

114TH CONGRESS  
1ST SESSION

# S. 1063

To amend title VI of the Public Utility Regulatory Policies Act of 1978 to establish a Federal energy efficiency resource standard for electricity and natural gas suppliers, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 22, 2015

Mr. FRANKEN introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend title VI of the Public Utility Regulatory Policies Act of 1978 to establish a Federal energy efficiency resource standard for electricity and natural gas suppliers, 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 “American Energy Effi-  
5       ciency Act”.

1 **SEC. 2. ENERGY EFFICIENCY RESOURCE STANDARD FOR**  
 2 **RETAIL ELECTRICITY AND NATURAL GAS**  
 3 **SUPPLIERS.**

4 (a) IN GENERAL.—Title VI of the Public Utility Reg-  
 5 ulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is  
 6 amended by adding at the end the following:

7 **“SEC. 610. FEDERAL ENERGY EFFICIENCY RESOURCE**  
 8 **STANDARD FOR RETAIL ELECTRICITY AND**  
 9 **NATURAL GAS SUPPLIERS.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) BASE QUANTITY.—

12 “(A) IN GENERAL.—The term ‘base quan-  
 13 tity’, with respect to a retail electricity supplier  
 14 or retail natural gas supplier, means, for each  
 15 calendar year for which a performance standard  
 16 is established under subsection (c), the average  
 17 annual quantity of electricity or natural gas de-  
 18 livered by the retail electricity supplier or retail  
 19 natural gas supplier to retail customers during  
 20 the 3 calendar years immediately preceding the  
 21 first year that compliance is required under  
 22 subsection (c)(1).

23 “(B) EXCLUSION.—The term ‘base quan-  
 24 tity’, with respect to a retail natural gas sup-  
 25 plier, does not include natural gas delivered for  
 26 purposes of electricity generation.

1           “(2) CUSTOMER FACILITY SAVINGS.—The term  
2           ‘customer facility savings’ means a reduction in end-  
3           use electricity or natural gas consumption (including  
4           waste heat energy savings) at a facility of an end-  
5           use consumer of electricity or natural gas served by  
6           a retail electricity supplier or natural gas supplier,  
7           as compared to—

8                   “(A) in the case of a new facility, con-  
9                   sumption at a reference facility of average effi-  
10                  ciency;

11                  “(B) in the case of an existing facility,  
12                  consumption at the facility during a base period  
13                  of not less than 1 year;

14                  “(C) in the case of new equipment that re-  
15                  places existing equipment at the end of the use-  
16                  ful life of the existing equipment, consumption  
17                  by new equipment of average efficiency of the  
18                  same equipment type, except that customer sav-  
19                  ings under this subparagraph shall not be  
20                  counted towards customer savings under sub-  
21                  paragraph (A) or (B); and

22                  “(D) in the case of new equipment that re-  
23                  places existing equipment with remaining useful  
24                  life—

1                   “(i) consumption of the existing  
2                   equipment for the remaining useful life of  
3                   the equipment; and

4                   “(ii) thereafter, consumption of new  
5                   equipment of average efficiency.

6                   “(3) ELECTRICITY SAVINGS.—The term ‘elec-  
7                   tricity savings’ means reductions in electricity con-  
8                   sumption achieved through measures implemented  
9                   after the date of enactment of this section, as deter-  
10                  mined in accordance with regulations promulgated  
11                  by the Secretary, that are limited to—

12                   “(A) customer facility savings of elec-  
13                   tricity, adjusted to reflect any associated in-  
14                   crease in fuel consumption at the facility;

15                   “(B) reductions in distribution system  
16                   losses of electricity achieved by a retail elec-  
17                   tricity supplier, as compared to losses attrib-  
18                   utable to new or replacement distribution sys-  
19                   tem equipment of average efficiency, as defined  
20                   in regulations promulgated by the Secretary;

21                   “(C) CHP savings;

22                   “(D) codes and standards savings of elec-  
23                   tricity; and

24                   “(E) fuel switching energy savings that re-  
25                   sults in net savings of electricity.

1           “(4) NATURAL GAS SAVINGS.—The term ‘nat-  
2           ural gas savings’ means reductions in natural gas  
3           consumption from measures implemented after the  
4           date of enactment of this section, as determined in  
5           accordance with regulations promulgated by the Sec-  
6           retary, that are limited to—

7                   “(A) customer facility savings of natural  
8                   gas, adjusted to reflect any associated increase  
9                   in electricity consumption or consumption of  
10                  other fuels at the facility;

11                  “(B) reductions in leakage, operational  
12                  losses, and consumption of natural gas fuel to  
13                  operate a gas distribution system, achieved by  
14                  a retail natural gas supplier, as compared to  
15                  similar leakage, losses, and consumption during  
16                  a base period of not less than 1 year;

17                  “(C) codes and standards savings of nat-  
18                  ural gas; and

19                  “(D) fuel switching energy savings that re-  
20                  sults in net savings of natural gas.

21           “(5) RETAIL ELECTRICITY SUPPLIER.—

22                   “(A) IN GENERAL.—The term ‘retail elec-  
23                   tricity supplier’ means, for any given calendar  
24                   year, an electric utility that sells not less than  
25                   1,000,000 megawatt hours of electric energy to

1 electric consumers for purposes other than re-  
2 sale during the preceding calendar year.

3 “(B) INCLUSIONS AND LIMITATIONS.—For  
4 purposes of determining whether an electric  
5 utility qualifies as a retail electricity supplier  
6 under subparagraph (A)—

7 “(i) deliveries by any affiliate of an  
8 electric utility to electric consumers for  
9 purposes other than resale shall be consid-  
10 ered to be deliveries by the electric utility;  
11 and

12 “(ii) deliveries by any electric utility  
13 to a lessee, tenant, or affiliate of the elec-  
14 tric utility shall not be considered to be de-  
15 liveries to electric consumers.

16 “(6) RETAIL NATURAL GAS SUPPLIER.—

17 “(A) IN GENERAL.—The term ‘retail nat-  
18 ural gas supplier’ means, for any given calendar  
19 year, a local distribution company (as defined  
20 in section 2 of the Natural Gas Policy Act of  
21 1978 (15 U.S.C. 3301)), that delivered to nat-  
22 ural gas consumers more than 5,000,000,000  
23 cubic feet of natural gas for purposes other  
24 than resale during the preceding calendar year.

1           “(B) INCLUSIONS AND LIMITATIONS.—For  
2 purposes of determining whether a person  
3 qualifies as a retail natural gas supplier under  
4 subparagraph (A)—

5           “(i) deliveries of natural gas by any  
6 affiliate of a local distribution company to  
7 consumers for purposes other than resale  
8 shall be considered to be deliveries by the  
9 local distribution company; and

10           “(ii) deliveries of natural gas to a les-  
11 see, tenant, or affiliate of a local distribu-  
12 tion company shall not be considered to be  
13 deliveries to natural gas consumers.

14           “(b) ESTABLISHMENT OF PROGRAM.—

15           “(1) REGULATIONS.—Not later than 1 year  
16 after the date of enactment of this section, the Sec-  
17 retary shall, by regulation, establish a program to  
18 implement and enforce the requirements of this sec-  
19 tion, including by—

20           “(A) defining the terms ‘CHP savings’,  
21 ‘code and standards savings’, ‘combined heat  
22 and power system’, ‘cost-effective’, ‘fuel switch-  
23 ing energy savings’, ‘reporting period’, ‘third-  
24 party efficiency provider’, and ‘waste heat en-  
25 ergy savings’;

1           “(B) establishing measurement and  
2 verification procedures and standards that  
3 count only measures and savings that are addi-  
4 tional to business-as-usual customer purchase  
5 practices;

6           “(C) establishing requirements under  
7 which retail electricity suppliers and retail nat-  
8 ural gas suppliers shall—

9                   “(i) demonstrate, document, and re-  
10 port the compliance of the retail electricity  
11 suppliers and retail natural gas suppliers  
12 with the performance standards under sub-  
13 section (c); and

14                   “(ii) estimate the impact of the stand-  
15 ards on current and future electricity and  
16 natural gas use in the service territories of  
17 the suppliers;

18           “(D) establishing requirements governing  
19 applications for, and implementation of, dele-  
20 gated State administration under subsection  
21 (e); and

22           “(E) establishing rules to govern transfers  
23 of electricity or natural gas savings between  
24 suppliers and third-party efficiency providers  
25 serving the same State and between suppliers



1           and third-party efficiency providers serving dif-  
2           ferent States.

3           “(2) COORDINATION WITH STATE PROGRAMS.—

4           In establishing and implementing this section, the  
5           Secretary shall, to the maximum extent practicable,  
6           preserve the integrity and incorporate best practices  
7           of existing State energy efficiency programs.

8           “(c) PERFORMANCE STANDARDS.—

9           “(1) COMPLIANCE OBLIGATION.—Not later  
10          than May 1 of the calendar year immediately fol-  
11          lowing each reporting period—

12                 “(A) each retail electricity supplier shall  
13                 submit to the Secretary a report, in accordance  
14                 with regulations promulgated by the Secretary,  
15                 demonstrating that the retail electricity supplier  
16                 has achieved cumulative electricity savings (ad-  
17                 justed to account for any attrition of savings  
18                 measures implemented in prior years) in each  
19                 calendar year that are equal to the applicable  
20                 percentage of the base quantity of the retail  
21                 electricity supplier; and

22                 “(B) each retail natural gas supplier shall  
23                 submit to the Secretary a report, in accordance  
24                 with regulations promulgated by the Secretary,  
25                 demonstrating that it has achieved cumulative

1 natural gas savings (adjusted to account for  
 2 any attrition of savings measures implemented  
 3 in prior years) in each calendar year that are  
 4 equal to the applicable percentage of the base  
 5 quantity of such retail natural gas supplier.

6 “(2) STANDARDS FOR 2017 THROUGH 2030.—  
 7 For each of calendar years 2017 through 2030, the  
 8 applicable percentages are as follows:

“Calendar Year	Cumulative Electricity Savings Percentage	Cumulative Natural Gas Savings Percentage
2017	1.00	0.50
2018	2.00	1.25
2019	3.00	2.00
2020	4.25	3.00
2021	5.50	4.00
2022	7.00	5.00
2023	8.50	6.00
2024	10.00	7.00
2025	11.50	8.00
2026	13.00	9.00
2027	14.75	10.00
2028	16.50	11.00
2029	18.25	12.00
2030	20.00	13.00.

9 “(3) SUBSEQUENT YEARS.—

10 “(A) CALENDAR YEARS 2031 THROUGH  
 11 2040.—Not later than December 31, 2028, the  
 12 Secretary shall promulgate regulations estab-  
 13 lishing performance standards (expressed as ap-

1 applicable percentages of base quantity for both  
2 cumulative electricity savings and cumulative  
3 natural gas savings) for each of calendar years  
4 2031 through 2040.

5 “(B) REQUIREMENTS.—The Secretary  
6 shall establish standards under this paragraph  
7 at levels reflecting the maximum achievable  
8 level of cost-effective energy efficiency potential,  
9 taking into account—

10 “(i) cost-effective energy savings  
11 achieved by leading retail electricity sup-  
12 pliers and retail natural gas suppliers;

13 “(ii) opportunities for new codes and  
14 standard savings;

15 “(iii) technology improvements; and

16 “(iv) other indicators of cost-effective  
17 energy efficiency potential including dif-  
18 ferences between States.

19 “(C) MINIMUM PERCENTAGE.—In no case  
20 shall the applicable percentages for any cal-  
21 endar year be less than the applicable percent-  
22 ages for calendar year 2030.

23 “(4) DELAY OF SUBMISSION FOR FIRST RE-  
24 PORTING PERIOD.—

1           “(A) IN GENERAL.—Notwithstanding  
2 paragraphs (1) and (2), for the 2017 reporting  
3 period, the Secretary may accept a request from  
4 a retail electricity supplier or a retail natural  
5 gas supplier to delay the required submission of  
6 documentation of all or part of the required  
7 savings for up to 2 years.

8           “(B) PLAN FOR COMPLIANCE.—The re-  
9 quest for delay under subparagraph (A) shall  
10 include a plan for coming into full compliance  
11 by the end of the 2018–2019 reporting period.

12           “(5) APPLYING UNUSED SAVINGS TO FUTURE  
13 YEARS.—If savings achieved in a year exceed the  
14 performance standards specified in this subsection,  
15 any savings in excess of the performance standards  
16 may be applied toward performance standards speci-  
17 fied for future years.

18           “(d) ENFORCEMENT AND JUDICIAL REVIEW.—

19           “(1) REVIEW OF RETAIL SUPPLIER REPORTS.—

20           “(A) IN GENERAL.—The Secretary shall  
21 review each report submitted to the Secretary  
22 by a retail electricity supplier or retail natural  
23 gas supplier under subsection (c) to verify that  
24 the applicable performance standards under  
25 subsection (c) have been met.

1           “(B) EXCLUSION.—In determining compli-  
2           ance with the applicable performance standards  
3           under subsection (c), the Secretary shall ex-  
4           clude reported electricity savings or natural gas  
5           savings that are not adequately demonstrated  
6           and documented, in accordance with the regula-  
7           tions promulgated under subsections (b) and  
8           (c).

9           “(2) PENALTY FOR FAILURE TO DOCUMENT  
10          ADEQUATE SAVINGS.—If a retail electricity supplier  
11          or a retail natural gas supplier fails to demonstrate  
12          compliance with an applicable performance standard  
13          under subsection (c), or to pay to the State an appli-  
14          cable alternative compliance payment under sub-  
15          section (e)(3), the Secretary shall assess against the  
16          retail electricity supplier or retail natural gas sup-  
17          plier a civil penalty for each failure in an amount  
18          equal to, as adjusted for inflation in accordance with  
19          such regulations as the Secretary may promulgate—

20                 “(A) \$100 per megawatt hour of electricity  
21                 savings or alternative compliance payment that  
22                 the retail electricity supplier failed to achieve or  
23                 make, respectively; or

24                 “(B) \$10 per million Btu of natural gas  
25                 savings or alternative compliance payment that

1           the retail natural gas supplier failed to achieve  
2           or make, respectively.

3           “(3) OFFSETTING STATE PENALTIES.—The  
4           Secretary shall reduce the amount of any penalty  
5           under paragraph (2) by the amount paid by the rel-  
6           evant retail electricity supplier or retail natural gas  
7           supplier to a State for failure to comply with the re-  
8           quirements of a State energy efficiency resource  
9           standard during the same compliance period.

10           “(4) ENFORCEMENT PROCEDURES.—The Sec-  
11           retary shall assess a civil penalty, as provided under  
12           paragraph (2), in accordance with the procedures  
13           described in section 333(d) of the Energy Policy and  
14           Conservation Act of 1954 (42 U.S.C. 6303).

15           “(e) STATE ADMINISTRATION.—

16           “(1) IN GENERAL.—Upon receipt of an applica-  
17           tion from the Governor of a State (including the  
18           Mayor of the District of Columbia), the Secretary  
19           may delegate to the State responsibility for admin-  
20           istering this section within the territory of the State  
21           if the Secretary determines that the State will imple-  
22           ment an energy efficiency program that meets or ex-  
23           ceeds the requirements of this section.

24           “(2) SECRETARIAL DETERMINATION.—Not  
25           later than 180 days after the date on which a com-

1       plete application is received by the Secretary, the  
2       Secretary shall make a substantive determination  
3       approving or disapproving a State application, after  
4       public notice and comment.

5           “(3) ALTERNATIVE COMPLIANCE PAYMENTS.—

6           “(A) IN GENERAL.—As part of an applica-  
7       tion submitted under paragraph (1), a State  
8       may permit retail electricity suppliers or retail  
9       natural gas suppliers to pay to the State, by  
10      not later than May 1 of the calendar year im-  
11      mediately following the applicable reporting pe-  
12      riod, an alternative compliance payment in an  
13      amount equal to, as adjusted for inflation in ac-  
14      cordance with such regulations as the Secretary  
15      may promulgate, not less than—

16           “(i) \$50 per megawatt hour of elec-  
17      tricity savings needed to make up any def-  
18      icit with regard to a compliance obligation  
19      under the applicable performance stand-  
20      ard; or

21           “(ii) \$5 per million Btu of natural gas  
22      savings needed to make up any deficit with  
23      regard to a compliance obligation under  
24      the applicable performance standard.

1           “(B) USE OF PAYMENTS.—Alternative  
2 compliance payments collected by a State under  
3 subparagraph (A) shall be used by the State to  
4 administer the delegated authority of the State  
5 under this section and to implement cost-effec-  
6 tive energy efficiency programs that—

7           “(i) to the maximum extent prac-  
8 ticable, achieve electricity savings and nat-  
9 ural gas savings in the State sufficient to  
10 make up the deficit associated with the al-  
11 ternative compliance payments; and

12           “(ii) can be measured and verified in  
13 accordance with the applicable procedures  
14 and standards under subsection (b)(1)(B).

15           “(4) REVIEW OF STATE IMPLEMENTATION.—

16           “(A) PERIODIC REVIEW.—Every 2 years,  
17 the Secretary shall review State implementation  
18 of this section for conformance with the re-  
19 quirements of this section in approximately  $\frac{1}{2}$   
20 of the States that have received approval under  
21 this subsection to administer the program, so  
22 that each State shall be reviewed at least every  
23 4 years.

24           “(B) REPORT.—To facilitate the review  
25 under subparagraph (A), the Secretary may re-



1           quire the State to submit a report dem-  
2           onstrating the conformance of the State with  
3           the requirements of this section.

4           “(C) DEFICIENCIES.—

5           “(i) IN GENERAL.—In completing a  
6           review under this paragraph, if the Sec-  
7           retary finds deficiencies, the Secretary  
8           shall—

9                   “(I) notify the State of the defi-  
10                   ciencies;

11                   “(II) direct the State to correct  
12                   the deficiencies; and

13                   “(III) require the State to report  
14                   to the Secretary on progress made by  
15                   not later than 180 days after the date  
16                   on which the State receives notice  
17                   under subclause (I).

18           “(ii) SUBSTANTIAL DEFICIENCIES.—If  
19           the deficiencies are substantial, the Sec-  
20           retary shall—

21                   “(I) disallow the reported elec-  
22                   tricity savings or natural gas savings  
23                   that the Secretary determines are not  
24                   credible due to deficiencies;

1                   “(II) re-review the State not  
2 later than 2 years after the date on  
3 which the original review was com-  
4 pleted; and

5                   “(III) if substantial deficiencies  
6 remain uncorrected after the review  
7 provided for under subclause (II), re-  
8 voke the authority of the State to ad-  
9 minister the program established  
10 under this section.

11           “(f) INFORMATION AND REPORTS.—In accordance  
12 with section 13 of the Federal Energy Administration Act  
13 of 1974 (15 U.S.C. 772), the Secretary may require any  
14 retail electricity supplier, retail natural gas supplier, third-  
15 party efficiency provider, or any other entity that the Sec-  
16 retary determines appropriate, to provide any information  
17 the Secretary determines appropriate to carry out this sec-  
18 tion.

19           “(g) STATE LAW.—Nothing in this section dimin-  
20 ishes or qualifies any authority of a State or political sub-  
21 division of a State to adopt or enforce any law or regula-  
22 tion respecting electricity savings or natural gas savings,  
23 including any law or regulation establishing energy effi-  
24 ciency requirements that are more stringent than those  
25 under this section, except that no State law or regulation

1 shall relieve any person of any requirement otherwise ap-  
2 plicable under this section.”.

3 (b) CONFORMING AMENDMENT.—The table of con-  
4 tents of the Public Utility Regulatory Policies Act of 1978  
5 (16 U.S.C. prec. 2601) is amended by adding at the end  
6 of the items relating to title VI the following:

“Sec. 609. Rural and remote communities electrification grants.

“Sec. 610. Federal energy efficiency resource standard for retail electricity and  
natural gas suppliers.”.

