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(Original Signature of Member)

110TH CONGRESS
2D SESSION

H. R.

To promote biogas production, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. HIGGINS introduced the following bill; which was referred to the
Committee on _____

A BILL

To promote biogas production, and for other purposes.

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 “Biogas Production In-
5 centive Act of 2008”.

6 **SEC. 2. CREDIT FOR PRODUCTION OF BIOGAS FROM CER-**
7 **TAIN RENEWABLE FEEDSTOCK.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by inserting after section 45P the fol-
2 lowing new section:

3 **“SEC. 45Q. BIOGAS PRODUCED FROM CERTAIN RENEWABLE**
4 **FEEDSTOCK.**

5 “(a) AMOUNT OF CREDIT.—For purposes of section
6 38, the qualified biogas production credit for any taxable
7 year is an amount equal to the product of—

8 “(1) \$4.27, and

9 “(2) each million British thermal units
10 (mmBtu) of biogas—

11 “(A) produced by the taxpayer—

12 “(i) from qualified energy feedstock,
13 and

14 “(ii) at a qualified facility during the
15 7-year period beginning on the date the fa-
16 cility was originally placed in service, and

17 “(B)(i) sold by the taxpayer to an unre-
18 lated person during the taxable year, or

19 “(ii) used by the taxpayer as a fuel during
20 the taxable year.

21 “(b) DEFINITIONS.—

22 “(1) BIOGAS.—The term ‘biogas’ means a gas
23 which—

24 “(A) is derived by processing a qualified
25 energy feedstock, and

1 “(B) contains—

2 “(i) at least 60 percent methane, and

3 “(ii) carbon dioxide and trace gases.

4 “(2) QUALIFIED ENERGY FEEDSTOCK.—

5 “(A) IN GENERAL.—The term ‘qualified
6 energy feedstock’ means—

7 “(i) manure of livestock (including
8 any litter, wood shavings, straw, rice hulls,
9 bedding material, and other materials inci-
10 dentally collected with the manure),

11 “(ii) any nonhazardous, organic agri-
12 cultural or food industry byproduct or
13 waste material (cellulosic or otherwise) de-
14 rived from—

15 “(I) harvesting residue,

16 “(II) any waste or byproduct
17 from fermentation processes, ethanol
18 production, biodiesel production,
19 slaughter of livestock, food produc-
20 tion, food processing, or food service,
21 or

22 “(III) other organic wastes, by-
23 products, or sources,

24 “(iii) solid wood waste materials, in-
25 cluding waste pallets, crates, dunnage,

1 manufacturing and construction wood
2 wastes, and tree trimmings,

3 “(iv) agricultural or forestry crops,

4 “(v) landfill waste, sewage waste
5 treatment materials, or other decaying or-
6 ganic materials, or

7 “(vi) algae.

8 “(B) LIVESTOCK.—The term ‘livestock’ in-
9 cludes poultry, cattle, sheep, swine, goats,
10 horses, mules, and other equines.

11 “(3) QUALIFIED FACILITY.—The term ‘quali-
12 fied facility’ means a facility that—

13 “(A) uses anaerobic digesters or other bio-
14 logical or chemical processes to convert quali-
15 fied energy feedstock into biogas,

16 “(B) is owned by the taxpayer,

17 “(C) is located in the United States,

18 “(D) is originally placed in service after
19 the date of the enactment of this section and
20 before January 1, 2018, and

21 “(E) the biogas output of which is—

22 “(i) marketed through interconnection
23 with a gas distribution or transmission
24 pipeline,

1 “(ii) marketed as a gaseous or liquid
2 fuel such as hydrogen or natural gas and
3 then used as a fuel, or

4 “(iii) reasonably expected to be used
5 in a quantity sufficient to offset the con-
6 sumption of at least 5,000 mmBtu annu-
7 ally of commercially-marketed fuel derived
8 from coal, crude oil, natural gas, propane,
9 or other fossil fuel.

10 “(c) SPECIAL RULES.—For purposes of this sec-
11 tion—

12 “(1) INCREASED CREDIT FOR QUALIFIED CEL-
13 LULOSIC ENERGY FEEDSTOCK.—

14 “(A) IN GENERAL.—In the case of biogas
15 is produced from qualified cellulosic energy
16 feedstock, subsection (a) shall be applied by
17 substituting the dollar amount in effect for the
18 taxable year under subsection (a)(1) with an
19 amount equal to 125 percent of such dollar
20 amount.

21 “(B) QUALIFIED CELLULOSIC ENERGY
22 FEEDSTOCK.—For purposes of subparagraph
23 (A), the term ‘qualified cellulosic energy feed-
24 stock’ means an qualified energy feedstock that

1 is composed of any lignocellulosic or
2 hemicellulosic matter.

3 “(2) PRODUCTION ATTRIBUTABLE TO THE TAX-
4 PAYER.—In the case of a facility in which more than
5 1 person has an ownership interest, except to the ex-
6 tent provided in regulations prescribed by the Sec-
7 retary, production from the qualified facility shall be
8 allocated among such persons in proportion to their
9 respective ownership interests in the gross sales
10 from such qualified facility.

11 “(3) RELATED PERSONS.—Persons shall be
12 treated as related to each other if such persons
13 would be treated as a single employer under the reg-
14 ulations prescribed under section 52(b). In the case
15 of a corporation which is a member of an affiliated
16 group of corporations filing a consolidated return,
17 such corporation shall be treated as selling biogas to
18 an unrelated person if such biogas is sold to such a
19 person by another member of such group.

20 “(4) PASS-THRU IN THE CASE OF ESTATES AND
21 TRUSTS.—Under regulations prescribed by the Sec-
22 retary, rules similar to the rules of subsection (d) of
23 section 52 shall apply.

24 “(5) COORDINATION WITH CREDIT FROM PRO-
25 DUCING FUEL FROM A NONCONVENTIONAL

1 SOURCE.—The amount of biogas produced and sold
2 or used by the taxpayer during any taxable year
3 which is taken into account under this section shall
4 be reduced by the amount of biogas produced and
5 sold by the taxpayer in such taxable year which is
6 taken into account under section 45K.

7 “(6) COORDINATION WITH CREDIT FROM PRO-
8 DUCING ELECTRICITY FROM RENEWABLE RE-
9 SOURCES.—The amount of biogas produced and sold
10 or used by the taxpayer during any taxable year
11 which is taken into account under this section shall
12 be reduced by the amount of biogas produced and
13 sold by the taxpayer in such taxable year which is
14 taken into account under section 45.

15 “(7) CREDIT ELIGIBILITY IN THE CASE OF GOV-
16 ERNMENT-OWNED FACILITIES.—In the case of any
17 facility producing biogas and that is owned by a gov-
18 ernmental unit, subparagraph (B) of subsection
19 (b)(3) shall be applied by substituting ‘is leased or
20 operated by the taxpayer’ for ‘is owned by the tax-
21 payer’.

22 “(d) TRANSFERABILITY OF CREDIT.—

23 “(1) IN GENERAL.—A taxpayer may transfer
24 the credit under this section through an assignment

1 to any person. Such transfer may be revoked only
2 with the consent of the Secretary.

3 “(2) REGULATIONS.—The Secretary shall pre-
4 scribe such regulations as necessary to ensure that
5 any credit transferred under paragraph (1) is
6 claimed once and not reassigned by such other per-
7 son.

8 “(e) ADJUSTMENT BASED ON INFLATION.—

9 “(1) IN GENERAL.—The dollar amount under
10 subsection (a)(1) shall be adjusted by multiplying
11 such amount by the inflation adjustment factor for
12 the calendar year in which the sale occurs. If any
13 amount as increased under the preceding sentence is
14 not a multiple of 1 cent, such amount shall be
15 rounded to the nearest multiple of 1 cent.

16 “(2) COMPUTATION OF INFLATION ADJUST-
17 MENT FACTOR.—

18 “(A) IN GENERAL.—The Secretary shall,
19 not later than April 1 of each calendar year, de-
20 termine and publish in the Federal Register the
21 inflation adjustment factor in accordance with
22 this paragraph.

23 “(B) INFLATION ADJUSTMENT FACTOR.—
24 The term ‘inflation adjustment factor’ means,
25 with respect to a calendar year, a fraction the

1 numerator of which is the GDP implicit price
2 deflator for the preceding calendar year and the
3 denominator of which is the GDP implicit price
4 deflator for calendar year 2007. The term
5 ‘GDP implicit price deflator’ means the most
6 recent revision of the implicit price deflator for
7 the gross domestic product as computed and
8 published by the Department of Commerce be-
9 fore March 15 of the calendar year.”.

10 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
11 tion 38(b) of the Internal Revenue Code of 1986 is amend-
12 ed by striking “plus” at the end of paragraph (32), by
13 striking the period at the end of paragraph (33) and in-
14 serting “, plus”, and by adding at the end the following
15 new paragraph:

16 “(34) the qualified biogas production credit
17 under section 45Q(a).”.

18 (c) CREDIT ALLOWED AGAINST AMT.—Section
19 38(c)(4)(B) of the Internal Revenue Code of 1986 is
20 amended by striking “and” at the end of clause (iii), by
21 striking the period at the end of clause (iv) and inserting
22 “, and”, and by adding at the end the following new
23 clause:

24 “(v) the credit determined under section 45Q.”.

1 (d) CLERICAL AMENDMENT.—The table of sections
2 for subpart D of part IV of subchapter A of chapter 1
3 of the Internal Revenue Code of 1986 is amended by add-
4 ing at the end the following new item:

“Sec. 45Q. Biogas produced from certain renewable feedstock.”.

5 (e) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to biogas produced and sold (or
7 used) in taxable years beginning after the date of the en-
8 actment of this Act.