

115TH CONGRESS  
2D SESSION

# H. R. 7196

To amend the Internal Revenue Code of 1986 to provide investment and production tax credits for emerging energy technologies, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 29, 2018

Mr. REED (for himself, Mr. LAHOOD, and Mr. PAULSEN) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide investment and production tax credits for emerging energy technologies, 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 “Energy Sector Innova-  
5 tion Credit Act of 2018”.

6 **SEC. 2. INVESTMENT CREDIT FOR EMERGING ENERGY**  
7 **TECHNOLOGY.**

8 (a) IN GENERAL.—Subpart E of part IV of sub-  
9 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by inserting after section 48C the fol-  
2 lowing new section:

3 **“SEC. 48D. EMERGING ENERGY TECHNOLOGY CREDIT.**

4 “(a) IN GENERAL.—For purposes of section 46, the  
5 emerging energy technology credit for any taxable year is  
6 an amount equal to 30 percent of the basis of any qualified  
7 emerging energy property placed in service by the taxpayer  
8 during such taxable year.

9 “(b) QUALIFIED EMERGING ENERGY PROPERTY.—  
10 For purposes of this section—

11 “(1) IN GENERAL.—The term ‘qualified emerg-  
12 ing energy property’ means property which is con-  
13 structed, reconstructed, erected, or acquired by the  
14 taxpayer, the original use of which commences with  
15 the taxpayer, and which is—

16 “(A) a qualified production facility (as de-  
17 fined in section 45T(d), determined without re-  
18 gard to paragraph (2) thereof) which is a tier  
19 1 facility (as defined in section 45T(b)(2)(A)),  
20 or

21 “(B) property which is placed in service at  
22 and used in connection with an existing electric  
23 generating facility which is a point source of air  
24 pollutants to retrofit such facility and which,  
25 with respect to such facility—

1 “(i) improves conversion efficiency (as  
2 defined in section 45T(e)(2)) or energy ef-  
3 ficiency (as defined in section 45T(e)(3))  
4 by at least 50 percent,

5 “(ii) decreases water consumption, in  
6 the case of a type of facility which has sig-  
7 nificant water consumption, by at least 75  
8 percent, or

9 “(iii) as recognized by the Environ-  
10 mental Protection Agency pursuant to its  
11 enforcement of the Clean Air Act (42  
12 U.S.C. 7401 et seq.) or by administrative  
13 action, reduces, sequesters, or controls by  
14 at least 50 percent the emission of air pol-  
15 lutants which can be reasonably antici-  
16 pated to endanger public health or welfare.

17 “(2) DENIAL OF DOUBLE BENEFIT.—Such  
18 term shall not include—

19 “(A) any property which,

20 “(B) property any portion of which, or

21 “(C) property placed in service at and used

22 in connection with a facility which,

23 has been treated as a qualified facility for purposes  
24 of section 45(d), as an advanced nuclear power facil-  
25 ity for purposes of section 45J, as a qualified facility

1 for purposes of section 45Q, as a qualified produc-  
2 tion facility for purposes of section 45T, as energy  
3 property for purposes of section 48, or as a qualified  
4 investment for purposes of section 48A, 48B, or  
5 48C, for any taxable year.

6 “(3) POINT SOURCE.—For purposes of para-  
7 graph (1)(B), the term ‘point source’ means a large,  
8 stationary and non-mobile, identifiable source of  
9 emissions that releases pollutants into the atmos-  
10 phere.

11 “(c) FIRST OF ITS KIND TECHNOLOGY.—

12 “(1) IN GENERAL.—In the case of any qualified  
13 emerging energy property which is the first of its  
14 kind, subsection (a) shall be applied by substituting  
15 ‘40 percent’ for ‘30 percent’.

16 “(2) FIRST OF ITS KIND.—Property shall be  
17 treated as the first of its kind if such property is 1  
18 of the first 3 original demonstrations in the United  
19 States of an engineering design for megawatt-scale  
20 electric power generation which generates revenue  
21 from sales of electric power.

22 “(3) DETERMINATION.—

23 “(A) IN GENERAL.—The Secretary, in con-  
24 sultation with the Secretary of Energy, shall de-  
25 velop a process to determine whether qualified

1 emerging energy property is first of its kind.  
2 Such process shall include a certification, at the  
3 request of the taxpayer before the commence-  
4 ment of construction, that the property will be  
5 treated as first of its kind. Such process shall  
6 be designed to make a determination not later  
7 than 90 days after the submission of an appli-  
8 cation for determination.

9 “(B) TERMINATION IF CONSTRUCTION  
10 DOES NOT PROCEED.—Except as otherwise pro-  
11 vided by the Secretary, a certification of any  
12 qualified emerging energy property under sub-  
13 paragraph (A) shall cease to have any force or  
14 effect if construction of such property does not  
15 begin before the date which is 5 years after the  
16 date of such certification or if the Secretary  
17 makes a determination that such construction  
18 has been suspended indefinitely.

19 “(d) CERTAIN QUALIFIED PROGRESS EXPENDITURE  
20 RULES MADE APPLICABLE.—Rules similar to the rules of  
21 subsections (c)(4) and (d) of section 46 (as in effect on  
22 the day before the enactment of the Revenue Reconcili-  
23 ation Act of 1990) shall apply for purposes of this section.

24 “(e) TRANSFER OF CREDIT BY CERTAIN PUBLIC EN-  
25 TITIES.—

1           “(1) IN GENERAL.—If, with respect to a credit  
2 under subsection (a) for any taxable year—

3           “(A) a qualified public entity would be the  
4 taxpayer (but for this paragraph), and

5           “(B) such entity elects the application of  
6 this paragraph for such taxable year with re-  
7 spect to all (or any portion specified in such  
8 election) of such credit, the eligible project part-  
9 ner specified in such election, and not the quali-  
10 fied public entity, shall be treated as the tax-  
11 payer for purposes of this title with respect to  
12 such credit (or such portion thereof).

13           “(2) DEFINITIONS.—For purposes of this sub-  
14 section—

15           “(A) QUALIFIED PUBLIC ENTITY.—The  
16 term ‘qualified public entity’ means—

17           “(i) a Federal, State, or local govern-  
18 ment entity, or any political subdivision,  
19 agency, or instrumentality thereof,

20           “(ii) a mutual or cooperative electric  
21 company described in section 501(c)(12) or  
22 1381(a)(2), or

23           “(iii) a not-for-profit electric utility  
24 which had or has received a loan or loan

1           guarantee under the Rural Electrification  
2           Act of 1936.

3           “(B) ELIGIBLE PROJECT PARTNER.—The  
4           term ‘eligible project partner’ means any person  
5           who—

6                   “(i) is responsible for, or participates  
7                   in, the design or construction of the quali-  
8                   fied emerging energy property to which the  
9                   credit under subsection (a) relates,

10                   “(ii) is a financial institution pro-  
11                   viding financing for the construction or op-  
12                   eration of such property, or

13                   “(iii) has an ownership interest in  
14                   such property.

15           “(3) SPECIAL RULES.—

16                   “(A) APPLICATION TO PARTNERSHIPS.—In  
17                   the case of a credit under subsection (a) which  
18                   is determined at the partnership level—

19                           “(i) for purposes of paragraph (1)(A),  
20                           a qualified public entity shall be treated as  
21                           the taxpayer with respect to such entity’s  
22                           distributive share of such credit, and

23                           “(ii) the term ‘eligible project partner’  
24                           shall include any partner of the partner-  
25                           ship.

1           “(B) TAXABLE YEAR IN WHICH CREDIT  
2           TAKEN INTO ACCOUNT.—In the case of any  
3           credit (or portion thereof) with respect to which  
4           an election is made under paragraph (1), such  
5           credit shall be taken into account in the first  
6           taxable year of the eligible project partner end-  
7           ing with, or after, the qualified public entity’s  
8           taxable year with respect to which the credit  
9           was determined.

10           “(C) TREATMENT OF TRANSFER UNDER  
11           PRIVATE USE RULES.—For purposes of section  
12           141(b)(1), any benefit derived by an eligible  
13           project partner in connection with an election  
14           under this subsection shall not be taken into ac-  
15           count as a private business use.”.

16           (b) CREDIT MADE PART OF INVESTMENT CREDIT.—  
17           Section 46 of such Code is amended by striking “and”  
18           at the end of paragraph (5), by striking the period at the  
19           end of paragraph (6) and inserting “, and”, and by adding  
20           at the end the following new paragraph:

21           “(7) the emerging energy technology credit.”.

22           (c) CONFORMING AMENDMENTS.—

23           (1) Section 49(a)(1)(C) of such Code is amend-  
24           ed by striking “and” at the end of clause (iv), by  
25           striking the period at the end of clause (v) and in-



1       serting “, and”, and by adding at the end the fol-  
2       lowing new clause:

3                       “(vi) the basis of any qualified emerg-  
4                       ing energy property (as defined in section  
5                       48D(b)).”.

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

“Sec. 48D. Emerging energy technology credit.”.

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

17 **SEC. 3. PRODUCTION CREDIT FOR EMERGING ENERGY**  
18 **TECHNOLOGY.**

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 at the end the following new  
22 section:

1 **“SEC. 45T. EMERGING ENERGY TECHNOLOGY PRODUCTION**  
2 **CREDIT.**

3 “(a) IN GENERAL.—For purposes of section 38, the  
4 emerging energy technology production credit determined  
5 under this section for any taxable year beginning in the  
6 credit period with respect to a qualified production facility  
7 of the taxpayer is an amount equal to the applicable per-  
8 centage of the lesser of—

9 “(1) the annual gross receipts of the taxpayer  
10 from the sale of electricity generated at the qualified  
11 production facility to an unrelated person during  
12 such taxable year, or

13 “(2) the product of—

14 “(A) the national average wholesale price  
15 of a kilowatt hour of electricity in the taxable  
16 year, as determined by the Secretary in con-  
17 sultation with the Administrator of the Energy  
18 Information Administration, multiplied by

19 “(B) the number of kilowatt hours of elec-  
20 tricity produced at the qualified production fa-  
21 cility and sold to an unrelated person during  
22 the taxable year.

23 “(b) APPLICABLE PERCENTAGE.—For purposes of  
24 this section—

25 “(1) IN GENERAL.—The applicable percentage  
26 is—

1           “(A) in the case of a tier 1 facility, 60 per-  
2 cent,

3           “(B) in the case of a tier 2 facility, 45 per-  
4 cent,

5           “(C) in the case of a tier 3 facility, 30 per-  
6 cent,

7           “(D) in the case of a tier 4 facility, 15 per-  
8 cent, and

9           “(E) in the case of any other facility, zero  
10 percent.

11           “(2) FACILITY TIERS.—

12           “(A) TIER 1 FACILITY.—The term ‘tier 1  
13 facility’ means, with respect to any taxable  
14 year, an electric generating facility using a type  
15 of technology which accounts for less than .5  
16 percent of annual domestic electricity produc-  
17 tion in the preceding taxable year, as deter-  
18 mined by the Secretary on the basis of data re-  
19 ported by the Energy Information Administra-  
20 tion.

21           “(B) TIER 2 FACILITY.—The term ‘tier 2  
22 facility’ means, with respect to any taxable  
23 year, an electric generating facility using a type  
24 of technology which accounts for at least .5 per-  
25 cent but less than 1 percent of annual domestic

1 electricity production in the preceding taxable  
2 year, as determined by the Secretary on the  
3 basis of data reported by the Energy Informa-  
4 tion Administration.

5 “(C) TIER 3 FACILITY.—The term ‘tier 3  
6 facility’ means, with respect to any taxable  
7 year, an electric generating facility using a type  
8 of technology which accounts for at least 1 per-  
9 cent but less than 1.5 percent of annual domes-  
10 tic electricity production in the preceding tax-  
11 able year, as determined by the Secretary on  
12 the basis of data reported by the Energy Infor-  
13 mation Administration.

14 “(D) TIER 4 FACILITY.—The term ‘tier 4  
15 facility’ means, with respect to any taxable  
16 year, an electric generating facility using a type  
17 of technology which accounts for at least 1.5  
18 percent but less than 2 percent of annual do-  
19 mestic electricity production in the preceding  
20 taxable year, as determined by the Secretary on  
21 the basis of data reported by the Energy Infor-  
22 mation Administration.

23 “(e) CREDIT PERIOD.—For purposes of this section,  
24 the credit period with respect to any qualified production

1 facility is the 10-year period beginning with the date the  
2 facility was originally placed in service.

3 “(d) QUALIFIED PRODUCTION FACILITY.—For pur-  
4 poses of this section—

5 “(1) IN GENERAL.—The term ‘qualified produc-  
6 tion facility’ means any facility which—

7 “(A) was originally placed in service after  
8 the date of the enactment of this Act,

9 “(B) generates electricity,

10 “(C) is located in the United States or a  
11 possession of the United States (as such terms  
12 are used in section 638),

13 “(D) utilizes emerging technology, and

14 “(E) is certified by the Secretary, after  
15 consultation with the Secretary of Energy, as a  
16 qualified production facility for purposes of this  
17 section.

18 “(2) DENIAL OF DOUBLE BENEFIT.—Such  
19 term shall not include any facility which has been  
20 treated as a qualified facility for purposes of section  
21 45(d), as an advanced nuclear power facility for pur-  
22 poses of section 45J, as a qualified facility for pur-  
23 poses of section 45Q, as energy property for pur-  
24 poses of section 48, as a qualified investment for  
25 purposes of section 48A, 48B, or 48C, or as quali-

1       fied emerging energy property for purposes of sec-  
2       tion 48D, for any taxable year.

3       “(e) EMERGING TECHNOLOGY.—For purposes of this  
4 section—

5               “(1) IN GENERAL.—The term ‘emerging tech-  
6 nology’ means—

7                       “(A) any new or improved power conver-  
8 sion fuel-based technology—

9                               “(i) which—

10                                       “(I) reduces emission of air pol-  
11 lutants that can be reasonably antici-  
12 pated to endanger public health or  
13 welfare to below the volume or rate  
14 required by the Clean Air Act, in the  
15 case of a type of facility which has  
16 significant emission of air pollutants,  
17 or

18                                       “(II) yields at least a 50 percent  
19 improvement in energy efficiency, as  
20 compared to existing fuel-based elec-  
21 tric generating commercial technology,  
22 and

23                               “(ii) which operates with a capacity  
24 factor of at least 50 percent,

1           “(B) any new or improved reactor design  
2 licensed by the Nuclear Regulatory Commission  
3 which produces electricity through nuclear fis-  
4 sion or a fusion chain reaction and which (when  
5 compared to existing nuclear commercial tech-  
6 nologies)—

7                   “(i) reduces the high-level radioactive  
8 waste or spent nuclear fuel per unit of en-  
9 ergy yield,

10                   “(ii) improves fuel utilization,

11                   “(iii) decreases core damage frequency  
12 or large early release frequency by at least  
13 a factor of 10, or

14                   “(iv) increases thermal efficiency,

15           “(C) any new technology or new improve-  
16 ment to technology which generates electricity  
17 from renewable energy (as defined in section  
18 203(b)(2) of the Energy Policy Act of 2005)  
19 and which generates at least a 25 percent in-  
20 crease in the conversion efficiency of the facility  
21 as compared with the commercial technology of  
22 the same type as such technology which is con-  
23 sidered to be the best of its type in commercial  
24 use, or

1           “(D) technology which the Secretary, in  
2           consultation with the Secretary of Energy, de-  
3           termines would improve energy efficiency or  
4           conversion efficiency of electric generating com-  
5           mercial technology by not less than 15 percent.

6           “(2) CONVERSION EFFICIENCY.—The term  
7           ‘conversion efficiency’ means the fraction—

8                   “(A) the numerator of which is the total  
9                   useful electrical or thermal power produced by  
10                  an electric generating facility at normal oper-  
11                  ating rates, and expected to be consumed in its  
12                  normal application, and

13                   “(B) the denominator of which is the inci-  
14                  dent energy, whether mechanical, radiation, or  
15                  thermal energy, which is measurable at the  
16                  input of the electric generating facility.

17           “(3) ENERGY EFFICIENCY.—The term ‘energy  
18           efficiency’ means the fraction—

19                   “(A) the numerator of which is the total  
20                  useful electrical, thermal, and mechanical power  
21                  which is produced by the facility at normal op-  
22                  erating rates and expected to be consumed in  
23                  its normal operation, and



1           “(B) the denominator of which is the lower  
2           heating value of the energy sources for the fa-  
3           cility.

4           “(4) EFFICIENCY BASELINE.—Not less fre-  
5           quently than every 10 years, the Secretary, in con-  
6           sultation with the Secretary of Energy, shall estab-  
7           lish baseline levels with respect to the types of elec-  
8           tric generating facilities and the measures of effi-  
9           ciency described in paragraph (1) which a facility  
10          must exceed in order to meet the requirements of  
11          such paragraph.

12          “(5) COMMERCIAL TECHNOLOGY.—The term  
13          ‘commercial technology’ means a design that has  
14          been installed in and is being used in 3 or more  
15          projects in the United States marketplace in the  
16          same general application as in the electric gener-  
17          ating facility, and has been in such use in at least  
18          1 of such projects for a period of at least 5 years.

19          “(6) CORE DAMAGE FREQUENCY.—The term  
20          ‘core damage frequency’ means the likelihood that,  
21          given the way a reactor is designed and operated, an  
22          accident could cause the fuel in the reactor to be  
23          damaged.

24          “(7) LARGE EARLY RELEASE FREQUENCY.—  
25          The term ‘large early release frequency’ means the

1 likelihood of a release into the environment of a suf-  
2 ficiently large quantity of fission products in an  
3 early enough time frame to have the potential for a  
4 prompt fatality.

5 “(f) TRANSFER OF CREDIT BY CERTAIN PUBLIC EN-  
6 TITIES.—

7 “(1) IN GENERAL.—If, with respect to a credit  
8 under subsection (a) for any taxable year—

9 “(A) a qualified public entity would be the  
10 taxpayer (but for this paragraph), and

11 “(B) such entity elects the application of  
12 this paragraph for such taxable year with re-  
13 spect to all (or any portion specified in such  
14 election) of such credit, the eligible project part-  
15 ner specified in such election, and not the quali-  
16 fied public entity, shall be treated as the tax-  
17 payer for purposes of this title with respect to  
18 such credit (or such portion thereof).

19 “(2) DEFINITIONS.—For purposes of this sub-  
20 section—

21 “(A) QUALIFIED PUBLIC ENTITY.—The  
22 term ‘qualified public entity’ means—

23 “(i) a Federal, State, or local govern-  
24 ment entity, or any political subdivision,  
25 agency, or instrumentality thereof,

1           “(ii) a mutual or cooperative electric  
2           company described in section 501(c)(12) or  
3           1381(a)(2), or

4           “(iii) a not-for-profit electric utility  
5           which had or has received a loan or loan  
6           guarantee under the Rural Electrification  
7           Act of 1936.

8           “(B) ELIGIBLE PROJECT PARTNER.—The  
9           term ‘eligible project partner’ means any person  
10          who—

11           “(i) is responsible for, or participates  
12           in, the design or construction of the quali-  
13           fied production facility to which the credit  
14           under subsection (a) relates,

15           “(ii) is a financial institution pro-  
16           viding financing for the construction or op-  
17           eration of such facility, or

18           “(iii) has an ownership interest in  
19           such facility.

20          “(3) SPECIAL RULES.—

21           “(A) APPLICATION TO PARTNERSHIPS.—In  
22           the case of a credit under subsection (a) which  
23           is determined at the partnership level—

24           “(i) for purposes of paragraph (1)(A),  
25           a qualified public entity shall be treated as

1 the taxpayer with respect to such entity's  
2 distributive share of such credit, and

3 “(ii) the term ‘eligible project partner’  
4 shall include any partner of the partner-  
5 ship.

6 “(B) TAXABLE YEAR IN WHICH CREDIT  
7 TAKEN INTO ACCOUNT.—In the case of any  
8 credit (or portion thereof) with respect to which  
9 an election is made under paragraph (1), such  
10 credit shall be taken into account in the first  
11 taxable year of the eligible project partner end-  
12 ing with, or after, the qualified public entity's  
13 taxable year with respect to which the credit  
14 was determined.

15 “(C) TREATMENT OF TRANSFER UNDER  
16 PRIVATE USE RULES.—For purposes of section  
17 141(b)(1), any benefit derived by an eligible  
18 project partner in connection with an election  
19 under this subsection shall not be taken into ac-  
20 count as a private business use.

21 “(g) REGULATIONS.—Not later than 1 year after the  
22 date of the enactment of this section, the Secretary shall  
23 prescribe such regulations as may be necessary or appro-  
24 priate to carry out the purposes of this section. Such regu-

1 lations shall include a process for making eligibility certifi-  
2 cations described in subsection (d)(1)(E).”.

3 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-  
4 NESS CREDIT.—Section 38(b) of such Code is amended  
5 by striking “plus” at the end of paragraph (31), by strik-  
6 ing the period at the end of paragraph (32) and inserting  
7 “, plus”, and by adding at the end the following new para-  
8 graph:

9 “(33) the emerging energy technology produc-  
10 tion credit determined under section 45T(a).”.

11 (c) CLERICAL AMENDMENT.—The table of sections  
12 for subpart D of part IV of subchapter A of chapter 1  
13 of such Code is amended by adding at the end the fol-  
14 lowing new item:

“Sec. 45T. Emerging energy technology production credit.”.

15 (d) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to electricity produced and sold  
17 after the date of the enactment of this Act.

18 **SEC. 4. MODIFICATION OF ENERGY CREDIT.**

19 (a) ENERGY CREDIT FOR ENERGY STORAGE TECH-  
20 NOLOGIES.—

21 (1) IN GENERAL.—Section 48(a)(3)(A) of the  
22 Internal Revenue Code of 1986 is amended by strik-  
23 ing “or” at the end of clause (vi), by adding “or”  
24 at the end of clause (vii), and by adding at the end  
25 the following new clause:

1 “(viii) equipment which—

2 “(I) receives, stores, and delivers  
3 energy using batteries, compressed  
4 air, pumped hydropower, hydrogen  
5 storage (including hydrolysis), thermal  
6 energy storage, regenerative fuel cells,  
7 flywheels, capacitors, superconducting  
8 magnets, or other technologies identi-  
9 fied by the Secretary in consultation  
10 with the Secretary of Energy,

11 “(II) has a capacity of not less  
12 than 5 kilowatt hours, and

13 “(III) receives an allocation of  
14 national megawatt capacity from the  
15 Secretary under paragraph (8) equal  
16 to the capacity of such equipment.”.

17 (2) 30-PERCENT CREDIT.—Section  
18 48(a)(2)(A)(i)(II) of such Code is amended by strik-  
19 ing “paragraph (3)(A)(i)” and inserting “clause (i)  
20 or (viii) of paragraph (3)(A)”.

21 (3) NATIONAL LIMITATION RELATING TO EN-  
22 ERGY STORAGE PROPERTY.—Section 48(a) of such  
23 Code is amended by adding at the end the following  
24 new paragraph:

1           “(8) NATIONAL LIMITATION RELATING TO EN-  
2           ERGY STORAGE PROPERTY.—

3                   “(A) IN GENERAL.—The aggregate  
4                   amount of national megawatt capacity limita-  
5                   tion allocated by the Secretary to equipment de-  
6                   scribed in paragraph (3)(A)(viii) shall not ex-  
7                   ceed 10,000 megawatts.

8                   “(B) ALLOCATION OF LIMITATION.—The  
9                   Secretary shall allocate the national megawatt  
10                  capacity limitation in such manner as the Sec-  
11                  retary may prescribe, with a focus on diversity  
12                  of technological design.

13                  “(C) REGULATIONS.—Not later than 6  
14                  months after the date of the enactment of this  
15                  paragraph, the Secretary shall prescribe such  
16                  regulations as may be necessary or appropriate  
17                  to carry out the purposes of this paragraph.  
18                  Such regulations shall provide a process under  
19                  which the Secretary, after consultation with the  
20                  Secretary of Energy, shall allocate the national  
21                  megawatt capacity limitation.”.

22           (b) TRANSFER OF ENERGY CREDIT BY CERTAIN  
23           PUBLIC ENTITIES.—Section 48 of such Code is amended  
24           by adding at the end the following new subsection:

1       “(f) TRANSFER OF CREDIT BY CERTAIN PUBLIC EN-  
2 TITIES.—

3           “(1) IN GENERAL.—If, with respect to a credit  
4 under subsection (a) for any taxable year—

5               “(A) a qualified public entity would be the  
6 taxpayer (but for this paragraph), and

7               “(B) such entity elects the application of  
8 this paragraph for such taxable year with re-  
9 spect to all (or any portion specified in such  
10 election) of such credit, the eligible project part-  
11 ner specified in such election, and not the quali-  
12 fied public entity, shall be treated as the tax-  
13 payer for purposes of this title with respect to  
14 such credit (or such portion thereof).

15           “(2) DEFINITIONS.—For purposes of this sub-  
16 section—

17               “(A) QUALIFIED PUBLIC ENTITY.—The  
18 term ‘qualified public entity’ means—

19                   “(i) a Federal, State, or local govern-  
20 ment entity, or any political subdivision,  
21 agency, or instrumentality thereof,

22                   “(ii) a mutual or cooperative electric  
23 company described in section 501(c)(12) or  
24 1381(a)(2), or



1           “(iii) a not-for-profit electric utility  
2           which had or has received a loan or loan  
3           guarantee under the Rural Electrification  
4           Act of 1936.

5           “(B) ELIGIBLE PROJECT PARTNER.—The  
6           term ‘eligible project partner’ means any person  
7           who—

8                   “(i) is responsible for, or participates  
9                   in, the design or construction of the energy  
10                  property to which the credit under sub-  
11                  section (a) relates,

12                   “(ii) is a financial institution pro-  
13                   viding financing for the construction or op-  
14                   eration of such property, or

15                   “(iii) has an ownership interest in  
16                   such property.

17           “(3) SPECIAL RULES.—

18                   “(A) APPLICATION TO PARTNERSHIPS.—In  
19                   the case of a credit under subsection (a) which  
20                   is determined at the partnership level—

21                   “(i) for purposes of paragraph (1)(A),  
22                   a qualified public entity shall be treated as  
23                   the taxpayer with respect to such entity’s  
24                   distributive share of such credit, and

1                   “(ii) the term ‘eligible project partner’  
2                   shall include any partner of the partner-  
3                   ship.

4                   “(B) TAXABLE YEAR IN WHICH CREDIT  
5                   TAKEN INTO ACCOUNT.—In the case of any  
6                   credit (or portion thereof) with respect to which  
7                   an election is made under paragraph (1), such  
8                   credit shall be taken into account in the first  
9                   taxable year of the eligible project partner end-  
10                  ing with, or after, the qualified public entity’s  
11                  taxable year with respect to which the credit  
12                  was determined.

13                  “(C) TREATMENT OF TRANSFER UNDER  
14                  PRIVATE USE RULES.—For purposes of section  
15                  141(b)(1), any benefit derived by an eligible  
16                  project partner in connection with an election  
17                  under this subsection shall not be taken into ac-  
18                  count as a private business use.”.

19                  (c) EFFECTIVE DATE.—

20                  (1) IN GENERAL.—Except as otherwise pro-  
21                  vided in this subsection, the amendments made by  
22                  this section shall apply to periods after the date of  
23                  the enactment of this Act, in taxable years ending  
24                  after such date, under rules similar to the rules of  
25                  section 48(m) of the Internal Revenue Code of 1986

1 (as in effect on the day before the date of the enact-  
2 ment of the Revenue Reconciliation Act of 1990).

3 (2) TRANSFER OF ENERGY CREDIT BY CERTAIN  
4 PUBLIC ENTITIES.—The amendment made by sub-  
5 section (b) shall apply to credits arising in taxable  
6 years ending after the date of the enactment of this  
7 Act.

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