

117TH CONGRESS
1ST SESSION

S. 2291

To amend the Internal Revenue Code of 1986 to establish a tax credit for production of electricity using nuclear power.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. CARDIN (for himself, Mr. MANCHIN, Mr. CARPER, Mr. WHITEHOUSE, and Mr. BOOKER) 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 tax credit for production of electricity using nuclear power.

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 “Zero-Emission Nuclear
5 Power Production Credit Act of 2021”.

6 **SEC. 2. ZERO-EMISSION NUCLEAR POWER PRODUCTION**
7 **CREDIT.**

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

1 1986 is amended by adding at the end the following new
2 section:

3 **“SEC. 45U. ZERO-EMISSION NUCLEAR POWER PRODUCTION**
4 **CREDIT.**

5 “(a) AMOUNT OF CREDIT.—For purposes of section
6 38, the zero-emission nuclear power production credit for
7 any taxable year is an amount equal to the amount by
8 which—

9 “(1) the product of—

10 “(A) 1.5 cents, multiplied by

11 “(B) the kilowatt hours of electricity—

12 “(i) produced by the taxpayer at a
13 qualified nuclear power facility, and

14 “(ii) sold by the taxpayer to an unre-
15 lated person during the taxable year, ex-
16 ceeds

17 “(2) the reduction amount for such taxable
18 year.

19 “(b) DEFINITIONS.—

20 “(1) QUALIFIED NUCLEAR POWER FACILITY.—

21 For purposes of this section, the term ‘qualified nu-
22 clear power facility’ means any nuclear facility—

23 “(A) which is owned by the taxpayer and
24 which uses nuclear energy to produce elec-
25 tricity,

1 “(B) which is not described in section
2 168(i)(10), and

3 “(C) which is not an advanced nuclear
4 power facility, as defined in subsection (d)(1) of
5 section 45J, or which has not received an allo-
6 cation under subsection (b) of such section.

7 “(2) REDUCTION AMOUNT.—

8 “(A) IN GENERAL.—For purposes of this
9 section, the term ‘reduction amount’ means,
10 with respect to any qualified nuclear power fa-
11 cility for any taxable year, the amount equal to
12 the lesser of—

13 “(i) the amount determined under
14 subsection (a)(1), or

15 “(ii) the amount equal to 80 percent
16 of the excess of—

17 “(I) subject to subparagraph (B),
18 the gross receipts from any electricity
19 produced by such facility and sold to
20 an unrelated person during such tax-
21 able year, over

22 “(II) the amount equal to the
23 product of—

24 “(aa) 2.5 cents, multiplied
25 by

1 “(bb) the amount deter-
2 mined under subsection
3 (a)(1)(B).

4 “(B) TREATMENT OF CERTAIN RE-
5 CEIPTS.—

6 “(i) IN GENERAL.—The amount de-
7 termined under subparagraph (A)(ii)(I)
8 shall include any amount received by the
9 taxpayer during the taxable year with re-
10 spect to the qualified nuclear power facility
11 from a zero-emission credit program unless
12 the amount received by the taxpayer is
13 subject to reduction—

14 “(I) by the full amount of the
15 credit determined under this section,
16 or

17 “(II) by any lesser amount if
18 such amount entirely offsets the
19 amount received from a zero-emission
20 credit program.

21 “(ii) ZERO-EMISSION CREDIT PRO-
22 GRAM.—For purposes of this subpara-
23 graph, the term ‘zero-emission credit pro-
24 gram’ means any State or local govern-
25 ment program that provides payments to a

1 qualified nuclear power facility for, in
2 whole or in part, the zero-emission, zero-
3 carbon, or air quality attributes of any
4 portion of the electricity produced by such
5 facility.

6 “(3) ELECTRICITY.—For purposes of this sec-
7 tion (with the exception of subsection (d)(3)), the
8 term ‘electricity’ means the energy produced by a
9 qualified nuclear power facility from the conversion
10 of nuclear fuel into electric power.

11 “(c) ELECTION FOR DIRECT PAYMENT.—

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

22 “(2) TIMING.—The payment described in para-
23 graph (1) shall be treated as made on the later of
24 the due date of the return of tax for the taxable year
25 or the date on which such return is filed.

1 “(3) EXCLUSION FROM GROSS INCOME.—Gross
2 income of the taxpayer shall be determined without
3 regard to this subsection.

4 “(4) DENIAL OF DOUBLE BENEFIT.—Solely for
5 purposes of section 38, in the case of a taxpayer
6 making an election under this subsection, the credit
7 determined under subsection (a) shall be reduced by
8 the amount of the portion of such credit with respect
9 to which the taxpayer makes such election.

10 “(5) EXCLUSION OF TAX-EXEMPT ENTITIES.—
11 This subsection shall not apply to any entity de-
12 scribed in section 168(h)(2).

13 “(d) OTHER RULES.—

14 “(1) INFLATION ADJUSTMENT.—In the case of
15 calendar years beginning after 2021, the 1.5 cent
16 amount in subsection (a)(1)(A) and the 2.5 cent
17 amount in subsection (b)(2)(A)(ii)(II)(aa) shall each
18 be adjusted by multiplying such amount by the infla-
19 tion adjustment factor (as determined under section
20 45(e)(2), as applied by substituting ‘calendar year
21 2020’ for ‘calendar year 1992’ in subparagraph (B)
22 thereof) for the calendar year in which the sale oc-
23 curs. If any amount as increased under the pre-
24 ceding sentence is not a multiple of 0.1 cent, such

1 amount shall be rounded to the nearest multiple of
2 0.1 cent.

3 “(2) SPECIAL RULES.—Rules similar to the
4 rules of paragraphs (1), (3), (4), and (5) of section
5 45(e) shall apply for purposes of this section.

6 “(3) PHASEOUT OF CREDIT.—If the Secretary,
7 in consultation with the Secretary of Energy and the
8 Administrator of the Environmental Protection
9 Agency, determines that the annual greenhouse gas
10 emissions from electricity production in the United
11 States for a calendar year are equal to or less than
12 50 percent of the annual greenhouse gas emissions
13 from electricity production in the United States for
14 calendar year 2020, the amount of the credit deter-
15 mined under the subsection (a) shall be reduced by
16 an amount equal to the product of—

17 “(A) the amount of credit determined
18 under the subsection (a), as determined before
19 application of this paragraph, multiplied by

20 “(B) an amount (expressed as a percent-
21 age) equal to twice the percentage amount that
22 the percentage determined by the Secretary
23 pursuant to this paragraph exceeds 50 percent.

24 “(4) ULTIMATE PURCHASER.—For purposes of
25 this section, electricity produced by the taxpayer will

1 be treated as sold to an unrelated person if the ulti-
2 mate purchaser of such electricity is unrelated to
3 such taxpayer.

4 “(e) RECAPTURE.—

5 “(1) IN GENERAL.—The Secretary, in consulta-
6 tion with the Secretary of Energy and the Secretary
7 of Labor, shall, by regulations, provide for recap-
8 turing the benefit of any credit allowable under sub-
9 section (a) for any taxable year if the Secretary de-
10 termines that—

11 “(A) any contractor or subcontractor has
12 failed to pay a laborer or mechanic employed by
13 the contractor or subcontractor in the perform-
14 ance of any construction, repair, alteration, or
15 maintenance with respect to the qualified nu-
16 clear power facility during such taxable year
17 wages at rates not less than the rates prevailing
18 on projects of a similar character in the locality
19 as determined by the Secretary of Labor in ac-
20 cordance with subchapter IV of chapter 31 of
21 title 40, United States Code,

22 “(B) any such contractor or subcontractor
23 has failed to make the records required under
24 paragraph (2) available to the Secretary for the
25 purposes described in such paragraph, or

1 “(C) any contractor or subcontractor has
2 failed to satisfy the requirements under sub-
3 section (f) during such taxable year.

4 “(2) INVESTIGATION.—Upon receipt of a com-
5 plaint or its own initiative, the Secretary, in con-
6 sultation with the Secretary of Energy and the Sec-
7 retary of Labor, shall request and review the payroll
8 records of contractors and subcontractors engaged in
9 the performance of any construction, repair, alter-
10 ation, or maintenance with respect to a qualified nu-
11 clear power facility, and interview individuals em-
12 ployed by such contractors and subcontractors, to
13 determine whether the requirements of paragraph
14 (1)(A) and (1)(C) have been met.

15 “(3) ADMINISTRATION AND ENFORCEMENT.—
16 With respect to the administration and enforcement
17 of the standards in paragraph (1)(A) and (1)(C),
18 the Secretary of Labor shall have the authority and
19 functions set forth in Reorganization Plan Num-
20 bered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.)
21 and section 3145 of title 40, United States Code.

22 “(f) USE OF QUALIFIED APPRENTICES.—

23 “(1) IN GENERAL.—All contractors and sub-
24 contractors engaged in the performance of construc-
25 tion, repair, alteration, or maintenance with respect

1 to the qualified nuclear power facility shall, subject
2 to paragraph (2), ensure that not less than 15 per-
3 cent of the total labor hours of such work be per-
4 formed by qualified apprentices.

5 “(2) APPRENTICE-TO-JOURNEYWORKER
6 RATIO.—The requirement under paragraph (1) shall
7 be subject to any applicable requirements for ap-
8 prentice-to-journeyworker ratios of the Department
9 of Labor or the applicable State apprenticeship
10 agency.

11 “(3) PARTICIPATION.—Each contractor and
12 subcontractor who employs 4 or more individuals to
13 perform construction, repair, alteration, or mainte-
14 nance with respect to the qualified nuclear power fa-
15 cility shall employ 1 or more qualified apprentices to
16 perform such work.

17 “(4) EXCEPTION.—Notwithstanding any other
18 provision in this subsection, this section shall not
19 apply in the case of a taxpayer who—

20 “(A) demonstrates a lack of availability of
21 qualified apprentices in the geographic area of
22 the construction, repair, alteration, or mainte-
23 nance; and

24 “(B) makes a good faith effort, and its
25 contractors and subcontractors make a good

1 faith effort, to comply with the requirements of
2 this subsection.

3 “(5) DEFINITIONS.—In this subsection:

4 “(A) LABOR HOURS.—The term ‘labor
5 hours’—

6 “(i) means the total number of hours
7 devoted to the performance of construction,
8 repair, alteration, or maintenance by em-
9 ployees of the contractor or subcontractor;
10 and

11 “(ii) excludes any hours worked by—

12 “(I) foremen;

13 “(II) superintendents;

14 “(III) owners; or

15 “(IV) persons employed in a
16 bona fide executive, administrative, or
17 professional capacity (within the
18 meaning of those terms in part 541 of
19 title 29, Code of Federal Regulations).

20 “(B) QUALIFIED APPRENTICE.—The term
21 ‘qualified apprentice’ means an individual who
22 is an employee of the contractor or subcon-
23 tractor and who is participating in a registered
24 apprenticeship program, as defined in section
25 3131(e)(3)(B).

1 “(g) TERMINATION.—This section shall not apply to
2 taxable years beginning after December 31, 2031.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 38(b) of the Internal Revenue Code
5 of 1986 is amended—

6 (A) in paragraph (32), by striking “plus”
7 at the end,

8 (B) in paragraph (33), by striking the pe-
9 riod at the end and inserting “, plus”, and

10 (C) by adding at the end the following new
11 paragraph:

12 “(34) the zero-emission nuclear power produc-
13 tion credit determined under section 45U(a).”.

14 (2) The table of sections for subpart D of part
15 IV of subchapter A of chapter 1 of such Code is
16 amended by adding at the end the following new
17 item:

“Sec. 45U. Zero-emission nuclear power production credit.”.

18 (c) REPORT.—Not later than January 1, 2025, the
19 Comptroller General of the United States shall submit to
20 Congress a report with respect to the credits allowed for
21 qualified nuclear power facilities under section 45U of the
22 Internal Revenue Code of 1986 (as added by subsection
23 (a)), which shall include—

24 (1) an evaluation of the effectiveness of the
25 credits allowed under such section in regards to en-

1 suring grid reliability while avoiding emissions of
2 carbon dioxide, nitrogen oxides, sulfur oxides, partic-
3 ulate matter, and hazardous air pollutants;

4 (2) a quantification of the ratepayer savings
5 achieved as a result of the credits allowed under
6 such section; and

7 (3) any recommendations to renew or expand
8 the credits allowed under such section.

9 (d) **EFFECTIVE DATE.**—This section shall apply to
10 electricity produced and sold after December 31, 2021, in
11 taxable years beginning after such date.

○