

109TH CONGRESS  
1ST SESSION

# 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.

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## 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

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## 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.

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 “Clean Energy Bonds Act of 2005”.

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. CREDIT TO HOLDERS OF CLEAN ENERGY BONDS.**

5 (a) IN GENERAL.—Part IV of subchapter A of chap-  
 6 ter 1 (relating to credits against tax) is amended by add-  
 7 ing at the end the following new subpart:

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

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

10 **“SEC. 54. CREDIT TO HOLDERS OF CLEAN ENERGY BONDS.**

11 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-  
 12 payer who holds a clean energy bond on a credit allowance  
 13 date of such bond, which occurs during the taxable year,  
 14 there shall be allowed as a credit against the tax imposed  
 15 by this chapter for such taxable year an amount equal to  
 16 the sum of the credits determined under subsection (b)  
 17 with respect to credit allowance dates during such year  
 18 on which the taxpayer holds such bond.

19 “(b) AMOUNT OF CREDIT.—

20 “(1) IN GENERAL.—The amount of the credit  
 21 determined under this subsection with respect to any  
 22 credit allowance date for a clean energy bond is 25  
 23 percent of the annual credit determined with respect  
 24 to such bond.

1           “(2) ANNUAL CREDIT.—The annual credit de-  
2           termined with respect to any clean energy bond is  
3           the product of—

4                   “(A) the credit rate determined by the Sec-  
5                   retary under paragraph (3) for the day on  
6                   which such bond was sold, multiplied by

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

9           “(3) DETERMINATION.—For purposes of para-  
10           graph (2), with respect to any clean energy bond,  
11           the Secretary shall determine daily or caused to be  
12           determined daily a credit rate which shall apply to  
13           the first day on which there is a binding, written  
14           contract for the sale or exchange of the bond. The  
15           credit rate for any day is the credit rate which the  
16           Secretary or the Secretary’s designee estimates will  
17           permit the issuance of clean energy bonds with a  
18           specified maturity or redemption date without dis-  
19           count and without interest cost to the qualified  
20           issuer.

21           “(4) CREDIT ALLOWANCE DATE.—For purposes  
22           of this section, the term ‘credit allowance date’  
23           means—

24                   “(A) March 15,

25                   “(B) June 15,

1                   “(C) September 15, and

2                   “(D) December 15.

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

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

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

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

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

22                               “(B) the sum of the credits allowable  
23                               under this part (other than subpart C thereof,  
24                               relating to refundable credits).

1           “(2) CARRYOVER OF UNUSED CREDIT.—If the  
2           credit allowable under subsection (a) exceeds the  
3           limitation imposed by paragraph (1) for such taxable  
4           year, such excess shall be carried to the succeeding  
5           taxable year and added to the credit allowable under  
6           subsection (a) for such taxable year.

7           “(d) CLEAN ENERGY BOND.—For purposes of this  
8           section—

9           “(1) IN GENERAL.—The term ‘clean energy  
10          bond’ means any bond issued as part of an issue  
11          if—

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

14                 “(B) 95 percent or more of the proceeds  
15                 from the sale of such issue are to be used for  
16                 capital expenditures incurred by qualified bor-  
17                 rowers for 1 or more qualified projects,

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

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

23           “(2) QUALIFIED PROJECT; SPECIAL USE  
24           RULES.—

1           “(A) IN GENERAL.—The term ‘qualified  
2 project’ means any qualified facility (as deter-  
3 mined under section 45(d) without regard to  
4 any placed in service date) owned by a qualified  
5 borrower.

6           “(B) REFINANCING RULES.—For purposes  
7 of paragraph (1)(B), a qualified project may be  
8 refinanced with proceeds of a clean energy bond  
9 only if the indebtedness being refinanced (in-  
10 cluding any obligation directly or indirectly refi-  
11 nanced by such indebtedness) was originally in-  
12 curred by a qualified borrower after the date of  
13 the enactment of this section.

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

23           “(D) TREATMENT OF CHANGES IN USE.—  
24 For purposes of paragraph (1)(B), the proceeds  
25 of an issue shall not be treated as used for a

1 qualified project to the extent that a qualified  
2 borrower takes any action within its control  
3 which causes such proceeds not to be used for  
4 a qualified project. The Secretary shall pre-  
5 scribe regulations specifying remedial actions  
6 that may be taken (including conditions to tak-  
7 ing such remedial actions) to prevent an action  
8 described in the preceding sentence from caus-  
9 ing a bond to fail to be a clean energy bond.

10 “(e) MATURITY LIMITATIONS.—

11 “(1) DURATION OF TERM.—A bond shall not be  
12 treated as a clean energy bond if such bond is issued  
13 as part of an issue and—

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

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

20 “(2) DETERMINATION OF AVERAGES.—For pur-  
21 poses of paragraph (1), the determination of aver-  
22 ages of an issue and economic life of any facility  
23 shall be determined in accordance with section  
24 147(b).

1           “(3) RATABLE PRINCIPAL AMORTIZATION RE-  
 2           QUIRED.—A bond shall not be treated as a clean en-  
 3           ergy bond unless it is part of an issue which pro-  
 4           vides for an equal amount of principal to be paid by  
 5           the qualified issuer during each calendar year that  
 6           the issue is outstanding.

7           “(f) CREDIT INCLUDED IN GROSS INCOME.—Gross  
 8           income includes the amount of the credit allowed to the  
 9           taxpayer under this section (determined without regard to  
 10          subsection (c)) and the amount so included shall be treat-  
 11          ed as interest income.

12          “(g) SPECIAL RULES RELATING TO EXPENDI-  
 13          TURES.—

14                  “(1) IN GENERAL.—An issue shall be treated as  
 15          meeting the requirements of this subsection if—

16                          “(A) at least 95 percent of the proceeds  
 17                          from the sale of the issue are to be spent for  
 18                          1 or more qualified projects within the 5-year  
 19                          period beginning on the date of issuance of the  
 20                          clean energy bond,

21                          “(B) a binding commitment with a third  
 22                          party to spend at least 10 percent of the pro-  
 23                          ceeds from the sale of the issue will be incurred  
 24                          within the 6-month period beginning on the  
 25                          date of issuance of the clean energy bond or, in

1           the case of a clean energy bond, the proceeds  
2           of which are to be loaned to 2 or more qualified  
3           borrowers, such binding commitment will be in-  
4           curred within the 6-month period beginning on  
5           the date of the loan of such proceeds to a quali-  
6           fied borrower, and

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

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

17                   “(3) FAILURE TO SPEND REQUIRED AMOUNT  
18           OF BOND PROCEEDS WITHIN 5 YEARS.—To the ex-  
19           tent that less than 95 percent of the proceeds of  
20           such issue are expended within such 5-year period  
21           (and no extension has been obtained under para-  
22           graph (2)), the qualified issuer shall redeem all of  
23           the nonqualified bonds on the earliest call date sub-  
24           sequent to the expiration of the 5-year period. If  
25           such earliest call date is more than 90 days subse-

1       quent to the expiration of the 5-year period, the  
2       qualified issuer shall establish a yield-restricted de-  
3       feasance escrow within such 90 days to retire such  
4       nonqualified bonds on the earlier of the date which  
5       is 10 years after the issue date or the first call date.  
6       For purposes of this paragraph, the term ‘non-  
7       qualified bonds’ means the portion of the out-  
8       standing bonds in an amount that, if the remaining  
9       bonds were issued on the fifth anniversary of the  
10      date of the issuance of the issue, at least 95 percent  
11      of the proceeds of the remaining bonds would be  
12      used to provide qualified projects.

13      “(h) SPECIAL RULES RELATING TO ARBITRAGE.—

14           “(1) IN GENERAL.—A bond which is part of an  
15      issue shall not be treated as a clean energy bond un-  
16      less, with respect to the issue of which the bond is  
17      a part, the qualified issuer satisfies the arbitrage re-  
18      bate requirements of section 148 with respect to  
19      gross proceeds of the issue (other than any amounts  
20      applied in accordance with subsection (g)). For pur-  
21      poses of such requirements, yield over the term of an  
22      issue shall be determined under the principles of sec-  
23      tion 148 based on the qualified issuer’s payments of  
24      principal, interest (if any), and fees for qualified  
25      guarantees on such issue.

1           “(2) EXCEPTION.—Amounts on deposit in a  
2           bona fide debt service fund with regard to any clean  
3           energy bond are not subject to the arbitrage rebate  
4           requirements of section 148.

5           “(i) COOPERATIVE ELECTRIC COMPANY; QUALIFIED  
6 ENERGY TAX CREDIT BOND LENDER; GOVERNMENTAL  
7 BODY; QUALIFIED BORROWER.—For purposes of this sec-  
8 tion—

9           “(1) COOPERATIVE ELECTRIC COMPANY.—The  
10          term ‘cooperative electric company’ means a mutual  
11          or cooperative electric company described in section  
12          501(c)(12) or section 1381(a)(2)(C), or a not-for-  
13          profit electric utility which has received a loan or  
14          loan guarantee under the Rural Electrification Act.

15          “(2) CLEAN ENERGY BOND LENDER.—The  
16          term ‘clean energy bond lender’ means a lender  
17          which is a cooperative which is owned by, or has out-  
18          standing loans to, 100 or more cooperative electric  
19          companies and is in existence on February 1, 2002,  
20          and shall include any affiliated entity which is con-  
21          trolled by such lender.

22          “(3) GOVERNMENTAL BODY.—The term ‘gov-  
23          ernmental body’ means any State, territory, posses-  
24          sion of the United States, the District of Columbia,

1 Indian tribal government, and any political subdivi-  
2 sion thereof.

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

5 “(A) a clean energy bond lender,

6 “(B) a cooperative electric company,

7 “(C) a governmental body, or

8 “(D) the Tennessee Valley Authority.

9 “(5) QUALIFIED BORROWER.—The term ‘quali-  
10 fied borrower’ means—

11 “(A) a cooperative electric company,

12 “(B) a governmental body, or

13 “(C) the Tennessee Valley Authority.

14 “(j) SPECIAL RULES RELATING TO POOL BONDS.—

15 No portion of a pooled financing bond may be allocable  
16 to loan unless the borrower has entered into a written loan  
17 commitment for such portion prior to the issue date of  
18 such issue.

19 “(k) OTHER DEFINITIONS AND SPECIAL RULES.—

20 For purposes of this section—

21 “(1) BOND.—The term ‘bond’ includes any ob-  
22 ligation.

23 “(2) POOLED FINANCING BOND.—The term  
24 ‘pooled financing bond’ shall have the meaning given  
25 such term by section 149(f)(4)(A).

1           “(3) PARTNERSHIP; S CORPORATION; AND  
2 OTHER PASS-THRU ENTITIES.—Under regulations  
3 prescribed by the Secretary, in the case of a partner-  
4 ship, trust, S corporation, or other pass-thru entity,  
5 rules similar to the rules of section 41(g) shall apply  
6 with respect to the credit allowable under subsection  
7 (a).

8           “(4) BONDS HELD BY REGULATED INVEST-  
9 MENT COMPANIES.—If any clean energy bond is held  
10 by a regulated investment company, the credit deter-  
11 mined under subsection (a) shall be allowed to  
12 shareholders of such company under procedures pre-  
13 scribed by the Secretary.

14           “(5) TREATMENT FOR ESTIMATED TAX PUR-  
15 POSES.—Solely for purposes of sections 6654 and  
16 6655, the credit allowed by this section to a tax-  
17 payer by reason of holding a clean energy bond on  
18 a credit allowance date shall be treated as if it were  
19 a payment of estimated tax made by the taxpayer on  
20 such date.

21           “(6) REPORTING.—Issuers of clean energy  
22 bonds shall submit reports similar to the reports re-  
23 quired under section 149(e).

1       “(1) TERMINATION.—This section shall not apply  
2 with respect to any bond issued after December 31,  
3 2008.”.

4       (b) REPORTING.—Subsection (d) of section 6049 (re-  
5 lating to returns regarding payments of interest) is  
6 amended by adding at the end the following new para-  
7 graph:

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

10               “(A) IN GENERAL.—For purposes of sub-  
11 section (a), the term ‘interest’ includes amounts  
12 includible in gross income under section 54(f)  
13 and such amounts shall be treated as paid on  
14 the credit allowance date (as defined in section  
15 54(b)(4)).

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

22               “(C) REGULATORY AUTHORITY.—The Sec-  
23 retary may prescribe such regulations as are  
24 necessary or appropriate to carry out the pur-  
25 poses of this paragraph, including regulations

1           which require more frequent or more detailed  
2           reporting.”.

3           (c) CLERICAL AMENDMENTS.—

4           (1) The table of subparts for part IV of sub-  
5           chapter A of chapter 1 is amended by adding at the  
6           end the following new item:

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

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

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

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

○