

110TH CONGRESS  
1ST SESSION

# H. R. 2036

To promote the development and use of marine and hydrokinetic renewable energy technologies, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2007

Mr. INSLEE (for himself, Mr. HOLT, Mr. HALL of New York, Ms. BORDALLO, Mr. DELAHUNT, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Science and Technology, Ways and Means, and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To promote the development and use of marine and hydrokinetic renewable energy technologies, 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 “Marine and  
5 Hydrokinetic Renewable Energy Promotion Act”.

1 **SEC. 2. DEFINITION.**

2 For purposes of this Act, the term “marine and  
3 hydrokinetic renewable energy” means electrical energy  
4 from—

5 (1) waves, tides, and currents in oceans, estu-  
6 aries, and tidal areas;

7 (2) free flowing water in rivers, lakes, and  
8 streams;

9 (3) free flowing water in man-made channels,  
10 including projects that utilize nonmechanical struc-  
11 tures to accelerate the flow of water for electric  
12 power production purposes; and

13 (4) differentials in ocean temperature (ocean  
14 thermal energy conversion).

15 The term shall not include energy from any source that  
16 utilizes a dam, diversionary structure, or impoundment for  
17 electric power production purposes, except as provided in  
18 paragraph (3).

19 **SEC. 3. RESEARCH AND DEVELOPMENT.**

20 (a) PROGRAM.—The Secretary of Energy, in con-  
21 sultation with the Secretary of Commerce and the Sec-  
22 retary of the Interior, shall establish a program of marine  
23 and hydrokinetic renewable energy research focused on—

24 (1) developing and demonstrating marine and  
25 hydrokinetic renewable energy technologies;

1           (2) reducing the manufacturing and operation  
2 costs of marine and hydrokinetic renewable energy  
3 technologies;

4           (3) increasing the reliability and survivability of  
5 marine and hydrokinetic renewable energy facilities;

6           (4) integrating marine and hydrokinetic renew-  
7 able energy into electric grids;

8           (5) identifying opportunities for cross fertiliza-  
9 tion and development of economies of scale between  
10 offshore wind and marine and hydrokinetic renew-  
11 able energy sources;

12           (6) identifying, in consultation with the Sec-  
13 retary of Commerce and the Secretary of the Inte-  
14 rior, the environmental impacts of marine and  
15 hydrokinetic renewable energy technologies and ways  
16 to address adverse impacts, and providing public in-  
17 formation concerning technologies and other means  
18 available for monitoring and determining environ-  
19 mental impacts; and

20           (7) standards development, demonstration, and  
21 technology transfer for advanced systems engineer-  
22 ing and system integration methods to identify crit-  
23 ical interfaces.

24           (b) AUTHORIZATION OF APPROPRIATIONS.—There  
25 are authorized to be appropriated to the Secretary of En-

1 ergy for carrying out this section \$50,000,000 for each  
2 of the fiscal years 2008 through 2017.

3 **SEC. 4. ADAPTIVE MANAGEMENT AND ENVIRONMENTAL**  
4 **FUND.**

5 (a) FINDINGS.—The Congress finds that—

6 (1) the use of marine and hydrokinetic renew-  
7 able energy technologies can avoid contributions to  
8 global warming gases, and such technologies can be  
9 produced domestically;

10 (2) marine and hydrokinetic renewable energy  
11 is a nascent industry; and

12 (3) the United States must work to promote  
13 new renewable energy technologies that reduce con-  
14 tributions to global warming gases and improve our  
15 country's domestic energy production in a manner  
16 that is consistent with environmental protection,  
17 recreation, and other public values.

18 (b) ESTABLISHMENT.—The Secretary of Energy  
19 shall establish an Adaptive Management and Environ-  
20 mental Fund, and shall lend amounts from that fund to  
21 entities described in subsection (f) to cover the costs of  
22 projects that produce marine and hydrokinetic renewable  
23 energy. Such costs include design, fabrication, deploy-  
24 ment, operation, monitoring, and decommissioning costs.  
25 Loans under this section may be subordinate to project-

1 related loans provided by commercial lending institutions  
2 to the extent the Secretary of Energy considers appro-  
3 priate.

4 (c) REASONABLE ACCESS.—As a condition of receiv-  
5 ing a loan under this section, a recipient shall provide rea-  
6 sonable access, to Federal or State agencies and other re-  
7 search institutions as the Secretary considers appropriate,  
8 to the project area and facilities for the purposes of inde-  
9 pendent environmental research.

10 (d) PUBLIC AVAILABILITY.—The results of any as-  
11 sessment or demonstration paid for, in whole or in part,  
12 with funds provided under this section shall be made avail-  
13 able to the public, except to the extent that they contain  
14 information that is protected from disclosure under sec-  
15 tion 552(b) of title 5, United States Code.

16 (e) REPAYMENT OF LOANS.—

17 (1) IN GENERAL.—The Secretary of Energy  
18 shall require a recipient of a loan under this section  
19 to repay the loan, plus interest at a rate of 2.1 per-  
20 cent per year, over a period not to exceed 20 years,  
21 beginning after the commercial generation of electric  
22 power from the project commences. Such repayment  
23 shall be required at a rate that takes into account  
24 the economic viability of the loan recipient and en-  
25 sures regular and timely repayment of the loan.

1           (2) BEGINNING OF REPAYMENT REQUIRED.—

2           No repayments shall be required under this sub-  
3           section until after the project generates net pro-  
4           ceeds. For purposes of this paragraph, the term “net  
5           proceeds” means proceeds from the commercial sale  
6           of electricity after payment of project-related costs,  
7           including taxes and regulatory fees that have not  
8           been paid using funds from a loan provided for the  
9           project under this section.

10           (3) TERMINATION.—Repayment of a loan made  
11           under this section shall terminate as of the date that  
12           the project for which the loan was provided ceases  
13           commercial generation of electricity if a govern-  
14           mental permitting authority has ordered the closure  
15           of the facility because of a finding that the project  
16           has unacceptable adverse environmental impacts, ex-  
17           cept that the Secretary shall require a loan recipient  
18           to continue making loan repayments for the cost of  
19           equipment, obtained using funds from the loan that  
20           have not otherwise been repaid under rules estab-  
21           lished by the Secretary, that is utilized in a subse-  
22           quent project for the commercial generation of elec-  
23           tricity.

24           (f) ADAPTIVE MANAGEMENT PLAN.—In order to re-  
25           ceive a loan under this section, an applicant for a Federal

1 license or permit to construct, operate, or maintain a ma-  
2 rine or hydrokinetic renewable energy project shall provide  
3 to the Federal agency with primary jurisdiction to issue  
4 such license or permit an adaptive management plan for  
5 the proposed project. Such plan shall—

6           (1) be prepared in consultation with other par-  
7 ties to the permitting or licensing proceeding, includ-  
8 ing all Federal, State, municipal, and tribal agencies  
9 with authority under applicable Federal law to re-  
10 quire or recommend design or operating conditions,  
11 for protection, mitigation, and enhancement of fish  
12 and wildlife resources, water quality, navigation,  
13 public safety, land reservations, or recreation, for in-  
14 corporation into the permit or license;

15           (2) set forth specific and measurable objectives  
16 for the protection, mitigation, and enhancement of  
17 fish and wildlife resources, water quality, navigation,  
18 public safety, land reservations, or recreation, as re-  
19 quired or recommended by governmental agencies  
20 described in paragraph (1), and shall require moni-  
21 toring to ensure that these objectives are met;

22           (3) provide specifically for the modification or,  
23 if necessary, removal of the marine or hydrokinetic  
24 renewable energy project based on findings by the li-  
25 censing or permitting agency that the marine or

1 hydrokinetic renewable energy project has not at-  
2 tained or will not attain the specific and measurable  
3 objectives set forth in paragraph (2); and

4 (4) be approved and incorporated in the Fed-  
5 eral license or permit.

6 (g) SUNSET.—The Secretary of Energy shall trans-  
7 mit a report to the Congress when the Secretary of Energy  
8 determines that the technologies supported under this Act  
9 have achieved a level of maturity sufficient to enable the  
10 expiration of the programs under this Act. The Secretary  
11 of Energy shall not make any new loans under this section  
12 after the report is transmitted under this subsection.

13 **SEC. 5. PROGRAMMATIC ENVIRONMENTAL IMPACT STATE-**  
14 **MENT.**

15 The Secretary of Commerce and the Secretary of the  
16 Interior shall, in cooperation with the Federal Energy  
17 Regulatory Commission and the Secretary of Energy, and  
18 in consultation with appropriate State agencies, jointly  
19 prepare programmatic environmental impact statements  
20 which contain all the elements of an environmental impact  
21 statement under section 102 of the National Environ-  
22 mental Policy Act of 1969 (42 U.S.C. 4332), regarding  
23 the impacts of the deployment of marine and hydrokinetic  
24 renewable energy technologies in the navigable waters of  
25 the United States. One programmatic environmental im-

1 pact statement shall be prepared under this section for  
2 each of the Environmental Protection Agency regions of  
3 the United States. The agencies shall issue the pro-  
4 grammatic environmental impact statements under this  
5 section not later than 18 months after the date of enact-  
6 ment of this Act. The programmatic environmental impact  
7 statements shall evaluate among other things the potential  
8 impacts of site selection on fish and wildlife and related  
9 habitat. Nothing in this section shall operate to delay con-  
10 sideration of any application for a license or permit for  
11 a marine and hydrokinetic renewable energy technology  
12 project.

13 **SEC. 6. PRODUCTION CREDIT FOR ELECTRICITY PRO-**  
14 **DUCED FROM MARINE RENEWABLES.**

15 (a) IN GENERAL.—Paragraph (1) of section 45(c) of  
16 the Internal Revenue Code of 1986 (relating to resources)  
17 is amended by striking “and” at the end of subparagraph  
18 (G), by striking the period at the end of subparagraph  
19 (H) and inserting “, and”, and by adding at the end the  
20 following new subparagraph:

21 “(I) marine and hydrokinetic renewable en-  
22 ergy.”.

23 (b) MARINE RENEWABLES.—Subsection (c) of sec-  
24 tion 45 of such Code is amended by adding at the end  
25 the following new paragraph:

1           “(10) MARINE AND HYDROKINETIC RENEW-  
2 ABLE ENERGY.—

3           “(A) IN GENERAL.—The term ‘marine and  
4 hydrokinetic renewable energy’ means energy  
5 derived from—

6                   “(i) waves, tides, and currents in  
7 oceans, estuaries, and tidal areas,

8                   “(ii) free flowing water in rivers,  
9 lakes, and streams,

10                   “(iii) free flowing water in man-made  
11 channels, including projects that utilize  
12 nonmechanical structures to accelerate the  
13 flow of water for electric power production  
14 purposes, or

15                   “(iv) differentials in ocean tempera-  
16 ture (ocean thermal energy conversion).

17           “(B) EXCEPTIONS.—Such term shall not  
18 include any energy which is—

19                   “(i) described in subparagraphs (A)  
20 through (H) of paragraph (1), or

21                   “(ii) derived from any source that uti-  
22 lizes a dam, diversionary structure, or im-  
23 poundment for electric power production  
24 purposes, except as provided in subpara-  
25 graph (A)(iii).”.

1 (c) DEFINITION OF FACILITY.—Subsection (d) of  
2 section 45 of such Code is amended by adding at the end  
3 the following new paragraph:

4 “(11) MARINE AND HYDROKINETIC RENEW-  
5 ABLE ENERGY FACILITIES.—In the case of a facility  
6 producing electricity from marine and hydrokinetic  
7 renewable energy, the term ‘qualified facility’ means  
8 any facility owned by the taxpayer which is origi-  
9 nally placed in service after the date of the enact-  
10 ment of this paragraph and before January 1,  
11 2009.”.

12 (d) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to electricity produced and sold  
14 after the date of the enactment of this Act, in taxable  
15 years ending after such date.

16 **SEC. 7. INVESTMENT CREDIT AND 5-YEAR DEPRECIATION**  
17 **FOR EQUIPMENT WHICH PRODUCES ELEC-**  
18 **TRICITY FROM MARINE AND HYDROKINETIC**  
19 **RENEWABLE ENERGY.**

20 (a) IN GENERAL.—Subparagraph (A) of section  
21 48(a)(3) of the Internal Revenue Code of 1986 (relating  
22 to energy property) is amended by striking “or” at the  
23 end of clause (iii), by inserting “or” at the end of clause  
24 (iv), and by adding at the end the following new clause:

1                   “(v) equipment which uses marine  
2                   and hydrokinetic renewable energy (as de-  
3                   fined in section 45(c)(10)) but only with  
4                   respect to periods ending before January  
5                   1, 2018,”.

6           (b) 30 PERCENT CREDIT.—Clause (i) of section  
7 48(a)(2)(A) of such Code is amended by striking “and”  
8 at the end of subclause (II) and by adding at the end the  
9 following new subclause:

10                                   “(IV) energy property described  
11                                   in paragraph (3)(A)(v), and”.

12           (c) CREDITS ALLOWED FOR INVESTMENT AND PRO-  
13 DUCTION.—Paragraph (3) of section 48(a)(3) is amended  
14 by inserting “(other than property described in subpara-  
15 graph (A)(v))” after “any property” in the last sentence  
16 thereof.

17           (d) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to property placed in service after  
19 the date of the enactment of this Act, in taxable years  
20 ending after such date.

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