

112TH CONGRESS  
1ST SESSION

# S. 1397

To amend the Internal Revenue Code of 1986 to provide for an investment tax credit related to the production of electricity from offshore wind.

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## IN THE SENATE OF THE UNITED STATES

JULY 21, 2011

Mr. CARPER (for himself, Ms. SNOWE, Mr. MENENDEZ, Ms. COLLINS, Mr. COONS, Mr. WHITEHOUSE, Mr. BROWN of Ohio, Mr. REED, Mr. LAUTENBERG, and Mr. CARDIN) 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 provide for an investment tax credit related to the production of electricity from offshore wind.

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 “Incentivizing Offshore  
5 Wind Power Act”.

6 **SEC. 2. QUALIFYING OFFSHORE WIND FACILITY CREDIT.**

7 (a) IN GENERAL.—Section 46 of the Internal Rev-  
8 enue Code of 1986 is amended by striking “and” at the  
9 end of paragraph (5), by striking the period at the end

1 of paragraph (6), and by adding at the end the following  
2 new paragraph:

3 “(7) the qualifying offshore wind facility cred-  
4 it.”.

5 (b) AMOUNT OF CREDIT.—Subpart E of part IV of  
6 subchapter A of chapter 1 is amended by inserting after  
7 section 48D the following new section:

8 **“SEC. 48E. CREDIT FOR OFFSHORE WIND FACILITIES.**

9 “(a) IN GENERAL.—For purposes of section 46, the  
10 qualifying offshore wind facility credit for any taxable year  
11 is an amount equal to 30 percent of the qualified invest-  
12 ment for such taxable year with respect to any qualifying  
13 offshore wind facility of the taxpayer.

14 “(b) QUALIFIED INVESTMENT.—

15 “(1) IN GENERAL.—For purposes of subsection  
16 (a), the qualified investment for any taxable year is  
17 the basis of eligible property placed in service by the  
18 taxpayer during such taxable year which is part of  
19 a qualifying offshore wind facility.

20 “(2) CERTAIN QUALIFIED PROGRESS EXPENDI-  
21 TURES RULES MADE APPLICABLE.—Rules similar to  
22 the rules of subsections (c)(4) and (d) of section 46  
23 (as in effect on the day before the enactment of the  
24 Revenue Reconciliation Act of 1990) shall apply for  
25 purposes of this section.

1 “(c) DEFINITIONS.—For purposes of this section—

2 “(1) QUALIFYING OFFSHORE WIND FACILITY.—

3 “(A) IN GENERAL.—The term ‘qualifying  
4 offshore wind facility’ means an offshore facility  
5 using wind to produce electricity.

6 “(B) OFFSHORE FACILITY.—The term  
7 ‘offshore facility’ means any facility located in  
8 the inland navigable waters of the United  
9 States, including the Great Lakes, or in the  
10 coastal waters of the United States, including  
11 the territorial seas of the United States, the ex-  
12 clusive economic zone of United States, and the  
13 outer Continental Shelf of the United States.

14 “(2) ELIGIBLE PROPERTY.—The term ‘eligible  
15 property’ means any property—

16 “(A) which is—

17 “(i) tangible personal property, or

18 “(ii) other tangible property (not in-  
19 cluding a building or its structural compo-  
20 nents), but only if such property is used as  
21 an integral part of the qualifying offshore  
22 wind facility, and

23 “(B) with respect to which depreciation (or  
24 amortization in lieu of depreciation) is allow-  
25 able.

1       “(d) QUALIFYING CREDIT FOR OFFSHORE WIND FA-  
2 CILITIES PROGRAM.—

3               “(1) ESTABLISHMENT.—

4                       “(A) IN GENERAL.—Not later than 180  
5 days after the date of the enactment of this sec-  
6 tion, the Secretary, in consultation with the  
7 Secretary of Energy and the Secretary of the  
8 Interior, shall establish a qualifying credit for  
9 offshore wind facilities program to consider and  
10 award certifications for qualified investments el-  
11 igible for credits under this section to qualifying  
12 offshore wind facility sponsors.

13                       “(B) LIMITATION.—The total amount of  
14 megawatt capacity for offshore facilities with  
15 respect to which credits may be allocated under  
16 the program shall not exceed 3,000 megawatts.

17               “(2) CERTIFICATION.—

18                       “(A) APPLICATION PERIOD.—Each appli-  
19 cant for certification under this paragraph shall  
20 submit an application containing such informa-  
21 tion as the Secretary may require beginning on  
22 the date the Secretary establishes the program  
23 under paragraph (1).

24                       “(B) PERIOD OF ISSUANCE.—An applicant  
25 which receives a certification shall have 5 years

1 from the date of issuance of the certification in  
2 order to place the facility in service and if such  
3 facility is not placed in service by that time pe-  
4 riod, then the certification shall no longer be  
5 valid.

6 “(3) SELECTION CRITERIA.—In determining  
7 which qualifying offshore wind facilities to certify  
8 under this section, the Secretary shall—

9 “(A) take into consideration which facili-  
10 ties will be placed in service at the earliest date,  
11 and

12 “(B) take into account the technology of  
13 the facility that may lead to reduced industry  
14 and consumer costs or expand access to off-  
15 shore wind.

16 “(4) REVIEW, ADDITIONAL ALLOCATIONS, AND  
17 REALLOCATIONS.—

18 “(A) REVIEW.—Periodically, but not later  
19 than 4 years after the date of the enactment of  
20 this section, the Secretary shall review the cred-  
21 its allocated under this section as of the date of  
22 such review.

23 “(B) ADDITIONAL ALLOCATIONS AND RE-  
24 ALLOCATIONS.—The Secretary may make addi-  
25 tional allocations and reallocations of credits

1 under this section if the Secretary determines  
2 that—

3 “(i) the limitation under paragraph  
4 (1)(B) has not been attained at the time of  
5 the review, or

6 “(ii) scheduled placed-in-service dates  
7 of previously certified facilities have been  
8 significantly delayed and the Secretary de-  
9 termines the applicant will not meet the  
10 timeline pursuant to paragraph (2)(B).

11 “(C) ADDITIONAL PROGRAM FOR ALLOCA-  
12 TIONS AND REALLOCATIONS.—If the Secretary  
13 determines that credits under this section are  
14 available for further allocation or reallocation,  
15 but there is an insufficient quantity of quali-  
16 fying applications for certification pending at  
17 the time of the review, the Secretary is author-  
18 ized to conduct an additional program for appli-  
19 cations for certification.

20 “(5) DISCLOSURE OF ALLOCATIONS.—The Sec-  
21 retary shall, upon making a certification under this  
22 subsection, publicly disclose the identity of the appli-  
23 cant and the amount of the credit with respect to  
24 such applicant.

1       “(e) DENIAL OF DOUBLE BENEFIT.—A credit shall  
2 not be allowed under this section with respect to any facil-  
3 ity if—

4               “(1) a credit has been allowed to such facility  
5 under section 45 for such taxable year or any prior  
6 taxable year,

7               “(2) a credit has been allowed with respect to  
8 such facility under section 46 by reason of section  
9 48(a) or 48C(a) for such taxable or any preceding  
10 taxable year, or

11               “(3) a grant has been made with respect to  
12 such facility under section 1603 of the American Re-  
13 covery and Reinvestment Act of 2009.”.

14       (c) CONFORMING AMENDMENTS.—

15               (1) Section 49(a)(1)(C) of the Internal Revenue  
16 Code of 1986 is amended—

17                       (A) by striking “and” at the end of clause  
18 (v),

19                       (B) by striking the period at the end of  
20 clause (vi) and inserting “, and”, and

21                       (C) by adding after clause (vi) the fol-  
22 lowing new clause:

23                               “(vi) the basis of any property which  
24 is part of a qualifying offshore wind facil-  
25 ity under section 48E.”.

1           (2) The table of sections for subpart E of part  
2           IV of subchapter A of chapter 1 of the Internal Rev-  
3           enue Code of 1986 is amended by inserting after the  
4           item relating to section 48D the following new item:

“48E. Credit for offshore wind facilities.”.

5           (d) EFFECTIVE DATE.—The amendments made by  
6           this section shall apply to periods after the date of the  
7           enactment of this Act, under rules similar to the rules of  
8           section 48(m) of the Internal Revenue Code of 1986 (as  
9           in effect on the day before the date of the enactment of  
10          the Revenue Reconciliation Act of 1990).

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