To amend the Internal Revenue Code of 1986 to provide for an investment tax credit for waste-to-energy facilities.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. Doggett (for himself, Mr. Lewis of Georgia, Mr. Blumenauer, and Mr. Holt) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for an investment tax credit for waste-to-energy facilities.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Waste-to-Energy Technology Act of 2011”.

SEC. 2. INVESTMENT TAX CREDIT FOR WASTE-TO-ENERGY FACILITIES.

(a) 30 PERCENT ENERGY PERCENTAGE.—Clause (i) of section 48(a)(2)(A) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of subpara-
graph (III) and by inserting after subparagraph (IV) the following new subparagraph:

“(V) qualified waste-to-energy property, and”.

(b) Energy Property.—Subparagraph (A) of section 48(a)(3) of such Code is amended by striking “or” at the end of clause (vi), by inserting “or” at the end of clause (vii), and by inserting after clause (vii) the following new clause:

“(viii) qualified waste-to-energy property,”.

(c) Qualified Waste-to-Energy Property Defined.—Subsection (c) of section 48 of such Code is amended by adding at the end the following new paragraph:

“(5) Qualified waste-to-energy property.—

“(A) In general.—The term ‘qualified waste-to-energy property’ means property comprising a system which—

“(i) uses municipal solid waste or municipal sewage sludge as the feedstock for producing solid, liquid, or gas fuel, or for producing energy, and
‘‘(ii) is certified by the Secretary under subparagraph (D)(iii) as eligible for a credit under this section.

‘‘(B) EXCEPTION.—Such term does not include any landfill facility that recirculates leachate, regrades landfill surfaces to encourage runoff to infiltrate the cells, or delays installation of covers longer than 18 months following the cell reaching more than 90 percent of its final grade.

‘‘(C) LIMITATION.—The amount allowed as a credit for a qualified waste-to-energy property shall not exceed the credit allocation to such project under subparagraph (D)(ii).

‘‘(D) COMPETITIVE ALLOCATION OF CREDIT.—

‘‘(i) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish a qualifying waste-to-energy project program to consider and award certifications for qualified investments eligible for credits
under this section to qualifying waste-to-
energy project sponsors.

“(ii) LIMITATION.—The total amount
of credits that may be allocated under the
program shall not exceed $1,000,000,000.

“(iii) CERTIFICATION.—

“(I) APPLICATION PERIOD.—An
application for certification under this
paragraph may only be submitted dur-
ding the 2-year period beginning on the
date the Secretary establishes the pro-
gram under clause (i) and shall con-
tain such information as the Secretary
may require.

“(II) TIME TO MEET CRITERIA
FOR CERTIFICATION.—Each applicant
for certification shall have 1 year from
the date of acceptance by the Sec-
retary of the application during which
to provide to the Secretary evidence
that the requirements of the certifi-
cation have been met.

“(iv) SELECTION CRITERIA.—In de-
termining which qualifying waste-to-energy
projects to certify under this section, the Secretary—

“(I) shall take into consideration only those projects where there is a reasonable expectation of commercial viability, and

“(II) shall take into consideration those projects which—

“(aa) use the least amount of materials which are commonly recycled,

“(bb) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases (including lifecycle leakage of greenhouse gases),

“(cc) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain), and
“(dd) pose the fewest risks
(other than climate risks) to en-
vironmental and human health.

“(v) LIMITATION ON ALLOCATION.—
No credit shall be allocated with respect to
any qualified waste-to-energy property for
which there is no net benefit in cumulative
lifecycle greenhouse gas emissions.

“(vi) GREENHOUSE GAS LEAKAGE
FROM FACILITY.—For purposes of clause
(iv)(II)(bb)—

“(I) IN GENERAL.—The lifecycle
leakage of greenhouse gases is, on a
integrated basis, the leakage rate dur-
ing each phase multiplied by the pro-
portion of lifetime greenhouse gases
that are released by the facility in
that phase, which shall be based upon
field data where that can be accom-
plished.

“(II) MATTERS INCLUDED.—In-
cluded in the lifecycle analysis shall be
an accounting of the leakage of green-
house gases attendant upon the pro-
duction of bio-based energy from the
facility. Such leakage shall be determined over the longer of the entire lifetime the facility releases greenhouse gases into the atmosphere or the time the facility is capable of doing so by virtue of the quantity of any residual carbon remaining after energy production. Leakage shall be accounted for during each distinct phase of the facility’s life, including the time before the gas collection system and the final cover is installed and the time after funds previously set aside to maintain the final cover after the facility is closed are no longer available. Leakage shall be counted for the entire time the facility generates, or is capable of generating, greenhouse gases.

“(vii) Definitions relating to greenhouse gas leakage.—For purposes of clause (vi)—

“(I) Leakage.—The term ‘leakage’ means the portion of the total greenhouse gases generated by decom-
position of organic discards disposed of in the facility that are released into the atmosphere.

“(II) FACILITY.—A facility refers not only to the energy-producing machinery but also to the entire municipal solid waste landfill unit.

“(III) PHASE.—The term ‘phase’ means one of the time periods when greenhouse gases are generated at a facility at distinctly different rates of generation and rates of gas collection. For landfill facilities that produce biogas, the periods are—

“(aa) the time prior to the installation of active gas collection systems,

“(bb) the time after the installation of the systems but prior to installation of the final cover,

“(cc) the time after installation of the final cover but prior to the time that maintenance of the cover ends, and
“(dd) the time after maintenance of the cover ends.

“(IV) Bio-based energy.—The term ‘bio-based energy’ means energy produced from the current decomposition of plants or animals.

“(V) Integrated basis.—The term ‘integrated basis’ means first multiplying the collection efficiency applicable for each phase of the life of a landfill facility by the proportion of the total gas over the landfill’s life that is generated during that phase, and then summing the product of the two for each phase to determine the integrated collection efficiency that reflects the actual lifetime collection efficiency.

“(E) Denial of double benefit.—

“(i) In general.—A credit shall not be allowed under sections 40, 40A, 45, 48B, and 6426 with respect to any fuel produced at a facility with respect to which a credit is allowed under this section.
“(ii) COORDINATION WITH ARRAGrant.—A credit shall not be allowed under this section for any facility if a grant is made under section 1603 of the American Recovery and Reinvestment Act with respect to such facility.”.

(d) CONFORMING AMENDMENT.—Subsection (e) of section 45 of such Code is amended by adding at the end the following new paragraph:

“(12) COORDINATION WITH ENERGY CREDIT FOR QUALIFIED WASTE-TO-ENERGY PROPERTY.—The term ‘qualified facility’ shall not include any facility which produces electricity from qualified waste-to-energy property (as defined in section 48(c)(5)) if a credit is determined under section 48 with respect to such property for the taxable year or any prior taxable year.”.

(e) REPORT.—After the Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, has made all of the credit allocation under section 48(c)(5) of the Internal Revenue Code of 1986 (as added by subsection (a)), the Secretary, in consultation with the Administrator, shall submit to Congress a report on the recipients of the energy credit for qualified waste-to-energy property under section 48 of
such Code and the effectiveness of the selection criteria under section 48(e)(5)(D)(iv) of such Code in selecting waste-to-energy projects these projects. The report shall also include recommendations (if any) for continuing the waste-to-energy credit under section 48(c) of such Code and, if so, at what dollar amount. The Secretary shall, upon making a certification of such credit under section 48(c)(5)(D)(iii) of such Code, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(f) Effective Date.—The amendments made by this section shall apply to facilities placed in service in periods after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).