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1st Session

HOUSE OF REPRESENTATIVES

{ REPORT
111-16

MAKING SUPPLEMENTAL APPROPRIATIONS FOR JOB PRESERVA-
TION AND CREATION, INFRASTRUCTURE INVESTMENT, ENERGY
EFFICIENCY AND SCIENCE, ASSISTANCE TO THE UNEMPLOYED,
AND STATE AND LOCAL FISCAL STABILIZATION, FOR THE FIS-
CAL YEAR ENDING SEPTEMBER 30, 2009, AND FOR OTHER PUR-
POSES

CONFERENCE REPORT

TO ACCOMPANY

H.R. 1



FEBRUARY 12, 2009.—Ordered to be printed

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1), a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment to the text deleted the entire House bill after the enacting clause and inserted the Senate bill. This conference agreement includes a revised bill.

The conference agreement designates amounts in the Act as emergency requirements pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009. All applicable provisions in the Act are designated as an emergency for purposes of pay-as-you-go principles.

DIVISION A—APPROPRIATIONS PROVISIONS

TITLE I—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES

DEPARTMENT OF AGRICULTURE

AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

The conference agreement provides \$24,000,000 for the Agriculture Buildings and Facilities and Rental Payments account instead of \$44,000,000 as proposed by the House. The Senate bill contained no such account.

The conference agreement provides funding to address priority maintenance, repair, and modernization investments in USDA's headquarter buildings and facilities.

OFFICE OF INSPECTOR GENERAL

The conference agreement provides \$22,500,000 for the Office of Inspector General as proposed by both the House and Senate.

The conference agreement provides funding to enhance oversight and improve accountability of the use of economic recovery funds appropriated to the Department of Agriculture in this Act, including \$7,500,000 for the U.S. Forest Service.

Effective date

The provision applies to obligations issued after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

6. **Expand qualified energy conservation bonds** (sec. 1612 of the House bill, sec. 1112 of the Senate amendment, sec. 1112 of the conference agreement, and sec. 54D of the Code)

PRESENT LAW

Qualified energy conservation bonds may be used to finance qualified conservation purposes.

The term “qualified conservation purpose” means:

1. Capital expenditures incurred for purposes of reducing energy consumption in publicly owned buildings by at least 20 percent; implementing green community programs; rural development involving the production of electricity from renewable energy resources; or any facility eligible for the production tax credit under section 45 (other than Indian coal and refined coal production facilities);

2. Expenditures with respect to facilities or grants that support research in: (a) development of cellulosic ethanol or other nonfossil fuels; (b) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels; (c) increasing the efficiency of existing technologies for producing nonfossil fuels; (d) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation; and (E) technologies to reduce energy use in buildings;

3. Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting;

4. Demonstration projects designed to promote the commercialization of: (a) green building technology; (b) conversion of agricultural waste for use in the production of fuel or otherwise; (c) advanced battery manufacturing technologies; (D) technologies to reduce peak-use of electricity; and (d) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity; and

5. Public education campaigns to promote energy efficiency (other than movies, concerts, and other events held primarily for entertainment purposes).

There is a national limitation on qualified energy conservation bonds of \$800 million. Allocations of qualified energy conservation bonds are made to the States with sub-allocations to large local governments. Allocations are made to the States according to their

respective populations, reduced by any sub-allocations to large local governments (defined below) within the States. Sub-allocations to large local governments shall be an amount of the national qualified energy conservation bond limitation that bears the same ratio to the amount of such limitation that otherwise would be allocated to the State in which such large local government is located as the population of such large local government bears to the population of such State. The term "large local government" means: any municipality or county if such municipality or county has a population of 100,000 or more. Indian tribal governments also are treated as large local governments for these purposes (without regard to population).

Each State or large local government receiving an allocation of qualified energy conservation bonds may further allocate issuance authority to issuers within such State or large local government. However, any allocations to issuers within the State or large local government shall be made in a manner that results in not less than 70 percent of the allocation of qualified energy conservation bonds to such State or large local government being used to designate bonds that are not private activity bonds (i.e., the bond cannot meet the private business tests or the private loan test of section 141).

Qualified energy conservation bonds are a type of qualified tax credit bond for purposes of section 54A of the Code. As a result, 100 percent of the available project proceeds of qualified energy conservation bonds must be used for qualified conservation purposes. In the case of qualified conservation bonds issued as private activity bonds, 100 percent of the available project proceeds must be used for capital expenditures. In addition, qualified energy conservation bonds only may be issued by Indian tribal governments to the extent such bonds are issued for purposes that satisfy the present law requirements for tax-exempt bonds issued by Indian tribal governments (i.e., essential governmental functions and certain manufacturing purposes).

Under present law, 100 percent of the available project proceeds of qualified energy conservation bonds to be used within the three-year period that begins on the date of issuance. Available project proceeds are proceeds from the sale of the issue less issuance costs (not to exceed two percent) and any investment earnings on such sale proceeds. To the extent less than 100 percent of the available project proceeds are used to finance qualified conservation purposes during the three-year spending period, bonds will continue to qualify as qualified energy conservation bonds if unspent proceeds are used within 90 days from the end of such three-year period to redeem bonds. The three-year spending period may be extended by the Secretary upon the issuer's request demonstrating that the failure to satisfy the three-year requirement is due to reasonable cause and the projects will continue to proceed with due diligence.

Qualified energy conservation bonds generally are subject to the arbitrage requirements of section 148. However, available project proceeds invested during the three-year spending period are not subject to the arbitrage restrictions (i.e., yield restriction and rebate requirements). In addition, amounts invested in a reserve

fund are not subject to the arbitrage restrictions to the extent: (1) such fund is funded at a rate not more rapid than equal annual installments; (2) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (3) the yield on such fund is not greater than the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified energy conservation bonds are issued.

The maturity of qualified energy conservation bonds is the term that the Secretary estimates will result in the present value of the obligation to repay the principal on such bonds being equal to 50 percent of the face amount of such bonds, using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more that are issued during the month the qualified energy conservation bonds are issued.

As with other tax credit bonds, the taxpayer holding qualified energy conservation bonds on a credit allowance date is entitled to a tax credit. The credit rate on the bonds is set by the Secretary at a rate that is 70 percent of the rate that would permit issuance of such bonds without discount and interest cost to the issuer.¹⁸⁴ The Secretary determines credit rates for tax credit bonds based on general assumptions about credit quality of the class of potential eligible issuers and such other factors as the Secretary deems appropriate. The Secretary may determine credit rates based on general credit market yield indexes and credit ratings.¹⁸⁵ The amount of the tax credit is determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit accrues quarterly, is includible in gross income (as if it were an interest payment on the bond), and can be claimed against regular income tax liability and alternative minimum tax liability. Unused credits may be carried forward to succeeding taxable years. In addition, credits may be separated from the ownership of the underlying bond similar to how interest coupons can be stripped for interest-bearing bonds.

Issuers of qualified energy conservation bonds are required to certify that the financial disclosure requirements that applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, as well as any other additional conflict of interest rules prescribed by the Secretary with respect to any Federal, State, or local government official directly involved with the issuance of qualified energy conservation bonds.

HOUSE BILL

In general

The provision expands the present-law qualified energy conservation bond program. The provision authorizes issuance of an additional \$2.4 billion of qualified energy conservation bonds. The provision expands eligibility for these tax credit bonds to include loans and grants for capital expenditures as part of green commu-

¹⁸⁴ Given the difference in credit quality and other characteristics of individual issuers, the Secretary cannot set credit rates in a manner that will allow each issuer to issue tax credit bonds at par.

¹⁸⁵ See Internal Revenue Services, Notice 2009-15, Credit Rates on Tax Credit Bonds, 2009-6 I.R.B. 1 (January 22, 2009).

nity programs. For example, this expansion will enable States to issue these tax credit bonds to finance loans and/or grants to individual homeowners to retrofit existing housing. The use of bond proceeds for such loans and grants will not cause such bond to be treated as a private activity bond for purposes of the private activity bond restrictions contained in the qualified energy conservation bond provisions.

Effective date

The provision is effective for bonds issued after the date of enactment.

SENATE AMENDMENT

In general

The provision expands the present-law qualified energy conservation bond program. The provision authorizes issuance of an additional \$2.4 billion of qualified energy conservation bonds. The provision clarifies that capital expenditures to implement green community programs, includes grants, loans and other repayment mechanisms for capital expenditures to implement such programs.

Effective date

The provision is effective for bonds issued after the date of enactment.

CONFERENCE AGREEMENT

In general

The provision expands the present-law qualified energy conservation bond program. The provision authorizes issuance of an additional \$2.4 billion of qualified energy conservation bonds. Also, the provision clarifies that capital expenditures to implement green community programs includes grants, loans and other repayment mechanisms to implement such programs. For example, this expansion will enable States to issue these tax credit bonds to finance retrofits of existing private buildings through loans and/or grants to individual homeowners or businesses, or through other repayment mechanisms. Other repayment mechanisms can include periodic fees assessed on a government bill or utility bill that approximates the energy savings of energy efficiency or conservation retrofits. Retrofits can include heating, cooling, lighting, water-saving, storm water-reducing, or other efficiency measures.

Finally, the provision clarifies that any bond used for the purpose of providing grants, loans or other repayment mechanisms for capital expenditures to implement green community programs is not treated as a private activity bond for purposes of determining whether the requirement that not less than 70 percent of allocations within a State or large local government be used to designate bonds that are not private activity bonds (sec. 54D(e)(3)) has been satisfied.

Effective date

The conference agreement follows the House bill and the Senate amendment.