

110TH CONGRESS
2D SESSION

H. R. 7097

To promote biogas production, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2008

Mr. HIGGINS (for himself, Mr. EMANUEL, and Mr. NUNES) introduced the following bill; which was referred to the Committee on Ways and Means

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
10 1986 is amended by inserting after section 45P the fol-
11 lowing new section:

1 **“SEC. 45Q. BIOGAS PRODUCED FROM CERTAIN RENEWABLE**
2 **FEEDSTOCK.**

3 “(a) AMOUNT OF CREDIT.—For purposes of section
4 38, the qualified biogas production credit for any taxable
5 year is an amount equal to the product of—

6 “(1) \$4.27, and

7 “(2) each million British thermal units
8 (mmBtu) of biogas—

9 “(A) produced by the taxpayer—

10 “(i) from qualified energy feedstock,

11 and

12 “(ii) at a qualified facility during the
13 7-year period beginning on the date the fa-
14 cility was originally placed in service, and

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

17 “(ii) used by the taxpayer as a fuel during
18 the taxable year.

19 “(b) DEFINITIONS.—For purposes of this section—

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

22 “(A) is derived by processing a qualified
23 energy feedstock, and

24 “(B) contains—

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

26 “(ii) carbon dioxide and trace gases.

1 “(2) QUALIFIED ENERGY FEEDSTOCK.—

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

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

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

12 “(I) renewable biomass,

13 “(II) harvesting residue,

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

20 “(IV) other organic wastes, by-
21 products, or sources,

22 “(iii) solid wood waste materials, in-
23 cluding waste pallets, crates, dunnage,
24 manufacturing and construction wood
25 wastes, and tree trimmings,

1 “(iv) agricultural or forestry crops, or

2 “(v) landfill waste, sewage waste
3 treatment materials, or other decaying or-
4 ganic materials.

5 “(B) RENEWABLE BIOMASS.—The term
6 ‘renewable biomass’ means materials from pre-
7 commercial thinning or invasive species from
8 National Forest System land and public lands
9 (as defined in section 103 of the Federal Land
10 Policy and Management Act of 1976 (43 U.S.C.
11 1702)) that—

12 “(i) are byproducts of preventive
13 treatments that are removed—

14 “(I) to reduce or contain disease
15 or insect infestation, or

16 “(II) to restore ecosystem health,

17 “(ii) would not otherwise be used for
18 higher-value products, and

19 “(iii) are harvested in accordance with
20 applicable law and land management plans
21 and the requirements for—

22 “(I) old-growth maintenance, res-
23 toration, and management direction of
24 paragraphs (2), (3), and (4) of sub-
25 section (e) of section 102 of the

1 Healthy Forests Restoration Act of
2 2003 (16 U.S.C. 6512), and

3 “(II) large tree retention of sub-
4 section (f) of that section, or

5 “(iv) any organic matter that is avail-
6 able on a renewable or recurring basis
7 from non-Federal land or land belonging to
8 an Indian or Indian tribe that is held in
9 trust by the United States or subject to a
10 restriction against alienation imposed by
11 the United States, including—

12 “(I) renewable plant material
13 (such as feed grains, other agricul-
14 tural commodities, other plants and
15 trees, and algae), and

16 “(II) waste material (such as
17 crop residue, other vegetative waste
18 material (including wood waste and
19 wood residues), animal waste and by-
20 products (including fats, oils, greases,
21 and manure), food waste, and yard
22 waste).

23 “(C) LIVESTOCK.—The term ‘livestock’ in-
24 cludes poultry, cattle, sheep, swine, goats,
25 horses, mules, and other equines.

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

3 “(A) uses anaerobic digesters or other bio-
4 logical, chemical, or thermal processes to con-
5 vert qualified energy feedstock into biogas,

6 “(B) is owned by the taxpayer,

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

8 “(D) is originally placed in service after
9 the date of the enactment of this section and
10 before January 1, 2018, and

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

12 “(i) marketed through interconnection
13 with a gas distribution or transmission
14 pipeline,

15 “(ii) marketed as a gaseous or liquid
16 fuel such as hydrogen or natural gas and
17 then used as a fuel, or

18 “(iii) reasonably expected to be used
19 in a quantity sufficient to offset the con-
20 sumption of at least 5,000 mmBtu annu-
21 ally of commercially-marketed fuel derived
22 from coal, crude oil, natural gas, propane,
23 or other fossil fuel.

24 “(c) SPECIAL RULES.—For purposes of this sec-
25 tion—

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

3 “(A) IN GENERAL.—In the case of biogas
4 is produced from qualified cellulosic energy
5 feedstock, subsection (a) shall be applied by
6 substituting the dollar amount in effect for the
7 taxable year under subsection (a)(1) with an
8 amount equal to 125 percent of such dollar
9 amount.

10 “(B) QUALIFIED CELLULOSIC ENERGY
11 FEEDSTOCK.—For purposes of subparagraph
12 (A), the term ‘qualified cellulosic energy feed-
13 stock’ means an qualified energy feedstock that
14 is composed of any lignocellulosic or
15 hemicellulosic matter.

16 “(2) PRODUCTION ATTRIBUTABLE TO THE TAX-
17 PAYER.—In the case of a facility in which more than
18 1 person has an ownership interest, except to the ex-
19 tent provided in regulations prescribed by the Sec-
20 retary, production from the qualified facility shall be
21 allocated among such persons in proportion to their
22 respective ownership interests in the gross sales
23 from such qualified facility.

24 “(3) RELATED PERSONS.—Persons shall be
25 treated as related to each other if such persons

1 would be treated as a single employer under the reg-
2 ulations prescribed under section 52(b). In the case
3 of a corporation which is a member of an affiliated
4 group of corporations filing a consolidated return,
5 such corporation shall be treated as selling biogas to
6 an unrelated person if such biogas is sold to such a
7 person by another member of such group.

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

12 “(5) COORDINATION WITH CREDIT FROM PRO-
13 DUCING FUEL FROM A NONCONVENTIONAL
14 SOURCE.—The amount of biogas produced and sold
15 or used by the taxpayer during any taxable year
16 which is taken into account under this section shall
17 be reduced by the amount of biogas produced and
18 sold by the taxpayer in such taxable year which is
19 taken into account under section 45K.

20 “(6) COORDINATION WITH CREDIT FROM PRO-
21 DUCING ELECTRICITY FROM RENEWABLE RE-
22 SOURCES.—The amount of biogas produced and sold
23 or used by the taxpayer during any taxable year
24 which is taken into account under this section shall
25 be reduced by the amount of biogas produced and

1 sold by the taxpayer in such taxable year which is
2 taken into account under section 45.

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

10 “(d) TRANSFERABILITY OF CREDIT.—

11 “(1) IN GENERAL.—A taxpayer may transfer
12 the credit under this section through an assignment
13 to any person. Such transfer may be revoked only
14 with the consent of the Secretary.

15 “(2) REGULATIONS.—The Secretary shall pre-
16 scribe such regulations as necessary to ensure that
17 any credit transferred under paragraph (1) is
18 claimed once and not reassigned by such other per-
19 son.

20 “(e) ADJUSTMENT BASED ON INFLATION.—

21 “(1) IN GENERAL.—The dollar amount under
22 subsection (a)(1) shall be adjusted by multiplying
23 such amount by the inflation adjustment factor for
24 the calendar year in which the sale occurs. If any
25 amount as increased under the preceding sentence is

1 not a multiple of 1 cent, such amount shall be
2 rounded to the nearest multiple of 1 cent.

3 “(2) COMPUTATION OF INFLATION ADJUST-
4 MENT FACTOR.—

5 “(A) IN GENERAL.—The Secretary shall,
6 not later than April 1 of each calendar year, de-
7 termine and publish in the Federal Register the
8 inflation adjustment factor in accordance with
9 this paragraph.

10 “(B) INFLATION ADJUSTMENT FACTOR.—
11 The term ‘inflation adjustment factor’ means,
12 with respect to a calendar year, a fraction the
13 numerator of which is the GDP implicit price
14 deflator for the preceding calendar year and the
15 denominator of which is the GDP implicit price
16 deflator for calendar year 2007. The term
17 ‘GDP implicit price deflator’ means the most
18 recent revision of the implicit price deflator for
19 the gross domestic product as computed and
20 published by the Department of Commerce be-
21 fore March 15 of the calendar year.”.

22 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
23 tion 38(b) of the Internal Revenue Code of 1986 is amend-
24 ed by striking “plus” at the end of paragraph (32), by
25 striking the period at the end of paragraph (33) and in-

1 serting “, plus”, and by adding at the end the following
2 new paragraph:

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

5 (c) CREDIT ALLOWED AGAINST AMT.—Section
6 38(c)(4)(B) of the Internal Revenue Code of 1986 is
7 amended by striking “and” at the end of clause (iii), by
8 striking the period at the end of clause (iv) and inserting
9 “, and”, and by adding at the end the following new
10 clause:

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

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

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

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

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