

117TH CONGRESS
1ST SESSION

S. _____

To amend the Internal Revenue Code of 1986 to provide for a 5-year extension of the carbon oxide sequestration credit, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. SMITH (for herself, Mrs. CAPITO, Mr. WHITEHOUSE, Mr. CRAMER, Mr. SCHATZ, Mr. HOEVEN, Mr. MANCHIN, Mr. BARRASSO, Mr. COONS, Mr. GRASSLEY, Mr. LUJÁN, and Ms. ERNST) 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 provide for a 5-year extension of the carbon oxide sequestration credit, 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 “Carbon Capture, Utili-
5 zation, and Storage Tax Credit Amendments Act of
6 2021”.

1 **SEC. 2. EXTENSION OF CREDIT FOR CARBON OXIDE SE-**
2 **QUESTRATION.**

3 Section 45Q(d)(1) of the Internal Revenue Code of
4 1986 is amended by striking “January 1, 2026” and in-
5 serting “January 1, 2031”.

6 **SEC. 3. ELECTIVE PAYMENT FOR CARBON OXIDE SEQUE-**
7 **STRATION AND QUALIFYING ADVANCED COAL**
8 **PROJECTS.**

9 (a) IN GENERAL.—Subchapter B of chapter 65 of the
10 Internal Revenue Code of 1986 is amended by adding at
11 the end the following new section:

12 **“SEC. 6431. ELECTIVE PAYMENT FOR CARBON OXIDE SE-**
13 **QUESTRATION AND QUALIFYING ADVANCED**
14 **COAL PROJECTS.**

15 “(a) ENERGY PROPERTY.—In the case of a taxpayer
16 making an election (at such time and in such manner as
17 the Secretary may provide) under this section with respect
18 to any portion of—

19 “(1) a carbon oxide sequestration credit which
20 would (without regard to this section) be determined
21 under section 45Q with respect to such taxpayer, or

22 “(2) a qualifying advanced coal project credit
23 which would (without regard to this section) be de-
24 termined under section 48A with respect to such
25 taxpayer,

1 such taxpayer shall be treated as making a payment
2 against the tax imposed by subtitle A for the taxable year
3 equal to the amount of such portion.

4 “(b) TIMING.—The payment described in subsection
5 (a) shall be treated as made on the later of the due date
6 of the return of tax for such taxable year or the date on
7 which such return is filed.

8 “(c) EXCLUSION FROM GROSS INCOME.—Gross in-
9 come of the taxpayer shall be determined without regard
10 to this section.

11 “(d) DENIAL OF DOUBLE BENEFIT.—Solely for pur-
12 poses of section 38, in the case of a taxpayer making an
13 election under this section, the carbon oxide sequestration
14 credit determined under section 45Q or the qualifying ad-
15 vanced coal project credit determined under section 48A
16 shall be reduced by the amount of the portion of such
17 credit with respect to which the taxpayer makes such elec-
18 tion.

19 “(e) SPECIAL RULES.—In the case of a taxpayer
20 making an election under this section with respect to the
21 qualifying advanced coal project credit determined under
22 section 48A, the credit subject to such an election shall
23 be determined notwithstanding—

24 “(1) section 50(b)(3), and

1 oxide sequestration credit determined
2 under section 45Q(a),

3 “(III) the credit allowed under
4 section 38 for the taxable year which
5 is properly allocable to the investment
6 credit determined under section 46,
7 but only to the extent properly allo-
8 cable to the qualifying advanced coal
9 project credit determined under sec-
10 tion 48A, plus”.

11 (b) APPLICATION TO TAXABLE YEARS BEGINNING
12 AFTER 2025.—Subparagraph (B) of section 59A(b)(2) of
13 the Internal Revenue Code of 1986 is amended to read
14 as follows:

15 “(B) by applying subparagraph (B)(ii)
16 thereof without regard to subclauses (I) and
17 (IV).”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to base erosion payments (as de-
20 fined in section 59A(d) of the Internal Revenue Code of
21 1986) paid or incurred in taxable years beginning after
22 December 31, 2017.

1 **SEC. 5. MODIFICATIONS OF QUALIFYING ADVANCED COAL**
2 **PROJECT CREDIT.**

3 (a) SEQUESTRATION REQUIREMENT FOR CERTAIN
4 EQUIPMENT.—Section 48A(e)(1)(G) of the Internal Rev-
5 enue Code of 1986 is amended by inserting “and 60 per-
6 cent in the case of an application for a reallocation of cred-
7 its under subsection (d)(4) with respect to an electrical
8 generating unit in existence on October 3, 2008” after
9 “under subsection (d)(4)”.

10 (b) NAMEPLATE GENERATING CAPACITY REQUIRE-
11 MENT.—Section 48A(e)(1)(C) of such Code is amended by
12 striking “400 megawatts” and inserting “200
13 megawatts”.

14 (c) ADVANCED COAL-BASED GENERATION TECH-
15 NOLOGY REQUIREMENTS.—

16 (1) IN GENERAL.—Section 48A(f)(1) of such
17 Code is amended by striking “generation technology
18 if—” and all that follows through “the unit is de-
19 signed” and inserting “generation technology if the
20 unit is designed”.

21 (2) CONFORMING AMENDMENTS.—Section
22 48A(f) of such Code is amended—

23 (A) by striking all that precedes “the pur-
24 pose of this section” and inserting the fol-
25 lowing:

1 “(f) ADVANCED COAL-BASED GENERATION TECH-
2 NOLOGY.—For”,

3 (B) by striking “in subparagraph (B)” in
4 the second sentence and inserting “in this sub-
5 section”, and

6 (C) by striking paragraphs (2) and (3).

7 (d) PERFORMANCE REQUIREMENTS IN CASE OF
8 BEST AVAILABLE CONTROL TECHNOLOGY.—Section
9 48A(f) of such Code, as amended by this Act, is amended
10 by adding at the end the following: “In the case of a ret-
11 rofit of a unit which has undergone a best available control
12 technology analysis after August 8, 2005, with respect to
13 the removal or emissions of any pollutant which is SO₂
14 or NO_x, the removal or emissions design level with respect
15 to such pollutant shall be the level determined in such
16 analysis.”.

17 (e) CLARIFICATION OF REALLOCATION AUTHOR-
18 ITY.—Section 48A(d)(4) of the Internal Revenue Code of
19 1986 is amended—

20 (1) in subparagraph (A)—

21 (A) by striking “Not later than 6 years
22 after the date of enactment of this section, the”
23 and inserting “The”, and

24 (B) by inserting “and every 6 months
25 thereafter until all credits available under this

1 section have been allowed” after “the date
2 which is 6 years after the date of enactment of
3 this section”,

4 (2) in subparagraph (B)—

5 (A) by striking “may reallocate credits
6 available under clauses (i) and (ii) of paragraph
7 (3)(B)” and inserting “shall reallocate credits
8 remaining available under paragraph (3)”,

9 (B) by striking “or” at the end of clause
10 (i), and

11 (C) by striking clause (ii) and inserting the
12 following:

13 “(ii) any applicant for certification
14 which submitted an accepted application
15 has subsequently failed to satisfy the re-
16 quirements under paragraph (2)(D), or

17 “(iii) any certification made pursuant
18 to paragraph (2) has been revoked pursu-
19 ant to paragraph (2)(E).”, and

20 (3) in subparagraph (C)—

21 (A) by striking “clause (i) or (ii) of para-
22 graph (3)(B)” and inserting “paragraph (3)”,

23 (B) by striking “is authorized to” and in-
24 serting “shall”, and

1 (C) by striking “an additional program”
2 and inserting “additional programs”.

3 (f) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the amendments made by this section
6 shall apply to allocations and reallocations after the
7 date of the enactment of this Act.

8 (2) REALLOCATION.—The amendments made
9 by subsection (e) shall apply to credits remaining
10 available under section 48A(d)(3) of the Internal
11 Revenue Code of 1986 on the date of the enactment
12 of this Act.

13 **SEC. 6. ENHANCEMENT OF CARBON OXIDE SEQUESTRA-**
14 **TION CREDIT FOR DIRECT AIR CAPTURE FA-**
15 **CILITIES.**

16 (a) IN GENERAL.—Section 45Q of the Internal Rev-
17 enue Code of 1986 is amended—

18 (1) in subsection (b)(1)—

19 (A) in subparagraph (A), by striking “The
20 applicable dollar amount” and inserting “Sub-
21 ject to subparagraph (B), the applicable dollar
22 amount”, and

23 (B) by striking subparagraph (B) and in-
24 serting the following:

1 “(B) SPECIAL RULE FOR DIRECT AIR CAP-
2 TURE FACILITIES.—

3 “(i) IN GENERAL.—Subject to clause
4 (ii), for any taxable year beginning in a
5 calendar year after 2021, in the case of
6 any qualified facility described in sub-
7 section (d)(2)(C), the applicable dollar
8 amount shall be an amount equal to—

9 “(I) for purposes of paragraph
10 (3) of subsection (a), an amount equal
11 to the product of \$120 and the infla-
12 tion adjustment factor for such cal-
13 endar year determined under section
14 43(b)(3)(B) for such calendar year,
15 determined by substituting ‘2020’ for
16 ‘1990’, and

17 “(II) for purposes of paragraph
18 (4) of such subsection, an amount
19 equal to the product of \$75 and the
20 inflation adjustment factor for such
21 calendar year determined under sec-
22 tion 43(b)(3)(B) for such calendar
23 year, determined by substituting
24 ‘2020’ for ‘1990’.

1 “(ii) USE IN ENHANCED OIL OR NAT-
2 URAL GAS RECOVERY PROJECT.—For any
3 taxable year beginning in a calendar year
4 after 2030, this subparagraph shall not
5 apply with respect to any qualified carbon
6 oxide which is used by the taxpayer in a
7 manner described in subsection
8 (a)(4)(B)(i).

9 “(C) ROUNDING.—The applicable dollar
10 amount determined under subparagraph (A) or
11 (B) shall be rounded to the nearest cent.”, and
12 (2) in subsection (d)(2)—

13 (A) in subparagraph (B), by striking “or”
14 at the end, and

15 (B) by striking subparagraph (C) and in-
16 serting the following:

17 “(C) in the case of a direct air capture fa-
18 cility, not less than 10,000 metric tons of quali-
19 fied carbon oxide during the taxable year, or

20 “(D) in the case of any facility not de-
21 scribed in subparagraph (A), (B), or (C), not
22 less than 100,000 metric tons of qualified car-
23 bon oxide during the taxable year.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2021.