

109TH CONGRESS
1ST SESSION

S. 1229

To amend the Internal Revenue Code of 1986 to extend, modify, and expand the credit for electricity produced from renewable resources and waste products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 13, 2005

Mr. REID (for himself, Mrs. FEINSTEIN, Ms. CANTWELL, Ms. SNOWE, Mr. JEFFORDS, Mr. LIEBERMAN, and Mr. KERRY) 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 extend, modify, and expand the credit for electricity produced from renewable resources and waste products, 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; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Renewable Energy Incentives Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
 2 shall be considered to be made to a section or other provi-
 3 sion of the Internal Revenue Code of 1986.

4 **SEC. 2. EXTENSION, MODIFICATION, AND EXPANSION OF**
 5 **CREDIT FOR ELECTRICITY PRODUCED FROM**
 6 **RENEWABLE RESOURCES AND WASTE PROD-**
 7 **UCTS.**

8 (a) PERMANENT EXTENSION.—

9 (1) Paragraphs (1) and (2)(A)(i) of section
 10 45(d) are each amended by striking “, and before
 11 January 1, 2006”.

12 (2) Section 45(d)(2)(A)(ii) is amended by strik-
 13 ing “before January 1, 2006, is originally placed in
 14 service and” and insert “is”.

15 (3) Section 45(d)(3)(A) is amended—

16 (A) by striking “owned by the taxpayer”,

17 (B) by inserting “owned by the taxpayer
 18 and” in clause (i)(I) after “is”,

19 (C) by striking “and before January 1,
 20 2006” in clause (i)(I), and

21 (D) by striking “originally placed in serv-
 22 ice before January 1, 2006” in clause (ii) and
 23 inserting “owned by the taxpayer”.

24 (4) Paragraphs (4), (5), (6), and (7) of section
 25 45(d) (relating to qualified facilities) are amended

1 by striking “and before January 1, 2006” each place
 2 it appears.

3 (b) CREDIT RATE.—

4 (1) INCREASE IN CREDIT RATE.—

5 (A) IN GENERAL.—Section 45(a)(1) is
 6 amended by striking “1.5 cents” and inserting
 7 “1.9 cents”.

8 (B) CONFORMING AMENDMENTS.—

9 (i) Section 45(b)(2) is amended by
 10 striking “1.5 cent” and inserting “1.9
 11 cent”.

12 (ii) Section 45(e)(2)(B) is amended by
 13 inserting “(calendar year 2004 in the case
 14 of the 1.9 cent amount in subsection (a))”
 15 after “1992”.

16 (2) FULL CREDIT RATE FOR ALL FACILITIES
 17 PLACED IN SERVICE AFTER DATE OF ENACTMENT.—

18 Section 45(b)(4)(A) (relating to credit rate) is
 19 amended by inserting “and placed in service before
 20 the date of the enactment of the Renewable Energy
 21 Incentives Act” after “subsection (d)”.

22 (c) FULL CREDIT PERIOD FOR ALL FACILITIES
 23 PLACED IN SERVICE AFTER DATE OF ENACTMENT.—Sec-
 24 tion 45(b)(4)(B)(i) (relating to credit period) is amended
 25 by inserting “and placed in service before the date of the

1 enactment of the Renewable Energy Incentives Act” after
 2 “subsection (d)”

3 (d) EXPANSION OF QUALIFIED RESOURCES.—

4 (1) IN GENERAL.—Section 45(c)(1) (defining
 5 qualified energy resources) is amended by striking
 6 “and” at the end of subparagraph (F), by striking
 7 the period at the end of subparagraph (G) and in-
 8 serting a comma, and by adding at the end the fol-
 9 lowing new subparagraphs:

10 “(H) incremental geothermal energy pro-
 11 duction, and

12 “(I) incremental hydropower production.”.

13 (2) DEFINITION OF RESOURCES.—Section 45(c)
 14 (relating to qualified energy resources and refined
 15 coal) is amended by adding at the end the following
 16 new paragraphs:

17 “(8) INCREMENTAL GEOTHERMAL PRODUC-
 18 TION.—

19 “(A) IN GENERAL.—The term ‘incremental
 20 geothermal production’ means for any taxable
 21 year the excess of—

22 “(i) the total kilowatt hours of elec-
 23 tricity produced from an incremental geo-
 24 thermal facility described in subsection
 25 (d)(9), over

1 “(ii) the average annual kilowatt
2 hours produced at such facility for 5 of the
3 previous 7 calendar years before the date
4 of the enactment of this paragraph after
5 eliminating the highest and the lowest kilo-
6 watt hour production years in such 7-year
7 period.

8 “(B) SPECIAL RULE.—A facility described
9 in subsection (d)(9) which was placed in service
10 at least 7 years before the date of the enact-
11 ment of this paragraph shall commencing with
12 the year in which such date of enactment oc-
13 curs, reduce the amount calculated under sub-
14 paragraph (A)(ii) each year, on a cumulative
15 basis, by the average percentage decrease in the
16 annual kilowatt hour production for the 7-year
17 period described in subparagraph (A)(ii) with
18 such cumulative sum not to exceed 30 percent.

19 “(9) INCREMENTAL HYDROPOWER PRODUC-
20 TION.—

21 “(A) IN GENERAL.—The term ‘incremental
22 hydropower production’ means for any taxable
23 year an amount equal to the percentage of total
24 kilowatt hours of electricity produced from an
25 incremental hydropower facility described in

subsection (d)(10) attributable to efficiency improvements or additions of capacity as determined under subparagraph (B).

“(B) DETERMINATION OF INCREMENTAL HYDROPOWER PRODUCTION.—For purposes of subparagraph (A), incremental hydropower production for any incremental hydropower facility for any taxable year shall be determined by establishing a percentage of average annual hydropower production at the facility attributable to the efficiency improvements or additions of capacity using the same water flow information used to determine an historic average annual hydropower production baseline for such facility. Such percentage and baseline shall be certified by the Federal Energy Regulatory Commission. For purposes of the preceding sentence, the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.”.

(3) FACILITIES.—Section 45(d) (relating to qualified facilities) is amended by adding at the end the following new paragraphs:

1 “(9) INCREMENTAL GEOTHERMAL FACILITY.—

2 In the case of a facility using incremental geo-
3 thermal to produce electricity, the term ‘qualified fa-
4 cility’ means any facility owned by the taxpayer
5 which is originally placed in service before the date
6 of the enactment of this paragraph, but only to the
7 extent of its incremental geothermal production. In
8 the case of a qualified facility described in the pre-
9 ceding sentence, the 10-year period referred to in
10 subsection (a) shall be treated as beginning not ear-
11 lier than such date of enactment. Such term shall
12 not include any property described in section
13 48(a)(3) the basis of which is taken into account by
14 the taxpayer for purposes of determining the energy
15 credit under section 48.

16 “(10) INCREMENTAL HYDROPOWER FACIL-
17 ITY.—In the case of a facility using incremental hy-
18 dropower to produce electricity, the term ‘qualified
19 facility’ means any non-Federal hydroelectric facility
20 owned by the taxpayer which is originally placed in
21 service before the date of the enactment of this
22 paragraph, but only to the extent of its incremental
23 hydropower production. In the case of a qualified fa-
24 cility described in the preceding sentence, the 10-
25 year period referred to in subsection (a) shall be

1 treated as beginning not earlier than such date of
 2 enactment.”.

3 (e) CREDIT ELIGIBILITY FOR LESSEES AND OPERA-
 4 TORS EXTENDED TO ALL FACILITIES.—Paragraph (6) of
 5 section 45(d) is amended to read as follows:

6 “(6) CREDIT ELIGIBILITY FOR LESSEES AND
 7 OPERATORS.—In the case of any facility described in
 8 paragraph (1), (4), (5), (6), (7), (9), or (10), if the
 9 owner of such facility is not the producer of the elec-
 10 tricity, the person eligible for the credit allowable
 11 under subsection (a) shall be the lessee or the oper-
 12 ator of such facility.”.

13 (f) QUALIFIED FACILITIES WITH CO-PRODUCTION.—
 14 Section 45(b) (relating to limitations and adjustments) is
 15 amended by adding at the end the following:

16 “(5) INCREASED CREDIT FOR CO-PRODUCTION
 17 FACILITIES.—

18 “(A) IN GENERAL.—In the case of a quali-
 19 fied facility described in any paragraph of sub-
 20 section (d) (other than paragraph (8)) which
 21 adds a co-production facility after the date of
 22 the enactment of this paragraph, the amount in
 23 effect under subsection (a)(1) for an eligible
 24 taxable year of a taxpayer shall (after adjust-
 25 ment under paragraph (2) and before adjust-

1 ment under paragraphs (1) and (3)) be in-
2 creased by .25 cents.

3 “(B) CO-PRODUCTION FACILITY.—For
4 purposes of subparagraph (A), the term ‘co-pro-
5 duction facility’ means a facility which—

6 “(i) enables a qualified facility to
7 produce heat, mechanical power, chemicals,
8 liquid fuels, or minerals from qualified en-
9 ergy resources in addition to electricity,
10 and

11 “(ii) produces such energy on a con-
12 tinuous basis.

13 “(C) ELIGIBLE TAXABLE YEAR.—For pur-
14 poses of subparagraph (A), the term ‘eligible
15 taxable year’ means any taxable year in which
16 the amount of gross receipts attributable to the
17 co-production facility of a qualified facility are
18 at least 10 percent of the amount of gross re-
19 ceipts attributable to electricity produced by
20 such facility.”.

21 (g) QUALIFIED FACILITIES LOCATED WITHIN
22 QUALIFIED INDIAN LANDS.—Section 45(b) (relating to
23 limitations and adjustments), as amended by subsection
24 (f), is amended by adding at the end the following:

1 “(6) INCREASED CREDIT FOR QUALIFIED FA-
 2 CILITY LOCATED WITHIN QUALIFIED INDIAN
 3 LAND.—In the case of a qualified facility described
 4 in any paragraph of subsection (d) (other than para-
 5 graphs (1), (2) and (8)) which—

6 “(A) is located within—

7 “(i) qualified Indian lands (as defined
 8 in section 7871(c)(3)), or

9 “(ii) lands which are held in trust by
 10 a Native Corporation (as defined in section
 11 3(m) of the Alaska Native Claims Settle-
 12 ment Act (43 U.S.C. 1602(m)) for Alaska
 13 Natives, and

14 “(B) is operated with the explicit written
 15 approval of the Indian tribal government or Na-
 16 tive Corporation (as so defined) having jurisdic-
 17 tion over such lands, the amount in effect under
 18 subsection (a)(1) for a taxable year shall (after
 19 adjustment under paragraphs (2) and (5) and
 20 before adjustment under paragraphs (1) and
 21 (3)) be increased by .25 cents.”.

22 (h) ADDITIONAL MODIFICATIONS.—

23 (1) TREATMENT OF PERSONS NOT ABLE TO
 24 USE ENTIRE CREDIT.—Section 45(e) (relating to ad-
 25 ditional definitions and special rules), as amended by

subsection (a)(2), is amended by adding at the end
the following new paragraph:

“(11) TREATMENT OF PERSONS NOT ABLE TO
USE ENTIRE CREDIT.—

“(A) ALLOWANCE OF CREDIT.—

“(i) IN GENERAL.—Except as other-
wise provided in this subsection—

“(I) any credit allowable under
subsection (a) with respect to a quali-
fied facility owned by a person de-
scribed in clause (ii) may be trans-
ferred or used as provided in this
paragraph, and

“(II) the determination as to
whether the credit is allowable shall
be made without regard to the tax-ex-
empt status of the person.

“(ii) PERSONS DESCRIBED.—A person
is described in this clause if the person
is—

“(I) an organization described in
section 501(c)(12)(C) and exempt
from tax under section 501(a),

“(II) an organization described
in section 1381(a)(2)(C),

1 “(III) a public utility (as defined
 2 in section 136(c)(2)(B)), which is ex-
 3 empt from income tax under this sub-
 4 title,

5 “(IV) any State or political sub-
 6 division thereof, the District of Co-
 7 lumbia, any possession of the United
 8 States, or any agency or instrumen-
 9 tality of any of the foregoing, or

10 “(V) any Indian tribal govern-
 11 ment (within the meaning of section
 12 7871) or any agency or instrumen-
 13 tality thereof.

14 “(B) TRANSFER OF CREDIT.—

15 “(i) IN GENERAL.—A person de-
 16 scribed in subparagraph (A)(ii) may trans-
 17 fer any credit to which subparagraph
 18 (A)(i) applies through an assignment to
 19 any other person not described in subpara-
 20 graph (A)(ii). Such transfer may be re-
 21 voked only with the consent of the Sec-
 22 retary.

23 “(ii) REGULATIONS.—The Secretary
 24 shall prescribe such regulations as nec-
 25 essary to ensure that any credit described

in clause (i) is assigned once and not reas-
signed by such other person.

“(iii) TRANSFER PROCEEDS TREATED
AS ARISING FROM ESSENTIAL GOVERN-
MENT FUNCTION.—Any proceeds derived
by a person described in subclause (III),
(IV), or (V) of subparagraph (A)(ii) from
the transfer of any credit under clause (i)
shall be treated as arising from the exer-
cise of an essential government function.

“(C) CREDIT NOT INCOME.—Any transfer
under subparagraph (B) of any credit to which
subparagraph (A)(i) applies shall not be treated
as income for purposes of section 501(c)(12).

“(D) TREATMENT OF UNRELATED PER-
SONS.—For purposes of subsection (a)(2)(B),
sales among and between persons described in
subparagraph (A)(ii) shall be treated as sales
between unrelated parties.”.

(2) CREDITS NOT REDUCED BY TAX-EXEMPT
BONDS OR CERTAIN OTHER SUBSIDIES.—Section
45(b)(3) (relating to credit reduced for grants, tax-
exempt bonds, subsidized energy financing, and
other credits) is amended—

(A) by striking clause (ii),

1 (B) by redesignating clauses (iii) and (iv)
 2 as clauses (ii) and (iii),

3 (C) by inserting “(other than any loan,
 4 debt, or other obligation incurred under sub-
 5 chapter I of chapter 31 of title 7 of the Rural
 6 Electrification Act of 1936 (7 U.S.C. 901 et
 7 seq.), as in effect on the date of the enactment
 8 of the Renewable Energy Incentives Act, or pro-
 9 ceeds of an issue of State or local government
 10 obligations the interest on which is exempt from
 11 tax under section 103)” after “project” in
 12 clause (ii) (as so redesignated), and

13 (D) by striking “**TAX-EXEMPT BONDS,**”
 14 in the heading and inserting “**CERTAIN**”.

15 (3) CREDIT ALLOWABLE AGAINST MINIMUM
 16 TAX WITHOUT LIMITATION.—Clause (ii) of section
 17 38(c)(4)(B) (defining specified credits) is amended
 18 to read as follows:

19 “(ii) the credit determined under sec-
 20 tion 45 to the extent that such credit is at-
 21 tributable to electricity or refined coal pro-
 22 duced at a facility which is originally
 23 placed in service after October 22, 2004.”.

24 (4) TREATMENT OF QUALIFIED FACILITIES NOT
 25 IN COMPLIANCE WITH POLLUTION LAWS.—Section

1 45(d) (relating to qualified facilities), as amended by
2 subsection (d)(3), is amended by adding at the end
3 the following:

4 “(11) NONCOMPLIANCE WITH POLLUTION
5 LAWS.—For purposes of this subsection, a facility
6 which is not in compliance with the applicable State
7 and Federal pollution prevention, control, and per-
8 mit requirements for any period of time shall not be
9 considered to be a qualified facility during such pe-
10 riod.”.

11 (i) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to electricity and other energy pro-
13 duced and sold after the date of the enactment of this
14 Act, in taxable years ending after such date.

○