S. 2378

To amend the Internal Revenue Code of 1986 to establish a border carbon adjustment for the importation of certain goods.

IN THE SENATE OF THE UNITED STATES

JULY 19, 2021

Mr. Coons 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 establish a border carbon adjustment for the importation of certain goods.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fair, Affordable, Innovative, and Resilient Transition and Competition Act” or the “FAIR Transition and Competition Act”.

SEC. 2. BORDER CARBON ADJUSTMENT.

The Internal Revenue Code of 1986 is amended by adding at the end the following new subtitle:
“Subtitle L—Border Carbon Adjustment

“CHAPTER 101—BORDER CARBON ADJUSTMENT

“Sec. 9901. Definitions.
For purposes of this subtitle:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(2) BASELINE EMISSIONS.—The term ‘baseline emissions’ means the average greenhouse gas emissions of a company’s relevant sector, as determined under section 9903(a).

“(3) BENCHMARK EMISSIONS.—The term ‘benchmark emissions’ means the greenhouse gas emissions of the highest emitting sites within a company’s relevant sector in the United States, as determined under section 9903(b).

“(4) BORDER CARBON ADJUSTMENT.—The term ‘border carbon adjustment’ means the fee imposed pursuant to section 9904.
“(5) CO₂-e.—The term ‘CO₂-e’ means the number of metric tons of carbon dioxide emissions with the same global warming potential as one metric ton of another greenhouse gas.

“(6) COVERED FUEL.—The term ‘covered fuel’ means natural gas, petroleum, coal, or any other product derived from natural gas, petroleum, or coal that is used or may be used so as to emit greenhouse gases to the atmosphere.

“(7) COVERED GOOD.—The term ‘covered good’ means a covered fuel or a product produced within a sector.

“(8) DOMESTIC ENVIRONMENTAL COST INCURRED.—The term ‘domestic environmental cost incurred’ means the amount determined under section 9902.

“(9) GREENHOUSE GAS.—The term ‘greenhouse gas’ has the same meaning given such term under paragraph (3) of section 901 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17321).

“(10) GREENHOUSE GAS CONTENT.—The term ‘greenhouse gas content’ means the amount of greenhouse gases, expressed in metric tons of CO₂-
e, which would be emitted to the atmosphere by the use of a covered fuel.

“(11) IMPORTED.—Irrespective of any other definition in law or treaty, the term ‘imported’ means to have landed on, brought into, or introduced into any place subject to the jurisdiction of the United States from a person or place outside the United States.

“(12) IMPORTER.—The term ‘importer’ means a person who, for any reason, brings a product from a foreign country into the United States for consumption, use, or warehousing.

“(13) PRODUCTION GREENHOUSE GAS EMISSIONS.—The term ‘production greenhouse gas emissions’ means the quantity of greenhouse gases, expressed in metric tons of CO$_2$-e, emitted to the atmosphere resulting from the production, manufacture, or assembly of a product, as determined under section 9905.

“(14) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury, or the Secretary’s delegate.

“(15) SECTOR.—The term ‘sector’ means industrial facilities which produce one of the following products:
“(A) Steel.
“(B) Aluminum.
“(C) Cement.
“(D) Iron.
“(E) Any product identified pursuant to section 9905(e).
“(F) Any product for which greater than 50 percent of the composition of such product consists of a product described in subparagraphs (A) through (E).

“(16) STATE.—The term ‘State’ means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

“(17) UPSTREAM GREENHOUSE GAS EMISSIONS.—The term ‘upstream greenhouse gas emissions’ means the quantity of greenhouse gases, expressed in metric tons of CO₂-e, emitted to the atmosphere resulting from the extraction, processing, transportation, financing, or other preparation of a covered fuel for use, as determined under section 9905.

“SEC. 9902. DETERMINATION OF DOMESTIC ENVIRONMENTAL COST INCURRED.

“Not later than July 1, 2023, and annually thereafter, the Secretary (in coordination with the Director of
the Office of Management and Budget, the Secretary of Commerce, the Secretary of Energy, the Administrator, the Secretary of Agriculture, the Secretary of Transportation, the United States Trade Representative, and the Secretary of the Interior) shall determine the domestic environmental cost incurred for each sector, and for the production of each covered fuel, based on the average cost incurred by companies within such sector (or, in the case of a covered fuel, the average cost incurred to produce such fuel) to comply with any Federal, State, regional, or local law, regulation, policy or program which is—

“(1) in effect at the time of such determination, including any such law, regulation, policy, or program which is implemented after the date of enactment of the FAIR Transition and Competition Act, and

“(2) designed to limit or reduce greenhouse gas emissions, including—

“(A) the Clean Air Act (42 U.S.C. 7401),

“(B) greenhouse gas emissions standards for passenger cars and light trucks, and

“(C) any State, regional, or local law, regulation, policy, or program that imposes a cap-and-trade system with respect to, or a tax or fee on, carbon dioxide.
“SEC. 9903. DETERMINATION OF EMISSIONS FOR EACH SECTOR.

“(a) BASELINE EMISSIONS.—Not later than July 1, 2023, and annually thereafter, the Administrator shall determine and publish the average greenhouse gas emissions of each sector during the prior calendar year in order to demonstrate the amount of progress made in reducing greenhouse gas emissions in the United States.

“(b) BENCHMARK EMISSIONS.—Not later than July 1, 2023, and annually thereafter, the Administrator shall determine and publish the production greenhouse gas emissions for the top 1 percent of the emitting production sites within each sector in the United States during the prior calendar year.

“SEC. 9904. BORDER CARBON ADJUSTMENT.

“(a) BORDER CARBON ADJUSTMENT.—Beginning on January 1, 2024, in the case of any importer that imports a covered good into the United States, there shall be imposed a fee—

“(1) in the case of a covered fuel, in an amount equal to the product of—

“(A) the domestic environmental cost incurred in the production of such fuel, multiplied by

“(B) the upstream greenhouse gas emissions of such fuel,
“(2) in the case of a product produced within a sector which is not a covered fuel, in an amount equal to the product of—

“(A) the domestic environmental cost incurred for the sector in which such product was produced, multiplied by

“(B) the production greenhouse gas emissions of the product, or

“(3) in the case of a product produced within a sector for which reliable data with respect to the production greenhouse gas emissions of such product is not available, in an amount equal to the product of—

“(A) the benchmark emissions for the sector which produced such product, multiplied by

“(B) the domestic environmental cost incurred for the sector in which such product was produced.

“(b) Exemptions.—

“(1) In general.—Not later than July 1, 2023, and annually thereafter, the Secretary shall publish an annual report which identifies all applicable countries, with any covered good imported from an applicable country during the calendar year be-
ginning after the date of publication of such report
to be exempt from the border carbon adjustment.

“(2) APPLICABLE COUNTRIES.—For purposes
of this subsection, the term ‘applicable country’
means—

“(A) any country included on the list of
Least Developed Countries on the most recent
Development Assistance Committee List of Of-
official Development Assistance Recipients pub-
lished by the Organisation for Economic Co-op-
eration and Development, and

“(B) any country which—

“(i) does not impose a border carbon
adjustment on products produced or manu-
factured in the United States, and

“(ii) the Secretary (in coordination
with the Secretary of State, the United
States Trade Representative, the Secretary
of Commerce, the Secretary of Energy, the
Administrator, the Secretary of Agri-
culture, the Secretary of Transportation,
and the Secretary of the Interior) deter-
mines enforces laws and regulations de-
dsigned to limit or reduce greenhouse gas
emissions that are at least as ambitious as
Federal laws and regulations designed to
limit or reduce greenhouse gas emissions.

“SEC. 9905. ADMINISTRATION OF BORDER CARBON ADJUST-
MENT.

“(a) IN GENERAL.—The Secretary (in consultation
with the Administrator, the United States Trade Rep-
resentative, and the Secretary of Homeland Security) shall
prescribe regulations and guidance to implement the bor-
der carbon adjustment.

“(b) METHODOLOGY.—In determining the production
greenhouse gas emissions of a covered good, the Secretary
shall use reliable methodologies which—

“(1) as may be necessary or convenient—

“(A) distinguish between different types of
covered fuels,

“(B) distinguish between a covered fuel’s
greenhouse gas content and that covered fuel’s
upstream greenhouse gas emissions,

“(C) distinguish between the different
types of greenhouse gas emissions which com-
pose a covered fuel’s upstream greenhouse gas
emissions, as well as the various processes
which produced those emissions, and

“(D) distinguish between the different
types of greenhouse gas emissions which com-
pose a covered good’s production greenhouse
gas emissions, as well as the various processes
which produced those emissions,
“(2) ensure that no covered good has the bor-
der carbon adjustment imposed upon it more than
once, and
“(3) are consistent with international treaties
and agreements, including free trade agreements.
“(e) PETITION PROCEDURE.—The Secretary shall es-
tablish fair, timely, impartial, and, to the extent necessary,
confidential procedures by which the importer of any cov-
ered good may petition the Secretary to revise the Sec-
retary’s determination of the production greenhouse gas
emissions of that importer’s covered good.
“(d) INTERNATIONAL NEGOTIATIONS.—The Sec-
retary of State and the United States Trade Representa-
tive shall engage with other countries regarding reducing
global greenhouse gas emissions through trade and ensur-
ing fairness in the application of emissions-based tariffs.
“(e) ADDITIONAL SECTORS.—The Secretary (in con-
sultation with the Director of the Office of Management
and Budget, the Secretary of Commerce, the Secretary of
Energy, the Administrator, the Secretary of Agriculture,
the Secretary of Transportation, the Secretary of the Inte-
rior, and the United States Trade Representative) shall,
for purposes of section 9901(15)(C), annually identify any
product for which the Secretary determines—

“(1) there is reliable data for determining the
production greenhouse gas emissions of such prod-
uct, and

“(2) that it is in the interest of the United
States to include such product under section
9901(15) for purposes of application of the border
carbon adjustment with respect to such product.

“SEC. 9906. ALLOCATION OF CARBON BORDER FEE ADJUST-
MENT REVENUES.

“With respect to the revenues collected under section
9904—

“(1) such revenues shall be used to supplement
appropriations made available in fiscal year 2024
and each fiscal year thereafter to U.S. Customs and
Border Protection, in such amounts as are necessary
to administer the border carbon adjustment, and

“(2) from any amounts remaining following any
supplemental appropriation made with respect to
amounts described in paragraph (1)—

“(A) 50 percent of such amounts remain-
ing shall be used to provide grants to States as
prescribed in section 3 of the FAIR Transition
and Competition Act, and
“(B) 50 percent of such amounts remaining shall be available, as provided by appropriation Acts, for making expenditures to support the high-impact research, development, demonstration, technology transfer, commercialization, and export of technologies that reduce or eliminate greenhouse gas emissions.”

SEC. 3. RESILIENT COMMUNITIES GRANT PROGRAM.

(a) IN GENERAL.—The Secretary shall provide to each State a Resilient Communities Grant no later than April 1, 2025, and each calendar year thereafter, in an amount determined under subsection (c).

(b) ELIGIBLE PURPOSES.—A State receiving a Resilient Communities Grant under this section shall use the amount of each such grant as follows:

(1) To provide job training and worker transition assistance, with priority given to workers and former workers in fossil fuel-related industries.

(2) To assist municipalities, counties, or other political subdivisions of the State in—

(A) developing climate vulnerability assessments and adaptation plans to help build resilience to rapid-onset and slow-onset climate hazards; and
(B) implementing such plans, which may include but are not limited to such projects as climate-smart infrastructure, agricultural climate solutions, and natural climate solutions to build climate resilience and support carbon sequestration.

(3) To directly assist frontline communities who are experiencing the earliest, most severe threats from climate change with technical assistance and resources to undertake efforts to build climate resilience.

(4) Alleviate historical burdens imposed upon communities of color, low-income communities, Tribal and Indigenous communities, fossil fuel-dependent communities, and other vulnerable populations that have been historically under-resourced due to inequities in resource allocation or disproportionately burdened by environmental hazards, including exposure to climate risks and polluted air, waterways, and landscapes.

(5) To provide relocation assistance to individuals and populations when climate change or the energy transition threatens their health, well-being, or livelihood.
(6) To assist small businesses that are disproportionately impacted by the border carbon adjustment imposed under subtitle L of the Internal Revenue Code of 1986 (as added by section 2 of this Act).

(c)Amount of Grant.—

(1) In General.—The amount of the Resilient Communities Grant made to any State for any calendar year shall be equal to the product of—

(A) the total amount made available under section 9906(2)(A) of the Internal Revenue Code of 1986 (as added by this Act) based on revenue collected in the prior calendar year; and

(B) the State allocation percentage for the State (as determined under paragraph (2)).

(2) State Allocation Percentage.—Not later than December 1, 2024, and each calendar year thereafter, the Secretary (in coordination with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, the Secretary of Labor, the Secretary of Homeland Security, the Secretary of Transportation, the Secretary of Agriculture, and the Secretary of Energy) shall establish the formula for determining the State allocation per-
percentage for the following calendar year, which, for
each State, shall take into account—

(A) the percentage of the population of the
United States residing in such State;

(B) the vulnerability of such State to cli-
mate change; and

(C) the percentage of the total United
States workforce employed in fossil fuel-related
industries who are employed in such industries
in such State.

(3) Climate vulnerability.—In accounting
for the vulnerability of each State to climate change
under paragraph (2)(B) for the purposes of deter-
mining the State allocation percentage, the parties
identified in paragraph (2) shall—

(A) at a minimum, consider the potential
risks from rapid-onset and slow-onset climate
hazards to—

(i) human health and safety;

(ii) infrastructure and other physical
assets; and

(iii) natural and agricultural systems;

(B) account for the disproportionate im-
pact of climate change on socially vulnerable
communities;
(C) ensure the methods for determining climate vulnerability do not result in a formula for State allocation that inequitably allocates resources to specific communities based on race, socioeconomic status, or other such characteristics; and

(D) utilize relevant components of existing metrics and indicators of climate vulnerability in the United States wherever possible, including but not limited to—

    (i) the FEMA National Risk Index;

    and

    (ii) over the past 5 years, the State’s proportion of—

        (I) National Flood Insurance Program claims;

        (II) Fire Mitigation Assistance Grants; and

        (III) USDA fast track drought designations.

(4) Minimum State Allocation.—For purposes of subparagraph (B), the State allocation percentage for any State shall not be less than 1 percent.
(5) VERIFICATION.—The Secretary shall verify the State use of grants under this subsection to ensure such uses comply with the requirements of this section. The Secretary may withhold a grant under this subsection if the Secretary determines that a State has not complied with such requirements.

(d) DEFINITIONS.—In this section:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Treasury or the Secretary’s delegate.

(2) SLOW-ONSET CLIMATE HAZARD.—The term “slow-onset climate hazard” means a threat from climate change that evolves gradually due to incremental change or because of an increasing frequency or intensity of recurring climate impacts, including—

(A) sea level rise;

(B) desertification;

(C) biodiversity loss;

(D) increasing temperatures;

(E) ocean acidification;

(F) soil salinization;

(G) drought;

(H) land and natural resource degradation;
(I) glacial retreat or reduced snow pack,
and related impacts; and

(J) permafrost thaw.

(3) STATE.—The term “State” means any of
the 50 States, the District of Columbia, or the Com-
monwealth of Puerto Rico.