

Chuck Grassley
S.L.C.

99

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide a Manager's amendment.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

H.R. 6To ^{Craig} ~~er~~ ^{for} AMENDMENT No. 1009By GrassleyTo: H.R. 6

Referred

20
Page(s)

GPO: 2004 97-290(Mec)

AMENDMENTS intended to be proposed by Mr. GRASSLEY
(for himself and Mr. BAUCUS)

Viz:

- 1 On page 12 (of title XV as agreed to), after line 23,
2 add the following:

3 **SEC. ____ APPLICATION OF SECTION 45 CREDIT TO AGRI-**
4 **CULTURAL COOPERATIVES.**

- 5 (a) IN GENERAL.—Section 45(e) (relating to defini-
6 tions and special rules), as amended by this Act, is amend-
7 ed by adding at the end the following:

- 8 “(1) ALLOCATION OF CREDIT TO PATRONS OF
9 AGRICULTURAL COOPERATIVE.—

- 10 “(A) ELECTION TO ALLOCATE.—

1 “(i) IN GENERAL.—In the case of an
2 eligible cooperative organization, any por-
3 tion of the credit determined under sub-
4 section (a) for the taxable year may, at the
5 election of the organization, be apportioned
6 among patrons of the organization on the
7 basis of the amount of business done by
8 the patrons during the taxable year.

9 “(ii) FORM AND EFFECT OF ELEC-
10 TION.—An election under clause (i) for any
11 taxable year shall be made on a timely
12 filed return for such year. Such election,
13 once made, shall be irrevocable for such
14 taxable year.

15 “(F) TREATMENT OF ORGANIZATIONS AND
16 PATRONS.—The amount of the credit appor-
17 tioned to any patrons under subparagraph
18 (A)—

19 “(i) shall not be included in the
20 amount determined under subsection (a)
21 with respect to the organization for the
22 taxable year, and

23 “(ii) shall be included in the amount
24 determined under subsection (a) for the
25 taxable year of the patrons with or within

1 which the taxable year of the organization
2 ends.

3 “(C) SPECIAL RULES FOR DECREASE IN
4 CREDITS FOR TAXABLE YEAR.—If the amount
5 of the credit of a cooperative organization de-
6 termined under subsection (a) for a taxable
7 year is less than the amount of such credit
8 shown on the return of the cooperative organi-
9 zation for such year, an amount equal to the
10 excess of—

11 “(i) such reduction, over

12 “(ii) the amount not apportioned to
13 such patrons under subparagraph (A) for
14 the taxable year, shall be treated as an in-
15 crease in tax imposed by this chapter on
16 the organization. Such increase shall not
17 be treated as tax imposed by this chapter
18 for purposes of determining the amount of
19 any credit under this subpart or subpart
20 A, B, E, or G.

21 “(D) ELIGIBLE COOPERATIVE DEFINED.—
22 For purposes of this section the term ‘eligible
23 cooperative’ means a cooperative organization
24 described in section 1381(a) which is owned
25 more than 50 percent by agricultural producers

1 or by entities owned by agricultural producers.
2 For this purpose an entity owned by an agricul-
3 tural producer is one that is more than 50 per-
4 cent owned by agricultural producers.

5 “(E) WRITTEN NOTICE TO PATRONS.—If
6 any portion of the credit available under sub-
7 section (a) is allocated to patrons under sub-
8 paragraph (A), the eligible cooperative shall
9 provide any patron receiving an allocation writ-
10 ten notice of the amount of the allocation. Such
11 notice shall be provided before the date on
12 which the return described in subparagraph
13 (B)(ii) is due.”.

14 **SEC. ____ EXPANSION OF RESOURCES TO WAVE, CURRENT,**
15 **TIDAL, AND OCEAN THERMAL ENERGY.**

16 a) IN GENERAL.—Section 45(c)(1) (defining quali-
17 fied energy resources), as amended by this Act, is amend-
18 ed by striking “and” at the end of subparagraph (H), by
19 striking the period at the end of subparagraph (I) and
20 inserting “, and” and by adding at the end the following
21 new subparagraph:

22 “(J) wave, current, tidal, and ocean ther-
23 mal energy.”

1 (b) DEFINITION OF RESOURCES.—Section 45(c), as
2 amended by this Act, is amended by adding at the end
3 the following new paragraph:

4 “(9) WAVE, CURRENT, TIDAL, AND OCEAN
5 THERMAL ENERGY.—The term ‘wave, current, tidal,
6 and ocean thermal energy’ means electricity pro-
7 duced from any of the following:

8 “(A) Free flowing ocean water derived
9 from tidal currents, ocean currents, waves, or
10 estuary currents.

11 “(B) Ocean thermal energy.

12 “(C) Free flowing water in rivers, lakes,
13 man made channels, or streams.”

14 (c) FACILITIES.—Section 45(d), as amended by this
15 Act, is amended by adding at the end the following new
16 paragraph:

17 “(11) WAVE, CURRENT, TIDAL, AND OCEAN
18 THERMAL FACILITY.—In the case of a facility using
19 resources described in subparagraph (A), (B), or (C)
20 of subsection (c)(9) to produce electricity, the term
21 ‘qualified facility’ means any facility owned by the
22 taxpayer which is originally placed in service after
23 the date of the enactment of this paragraph and be-
24 fore January 1, 2009, but such term shall not in-

1 clude a facility which includes impoundment struc-
2 tures or a small irrigation power facility.”

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years ending after the
5 date of the enactment of this Act.

6 (On page 35 (of title XV as agreed to), strike lines
7 10 through 16, and insert the following:

8 “(A) APPLICATION PERIOD.—Each appli-
9 cant for certification under this paragraph shall
10 submit an application meeting the requirements
11 of subparagraph (B). An applicant may only
12 submit an application during the 3-year period
13 beginning on the date the Secretary establishes
14 the program under paragraph (1).

15 “(B) REQUIREMENTS FOR APPLICATIONS
16 FOR CERTIFICATION.—An application under
17 subparagraph (A) shall contain such informa-
18 tion as the Secretary may require in order to
19 make a determination to accept or reject an ap-
20 plication for certification as meeting the re-
21 quirements under subsection (e)(1). Any infor-
22 mation contained in the application shall be
23 protected as provided in section 552(b)(4) of
24 title 5, United States Code.

1 “(C) TIME TO ACT UPON APPLICATIONS
2 FOR CERTIFICATION.—The Secretary shall issue
3 a determination as to whether an applicant has
4 met the requirements under subsection (e)(1)
5 within 60 days following the date of submittal
6 of the application for certification.

7 “(D) TIME TO MEET CRITERIA FOR CER-
8 TIFICATION.—Each applicant for certification
9 shall have 2 years from the date of acceptance
10 by the Secretary of the application during
11 which to provide to the Secretary evidence that
12 the criteria set forth in subsection (e)(2) have
13 been met.

14 “(E) PERIOD OF ISSUANCE.—An applicant
15 which receives a certification shall have 5 years
16 from the date of issuance of the certification in
17 order to place the project in service and if such
18 project is not placed in service by that time pe-
19 riod then the certification shall no longer be
20 valid.”.

21 On page 36 (of title XV as agreed to), strike lines
22 14 through 23.

1 On page 36 (of title XV as agreed to), line 24, strike
2 “(6)” and insert “(5)”.

3 On page 37 (of title XV as agreed to), line 16, strike
4 “commitment”.

5 On page 37 (of title XV as agreed to), line 17, strike
6 “(e)(4)(B)” and insert “paragraph (2)”.

7 On page 37 (of title XV as agreed to), line 19, strike
8 “(f)(2)(B)(ii)” and insert “paragraph (2)(D)”.

9 On page 37 (of title XV as agreed to), line 20, strike
10 “commitment”.

11 On page 37 (of title XV as agreed to), between lines
12 22 and 23, insert the following:

13 “(C) REALLOCATION.—If the Secretary de-
14 termines that megawatts under clause (i) or (ii)
15 of paragraph (3)(B) are available for realloca-
16 tion pursuant to the requirements set forth in
17 paragraph (2), the Secretary is authorized to
18 conduct an additional program for applications
19 for certification.”.

1 On page 38 (of title XV as agreed to), line 7, strike
2 “or polygeneration”.

3 (On page 38 (of title XV as agreed to), beginning with
4 line 13 strike all through page 39, line 25, and insert the
5 following:

6 “(C) the project, consisting of one or more
7 electric generation units at one site, will have a
8 total nameplate generating capacity of at least
9 400 megawatts;

10 “(D) the applicant demonstrates that there
11 is a letter of intent signed by an officer of an
12 entity willing to purchase the majority of the
13 output of the project or signed by an officer of
14 a utility indicating that the electricity capacity
15 addition is consistent with that utility’s inte-
16 grated resource plan as approved by the regu-
17 latory or governing body that oversees elec-
18 tricity capacity allocations of the utility;

19 “(E) there is evidence of ownership or con-
20 trol of a site of sufficient size to allow the pro-
21 posed project to be constructed and to operate
22 on a long-term basis; and

23 “(F) the project will be located in the
24 United States.

1 “(2) REQUIREMENTS FOR CERTIFICATION.—

2 For the purpose of subsection (d)(2)(D), a project
3 shall be eligible for certification only if the Secretary
4 determines that—

5 “(A) the applicant for certification has re-
6 ceived all Federal and State environmental au-
7 thorizations or reviews necessary to commence
8 construction of the project; and

9 “(B) the applicant for certification, except
10 in the case of a retrofit or repower of an exist-
11 ing electric generation unit, has purchased or
12 entered into a binding contract for the purchase
13 of the main steam turbine or turbines for the
14 project, except that such contract may be con-
15 tingent upon receipt of a certification under
16 subsection (d)(2).”.

17 On page 40 (of title XV as agreed to), strike “(2)”
18 and insert “(3)”.

19 On page 40 (of title XV as agreed to), line 4, strike
20 “subsection (d)(2)(B)(i)” and insert “subsection (d)(2)”.

21 On page 40 (of title XV as agreed to), line 5, strike
22 “certify capacity” and insert “certify capacity, in accord-

1 ance with the procedures set forth in subsection (d), in
2 relatively equal amounts”.

3 On page 40 (of title XV as agreed to), beginning with
4 line 19, strike all through page 42, line 6.

5 On page 42 (of title XV as agreed to), line 18, strike
6 “the vendor warrants that”.

7 On page 44 (of title XV as agreed to), after line 25,
8 insert the following:

9 “(h) APPLICABILITY.—No use of technology (or level
10 of emission reduction solely by reason of the use of the
11 technology), and no achievement of any emission reduction
12 by the demonstration of any technology or performance
13 level, by or at one or more facilities with respect to which
14 a credit is allowed under this section, shall be considered
15 to indicate that the technology or performance level is—

16 “(1) adequately demonstrated for purposes of
17 section 111 of the Clean Air Act (42 U.S. C. 7411);

18 “(2) achievable for purposes of section 169 of
19 that Act (42 U.S. C. 7479); or

20 “(3) achievable in practice for purposes of sec-
21 tion 171 of such Act (42 U.S.C. 7501).

1 (On page 155 (of title XV as agreed to), line 13, strike
2 "2010" and insert "2012".

3 (On page 186 (of title XV as agreed to), line 2, insert
4 "or any mixture of biodiesel (as defined in section
5 40A(d)(1)) and diesel fuel (as defined in section
6 4083(a)(3)), determined without regard to any use of ker-
7 osene and containing at least 20 percent biodiesel" after
8 "hydrogen".

9 Beginning on page 211 (of title XV as agreed to),
10 line 16, strike all through page 212, line 17, and insert
11 the following:

12 "(b) LIMITATION.—The amount allowable as a credit
13 under subsection (a) with respect to any qualified recy-
14 cling equipment shall not exceed—

15 "(1) in the case of such equipment described in
16 subsection (c)(1)(A)(i), 15 percent of the cost of
17 such equipment, and

18 "(2) in the case of such equipment described in
19 subsection (c)(1)(A)(ii), 15 percent of so much of
20 the cost of each piece of equipment as exceeds
21 \$400,000.

22 "(c) DEFINITIONS.—For purposes of this section—

23 "(1) QUALIFIED RECYCLING EQUIPMENT.—

1 “(A) IN GENERAL.—The term ‘qualified
2 recycling equipment’ means equipment, includ-
3 ing connecting piping—

4 “(i) employed in sorting or processing
5 residential and commercial qualified recy-
6 clable materials described in paragraph
7 (2)(A) for the purpose of converting such
8 materials for use in manufacturing tan-
9 gible consumer products, including pack-
10 aging, or

11 “(ii) the primary purpose of which is
12 the shredding and processing of qualified
13 recyclable materials described in paragraph
14 (2)(B).

15 “(B) EQUIPMENT AT COMMERCIAL OR
16 PUBLIC VENUES INCLUDED.—For purposes of
17 subparagraph (A)(i), such term includes equip-
18 ment which is utilized at commercial or public
19 venues, including recycling collection centers,
20 where the equipment is utilized to sort or proc-
21 ess qualified recyclable materials for such pur-
22 pose

23 “(C) EXCLUSION.—Such term does not in-
24 clude rolling stock or other equipment used to
25 transport recyclable materials.

1 “(2) QUALIFIED RECYCLABLE MATERIALS.—

2 The term ‘qualified recyclable materials’ means—

3 “(A) any packaging or printed material
4 which is glass, paper, plastic, steel, or alu-
5 minum, and

6 “(B) any electronic waste (including any
7 cathode ray tube, flat panel screen, or similar
8 video display device with a screen size greater
9 than 4 inches measured diagonally, or a central
10 processing unit),
11 generated by an individual or business and which
12 has been separated from solid waste for the purposes
13 of collection and recycling.

14 On page 215 (of title XV as agreed to), line 23, strike
15 “for any” and insert “during any”.

16 On page 230 (of title XV as agreed to), between lines
17 2 and 3, insert the following:

18 **SEC. ____ THREE-YEAR APPLICABLE RECOVERY PERIOD**
19 **FOR DEPRECIATION OF QUALIFIED ENERGY**
20 **MANAGEMENT DEVICES.**

21 (a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-
22 year property) is amended by striking “and” at the end
23 of clause (ii), by striking the period at the end of clause

1 (iii) and inserting “, and”, and by adding at the end the
2 following new clause:

3 “(iv) any qualified energy manage-
4 ment device.”.

5 (b) DEFINITION OF QUALIFIED ENERGY MANAGE-
6 MENT DEVICE.—Section 168(i) (relating to definitions
7 and special rules), as amended by this Act, is amended
8 by inserting at the end the following new paragraph:

9 “(18) QUALIFIED ENERGY MANAGEMENT DE-
10 VICE.—

11 “(A) IN GENERAL.—The term ‘qualified
12 energy management device’ means any energy
13 management device—

14 “(1) which is placed in service before January
15 1, 2008, by a taxpayer who is a supplier of electric
16 energy or a provider of electric energy services,

17 “(2) the original use of which commences with
18 the taxpayer, and

19 “(3) the purchase of which is subject to a bind-
20 ing contract entered into after June 23, 2005, but
21 only if there was no written binding contract entered
22 into on or before such date.

23 “(B) ENERGY MANAGEMENT DEVICE.—

24 For purposes of subparagraph (A), the term
25 ‘energy management device’ means any meter

1 or metering device which is used by the
2 taxpayer—

3 “(i) to measure and record electricity
4 usage data on a time-differentiated basis
5 in at least 4 separate time segments per
6 day, and

7 “(ii) to provide such data on at least
8 a monthly basis to both consumers and the
9 taxpayer.”.

10 (c) **ALTERNATIVE SYSTEM.**—The table contained in
11 section 168(g)(3)(B) is amended by inserting after the
12 item relating to subparagraph (A)(iii) the following:

“(A)(iv) 20”.

13 (d) **EFFECTIVE DATE.**—The amendments made by
14 this section shall apply to property placed in service after
15 December 31, 2005, in taxable years ending after such
16 date.

17 **SEC. ____.** **EXCEPTION FROM VOLUME CAP FOR CERTAIN**
18 **COOLING FACILITIES.**

19 (a) **IN GENERAL.**—Section 146 (relating to volume
20 cap) is amended by redesignating subsections (i) through
21 (n) as subsections (j) through (o), respectively, and by in-
22 serting after subsection (h) the following:

23 “(i) **EXCEPTION FOR FACILITIES USED TO COOL**
24 **STRUCTURES WITH OCEAN WATER, ETC.**—

1 “(1) IN GENERAL.—Only for purposes of this
2 section, the term ‘private activity bond’ shall not in-
3 clude any exempt facility bond described in section
4 142(a)(9) which is issued as part of an issue to fi-
5 nance any project which is designed to access deep
6 water renewable thermal energy for district cooling
7 to provide building air conditioning (including any
8 distribution piping, pumping, and chiller facilities).

9 “(2) LIMITATION.—Paragraph (1) shall apply
10 only to bonds issued as part of an issue the aggre-
11 gate authorized face amount of which is not more
12 than \$75,000,000 with respect to any project de-
13 scribed in such paragraph.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to projects placed in service after
16 the date of enactment of this Act and before July 1, 2008.

17 On page 6 (of Senate amendment number 933 as
18 modified and agreed to), line 12, strike “(i)” and insert
19 “(iii)”.

20 On page 6 (of Senate amendment number 933 as
21 modified and agreed to), line 18, strike the last period and
22 insert “, and”.

1 On page 232 (of title XV as agreed to), line 22, strike
2 “(iii)” and insert “(iv)”.

3 On page 255 (of title XV as agreed to), line 6, strike
4 “2007” and insert “2006”.

5 On page 256 (of title XV as agreed to), strike lines
6 3 through 15, and insert the following:

7 (b) NO EXEMPTIONS FROM TAX EXCEPT FOR EX-
8 PORTS.—

9 (1) IN GENERAL.—Section 4082(a) (relating to
10 exemptions for diesel fuel and kerosene) is amended
11 by inserting “(other than such tax at the Leaking
12 Underground Storage Tank Trust Fund financing
13 rate imposed in all cases other than for export)”
14 after “section 4081”.

15 (2) AMENDMENTS RELATING TO SECTION
16 4041.—

17 (A) Subsections (a)(1)(B), (a)(2)(A), and
18 (c)(2) of section 4041 are each amended by in-
19 serting “(other than such tax at the Leaking
20 Underground Storage Tank Trust Fund financ-
21 ing rate)” after “section 4081”.

22 (B) Section 4041(b)(1)(A) is amended by
23 striking “or (d)(1))”.

1 (C) Section 4041(d) is amended by adding
2 at the end the following new paragraph:

3 “(5) NONAPPLICATION OF EXEMPTIONS OTHER
4 THAN FOR EXPORTS.—For purposes of this section,
5 the tax imposed under this subsection shall be deter-
6 mined without regard to subsections (f), (g) (other
7 than with respect to any sale for export under para-
8 graph (3) thereof), (h), and (i).”.

9 (3) NO REFUND.—

10 (A) IN GENERAL.—Subchapter B of chap-
11 ter 65 is amended by adding at the end the fol-
12 lowing new section:

13 **“SEC. 6430. TREATMENT OF TAX IMPOSED AT LEAKING UN-**
14 **DERGROUND STORAGE TANK TRUST FUND**
15 **FINANCING RATE.**

16 “No refunds, credits, or payments shall be made
17 under this subchapter for any tax imposed at the Leaking
18 Underground Storage Tank Trust Fund financing rate,
19 except in the case of fuels destined for export.”.

20 (B) CLERICAL AMENDMENT.—The table of
21 sections for subchapter B of chapter 65 is
22 amended by adding at the end the following
23 new item:

“Sec. 6430. Treatment of tax imposed at Leaking Underground Storage Tank
Trust Fund financing rate.

1 On page 257 (of title XV as agreed to), strike lines
2 7 through 10, and insert the following:

3 (2) NO EXEMPTION.—The amendments made
4 by subsection (b) shall apply to fuel entered, re-
5 moved, or sold after September 30, 2005.

6 On page 257 (of title XV as agreed to), after line
7 11, add the following:

8 **SEC. 1573. TIRE EXCISE TAX MODIFICATION.**

9 (a) IN GENERAL.—Section 4071(a) (relating to im-
10 position and rate of tax) is amended by inserting “8.0 cents
11 in the case of a” before “super single tire”.

12 (b) DEFINITION OF SUPER SINGLE TIRE.—Section
13 4072(e) (defining super single tire) is amended by striking
14 “13 inches” and inserting “17.5 inches”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to sales after September 30, 2005.