

113TH CONGRESS
1ST SESSION

S. 401

To amend the Internal Revenue Code of 1986 to provide for an investment tax credit related to the production of electricity from offshore wind.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2013

Mr. CARPER (for himself, Ms. COLLINS, Mr. COONS, Mr. LAUTENBERG, Mr. WHITEHOUSE, Mr. BROWN, Mr. REED, Mr. KING, Mrs. GILLIBRAND, Mr. MENENDEZ, Mr. COWAN, Mr. CARDIN, and Ms. WARREN) 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 an investment tax credit related to the production of electricity from offshore wind.

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 “Incentivizing Offshore
5 Wind Power Act”.

6 **SEC. 2. QUALIFYING OFFSHORE WIND FACILITY CREDIT.**

7 (a) IN GENERAL.—Section 46 of the Internal Rev-
8 enue Code of 1986 is amended—

1 (1) by striking “and” at the end of paragraph
2 (5),

3 (2) by striking the period at the end of para-
4 graph (6) and inserting “, and”, and

5 (3) by adding at the end the following new
6 paragraph:

7 “(7) the qualifying offshore wind facility cred-
8 it.”.

9 (b) AMOUNT OF CREDIT.—Subpart E of part IV of
10 subchapter A of chapter 1 is amended by inserting after
11 section 48D the following new section:

12 **“SEC. 48E. CREDIT FOR OFFSHORE WIND FACILITIES.**

13 “(a) IN GENERAL.—For purposes of section 46, the
14 qualifying offshore wind facility credit for any taxable year
15 is an amount equal to 30 percent of the qualified invest-
16 ment for such taxable year with respect to any qualifying
17 offshore wind facility of the taxpayer.

18 “(b) QUALIFIED INVESTMENT.—

19 “(1) IN GENERAL.—For purposes of subsection
20 (a), the qualified investment for any taxable year is
21 the basis of eligible property placed in service by the
22 taxpayer during such taxable year which is part of
23 a qualifying offshore wind facility.

24 “(2) CERTAIN QUALIFIED PROGRESS EXPENDI-
25 TURES RULES MADE APPLICABLE.—Rules similar to

the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

“(c) DEFINITIONS.—For purposes of this section—

“(1) QUALIFYING OFFSHORE WIND FACILITY.—

“(A) IN GENERAL.—The term ‘qualifying offshore wind facility’ means an offshore facility using wind to produce electricity.

“(B) OFFSHORE FACILITY.—The term ‘offshore facility’ means any facility located in the inland navigable waters of the United States, including the Great Lakes, or in the coastal waters of the United States, including the territorial seas of the United States, the exclusive economic zone of United States, and the outer Continental Shelf of the United States.

“(2) ELIGIBLE PROPERTY.—The term ‘eligible property’ means any property—

“(A) which is—

“(i) tangible personal property, or

“(ii) other tangible property (not including a building or its structural components), but only if such property is used as

1 an integral part of the qualifying offshore
2 wind facility, and

3 “(B) with respect to which depreciation (or
4 amortization in lieu of depreciation) is allow-
5 able.

6 “(d) QUALIFYING CREDIT FOR OFFSHORE WIND FA-
7 CILITIES PROGRAM.—

8 “(1) ESTABLISHMENT.—

9 “(A) IN GENERAL.—Not later than 180
10 days after the date of the enactment of this sec-
11 tion, the Secretary, in consultation with the
12 Secretary of Energy and the Secretary of the
13 Interior, shall establish a qualifying credit for
14 offshore wind facilities program to consider and
15 award certifications for qualified investments el-
16 igible for credits under this section to qualifying
17 offshore wind facility sponsors.

18 “(B) LIMITATION.—The total amount of
19 megawatt capacity for offshore facilities with
20 respect to which credits may be allocated under
21 the program shall not exceed 3,000 megawatts.

22 “(2) CERTIFICATION.—

23 “(A) APPLICATION PERIOD.—Each appli-
24 cant for certification under this paragraph shall
25 submit an application containing such informa-

tion as the Secretary may require beginning on the date the Secretary establishes the program under paragraph (1).

“(B) PERIOD OF ISSUANCE.—An applicant which receives a certification shall have 5 years from the date of issuance of the certification in order to place the facility in service and if such facility is not placed in service by that time period, then the certification shall no longer be valid.

“(3) SELECTION CRITERIA.—In determining which qualifying offshore wind facilities to certify under this section, the Secretary shall—

“(A) take into consideration which facilities will be placed in service at the earliest date, and

“(B) take into account the technology of the facility that may lead to reduced industry and consumer costs or expand access to offshore wind.

“(4) REVIEW, ADDITIONAL ALLOCATIONS, AND REALLOCATIONS.—

“(A) REVIEW.—Periodically, but not later than 4 years after the date of the enactment of this section, the Secretary shall review the cred-

1 its allocated under this section as of the date of
2 such review.

3 “(B) ADDITIONAL ALLOCATIONS AND RE-
4 ALLOCATIONS.—The Secretary may make addi-
5 tional allocations and reallocations of credits
6 under this section if the Secretary determines
7 that—

8 “(i) the limitation under paragraph
9 (1)(B) has not been attained at the time of
10 the review, or

11 “(ii) scheduled placed-in-service dates
12 of previously certified facilities have been
13 significantly delayed and the Secretary de-
14 termines the applicant will not meet the
15 timeline pursuant to paragraph (2)(B).

16 “(C) ADDITIONAL PROGRAM FOR ALLOCA-
17 TIONS AND REALLOCATIONS.—If the Secretary
18 determines that credits under this section are
19 available for further allocation or reallocation,
20 but there is an insufficient quantity of quali-
21 fying applications for certification pending at
22 the time of the review, the Secretary is author-
23 ized to conduct an additional program for appli-
24 cations for certification.

1 “(5) DISCLOSURE OF ALLOCATIONS.—The Sec-
 2 retary shall, upon making a certification under this
 3 subsection, publicly disclose the identity of the appli-
 4 cant and the amount of the credit with respect to
 5 such applicant.

6 “(e) DENIAL OF DOUBLE BENEFIT.—A credit shall
 7 not be allowed under this section with respect to any facil-
 8 ity if—

9 “(1) a credit has been allowed to such facility
 10 under section 45 for such taxable year or any prior
 11 taxable year,

12 “(2) a credit has been allowed with respect to
 13 such facility under section 46 by reason of section
 14 48(a) or 48C(a) for such taxable or any preceding
 15 taxable year, or

16 “(3) a grant has been made with respect to
 17 such facility under section 1603 of the American Re-
 18 covery and Reinvestment Act of 2009.”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) Section 49(a)(1)(C) of the Internal Revenue
 21 Code of 1986 is amended—

22 (A) by striking “and” at the end of clause
 23 (v),

24 (B) by striking the period at the end of
 25 clause (vi) and inserting “, and”, and

1 (C) by adding after clause (vi) the fol-
2 lowing new clause:

3 “(vii) the basis of any property which
4 is part of a qualifying offshore wind facil-
5 ity under section 48E.”.

6 (2) The table of sections for subpart E of part
7 IV of subchapter A of chapter 1 of the Internal Rev-
8 enue Code of 1986 is amended by inserting after the
9 item relating to section 48D the following new item:

“48E. Credit for offshore wind facilities.”.

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to periods after the date of the
12 enactment of this Act, under rules similar to the rules of
13 section 48(m) of the Internal Revenue Code of 1986 (as
14 in effect on the day before the date of the enactment of
15 the Revenue Reconciliation Act of 1990).

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