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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Private Activity Renewable Energy Bonds Act''.

SEC. 2. TREATMENT OF BONDS ISSUED TO FINANCE RENEWABLE ENERGY RESOURCE FACILITIES AND CONSERVATION AND EFFICIENCY FACILITIES AND OTHER SPECIFIED GREENHOUSE GAS EMISSION TECHNOLOGIES.

(a) IN GENERAL.—Section 142(a) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting a comma, and by inserting after paragraph (15) the following new paragraphs:

''(16) renewable energy resource facilities,

''(17) conservation and efficiency facilities and projects, or

''(18) high efficiency vehicles and related facilities or projects.''.

(b) RENEWABLE ENERGY RESOURCE FACILITY.—Section 142 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(n) RENEWABLE ENERGY RESOURCE FACILITIES.—For purposes of subsection (a)(16)—

''(1) IN GENERAL.—The term 'renewable energy resource facility' means—

''(A) any facility used to produce electric or thermal energy (including a distributed generation facility) from—

''(i) solar, wind, or geothermal energy,

''(ii) marine and hydrokinetic renewable energy,

''(iii) incremental hydropower,

''(iv) biogas and solids produced in the wastewater treatment process, or

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

''(B) any facility used to produce biogas, or

''(C) any facility or project used for the manufacture of facilities referred to in subparagraph (A) or (B).

''(2) SPECIAL REQUIREMENTS FOR FACILITIES PRODUCING BIOGAS.—

''(A) IN GENERAL.—A facility shall not be treated as described in paragraph (1)(B), unless the biogas produced—

''(i) is of pipeline quality and distributed into a vehicle for transportation or into an intrastate, interstate, or LDC pipeline system, or

''(ii) is used to produce onsite electricity or hydrogen fuel for use in vehicular

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

''(B) PIPELINE QUALITY.—For purposes of subparagraph (A)(i), with respect to biogas, the term 'pipeline quality' means biogas with a British thermal unit content of at least 930 per cubic foot.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)) or from geothermal heat pumps.

''(B) MARINE AND HYDROKINETIC RENEWABLE ENERGY.—The term 'marine and hydrokinetic renewable energy' has the meaning given such term in section 45(c)(10).

''(C) INCREMENTAL HYDROPOWER.—The term 'incremental hydropower' means additional energy generated as a result of efficiency improvements or capacity additions to existing hydropower facilities made on or after the date of 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.

''(B) TAX ASSESSMENT LOAN.—For purposes of subparagraph (A), the term 'tax assessment loan' shall mean a governmental assessment, special tax, or similar charge upon real property.''.

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

''(o) CONSERVATION AND EFFICIENCY FACILITIES AND PROJECTS.—

''(1) IN GENERAL.—For purposes of subsection (a)(17), the term 'conservation and efficiency facility or project' means—

''(A) any facility used for the conservation or the efficient use of energy, including energy efficient retrofitting of existing buildings, or for the efficient storage, transmission, or distribution of energy, including any facility or project designed to implement smart grid technologies (as described in title XIII of the Energy Independence and Security Act of 2007, or individual components of such technologies as listed in section 1301 of such Act),

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

''(i) any facility or project designed to—

''(I) reduce the demand for water,

''(II) improve efficiency in use and reduce losses and waste of water, including water reuse, and

''(III) improve land management practices to conserve water, or

''(ii) any individual component of a facility or project referred to in clause (i), or

''(C) any facility or project used for the manufacture of facilities referred to in subparagraphs (A) and (B).

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

''(2) SPECIAL RULES FOR ENERGY LOAN TAX ASSESSMENT FINANCING.—

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

by any tax assessment loan upon real property, the term 'facility' in paragraph (1)(A) includes—

"(i) a prepayment for the principal purpose of purchasing electricity from conservation and efficiency 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.

"(B) TAX ASSESSMENT LOAN.—For purposes of subparagraph (A), the term 'tax assessment loan' shall mean a governmental assessment, special tax or similar charge upon real property.".

(d) HIGH EFFICIENCY VEHICLES AND RELATED FACILITIES OR PROJECTS.—Section 142 of the Internal Revenue Code of 1986, as amended by subsections (b) and (c), is amended by adding at the end the following new subsection:

"(p) HIGH EFFICIENCY VEHICLES AND RELATED FACILITIES OR PROJECTS.—For purposes of subsection (a)(18)—

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

''(2) FACILITIES RELATED TO HIGH EFFICIENCY VEHICLES.—A facility or project is related to a high efficiency vehicle if the facility is any real or personal property to be used in the design, technology transfer, manufacture, production, assembly, distribution, recharging or refueling, or service of high efficiency vehicles.''.

(e) NATIONAL LIMITATION ON AMOUNT OF RENEWABLE ENERGY BONDS.—Section 142 of the Internal Revenue Code of 1986, as amended by subsections (b), (c), and (d), is amended by adding at the end the following new subsection:

''(q) NATIONAL LIMITATION ON AMOUNT OF RENEWABLE ENERGY BONDS.—

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

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

''(2) ALLOCATION RULES.—

''(A) ALLOCATION AMONG STATES BY POPULATION.—The Secretary shall allocate authority to issue bonds described in paragraph (16), (17), or (18) of subsection (a) to each State by population for each calendar year in an aggregate amount to all States not to exceed $2,500,000,000.

''(B) STATE ALLOCATION.—The State may allocate the amount allocated to the State under subparagraph (A) for any calendar year among facilities or projects described in paragraphs (16), (17), and (18) of subsection (a) in such manner as the State determines appropriate.

''(C) UNUSED RENEWABLE ENERGY BOND CARRYOVER TO BE ALLOCATED AMONG QUALIFIED STATES.—

''(i) IN GENERAL.—Any unused bond allocation for any State for any calendar year under subparagraph (A) shall carryover to the succeeding calendar year and

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

''(ii) UNUSED BOND ALLOCATION CARRYOVER.—For purposes of this subparagraph, unused bond allocations are bond allocations described in subparagraph (A) of any State which remain unused by November 1 of any calendar year.

''(iii) FORMULA FOR ALLOCATION OF UNUSED BOND ALLOCATION CARRYOVERS AMONG QUALIFIED STATES.—The amount allocated under this subparagraph to a qualified State for any calendar year shall bear the same ratio to all States from the preceding calendar year under subparagraph (A), excluding States which are not a qualified State.

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

''(v) QUALIFIED STATE.—For purposes of this subparagraph, the term

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

‘‘(I) which allocated its entire bond allocation under subparagraph (A) for the preceding calendar year, and

‘‘(II) for which a request is made (not later than August 1 of the calendar year) to receive an allocation under clause (iii).

‘‘(vi) REPORTING.—States shall report annually to the Secretary on their use of bonds described in paragraph (16), (17), and (18) of subsection (a), including description of projects, amount spent per project, total amount of unused bonds, and expected greenhouse gas or water savings per project with a description of how such savings were calculated. Such reporting shall be submitted not later than November 1 of any calendar year.’’.

(f) COORDINATION WITH SECTION 45.—Paragraph (3) of section 45(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: ‘‘Clause (ii) of subparagraph (A) shall not apply

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

(g) COORDINATION WITH SECTION 45K.—Subparagraph (A) of section 45K(b)(3) of the Internal Revenue Code of 1986 is amended by adding at the end the following flush sentence:

> ''Subclause (II) of clause (i) shall not apply with respect to any facility described in paragraph (16), (17), or (18) of section 142(a).''.

(h) COORDINATION WITH SECTION 48.—Subparagraph (A) of section 48(a)(4) of the Internal Revenue Code of 1986 is amended by adding at the end the following flush sentence:

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

(i) COORDINATION WITH SECTION 146(g)(3).—Section 146(g)(3) of the Internal Revenue Code of 1986 is amended by striking ''or (15)'' and inserting ''(15), (16), (17), or (18)''.

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

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