

111TH CONGRESS
1ST SESSION

S. 1371

To amend the Internal Revenue Code of 1986 to provide for clean renewable water supply bonds.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. NELSON of Florida (for himself, Mr. ENSIGN, and Mr. MARTINEZ) 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 provide for clean renewable water supply bonds.

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 “Clean Renewable
5 Water Supply Bond Act of 2009”.

6 **SEC. 2. CLEAN RENEWABLE WATER SUPPLY BONDS.**

7 (a) IN GENERAL.—Subpart I of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of
9 1986 is amended by adding at the end the following new
10 section:

1 **“SEC. 54G. CLEAN RENEWABLE WATER SUPPLY BONDS.**

2 “(a) CLEAN RENEWABLE WATER SUPPLY BONDS.—

3 For purposes of this subpart, the term ‘clean renewable
4 water supply bond’ means any bond issued as part of an
5 issue if—

6 “(1) 100 percent of the available project pro-
7 ceeds of such issue are to be used for capital expend-
8 itures incurred by qualified borrowers for 1 or more
9 qualified projects,

10 “(2) the bond is issued by a qualified issuer,

11 “(3) the issuer designates such bond for pur-
12 poses of this section, and

13 “(4) in the case of a bond issued by a qualified
14 issuer before 2019, the bond is issued—

15 “(A) pursuant to an allocation by the Sec-
16 retary to such issuer of a portion of the na-
17 tional clean renewable water supply bond limita-
18 tion under subsection (b), and

19 “(B) not later than 6 months after the
20 date that such qualified issuer receives an allo-
21 cation under subsection (b).

22 “Any allocation under subsection (b) not used within the
23 6-month period described in paragraph (4)(B) shall be ap-
24 plied to increase the national clean renewable water supply
25 bond limitation for the next succeeding application period
26 under subsection (b)(2)(B).

1 “(b) NATIONAL LIMITATION ON AMOUNT OF BONDS
2 DESIGNATED.—

3 “(1) IN GENERAL.—There is a national clean
4 renewable water supply bond limitation for each cal-
5 endar year before 2019. Such limitation is—

6 “(A) \$0 for 2009,

7 “(B) \$100,000,000 for 2010,

8 “(C) \$150,000,000 for 2011,

9 “(D) \$200,000,000 for 2012,

10 “(E) \$250,000,000 for 2013,

11 “(F) \$500,000,000 for 2014,

12 “(G) \$750,000,000 for 2015,

13 “(H) \$1,000,000,000 for 2016,

14 “(I) \$1,500,000,000 for 2017, and

15 “(J) \$1,750,000,000 for 2018.

16 “(2) ALLOCATION OF LIMITATION.—

17 “(A) IN GENERAL.—The limitation under
18 paragraph (1) shall be allocated by the Sec-
19 retary among qualified projects as provided in
20 this paragraph.

21 “(B) METHOD OF ALLOCATION.—For each
22 calendar year after 2009 for which there is a
23 national clean renewable water supply bond lim-
24 itation, the Secretary shall publish a notice so-
25 liciting applications by qualified issuers for allo-

1 cations of such limitation to qualified projects.
2 Such notice shall specify a 3-month application
3 period in the calendar year during which the
4 Secretary will accept such applications. Within
5 30 days after the end of such application pe-
6 riod, and subject to the requirements of sub-
7 paragraph (C), the Secretary shall allocate such
8 limitation to qualified projects on a first-come,
9 first-served basis, based on the order in which
10 such applications are received from qualified
11 issuers.

12 “(C) ALLOCATION REQUIREMENTS.—

13 “(i) CERTIFICATIONS REGARDING
14 REGULATORY APPROVALS.—No portion of
15 the national clean renewable water supply
16 bond limitation shall be allocated to a
17 qualified project unless the qualified issuer
18 has certified in its application for such al-
19 location that as of the date of such appli-
20 cation the qualified issuer or qualified bor-
21 rower has received all Federal and State
22 regulatory approvals necessary to construct
23 the qualified project.

1 “(ii) RESTRICTION ON ALLOCATIONS
2 TO LARGE PROJECTS OR TO INDIVIDUAL
3 PROJECTS.—

4 “(I) IN GENERAL.—Except as
5 provided in subclause (III), for any
6 calendar year the Secretary shall not
7 allocate more than 60 percent of the
8 national clean renewable water supply
9 bond limitation to 1 or more large
10 projects, more than 18 percent of
11 such limitation to any single project
12 that is a large project, or more than
13 12 percent of such limitation to any
14 single project that is not a large
15 project.

16 “(II) DEFINITION OF LARGE
17 PROJECT.—For purposes of subclause
18 (I), the term ‘large project’ means a
19 qualified project that is designed to
20 deliver more than 10,000,000 gallons
21 of water per day.

22 “(III) EXCEPTION TO RESTRIC-
23 TION.—Subclause (I) shall not apply
24 to the extent its application would
25 cause any portion of the national

1 clean renewable water supply bond
 2 limitation for the calendar year to re-
 3 main unallocated, based on applica-
 4 tions for allocations of such limitation
 5 received by the Secretary during the
 6 application period referred to in sub-
 7 paragraph (B).

8 “(3) CARRYOVER OF UNUSED LIMITATION.—If
 9 the clean renewable water supply bond limitation for
 10 any calendar year exceeds the aggregate amount al-
 11 located under paragraph (2) for such year, such lim-
 12 itation for the succeeding calendar year shall be in-
 13 creased by the amount of such excess.

14 “(c) MATURITY LIMITATION.—

15 “(1) IN GENERAL.—A bond shall not be treated
 16 as a clean renewable water supply bond if the matu-
 17 rity of such bond exceeds 20 years.

18 “(2) COORDINATION WITH SECTION 54A.—The
 19 maturity limitation in section 54A(d)(5) shall not
 20 apply to any clean renewable water supply bond.

21 “(d) REFINANCING RULES.—For purposes of para-
 22 graph (a)(1), a qualified project may be refinanced with
 23 proceeds of a clean renewable water supply bond only if
 24 the indebtedness being refinanced (including any obliga-
 25 tion directly or indirectly refinanced by such indebtedness)

1 was originally incurred by a qualified borrower after the
 2 date of the enactment of this section.

3 “(e) DEFINITIONS.—For purposes of this section—

4 “(1) GOVERNMENTAL BODY.—The term ‘gov-
 5 ernmental body’ means any State or Indian tribal
 6 government, or any political subdivision thereof.

7 “(2) LOCAL WATER COMPANY.—The term ‘local
 8 water company’ means any entity responsible for
 9 providing water service to the general public (includ-
 10 ing electric utility, industrial, agricultural, commer-
 11 cial, or residential users) pursuant to State or tribal
 12 law.

13 “(3) QUALIFIED BORROWER.—The term ‘quali-
 14 fied borrower’ means a governmental body or a local
 15 water company.

16 “(4) QUALIFIED DESALINATION FACILITY.—
 17 The term ‘qualified desalination facility’ means any
 18 facility that is used to produce new water supplies
 19 by desalinating seawater, groundwater, or surface
 20 water if the facility’s source water includes chlorides
 21 or total dissolved solids that, either continuously or
 22 seasonally, exceed maximum permitted levels for pri-
 23 mary or secondary drinking water under Federal or
 24 State law (as in effect on the date of issuance of the
 25 issue).

1 “(5) QUALIFIED GROUNDWATER REMEDIATION
 2 FACILITY.—The term ‘qualified groundwater remedi-
 3 ation facility’ means any facility that is used to re-
 4 claim contaminated or naturally impaired ground-
 5 water for direct delivery for potable use if the facili-
 6 ty’s source water includes constituents that exceed
 7 maximum contaminant levels regulated under the
 8 Safe Drinking Water Act (as in effect on the date
 9 of the enactment of this section).

10 “(6) QUALIFIED ISSUER.—The term ‘qualified
 11 issuer’ means—

12 “(A) a governmental body, or

13 “(B) in the case of a State or political sub-
 14 division thereof (as defined for purposes of sec-
 15 tion 103), any entity qualified to issue tax-ex-
 16 empt bonds under section 103 on behalf of such
 17 State or political subdivision.

18 “(7) QUALIFIED PROJECT.—

19 “(A) IN GENERAL.—The term ‘qualified
 20 project’ means any facility owned by a qualified
 21 borrower which is a—

22 “(i) qualified desalination facility,

23 “(ii) qualified recycled water facility,

24 “(iii) qualified groundwater remedi-
 25 ation facility, or

1 “(iv) facility that is functionally re-
2 lated or subordinate to a facility described
3 in clause (i), (ii), or (iii).

4 “(B) ENVIRONMENTAL IMPACT.—A project
5 shall not be treated as a qualified project under
6 subparagraph (A) unless such project is de-
7 signed to comply with regulations issued under
8 subsection (f) relating to the minimization of
9 the environmental impact of the project.

10 “(8) QUALIFIED RECYCLED WATER FACILITY.—

11 “(A) IN GENERAL.—The term ‘qualified
12 recycled water facility’ means any wastewater
13 treatment or distribution facility which—

14 “(i) exceeds the requirements for the
15 treatment and disposal of wastewater
16 under the Clean Water Act and any other
17 Federal or State water pollution control
18 standards for the discharge and disposal of
19 wastewater to surface water, land, or
20 groundwater (as such requirements and
21 standards are in effect on the date of
22 issuance of the issue), and

23 “(ii) except as provided in subpara-
24 graph (B), is used to reclaim wastewater
25 produced by the general public (including

1 electric utility, industrial, agricultural,
2 commercial, or residential users) to the ex-
3 tent such reclaimed wastewater is used for
4 a beneficial use that the issuer reasonably
5 expects as of the date of issuance of the
6 issue otherwise would have been satisfied
7 with potable water supplies.

8 “(B) IMPERMISSIBLE USES.—Reclaimed
9 wastewater is not used for a use described in
10 subparagraph (A)(ii) to the extent such re-
11 claimed wastewater is—

12 “(i) discharged into a waterway or
13 used to meet waterway discharge permit
14 requirements and not used to supplement
15 potable water supplies,

16 “(ii) used to restore habitat,

17 “(iii) used to provide once-through
18 cooling for an electric generation facility,
19 or

20 “(iv) intentionally introduced into the
21 groundwater and not used to supplement
22 potable water supplies.

23 “(f) REGULATIONS.—The Secretary shall prescribe
24 such regulations as are necessary to carry out the pur-
25 poses of this section, including regulations promulgated in

1 consultation with the Administrator of the Environmental
 2 Protection Agency to ensure the environmental impact of
 3 qualified facilities is minimized.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Paragraph (1) of section 54A(d) of the In-
 6 ternal Revenue Code of 1986 is amended by striking
 7 “or” at the end of subparagraph (D), by inserting
 8 “or” at the end of subparagraph (E), and by insert-
 9 ing after subparagraph (E) the following new sub-
 10 paragraph:

11 “(F) a clean renewable water supply
 12 bond,”.

13 (2) Subparagraph (C) of section 54A(d)(2) of
 14 such Code is amended by striking “and” at the end
 15 of clause (iv), by striking the period at the end of
 16 clause (v) and inserting “, and”, and by adding at
 17 the end the following new clause:

18 “(vi) in the case of a clean renewable
 19 water supply bond, a purpose specified in
 20 section 54G(a)(1).”.

21 (3) The table of sections for subpart I of part
 22 IV of subchapter A of chapter 1 of such Code is
 23 amended by adding at the end the following new
 24 item:

“Sec. 54G. Clean renewable water supply bonds.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to obligations issued after Decem-
3 ber 31, 2008.

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