

117TH CONGRESS
1ST SESSION

S. 2306

To amend the Internal Revenue Code of 1986 to support upgrades at existing hydroelectric dams and the removal of obsolete river obstructions to improve the health of the Nation’s rivers and associated wildlife habitat and increase clean energy production, public safety, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Ms. CANTWELL (for herself 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 support upgrades at existing hydroelectric dams and the removal of obsolete river obstructions to improve the health of the Nation’s rivers and associated wildlife habitat and increase clean energy production, public safety, 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 “Maintaining and En-
5 hancing Hydroelectricity and River Restoration Act of
6 2021”.

1 **SEC. 2. CREDIT FOR MAINTAINING AND ENHANCING HY-**
2 **DROELECTRIC DAMS.**

3 (a) IN GENERAL.—Subpart E of part IV of sub-
4 chapter A of chapter 1 of the Internal Revenue Code of
5 1986 is amended by adding after section 48C the following
6 new section:

7 **“SEC. 48D. CREDIT FOR MAINTAINING AND ENHANCING HY-**
8 **DROELECTRIC DAMS.**

9 “(a) IN GENERAL.—For purposes of section 46, the
10 credit for maintaining and enhancing hydroelectric dams
11 for any taxable year is 30 percent of the basis of any quali-
12 fied dam safety, environmental, and grid resilience en-
13 hancement property placed in service during such taxable
14 year.

15 “(b) LIMITATION.—No credit shall be allowed under
16 subsection (a) with respect to any qualified dam safety,
17 environmental, and grid resilience property unless the
18 qualified dam in connection with which such property was
19 placed in service meets all applicable Federal, State, and
20 tribal requirements with respect to such dam on the date
21 such property is placed in service.

22 “(c) CERTAIN PROGRESS EXPENDITURE RULES
23 MADE APPLICABLE.—Rules similar to the rules of sub-
24 sections (c)(4) and (d) of section 46 (as in effect on the
25 day before the date of the enactment of the Revenue Rec-

1 onciliation Act of 1990) shall apply for purposes of sub-
2 section (a).

3 “(d) DEFINITIONS.—For purposes of this section—

4 “(1) QUALIFIED DAM SAFETY, ENVIRON-
5 MENTAL, AND GRID RESILIENCE PROPERTY.—The
6 term ‘qualified dam safety, environmental, and grid
7 resilience enhancement property’ means any prop-
8 erty—

9 “(A) which is—

10 “(i) dam safety property,

11 “(ii) environmental improvement
12 property, or

13 “(iii) grid resilience property,

14 “(B)(i) the construction, reconstruction, or
15 erection of which is completed by the taxpayer,
16 or

17 “(ii) which is acquired by the taxpayer if
18 the original use of such property commences
19 with the taxpayer, and

20 “(C) with respect to which depreciation (or
21 amortization in lieu of depreciation) is allow-
22 able.

23 “(2) DAM SAFETY PROPERTY.—The term ‘dam
24 safety property’ means property the purpose of
25 which is to maintain or improve dam safety on a

1 qualified dam to ensure acceptable performance
2 under all loading conditions (static, hydrologic, seis-
3 mic) in accordance with applicable regulatory cri-
4 teria and risk guidelines, including—

5 “(A) the maintenance or upgrade of spill-
6 ways or other appurtuant structures,

7 “(B) dam stability, including erosion re-
8 pair and enhanced seepage controls, and

9 “(C) upgrades or replacements of flood-
10 gates or natural infrastructure restoration or
11 protection to improve flood risk reduction.

12 “(3) ENVIRONMENTAL IMPROVEMENT PROP-
13 ERTY.—The term ‘environmental improvement prop-
14 erty’ means property the purpose of which is to—

15 “(A) add or improve safe and effective fish
16 passage, including new or upgraded turbine
17 technology, fish ladders, fishways, and all other
18 associated technology, equipment, or other fish
19 passage technology to a qualified dam,

20 “(B) maintain or improve the quality of
21 the water retained or released by a qualified
22 dam,

23 “(C) promote downstream sediment trans-
24 port processes and habitat maintenance with re-
25 spect to a qualified dam, or

1 “(D) provide for or improve recreational
2 access to the vicinity of a qualified dam, includ-
3 ing roads, trails, boat ingress and egress, flows
4 to improve recreation, and infrastructure that
5 improves river recreation opportunity.

6 “(4) GRID RESILIENCE PROPERTY.—

7 “(A) IN GENERAL.—The term ‘grid resil-
8 ience property’ means property—

9 “(i) the purpose of which is to provide
10 the ability of a hydroelectric facility at a
11 qualified dam to contribute to electricity
12 grid resilience and efficiency by—

13 “(I) adapting more quickly to
14 changing grid conditions,

15 “(II) providing ancillary services
16 (including black start capabilities,
17 voltage support, and spinning re-
18 serves),

19 “(III) integrating other variable
20 sources of electricity generation, or

21 “(IV) managing accumulated res-
22 ervoir sediments, or

23 “(ii) which is a qualified dam de-
24 scribed in paragraph (5)(B).

1 “(B) MITIGATION AND ENVIRONMENTAL
2 REVIEW REQUIREMENTS.—Such term shall not
3 include any property described in subparagraph
4 (A)(i) unless any physical or operational
5 changes instituted in connection with the activi-
6 ties described in such subparagraph have been
7 authorized under applicable Federal, State, and
8 tribal permitting or licensing processes which
9 include appropriate mitigation conditions aris-
10 ing from consultation and environmental review
11 under such processes.

12 “(5) QUALIFIED DAM.—The term ‘qualified
13 dam’ means any of the following:

14 “(A) A hydroelectric dam which is licensed
15 by the Federal Energy Regulatory Commission
16 or legally operating without such a license and
17 was placed in service before the date of the en-
18 actment of this section.

19 “(B) A hydroelectric dam which—

20 “(i) was licensed by the Federal En-
21 ergy Regulatory Commission before De-
22 cember 31, 2020,

23 “(ii) is under active license from the
24 Federal Energy Regulatory Commission on
25 the date of enactment of this section,

1 “(iii) meets the requirements of sub-
2 clauses (I) and (III) of sections
3 242(b)(1)(B)(ii) of the Energy Policy Act
4 of 2005 (42 U.S.C. 15881),

5 “(iv) is placed in service on or after
6 the date of the enactment of this section,
7 and

8 “(v) does not contribute to atmos-
9 pheric pollution.

10 “(C) Any dam which—

11 “(i) was placed in service before the
12 date of the enactment of this section,

13 “(ii) is operated on such date of en-
14 actment for any beneficial public use ex-
15 cept hydropower generation, and

16 “(iii) is authorized after such date of
17 the enactment for hydropower development
18 by the Federal Energy Regulatory Com-
19 mission, the Bureau of Reclamation, or a
20 State, as appropriate.

21 “(D) Any dam which was placed in service
22 before the date of the enactment of this section
23 and which is a qualified nonpowered dam (as
24 defined in section 34(e)(3) of the Federal
25 Power Act (16 U.S.C. § 823e(e)(3)).

1 “(e) ELECTIVE PAYMENT.—

2 “(1) IN GENERAL.—In the case of a taxpayer
3 making an election (at such time and in such man-
4 ner as the Secretary may provide) under this sub-
5 section with respect to any portion of the credit
6 which would (without regard to this subsection) be
7 determined under this section with respect to such
8 taxpayer, such taxpayer shall be treated as making
9 a payment against the tax imposed by subtitle A for
10 the taxable year equal to 100 percent of such
11 amount.

12 “(2) TIMING.—The payment described in sub-
13 section (a) shall be treated as made on the later of
14 the due date of the return of tax for such taxable
15 year or the date on which such return is filed.

16 “(3) DENIAL OF DOUBLE BENEFIT.—Solely for
17 purposes of section 38, in the case of a taxpayer
18 making an election under this subsection, the credit
19 determined under this section shall be reduced by
20 the amount of the portion of such credit with respect
21 to which the taxpayer makes such election.

22 “(4) APPLICATION TO CERTAIN TAX-EXEMPT
23 PERSONS.—In the case of a taxpayer making an
24 election under this subsection, the credit subject to

1 such an election shall be determined notwith-
2 standing—

3 “(A) section 50(b)(3), and

4 “(B) section 50(b)(4), with respect to an
5 entity described in section 50(b)(4)(A)(i).

6 “(f) SPECIAL RULE FOR PROPERTY FINANCED BY
7 SUBSIDIZED ENERGY FINANCING OR TAX-EXEMPT
8 BONDS.—For purposes of this section, rules similar to the
9 rules of section 48(a)(4) (determined without regard to
10 subparagraph (D) thereof) shall apply.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 46 of the Internal Revenue Code of
13 1986 is amended by striking “and” at the end of
14 paragraph (5), by striking the period at the end of
15 paragraph (6) and inserting “, and”, and by adding
16 at the end the following new paragraph:

17 “(7) the credit for maintaining and enhancing
18 hydroelectric dams.”.

19 (2) Section 49(a)(1)(C) of such Code is amend-
20 ed by striking “and” at the end of clause (iv), by
21 striking the period at the end of clause (v) and in-
22 serting “, and”, and by adding at the end the fol-
23 lowing new clause:

1 “(vi) the basis of any qualified prop-
2 erty taken into account under section
3 48D(d).”.

4 (3) Section 50(a)(2)(E) of such Code is amend-
5 ed by striking “or 48C(b)(2)” and inserting
6 “48C(b)(2), or 48D(e)”.

7 (4) The table of sections for subpart E of part
8 IV of subchapter A of chapter 1 of such Code is
9 amended by inserting after the item relating to sec-
10 tion 48C the following new item:

 “Sec. 48D. Credit for maintaining and enhancing hydroelectric dams.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to property placed in service after
13 the date of the enactment of this Act, under rules similar
14 to the rules of section 48(m) of the Internal Revenue Code
15 of 1986 (as in effect on the day before the date of the
16 enactment of the Revenue Reconciliation Act of 1990).

17 **SEC. 3. CREDIT FOR OBSOLETE RIVER OBSTRUCTION RE-**
18 **MOVAL EXPENDITURES.**

19 (a) IN GENERAL.—Subpart D of part IV of sub-
20 chapter A of chapter 1 of the Internal Revenue Code of
21 1986 is amended by adding after section 45T the following
22 new section:

1 **“SEC. 45U. CREDIT FOR OBSOLETE RIVER OBSTRUCTION**
2 **REMOVAL EXPENDITURES.**

3 “(a) IN GENERAL.—For purposes of section 38, the
4 credit for obsolete river obstruction removal expenditures
5 for any taxable year is 30 percent of the qualified obsolete
6 river obstruction removal expenditures incurred during
7 such taxable year.

8 “(b) QUALIFIED OBSOLETE RIVER OBSTRUCTION
9 REMOVAL EXPENDITURES.—For purposes of this sec-
10 tion—

11 “(1) IN GENERAL.—The term ‘qualified obso-
12 lete river obstruction removal expenditures’ means
13 any expenditure to demolish and remove, in whole or
14 in part, any dam described in paragraph (2) and its
15 associated infrastructure, including all associated re-
16 mediation and ecosystem restoration costs, so long
17 as—

18 “(A) the work is performed with the con-
19 sent of the dam owner, if available, and

20 “(B) none of the expenses incurred are
21 used to demolish or remove a Federally-owned
22 hydroelectric dam.

23 “(2) DAM DESCRIBED.—A dam is described in
24 this paragraph if such dam is—

1 “(A) a qualified nonpowered dam (as de-
2 fined in section 34(e)(3) of the Federal Power
3 Act (16 U.S.C. § 823e(e)(3)), or

4 “(B) a hydroelectric dam which is not
5 owned by the Federal government.

6 “(c) APPLICATION TO TAX-EXEMPT ENTITIES.—

7 “(1) IN GENERAL.—In the case of qualified ob-
8 solete river obstruction removal expenditures in-
9 curred by an eligible entity, the Secretary shall pro-
10 mulgate regulations to allow the allocation of the
11 credit under this section to the person primarily re-
12 sponsible for designing the property in lieu of the
13 owner of such property, with such person to be
14 treated as the taxpayer for purposes of this section.

15 “(2) ELIGIBLE ENTITY.—For purposes of this
16 subsection, the term ‘eligible entity’ means—

17 “(A) a Federal, State, or local government
18 or a political subdivision thereof,

19 “(B) an Indian tribe (as defined in section
20 45A(c)(6)), or

21 “(C) an organization described in section
22 501(c) and exempt from tax under section
23 501(a).

24 “(d) ELECTIVE PAYMENT.—

1 “(1) IN GENERAL.—In the case of a taxpayer
2 making an election (at such time and in such man-
3 ner as the Secretary may provide) under this sub-
4 section with respect to any portion of the credit
5 which would (without regard to this subsection) be
6 determined under this section with respect to such
7 taxpayer, such taxpayer shall be treated as making
8 a payment against the tax imposed by subtitle A for
9 the taxable year equal to 100 percent of such
10 amount.

11 “(2) TIMING.—The payment described in sub-
12 section (a) shall be treated as made on the later of
13 the due date of the return of tax for such taxable
14 year or the date on which such return is filed.

15 “(3) DENIAL OF DOUBLE BENEFIT.—Solely for
16 purposes of section 38, in the case of a taxpayer
17 making an election under this subsection, the credit
18 determined under this section shall be reduced by
19 the amount of the portion of such credit with respect
20 to which the taxpayer makes such election.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 38(b) of the Internal Revenue Code
23 of 1986 is amended by striking “plus” at the end of
24 paragraph (32), by striking the period at the end of

1 paragraph (33) and inserting “, plus”, and by add-
2 ing at the end the following new paragraph:

3 “(34) the credit for obsolete river obstruction
4 removal expenditures under section 45U(a).”.

5 (2) Section 280C of such Code is amended by
6 adding at the end the following new subsection:

7 “(i) CREDIT FOR OBSOLETE RIVER OBSTRUCTION
8 REMOVAL EXPENDITURES.—No deduction shall be al-
9 lowed for that portion of the expenses otherwise allowable
10 as a deduction taken into account in determining the cred-
11 it under section 45U for the taxable year which is equal
12 to the amount of the credit determined for such taxable
13 year under section 45U(a).”.

14 (3) The table of sections for subpart D of part
15 IV of subchapter A of chapter 1 of such Code is
16 amended by inserting after the item relating to sec-
17 tion 45T the following new item:

“Sec. 45U. Credit for obsolete river obstruction removal expenditures.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to any obsolete river obstruction
20 removal expenditures (as defined in section 45U of the In-
21 ternal Revenue Code of 1986, as added by this section)
22 incurred after the date of the enactment of this Act.

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