

111TH CONGRESS  
1ST SESSION

# S. 306

To promote biogas production, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2009

Mr. NELSON of Nebraska (for himself, Mr. CRAPO, Mr. WYDEN, Mr. THUNE, Mr. BROWN, Mr. JOHANNIS, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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 2009”.

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  
10 1986 is amended by inserting after section 45Q the fol-  
11 lowing new section:

1 **“SEC. 45R. BIOGAS PRODUCED FROM CERTAIN RENEWABLE**  
2 **FEEDSTOCKS.**

3 “(a) GENERAL RULE.—For purposes of section 38,  
4 the qualified biogas production credit for any taxable year  
5 is an amount equal to the product of—

6 “(1) \$4.27, and

7 “(2) each million British thermal unit (mmBtu)  
8 of biogas—

9 “(A) produced by the taxpayer—

10 “(i) from qualified energy feedstock,  
11 and

12 “(ii) at a qualified facility during the  
13 10-year period beginning on the date the  
14 facility was originally placed in service, and

15 “(B) either—

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

18 “(ii) used by the taxpayer during the  
19 taxable year.

20 “(b) DEFINITIONS.—

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

23 “(A) is derived by processing qualified en-  
24 ergy feedstock, and

25 “(B) contains at least 50 percent methane.

26 “(2) QUALIFIED ENERGY FEEDSTOCK.—

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

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

8           “(ii) any nonhazardous, cellulosic, or  
9 other organic agricultural or food industry  
10 by-product or waste material that is de-  
11 rived from—

12           “(I) renewable biomass,

13           “(II) harvesting residues,

14           “(III) wastes or byproducts from  
15 fermentation processes, ethanol pro-  
16 duction, biodiesel production, slaugh-  
17 ter of agricultural livestock, food pro-  
18 duction, food processing, or food serv-  
19 ice, or

20           “(IV) other organic wastes, by-  
21 products, or sources,

22           “(iii) solid wood waste materials, in-  
23 cluding waste pallets, crates, dunnage,  
24 manufacturing and construction wood

1 wastes, and landscape or right-of-way tree  
2 trimmings, or

3 “(iv) landfill waste, sewage waste  
4 treatment materials, or other organic ma-  
5 terials.

6 “(B) RENEWABLE BIOMASS.—The term  
7 ‘renewable biomass’ means—

8 “(i) materials from pre-commercial  
9 thinning or invasive species from National  
10 Forest System land and public lands (as  
11 defined in section 103 of the Federal Land  
12 Policy and Management Act of 1976 (43  
13 U.S.C. 1702)) that—

14 “(I) are byproducts of preventive  
15 treatments that are removed to reduce  
16 or contain disease or insect infestation  
17 to restore ecosystem health,

18 “(II) would not otherwise be used  
19 for higher-value products, and

20 “(III) are harvested in accord-  
21 ance with applicable law and land  
22 management plans and the require-  
23 ments for old-growth maintenance,  
24 restoration, and management direc-  
25 tion of paragraphs (2), (3), and (4) of

1 subsection (e) of section 102 of the  
2 Healthy Forests Restoration Act of  
3 2003 (16 U.S.C. 6512) and large tree  
4 retention of subsection (f) of that sec-  
5 tion, or

6 “(ii) any organic matter that is avail-  
7 able on a renewable or recurring basis  
8 from non-Federal land or land belonging to  
9 an Indian or Indian tribe that is held in  
10 trust by the United States or subject to a  
11 restriction against alienation imposed by  
12 the United States, including—

13 “(I) renewable plant material  
14 (such as feed grains, other agricul-  
15 tural commodities, other plants and  
16 trees, and algae), and

17 “(II) waste material (such as  
18 crop residue, other vegetative waste  
19 material (including wood waste and  
20 wood residues), animal waste and by-  
21 products (including fats, oils, greases,  
22 and manure), food waste, and yard  
23 waste).

24 “(C) AGRICULTURAL LIVESTOCK.—The  
25 term ‘agricultural livestock’ means poultry, cat-

1           tle, sheep, swine, goats, horses, mules, and  
2           other equines.

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

5                   “(A) uses anaerobic digesters, gasification,  
6                   or other biological, chemical, or thermal proc-  
7                   esses to convert qualified energy feedstock into  
8                   biogas,

9                   “(B) is owned by the taxpayer,

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

11                   “(D) is originally placed in service before  
12           January 1, 2017, and

13                   “(E) the biogas output of which is—

14                           “(i) marketed through interconnection  
15                           with a gas distribution or transmission  
16                           pipeline, or

17                           “(ii) reasonably expected to be used in  
18                           a quantity sufficient to offset the consump-  
19                           tion of 5,000 mmBtu annually of commer-  
20                           cially marketed fuel derived from coal,  
21                           crude oil, natural gas, propane, or other  
22                           fossil fuels.

23           “(c) SPECIAL RULES.—For purposes of this sec-  
24           tion—

1           “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-  
2           PAYER.—In the case of a facility in which more than  
3           1 person has an ownership interest, except to the ex-  
4           tent provided in regulations prescribed by the Sec-  
5           retary, production from the qualified facility shall be  
6           allocated among such persons in proportion to their  
7           respective ownership interests in the gross sales  
8           from such qualified facility.

9           “(2) RELATED PERSONS.—Persons shall be  
10          treated as related to each other if such persons  
11          would be treated as a single employer under the reg-  
12          ulations prescribed under section 52(b). In the case  
13          of a corporation which is a member of an affiliated  
14          group of corporations filing a consolidated return,  
15          such corporation shall be treated as selling biogas to  
16          an unrelated person if such biogas is sold to such a  
17          person by another member of such group.

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

22          “(4) COORDINATION WITH CREDIT FROM PRO-  
23          DUCING FUEL FROM A NONCONVENTIONAL  
24          SOURCE.—The amount of biogas produced and sold  
25          or used by the taxpayer during any taxable year

1 which is taken into account under this section shall  
2 be reduced by the amount of biogas produced and  
3 sold by the taxpayer in such taxable year which is  
4 taken into account under section 45K.

5 “(5) CREDIT ELIGIBILITY IN THE CASE OF GOV-  
6 ERNMENT-OWNED FACILITIES.—In the case of any  
7 facility which produce biogas and which is owned by  
8 a governmental unit, subparagraph (B) of subsection  
9 (b)(3) shall be applied by substituting ‘is leased or  
10 operated by the taxpayer’ for ‘is owned by the tax-  
11 payer’.

12 “(d) SPECIAL RULE FOR PUBLIC-PRIVATE PART-  
13 NERSHIPS.—

14 “(1) IN GENERAL.—In the case of facility which  
15 is owned by a public-private partnership, any quali-  
16 fied public entity which is a member of such part-  
17 nership may transfer such entity’s allocation of the  
18 credit under subsection (a) to any non-public entity  
19 which is a member of such partnership, except that  
20 the aggregate allocations of such credit claimed by  
21 such non-public entity shall be subject to the limita-  
22 tions under subsections (b) and (c) and section  
23 38(c).

24 “(2) QUALIFIED PUBLIC ENTITY.—For pur-  
25 poses of this subsection, the term ‘qualified public



1 entity' means a Federal, State, or local government  
2 entity, or any political subdivision thereof, or a coop-  
3 erative organization described in section 1381(a).

4 “(3) VERIFICATION OF TRANSFER OF ALLOCA-  
5 TION.—A qualified public entity that makes a trans-  
6 fer under paragraph (1), and a non-public entity  
7 that receives an allocation under such a transfer,  
8 shall provide verification of such transfer in such  
9 manner and at such time as the Secretary shall pre-  
10 scribe.

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 2008. 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 (34), by  
16          striking the period at the end of paragraph (35) and in-  
17          serting “, plus”, and by adding at the end the following  
18          new paragraph:

19                 “(36) the qualified biogas production credit  
20                 under section 45R(a).”.

21          (c) COORDINATION WITH CREDIT FOR PRODUCTION  
22          ELECTRICITY FROM A RENEWABLE RESOURCE.—Section  
23          45(e) of the Internal Revenue Code of 1986 is amended  
24          by adding at the end the following new paragraph:

1           “(12) COORDINATION WITH CREDIT FOR PRO-  
 2           DUCTION OF BIOGAS.—The term ‘qualified facility’  
 3           shall not include any facility which produces elec-  
 4           tricity from biogas the production from which is al-  
 5           lowed a credit under section 45R for such taxable  
 6           year or any prior taxable year.”.

7           (d) CREDIT ALLOWED AGAINST AMT.—Section  
 8           38(c)(4)(B) of the Internal Revenue Code of 1986 is  
 9           amended by redesignating clauses (vi) through (viii) as  
 10          clauses (vii) through (ix), respectively, and by inserting  
 11          after clause (v) the following new clause:

12                           “(vi) the credit determined under sec-  
 13                           tion 45R.”.

14          (e) CLERICAL AMENDMENT.—The table of sections  
 15          for subpart D of part IV of subchapter A of chapter 1  
 16          of the Internal Revenue Code of 1986 is amended by in-  
 17          serting after the item relating to section 45Q the following  
 18          new item:

          “Sec. 45R. Biogas produced from certain renewable feedstocks.”.

19          (f) EFFECTIVE DATE.—The amendments made by  
 20          this section shall apply to biogas produced and sold or  
 21          used in taxable years beginning after the date of the enact-  
 22          ment of this Act.

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