

117TH CONGRESS
1ST SESSION

S. _____

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

Ms. CANTWELL (for herself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on

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,*

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 2021”.

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

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 is amended by adding after section 48C the following
10 new section:

11 **“SEC. 48D. CREDIT FOR MAINTAINING AND ENHANCING HY-**
12 **DROELECTRIC DAMS.**

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

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

1 “(c) CERTAIN PROGRESS EXPENDITURE RULES
2 MADE APPLICABLE.—Rules similar to the rules of sub-
3 sections (c)(4) and (d) of section 46 (as in effect on the
4 day before the date of the enactment of the Revenue Rec-
5 onciliation Act of 1990) shall apply for purposes of sub-
6 section (a).

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

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

13 “(A) which is—

14 “(i) dam safety property,

15 “(ii) environmental improvement
16 property, or

17 “(iii) grid resilience property,

18 “(B)(i) the construction, reconstruction, or
19 erection of which is completed by the taxpayer,
20 or

21 “(ii) which is acquired by the taxpayer if
22 the original use of such property commences
23 with the taxpayer, and

1 “(C) with respect to which depreciation (or
2 amortization in lieu of depreciation) is allow-
3 able.

4 “(2) DAM SAFETY PROPERTY.—The term ‘dam
5 safety property’ means property the purpose of
6 which is to maintain or improve dam safety on a
7 qualified dam to ensure acceptable performance
8 under all loading conditions (static, hydrologic, seis-
9 mic) in accordance with applicable regulatory cri-
10 teria and risk guidelines, including—

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

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

15 “(C) upgrades or replacements of flood-
16 gates or natural infrastructure restoration or
17 protection to improve flood risk reduction.

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

21 “(A) add or improve safe and effective fish
22 passage, including new or upgraded turbine
23 technology, fish ladders, fishways, and all other
24 associated technology, equipment, or other fish
25 passage technology to a qualified dam,

1 “(B) maintain or improve the quality of
2 the water retained or released by a qualified
3 dam,

4 “(C) promote downstream sediment trans-
5 port processes and habitat maintenance with re-
6 spect to a qualified dam, or

7 “(D) provide for or improve recreational
8 access to the vicinity of a qualified dam, includ-
9 ing roads, trails, boat ingress and egress, flows
10 to improve recreation, and infrastructure that
11 improves river recreation opportunity.

12 “(4) GRID RESILIENCE PROPERTY.—

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

15 “(i) the purpose of which is to provide
16 the ability of a hydroelectric facility at a
17 qualified dam to contribute to electricity
18 grid resilience and efficiency by—

19 “(I) adapting more quickly to
20 changing grid conditions,

21 “(II) providing ancillary services
22 (including black start capabilities,
23 voltage support, and spinning re-
24 serves),

1 “(III) integrating other variable
2 sources of electricity generation, or

3 “(IV) managing accumulated res-
4 ervoir sediments, or

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

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

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

20 “(A) A hydroelectric dam which is licensed
21 by the Federal Energy Regulatory Commission
22 or legally operating without such a license and
23 was placed in service before the date of the en-
24 actment of this section.

25 “(B) A hydroelectric dam which—

1 “(i) was licensed by the Federal En-
2 ergy Regulatory Commission before De-
3 cember 31, 2020,

4 “(ii) is under active license from the
5 Federal Energy Regulatory Commission on
6 the date of enactment of this section,

7 “(iii) meets the requirements of sub-
8 clauses (I) and (III) of sections
9 242(b)(1)(B)(ii) of the Energy Policy Act
10 of 2005 (42 U.S.C. 15881),

11 “(iv) is placed in service on or after
12 the date of the enactment of this section,
13 and

14 “(v) does not contribute to atmos-
15 pheric pollution.

16 “(C) Any dam which—

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

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

22 “(iii) is authorized after such date of
23 the enactment for hydropower development
24 by the Federal Energy Regulatory Com-

1 mission, the Bureau of Reclamation, or a
2 State, as appropriate.

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

8 “(e) ELECTIVE PAYMENT.—

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

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

23 “(3) DENIAL OF DOUBLE BENEFIT.—Solely for
24 purposes of section 38, in the case of a taxpayer
25 making an election under this subsection, the credit

1 determined under this section shall be reduced by
2 the amount of the portion of such credit with respect
3 to which the taxpayer makes such election.

4 “(4) APPLICATION TO CERTAIN TAX-EXEMPT
5 PERSONS.—In the case of a taxpayer making an
6 election under this subsection, the credit subject to
7 such an election shall be determined notwith-
8 standing—

9 “(A) section 50(b)(3), and

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

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

17 (b) CONFORMING AMENDMENTS.—

18 (1) Section 46 of the Internal Revenue Code of
19 1986 is amended by striking “and” at the end of
20 paragraph (5), by striking the period at the end of
21 paragraph (6) and inserting “, and”, and by adding
22 at the end the following new paragraph:

23 “(7) the credit for maintaining and enhancing
24 hydroelectric dams.”.

1 1986 is amended by adding after section 45T the following
2 new section:

3 **“SEC. 45U. CREDIT FOR OBSOLETE RIVER OBSTRUCTION**
4 **REMOVAL EXPENDITURES.**

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

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

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

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

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

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

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

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

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

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

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

19 “(A) a Federal, State, or local government
20 or a political subdivision thereof,

21 “(B) an Indian tribe (as defined in section
22 45A(c)(6)), or

23 “(C) an organization described in section
24 501(c) and exempt from tax under section
25 501(a).

1 “(d) 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 (b) CONFORMING AMENDMENTS.—

23 (1) Section 38(b) of the Internal Revenue Code
24 of 1986 is amended by striking “plus” at the end of
25 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.