

112TH CONGRESS
2D SESSION

S. 3581

To amend the Internal Revenue Code of 1986 to modify the credit for carbon dioxide sequestration.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2012

Mr. CONRAD (for himself, Mr. ENZI, and Mr. ROCKEFELLER) 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 modify the credit for carbon dioxide sequestration.

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. MODIFICATIONS TO CARBON DIOXIDE SEQUES-**
4 **TRATION CREDIT.**

5 (a) ALLOCATION AND CERTIFICATION OF CREDIT.—

6 (1) IN GENERAL.—Subsection (e) of section
7 45Q of the Internal Revenue Code of 1986 is
8 amended to read as follows:

9 “(e) LIMITATION.—

1 “(1) ALLOCATION LIMITATION.—No credit shall
2 be allowed under subsection (a) with respect to
3 qualified carbon dioxide captured by carbon capture
4 equipment at a qualified facility for the amount of
5 qualified carbon dioxide captured by such carbon
6 capture equipment in excess of—

7 “(A) the portion of the national limitation
8 allocated with respect to such carbon capture
9 equipment under subsection (f), over

10 “(B) the amount of qualified carbon diox-
11 ide captured by such carbon capture equipment
12 during periods after July 31, 2013.

13 “(2) NATIONAL LIMITATION.—For purposes of
14 paragraph (1)(A), the national limitation is the ex-
15 cess of—

16 “(A) 75,000,000 metric tons of qualified
17 carbon dioxide, over

18 “(B) the number of metric tons of quali-
19 fied carbon dioxide captured before August 1,
20 2013, for which a credit under subsection (a)
21 was allowed.”.

22 “(2) ALLOCATION AND CERTIFICATION.—Section
23 45Q of such Code is amended by adding at the end
24 the following new subsection:

1 “(f) ALLOCATION FOR AND CERTIFICATION OF CAR-
2 BON CAPTURE PROJECTS.—

3 “(1) ESTABLISHMENT OF PROCEDURES.—Not
4 later than July 1, 2013, the Secretary shall estab-
5 lish, by regulation, processes and procedures—

6 “(A) for allocating the national limitation
7 under subsection (e)(2) to projects for placing
8 carbon capture equipment in service at qualified
9 facilities, and

10 “(B) for certifying projects for which an
11 allocation has been made under subparagraph
12 (A).

13 “(2) ALLOCATIONS.—

14 “(A) APPLICATION.—Each applicant for
15 an allocation under this subsection shall submit
16 an application to the Secretary under such
17 terms and conditions as are established by the
18 Secretary in regulations.

19 “(B) PRIORITY.—The Secretary shall rank
20 applications received under subparagraph (A) in
21 the following order:

22 “(i) Applicants with applications re-
23 ceived by the Secretary on an earlier date
24 shall be given higher priority than appli-
25 cants with applications received on a later

1 date. For purposes of this clause, any ap-
2 plication received before the date that is 30
3 days after the procedures and processes
4 described in paragraph (1) are established
5 shall be considered to have been received
6 on such date.

7 “(ii) In the case of applications re-
8 ceived on the same date, those applicants
9 concurrently applying for certification shall
10 be given higher priority.

11 “(iii) In the case of applications re-
12 ceived on the same date and concurrently
13 applying for certification, those projects
14 with the earlier date by which construction
15 commenced shall be given higher priority.

16 “(C) ALLOCATION TO APPLICANTS.—Sub-
17 ject to subparagraph (D), the Secretary shall
18 allocate tonnage to each applicant—

19 “(i) based on the amount requested
20 on the application, and

21 “(ii) in order of the rank of the appli-
22 cation under subparagraph (B),

23 until the amount of tonnage available under
24 this section is exhausted. Projects for which no
25 or a partial allocation is made shall retain their

1 ranking and shall be eligible to receive an allo-
2 cation of tonnage previously allocated that is
3 forfeited or recaptured.

4 “(D) LIMITATION.—The Secretary may
5 not allocate to any project more than the lesser
6 of—

7 “(i) the number of metric tons of
8 qualified carbon dioxide projected to be
9 captured at the qualified facility under the
10 project during the 10-year period begin-
11 ning on the date on which such project is
12 placed in service,

13 “(ii) the number of metric tons of
14 qualified carbon dioxide projected to be
15 captured at the qualified facility under the
16 project—

17 “(I) which are subject to a writ-
18 ten, binding contract for disposal in
19 secure geological storage (whether or
20 not used as a tertiary injectant), or

21 “(II) for which there is a plan for
22 such disposal by the applicant, or

23 “(iii) 15,000,000 metric tons of quali-
24 fied carbon dioxide.

1 “(E) REDUCTION FOR PRIOR CREDITS.—

2 The amount of any allocation under subpara-
3 graph (C) to any project shall be reduced by
4 the number of metric tons of carbon dioxide
5 captured by the carbon capture equipment with
6 respect to such project before August 1, 2013,
7 for which a credit was allowed under subsection
8 (a).

9 “(3) CERTIFICATION.—

10 “(A) IN GENERAL.—No credit shall be al-
11 lowed under subsection (a) with respect to any
12 project for using carbon capture equipment to
13 capture qualified carbon dioxide at a qualified
14 facility before the date on which such project is
15 certified under this paragraph.

16 “(B) APPLICATION FOR CERTIFICATION.—
17 Each project which is allocated a portion of the
18 national limitation shall submit an application
19 for certification to the Secretary containing
20 such information as the Secretary may require.
21 Such application shall be submitted—

22 “(i) not later than—

23 “(I) 6 months after the date on
24 which such project receives an alloca-
25 tion, and

1 “(II) 30 days after the later of
2 the date on which the regulations,
3 processes, and procedures are estab-
4 lished under paragraph (1) or the
5 construction start date, and

6 “(ii) not earlier than the construction
7 start date.

8 For purposes of this subparagraph, the term
9 ‘construction start date’ means the earlier of
10 the first date on which physical work on the
11 project of a significant nature is undertaken or
12 the date by which 5 percent or more of the total
13 cost of the project has been spent.

14 “(C) REVOCATION OF CERTIFICATION.—

15 “(i) MATERIALLY INACCURATE REP-
16 RESENTATIONS.—The Secretary may re-
17 voke a certification under this paragraph if
18 the Secretary determines that an applicant
19 has made a materially inaccurate represen-
20 tation with respect to the project.

21 “(ii) FAILURE TO TIMELY PLACE
22 EQUIPMENT IN SERVICE.—A certification
23 under this paragraph shall be revoked in
24 any case in which carbon capture equip-

1 ment with respect to the project is not
2 placed in service—

3 “(I) before the date which is 5
4 years after the date on which the allo-
5 cation was issued, in the case of a
6 new industrial facility, or

7 “(II) before the date which is 3
8 years after the date on which the allo-
9 cation was issued, in the case of a
10 modification of an existing industrial
11 facility.

12 “(D) REALLOCATION.—In any case—

13 “(i) in which a certification is revoked
14 under subparagraph (C), or

15 “(ii) in which a taxpayer to whom an
16 allocation is made under paragraph (2)
17 fails to obtain certification for a project
18 under this paragraph,

19 the amount of national limitation which was al-
20 located to such project under paragraph (2)
21 shall be reallocated under such rules as estab-
22 lished by the Secretary under regulations.

23 “(4) PUBLIC DISCLOSURE.—

24 “(A) IN GENERAL.—The Secretary shall,
25 within 30 days of making any allocation, certifi-

1 cation, revocation, or change in the ranking of
2 projects, publicly disclose the amount of such
3 allocation, a description of the project for which
4 such allocation, certification, or revocation was
5 made, and the change in the ranking of
6 projects, as the case may be.

7 “(B) ANNUAL REPORT.—The Secretary
8 shall issue an annual report summarizing cred-
9 its allocated and available for allocation.”.

10 (3) CONFORMING AMENDMENTS.—

11 (A) Paragraph (2) of section 45Q(c) of
12 such Code is amended by inserting “which is
13 part of a project which is certified under sub-
14 section (f)(3)” after “carbon capture equip-
15 ment”.

16 (B) Paragraph (3) of section 45Q(c) of
17 such Code is amended by striking “which” and
18 inserting “at which such carbon capture equip-
19 ment”.

20 (b) 10-YEAR CREDIT LIMITATION.—Section 45Q(a)
21 of the Internal Revenue Code of 1986 is amended—

22 (1) in paragraph (1)(A), by inserting “during
23 the 10-year period beginning on the later of the date
24 on which the carbon capture equipment described in
25 subsection (c)(1) is placed in service or the date on

1 which the project with respect to such carbon cap-
 2 ture equipment was certified under subsection
 3 (f)(3)” after “qualified facility”, and

4 (2) in paragraph (2)(A), by inserting “during
 5 the 10-year period beginning on the later of the date
 6 on which the carbon capture equipment described in
 7 subsection (e)(1) is placed in service or the date on
 8 which the project with respect to such carbon cap-
 9 ture equipment was certified under subsection
 10 (f)(3)” after “qualified facility”.

11 (c) DEFINITION OF CARBON CAPTURE EQUIP-
 12 MENT.—Section 45Q(d) of the Internal Revenue Code of
 13 1986 is amended by adding at the end the following new
 14 paragraph:

15 “(8) CARBON CAPTURE EQUIPMENT.—The term
 16 ‘carbon capture equipment’ means equipment to cap-
 17 ture and pressurize qualified carbon dioxide.”.

18 (d) CREDIT ALLOWED TO TAXPAYER PERFORMING
 19 CARBON CAPTURE.—

20 (1) IN GENERAL.—Paragraph (5) of section
 21 45Q(d) of the Internal Revenue Code of 1986 is
 22 amended to read as follows:

23 “(5) PERSON TO WHOM CREDIT IS ALLOW-
 24 ABLE.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B) or in regulations prescribed
3 by the Secretary, any credit under this section
4 shall be allowed to the taxpayer who—

5 “(i) captures the qualified carbon di-
6 oxide, and

7 “(ii) through contract or otherwise,
8 disposes of the qualified carbon dioxide in
9 a manner meeting the requirements of
10 paragraph (1)(B) or (2)(C) of subsection
11 (a), as the case may be.

12 “(B) ELECTION TO ALLOW CREDIT TO
13 PERSON DISPOSING CARBON DIOXIDE.—If the
14 person described in subparagraph (A) makes an
15 election under this subparagraph in such man-
16 ner as the Secretary may prescribe by regula-
17 tions, the credit under this section—

18 “(i) shall be allowable to the person
19 that disposes of qualified carbon dioxide in
20 a manner meeting the requirements of
21 paragraph (1)(B) or (2)(C) of subsection
22 (a), as the case may be, and

23 “(ii) shall not be allowable to the per-
24 son described in subparagraph (A).”.

25 (2) CONFORMING AMENDMENTS.—

1 (A) Section 45Q(a) of such Code is amend-
2 ed by striking “by the taxpayer” each place it
3 appears in paragraph (1)(B), (2)(B), and
4 (2)(C).

5 (B) Section 45Q(c) of such Code, as
6 amended by subsection (a), is amended by
7 striking paragraph (1) and redesignating para-
8 graphs (2) and (3) as paragraphs (1) and (2),
9 respectively.

10 (e) RULES RELATING TO CREDIT RECAPTURE.—
11 Paragraph (6) of section 45Q(d) of the Internal Revenue
12 Code of 1986 is amended by adding at the end the fol-
13 lowing new sentence: “Notwithstanding section 7805(b),
14 any regulation issued pursuant to this paragraph shall
15 apply only with respect to qualified carbon dioxide cap-
16 tured or disposed of after the date on which such regula-
17 tion is filed with the Federal Register.”.

18 (f) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to carbon dioxide captured after
20 July 31, 2013.

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