110TH CONGRESS
1ST SESSION

S. 1601

To lower the effective tax rate on investment in necessary energy infrastructure and credits for renewable energy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2007

Mr. HAGEL introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To lower the effective tax rate on investment in necessary energy infrastructure and credits for renewable energy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Energy Infrastructure Tax Reform and Incentives Act of 2007''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 101. INCOME AND GAINS FROM ELECTRICITY TRANSMISSION SYSTEMS TREATED AS QUALIFYING INCOME FOR PUBLICLY TRADED PARTNERSHIPS.

(a) IN GENERAL.—Section 7704(d)(1) of the Internal Revenue Code of 1986 (defining qualifying income) is amended by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively, and by inserting after subparagraph (E) the following new subparagraph:

''(F) income and gains from the transmission of electricity at 69 or more kilovolts through any property the original use of which commences after December 31, 2006,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, in taxable years ending after such date.

SEC. 102. FIVE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(B) of the Internal Revenue Code of 1986 (defining 5-year property) is amended by striking ''and'' at the end of clause (v), by striking the period at the end of clause (vi)(III) and inserting '', and'', and by inserting after clause (vi) the following new clause:

''(vii) any qualified energy management device.''.

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) of such Code (relating to definitions and special rules) is amended by inserting at the end the following new paragraph:

''(18) QUALIFIED ENERGY MANAGEMENT DEVICE.—

''(A) IN GENERAL.—The term 'qualified energy management device' means any energy management device which is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services.

''(B) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term 'energy management device' means any time-based meter and related communications equip-

ment which is capable of being used by the taxpayer as part of a system that—

''(i) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day,

''(ii) provides for the exchange of information between supplier or provider and the customer's energy management device in support of time-based rates or other forms of demand response, and

''(iii) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service in taxable years ending after the date of the enactment of this Act.

SEC. 103. SPECIAL DEPRECIATION ALLOWANCE FOR CELLULOSIC BIOMASS ETHANOL PLANT PROPERTY.

(a) IN GENERAL.—Section 168 of the Internal Revenue Code of 1986 (relating to accelerated cost recovery system) is amended by adding at the end the following:

''(l) SPECIAL ALLOWANCE FOR CELLULOSIC BIOMASS ETHANOL PLANT PROPERTY.—

''(1) ADDITIONAL ALLOWANCE.—In the case of any qualified cellulosic biomass ethanol plant property—

''(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

''(B) the adjusted basis of such property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

''(2) QUALIFIED CELLULOSIC BIOMASS ETHANOL PLANT PROPERTY.—

''(A) IN GENERAL.—The term 'qualified cellulosic biomass ethanol plant property' means property of a character subject to the allowance for depreciation—

''(i) which is used in the United States solely to produce cellulosic biomass ethanol,

''(ii) the original use of which commences with the taxpayer after the date of the enactment of this subsection,

''(iii) which has a nameplate capacity of 100,000,000 gallons per year of cellulosic biomass ethanol,

''(iv) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after the date of the enactment of this subsection, but only if no written binding contract for the acquisition was in effect on or before the date of the enactment of this subsection, and

''(v) which is placed in service by the taxpayer before January 1, 2013.

''(B) EXCEPTIONS.—

''(i) ALTERNATIVE DEPRECIATION PROPERTY.—Such term shall not include any property described in section 168(k)(2)(D)(i).

''(ii) TAX-EXEMPT BOND-FINANCED PROPERTY.—Such term shall not include any property any portion of which is financed with the proceeds of any obligation

the interest on which is exempt from tax under section 103.

''(iii) ELECTION OUT.—If a taxpayer makes an election under this subparagraph with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

''(3) CELLULOSIC BIOMASS ETHANOL.—For purposes of this subsection, the term 'cellulosic biomass ethanol'—

''(A) means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including—

''(i) dedicated energy crops and trees,

''(ii) wood and wood residues,

''(iii) plants,

''(iv) grasses,

''(v) agricultural residues,

''(vi) fibers,

''(vii) animal wastes and other waste materials, and

''(viii) municipal and solid waste, and

''(B) includes any ethanol produced in facilities where animal wastes or other waste materials are digested or otherwise used to displace 90 percent or more of the fossil fuel normally used in the production of ethanol.

''(4) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

''(A) by substituting 'the date of the enactment of subsection (l)' for 'September 10, 2001' each place it appears therein,

''(B) by substituting 'January 1, 2013' for 'January 1, 2005' in clause (i) thereof, and

''(C) by substituting 'qualified cellulosic biomass ethanol plant property' for 'qualified property' in clause (iv) thereof.

''(5) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

''(6) RECAPTURE.—For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified cellulosic biomass ethanol plant property which

ceases to be qualified cellulosic biomass ethanol plant property.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 104. COAL-TO-LIQUID FACILITIES.

(a) IN GENERAL.—Section 168 of the Internal Revenue Code of 1986 (relating to accelerated cost recovery system), as amended by this Act, is amended by adding at the end the following:

''(m) SPECIAL ALLOWANCE FOR COAL-TO-LIQUID PLANT PROPERTY.—

''(1) ADDITIONAL ALLOWANCE.—In the case of any qualified coal-to-liquid plant property—

''(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

''(B) the adjusted basis of such property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this

chapter for such taxable year and any subsequent taxable year.

''(2) QUALIFIED COAL-TO-LIQUID PLANT PROPERTY.—

''(A) IN GENERAL.—The term 'qualified coal-to-liquid plant property' means property of a character subject to the allowance for depreciation—

''(i) which is part of a commercial-scale project that converts coal to 1 or more liquid or gaseous transportation fuel that demonstrates the capture, and sequestration or disposal or use of, the carbon dioxide produced in the conversion process, and that, on the basis of carbon dioxide sequestration plan prepared by the applicant, is certified by the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Energy, as producing fuel with life cycle carbon dioxide emissions at or below the average life-cycle carbon dioxide emissions for the same type of fuel produced at traditional petroleum based facilities with similar annual capacities,

"(ii) which is used in the United States solely to produce coal-to-liquid fuels,

"(iii) the original use of which commences with the taxpayer after the date of the enactment of this subsection,

"(iv) which has a nameplate capacity of 30,000 barrels per day production of coal-to-liquid fuels;

"(v) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after the date of the enactment of this subsection, but only if no written binding contract for the acquisition was in effect on or before the date of the enactment of this subsection, and

"(vi) which is placed in service by the taxpayer before January 1, 2013.

"(B) EXCEPTIONS.—

"(i) ALTERNATIVE DEPRECIATION PROPERTY.—Such term shall not include any property described in section 168(k)(2)(D)(i).

"(ii) TAX-EXEMPT BOND-FINANCED PROPERTY.—Such term shall not include any property any portion of which is fi-

nanced with the proceeds of any obligation the interest on which is exempt from tax under section 103.

''(iii) ELECTION OUT.—If a taxpayer makes an election under this subparagraph with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

''(3) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

''(A) by substituting 'the date of the enactment of subsection (l)' for 'September 10, 2001' each place it appears therein,

''(B) by substituting 'January 1, 2013' for 'January 1, 2005' in clause (i) thereof, and

''(C) by substituting 'qualified coal-to-liquid plant property' for 'qualified property' in clause (iv) thereof.

''(4) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

''(5) RECAPTURE.—For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified coal-to-liquid plant property which ceases to be qualified coal-to-liquid plant property.''.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 105. DEDICATED ETHANOL PIPELINES TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(E) of the Internal Revenue Code of 1986 (defining 15-year property), is amended by striking ''and'' at the end of clause (vii), by striking the period at the end of clause (viii) and by inserting '', and'', and by adding at the end the following new clause:

''(ix) any dedicated ethanol distribution line the original use of which commences with the taxpayer after August 1, 2007, and which is placed in service before January 1, 2013.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) of such Code (relating to special rule for certain property assigned to classes) is amended by

inserting after the item relating to subparagraph (E)(viii) the following new item:

"(E)(ix) ..... 35.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to property placed in service after August 1, 2007.

(2) EXCEPTION.—The amendments made by this section shall not apply to any property with respect to which the taxpayer or related party has entered into a binding contract for the construction thereof on or before August 1, 2007, or, in the case of self-constructed property, has started construction on or before such date.

SEC. 106. CREDIT FOR POLLUTION ABATEMENT EQUIPMENT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 45N the following new section:

"SEC. 45O. CREDIT FOR POLLUTION ABATEMENT EQUIPMENT.

"(a) GENERAL RULE.—For purposes of section 38, the pollution abatement equipment credit for any taxable year is an amount equal to 30 percent of the costs of any

qualified pollution abatement equipment property placed in service by the taxpayer during the taxable year.

''(b) LIMITATION.—The credit allowed under subsection (a) for any taxable year with respect to any qualified pollution abatement equipment property shall not exceed—

''(1) $50,000,000 in the case of a property of a character subject an allowance for depreciation provided in section 167, and

''(2) $30,000,000 in any other case.

''(c) QUALIFIED POLLUTION ABATEMENT EQUIPMENT PROPERTY.—For purposes of this section, the term 'qualified pollution abatement equipment property' means pollution abatement equipment—

''(1) which is part of a unit or facility which either—

''(A) utilizes technologies that meet relevant Federal and State clean air requirements applicable to the unit or facility, including being adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411), achievable for purposes of section 169 of that Act (42 U.S.C. 7479), or achievable in practice for purposes of section 171 of that Act (42 U.S.C. 7501, or

''(B) utilizes equipment or processes that exceed relevant Federal or State clean air requirements applicable to the unit or facility by achieving greater efficiency or environmental performance,

''(2) which is installed on a voluntary basis and not as a result of an agreement with a Federal or State agency or required as a decree from a judicial decision, and

''(3) with respect to which an election under section 169 is not in effect.''.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of such Code is amended by striking ''plus'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', plus'', and by adding at the end the following new paragraph:

''(32) the pollution abatement equipment credit determined under section 45O(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 45N the following new item:

''Sec. 45O. Credit for pollution abatement equipment.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures made after the

date of the enactment of this Act, in taxable years ending after such date.

SEC. 107. MODIFICATIONS RELATING TO CLEAN RENEWABLE ENERGY BONDS.

(a) CLEAN RENEWABLE ENERGY BOND.—Paragraph (1) of section 54(d) of the Internal Revenue Code of 1986 (defining clean renewable energy bond) is amended—

(1) in subparagraph (A), by striking ''pursuant'' and all that follows through ''subsection (f)(2)'',

(2) in subparagraph (B), by striking ''95 percent or more of the proceeds'' and inserting ''90 percent or more of the net proceeds'', and

(3) in subparagraph (D), by striking ''subsection (h)'' and inserting ''subsection (g)''.

(b) QUALIFIED PROJECT.—Subparagraph (A) of section 54(d)(2) of such Code (defining qualified project) is amended to read as follows:

''(A) IN GENERAL.—The term 'qualified project' means any qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service requirement) owned by a qualified borrower and also without regard to the following:

''(i) In the case of a qualified facility described in section 45(d)(9) (regarding incremental hydropower production), any determination of incremental hydropower production and related calculations shall be determined by the qualified borrower based on a methodology that meets Federal Energy Regulatory Commission standards.

''(ii) In the case of a qualified facility described in section 45(d)(9) (regarding hydropower production), the facility need not be licensed by the Federal Energy Regulation Commission if the facility, when constructed, will meet Federal Energy Regulatory Commission licensing requirements and other applicable environmental, licensing, and regulatory requirements.''.

(c) REIMBURSEMENT.—Subparagraph (C) of section 54(d)(2) of such Code (relating to reimbursement) is amended to read as follows:

''(C) REIMBURSEMENT.—For purposes of paragraph (1)(B), proceeds of a clean renewable energy bond may be issued to reimburse a qualified borrower for amounts paid after the

date of the enactment of this subparagraph in the same manner as proceeds of State and local government obligations the interest upon which is exempt from tax under section 103.''.

(d) CHANGE IN USE.—Subparagraph (D) of section 54(d)(2) of such Code (relating to treatment of changes in use) is amended by striking ''or qualified issuer''.

(e) MAXIMUM TERM.—Paragraph (2) of section 54(e) of such Code (relating to maximum term) is amended by striking ''without regard to the requirements of subsection (1)(6) and''.

(f) REPEAL OF LIMITATION ON AMOUNT OF BONDS DESIGNATED.—Section 54 of such Code is amended by striking subsection (f) (relating to repeal of limitation on amount of bonds designated).

(g) SPECIAL RULES RELATING TO EXPENDITURES.—Subsection (h) of section 54 of such Code (relating to special rules relating to expenditures) is amended—

(1) in paragraph (1)(A), by striking ''95 percent of the proceeds'' and inserting ''90 percent of the net proceeds'',

(2) in paragraph (1)(B)—

(A) by striking ''10 percent of the proceeds'' and inserting ''5 percent of the net proceeds'', and

(B) by striking ''the 6-month period beginning on'' both places it appears and inserting ''1 year of'',

(3) in paragraph (1)(C), by inserting ''net'' before ''proceeds'', and

(4) in paragraph (3), by striking ''95 percent of the proceeds'' and inserting ''90 percent of the net proceeds''.

(h) REPEAL OF SPECIAL RULES RELATING TO ARBITRAGE.—Section 54 of such Code is amended by striking subsection (i) (relating to repeal of special rules relating to arbitrage).

(i) PUBLIC POWER ENTITY.—Subsection (j) of section 54 of such Code (defining cooperative electric company; qualified energy tax credit bond lender; governmental body; qualified borrower) is amended—

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively,

(2) by inserting after paragraph (3) the following new paragraph:

''(4) PUBLIC POWER ENTITY.—The term 'public power entity' means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of enactment of this paragraph).'',

(3) in paragraph (5), as so redesignated—

(A) by striking ''or'' at the end of subparagraph (B),

(B) by striking the period at the end of subparagraph (C) and inserting '', or'', and

(C) by adding at the end the following new subparagraph:

''(D) a public power entity.'', and

(4) in paragraph (6), as so redesignated—

(A) by striking ''or'' at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting '', or'', and

(C) by adding at the end the following new subparagraph:

''(C) a public power entity.''.

(j) REPEAL OF RATABLE PRINCIPAL AMORTIZATION REQUIREMENT.—Subsection (l) of section 54 of such Code (relating to other definitions and special rules) is amended by striking paragraph (5) and redesignating paragraph (6) as paragraph (5).

(k) NET PROCEEDS.—Subsection (l) of section 54 of such Code (relating to other definitions and special rules), as amended by subsection (j), is amended by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (4), (5),

(6), and (7), respectively, and by inserting after paragraph (1) the following new paragraphs:

''(2) NET PROCEEDS.—The term 'net proceeds' means, with respect to an issue, the proceeds of such issue reduced by amounts in a reasonably required reserve or replacement fund.

''(3) LIMITATION ON AMOUNT IN RESERVE OR REPLACEMENT FUND WHICH MAY BE FINANCED BY ISSUE.—A bond issued as part of an issue shall not be treated as a clean renewable energy bond if the amount of the proceeds from the sale of such issue which is part of any reserve or replacement fund exceeds 10 percent of the proceeds of the issue (or such higher amount which the issuer establishes is necessary to the satisfaction of the Secretary).''.

(l) OTHER SPECIAL RULES.—Subsection (l) of section 54 of such Code ((relating to other definitions and special rules), as amended by subsections (j) and (k), is amended by adding at the end the following new paragraphs:

''(8) CREDITS MAY BE SEPARATED.—There may be a separation (including at issuance) of the ownership of a clean renewable energy bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation,

the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

''(9) TREATMENT FOR ESTIMATED TAX PURPOSES.—Solely for the purposes of sections 6654 and 6655, the credit allowed by this section to a taxpayer by reason of holding a qualified energy tax credit bond on a credit allowance date (or the credit in the case of a separation as provided in paragraph (8)) shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.

''(10) CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.—If the sum of the credit exceeds the limitation imposed by subsection (c) for any taxable year, any credits may be applied in a manner similar to the rules set forth in section 39.''.

(m) TERMINATION.—Subsection (m) of section 54 of such Code (relating to termination) is amended by striking ''2008'' and inserting ''2013''.

(n) CLERICAL REDESIGNATIONS.—Section 54 of such Code, as amended by the preceding provisions of this section, is amended by redesignating subsections (g), (h), (j), (k), (l), and (m) as subsections (f), (g), (h), (i), (j), and (k), respectively.

(o) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 108. EXTENSION OF RENEWABLE ENERGY PRODUCTION TAX CREDIT.

(a) IN GENERAL.—Section 45 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''10-year period beginning on the date the facility was originally placed in service,'' in subsection (a)(2)(A)(ii) and inserting ''5-year period beginning on the date the facility was originally placed in service,'',

(2) by striking ''in subsection (a)(2)(A)(ii).'' in subsection (b)(4)(B)(i) and inserting ''beginning on the date the facility was originally placed in service.'',

(3) by striking ''in subsection (a)(2)(A)(ii).'' in subsection (b)(4)(B)(ii) and inserting ''beginning on the date the facility was originally placed in service.'', and

(4) by striking ''January 1, 2009'' each place it appears in subsection (d) and inserting ''January 1, 2014''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 109. ENERGY CREDIT EXTENDED TO GREEN BUILDINGS.

(a) IN GENERAL.—Section 48(a)(3)(A) of the Internal Revenue Code of 1986 (defining energy property) is amended—

(1) by striking ''or'' at the end of clause (iii),

(2) by inserting after clause (iv) the following new clauses:

''(v) thermal storage system determined by the Secretary of Energy through a site specific feasibility study which allows for a reduction in energy use of 10 percent per year compared with conventional technologies, or

''(vi) daylight dimming technologies determined by the Secretary of Energy,''.

(b) CREDIT RATE.—Section 48(a)(2)(A) of such Code (relating to energy percentage) is amended—

(1) by striking ''and'' at the end of clause (i)(III),

(2) by redesignating clause (ii) as clause (iii), and

(3) by inserting after clause (i) the following new clause:

"(ii) 50 percent in the case of energy property described in clause (v) or (vi) of paragraph (3)(A), and".

(c) LIMITATIONS.—Section 48 of such Code is amended by adding at the end the following new subsection:

"(d) ENERGY PROPERTY FOR GREEN BUILDINGS.—

"(1) THERMAL STORAGE UNIT.—In the case of energy property described in paragraph (3)(A)(v) placed in service during the taxable year, the credit otherwise determined under subsection (a)(1) for such year with respect to such property shall not exceed $500,000.

"(2) DAYLIGHT DIMMING TECHNOLOGIES.—In the case of energy property described in paragraph (3)(A)(vi) placed in service during the taxable year, the credit otherwise determined under subsection (a)(1) for such year with respect to such property shall not exceed $500,000.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of

the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

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