S. 962

To amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued to finance certain energy projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 28, 2005

Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. BUNNING, Mr. BINGAMAN, Mr. CONRAD, Mr. HAGEL, Mr. COLEMAN, Mr. JOHNSON, and Mr. NELSON of Nebraska) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued to finance certain energy projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) Short Title.—This Act may be cited as the “Clean Energy Bonds Act of 2005”.

(b) Amendment of 1986 Code.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment
to, or repeal of, a section or other provision, the reference
shall be considered to be made to a section or other provi-

SEC. 2. CREDIT TO HOLDERS OF CLEAN ENERGY BONDS.
(a) IN GENERAL.—Part IV of subchapter A of chap-
ter 1 (relating to credits against tax) is amended by add-
ing at the end the following new subpart:

“Subpart H—Nonrefundable Credit to Holders of
Clean Energy Bonds

“Sec. 54. Credit to holders of clean energy bonds.

“SEC. 54. CREDIT TO HOLDERS OF CLEAN ENERGY BONDS.
“(a) ALLOWANCE OF CREDIT.—In the case of a tax-
payer who holds a clean energy bond on a credit allowance
date of such bond, which occurs during the taxable year,
there shall be allowed as a credit against the tax imposed
by this chapter for such taxable year an amount equal to
the sum of the credits determined under subsection (b)
with respect to credit allowance dates during such year
on which the taxpayer holds such bond.

“(b) AMOUNT OF CREDIT.—
“(1) IN GENERAL.—The amount of the credit
determined under this subsection with respect to any
credit allowance date for a clean energy bond is 25
percent of the annual credit determined with respect
to such bond.
“(2) Annual credit.—The annual credit determined with respect to any clean energy bond is the product of—

“(A) the credit rate determined by the Secretary under paragraph (3) for the day on which such bond was sold, multiplied by

“(B) the outstanding face amount of the bond.

“(3) Determination.—For purposes of paragraph (2), with respect to any clean energy bond, the Secretary shall determine daily or caused to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary’s designee estimates will permit the issuance of clean energy bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.

“(4) Credit allowance date.—For purposes of this section, the term ‘credit allowance date’ means—

“(A) March 15,

“(B) June 15,
“(C) September 15, and

“(D) December 15.

Such term also includes the last day on which the
bond is outstanding.

“(5) SPECIAL RULE FOR ISSUANCE AND RE-
DEMPTION.—In the case of a bond which is issued
during the 3-month period ending on a credit allow-
ance date, the amount of the credit determined
under this subsection with respect to such credit al-
lowance date shall be a ratable portion of the credit
otherwise determined based on the portion of the 3-
month period during which the bond is outstanding.
A similar rule shall apply when the bond is redeemed
or matures.

“(c) LIMITATION BASED ON AMOUNT OF TAX.—

“(1) IN GENERAL.—The credit allowed under
subsection (a) for any taxable year shall not exceed
the excess of—

“(A) the sum of the regular tax liability
(as defined in section 26(b)) plus the tax im-
posed by section 55, over

“(B) the sum of the credits allowable
under this part (other than subpart C thereof,
relating to refundable credits).
“(2) Carryover of unused credit.—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

“(d) Clean energy bond.—For purposes of this section—

“(1) in general.—The term ‘clean energy bond’ means any bond issued as part of an issue if—

“(A) the bond is issued by a qualified issuer,

“(B) 95 percent or more of the proceeds from the sale of such issue are to be used for capital expenditures incurred by qualified borrowers for 1 or more qualified projects,

“(C) the qualified issuer designates such bond for purposes of this section and the bond is in registered form, and

“(D) the issue meets the requirements of subsections (e) and (g).

“(2) Qualified project; special use rules.—
“(A) IN GENERAL.—The term ‘qualified project’ means any qualified facility (as determined under section 45(d) without regard to any placed in service date) owned by a qualified borrower.

“(B) REFINANCING RULES.—For purposes of paragraph (1)(B), a qualified project may be refinanced with proceeds of a clean energy bond only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred by a qualified borrower after the date of the enactment of this section.

“(C) REIMBURSEMENT.—For purposes of paragraph (1)(B), a clean energy bond may be issued to reimburse a qualified borrower for amounts paid after the date of the enactment of this section with respect to a qualified project, but only if prior to the payment of such expenditure, the qualified borrower declared its intent to reimburse such expenditure with the proceeds of a clean energy bond.

“(D) TREATMENT OF CHANGES IN USE.—For purposes of paragraph (1)(B), the proceeds of an issue shall not be treated as used for a
qualified project to the extent that a qualified
borrower takes any action within its control
which causes such proceeds not to be used for
a qualified project. The Secretary shall pre-
scribe regulations specifying remedial actions
that may be taken (including conditions to tak-
ing such remedial actions) to prevent an action
described in the preceding sentence from caus-
ing a bond to fail to be a clean energy bond.

“(e) Maturity Limitations.—

“(1) Duration of Term.—A bond shall not be
treated as a clean energy bond if such bond is issued
as part of an issue and—

“(A) the average maturity of bonds issued
as a part of such issue, exceeds

“(B) 120 percent of the average reasonable
expected economic life of the facilities being fi-
nanced with the proceeds from the sale of such
issue.

“(2) Determination of Averages.—For pur-
poses of paragraph (1), the determination of aver-
ages of an issue and economic life of any facility
shall be determined in accordance with section
147(b).
“(3) Ratable principal amortization required.—A bond shall not be treated as a clean energy bond unless it is part of an issue which provides for an equal amount of principal to be paid by the qualified issuer during each calendar year that the issue is outstanding.

“(f) Credit included in gross income.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

“(g) Special rules relating to expenditures.—

“(1) In general.—An issue shall be treated as meeting the requirements of this subsection if—

“(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or more qualified projects within the 5-year period beginning on the date of issuance of the clean energy bond,

“(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the clean energy bond or, in
the case of a clean energy bond, the proceeds
of which are to be loaned to 2 or more qualified
borrowers, such binding commitment will be in-
curred within the 6-month period beginning on
the date of the loan of such proceeds to a quali-
Fied borrower, and

“(C) such projects will be completed with
due diligence and the proceeds from the sale of
the issue will be spent with due diligence.

“(2) EXTENSION OF PERIOD.—Upon submis-
sion of a request prior to the expiration of the period
described in paragraph (1)(A), the Secretary may
extend such period if the qualified issuer establishes
that the failure to satisfy the 5-year requirement is
due to reasonable cause and the related projects will
continue to proceed with due diligence.

“(3) FAILURE TO SPEND REQUIRED AMOUNT
OF BOND PROCEEDS WITHIN 5 YEARS.—To the ex-
tent that less than 95 percent of the proceeds of
such issue are expended within such 5-year period
(and no extension has been obtained under para-
graph (2)), the qualified issuer shall redeem all of
the nonqualified bonds on the earliest call date sub-
sequent to the expiration of the 5-year period. If
such earliest call date is more than 90 days subse-
sequent to the expiration of the 5-year period, the
qualified issuer shall establish a yield-restricted de-
feasance escrow within such 90 days to retire such
nonqualified bonds on the earlier of the date which
is 10 years after the issue date or the first call date.
For purposes of this paragraph, the term ‘non-
qualified bonds’ means the portion of the out-
standing bonds in an amount that, if the remaining
bonds were issued on the fifth anniversary of the
date of the issuance of the issue, at least 95 percent
of the proceeds of the remaining bonds would be
used to provide qualified projects.

“(h) Special Rules Relating to Arbitrage.—
“(1) In general.—A bond which is part of an
issue shall not be treated as a clean energy bond un-
less, with respect to the issue of which the bond is
a part, the qualified issuer satisfies the arbitrage re-
bate requirements of section 148 with respect to
gross proceeds of the issue (other than any amounts
applied in accordance with subsection (g)). For pur-
poses of such requirements, yield over the term of an
issue shall be determined under the principles of sec-
tion 148 based on the qualified issuer’s payments of
principal, interest (if any), and fees for qualified
guarantees on such issue.
“(2) Exception.—Amounts on deposit in a 
bona fide debt service fund with regard to any clean 
ergy bond are not subject to the arbitrage rebate 
requirements of section 148.

“(i) Cooperative Electric Company; Qualified 
Energy Tax Credit Bond Lender; Governmental 
Body; Qualified Borrower.—For purposes of this sec-
tion—

“(1) Cooperative Electric Company.—The 
term ‘cooperative electric company’ means a mutual 
or cooperative electric company described in section 
501(c)(12) or section 1381(a)(2)(C), or a not-for-
profit electric utility which has received a loan or 
loan guarantee under the Rural Electrification Act.

“(2) Clean Energy Bond Lender.—The 
term ‘clean energy bond lender’ means a lender 
which is a cooperative which is owned by, or has out-
standing loans to, 100 or more cooperative electric 
companies and is in existence on February 1, 2002, 
and shall include any affiliated entity which is con-
trolled by such lender.

“(3) Governmental Body.—The term ‘gov-
ernmental body’ means any State, territory, posses-
sion of the United States, the District of Columbia,
Indian tribal government, and any political subdivision thereof.

“(4) QUALIFIED ISSUER.—The term ‘qualified issuer’ means—

“(A) a clean energy bond lender,
“(B) a cooperative electric company,
“(C) a governmental body, or
“(D) the Tennessee Valley Authority.

“(5) QUALIFIED BORROWER.—The term ‘qualified borrower’ means—

“(A) a cooperative electric company,
“(B) a governmental body, or
“(C) the Tennessee Valley Authority.

“(j) SPECIAL RULES RELATING TO POOL BONDS.—
No portion of a pooled financing bond may be allocable to loan unless the borrower has entered into a written loan commitment for such portion prior to the issue date of such issue.

“(k) OTHER DEFINITIONS AND SPECIAL RULES.—
For purposes of this section—

“(1) BOND.—The term ‘bond’ includes any obligation.

“(2) POOLED FINANCING BOND.—The term ‘pooled financing bond’ shall have the meaning given such term by section 149(f)(4)(A).
“(3) Partnership; S corporation; and other pass-thru entities.—Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

“(4) Bonds held by regulated investment companies.—If any clean energy bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

“(5) Treatment for estimated tax purposes.—Solely for purposes of sections 6654 and 6655, the credit allowed by this section to a taxpayer by reason of holding a clean energy bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.

“(6) Reporting.—Issuers of clean energy bonds shall submit reports similar to the reports required under section 149(e).
“(l) TERMINATION.—This section shall not apply with respect to any bond issued after December 31, 2008.”.

(b) REPORTING.—Subsection (d) of section 6049 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

“(8) REPORTING OF CREDIT ON CLEAN ENERGY BONDS.—

“(A) IN GENERAL.—For purposes of subsection (a), the term ‘interest’ includes amounts includible in gross income under section 54(f) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(b)(4)).

“(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

“(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations
which require more frequent or more detailed reporting.”.

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

“SUBPART H. NONREFUNDABLE CREDIT TO HOLDERS OF CLEAN ENERGY BONDS.”.

(2) Section 6401(b)(1) is amended by striking “and G” and inserting “G, and H”.

(d) ISSUANCE OF REGULATIONS.—The Secretary of Treasury shall issue regulations required under section 54 of the Internal Revenue Code of 1986 (as added by this section) not later than 120 days after the date of the enactment of this Act.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.