

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.

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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

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## 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(c)”.

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.

○