 13258) is further amended by adding at the end
9 the following:

10 “(f) CREDIT FOR INVESTMENT IN ALTERNATIVE
11 FUEL INFRASTRUCTURE.—

12 “(1) DEFINITIONS.—In this subsection, the
13 term ‘qualifying infrastructure’ means—

14 “(A) equipment required to refuel or re-
15 charge alternative fueled vehicles;

16 “(B) facilities or equipment required to
17 maintain, repair, or operate alternative fueled
18 vehicles;

19 “(C) such other activities the Secretary
20 considers to constitute an appropriate expendi-
21 ture in support of the operation, maintenance,
22 or further widespread adoption of or utilization
23 of alternative fueled vehicles.

24 “(2) ISSUANCE OF CREDITS.—The Secretary
25 shall issue a credit to a fleet or covered person under

1 this title for investment in qualifying infrastructure
2 if the qualifying infrastructure is open to the general
3 public during regular business hours.

4 “(3) AMOUNT.—For the purposes of credits
5 under this subsection—

6 “(A) 1 credit shall be equal to a minimum
7 investment of \$25,000 in cash or equivalent ex-
8 penditure, as determined by the Secretary; and

9 “(B) except in the case of a Federal or
10 State fleet, no part of the investment may be
11 provided by Federal or State funds.

12 “(4) USE OF CREDITS.—At the request of a
13 fleet or covered person allocated a credit under this
14 subsection, the Secretary shall, for the year in which
15 the investment is made, treat that credit as the ac-
16 quisition of 1 alternative fueled vehicle that the fleet
17 or covered person is required to acquire under this
18 title.”.

19 **SEC. 706. INCREMENTAL COST ALLOCATION.**

20 Section 303(c) of the Energy Policy Act of 1992 (42
21 U.S.C. 13212(c) is amended by striking “may” and insert-
22 ing “shall”.

23 **SEC. 707. REVIEW OF ALTERNATIVE FUEL PROGRAMS.**

24 (a) IN GENERAL.—Not later than 1 year after the
25 date of enactment of this section, the Secretary shall com-

1 plete a study to determine the effect that titles III, IV,
2 and V of the Energy Policy Act of 1992 (42 U.S.C. 13211
3 et seq.) have had on the development of alternative fueled
4 vehicle technology, its availability in the market, and the
5 cost of light duty motor vehicles that are alternative fueled
6 vehicles.

7 (b) TOPICS.—As part of such study, the Secretary
8 shall specifically identify—

9 (1) the number of alternative fueled vehicles ac-
10 quired by fleets or covered persons required to ac-
11 quire alternative fueled vehicles;

12 (2) the amount, by type, of alternative fuel ac-
13 tually used in alternative fueled vehicles acquired by
14 fleets or covered persons;

15 (3) the amount of petroleum displaced by the
16 use of alternative fuels in alternative fueled vehicles
17 acquired by fleets or covered persons;

18 (4) the cost of compliance with vehicle acquisi-
19 tion requirements by fleets or covered persons; and

20 (5) the existence of obstacles preventing compli-
21 ance with vehicle acquisition requirements and in-
22 creased use of alternative fuel in alternative fueled
23 vehicles acquired by fleets or covered persons.

24 (c) REPORT.—Upon completion of the study, the Sec-
25 retary shall submit to the Congress a report that describes

1 the results of the study conducted under this section and
2 includes any recommendations of the Secretary for legisla-
3 tive or administrative changes concerning the alternative
4 fueled vehicle requirements under titles III, IV and V of
5 the Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.).
6 Such study shall be updated on a regular basis as deemed
7 necessary by the Secretary.

8 **SEC. 708. HIGH OCCUPANCY VEHICLE EXCEPTION.**

9 Notwithstanding section 102(a)(1) of title 23, United
10 States Code, a State may permit a vehicle with fewer than
11 2 occupants to operate in high occupancy vehicle lanes if
12 such vehicle is a dedicated vehicle (as defined in section
13 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)).

14 **SEC. 709. ALTERNATIVE COMPLIANCE AND FLEXIBILITY.**

15 (a) ALTERNATIVE COMPLIANCE.—Title V of the En-
16 ergy Policy Act of 1992 is amended by adding at the end
17 the following:

18 **“SEC. 515. ALTERNATIVE COMPLIANCE.**

19 “(a) APPLICATION FOR WAIVER.—Any covered per-
20 son subject to the requirements of section 501 and any
21 State subject to the requirement of section 507(o) may
22 petition the Secretary for a waiver of the applicable re-
23 quirements of section 501 or 507(o).

24 “(b) GRANT OF WAIVER.—The Secretary may grant
25 a waiver of the requirements of section 501 or 507(o)

1 upon a showing that the fleet owned, operated, leased, or
 2 otherwise controlled by the State or covered person—

3 “(1) will achieve a reduction in its annual con-
 4 sumption of petroleum fuels equal to the reduction
 5 in consumption of petroleum that would result from
 6 compliance with section 501 or 507(o); and

7 “(2) is in compliance with all applicable vehicle
 8 emission standards established by the Administrator
 9 under the Clean Air Act.

10 “(c) REVOCATION OF WAIVER.—The Secretary shall
 11 revoke any waiver granted under this section if the State
 12 or covered person fails to comply with the requirements
 13 of subsection (b).”.

14 (b) CREDIT FOR HYBRID VEHICLES, DEDICATED AL-
 15 TERNATIVE FUEL VEHICLES, AND INFRASTRUCTURE.—
 16 Section 507 of the Energy Policy Act of 1992 (42 U.S.C.
 17 13258) (as amended by section 705) is amended by adding
 18 at the end the following:

19 “(r) CREDITS FOR NEW QUALIFIED HYBRID MOTOR
 20 VEHICLES.—

21 “(1) DEFINITIONS.—In this subsection:

22 “(A) 2000 MODEL YEAR CITY FUEL EFFI-
 23 CIENCY.—The term ‘2000 model year city fuel
 24 efficiency’, with respect to a motor vehicle,

1 means fuel efficiency determined in accordance
 2 with the following tables:

3 “(i) In the case of a passenger auto-
 4 mobile:

“If vehicle inertia weight class is:	The 2000 model year city fuel efficiency is:
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 to 8,500 lbs	11.1 mpg.

5 “(ii) In the case of a light truck:

“If vehicle inertia weight class is:	The 2000 model year city fuel efficiency is:
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.0 mpg.

6 “(B) ADMINISTRATOR.—The term ‘Admin-
 7 istrator’ means the Administrator of the Envi-
 8 ronmental Protection Agency.

9 “(C) ENERGY STORAGE DEVICE.—The
 10 term ‘energy storage device’ means an onboard

1 rechargeable energy storage system or similar
2 storage device.

3 “(D) FUEL EFFICIENCY.—The term ‘fuel
4 efficiency’ means the percentage increased fuel
5 efficiency specified in table 1 in paragraph
6 (2)(C) over the average 2000 model year city
7 fuel efficiency of vehicles in the same weight
8 class.

9 “(E) MAXIMUM AVAILABLE POWER.—The
10 term ‘maximum available power’, with respect
11 to a new qualified hybrid motor vehicle that is
12 a passenger vehicle or light truck, means the
13 quotient obtained by dividing—

14 “(i) the maximum power available
15 from the electrical storage device of the
16 new qualified hybrid motor vehicle, during
17 a standard 10-second pulse power or equiv-
18 alent test; by

19 “(ii) the sum of—

20 “(I) the maximum power de-
21 scribed in clause (i); and

22 “(II) the net power of the inter-
23 nal combustion or heat engine, as de-
24 termined in accordance with stand-

1 ards established by the Society of
2 Automobile Engineers.

3 “(F) MOTOR VEHICLE.—The term ‘motor
4 vehicle’ has the meaning given the term in sec-
5 tion 216 of the Clean Air Act (42 U.S.C.
6 7550).

7 “(G) NEW QUALIFIED HYBRID MOTOR VE-
8 HICLE.—The term ‘new qualified hybrid motor
9 vehicle’ means a motor vehicle that—

10 “(i) draws propulsion energy from
11 both—

12 “(I) an internal combustion en-
13 gine (or heat engine that uses com-
14 bustible fuel); and

15 “(II) an energy storage device;

16 “(ii) in the case of a passenger auto-
17 mobile or light truck—

18 “(I) in the case of a 2001 or
19 later model vehicle, receives a certifi-
20 cate of conformity under the Clean
21 Air Act (42 U.S.C. 7401 et seq.) and
22 produces emissions at a level that is
23 at or below the standard established
24 by a qualifying California standard
25 described in section 243(e)(2) of the

1 Clean Air Act (42 U.S.C. 7583(e)(2))
2 for that make and model year; and

3 “(II) in the case of a 2004 or
4 later model vehicle, is certified by the
5 Administrator as producing emissions
6 at a level that is at or below the level
7 established for Bin 5 vehicles in the
8 Tier 2 regulations promulgated by the
9 Administrator under section 202(i) of
10 the Clean Air Act (42 U.S.C. 7521(i))
11 for that make and model year vehicle;
12 and

13 “(iii) employs a vehicle braking sys-
14 tem that recovers waste energy to charge
15 an energy storage device.

16 “(H) VEHICLE INERTIA WEIGHT CLASS.—
17 The term ‘vehicle inertia weight class’ has the
18 meaning given the term in regulations promul-
19 gated by the Administrator for purposes of the
20 administration of title II of the Clean Air Act
21 (42 U.S.C. 7521 et seq.).

22 “(2) ALLOCATION.—

23 “(A) IN GENERAL.—The Secretary shall
24 allocate a partial credit to a fleet or covered
25 person under this title if the fleet or person ac-

1 quires a new qualified hybrid motor vehicle that
 2 is eligible to receive a credit under each of the
 3 tables in subparagraph (C).

4 “(B) AMOUNT.—The amount of a partial
 5 credit allocated under subparagraph (A) for a
 6 vehicle described in that subparagraph shall be
 7 equal to the sum of—

8 “(i) the partial credits determined
 9 under table 1 in subparagraph (C); and

10 “(ii) the partial credits determined
 11 under table 2 in subparagraph (C).

12 “(C) TABLES.—The tables referred to in
 13 subparagraphs (A) and (B) are as follows:

“Table 1

“Partial credit for increased fuel efficiency:	Amount of credit:
At least 125% but less than 150% of 2000 model year city fuel efficiency.	0.14
At least 150% but less than 175% of 2000 model year city fuel efficiency.	0.21
At least 175% but less than 200% of 2000 model year city fuel efficiency.	0.28
At least 200% but less than 225% of 2000 model year city fuel efficiency.	0.35
At least 225% but less than 250% of 2000 model year city fuel efficiency.	0.50.

“Table 2

“Partial credit for ‘Maximum Available Power’:	Amount of credit:
At least 5% but less than 10%	0.125
At least 10% but less than 20%	0.250
At least 20% but less than 30%	0.375
At least 30% or more	0.500.

14 “(D) USE OF CREDITS.—At the request of
 15 a fleet or covered person allocated a credit

1 under this subsection, the Secretary shall, for
2 the year in which the acquisition of the quali-
3 fied hybrid motor vehicle is made, treat that
4 credit as the acquisition of 1 alternative fueled
5 vehicle that the fleet or covered person is re-
6 quired to acquire under this title.

7 “(3) REGULATIONS.—The Secretary shall pro-
8 mulgate regulations under which any Federal fleet
9 that acquires a new qualified hybrid motor vehicle
10 will receive partial credits determined under the ta-
11 bles contained in paragraph (2)(C) for purposes of
12 meeting the requirements of section 303.

13 “(s) CREDIT FOR SUBSTANTIAL CONTRIBUTION TO-
14 WARDS USE OF DEDICATED VEHICLES IN NONCOVERED
15 FLEETS.—

16 “(1) DEFINITIONS.—In this subsection:

17 “(A) DEDICATED VEHICLE.—The term
18 ‘dedicated vehicle’ includes—

19 “(i) a light, medium, or heavy duty
20 vehicle; and

21 “(ii) a neighborhood electric vehicle.

22 “(B) MEDIUM OR HEAVY DUTY VEHI-
23 CLE.—The term ‘medium or heavy duty vehicle’
24 includes a vehicle that—

1 “(i) operates solely on alternative fuel;
2 and

3 “(ii)(I) in the case of a medium duty
4 vehicle, has a gross vehicle weight rating of
5 more than 8,500 pounds but not more
6 than 14,000 pounds; or

7 “(II) in the case of a heavy duty vehi-
8 cle, has a gross vehicle weight rating of
9 more than 14,000 pounds.

10 “(C) SUBSTANTIAL CONTRIBUTION.—The
11 term ‘substantial contribution’ (equal to 1 full
12 credit) means not less than \$15,000 in cash or
13 in kind services, as determined by the Sec-
14 retary.

15 “(2) ISSUANCE OF CREDITS.—The Secretary
16 shall issue a credit to a fleet or covered person under
17 this title if the fleet or person makes a substantial
18 contribution toward the acquisition and use of dedi-
19 cated vehicles by a person that owns, operates,
20 leases, or otherwise controls a fleet that is not cov-
21 ered by this title.

22 “(3) MULTIPLE CREDITS FOR MEDIUM AND
23 HEAVY DUTY DEDICATED VEHICLES.—The Secretary
24 shall issue 2 full credits to a fleet or covered person

1 under this title if the fleet or person acquires a me-
2 dium or heavy duty dedicated vehicle.

3 “(4) USE OF CREDITS.—At the request of a
4 fleet or covered person allocated a credit under this
5 subsection, the Secretary shall, for the year in which
6 the acquisition of the dedicated vehicle is made,
7 treat that credit as the acquisition of 1 alternative
8 fueled vehicle that the fleet or covered person is re-
9 quired to acquire under this title.

10 “(5) LIMITATION.—Per vehicle credits acquired
11 under this subsection shall not exceed the per vehicle
12 credits allowed under this section to a fleet for quali-
13 fying vehicles in each of the weight categories (light,
14 medium, or heavy duty).

15 “(t) CREDIT FOR SUBSTANTIAL INVESTMENT IN AL-
16 TERNATIVE FUEL INFRASTRUCTURE.—

17 “(1) DEFINITIONS.—In this section, the term
18 ‘qualifying infrastructure’ means—

19 “(A) equipment required to refuel or re-
20 charge alternative fueled vehicles;

21 “(B) facilities or equipment required to
22 maintain, repair, or operate alternative fueled
23 vehicles;

24 “(C) training programs, educational mate-
25 rials, or other activities necessary to provide in-

1 formation regarding the operation, mainte-
2 nance, or benefits associated with alternative
3 fueled vehicles; and

4 “(D) such other activities the Secretary
5 considers to constitute an appropriate expendi-
6 ture in support of the operation, maintenance,
7 or further widespread adoption of or utilization
8 of alternative fueled vehicles.

9 “(2) ISSUANCE OF CREDITS.—The Secretary
10 shall issue a credit to a fleet or covered person under
11 this title for investment in qualifying infrastructure
12 if the qualifying infrastructure is open to the general
13 public during regular business hours.

14 “(3) AMOUNT.—For the purposes of credits
15 under this subsection—

16 “(A) 1 credit shall be equal to a minimum
17 investment of \$25,000 in cash or in kind serv-
18 ices, as determined by the Secretary; and

19 “(B) except in the case of a Federal or
20 State fleet, no part of the investment may be
21 provided by Federal or State funds.

22 “(4) USE OF CREDITS.—At the request of a
23 fleet or covered person allocated a credit under this
24 subsection, the Secretary shall, for the year in which
25 the investment is made, treat that credit as the ac-

1 quisition of 1 alternative fueled vehicle that the fleet
 2 or covered person is required to acquire under this
 3 title.”.

4 (c) LEASE CONDENSATE FUELS.—Section 301 of the
 5 Energy Policy Act of 1992 (42 U.S.C. 13211) is amend-
 6 ed—

7 (1) in paragraph (2), by inserting “mixtures
 8 containing 50 percent or more by volume of lease
 9 condensate or fuels extracted from lease conden-
 10 sate;” after “liquified petroleum gas;”;

11 (2) in paragraph (15), by inserting “mixtures
 12 containing 50 percent or more by volume of lease
 13 condensate or fuels extracted from lease conden-
 14 sate;” after “liquified petroleum gas;” and

15 (3) by adding at the end the following:

16 “(16) the term ‘lease condensate’ means a mix-
 17 ture, primarily of pentanes and heavier hydro-
 18 carbons, which is recovered as a liquid from natural
 19 gas in lease separation facilities.”.

20 **Subtitle B—Automobile Fuel**
 21 **Economy**

22 **SEC. 711. AUTOMOBILE FUEL ECONOMY STANDARDS.**

23 (a) TITLE 49 AMENDMENT.—Section 32902(f) of
 24 title 49, United States Code, is amended to read as fol-
 25 lows:

1 “(f) CONSIDERATIONS.—When deciding maximum
2 feasible average fuel economy under this section, the Sec-
3 retary of Transportation shall consider the following mat-
4 ters:

5 “(1) technological feasibility;

6 “(2) economic practicability;

7 “(3) the effect of other motor vehicle standards
8 of the Government on fuel economy;

9 “(4) the need of the United States to conserve
10 energy;

11 “(5) the effects of fuel economy standards on
12 motor vehicle and passenger safety; and

13 “(6) the effects of compliance with average fuel
14 economy standards on levels of employment in the
15 United States.”.

16 (b) CLARIFICATION OF AUTHORITY.—Section
17 32902(b) of title 49, United States Code, is amended by
18 inserting before the period at the end the following: “or
19 such other number as the Secretary prescribes under sub-
20 section (c)”.

21 (c) ENVIRONMENTAL ASSESSMENT.—When issuing
22 final regulations setting forth increased average fuel econ-
23 omy standards under section 32902(a) or section 32902(c)
24 of title 49, United States Code, the Secretary of Transpor-
25 tation shall also issue an environmental assessment of the

1 effects of the increased standards on the environment
2 under the National Environmental Policy Act of 1969 (42
3 U.S.C. 4321 et seq.).

4 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
5 purposes of this section, there are authorized to be appro-
6 priated to the Secretary of Transportation \$5,000,000 for
7 each of fiscal years 2004 through 2008.

8 **SEC. 712. DUAL-FUELED AUTOMOBILES.**

9 (a) MANUFACTURING INCENTIVES.—Section 32905
10 of title 49, United States Code, is amended—

11 (1) in subsections (b) and (d), by striking
12 “1993–2004” and inserting “1993–2008”;

13 (2) in subsection (f), by striking “2001” and
14 inserting “2005”;

15 (3) in subsection (f)(1), by striking “2004” and
16 inserting “2008”; and

17 (4) in subsection (g), by striking “September
18 30, 2000” and inserting “September 30, 2004”.

19 (b) MAXIMUM FUEL ECONOMY INCREASE.—Sub-
20 section (a)(1) of section 32906 of title 49, United States
21 Code, is amended—

22 (1) in subparagraph (A), by striking “the model
23 years 1993–2004” and inserting “model years
24 1993–2008”; and

1 (2) in subparagraph (B), by striking “the model
2 years 2005–2008” and inserting “model years
3 2009–2012”.

4 **SEC. 713. FEDERAL FLEET FUEL ECONOMY.**

5 Section 32917 of title 49, United States Code, is
6 amended to read as follows:

7 **“§ 32917. Standards for executive agency automobiles**

8 “(a) **BASELINE AVERAGE FUEL ECONOMY.**—The
9 head of each executive agency shall determine, for all auto-
10 mobiles in the agency’s fleet of automobiles that were
11 leased or bought as a new vehicle in fiscal year 1999, the
12 average fuel economy for such automobiles. For the pur-
13 poses of this section, the average fuel economy so deter-
14 mined shall be the baseline average fuel economy for the
15 agency’s fleet of automobiles.

16 “(b) **INCREASE OF AVERAGE FUEL ECONOMY.**—The
17 head of an executive agency shall manage the procurement
18 of automobiles for that agency in such a manner that not
19 later than September 30, 2005, the average fuel economy
20 of the new automobiles in the agency’s fleet of automobiles
21 is not less than 3 miles per gallon higher than the baseline
22 average fuel economy determined under subsection (a) for
23 that fleet.

24 “(c) **CALCULATION OF AVERAGE FUEL ECONOMY.**—
25 Average fuel economy shall be calculated for the purposes

1 of this section in accordance with guidance which the Sec-
2 retary of Transportation shall prescribe for the implemen-
3 tation of this section.

4 “(d) DEFINITIONS.—In this section:

5 “(1) The term ‘automobile’ does not include
6 any vehicle designed for combat-related missions,
7 law enforcement work, or emergency rescue work.

8 “(2) The term ‘executive agency’ has the mean-
9 ing given that term in section 105 of title 5.

10 “(3) The term ‘new automobile’, with respect to
11 the fleet of automobiles of an executive agency,
12 means an automobile that is leased for at least 60
13 consecutive days or bought, by or for the agency,
14 after September 30, 1999.”.

15 **SEC. 714. RAILROAD EFFICIENCY.**

16 (a) ESTABLISHMENT.—The Secretary of Energy, in
17 cooperation with the Secretary of Transportation and the
18 Administrator of the Environmental Protection Agency,
19 shall establish a cost-shared, public-private research part-
20 nership to develop and demonstrate railroad locomotive
21 technologies that increase fuel economy, reduce emissions,
22 and lower costs of operation. Such partnership shall in-
23 volve the Federal Government, railroad carriers, loco-
24 motive manufacturers and equipment suppliers, and the
25 Association of American Railroads.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—For the
2 purposes of this section, there are authorized to be appro-
3 priated to the Secretary of Energy \$25,000,000 for fiscal
4 year 2004, \$35,000,000 for fiscal year 2005, and
5 \$50,000,000 for fiscal year 2006.

6 **SEC. 715. REDUCTION OF ENGINE IDLING IN HEAVY-DUTY**
7 **VEHICLES.**

8 (a) IDENTIFICATION.—Not later than 180 days after
9 the date of enactment of this section, the Secretary of En-
10 ergy, in consultation with the Secretary of Transportation
11 and the Administrator of the Environmental Protection
12 Agency, shall commence a study to analyze the potential
13 fuel savings and emissions reductions resulting from use
14 of idling reduction technologies as they are applied to
15 heavy-duty vehicles. Upon completion of the study, the
16 Secretary of Energy shall, by rule, certify those idling re-
17 duction technologies with the greatest economic or tech-
18 nical feasibility and the greatest potential for fuel savings
19 and emissions reductions, and publish a list of such cer-
20 tified technologies in the Federal Register.

21 (b) VEHICLE WEIGHT EXEMPTION.—Section 127(a)
22 of Title 23, United States Code, is amended by adding
23 at the end the following: “In order to promote reduction
24 of fuel use and emissions due to engine idling, the max-
25 imum gross vehicle weight limit and the axle weight limit

1 for any motor vehicle equipped with an idling reduction
2 technology certified by the U.S. Department of Energy
3 will be increased by an amount necessary to compensate
4 for the additional weight of the idling reduction system,
5 provided that the weight increase shall be no greater than
6 400 pounds.”

7 (c) DEFINITIONS.—For the purposes of this section:

8 (1) The term “idling reduction technology”
9 means a device or system of devices utilized to re-
10 duce long-duration idling of a vehicle.

11 (2) The term “heavy-duty vehicle” means a ve-
12 hicle that has a gross vehicle weight rating greater
13 than 8,500 pounds and is powered by a diesel en-
14 gine.

15 (3) The term “long-duration idling” means the
16 operation of a main drive engine, for a period great-
17 er than 30 consecutive minutes, where the main
18 drive engine is not engaged in gear. Such term does
19 not apply to routine stoppages associated with traf-
20 fic movement or congestion.

1 **TITLE VIII—HYDROGEN**
2 **Subtitle A—Basic Research**
3 **Programs**

4 **SEC. 801. SHORT TITLE.**

5 This subtitle may be cited as the “George E. Brown,
6 Jr. and Robert S. Walker Hydrogen Future Act of 2003”.

7 **SEC. 802. MATSUNAGA ACT AMENDMENT.**

8 The Spark M. Matsunaga Hydrogen Research, Devel-
9 opment, and Demonstration Act of 1990 (42 U.S.C.
10 12401 et seq.) is amended by striking sections 102
11 through 109 and inserting the following:

12 **“SEC. 102. DEFINITIONS.**

13 “In this Act—

14 “(1) the term ‘advisory committee’ means the
15 Hydrogen and Fuel Cell Technical Advisory Com-
16 mittee established under section 107;

17 “(2) the term ‘Department’ means the Depart-
18 ment of Energy;

19 “(3) the term ‘fuel cell’ means a device that di-
20 rectly converts the chemical energy of a fuel into
21 electricity by an electrochemical process;

22 “(4) the term ‘infrastructure’ means the equip-
23 ment, systems, or facilities used to produce, dis-
24 tribute, deliver, or store hydrogen; and

1 “(5) the term ‘Secretary’ means the Secretary
2 of Energy.

3 **“SEC. 103. HYDROGEN RESEARCH AND DEVELOPMENT.**

4 “(a) IN GENERAL.—The Secretary shall conduct a
5 research and development program on technologies related
6 to the production, distribution, storage, and use of hydro-
7 gen energy, fuel cells, and related infrastructure.

8 “(b) GOAL.—The goal of such program shall be to
9 enable the safe, economic, and environmentally sound use
10 of hydrogen energy, fuel cells, and related infrastructure
11 for transportation, commercial, industrial, residential, and
12 electric power generation applications.

13 “(c) FOCUS.—In carrying out activities under this
14 section, the Secretary shall focus on critical technical
15 issues including, but not limited to—

16 “(1) the production of hydrogen from diverse
17 energy sources, with emphasis on cost-effective pro-
18 duction from renewable energy sources;

19 “(2) the delivery of hydrogen, including safe de-
20 livery in fueling stations and use of existing hydro-
21 gen pipelines;

22 “(3) the storage of hydrogen, including storage
23 of hydrogen in surface transportation;

1 “(4) fuel cell technologies for transportation,
2 stationary and portable applications, with emphasis
3 on cost-reduction of fuel cell stacks; and

4 “(5) the use of hydrogen energy and fuel cells,
5 including use in—

6 “(A) isolated villages, islands, and areas in
7 which other energy sources are not available or
8 are very expensive; and

9 “(B) foreign markets, particularly where
10 an energy infrastructure is not well developed.

11 “(d) CODES AND STANDARDS.—The Secretary shall
12 facilitate the development of domestic and international
13 codes and standards and seek to resolve other critical reg-
14 ulatory and technical barriers preventing the introduction
15 of hydrogen energy and fuel cells into the marketplace.

16 “(e) SOLICITATION.—The Secretary shall carry out
17 the research and development activities authorized under
18 this section through solicitation of proposals, and evalua-
19 tion using competitive merit review.

20 “(f) COST SHARING.—The Secretary shall require a
21 commitment from non-Federal sources of at least 20 per-
22 cent of the cost of proposed research and development
23 projects. The Secretary may reduce or eliminate the cost
24 sharing requirement—

1 “(1) if the Secretary determines that the re-
2 search and development is of a basic or fundamental
3 nature, or

4 “(2) for technical analyses, outreach activities,
5 and educational programs that the Secretary does
6 not expect to result in a marketable product.

7 **“SEC. 104. DEMONSTRATION PROGRAMS.**

8 “(a) REQUIREMENT.—In conjunction with activities
9 conducted under section 103, the Secretary shall conduct
10 demonstrations of hydrogen energy and fuel cell tech-
11 nologies in order to evaluate the commercial potential of
12 such technologies.

13 “(b) SOLICITATION.—The Secretary shall carry out
14 the demonstrations authorized under this section through
15 solicitation of proposals, and evaluation using competitive
16 merit review.

17 “(c) COST SHARING.—The Secretary shall require a
18 commitment from non-Federal sources of at least 50 per-
19 cent of the costs directly relating to a demonstration
20 project under this section. The Secretary may reduce such
21 non-Federal requirement if the Secretary determines that
22 the reduction is appropriate considering the technological
23 risks involved in the project.

24 **“SEC. 105. TECHNOLOGY TRANSFER.**

25 “The Secretary shall conduct programs to—

1 “(1) transfer critical hydrogen energy and fuel
2 cell technologies to the private sector in order to
3 promote wider understanding of such technologies
4 and wider use of research progress under this Act;

5 “(2) accelerate wider application of hydrogen
6 energy and fuel cell technologies in foreign countries
7 in order to increase the global market for the tech-
8 nologies and foster global development without
9 harmful environmental effects;

10 “(3) foster the exchange of generic, nonpropri-
11 etary information and technology developed pursuant
12 to this Act, among industry, academia, and the Fed-
13 eral agencies; and

14 “(4) inventory and assess the technical and
15 commercial viability of technologies related to pro-
16 duction, distribution, storage, and use of hydrogen
17 energy and fuel cells.

18 **“SEC. 106. COORDINATION AND CONSULTATION.**

19 “The Secretary shall have overall management re-
20 sponsibility for carrying out programs under this Act. In
21 carrying out such programs, the Secretary—

22 “(1) shall establish a central point for the co-
23 ordination of all hydrogen energy and fuel cell re-
24 search, development, and demonstration activities of
25 the Department;

1 “(2) in carrying out the Secretary’s authorities
2 pursuant to this Act, shall consult with other Fed-
3 eral agencies as appropriate, and may obtain the as-
4 sistance of any Federal agency, on a reimbursable
5 basis or otherwise and with the consent of such
6 agency; and

7 “(3) shall attempt to ensure that activities
8 under this Act do not unnecessarily duplicate any
9 available research and development results or dis-
10 place or compete with privately funded hydrogen and
11 fuel cell energy activities.

12 **“SEC. 107. ADVISORY COMMITTEE.**

13 “(a) ESTABLISHMENT.—There is hereby established
14 the Hydrogen and Fuel Cell Technical Advisory Com-
15 mittee, to advise the Secretary on the programs under this
16 Act.

17 “(b) MEMBERSHIP.—The advisory committee shall be
18 comprised of not fewer than 12 nor more than 25 mem-
19 bers appointed by the Secretary based on their technical
20 and other qualifications from domestic industry, auto-
21 makers, universities, professional societies, Federal labora-
22 tories, financial institutions, and environmental and other
23 organizations as the Secretary deems appropriate. The ad-
24 visory committee shall have a chairperson, who shall be
25 elected by the members from among their number.

1 “(c) TERMS.—Members of the advisory committee
2 shall be appointed for terms of 3 years, with each term
3 to begin not later than 3 months after the date of enact-
4 ment of the Energy Policy Act of 2003, except that one-
5 third of the members first appointed shall serve for 1 year,
6 and one-third of the members first appointed shall serve
7 for 2 years, as designated by the Secretary at the time
8 of appointment.

9 “(d) REVIEW.—The advisory committee shall review
10 and make any necessary recommendations to the Sec-
11 retary on—

12 “(1) implementation and conduct of programs
13 under this Act;

14 “(2) economic, technological, and environmental
15 consequences of the deployment of technologies re-
16 lated to production, distribution, storage, and use of
17 hydrogen energy, and fuel cells;

18 “(3) means for resolving barriers to imple-
19 menting hydrogen and fuel cell technologies; and

20 “(4) the coordination plan and any updates
21 thereto prepared by the Secretary pursuant to sec-
22 tion 108.

23 “(e) RESPONSE.—The Secretary shall consider any
24 recommendations made by the advisory committee, and
25 shall provide a response to the advisory committee within

1 30 days after receipt of such recommendations. Such re-
2 sponse shall either describe the implementation of the ad-
3 visory committee's recommendations or provide an expla-
4 nation of the reasons that any such recommendations will
5 not be implemented.

6 “(f) SUPPORT.—The Secretary shall provide such
7 staff, funds and other support as may be necessary to en-
8 able the advisory committee to carry out its functions. In
9 carrying out activities pursuant to this section, the advi-
10 sory committee may also obtain the assistance of any Fed-
11 eral agency, on a reimbursable basis or otherwise and with
12 the consent of such agency.

13 **“SEC. 108. COORDINATION PLAN.**

14 “(a) PLAN.—The Secretary, in consultation with
15 other Federal agencies, shall prepare and maintain on an
16 ongoing basis a comprehensive plan for activities under
17 this Act.

18 “(b) DEVELOPMENT.—In developing such plan, the
19 Secretary shall—

20 “(1) consider the guidance of the National Hy-
21 drogen Energy Roadmap published by the Depart-
22 ment in November 2002 and any updates thereto;

23 “(2) consult with the advisory committee; and

24 “(3) consult with interested parties from do-
25 mestic industry, automakers, universities, profes-

1 sional societies, Federal laboratories, financial insti-
2 tutions, and environmental and other organizations
3 as the Secretary deems appropriate.

4 “(c) CONTENTS.—At a minimum, the plan shall pro-
5 vide—

6 “(1) an assessment of the effectiveness of the
7 programs authorized under this Act, including a
8 summary of recommendations of the advisory com-
9 mittee for improvements in such programs;

10 “(2) a description of proposed research, devel-
11 opment, and demonstration activities planned by the
12 Department for the next five years;

13 “(3) a description of the role Federal labora-
14 tories, institutions of higher education, small busi-
15 nesses, and other private sector firms are expected
16 to play in such programs;

17 “(4) cost and performance milestones that will
18 be used to evaluate the programs for the next five
19 years;

20 “(5) any significant technical, regulatory, and
21 other hurdles that stand in the way of achieving
22 such cost and performance milestones, and how the
23 programs will address those hurdles; and

24 (6) to the extent practicable, an analysis of
25 Federal, State, local, and private sector hydrogen re-

1 search, development, and demonstration activities to
2 identify areas for increased intergovernmental and
3 private-public sector collaboration.

4 “(d) REPORT.—Not later than January 1, 2005, and
5 biennially thereafter, the Secretary shall transmit to Con-
6 gress the comprehensive plan developed for the programs
7 authorized under this Act, or any updates thereto.

8 **“SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

9 “There are authorized to be appropriated to carry out
10 the purposes of this Act—

11 “(1) such sums as may be necessary for fiscal
12 years 1992 through 2003;

13 “(2) \$105,000,000 for fiscal year 2004;

14 “(3) \$150,000,000 for fiscal year 2005;

15 “(4) \$175,000,000 for fiscal year 2006;

16 “(5) \$200,000,000 for fiscal year 2007; and

17 “(6) \$225,000,000 for fiscal year 2008.”.

18 **SEC. 803. HYDROGEN TRANSPORTATION AND FUEL INITIA-**

19 **TIVE.**

20 (a) VEHICLE TECHNOLOGIES.—The Secretary shall
21 carry out a research, development, demonstration, and
22 commercial application program on advanced hydrogen-
23 powered vehicle technologies. Such program shall ad-
24 dress—

25 (1) engine and emission control systems;

- 1 (2) energy storage, electric propulsion, and hy-
- 2 brid systems;
- 3 (3) automotive materials;
- 4 (4) hydrogen-carrier fuels; and
- 5 (5) other advanced vehicle technologies.

6 (b) HYDROGEN FUEL INITIATIVE.—In coordination
7 with the program authorized in subsection (a), the Sec-
8 retary of Energy, in partnership with the private sector,
9 shall conduct a research, development, demonstration and
10 commercial application program designed to enable the
11 rapid and coordinated introduction of hydrogen-fueled ve-
12 hicles and associated infrastructure into commerce. Such
13 program shall address—

14 (1) production of hydrogen from diverse energy
15 resources, including—

16 (A) renewable energy resources;

17 (B) fossil fuels, in conjunction with carbon
18 capture and sequestration;

19 (C) hydrogen-carrier fuels; and

20 (D) nuclear energy;

21 (2) delivery of hydrogen or hydrogen-carrier
22 fuels, including—

23 (A) transmission by pipeline and other dis-
24 tribution methods; and

1 (B) safe, convenient, and economic refuel-
2 ing of vehicles, either at central refueling sta-
3 tions or through distributed on-site generation;

4 (3) storage of hydrogen or hydrogen-carrier
5 fuels, including development of materials for safe
6 and economic storage in gaseous, liquid or solid
7 forms at refueling facilities or onboard vehicles;

8 (4) development of advanced vehicle tech-
9 nologies, such as efficient fuel cells and direct hydro-
10 gen combustion engines, and related component
11 technologies such as advanced materials and control
12 systems; and

13 (5) development of necessary codes, standards,
14 and safety practices to accompany the production,
15 distribution, storage and use of hydrogen or hydro-
16 gen-carrier fuels in transportation.

17 (c) MATSUNAGA ACT.—In carrying out programs and
18 projects under subsections (a) and (b), the Secretary shall
19 ensure that such programs and projects are consistent
20 with, and do not unnecessarily duplicate, activities carried
21 out under the programs authorized under the Spark M.
22 Matsunaga Hydrogen Research, Development, and Dem-
23 onstration Act of 1990 (42 U.S.C. 12401 et seq.).

24 (d) ADVISORY COMMITTEE.—The Hydrogen and
25 Fuel Cell Technical Advisory Committee authorized under

1 section 107 of the Spark M. Matsunaga Hydrogen Re-
2 search, Development, and Demonstration Act of 1990 (42
3 U.S.C. 12408), as amended in this title, shall also advise
4 the Secretary on the programs and activities carried out
5 under this section.

6 (e) SOLICITATION.—The Secretary shall carry out
7 the programs authorized under this section through solici-
8 tation of proposals, and evaluation using competitive merit
9 review.

10 (f) COST SHARING.—The Secretary shall require a
11 commitment from non-Federal sources of at least 50 per-
12 cent of the costs directly relating to a demonstration
13 project under this section. The Secretary may reduce such
14 non-Federal requirement if the Secretary determines that
15 the reduction is appropriate considering the technological
16 risks involved in the project.

17 (g) AUTHORIZATION OF APPROPRIATIONS.—For the
18 purposes of this section, there are authorized to be appro-
19 priated to the Secretary—

20 (1) for activities pursuant to subsection (a), to
21 remain available until expended—

22 (A) \$100,000,000 for each of fiscal years
23 2004 and 2005;

24 (B) \$110,000,000 for each of fiscal years
25 2006 and 2007; and

1 (C) \$120,000,000 for fiscal year 2008; and

2 (2) for activities pursuant to subsection (b), to
3 remain available until expended—

4 (A) \$125,000,000 for fiscal year 2004;

5 (B) \$150,000,000 for fiscal year 2005;

6 (C) \$175,000,000 for fiscal year 2006; and

7 (D) \$200,000,000 for each of fiscal years
8 2007 and 2008.

9 **SEC. 804. INTERAGENCY TASK FORCE AND COORDINATION**

10 **PLAN.**

11 (a) ESTABLISHMENT.—Not later than 120 days after
12 the date of enactment of this Act, the Secretary shall es-
13 tablish an interagency task force to coordinate Federal hy-
14 drogen and fuel cell energy activities.

15 (b) COMPOSITION.—The task force shall be chaired
16 by a designee of the Secretary, and shall include represent-
17 atives of—

18 (1) the Office of Science and Technology Policy;

19 (2) the Department of Transportation;

20 (3) the Department of Defense;

21 (4) the Department of Commerce (including the
22 National Institute for Standards and Technology);

23 (5) the Environmental Protection Agency;

24 (6) the National Aeronautics and Space Admin-
25 istration;

1 (7) the Department of State; and

2 (8) other Federal agencies as the Director con-
3 siders appropriate.

4 (c) COORDINATION PLAN.—The task force shall pre-
5 pare a comprehensive coordination plan for Federal hydro-
6 gen and fuel cell energy activities, which shall include a
7 summary of such activities.

8 (d) REPORT.—Not later than one year after it is es-
9 tablished, the task force shall report to Congress on the
10 coordination plan in subsection (c) and on the interagency
11 coordination of Federal hydrogen and fuel cell energy ac-
12 tivities.

13 **SEC. 805. REVIEW BY THE NATIONAL ACADEMIES.**

14 Not later than two years after the date of enactment
15 of this Act, and every four years thereafter, the Secretary
16 shall enter into a contract with the National Academies.
17 Such contract shall require the National Academies to per-
18 form a review of the progress made through Federal hy-
19 drogen and fuel cell energy programs and activities, in-
20 cluding the need for modified or additional programs, and
21 to report to the Congress on the results of such review.
22 There are authorized to be appropriated to the Secretary
23 such sums as may be necessary to carry out the require-
24 ments of this section.

Subtitle B—Demonstration Programs

SEC. 811. DEFINITIONS.

For the purposes of this subtitle and subtitle C—

(1) the term “fuel cell” means a device that directly converts the chemical energy of a fuel into electricity by an electrochemical process;

(2) the term “hydrogen-carrier fuel” means any hydrocarbon fuel that is capable of being thermochemically processed or otherwise reformed to produce hydrogen;

(3) the term “infrastructure” means the equipment, systems, or facilities used to produce, distribute, deliver, or store hydrogen or hydrogen-carrier fuels;

(4) the term “institution of higher education” has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); and

(5) the term “Secretary” means the Secretary of Energy.

SEC. 812. HYDROGEN VEHICLE DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a program for demonstration and commercial application of

1 hydrogen-powered vehicles and associated hydrogen fuel-
2 ing infrastructure in a variety of transportation-related
3 applications, including—

4 (1) fuel cell vehicles in light-duty vehicle fleets;

5 (2) heavy-duty fuel cell on-road and off-road ve-
6 hicles, including mass transit buses;

7 (3) use of hydrogen-powered vehicles and hy-
8 drogen fueling infrastructure (including multiple hy-
9 drogen refueling stations) along major transpor-
10 tation routes or in entire regions; and

11 (4) other similar projects as the Secretary may
12 deem necessary to contribute to the rapid dem-
13 onstration and deployment of hydrogen-based tech-
14 nologies in widespread use for transportation.

15 (b) ELIGIBILITY.—Federal, state, tribal, and local
16 governments, academic and other non-profit organiza-
17 tions, private entities, and consortia of these entities shall
18 be eligible for these projects.

19 (c) SELECTION.—In selecting projects under this sec-
20 tion, the Secretary shall—

21 (1) consult with Federal, State, local and pri-
22 vate fleet managers to identify potential projects
23 where hydrogen-powered vehicles may be placed into
24 service;

1 (2) identify not less than 10 sites at which to
2 carry out projects under this program, 2 of which
3 must be based at Federal facilities; and

4 (3) select projects based on the following fac-
5 tors—

6 (A) geographic diversity;

7 (B) a diverse set of operating environ-
8 ments, duty cycles, and likely weather condi-
9 tions;

10 (C) the interest and capability of the par-
11 ticipating agencies, entities, or fleets;

12 (D) the availability and appropriateness of
13 potential sites for refueling infrastructure and
14 for maintenance of the vehicle fleet;

15 (E) the existence of traffic congestion in
16 the area expected to be served by the hydrogen-
17 powered vehicles;

18 (F) proximity to non-attainment areas as
19 defined in section 171 of the Clean Air Act (42
20 U.S.C. 7501); and

21 (G) such other criteria as the Secretary de-
22 termines to be appropriate in order to carry out
23 the purposes of the program.

24 (d) INFRASTRUCTURE.—In funding projects under
25 this section, the Secretary shall also support the installa-

1 tion of refueling infrastructure at sites necessary for suc-
2 cess of the project, giving preference to those infrastruc-
3 ture projects that include co-production of both—

- 4 (1) hydrogen for use in transportation; and
- 5 (2) electricity that can be consumed on site.

6 (e) OPERATION AND MAINTENANCE PERIOD.—Vehi-
7 cles purchased for projects under this section shall be op-
8 erated and maintained by the participating agencies or en-
9 tities in regular duty cycles for a period of not less than
10 12 months.

11 (f) TRAINING AND TECHNICAL SUPPORT.—In fund-
12 ing proposals under this section, the Secretary shall also
13 provide funding for training and technical support as may
14 be necessary to assure the success of such projects, includ-
15 ing training and technical support in—

- 16 (1) the installation, operation, and maintenance
17 of fueling infrastructure;
- 18 (2) the operation and maintenance of fuel cell
19 vehicles; and
- 20 (3) data collection necessary to monitor project
21 performance.

22 (g) COST-SHARING.—Except as otherwise provided,
23 the Secretary shall require a commitment from non-Fed-
24 eral sources of at least 50 percent of the costs directly
25 relating to a demonstration project under this section. The

1 Secretary may reduce such non-Federal requirement if the
2 Secretary determines that the reduction is appropriate
3 considering the technological risks involved in the project.

4 (h) AUTHORIZATION OF APPROPRIATIONS.—For the
5 purposes of this section, there are authorized to be appro-
6 priated to the Secretary \$50,000,000 for each of fiscal
7 years 2006 through 2010, to remain available until ex-
8 pended.

9 **SEC. 813. STATIONARY FUEL CELL DEMONSTRATION PRO-**
10 **GRAM.**

11 (a) IN GENERAL.—The Secretary shall establish a
12 program for demonstration and commercial application of
13 hydrogen fuel cells in stationary applications, including—

14 (1) fuel cells for use in residential and commer-
15 cial buildings;

16 (2) portable fuel cells, including auxiliary power
17 units in trucks;

18 (3) small form and micro fuel cells of 20 watts
19 or less;

20 (4) distributed generation systems with fuel
21 cells using renewable energy; and

22 (5) other similar projects as the Secretary may
23 deem necessary to contribute to the rapid dem-
24 onstration and deployment of hydrogen-based tech-
25 nologies in widespread use.

1 (b) COMPETITIVE EVALUATION.—Proposals sub-
2 mitted in response to solicitations issued pursuant to this
3 section shall be evaluated on a competitive basis using
4 peer review. The Secretary is not required to make an
5 award under this section in the absence of a meritorious
6 proposal.

7 (c) PREFERENCE.—The Secretary shall give pref-
8 erence, in making an award under this section, to pro-
9 posals that—

10 (1) are submitted jointly from consortia that in-
11 clude two or more participants from institutions of
12 higher education, industry, State, tribal, or local
13 governments, and Federal laboratories; and

14 (2) reflect proven experience and capability with
15 technologies relevant to the projects proposed.

16 (d) TRAINING AND TECHNICAL SUPPORT.—In fund-
17 ing proposals under this section, the Secretary shall also
18 provide funding for training and technical support as may
19 be necessary to assure the success of such projects, includ-
20 ing training and technical support in the installation, oper-
21 ation, and maintenance of fuel cells and the collection of
22 data to monitor project performance.

23 (e) COST-SHARING.—Except as otherwise provided,
24 the Secretary shall require a commitment from non-Fed-
25 eral sources of at least 50 percent of the costs directly

1 relating to a demonstration project under this section. The
2 Secretary may reduce such non-Federal requirement if the
3 Secretary determines that the reduction is appropriate
4 considering the technological risks involved in the project.

5 (f) AUTHORIZATION OF APPROPRIATIONS.—For the
6 purposes of this section, there are authorized to be appro-
7 priated to the Secretary \$50,000,000 for each of fiscal
8 years 2006 through 2010, to remain available until ex-
9 pended.

10 **SEC. 814. HYDROGEN DEMONSTRATION PROGRAMS IN NA-**
11 **TIONAL PARKS.**

12 (a) STUDY.—Not later than 1 year after the date of
13 enactment of this section, the Secretary of the Interior
14 and the Secretary of Energy shall jointly study and report
15 to Congress on—

16 (1) the energy needs and uses at National
17 Parks; and

18 (2) the potential for fuel cell and other hydro-
19 gen-based technologies to meet such energy needs
20 in—

21 (A) stationary applications, including
22 power generation, combined heat and power for
23 buildings and campsites, and standby and
24 backup power systems; and

1 (B) transportation-related applications, in-
2 cluding support vehicles, passenger vehicles and
3 heavy-duty trucks and buses.

4 (b) PILOT PROJECTS.—Based on the results of the
5 study conducted under subsection (a), the Secretary of the
6 Interior shall fund not fewer than 3 pilot projects in na-
7 tional parks to provide for demonstration of fuel cells or
8 other hydrogen-based technologies in those applications
9 where the greatest potential for such use in National
10 Parks has been identified. Such pilot projects shall be geo-
11 graphically distributed throughout the United States.

12 (c) DEFINITION.—For the purpose of this section,
13 the term “National Parks” means those areas of land and
14 water now or hereafter administered by the Secretary of
15 the Interior through the National Park Service for park,
16 monument, historic, parkway, recreational, or other pur-
17 poses.

18 (d) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Secretary of the
20 Interior \$1,000,000 for fiscal year 2004, and \$15,000,000
21 for fiscal year 2005, to remain available until expended.

22 **SEC. 815. INTERNATIONAL DEMONSTRATION PROGRAM.**

23 (a) IN GENERAL.—The Secretary, in consultation
24 with the Administrator of the U.S. Agency for Inter-
25 national Development, shall conduct demonstrations of

1 fuel cells and associated hydrogen fueling infrastructure
2 in countries other than the United States, particularly in
3 areas where an energy infrastructure is not already well
4 developed.

5 (b) ELIGIBLE TECHNOLOGIES.—The program may
6 demonstrate—

7 (1) fuel cell vehicles in light-duty vehicle fleets;

8 (2) heavy-duty fuel cell on-road and off-road ve-
9 hicles;

10 (3) stationary fuel cells in residential and com-
11 mercial buildings; or

12 (4) portable fuel cells, including auxiliary power
13 units in trucks.

14 (c) PARTICIPANTS.—

15 (1) ELIGIBILITY.—Foreign nations, non-profit
16 organizations, and private companies shall be eligible
17 for these pilot projects.

18 (2) COOPERATION.—Eligible entities may per-
19 form the projects in cooperation with United States
20 non-profit organizations and private companies.

21 (3) COST-SHARING.—The Secretary may re-
22 quire a commitment from participating private com-
23 panies and from participating foreign countries.

24 (d) AUTHORIZATION OF APPROPRIATIONS.—For ac-
25 tivities conducted under this section, there are authorized

1 to be appropriated to the Secretary \$25,000,000 for each
2 of fiscal years 2006 through 2010, to remain available
3 until expended.

4 **SEC. 816. TRIBAL STATIONARY HYBRID POWER DEM-**
5 **ONSTRATION.**

6 (a) IN GENERAL.—Not later than 1 year after the
7 date of enactment of this Act, the Secretary, in coopera-
8 tion with Indian tribes, shall develop and transmit to Con-
9 gress a strategy for a demonstration and commercial ap-
10 plication program to develop hybrid distributed power sys-
11 tems on Indian lands that combine—

12 (1) one renewable electric power generating
13 technology of 2 megawatts or less located near the
14 site of electric energy use; and

15 (2) fuel cell power generation suitable for use in
16 distributed power systems.

17 (b) DEFINITION.—For the purposes of this section,
18 the terms “Indian tribe” and “Indian land” have the
19 meaning given such terms under Title XXVI of the En-
20 ergy Policy Act of 1992 (25 U.S.C. 3501 et seq.), as
21 amended by this Act.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—For ac-
23 tivities under this section, there are authorized to be ap-
24 propriated to the Secretary of Energy \$1,000,000 for fis-

1 cal year 2005, and \$5,000,000 for each of fiscal years
2 2006 through 2008.

3 **SEC. 817. DISTRIBUTED GENERATION PILOT PROGRAM.**

4 (a) ESTABLISHMENT.—The Secretary shall support
5 a demonstration program to develop, deploy, and commer-
6 cialize distributed generation systems to significantly re-
7 duce the cost of producing hydrogen from renewable en-
8 ergy for use in fuel cells. Such program shall provide the
9 necessary infrastructure to test these distributed genera-
10 tion technologies at pilot scales in a real-world environ-
11 ment.

12 (b) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Secretary of En-
14 ergy, to remain available until expended, for the purposes
15 of carrying out this section—

16 (1) \$10,000,000 for fiscal year 2004;

17 (2) \$15,000,000 for fiscal year 2005; and

18 (3) \$20,000,000 for each of fiscal years 2006
19 through 2008.

20 **Subtitle C—Federal Programs**

21 **SEC. 821. PUBLIC EDUCATION AND TRAINING.**

22 (a) EDUCATION.—The Secretary shall conduct a pub-
23 lic education program designed to increase public interest
24 in and acceptance of hydrogen energy and fuel cell tech-
25 nologies.

1 (b) TRAINING.—The Secretary shall conduct a pro-
2 gram to promote university-based training in critical skills
3 for research in, production of, and use of hydrogen energy
4 and fuel cell technologies. Such program may include re-
5 search fellowships at institutions of higher education, cen-
6 ters of excellence in critical technologies, internships in in-
7 dustry, and such other measures as the Secretary deems
8 appropriate.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—For ac-
10 tivities pursuant to this section, there are authorized to
11 be appropriated to the Secretary \$7,000,000 for each of
12 fiscal years 2004 through 2008.

13 **SEC. 822. HYDROGEN TRANSITION STRATEGIC PLANNING.**

14 (a) IN GENERAL.—Not later than September 30,
15 2004, the head of each federal agency with annual outlays
16 of greater than \$20,000,000 shall submit to the Director
17 of the Office of Management and Budget and to the Con-
18 gress a hydrogen transition strategic plan containing a
19 comprehensive assessment of how the transition to a hy-
20 drogen-based economy could assist the mission, operation
21 and regulatory program of the agency.

22 (b) CONTENTS.—At a minimum, each plan shall con-
23 tain—

24 (1) a description of areas within the agency's
25 control where using hydrogen and/or fuel cells could

1 benefit the operation of the agency, assist in the im-
2 plementation of its regulatory functions or enhance
3 the agency's mission; and

4 (2) a description of any agency management
5 practices, procurement policies, regulations, policies,
6 or guidelines that may inhibit the agency's transition
7 to use of fuel cells and hydrogen as an energy
8 source.

9 (c) DURATION AND REVISION.—The strategic plan
10 shall cover a period of not less than the five years fol-
11 lowing the fiscal year in which it is submitted, and shall
12 be updated and revised at least every three years.

13 **SEC. 823. MINIMUM FEDERAL FLEET REQUIREMENT.**

14 (a) Section 303(b) of the Energy Policy Act of 1992
15 (42 U.S.C. 13212(b)) is amended by adding at the end
16 the following:

17 “(4) HYDROGEN VEHICLES.—

18 “(A) Of the number of vehicles acquired
19 under paragraph (1)(D) by a Federal fleet of
20 100 or more vehicles, not less than—

21 “(i) 5 percent in fiscal years 2006 and
22 2007;

23 “(ii) 10 percent in fiscal years 2008
24 and 2009;

1 “(iii) 15 percent in fiscal years 2010
2 and 2011; and

3 “(iv) 20 percent in fiscal years 2012
4 and thereafter,

5 shall be hydrogen-powered vehicles that meet
6 standards for performance, reliability, cost, and
7 maintenance established by the Secretary.

8 “(B) The Secretary may establish a lesser
9 percentage, or waive the requirement under
10 subparagraph (A) for any fiscal year entirely, if
11 hydrogen-powered vehicles meeting the stand-
12 ards set by the Secretary pursuant to subpara-
13 graph (A) are not available at a purchase price
14 that is less than 150 percent of the purchase
15 price of other comparable alternative fueled ve-
16 hicles.

17 “(C) The Secretary may by rule, delay the
18 implementation of the requirements under sub-
19 paragraph (A) in the event that the Secretary
20 determines that hydrogen-powered vehicles are
21 not commercially or economically available, or
22 that fuel for such vehicles is not commercially
23 or economically available.

24 “(D) The Secretary, in consultation with
25 the Administrator of General Services, may for

1 reasons of refueling infrastructure use and cost
2 optimization, elect to allocate the acquisitions
3 necessary to achieve the requirements in sub-
4 paragraph (A) to certain Federal fleets in lieu
5 of requiring each Federal fleet to achieve the
6 requirements in subparagraph (A).”.

7 (b) REFUELING.—Section 304 of the Energy Policy
8 Act of 1992 (42 U.S.C. 13213) is amended—

9 (1) by redesignating subsection (b) as sub-
10 section (c);

11 (2) in the second sentence of subsection (a), by
12 striking “If publicly” and inserting the following:

13 “(b) COMMERCIAL ARRANGEMENTS.—

14 “(1) IN GENERAL.—If publicly”; and

15 (3) in subsection (b) (as designated by para-
16 graph (2)), by adding at the end the following:

17 “(2) MANDATORY ARRANGEMENTS.—

18 “(A) IN GENERAL.—In a case in which
19 publicly available fueling facilities are not con-
20 venient or accessible to the locations of 2 or
21 more Federal fleets for which hydrogen-powered
22 vehicles are required to be purchased under sec-
23 tion 303(b)(4), the Federal agency for which
24 the Federal fleets are maintained (or the Fed-
25 eral agencies for which the Federal fleets are

1 maintained, acting jointly under a memo-
2 randum of agreement providing for cost shar-
3 ing) shall enter into a commercial arrangement
4 as provided in paragraph (1).

5 “(B) SUNSET.—Subparagraph (A) ceases
6 to be effective at the end of fiscal year 2013.”.

7 **SEC. 824. STATIONARY FUEL CELL PURCHASE REQUIRE-**
8 **MENT.**

9 (a) REQUIREMENT.—The President, acting through
10 the Secretary of Energy, shall seek to ensure that, to the
11 extent economically practicable and technically feasible, of
12 the total amount of electric energy the Federal Govern-
13 ment consumes during any fiscal year, the following
14 amounts shall be generated by fuel cells—

15 (1) not less than 1 percent in fiscal years
16 2006 through 2008;

17 (2) not less than 2 percent in fiscal years
18 2009 and 2010; and

19 (3) not less than 3 percent in fiscal year
20 2011 and each fiscal year thereafter.

21 (b) COMPLIANCE.—In complying with the require-
22 ments of subsection (a), Federal agencies are encouraged
23 to—

24 (1) use innovative purchasing practices;

1 (2) use fuel cells at the site of electricity usage
2 and in combined heat and power applications; and

3 (3) use fuel cells in stand alone power func-
4 tions, such as but not limited to battery power and
5 backup power.

6 (c) DEFINITIONS.—For purposes of this section—

7 (1) the term “fuel cells” means an integrated
8 system comprised of a fuel cell stack assembly and
9 balance of plant components that converts a fuel
10 into electricity using an electrochemical means; and

11 (2) the term “electrical energy” includes on and
12 off grid power, including premium power applica-
13 tions, standby power applications and electricity gen-
14 eration.

15 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
16 purposes of this section, there are authorized to be appro-
17 priated to the Secretary of Energy \$30,000,000 for fiscal
18 year 2004, \$70,000,000 for fiscal year 2005, and
19 \$100,000,000 for each of fiscal years 2006 and thereafter.

20 **SEC. 825. DEPARTMENT OF ENERGY STRATEGY.**

21 Not later than 1 year after the date of enactment
22 of this Act, the Secretary shall publish and transmit to
23 Congress a plan identifying critical technologies, enabling
24 strategies and applications, technical targets, and associ-

1 ated timeframes that support the commercialization of hy-
2 drogen-fueled fuel cell vehicles.

3 **TITLE IX—RESEARCH AND**
4 **DEVELOPMENT**

5 **SEC. 901. SHORT TITLE.**

6 This Title may be cited as the “Energy Research, De-
7 velopment, Demonstration, and Commercial Application
8 Act of 2003”.

9 **SEC. 902. GOALS.**

10 (a) IN GENERAL.—In order to achieve the purposes
11 of this title, the Secretary shall conduct a balanced set
12 of programs of energy research, development, demonstra-
13 tion, and commercial application, focused on—

14 (1) increasing the efficiency of all energy inten-
15 sive sectors through conservation and improved tech-
16 nologies,

17 (2) promoting diversity of energy supply,

18 (3) decreasing the nation’s dependence on for-
19 eign energy supplies,

20 (4) improving United States energy security,
21 and

22 (5) decreasing the environmental impact of en-
23 ergy-related activities.

1 (b) GOALS.—The Secretary shall publish measurable
2 cost and performance-based goals with each annual budget
3 submission in at least the following areas:

4 (1) energy efficiency for buildings, energy-con-
5 suming industries, and vehicles;

6 (2) electric energy generation (including distrib-
7 uted generation), transmission, and storage;

8 (3) renewable energy technologies including
9 wind power, photovoltaics, solar thermal systems,
10 geothermal energy, hydrogen-fueled systems, bio-
11 mass-based systems, biofuels, and hydropower;

12 (4) fossil energy including power generation,
13 onshore and offshore oil and gas resource recovery,
14 and transportation; and

15 (5) nuclear energy including programs for exist-
16 ing and advanced reactors, and education of future
17 specialists.

18 (c) PUBLIC COMMENT.—The Secretary shall provide
19 mechanisms for input on the annually published goals
20 from industry, university, and other public sources.

21 (d) EFFECT OF GOALS.—Nothing in subsection (a)
22 or the annually published goals creates any new authority
23 for any Federal agency, or may be used by a Federal agen-
24 cy to support the establishment of regulatory standards
25 or regulatory requirements.

1 **SEC. 903. DEFINITIONS.**

2 For purposes of this title:

3 (1) The term “Department” means the Depart-
4 ment of Energy.

5 (2) The term “departmental mission” means
6 any of the functions vested in the Secretary of En-
7 ergy by the Department of Energy Organization Act
8 (42 U.S.C. 7101 et seq.) or other law.

9 (3) The term “institution of higher education”
10 has the meaning given that term in section 101(a)
11 of the Higher Education Act of 1965 (20 U.S.C.
12 1001(a)).

13 (4) The term “National Laboratory” means any
14 of the following laboratories owned by the Depart-
15 ment:

16 (A) Ames Laboratory.

17 (B) Argonne National Laboratory.

18 (C) Brookhaven National Laboratory.

19 (D) Fermi National Accelerator Labora-
20 tory.

21 (E) Idaho National Engineering and Envi-
22 ronmental Laboratory.

23 (F) Lawrence Berkeley National Labora-
24 tory.

25 (G) Lawrence Livermore National Labora-
26 tory.

1 (H) Los Alamos National Laboratory.

2 (I) National Energy Technology Labora-
3 tory.

4 (J) National Renewable Energy Labora-
5 tory.

6 (K) Oak Ridge National Laboratory.

7 (L) Pacific Northwest National Labora-
8 tory.

9 (M) Princeton Plasma Physics Laboratory.

10 (N) Sandia National Laboratories.

11 (O) Stanford Linear Accelerator Center.

12 (P) Thomas Jefferson National Accelerator
13 Facility.

14 (5) The term “nonmilitary energy laboratory”
15 means the laboratories listed in (4) with the exclu-
16 sion of (4)(G), (4)(H), and (4)(N).

17 (6) The term “Secretary” means the Secretary
18 of Energy.

19 (7) The term “single-purpose research facility”
20 means any of the primarily single-purpose entities
21 owned by the Department or any other organization
22 of the Department designated by the Secretary.

1 **Subtitle A—Energy Efficiency**

2 **SEC. 911. ENERGY EFFICIENCY.**

3 (a) IN GENERAL.—The following sums are author-
4 ized to be appropriated to the Secretary for energy effi-
5 ciency and conservation research, development, dem-
6 onstration, and commercial application activities, includ-
7 ing activities authorized under this subtitle:

8 (1) for fiscal year 2004, \$616,000,000;

9 (2) for fiscal year 2005, \$695,000,000;

10 (3) for fiscal year 2006, \$772,000,000;

11 (4) for fiscal year 2007, \$865,000,000; and

12 (5) for fiscal year 2008, \$920,000,000.

13 (b) ALLOCATIONS.—From amounts authorized under
14 subsection (a), the following sums are authorized:

15 (1) For activities under section 912—

16 (A) for fiscal year 2004, \$20,000,000; and

17 (B) for fiscal year 2005, \$30,000,000.

18 (2) For activities under section 914—

19 (A) for fiscal year 2004, \$4,000,000; and

20 (B) for each of fiscal years 2005 through
21 2008, \$7,000,000.

22 (3) For activities under section 915—

23 (A) for fiscal year 2004, \$20,000,000;

24 (B) for fiscal year 2005, \$25,000,000;

25 (C) for fiscal year 2006, \$30,000,000;

1 (D) for fiscal year 2007, \$35,000,000; and

2 (E) for fiscal year 2008, \$40,000,000.

3 (c) EXTENDED AUTHORIZATION.—There are author-
4 ized to be appropriated to the Secretary for activities
5 under section 912, \$50,000,000 for each of fiscal years
6 2006 through 2013.

7 (d) None of the funds authorized to be appropriated
8 under this section may be used for—

9 (1) the promulgation and implementation of en-
10 ergy efficiency regulations;

11 (2) the Weatherization Assistance Program
12 under part A of title IV of the Energy Conservation
13 and Production Act;

14 (3) the State Energy Program under part D of
15 title III of the Energy Policy and Conservation Act;

16 or

17 (4) the Federal Energy Management Program
18 under part 3 of title V of the National Energy Con-
19 servation Policy Act.

20 **SEC. 912. NEXT GENERATION LIGHTING INITIATIVE.**

21 (a) IN GENERAL.—The Secretary shall carry out a
22 Next Generation Lighting Initiative in accordance with
23 this section to support research, development, demonstra-
24 tion, and commercial application activities related to ad-

1 vanced solid-state lighting technologies based on white
2 light emitting diodes.

3 (b) OBJECTIVES.—The objectives of the initiative
4 shall be to develop advanced solid-state organic and inor-
5 ganic lighting technologies based on white light emitting
6 diodes that, compared to incandescent and fluorescent
7 lighting technologies, are longer lasting; more energy-effi-
8 cient; cost-competitive and have less environmental im-
9 pact.

10 (c) INDUSTRY ALLIANCE.—The Secretary shall, with-
11 in 3 months from the date of enactment of this section,
12 competitively select an Industry Alliance to represent par-
13 ticipants who are private, for-profit firms which, as a
14 group, are broadly representative of United States solid
15 state lighting research, development, infrastructure, and
16 manufacturing expertise as a whole.

17 (d) RESEARCH.—

18 (1) The Secretary shall carry out the research
19 activities of the Next Generation Lighting Initiative
20 through competitively awarded grants to researchers,
21 including Industry Alliance participants, national
22 laboratories and institutions of higher education.

23 (2) The Secretary shall annually solicit from
24 the Industry Alliance—

1 (A) comments to identify solid-state light-
2 ing technology needs;

3 (B) assessment of the progress of the Ini-
4 tiative's research activities; and

5 (C) assistance in annually updating solid-
6 state lighting technology roadmaps.

7 (3) The information and roadmaps under (2)
8 shall be available to the public.

9 (e) DEVELOPMENT, DEMONSTRATION, AND COMMER-
10 CIAL APPLICATION.—The Secretary shall carry out a de-
11 velopment, demonstration, and commercial application
12 program for the Next Generation Lighting Initiative
13 through competitively selected awards. The Secretary may
14 give preference to participants of the Industry Alliance se-
15 lected pursuant to subsection (c).

16 (f) COST SHARING.—The Secretary shall require cost
17 sharing according to 42 U.S.C. 13542.

18 (g) INTELLECTUAL PROPERTY.—The Secretary may
19 require, in accordance with the authorities provided in 35
20 U.S.C. 202(a)(ii), 42 U.S.C. 2182 and 42 U.S.C. 5908,
21 that for any new invention from subsection (d)—

22 (1) that the Industry Alliance members who are
23 active participants in research, development and
24 demonstration activities related to the advanced
25 solid-state lighting technologies that are the subject

1 of this legislation shall be granted first option to ne-
2 negotiate with the invention owner, at least in the field
3 of solid-state lighting, non-exclusive licenses and roy-
4 alties on terms that are reasonable under the cir-
5 cumstances;

6 (2) that the invention owner must offer to nego-
7 tiate licenses with the Industry Alliance participants
8 cited in (1), in good faith, for at least 1 year after
9 U.S. patents are issued on any such new invention;
10 and

11 (3) such other terms as the Secretary deter-
12 mines are required to promote accelerated commer-
13 cialization of inventions made under the Initiative.

14 (h) NATIONAL ACADEMY REVIEW.—The Secretary
15 shall enter into an arrangement with the National Acad-
16 emy of Sciences to conduct periodic reviews of the Next
17 Generation Lighting Initiative.

18 (i) DEFINITIONS.—As used in this section:

19 (1) The term “advanced solid-state lighting”
20 means a semiconducting device package and delivery
21 system that produces white light using externally ap-
22 plied voltage.

23 (2) The term “research” includes basic research
24 on the technologies, materials and manufacturing
25 processes required for white light emitting diodes.

1 (3) The term “Industry Alliance” means an en-
2 tity selected by the Secretary under subsection (c).

3 (4) The term “white light emitting diode”
4 means a semiconducting package, utilizing either or-
5 ganic or inorganic materials, that produces white
6 light using externally applied voltage.

7 **SEC. 913. NATIONAL BUILDING PERFORMANCE INITIATIVE.**

8 (a) INTERAGENCY GROUP.—Not later than 90 days
9 after the date of enactment of this Act, the Director of
10 the Office of Science and Technology Policy shall establish
11 an interagency group to develop, in coordination with the
12 advisory committee established under subsection (e), a
13 National Building Performance Initiative (in this section
14 referred to as the “Initiative”). The interagency group
15 shall be co-chaired by appropriate officials of the Depart-
16 ment and the Department of Commerce, who shall jointly
17 arrange for the provision of necessary administrative sup-
18 port to the group.

19 (b) INTEGRATION OF EFFORTS.—The Initiative shall
20 integrate Federal, State, and voluntary private sector ef-
21 forts to reduce the costs of construction, operation, main-
22 tenance, and renovation of commercial, industrial, institu-
23 tional, and residential buildings.

24 (c) PLAN.—Not later than 1 year after the date of
25 enactment of this Act, the interagency group shall submit

1 to Congress a plan for carrying out the appropriate Fed-
2 eral role in the Initiative. The plan shall include—

3 (1) research, development, demonstration, and
4 commercial application of systems and materials for
5 new construction and retrofit relating to the building
6 envelope and building system components; and

7 (2) the collection, analysis, and dissemination of
8 research results and other pertinent information on
9 enhancing building performance to industry, govern-
10 ment entities, and the public.

11 (d) DEPARTMENT OF ENERGY ROLE.—Within the
12 Federal portion of the Initiative, the Department shall be
13 the lead agency for all aspects of building performance re-
14 lated to use and conservation of energy.

15 (e) ADVISORY COMMITTEE.—The Director of the Of-
16 fice of Science and Technology Policy shall establish an
17 advisory committee to—

18 (1) analyze and provide recommendations on
19 potential private sector roles and participation in the
20 Initiative; and

21 (2) review and provide recommendations on the
22 plan described in subsection (c).

23 (f) CONSTRUCTION.—Nothing in this section provides
24 any Federal agency with new authority to regulate build-
25 ing performance.

1 **SEC. 914. SECONDARY ELECTRIC VEHICLE BATTERY USE**
2 **PROGRAM.**

3 (a) DEFINITIONS.—For purposes of this section:

4 (1) The term “battery” means an energy stor-
5 age device that previously has been used to provide
6 motive power in a vehicle powered in whole or in
7 part by electricity.

8 (2) The term “associated equipment” means
9 equipment located where the batteries will be used
10 that is necessary to enable the use of the energy
11 stored in the batteries.

12 (b) PROGRAM.—The Secretary shall establish and
13 conduct a research, development, demonstration, and com-
14 mercial application program for the secondary use of bat-
15 teries. Such program shall be—

16 (1) designed to demonstrate the use of batteries
17 in secondary applications, including utility and com-
18 mercial power storage and power quality;

19 (2) structured to evaluate the performance, in-
20 cluding useful service life and costs, of such bat-
21 teries in field operations, and the necessary sup-
22 porting infrastructure, including reuse and disposal
23 of batteries; and

24 (3) coordinated with ongoing secondary battery
25 use programs at the National Laboratories and in
26 industry.

1 (c) SOLICITATION.—Not later than 180 days after
2 the date of the enactment of this Act, the Secretary shall
3 solicit proposals to demonstrate the secondary use of bat-
4 teries and associated equipment and supporting infra-
5 structure in geographic locations throughout the United
6 States. The Secretary may make additional solicitations
7 for proposals if the Secretary determines that such solici-
8 tations are necessary to carry out this section.

9 (d) SELECTION OF PROPOSALS.—

10 (1) The Secretary shall, not later than 90 days
11 after the closing date established by the Secretary
12 for receipt of proposals under subsection (c), select
13 up to 5 proposals which may receive financial assist-
14 ance under this section once the Department is in
15 receipt of appropriated funds.

16 (2) In selecting proposals, the Secretary shall
17 consider diversity of battery type, geographic and
18 climatic diversity, and life-cycle environmental ef-
19 fects of the approaches.

20 (3) No one project selected under this section
21 shall receive more than 25 percent of the funds au-
22 thorized for this Program.

23 (4) The Secretary shall consider the extent of
24 involvement of State or local government and other

1 persons in each demonstration project to optimize
2 use of Federal resources.

3 (5) The Secretary may consider such other cri-
4 teria as the Secretary considers appropriate.

5 (e) CONDITIONS.—The Secretary shall require that—

6 (1) relevant information be provided to the De-
7 partment, the users of the batteries, the proposers,
8 and the battery manufacturers; and

9 (2) the proposer provide at least 50 percent of
10 the costs associated with the proposal.

11 **SEC. 915. ENERGY EFFICIENCY SCIENCE INITIATIVE.**

12 (a) ESTABLISHMENT.—The Secretary shall establish
13 an Energy Efficiency Science Initiative to be managed by
14 the Assistant Secretary in the Department with responsi-
15 bility for energy conservation under section 203(a)(9) of
16 the Department of Energy Organization Act (42 U.S.C.
17 7133(a)(9)), in consultation with the Director of the Of-
18 fice of Science, for grants to be competitively awarded and
19 subject to peer review for research relating to energy effi-
20 ciency.

21 (b) REPORT.—The Secretary shall submit to the Con-
22 gress, along with the President's annual budget request
23 under section 1105(a) of title 31, United States Code, a
24 report on the activities of the Energy Efficiency Science
25 Initiative, including a description of the process used to

1 award the funds and an explanation of how the research
2 relates to energy efficiency.

3 **Subtitle B—Distributed Energy and**
4 **Electric Energy Systems**

5 **SEC. 921. DISTRIBUTED ENERGY AND ELECTRIC ENERGY**
6 **SYSTEMS.**

7 (a) IN GENERAL.—

8 (1) The following sums are authorized to be ap-
9 propriated to the Secretary for distributed energy
10 and electric energy systems activities, including ac-
11 tivities authorized under this subtitle:

12 (A) for fiscal year 2004, \$190,000,000;

13 (B) for fiscal year 2005, \$200,000,000;

14 (C) for fiscal year 2006, \$220,000,000;

15 (D) for fiscal year 2007, \$240,000,000;

16 and

17 (E) for fiscal year 2008, \$260,000,000.

18 (2) For the Initiative in subsection 927(e),
19 there are authorized to be appropriated—

20 (A) for fiscal year 2004, \$15,000,000;

21 (B) for fiscal year 2005, \$20,000,000;

22 (C) for fiscal year 2006, \$30,000,000;

23 (D) for fiscal year 2007, \$35,000,000; and

24 (E) for fiscal year 2008, \$40,000,000.

1 (b) MICRO-COGENERATION ENERGY TECH-
2 NOLOGY.—From amounts authorized under subsection
3 (a), \$20,000,000 for each of fiscal years 2004 and 2005
4 shall be available for activities under section 924.

5 **SEC. 922. HYBRID DISTRIBUTED POWER SYSTEMS.**

6 Not later than 1 year after the date of enactment
7 of this Act, the Secretary shall develop and transmit to
8 the Congress a strategy for a comprehensive research, de-
9 velopment, demonstration, and commercial application
10 program to develop hybrid distributed power systems that
11 combine—

12 (1) one or more renewable electric power gen-
13 eration technologies of 10 megawatts or less located
14 near the site of electric energy use; and

15 (2) nonintermittent electric power generation
16 technologies suitable for use in a distributed power
17 system.

18 **SEC. 923. HIGH POWER DENSITY INDUSTRY PROGRAM.**

19 The Secretary shall establish a comprehensive re-
20 search, development, demonstration, and commercial ap-
21 plication program to improve energy efficiency of high
22 power density facilities, including data centers, server
23 farms, and telecommunications facilities. Such program
24 shall consider technologies that provide significant im-
25 provement in thermal controls, metering, load manage-

1 ment, peak load reduction, or the efficient cooling of elec-
2 tronics.

3 **SEC. 924. MICRO-COGENERATION ENERGY TECHNOLOGY.**

4 The Secretary shall make competitive, merit-based
5 grants to consortia for the development of micro-cogenera-
6 tion energy technology. The consortia shall explore the use
7 of small-scale combined heat and power in residential
8 heating appliances, the use of excess power to operate
9 other appliances within the residence and supply of excess
10 generated power to the power grid.

11 **SEC. 925. DISTRIBUTED ENERGY TECHNOLOGY DEM-**
12 **ONSTRATION PROGRAM.**

13 The Secretary, within the sums authorized under sec-
14 tion 921(a)(1), may provide financial assistance to coordi-
15 nating consortia of interdisciplinary participants for dem-
16 onstrations designed to accelerate the utilization of dis-
17 tributed energy technologies, such as fuel cells, microtur-
18 bines, reciprocating engines, thermally activated tech-
19 nologies, and combined heat and power systems, in highly
20 energy intensive commercial applications.

21 **SEC. 926. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
22 **TRIBUTION.**

23 (a) CREATION OF AN OFFICE OF ELECTRIC TRANS-
24 MISSION AND DISTRIBUTION.—Title II of the Department

1 “(6) develop programs for workforce training in
2 power and transmission engineering.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) The table of contents of the Department of
5 Energy Act is amended by inserting after the item
6 relating to section 217 the following new item:

“218. Office of Electric Transmission and Distribution.”.

7 (2) Section 5315 of title 5, United States Code,
8 is amended by inserting “Director, Office of Electric
9 Transmission and Distribution, Department of En-
10 ergy.” after “Inspector General, Department of En-
11 ergy.”.

12 **SEC. 927. ELECTRIC TRANSMISSION AND DISTRIBUTION**
13 **PROGRAMS.**

14 (a) DEMONSTRATION PROGRAM.—The Secretary,
15 acting through the Director of the Office of Electric
16 Transmission and Distribution, shall establish a com-
17 prehensive research, development, and demonstration pro-
18 gram to ensure the reliability, efficiency, and environ-
19 mental integrity of electrical transmission and distribution
20 systems. This program shall include—

21 (1) advanced energy and energy storage tech-
22 nologies, materials, and systems, giving priority to
23 new transmission technologies, including composite
24 conductor materials and other technologies that en-

- 1 hance reliability, operational flexibility, or power-car-
2 rying capability;
- 3 (2) advanced grid reliability and efficiency tech-
4 nology development;
- 5 (3) technologies contributing to significant load
6 reductions;
- 7 (4) advanced metering, load management, and
8 control technologies;
- 9 (5) technologies to enhance existing grid compo-
10 nents;
- 11 (6) the development and use of high-tempera-
12 ture superconductors to—
- 13 (A) enhance the reliability, operational
14 flexibility, or power-carrying capability of elec-
15 tric transmission or distribution systems; or
- 16 (B) increase the efficiency of electric en-
17 ergy generation, transmission, distribution, or
18 storage systems;
- 19 (7) integration of power systems, including sys-
20 tems to deliver high-quality electric power, electric
21 power reliability, and combined heat and power;
- 22 (8) supply of electricity to the power grid by
23 small scale, distributed and residential-based power
24 generators;

1 (9) the development and use of advanced grid
2 design, operation and planning tools;

3 (10) any other infrastructure technologies, as
4 appropriate; and

5 (11) technology transfer and education.

6 (b) PROGRAM PLAN.—Not later than 1 year after the
7 date of the enactment of this legislation, the Secretary,
8 in consultation with other appropriate Federal agencies,
9 shall prepare and transmit to Congress a 5-year program
10 plan to guide activities under this section. In preparing
11 the program plan, the Secretary shall consult with utili-
12 ties, energy services providers, manufacturers, institutions
13 of higher education, other appropriate State and local
14 agencies, environmental organizations, professional and
15 technical societies, and any other persons the Secretary
16 considers appropriate.

17 (c) IMPLEMENTATION.—The Secretary shall consider
18 implementing this program using a consortium of indus-
19 try, university and national laboratory participants.

20 (d) REPORT.—Not later than 2 years after the trans-
21 mittal of the plan under subsection (b), the Secretary shall
22 transmit a report to Congress describing the progress
23 made under this section and identifying any additional re-
24 sources needed to continue the development and commer-

1 cial application of transmission and distribution of infra-
2 structure technologies.

3 (e) POWER DELIVERY RESEARCH INITIATIVE.—The
4 Secretary shall establish a research, development and
5 demonstration initiative specifically focused on power de-
6 livery utilizing components incorporating high tempera-
7 ture superconductivity.

8 (1) Goals of this Initiative shall be to—

9 (A) establish world-class facilities to de-
10 velop high temperature superconductivity power
11 applications in partnership with manufacturers
12 and utilities;

13 (B) provide technical leadership for estab-
14 lishing reliability for high temperature super-
15 conductivity power applications including suit-
16 able modeling and analysis;

17 (C) facilitate commercial transition toward
18 direct current power transmission, storage, and
19 use for high power systems utilizing high tem-
20 perature superconductivity; and

21 (D) facilitate the integration of very low
22 impedance high temperature superconducting
23 wires and cables in existing electric networks to
24 improve system performance, power flow control
25 and reliability.

1 (2) The Initiative shall include—

2 (A) feasibility analysis, planning, research,
3 and design to construct demonstrations of
4 superconducting links in high power, direct cur-
5 rent and controllable alternating current trans-
6 mission systems;

7 (B) public-private partnerships to dem-
8 onstrate deployment of high temperature super-
9 conducting cable into testbeds simulating a re-
10 alistic transmission grid and under varying
11 transmission conditions, including actual grid
12 insertions; and

13 (C) testbeds developed in cooperation with
14 national laboratories, industries, and univer-
15 sities to demonstrate these technologies, pre-
16 pare the technologies for commercial introduc-
17 tion, and address cost or performance road-
18 blocks to successful commercial use.

19 (f) TRANSMISSION AND DISTRIBUTION GRID PLAN-
20 NING AND OPERATIONS INITIATIVE.—The Secretary shall
21 establish a research, development and demonstration ini-
22 tiative specifically focused on tools needed to plan, operate
23 and expand the transmission and distribution grids in the
24 presence of competitive market mechanisms for energy,

1 load demand, customer response and ancillary services.

2 Goals of this Initiative shall be to—

3 (1) develop and utilize a geographically distrib-
4 uted Center, consisting of research universities and
5 national laboratories, with expertise and facilities to
6 develop the underlying theory and software for
7 power system application, and to assure commercial
8 development in partnership with software vendors
9 and utilities;

10 (2) provide technical leadership in engineering
11 and economic analysis for reliability and efficiency of
12 power systems planning and operations in the pres-
13 ence of competitive markets for electricity;

14 (3) model, simulate and experiment with new
15 market mechanisms and operating practices to un-
16 derstand and optimize such new methods before ac-
17 tual use; and

18 (4) provide technical support and technology
19 transfer to electric utilities and other participants in
20 the domestic electric industry and marketplace.

21 **Subtitle C—Renewable Energy**

22 **SEC. 931. RENEWABLE ENERGY.**

23 (a) IN GENERAL.—The following sums are author-
24 ized to be appropriated to the Secretary for renewable en-
25 ergy research, development, demonstration, and commer-

1 cial application activities, including activities authorized
2 under this subtitle:

- 3 (1) for fiscal year 2004, \$480,000,000;
- 4 (2) for fiscal year 2005, \$550,000,000;
- 5 (3) for fiscal year 2006, \$610,000,000;
- 6 (4) for fiscal year 2007, \$659,000,000; and
- 7 (5) for fiscal year 2008, \$710,000,000.

8 (b) BIOENERGY.—From the amounts authorized
9 under subsection (a), the following sums are authorized
10 to be appropriated to carry out section 932:

- 11 (1) for fiscal year 2004, \$135,425,000;
- 12 (2) for fiscal year 2005, \$155,600,000;
- 13 (3) for fiscal year 2006, \$167,650,000;
- 14 (4) for fiscal year 2007, \$180,000,000; and
- 15 (5) for fiscal year 2008, \$192,000,000.

16 (c) BIODIESEL ENGINE TESTING.—From amounts
17 authorized under subsection (a), \$5,000,000 is authorized
18 to be appropriated in each of fiscal years 2004 and 2008
19 to carry out section 933.

20 (d) CONCENTRATING SOLAR POWER.—From
21 amounts authorized under subsection (a), the following
22 sums are authorized to be appropriated to carry out sec-
23 tion 934:

- 24 (1) for fiscal year 2004, \$20,000,000;
- 25 (2) for fiscal year 2005, \$40,000,000; and

1 (3) for each of fiscal years 2006, 2007 and
2 2008, \$50,000,000.

3 (e) LIMITS ON USE OF FUNDS.—

4 (1) None of the funds authorized to be appro-
5 priated under this section may be used for Renew-
6 able Support and Implementation.

7 (2) Of the funds authorized under subsection
8 (b), not less than \$5,000,000 for each fiscal year
9 shall be made available for grants to Historically
10 Black Colleges and Universities, Tribal Colleges, and
11 Hispanic-Serving Institutions.

12 (f) CONSULTATION.—In carrying out this section, the
13 Secretary, in consultation with the Secretary of Agri-
14 culture, shall demonstrate the use of advanced wind power
15 technology, including combined use with coal gasification;
16 biomass; geothermal energy systems; and other renewable
17 energy technologies to assist in delivering electricity to
18 rural and remote locations.

19 **SEC. 932. BIOENERGY PROGRAMS.**

20 (a) IN GENERAL.—The Secretary shall conduct a
21 program of research, development, demonstration, and
22 commercial application for bioenergy, including—

23 (1) biopower energy systems;

24 (2) biofuels;

25 (3) bioproducts;

1 (4) integrated biorefineries that may produce
2 biopower, biofuels and bioproducts;

3 (5) cross-cutting research and development in
4 feedstocks; and

5 (6) economic analysis.

6 (b) BIOFUELS AND BIOPRODUCTS.—The goals of the
7 biofuels and bioproducts programs shall be to develop, in
8 partnership with industry—

9 (1) advanced biochemical and thermo-chemical
10 conversion technologies capable of making fuels from
11 cellulosic feedstocks that are price-competitive with
12 gasoline or diesel in either internal combustion en-
13 gines or fuel cell-powered vehicles; and

14 (2) advanced biotechnology processes capable of
15 making biofuels and bioproducts with emphasis on
16 development of biorefinery technologies using en-
17 zyme-based processing systems.

18 (c) DEFINITION.—For purposes of (b), the term “cel-
19 lulosic feedstock” means any portion of a crop not nor-
20 mally used in food production or any non-food crop grown
21 for the purpose of producing biomass feedstock.

22 **SEC. 933. BIODIESEL ENGINE TESTING PROGRAM.**

23 (a) IN GENERAL.—Not later than 180 days after en-
24 actment of this Act, the Secretary shall initiate a partner-
25 ship with diesel engine, diesel fuel injection system, and

1 diesel vehicle manufacturers and diesel and biodiesel fuel
2 providers to include biodiesel testing in advanced diesel en-
3 gine and fuel system technology.

4 (b) SCOPE.—The study shall provide for testing to
5 determine the impact of biodiesel on current and future
6 emission control technologies, with emphasis on—

7 (1) the impact of biodiesel on emissions war-
8 ranty, in-use liability, and anti-tampering provisions;

9 (2) the impact of long-term use of biodiesel on
10 engine operations;

11 (3) the options for optimizing these technologies
12 for both emissions and performance when switching
13 between biodiesel and diesel fuel; and

14 (4) the impact of using biodiesel in these fuel-
15 ing systems and engines when used as a blend with
16 2006 Environmental Protection Agency-mandated
17 diesel fuel containing a maximum of 15-parts-per-
18 million sulfur content.

19 (c) REPORT.—Not later than 2 years after the date
20 of enactment, the Secretary shall provide an interim re-
21 port to Congress on the findings of this study, including
22 a comprehensive analysis of impacts from biodiesel on en-
23 gine operation for both existing and expected future diesel
24 technologies, and recommendations for ensuring optimal

1 emissions reductions and engine performance with bio-
2 diesel.

3 (d) DEFINITION.—For purposes of this section, the
4 term “biodiesel” means a diesel fuel substitute produced
5 from non-petroleum renewable resources that meets the
6 registration requirements for fuels and fuel additives es-
7 tablished by the Environmental Protection Agency under
8 section 211 of the Clean Air Act (42 U.S.C. 7545) and
9 that meets the American Society for Testing and Materials
10 D6751–02a “Standard Specification for Biodiesel Fuel
11 (B100) Blend Stock for Distillate Fuels”.

12 **SEC. 934. CONCENTRATING SOLAR POWER RESEARCH PRO-**
13 **GRAM.**

14 (a) IN GENERAL.—The Secretary shall conduct a
15 program of research and development to evaluate the po-
16 tential of concentrating solar power for hydrogen produc-
17 tion, including co-generation approaches for both hydro-
18 gen and electricity. Such program shall take advantage of
19 existing facilities to the extent possible and shall include—

20 (1) development of optimized technologies that
21 are common to both electricity and hydrogen produc-
22 tion;

23 (2) evaluation of thermo-chemical cycles for hy-
24 drogen production at the temperatures attainable
25 with concentrating solar power;

1 (3) evaluation of materials issues for the ther-
2 mo-chemical cycles in (2);

3 (4) system architectures and economics studies;
4 and

5 (5) coordination with activities in the Advanced
6 Reactor Hydrogen Co-generation Project on high
7 temperature materials, thermo-chemical cycle and
8 economic issues.

9 (b) ASSESSMENT.—In carrying out the program
10 under this section, the Secretary is directed to assess con-
11 flicting guidance on the economic potential of concen-
12 trating solar power for electricity production received from
13 the National Research Council report entitled “Renewable
14 Power Pathways: A Review of the U.S. Department of En-
15 ergy’s Renewable Energy Programs” in 2000 and subse-
16 quent DOE-funded reviews of that report and provide an
17 assessment of the potential impact of this technology be-
18 fore, or concurrent with, submission of the fiscal year
19 2006 budget.

20 (c) REPORT.—Not later than 5 years after the date
21 of enactment of this section, the Secretary shall provide
22 a report to Congress on the economic and technical poten-
23 tial for electricity or hydrogen production, with or without
24 co-generation, with concentrating solar power, including
25 the economic and technical feasibility of potential con-

1 construction of a pilot demonstration facility suitable for com-
2 mercial production of electricity and/or hydrogen from
3 concentrating solar power.

4 **SEC. 935. MISCELLANEOUS PROJECTS.**

5 The Secretary shall conduct research, development,
6 demonstration, and commercial application programs
7 for—

8 (1) ocean energy, including wave energy;

9 (2) the combined use of renewable energy tech-
10 nologies with one another and with other energy
11 technologies, including the combined use of wind
12 power and coal gasification technologies; and

13 (3) renewable energy technologies for cogenera-
14 tion of hydrogen and electricity.

15 **Subtitle D—Nuclear Energy**

16 **SEC. 941. NUCLEAR ENERGY.**

17 (a) CORE PROGRAMS.—The following sums are au-
18 thorized to be appropriated to the Secretary for nuclear
19 energy research, development, demonstration, and com-
20 mercial application activities, including activities author-
21 ized under this subtitle, other than those described in sub-
22 section (b):

23 (1) for fiscal year 2004, \$273,000,000;

24 (2) for fiscal year 2005, \$305,000,000;

25 (3) for fiscal year 2006, \$330,000,000;

1 (4) for fiscal year 2007, \$355,000,000; and

2 (5) for fiscal year 2008, \$495,000,000.

3 (b) NUCLEAR INFRASTRUCTURE SUPPORT.—The fol-
4 lowing sums are authorized to be appropriated to the Sec-
5 retary for activities under section 942(f):

6 (1) for fiscal year 2004, \$125,000,000;

7 (2) for fiscal year 2005, \$130,000,000;

8 (3) for fiscal year 2006, \$135,000,000;

9 (4) for fiscal year 2007, \$140,000,000; and

10 (5) for fiscal year 2008, \$145,000,000.

11 (c) ALLOCATIONS.—From amounts authorized under
12 subsection (a), the following sums are authorized:

13 (1) For activities under section 943—

14 (A) for fiscal year 2004, \$140,000,000;

15 (B) for fiscal year 2005, \$145,000,000;

16 (C) for fiscal year 2006, \$150,000,000;

17 (D) for fiscal year 2007, \$155,000,000;

18 and

19 (E) for fiscal year 2008, \$275,000,000.

20 (2) For activities under section 944—

21 (A) for fiscal year 2004, \$33,000,000;

22 (B) for fiscal year 2005, \$37,900,000;

23 (C) for fiscal year 2006, \$43,600,000;

24 (D) for fiscal year 2007, \$50,100,000; and

25 (E) for fiscal year 2008, \$56,000,000.

1 (3) For activities under section 946, for each of
2 fiscal years 2004 through 2008, \$6,000,000.

3 (d) None of the funds authorized under this section
4 may be used for decommissioning the Fast Flux Test Fa-
5 cility.

6 **SEC. 942. NUCLEAR ENERGY RESEARCH PROGRAMS.**

7 (a) NUCLEAR ENERGY RESEARCH INITIATIVE.—The
8 Secretary shall carry out a Nuclear Energy Research Ini-
9 tiative for research and development related to nuclear en-
10 ergy.

11 (b) NUCLEAR ENERGY PLANT OPTIMIZATION PRO-
12 GRAM.—The Secretary shall carry out a Nuclear Energy
13 Plant Optimization Program to support research and de-
14 velopment activities addressing reliability, availability, pro-
15 ductivity, component aging, safety and security of existing
16 nuclear power plants.

17 (c) NUCLEAR POWER 2010 PROGRAM.—The Sec-
18 retary shall carry out a Nuclear Power 2010 Program,
19 consistent with recommendations in the October 2001 re-
20 port entitled “A Roadmap to Deploy New Nuclear Power
21 Plants in the United States by 2010” issued by the Nu-
22 clear Energy Research Advisory Committee of the Depart-
23 ment. The Program shall include—

24 (1) utilization of the expertise and capabilities
25 of industry, universities, and National Laboratories

1 in evaluation of advanced nuclear fuel cycles and
2 fuels testing;

3 (2) consideration of a variety of reactor designs
4 suitable for both developed and developing nations;

5 (3) participation of international collaborators
6 in research, development, and design efforts as ap-
7 propriate; and

8 (4) encouragement for university and industry
9 participation.

10 (d) GENERATION IV NUCLEAR ENERGY SYSTEMS

11 INITIATIVE.—The Secretary shall carry out a Generation
12 IV Nuclear Energy Systems Initiative to develop an over-
13 all technology plan and to support research and develop-
14 ment necessary to make an informed technical decision
15 about the most promising candidates for eventual commer-
16 cial application. The Initiative shall examine advanced
17 proliferation-resistant and passively safe reactor designs,
18 including designs that—

19 (1) are economically competitive with other elec-
20 tric power generation plants;

21 (2) have higher efficiency, lower cost, and im-
22 proved safety compared to reactors in operation on
23 the date of enactment of this Act;

1 (3) use fuels that are proliferation resistant and
2 have substantially reduced production of high-level
3 waste per unit of output; and

4 (4) use improved instrumentation.

5 (e) REACTOR PRODUCTION OF HYDROGEN.—The
6 Secretary shall carry out research to examine designs for
7 high-temperature reactors capable of producing large-scale
8 quantities of hydrogen using thermo-chemical processes.

9 (f) NUCLEAR INFRASTRUCTURE SUPPORT.—The
10 Secretary shall develop and implement a strategy for the
11 facilities of the Office of Nuclear Energy, Science, and
12 Technology and shall transmit a report containing the
13 strategy along with the President’s budget request to the
14 Congress for fiscal year 2006. Such strategy shall provide
15 a cost-effective means for—

16 (1) maintaining existing facilities and infra-
17 structure, as needed;

18 (2) closing unneeded facilities;

19 (3) making facility upgrades and modifications;

20 and

21 (4) building new facilities.

22 **SEC. 943. ADVANCED FUEL CYCLE INITIATIVE.**

23 (a) IN GENERAL.—The Secretary, through the Direc-
24 tor of the Office of Nuclear Energy, Science and Tech-
25 nology, shall conduct an advanced fuel recycling tech-

1 nology research and development program to evaluate pro-
2 liferation-resistant fuel recycling and transmutation tech-
3 nologies which minimize environmental or public health
4 and safety impacts as an alternative to aqueous reprocess-
5 ing technologies deployed as of the date of enactment of
6 this Act in support of evaluation of alternative national
7 strategies for spent nuclear fuel and the Generation IV
8 advanced reactor concepts, subject to annual review by the
9 Secretary's Nuclear Energy Research Advisory Committee
10 or other independent entity, as appropriate. Opportunities
11 to enhance progress of this program through international
12 cooperation should be sought.

13 (b) REPORTS.—The Secretary shall report on the ac-
14 tivities of the advanced fuel recycling technology research
15 and development program as part of the Department's an-
16 nual budget submission.

17 **SEC. 944. UNIVERSITY NUCLEAR SCIENCE AND ENGINEER-**
18 **ING SUPPORT.**

19 (a) ESTABLISHMENT.—The Secretary shall support
20 a program to invest in human resources and infrastructure
21 in the nuclear sciences and engineering and related fields
22 (including health physics and nuclear and radiochemistry),
23 consistent with departmental missions related to civilian
24 nuclear research and development.

1 (b) DUTIES.—In carrying out the program under this
2 section, the Secretary shall establish fellowship and faculty
3 assistance programs, as well as provide support for funda-
4 mental research and encourage collaborative research
5 among industry, national laboratories, and universities
6 through the Nuclear Energy Research Initiative. The Sec-
7 retary is encouraged to support activities addressing the
8 entire fuel cycle through involvement of both the Offices
9 of Nuclear Energy, Science and Technology and Civilian
10 Radioactive Waste Management. The Secretary shall sup-
11 port communication and outreach related to nuclear
12 science, engineering and nuclear waste management.

13 (c) MAINTAINING UNIVERSITY RESEARCH AND
14 TRAINING REACTORS AND ASSOCIATED INFRASTRUC-
15 TURE.—Activities under this section may include—

16 (1) converting research reactors currently using
17 high-enrichment fuels to low-enrichment fuels, up-
18 grading operational instrumentation, and sharing of
19 reactors among institutions of higher education;

20 (2) providing technical assistance, in collabora-
21 tion with the United States nuclear industry, in reli-
22 censing and upgrading training reactors as part of
23 a student training program; and

1 (3) providing funding for reactor improvements
2 as part of a focused effort that emphasizes research,
3 training, and education.

4 (d) UNIVERSITY-NATIONAL LABORATORY INTER-
5 ACTIONS.—The Secretary shall develop sabbatical fellow-
6 ship and visiting scientist programs to encourage sharing
7 of personnel between national laboratories and univer-
8 sities.

9 (e) OPERATING AND MAINTENANCE COSTS.—Fund-
10 ing for a research project provided under this section may
11 be used to offset a portion of the operating and mainte-
12 nance costs of a research reactor at an institution of high-
13 er education used in the research project.

14 **SEC. 945. SECURITY OF NUCLEAR FACILITIES.**

15 The Secretary, through the Director of the Office of
16 Nuclear Energy, Science and Technology shall conduct a
17 research and development program on cost-effective tech-
18 nologies for increasing the safety of nuclear facilities from
19 natural phenomena and the security of nuclear facilities
20 from deliberate attacks.

21 **SEC. 946. ALTERNATIVES TO INDUSTRIAL RADIOACTIVE**
22 **SOURCES.**

23 (a) SURVEY.—Not later than August 1, 2004, the
24 Secretary shall provide to the Congress results of a survey

1 of industrial applications of large radioactive sources. The
2 survey shall—

3 (1) consider well-logging sources as one class of
4 industrial sources;

5 (2) include information on current domestic and
6 international Department, Department of Defense,
7 State Department and commercial programs to
8 manage and dispose of radioactive sources; and

9 (3) discuss available disposal options for cur-
10 rently deployed or future sources and, if deficiencies
11 are noted for either deployed or future sources, rec-
12 ommend legislative options that Congress may con-
13 sider to remedy identified deficiencies.

14 (b) PLAN.—In conjunction with the survey in sub-
15 section (a), the Secretary shall establish a research and
16 development program to develop alternatives to such
17 sources that reduce safety, environmental, or proliferation
18 risks to either workers using the sources or the public.
19 Miniaturized particle accelerators for well-logging or other
20 industrial applications and portable accelerators for pro-
21 duction of short-lived radioactive materials at an indus-
22 trial site shall be considered as part of the research and
23 development efforts. Details of the program plan shall be
24 provided to the Congress by August 1, 2004.

1 **Subtitle E—Fossil Energy**

2 **SEC. 951. FOSSIL ENERGY.**

3 (a) IN GENERAL.—The following sums are author-
4 ized to be appropriated to the Secretary for fossil energy
5 research, development, demonstration, and commercial ap-
6 plication activities, including activities authorized under
7 this subtitle:

8 (1) for fiscal year 2004, \$523,000,000;

9 (2) for fiscal year 2005, \$542,000,000;

10 (3) for fiscal year 2006, \$558,000,000;

11 (4) for fiscal year 2007, \$585,000,000; and

12 (5) for fiscal year 2008, \$600,000,000.

13 (b) ALLOCATIONS.—From amounts authorized under
14 subsection (a), the following sums are authorized:

15 (1) For activities under section 952(b)(2),
16 \$28,000,000 for each of the fiscal years 2004
17 through 2008.

18 (2) For activities under section 953—

19 (A) for fiscal year 2004, \$12,000,000;

20 (B) for fiscal year 2005, \$15,000,000; and

21 (C) for each of fiscal years 2006 through
22 2008, \$20,000,000.

23 (3) For activities under section 954, to remain
24 available until expended—

25 (A) for fiscal year 2004, \$200,000,000;

1 (B) for fiscal year 2005, \$210,000,000;

2 and

3 (C) for fiscal year 2006, \$220,500,000.

4 (4) For the Office of Arctic Energy under sec-
5 tion 3197 of the Floyd D. Spence National Defense
6 Authorization Act for Fiscal Year 2001 (Public Law
7 106–398), \$25,000,000 for each of fiscal years 2004
8 through 2008.

9 (c) EXTENDED AUTHORIZATION.—There are author-
10 ized to be appropriated to the Secretary for the Office of
11 Arctic Energy under section 3197 of the Floyd D. Spence
12 National Defense Authorization Act for Fiscal Year 2001
13 (Public Law 106–398), \$25,000,000 for each of fiscal
14 years 2009 through 2012.

15 (d) LIMITS ON USE OF FUNDS.—

16 (1) None of the funds authorized under this
17 section may be used for Fossil Energy Environ-
18 mental Restoration or Import/Export Authorization.

19 (2) Of the funds authorized under subsection
20 (b)(2), not less than 20 percent of the funds appro-
21 priated for each fiscal year shall be dedicated to re-
22 search and development carried out at institutions of
23 higher education.

1 **SEC. 952. OIL AND GAS RESEARCH PROGRAMS.**

2 (a) OIL AND GAS RESEARCH.—The Secretary shall
3 conduct a program of research, development, demonstra-
4 tion, and commercial application on oil and gas, includ-
5 ing—

6 (1) exploration and production;

7 (2) gas hydrates;

8 (3) reservoir life and extension;

9 (4) transportation and distribution infrastruc-
10 ture;

11 (5) ultraclean fuels;

12 (6) heavy oil and shale; and

13 (7) related environmental research.

14 (b) FUEL CELLS.—

15 (1) The Secretary shall conduct a program of
16 research, development, demonstration, and commer-
17 cial application on fuel cells for low-cost, high-effi-
18 ciency, fuel-flexible, modular power systems.

19 (2) The demonstrations shall include fuel cell
20 proton exchange membrane technology for commer-
21 cial, residential, and transportation applications, and
22 distributed generation systems, utilizing improved
23 manufacturing production and processes.

24 (c) NATURAL GAS AND OIL DEPOSITS REPORT.—

25 Not later than 2 years after the date of the enactment
26 of this Act, and every 2 years thereafter, the Secretary

1 of the Interior, in consultation with other appropriate Fed-
2 eral agencies, shall transmit a report to the Congress of
3 the latest estimates of natural gas and oil reserves, re-
4 serves growth, and undiscovered resources in Federal and
5 State waters off the coast of Louisiana and Texas.

6 (d) INTEGRATED CLEAN POWER AND ENERGY RE-
7 SEARCH.—

8 (1) The Secretary shall establish a national cen-
9 ter or consortium of excellence in clean energy and
10 power generation, utilizing the resources of the exist-
11 ing Clean Power and Energy Research Consortium,
12 to address the nation's critical dependence on energy
13 and the need to reduce emissions.

14 (2) The center or consortium will conduct a
15 program of research, development, demonstration
16 and commercial application on integrating the fol-
17 lowing six focus areas—

18 (A) efficiency and reliability of gas tur-
19 bines for power generation;

20 (B) reduction in emissions from power
21 generation;

22 (C) promotion of energy conservation
23 issues;

24 (D) effectively utilizing alternative fuels
25 and renewable energy;

1 (E) development of advanced materials
2 technology for oil and gas exploration and utili-
3 zation in harsh environments; and

4 (F) education on energy and power genera-
5 tion issues.

6 **SEC. 953. RESEARCH AND DEVELOPMENT FOR COAL MIN-**
7 **ING TECHNOLOGIES.**

8 (a) ESTABLISHMENT.—The Secretary shall carry out
9 a program for research and development on coal mining
10 technologies. The Secretary shall cooperate with appro-
11 priate Federal agencies, coal producers, trade associations,
12 equipment manufacturers, institutions of higher education
13 with mining engineering departments, and other relevant
14 entities.

15 (b) PROGRAM.—The research and development activi-
16 ties carried out under this section shall—

17 (1) be guided by the mining research and devel-
18 opment priorities identified by the Mining Industry
19 of the Future Program and in the recommendations
20 form relevant reports of the National Academy of
21 Sciences on mining technologies;

22 (2) include activities exploring minimization of
23 contaminants in mined coal that contribute to envi-
24 ronmental concerns including development and dem-

1 onstration of electromagnetic wave imaging ahead of
2 mining operations;

3 (3) develop and demonstrate coal bed electro-
4 magnetic wave imaging and techniques for hori-
5 zontal drilling in order to increase methane recovery
6 efficiency, prevent spoilage of domestic coal reserves
7 and minimize water disposal associated with meth-
8 ane extraction; and

9 (4) expand mining research capabilities at insti-
10 tutions of higher education.

11 **SEC. 954. COAL AND RELATED TECHNOLOGIES PROGRAM.**

12 (a) IN GENERAL.—In addition to the program au-
13 thorized under Title II of this Act, the Secretary of En-
14 ergy shall conduct a program of technology research, de-
15 velopment and demonstration and commercial application
16 for coal and power systems, including programs to facili-
17 tate production and generation of coal-based power
18 through—

19 (1) innovations for existing plants;

20 (2) integrated gasification combined cycle;

21 (3) advanced combustion systems;

22 (4) turbines for synthesis gas derived from coal;

23 (5) carbon capture and sequestration research
24 and development;

1 (6) coal-derived transportation fuels and chemi-
2 cals;

3 (7) solid fuels and feedstocks; and

4 (8) advanced coal-related research.

5 (b) COST AND PERFORMANCE GOALS.—In carrying
6 out programs authorized by this section, the Secretary
7 shall identify cost and performance goals for coal-based
8 technologies that would permit the continued cost-com-
9 petitive use of coal for electricity generation, as chemical
10 feedstocks, and as transportation fuel in 2007, 2015, and
11 the years after 2020. In establishing such cost and per-
12 formance goals, the Secretary shall—

13 (1) consider activities and studies undertaken
14 to date by industry in cooperation with the Depart-
15 ment of Energy in support of such assessment;

16 (2) consult with interested entities, including
17 coal producers, industries using coal, organizations
18 to promote coal and advanced coal technologies, en-
19 vironmental organizations and organizations rep-
20 resenting workers;

21 (3) not later than 120 days after the date of
22 enactment of this section, publish in the Federal
23 Register proposed draft cost and performance goals
24 for public comments; and

1 (4) not later than 180 days after the date of
2 enactment of this section and every four years there-
3 after, submit to Congress a report describing final
4 cost and performance goals for such technologies
5 that includes a list of technical milestones as well as
6 an explanation of how programs authorized in this
7 section will not duplicate the activities authorized
8 under the Clean Coal Power Initiative authorized
9 under Title II of this Act.

10 **SEC. 955. COMPLEX WELL TECHNOLOGY TESTING FACIL-**
11 **ITY.**

12 The Secretary of Energy, in coordination with indus-
13 try leaders in extended research drilling technology, shall
14 establish a Complex Well Technology Testing Facility at
15 the Rocky Mountain Oilfield Testing Center to increase
16 the range of extended drilling technologies.

17 **Subtitle F—Science**

18 **SEC. 961. SCIENCE.**

19 (a) IN GENERAL.—The following sums are author-
20 ized to be appropriated to the Secretary for research, de-
21 velopment, demonstration, and commercial application ac-
22 tivities of the Office of Science, including activities author-
23 ized under this subtitle, including the amounts authorized
24 under the amendment made by section 967(c)(2)(D), and
25 including basic energy sciences, advanced scientific and

1 computing research, biological and environmental re-
2 search, fusion energy sciences, high energy physics, nu-
3 clear physics, and research analysis and infrastructure
4 support:

5 (1) for fiscal year 2004, \$3,785,000,000;

6 (2) for fiscal year 2005, \$4,153,000,000;

7 (3) for fiscal year 2006, \$4,586,000,000;

8 (4) for fiscal year 2007, \$5,000,000,000; and

9 (5) For fiscal year 2008, \$5,400,000,000.

10 (b) ALLOCATIONS.—From amounts authorized under
11 subsection (a), the following sums are authorized:

12 (1) For activities of the Fusion Energy Sciences
13 Program, including activities under section 962—

14 (A) for fiscal year 2004, \$335,000,000;

15 (B) for fiscal year 2005, \$349,000,000;

16 (C) for fiscal year 2006, \$362,000,000;

17 (D) for fiscal year 2007, \$377,000,000;

18 and

19 (E) for fiscal year 2008, \$393,000,000.

20 (2) For the Spallation Neutron Source—

21 (A) for construction in fiscal year 2004,

22 \$124,600,000;

23 (B) for construction in fiscal year 2005,

24 \$79,800,000;

1 (C) for completion of construction in fiscal
2 year 2006, \$41,100,000; and

3 (D) for other project costs (including re-
4 search and development necessary to complete
5 the project, preoperations costs, and capital
6 equipment related to construction),
7 \$103,279,000 for the period encompassing fis-
8 cal years 2003 through 2006, to remain avail-
9 able until expended through September 30,
10 2006.

11 (3) For Catalysis Research activities under sec-
12 tion 965—

13 (A) for fiscal year 2004, \$33,000,000;

14 (B) for fiscal year 2005, \$35,000,000;

15 (C) for fiscal year 2006, \$36,500,000;

16 (D) for fiscal year 2007, \$38,200,000; and

17 (E) for fiscal year 2008, \$40,100,000.

18 (4) For Nanoscale Science and Engineering Re-
19 search activities under section 966—

20 (A) for fiscal year 2004, \$270,000,000;

21 (B) for fiscal year 2005, \$290,000,000;

22 (C) for fiscal year 2006, \$310,000,000;

23 (D) for fiscal year 2007, \$330,000,000;

24 and

25 (E) for fiscal year 2008, \$375,000,000.

1 (5) For activities under subsection 966(c), from
2 the amounts authorized under subparagraph (4)—

3 (A) for fiscal year 2004, \$135,000,000;

4 (B) for fiscal year 2005, \$150,000,000;

5 (C) for fiscal year 2006, \$120,000,000;

6 (D) for fiscal year 2007, \$100,000,000;

7 and

8 (E) for fiscal year 2008, \$125,000,000.

9 (6) For activities in the Genomes to Life Pro-
10 gram under section 968—

11 (A) for fiscal year 2004, \$100,000,000;

12 (B) for fiscal year 2005, \$170,000,000;

13 (C) for fiscal year 2006, \$325,000,000;

14 (D) for fiscal year 2007, \$415,000,000;

15 and

16 (E) for fiscal year 2008, \$455,000,000.

17 (7) For construction and ancillary equipment of
18 the Genomes to Life User Facilities under section
19 968(d), of funds authorized under (6)—

20 (A) for fiscal year 2004, \$16,000,000;

21 (B) for fiscal year 2005, \$70,000,000;

22 (C) for fiscal year 2006, \$175,000,000;

23 (D) for fiscal year 2007, \$215,000,000;

24 and

25 (E) for fiscal year 2008, \$205,000,000.

1 (8) For activities in the Water Supply Tech-
2 nologies Program under section 970, \$30,000,000
3 for each of fiscal years 2004 through 2008.

4 (c) In addition to the funds authorized under sub-
5 section (b)(1), the following sums are authorized for con-
6 struction costs associated with the ITER project under
7 section 962—

8 (1) for fiscal year 2006, \$55,000,000;

9 (2) for fiscal year 2007, \$95,000,000; and

10 (3) for fiscal year 2008, \$115,000,000.

11 **SEC. 962. UNITED STATES PARTICIPATION IN ITER.**

12 (a) PARTICIPATION.—

13 (1) The Secretary of Energy is authorized to
14 undertake full scientific and technological coopera-
15 tion in the International Thermonuclear Experi-
16 mental Reactor project (referred to in this title as
17 “ITER”).

18 (2) In the event that ITER fails to go forward
19 within a reasonable period of time, the Secretary
20 shall send to Congress a plan, including costs and
21 schedules, for implementing the domestic burning
22 plasma experiment known as the Fusion Ignition
23 Research Experiment. Such a plan shall be devel-
24 oped with full consultation with the Fusion Energy

1 Sciences Advisory Committee and be reviewed by the
2 National Research Council.

3 (3) It is the intent of Congress that such sums
4 shall be largely for work performed in the United
5 States and that such work contributes the maximum
6 amount possible to the U.S. scientific and techno-
7 logical base.

8 (b) PLANNING.—

9 (1) Not later than 180 days of the date of en-
10 actment of this act, the Secretary shall present to
11 Congress a plan, with proposed cost estimates, budg-
12 ets and potential international partners, for the im-
13 plementation of the goals of this section. The plan
14 shall ensure that—

15 (A) existing fusion research facilities are
16 more fully utilized;

17 (B) fusion science, technology, theory, ad-
18 vanced computation, modeling and simulation
19 are strengthened;

20 (C) new magnetic and inertial fusion re-
21 search facilities are selected based on scientific
22 innovation, cost effectiveness, and their poten-
23 tial to advance the goal of practical fusion en-
24 ergy at the earliest date possible, and those that
25 are selected are funded at a cost-effective rate;

1 (D) communication of scientific results and
2 methods between the fusion energy science com-
3 munity and the broader scientific and tech-
4 nology communities is improved;

5 (E) inertial confinement fusion facilities
6 are utilized to the extent practicable for the
7 purpose of inertial fusion energy research and
8 development; and

9 (F) attractive alternative inertial and mag-
10 netic fusion energy approaches are more fully
11 explored.

12 (2) Such plan shall also address the status of
13 and, to the degree possible, costs and schedules
14 for—

15 (A) in coordination with the program in
16 section 969, the design and implementation of
17 international or national facilities for the test-
18 ing of fusion materials; and

19 (B) the design and implementation of
20 international or national facilities for the test-
21 ing and development of key fusion technologies.

22 **SEC. 963. SPALLATION NEUTRON SOURCE.**

23 (a) DEFINITION.—For the purposes of this section,
24 the term “Spallation Neutron Source” means Department

1 Project 9909E 09334, Oak Ridge National Laboratory,
2 Oak Ridge, Tennessee.

3 (b) REPORT.—The Secretary shall report on the
4 Spallation Neutron Source as part of the Department’s
5 annual budget submission, including a description of the
6 achievement of milestones, a comparison of actual costs
7 to estimated costs, and any changes in estimated project
8 costs or schedule.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—The
10 total amount obligated by the Department, including prior
11 year appropriations, for the Spallation Neutron Source
12 may not exceed—

13 (1) \$1,192,700,000 for costs of construction;

14 (2) \$219,000,000 for other project costs; and

15 (3) \$1,411,700,000 for total project cost.

16 **SEC. 964. SUPPORT FOR SCIENCE AND ENERGY FACILITIES**
17 **AND INFRASTRUCTURE.**

18 (a) FACILITY AND INFRASTRUCTURE POLICY.—The
19 Secretary shall develop and implement a strategy for fa-
20 cilities and infrastructure supported primarily from the
21 Office of Science, the Office of Energy Efficiency and Re-
22 newable Energy, the Office of Fossil Energy, or the Office
23 of Nuclear Energy, Science and Technology Programs at
24 all national laboratories and single-purpose research facili-
25 ties. Such strategy shall provide cost-effective means for—

1 (1) maintaining existing facilities and infra-
2 structure, as needed;

3 (2) closing unneeded facilities;

4 (3) making facility modifications; and

5 (4) building new facilities.

6 (b) REPORT.—

7 (1) The Secretary shall prepare and transmit,
8 along with the President's budget request to the
9 Congress for fiscal year 2006, a report containing
10 the strategy developed under subsection (a).

11 (2) For each national laboratory and single-pur-
12 pose research facility, for the facilities primarily
13 used for science and energy research, such report
14 shall contain—

15 (A) the current priority list of proposed fa-
16 cilities and infrastructure projects, including
17 cost and schedule requirements;

18 (B) a current ten-year plan that dem-
19 onstrates the reconfiguration of its facilities and
20 infrastructure to meet its missions and to ad-
21 dress its long-term operational costs and return
22 on investment;

23 (C) the total current budget for all facili-
24 ties and infrastructure funding; and

1 (D) the current status of each facility and
2 infrastructure project compared to the original
3 baseline cost, schedule, and scope.

4 **SEC. 965. CATALYSIS RESEARCH PROGRAM.**

5 (a) ESTABLISHMENT.—The Secretary, through the
6 Office of Science, shall support a program of research and
7 development in catalysis science consistent with the De-
8 partment’s statutory authorities related to research and
9 development. The program shall include efforts to—

10 (1) enable catalyst design using combinations of
11 experimental and mechanistic methodologies coupled
12 with computational modeling of catalytic reactions at
13 the molecular level;

14 (2) develop techniques for high throughput syn-
15 thesis, assay, and characterization at nanometer and
16 sub-nanometer scales in situ under actual operating
17 conditions;

18 (3) synthesize catalysts with specific site archi-
19 tectures;

20 (4) conduct research on the use of precious
21 metals for catalysis; and

22 (5) translate molecular understanding to the
23 design of catalytic compounds.

1 (b) DUTIES OF THE OFFICE OF SCIENCE.—In car-
2 rying out this program, the Director of the Office of
3 Science shall—

4 (1) support both individual investigators and
5 multidisciplinary teams of investigators to pioneer
6 new approaches in catalytic design;

7 (2) develop, plan, construct, acquire, share, or
8 operate special equipment or facilities for the use of
9 investigators in collaboration with national user fa-
10 cilities such as nanoscience and engineering centers;

11 (3) support technology transfer activities to
12 benefit industry and other users of catalysis science
13 and engineering; and

14 (4) coordinate research and development activi-
15 ties with industry and other federal agencies.

16 (c) TRIENNIAL ASSESSMENT.—The National Acad-
17 emy of Sciences shall review the catalysis program every
18 three years to report on gains made in the fundamental
19 science of catalysis and its progress towards developing
20 new fuels for energy production and material fabrication
21 processes.

22 **SEC. 966. NANOSCALE SCIENCE AND ENGINEERING RE-**
23 **SEARCH.**

24 (a) ESTABLISHMENT.—The Secretary, acting
25 through the Office of Science, shall support a program of

1 research, development, demonstration, and commercial ap-
2 plication in nanoscience and nanoengineering. The pro-
3 gram shall include efforts to further the understanding of
4 the chemistry, physics, materials science, and engineering
5 of phenomena on the scale of nanometers and to apply
6 this knowledge to the Department's mission areas.

7 (b) DUTIES OF THE OFFICE OF SCIENCE.—In car-
8 rying out the program under this section, the Office of
9 Science shall—

10 (1) support both individual investigators and
11 teams of investigators, including multidisciplinary
12 teams;

13 (2) carry out activities under subsection (c);

14 (3) support technology transfer activities to
15 benefit industry and other users of nanoscience and
16 nanoengineering; and

17 (4) coordinate research and development activi-
18 ties with other DOE programs, industry and other
19 Federal agencies.

20 (c) NANOSCIENCE AND NANOENGINEERING RE-
21 SEARCH CENTERS AND MAJOR INSTRUMENTATION.—

22 (1) The Secretary shall carry out projects to de-
23 velop, plan, construct, acquire, operate, or support
24 special equipment, instrumentation, or facilities for

1 investigators conducting research and development
2 in nanoscience and nanoengineering.

3 (2) Projects under paragraph (1) may include
4 the measurement of properties at the scale of
5 nanometers, manipulation at such scales, and the in-
6 tegration of technologies based on nanoscience or
7 nanoengineering into bulk materials or other tech-
8 nologies.

9 (3) Facilities under paragraph (1) may include
10 electron microcharacterization facilities, microlithog-
11 raphy facilities, scanning probe facilities, and related
12 instrumentation.

13 (4) The Secretary shall encourage collabora-
14 tions among DOE programs, institutions of higher
15 education, laboratories, and industry at facilities
16 under this subsection.

17 **SEC. 967. ADVANCED SCIENTIFIC COMPUTING FOR ENERGY**
18 **MISSIONS.**

19 (a) IN GENERAL.—The Secretary, acting through the
20 Office of Science, shall support a program to advance the
21 Nation’s computing capability across a diverse set of
22 grand challenge, computationally based, science problems
23 related to departmental missions.

1 (b) DUTIES OF THE OFFICE OF SCIENCE.—In car-
2 rying out the program under this section, the Office of
3 Science shall—

4 (1) advance basic science through computation
5 by developing software to solve grand challenge
6 science problems on new generations of computing
7 platforms in collaboration with other DOE program
8 offices;

9 (2) enhance the foundations for scientific com-
10 puting by developing the basic mathematical and
11 computing systems software needed to take full ad-
12 vantage of the computing capabilities of computers
13 with peak speeds of 100 teraflops or more, some of
14 which may be unique to the scientific problem of in-
15 terest;

16 (3) enhance national collaboratory and net-
17 working capabilities by developing software to inte-
18 grate geographically separated researchers into ef-
19 fective research teams and to facilitate access to and
20 movement and analysis of large (petabyte) data sets;

21 (4) maintain a robust scientific computing
22 hardware infrastructure to ensure that the com-
23 puting resources needed to address departmental
24 missions are available; and

1 (5) explore new computing approaches and
2 technologies that promise to advance scientific com-
3 puting including developments in quantum com-
4 puting.

5 (c) HIGH-PERFORMANCE COMPUTING ACT OF 1991
6 AMENDMENTS.—The High-Performance Computing Act
7 of 1991 is amended—

8 (1) in section 4 (15 U.S.C. 5503)—

9 (A) in paragraph (3) by striking “means”
10 and inserting “and ‘networking and information
11 technology’ mean”, and by striking “(including
12 vector supercomputers and large scale parallel
13 systems)”; and

14 (B) in paragraph (4), by striking “packet
15 switched”; and

16 (2) in section 203 (15 U.S.C. 5523)—

17 (A) in subsection (a), by striking all after
18 “As part of the” and inserting: “Networking
19 and Information Technology Research and De-
20 velopment Program, the Secretary of Energy
21 shall conduct basic and applied research in net-
22 working and information technology, with em-
23 phasis on supporting fundamental research in
24 the physical sciences and engineering, and en-
25 ergy applications; providing supercomputer ac-

1 cess and advanced communication capabilities
2 and facilities to scientific researchers; and de-
3 veloping tools for distributed scientific collabo-
4 ration.”;

5 (B) in subsection (b), by striking “Pro-
6 gram” and inserting “Networking and Informa-
7 tion Technology Research and Development
8 Program”; and

9 (C) by amending subsection (e) to read as
10 follows:

11 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Secretary of En-
13 ergy to carry out the Networking and Information Tech-
14 nology Research and Development Program such sums as
15 may be necessary for fiscal years 2004 through 2008.”.

16 (d) COORDINATION.—The Secretary shall ensure that
17 the program under this section is integrated and con-
18 sistent with—

19 (1) the Accelerated Strategic Computing Initia-
20 tive of the National Nuclear Security Administra-
21 tion; and

22 (2) other national efforts related to advanced
23 scientific computing for science and engineering.

1 **SEC. 968. GENOMES TO LIFE PROGRAM.**

2 (a) ESTABLISHMENT.—The Secretary shall carry out
3 a program of research, development, demonstration, and
4 commercial application, to be known as the Genomes to
5 Life Program, in systems biology and proteomics con-
6 sistent with the Department’s statutory authorities.

7 (b) PLANNING.—

8 (1) The Secretary shall prepare a program plan
9 describing how knowledge and capabilities would be
10 developed by the program and applied to Depart-
11 ment missions relating to energy security, environ-
12 mental cleanup, and national security.

13 (2) The program plan will be developed in con-
14 sultation with other relevant Department technology
15 programs.

16 (3) The program plan shall focus science and
17 technology on long-term goals, including—

18 (A) contributing to U.S. independence
19 from foreign energy sources, including produc-
20 tion of hydrogen;

21 (B) converting carbon dioxide to organic
22 carbon;

23 (C) advancing environmental cleanup;

24 (D) providing the science and technology
25 for new biotechnology industries; and

1 (E) improving national security and com-
2 bating bioterrorism.

3 (4) The program plan shall establish specific
4 short-term goals and update these goals with the
5 Secretary's annual budget submission.

6 (c) PROGRAM EXECUTION.—In carrying out the pro-
7 gram under this Act, the Secretary shall—

8 (1) support individual investigators and multi-
9 disciplinary teams of investigators;

10 (2) subject to subsection (d), develop, plan, con-
11 struct, acquire, or operate special equipment or fa-
12 cilities for the use of investigators conducting re-
13 search, development, demonstration, or commercial
14 application in systems biology and proteomics;

15 (3) support technology transfer activities to
16 benefit industry and other users of systems biology
17 and proteomics; and

18 (4) coordinate activities by the Department
19 with industry and other federal agencies.

20 (d) GENOMES TO LIFE USER FACILITIES AND AN-
21 CILLARY EQUIPMENT.—

22 (1) Within the funds authorized to be appro-
23 priated pursuant to this Act, the amounts specified
24 under section 961(b)(7) shall, subject to appropria-
25 tions, be available for projects to develop, plan, con-

1 struct, acquire, or operate special equipment, instru-
2 mentation, or facilities for investigators conducting
3 research, development, demonstration, and commer-
4 cial application in systems biology and proteomics
5 and associated biological disciplines.

6 (2) Projects under paragraph (1) may in-
7 clude—

8 (A) the identification and characterization
9 of multiprotein complexes;

10 (B) characterization of gene regulatory
11 networks;

12 (C) characterization of the functional rep-
13 ertoire of complex microbial communities in
14 their natural environments at the molecular
15 level; and

16 (D) development of computational methods
17 and capabilities to advance understanding of
18 complex biological systems and predict their be-
19 havior.

20 (3) Facilities under paragraph (1) may include
21 facilities, equipment, or instrumentation for—

22 (A) the production and characterization of
23 proteins;

24 (B) whole proteome analysis;

1 (C) characterization and imaging of molec-
2 ular machines; and

3 (D) analysis and modeling of cellular sys-
4 tems.

5 (4) The Secretary shall encourage collabora-
6 tions among universities, laboratories and industry
7 at facilities under this subsection. All facilities under
8 this subsection shall have a specific mission of tech-
9 nology transfer to other institutions.

10 **SEC. 969. FISSION AND FUSION ENERGY MATERIALS RE-**
11 **SEARCH PROGRAM.**

12 In the President's fiscal year 2006 budget request,
13 the Secretary shall establish a research and development
14 program on material science issues presented by advanced
15 fission reactors and the Department's fusion energy pro-
16 gram. The program shall develop a catalog of material
17 properties required for these applications, develop theo-
18 retical models for materials possessing the required prop-
19 erties, benchmark models against existing data, and de-
20 velop a roadmap to guide further research and develop-
21 ment in this area.

22 **SEC. 970. ENERGY-WATER SUPPLY TECHNOLOGIES PRO-**
23 **GRAM.**

24 (a) ESTABLISHMENT.—There is established within
25 the Office of Science, Office of Biological and Environ-

1 mental Research, the “Energy-Water Supply Technologies
2 Program,” to study energy-related issues associated with
3 water resources and municipal waterworks and to study
4 water supply issues related to energy production.

5 (b) DEFINITIONS.—

6 (1) The term “Foundation” means the Amer-
7 ican Water Works Association Research Foundation.

8 (2) The term “Indian tribe” has the meaning
9 given the term in section 4 of the Indian Self-Deter-
10 mination and Education Assistance Act (25 U.S.C.
11 450b).

12 (3) The term “Program” means the Water
13 Supply Technologies Program established by section
14 970(a).

15 (c) PROGRAM AREAS.—The program shall conduct
16 research and development, including—

17 (1) arsenic removal under subsection (d);

18 (2) desalination research program under sub-
19 section (e);

20 (3) the water and energy sustainability program
21 under subsection (f); and

22 (4) other energy-intensive water supply and
23 treatment technologies and other technologies se-
24 lected by the Secretary.

25 (d) ARSENIC REMOVAL PROGRAM.—

1 (1) As soon as practicable after the date of en-
2 actment of this Act, the Secretary shall enter into a
3 contract with the Foundation to utilize the facilities,
4 institutions and relationships established in the
5 “Consolidated Appropriations Resolution, 2003” as
6 described in Senate Report 107–220 that will carry
7 out a research program to develop and demonstrate
8 innovative arsenic removal technologies.

9 (2) In carrying out the arsenic removal pro-
10 gram, the Foundation shall, to the maximum extent
11 practicable, conduct research on means of—

12 (A) reducing energy costs incurred in
13 using arsenic removal technologies;

14 (B) minimizing materials, operating, and
15 maintenance costs incurred in using arsenic re-
16 moval technologies; and

17 (C) minimizing any quantities of waste (es-
18 pecially hazardous waste) that result from use
19 of arsenic removal technologies.

20 (3) The Foundation shall carry out peer-re-
21 viewed research and demonstration projects to de-
22 velop and demonstrate water purification tech-
23 nologies.

24 (4) In carrying out the arsenic removal pro-
25 gram—

1 (A) demonstration projects will be imple-
2 mented with municipal water system partners
3 to demonstrate the applicability of innovative
4 arsenic removal technologies in areas with dif-
5 ferent water chemistries representative of areas
6 across the United States with arsenic levels
7 near or exceeding EPA guidelines; and

8 (B) not less than 40 percent of the funds
9 of the Department used for demonstration
10 projects under the arsenic removal program
11 shall be expended on projects focused on needs
12 of and in partnership with rural communities or
13 Indian tribes.

14 (5) The Foundation shall develop evaluations of
15 cost effectiveness of arsenic removal technologies
16 used in the program and an education, training, and
17 technology transfer component for the program.

18 (6) The Secretary shall consult with the Admin-
19 istrator of the Environmental Protection Agency to
20 ensure that activities under the arsenic removal pro-
21 gram are coordinated with appropriate programs of
22 the Environmental Protection Agency and other fed-
23 eral agencies, state programs and academia.

24 (7) Not later than 1 year after the date of com-
25 mencement of the arsenic removal program, and an-

1 nually thereafter, the Secretary shall submit to Con-
2 gress a report on the results of the arsenic removal
3 program.

4 (e) DESALINATION PROGRAM.—

5 (1) The Secretary, in cooperation with the
6 Commissioner of Reclamation, shall carry out a de-
7 salination research program in accordance with the
8 desalination technology progress plan developed in
9 Title II of the Energy and Water Development Ap-
10 propriations Act, 2002 (115 Stat. 498), and de-
11 scribed in Senate Report 107–39 under the heading
12 “WATER AND RELATED RESOURCES” in the
13 “BUREAU OF RECLAMATION” section.

14 (2) The desalination program shall—

15 (A) draw on the national laboratory part-
16 nership established with the Bureau of Rec-
17 lamation to develop the January 2003 national
18 Desalination and Water Purification Tech-
19 nology Roadmap for next-generation desalina-
20 tion technology;

21 (B) focus on research relating to, and de-
22 velopment and demonstration of, technologies
23 that are appropriate for use in desalinating
24 brackish groundwater, wastewater and other sa-

1 line water supplies; disposal of residual brine or
2 salt; and

3 (C) consider the use of renewable energy
4 sources.

5 (3) Under the desalination program, funds
6 made available may be used for construction
7 projects, including completion of the National De-
8 salination Research Center for brackish groundwater
9 and ongoing facility operational costs.

10 (4) The Secretary and the Commissioner of
11 Reclamation shall jointly establish a steering com-
12 mittee for the desalination program. The steering
13 committee shall be jointly chaired by 1 representa-
14 tive from this Program and 1 representative from
15 the Bureau of Reclamation.

16 (f) WATER AND ENERGY SUSTAINABILITY PRO-
17 GRAM.—

18 (1) The Secretary shall carry out a research
19 program to develop understanding and technologies
20 to assist in ensuring that sufficient quantities of
21 water are available to meet present and future re-
22 quirements.

23 (2) Under this program and in collaboration
24 with other programs within the Department includ-
25 ing those within the Offices of Fossil Energy and

1 Energy Efficiency and Renewable Energy, the Sec-
2 retary of the Interior, Army Corps of Engineers, En-
3 vironmental Protection Agency, Department of Com-
4 merce, Department of Defense, state agencies, non-
5 governmental agencies and academia, the Secretary
6 shall assess the current state of knowledge and pro-
7 gram activities concerning—

8 (A) future water resources needed to sup-
9 port energy production within the United States
10 including but not limited to the water needs for
11 hydropower and thermo-electric power genera-
12 tion;

13 (B) future energy resources needed to sup-
14 port development of water purification and
15 treatment including desalination and long-dis-
16 tance water conveyance;

17 (C) reuse and treatment of water produced
18 as a by-product of oil and gas extraction;

19 (D) use of impaired and non-traditional
20 water supplies for energy production and other
21 uses; and

22 (E) technologies to reduce water use in en-
23 ergy production.

24 (3) In addition to the assessments in (2), the
25 Secretary shall—

1 (A) develop a research plan defining the
2 scientific and technology development needs and
3 activities required to support long-term water
4 needs and planning for energy sustainability,
5 use of impaired water for energy production
6 and other uses, and reduction of water use in
7 energy production;

8 (B) carry out the research plan required
9 under (A) including development of numerical
10 models, decision analysis tools, economic anal-
11 ysis tools, databases, planning methodologies
12 and strategies;

13 (C) implement at least three planning dem-
14 onstration projects using the models, tools and
15 planning approaches developed under subpara-
16 graph (B) and assess the viability of these tools
17 at the scale of river basins with at least one
18 demonstration involving an international bor-
19 der; and

20 (D) transfer these tools to other federal
21 agencies, state agencies, non-profit organiza-
22 tions, industry and academia for use in their
23 energy and water sustainability efforts.

24 (4) Not later than 1 year after the date of en-
25 actment of this Act, the Secretary shall submit to

1 Congress a report on the water and energy sustain-
2 ability program that describes the research elements
3 described under paragraph (2), and makes rec-
4 ommendations for a management structure that op-
5 timizes use of Federal resources and programs.

6 (g) COST SHARING.—

7 (1) Research projects under this section shall
8 not require cost-sharing.

9 (2) Each demonstration project carried out
10 under the Program shall be carried out on a cost-
11 shared basis, as determined by the Secretary.

12 (3) With respect to a demonstration project, the
13 Secretary may accept in-kind contributions, and
14 waive the cost-sharing requirement in appropriate
15 circumstances.

16 **Subtitle G—Energy and** 17 **Environment**

18 **SEC. 971. UNITED STATES-MEXICO ENERGY TECHNOLOGY**

19 **COOPERATION.**

20 (a) PROGRAM.—The Secretary shall establish a re-
21 search, development, demonstration, and commercial ap-
22 plication program to be carried out in collaboration with
23 entities in Mexico and the United States to promote en-
24 ergy efficient, environmentally sound economic develop-
25 ment along the United States-Mexico border which mini-

1 mizes public health risks from industrial activities in the
2 border region.

3 (b) PROGRAM MANAGEMENT.—The program under
4 subsection (a) shall be managed by the Department of En-
5 ergy Carlsbad Environmental Management Field Office.

6 (c) TECHNOLOGY TRANSFER.—In carrying out
7 projects and activities under this section, the Secretary
8 shall assess the applicability of technology developed under
9 the Environmental Management Science Program of the
10 Department.

11 (d) INTELLECTUAL PROPERTY.—In carrying out this
12 section, the Secretary shall comply with the requirements
13 of any agreement entered into between the United States
14 and Mexico regarding intellectual property protection.

15 (e) AUTHORIZATION OF APPROPRIATIONS.—The fol-
16 lowing sums are authorized to be appropriated to the Sec-
17 retary to carry out activities under this section:

18 (1) For each of fiscal years 2004 and 2005,
19 \$5,000,000.

20 (2) For each of fiscal years 2006, 2007, and
21 2008, \$6,000,000.

22 **SEC. 972. COAL TECHNOLOGY LOAN.**

23 There are authorized to be appropriated to the Sec-
24 retary \$125,000,000 to provide a loan to the owner of the
25 experimental plant constructed under United States De-

1 partment of Energy cooperative agreement number DE–
2 FC–22–91PC90544 on such terms and conditions as the
3 Secretary determines, including interest rates and upfront
4 payments.

5 **Subtitle H—Management**

6 **SEC. 981. AVAILABILITY OF FUNDS.**

7 Funds authorized to be appropriated to the Depart-
8 ment under this title shall remain available until expended.

9 **SEC. 982. COST SHARING.**

10 (a) RESEARCH AND DEVELOPMENT.—Except as oth-
11 erwise provided in this title, for research and development
12 programs carried out under this title, the Secretary shall
13 require a commitment from non-Federal sources of at
14 least 20 percent of the cost of the project. Cost sharing
15 is not required for research and development of a basic
16 or fundamental nature.

17 (b) DEMONSTRATION AND COMMERCIAL APPLICA-
18 TION.—Except as otherwise provided in this subtitle, the
19 Secretary shall require at least 50 percent of the costs di-
20 rectly and specifically related to any demonstration or
21 commercial application project under this subtitle to be
22 provided from non-Federal sources. The Secretary may re-
23 duce the non-Federal requirement under this subsection
24 if the Secretary determines that the reduction is necessary
25 and appropriate considering the technological risks in-

1 volved in the project and is necessary to meet the objec-
2 tives of this title.

3 (c) CALCULATION OF AMOUNT.—In calculating the
4 amount of the non-Federal commitment under subsection
5 (a) or (b), the Secretary may include personnel, services,
6 equipment, and other resources.

7 **SEC. 983. MERIT REVIEW OF PROPOSALS.**

8 Awards of funds authorized under this title shall be
9 made only after an impartial review of the scientific and
10 technical merit of the proposals for such awards has been
11 carried out by or for the Department.

12 **SEC. 984. EXTERNAL TECHNICAL REVIEW OF DEPART-**
13 **MENTAL PROGRAMS.**

14 (a) NATIONAL ENERGY RESEARCH AND DEVELOP-
15 MENT ADVISORY BOARDS.—

16 (1) The Secretary shall establish one or more
17 advisory boards to review Department research, de-
18 velopment, demonstration, and commercial applica-
19 tion programs in energy efficiency, renewable en-
20 ergy, nuclear energy, and fossil energy.

21 (2) The Secretary may designate an existing
22 advisory board within the Department to fulfill the
23 responsibilities of an advisory board under this sub-
24 section, and may enter into appropriate arrange-

1 ments with the National Academy of Sciences to es-
2 tablish such an advisory board.

3 (b) UTILIZATION OF EXISTING COMMITTEES.—The
4 Secretary shall continue to use the scientific program advi-
5 sory committees chartered under the Federal Advisory
6 Committee Act by the Office of Science to oversee research
7 and development programs under that Office.

8 (c) MEMBERSHIP.—Each advisory board under this
9 section shall consist of persons with appropriate expertise
10 representing a diverse range of interests.

11 (d) MEETINGS AND PURPOSES.—Each advisory
12 board under this section shall meet at least semi-annually
13 to review and advise on the progress made by the respec-
14 tive research, development, demonstration, and commer-
15 cial application program or programs. The advisory board
16 shall also review the measurable cost and performance-
17 based goals for such programs as established under sec-
18 tion 902, and the progress on meeting such goals.

19 (e) PERIODIC REVIEWS AND ASSESSMENTS.—The
20 Secretary shall enter into appropriate arrangements with
21 the National Academy of Sciences to conduct periodic re-
22 views and assessments of the programs authorized by this
23 title, the measurable cost and performance-based goals for
24 such programs as established under section 902, if any,
25 and the progress on meeting such goals. Such reviews and

1 assessments shall be conducted every 5 years, or more
2 often as the Secretary considers necessary, and the Sec-
3 retary shall transmit to the Congress reports containing
4 the results of all such reviews and assessments.

5 **SEC. 985. IMPROVED COORDINATION OF TECHNOLOGY**
6 **TRANSFER ACTIVITIES.**

7 (a) **TECHNOLOGY TRANSFER COORDINATOR.**—The
8 Secretary shall designate a Technology Transfer Coordi-
9 nator to perform oversight of and policy development for
10 technology transfer activities at the Department. The
11 Technology Transfer Coordinator shall coordinate the ac-
12 tivities of the Technology Transfer Working Group, shall
13 oversee the expenditure of funds allocated to the Tech-
14 nology Transfer Working Group, and shall coordinate with
15 each technology partnership ombudsman appointed under
16 section 11 of the Technology Transfer Commercialization
17 Act of 2000 (42 U.S.C. 7261c).

18 (b) **TECHNOLOGY TRANSFER WORKING GROUP.**—
19 The Secretary shall establish a Technology Transfer
20 Working Group, which shall consist of representatives of
21 the National Laboratories and single-purpose research fa-
22 cilities, to—

23 (1) coordinate technology transfer activities oc-
24 ccurring at National Laboratories and single-purpose
25 research facilities;

1 (2) exchange information about technology
2 transfer practices, including alternative approaches
3 to resolution of disputes involving intellectual prop-
4 erty rights and other technology transfer matters;
5 and

6 (3) develop and disseminate to the public and
7 prospective technology partners information about
8 opportunities and procedures for technology transfer
9 with the Department, including those related to al-
10 ternative approaches to resolution of disputes involv-
11 ing intellectual property rights and other technology
12 transfer matters.

13 (c) **TECHNOLOGY TRANSFER RESPONSIBILITY.**—
14 Nothing in this section shall affect the technology transfer
15 responsibilities of Federal employees under the Stevenson-
16 Wydler Technology Innovation Act of 1980.

17 **SEC. 986. TECHNOLOGY INFRASTRUCTURE PROGRAM.**

18 (a) **ESTABLISHMENT.**—The Secretary shall establish
19 a Technology Infrastructure Program in accordance with
20 this section.

21 (b) **PURPOSE.**—The purpose of the Technology Infra-
22 structure Program shall be to improve the ability of Na-
23 tional Laboratories and single-purpose research facilities
24 to support departmental missions by—

1 (1) stimulating the development of technology
2 clusters that can support departmental missions at
3 the National Laboratories or single-purpose research
4 facilities;

5 (2) improving the ability of National Labora-
6 tories and single-purpose research facilities to lever-
7 age and benefit from commercial research, tech-
8 nology, products, processes, and services; and

9 (3) encouraging the exchange of scientific and
10 technological expertise between National Labora-
11 tories or single-purpose research facilities and enti-
12 ties that can support departmental missions at the
13 National Laboratories or single-purpose research fa-
14 cilities, such as institutions of higher education;
15 technology-related business concerns; nonprofit insti-
16 tutions; and agencies of State, tribal, or local gov-
17 ernments.

18 (c) PROJECTS.—The Secretary shall authorize the
19 Director of each National Laboratory or single-purpose re-
20 search facility to implement the Technology Infrastructure
21 Program at such National Laboratory or facility through
22 projects that meet the requirements of subsections (d) and
23 (e).

24 (d) PROGRAM REQUIREMENTS.—Each project funded
25 under this section shall meet the following requirements:

1 (1) Each project shall include at least one of
2 each of the following entities: a business; an institu-
3 tion of higher education; a nonprofit institution; and
4 an agency of a State, local, or tribal government.

5 (2) Not less than 50 percent of the costs of
6 each project funded under this section shall be pro-
7 vided from non-Federal sources. The calculation of
8 costs paid by the non-Federal sources to a project
9 shall include cash, personnel, services, equipment,
10 and other resources expended on the project after
11 start of the project. Independent research and devel-
12 opment expenses of Government contractors that
13 qualify for reimbursement under section 3109205
14 0918(e) of the Federal Acquisition Regulations
15 issued pursuant to section 25(c)(1) of the Office of
16 Federal Procurement Policy Act (41 U.S.C.
17 421(c)(1)) may be credited towards costs paid by
18 non-Federal sources to a project, if the expenses
19 meet the other requirements of this section.

20 (3) All projects under this section shall be com-
21 petitively selected using procedures determined by
22 the Secretary.

23 (4) Any participant that receives funds under
24 this section may use generally accepted accounting

1 principles for maintaining accounts, books, and
2 records relating to the project.

3 (5) No Federal funds shall be made available
4 under this section for construction or any project for
5 more than 5 years.

6 (e) SELECTION CRITERIA.—

7 (1) The Secretary shall allocate funds under
8 this section only if the Director of the National Lab-
9 oratory or single-purpose research facility managing
10 the project determines that the project is likely to
11 improve the ability of the National Laboratory or
12 single-purpose research facility to achieve technical
13 success in meeting departmental missions.

14 (2) The Secretary shall consider the following
15 criteria in selecting a project to receive Federal
16 funds—

17 (A) the potential of the project to promote
18 the development of a commercially sustainable
19 technology cluster following the period of De-
20 partment investment, which will derive most of
21 the demand for its products or services from
22 the private sector, and which will support de-
23 partmental missions at the participating Na-
24 tional Laboratory or single-purpose research fa-
25 cility;

1 (B) the potential of the project to promote
2 the use of commercial research, technology,
3 products, processes, and services by the partici-
4 pating National Laboratory or single-purpose
5 research facility to achieve its mission or the
6 commercial development of technological inno-
7 vations made at the participating National Lab-
8 oratory or single-purpose research facility;

9 (C) the extent to which the project involves
10 a wide variety and number of institutions of
11 higher education, nonprofit institutions, and
12 technology-related business concerns that can
13 support the missions of the participating Na-
14 tional Laboratory or single-purpose research fa-
15 cility and that will make substantive contribu-
16 tions to achieving the goals of the project;

17 (D) the extent to which the project focuses
18 on promoting the development of technology-re-
19 lated business concerns that are small busi-
20 nesses or involves such small businesses sub-
21 stantively in the project; and

22 (E) such other criteria as the Secretary de-
23 termines to be appropriate.

24 (f) ALLOCATION.—In allocating funds for projects
25 approved under this section, the Secretary shall provide—

1 (1) the Federal share of the project costs; and

2 (2) additional funds to the National Laboratory
3 or single-purpose research facility managing the
4 project to permit the National Laboratory or single-
5 purpose research facility to carry out activities relat-
6 ing to the project, and to coordinate such activities
7 with the project.

8 (g) REPORT TO CONGRESS.—Not later than July 1,
9 2006, the Secretary shall report to Congress on whether
10 the Technology Infrastructure Program should be contin-
11 ued and, if so, how the program should be managed.

12 (h) DEFINITIONS.—In this section:

13 (1) The term “technology cluster” means a con-
14 centration of technology-related business concerns,
15 institutions of higher education, or nonprofit institu-
16 tions, that reinforce each other’s performance in the
17 areas of technology development through formal or
18 informal relationships.

19 (2) The term “technology-related business con-
20 cern” means a for-profit corporation, company, asso-
21 ciation, firm, partnership, or small business concern
22 that conducts scientific or engineering research; de-
23 velops new technologies; manufactures products
24 based on new technologies; or performs technological
25 services.

1 (i) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary for ac-
3 tivities under this section \$10,000,000 for each of fiscal
4 years 2004, 2005, and 2006.

5 **SEC. 987. SMALL BUSINESS ADVOCACY AND ASSISTANCE.**

6 (a) SMALL BUSINESS ADVOCATE.—The Secretary
7 shall require the Director of each National Laboratory,
8 and may require the Director of a single-purpose research
9 facility, to designate a small business advocate to—

10 (1) increase the participation of small business
11 concerns, including socially and economically dis-
12 advantaged small business concerns, in procurement,
13 collaborative research, technology licensing, and
14 technology transfer activities conducted by the Na-
15 tional Laboratory or single-purpose research facility;

16 (2) report to the Director of the National Lab-
17 oratory or single-purpose research facility on the ac-
18 tual participation of small business concerns in pro-
19 curement and collaborative research along with rec-
20 ommendations, if appropriate, on how to improve
21 participation;

22 (3) make available to small businesses training,
23 mentoring, and information on how to participate in
24 procurement and collaborative research activities;

1 (4) increase the awareness inside the National
2 Laboratory or single-purpose research facility of the
3 capabilities and opportunities presented by small
4 business concerns; and

5 (5) establish guidelines for the program under
6 subsection (b) and report on the effectiveness of
7 such program to the Director of the National Lab-
8 oratory or single-purpose research facility.

9 (b) ESTABLISHMENT OF SMALL BUSINESS ASSIST-
10 ANCE PROGRAM.—The Secretary shall require the Direc-
11 tor of each National Laboratory, and may require the Di-
12 rector of a single-purpose research facility, to establish a
13 program to provide small business concerns—

14 (1) assistance directed at making them more ef-
15 fective and efficient subcontractors or suppliers to
16 the National Laboratory or single-purpose research
17 facility; or

18 (2) general technical assistance, the cost of
19 which shall not exceed \$10,000 per instance of as-
20 sistance, to improve the small business concern's
21 products or services.

22 (c) USE OF FUNDS.—None of the funds expended
23 under subsection (b) may be used for direct grants to the
24 small business concerns.

25 (d) DEFINITIONS.—In this section:

1 **SEC. 989. NATIONAL ACADEMY OF SCIENCES REPORT.**

2 Not later than 90 days after the date of enactment
3 of this Act, the Secretary shall enter into an arrangement
4 with the National Academy of Sciences for the Academy
5 to—

6 (1) conduct a study on—

7 (A) the obstacles to accelerating the re-
8 search, development, demonstration, and com-
9 mercial application cycle for energy technology;
10 and

11 (B) the adequacy of Department policies
12 and procedures for, and oversight of, technology
13 transfer-related disputes between contractors of
14 the Department and the private sector; and

15 (2) report to the Congress on recommendations
16 developed as a result of the study.

17 **SEC. 990. OUTREACH.**

18 The Secretary shall ensure that each program au-
19 thorized by this title includes an outreach component to
20 provide information, as appropriate, to manufacturers,
21 consumers, engineers, architects, builders, energy service
22 companies, institutions of higher education, facility plan-
23 ners and managers, State and local governments, and
24 other entities.

1 **SEC. 991. COMPETITIVE AWARD OF MANAGEMENT CON-**
2 **TRACTS.**

3 None of the funds authorized to be appropriated to
4 the Secretary by this title may be used to award a manage-
5 ment and operating contract for a nonmilitary energy lab-
6 oratory of the Department unless such contract is com-
7 petitively awarded or the Secretary grants, on a case-by-
8 case basis, a waiver to allow for such a deviation. The Sec-
9 retary may not delegate the authority to grant such a
10 waiver and shall submit to the Congress a report notifying
11 the Congress of the waiver and setting forth the reasons
12 for the waiver at least 60 days prior to the date of the
13 award of such a contract.

14 **SEC. 992. REPROGRAMMING.**

15 (a) DISTRIBUTION REPORT.—Not later than 60 days
16 after the date of the enactment of an Act appropriating
17 amounts authorized under this title, the Secretary shall
18 transmit to the appropriate authorizing committees of the
19 Congress a report explaining how such amounts will be
20 distributed among the authorizations contained in this
21 title.

22 (b) PROHIBITION.—

23 (1) No amount identified under subsection (a)
24 shall be reprogrammed if such reprogramming would
25 result in an obligation which changes an individual
26 distribution required to be reported under subsection

1 (a) by more than 5 percent unless the Secretary has
2 transmitted to the appropriate authorizing commit-
3 tees of the Congress a report described in subsection
4 (c) and a period of 30 days has elapsed after such
5 committees receive the report.

6 (2) In the computation of the 30-day period de-
7 scribed in paragraph (1), there shall be excluded any
8 day on which either House of Congress is not in ses-
9 sion because of an adjournment of more than 3 days
10 to a day certain.

11 (c) REPROGRAMMING REPORT.—A report referred to
12 in subsection (b)(1) shall contain a full and complete
13 statement of the action proposed to be taken and the facts
14 and circumstances relied on in support of the proposed
15 action.

16 **SEC. 993. CONSTRUCTION WITH OTHER LAWS.**

17 Except as otherwise provided in this title, the Sec-
18 retary shall carry out the research, development, dem-
19 onstration, and commercial application programs,
20 projects, and activities authorized by this title in accord-
21 ance with the applicable provisions of the Atomic Energy
22 Act of 1954 (42 U.S.C. et seq.), the Federal Nonnuclear
23 Research and Development Act of 1974 (42 U.S.C. 5901
24 et seq.), the Energy Policy Act of 1992 (42 U.S.C. 13201
25 et seq.), the Stevenson-Wydler Technology Innovation Act

1 of 1980 (15 U.S.C. 3701 et seq.), chapter 18 of title 35,
2 United States Code (commonly referred to as the Bayh-
3 Dole Act), and any other Act under which the Secretary
4 is authorized to carry out such activities.

5 **SEC. 994. IMPROVED COORDINATION AND MANAGEMENT**
6 **OF CIVILIAN SCIENCE AND TECHNOLOGY**
7 **PROGRAMS.**

8 (a) EFFECTIVE TOP-LEVEL COORDINATION OF RE-
9 SEARCH AND DEVELOPMENT PROGRAMS.—Section 202(b)
10 of the Department of Energy Organization Act (42 U.S.C.
11 7132(b)) is amended to read as follows:

12 “(b)(1) There shall be in the Department an Under
13 Secretary for Energy and Science, who shall be appointed
14 by the President, by and with the advice and consent of
15 the Senate. The Under Secretary shall be compensated at
16 the rate provided for at level III of the Executive Schedule
17 under section 5314 of title 5, United States Code.

18 “(2) The Under Secretary for Energy and Science
19 shall be appointed from among persons who—

20 “(A) have extensive background in scientific or
21 engineering fields; and

22 “(B) are well qualified to manage the civilian
23 research and development programs of the Depart-
24 ment of Energy.

1 “(3) The Under Secretary for Energy and Science
2 shall—

3 “(A) serve as the Science and Technology Advi-
4 sor to the Secretary;

5 “(B) monitor the Department’s research and
6 development programs in order to advise the Sec-
7 retary with respect to any undesirable duplication or
8 gaps in such programs;

9 “(C) advise the Secretary with respect to the
10 well-being and management of the multipurpose lab-
11 oratories under the jurisdiction of the Department;

12 “(D) advise the Secretary with respect to edu-
13 cation and training activities required for effective
14 short- and long-term basic and applied research ac-
15 tivities of the Department;

16 “(E) advise the Secretary with respect to grants
17 and other forms of financial assistance required for
18 effective short- and long-term basic and applied re-
19 search activities of the Department; and

20 “(F) exercise authority and responsibility over
21 Assistant Secretaries carrying out energy research
22 and development and energy technology functions
23 under sections 203 and 209, as well as other ele-
24 ments of the Department assigned by the Sec-
25 retary.”.

1 (b) RECONFIGURATION OF POSITION OF DIRECTOR
2 OF THE OFFICE OF SCIENCE.—

3 (1) Section 209 of the Department of Energy
4 Organization Act (41 U.S.C. 7139) is amended to
5 read as follows:

6 “OFFICE OF SCIENCE

7 “SEC. 209. (a) There shall be within the Department
8 an Office of Science, to be headed by an Assistant Sec-
9 retary for Science, who shall be appointed by the Presi-
10 dent, by and with the advice and consent of the Senate,
11 and who shall be compensated at the rate provided for
12 level IV of the Executive Schedule under section 5315 of
13 title 5, United States Code.

14 “(b) The Assistant Secretary for Science shall be in
15 addition to the Assistant Secretaries provided for under
16 section 203 of this Act.

17 “(c) It shall be the duty and responsibility of the As-
18 sistant Secretary for Science to carry out the fundamental
19 science and engineering research functions of the Depart-
20 ment, including the responsibility for policy and manage-
21 ment of such research, as well as other functions vested
22 in the Secretary which he may assign to the Assistant Sec-
23 retary.”.

24 (2) Notwithstanding section 3345(b)(1) of title
25 5, United States Code, the President may designate
26 the Director of the Office of Science immediately

1 prior to the effective date of this Act to act in the
2 office of the Assistant Secretary of Energy for
3 Science until the office is filled as provided in sec-
4 tion 209 of the Department of Energy Organization
5 Act, as amended by paragraph (1). While so acting,
6 such person shall receive compensation at the rate
7 provided by this Act for the office of Assistant Sec-
8 retary for Science.

9 (c) ADDITIONAL ASSISTANT SECRETARY POSITION
10 TO ENABLE IMPROVED MANAGEMENT OF NUCLEAR EN-
11 ERGY ISSUES.—

12 (1) Section 203(a) of the Department of En-
13 ergy Organization Act (42 U.S.C. 7133(a)) is
14 amended by striking “There shall be in the Depart-
15 ment six Assistant Secretaries” and inserting “Ex-
16 cept as provided in section 209, there shall be in the
17 Department seven Assistant Secretaries”.

18 (2) It is the sense of the Congress that the
19 leadership for departmental missions in nuclear en-
20 ergy should be at the Assistant Secretary level.

21 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

22 (1) Section 202 of the Department of Energy
23 Organization Act (42 U.S.C. 7132) is further
24 amended by adding the following at the end:

1 “(d) There shall be in the Department an Under Sec-
2 retary, who shall be appointed by the President, by and
3 with the advice and consent of the Senate, and who shall
4 perform such functions and duties as the Secretary shall
5 prescribe, consistent with this section. The Under Sec-
6 retary shall be compensated at the rate provided for level
7 III of the Executive Schedule under section 5314 of title
8 5, United States Code.

9 “(e) There shall be in the Department a General
10 Counsel, who shall be appointed by the President, by and
11 with the advice and consent of the Senate, and who shall
12 perform such functions and duties as the Secretary shall
13 prescribe. The General Counsel shall be compensated at
14 the rate provided for level IV of the Executive Schedule
15 under section 5315 of title 5, United States Code.”.

16 (2) Section 5314 of title 5, United States Code,
17 is amended by striking “Under Secretaries of En-
18 ergy (2)” and inserting “Under Secretaries of En-
19 ergy (3)”.

20 (3) Section 5315 of title 5, United States Code,
21 is amended by—

22 (A) striking “Director, Office of Science,
23 Department of Energy.”; and

1 (B) striking “Assistant Secretaries of En-
2 ergy (6)” and inserting “Assistant Secretaries
3 of Energy (8)”.

4 (4) The table of contents for the Department of
5 Energy Organization Act (42 U.S.C. 7101 note) is
6 amended—

7 (A) by striking “Section 209” and insert-
8 ing “Sec. 209”;

9 (B) by striking “213.” and inserting “Sec.
10 213.”;

11 (C) by striking “214.” and inserting “Sec.
12 214.”;

13 (D) by striking “215.” and inserting “Sec.
14 215.”; and

15 (E) by striking “216.” and inserting “Sec.
16 216.”.

17 **SEC. 995. EDUCATIONAL PROGRAMS IN SCIENCE AND**
18 **MATHEMATICS.**

19 (a) Section 3165a of the Department of Energy
20 Science Education Enhancement Act (42 U.S.C. 7381a)
21 is amended by adding at the end:

22 “(14) Support competitive events for students,
23 under supervision of teachers, designed to encourage
24 student interest and knowledge in science and math-
25 ematics.”.

1 (b) Section 3169 of the Department of Energy
2 Science Education Enhancement Act (42 U.S.C. 7381e),
3 as redesignated by this Act, is amended by inserting before
4 the period: “; and \$40,000,000 for each of fiscal years
5 2004 through 2008.”.

6 **SEC. 996. OTHER TRANSACTIONS AUTHORITY.**

7 Section 646 of the Department of Energy Organiza-
8 tion Act (42 U.S.C. 7256) is amended by adding at the
9 end the following:

10 “(g)(1) In addition to other authorities granted to the
11 Secretary under law, the Secretary may enter into other
12 transactions on such terms as the Secretary may deem
13 appropriate in furtherance of research, development, or
14 demonstration functions vested in the Secretary. Such
15 other transactions shall not be subject to the provisions
16 of section 9 of the Federal Nonnuclear Energy Research
17 and Development Act of 1974 (42 U.S.C. 5908).

18 “(2)(A) The Secretary shall ensure that—

19 “(i) to the maximum extent the Secretary de-
20 termines practicable, no transaction entered into
21 under paragraph (1) provides for research, develop-
22 ment, or demonstration that duplicates research, de-
23 velopment, or demonstration being conducted under
24 existing projects carried out by the Department;

1 “(ii) to the extent the Secretary determines
2 practicable, the funds provided by the Government
3 under a transaction authorized by paragraph (1) do
4 not exceed the total amount provided by other par-
5 ties to the transaction; and

6 “(iii) to the extent the Secretary determines
7 practicable, competitive, merit-based selection proce-
8 dures shall be used when entering into transactions
9 under paragraph (1).

10 “(B) A transaction authorized by paragraph (1) may
11 be used for a research, development, or demonstration
12 project only if the Secretary determines the use of a stand-
13 ard contract, grant, or cooperative agreement for the
14 project is not feasible or appropriate.

15 “(3)(A) The Secretary shall protect from disclosure,
16 including disclosure under section 552 of title 5, United
17 States Code, for up to 5 years after the date the informa-
18 tion is received by the Secretary—

19 “(i) a proposal, proposal abstract, and sup-
20 porting documents submitted to the Department in
21 a competitive or noncompetitive process having the
22 potential for resulting in an award to the party sub-
23 mitting the information entering into a transaction
24 under paragraph (1); and

1 “(ii) a business plan and technical information
2 relating to a transaction authorized by paragraph
3 (1) submitted to the Department as confidential
4 business information.

5 “(B) The Secretary may protect from disclosure, for
6 up to 5 years after the information was developed, any
7 information developed pursuant to a transaction under
8 paragraph (1) which developed information is of a char-
9 acter that it would be protected from disclosure under sec-
10 tion 552(b)(4) of title 5, United States Code, if obtained
11 from a person other than a Federal agency.

12 “(4) Not later than 90 days after the date of enact-
13 ment of this section, the Secretary shall prescribe guide-
14 lines for using other transactions authorized by the
15 amendment under subsection (a). Such guidelines shall be
16 published in the Federal Register for public comment
17 under rulemaking procedures of the Department.

18 “(5) The authority of the Secretary under this sub-
19 section may be delegated only to an officer of the Depart-
20 ment who is appointed by the President by and with the
21 advice and consent of the Senate and may not be delegated
22 to any other person.”.

1 **SEC. 997. REPORT ON RESEARCH AND DEVELOPMENT PRO-**
2 **GRAM EVALUATION METHODOLOGIES.**

3 Not later than 180 days after the date of enactment
4 of this Act, the Secretary shall enter into appropriate ar-
5 rangements with the National Academy of Sciences to in-
6 vestigate and report on the scientific and technical merits
7 of any evaluation methodology currently in use or pro-
8 posed for use in relation to the scientific and technical pro-
9 grams of the Department by the Secretary or other Fed-
10 eral official. Not later than 6 months after receiving the
11 report of the National Academy, the Secretary shall sub-
12 mit such report to Congress, along with any other views
13 or plans of the Secretary with respect to the future use
14 of such evaluation methodology.

15 **TITLE X—PERSONNEL AND**
16 **TRAINING**

17 **SEC. 1001. WORKFORCE TRENDS AND TRAINEESHIP**
18 **GRANTS.**

19 (a) WORKFORCE TRENDS.—

20 (1) The Secretary of Energy (in this title re-
21 ferred to as the “Secretary”), in consultation with
22 the Secretary of Labor and utilizing statistical data
23 collected by the Secretary of Labor, shall monitor
24 trends in the workforce of skilled technical personnel
25 supporting energy technology industries, including
26 renewable energy industries, companies developing

1 and commercializing devices to increase energy effi-
2 ciency, the oil and gas industry, the nuclear power
3 industry, the coal industry, and other industrial sec-
4 tors as the Secretary may deem appropriate.

5 (2) The Secretary shall report to the Congress
6 whenever the Secretary determines that significant
7 national shortfalls of skilled technical personnel in
8 one or more energy industry segments are forecast
9 or have occurred.

10 (b) TRAINEESHIP GRANTS FOR SKILLED TECHNICAL
11 PERSONNEL.—The Secretary, in consultation with the
12 Secretary of Labor, may establish grant programs in the
13 appropriate offices of the Department of Energy to en-
14 hance training of skilled technical personnel for which a
15 shortfall is determined under subsection (a).

16 (c) DEFINITION.—For purposes of this section, the
17 term “skilled technical personnel” means journey and ap-
18 prentice level workers who are enrolled in or have com-
19 pleted a State or federally recognized apprenticeship pro-
20 gram and other skilled workers in energy technology in-
21 dustries.

22 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
23 purposes of this section, there are authorized to be appro-
24 priated to the Secretary \$20,000,000 for each of fiscal

1 years 2004 through 2008, to remain available until ex-
2 pended.

3 **SEC. 1002. RESEARCH FELLOWSHIPS IN ENERGY RE-**
4 **SEARCH.**

5 (a) POSTDOCTORAL FELLOWSHIPS.—The Secretary
6 shall establish a program of fellowships to encourage out-
7 standing young scientists and engineers to pursue
8 postdoctoral research appointments in energy research
9 and development at institutions of higher education of
10 their choice.

11 (b) DISTINGUISHED SENIOR RESEARCH FELLOW-
12 SHIPS.—The Secretary shall establish a program of fellow-
13 ships to allow outstanding senior researchers in energy re-
14 search and development and their research groups to ex-
15 plore research and development topics of their choosing
16 for a fixed period of time. Awards under this program
17 shall be made on the basis of past scientific or technical
18 accomplishment and promise for continued accomplish-
19 ment during the period of support, which shall not be less
20 than 3 years.

21 (c) AUTHORIZATION OF APPROPRIATIONS.—For the
22 purposes of this section, there are authorized to be appro-
23 priated to the Secretary \$40,000,000 for each of fiscal
24 years 2004 through 2008, to remain available until ex-
25 pended.

1 **SEC. 1003. TRAINING GUIDELINES FOR ELECTRIC ENERGY**
2 **INDUSTRY PERSONNEL.**

3 The Secretary of Labor, in consultation with the Sec-
4 retary of Energy and jointly with the electric industry and
5 recognized employee representatives, shall develop model
6 personnel training guidelines to support electric system re-
7 liability and safety. The training guidelines shall, at a min-
8 imum—

9 (1) include training requirements for workers
10 engaged in the construction, operation, inspection,
11 and maintenance of electric generation, trans-
12 mission, and distribution, including competency and
13 certification requirements, and assessment require-
14 ments that include initial and ongoing evaluation of
15 workers, recertification assessment procedures, and
16 methods for examining or testing the qualification of
17 individuals performing covered tasks; and

18 (2) consolidate existing training guidelines on
19 the construction, operation, maintenance, and in-
20 spection of electric generation, transmission, and
21 distribution facilities, such as those established by
22 the National Electric Safety Code and other indus-
23 try consensus standards.

1 **SEC. 1004. NATIONAL CENTER ON ENERGY MANAGEMENT**
2 **AND BUILDING TECHNOLOGIES.**

3 The Secretary shall support the establishment of a
4 National Center on Energy Management and Building
5 Technologies, to carry out research, education, and train-
6 ing activities to facilitate the improvement of energy effi-
7 ciency and indoor air quality in industrial, commercial,
8 and residential buildings. The National Center shall be es-
9 tablished by—

10 (1) recognized representatives of employees in
11 the heating, ventilation, and air-conditioning indus-
12 try;

13 (2) contractors that install and maintain heat-
14 ing, ventilation, and air-conditioning systems and
15 equipment;

16 (3) manufacturers of heating, ventilation, and
17 air-conditioning systems and equipment;

18 (4) representatives of the advanced building en-
19 velope industry, including design, windows, lighting,
20 and insulation industries; and

21 (5) other entities as the Secretary may deem
22 appropriate.

23 **SEC. 1005. IMPROVED ACCESS TO ENERGY-RELATED SCI-**
24 **ENTIFIC AND TECHNICAL CAREERS.**

25 (a) DEPARTMENT OF ENERGY SCIENCE EDUCATION
26 PROGRAMS.—Section 3164 of the Department of Energy

1 Science Education Enhancement Act (42 U.S.C. 7381a)
 2 is amended by adding at the end the following:

3 “(c) PROGRAMS FOR STUDENTS FROM UNDER-REP-
 4 RESENTED GROUPS.—In carrying out a program under
 5 subsection (a), the Secretary shall give priority to activi-
 6 ties that are designed to encourage students from under-
 7 represented groups to pursue scientific and technical ca-
 8 reers.”.

9 (b) PARTNERSHIPS WITH HISTORICALLY BLACK
 10 COLLEGES AND UNIVERSITIES, HISPANIC-SERVICING IN-
 11 STITUTIONS, AND TRIBAL COLLEGES.—The Department
 12 of Energy Science Education Enhancement Act (42
 13 U.S.C. 7381 et seq.) is amended—

14 (1) by redesignating sections 3167 and 3168 as
 15 sections 3168 and 3169, respectively; and

16 (2) by inserting after section 3166 the fol-
 17 lowing:

18 **“SEC. 3167. PARTNERSHIPS WITH HISTORICALLY BLACK**
 19 **COLLEGES AND UNIVERSITIES, HISPANIC-**
 20 **SERVING INSTITUTIONS, AND TRIBAL COL-**
 21 **LEGES.**

22 “(a) DEFINITIONS.—In this section:

23 “(1) HISPANIC-SERVING INSTITUTION.—The
 24 term ‘Hispanic-serving institution’ has the meaning

1 given that term in section 502(a) of the Higher
2 Education Act of 1965 (20 U.S.C. 1101a(a)).

3 “(2) HISTORICALLY BLACK COLLEGE OR UNI-
4 VERSITY.—The term ‘historically Black college or
5 university’ has the meaning given the term ‘part B
6 institution’ in section 322 of the Higher Education
7 Act of 1965 (20 U.S.C. 1061).

8 “(3) NATIONAL LABORATORY.—The term ‘Na-
9 tional Laboratory’ has the meaning given that term
10 in section 903(5) of the Energy Policy Act of 2003.

11 “(4) SCIENCE FACILITY.—The term ‘science fa-
12 cility’ has the meaning given the term ‘single-pur-
13 pose research facility’ in section 903(8) of the En-
14 ergy Policy Act of 2003.

15 “(5) TRIBAL COLLEGE.—The term ‘tribal col-
16 lege’ has the meaning given the term ‘tribally con-
17 trolled college or university’ in section 2(a) of the
18 Tribally Controlled College or University Assistance
19 Act of 1978 (25 U.S.C. 1801(a)).

20 “(b) EDUCATION PARTNERSHIP.—The Secretary
21 shall direct the Director of each National Laboratory, and
22 may direct the head of any science facility, to increase the
23 participation of historically Black colleges or universities,
24 Hispanic-serving institutions, or tribal colleges in activities
25 that increase the capacity of the historically Black colleges

1 or universities, Hispanic-serving institutions, or tribal col-
2 leges to train personnel in science or engineering.

3 “(c) ACTIVITIES.—An activity under subsection (b)
4 may include—

5 “(1) collaborative research;

6 “(2) equipment transfer;

7 “(3) training activities conducted at a National
8 Laboratory or science facility; and

9 “(4) mentoring activities conducted at a Na-
10 tional Laboratory or science facility.

11 “(d) REPORT.—Not later than 2 years after the date
12 of enactment of this section, the Secretary shall submit
13 to the Congress a report on the activities carried out under
14 this section.”.

15 **SEC. 1006. NATIONAL POWER PLANT OPERATIONS TECH-**
16 **NOLOGY AND EDUCATION CENTER.**

17 (a) ESTABLISHMENT.—The Secretary shall support
18 the establishment of a National Power Plant Operations
19 Technology and Education Center (in this section referred
20 to as the “Center”), to address the need for training and
21 educating certified operators for electric power generation
22 plants.

23 (b) ROLE.—The Center shall provide both training
24 and continuing education relating to electric power gen-
25 eration plant technologies and operations. The Center

1 shall conduct training and education activities on site and
 2 through Internet-based information technologies that
 3 allow for learning at remote sites.

4 (c) CRITERIA FOR COMPETITIVE SELECTION.—The
 5 Secretary shall support the establishment of the Center
 6 at an institution of higher education with expertise in
 7 power plant technology and operation and with the ability
 8 to provide on-site as well as Internet-based training.

9 **SEC. 1007. FEDERAL MINE INSPECTORS.**

10 In light of projected retirements of Federal mine in-
 11 spectors and the need for additional personnel, the Sec-
 12 retary of Labor shall hire, train, and deploy such addi-
 13 tional skilled Federal mine inspectors as necessary to en-
 14 sure the availability of skilled and experienced individuals
 15 and to maintain the number of Federal mine inspectors
 16 at or above the levels authorized by law or established by
 17 regulation.

18 **TITLE XI—ELECTRICITY**

19 **SEC. 1101. DEFINITIONS.**

20 (a) ELECTRIC UTILITY.—Section 3(22) of the Fed-
 21 eral Power Act (16 U.S.C. 796(22)) is amended to read
 22 as follows:

23 “(22) ‘electric utility’ means any person or Fed-
 24 eral or State agency (including any municipality)
 25 that sells electric energy; such term includes the

1 Tennessee Valley Authority and each Federal power
2 marketing agency;”.

3 (b) TRANSMITTING UTILITY.—Section 3(23) of the
4 Federal Power Act (16 U.S.C. 796(23)) is amended to
5 read as follows:

6 “(23) ‘transmitting utility’ means an entity, in-
7 cluding any entity described in section 201(f), that
8 owns or operates facilities used for the transmission
9 of electric energy—

10 “(A) in interstate commerce; or

11 “(B) for the sale of electric energy at
12 wholesale;”.

13 (c) ADDITIONAL DEFINITIONS.—At the end of sec-
14 tion (3) of the Federal Power Act, add the following:

15 “(26) ‘unregulated transmitting utility’ means
16 an entity that—

17 “(A) owns or operates facilities used for
18 the transmission of electric energy in interstate
19 commerce, and

20 “(B) is an entity described in section
21 201(f) or a rural electric cooperative with fi-
22 nancing from the Rural Utilities Service.

23 “(27) ‘distribution utility’ means an electric
24 utility that does not own or operate transmission fa-
25 cilities or an unregulated transmitting utility that

1 provides 90 percent of the electric energy its trans-
 2 mits to customers at retail.”.

3 (d) For the purposes of this title, the term “the Com-
 4 mission” means the Federal Energy Regulatory Commis-
 5 sion.

6 **Subtitle A—Reliability**

7 **SEC. 1111. ELECTRIC RELIABILITY STANDARDS.**

8 Part II of the Federal Power Act (16 U.S.C. 824 et
 9 seq.) is amended by adding the following:

10 “ELECTRIC RELIABILITY

11 “SEC. 215. (a) For the purposes of this section:

12 “(1) The term ‘bulk-power system’ means—

13 “(A) facilities and control systems nec-
 14 essary for operating an interconnected electric
 15 energy transmission network (or any portion
 16 thereof); and

17 “(B) electric energy from generation facili-
 18 ties needed to maintain transmission system re-
 19 liability.

20 The term does not include facilities used in the local
 21 distribution of electric energy.

22 “(2) The terms ‘Electric Reliability Organiza-
 23 tion’ and ‘ERO’ mean the organization certified by
 24 the Commission under subsection (c), the purpose of
 25 which is to establish and enforce reliability stand-

1 ards for the bulk-power system, subject to Commis-
2 sion review.

3 “(3) The term ‘reliability standard’ means a re-
4 quirement, approved by the Commission under this
5 section, to provide for reliable operation of the bulk-
6 power system. The term includes requirements for
7 the operation of existing bulk-power system compo-
8 nents and the design of planned additions or modi-
9 fications to such components to the extent necessary
10 to provide for reliable operation of the bulk-power
11 system, but the term does not include any require-
12 ment to enlarge such components or to construct
13 new transmission capacity or generation capacity.

14 “(4) The term ‘reliable operation’ means oper-
15 ating the components of the bulk-power system with-
16 in equipment and electric system thermal, voltage,
17 and stability limits so that instability, uncontrolled
18 separation, or cascading failures of such system will
19 not occur as a result of a sudden disturbance or un-
20 anticipated failure of system components.

21 “(5) The term ‘Interconnection’ means a geo-
22 graphic area in which the operation of bulk-power
23 system components is synchronized such that the
24 failure of one or more of such components may ad-
25 versely affect the ability of the operators of other

1 components within the system to maintain reliable
2 operation of the portion of the system within their
3 control.

4 “(6) The term ‘transmission organization’
5 means an RTO or other transmission organization
6 finally approved by the Commission for the oper-
7 ation of transmission facilities.

8 “(7) The term ‘regional entity’ means an entity
9 having enforcement authority pursuant to subsection
10 (e)(4).

11 “(b) The Commission shall have jurisdiction, within
12 the United States, over the ERO certified by the Commis-
13 sion under subsection (c), any regional entities, and all
14 users, owners and operators of the bulk-power system, in-
15 cluding the entities described in section 201(f), for pur-
16 poses of approving reliability standards established under
17 this section and enforcing compliance with this section. All
18 users, owners and operators of the bulk-power system
19 shall comply with reliability standards that take effect
20 under this section. The Commission shall issue a final rule
21 to implement the requirements of this section not later
22 than 180 days after the date of enactment of this section.

23 “(c) Following the issuance of a Commission rule
24 under subsection (b), any person may submit an applica-
25 tion to the Commission for certification as the Electric Re-

1 liability Organization. The Commission may certify one
2 such ERO if the Commission determines that such ERO—

3 “(1) has the ability to develop and enforce, sub-
4 ject to subsection (d)(2), reliability standards that
5 provide for an adequate level of reliability of the
6 bulk-power system; and

7 “(2) has established rules that—

8 “(A) assure its independence of the users
9 and owners and operators of the bulk-power
10 system, while assuring fair stakeholder rep-
11 resentation in the selection of its directors and
12 balanced decisionmaking in any ERO com-
13 mittee or subordinate organizational structure;

14 “(B) allocate equitably reasonable dues,
15 fees, and other charges among end users for all
16 activities under this section;

17 “(C) provide fair and impartial procedures
18 for enforcement of reliability standards through
19 the imposition of penalties in accordance with
20 subsection (e) (including limitations on activi-
21 ties, functions, or operations, or other appro-
22 priate sanctions);

23 “(D) provide for reasonable notice and op-
24 portunity for public comment, due process,
25 openness, and balance of interests in developing

1 reliability standards and otherwise exercising its
2 duties; and

3 “(E) provide for taking, after certification,
4 appropriate steps to gain recognition in Canada
5 and Mexico.

6 “(d)(1) The ERO shall file each reliability standard
7 or modification to a reliability standard that it proposes
8 to be made effective under this section with the Commis-
9 sion.

10 “(2) The Commission may approve by rule or order
11 a proposed reliability standard or modification to a reli-
12 ability standard if it determines that the standard is just,
13 reasonable, not unduly discriminatory or preferential, and
14 in the public interest. The Commission shall give due
15 weight to the technical expertise of the ERO with respect
16 to the content of a proposed standard or modification to
17 a reliability standard and to the technical expertise of a
18 regional entity organized on an Interconnection-wide basis
19 with respect to a reliability standard to be applicable with-
20 in that Interconnection, but shall not defer with respect
21 to the effect of a standard on competition. A proposed
22 standard or modification shall take effect upon approval
23 by the Commission.

24 “(3) The ERO shall rebuttably presume that a pro-
25 posal from a regional entity organized on an Interconnec-

1 tion-wide basis for a reliability standard or modification
2 to a reliability standard to be applicable on an Inter-
3 connection-wide basis is just, reasonable, and not unduly
4 discriminatory or preferential, and in the public interest.

5 “(4) The Commission shall remand to the ERO for
6 further consideration a proposed reliability standard or a
7 modification to a reliability standard that the Commission
8 disapproves in whole or in part.

9 “(5) The Commission, upon its own motion or upon
10 complaint, may order the ERO to submit to the Commis-
11 sion a proposed reliability standard or a modification to
12 a reliability standard that addresses a specific matter if
13 the Commission considers such a new or modified reli-
14 ability standard appropriate to carry out this section.

15 “(6) The final rule adopted under subsection (b) shall
16 include fair processes for the identification and timely res-
17 olution of any conflict between a reliability standard and
18 any function, rule, order, tariff, rate schedule, or agree-
19 ment accepted, approved, or ordered by the Commission
20 applicable to a transmission organization. Such trans-
21 mission organization shall continue to comply with such
22 function, rule, order, tariff, rate schedule or agreement ac-
23 cepted approved, or ordered by the Commission until—

24 “(A) the Commission finds a conflict exists be-
25 tween a reliability standard and any such provision;

1 “(B) the Commission orders a change to such
2 provision pursuant to section 206 of this part; and

3 “(C) the ordered change becomes effective
4 under this part.

5 If the Commission determines that a reliability standard
6 needs to be changed as a result of such a conflict, it shall
7 order the ERO to develop and file with the Commission
8 a modified reliability standard under paragraph (4) or (5)
9 of this subsection.

10 “(e)(1) The ERO may impose, subject to paragraph
11 (2), a penalty on a user or owner or operator of the bulk-
12 power system for a violation of a reliability standard ap-
13 proved by the Commission under subsection (d) if the
14 ERO, after notice and an opportunity for a hearing—

15 “(A) finds that the user or owner or operator
16 has violated a reliability standard approved by the
17 Commission under subsection (d); and

18 “(B) files notice and the record of the pro-
19 ceeding with the Commission.

20 “(2) A penalty imposed under paragraph (1) may
21 take effect not earlier than the 31st day after the ERO
22 files with the Commission notice of the penalty and the
23 record of proceedings. Such penalty shall be subject to re-
24 view by the Commission, on its own motion or upon appli-
25 cation by the user, owner or operator that is the subject

1 of the penalty filed within 30 days after the date such
2 notice is filed with the Commission. Application to the
3 Commission for review, or the initiation of review by the
4 Commission on its own motion, shall not operate as a stay
5 of such penalty unless the Commission otherwise orders
6 upon its own motion or upon application by the user,
7 owner or operator that is the subject of such penalty. In
8 any proceeding to review a penalty imposed under para-
9 graph (1), the Commission, after notice and opportunity
10 for hearing (which hearing may consist solely of the record
11 before the ERO and opportunity for the presentation of
12 supporting reasons to affirm, modify, or set aside the pen-
13 alty), shall by order affirm, set aside, reinstate, or modify
14 the penalty, and, if appropriate, remand to the ERO for
15 further proceedings. The Commission shall implement ex-
16 pedited procedures for such hearings.

17 “(3) On its own motion or upon complaint, the Com-
18 mission may order compliance with a reliability standard
19 and may impose a penalty against a user or owner or oper-
20 ator of the bulk-power system, if the Commission finds,
21 after notice and opportunity for a hearing, that the user
22 or owner or operator of the bulk-power system has en-
23 gaged or is about to engage in any acts or practices that
24 constitute or will constitute a violation of a reliability
25 standard.

1 “(4) The Commission shall establish regulations au-
2 thorizing the ERO to enter into an agreement to delegate
3 authority to a regional entity for the purpose of proposing
4 reliability standards to the ERO and enforcing reliability
5 standards under paragraph (1) if—

6 “(A) the regional entity is governed by an inde-
7 pendent board, a balanced stakeholder board, or a
8 combination independent and balanced stakeholder
9 board;

10 “(B) the regional entity otherwise satisfies the
11 provisions of subsection (c)(1) and (2); and

12 “(C) the agreement promotes effective and effi-
13 cient administration of bulk-power system reliability.

14 The Commission may modify such delegation. The ERO
15 and the Commission shall rebuttably presume that a pro-
16 posal for delegation to a regional entity organized on an
17 Interconnection-wide basis promotes effective and efficient
18 administration of bulk-power system reliability and should
19 be approved. Such regulation may provide that the Com-
20 mission may assign the ERO’s authority to enforce reli-
21 ability standards under paragraph (1) directly to a re-
22 gional entity consistent with the requirements of this para-
23 graph.

24 “(5) The Commission may take such action as is nec-
25 essary or appropriate against the ERO or a regional entity

1 to ensure compliance with a reliability standard or any
2 Commission order affecting the ERO or a regional entity.

3 “(6) Any penalty imposed under this section shall
4 bear a reasonable relation to the seriousness of the viola-
5 tion and shall take into consideration the efforts of such
6 user, owner, or operator to remedy the violation in a time-
7 ly manner.

8 “(f) The ERO shall file with the Commission for ap-
9 proval any proposed rule or proposed rule change, accom-
10 panied by an explanation of its basis and purpose. The
11 Commission, upon its own motion or complaint, may pro-
12 pose a change to the rules of the ERO. A proposed rule
13 or proposed rule change shall take effect upon a finding
14 by the Commission, after notice and opportunity for com-
15 ment, that the change is just, reasonable, not unduly dis-
16 criminatory or preferential, is in the public interest, and
17 satisfies the requirements of subsection (c).

18 “(g) The ERO shall conduct periodic assessments of
19 the reliability and adequacy of the bulk-power system in
20 North America.

21 “(h) The President is urged to negotiate international
22 agreements with the governments of Canada and Mexico
23 to provide for effective compliance with reliability stand-
24 ards and the effectiveness of the ERO in the United States
25 and Canada or Mexico.

1 “(i)(1) The ERO shall have authority to develop and
2 enforce compliance with reliability standards for only the
3 bulk-power system.

4 “(2) This section does not authorize the ERO or the
5 Commission to order the construction of additional gen-
6 eration or transmission capacity or to set and enforce com-
7 pliance with standards for adequacy or safety of electric
8 facilities or services.

9 “(3) Nothing in this section shall be construed to pre-
10 empt any authority of any State to take action to ensure
11 the safety, adequacy, and reliability of electric service
12 within that State, as long as such action is not incon-
13 sistent with any reliability standard.

14 “(4) Within 90 days of the application of the ERO
15 or other affected party, and after notice and opportunity
16 for comment, the Commission shall issue a final order de-
17 termining whether a State action is inconsistent with a
18 reliability standard, taking into consideration any rec-
19 ommendation of the ERO.

20 “(5) The Commission, after consultation with the
21 ERO, may stay the effectiveness of any State action, pend-
22 ing the Commission’s issuance of a final order.

23 “(j) The Commission shall establish a regional advi-
24 sory body on the petition of at least two-thirds of the
25 States within a region that have more than one-half of

1 their electric load served within the region. A regional ad-
2 visory body shall be composed of one member from each
3 participating State in the region, appointed by the Gov-
4 ernor of each State, and may include representatives of
5 agencies, States, and provinces outside the United States.
6 A regional advisory body may provide advice to the ERO,
7 a regional entity, or the Commission regarding the govern-
8 ance of an existing or proposed regional entity within the
9 same region, whether a standard proposed to apply within
10 the region is just, reasonable, not unduly discriminatory
11 or preferential, and in the public interest, whether fees
12 proposed to be assessed within the region are just, reason-
13 able, not unduly discriminatory or preferential, and in the
14 public interest and any other responsibilities requested by
15 the Commission. The Commission may give deference to
16 the advice of any such regional advisory body if that body
17 is organized on an Interconnection-wide basis.

18 “(k) The provisions of this section do not apply to
19 Alaska or Hawaii.”.

20 **Subtitle B—Regional Markets**

21 **SEC. 1121. IMPLEMENTATION DATE FOR PROPOSED RULE-** 22 **MAKING ON STANDARD MARKET DESIGN.**

23 The Commission’s proposed rulemaking entitled
24 “Remedying Undue Discrimination Through Open Access
25 Transmission Service and Standard Electricity Market

1 Design” (Docket No. RM01–12–000) is remanded to the
2 Commission for reconsideration. No final rule pursuant to
3 the proposed rulemaking, including any rule or order of
4 general applicability within the scope of the proposed rule-
5 making, may be issued before July 1, 2005. Any final rule
6 issued by the Commission pursuant to the proposed rule-
7 making, including any rule or order of general applica-
8 bility within the scope of the proposed rulemaking, shall
9 be preceded by a notice of proposed rulemaking issued
10 after the date of enactment of this Act and an opportunity
11 for public comment.

12 **SEC. 1122. SENSE OF THE CONGRESS ON REGIONAL TRANS-**
13 **MISSION ORGANIZATIONS.**

14 It is the sense of Congress that, in order to promote
15 fair, open access to electric transmission service, benefit
16 retail consumers, facilitate wholesale competition, improve
17 efficiencies in transmission grid management, promote
18 grid reliability, remove opportunities for unduly discrimi-
19 natory or preferential transmission practices, and provide
20 for the efficient development of transmission infrastruc-
21 ture needed to meet the growing demands of competitive
22 wholesale power markets, all transmitting utilities in inter-
23 state commerce should voluntarily become members of
24 independently administered Regional Transmission Orga-
25 nizations (“RTO”) that have operational or functional

1 control of facilities used for the transmission of electric
2 energy in interstate commerce and do not own or control
3 generation facilities used to supply electric energy for sale
4 at wholesale.

5 **SEC. 1123. FEDERAL UTILITY PARTICIPATION IN REGIONAL**
6 **TRANSMISSION ORGANIZATIONS.**

7 (a) DEFINITIONS.—For purposes of this section:

8 (1) The term “appropriate Federal regulatory
9 authority” means—

10 (A) with respect to a Federal power mar-
11 keting agency, the Secretary of Energy, except
12 that the Secretary may designate the Adminis-
13 trator of a Federal power marketing agency to
14 act as the appropriate Federal regulatory au-
15 thority with respect to the transmission system
16 of that Federal power marketing agency; and

17 (B) with respect to the Tennessee Valley
18 Authority, the Board of Directors of the Ten-
19 nessee Valley Authority.

20 (2) The term “Federal utility” means a Federal
21 power marketing agency or the Tennessee Valley
22 Authority.

23 (3) The term “transmission system” means
24 electric transmission facilities owned, leased, or con-

1 tracted for by the United States and operated by a
2 Federal utility.

3 (b) TRANSFER.—

4 (1) The appropriate Federal regulatory author-
5 ity is authorized to enter into a contract, agreement
6 or other arrangement transferring control and use of
7 all or part of the Federal utility’s transmission sys-
8 tem to a Regional Transmission Organization
9 (“RTO”). Such contract, agreement or arrangement
10 shall be voluntary and include—

11 (A) performance standards for operation
12 and use of the transmission system that the
13 head of the Federal utility determines necessary
14 or appropriate, including standards that assure
15 recovery of all the Federal utility’s costs and
16 expenses related to the transmission facilities
17 that are the subject of the contract, agreement
18 or other arrangement, consistency with existing
19 contracts and third-party financing arrange-
20 ments, and consistency with said Federal util-
21 ity’s statutory authorities, obligations, and limi-
22 tations;

23 (B) provisions for monitoring and over-
24 sight by the Federal utility of the RTO fulfill-
25 ment of the terms and conditions of the con-

1 tract, agreement or other arrangement, includ-
2 ing a provision that may provide for the resolu-
3 tion of disputes through arbitration or other
4 means with the RTO or with other participants,
5 notwithstanding the obligations and limitations
6 of any other law regarding arbitration; and

7 (C) a provision that allows the Federal
8 utility to withdraw from the RTO and termi-
9 nate the contract, agreement or other arrange-
10 ment in accordance with its terms.

11 (2) Neither this section, actions taken pursuant
12 to it, nor any other transaction of a Federal utility
13 using an RTO shall serve to confer upon the Com-
14 mission jurisdiction or authority over the Federal
15 utility's electric generation assets, electric capacity
16 or energy that the Federal utility is authorized by
17 law to market, or the Federal utility's power sales
18 activities.

19 (c) EXISTING STATUTORY AND OTHER OBLIGA-
20 TIONS.—

21 (1) Any statutory provision requiring or author-
22 izing a Federal utility to transmit electric power, or
23 to construct, operate or maintain its transmission
24 system shall not be construed to prohibit a transfer
25 of control and use of its transmission system pursu-

1 ant to, and subject to all requirements of subsection
2 (b).

3 (2) This subsection shall not be construed to—

4 (A) suspend, or exempt any Federal utility
5 from any provision of existing Federal law, in-
6 cluding but not limited to any requirement or
7 direction relating to the use of the Federal util-
8 ity's transmission system, environmental protec-
9 tion, fish and wildlife protection, flood control,
10 navigation, water delivery, or recreation; or

11 (B) authorize abrogation of any contract
12 or treaty obligation.

13 **SEC. 1124. REGIONAL CONSIDERATION OF COMPETITIVE**
14 **WHOLESALE MARKETS.**

15 (a) STATE REGULATORY COMMISSIONS.—Not later
16 than 90 days after the date of enactment of this Act, the
17 Commission shall convene regional discussions with State
18 regulatory commissions, as defined in section 3(21) of the
19 Federal Power Act. The regional discussions should ad-
20 dress whether wholesale electric markets in each region
21 are working effectively to provide reliable service to elec-
22 tric consumers in the region at the lowest reasonable cost.
23 Priority should be given to discussions in regions that do
24 not have, as of the date of enactment of this Act, a Re-

1 gional Transmission Organization (“RTO”). The regional
2 discussions shall consider—

3 (1) the need for an RTO or other organizations
4 in the region to provide nondiscriminatory trans-
5 mission access and generation interconnection;

6 (2) a process for regional planning of trans-
7 mission facilities with State regulatory authority
8 participation and for consideration of multi-state
9 projects;

10 (3) a means for ensuring that costs for all elec-
11 tric consumers, as defined in section 3(5) of the
12 Public Utility Regulatory Policies Act of 1978 (16
13 U.S.C. 2602(5)), and buyers of wholesale energy or
14 capacity are reasonable and economically efficient;

15 (4) a means for ensuring that all electric con-
16 sumers, as defined in section 3(5) of the Public Util-
17 ity Regulatory Policies Act of 1978 (16 U.S.C.
18 2602(5)), within the region maintain their ability to
19 use the existing transmission system without incur-
20 ring unreasonable additional costs in order to ex-
21 pand the transmission system for new customers;

22 (5) whether the integrated transmission and
23 electric power supply system can and should be oper-
24 ated in a manner that schedules and economically
25 prioritizes all available electric generation resources,

1 so as to minimize the costs of electric energy to all
2 consumers (“economic dispatch”) and maintaining
3 system reliability;

4 (6) a means to provide transparent price signals
5 to ensure efficient expansion of the electric system
6 and efficiently manage transmission congestion;

7 (7) eliminating in a reasonable manner, con-
8 sistent with applicable State and Federal law, mul-
9 tiple, cumulative charges for transmission service
10 across successive locations within a region
11 (“pancaked rates”);

12 (8) resolution of seams issues with neighboring
13 regions and inter-regional coordination;

14 (9) a means of providing information electroni-
15 cally to potential users of the transmission system;

16 (10) implementation of a market monitor for
17 the region with State regulatory authority and Com-
18 mission oversight and establishment of rules and
19 procedures that ensure that State regulatory au-
20 thorities are provided access to market information
21 and that provides for expedited consideration by the
22 Commission of any complaints concerning exercise of
23 market power and the operation of wholesale mar-
24 kets;

1 (11) a process by which to phase-in any pro-
2 posed RTO or other organization designated to pro-
3 vide nondiscriminatory transmission access so as to
4 best meet the needs of a region, and, if relevant,
5 shall take into account the special circumstances
6 that may be found in the Western Interconnection
7 related to the existence of transmission congestion,
8 the existence of significant hydroelectric capacity,
9 the participation of unregulated transmitting utili-
10 ties, and the distances between generation and load;
11 and

12 (12) a timetable to meet the objectives of this
13 section.

14 (b) REPORT.—Not later than 1 year after the date
15 of enactment of this Act, the Commission shall report to
16 Congress on the progress made in addressing the issues
17 in subsection (a) of this section in discussions with the
18 States.

19 (c) SAVINGS.—Nothing in this section shall affect any
20 discussions between the Commission and State or other
21 retail regulatory authorities that are on-going prior to en-
22 actment of this Act.

1 **Subtitle C—Improving Trans-**
2 **mission Access and Protecting**
3 **Service Obligations**

4 **SEC. 1131. SERVICE OBLIGATION SECURITY AND PARITY.**

5 The Federal Power Act (16 U.S.C. 824e) is amended
6 by adding the following:

7 “SEC. 220. (a)(1) The Commission shall exercise its
8 authority under this Act to ensure that any load-serving
9 entity that, as of the date of enactment of this section—

10 “(A) owns generation facilities, markets the
11 output of federal generation facilities, or holds rights
12 under one or more long-term contracts to purchase
13 electric energy, for the purpose of meeting a service
14 obligation, and

15 “(B) by reason of ownership of transmission fa-
16 cilities, or one or more contracts or service agree-
17 ments for firm transmission service, holds firm
18 transmission rights for delivery of the output of such
19 generation facilities or such purchased energy to
20 meet such service obligation,

21 is entitled to use such firm transmission rights, or equiva-
22 lent financial transmission rights, in order to deliver such
23 output or purchased energy, or the output of other gener-
24 ating facilities or purchased energy to the extent deliver-
25 able using such rights, to meet its service obligation.

1 “(2) To the extent that all or a portion of the service
2 obligation covered by such firm transmission rights is
3 transferred to another load-serving entity, the successor
4 load-serving entity shall be entitled to use the firm trans-
5 mission rights associated with the transferred service obli-
6 gation. Subsequent transfers to another load-serving enti-
7 ty, or back to the original load-serving entity, shall be enti-
8 tled to the same rights.

9 “(3) The Commission shall exercise its authority
10 under this Act in a manner that facilitates the planning
11 and expansion of transmission facilities to meet the rea-
12 sonable needs of load-serving entities to satisfy their serv-
13 ice obligations.

14 “(b) Nothing in this section shall affect any method-
15 ology for the allocation of transmission rights by a Com-
16 mission-approved entity that, prior to the date of enact-
17 ment of this section, has been authorized by the Commis-
18 sion to allocate transmission rights.

19 “(c) Nothing in this Act shall relieve a load-serving
20 entity from any obligation under State or local law to build
21 transmission or distribution facilities adequate to meet its
22 service obligations.

23 “(d) Nothing in this section shall provide a basis for
24 abrogating any contract or service agreement for firm

1 transmission service or rights in effect as of the date of
2 the enactment of this subsection.

3 “(e) For purposes of this section:

4 “(1) The term ‘distribution utility’ means an
5 electric utility that has a service obligation to end-
6 users.

7 “(2) The term ‘load-serving entity’ means a dis-
8 tribution utility or an electric utility (including an
9 entity described in section 201(f) or a rural coopera-
10 tive) that has a service obligation to end-users or a
11 distribution utility.

12 “(3) The term ‘service obligation’ means a re-
13 quirement applicable to, or the exercise of authority
14 granted to, an electric utility (including an entity de-
15 scribed in section 201(f) or a rural cooperative)
16 under Federal, State or local law or under long-term
17 contracts to provide electric service to end-users or
18 to a distribution utility.

19 “(f) Nothing in the section shall apply to an entity
20 located in an area referred to in section 212(k)(2)(A).”.

21 **SEC. 1132. OPEN NONDISCRIMINATORY ACCESS.**

22 Part II of the Federal Power Act (16 U.S.C. 824 et
23 seq.) is amended by inserting after section 211 the fol-
24 lowing:

1 “(c) Whenever the Commission, after a hearing held
2 upon a complaint, finds any exemption granted pursuant
3 to subsection (b) adversely affects the reliable and efficient
4 operation of an interconnected transmission system, it
5 may revoke the exemption.

6 “(d) The rate changing procedures applicable to pub-
7 lic utilities under subsections (c) and (d) of section 205
8 are applicable to unregulated transmitting utilities for
9 purposes of this section.

10 “(e) In exercising its authority under paragraph (1)
11 of subsection (a), the Commission may remand trans-
12 mission rates to an unregulated transmitting utility for
13 review and revision where necessary to meet the require-
14 ments of subsection (a).

15 “(f) The provision of transmission services under sub-
16 section (a) does not preclude a request for transmission
17 services under section 211.

18 “(g) The Commission may not require a State or mu-
19 nicipality to take action under this section that constitutes
20 a private business use for purposes of section 141 of the
21 Internal Revenue Code of 1986 (26 U.S.C. 141).

22 “(h) Nothing in this Act authorizes the Commission
23 to require an unregulated transmitting utility to transfer
24 control or operational control of its transmitting facilities
25 to an RTO or any other Commission-approved organiza-

1 tion designated to provide non-discriminatory trans-
 2 mission access.”.

3 **SEC. 1133. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

4 Part II of the Federal Power Act is amended by add-
 5 ing the following:

6 “SUSTAINABLE TRANSMISSION NETWORKS RULEMAKING

7 “SEC. 221. Within six months of enactment of this
 8 section, the Commission shall issue a final rule estab-
 9 lishing transmission pricing policies applicable to all public
 10 utilities and policies for the allocation of costs associated
 11 with the expansion, modification or upgrade of existing
 12 interstate transmission facilities and for the interconnec-
 13 tion of new transmission facilities for utilities and facilities
 14 which are not included within a Commission approved
 15 RTO. Consistent with section 205 of this Act, such rule
 16 shall, to the maximum extent practicable—

17 “(1) promote capital investment in the economi-
 18 cally efficient transmission systems;

19 “(2) encourage the construction of transmission
 20 and generation facilities in a manner which provides
 21 the lowest overall risk and cost to consumers;

22 “(3) encourage improved operation of trans-
 23 mission facilities and deployment of transmission
 24 technologies designed to increase capacity and effi-
 25 ciency of existing networks;

1 “(4) ensure that the costs of any transmission
2 expansion or interconnection be allocated in such a
3 way that all users of the affected transmission sys-
4 tem bear the appropriate share of costs; and

5 “(5) ensure that parties who pay for facilities
6 necessary for transmission expansion or interconnec-
7 tion receive appropriate compensation for those fa-
8 cilities.”.

9 **Subtitle D—Amendments to the**
10 **Public Utility Regulatory Poli-**
11 **cies Act of 1978**

12 **SEC. 1141. NET METERING.**

13 (a) ADOPTION OF STANDARD.—Section 111(d) of the
14 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
15 2621(d)) is amended by adding at the end the following:

16 “(11) NET METERING.—

17 “(A) Each electric utility shall make avail-
18 able upon request net metering service to any
19 electric consumer that the electric utility serves.

20 “(B) For purposes of implementing this
21 paragraph, any reference contained in this sec-
22 tion to the date of enactment of the Public Util-
23 ity Regulatory Policies Act of 1978 shall be
24 deemed to be a reference to the date of enact-
25 ment of this paragraph.

1 “(C) Notwithstanding subsections (b) and
2 (e) of section 112, each State regulatory au-
3 thority shall consider and make a determination
4 concerning whether it is appropriate to imple-
5 ment the standard set out in subparagraph (A)
6 not later than 1 year after the date of enact-
7 ment of this paragraph.”.

8 (b) SPECIAL RULES FOR NET METERING.—Section
9 115 of the Public Utility Regulatory Policies Act of 1978
10 (16 U.S.C. 2625) is further amended by adding at the
11 end the following:

12 “(i) NET METERING.—In undertaking the consider-
13 ation and making the determination under section 111
14 with respect to the standard concerning net metering es-
15 tablished by section 111(d)(13), the term net metering
16 service shall mean a service provided in accordance with
17 the following standards:

18 “(1) An electric utility—

19 “(A) shall charge the owner or operator of
20 an on-site generating facility rates and charges
21 that are identical to those that would be
22 charged other electric consumers of the electric
23 utility in the same rate class; and

24 “(B) shall not charge the owner or oper-
25 ator of an on-site generating facility any addi-

1 tional standby, capacity, interconnection, or
2 other rate or charge.

3 “(2) An electric utility that sells electric energy
4 to the owner or operator of an on-site generating fa-
5 cility shall measure the quantity of electric energy
6 produced by the on-site facility and the quantity of
7 electric energy consumed by the owner or operator
8 of an on-site generating facility during a billing pe-
9 riod in accordance with reasonable metering prac-
10 tices.

11 “(3) If the quantity of electric energy sold by
12 the electric utility to an on-site generating facility
13 exceeds the quantity of electric energy supplied by
14 the on-site generating facility to the electric utility
15 during the billing period, the electric utility may bill
16 the owner or operator for the net quantity of electric
17 energy sold, in accordance with reasonable metering
18 practices.

19 “(4) If the quantity of electric energy supplied
20 by the on-site generating facility to the electric util-
21 ity exceeds the quantity of electric energy sold by
22 the electric utility to the on-site generating facility
23 during the billing period—

24 “(A) the electric utility may bill the owner
25 or operator of the on-site generating facility for

1 the appropriate charges for the billing period in
2 accordance with paragraph (2); and

3 “(B) the owner or operator of the on-site
4 generating facility shall be credited for the ex-
5 cess kilowatt-hours generated during the billing
6 period, with the kilowatt-hour credit appearing
7 on the bill for the following billing period.

8 “(5) An eligible onsite generating facility and
9 net metering system used by an electric consumer
10 shall meet all applicable safety, performance, reli-
11 ability, and interconnection standards established by
12 the National Electrical Code, the Institute of Elec-
13 trical and Electronics Engineers, and Underwriters
14 Laboratories.

15 “(6) The Commission, after consultation with
16 State regulatory authorities and unregulated electric
17 utilities and after notice and opportunity for com-
18 ment, may adopt, by rule, additional control and
19 testing requirements for on-site generating facilities
20 and net metering systems that the Commission de-
21 termines are necessary to protect public safety and
22 system reliability.

23 “(7) For purposes of this subsection—

24 “(A) The term ‘eligible on-site generating
25 facility’ means a facility on the site of a resi-

1 dential electric consumer with a maximum gen-
2 erating capacity of 10 kilowatts or less that is
3 fueled by solar energy, wind energy, or fuel
4 cells; or a facility on the site of a commercial
5 electric consumer with a maximum generating
6 capacity of 500 kilowatts or less that is fueled
7 solely by a renewable energy resource, landfill
8 gas, or a high efficiency system.

9 “(B) The term ‘renewable energy resource’
10 means solar, wind, biomass, or geothermal en-
11 ergy.

12 “(C) The term ‘high efficiency system’
13 means fuel cells or combined heat and power.

14 “(D) The term ‘net metering service’
15 means service to an electric consumer under
16 which electric energy generated by that electric
17 consumer from an eligible on-site generating fa-
18 cility and delivered to the local distribution fa-
19 cilities may be used to offset electric energy
20 provided by the electric utility to the electric
21 consumer during the applicable billing period.”.

22 **SEC. 1142. SMART METERING.**

23 (a) IN GENERAL.—Section 111(d) of the Public Utili-
24 ties Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))
25 is amended by adding at the end the following:

1 “(12) TIME-BASED METERING AND COMMU-
2 NICATIONS.—

3 “(A) Each electric utility shall offer each
4 of its customer classes, and provide individual
5 customers upon customer request, a time-based
6 rate schedule under which the rate charged by
7 the electric utility varies during different time
8 periods and reflects the variance in the costs of
9 generating and purchasing electricity at the
10 wholesale level. The time-based rate schedule
11 shall enable the electric consumer to manage
12 energy use and cost through advanced metering
13 and communications technology.

14 “(B) The types of time-based rate sched-
15 ules that may be offered under the schedule re-
16 ferred to in subparagraph (A) include, among
17 others—

18 “(i) time-of-use pricing whereby elec-
19 tricity prices are set for a specific time pe-
20 riod on an advance or forward basis, typi-
21 cally not changing more often than twice a
22 year. Prices paid for energy consumed dur-
23 ing these periods shall be pre-established
24 and known to consumers in advance of
25 such consumption, allowing them to vary

1 their demand and usage in response to
2 such prices and manage their energy costs
3 by shifting usage to a lower cost period or
4 reducing their consumption overall;

5 “(ii) critical peak pricing whereby
6 time-of-use prices are in effect except for
7 certain peak days, when prices may reflect
8 the costs of generating and purchasing
9 electricity at the wholesale level and when
10 consumers may receive additional discounts
11 for reducing peak period energy consump-
12 tion; and

13 “(iii) real-time pricing whereby elec-
14 tricity prices are set for a specific time pe-
15 riod on an advanced or forward basis and
16 may change as often as hourly.

17 “(C) Each electric utility subject to sub-
18 paragraph (A) shall provide each customer re-
19 questing a time-based rate with a time-based
20 meter capable of enabling the utility and cus-
21 tomer to offer and receive such rate, respec-
22 tively.

23 “(D) For purposes of implementing this
24 paragraph, any reference contained in this sec-
25 tion to the date of enactment of the Public Util-

1 ity Regulatory Policies Act of 1978 shall be
2 deemed to be a reference to the date of enact-
3 ment of this paragraph.

4 “(E) In a State that permits third-party
5 marketers to sell electric energy to retail elec-
6 tric consumers, such consumers shall be entitled
7 to receive that same time-based metering and
8 communications device and service as a retail
9 electric consumer of the electric utility.

10 “(F) Notwithstanding subsections (b) and
11 (c) of section 112, each State regulatory au-
12 thority shall, not later than twelve (12) months
13 after enactment of this paragraph conduct an
14 investigation in accordance with section 115(i)
15 and issue a decision whether it is appropriate to
16 implement the standards set out in subpara-
17 graphs (A) and (C).”.

18 (b) STATE INVESTIGATION OF DEMAND RESPONSE
19 AND TIME-BASED METERING.—Section 115 of the Public
20 Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625)
21 is amended by adding the at the end the following:

22 “(k) TIME-BASED METERING AND COMMUNICA-
23 TIONS.—Each State regulatory authority shall conduct an
24 investigation and issue a decision whether or not it is ap-
25 propriate for electric utilities to provide and install time-

1 based meters and communications devices for each of their
2 customers which enable such customers to participate in
3 time-based pricing rate schedules and other demand re-
4 sponse programs.”.

5 (c) FEDERAL ASSISTANCE ON DEMAND RE-
6 SPONSE.—Section 132(a) of the Public Utility Regulatory
7 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by
8 striking “and” at the end of paragraph (3), striking the
9 period at the end of paragraph (4) and inserting “; and”,
10 and by adding the following at the end thereof:

11 “(5) technologies, techniques and rate-making
12 methods related to advanced metering and commu-
13 nications and the use of these technologies, tech-
14 niques and methods in demand response programs.”.

15 (d) FEDERAL GUIDANCE.—Section 132 of the Public
16 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643)
17 is amended by adding the following at the end thereof:

18 “(d) DEMAND RESPONSE.—The Secretary shall be
19 responsible for—

20 “(1) educating consumers on the availability,
21 advantages and benefits of advanced metering and
22 communications technologies, including the funding
23 of demonstration or pilot projects;

24 “(2) working with States, utilities, other energy
25 providers and advanced metering and communica-

1 tions experts to identify and address barriers to the
2 adoption of demand response programs; and

3 “(3) not later than 180 days after the date of
4 enactment of the Energy Policy Act of 2003, pro-
5 viding the Congress with a report that identifies and
6 quantifies the national benefits of demand response
7 and makes a recommendation on achieving specific
8 levels of such benefits by January 1, 2005.”.

9 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
10 TION.—

11 (1) It is the policy of the United States to en-
12 courage States to coordinate, on a regional basis,
13 State energy policies to provide reliable and afford-
14 able demand response services to the public.

15 (2) The Secretary of Energy shall provide tech-
16 nical assistance to States and regional organizations
17 formed by two or more States to assist them in—

18 (A) identifying the areas with the greatest
19 demand response potential;

20 (B) identifying and resolving problems in
21 transmission and distribution networks, includ-
22 ing through the use of demand response; and

23 (C) developing plans and programs to use
24 demand response to respond to peak demand or
25 emergency needs.

1 (3) Not later than 1 year after the date of en-
2 actment of this Act, the Commission shall prepare
3 and publish an annual report, by appropriate region,
4 that assesses demand response resources, including
5 those available from all consumer classes, and which
6 identifies and reviews—

7 (A) saturation and penetration rate of ad-
8 vanced meters and communications tech-
9 nologies, devices and systems;

10 (B) existing demand response programs
11 and time-based rate programs;

12 (C) the annual resource contribution of de-
13 mand resources;

14 (D) the potential for demand response as
15 a quantifiable, reliable resource for regional
16 planning purposes; and

17 (E) steps taken to ensure that, in regional
18 transmission planning and operations, demand
19 resources are provided equitable treatment as a
20 quantifiable, reliable resource relative to the re-
21 source obligations of any load-serving entity,
22 transmission provider, or transmitting party.

23 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-
24 SPONSE DEVICES.—It is the policy of the United States
25 that time-based pricing and other forms of demand re-

1 sponse, whereby electricity customers are provided with
2 electricity price signals and the ability to benefit by re-
3 sponding to them, shall be encouraged and the deployment
4 of such technology and devices that enable electricity cus-
5 tomers to participate in such pricing and demand response
6 systems shall be facilitated.

7 **SEC. 1143. ADOPTION OF ADDITIONAL STANDARDS.**

8 (a) ADOPTION OF STANDARDS.—Section 113(b) of
9 the Public Utility Regulatory Policies Act of 1978 (16
10 U.S.C. 2623(b)) is amended by adding at the end the fol-
11 lowing:

12 “(6) Each electric utility shall provide distrib-
13 uted generation, combined heat and power, and dis-
14 trict heating and cooling systems competitive access
15 to the local distribution grid and competitive pricing
16 of service, and shall use simplified standard con-
17 tracts for the interconnection of generating facilities
18 that have a power production capacity of 250 kilo-
19 watts or less.

20 “(7) No electric utility may refuse to inter-
21 connect a generating facility with the distribution fa-
22 cilities of the electric utility if the owner or operator
23 of the generating facility complies with technical
24 standards adopted by the State regulatory authority

1 and agrees to pay the costs established by such
2 State regulatory authority.

3 “(8) Each electric utility shall develop a plan to
4 minimize dependence on one fuel source and to en-
5 sure that the electric energy it sells to consumers is
6 generated using a diverse range of fuels and tech-
7 nologies, including renewable technologies.

8 “(9) Each electric utility shall develop and im-
9 plement a ten-year plan to increase the efficiency of
10 its fossil fuel generation.”.

11 (b) TIME FOR ADOPTING STANDARDS.—Section 113
12 of the Public Utility Regulatory Policies Act of 1978 (16
13 U.S.C. 2623) is further amended by adding at the end
14 the following:

15 “(d) SPECIAL RULE.—For purposes of implementing
16 paragraphs (6), (7), (8), and (9) of subsection (b), any
17 reference contained in this section to the date of enact-
18 ment of the Public Utility Regulatory Policies Act of 1978
19 shall be deemed to be a reference to the date of enactment
20 of this subsection.”.

21 **SEC. 1144. TECHNICAL ASSISTANCE.**

22 Section 132(c) of the Public Utility Regulatory Poli-
23 cies Act of 1978 (16 U.S.C. 2642(c)) is amended to read
24 as follows:

1 “(c) TECHNICAL ASSISTANCE FOR CERTAIN RESPON-
 2 SIBILITIES.—The Secretary may provide such technical
 3 assistance as determined appropriate to assist State regu-
 4 latory authorities and electric utilities in carrying out their
 5 responsibilities under section 111(d)(11) and paragraphs
 6 (6), (7), (8), and (9) of section 113(b).”.

7 **SEC. 1145. COGENERATION AND SMALL POWER PRODUC-**
 8 **TION PURCHASE AND SALE REQUIREMENTS.**

9 (a) TERMINATION OF MANDATORY PURCHASE AND
 10 SALE REQUIREMENTS.—Section 210 of the Public Utility
 11 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is
 12 amended by adding at the end the following:

13 “(m) TERMINATION OF MANDATORY PURCHASE AND
 14 SALE REQUIREMENTS.—

15 “(1) OBLIGATION TO PURCHASE.—After the
 16 date of enactment of this subsection, no electric util-
 17 ity shall be required to enter into a new contract or
 18 obligation to purchase electric energy from a quali-
 19 fying cogeneration facility or a qualifying small
 20 power production facility under this section if the
 21 Commission finds that the qualifying cogeneration
 22 facility or qualifying small power production facility
 23 has access to an independently administered, auc-
 24 tion-based day ahead and real time wholesale market
 25 for the sale of electric energy.

1 “(2) OBLIGATION TO SELL.—After the date of
2 enactment of this subsection, no electric utility shall
3 be required to enter into a new contract or obliga-
4 tion to sell electric energy to a qualifying cogenera-
5 tion facility or a qualifying small power production
6 facility under this section if competing retail electric
7 suppliers are able to provide electric energy to the
8 qualifying cogeneration facility or qualifying small
9 power production facility.

10 “(3) NO EFFECT ON EXISTING RIGHTS AND
11 REMEDIES.—Nothing in this subsection affects the
12 rights or remedies of any party under any contract
13 or obligation, in effect on the date of enactment of
14 this subsection, to purchase electric energy or capac-
15 ity from or to sell electric energy or capacity to a
16 facility under this Act (including the right to recover
17 costs of purchasing electric energy or capacity).

18 “(4) RECOVERY OF COSTS.—

19 “(A) REGULATION.—The Commission
20 shall promulgate such regulations as are nec-
21 essary to ensure that an electric utility that
22 purchases electric energy or capacity from a
23 qualifying cogeneration facility or qualifying
24 small power production facility in accordance
25 with any legally enforceable obligation entered

1 into or imposed under this section before the
2 date of enactment of this subsection recovers all
3 prudently incurred costs associated with the
4 purchase.

5 “(B) ENFORCEMENT.—A regulation under
6 subparagraph (A) shall be enforceable in ac-
7 cordance with the provisions of law applicable
8 to enforcement of regulations under the Federal
9 Power Act (16 U.S.C. 791a et seq.).”

10 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—
11 Section 3 of the Federal Power Act (16 U.S.C. 796) is
12 amended—

13 (1) by striking paragraph (17)(C) and inserting
14 the following:

15 “(C) ‘qualifying small power production fa-
16 cility’ means a small power production facility
17 that the Commission determines, by rule, meets
18 such requirements (including requirements re-
19 specting minimum size, fuel use, and fuel effi-
20 ciency) as the Commission may, by rule, pre-
21 scribe;” and

22 (2) by striking paragraph (18)(B) and inserting
23 the following:

24 “(B) ‘qualifying cogeneration facility’
25 means a cogeneration facility that the Commis-

1 sion determines, by rule, meets such require-
2 ments (including requirements respecting min-
3 imum size, fuel use, and fuel efficiency) as the
4 Commission may, by rule, prescribe;”.

5 **SEC. 1146. RECOVERY OF COSTS.**

6 (a) REGULATION.—To ensure recovery by any elec-
7 tric utility that purchases electricity or capacity from a
8 qualifying facility pursuant to any legally enforceable obli-
9 gation entered into or imposed under section 210 of the
10 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
11 824a–3) before the date of enactment of this Act of all
12 costs associated with the purchases, the Commission shall
13 promulgate and enforce such regulations as are required
14 to ensure that no utility shall be required directly or indi-
15 rectly to absorb the costs associated with the purchases.

16 (b) TREATMENT.—A regulation under subsection (a)
17 shall be treated as a rule enforceable under the Federal
18 Power Act (16 U.S.C. 791a et seq.).

19 **Subtitle E—Provisions Regarding**
20 **the Public Utility Holding Com-**
21 **pany Act of 1935**

22 **SEC. 1151. DEFINITIONS.**

23 For the purposes of this subtitle:

24 (1) The term “affiliate” of a company means
25 any company 5 percent or more of the outstanding

1 voting securities of which are owned, controlled, or
2 held with power to vote, directly or indirectly, by
3 such company.

4 (2) The term “associate company” of a com-
5 pany means any company in the same holding com-
6 pany system with such company.

7 (3) The term “Commission” means the Federal
8 Energy Regulatory Commission.

9 (4) The term “company” means a corporation,
10 partnership, association, joint stock company, busi-
11 ness trust, or any organized group of persons,
12 whether incorporated or not, or a receiver, trustee,
13 or other liquidating agent of any of the foregoing.

14 (5) The term “electric utility company” means
15 any company that owns or operates facilities used
16 for the generation, transmission, or distribution of
17 electric energy for sale.

18 (6) The terms “exempt wholesale generator”
19 and “foreign utility company” have the same mean-
20 ings as in sections 32 and 33, respectively, of the
21 Public Utility Holding Company Act of 1935 (15
22 U.S.C. 79z-5, 79z-5b), as those sections existed on
23 the day before the effective date of this subtitle.

24 (7) The term “gas utility company” means any
25 company that owns or operates facilities used for

1 distribution at retail (other than the distribution
2 only in enclosed portable containers or distribution
3 to tenants or employees of the company operating
4 such facilities for their own use and not for resale)
5 of natural or manufactured gas for heat, light, or
6 power.

7 (8) The term “holding company” means—

8 (A) any company that directly or indirectly
9 owns, controls, or holds, with power to vote, 10
10 percent or more of the outstanding voting secu-
11 rities of a public utility company or of a holding
12 company of any public utility company; and

13 (B) any person, determined by the Com-
14 mission, after notice and opportunity for hear-
15 ing, to exercise directly or indirectly (either
16 alone or pursuant to an arrangement or under-
17 standing with one or more persons) such a con-
18 trolling influence over the management or poli-
19 cies of any public utility company or holding
20 company as to make it necessary or appropriate
21 for the rate protection of utility customers with
22 respect to rates that such person be subject to
23 the obligations, duties, and liabilities imposed
24 by this subtitle upon holding companies.

1 (9) The term “holding company system” means
2 a holding company, together with its subsidiary com-
3 panies.

4 (10) The term “jurisdictional rates” means
5 rates established by the Commission for the trans-
6 mission of electric energy in interstate commerce,
7 the sale of electric energy at wholesale in interstate
8 commerce, the transportation of natural gas in inter-
9 state commerce, and the sale in interstate commerce
10 of natural gas for resale for ultimate public con-
11 sumption for domestic, commercial, industrial, or
12 any other use.

13 (11) The term “natural gas company” means a
14 person engaged in the transportation of natural gas
15 in interstate commerce or the sale of such gas in
16 interstate commerce for resale.

17 (12) The term “person” means an individual or
18 company.

19 (13) The term “public utility” means any per-
20 son who owns or operates facilities used for trans-
21 mission of electric energy in interstate commerce or
22 sales of electric energy at wholesale in interstate
23 commerce.

24 (14) The term “public utility company” means
25 an electric utility company or a gas utility company.

1 (15) The term “State commission” means any
2 commission, board, agency, or officer, by whatever
3 name designated, of a State, municipality, or other
4 political subdivision of a State that, under the laws
5 of such State, has jurisdiction to regulate public util-
6 ity companies.

7 (16) The term “subsidiary company” of a hold-
8 ing company means—

9 (A) any company, 10 percent or more of
10 the outstanding voting securities of which are
11 directly or indirectly owned, controlled, or held
12 with power to vote, by such holding company;
13 and

14 (B) any person, the management or poli-
15 cies of which the Commission, after notice and
16 opportunity for hearing, determines to be sub-
17 ject to a controlling influence, directly or indi-
18 rectly, by such holding company (either alone or
19 pursuant to an arrangement or understanding
20 with one or more other persons) so as to make
21 it necessary for the rate protection of utility
22 customers with respect to rates that such per-
23 son be subject to the obligations, duties, and li-
24 abilities imposed by this subtitle upon sub-
25 sidiary companies of holding companies.

1 (17) The term “voting security” means any se-
2 curity presently entitling the owner or holder thereof
3 to vote in the direction or management of the affairs
4 of a company.

5 **SEC. 1152. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
6 **PANY ACT OF 1935.**

7 The Public Utility Holding Company Act of 1935 (15
8 U.S.C. 79a et seq.) is repealed, effective 12 months after
9 the date of enactment of this Act.

10 **SEC. 1153. FEDERAL ACCESS TO BOOKS AND RECORDS.**

11 (a) IN GENERAL.—Each holding company and each
12 associate company thereof shall maintain, and shall make
13 available to the Commission, such books, accounts, memo-
14 randa, and other records as the Commission determines
15 are relevant to costs incurred by a public utility or natural
16 gas company that is an associate company of such holding
17 company and necessary or appropriate for the protection
18 of utility customers with respect to jurisdictional rates.

19 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
20 ing company or of any subsidiary company of a holding
21 company shall maintain, and make available to the Com-
22 mission, such books, accounts, memoranda, and other
23 records with respect to any transaction with another affil-
24 iate, as the Commission determines are relevant to costs
25 incurred by a public utility or natural gas company that

1 is an associate company of such holding company and nec-
2 essary or appropriate for the protection of utility cus-
3 tomers with respect to jurisdictional rates.

4 (c) HOLDING COMPANY SYSTEMS.—The Commission
5 may examine the books, accounts, memoranda, and other
6 records of any company in a holding company system, or
7 any affiliate thereof, as the Commission determines are
8 relevant to costs incurred by a public utility or natural
9 gas company within such holding company system and
10 necessary or appropriate for the protection of utility cus-
11 tomers with respect to jurisdictional rates.

12 (d) CONFIDENTIALITY.—No member, officer, or em-
13 ployee of the Commission shall divulge any fact or infor-
14 mation that may come to his or her knowledge during the
15 course of examination of books, accounts, memoranda, or
16 other records as provided in this section, except as may
17 be directed by the Commission or by a court of competent
18 jurisdiction.

19 **SEC. 1154. STATE ACCESS TO BOOKS AND RECORDS.**

20 (a) IN GENERAL.—Upon the written request of a
21 State commission having jurisdiction to regulate a public
22 utility company in a holding company system, and subject
23 to such terms and conditions as may be necessary and ap-
24 propriate to safeguard against unwarranted disclosure to
25 the public of any trade secrets or sensitive commercial in-

1 formation, a holding company or any associate company
2 or affiliate thereof, wherever located, shall produce for in-
3 spection books, accounts, memoranda, and other records
4 that—

5 (1) have been identified in reasonable detail in
6 a proceeding before the State commission;

7 (2) the State commission determines are rel-
8 evant to costs incurred by such public utility com-
9 pany; and

10 (3) are necessary for the effective discharge of
11 the responsibilities of the State commission with re-
12 spect to such proceeding.

13 (b) EFFECT ON STATE LAW.—Nothing in this section
14 shall preempt applicable State law concerning the provi-
15 sion of books, accounts, memoranda, or other records, or
16 in any way limit the rights of any State to obtain books,
17 accounts, memoranda, or other records, under Federal
18 law, contract, or otherwise.

19 (c) COURT JURISDICTION.—Any United States dis-
20 trict court located in the State in which the State commis-
21 sion referred to in subsection (a) is located shall have ju-
22 risdiction to enforce compliance with this section.

23 **SEC. 1155. EXEMPTION AUTHORITY.**

24 (a) RULEMAKING.—Not later than 90 days after the
25 date of enactment of this title, the Commission shall pro-

1 mulgate a final rule to exempt from the requirements of
2 section 203 any person that is a holding company, solely
3 with respect to one or more—

4 (1) qualifying facilities under the Public Utility
5 Regulatory Policies Act of 1978;

6 (2) exempt wholesale generators; or

7 (3) foreign utility companies.

8 (b) OTHER AUTHORITY.—If, upon application or
9 upon its own motion, the Commission finds that the books,
10 accounts, memoranda, and other records of any person are
11 not relevant to the jurisdictional rates of a public utility
12 company or natural gas company, or if the Commission
13 finds that any class of transactions is not relevant to the
14 jurisdictional rates of a public utility company, the Com-
15 mission shall exempt such person or transaction from the
16 requirements of section 203.

17 **SEC. 1156. AFFILIATE TRANSACTIONS.**

18 Nothing in this subtitle shall preclude the Commis-
19 sion or a State commission from exercising its jurisdiction
20 under otherwise applicable law to determine whether a
21 public utility company, public utility, or natural gas com-
22 pany may recover in rates any costs of an activity per-
23 formed by an associate company, or any costs of goods
24 or services acquired by such public utility company, public

1 utility, or natural gas company from an associate com-
2 pany.

3 **SEC. 1157. APPLICABILITY.**

4 No provision of this subtitle shall apply to, or be
5 deemed to include—

6 (1) the United States;

7 (2) a State or any political subdivision of a
8 State;

9 (3) any foreign governmental authority not op-
10 erating in the United States;

11 (4) any agency, authority, or instrumentality of
12 any entity referred to in paragraph (1), (2), or (3);
13 or

14 (5) any officer, agent, or employee of any entity
15 referred to in paragraph (1), (2), or (3) acting as
16 such in the course of such officer, agent, or employ-
17 ee's official duty.

18 **SEC. 1158. EFFECT ON OTHER REGULATIONS.**

19 Nothing in this subtitle precludes the Commission or
20 a State commission from exercising its jurisdiction under
21 otherwise applicable law to protect utility customers.

22 **SEC. 1159. ENFORCEMENT.**

23 The Commission shall have the same powers as set
24 forth in sections 306 through 317 of the Federal Power

1 Act (16 U.S.C. 825e–825p) to enforce the provisions of
2 this subtitle.

3 **SEC. 1160. SAVINGS PROVISIONS.**

4 (a) IN GENERAL.—Nothing in this subtitle prohibits
5 a person from engaging in or continuing to engage in ac-
6 tivities or transactions in which it is legally engaged or
7 authorized to engage on the date of enactment of this Act,
8 if that person continues to comply with the terms of any
9 such authorization, whether by rule or by order.

10 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
11 Nothing in this subtitle limits the authority of the Com-
12 mission under the Federal Power Act (16 U.S.C. 791a and
13 following) (including section 301 of that Act) or the Nat-
14 ural Gas Act (15 U.S.C. 717 and following) (including sec-
15 tion 8 of that Act).

16 **SEC. 1161. IMPLEMENTATION.**

17 Not later than 12 months after the date of enactment
18 of this title, the Commission shall—

19 (1) promulgate such regulations as may be nec-
20 essary or appropriate to implement this subtitle; and

21 (2) submit to Congress detailed recommenda-
22 tions on technical and conforming amendments to
23 Federal law necessary to carry out this subtitle and
24 the amendments made by this subtitle.

1 **SEC. 1162. TRANSFER OF RESOURCES.**

2 All books and records that relate primarily to the
3 functions transferred to the Commission under this sub-
4 title shall be transferred from the Securities and Exchange
5 Commission to the Commission.

6 **SEC. 1163. EFFECTIVE DATE.**

7 This subtitle shall take effect 12 months after the
8 date of enactment of this title.

9 **SEC. 1164. CONFORMING AMENDMENT TO THE FEDERAL**
10 **POWER ACT.**

11 Section 318 of the Federal Power Act (16 U.S.C.
12 825q) is repealed.

13 **Subtitle F—Market Transparency,**
14 **Anti-Manipulation And Enforce-**
15 **ment**

16 **SEC. 1171. MARKET TRANSPARENCY RULES.**

17 Part II of the Federal Power Act is amended by add-
18 ing:

19 “MARKET TRANSPARENCY RULES

20 “SEC. 222. (a) Not later than 180 days after the date
21 of enactment of this section, the Commission shall issue
22 rules establishing an electronic information system to pro-
23 vide the Commission and the public with access to such
24 information as is necessary or appropriate to facilitate
25 price transparency and participation in markets subject to
26 the Commission’s jurisdiction. Such systems shall provide

1 information about the availability and market price of
2 wholesale electric energy and transmission services to the
3 Commission, State commissions, buyers and sellers of
4 wholesale electric energy, users of transmission services,
5 and the public. The Commission shall have authority to
6 obtain such information from any electric and transmit-
7 ting utility, including any entity described in section
8 201(f).

9 “(b) The Commission shall exempt from disclosure
10 information it determines would, if disclosed, be detri-
11 mental to the operation of an effective market or jeop-
12 ardize system security. This section shall not apply to an
13 entity described in section 212(k)(2)(B) with respect to
14 transactions for the purchase or sale of wholesale electric
15 energy and transmission services within the area described
16 in section 212(k)(2)(A).”.

17 **SEC. 1172. MARKET MANIPULATION.**

18 Part II of the Federal Power Act is amended by the
19 following:

20 “PROHIBITION ON FILING FALSE INFORMATION

21 “SEC. 223. It shall be a violation of this Act for any
22 person or any other entity (including entities described in
23 section 201(f)) willfully and knowingly to report any infor-
24 mation relating to the price of electricity sold at wholesale,
25 which information the person or any other entity knew to
26 be false at the time of the reporting, to any governmental

1 entity with the intent to manipulate the data being com-
2 piled by such governmental entity.

3 “PROHIBITION ON ROUND TRIP TRADING

4 “SEC. 224. (a) It shall be a violation of this Act for
5 any person or any other entity (including entities de-
6 scribed in section 201(f)) willfully and knowingly to enter
7 into any contract or other arrangement to execute a
8 ‘round-trip trade’ for the purchase or sale of electric en-
9 ergy at wholesale.

10 “(b) For the purposes of this section, the term ‘round
11 trip trade’ means a transaction, or combination of trans-
12 actions, in which a person or any other entity—

13 “(1) enters into a contract or other arrange-
14 ment to purchase from, or sell to, any other person
15 or other entity electric energy at wholesale;

16 “(2) simultaneously with entering into the con-
17 tract or arrangement described in paragraph (1), ar-
18 ranges a financially offsetting trade with such other
19 person or entity for the same such electric energy,
20 at the same location, price, quantity and terms so
21 that, collectively, the purchase and sale transactions
22 in themselves result in no financial gain or loss; and

23 “(3) enters into the contract or arrangement
24 with the intent to deceptively affect reported reve-
25 nues, trading volumes, or prices.”.

1 **SEC. 1173. ENFORCEMENT.**

2 (a) COMPLAINTS.—Section 306 of the Federal Power
3 Act (16 U.S.C. 825e) is amended by—

4 (1) inserting “electric utility (including entities
5 described in section 201(f) and rural cooperative en-
6 tities),” after “Any person,”; and

7 (2) inserting “transmitting utility,” after “li-
8 censee” each place it appears.

9 (b) INVESTIGATIONS.—Section 307(a) of the Federal
10 Power Act (16 U.S.C. 825f(a)) is amended by inserting
11 “or transmitting utility” after “any person” in the first
12 sentence.

13 (c) REVIEW OF COMMISSION ORDERS.—Section
14 313(a) of the Federal Power Act (16 U.S.C. 8251) is
15 amended by inserting “electric utility,” after “Any per-
16 son,” in the first sentence.

17 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-
18 eral Power Act (16 U.S.C. 825o) is amended—

19 (1) in subsection (a), by striking “\$5,000” and
20 inserting “\$1,000,000”, and by striking “two years”
21 and inserting “five years”;

22 (2) in subsection (b), by striking “\$500” and
23 inserting “\$25,000”; and

24 (3) by striking subsection (c).

25 (e) CIVIL PENALTIES.—Section 316A of the Federal
26 Power Act (16 U.S.C. 825o–1) is amended—

1 (1) in subsections (a) and (b), by striking “sec-
2 tion 211, 212, 213, or 214” each place it appears
3 and inserting “Part II”; and

4 (2) in subsection (b), by striking “\$10,000”
5 and inserting “\$1,000,000”.

6 (f) GENERAL PENALTIES.—Section 21 of the Natural
7 Gas Act (15 U.S.C. 717t) is amended—

8 (1) in subsection (a), by striking “\$5,000” and
9 inserting “\$1,000,000”, and by striking “two years”
10 and inserting “five years”; and

11 (2) in subsection (b), by striking “\$500” and
12 inserting “\$50,000”.

13 **SEC. 1174. REFUND EFFECTIVE DATE.**

14 Section 206(b) of the Federal Power Act (16 U.S.C.
15 824e(b)) is amended by—

16 (1) striking “the date 60 days after the filing
17 of such complaint nor later than 5 months after the
18 expiration of such 60-day period” in the second sen-
19 tence and inserting “the date of the filing of such
20 complaint nor later than 5 months after the filing of
21 such complaint”;

22 (2) striking “60 days after” in the third sen-
23 tence and inserting “of”;

1 (3) striking “expiration of such 60-day period”
2 in the third sentence and inserting “publication
3 date”; and

4 (4) striking the fifth sentence and inserting: “If
5 no final decision is rendered by the conclusion of the
6 180-day period commencing upon initiation of a pro-
7 ceeding pursuant to this section, the Commission
8 shall state the reasons why it has failed to do so and
9 shall state its best estimate as to when it reasonably
10 expects to make such decision.”.

11 **Subtitle G—Consumer Protections**

12 **SEC. 1181. CONSUMER PRIVACY.**

13 The Federal Trade Commission shall issue rules pro-
14 tecting the privacy of electric consumers from the disclo-
15 sure of consumer information in connection with the sale
16 or delivery of electric energy to a retail electric consumer.
17 If the Federal Trade Commission determines that a
18 State’s regulations provide equivalent or greater protec-
19 tion than the provisions of this section, such State regula-
20 tions shall apply in that State in lieu of the regulations
21 issued by the Commission under this section.

22 **SEC. 1182. UNFAIR TRADE PRACTICES.**

23 (a) SLAMMING.—The Federal Trade Commission
24 shall issue rules prohibiting the change of selection of an
25 electric utility except with the informed consent of the

1 electric consumer or if determined by the appropriate
2 State regulatory authority to be necessary to prevent loss
3 of service.

4 (b) CRAMMING.—The Federal Trade Commission
5 shall issue rules prohibiting the sale of goods and services
6 to an electric consumer unless expressly authorized by law
7 or the electric consumer.

8 (c) STATE AUTHORITY.—If the Federal Trade Com-
9 mission determines that a State’s regulations provide
10 equivalent or greater protection than the provisions of this
11 section, such State regulations shall apply in that State
12 in lieu of the regulations issued by the Commission under
13 this section.

14 **SEC. 1183. DEFINITIONS.**

15 For purposes of this subtitle—

16 (1) “State regulatory authority” has the mean-
17 ing given that term in section 3(21) of the Federal
18 Power Act (16 U.S.C. 796(21)); and

19 (2) “electric consumer” and “electric utility”
20 have the meanings given those terms in section 3 of
21 the Public Utility Regulatory Policies Act of 1978
22 (16 U.S.C. 2602).

1 **Subtitle H—Technical Amendments**

2 **SEC. 1191. TECHNICAL AMENDMENTS.**

3 (a) Section 211(c) of the Federal Power Act (16
4 U.S.C. 824j(c)) is amended by—

5 (1) striking “(2)”;

6 (2) striking “(A)” and inserting “(1)”;

7 (3) striking “(B)” and inserting “(2)”;

8 (4) striking “termination of modification” and
9 inserting “termination or modification”.

10 (b) Section 211(d)(1) of the Federal Power Act (16
11 U.S.C. 824j(d)) is amended by striking “electric utility”
12 the second time it appears and inserting “transmitting
13 utility”.

14 (c) Section 315 of the Federal Power Act (16 U.S.C.
15 825n) is amended by striking “subsection” and inserting
16 “section”.

Calendar No. 79

108TH CONGRESS
1ST SESSION

S. 14

A BILL

To enhance the energy security of the United
States, and for other purposes

MAY 1, 2003

Read the second time and placed on the calendar