

115TH CONGRESS
2D SESSION

S. 2681

To amend the Internal Revenue Code of 1986 to allow a credit against tax for coal-powered electric generation units.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 2018

Mr. MANCHIN 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 allow a credit against tax for coal-powered electric generation units.

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 Reliability Act
5 of 2018”.

6 **SEC. 2. COAL-POWERED ELECTRIC GENERATION UNIT**
7 **CREDIT.**

8 (a) **FEDERAL TAX CREDIT FOR COAL-POWERED**
9 **ELECTRIC GENERATION UNITS.**—Subpart D of part IV
10 of subchapter A of chapter 1 of the Internal Revenue Code

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

3 **“SEC. 45T. COAL-POWERED ELECTRIC GENERATION UNIT**
 4 **CREDIT.**

5 “(a) IN GENERAL.—For purposes of section 38, in
 6 the case of a taxpayer who owns or leases a coal-powered
 7 electric generation unit, the coal-powered electric genera-
 8 tion unit credit determined under this section for a taxable
 9 year shall be an amount equal to the lesser of 30 percent
 10 of qualified expenses paid or incurred by such taxpayer
 11 in such year or the product of—

12 “(1) \$13, multiplied by

13 “(2) the nameplate capacity rating in kilowatts
 14 of such unit.

15 “(b) COAL-POWERED ELECTRIC GENERATION
 16 UNIT.—For purposes of this section, the term ‘coal-pow-
 17 ered electric generation unit’ means an electric generation
 18 unit (as defined in section 48A(c)(6)) that—

19 “(1) uses coal to produce not less than 75 per-
 20 cent of the electricity produced by such unit, and

21 “(2) has constructed and installed emissions
 22 controls pursuant to—

23 “(A) the final rule of the Environmental
 24 Protection Agency entitled ‘Rule To Reduce
 25 Interstate Transport of Fine Particulate Matter

1 and Ozone (Clean Air Interstate Rule); Revi-
2 sions to Acid Rain Program; Revisions to the
3 NOX SIP Call’ (70 Fed. Reg. 25162 (May 12,
4 2005)) (commonly known as the ‘Clean Air
5 Interstate Rule’),

6 “(B) the final rule of the Environmental
7 Protection Agency entitled ‘Federal Implemen-
8 tation Plans: Interstate Transport of Fine Par-
9 ticulate Matter and Ozone and Correction of
10 SIP Approvals’ (76 Fed. Reg. 48208 (August
11 8, 2011)) (commonly known as the ‘Cross State
12 Air Pollution Rule’),

13 “(C) the final rule of the Environmental
14 Protection Agency entitled ‘National Emission
15 Standards for Hazardous Air Pollutants From
16 Coal- and Oil-Fired Electric Utility Steam Gen-
17 erating Units and Standards of Performance
18 for Fossil-Fuel-Fired Electric Utility, Indus-
19 trial-Commercial-Institutional, and Small In-
20 dustrial-Commercial-Institutional Steam Gener-
21 ating Units’ (77 Fed. Reg. 9304 (February 16,
22 2012)) (commonly known as the ‘Mercury and
23 Air Toxics Standards Rule’),

24 “(D) the final rule of the Environmental
25 Protection Agency entitled ‘Regional Haze Reg-

1 ulations and Guidelines for Best Available Ret-
2 rofit Technology (BART) Determinations’ (70
3 Fed. Reg. 39104 (July 6, 2005)) (commonly
4 known as the ‘Regional Haze regulations’), or

5 “(E) any other Federal emissions control
6 requirements applicable to an electric genera-
7 tion plant that are equal to or more stringent
8 than the requirements of a rule described in
9 subparagraph (A), (B), (C), or (D).

10 “(c) QUALIFIED EXPENSES.—For purposes of this
11 section, the term ‘qualified expenses’ means amounts paid
12 or incurred for the operation or maintenance of a coal-
13 powered electric generation unit, other than amounts paid
14 or incurred for coal.

15 “(d) TRANSFER OF CREDIT.—

16 “(1) TRANSFER TO ELIGIBLE PROJECT PART-
17 NER.—

18 “(A) IN GENERAL.—With respect to a
19 credit under subsection (a) for any taxable year,
20 a taxpayer may elect to transfer all or any por-
21 tion of such credit to any eligible project part-
22 ner as specified in such election and such eligi-
23 ble project partner, not the taxpayer, shall be
24 entitled to claim the credit (or portion thereof)
25 for the taxable year.

1 “(B) ELECTION TO TRANSFER.—The tax-
2 payer may elect to transfer all or any portion
3 of the credit to an eligible project partner by at-
4 taching a statement to the taxpayer’s tax re-
5 turn for the taxable year in which the qualified
6 expenses were paid or incurred, providing such
7 information as is necessary for the Secretary to
8 adequately identify the eligible project partner
9 and the amount of the credit being transferred.

10 “(2) ELIGIBLE PROJECT PARTNER.—For pur-
11 poses of this subsection, the term ‘eligible project
12 partner’ means, with respect to any coal-powered
13 electric generation unit, any person who—

14 “(A) is responsible for operating, maintain-
15 ing, or repairing such unit,

16 “(B) participates in the provision, includ-
17 ing transportation, of coal or other materials
18 and supplies to such unit,

19 “(C) provides financing for the construc-
20 tion, repair, or operation of such unit, or

21 “(D) leases such unit.

22 “(3) SPECIAL RULES.—

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

1 ‘eligible project partner’ shall include any part-
2 ner of the partnership.

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

12 “(e) BASIS ADJUSTMENT.—For purposes of this sub-
13 title, if a credit is allowed under this section with respect
14 to any coal-powered electric generation unit, the basis of
15 such property shall be reduced by the amount of the credit
16 so allowed.

17 “(f) TERMINATION.—This section shall apply to tax-
18 able years beginning after December 31, 2017, and ending
19 before January 1, 2023.”.

20 (b) ASSESSMENT BY FEDERAL ENERGY REGU-
21 LATORY COMMISSION.—

22 (1) IN GENERAL.—In the case of any coal-pow-
23 ered electric generation unit which has claimed a
24 credit under section 45T of the Internal Revenue
25 Code of 1986 (as added by subsection (a)), the Fed-

1 eral Energy Regulatory Commission shall require
2 the applicable reliability coordinator to conduct an
3 assessment analyzing the reliability and resilience at-
4 tributes offered by such unit to the regional grid in
5 which it is located, with such assessment to be com-
6 pleted not later than April 1, 2023.

7 (2) REPORTING.—Not later than June 1, 2023,
8 the Federal Energy Regulatory Commission shall re-
9 port to the relevant Congressional committees—

10 (A) the results of the assessments de-
11 scribed under paragraph (1); and

12 (B) a recommendation as to whether the
13 credit under section 45T of the Internal Rev-
14 enue Code of 1986 should be amended so as to
15 apply to taxable years beginning after Decem-
16 ber 31, 2022.

17 (3) DEFINITIONS.—In this subsection:

18 (A) APPLICABLE RELIABILITY COORDI-
19 NATOR.—The term “applicable reliability coor-
20 dinator” means the Reliability Coordinator of
21 the Electric Reliability Organization (as defined
22 in section 215(a) of the Federal Power Act (16
23 U.S.C. 2824o(a))) for the region in which a
24 coal-powered electric generation unit which has

1 claimed a credit under section 45T of the Inter-
2 nal Revenue Code of 1986 is located.

3 (B) RELEVANT CONGRESSIONAL COMMIT-
4 TEES.—The term “relevant Congressional com-
5 mittees” means—

6 (i) the Committee on Finance of the
7 Senate;

8 (ii) the Committee on Ways and
9 Means of the House of Representatives;

10 (iii) the Committee on Energy and
11 Natural Resources of the Senate; and

12 (iv) the Committee on Energy and
13 Commerce of the House of Representa-
14 tives.

15 (c) CONFORMING AMENDMENT.—Section
16 501(c)(12)(I) is amended by inserting “or 45T(d)(1)”
17 after “section 45J(e)(I)”.

18 (d) CREDIT TO BE PART OF GENERAL BUSINESS
19 CREDIT.—

20 (1) IN GENERAL.—Section 38(b) of the Internal
21 Revenue Code of 1986 is amended by striking
22 “plus” at the end of paragraph (36), by striking the
23 period at the end of paragraph (37) and inserting “,
24 plus”, and by adding at the end the following new
25 paragraph:

1 “(38) the coal-powered electric generation unit
2 credit determined under section 45T(a).”.

3 (2) CREDIT ALLOWED AGAINST ALTERNATIVE
4 MINIMUM TAX.—Subparagraph (B) of section
5 38(c)(4) of the Internal Revenue Code of 1986 is
6 amended—

7 (A) by redesignating clauses (x), (xi), and
8 (xii) as clauses (xi), (xii), and (xiii), respec-
9 tively; and

10 (B) by inserting after clause (ix) the fol-
11 lowing new clause:

12 “(x) the credit determined under sec-
13 tion 45T.”.

14 (e) CLERICAL AMENDMENT.—The table of sections
15 for subpart D of part IV of subchapter A of chapter 1
16 is amended by adding at the end the following new item:

“Sec. 45T. Coal-powered electric generation unit credit.”.

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