

108TH CONGRESS
2D SESSION

H. R. 4094

To amend the Internal Revenue Code of 1986 to establish a Federal income tax credit for production of energy from geothermal energy resources, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 2004

Ms. MILLENDER-MCDONALD introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committees on Ways and Means and Agriculture, 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

A BILL

To amend the Internal Revenue Code of 1986 to establish a Federal income tax credit for production of energy from geothermal energy resources, 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 “Geothermal Energy
5 Initiative Act of 2004”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Federal income tax credits have been estab-
2 lished for production of energy from renewable en-
3 ergy resources, other than geothermal energy re-
4 sources, including with respect to wind energy and
5 closed-loop biomass energy.

6 (2) The last national resource assessment of
7 geothermal energy resource sites in the United
8 States was completed in 1978. There have been sub-
9 stantial changes in technology and advances in geo-
10 logical science in the intervening 26 years.

11 (3) Many Federal land management agencies,
12 including the Bureau of Land Management and the
13 Forest Service, are not aware of geothermal energy
14 resources and fail to recognize geothermal energy re-
15 sources in their land use planning process. Failure
16 to recognize geothermal energy resources during the
17 land use planning process poses significant delays in
18 geothermal resource development.

19 (4) The Bureau of Land Management has a
20 backlog of 230 lease applications for prospecting for
21 geothermal energy. The average age of these lease
22 applications is 9 years. The oldest non-competitive
23 application was received in 1974.

1 (5) There appears to be a lack of focus and pri-
 2 ority in the Bureau of Land Management concerning
 3 geothermal energy efforts.

4 (6) Development of geothermal energy re-
 5 sources is environmentally safe and clean.

6 **SEC. 3. CREDIT FOR ELECTRICITY PRODUCED FROM GEO-**
 7 **THERMAL ENERGY.**

8 (a) IN GENERAL.—Section 45(c)(1) of the Internal
 9 Revenue Code of 1986 (relating to qualified energy re-
 10 sources) is amended by striking “and” at the end of sub-
 11 paragraph (B), by striking the period at the end of the
 12 subparagraph (C) and inserting “, and”, and by adding
 13 at the end the following new subparagraph:

14 “(D) geothermal energy.”.

15 (b) QUALIFIED FACILITY.—Section 45(c)(3) of such
 16 Code (defining qualified facility) is amended by inserting
 17 after subparagraph (E) the following new subparagraph:

18 “(D) GEOTHERMAL ENERGY FACILITY.—

19 In the case of a facility using geothermal en-
 20 ergy to produce electricity, the term ‘qualified
 21 facility’ means—

22 “(i) any facility owned by the tax-
 23 payer which is originally placed in service
 24 after December 31, 2004, and

1 “(ii) any facility owned by the tax-
 2 payer which is originally placed in service
 3 before January 1, 2005, but only to the ex-
 4 tent of its incremental production.

5 If such a facility is leased and the operator
 6 thereof is the lessee, such lessee (and not the
 7 owner) shall be treated for purposes of this sec-
 8 tion as owning such facility.”.

9 (c) INCREMENTAL PRODUCTION.—Section 45(d) of
 10 such Code (relating to definitions and special rules) is
 11 amended by adding at the end the following new para-
 12 graph:

13 “(9) DEFINITION AND SPECIAL RULE WITH RE-
 14 SPECT TO INCREMENTAL GEOTHERMAL PRODUC-
 15 TION.—For purposes of subparagraph (D) of para-
 16 graph (3)—

17 “(A) IN GENERAL.—The term ‘incremental
 18 production’ means, with respect to a facility de-
 19 scribed in subsection (c)(3)(D)(ii) for any tax-
 20 able year, the excess of—

21 “(i) the total kilowatt hours of elec-
 22 tricity produced from such facility, over

23 “(ii) the average annual kilowatt
 24 hours produced at such facility for five of
 25 the previous seven calendar years prior to

1 the date of the enactment of this para-
2 graph after eliminating the highest and
3 lowest kilowatt hour production years in
4 such seven-year period.

5 “(B) SPECIAL RULE.—A facility which was
6 placed in service seven years or longer prior to
7 the date of the enactment of this paragraph
8 shall, commencing with the year of such enact-
9 ment, reduce the amount calculated under sub-
10 paragraph (A)(ii) each year, on a cumulative
11 basis, by the average decrease in annual kilo-
12 watt hour production for the seven-year period
13 described in subparagraph (A)(ii) with such cu-
14 mulative sum not to exceed 30 percent.”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to electricity sold after December
17 31, 2004.

18 **SEC. 4. ASSESSMENT OF GEOTHERMAL ENERGY RE-**
19 **SOURCES.**

20 (a) RESOURCE ASSESSMENT.—Not later than 3
21 months after the date of the enactment of this Act, and
22 each year thereafter, the Secretary of Energy shall review
23 the available assessments of geothermal energy resources
24 available within the United States and undertake new as-
25 sessments as necessary, taking into account changes in

1 market conditions, available technologies, and other rel-
2 evant factors.

3 (b) CONTENTS OF REPORTS.—Not later than 1 year
4 after the date of the enactment of this Act, and each year
5 thereafter, the Secretary shall publish a report based on
6 the assessment under subsection (a). The report shall con-
7 tain a detailed inventory describing the available amount
8 and characteristics of the geothermal energy resources, in-
9 cluding—

10 (1) descriptions of surrounding terrain, popu-
11 lation and load centers, nearby energy infrastruc-
12 ture, location of energy and water resources, and
13 available estimates of the costs needed to develop
14 each resource;

15 (2) an identification of any barriers to pro-
16 viding adequate transmission for remote sources of
17 geothermal energy resources to current and emerg-
18 ing markets;

19 (3) recommendations for removing or address-
20 ing such barriers; and

21 (4) ways to provide access to the grid that do
22 not unfairly disadvantage renewable or other energy
23 producers.

24 (c) AUTHORIZATION OF APPROPRIATIONS.—To carry
25 out this section there is authorized to be appropriated to

1 the Secretary of the Interior \$5,000,000 for fiscal years
2 2005, 2006, and 2007.

3 **SEC. 5. ENHANCED ACCESS TO FEDERAL LANDS FOR GEO-**
4 **THERMAL RESOURCE DEVELOPMENT.**

5 (a) REVISION OF LAND USE PLANS.—

6 (1) PUBLIC LANDS.—The Secretary of the Inte-
7 rior shall expedite development of geothermal energy
8 in making revisions to land use plans under section
9 202 of the Federal Land Policy and Management
10 Act of 1976 (42 U.S.C. 1712) while protecting other
11 resources.

12 (2) NATIONAL FOREST SYSTEM LANDS.—The
13 Secretary of Agriculture shall expedite development
14 of geothermal energy in making revisions of land
15 and resource management plans under section 6 of
16 the Forest and Rangeland Renewable Resources
17 Planning Act of 1974 (16 U.S.C. 1604) while pro-
18 tecting other resources.

19 (3) ISSUANCE OF RIGHTS-OF-WAY NOT AF-
20 FECTED.—Nothing in this subsection shall preclude
21 the issuance of a right-of-way for the development of
22 a geothermal energy project prior to the revision of
23 a land use plan by the appropriate land management
24 agency.

1 (b) REPORT TO CONGRESS.—Within 24 months after
2 the date of the enactment of this section, the Secretary
3 of the Interior shall develop and report to the Congress
4 recommendations on any statutory or regulatory changes
5 the Secretary believes would assist in the development of
6 geothermal energy on Federal land. The report shall in-
7 clude—

8 (1) a 5-year plan developed by the Secretary of
9 the Interior, in cooperation with the Secretary of
10 Agriculture, for encouraging the development of geo-
11 thermal energy on Federal land in an environ-
12 mentally sound manner;

13 (2) an analysis of—

14 (A) whether the use of rights-of-ways is
15 the best means of authorizing use of Federal
16 land for the development of geothermal energy,
17 or whether such resources could be better devel-
18 oped through a leasing system or other method;

19 (B) the desirability of grants, loans, tax
20 credits, or other provisions to promote geo-
21 thermal energy development on Federal land;
22 and

23 (C) any problems, including environmental
24 concerns, that the Secretary of the Interior or
25 the Secretary of Agriculture has encountered in

1 managing geothermal energy projects on Fed-
2 eral land, or believe are likely to arise in rela-
3 tion to the development of geothermal energy
4 on Federal land; and

5 (3) a list, developed in consultation with the
6 Secretaries of Energy and Defense, of lands under
7 the jurisdiction of the Departments of Energy and
8 Defense, respectively, that would be suitable for de-
9 velopment for geothermal energy, and recommended
10 statutory and regulatory mechanisms for such devel-
11 opment.

12 **SEC. 6. CONSULTATION REGARDING GEOTHERMAL LEAS-**
13 **ING AND PERMITTING ON PUBLIC LANDS.**

14 (a) IN GENERAL.—Not later than 6 months after the
15 date of the enactment of this Act, the Secretary of the
16 Interior and the Secretary of Agriculture shall enter into
17 and submit to the Congress a memorandum of under-
18 standing in accordance with this section regarding leasing
19 and permitting, for geothermal development, of public
20 lands under their respective administrative jurisdictions.

21 (b) LEASE AND PERMIT APPLICATIONS.—The memo-
22 randum of understanding shall include provisions that—

23 (1) identify known geothermal areas on public
24 lands within the National Forest System and to the
25 extent necessary review management plans to con-

1 sider leasing of such lands under the Geothermal
2 Steam Act of 1970 (30 U.S.C. 1001 et seq.) as a
3 land use;

4 (2) establish an administrative procedure for
5 processing geothermal lease applications, including
6 lines of authority, steps in application processing,
7 and timeframes for application processing;

8 (3) provide that the Secretary concerned
9 shall—

10 (A) within 14 days after receiving an ap-
11 plication for a lease, determine whether the ap-
12 plication contains sufficient information to
13 allow processing of the application; and

14 (B) if the application is found not to con-
15 tain sufficient information to allow processing
16 the application, before the end of such 14-day
17 period, provide written notification to the lease
18 applicant that the application is being returned
19 to the applicant without processing and an
20 itemization of the deficiencies in the application
21 that prevent processing;

22 (4) provide that the Secretary concerned shall
23 within 30 days after receiving a lease application,
24 provide written notice to the lease applicant regard-
25 ing the status of the application, including an esti-

1 mate of the time that will be required to complete
2 action on the application; and

3 (5) establish an administrative procedure for
4 processing geothermal development permits, includ-
5 ing lines of authority, steps in permit processing,
6 and timeframes for permit processing.

7 (c) FIVE-YEAR LEASING PLAN.—The memorandum
8 of understanding shall develop a 5-year plan for leasing
9 under the Geothermal Steam Act of 1970 (30 U.S.C. 1001
10 et seq.) of public land in the National Forest System. The
11 plan for geothermal leasing shall be updated every 5 years.

12 (d) DATA RETRIEVAL SYSTEM.—The memorandum
13 of understanding shall establish a joint data retrieval sys-
14 tem that is capable of—

15 (1) tracking lease and permit applications and
16 requests; and

17 (2) providing to the applicant or requester in-
18 formation as to their status within the Departments
19 of the Interior and Agriculture, including an esti-
20 mate of the time required for administrative action.

21 **SEC. 7. REIMBURSEMENT FOR COSTS OF NEPA ANALYSES,**
22 **DOCUMENTATION, AND STUDIES.**

23 (a) IN GENERAL.—The Geothermal Steam Act of
24 1970 (30 U.S.C. 1001 et seq.) is amended by adding at
25 the end the following:

1 **“SEC. 30. REIMBURSEMENT FOR COSTS OF NEPA ANAL-**
2 **YSES, DOCUMENTATION, AND STUDIES.**

3 “(a) IN GENERAL.—The Secretary of the Interior
4 may, through royalty credits, reimburse a person who is
5 a lessee, operator, operating rights owner, or applicant for
6 a lease under this Act for reasonable amounts paid by the
7 person for preparation by the Secretary (or a contractor
8 or other person selected by the Secretary) of any project-
9 level analysis, documentation, or related study required
10 under the National Environmental Policy Act of 1969 (42
11 U.S.C. 4321 et seq.) with respect to the lease.

12 “(b) CONDITIONS.—The Secretary may provide reim-
13 bursement under subsection (a) only if—

14 “(1) adequate funding to enable the Secretary
15 to timely prepare the analysis, documentation, or re-
16 lated study is not appropriated;

17 “(2) the person paid the amounts voluntarily;
18 and

19 “(3) the person maintains records of its costs
20 in accordance with regulations prescribed by the
21 Secretary.”.

22 (b) APPLICATION.—The amendment made by this
23 section shall apply with respect to any lease entered into
24 before, on, or after the date of the enactment of this Act.

25 (c) DEADLINE FOR REGULATIONS.—The Secretary
26 shall issue regulations implementing the amendment made

1 by this section by not later than 90 days after the date
2 of the enactment of this Act.

3 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

4 To carry out section 5 through 7 there are authorized
5 to be appropriated to the Secretary of the Interior such
6 sums as may be necessary.

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