

112TH CONGRESS  
1ST SESSION

# H. R. 66

To amend the Internal Revenue Code of 1986 to provide for an investment tax credit for waste-to-energy facilities.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. DOGGETT (for himself, Mr. LEWIS of Georgia, Mr. BLUMENAUER, and Mr. HOLT) 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 for an investment tax credit for waste-to-energy facilities.

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 “Waste-to-Energy Tech-  
5 nology Act of 2011”.

6 **SEC. 2. INVESTMENT TAX CREDIT FOR WASTE-TO-ENERGY**  
7 **FACILITIES.**

8 (a) 30 PERCENT ENERGY PERCENTAGE.—Clause (i)  
9 of section 48(a)(2)(A) of the Internal Revenue Code of  
10 1986 is amended by striking “and” at the end of subpara-

1 graph (III) and by inserting after subparagraph (IV) the  
2 following new subparagraph:

3                   “(V) qualified waste-to-energy property,  
4                   and”.

5           (b) ENERGY PROPERTY.—Subparagraph (A) of sec-  
6 tion 48(a)(3) of such Code is amended by striking “or”  
7 at the end of clause (vi), by inserting “or” at the end of  
8 clause (vii), and by inserting after clause (vii) the fol-  
9 lowing new clause:

10                   “(viii) qualified waste-to-energy prop-  
11                   erty,”.

12           (c) QUALIFIED WASTE-TO-ENERGY PROPERTY DE-  
13 FINED.—Subsection (c) of section 48 of such Code is  
14 amended by adding at the end the following new para-  
15 graph:

16                   “(5) QUALIFIED WASTE-TO-ENERGY PROP-  
17                   ERTY.—

18                   “(A) IN GENERAL.—The term ‘qualified  
19                   waste-to-energy property’ means property com-  
20                   prising a system which—

21                   “(i) uses municipal solid waste or mu-  
22                   nicipal sewage sludge as the feedstock for  
23                   producing solid, liquid, or gas fuel, or for  
24                   producing energy, and

1           “(ii) is certified by the Secretary  
2           under subparagraph (D)(iii) as eligible for  
3           a credit under this section.

4           “(B) EXCEPTION.—Such term does not in-  
5           clude any landfill facility that recirculates leach-  
6           ate, regrades landfill surfaces to encourage run-  
7           off to infiltrate the cells, or delays installation  
8           of covers longer than 18 months following the  
9           cell reaching more than 90 percent of its final  
10          grade.

11          “(C) LIMITATION.—The amount allowed  
12          as a credit for a qualified waste-to-energy prop-  
13          erty shall not exceed the credit allocation to  
14          such project under subparagraph (D)(ii).

15          “(D) COMPETITIVE ALLOCATION OF CRED-  
16          IT.—

17                 “(i) IN GENERAL.—Not later than  
18                 180 days after the date of enactment of  
19                 this section, the Secretary, in consultation  
20                 with the Administrator of the Environ-  
21                 mental Protection Agency, shall establish a  
22                 qualifying waste-to-energy project program  
23                 to consider and award certifications for  
24                 qualified investments eligible for credits

1 under this section to qualifying waste-to-  
2 energy project sponsors.

3 “(ii) LIMITATION.—The total amount  
4 of credits that may be allocated under the  
5 program shall not exceed \$1,000,000,000.

6 “(iii) CERTIFICATION.—

7 “(I) APPLICATION PERIOD.—An  
8 application for certification under this  
9 paragraph may only be submitted dur-  
10 ing the 2-year period beginning on the  
11 date the Secretary establishes the pro-  
12 gram under clause (i) and shall con-  
13 tain such information as the Secretary  
14 may require.

15 “(II) TIME TO MEET CRITERIA  
16 FOR CERTIFICATION.—Each applicant  
17 for certification shall have 1 year from  
18 the date of acceptance by the Sec-  
19 retary of the application during which  
20 to provide to the Secretary evidence  
21 that the requirements of the certifi-  
22 cation have been met.

23 “(iv) SELECTION CRITERIA.—In de-  
24 termining which qualifying waste-to-energy

1 projects to certify under this section, the  
2 Secretary—

3 “(I) shall take into consideration  
4 only those projects where there is a  
5 reasonable expectation of commercial  
6 viability, and

7 “(II) shall take into consideration  
8 those projects which—

9 “(aa) use the least amount  
10 of materials which are commonly  
11 recycled,

12 “(bb) will provide the great-  
13 est net impact in avoiding or re-  
14 ducing air pollutants or anthro-  
15 pogenic emissions of greenhouse  
16 gases (including lifecycle leakage  
17 of greenhouse gases),

18 “(cc) have the lowest  
19 levelized cost of generated or  
20 stored energy, or of measured re-  
21 duction in energy consumption or  
22 greenhouse gas emission (based  
23 on costs of the full supply chain),  
24 and

1                   “(dd) pose the fewest risks  
2                   (other than climate risks) to en-  
3                   vironmental and human health.

4                   “(v) LIMITATION ON ALLOCATION.—  
5                   No credit shall be allocated with respect to  
6                   any qualified waste-to-energy property for  
7                   which there is no net benefit in cumulative  
8                   lifecycle greenhouse gas emissions.

9                   “(vi) GREENHOUSE GAS LEAKAGE  
10                  FROM FACILITY.—For purposes of clause  
11                  (iv)(II)(bb)—

12                   “(I) IN GENERAL.—The lifecycle  
13                  leakage of greenhouse gases is, on a  
14                  integrated basis, the leakage rate dur-  
15                  ing each phase multiplied by the pro-  
16                  portion of lifetime greenhouse gases  
17                  that are released by the facility in  
18                  that phase, which shall be based upon  
19                  field data where that can be accom-  
20                  plished.

21                   “(II) MATTERS INCLUDED.—In-  
22                  cluded in the lifecycle analysis shall be  
23                  an accounting of the leakage of green-  
24                  house gases attendant upon the pro-  
25                  duction of bio-based energy from the

1 facility. Such leakage shall be deter-  
2 mined over the longer of the entire  
3 lifetime the facility releases green-  
4 house gases into the atmosphere or  
5 the time the facility is capable of  
6 doing so by virtue of the quantity of  
7 any residual carbon remaining after  
8 energy production. Leakage shall be  
9 accounted for during each distinct  
10 phase of the facility's life, including  
11 the time before the gas collection sys-  
12 tem and the final cover is installed  
13 and the time after funds previously  
14 set aside to maintain the final cover  
15 after the facility is closed are no  
16 longer available. Leakage shall be  
17 counted for the entire time the facility  
18 generates, or is capable of generating,  
19 greenhouse gases.

20 “(vii) DEFINITIONS RELATING TO  
21 GREENHOUSE GAS LEAKAGE.—For pur-  
22 poses of clause (vi)—

23 “(I) LEAKAGE.—The term ‘leak-  
24 age’ means the portion of the total  
25 greenhouse gases generated by decom-

1 position of organic discards disposed  
2 of in the facility that are released into  
3 the atmosphere.

4 “(II) FACILITY.—A facility refers  
5 not only to the energy-producing ma-  
6 chinery but also to the entire munic-  
7 ipal solid waste landfill unit.

8 “(III) PHASE.—The term ‘phase’  
9 means one of the time periods when  
10 greenhouse gases are generated at a  
11 facility at distinctly different rates of  
12 generation and rates of gas collection.  
13 For landfill facilities that produce  
14 biogas, the periods are—

15 “(aa) the time prior to the  
16 installation of active gas collec-  
17 tion systems,

18 “(bb) the time after the in-  
19 stallation of the systems but  
20 prior to installation of the final  
21 cover,

22 “(cc) the time after installa-  
23 tion of the final cover but prior  
24 to the time that maintenance of  
25 the cover ends, and



1                   “(dd) the time after mainte-  
2                   nance of the cover ends.

3                   “(IV) BIO-BASED ENERGY.—The  
4                   term ‘bio-based energy’ means energy  
5                   produced from the current decomposi-  
6                   tion of plants or animals.

7                   “(V) INTEGRATED BASIS.—The  
8                   term ‘integrated basis’ means first  
9                   multiplying the collection efficiency  
10                  applicable for each phase of the life of  
11                  a landfill facility by the proportion of  
12                  the total gas over the landfill’s life  
13                  that is generated during that phase,  
14                  and then summing the product of the  
15                  two for each phase to determine the  
16                  integrated collection efficiency that re-  
17                  flects the actual lifetime collection ef-  
18                  ficiency.

19                  “(E) DENIAL OF DOUBLE BENEFIT.—

20                  “(i) IN GENERAL.—A credit shall not  
21                  be allowed under sections 40, 40A, 45,  
22                  48B, and 6426 with respect to any fuel  
23                  produced at a facility with respect to which  
24                  a credit is allowed under this section.

1                   “(ii) COORDINATION WITH ARRA  
2                   GRANT.—A credit shall not be allowed  
3                   under this section for any facility if a  
4                   grant is made under section 1603 of the  
5                   American Recovery and Reinvestment Act  
6                   with respect to such facility.”.

7           (d) CONFORMING AMENDMENT.—Subsection (e) of  
8 section 45 of such Code is amended by adding at the end  
9 the following new paragraph:

10                   “(12) COORDINATION WITH ENERGY CREDIT  
11                   FOR QUALIFIED WASTE-TO-ENERGY PROPERTY.—  
12                   The term ‘qualified facility’ shall not include any fa-  
13                   cility which produces electricity from qualified waste-  
14                   to-energy property (as defined in section 48(c)(5)) if  
15                   a credit is determined under section 48 with respect  
16                   to such property for the taxable year or any prior  
17                   taxable year.”.

18           (e) REPORT.—After the Secretary of the Treasury,  
19 in consultation with the Administrator of the Environ-  
20 mental Protection Agency, has made all of the credit allo-  
21 cation under section 48(c)(5) of the Internal Revenue  
22 Code of 1986 (as added by subsection (a)), the Secretary,  
23 in consultation with the Administrator, shall submit to  
24 Congress a report on the recipients of the energy credit  
25 for qualified waste-to-energy property under section 48 of

1 such Code and the effectiveness of the selection criteria  
2 under section 48(c)(5)(D)(iv) of such Code in selecting  
3 waste-to-energy projects these projects. The report shall  
4 also include recommendations (if any) for continuing the  
5 waste-to-energy credit under section 48(c) of such Code  
6 and, if so, at what dollar amount. The Secretary shall,  
7 upon making a certification of such credit under section  
8 48(c)(5)(D)(iii) of such Code, publicly disclose the identity  
9 of the applicant and the amount of the credit with respect  
10 to such applicant.

11 (f) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to facilities placed in service in pe-  
13 riods after the date of the enactment of this Act, in tax-  
14 able years ending after such date, under rules similar to  
15 the rules of section 48(m) of the Internal Revenue Code  
16 of 1986 (as in effect on the day before the date of the  
17 enactment of the Revenue Reconciliation Act of 1990).

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