

107TH CONGRESS  
1ST SESSION

# S. 1566

To amend the Internal Revenue Code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 18, 2001

Mr. REID (for himself and Mr. SMITH of Oregon) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, 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; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Renewable Energy Incentives Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-  
7 wise expressly provided, whenever in this Act an amend-  
8 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference  
2 shall be considered to be made to a section or other provi-  
3 sion of the Internal Revenue Code of 1986.

4 **SEC. 2. MODIFICATIONS TO CREDIT FOR ELECTRICITY**  
5 **PRODUCED FROM RENEWABLE RESOURCES**  
6 **AND WASTE PRODUCTS.**

7 (a) INCREASE IN CREDIT RATE.—

8 (1) IN GENERAL.—Section 45(a)(1) is amended  
9 by striking “1.5 cents” and inserting “1.8 cents”.

10 (2) CONFORMING AMENDMENTS.—

11 (A) Section 45(b)(2) is amended by strik-  
12 ing “1.5 cent” and inserting “1.8 cent”.

13 (B) Section 45(d)(2)(B) is amended by in-  
14 serting “(calendar year 2001 in the case of the  
15 1.8 cent amount in subsection (a))” after  
16 “1992”.

17 (b) EXPANSION OF QUALIFIED RESOURCES.—

18 (1) IN GENERAL.—Section 45(c)(1) (relating to  
19 qualified energy resources) is amended by striking  
20 “and” at the end of subparagraph (B), by striking  
21 the period at the end of subparagraph (C) and in-  
22 serting “, and”, and by adding at the end the fol-  
23 lowing:

24 “(D) alternative resources.”.

1           (2) DEFINITION OF ALTERNATIVE RE-  
2 SOURCES.—Section 45(c) (relating to definitions) is  
3 amended—

4           (A) by redesignating paragraph (3) as  
5 paragraph (5),

6           (B) by redesignating paragraph (4) as  
7 paragraph (3), and

8           (C) by inserting after paragraph (3), as re-  
9 designated by subparagraph (B), the following:

10           “(4) ALTERNATIVE RESOURCES.—

11           “(A) IN GENERAL.—The term ‘alternative  
12 resources’ means—

13           “(i) solar,

14           “(ii) open loop biomass,

15           “(iii) geothermal,

16           “(iv) incremental geothermal,

17           “(v) incremental hydropower, and

18           “(v) landfill gas.

19           “(B) OPEN LOOP BIOMASS.—The term  
20 ‘open loop biomass’ means any nonhazardous,  
21 cellulosic waste material, which is segregated  
22 from other waste materials and derived from—

23           “(i) a forest-related resource, includ-  
24 ing mill and harvesting residue,  
25 precommercial thinnings, slash, and brush,

1           “(ii) an agricultural source, including  
2           orchard tree crops, vineyards, grain, leg-  
3           umes, sugar, and other crop by-products or  
4           residues, or

5           “(iii) a miscellaneous source, includ-  
6           ing waste pallets, crates, dunnage, and  
7           landscape or right-of-way tree trimmings,  
8           but not including—

9                   “(I) municipal solid waste,

10                   “(II) recyclable post-consumer  
11           wastepaper,

12                   “(III) painted, treated, or pres-  
13           surized wood,

14                   “(IV) wood contaminated with  
15           plastic or metals, or

16                   “(V) tires.

17           “(C) GEOTHERMAL.—The term ‘geo-  
18           thermal’ means energy derived from a geo-  
19           thermal deposit (within the meaning of section  
20           613(e)(2)).

21           “(D) INCREMENTAL GEOTHERMAL.—The  
22           term ‘incremental geothermal’ means additional  
23           generating capacity achieved from—

24                   “(i) increased efficiency, or

25                   “(ii) additions of new capacity,

1 at a non-Federal geothermal project originally  
 2 placed in service before the date of enactment  
 3 of this paragraph.

4 “(E) INCREMENTAL HYDROPOWER.—The  
 5 term ‘incremental hydropower’ means additional  
 6 generating capacity achieved from—

7 “(i) increased efficiency, or

8 “(ii) additions of new capacity,

9 at a licensed non-Federal hydroelectric project  
 10 originally placed in service before the date of  
 11 enactment of this paragraph.

12 “(F) LANDFILL GAS.—The term ‘landfill  
 13 gas’ means gas generated from the decomposi-  
 14 tion of any household solid waste, commercial  
 15 solid waste, and industrial solid waste disposed  
 16 of in a municipal solid waste landfill unit (as  
 17 such terms are defined in regulations promul-  
 18 gated under subtitle D of the Solid Waste Dis-  
 19 posal Act (42 U.S.C. 6941 et seq.).”.

20 (3) QUALIFIED FACILITY.—Section 45(c)(5)  
 21 (defining qualified facility), as redesignated by para-  
 22 graph 2(A), is amended by adding at the end the  
 23 following:

24 “(D) ALTERNATIVE RESOURCES FACIL-  
 25 ITY.—

1           “(i) IN GENERAL.—In the case of a  
2 facility using alternative resources other  
3 than incremental geothermal or incre-  
4 mental hydropower to produce electricity,  
5 the term ‘qualified facility’ means any fa-  
6 cility of the taxpayer which is originally  
7 placed in service after the date of the en-  
8 actment of this subparagraph.

9           “(ii) INCREMENTAL GEOTHERMAL FA-  
10 CILITY.—In the case of a facility using in-  
11 cremental geothermal to produce elec-  
12 tricity, the term ‘qualified facility’ means  
13 any facility of the taxpayer described in  
14 paragraph (4)(D).

15           “(iii) INCREMENTAL HYDROPOWER  
16 FACILITY.—In the case of a facility using  
17 incremental hydropower to produce elec-  
18 tricity, the term ‘qualified facility’ means  
19 any facility of the taxpayer described in  
20 paragraph (4)(E).

21           “(iv) SPECIAL RULES.—In the case of  
22 a qualified facility described in this sub-  
23 paragraph, the 10-year period referred to  
24 in subsection (a) shall be treated as begin-

1                   ning no earlier than the date of the enact-  
2                   ment of this subparagraph.”.

3                   (4) GOVERNMENT-OWNED FACILITY.—Section  
4                   45(d)(6) (relating to credit eligibility in the case of  
5                   government-owned facilities using poultry waste) is  
6                   amended—

7                   (A) by inserting “or alternative resources”  
8                   after “poultry waste”, and

9                   (B) by inserting “OR ALTERNATIVE RE-  
10                  SOURCES” after “POULTRY WASTE” in the  
11                  heading thereof.

12                  (5) QUALIFIED FACILITIES WITH CO-PRODUC-  
13                  TION.—Section 45(b) (relating to limitations and ad-  
14                  justments) is amended by adding at the end the fol-  
15                  lowing:

16                  “(4) INCREASED CREDIT FOR CO-PRODUCTION  
17                  FACILITIES.—

18                  “(A) IN GENERAL.—In the case of a quali-  
19                  fied facility described in subparagraph (C)(i) or  
20                  (D)(i) of subsection (c)(5) which has a co-pro-  
21                  duction facility or a qualified facility described  
22                  in subparagraph (A), (B), (C)(ii), (D)(ii), or  
23                  (D)(iii) of subsection (c)(5) which adds a co-  
24                  production facility after the date of the enact-  
25                  ment of this paragraph, the amount in effect

1 under subsection (a)(1) for an eligible taxable  
2 year of a taxpayer shall (after adjustment  
3 under paragraph (2) and before adjustment  
4 under paragraphs (1) and (3)) be increased by  
5 .25 cents.

6 “(B) CO-PRODUCTION FACILITY.—For  
7 purposes of subparagraph (A), the term ‘co-pro-  
8 duction facility’ means a facility which—

9 “(i) enables a qualified facility to  
10 produce heat, mechanical power, chemicals,  
11 liquid fuels, or minerals from qualified en-  
12 ergy resources in addition to electricity,  
13 and

14 “(ii) produces such energy on a con-  
15 tinuous basis.

16 “(C) ELIGIBLE TAXABLE YEAR.—For pur-  
17 poses of subparagraph (A), the term ‘eligible  
18 taxable year’ means any taxable year in which  
19 the amount of gross receipts attributable to the  
20 co-production facility of a qualified facility are  
21 at least 10 percent of the amount of gross re-  
22 cepts attributable to electricity produced by  
23 such facility.”.

24 (6) QUALIFIED FACILITIES LOCATED WITHIN  
25 QUALIFIED INDIAN LANDS.—Section 45(b) (relating

1 to limitations and adjustments), as amended by  
 2 paragraph (5), is amended by adding at the end the  
 3 following:

4 “(5) INCREASED CREDIT FOR QUALIFIED FA-  
 5 CILITY LOCATED WITHIN QUALIFIED INDIAN  
 6 LAND.—In the case of a qualified facility described  
 7 in subsection (c)(5)(D) which—

8 “(A) is located within—

9 “(i) qualified Indian lands (as defined  
 10 in section 7871(c)(3)), or

11 “(ii) lands which are held in trust by  
 12 a Native Corporation (as defined in section  
 13 3(m) of the Alaska Native Claims Settle-  
 14 ment Act (43 U.S.C. 1602(m)) for Alaska  
 15 Natives, and

16 “(B) is operated with the explicit written  
 17 approval of the Indian tribal government or Na-  
 18 tive Corporation (as so defined) having jurisdic-  
 19 tion over such lands,

20 the amount in effect under subsection (a)(1) for a  
 21 taxable year shall (after adjustment under para-  
 22 graphs (2) and (4) and before adjustment under  
 23 paragraphs (1) and (3)) be increased by .25 cents.”.

24 (7) CONFORMING AMENDMENTS.—

1 (A) The heading for section 45 is amended  
2 by inserting “**AND WASTE PRODUCTS**” after  
3 “**RESOURCES**”.

4 (B) The item relating to section 45 in the  
5 table of sections subpart D of part IV of sub-  
6 chapter A of chapter 1 is amended by inserting  
7 “and waste products” after “resources”.

8 (c) **ADDITIONAL MODIFICATIONS OF RENEWABLE**  
9 **RESOURCES AND WASTE PRODUCTS CREDIT.**—

10 (1) **CREDITS FOR CERTAIN TAX EXEMPT ORGA-**  
11 **NIZATIONS AND GOVERNMENTAL UNITS.**—Section  
12 45(d) (relating to definitions and special rules) is  
13 amended by adding at the end the following:

14 “(8) **CREDITS FOR CERTAIN TAX EXEMPT OR-**  
15 **GANIZATIONS AND GOVERNMENTAL UNITS.**—

16 “(A) **ALLOWANCE OF CREDIT.**—Any credit  
17 which would be allowable under subsection (a)  
18 with respect to a qualified facility of an entity  
19 if such entity were not exempt from tax under  
20 this chapter shall be treated as a credit allow-  
21 able under subpart C to such entity if such en-  
22 tity is—

23 “(i) an organization described in sec-  
24 tion 501(c)(12)(C) and exempt from tax  
25 under section 501(a),

1           “(ii) an organization described in sec-  
2           tion 1381(a)(2)(C),

3           “(iii) an entity the income of which is  
4           excludable from gross income under section  
5           115, or

6           “(iv) any State or political subdivision  
7           thereof, the District of Columbia, any pos-  
8           session of the United States, any Indian  
9           tribal government (within the meaning of  
10          section 7871), or any agency or instrumen-  
11          tality of any of the foregoing.

12          “(B) TRANSFER AND USE OF CREDIT.—

13           “(i) TRANSFER OF CREDIT BY TAX-  
14           EXEMPT ORGANIZATIONS AND GOVERN-  
15           MENTAL UNITS.—An entity described in  
16           subparagraph (A) may assign, trade, sell,  
17           or otherwise transfer any credit allowable  
18           to such entity under subparagraph (A) to  
19           any taxpayer.

20           “(ii) LIMITATIONS ON TRANSFER OF  
21           CREDIT.—A taxpayer which acquires a  
22           credit from an entity described in subpara-  
23           graph (A) may not assign, trade, sell, or  
24           otherwise transfer the credit.

1           “(iii) USE OF CREDIT AS AN OFF-  
2           SET.—Notwithstanding any other provision  
3           of law, in the case of an entity described  
4           in clause (i) or (ii) of subparagraph (A),  
5           any credit allowable to such entity under  
6           subparagraph (A) may be applied by such  
7           entity, without penalty, as a prepayment of  
8           any loan, debt, or other obligation the enti-  
9           ty has incurred under subchapter I of  
10          chapter 31 of title 7 of the Rural Elec-  
11          trification Act of 1936 (7 U.S.C. 901 et  
12          seq.).

13          “(C) CREDIT NOT INCOME.—Neither a  
14          transfer under clause (i) or a use under clause  
15          (iii) of subparagraph (B) of any credit allowable  
16          under subparagraph (A) shall result in income  
17          for purposes of section 501(c)(12).

18          “(D) TRANSFER PROCEEDS TREATED AS  
19          ARISING FROM ESSENTIAL GOVERNMENT FUNC-  
20          TION.—Any proceeds derived by an entity de-  
21          scribed in subparagraph (A)(iii) from the trans-  
22          fer of any credit under subparagraph (B)(i)  
23          shall be treated as arising from an essential  
24          government function.

1           “(E) CREDITS NOT REDUCED BY TAX-EX-  
 2           EMPT BONDS OR CERTAIN OTHER SUBSIDIES.—  
 3           Subsection (b)(3) shall not apply to reduce any  
 4           credit allowable under subparagraph (A) with  
 5           respect to—

6                   “(i) proceeds described in subpara-  
 7                   graph (A)(ii) of such subsection, or

8                   “(ii) any loan, debt, or other obliga-  
 9                   tion incurred under subchapter I of chap-  
 10                   ter 31 of title 7 of the Rural Electrification  
 11                   Act of 1936 (7 U.S.C. 901 et seq.),  
 12           used to provide financing for any qualified facil-  
 13           ity.

14           “(F) TREATMENT OF UNRELATED PER-  
 15           SONS.—For purposes of this paragraph and  
 16           subsection (a)(2)(B), sales among and between  
 17           entities described in subparagraph (A) shall be  
 18           treated as sales between unrelated parties.”.

19           (2) COORDINATION WITH OTHER CREDITS.—  
 20           Section 45(d), as amended by paragraph (1), is  
 21           amended by adding at the end the following:

22                   “(9) COORDINATION WITH OTHER CREDITS.—  
 23           This section shall not apply to any qualified facility  
 24           with respect to which a credit under any other sec-  
 25           tion is allowed for the taxable year unless the tax-

1 payer elects to waive the application of such credit  
2 to such facility.”.

3 (3) CREDIT ALLOWABLE AGAINST REGULAR  
4 AND PORTION OF MINIMUM TAX.—

5 (A) IN GENERAL.—Section 38(c) (relating  
6 to limitation based on amount of tax) is amend-  
7 ed by redesignating paragraph (3) as paragraph  
8 (4) and inserting after paragraph (2) the fol-  
9 lowing:

10 “(3) SPECIAL RULES FOR RENEWABLE ELEC-  
11 TRICITY PRODUCTION CREDIT.—

12 “(A) IN GENERAL.—In the case of the re-  
13 newable electricity production credit—

14 “(i) this section and section 39 shall  
15 be applied separately with respect to the  
16 credit, and

17 “(ii) for purposes of applying para-  
18 graph (1) to such credit—

19 “(I) 75 percent of the tentative  
20 minimum tax shall be substituted for  
21 the tentative minimum tax under sub-  
22 paragraph (A) thereof, and

23 “(II) the limitation under para-  
24 graph (1) (as modified by subclause  
25 (I)) shall be reduced by the credit al-

1                   lowed under subsection (a) for the  
2                   taxable year (other than the renewable  
3                   electricity production credit).

4                   “(B) RENEWABLE ELECTRICITY PRODUC-  
5                   TION CREDIT.—For purposes of this subsection,  
6                   the term ‘renewable electricity production cred-  
7                   it’ means the credit allowable under subsection  
8                   (a) by reason of section 45(a).”.

9                   (B) CONFORMING AMENDMENT.—Sub-  
10                  clause (II) of section 38(c)(2)(A)(ii) of such  
11                  Code is amended by inserting “or the renewable  
12                  electricity production credit” after “employment  
13                  credit”.

14                  (4) EXPANSION TO INCLUDE ANIMAL WASTE.—  
15                  Section 45 (relating to electricity produced from cer-  
16                  tain renewable resources), as amended by para-  
17                  graphs (2) and (4) of subsection (b), is amended—

18                         (A) by striking “poultry” each place it ap-  
19                         pears in subsection (c)(1)(C) and subsection  
20                         (d)(6) and inserting “animal”,

21                         (B) by striking “POULTRY” in the heading  
22                         of paragraph (6) of subsection (d) and inserting  
23                         “ANIMAL”,

24                         (C) by striking paragraph (3) of subsection  
25                         (c) and inserting the following:

1           “(3) ANIMAL WASTE.—The term ‘animal waste’  
2 means manure and litter and other animal wastes,  
3 including—

4           “(A) wood shavings, straw, rice hulls, and  
5 other bedding material for the disposition of  
6 manure, and

7           “(B) byproducts, packaging, and other ma-  
8 terials which are nontoxic and biodegradable  
9 and are associated with the processing, feeding,  
10 selling, transporting, and disposal of such ani-  
11 mal wastes.”, and

12           (D) by striking subparagraph (C) of sub-  
13 section (c)(5) and inserting the following:

14           “(C) ANIMAL WASTE FACILITY.—

15           “(i) IN GENERAL.—Except as pro-  
16 vided in clause (ii), in the case of a facility  
17 using animal waste (other than poultry) to  
18 produce electricity, the term ‘qualified fa-  
19 cility’ means any facility of the taxpayer  
20 which is originally placed in service after  
21 the date of the enactment of this clause.

22           “(ii) POULTRY WASTE.—In the case  
23 of a facility using animal waste relating to  
24 poultry to produce electricity, the term  
25 ‘qualified facility’ means any facility of the

1 taxpayer which is originally placed in serv-  
2 ice after December 31, 1999.”.

3 (5) TREATMENT OF QUALIFIED FACILITIES NOT  
4 IN COMPLIANCE WITH POLLUTION LAWS.—Section  
5 45(c)(5) (relating to qualified facilities), as amended  
6 by paragraphs (2) and (3) of subsection (b), is  
7 amended by adding at the end the following:

8 “(E) NONCOMPLIANCE WITH POLLUTION  
9 LAWS.—For purposes of this paragraph, a facil-  
10 ity which is not in compliance with the applica-  
11 ble State and Federal pollution prevention, con-  
12 trol, and permit requirements for any period of  
13 time shall not be considered to be a qualified  
14 facility during such period.”.

15 (6) PERMANENT EXTENSION OF QUALIFIED FA-  
16 CILITY DATES.—Section 45(c)(5) (relating to quali-  
17 fied facility), as redesignated by subsection (b)(2), is  
18 amended by striking “, and before January 1, 2002”  
19 in subparagraphs (A) and (B).

20 (d) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to electricity and other energy pro-  
22 duced after the date of the enactment of this Act.

○