

111TH CONGRESS
2D SESSION

H. R. 5856

To amend the Internal Revenue Code of 1986 to provide for an investment tax credit for waste-to-energy facilities.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2010

Mr. DOGGETT (for himself, Mr. LEWIS of Georgia, Mr. BLUMENAUER, and Mr. HOLT) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for an investment tax credit for waste-to-energy facilities.

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 “Waste-to-Energy Tech-
5 nology Act of 2010”.

6 **SEC. 2. INVESTMENT TAX CREDIT FOR WASTE TO ENERGY**
7 **FACILITIES.**

8 (a) 30 PERCENT ENERGY PERCENTAGE.—Clause (i)
9 of section 48(a)(2)(A) of the Internal Revenue Code of
10 1986 is amended by striking “and” at the end of subpara-

1 graph (III) and by inserting after subparagraph (IV) the
 2 following new subparagraph:

3 “(E) qualified waste-to-energy property,
 4 and”.

5 (b) ENERGY PROPERTY.—Subparagraph (A) of sec-
 6 tion 48(a)(3) of such Code is amended by striking “or”
 7 at the end of clause (vi), by inserting “or” at the end of
 8 clause (vii), and by inserting after clause (vii) the fol-
 9 lowing new clause:

10 “(viii) qualified waste-to-energy prop-
 11 erty,”.

12 (c) QUALIFIED WASTE-TO-ENERGY PROPERTY DE-
 13 FINED.—Subsection (c) of section 48 of such Code is
 14 amended by adding at the end the following new para-
 15 graph:

16 “(5) QUALIFIED WASTE-TO-ENERGY PROP-
 17 ERTY.—

18 “(A) IN GENERAL.—The term ‘qualified
 19 waste-to-energy property’ means property com-
 20 prising a system which—

21 “(i) uses municipal solid waste or mu-
 22 nicipal sewage sludge as the feedstock for
 23 producing solid, liquid, or gas fuel, and

1 “(ii) is certified by the Secretary
2 under subparagraph (D)(iii) as eligible for
3 a credit under this section.

4 “(B) EXCEPTION.—Such term does not in-
5 clude any landfill facility that recirculates leach-
6 ate, regrades landfill surfaces to encourage run-
7 off to infiltrate the cells, or delays installation
8 of covers longer than 18 months following the
9 cell reaching more than 90 percent of its final
10 grade.

11 “(C) LIMITATION.—The amount allowed
12 as a credit for a qualified waste-to-energy prop-
13 erty shall not exceed the credit allocation to
14 such project under subparagraph (D)(ii).

15 “(D) COMPETITIVE ALLOCATION OF CRED-
16 IT.—

17 “(i) IN GENERAL.—Not later than
18 180 days after the date of enactment of
19 this section, the Secretary, in consultation
20 with the Administrator of the Environ-
21 mental Protection Agency, shall establish a
22 qualifying waste-to-energy project program
23 to consider and award certifications for
24 qualified investments eligible for credits

1 under this section to qualifying waste-to-
2 energy project sponsors.

3 “(ii) LIMITATION.—The total amount
4 of credits that may be allocated under the
5 program shall not exceed \$1,000,000,000.

6 “(iii) CERTIFICATION.—

7 “(I) APPLICATION PERIOD.—An
8 application for certification under this
9 paragraph may only be submitted dur-
10 ing the 2-year period beginning on the
11 date the Secretary establishes the pro-
12 gram under clause (i) and shall con-
13 tain such information as the Secretary
14 may require.

15 “(II) TIME TO MEET CRITERIA
16 FOR CERTIFICATION.—Each applicant
17 for certification shall have 1 year from
18 the date of acceptance by the Sec-
19 retary of the application during which
20 to provide to the Secretary evidence
21 that the requirements of the certifi-
22 cation have been met.

23 “(iv) SELECTION CRITERIA.—In de-
24 termining which qualifying waste-to-energy

1 projects to certify under this section, the
2 Secretary—

3 “(I) shall take into consideration
4 only those projects where there is a
5 reasonable expectation of commercial
6 viability, and

7 “(II) shall take into consideration
8 those projects which—

9 “(aa) use the least amount
10 of post-consumer materials that
11 could otherwise enter the recy-
12 cling stream,

13 “(bb) will provide the great-
14 est net impact in avoiding or re-
15 ducing air pollutants or anthro-
16 pogenic emissions of greenhouse
17 gases (including lifecycle leakage
18 of greenhouse gases),

19 “(cc) have the lowest
20 levelized cost of generated or
21 stored energy, or of measured re-
22 duction in energy consumption or
23 greenhouse gas emission (based
24 on costs of the full supply chain),
25 and

1 “(dd) pose the fewest risks
2 (other than climate risks) to en-
3 vironmental and human health.

4 “(v) LIMITATION ON ALLOCATION.—
5 No credit shall be allocated with respect to
6 any qualified waste-to-energy property for
7 which there is no net benefit in cumulative
8 lifecycle greenhouse gas emissions.

9 “(vi) GREENHOUSE GAS LEAKAGE
10 FROM FACILITY.—For purposes of clause
11 (iv)(II)(bb)—

12 “(I) IN GENERAL.—The lifecycle
13 leakage of greenhouse gases is, on a
14 integrated basis, the leakage rate dur-
15 ing each phase multiplied by the pro-
16 portion of lifetime greenhouse gases
17 that are released by the facility in
18 that phase, which shall be based upon
19 field data where that can be accom-
20 plished.

21 “(II) MATTERS INCLUDED.—In-
22 cluded in the lifecycle analysis shall be
23 an accounting of the leakage of green-
24 house gases attendant upon the pro-
25 duction of bio-based energy from the

1 facility. Such leakage shall be deter-
2 mined over the longer of the entire
3 lifetime the facility releases green-
4 house gases into the atmosphere or
5 the time the facility is capable of
6 doing so by virtue of the quantity of
7 any residual carbon remaining after
8 energy production. Leakage shall be
9 accounted for during each distinct
10 phase of the facility's life, including
11 the time before the gas collection sys-
12 tem and the final cover is installed
13 and the time after funds previously
14 set aside to maintain the final cover
15 after the facility is closed are no
16 longer available. Leakage shall be
17 counted for the entire time the facility
18 generates, or is capable of generating,
19 greenhouse gases.

20 “(vii) DEFINITIONS RELATING TO
21 GREENHOUSE GAS LEAKAGE.—For pur-
22 poses of clause (vi)—

23 “(I) LEAKAGE.—The term ‘leak-
24 age’ means the portion of the total
25 greenhouse gases generated by decom-

1 position of organic discards disposed
2 of in the facility that are released into
3 the atmosphere.

4 “(II) FACILITY.—A facility refers
5 not only to the energy-producing ma-
6 chinery but also to the entire munic-
7 ipal solid waste landfill unit.

8 “(III) PHASE.—The term ‘phase’
9 means one of the time periods when
10 greenhouse gases are generated at a
11 facility at distinctly different rates of
12 generation and rates of gas collection.
13 For landfill facilities that produce
14 biogas, the periods are—

15 “(aa) the time prior to the
16 installation of active gas collec-
17 tion systems,

18 “(bb) the time after the in-
19 stallation of the systems but
20 prior to installation of the final
21 cover,

22 “(cc) the time after installa-
23 tion of the final cover but prior
24 to the time that maintenance of
25 the cover ends, and

1 “(dd) the time after mainte-
2 nance of the cover ends.

3 “(IV) BIO-BASED ENERGY.—The
4 term ‘bio-based energy’ means energy
5 produced from the current decomposi-
6 tion of plants or animals.

7 “(V) INTEGRATED BASIS.—The
8 term ‘integrated basis’ means first
9 multiplying the collection efficiency
10 applicable for each phase of the life of
11 a landfill facility by the proportion of
12 the total gas over the landfill’s life
13 that is generated during that phase,
14 and then summing the product of the
15 two for each phase to determine the
16 integrated collection efficiency that re-
17 flects the actual lifetime collection ef-
18 ficiency.

19 “(E) DENIAL OF DOUBLE BENEFIT.—

20 “(i) IN GENERAL.—A credit shall not
21 be allowed under sections 40, 40A, 45,
22 48B, and 6426 with respect to any fuel
23 produced at a facility with respect to which
24 a credit is allowed under this section.

1 “(ii) COORDINATION WITH ARRA
2 GRANT.—A credit shall not be allowed
3 under this section for any facility if a
4 grant is made under section 1603 of the
5 American Recovery and Reinvestment Act
6 with respect to such facility.”.

7 (d) CONFORMING AMENDMENT.—Subsection (e) of
8 section 45 of such Code is amended by adding at the end
9 the following new paragraph:

10 “(12) COORDINATION WITH ENERGY CREDIT
11 FOR QUALIFIED WASTE-TO-ENERGY PROPERTY.—
12 The term ‘qualified facility’ shall not include any fa-
13 cility which produces electricity from solid, gas, or
14 liquid fuel produced by qualified waste-to-energy
15 property (as defined in section 48(c)(5)) if a credit
16 is determined under section 48 with respect to such
17 property for the taxable year or any prior taxable
18 year.”.

19 (e) REPORT.—After the Secretary of the Treasury,
20 in consultation with the Administrator of the Environ-
21 mental Protection Agency, has made all of the credit allo-
22 cation under section 48(c)(5) of the Internal Revenue
23 Code of 1986 (as added by subsection (a)), the Secretary,
24 in consultation with the Administrator, shall submit to
25 Congress a report on the recipients of the energy credit

1 for qualified waste-to-energy property under section 48 of
2 such Code and the effectiveness of the selection criteria
3 under section 48(c)(5)(D)(iv) of such Code in selecting
4 waste-to-energy projects these projects. The report shall
5 also include recommendations (if any) for continuing the
6 waste-to-energy credit under section 48(c) of such Code
7 and, if so, at what dollar amount. The Secretary shall,
8 upon making a certification of such credit under section
9 48(c)(5)(D)(iii) of such Code, publicly disclose the identity
10 of the applicant and the amount of the credit with respect
11 to such applicant.

12 (f) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to facilities placed in service in pe-
14 riods after the date of the enactment of this Act, in tax-
15 able years ending after such date, under rules similar to
16 the rules of section 48(m) of the Internal Revenue Code
17 of 1986 (as in effect on the day before the date of the
18 enactment of the Revenue Reconciliation Act of 1990).

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