

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3746

To amend the Internal Revenue Code of 1986 to provide tax incentives for making homes more water-efficient, for building new water-efficient homes, for public water conservation, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Ms. BERKLEY (for herself and Ms. TITUS) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide tax incentives for making homes more water-efficient, for building new water-efficient homes, for public water conservation, 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 “Water Efficiency and  
5 Conservation Investment Act of 2009”.

6       **SEC. 2. RESIDENTIAL WATER EFFICIENCY CREDIT.**

7       (a) IN GENERAL.—Subpart B of part IV of sub-  
8 chapter A of chapter 1 of the Internal Revenue Code is

1 amended by inserting after section 30D the following new  
2 section:

3 **“SEC. 30E. RESIDENTIAL WATER EFFICIENCY CREDIT.**

4 “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
5 dividual, there shall be allowed as a credit against the tax  
6 imposed by this chapter for the taxable year an amount  
7 equal to 50 percent of the qualified water efficiency prop-  
8 erty expenditures paid or incurred during such taxable  
9 year.

10 “(b) LIMITATION.—The credit allowed under this sec-  
11 tion with respect to any taxpayer for any taxable year shall  
12 not exceed \$750.

13 “(c) QUALIFIED WATER EFFICIENCY PROPERTY EX-  
14 PENDITURES.—For purposes of this section—

15 “(1) IN GENERAL.—The term ‘qualified water  
16 efficiency property expenditures’ means expenditures  
17 for qualified water efficiency property which is—

18 “(A) installed on or in connection with a  
19 dwelling unit located in the United States that  
20 is owned by the taxpayer (without regard to  
21 whether any other person occupies such dwell-  
22 ing unit as a residence), and

23 “(B) originally placed in service by the tax-  
24 payer.

1 Such term includes expenditures for labor costs  
2 properly allocable to the onsite preparation, assem-  
3 bly, or original installation of such property.

4 “(2) QUALIFIED WATER EFFICIENCY PROP-  
5 erty.—The term ‘qualified water efficiency prop-  
6 erty’ means—

7 “(A) property which meets the national ef-  
8 ficiency standards and specifications for resi-  
9 dential water-using fixtures, appliances, and de-  
10 vices under the WaterSense program of the En-  
11 vironmental Protection Agency that are in ef-  
12 fect on the date of purchase of such property,  
13 but only if such property improves water effi-  
14 ciency by no less than 20 percent over standard  
15 models of similar water-using fixtures and ap-  
16 pliances as determined by the Administrator of  
17 such Agency, and

18 “(B) water efficient landscaping which is  
19 installed by a landscape irrigation professional  
20 certified by such WaterSense program and  
21 which reduces water use by no less than 50 per-  
22 cent, as certified by such professional.

23 “(3) STATE WATER EFFICIENCY STANDARDS.—  
24 In the case of a State that has mandatory water ef-  
25 ficiency standards for any property that are more

1 stringent than the standards and specifications de-  
2 scribed in paragraph (2), property installed on or in  
3 connection with a dwelling unit that is located in  
4 such State must meet such water efficiency stand-  
5 ards of such State in order to be treated as qualified  
6 water efficiency property for purposes of this sec-  
7 tion.

8 “(d) SPECIAL RULES.—For purposes of this sec-  
9 tion—

10 “(1) JOINT OWNERSHIP OF WATER EFFICIENCY  
11 ITEMS.—

12 “(A) IN GENERAL.—An expenditure shall  
13 not fail to be treated as a qualified water effi-  
14 ciency property expenditure merely because  
15 such expenditure was made with respect to 2 or  
16 more dwelling units.

17 “(B) ALLOCATION OF EXPENDITURES.—In  
18 the case of an expenditure made with respect to  
19 2 or more dwelling units, for purposes of deter-  
20 mining the credit allowable under this section,  
21 such expenditure shall be allocated among such  
22 dwelling units in proportion to the amount of  
23 the expenditure made for each dwelling unit.

24 “(2) REFUNDS DISREGARDED IN THE ADMINIS-  
25 TRATION OF FEDERAL PROGRAMS AND FEDERALLY

1 ASSISTED PROGRAMS.—Any credit or refund allowed  
2 or made to any individual by reason of this section  
3 shall not be taken into account as income and shall  
4 not be taken into account as resources, for purposes  
5 of determining the eligibility of such individual or  
6 any other individual for benefits or assistance, or the  
7 amount or extent of benefits or assistance, under  
8 any Federal program or under any State or local  
9 program financed in whole or in part with Federal  
10 funds.

11 “(3) BASIS ADJUSTMENTS.—For purposes of  
12 this subtitle, if a credit is allowed under subsection  
13 (a) for any expenditure with respect to any property,  
14 the increase in the basis of such property which  
15 would (but for this subsection) result from such ex-  
16 penditure shall be reduced by the amount of the  
17 credit so allowed.

18 “(4) DENIAL OF DOUBLE BENEFIT.—

19 “(A) IN GENERAL.—No deduction or credit  
20 under any other provision of this chapter shall  
21 be allowed with respect to the amount of any  
22 qualified water efficiency property expenditure  
23 taken into account under this section.

24 “(B) REBATE PROGRAMS.—The amount of  
25 any qualified water efficiency property expendi-

1           ture for which an individual is reimbursed  
2           under any Federal government program shall  
3           not be taken into account for purposes of deter-  
4           mining the credit under subsection (a) with re-  
5           spect such individual.

6           “(e) APPLICATION WITH OTHER CREDITS.—

7           “(1) BUSINESS CREDIT.—

8                   “(A) BUSINESS CREDIT TREATED AS PART  
9                   OF GENERAL BUSINESS CREDIT.—So much of  
10                  the credit which would be allowed under sub-  
11                  section (a) for any taxable year (determined  
12                  without regard to this subsection) that is attrib-  
13                  utable to property of a character subject to an  
14                  allowance for depreciation shall be treated as a  
15                  credit listed in section 38(b) for such taxable  
16                  year (and not allowed under subsection (a)).

17                  “(B) DISALLOWANCE OF DEPRECIATION.—

18                  In the case of an expenditure for property de-  
19                  scribed in subparagraph (A) with respect to  
20                  which a credit is allowed under section 38(b) by  
21                  reason of such subparagraph, the depreciation  
22                  allowance for such property in all taxable years  
23                  shall be zero and no deduction shall be available  
24                  under section 167 with respect to such prop-  
25                  erty.

1           “(2) PERSONAL CREDIT.—

2                   “(A) IN GENERAL.—For purposes of this  
3 title, the credit allowed under subsection (a) for  
4 any taxable year (determined after application  
5 of paragraph (1)) shall be treated as a credit  
6 allowable under subpart A for such taxable  
7 year.

8                   “(B) LIMITATION BASED ON AMOUNT OF  
9 TAX.—In the case of a taxable year to which  
10 section 26(a)(2) does not apply, the credit al-  
11 lowed under subsection (a) for any taxable year  
12 (determined after application of paragraph (1))  
13 shall not exceed the excess of—

14                           “(i) the sum of the regular tax liabil-  
15 ity (as defined in section 26(b)), plus

16                                   “(ii) the sum of the credits allowable  
17 under subpart A (other than this section  
18 and sections 23, 25D, 30, 30B, and 30D)  
19 and section 27 for the taxable year.

20           “(f) TERMINATION.—This section shall not apply  
21 with respect to any property placed in service after Decem-  
22 ber 31, 2014.”.

23           (b) CONFORMING AMENDMENTS.—

1           (1) Section 24(b)(3)(B) of the Internal Revenue  
2 Code of 1986 is amended by striking “and 30D”  
3 and inserting “, 30D, and 30E”.

4           (2) Section 25(e)(1)(C)(ii) of such Code is  
5 amended by inserting “30E,” after “30D,”.

6           (3) Section 25B(g)(2) of such Code is amended  
7 by striking “and 30D” and inserting “30D, and  
8 30E”.

9           (4) Section 904(i) of such Code is amended by  
10 striking “and 30D” and inserting “30D, and 30E”.

11           (5) Section 1016(a) of such Code is amended  
12 by striking “and” at the end of paragraph (36), by  
13 striking the period at the end of paragraph (37) and  
14 inserting “, and”, and by adding at the end the fol-  
15 lowing new paragraph:

16           “(38) to the extent provided in section  
17 30E(d)(3).”.

18           (6) Section 1400C(d)(2) of such Code is  
19 amended by striking “and 30D” and inserting  
20 “30D, and 30E”.

21           (c) CREDIT TO BE PART OF BUSINESS CREDIT.—  
22 Section 38(b) of the Internal Revenue Code of 1986 is  
23 amended by striking “plus” at the end of paragraph (34),  
24 by striking the period at the end of paragraph (35) and



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

3 “(36) the portion of the residential water effi-  
4 ciency credit to which section 30E(e)(1) applies.”.

5 (d) CLERICAL AMENDMENT.—The table of sections  
6 for subpart B 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 30D the following  
9 new item:

“Sec. 30E. Residential water efficiency credit.”.

10 (e) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to property placed in service after  
12 December 31, 2009.

13 **SEC. 3. NEW WATER EFFICIENT HOME CREDIT.**

14 (a) IN GENERAL.—Subpart D of part IV of sub-  
15 chapter A of chapter 1 of the Internal Revenue Code of  
16 1986 is amended by adding at the end the following new  
17 section:

18 **“SEC. 45R. NEW WATER EFFICIENT HOME CREDIT.**

19 “(a) ALLOWANCE OF CREDIT.—For purposes of sec-  
20 tion 38, in the case of an eligible contractor, the new water  
21 efficient home credit for the taxable year is an amount  
22 equal to \$1,500 for each qualified new water efficient  
23 home which is—

24 “(1) constructed by such eligible contractor,  
25 and

1           “(2) acquired by a person from such eligible  
2 contractor during the taxable year.

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

4           “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-  
5 ble contractor’ means a person who is certified as a  
6 builder partner under the WaterSense program of  
7 the Environmental Protection Agency and who is—

8                   “(A) the person who constructed the quali-  
9 fied new water efficient home, or

10                   “(B) in the case of a qualified new energy  
11 efficient home which is a manufactured home,  
12 the manufactured home producer of such home.

13           “(2) QUALIFIED NEW WATER EFFICIENT  
14 HOME.—The term ‘qualified new water efficient  
15 home’ means a dwelling unit—

16                   “(A) located in the United States,

17                   “(B) the construction of which is substan-  
18 tially completed after the date of the enactment  
19 of this section, and

20                   “(C) which is certified by the Environ-  
21 mental Protection Agency as complying with  
22 the Final Water-Efficient Single-Family New  
23 Home Specification issued by such Agency.

1           “(3) CONSTRUCTION.—The term ‘construction’  
2 includes substantial reconstruction and rehabilita-  
3 tion.

4           “(4) ACQUIRE.—The term ‘acquire’ includes  
5 purchase.

6           “(c) CERTIFICATION.—

7           “(1) METHOD OF CERTIFICATION.—A certifi-  
8 cation described in subsection (b)(2)(C) shall be  
9 made in accordance with guidance prescribed by the  
10 Secretary, after consultation with the Administrator  
11 of the Environmental Protection Agency. Such guid-  
12 ance shall specify procedures and methods for calcu-  
13 lating water and cost savings.

14           “(2) FORM.—Any certification described in sub-  
15 section (b)(2)(C) shall be made in writing in a man-  
16 ner which specifies in readily verifiable fashion the  
17 water efficient components (including toilets, fau-  
18 cets, other plumbing fixtures and appliances, hot  
19 water delivery, landscape design, and irrigation sys-  
20 tems) installed and their respective rated water effi-  
21 ciency performance.

22           “(d) BASIS ADJUSTMENT.—For purposes of this sub-  
23 title, if a credit is allowed under this section in connection  
24 with any expenditure for any property, the increase in the  
25 basis of such property which would (but for this sub-

1 section) result from such expenditure shall be reduced by  
2 the amount of the credit so determined.

3 “(e) COORDINATION WITH OTHER CREDITS.—Ex-  
4 penditures taken into account under section 45L, 47, or  
5 48(a) shall not be taken into account under this section.

6 “(f) REBATE PROGRAMS.—The amount of the credit  
7 allowed under subsection (a) to an eligible contractor with  
8 respect to any qualified new water efficient home shall be  
9 reduced, but not below zero, by the amount of any reim-  
10 bursement which such contractor receives under any Fed-  
11 eral government program for the construction of such  
12 home or for expenditures relating to such construction.

13 “(g) TERMINATION.—This section shall not apply to  
14 any qualified new water efficient home acquired after De-  
15 cember 31, 2014.”.

16 (b) CREDIT TO BE PART OF GENERAL BUSINESS  
17 CREDIT.—Section 38(b) of the Internal Revenue Code of  
18 1986, as amended by this Act, is amended by striking  
19 “plus” at the end of paragraph (35), by striking the period  
20 at the end of paragraph (36) and inserting “, plus”, and  
21 by adding at the end the following new paragraph:

22 “(37) the new water efficient home credit deter-  
23 mined under section 45R.”.

24 (c) CLERICAL AMENDMENT.—The table of sections  
25 for subpart D of part IV of subchapter A of chapter 1

1 of the Internal Revenue Code of 1986 is amended by add-  
 2 ing at the end the following new item:

“Sec. 45R. New water efficient home credit.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by  
 4 this section shall apply to homes acquired after December  
 5 31, 2009.

6 **SEC. 4. WATER CONSERVATION BONDS.**

7 (a) **IN GENERAL.**—Section 54D of the Internal Rev-  
 8 enue Code of 1986 is amended—

9 (1) by striking “energy conservation bond” each  
 10 place it appears in subsections (a), (b), and (d), and  
 11 inserting “energy and water conservation bond”,

12 (2) by inserting “**AND WATER**” after “**QUALI-**  
 13 **FIED ENERGY**” in the heading,

14 (3) by striking “State or local government” in  
 15 subsection (a)(2) and inserting “State, local govern-  
 16 ment, or water district”,

17 (4) by striking “\$3,200,000,000” in subsection  
 18 (d) and inserting “\$4,000,000,000, of which not less  
 19 than 20 percent shall be used for qualified conserva-  
 20 tion purposes described in subsection (f)(1)(F)”, and

21 (5) by adding at the end of subsection (f)(1)  
 22 the following new subparagraph:

23 “(F) Expenditures incurred for purposes  
 24 of—

1           “(i) reducing water consumption by a  
2 public building or facility by not less than  
3 30 percent,

4           “(ii) advanced water metering infra-  
5 structure, including the purchase, installa-  
6 tion, and commissioning of advanced water  
7 meters and related software and infra-  
8 structure,

9           “(iii) investigation, design, or con-  
10 struction of a qualified groundwater reme-  
11 diation, desalination, or recycled water fa-  
12 cility or system,

13           “(iv) increasing energy efficiency or  
14 the generation and use of renewable energy  
15 in the management, conveyance, or treat-  
16 ment of water, wastewater, or stormwater,

17           “(v) reducing water loss in a water  
18 distribution system, including training  
19 water system personnel, annual testing and  
20 calibration of meters, detecting and repair-  
21 ing leaks, and purchase and installation of  
22 related equipment, or

23           “(vi) establishing or improving a sys-  
24 tem for volumetric billing to enable utilities  
25 to base retail residential customer bills in

1 whole or in part on the volume of metered  
2 water deliveries.”.

3 (b) EFFECTIVE DATE.—The amendments made by  
4 this section shall take effect on the date of the enactment  
5 of this Act.

6 **SEC. 5. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**  
7 **MENTS FOR ELECTRICITY.**

8 (a) IN GENERAL.—Subsection (b) of section 148 of  
9 the Internal Revenue Code of 1986 is amended by adding  
10 at the end the following new paragraph:

11 “(5) SAFE HARBOR FOR PREPAID ELECTRICITY  
12 SUPPLY CONTRACTS.—

13 “(A) IN GENERAL.—The term ‘investment-  
14 type property’ does not include a prepayment  
15 under a qualified electricity supply contract.

16 “(B) QUALIFIED ELECTRICITY SUPPLY  
17 CONTRACT.—

18 “(i) IN GENERAL.—For purposes of  
19 this paragraph, the term ‘qualified elec-  
20 tricity supply contract’ means—

21 “(I) any contract entered into by  
22 a water or sewer utility to acquire  
23 electricity for the use of such utility in  
24 providing water or sewer services to  
25 its customers, if such contract pro-

1 provides that the provider of such elec-  
2 tricity under the contract will use not  
3 less than 75 percent of the prepay-  
4 ment described in subparagraph (A)  
5 to acquire, construct, or improve a  
6 qualified renewable energy facility,  
7 and

8 “(II) any contract to acquire  
9 electricity which is not described in  
10 subclause (I) which the Secretary de-  
11 termines does not constitute property  
12 of the type intended to be described in  
13 paragraph (2)(D).

14 “(ii) WATER OR SEWER UTILITY.—  
15 The term ‘water or sewer utility’ means a  
16 utility which is a governmental unit or is  
17 owned by a governmental unit and which  
18 provides—

19 “(I) water for residential, com-  
20 mercial, irrigation, or industrial use,  
21 or

22 “(II) sewer services for residen-  
23 tial, commercial, or industrial use,  
24 to retail or wholesale customers in the  
25 service territory of such utility.



1           “(iii) QUALIFIED RENEWABLE EN-  
2           ERGY FACILITY.—The term ‘qualified re-  
3           newable energy facility’ means a qualified  
4           facility within the meaning of section 45(d)  
5           (without regard to paragraphs (8) and  
6           (10) thereof, to the placed in service date  
7           of such facility, and to the person who  
8           owns such facility) which is located in the  
9           United States.

10           “(iv) USE OF WATER OR SEWER UTIL-  
11           ITY.—For purposes of clause (i)(I), a con-  
12           tract shall be treated as providing elec-  
13           tricity for the use of a water or sewer util-  
14           ity if the sum of—

15                   “(I) the total number of kilowatt  
16                   hours of electricity purchased under  
17                   such contract and any other contracts  
18                   for the purchase of electricity by such  
19                   utility in effect on the date of the exe-  
20                   cution of such contract, plus

21                   “(II) the amount of electricity ex-  
22                   pected to be generated by any gener-  
23                   ating facilities owned and used by  
24                   such utility,

1 does not exceed by more than 10 percent  
2 the total kilowatt hours of electricity ex-  
3 pected to be used by such utility during  
4 the term of such contract for the purpose  
5 of providing water or sewer services to its  
6 customers or for resale to other water or  
7 sewer utilities for their use (and not for re-  
8 sale to any entity that is not a water or  
9 sewer utility).

10 “(C) OTHER RULES.—Rules similar to the  
11 rules of subparagraphs (D)(ii), (G), and (I) of  
12 paragraph (4) shall apply for purposes of this  
13 paragraph.”.

14 (b) PRIVATE LOAN FINANCING TEST NOT TO APPLY  
15 TO PREPAYMENTS FOR ELECTRICITY.—Paragraph (2) of  
16 section 141(c) of the Internal Revenue Code of 1986 is  
17 amended—

18 (1) by striking “or” at the end of subparagraph

19 (B),

20 (2) by striking the period at the end of sub-  
21 paragraph (C) and inserting “, or”, and

22 (3) by adding at the end the following new sub-  
23 paragraph:

24 “(D) is a qualified electricity supply con-  
25 tract (as defined in section 148(b)(5)).”.

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

○