

117TH CONGRESS
1ST SESSION

H. R. 3939

To amend the Internal Revenue Code of 1986 to make qualified biogas property and qualified manure resource recovery property eligible for the energy credit and to permit renewable energy bonds to finance qualified biogas property, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2021

Mr. KIND (for himself and Mr. REED) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Science, Space, and Technology, 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 amend the Internal Revenue Code of 1986 to make qualified biogas property and qualified manure resource recovery property eligible for the energy credit and to permit renewable energy bonds to finance qualified biogas property, 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 “Agriculture Environ-
5 mental Stewardship Act of 2021”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Incentives and encouragement for the con-
4 servation and appropriate handling of nutrients con-
5 tained in organic matter are necessary.

6 (2) Biogas systems will save Federal, State, and
7 local taxpayers money by converting waste into use-
8 ful products, such as fuel, fertilizer, thermal heat,
9 feedstock for hydrogen fuel cells, and renewable
10 chemicals.

11 (3) Manure resource recovery systems will save
12 Federal, State, and local taxpayers money by recov-
13 ering the nutrients contained in organic matter from
14 their source, rather than recovering the nutrients
15 after they have entered landfills or waterways.

16 **SEC. 3. ENERGY CREDIT FOR QUALIFIED BIOGAS PROP-**
17 **ERTY AND QUALIFIED MANURE RESOURCE**
18 **RECOVERY PROPERTY.**

19 (a) IN GENERAL.—Section 48(a)(3)(A) of the Inter-
20 nal Revenue Code of 1986 is amended by striking “or”
21 at the end of clause (vii) and by adding at the end the
22 following new clauses:

23 “(ix) qualified biogas property, or

24 “(x) qualified manure resource recov-
25 ery property,”.

1 (b) 30-PERCENT CREDIT.—Section 48(a)(2)(A)(i) of
 2 such Code is amended by striking “and” at the end of
 3 subclause (IV), by striking “and” at the end of subclause
 4 (V), and by adding at the end the following new sub-
 5 clauses:

6 “(VI) qualified biogas property,
 7 and
 8 “(VII) qualified manure resource
 9 recovery property, and”.

10 (c) DEFINITIONS.—Section 48(c) of such Code is
 11 amended by adding at the end the following new para-
 12 graphs:

13 “(6) QUALIFIED BIOGAS PROPERTY.—

14 “(A) IN GENERAL.—The term ‘qualified
 15 biogas property’ means property comprising a
 16 system which—

17 “(i) uses anaerobic digesters, or other
 18 biological, chemical, thermal, or mechanical
 19 processes (alone or in combination), to
 20 convert biomass (as defined in section
 21 45K(c)(3)) into a gas which consists of not
 22 less than 52 percent methane, and

23 “(ii) captures such gas for use as a
 24 fuel.

1 “(B) INCLUSION OF CERTAIN CLEANING
2 AND CONDITIONING EQUIPMENT.—Such term
3 shall include any property which cleans and
4 conditions the gas referred to in subparagraph
5 (A) for use as a fuel.

6 “(C) TERMINATION.—No credit shall be
7 determined under this section with respect to
8 any qualified biogas property for any period
9 after December 31, 2023.

10 “(7) QUALIFIED MANURE RESOURCE RECOVERY
11 PROPERTY.—

12 “(A) IN GENERAL.—The term ‘qualified
13 manure resource recovery property’ means
14 property comprising a system which uses phys-
15 ical, biological, chemical, thermal, or mechanical
16 processes to recover the nutrients nitrogen and
17 phosphorus from a non-treated digestate or ani-
18 mal manure by reducing or separating at least
19 50 percent of the concentration of such nutri-
20 ents, excluding any reductions during the incin-
21 eration, storage, composting, or field application
22 of the non-treated digestate or animal manure.

23 “(B) INCLUSION OF CERTAIN PROCESSING
24 EQUIPMENT.—Such term shall include—

1 “(i) any property which is used to re-
 2 cover the nutrients referred to in subpara-
 3 graph (A), such as—

4 “(I) biological reactors,

5 “(II) crystallizers,

6 “(III) water filtration membrane
 7 systems and other water purifiers,

8 “(IV) evaporators,

9 “(V) distillers,

10 “(VI) decanter centrifuges, and

11 “(VII) equipment that facilitates
 12 the process of removing and
 13 dewatering suspended and dissolved
 14 solids, ammonia stripping, gasifi-
 15 cation, or ozonation, and

16 “(ii) any thermal drier which treats
 17 the nutrients recovered by the processes re-
 18 ferred to in subparagraph (A).

19 “(C) TERMINATION.—No credit shall be
 20 determined under this section with respect to
 21 any qualified manure resource recovery prop-
 22 erty for any period after December 31, 2023.”.

23 (d) DENIAL OF DOUBLE BENEFIT FOR QUALIFIED
 24 BIOGAS PROPERTY.—Section 45(e) of such Code is

1 amended by adding at the end the following new para-
 2 graph:

3 “(12) COORDINATION WITH ENERGY CREDIT
 4 FOR QUALIFIED BIOGAS PROPERTY.—The term
 5 ‘qualified facility’ shall not include any facility which
 6 produces electricity from gas produced by qualified
 7 biogas property (as defined in section 48(c)(6)) if a
 8 credit is determined under section 48 with respect to
 9 such property for the taxable year or any prior tax-
 10 able year.”.

11 (e) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to periods after December 31,
 13 2020, in taxable years ending after such date, under rules
 14 similar to the rules of section 48(m) of such Code (as in
 15 effect on the day before the date of the enactment of the
 16 Revenue Reconciliation Act of 1990).

17 **SEC. 4. RENEWABLE ENERGY BONDS RELATING TO BIOGAS**
 18 **PROPERTY AND MANURE RESOURCE RECOV-**
 19 **ERY PROPERTY.**

20 (a) IN GENERAL.—Part IV of subchapter A of chap-
 21 ter 1 of the Internal Revenue Code of 1986 is amended
 22 by adding at the end the following:

23 **“Subpart H—Nonrefundable Credit to Holders of**
 24 **Certain Bonds**

“Sec. 54. Credit to holders of qualified renewable energy bonds.

1 **“SEC. 54. CREDIT TO HOLDERS OF QUALIFIED RENEWABLE**
2 **ENERGY BONDS.**

3 “(a) ALLOWANCE OF CREDIT.—If a taxpayer holds
4 a qualified renewable energy bond on one or more credit
5 allowance dates of the bond during any taxable year, there
6 shall be allowed as a credit against the tax imposed by
7 this chapter for the taxable year an amount equal to 70
8 percent of the sum of the credits determined under sub-
9 section (b) with respect to such dates.

10 “(b) AMOUNT OF CREDIT.—

11 “(1) IN GENERAL.—The amount of the credit
12 determined under this subsection with respect to any
13 credit allowance date for a qualified renewable en-
14 ergy bond is 25 percent of the annual credit deter-
15 mined with respect to such bond.

16 “(2) ANNUAL CREDIT.—The annual credit de-
17 termined with respect to any qualified renewable en-
18 ergy bond is the product of—

19 “(A) the applicable credit rate, multiplied
20 by

21 “(B) the outstanding face amount of the
22 bond.

23 “(3) APPLICABLE CREDIT RATE.—For purposes
24 of paragraph (2), the applicable credit rate is the
25 rate which the Secretary estimates will permit the
26 issuance of qualified renewable energy bonds with a

1 specified maturity or redemption date without dis-
 2 count and without interest cost to the qualified
 3 issuer. The applicable credit rate with respect to any
 4 qualified renewable energy bond shall be determined
 5 as of the first day on which there is a binding, writ-
 6 ten contract for the sale or exchange of the bond.

7 “(4) SPECIAL RULE FOR ISSUANCE AND RE-
 8 DEMPTION.—In the case of a bond which is issued
 9 during the 3-month period ending on a credit allow-
 10 ance date, the amount of the credit determined
 11 under this subsection with respect to such credit al-
 12 lowance date shall be a ratable portion of the credit
 13 otherwise determined based on the portion of the 3-
 14 month period during which the bond is outstanding.
 15 A similar rule shall apply when the bond is redeemed
 16 or matures.

17 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

18 “(1) IN GENERAL.—The credit allowed under
 19 subsection (a) for any taxable year shall not exceed
 20 the excess of—

21 “(A) the sum of the regular tax liability
 22 (as defined in section 26(b)) plus the tax im-
 23 posed by section 55, over

1 “(B) the sum of the credits allowable
2 under this part (other than subpart C and this
3 subpart).

4 “(2) CARRYOVER OF UNUSED CREDIT.—If the
5 credit allowable under subsection (a) exceeds the
6 limitation imposed by paragraph (1) for such taxable
7 year, such excess shall be carried to the succeeding
8 taxable year and added to the credit allowable under
9 subsection (a) for such taxable year (determined be-
10 fore the application of paragraph (1) for such suc-
11 ceeding taxable year).

12 “(d) QUALIFIED RENEWABLE ENERGY BONDS.—For
13 purposes of this subpart—

14 “(1) IN GENERAL.—The term ‘qualified renew-
15 able energy bonds’ means any bond issued as part
16 of an issue if—

17 “(A) the bond is issued by a qualified
18 issuer pursuant to an allocation by the Sec-
19 retary to such issuer of a portion of the na-
20 tional renewable energy bond limitation under
21 paragraph (2),

22 “(B) 100 percent of the available project
23 proceeds of such issue are to be used for capital
24 expenditures incurred by a governmental body,
25 public power provider, or cooperative electric

1 company for property owned by the public
2 power provider, a governmental body, or a coop-
3 erative electric company, as the case may be,
4 that is—

5 “(i) qualified biogas property (as de-
6 fined in section 48(c)(6)), or

7 “(ii) a qualified manure resource re-
8 covery property (as defined in section
9 48(c)(7)),

10 “(C) the qualified issuer designates such
11 bond for purposes of this section, and

12 “(D) the issue meets the requirements of
13 this section.

14 “(2) LIMITATION ON AMOUNT OF BONDS DES-
15 IGNATED.—

16 “(A) IN GENERAL.—The maximum aggre-
17 gate face amount of bonds which may be des-
18 ignated under paragraph (1)(C) by any issuer
19 shall not exceed the limitation amount allocated
20 under this paragraph to such issuer.

21 “(B) NATIONAL LIMITATION ON AMOUNT
22 OF BONDS DESIGNATED.—There is a national
23 renewable energy bond limitation of
24 \$800,000,000 which shall be allocated by the

Secretary as provided in subparagraph (C), except that—

“(i) not more than $33\frac{1}{3}$ percent thereof may be allocated to projects of public power providers,

“(ii) not more than $33\frac{1}{3}$ percent thereof may be allocated to projects of governmental bodies, and

“(iii) not more than $33\frac{1}{3}$ percent thereof may be allocated to projects of cooperative electric companies.

“(C) METHOD OF ALLOCATION.—

“(i) ALLOCATION AMONG PUBLIC POWER PROVIDERS.—After the Secretary determines the projects of public power providers which are appropriate for receiving an allocation of the national renewable energy bond limitation, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the limitation under subparagraph (B)(i) bears to the cost of all such projects.

1 “(ii) ALLOCATION AMONG GOVERN-
2 MENTAL BODIES AND COOPERATIVE ELEC-
3 TRIC COMPANIES.—The Secretary shall
4 make allocations of the amount of the na-
5 tional renewable energy bond limitation de-
6 scribed in subparagraphs (B)(ii) and
7 (B)(iii) among projects of governmental
8 bodies and cooperative electric companies,
9 respectively, in such manner as the Sec-
10 retary determines appropriate.

11 “(e) DEFINITIONS.—For purposes of this section—

12 “(1) QUALIFIED ISSUER.—The term ‘qualified
13 issuer’ means a public power provider, a cooperative
14 electric company, a governmental body, a renewable
15 energy bond lender, or a not-for-profit electric utility
16 which has received a loan or loan guarantee under
17 the Rural Electrification Act.

18 “(2) PUBLIC POWER PROVIDER.—The term
19 ‘public power provider’ means a State utility with a
20 service obligation, as such terms are defined in sec-
21 tion 217 of the Federal Power Act (as in effect on
22 the date of the enactment of this paragraph).

23 “(3) GOVERNMENTAL BODY.—The term ‘gov-
24 ernmental body’ means any State or Indian tribal
25 government, or any political subdivision thereof.

1 “(4) COOPERATIVE ELECTRIC COMPANY.—The
 2 term ‘cooperative electric company’ means a mutual
 3 or cooperative electric company described in section
 4 501(c)(12) or section 1381(a)(2)(C).

5 “(5) RENEWABLE ENERGY BOND LENDER.—
 6 The term ‘renewable energy bond lender’ means a
 7 lender which is a cooperative which is owned by, or
 8 has outstanding loans to, 100 or more cooperative
 9 electric companies and is in existence on February
 10 1, 2002, and shall include any affiliated entity which
 11 is controlled by such lender.

12 “(f) OTHER DEFINITIONS.—For purposes of this
 13 subchapter—

14 “(1) CREDIT ALLOWANCE DATE.—The term
 15 ‘credit allowance date’ means—

16 “(A) March 15,

17 “(B) June 15,

18 “(C) September 15, and

19 “(D) December 15.

20 Such term includes the last day on which the bond
 21 is outstanding.

22 “(2) BOND.—The term ‘bond’ includes any ob-
 23 ligation.

1 “(3) STATE.—The term ‘State’ includes the
2 District of Columbia and any possession of the
3 United States.

4 “(4) AVAILABLE PROJECT PROCEEDS.—The
5 term ‘available project proceeds’ means—

6 “(A) the excess of—

7 “(i) the proceeds from the sale of an
8 issue, over

9 “(ii) the issuance costs financed by
10 the issue (to the extent that such costs do
11 not exceed 2 percent of such proceeds),
12 and

13 “(B) the proceeds from any investment of
14 the excess described in subparagraph (A).

15 “(g) CREDIT TREATED AS INTEREST.—For purposes
16 of this subtitle, the credit determined under subsection (a)
17 shall be treated as interest which is includible in gross in-
18 come.

19 “(h) S CORPORATIONS AND PARTNERSHIPS.—In the
20 case of a renewable energy bond held by an S corporation
21 or partnership, the allocation of the credit allowed by this
22 section to the shareholders of such corporation or partners
23 of such partnership shall be treated as a distribution.

24 “(i) BONDS HELD BY REAL ESTATE INVESTMENT
25 TRUSTS.—If any qualified renewable energy bond is held

1 by a real estate investment trust, the credit determined
2 under subsection (a) shall be allowed to beneficiaries of
3 such trust (and any gross income included under sub-
4 section (f) with respect to such credit shall be distributed
5 to such beneficiaries) under procedures prescribed by the
6 Secretary.

7 “(j) CREDITS MAY BE STRIPPED.—Under regula-
8 tions prescribed by the Secretary—

9 “(1) IN GENERAL.—There may be a separation
10 (including at issuance) of the ownership of a quali-
11 fied renewable energy bond and the entitlement to
12 the credit under this section with respect to such
13 bond. In case of any such separation, the credit
14 under this section shall be allowed to the person who
15 on the credit allowance date holds the instrument ev-
16 idencing the entitlement to the credit and not to the
17 holder of the bond.

18 “(2) CERTAIN RULES TO APPLY.—In the case
19 of a separation described in paragraph (1), the rules
20 of section 1286 shall apply to the qualified renew-
21 able energy bond as if it were a stripped bond and
22 to the credit under this section as if it were a
23 stripped coupon.”.

1 (b) PAYMENTS TO ISSUERS.—Subchapter B of chap-
 2 ter 65 of such Code is amended by adding at the end the
 3 following:

4 **“SEC. 6431. CREDIT FOR QUALIFIED RENEWABLE ENERGY**
 5 **BONDS ALLOWED TO ISSUER.**

6 “(a) IN GENERAL.—The issuer of a qualified renew-
 7 able energy bond (as defined in section 54(d)) shall be al-
 8 lowed a credit with respect to each interest payment under
 9 such bond which shall be payable by the Secretary as pro-
 10 vided in subsection (b).

11 “(b) PAYMENT OF CREDIT.—The Secretary shall pay
 12 (contemporaneously with each interest payment date
 13 under such bond) to the issuer of such bond (or to any
 14 person who makes such interest payments on behalf of the
 15 issuer) 35 percent of the interest payable under such bond
 16 on such date.

17 “(c) APPLICATION OF ARBITRAGE RULES.—For pur-
 18 poses of section 148, the yield on such bonds shall be re-
 19 duced by the credit allowed under this section.

20 “(d) INTEREST PAYMENT DATE.—For purposes of
 21 this subsection, the term ‘interest payment date’ means
 22 each date on which interest is payable by the issuer under
 23 the terms of the bond.”.

24 (c) CONFORMING AMENDMENTS.—

1 (1) The table of subparts for part IV of sub-
 2 chapter A of chapter 1 of such Code is amended by
 3 adding at the end the following new item:

“SUBPART H. NONREFUNDABLE CREDIT TO HOLDERS OF CERTAIN BONDS”.

4 (2) The table of sections for subchapter B of
 5 chapter 65 of such Code is amended by adding at
 6 the end the following new item:

“Sec. 6431. Credit for qualified renewable energy bonds allowed to issuer.”.

7 (3) Section 6211(b)(4)(A) of such Code is
 8 amended by inserting “6431,” after “6428B,”.

9 (4) Section 6401(b)(1) of such Code is amend-
 10 ed by striking “and G” and inserting “G, and H”.

11 (d) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to bonds issued after the date of
 13 the enactment of this Act.

14 **SEC. 5. STUDY OF BIOGAS AND NUTRIENT REUSE.**

15 (a) IN GENERAL.—The Secretary of the Treasury
 16 shall enter into an agreement with the National Renewable
 17 Energy Laboratory to undertake a study of biogas that
 18 addresses the following:

19 (1) The quality of biogas, including a compari-
 20 son of biogas to natural gas and the identification
 21 of any components of biogas which make biogas un-
 22 suitable for injection into existing natural gas pipe-
 23 lines.

1 (2) Methods for obtaining the highest energy
2 content in biogas, including the use of co-digestion
3 and identifying the optimal feed mixture.

4 (3) Recommendations for the expansion of
5 biogas production, including an analysis of the ex-
6 tent to which increasing the methane content of
7 biogas would result in the greater use of biogas and
8 an analysis of how the expanded use of biogas could
9 help meet the growing energy needs of the United
10 States.

11 (4) Methods for productive use of nutrients re-
12 covered from qualified manure resource recovery
13 property that benefits the agricultural economy.

14 (b) REPORT.—Not later than 2 years after the date
15 of the enactment of this Act, the Secretary shall submit
16 to Congress a report on the study conducted under sub-
17 section (a).

○