

111TH CONGRESS
2D SESSION

S. 3336

To amend the Internal Revenue Code of 1986 to provide for the treatment of bonds issued to finance renewable energy resource facilities, conservation and efficiency facilities, and other specified greenhouse gas emission technologies.

IN THE SENATE OF THE UNITED STATES

MAY 11, 2010

Mrs. FEINSTEIN (for herself and Mr. BROWN of Ohio) 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 the treatment of bonds issued to finance renewable energy resource facilities, conservation and efficiency facilities, and other specified greenhouse gas emission technologies.

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 “Private Activity Re-
5 newable Energy Bonds Act”.

1 **SEC. 2. TREATMENT OF BONDS ISSUED TO FINANCE RE-**
 2 **NEWABLE ENERGY RESOURCE FACILITIES**
 3 **AND CONSERVATION AND EFFICIENCY FA-**
 4 **CILITIES AND OTHER SPECIFIED GREEN-**
 5 **HOUSE GAS EMISSION TECHNOLOGIES.**

6 (a) IN GENERAL.—Section 142(a) of the Internal
 7 Revenue Code of 1986 is amended by striking “or” at the
 8 end of paragraph (14), by striking the period at the end
 9 of paragraph (15) and inserting a comma, and by insert-
 10 ing after paragraph (15) the following new paragraphs:

11 “(16) renewable energy resource facilities,

12 “(17) conservation and efficiency facilities and
 13 projects, or

14 “(18) high efficiency vehicles and related facili-
 15 ties or projects.”.

16 (b) RENEWABLE ENERGY RESOURCE FACILITY.—
 17 Section 142 of the Internal Revenue Code of 1986 is
 18 amended by adding at the end the following new sub-
 19 section:

20 “(n) RENEWABLE ENERGY RESOURCE FACILI-
 21 TIES.—For purposes of subsection (a)(16)—

22 “(1) IN GENERAL.—The term ‘renewable en-
 23 ergy resource facility’ means—

24 “(A) any facility used to produce electric
 25 or thermal energy (including a distributed gen-
 26 eration facility) from—

1 “(i) solar, wind, or geothermal energy,

2 “(ii) marine and hydrokinetic renew-
3 able energy,

4 “(iii) incremental hydropower,

5 “(iv) biogas and solids produced in
6 the wastewater treatment process, or

7 “(v) biomass (as defined in section
8 203(b)(1) of the Energy Policy Act of
9 2005 (42 U.S.C. 15852(b)(1))),

10 “(B) any facility used to produce biogas,

11 or

12 “(C) any facility or project used for the
13 manufacture of facilities referred to in subpara-
14 graph (A) or (B).

15 “(2) SPECIAL REQUIREMENTS FOR FACILITIES
16 PRODUCING BIOGAS.—

17 “(A) IN GENERAL.—A facility shall not be
18 treated as described in paragraph (1)(B), un-
19 less the biogas produced—

20 “(i) is of pipeline quality and distrib-
21 uted into a vehicle for transportation or
22 into an intrastate, interstate, or LDC pipe-
23 line system, or

24 “(ii) is used to produce onsite elec-
25 tricity or hydrogen fuel for use in vehicular

1 or stationary fuel cell applications and has
 2 a British thermal unit content of at least
 3 500 per cubic foot.

4 “(B) PIPELINE QUALITY.—For purposes of
 5 subparagraph (A)(i), with respect to biogas, the
 6 term ‘pipeline quality’ means biogas with a
 7 British thermal unit content of at least 930 per
 8 cubic foot.

9 “(3) DEFINITIONS.—For purposes of this sub-
 10 section—

11 “(A) GEOTHERMAL ENERGY.—The term
 12 ‘geothermal energy’ means energy derived from
 13 a geothermal deposit (within the meaning of
 14 section 613(e)(2)) or from geothermal heat
 15 pumps.

16 “(B) MARINE AND HYDROKINETIC RENEW-
 17 ABLE ENERGY.—The term ‘marine and
 18 hydrokinetic renewable energy’ has the meaning
 19 given such term in section 45(c)(10).

20 “(C) INCREMENTAL HYDROPOWER.—The
 21 term ‘incremental hydropower’ means additional
 22 energy generated as a result of efficiency im-
 23 provements or capacity additions to existing hy-
 24 dropower facilities made on or after the date of
 25 enactment of this subsection. The term ‘incre-

mental hydropower’ does not include additional energy generated as a result of operational changes not directly associated with efficiency improvements or capacity additions.

“(D) BIOGAS.—The term ‘biogas’ means a gaseous fuel derived from landfill, municipal solid waste, food waste, wastewater or biosolids, or biomass (as defined in section 203(b)(1) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b))).

“(4) SPECIAL RULES FOR ENERGY LOAN TAX ASSESSMENT FINANCING.—

“(A) IN GENERAL.—In the case of any renewable recovery energy resource facility provided from the proceeds of a bond secured by any tax assessment loan upon real property, the term ‘facility’ in paragraph (1) includes—

“(i) a prepayment for the principal purpose of purchasing electricity from renewable energy resource property, and

“(ii) a prepayment of a lease or license of such property, but only if the prepayment agreement provides that it shall not be canceled prior to the expiration of the tax assessment loan.

1 “(B) TAX ASSESSMENT LOAN.—For pur-
 2 poses of subparagraph (A), the term ‘tax as-
 3 sessment loan’ shall mean a governmental as-
 4 sessment, special tax, or similar charge upon
 5 real property.”.

6 (c) CONSERVATION AND EFFICIENCY FACILITY OR
 7 PROJECT.—Section 142 of the Internal Revenue Code of
 8 1986, as amended by subsection (b), is amended by adding
 9 at the end the following new subsection:

10 “(o) CONSERVATION AND EFFICIENCY FACILITIES
 11 AND PROJECTS.—

12 “(1) IN GENERAL.—For purposes of subsection
 13 (a)(17), the term ‘conservation and efficiency facility
 14 or project’ means—

15 “(A) any facility used for the conservation
 16 or the efficient use of energy, including energy
 17 efficient retrofitting of existing buildings, or for
 18 the efficient storage, transmission, or distribu-
 19 tion of energy, including any facility or project
 20 designed to implement smart grid technologies
 21 (as described in title XIII of the Energy Inde-
 22 pendence and Security Act of 2007, or indi-
 23 vidual components of such technologies as listed
 24 in section 1301 of such Act),

1 “(B) any facility used for the conservation
 2 of or the efficient use of water, including—

3 “(i) any facility or project designed
 4 to—

5 “(I) reduce the demand for
 6 water,

7 “(II) improve efficiency in use
 8 and reduce losses and waste of water,
 9 including water reuse, and

10 “(III) improve land management
 11 practices to conserve water, or

12 “(ii) any individual component of a
 13 facility or project referred to in clause (i),
 14 or

15 “(C) any facility or project used for the
 16 manufacture of facilities referred to in subpara-
 17 graphs (A) and (B).

18 For purposes of subparagraph (B)(i), facility or
 19 project does not include any facility or project that
 20 stores water.

21 “(2) SPECIAL RULES FOR ENERGY LOAN TAX
 22 ASSESSMENT FINANCING.—

23 “(A) IN GENERAL.—In the case of any
 24 conservation and efficiency facility or project
 25 provided from the proceeds of a bond secured

1 by any tax assessment loan upon real property,
 2 the term ‘facility’ in paragraph (1)(A) in-
 3 cludes—

4 “(i) a prepayment for the principal
 5 purpose of purchasing electricity from con-
 6 servation and efficiency property, and

7 “(ii) a prepayment of a lease or li-
 8 cense of such property, but only if the pre-
 9 payment agreement provides that it shall
 10 not be canceled prior to the expiration of
 11 the tax assessment loan.

12 “(B) TAX ASSESSMENT LOAN.—For pur-
 13 poses of subparagraph (A), the term ‘tax as-
 14 sessment loan’ shall mean a governmental as-
 15 sessment, special tax or similar charge upon
 16 real property.”.

17 (d) HIGH EFFICIENCY VEHICLES AND RELATED FA-
 18 CILITIES OR PROJECTS.—Section 142 of the Internal Rev-
 19 enue Code of 1986, as amended by subsections (b) and
 20 (c), is amended by adding at the end the following new
 21 subsection:

22 “(p) HIGH EFFICIENCY VEHICLES AND RELATED
 23 FACILITIES OR PROJECTS.—For purposes of subsection
 24 (a)(18)—

1 “(1) HIGH EFFICIENCY VEHICLES.—The term
 2 ‘high efficiency vehicle’ means any vehicle that will
 3 exceed by at least 150 percent the average combined
 4 fuel economy for vehicles with substantially similar
 5 attributes in the model year in which the production
 6 of such vehicle is expected to begin at the facility.

7 “(2) FACILITIES RELATED TO HIGH EFFI-
 8 CIENCY VEHICLES.—A facility or project is related
 9 to a high efficiency vehicle if the facility is any real
 10 or personal property to be used in the design, tech-
 11 nology transfer, manufacture, production, assembly,
 12 distribution, recharging or refueling, or service of
 13 high efficiency vehicles.”.

14 (e) NATIONAL LIMITATION ON AMOUNT OF RENEW-
 15 ABLE ENERGY BONDS.—Section 142 of the Internal Rev-
 16 enue Code of 1986, as amended by subsections (b), (c),
 17 and (d), is amended by adding at the end the following
 18 new subsection:

19 “(q) NATIONAL LIMITATION ON AMOUNT OF RENEW-
 20 ABLE ENERGY BONDS.—

21 “(1) IN GENERAL.—An issue shall not be treat-
 22 ed as an issue described in paragraph (16), (17), or
 23 (18) of subsection (a) if the aggregate face amount
 24 of bonds issued by the State pursuant thereto (when
 25 added to the aggregate face amount of bonds pre-

1 viously so issued during the calendar year) exceeds
2 the amount allocated to the State by the Secretary
3 under paragraph (2) for such calendar year.

4 “(2) ALLOCATION RULES.—

5 “(A) ALLOCATION AMONG STATES BY POP-
6 ULATION.—The Secretary shall allocate author-
7 ity to issue bonds described in paragraph (16),
8 (17), or (18) of subsection (a) to each State by
9 population for each calendar year in an aggre-
10 gate amount to all States not to exceed
11 \$2,500,000,000.

12 “(B) STATE ALLOCATION.—The State may
13 allocate the amount allocated to the State
14 under subparagraph (A) for any calendar year
15 among facilities or projects described in para-
16 graphs (16), (17), and (18) of subsection (a) in
17 such manner as the State determines appro-
18 priate.

19 “(C) UNUSED RENEWABLE ENERGY BOND
20 CARRYOVER TO BE ALLOCATED AMONG QUALI-
21 FIED STATES.—

22 “(i) IN GENERAL.—Any unused bond
23 allocation for any State for any calendar
24 year under subparagraph (A) shall carry-
25 over to the succeeding calendar year and

1 be assigned to the Secretary for allocation
2 among qualified States for the succeeding
3 calendar year.

4 “(ii) UNUSED BOND ALLOCATION
5 CARRYOVER.—For purposes of this sub-
6 paragraph, unused bond allocations are
7 bond allocations described in subparagraph
8 (A) of any State which remain unused by
9 November 1 of any calendar year.

10 “(iii) FORMULA FOR ALLOCATION OF
11 UNUSED BOND ALLOCATION CARRYOVERS
12 AMONG QUALIFIED STATES.—The amount
13 allocated under this subparagraph to a
14 qualified State for any calendar year shall
15 bear the same ratio to all States from the
16 preceding calendar year under subpara-
17 graph (A), excluding States which are not
18 a qualified State.

19 “(iv) TIMING OF ALLOCATION.—The
20 Secretary shall allocate the unused bond
21 allocation carried over from the preceding
22 year among qualified States not later than
23 March 1 of the succeeding year.

24 “(v) QUALIFIED STATE.—For pur-
25 poses of this subparagraph, the term

1 ‘qualified State’ means, with respect to a
2 calendar year, any State—

3 “(I) which allocated its entire
4 bond allocation under subparagraph
5 (A) for the preceding calendar year,
6 and

7 “(II) for which a request is made
8 (not later than August 1 of the cal-
9 endar year) to receive an allocation
10 under clause (iii).

11 “(vi) REPORTING.—States shall re-
12 port annually to the Secretary on their use
13 of bonds described in paragraph (16), (17),
14 and (18) of subsection (a), including de-
15 scription of projects, amount spent per
16 project, total amount of unused bonds, and
17 expected greenhouse gas or water savings
18 per project with a description of how such
19 savings were calculated. Such reporting
20 shall be submitted not later than Novem-
21 ber 1 of any calendar year.”.

22 (f) COORDINATION WITH SECTION 45.—Paragraph
23 (3) of section 45(b) of the Internal Revenue Code of 1986
24 is amended by adding at the end the following new sen-
25 tence: “Clause (ii) of subparagraph (A) shall not apply

1 with respect to any facility described in paragraph (16),
 2 (17), or (18) of section 142(a).”.

3 (g) COORDINATION WITH SECTION 45K.—Subpara-
 4 graph (A) of section 45K(b)(3) of the Internal Revenue
 5 Code of 1986 is amended by adding at the end the fol-
 6 lowing flush sentence:

7 “Subclause (II) of clause (i) shall not apply
 8 with respect to any facility described in para-
 9 graph (16), (17), or (18) of section 142(a).”.

10 (h) COORDINATION WITH SECTION 48.—Subpara-
 11 graph (A) of section 48(a)(4) of the Internal Revenue
 12 Code of 1986 is amended by adding at the end the fol-
 13 lowing flush sentence:

14 “Clause (ii) shall not apply with respect to any
 15 facility described in paragraph (16), (17), or
 16 (18) of section 142(a).”.

17 (i) COORDINATION WITH SECTION 146(g)(3).—Sec-
 18 tion 146(g)(3) of the Internal Revenue Code of 1986 is
 19 amended by striking “or (15)” and inserting “(15), (16),
 20 (17), or (18)”.

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

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