

110TH CONGRESS
1ST SESSION

H. R. 2038

To promote biogas production, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2007

Mr. KIND (for himself and Mr. NUNES) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 2007”.

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

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 40A the fol-
2 lowing new section:

3 **“SEC. 40B. BIOGAS PRODUCED FROM CERTAIN RENEWABLE**
4 **FEEDSTOCKS.**

5 “(a) GENERAL RULE.—For purposes of section 38,
6 the qualified biogas production credit for any taxable year
7 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) either—

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

20 “(ii) used by the taxpayer during the
21 taxable year.

22 “(b) DEFINITIONS.—

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

1 “(A) is derived by processing qualified en-
2 ergy feedstock in an anaerobic digester, and

3 “(B) contains—

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

5 “(ii) carbon dioxide and trace gases.

6 “(2) QUALIFIED ENERGY FEEDSTOCK.—

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

9 “(i) manure of agricultural livestock,
10 including litter, wood shavings, straw, rice
11 hulls, bedding material, and other mate-
12 rials incidentally collected with the ma-
13 nure,

14 “(ii) any nonhazardous, cellulosic, or
15 other organic agricultural or food industry
16 byproduct or waste material that is derived
17 from—

18 “(I) harvesting residues,

19 “(II) wastes or byproducts from
20 fermentation processes, ethanol pro-
21 duction, biodiesel production, slaugh-
22 ter of agricultural livestock, food pro-
23 duction, food processing, or food serv-
24 ice, or

1 “(III) other organic wastes, by-
2 products, or sources, or

3 “(iii) solid wood waste materials, in-
4 cluding waste pallets, crates, dunnage,
5 manufacturing and construction wood
6 wastes, and landscape or right-of-way tree
7 trimmings.

8 “(B) EXCLUSIONS.—The term ‘qualified
9 energy feedstock’ does not include—

10 “(i) pressure-treated, chemically-treat-
11 ed, or painted wood wastes,

12 “(ii) municipal solid waste,

13 “(iii) landfills, or

14 “(iv) paper that is commonly recycled.

15 “(C) AGRICULTURAL LIVESTOCK.—The
16 term ‘agricultural livestock’ means poultry, cat-
17 tle, sheep, swine, goats, horses, mules, and
18 other equines.

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

21 “(A) uses anaerobic digesters to process
22 qualified energy feedstock into biogas,

23 “(B) is owned by the taxpayer,

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

1 “(D) is originally placed in service before
2 January 1, 2018, and

3 “(E) the biogas output of which is—

4 “(i) marketed through interconnection
5 with a gas distribution or transmission
6 pipeline, or

7 “(ii) used on-site or off-site in a quan-
8 tity that is sufficient to offset the con-
9 sumption of at least 6,570 mmBtu annu-
10 ally of commercially-marketed fuel derived
11 from coal, crude oil, natural gas, propane,
12 or other fossil fuel.

13 “(c) SPECIAL RULES.—For purposes of this sec-
14 tion—

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

23 “(2) RELATED PERSONS.—Persons shall be
24 treated as related to each other if such persons
25 would be treated as a single employer under the reg-

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

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

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

19 “(5) CREDIT ELIGIBILITY IN THE CASE OF GOV-
20 ERNMENT-OWNED FACILITIES USING POULTRY
21 WASTE.—In the case of a facility using poultry
22 waste to produce biogas and owned by a govern-
23 mental unit, subparagraph (B) of subsection (b)(3)
24 shall be applied by substituting ‘is leased or operated
25 by the taxpayer’ for ‘is owned by the taxpayer’.

1 “(d) TRANSFERABILITY OF CREDIT.—

2 “(1) IN GENERAL.—A taxpayer may transfer
3 the credit under this section through an assignment
4 to any person. Such transfer may be revoked only
5 with the consent of the Secretary.

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

11 “(e) ADJUSTMENT BASED ON INFLATION.—

12 “(1) IN GENERAL.—The \$4.27 amount under
13 subsection (b)(1) shall be adjusted by multiplying
14 such amount by the inflation adjustment factor for
15 the calendar year in which the sale occurs. If any
16 amount as increased under the preceding sentence is
17 not a multiple of 0.1 cent, such amount shall be
18 rounded to the nearest multiple of 0.1 cent.

19 “(2) COMPUTATION OF INFLATION ADJUST-
20 MENT FACTOR.—

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

1 “(B) INFLATION ADJUSTMENT FACTOR.—
2 The term ‘inflation adjustment factor’ means,
3 with respect to a calendar year, a fraction the
4 numerator of which is the GDP implicit price
5 deflator for the preceding calendar year and the
6 denominator of which is the GDP implicit price
7 deflator for calendar year 2007. The term
8 ‘GDP implicit price deflator’ means the most
9 recent revision of the implicit price deflator for
10 the gross domestic product as computed and
11 published by the Department of Commerce be-
12 fore March 15 of the calendar year.”.

13 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
14 tion 38(b) of the Internal Revenue Code of 1986 is amend-
15 ed by striking “plus” at the end of paragraph (30), by
16 striking the period at the end of paragraph (31) and in-
17 serting “, plus”, and by adding at the end the following
18 new paragraph:

19 “(32) the qualified biogas production credit
20 under section 40B(a).”.

21 (c) CREDIT ALLOWED AGAINST AMT.—Section
22 38(c)(4)(B) of the Internal Revenue Code of 1986 is
23 amended by striking “and” at the end of clause (i), by
24 striking the period at the end of clause (ii)(II) and insert-

1 ing “, and”, and by adding at the end the following new
2 clause:

3 “(iii) the credit determined under sec-
4 tion 40B.”.

5 (d) CLERICAL AMENDMENT.—The table of sections
6 for subpart D of part IV of subchapter A of chapter 1
7 of the Internal Revenue Code of 1986 is amended by in-
8 serting after the item relating to section 40A the following
9 new item:

“Sec. 40B. Biogas produced from certain renewable feedstocks.”.

10 (e) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to biogas produced and sold or
12 used in taxable years beginning after the date of the enact-
13 ment of this Act.

14 **SEC. 3. INCENTIVES FOR BIOGAS PRODUCTION.**

15 Title IX of the Farm Security and Rural Investment
16 Act of 2002 (7 U.S.C. 8101 et seq.) is amended by adding
17 at the end the following:

18 **“SEC. 9012. COUNTER-CYCLICAL PAYMENTS FOR THE PRO-**
19 **DUCTION OF BIOGAS FROM CERTAIN RENEW-**
20 **ABLE FEEDSTOCK RESOURCES.**

21 “(a) DEFINITIONS.—In this section:

22 “(1) AGRICULTURAL LIVESTOCK.—The term
23 ‘agricultural livestock’ means—

24 “(A) poultry;

25 “(B) cattle;

- 1 “(C) sheep;
2 “(D) swine;
3 “(E) goats;
4 “(F) horses;
5 “(G) mules; and
6 “(H) other equines.

7 “(2) BIOGAS.—The term ‘biogas’ means a gas
8 that—

- 9 “(A) is produced at a qualified facility;
10 “(B) is derived by processing qualified en-
11 ergy feedstock in an anaerobic digester; and
12 “(C) contains—
13 “(i) at least 60 percent methane; and
14 “(ii) carbon dioxide and trace gases.

15 “(3) PROVIDER.—The term ‘provider’ means a
16 provider of qualified energy feedstock, including a
17 farmer, rancher, rural small business, agricultural
18 cooperative, and partnership.

19 “(4) QUALIFIED BIOGAS PRODUCER.—The term
20 ‘qualified biogas producer’ means a person that op-
21 erates a qualified facility.

22 “(5) QUALIFIED ENERGY FEEDSTOCK.—

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

1 “(i) manure of agricultural livestock,
2 including litter, wood shavings, straw, rice
3 hulls, bedding material, and other mate-
4 rials incidentally collected with the ma-
5 nure;

6 “(ii) any nonhazardous, cellulosic, or
7 other organic agricultural or food industry
8 byproduct or waste material that is derived
9 from—

10 “(I) harvesting residues;

11 “(II) wastes or byproducts from
12 fermentation processes, ethanol pro-
13 duction, biodiesel production, slaugh-
14 ter of agricultural livestock, food pro-
15 duction, food processing, or food serv-
16 ice; or

17 “(III) other organic wastes, by-
18 products, or sources; or

19 “(iii) solid wood waste materials, in-
20 cluding waste pallets, crates, dunnage,
21 manufacturing and construction wood
22 wastes, and landscape or right-of-way tree
23 trimmings.

24 “(B) EXCLUSIONS.—The term ‘qualified
25 energy feedstock’ does not include—

1 “(i) pressure-treated, chemically-treat-
2 ed, or painted wood wastes;

3 “(ii) municipal solid waste;

4 “(iii) landfills; or

5 “(iv) paper that is commonly recycled.

6 “(6) QUALIFIED FACILITY.—The term ‘quali-
7 fied facility’ means a facility that—

8 “(A) uses anaerobic digesters to process
9 qualified energy feedstock into biogas;

10 “(B) is located in the United States; and

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

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

15 “(ii) used on-site or off-site in a quan-
16 tity that is sufficient to offset the con-
17 sumption of at least 50,000 mmBtu annu-
18 ally of commercially-marketed fuel derived
19 from coal, crude oil, natural gas, propane,
20 or other fossil fuel.

21 “(b) COUNTER-CYCLICAL PAYMENTS.—

22 “(1) IN GENERAL.—The Secretary shall use
23 such funds of the Commodity Credit Corporation as
24 are necessary to make counter-cyclical payments in
25 accordance with this subsection to qualified biogas

1 producers for qualified facilities placed in service be-
2 fore December 31, 2013.

3 “(2) PAYMENT AMOUNT.—

4 “(A) IN GENERAL.—The amount of the
5 payments described in paragraph (1) shall be
6 equal to the product obtained by multiplying—

7 “(i) the applicable amount calculated
8 under subparagraph (B); and

9 “(ii) the mmBtus of biogas that is
10 produced in any year during the 10-year
11 period beginning on the date on which the
12 qualified facility is placed into service.

13 “(B) APPLICABLE AMOUNT.—The applica-
14 ble amount under subparagraph (A)(i) is the
15 amount equal to 1.0 cent for every 1.0 cent
16 that the annual average of average daily prices
17 of natural gas on the Henry Hub Natural Gas
18 Futures Market of the New York Mercantile
19 Exchange is below \$7.50 per mmBtu, as ad-
20 justed for inflation by the Secretary.

21 “(3) PAYMENT TIMING.—The Secretary shall
22 make payments under this subsection once per cal-
23 endar year, on a date determined by the Secretary.

24 “(4) USE OF PAYMENTS.—As a condition on re-
25 ceipt of payments under this subsection, a qualified

1 biogas producer shall agree to use the payments first
2 to pay down loans and other obligations incurred by
3 the qualified biogas producer for the physical facili-
4 ties designed, built, and used to produce biogas.

5 “(c) TRANSPORTATION COSTS.—

6 “(1) DEFINITION OF SECRETARY.—In this sub-
7 section, the term ‘Secretary’ means the Secretary,
8 acting in consultation with the Secretary of Energy
9 and the Administrator of the Environmental Protec-
10 tion Agency.

11 “(2) IN GENERAL.—The Secretary shall make
12 loans, loan guarantees, and grants to providers—

13 “(A) for collecting qualified energy feed-
14 stock and transporting the feedstock to a quali-
15 fied facility that produces biogas using manure
16 of agricultural livestock from multiple, smaller
17 farming operations, as determined by the Sec-
18 retary; or

19 “(B) for the purchase or construction of
20 equipment or facilities used in connection with
21 the collection and transportation under sub-
22 paragraph (A).

23 “(3) ELIGIBILITY.—To be eligible to receive a
24 grant under this subsection, a provider shall—

1 “(A) demonstrate financial need, as deter-
2 mined by the Secretary; and

3 “(B) submit to the Secretary a description
4 of—

5 “(i) the terms and conditions of the
6 commitment by a qualified facility to ac-
7 cept the qualified energy feedstock from
8 the provider;

9 “(ii) the location of the qualified facil-
10 ity; and

11 “(iii) a plan for environmentally-sound
12 and economically-sustainable continued
13 transportation of the qualified energy feed-
14 stock.

15 “(4) COST SHARING.—

16 “(A) IN GENERAL.—

17 “(i) GRANTS.—The amount of a grant
18 under this subsection shall not exceed 75
19 percent of the annual cost of the activity
20 funded under paragraph (2)(A).

21 “(ii) MAXIMUM AMOUNT OF COM-
22 BINED GRANT AND LOAN.—The combined
23 amount of a grant and loan made or guar-
24 anteed for purchase or construction of
25 equipment used in connection with trans-

1 port of qualified energy feedstock shall not
2 exceed 75 percent of the cost of the activ-
3 ity funded under paragraph (2)(B).

4 “(B) FACTORS.—In determining the
5 amount of a grant or loan, the Secretary shall
6 take into consideration, as applicable—

7 “(i) the size, location, and biogas pro-
8 duction efficiency of the qualified facility;

9 “(ii) the estimated quantity of biogas
10 to be produced by the qualified facility;

11 “(iii) the number of farms, ranches,
12 or small rural businesses within a reason-
13 able distance of the qualified facility, as
14 determined by the Secretary;

15 “(iv) the expected environmental bene-
16 fits of producing biogas from qualified en-
17 ergy feedstocks by the qualified facility;
18 and

19 “(v) such other factors as the Sec-
20 retary determines to be appropriate.

21 “(5) INTEREST RATE.—

22 “(A) IN GENERAL.—A loan made by the
23 Secretary under this subsection shall bear inter-
24 est at the rate equivalent to the rate of interest

1 charged on Treasury securities of comparable
2 maturity on the date the loan is approved.

3 “(B) DURATION.—The interest rate for
4 each loan will remain in effect for the term of
5 the loan.

6 “(6) FUNDING.—

7 “(A) IN GENERAL.—Notwithstanding any
8 other provision of law, on October 1, 2007, and
9 on each October 1 thereafter through October
10 1, 2011, out of any funds in the Treasury not
11 otherwise appropriated, the Secretary of the
12 Treasury shall transfer to the Secretary to
13 carry out this subsection \$10,000,000, to re-
14 main available until expended.

15 “(B) RECEIPT AND ACCEPTANCE.—The
16 Secretary shall be entitled to receive, shall ac-
17 cept, and shall use to carry out this subsection
18 the funds transferred under subparagraph (A),
19 without further appropriation.

20 “(d) IMPLEMENTATION.—

21 “(1) IN GENERAL.—Not later than 180 days
22 after the date of enactment of this section, the Sec-
23 retary shall promulgate such regulations as are nec-
24 essary to implement this section, including a notice
25 describing the method by which the Secretary deter-

1 mines and adjusts the average price under sub-
2 section (b)(2)(B).

3 “(2) PROCEDURE.—The promulgation of the
4 regulations and administration of this section shall
5 be made without regard to—

6 “(A) the notice and comment provisions of
7 section 553 of title 5, United States Code;

8 “(B) the Statement of Policy of the Sec-
9 retary of Agriculture effective July 24, 1971
10 (36 Fed. Reg. 13804), relating to notices of
11 proposed rulemaking and public participation in
12 rulemaking; and

13 “(C) chapter 35 of title 44, United States
14 Code (commonly known as the ‘Paperwork Re-
15 duction Act’).”

○