

117TH CONGRESS
2D SESSION

S. 5222

To amend the Internal Revenue Code of 1986 to support upgrades at existing hydroelectric dams in order to increase clean energy production, improve the resiliency and reliability of the United States electric grid, enhance the health of the Nation's rivers and associated wildlife habitats, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2022

Ms. CANTWELL (for herself, Ms. MURKOWSKI, Ms. STABENOW, and Mr. SULLIVAN) 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 in order to increase clean energy production, improve the resiliency and reliability of the United States electric grid, enhance the health of the Nation's rivers and associated wildlife habitats, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Maintaining and En-
3 hancing Hydroelectricity and River Restoration Act of
4 2022”.

5 **SEC. 2. CREDIT FOR MAINTAINING AND ENHANCING HY-**
6 **DROELECTRIC FACILITIES.**

7 (a) IN GENERAL.—Subpart E of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of
9 1986, as amended by section 13702 of Public Law 117–
10 169, is amended by inserting after section 48E the fol-
11 lowing new section:

12 **“SEC. 48F. CREDIT FOR MAINTAINING AND ENHANCING HY-**
13 **DROELECTRIC FACILITIES.**

14 “(a) IN GENERAL.—For purposes of section 46, the
15 credit for maintaining and enhancing hydroelectric facili-
16 ties for any taxable year is an amount equal to 30 percent
17 of the basis of any hydropower improvement property
18 placed in service during such taxable year.

19 “(b) CERTAIN PROGRESS EXPENDITURE RULES
20 MADE APPLICABLE.—Rules similar to the rules of sub-
21 sections (c)(4) and (d) of section 46 (as in effect on the
22 day before the date of the enactment of the Revenue Rec-
23 onciliation Act of 1990) shall apply for purposes of sub-
24 section (a).

1 “(c) HYDROPOWER IMPROVEMENT PROPERTY.—In
2 this section, the term ‘hydropower improvement property’
3 means property—

4 “(1) which—

5 “(A) adds or improves fish passage at a
6 qualified dam,

7 “(B) maintains or improves the quality of
8 the water retained or released by a qualified
9 dam,

10 “(C) promotes downstream sediment trans-
11 port processes and habitat maintenance with re-
12 spect to a qualified dam,

13 “(D) upgrades, repairs, or reconstructs a
14 qualified dam to meet Federal dam safety and
15 security standards,

16 “(E) improves the public uses of, and ac-
17 cess to, public waterways impacted by a quali-
18 fied dam in a manner consistent with a license
19 issued by the Federal Energy Regulatory Com-
20 mission or a settlement agreement reached with
21 the Federal Energy Regulatory Commission
22 pursuant to such a license,

23 “(F) removes an obsolete river obstruction,
24 or

1 “(G) places into service an approved re-
 2 mote dam, and

3 “(2) for which, prior to January 1, 2032, the
 4 taxpayer receives written approval with respect to
 5 any property described in paragraph (1) from the
 6 Federal Energy Regulatory Commission or State or
 7 local officials, as appropriate.

8 “(d) OTHER DEFINITIONS.—In this section—

9 “(1) APPROVED REMOTE DAM.—The term ‘ap-
 10 proved remote dam’ means—

11 “(A) a hydroelectric dam which—

12 “(i) exclusively services communities
 13 not interconnected to the Electric Reli-
 14 ability Council of Texas, the Eastern Inter-
 15 connection, or the Western Interconnec-
 16 tion,

17 “(ii) was licensed by the Federal En-
 18 ergy Regulatory Commission before De-
 19 cember 31, 2020, and

20 “(iii) does not contribute to atmos-
 21 phere pollution, and

22 “(B) any qualified interconnection property
 23 (as defined in section 48(a)(8)(B)) associated
 24 with a dam described in subparagraph (A)

1 which has a maximum net output of not greater
2 than 20 megawatts.

3 “(2) FISH PASSAGE.—The term ‘fish passage’
4 means, with respect to any qualified dam, any new
5 or upgraded turbine, fishway, or other fish passage
6 technology which improves fish migration and sur-
7 vival rates.

8 “(3) OBSOLETE RIVER OBSTRUCTION.—The
9 term ‘obsolete river obstruction’ means a qualified
10 nonpowered dam (as defined in section 34(e)(3) of
11 the Federal Power Act (16 U.S.C. 823e(e)(3))) no
12 longer serving its intended purpose.

13 “(4) QUALIFIED DAM.—The term ‘qualified
14 dam’ means a hydroelectric dam that is licensed by
15 the Federal Energy Regulatory Commission or le-
16 gally operating without such a license before the
17 date of enactment of this section.”.

18 (b) ELECTIVE PAYMENT AND TRANSFER OF CRED-
19 IT.—

20 (1) ELECTIVE PAYMENT.—Section 6417 of the
21 Internal Revenue Code of 1986, as added by section
22 13801(a) of Public Law 117–169, is amended—

23 (A) in subsection (b), by adding at the end
24 the following:

“(13) The credit for maintaining and enhancing hydroelectric facilities under section 48F.”, and

(B) in subsection (d)(1)—

(i) in subparagraph (E), by striking “(C), or (D)” each place it appears and inserting “(C), (D), or (E)”,

(ii) by redesignating subparagraph (E) (as amended by clause (i)) as subparagraph (F), and

(iii) by inserting after subparagraph (D) the following:

“(E) ELECTION WITH RESPECT TO CREDIT FOR MAINTAINING AND ENHANCING HYDRO-ELECTRIC FACILITIES.—If a taxpayer other than an entity described in subparagraph (A) makes an election under this subparagraph with respect to any taxable year in which such taxpayer has, after December 31, 2022, placed in service hydropower improvement property (as defined in section 48F(c)), such taxpayer shall be treated as an applicable entity for purposes of this section for such taxable year, but only with respect to the credit described in subsection (b)(13).”.

(2) TRANSFER.—Section 6418(f)(1)(A) of the Internal Revenue Code of 1986, as added by section 13801(b) of Public Law 117–169, is amended by adding at the end the following:

“(xii) The credit for maintaining and enhancing hydroelectric facilities under section 48F.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 46 of the Internal Revenue Code of 1986, as amended by section 13702(b)(1) of Public Law 117–169, is amended—

(A) in paragraph (6), by striking “and” at the end,

(B) in paragraph (7), by striking the period at the end and inserting “, and”, and

(C) by adding at the end the following:

“(8) the credit for maintaining and enhancing hydroelectric facilities.”.

(2) Section 49(a)(1)(C) of such Code, as amended by section 13702(b)(2) of Public Law 117–169, is amended—

(A) in clause (vii), by striking “and” at the end,

(B) in clause (viii), by striking the period at the end and inserting “, and”, and

1 (C) by adding at the end the following:

2 “(ix) the basis of any hydropower im-
3 provement property under section 48F.”.

4 (3) Section 50 of such Code is amended—

5 (A) in subsection (a)(2)(E), as amended by
6 section 13702(b) of Public Law 117–169, by
7 striking “or 48E(e)” and inserting “48E(e), or
8 48F(b)”, and

9 (B) in subsection (d)(2), as amended by
10 section 13102(f)(5) of Public Law 117–169—

11 (i) in the matter preceding subpara-
12 graph (A), by inserting “or any hydro-
13 power improvement property (as defined in
14 section 48F(c))” after “any energy storage
15 technology (as defined in section
16 48(c)(6))”, and

17 (ii) in subparagraph (B), by striking
18 “energy storage technology” each place it
19 appears and inserting “energy storage
20 technology or hydropower improvement
21 property”.

22 (4) The table of sections for subpart E of part
23 IV of subchapter A of chapter 1 of such Code, as
24 amended by section 13702(b)(5) of Public Law 117–

1 169, is amended by inserting after the item relating
2 to section 48E the following new item:

“Sec. 48F. Credit for maintaining and enhancing hydroelectric facilities.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to property placed in service after
5 December 31, 2022.

○