

117TH CONGRESS  
1ST SESSION

# H. R. 3139

To require the Secretary of Energy to submit to Congress an annual report on peaker plants in the United States and to provide financial incentives for replacing peaker plants with technology that receives, stores, and delivers energy generated by renewable energy resources, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2021

Ms. CLARKE of New York (for herself, Mr. TORRES of New York, Ms. VELÁZQUEZ, Mr. NADLER, Ms. BARRAGÁN, Ms. NORTON, Mr. ESPAILLAT, Ms. LEE of California, Ms. WILLIAMS of Georgia, Mr. JONES, and Mr. SOTO) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To require the Secretary of Energy to submit to Congress an annual report on peaker plants in the United States and to provide financial incentives for replacing peaker plants with technology that receives, stores, and delivers energy generated by renewable energy resources, 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 “Promoting Energy Al-  
3 ternatives is Key to Emission Reductions Act of 2021”  
4 or the “PEAKER Act of 2021”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) APPROPRIATE COMMITTEES OF CON-  
8 GRESS.—The term “appropriate committees of Con-  
9 gress” means—

10 (A) the Committee on Finance of the Sen-  
11 ate;

12 (B) the Committee on Energy and Natural  
13 Resources of the Senate;

14 (C) the Committee on Environment and  
15 Public Works of the Senate;

16 (D) the Committee on Ways and Means of  
17 the House of Representatives; and

18 (E) the Committee on Energy and Com-  
19 merce of the House of Representatives.

20 (2) DISADVANTAGED COMMUNITY.—The term  
21 “disadvantaged community” means a community  
22 that—

23 (A) is located in an area with a high con-  
24 centration of individuals who—

25 (i) are members of low- and moderate-  
26 income households (as defined in section

1           570.3 of title 24, Code of Federal Regula-  
2           tions (or a successor regulation));

3           (ii) experience high levels of unem-  
4           ployment;

5           (iii) face a high rent burden;

6           (iv) face a high energy burden;

7           (v) have low levels of home ownership;

8           (vi) have low levels of educational at-  
9           tainment; or

10          (vii) are members of groups that have  
11          historically experienced discrimination on  
12          the basis of race or ethnicity;

13          (B) is burdened by high cumulative envi-  
14          ronmental pollution or other hazards that can  
15          lead to negative public health effects; or

16          (C) is determined to be a disadvantaged  
17          community, an environmental justice commu-  
18          nity, a climate-burdened community, or an oth-  
19          erwise similarly vulnerable community pursuant  
20          to any Federal or State-level initiative, includ-  
21          ing any relevant mapping initiative.

22          (3) HIGH ENERGY BURDEN.—The term “high  
23          energy burden” means, with respect to a household,  
24          expenditure of the household on residential energy

1 costs that equals 6 percent or more of the household  
2 income.

3 (4) PEAKER PLANT.—The term “peaker plant”  
4 means a fossil fuel-fired power plant or unit of a  
5 power plant that is run primarily to meet peak elec-  
6 tricity demand, as determined by the Secretary, in  
7 coordination with the Administrator of the Environ-  
8 mental Protection Agency and the applicable local  
9 electrical grid operator.

10 (5) SECRETARY.—The term “Secretary” means  
11 the Secretary of Energy.

12 **SEC. 3. ANNUAL REPORT ON PEAKER PLANTS IN THE**  
13 **UNITED STATES.**

14 (a) IN GENERAL.—Not later than 180 days after the  
15 date of enactment of this Act, and annually thereafter,  
16 the Secretary, in coordination with the Administrator of  
17 the Environmental Protection Agency, the White House  
18 Environmental Justice Advisory Council, the White House  
19 Environmental Justice Interagency Council, the Council  
20 on Environmental Quality, and any other relevant Federal  
21 entity that the Secretary determines to be appropriate,  
22 shall submit to the appropriate committees of Congress  
23 a report that—

24 (1) identifies each peaker plant in the United  
25 States; and

1           (2) for each peaker plant identified under para-  
2 graph (1)—

3           (A) describes the location of the peaker  
4 plant and related socioeconomic and demo-  
5 graphic data for that location, including wheth-  
6 er the peaker plant is located in or adjacent to  
7 a disadvantaged community;

8           (B) evaluates the quantity of carbon diox-  
9 ide, nitric oxides, sulfur oxides, fine particulate  
10 matter (PM<sub>2.5</sub>), and methane emitted per unit  
11 of electricity generated by the peaker plant;

12           (C) identifies—

13           (i) the total number of hours that the  
14 peaker plant generates electricity during  
15 the year covered by the report;

16           (ii) the capacity factor of the plant;

17           (iii) the average number of hours that  
18 the peaker plant generates electricity each  
19 time that the peaker plant generates elec-  
20 tricity; and

21           (iv) the percentage of the total num-  
22 ber of instances in which the peaker plant  
23 is started that result in the peaker plant  
24 generating electricity for—

25           (I) not less than 4 hours;

1 (II) not less than 8 hours; and  
2 (III) not less than 12 hours; and  
3 (D) identifies, for each day on which the 3  
4 air monitors closest to the peaker plant indicate  
5 that Federal ozone or particulate matter stand-  
6 ards have been exceeded, the percentage of peak  
7 demand met by the peaker plant for the elec-  
8 trical grid load zone served by the peaker plant.

9 (b) COMMUNITY ENGAGEMENT.—In preparing a re-  
10 port under subsection (a), the Secretary shall initiate and  
11 carry out public engagement with residents and stake-  
12 holders from disadvantaged communities containing a  
13 peaker plant.

14 **SEC. 4. CREDIT FOR GENERATION AND STORAGE OF EN-**  
15 **ERGY FROM RENEWABLE SOURCES.**

16 (a) IN GENERAL.—Subpart E of part IV of sub-  
17 chapter A of chapter 1 of the Internal Revenue Code of  
18 1986 is amended by inserting after section 48C the fol-  
19 lowing new section:

20 **“SEC. 48D. RENEWABLE ENERGY GENERATION AND STOR-**  
21 **AGE CREDIT.**

22 “(a) IN GENERAL.—For purposes of section 46, the  
23 renewable energy generation and storage credit for any  
24 taxable year is an amount equal to 10 percent of the quali-

1 fied investment for such taxable year with respect to any  
2 qualified renewable energy facility.

3 “(b) QUALIFIED INVESTMENT WITH RESPECT TO  
4 QUALIFIED RENEWABLE ENERGY FACILITIES.—

5 “(1) IN GENERAL.—For purposes of subsection  
6 (a), the qualified investment with respect to a quali-  
7 fied renewable energy facility for any taxable year is  
8 the basis of any qualified property placed in service  
9 by the taxpayer during such taxable year which is  
10 part of a qualified renewable energy facility.

11 “(2) QUALIFIED PROPERTY.—For purposes of  
12 this subsection, the term ‘qualified property’ means  
13 property—

14 “(A) which is—

15 “(i) tangible personal property, or

16 “(ii) other tangible property (not in-  
17 cluding a building or its structural compo-  
18 nents), but only if such property is used as  
19 an integral part of the qualified renewable  
20 energy facility,

21 “(B) with respect to which depreciation (or  
22 amortization in lieu of depreciation) is allow-  
23 able,

1           “(C) which is constructed, reconstructed,  
2           erected, installed, or acquired by the taxpayer,  
3           and

4           “(D) the original use of which commences  
5           with the taxpayer.

6           “(3) QUALIFIED RENEWABLE ENERGY FACIL-  
7           ITY.—

8           “(A) IN GENERAL.—Subject to subpara-  
9           graph (B), the term ‘qualified renewable energy  
10          facility’ means a facility which—

11           “(i) uses solar, wind, low-impact hy-  
12           droelectric (as certified by the Low Impact  
13           Hydropower Institute), geothermal, tidal,  
14           or wave energy to generate electricity  
15           which will be received and stored by prop-  
16           erty described in clause (ii),

17           “(ii) contains property which receives,  
18           stores, and delivers electricity described in  
19           clause (i), provided that such electricity  
20           is—

21           “(I)(aa) sold by the taxpayer to  
22           an unrelated person, or

23           “(bb) in the case of a facility  
24           which is equipped with a metering de-  
25           vice which is owned and operated by



1 an unrelated person, sold or consumed  
2 by the taxpayer, and

3 “(II) at a minimum, discharged  
4 at such times as a peaker plant within  
5 the same electrical grid load zone  
6 would operate to meet peak electricity  
7 demand (as determined by the grid  
8 operator for such electrical grid), and  
9 “(iii) which is placed in service—

10 “(I) in a disadvantaged commu-  
11 nity which is located within—

12 “(aa) the same census tract  
13 as a peaker plant, or

14 “(bb) a census tract that is  
15 adjacent to a census tract in  
16 which a peaker plant is located,  
17 and

18 “(II) after December 31, 2021.

19 “(B) SPECIAL RULE.—For purposes of  
20 this paragraph, a facility shall not be deemed to  
21 be a qualified renewable energy facility unless  
22 the taxpayer demonstrates, to the satisfaction  
23 of the Secretary, that—

24 “(i) the property described in clause  
25 (i) of subparagraph (A) is co-located with

1 property described in clause (ii) of such  
2 subparagraph,

3 “(ii) such taxpayer has, with respect  
4 to the property described in clause (ii) of  
5 such subparagraph, entered into a contract  
6 which ensures that such property operates  
7 primarily to receive, store, and deliver elec-  
8 tricity from any property described in  
9 clause (i) of such subparagraph, or

10 “(iii) the property described in clause  
11 (ii) of such subparagraph receives elec-  
12 tricity during periods of typically high pro-  
13 duction of electricity, as a percentage of  
14 the grid generation mix, from sources de-  
15 scribed in clause (i) of such subparagraph,  
16 as determined by the grid operator for the  
17 electrical grid.

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

1       “(d) DEFINITIONS.—The terms ‘disadvantaged com-  
2 munity’ and ‘peaker plant’ have the same meanings given  
3 such term under section 2 of the PEAKER Act of 2021.”.

4       (b) CONFORMING AMENDMENTS.—

5           (1) Section 46 of the Internal Revenue Code of  
6 1986 is amended—

7               (A) by striking “and” at the end of para-  
8 graph (5),

9               (B) by striking the period at the end of  
10 paragraph (6) and inserting “, and”, and

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

13              “(7) the renewable energy generation and stor-  
14 age credit.”.

15           (2) Section 49(a)(1)(C) of such Code is amend-  
16 ed—

17               (A) by striking “and” at the end of clause  
18 (iv),

19               (B) by striking the period at the end of  
20 clause (v) and inserting “, and”, and

21              (C) by adding at the end the following new  
22 clause:

23              “(vi) the basis of any qualified prop-  
24 erty which is part of a qualified renewable  
25 energy facility under section 48D.”.

1           (3) Section 50(a)(2)(E) of such Code is amend-  
2           ed by striking “or 48C(b)(2)” and inserting  
3           “48C(b)(2), or 48D(c)”.

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

          “48D. Renewable energy generation and storage credit.”.

8           (c) EFFECTIVE DATE.—The amendments made by  
9           this subsection shall apply to property placed in service  
10          after December 31, 2020, under rules similar to the rules  
11          of section 48(m) of the Internal Revenue Code of 1986  
12          (as in effect on the day before the date of the enactment  
13          of the Revenue Reconciliation Act of 1990).

14   **SEC. 5. RENEWABLE ENERGY GRANT PROGRAM.**

15          (a) DEFINITIONS.—In this section:

16               (1) ELIGIBLE ENTITY.—The term “eligible enti-  
17               ty” means each of the following:

18                       (A) A unit of State or local government.

19                       (B) A tax-exempt nonprofit organization.

20                       (C) A community-owned energy generation  
21                       facility or energy storage facility located in a  
22                       disadvantaged community.

23                       (D) A community-based energy cooperative  
24                       or a similar group of individuals within a com-

1           munity who are pursuing an eligible project de-  
2           scribed in subsection (d).

3           (E) A partnership between—

4                   (i) 1 or more of the entities described  
5                   in subparagraphs (A) through (D); and

6                   (ii)(I) an electric utility; or

7                   (II) a private entity.

8           (2) ENERGY STORAGE FACILITY.—The term  
9           “energy storage facility” means a facility that re-  
10          ceives, stores, and delivers electricity.

11          (3) PROGRAM.—The term “program” means  
12          the grant program established under subsection (b).

13          (4) QUALIFYING COMMUNITY ENERGY PRO-  
14          POSAL.—The term “qualifying community energy  
15          proposal” means a proposal to deploy and implement  
16          renewable energy generation, energy storage tech-  
17          nology, energy efficiency upgrades, energy demand  
18          management strategies, or distributed renewable en-  
19          ergy resources that a qualifying community energy  
20          study determines can reduce the runtime of an exist-  
21          ing or planned peaker plant or otherwise reduce or  
22          replace the need for an existing or planned peaker  
23          plant.

1 (5) QUALIFYING COMMUNITY ENERGY STUDY.—

2 The term “qualifying community energy study”  
3 means a study or assessment that—

4 (A) seeks to identify clean energy strate-  
5 gies to reduce the runtime of an existing or  
6 planned peaker plant or otherwise reduce or re-  
7 place the need for an existing or planned peaker  
8 plant, including strategies that involve—

9 (i) renewable energy generation;

10 (ii) energy storage technology;

11 (iii) energy efficiency upgrades;

12 (iv) energy demand management  
13 strategies; or

14 (v) distributed renewable energy de-  
15 ployment; and

16 (B) is led by or performed in partnership  
17 with the communities directly impacted by pol-  
18 lution from a peaker plant that is located with-  
19 in the same or an adjacent census tract.

20 (6) QUALIFYING ENERGY STORAGE FACILITY.—

21 The term “qualifying energy storage facility” means  
22 an energy storage facility that—

23 (A) is colocated with a qualifying renew-  
24 able energy facility and operates primarily to  
25 receive, store, and deliver renewable energy gen-

1 erated by that qualifying renewable energy fa-  
2 cility;

3 (B) has entered into a contract with 1 or  
4 more qualifying renewable energy facilities such  
5 that the energy storage system operates pri-  
6 marily to receive, store, and deliver renewable  
7 energy generated by those qualifying renewable  
8 energy facilities; or

9 (C) receives electricity during periods of  
10 typically high production of renewable energy  
11 (as a percentage of the grid generation mix), as  
12 determined by the operator of the applicable  
13 electrical grid.

14 (7) QUALIFYING RENEWABLE ENERGY FACIL-  
15 ITY.—The term “qualifying renewable energy facil-  
16 ity” means a facility that—

17 (A) generates renewable energy; and

18 (B)(i) is colocated with a qualifying energy  
19 storage facility; or

20 (ii) has entered into a contract described in  
21 paragraph (6)(B) with 1 or more qualifying en-  
22 ergy storage facilities.

23 (8) RENEWABLE ENERGY.—The term “renew-  
24 able energy” means electricity that is generated by  
25 or derived from, as applicable—

- 1           (A) a low-impact hydroelectric facility cer-  
2           tified by the Low Impact Hydropower Institute;  
3           (B) solar energy;  
4           (C) wind energy;  
5           (D) geothermal energy;  
6           (E) tidal energy; or  
7           (F) wave energy.

8           (b) ESTABLISHMENT.—Not later than 1 year after  
9 the date of enactment of this Act, the Secretary shall es-  
10 tablish a grant program to assist eligible entities in—

11           (1) carrying out projects for the construction,  
12           reconstruction, erection, installation, or acquisition  
13           of qualifying renewable energy facilities and quali-  
14           fying energy storage facilities;

15           (2) carrying out projects for the implementation  
16           of qualifying community energy proposals; and

17           (3) developing and carrying out qualifying com-  
18           munity energy studies.

19           (c) APPLICATIONS.—To be eligible to receive a grant  
20 under the program, an eligible entity shall submit to the  
21 Secretary an application at such time, in such manner,  
22 and containing such information as the Secretary may re-  
23 quire.



1 (d) ELIGIBLE PROJECTS AND QUALIFYING COMMU-  
2 NITY ENERGY STUDIES.—The Secretary may provide a  
3 grant under the program for—

4 (1) a project described in subsection (b)(1) only  
5 if each qualifying renewable energy facility and  
6 qualifying energy storage facility to be constructed,  
7 reconstructed, erected, installed, or acquired pursu-  
8 ant to the project will—

9 (A) be located in, or provide a direct and  
10 significant benefit to, a disadvantaged commu-  
11 nity that is located within—

12 (i) the same census tract as an exist-  
13 ing or planned peaker plant; or

14 (ii) a census tract that is adjacent to  
15 a census tract in which an existing or  
16 planned peaker plant is or will be located;  
17 and

18 (B) at a minimum, discharge electricity at  
19 such times as a peaker plant within the same  
20 electrical grid load zone would operate to meet  
21 peak electricity demand, as determined by the  
22 operator of the applicable electrical grid;

23 (2) a project described in subsection (b)(2) only  
24 if the qualifying community energy proposal to be  
25 implemented pursuant to the project will be imple-

1       mented in, or provide a direct and significant benefit  
2       to, a disadvantaged community that is located within  
3       a census tract described in clause (i) or (ii) of para-  
4       graph (1)(A); and

5               (3) the development and carrying out of a  
6       qualifying community energy study only if the quali-  
7       fying community energy study will provide for en-  
8       gagement with, and incorporate feedback from, each  
9       disadvantaged community that is located within a  
10      census tract described in clause (i) or (ii) of para-  
11      graph (1)(A).

12      (e) TECHNICAL ASSISTANCE GRANTS.—The Sec-  
13      retary may use amounts appropriated under subsection (i)  
14      to provide grants to eligible entities for the cost of acquir-  
15      ing technical assistance for the preparation and submis-  
16      sion of an application under subsection (c).

17      (f) PRIORITY FOR CERTAIN ELIGIBLE ENTITIES.—  
18      In evaluating applications submitted by eligible entities de-  
19      scribed in subsection (a)(1)(B), the Secretary shall give  
20      priority to applications submitted by local, community-  
21      based organizations or energy cooperatives.

22      (g) COST SHARING.—

23               (1) IN GENERAL.—Except as provided in para-  
24      graph (2), with respect to each project described in  
25      paragraph (1) or (2) of subsection (b) for which a

1 grant is provided under the program, the maximum  
2 amount provided for the project under the program  
3 shall not exceed 60 percent of the total cost incurred  
4 by the applicable eligible entity for, as applicable—

5 (A) the construction, reconstruction, erec-  
6 tion, installation, or acquisition of the applica-  
7 ble qualifying renewable energy facility or quali-  
8 fying energy storage facility; or

9 (B) the implementation of the applicable  
10 qualifying community energy proposal.

11 (2) LOCAL, COMMUNITY-BASED ORGANIZATIONS  
12 AND ENERGY COOPERATIVES.—With respect to a  
13 project described in paragraph (1) that is carried  
14 out by, or for which an application is submitted by,  
15 a local, community-based organization or an energy  
16 cooperative, the maximum amount provided for the  
17 project under the program shall not exceed 80 per-  
18 cent of the total cost incurred by the local, commu-  
19 nity-based organization or energy cooperative for the  
20 activities described in subparagraph (A) or (B) of  
21 that paragraph, as applicable.

22 (h) COMMUNITY ENGAGEMENT.—In carrying out this  
23 section, the Secretary shall initiate and carry out public  
24 engagement, particularly with residents and stakeholders  
25 from disadvantaged communities and communities in or

1 adjacent to areas with existing peaker plants identified in  
2 a report under section 3(a), to ensure that—

3 (1)(A) the public has input into the formulation  
4 of the program; and

5 (B) based on that input, the program best ad-  
6 dresses the needs and circumstances of disadvan-  
7 taged communities; and

8 (2) the public has information relating to the  
9 program, including—

10 (A) the benefits of, and opportunities for,  
11 eligible projects under the program; and

12 (B) the ways in which disadvantaged com-  
13 munities can best use the program to address  
14 the clean energy goals of those disadvantaged  
15 communities.

16 (i) AUTHORIZATION OF APPROPRIATIONS.—There is  
17 authorized to be appropriated to the Secretary to carry  
18 out the program not more than \$1,000,000,000 for each  
19 of fiscal years 2022 through 2032.

○