

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.

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## 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.

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-

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

5           “(D) BIOGAS.—The term ‘biogas’ means a  
6           gaseous fuel derived from landfill, municipal  
7           solid waste, food waste, wastewater or biosolids,  
8           or biomass (as defined in section 203(b)(1) of  
9           the Energy Policy Act of 2005 (42 U.S.C.  
10          15852(b))).

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

13           “(A) IN GENERAL.—In the case of any re-  
14           newable recovery energy resource facility pro-  
15           vided from the proceeds of a bond secured by  
16           any tax assessment loan upon real property, the  
17           term ‘facility’ in paragraph (1) includes—

18                   “(i) a prepayment for the principal  
19                   purpose of purchasing electricity from re-  
20                   newable energy resource property, and

21                   “(ii) a prepayment of a lease or li-  
22                   cense of such property, but only if the pre-  
23                   payment agreement provides that it shall  
24                   not be canceled prior to the expiration of  
25                   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.

○