

110TH CONGRESS
1ST SESSION

S. 1154

To promote biogas production, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 18, 2007

Mr. NELSON of Nebraska (for himself and Mr. CRAIG) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To promote biogas production, 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 “Biogas Production In-
5 centive Act of 2007”.

6 **SEC. 2. CREDIT FOR PRODUCTION OF BIOGAS FROM CER-**
7 **TAIN RENEWABLE FEEDSTOCKS.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code of
10 1986 is amended by inserting after section 40A the fol-
11 lowing new section:

1 **“SEC. 40B. BIOGAS PRODUCED FROM CERTAIN RENEWABLE**
 2 **FEEDSTOCKS.**

3 “(a) GENERAL RULE.—For purposes of section 38,
 4 the qualified biogas production credit for any taxable year
 5 is an amount equal to the product of—

6 “(1) \$4.27, and

7 “(2) each million British thermal units
 8 (mmBtu) of biogas—

9 “(A) produced by the taxpayer—

10 “(i) from qualified energy feedstock,
 11 and

12 “(ii) at a qualified facility during the
 13 7-year period beginning on the date the fa-
 14 cility was originally placed in service, and

15 “(B) either—

16 “(i) sold by the taxpayer to an unre-
 17 lated person during the taxable year, or

18 “(ii) used by the taxpayer during the
 19 taxable year.

20 “(b) DEFINITIONS.—

21 “(1) BIOGAS.—The term ‘biogas’ means a gas
 22 that—

23 “(A) is derived by processing qualified en-
 24 ergy feedstock in an anaerobic digester, and

25 “(B) contains—

26 “(i) at least 60 percent methane, and

1 “(ii) carbon dioxide and trace gases.

2 “(2) QUALIFIED ENERGY FEEDSTOCK.—

3 “(A) IN GENERAL.—The term ‘qualified
4 energy feedstock’ means—

5 “(i) manure of agricultural livestock,
6 including litter, wood shavings, straw, rice
7 hulls, bedding material, and other mate-
8 rials incidentally collected with the ma-
9 nure,

10 “(ii) any nonhazardous, cellulosic, or
11 other organic agricultural or food industry
12 byproduct or waste material that is derived
13 from—

14 “(I) harvesting residues,

15 “(II) wastes or byproducts from
16 fermentation processes, ethanol pro-
17 duction, biodiesel production, slaugh-
18 ter of agricultural livestock, food pro-
19 duction, food processing, or food serv-
20 ice, or

21 “(III) other organic wastes, by-
22 products, or sources, or

23 “(iii) solid wood waste materials, in-
24 cluding waste pallets, crates, dunnage,
25 manufacturing and construction wood

1 wastes, and landscape or right-of-way tree
2 trimmings.

3 “(B) EXCLUSIONS.—The term ‘qualified
4 energy feedstock’ does not include—

5 “(i) pressure-treated, chemically-treat-
6 ed, or painted wood wastes,

7 “(ii) municipal solid waste,

8 “(iii) landfills, or

9 “(iv) paper that is commonly recycled.

10 “(C) AGRICULTURAL LIVESTOCK.—The
11 term ‘agricultural livestock’ means poultry, cat-
12 tle, sheep, swine, goats, horses, mules, and
13 other equines.

14 “(3) QUALIFIED FACILITY.—The term ‘quali-
15 fied facility’ means a facility that—

16 “(A) uses anaerobic digesters to process
17 qualified energy feedstock into biogas,

18 “(B) is owned by the taxpayer,

19 “(C) is located in the United States,

20 “(D) is originally placed in service before
21 January 1, 2018, and

22 “(E) the biogas output of which is—

23 “(i) marketed through interconnection
24 with a gas distribution or transmission
25 pipeline, or

1 “(ii) used on-site or off-site in a quan-
2 tity that is sufficient to offset the con-
3 sumption of at least 50,000 mmBtu annu-
4 ally of commercially-marketed fuel derived
5 from coal, crude oil, natural gas, propane,
6 or other fossil fuel.

7 “(c) SPECIAL RULES.—For purposes of this sec-
8 tion—

9 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
10 PAYER.—In the case of a facility in which more than
11 1 person has an ownership interest, except to the ex-
12 tent provided in regulations prescribed by the Sec-
13 retary, production from the qualified facility shall be
14 allocated among such persons in proportion to their
15 respective ownership interests in the gross sales
16 from such qualified facility.

17 “(2) RELATED PERSONS.—Persons shall be
18 treated as related to each other if such persons
19 would be treated as a single employer under the reg-
20 ulations prescribed under section 52(b). In the case
21 of a corporation which is a member of an affiliated
22 group of corporations filing a consolidated return,
23 such corporation shall be treated as selling biogas to
24 an unrelated person if such biogas is sold to such a
25 person by another member of such group.

1 “(3) PASS-THRU IN THE CASE OF ESTATES AND
 2 TRUSTS.—Under regulations prescribed by the Sec-
 3 retary, rules similar to the rules of subsection (d) of
 4 section 52 shall apply.

5 “(4) COORDINATION WITH CREDIT FROM PRO-
 6 DUCING FUEL FROM A NONCONVENTIONAL
 7 SOURCE.—The amount of biogas produced and sold
 8 or used by the taxpayer during any taxable year
 9 which is taken into account under this section shall
 10 be reduced by the amount of biogas produced and
 11 sold by the taxpayer in such taxable year which is
 12 taken into account under section 45K.

13 “(5) CREDIT ELIGIBILITY IN THE CASE OF GOV-
 14 ERNMENT-OWNED FACILITIES USING POULTRY
 15 WASTE.—In the case of a facility using poultry
 16 waste to produce biogas and owned by a govern-
 17 mental unit, subparagraph (B) of subsection (b)(3)
 18 shall be applied by substituting ‘is leased or operated
 19 by the taxpayer’ for ‘is owned by the taxpayer’.

20 “(d) TRANSFERABILITY OF CREDIT.—

21 “(1) IN GENERAL.—A taxpayer may transfer
 22 the credit under this section through an assignment
 23 to any person. Such transfer may be revoked only
 24 with the consent of the Secretary.

1 “(2) REGULATIONS.—The Secretary shall pre-
 2 scribe such regulations as necessary to ensure that
 3 any credit transferred under paragraph (1) is
 4 claimed once and not reassigned by such other per-
 5 son.

6 “(e) ADJUSTMENT BASED ON INFLATION.—

7 “(1) IN GENERAL.—The \$4.27 amount under
 8 subsection (b)(1) shall be adjusted by multiplying
 9 such amount by the inflation adjustment factor for
 10 the calendar year in which the sale occurs. If any
 11 amount as increased under the preceding sentence is
 12 not a multiple of 0.1 cent, such amount shall be
 13 rounded to the nearest multiple of 0.1 cent.

14 “(2) COMPUTATION OF INFLATION ADJUST-
 15 MENT FACTOR.—

16 “(A) IN GENERAL.—The Secretary shall,
 17 not later than April 1 of each calendar year, de-
 18 termine and publish in the Federal Register the
 19 inflation adjustment factor in accordance with
 20 this paragraph.

21 “(B) INFLATION ADJUSTMENT FACTOR.—

22 The term ‘inflation adjustment factor’ means,
 23 with respect to a calendar year, a fraction the
 24 numerator of which is the GDP implicit price
 25 deflator for the preceding calendar year and the

1 denominator of which is the GDP implicit price
 2 deflator for calendar year 2007. The term
 3 ‘GDP implicit price deflator’ means the most
 4 recent revision of the implicit price deflator for
 5 the gross domestic product as computed and
 6 published by the Department of Commerce be-
 7 fore March 15 of the calendar year.”.

8 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
 9 tion 38(b) of the Internal Revenue Code of 1986 is amend-
 10 ed by striking “plus” at the end of paragraph (30), by
 11 striking the period at the end of paragraph (31) and in-
 12 serting “, plus”, and by adding at the end the following
 13 new paragraph:

14 “(32) the qualified biogas production credit
 15 under section 40B(a).”.

16 (c) CREDIT ALLOWED AGAINST AMT.—Section
 17 38(c)(4)(B) of the Internal Revenue Code of 1986 is
 18 amended by striking “and” at the end of clause (i), by
 19 striking the period at the end of clause (ii)(II) and insert-
 20 ing “, and”, and by adding at the end the following new
 21 clause:

22 “(iii) the credit determined under sec-
 23 tion 40B.”.

24 (d) CLERICAL AMENDMENT.—The table of sections
 25 for subpart D of part IV of subchapter A of chapter 1

1 of the Internal Revenue Code of 1986 is amended by in-
 2 serting after the item relating to section 40A the following
 3 new item:

“Sec. 40B. Biogas produced from certain renewable feedstocks.”.

4 (e) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to biogas produced and sold or
 6 used in taxable years beginning after the date of the enact-
 7 ment of this Act.

8 **SEC. 3. INCENTIVES FOR BIOGAS PRODUCTION.**

9 Title IX of the Farm Security and Rural Investment
 10 Act of 2002 (7 U.S.C. 8101 et seq.) is amended by adding
 11 at the end the following:

12 **“SEC. 9012. COUNTER-CYCLICAL PAYMENTS FOR THE PRO-**
 13 **DUCTION OF BIOGAS FROM CERTAIN RENEW-**
 14 **ABLE FEEDSTOCK RESOURCES.**

15 “(a) DEFINITIONS.—In this section:

16 “(1) AGRICULTURAL LIVESTOCK.—The term
 17 ‘agricultural livestock’ means—

18 “(A) poultry;

19 “(B) cattle;

20 “(C) sheep;

21 “(D) swine;

22 “(E) goats;

23 “(F) horses;

24 “(G) mules; and

25 “(H) other equines.

1 “(2) BIOGAS.—The term ‘biogas’ means a gas
2 that—

3 “(A) is produced at a qualified facility;

4 “(B) is derived by processing qualified en-
5 ergy feedstock in an anaerobic digester; and

6 “(C) contains—

7 “(i) at least 60 percent methane; and

8 “(ii) carbon dioxide and trace gases.

9 “(3) PROVIDER.—The term ‘provider’ means a
10 provider of qualified energy feedstock, including a
11 farmer, rancher, rural small business, agricultural
12 cooperative, and partnership.

13 “(4) QUALIFIED BIOGAS PRODUCER.—The term
14 ‘qualified biogas producer’ means a person that op-
15 erates a qualified facility.

16 “(5) QUALIFIED ENERGY FEEDSTOCK.—

17 “(A) IN GENERAL.—The term ‘qualified
18 energy feedstock’ means—

19 “(i) manure of agricultural livestock,
20 including litter, wood shavings, straw, rice
21 hulls, bedding material, and other mate-
22 rials incidentally collected with the ma-
23 nure;

24 “(ii) any nonhazardous, cellulosic, or
25 other organic agricultural or food industry

1 byproduct or waste material that is derived
 2 from—

3 “(I) harvesting residues;

4 “(II) wastes or byproducts from
 5 fermentation processes, ethanol pro-
 6 duction, biodiesel production, slaugh-
 7 ter of agricultural livestock, food pro-
 8 duction, food processing, or food serv-
 9 ice; or

10 “(III) other organic wastes, by-
 11 products, or sources; or

12 “(iii) solid wood waste materials, in-
 13 cluding waste pallets, crates, dunnage,
 14 manufacturing and construction wood
 15 wastes, and landscape or right-of-way tree
 16 trimmings.

17 “(B) EXCLUSIONS.—The term ‘qualified
 18 energy feedstock’ does not include—

19 “(i) pressure-treated, chemically-treat-
 20 ed, or painted wood wastes;

21 “(ii) municipal solid waste;

22 “(iii) landfills; or

23 “(iv) paper that is commonly recycled.

24 “(6) QUALIFIED FACILITY.—The term ‘quali-
 25 fied facility’ means a facility that—

1 “(A) uses anaerobic digesters to process
2 qualified energy feedstock into biogas;

3 “(B) is located in the United States; and

4 “(C) the biogas output of which is—

5 “(i) marketed through interconnection
6 with a gas distribution or transmission
7 pipeline; or

8 “(ii) used on-site or off-site in a quan-
9 tity that is sufficient to offset the con-
10 sumption of at least 50,000 mmBtu annu-
11 ally of commercially-marketed fuel derived
12 from coal, crude oil, natural gas, propane,
13 or other fossil fuel.

14 “(b) COUNTER-CYCLICAL PAYMENTS.—

15 “(1) IN GENERAL.—The Secretary shall use
16 such funds of the Commodity Credit Corporation as
17 are necessary to make counter-cyclical payments in
18 accordance with this subsection to qualified biogas
19 producers for qualified facilities placed in service be-
20 fore December 31, 2013.

21 “(2) PAYMENT AMOUNT.—

22 “(A) IN GENERAL.—The amount of the
23 payments described in paragraph (1) shall be
24 equal to the product obtained by multiplying—

1 “(i) the applicable amount calculated
2 under subparagraph (B); and

3 “(ii) the mmBtus of biogas that is
4 produced in any year during the 10-year
5 period beginning on the date on which the
6 qualified facility is placed into service.

7 “(B) APPLICABLE AMOUNT.—The applica-
8 ble amount under subparagraph (A)(i) is the
9 amount equal to 1.0 cent for every 1.0 cent
10 that the annual average of average daily prices
11 of natural gas on the Henry Hub Natural Gas
12 Futures Market of the New York Mercantile
13 Exchange is below \$7.50 per mmBtu, as ad-
14 justed for inflation by the Secretary.

15 “(3) PAYMENT TIMING.—The Secretary shall
16 make payments under this subsection once per cal-
17 endar year, on a date determined by the Secretary.

18 “(4) USE OF PAYMENTS.—As a condition on re-
19 ceipt of payments under this subsection, a qualified
20 biogas producer shall agree to use the payments first
21 to pay down loans and other obligations incurred by
22 the qualified biogas producer for the physical facili-
23 ties designed, built, and used to produce biogas.

24 “(c) TRANSPORTATION COSTS.—

1 “(1) DEFINITION OF SECRETARY.—In this sub-
2 section, the term ‘Secretary’ means the Secretary,
3 acting in consultation with the Secretary of Energy
4 and the Administrator of the Environmental Protec-
5 tion Agency.

6 “(2) IN GENERAL.—The Secretary shall make
7 loans, loan guarantees, and grants to providers—

8 “(A) for collecting qualified energy feed-
9 stock and transporting the feedstock to a quali-
10 fied facility that produces biogas using manure
11 of agricultural livestock from multiple, smaller
12 farming operations, as determined by the Sec-
13 retary; or

14 “(B) for the purchase or construction of
15 equipment or facilities used in connection with
16 the collection and transportation under sub-
17 paragraph (A).

18 “(3) ELIGIBILITY.—To be eligible to receive a
19 grant under this subsection, a provider shall—

20 “(A) demonstrate financial need, as deter-
21 mined by the Secretary; and

22 “(B) submit to the Secretary a description
23 of—

24 “(i) the terms and conditions of the
25 commitment by a qualified facility to ac-

cept the qualified energy feedstock from
the provider;

“(ii) the location of the qualified facility; and

“(iii) a plan for environmentally-sound and economically-sustainable continued transportation of the qualified energy feedstock.

“(4) COST SHARING.—

“(A) IN GENERAL.—

“(i) GRANTS.—The amount of a grant under this subsection shall not exceed 75 percent of the annual cost of the activity funded under paragraph (2)(A).

“(ii) MAXIMUM AMOUNT OF COMBINED GRANT AND LOAN.—The combined amount of a grant and loan made or guaranteed for purchase or construction of equipment used in connection with transport of qualified energy feedstock shall not exceed 75 percent of the cost of the activity funded under paragraph (2)(B).

“(B) FACTORS.—In determining the amount of a grant or loan, the Secretary shall take into consideration, as applicable—

1 “(i) the size, location, and biogas pro-
2 duction efficiency of the qualified facility;

3 “(ii) the estimated quantity of biogas
4 to be produced by the qualified facility;

5 “(iii) the number of farms, ranches,
6 or small rural businesses within a reason-
7 able distance of the qualified facility, as
8 determined by the Secretary;

9 “(iv) the expected environmental bene-
10 fits of producing biogas from qualified en-
11 ergy feedstocks by the qualified facility;
12 and

13 “(v) such other factors as the Sec-
14 retary determines to be appropriate.

15 “(5) INTEREST RATE.—

16 “(A) IN GENERAL.—A loan made by the
17 Secretary under this subsection shall bear inter-
18 est at the rate equivalent to the rate of interest
19 charged on Treasury securities of comparable
20 maturity on the date the loan is approved.

21 “(B) DURATION.—The interest rate for
22 each loan will remain in effect for the term of
23 the loan.

24 “(6) FUNDING.—

1 “(A) IN GENERAL.—Notwithstanding any
 2 other provision of law, on October 1, 2007, and
 3 on each October 1 thereafter through October
 4 1, 2011, out of any funds in the Treasury not
 5 otherwise appropriated, the Secretary of the
 6 Treasury shall transfer to the Secretary to
 7 carry out this subsection \$10,000,000, to re-
 8 main available until expended.

9 “(B) RECEIPT AND ACCEPTANCE.—The
 10 Secretary shall be entitled to receive, shall ac-
 11 cept, and shall use to carry out this subsection
 12 the funds transferred under subparagraph (A),
 13 without further appropriation.

14 “(d) IMPLEMENTATION.—

15 “(1) IN GENERAL.—Not later than 180 days
 16 after the date of enactment of this section, the Sec-
 17 retary shall promulgate such regulations as are nec-
 18 essary to implement this section, including a notice
 19 describing the method by which the Secretary deter-
 20 mines and adjusts the average price under sub-
 21 section (b)(2)(B).

22 “(2) PROCEDURE.—The promulgation of the
 23 regulations and administration of this section shall
 24 be made without regard to—

1 “(A) the notice and comment provisions of
2 section 553 of title 5, United States Code;

3 “(B) the Statement of Policy of the Sec-
4 retary of Agriculture effective July 24, 1971
5 (36 Fed. Reg. 13804), relating to notices of
6 proposed rulemaking and public participation in
7 rulemaking; and

8 “(C) chapter 35 of title 44, United States
9 Code (commonly known as the ‘Paperwork Re-
10 duction Act’).”.

○