

109TH CONGRESS
1ST SESSION

S. 1203

To amend the Internal Revenue Code of 1986 to provide tax incentives for the investment in greenhouse gas intensity reduction projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 8, 2005

Mr. HAGEL (for himself, Mr. PRYOR, Mr. ALEXANDER, Mr. CRAIG, Mrs. DOLE, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide tax incentives for the investment in greenhouse gas intensity reduction projects, 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 CODE.**

4 (a) SHORT TITLE.—This title may be cited as the
5 “Climate Change Technology Tax Incentives Act of
6 2005”.

7 (b) AMENDMENT OF CODE.—Except as otherwise ex-
8 pressly provided, whenever in this title an amendment or
9 repeal is expressed in terms of an amendment to, or repeal

1 of, a section or other provision, the reference shall be con-
 2 sidered to be made to a section or other provision of the
 3 Internal Revenue Code of 1986.

4 **TITLE I—GREENHOUSE GAS IN-**
 5 **TENSITY REDUCTION TAX IN-**
 6 **CENTIVES**

7 **SEC. 101. GREENHOUSE GAS INTENSITY REDUCTION IN-**
 8 **VESTMENT TAX CREDIT.**

9 (a) IN GENERAL.—Subpart D of part IV of sub-
 10 chapter A of chapter 1 (relating to business-related cred-
 11 its) is amended by adding at the end the following new
 12 section:

13 **“SEC. 45J. GREENHOUSE GAS INTENSITY REDUCTION IN-**
 14 **VESTMENT CREDIT.**

15 “(a) ALLOWANCE OF CREDIT.—

16 “(1) IN GENERAL.—For purposes of section 38,
 17 in the case of a taxpayer’s investment in a green-
 18 house gas intensity reduction project approved by
 19 the accreditation panel, the greenhouse gas intensity
 20 reduction investment credit determined under this
 21 section for the taxable year is an amount equal to—

22 “(A) percentage reduction in greenhouse
 23 gas intensity certified for such project for such
 24 year by the accreditation panel, multiplied by

1 “(B) the investment in such project during
2 such year which is attributable, directly or indi-
3 rectly, to the taxpayer, as determined by the ac-
4 creditation panel.

5 “(2) AGGREGATE DOLLAR LIMITATION.—The
6 credit determined under paragraph (1) for any tax-
7 able year, when added to any credit allowed to the
8 taxpayer with respect to the such project in any pre-
9 ceding taxable year, shall not exceed 50 percent of
10 the investment attributable to the taxpayer with re-
11 spect to such project through such taxable year.

12 “(b) LIMITATION ON AGGREGATE CREDIT ALLOW-
13 ABLE.—

14 “(1) IN GENERAL.—The amount of the green-
15 house gas intensity reduction investment credit de-
16 termined under subsection (a) for any project, when
17 added to all such credits allowed to all taxpayers
18 with respect to the such project shall not exceed the
19 credit dollar amount allocated to such project under
20 this subsection by the accreditation panel from the
21 greenhouse gas intensity reduction investment credit
22 limitation for the calendar year in which such alloca-
23 tion is made.

24 “(2) TIME FOR MAKING ALLOCATION.—An allo-
25 cation shall be taken into account under paragraph

1 (1) only if it is made not later than the close of the
 2 calendar year in which the greenhouse gas intensity
 3 reduction project proposal with respect to such
 4 project is approved by the accreditation panel.

5 “(3) OVERALL LIMITATION ON AGGREGATE
 6 CREDIT ALLOWABLE.—The accreditation panel may
 7 allocate the aggregate credit dollar amount to any
 8 such project for a period not to exceed a 10-year pe-
 9 riod beginning with the calendar year described in
 10 paragraph (2).

11 “(c) LIMITATION ON AMOUNT OF CREDITS ALLO-
 12 CATED.—

13 “(1) IN GENERAL.—There is a greenhouse gas
 14 intensity reduction investment credit limitation
 15 amount for each calendar year. Such limitation
 16 amount is—

17 “(A) \$400,000,000 for 2006,

18 “(B) \$300,000,000 for 2007,

19 “(C) \$300,000,000 for 2008,

20 “(D) \$300,000,000 for 2009,

21 “(E) \$300,000,000 for 2010, and

22 “(F) except as provided in paragraph (2),
 23 zero thereafter.

24 “(2) CARRYOVER OF UNUSED ISSUANCE LIMI-
 25 TATION.—If for any calendar year the limitation

1 amount imposed by paragraph (1) exceeds the
 2 amount of greenhouse gas intensity reduction invest-
 3 ment credits allocated during such year, such excess
 4 shall be carried forward to the succeeding calendar
 5 year as an addition to the limitation imposed by
 6 paragraph (1).

7 “(d) GREENHOUSE GAS INTENSITY REDUCTION
 8 PROJECT; GREENHOUSE GAS INTENSITY; ACCREDITA-
 9 TION PANEL.—For purposes of this section—

10 “(1) GREENHOUSE GAS INTENSITY REDUCTION
 11 PROJECT.—The term ‘greenhouse gas intensity re-
 12 duction project’ means any project approved under
 13 this section by the accreditation panel. Such ap-
 14 proval shall be based on the following criteria:

15 “(A) The extent of the reduction in green-
 16 house gas intensity proposed for the project.

17 “(B) Improvements in system efficiency.

18 “(C) In the case of projects located outside
 19 the United States, the extent of technology
 20 transfer.

21 “(D) The existence and nature of agree-
 22 ments for sharing project benefits and liability
 23 between the taxpayer and any host government.

24 “(2) GREENHOUSE GAS INTENSITY.—The
 25 greenhouse gas intensity for any period is equal to

the volume of emissions divided by the economic output associated with a project as compared to a greenhouse gas intensity baseline established after the date of the enactment of this section. The comparison to such baseline may be made by geographic regions, industry segments, or on a taxpayer basis.

“(3) ACCREDITATION PANEL.—The term ‘accreditation panel’ means a panel jointly certified by the Secretary and the Secretary of Commerce.

“(e) RECAPTURE OF CREDIT IN CERTAIN CASES.—

“(1) IN GENERAL.—If, at any time during the 20-year period of a greenhouse gas intensity reduction project, there is a recapture event with respect to such project, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

“(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The credit recapture amount is an amount equal to the recapture percentage of all greenhouse gas intensity reduction investment credits previously allowable to a taxpayer with respect to any investment in such project that is attributable to such taxpayer.

1 “(B) RECAPTURE PERCENTAGE.—The re-
 2 capture percentage shall be 100 percent if the
 3 recapture event occurs during the first 5 years
 4 of the project, 75 percent if the recapture event
 5 occurs during the second 5 years of the project,
 6 50 percent if the recapture event occurs during
 7 the third 5 years of the project, 25 percent if
 8 the recapture event occurs during the fourth 5
 9 years of the project, and 0 percent if the recap-
 10 ture event occurs at any time after the 20th
 11 year of the project.

12 “(3) RECAPTURE EVENT.—For purposes of
 13 paragraph (1), there is a recapture event with re-
 14 spect to a greenhouse gas intensity reduction project
 15 if—

16 “(A) the taxpayer violates a term or condi-
 17 tion of the approval of the project by the ac-
 18 creditation panel at any time,

19 “(B) the taxpayer adopts a practice which
 20 the accreditation panel has specified in its ap-
 21 proval of the project as a practice which would
 22 tend to defeat the purposes of the program, or

23 “(C) the taxpayer disposes of any owner-
 24 ship interest arising out of its investment that
 25 the accreditation panel has determined is attrib-

1 utable to the project, unless the accreditation
2 panel determines that such disposition will not
3 have any adverse effect on the greenhouse gas
4 intensity reduction project.

5 If an event which otherwise would be a recapture
6 event is outside the control of the taxpayer, as deter-
7 mined by the accreditation panel, such event shall
8 not be treated as a recapture event with respect to
9 such taxpayer.

10 “(4) SPECIAL RULES.—

11 “(A) TAX BENEFIT RULE.—The tax for
12 the taxable year shall be increased under para-
13 graph (1) only with respect to credits allowed
14 by reason of this section which were used to re-
15 duce tax liability. In the case of credits not so
16 used to reduce tax liability, the carryforwards
17 and carrybacks under section 39 shall be appro-
18 priately adjusted.

19 “(B) NO CREDITS AGAINST TAX.—Any in-
20 crease in tax under this subsection shall not be
21 treated as a tax imposed by this chapter for
22 purposes of determining the amount of any
23 credit under this chapter or for purposes of sec-
24 tion 55.

25 “(f) DISALLOWANCE OF DOUBLE BENEFIT.—

1 “(1) BASIS REDUCTION.—The basis of any in-
 2 vestment in a greenhouse gas intensity reduction
 3 project shall be reduced by the amount of any credit
 4 determined under this section with respect to such
 5 investment.

6 “(2) CHARITABLE DEDUCTION DISALLOWED.—
 7 No deduction shall be allowed to a taxpayer under
 8 section 170 with respect to any contribution which
 9 the accreditation panel certifies to the Secretary con-
 10 stitutes an investment in a greenhouse gas intensity
 11 reduction project that is attributable to such tax-
 12 payer.

13 “(g) CERTIFICATION TO SECRETARY.—The accredi-
 14 tation panel shall certify to the Secretary before January
 15 31 of each year with respect to each taxpayer which has
 16 made an investment in a greenhouse gas intensity reduc-
 17 tion project—

18 “(1) the amount of the greenhouse gas intensity
 19 reduction investment credit allowable to such tax-
 20 payer for the preceding calendar year,

21 “(2) whether a recapture event occurred with
 22 respect to such taxpayer during the preceding cal-
 23 endar year, and

1 “(3) the credit recapture amount, if any, with
 2 respect to such taxpayer for the preceding calendar
 3 year.

4 “(h) REGULATIONS.—The Secretary shall prescribe
 5 such regulations as may be appropriate to carry out this
 6 section, including regulations—

7 “(1) which limit the credit for investments
 8 which are directly or indirectly subsidized by other
 9 Federal benefits,

10 “(2) which prevent the abuse of the provisions
 11 of this section through the use of related parties,
 12 and

13 “(3) which impose appropriate reporting re-
 14 quirements.”.

15 (b) CREDIT MADE PART OF GENERAL BUSINESS
 16 CREDIT.—Subsection (b) of section 38 is amended by
 17 striking “plus” at the end of paragraph (18), by striking
 18 the period at the end of paragraph (19) and inserting “,
 19 plus”, and by adding at the end the following new para-
 20 graph:

21 “(20) the greenhouse gas intensity reduction in-
 22 vestment credit determined under section 45J(a).”.

23 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection
 24 (c) of section 196 is amended by striking “and” at the
 25 end of paragraph (11), by striking the period at the end

1 of paragraph (12) and inserting “, and”, and by adding
 2 at the end the following new paragraph:

3 “(13) the greenhouse gas intensity reduction in-
 4 vestment credit determined under section 45J(a).”.

5 (d) CLERICAL AMENDMENT.—The table of sections
 6 for subpart D of part IV of subchapter A of chapter 1
 7 is amended by adding at the end the following new item:
 “Sec. 45J. Greenhouse gas intensity reduction investment credit.”.

8 (e) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to investments made after Decem-
 10 ber 31, 2005.

11 **TITLE II—ENERGY EFFICIENCY** 12 **PROVISIONS**

13 **Subtitle A—Renewable Energy**

14 **SEC. 201. SENSE OF THE SENATE REGARDING EXTENSION** 15 **OF RENEWABLE ENERGY CREDIT.**

16 It is the sense of the Senate that the income tax cred-
 17 it for electricity produced from certain renewable re-
 18 sources under section 45 of the Internal Revenue Code
 19 of 1986 should be extended through 2010.

20 **Subtitle B—Nuclear Power**

21 **SEC. 211. CREDIT FOR PRODUCTION FROM ADVANCED NU-** 22 **CLEAR POWER FACILITIES.**

23 (a) IN GENERAL.—Subpart D of part IV of sub-
 24 chapter A of chapter 1 (relating to business related cred-

1 its), as amended by this Act, is amended by adding at
 2 the end the following new section:

3 **“SEC. 45K. CREDIT FOR PRODUCTION FROM ADVANCED NU-**
 4 **CLEAR POWER FACILITIES.**

5 “(a) GENERAL RULE.—For purposes of section 38,
 6 the advanced nuclear power facility production credit of
 7 any taxpayer for any taxable year is equal to the product
 8 of—

9 “(1) 0.6 cent, multiplied by

10 “(2) the kilowatt hours of electricity—

11 “(A) produced by the taxpayer at an ad-
 12 vanced nuclear power facility during the 10-
 13 year period beginning on the date the facility
 14 was originally placed in service, and

15 “(B) sold by the taxpayer to an unrelated
 16 person during the taxable year.

17 “(b) NATIONAL LIMITATION.—

18 “(1) IN GENERAL.—The amount of credit
 19 which would (but for this subsection and subsection
 20 (c)) be allowed with respect to any facility for any
 21 taxable year shall not exceed the amount which
 22 bears the same ratio to such amount of credit as—

23 “(A) the national megawatt capacity limi-
 24 tation allocated to the facility, bears to

1 “(B) the total megawatt nameplate capac-
2 ity of such facility.

3 “(2) AMOUNT OF NATIONAL LIMITATION.—The
4 national megawatt capacity limitation shall be 8,000
5 megawatts.

6 “(3) ALLOCATION OF LIMITATION.—The Sec-
7 retary shall allocate the national megawatt capacity
8 limitation in such manner as the Secretary may pre-
9 scribe.

10 “(4) REGULATIONS.—Not later than 6 months
11 after the date of the enactment of this section, the
12 Secretary shall prescribe such regulations as may be
13 necessary or appropriate to carry out the purposes
14 of this subsection. Such regulations shall provide a
15 certification process under which the Secretary, after
16 consultation with the Secretary of Energy, shall ap-
17 prove and allocate the national megawatt capacity
18 limitation.

19 “(c) OTHER LIMITATIONS.—

20 “(1) ANNUAL LIMITATION.—The amount of the
21 credit allowable under subsection (a) (after the ap-
22 plication of subsection (b)) for any taxable year with
23 respect to any facility shall not exceed an amount
24 which bears the same ratio to \$125,000,000 as—

1 “(A) the national megawatt capacity limi-
 2 tation allocated under subsection (b) to the fa-
 3 cility, bears to

4 “(B) 1000.

5 “(2) OTHER LIMITATIONS.—Rules similar to
 6 the rules of section 45(b) shall apply for purposes of
 7 this section, except that paragraph (2) thereof shall
 8 not apply to the 0.6 cent under subsection (a)(1).

9 “(d) ADVANCED NUCLEAR POWER FACILITY.—For
 10 purposes of this section, the term ‘advanced nuclear power
 11 facility’ means any advanced nuclear facility—

12 “(1) which is owned by the taxpayer and which
 13 uses nuclear energy to produce electricity, and

14 “(2) which is originally placed in service after
 15 the date of the enactment of this paragraph and be-
 16 fore January 1, 2010.

17 “(e) OTHER RULES TO APPLY.—Rules similar to the
 18 rules of paragraphs (1), (2), (3), (4), and (5) of section
 19 45(e) shall apply for purposes of this section.”

20 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
 21 tion 38(b), as amended by this Act, is amended by striking
 22 “plus” at the end of paragraph (19), by striking the period
 23 at the end of paragraph (20) and inserting “, plus”, and
 24 by adding at the end the following new paragraph:

1 “(21) the advanced nuclear power facility pro-
2 duction credit determined under section 45K(a).”.

3 (c) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1,
5 as amended by this Act, is amended by adding at the end
6 the following new item:

“Sec. 45K. Credit for production from advanced nuclear power facilities.”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to production in taxable years end-
9 ing after the date of the enactment of this Act.

10 **SEC. 212. INVESTMENT TAX CREDIT FOR INVESTMENTS IN**
11 **NUCLEAR POWER FACILITIES.**

12 (a) NEW CREDIT FOR NUCLEAR POWER FACILI-
13 TIES.—Section 46 is amended by—

14 (1) striking “and” at the end of paragraph (1),

15 (2) striking the period at the end of paragraph

16 (2) and inserting “, and”, and

17 (3) inserting after paragraph (2) the following
18 new paragraph:

19 “(3) the nuclear power facility construction
20 credit.”.

21 (b) NUCLEAR POWER FACILITY CONSTRUCTION
22 CREDIT.—Subpart E of part IV of subchapter A of chap-
23 ter 1 is amended by inserting after section 48 the fol-
24 lowing new section:

1 **“SEC. 48A. NUCLEAR POWER FACILITY CONSTRUCTION**
2 **CREDIT.**

3 “(a) IN GENERAL.—For purposes of section 46, the
4 nuclear power facility construction credit for any taxable
5 year is 10 percent of so much of the qualified nuclear
6 power facility expenditures paid or incurred by the tax-
7 payer with respect to a qualified nuclear power facility.

8 “(b) WHEN EXPENDITURES TAKEN INTO AC-
9 COUNT.—

10 “(1) IN GENERAL.—Qualified nuclear power fa-
11 cility expenditures shall be taken into account for
12 the taxable year in which the qualified nuclear power
13 facility is placed in service.

14 “(2) COORDINATION WITH SUBSECTION (c).—
15 The amount which would (but for this paragraph) be
16 taken into account under paragraph (1) with respect
17 to any qualified nuclear power facility shall be re-
18 duced (but not below zero) by any amount of quali-
19 fied nuclear power facility expenditures taken into
20 account under subsection (c) by the taxpayer or a
21 predecessor of the taxpayer (or, in the case of a sale
22 and leaseback described in section 50(a)(2)(C), by
23 the lessee), to the extent any amount so taken into
24 account has not been required to be recaptured
25 under section 50(a).

26 “(c) PROGRESS EXPENDITURES.—

1 “(1) IN GENERAL.—A taxpayer may elect to
2 take into account qualified nuclear power facility ex-
3 penditures.

4 “(A) SELF-CONSTRUCTED PROPERTY.—In
5 the case of a qualified nuclear power facility
6 which is a self-constructed facility, in the tax-
7 able year for which such expenditures are prop-
8 erly chargeable to capital account with respect
9 to such facility.

10 “(B) ACQUIRED FACILITY.—In the case of
11 a qualified nuclear facility which is not self-con-
12 structed property, in the taxable year in which
13 such expenditures are paid.

14 “(2) SPECIAL RULES FOR APPLYING PARA-
15 GRAPH (1).—For purposes of paragraph (1)—

16 “(A) COMPONENT PARTS, ETC.—Property
17 which is not self-constructed property and
18 which is to be a component part of, or is other-
19 wise to be included in, any facility to which this
20 subsection applies shall be taken into account in
21 accordance with paragraph (1)(B).

22 “(B) CERTAIN BORROWING DIS-
23 REGARDED.—Any amount borrowed directly or
24 indirectly by the taxpayer on a nonrecourse
25 basis from the person constructing the facility

1 for the taxpayer shall not be treated as an
2 amount expended for such facility.

3 “(C) LIMITATION FOR FACILITIES OR COM-
4 PONENTS WHICH ARE NOT SELF-CON-
5 STRUCTED.—

6 “(i) IN GENERAL.—In the case of a
7 facility or a component of a facility which
8 is not self-constructed, the amount taken
9 into account under paragraph (1)(B) for
10 any taxable year shall not exceed the
11 amount which represents the portion of the
12 overall cost to the taxpayer of the facility
13 or component of a facility which is prop-
14 erly attributable to the portion of the facil-
15 ity or component which is completed dur-
16 ing such taxable year.

17 “(ii) CARRY-OVER OF CERTAIN
18 AMOUNTS.—In the case of a facility or
19 component of a facility which is not self-
20 constructed, if for the taxable year—

21 “(I) the amount which (but for
22 clause (i)) would have been taken into
23 account under paragraph (1)(B) ex-
24 ceeds the limitation of clause (i), then
25 the amount of such excess shall be

1 taken into account under paragraph
2 (1)(B) for the succeeding taxable
3 year, or

4 “(II) the limitation of clause (i)
5 exceeds the amount taken into ac-
6 count under paragraph (1)(B), then
7 the amount of such excess shall in-
8 crease the limitation of clause (i) for
9 the succeeding taxable year.

10 “(D) DETERMINATION OF PERCENTAGE OF
11 COMPLETION.—The determination under sub-
12 paragraph (C)(i) of the portion of the overall
13 cost to the taxpayer of the construction which
14 is properly attributable to construction com-
15 pleted during any taxable year shall be made on
16 the basis of engineering or architectural esti-
17 mates or on the basis of cost accounting
18 records. Unless the taxpayer establishes other-
19 wise by clear and convincing evidence, the con-
20 struction shall be deemed to be completed not
21 more rapidly than ratably over the normal con-
22 struction period.

23 “(E) NO PROGRESS EXPENDITURES FOR
24 CERTAIN PRIOR PERIODS.—No qualified nuclear
25 facility expenditures shall be taken into account

under this subsection for any period before the first day of the first taxable year to which an election under this subsection applies.

“(F) NO PROGRESS EXPENDITURES FOR PROPERTY FOR YEAR IT IS PLACED IN SERVICE, ETC.—In the case of any qualified nuclear facility, no qualified nuclear facility expenditures shall be taken into account under this subsection for the earlier of—

“(i) the taxable year in which the facility is placed in service, or

“(ii) the first taxable year for which recapture is required under section 50(a)(2) with respect to such facility, or for any taxable year thereafter.

“(3) SELF-CONSTRUCTED.—For purposes of this subsection—

“(A) the term ‘self-constructed facility’ means any facility if it is reasonable to believe that more than half of the qualified nuclear facility expenditures for such facility will be made directly by the taxpayer, and

“(B) a component of a facility shall be treated as not self-constructed if the cost of the component is at least 5 percent of the expected

1 cost of the facility and the component is ac-
2 quired by the taxpayer.

3 “(4) ELECTION.—An election shall be made
4 under this section for a qualified nuclear power facil-
5 ity by claiming the nuclear power facility construc-
6 tion credit for expenditures described in paragraph
7 (1) on a tax return filed by the due date for such
8 return (taking into account extensions). Such an
9 election shall apply to the taxable year for which
10 made and all subsequent taxable years. Such an
11 election, once made, may be revoked only with the
12 consent of the Secretary.

13 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
14 poses of this section—

15 “(1) QUALIFIED NUCLEAR POWER FACILITY.—
16 The term ‘qualified nuclear power facility’ means a
17 nuclear power facility, as defined in section
18 168(e)(8), the construction of which was approved
19 by the Nuclear Regulatory Commission on or before
20 December 31, 2014, and begun on or before Decem-
21 ber 31, 2020.

22 “(2) QUALIFIED NUCLEAR POWER FACILITY
23 EXPENDITURES.—

24 “(A) IN GENERAL.—The term ‘qualified
25 nuclear power facility expenditures’ means any

1 amount properly chargeable to capital ac-
2 count—

3 “(i) with respect to a qualified nuclear
4 power facility,

5 “(ii) for which depreciation is allow-
6 able under section 168, and

7 “(iii) which are incurred before the
8 qualified nuclear power facility is placed in
9 service or in connection with the placement
10 of such facility in service.

11 “(B) LIMITATION PER FACILITY.—The
12 amount of qualified nuclear power facility ex-
13 penditures which may be taken into account
14 under subsection (a) with respect to any quali-
15 fied nuclear power facility shall not exceed
16 \$10,000,000.

17 “(C) PRE-EFFECTIVE DATE EXPENDI-
18 TURES.—Qualified nuclear power facility ex-
19 penditures do not include any expenditures in-
20 curred by the taxpayer before January 1, 2008,
21 unless such expenditures constitute less than 20
22 percent of the total qualified nuclear power fa-
23 cility expenditures (determined without regard
24 to this subparagraph) for the qualified nuclear
25 power facility.

1 “(3) DELAYS AND SUSPENSION OF CONSTRUC-
2 TION.—

3 “(A) IN GENERAL.—For purposes of ap-
4 plying this section and section 50, a nuclear
5 power facility that is under construction shall
6 cease to be treated as a facility that will be a
7 qualified nuclear power facility as of the earlier
8 of—

9 “(i) the date on which the taxpayer
10 decides to terminate construction of the fa-
11 cility, or

12 “(ii) the last day of any 24 month pe-
13 riod in which the taxpayer has failed to
14 incur qualified nuclear power facility ex-
15 penditures totaling at least 20 percent of
16 the expected total cost of the nuclear
17 power facility.

18 “(B) AUTHORITY TO WAIVE.—The Sec-
19 retary may waive the application of clause (ii)
20 of subparagraph (A) if the Secretary deter-
21 mines that the taxpayer intended to continue
22 the construction of the qualified nuclear power
23 facility and the expenditures were not incurred
24 for reasons outside the control of the taxpayer.

1 “(C) RESUMPTION OF CONSTRUCTION.—If
 2 a nuclear power facility that is under construc-
 3 tion ceases to be a qualified nuclear power facil-
 4 ity by reason of paragraph (2) and work is sub-
 5 sequently resumed on the construction of such
 6 facility—

7 “(i) the date work is subsequently re-
 8 sumed shall be treated as the date that
 9 construction began for purposes of para-
 10 graph (1), and

11 “(ii) if the facility is a qualified nu-
 12 clear power facility, the qualified nuclear
 13 power facility expenditures shall be deter-
 14 mined without regard to any delay or tem-
 15 porary termination of construction of the
 16 facility.”.

17 (c) PROVISIONS RELATING TO CREDIT RECAP-
 18 TURE.—

19 (1) PROGRESS EXPENDITURE RECAPTURE
 20 RULES.—

21 (A) BASIC RULES.—Subparagraph (A) of
 22 section 50(a)(2) is amended to read as follows:

23 “(A) IN GENERAL.—If during any taxable
 24 year any building to which section 47(d) applied
 25 or any facility to which section 48A(c) applied

ceases (by reason of sale or other disposition, cancellation or abandonment of contract, or otherwise) to be, with respect to the taxpayer, property which, when placed in service, will be a qualified rehabilitated building or a qualified nuclear power facility, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the credit determined under this subpart with respect to such building or facility.”.

(B) AMENDMENT TO EXCESS CREDIT RECAPTURE RULE.—Subparagraph (B) of section 50(a)(2) is amended—

(i) by inserting “or paragraph (2) of section 48A(b)” after “paragraph (2) of section 47(b)”,

(ii) by inserting “or section 48A(b)(1)” after “section 47(b)(1)”, and

(iii) by inserting “or facility” after “building”.

1 (C) AMENDMENT OF SALE AND LEASE-
 2 BACK RULE.—Subparagraph (C) of section
 3 50(a)(2) is amended—

4 (i) by inserting “or section 48A(c)”
 5 after “section 47(d)”, and

6 (ii) by inserting “or qualified nuclear
 7 power facility expenditures” after “quali-
 8 fied rehabilitation expenditures”.

9 (D) CONFORMING AMENDMENT.—Sub-
 10 paragraph (D) of section 50(a)(2) is amended
 11 by inserting “or section 48A(c)” after “section
 12 47(d)”.

13 (d) NO BASIS ADJUSTMENT.—Section 50(c) is
 14 amended by inserting at the end the following new para-
 15 graph:

16 “(6) NUCLEAR POWER FACILITY CONSTRUC-
 17 TION CREDIT.—Paragraphs (1) and (2) shall not
 18 apply to the nuclear power facility construction cred-
 19 it.”.

20 (e) TECHNICAL AMENDMENTS.—The table of sec-
 21 tions for subpart E of part IV of subchapter A of chapter
 22 1 is amended by inserting after the item for section 48
 23 the following new item:

“Sec. 48A. Nuclear power facility construction credit.”.

24 (f) EFFECTIVE DATE.—The amendments made by
 25 this section of this Act shall apply to expenditures in-

1 curred in taxable years beginning after December 31,
2 2007.

3 **SEC. 213. TAX-EXEMPT FINANCING OF NUCLEAR POWER FA-**
4 **CILITIES.**

5 (a) IN GENERAL.—Subsection (a) of section 142 is
6 amended—

7 (1) by striking “or” at the end of paragraph
8 (13),

9 (2) by striking the period at the end of para-
10 graph (14) and inserting “, or”, and

11 (3) by inserting at the end the following new
12 paragraph:

13 “(15) nuclear power facility.”.

14 (b) DEFINITION.—Section 142 is amended by insert-
15 ing at the end the following new subsection:

16 “(m) NUCLEAR POWER FACILITY.—For purposes of
17 subsection (a)(15), the term ‘nuclear power facility’ means
18 a nuclear power facility (within the meaning of section
19 168(e)(8)) and any nuclear fuel assemblies (within the
20 meaning of section 168(e)(8)(B)) initially included in any
21 such facility.”.

22 (c) EXEMPTION FROM VOLUME CAP.—Paragraph
23 (3) of section 146(g) (exempting certain exempt facility
24 bonds from the state volume caps) is amended—

1 (1) by striking “or (14)” and inserting “(14),
2 or (15)”, and

3 (2) by striking “and qualified green building
4 and sustainable design projects” and inserting
5 “qualified green building and sustainable design
6 projects and nuclear power facilities”.

7 (d) EXEMPTION FROM ALTERNATIVE DEPRECIATION.—Paragraph (5) of section 168(g) is amended by in-
8 serting at the end the following new subparagraph:

10 “(D) NUCLEAR POWER FACILITY.—The
11 term ‘tax-exempt bond financed property’ does
12 not include any nuclear power facility that is fi-
13 nanced with bonds described in section
14 142(a)(15).”.

15 (e) EFFECTIVE DATE.—The amendments made by
16 this section of this Act shall apply with respect to bonds
17 issued on or after January 1, 2006, and before January
18 1, 2011.

19 **TITLE III—RESEARCH CREDITS**

20 **SEC. 301. SENSE OF THE SENATE REGARDING PERMANENT** 21 **EXTENSION OF RESEARCH CREDIT.**

22 It is the sense of the Senate that the income tax cred-
23 it for increasing research activities under section 41 of the
24 Internal Revenue Code of 1986 should be permanently ex-
25 tended, the rates of the alternative incremental credit

1 under such section should be increased, and an alternative
 2 simplified credit for qualified research expenses should be
 3 instituted.

4 **TITLE IV—SUNSET**

5 **SEC. 401. SUNSET.**

6 (a) IN GENERAL.—All provisions of, and amend-
 7 ments made by, this Act shall not apply to taxable years
 8 beginning after December 31, 2010.

9 (b) APPLICATION OF CERTAIN LAWS.—The Internal
 10 Revenue Code of 1986 shall be applied and administered
 11 to taxable years beginning after December 31, 2010, as
 12 if the provisions and amendments described in subsection
 13 (a) had never been enacted.

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