

108TH CONGRESS  
1ST SESSION

# H. R. 653

To establish a Fund for Environmental Priorities to be funded by a portion of the consumer savings resulting from retail electricity choice, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2003

Mr. ANDREWS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Transportation and Infrastructure, 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 establish a Fund for Environmental Priorities to be funded by a portion of the consumer savings resulting from retail electricity choice, 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 “Environmental Prior-  
5       ities Act of 2003”.

1 **SEC. 2. RECAPTURE OF SAVINGS FROM RETAIL ELEC-**  
2 **TRICITY COMPETITION.**

3 (a) **EFFECTIVE DATE.**—This Act shall take effect for  
4 a consumer sector in any State on January 1 of the first  
5 year after all State regulated electric utilities and all non-  
6 regulated electric utilities in that State have been deter-  
7 mined by the Secretary of Energy to have established re-  
8 tail electric service choice for customers in that sector, but  
9 not earlier than January 1, 2004. The Secretary shall an-  
10 nually review the laws and regulations of each State relat-  
11 ing to retail electric service regulation and make such de-  
12 terminations on January 1, 2004, and January 1 of each  
13 year thereafter.

14 (b) **10 PERCENT OF CONSUMER SAVINGS.**—For each  
15 State, on December 31 of the first full calendar year fol-  
16 lowing the effective date of this Act for any consumer sec-  
17 tor in the State, and on December 31 of each subsequent  
18 calendar year, each provider of retail electric services in  
19 the State shall contribute to the fiscal agent for the Envi-  
20 ronmental Priorities Board established under section 2 an  
21 amount equal to 10 percent of the total consumer savings  
22 for that sector for that calendar year.

23 (c) **DEFINITIONS.**—For purposes of this section:

24 (1) **CONSUMER SAVINGS.**—For any provider of  
25 retail electric services in a State, for any consumer  
26 sector in the State, the term “consumer savings”

1 means, for any calendar year, the amount (if any)  
2 by which the potential rate for electric energy pro-  
3 vided by that provider to that sector exceeds the cur-  
4 rent rate for that sector, multiplied by that sector's  
5 total consumption (in kilowatt-hours) during that  
6 calendar year.

7 (2) CURRENT RATE.—For any provider of retail  
8 electric services in a State, for any consumer sector  
9 in the State, the term “current rate” means, for the  
10 12 months following the effective date of this Act for  
11 that sector in that State, the average kilowatt-hour  
12 rate paid by customers of the provider in that con-  
13 sumer sector in that State, as calculated by the pro-  
14 vider and recalculated annually.

15 (3) POTENTIAL RATE.—

16 (A) GENERAL RULE.—For any provider of  
17 retail electric services in a State, for any con-  
18 sumer sector in the State, the term “potential  
19 rate” means, for each calendar year following  
20 the effective date of this act for that sector in  
21 that State, the average kilowatt-hour rate paid  
22 by the provider's customers in that sector dur-  
23 ing the 12-month period preceding the date on  
24 which retail electric service choice for customers  
25 in that sector was established, adjusted for in-

1           flation. The adjustment for inflation shall be  
2           made using a methodology to be determined by  
3           the Secretary of Energy. The Secretary of En-  
4           ergy shall recalculate the potential rate annu-  
5           ally to adjust it for inflation.

6           (B) SPECIAL RULES.— For all sectors not  
7           serviced by the provider during any period, the  
8           average kilowatt-hour rate for that sector shall  
9           be estimated or measured by the Secretary of  
10          Energy. In any case where retail choice in a  
11          State or sector did not all occur on one effective  
12          date but was phased-in over time, the Secretary  
13          of Energy shall establish regulations to fairly  
14          establish the potential rate. In any cases where,  
15          for the 12-month period preceding the date on  
16          which retail electric service choice for customers  
17          in that sector was established, a provider served  
18          a sector in the State but did not serve it for the  
19          full period, the Secretary of Energy shall estab-  
20          lish regulations to fairly establish the potential  
21          rate.

22 **SEC. 3. USE OF CONTRIBUTIONS FOR ENVIRONMENTAL**  
23 **PRIORITIES.**

24          (a) NATIONAL ENVIRONMENTAL PRIORITIES  
25 BOARD.—The Administrator of the Environmental Pro-

1 tection Agency (hereinafter in this section referred to as  
2 the “Administrator”) shall establish a National Environ-  
3 mental Priorities Board to carry out the functions and re-  
4 sponsibilities specified in this section. The Board shall be  
5 composed of 3 persons who are officers or employees of  
6 the United States, and 4 State commissioners nominated  
7 by the national organization of the State commissions and  
8 appointed by the Administrator. The Administrator shall  
9 appoint one member of the Board to serve as Chairman.

10 (b) RULES.—Within 180 days after the enactment of  
11 this Act, the Administrator shall promulgate a final rule  
12 containing the rules and procedures of the Board, includ-  
13 ing the rules and procedures for selecting a non-Federal  
14 fiscal agent under subsection (e). The Administrator shall  
15 have oversight responsibilities over the Board.

16 (c) ENVIRONMENTAL PRIORITIES PROGRAM.—

17 (1) REGULATIONS.—Within 90 days after the  
18 promulgation of the Administrator’s rules under  
19 subsection (b), the Board shall institute a pro-  
20 ceeding to establish regulations governing creation  
21 and administration of an Environmental Priorities  
22 Program. Such regulations shall include criteria and  
23 methods of selecting State projects to receive sup-  
24 port under the Program. Such support may include  
25 direct loans, loan guarantees, grants, capitalization

1 grants for State revolving funds, and other assist-  
2 ance. The State projects may include—

3 (A) lowering borrowing costs for municipal  
4 and regional governments constructing waste-  
5 water treatment plants;

6 (B) increasing the use of filter strips and  
7 riparian buffers in protecting rivers and  
8 streams;

9 (C) mitigating the deleterious effect of  
10 electricity production on air quality;

11 (D) supporting the preservation of open  
12 space for resource conservation, wildlife protec-  
13 tion, or recreation; and

14 (E) such other projects furthering national  
15 environmental priorities as may be established  
16 by the Board.

17 (2) AGENT.—The Board shall enter into ar-  
18 rangements with a non-Federal fiscal agent who  
19 shall be authorized to receive the contributions made  
20 under section 2(b) and to disburse such contribu-  
21 tions as provided in subsection (d).

22 (3) PROGRAMS.—Any State in which retail elec-  
23 tric service choice has been established for any con-  
24 sumer sector may establish one or more public pur-  
25 pose programs and apply for matching funding

1 under this section for projects to be funded under  
2 such program. A participating State may use match-  
3 ing funds received under this section only to support  
4 one or more eligible environmental priorities pro-  
5 grams meeting the selection criteria established  
6 under paragraph (1). The Board shall regularly  
7 audit the expenditures of matching funds received by  
8 a participating State under this section.

9 (4) STATE OPTION.—At no time shall a State  
10 be required, pursuant to this section, to participate  
11 in the Environmental Priorities Program, nor may a  
12 State be required by the Board to fund a particular  
13 project.

14 (d) FUND FOR ENVIRONMENTAL PRIORITIES.—

15 (1) DISTRIBUTION.—The fiscal agent shall dis-  
16 tribute contributions received by the fiscal agent  
17 under section 2(b) to States (or entities designated  
18 by the States) under this subsection in accordance  
19 with the criteria established by the Board under sub-  
20 section (c) to carry out eligible projects under envi-  
21 ronmental priorities programs established by the  
22 States. For each calendar year after the year 2002,  
23 the Board shall solicit applications from States for  
24 matching funds to carry out eligible environmental  
25 priorities programs. The applications for assistance

1 during any calendar year must be received by the  
2 Board before the commencement of such year. In its  
3 application, the State shall certify that the moneys  
4 will be used for one or more eligible public purpose  
5 programs and shall specify the amount of State sup-  
6 port which is projected for the coming calendar year  
7 for the programs concerned.

8 (2) CALCULATION.—Upon receipt of all State  
9 requests for matching funds submitted pursuant to  
10 paragraph (1) for any calendar year, the Board shall  
11 calculate the funds necessary to match the level of  
12 projected States funds for eligible environmental pri-  
13 orities programs for that calendar year.

14 (3) REDUCTION.—Following the calculation of  
15 the amount of matching funds required under para-  
16 graph (2) for all States requesting funds for any cal-  
17 endar year, the Board shall communicate that  
18 amount to the fiscal agent. Expenditures by the fis-  
19 cal agent for any calendar year may not exceed the  
20 total balance. To the extent the matching funds re-  
21 quested by all such States for a calendar year exceed  
22 the total amount received by the fiscal agent during  
23 the prior calendar year and available to the fiscal  
24 agent at the commencement of the calendar year  
25 concerned, the matching funds distributed to each



1       such State shall be reduced pro rata so that the per-  
2       centage of State funds matched by funds provided  
3       under this section is the same for all States request-  
4       ing funds.

5           (4) USE OF FUNDS.—The fiscal agent shall dis-  
6       tribute matching funds to the States (or to an entity  
7       or entities designated by the State to receive pay-  
8       ments) to be used for eligible environmental prior-  
9       ities programs designated under subsection (c). All  
10      funds received shall be used only for the eligible en-  
11      vironmental priorities programs designated by the  
12      State.

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