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S. 2982

To enhance international conservation, to promote the role of carbon sequestration as a means of slowing the build-up of greenhouse gases in the atmosphere, and to reward and encourage voluntary, pro-active environmental efforts on the issue of global climate change.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2000

Mr. BROWNBACK (for himself, Mr. DASCHLE, Mr. DEWINE, Mr. KERREY, Mr. GRASSLEY, Mr. BYRD, and Mr. LUGAR) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To enhance international conservation, to promote the role of carbon sequestration as a means of slowing the build-up of greenhouse gases in the atmosphere, and to reward and encourage voluntary, pro-active environmental efforts on the issue of global climate change.

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 “International Carbon
5 Sequestration Incentive Act”.

TITLE I—INVESTMENT TAX CREDIT

SEC. 101. CARBON SEQUESTRATION INVESTMENT TAX

CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by adding at the end the following new section:

“SEC. 45D. CARBON SEQUESTRATION INVESTMENT CREDIT.

“(a) ALLOWANCE OF CREDIT.—

“(1) IN GENERAL.—For purposes of section 38, in the case of an eligible taxpayer who is subject to the terms and conditions of a carbon sequestration project contract with respect to a sponsored carbon sequestration project outside the United States during the taxable year, the carbon sequestration investment credit determined under this section for such taxable year is an amount equal to—

“(A) \$2.50, multiplied by

“(B) the number of tons of carbon sequestered in such project during the taxable year and verified under subsection (c)(4).

“(2) AGGREGATE DOLLAR LIMITATION.—The credit determined under paragraph (1) for any taxable year, when added to any credit allowed with re-

1 spect to the sponsored project in any preceding tax-
 2 able year, shall not exceed 50 percent of the invest-
 3 ment paid or incurred with respect to such project
 4 through such taxable year.

5 “(b) ANNUAL LIMITATION ON AGGREGATE CREDIT
 6 ALLOWABLE.—

7 “(1) IN GENERAL.—The amount of the carbon
 8 sequestration investment credit determined under
 9 subsection (a) for any taxable year with respect to
 10 a carbon sequestration project sponsored by an eligi-
 11 ble taxpayer shall not exceed the aggregate credit
 12 dollar amount allocated to such project under this
 13 subsection by the implementing panel.

14 “(2) TIME FOR MAKING ALLOCATION.—An allo-
 15 cation shall be taken into account under paragraph
 16 (1) only if it is made not later than the close of the
 17 calendar year in which the carbon sequestration
 18 project contract with respect to such project is en-
 19 tered into by the eligible taxpayer and the imple-
 20 menting panel.

21 “(3) AGGREGATE CREDIT DOLLAR AMOUNT.—
 22 The aggregate credit dollar amount which the imple-
 23 menting panel may allocate for any calendar year is
 24 equal to \$200,000,000.

1 “(c) CARBON SEQUESTRATION PROJECT CON-
2 TRACT.—For purposes of this section—

3 “(1) IN GENERAL.—The term ‘carbon seques-
4 tration project contract’ means a contract entered
5 into between an eligible taxpayer and the imple-
6 menting panel—

7 “(A) based on a contract offer to increase
8 the sequestration of carbon in a project spon-
9 sored by the eligible taxpayer and accepted by
10 the implementing panel under the carbon se-
11 questration program established under sub-
12 section (d)(1),

13 “(B) the duration of which is not less than
14 30 years, and

15 “(C) which includes the terms and condi-
16 tions described in paragraphs (2), (3), (4), and
17 (5).

18 “(2) CARBON SEQUESTRATION PRACTICES.—
19 Under a carbon sequestration project contract, the
20 eligible taxpayer shall agree to contract with other
21 entities, including organizations based in the country
22 in which the sponsored carbon sequestration project
23 is located, to carry out carbon sequestration prac-
24 tices proposed by the eligible taxpayer which (as de-
25 termined by the implementing panel)—

1 “(A) provide for additional carbon seques-
2 tration beyond that which would be provided in
3 the absence of the project sponsored by the eli-
4 gible taxpayer, and

5 “(B) contribute to a positive reduction of
6 greenhouse gases in the atmosphere through
7 carbon sequestration over at least a 30-year pe-
8 riod.

9 “(3) COMPLIANCE WITH CARBON SEQUESTRA-
10 TION PROJECT CONTRACT.—

11 “(A) IN GENERAL.—Under a carbon se-
12 questration project contract, the eligible tax-
13 payer shall provide the implementing panel with
14 verification through a third party that the car-
15 bon sequestration project sponsored by the eli-
16 gible taxpayer is sequestering carbon in accord-
17 ance with the contract presented to the imple-
18 menting panel, including an annual audit of the
19 project, an actual verification of the practices at
20 the project site every 5 years, and such random
21 inspections as are necessary.

22 “(B) FRAUD OR FALSE STATEMENTS.—
23 Section 1001 of title 18, United States Code,
24 shall apply to a statement, representation, writ-

ing, or document provided by an eligible taxpayer under this paragraph.

“(C) CONFIDENTIALITY.—Information provided by an eligible taxpayer under this paragraph shall be considered to be confidential information for the purposes of section 552(b)(4) of title 5, United States Code.

“(4) OPTIONS FOR NEW ELIGIBLE TAXPAYER.—Under a carbon sequestration project contract, if, during the term of such contract, an eligible taxpayer which sponsored the carbon sequestration project sells or otherwise transfers the carbon sequestration rights of the project to another eligible taxpayer, the new eligible taxpayer may—

“(A) continue the contract under the same terms or conditions,

“(B) enter into a new contract in accordance with this section, or

“(C) elect not to participate in the program established under subsection (d)(1).

“(5) TERMINATION OF CONTRACTS.—Under a carbon sequestration project contract, the implementing panel may terminate such contract if—

“(A) the eligible taxpayer agrees to the termination, or

1 “(B) the implementing panel determines
2 that the termination would be in the public in-
3 terest.

4 “(d) CARBON SEQUESTRATION PROGRAM.—For pur-
5 poses of this section—

6 “(1) IN GENERAL.—Within 180 days after the
7 date of the enactment of the International Carbon
8 Sequestration Incentive Act, the implementing panel
9 shall establish a carbon sequestration program to
10 permit eligible taxpayers to make carbon sequestra-
11 tion project contract offers to the implementing
12 panel.

13 “(2) ACCEPTANCE OF CONTRACT OFFERS.—

14 “(A) IN GENERAL.—Under the carbon se-
15 questration program, the implementing panel
16 shall accept a contract offer from an eligible
17 taxpayer only if—

18 “(i) such taxpayer submits to the
19 panel a needs assessment described in sub-
20 paragraph (B), and

21 “(ii) the contract offer identifies the
22 benefits of carbon sequestration practices
23 of the sponsored project under criteria de-
24 veloped to evaluate such benefits under
25 paragraph (3) and under guidelines insti-

1 tuted to quantify such benefits under para-
2 graph (4).

3 “(B) NEEDS ASSESSMENT.—A needs as-
4 sessment described in this subparagraph is an
5 assessment of the need for the carbon seques-
6 tration project sponsored by the eligible tax-
7 payer in the contract offer and the ability of the
8 eligible taxpayer to carry out the carbon seques-
9 tration practices related to such project. The
10 assessment shall be developed by the eligible
11 taxpayer, in cooperation with the Agency for
12 International Development, nongovernmental
13 organizations, and independent third-party
14 verifiers.

15 “(3) CRITERIA FOR EVALUATING BENEFITS OF
16 CARBON SEQUESTRATION PRACTICES.—

17 “(A) IN GENERAL.—The Chief of the For-
18 est Service, in consultation with other members
19 of the implementing panel, shall develop criteria
20 for prioritizing, determining the acceptability
21 of, and evaluating, the benefits of the carbon
22 sequestration practices proposed in projects
23 sponsored by eligible taxpayers which will in-
24 crease the sequestration of carbon for the pur-

poses of determining the acceptability of contract offers made by eligible taxpayers.

“(B) CONTENT.—The criteria shall ensure that credits under this section should not be allocated to projects whose primary purpose is to grow timber for commercial harvest or to projects which replace native ecological systems with commercial timber plantations. Projects should be prioritized according to—

“(i) native forest preservation, especially with respect to land which would otherwise cease to be native forest land,

“(ii) reforestation of former forest land where such land has not been forested for at least 10 years,

“(iii) biodiversity enhancement,

“(iv) the prevention of greenhouse gas emissions through the preservation of carbon storing plants and trees,

“(v) soil erosion management,

“(vi) soil fertility restoration, and

“(vii) the duration of the project, including any project under which other entities are engaged to extend the duration of

1 the project beyond the minimum carbon se-
 2 questration project contract term.

3 “(4) GUIDELINES FOR QUANTIFYING BENE-
 4 FITS.—

5 “(A) IN GENERAL.—The Chief of the For-
 6 est Service, in consultation with other members
 7 of the implementing panel, shall institute guide-
 8 lines for the development of methodologies for
 9 quantifying the amount of carbon sequestered
 10 by particular projects for the purposes of deter-
 11 mining the acceptability of projects sponsored
 12 by eligible taxpayers. These guidelines should
 13 set standards for eligible taxpayers with regard
 14 to—

15 “(i) methodologies for measuring the
 16 carbon sequestered,

17 “(ii) measures to assure the duration
 18 of projects sponsored,

19 “(iii) criteria that verifies that the
 20 carbon sequestered is additional to the se-
 21 questration which would have occurred
 22 without the sponsored project,

23 “(iv) reasonable criteria to evaluate
 24 the extent to which the project displaces

1 activity that causes deforestation in an-
2 other location, and

3 “(v) the extent to which the project
4 promotes sustainable development in a
5 project area, particularly with regard to
6 protecting the traditional land tenure of in-
7 digenous people.

8 “(B) BASIS.—In developing the guidelines,
9 the Chief of the Forest Service shall—

10 “(i) consult with land grant univer-
11 sities and entities which specialize in car-
12 bon storage verification and measurement,
13 and

14 “(ii) use information reported to the
15 Secretary of Energy from projects carried
16 out under the voluntary reporting program
17 of the Energy Information Administration
18 under section 1605 of the Energy Policy
19 Act of 1992 (42 U.S.C. 13385).

20 “(5) REPORTING.—The Administrator of the
21 Energy Information Administration, in consultation
22 with the Secretary of Agriculture, shall develop
23 forms to monitor carbon sequestration improvements
24 made as a result of the program established under

1 this section and the implementing panel shall use
2 such forms to report to the Administrator on—

3 “(A) carbon sequestration improvements
4 made as a result of the program,

5 “(B) carbon sequestration practices of eli-
6 gible taxpayers enrolled in the program, and

7 “(C) compliance with contracts entered
8 into under this section.

9 “(e) ELIGIBLE TAXPAYER; IMPLEMENTING
10 PANEL.—For purposes of this section—

11 “(1) ELIGIBLE TAXPAYER.—A taxpayer is eligi-
12 ble for the credit under this section with respect to
13 a carbon sequestration project contract if such tax-
14 payer has not elected the application of sections 201
15 and 202 of the International Carbon Sequestration
16 Incentive Act with respect to such contract.

17 “(2) IMPLEMENTING PANEL.—There is estab-
18 lished an implementing panel consisting of—

19 “(A) the Secretary of Agriculture,

20 “(B) the Secretary of State,

21 “(C) the Secretary of Energy,

22 “(D) the Chief of the Forest Service, and

23 “(E) representatives of nongovernmental
24 organizations who have an expertise and experi-

1 ence in carbon sequestration practices, ap-
2 pointed by the Secretary of Agriculture.

3 The Chief of the Forest Service shall act as chair-
4 person of the implementing panel.

5 “(f) RECAPTURE OF CREDIT IN CERTAIN CASES.—

6 “(1) IN GENERAL.—If, at any time during the
7 carbon sequestration project contract period, there is
8 a recapture event with respect to the investment
9 under the contract, then the tax imposed by this
10 chapter for the taxable year in which such event oc-
11 curs shall be increased by the credit recapture
12 amount.

13 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
14 poses of paragraph (1), the credit recapture amount
15 is an amount equal to the sum of—

16 “(A) the aggregate decrease in the credits
17 allowed to the taxpayer under section 38 for all
18 prior taxable years which would have resulted if
19 no credit had been determined under this sec-
20 tion with respect to such investment, plus

21 “(B) interest at the overpayment rate es-
22 tablished under section 6621 on the amount de-
23 termined under subparagraph (A) for each
24 prior taxable year for the period beginning on

1 the due date for filing the return for the prior
2 taxable year involved.

3 No deduction shall be allowed under this chapter for
4 interest described in subparagraph (B).

5 “(3) RECAPTURE EVENT.—For purposes of
6 paragraph (1), there is a recapture event with re-
7 spect to an investment under the contract if—

8 “(A) the eligible taxpayer violates a term
9 or condition of the contract with the imple-
10 menting panel at any time,

11 “(B) the eligible taxpayer transfers the
12 right and interest of the taxpayer in the carbon
13 sequestration practices of the sponsored project,
14 unless—

15 “(i) the transferee agrees with the im-
16 plementing panel to assume all obligations
17 of the contract, or

18 “(ii) the transferee and the imple-
19 menting panel enter into a new carbon se-
20 questration project contract,

21 “(C) the eligible taxpayer adopts a practice
22 specified by the implementing panel in the con-
23 tract as a practice which would tend to defeat
24 the purposes of the carbon sequestration pro-
25 gram, or

1 “(D) the contract is terminated under sub-
2 section (c)(5).

3 “(4) SPECIAL RULES.—

4 “(A) TAX BENEFIT RULE.—The tax for
5 the taxable year shall be increased under para-
6 graph (1) only with respect to credits allowed
7 by reason of this section which were used to re-
8 duce tax liability. In the case of credits not so
9 used to reduce tax liability, the carryforwards
10 and carrybacks under section 39 shall be appro-
11 priately adjusted.

12 “(B) NO CREDITS AGAINST TAX.—Any in-
13 crease in tax under this subsection shall not be
14 treated as a tax imposed by this chapter for
15 purposes of determining the amount of any
16 credit under this chapter or for purposes of sec-
17 tion 55.

18 “(g) BASIS REDUCTION.—The basis of any invest-
19 ment under a carbon sequestration project contract shall
20 be reduced by the amount of any credit determined under
21 this section with respect to such investment.

22 “(h) REGULATIONS.—The Secretary shall prescribe
23 such regulations as may be appropriate to carry out this
24 section, including regulations—

1 “(1) which limit the credit for investments
2 which are directly or indirectly subsidized by other
3 Federal benefits,

4 “(2) which prevent the abuse of the provisions
5 of this section through the use of related parties,
6 and

7 “(3) which impose appropriate reporting re-
8 quirements.”.

9 (b) CREDIT MADE PART OF GENERAL BUSINESS
10 CREDIT.—

11 (1) IN GENERAL.—Subsection (b) of section 38
12 of the Internal Revenue Code of 1986 is amended by
13 striking “plus” at the end of paragraph (12), by
14 striking the period at the end of paragraph (13) and
15 inserting “, plus”, and by adding at the end the fol-
16 lowing new paragraph:

17 “(14) the carbon sequestration investment cred-
18 it determined under section 45D(a).”

19 (2) LIMITATION ON CARRYBACK.—Subsection
20 (d) of section 39 of such Code is amended by adding
21 at the end the following new paragraph:

22 “(10) NO CARRYBACK OF CARBON SEQUESTRA-
23 TION INVESTMENT CREDIT BEFORE JANUARY 1,
24 2001.—No portion of the unused business credit for
25 any taxable year which is attributable to the credit

1 under section 45D may be carried back to a taxable
 2 year ending before January 1, 2001.”

3 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection
 4 (c) of section 196 of the Internal Revenue Code of 1986
 5 is amended by striking “and” at the end of paragraph (7),
 6 by striking the period at the end of paragraph (8) and
 7 inserting “, and”, and by adding at the end the following
 8 new paragraph:

9 “(9) the carbon sequestration investment credit
 10 determined under section 45D(a).”

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

“Sec. 45D. Carbon sequestration investment credit.”

15 (e) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to investments made after Decem-
 17 ber 31, 2000.

18 **TITLE II—LOAN GUARANTEES** 19 **AND EQUITY INVESTMENT IN-** 20 **SURANCE**

21 **SEC. 201. EXPORT-IMPORT BANK FINANCING.**

22 An owner or operator of property that is located out-
 23 side of the United States may enter into a carbon seques-
 24 tration project contract under the terms and conditions
 25 established under section 45D of the Internal Revenue

1 Code of 1986 to be eligible for an extension of credit from
2 the Export-Import Bank of the United States of up to
3 75 percent of the cost of carrying out the carbon seques-
4 tration practices specified in the contract to the extent
5 that the Export-Import Bank determines that the cost
6 sharing is appropriate, in the public interest, and other-
7 wise meets the requirements of the Export-Import Bank
8 Act of 1945.

9 **SEC. 202. EQUITY INVESTMENT INSURANCE.**

10 An owner or operator of property that is located out-
11 side of the United States may enter into a carbon seques-
12 tration project contract under the terms and conditions
13 established under section 45D of the Internal Revenue
14 Code of 1986 to be eligible for investment insurance issued
15 by the Overseas Private Investment Corporation pursuant
16 to section 234 of the Foreign Assistance Act of 1961 (22
17 U.S.C. 2194) if the Corporation determines that issuance
18 of the insurance is consistent with the provisions of such
19 section 234.

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