

117TH CONGRESS
1ST SESSION

H. R. 5183

To amend the Internal Revenue Code of 1986 to provide for an increase in energy credit for solar facilities placed in service with low-income communities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 2021

Mr. DANNY K. DAVIS of Illinois (for himself, Ms. SÁNCHEZ, Ms. SEWELL, Mr. HORSFORD, Mr. EVANS, Mr. GOMEZ, and Mr. ESPAILLAT) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for an increase in energy credit for solar facilities placed in service with low-income communities, 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 “Low-Income Housing
5 Renewable Energy Credit Act”.

1 **SEC. 2. INCREASE IN ENERGY CREDIT FOR SOLAR FACILI-**
2 **TIES PLACED IN SERVICE IN CONNECTION**
3 **WITH LOW-INCOME COMMUNITIES.**

4 (a) IN GENERAL.—Section 48 is amended by adding
5 at the end the following new subsection:

6 “(e) SPECIAL RULES FOR CERTAIN SOLAR FACILI-
7 TIES PLACED IN SERVICE IN CONNECTION WITH LOW-
8 INCOME COMMUNITIES.—

9 “(1) IN GENERAL.—In the case of any qualified
10 solar facility with respect to which the Secretary
11 makes an allocation of environmental justice solar
12 capacity limitation under paragraph (4)—

13 “(A) equipment described in paragraph
14 (3)(B) shall be treated for purposes of this sec-
15 tion as energy property described in subsection
16 (a)(2)(A)(i),

17 “(B) the energy percentage otherwise de-
18 termined under subsection (a)(2) with respect
19 to any eligible property which is part of such
20 facility shall be increased by—

21 “(i) in the case of a facility described
22 in subclause (I) of paragraph (2)(A)(iii)
23 and not described in subclause (II) of such
24 paragraph, 10 percentage points, and

25 “(ii) in the case of a facility described
26 in subclause (II) of paragraph (2)(A)(iii)

1 and not described in subclause (I) of such
2 paragraph, 20 percentage points, and

3 “(C) the increase in the credit determined
4 under subsection (a) by reason of this sub-
5 section for any taxable year with respect to all
6 property which is part of such facility shall not
7 exceed the amount which bears the same ratio
8 to the amount of such increase (determined
9 without regard to this subparagraph) as—

10 “(i) the environmental justice solar
11 capacity limitation allocated to such facil-
12 ity, bears to

13 “(ii) the total megawatt nameplate ca-
14 pacity of such facility.

15 “(2) QUALIFIED SOLAR FACILITY.—For pur-
16 poses of this subsection—

17 “(A) IN GENERAL.—The term ‘qualified
18 solar facility’ means any facility—

19 “(i) which generates electricity solely
20 from property described in subsection
21 (a)(3)(A)(i),

22 “(ii) which has a nameplate capacity
23 of 5 megawatts or less, and

24 “(iii) which—

1 “(I) is located in a low-income
2 community (as defined in section
3 45D(e)), or

4 “(II) is part of a qualified low-in-
5 come residential building project or a
6 qualified low-income economic benefit
7 project.

8 “(B) QUALIFIED LOW-INCOME RESIDEN-
9 TIAL BUILDING PROJECT.—A facility shall be
10 treated as part of a qualified low-income resi-
11 dential building project if—

12 “(i) such facility is installed on a resi-
13 dential rental building which participates
14 in a covered housing program (as defined
15 in section 41411(a) of the Violence Against
16 Women Act of 1994 (34 U.S.C.
17 12491(a)(3))), a Housing Development
18 Fund Corporation cooperative under Arti-
19 cle XI of the New York State Private
20 Housing Finance Law, a housing assist-
21 ance program administered by the U.S.
22 Department of Agriculture under title V of
23 the Housing Act of 1949, or such other af-
24 fordable housing programs as the Sec-
25 retary may provide, and

1 “(ii) the financial benefits of the elec-
2 tricity produced by such facility are allo-
3 cated equitably among the occupants of the
4 dwelling units of such building.

5 “(C) QUALIFIED LOW-INCOME ECONOMIC
6 BENEFIT PROJECT.—A facility shall be treated
7 as part of a qualified low-income economic ben-
8 efit project if at least 50 percent of the finan-
9 cial benefits of the electricity produced by such
10 facility are provided to households with income
11 of—

12 “(i) less than 200 percent of the pov-
13 erty line applicable to a family of the size
14 involved, or

15 “(ii) less than 70 percent of area me-
16 dian gross income (as determined under
17 section 142(d)(2)(B)).

18 “(D) FINANCIAL BENEFIT.—For purposes
19 of subparagraphs (B) and (C), electricity ac-
20 quired at a below-market rate shall not fail to
21 be taken into account as a financial benefit.

22 “(3) ELIGIBLE PROPERTY.—

23 “(A) IN GENERAL.—For purposes of this
24 section, the term ‘eligible property’ means—

1 “(i) energy property which is de-
2 scribed in subsection (a)(3)(A)(i), includ-
3 ing any property that stores electricity
4 which is installed in connection with such
5 energy property, and

6 “(ii) the amount of any expenditures
7 which are paid or incurred by the taxpayer
8 for qualified interconnection property in-
9 stalled in connection with the installation
10 of property described in subparagraph (A)
11 to provide for the transmission or distribu-
12 tion of the electricity produced or stored by
13 such property, and which are properly
14 chargeable to the capital account of the
15 taxpayer.

16 “(B) DEFINITIONS.—For purposes of sub-
17 paragraph (A)—

18 “(i) QUALIFIED INTERCONNECTION
19 PROPERTY.—The term ‘qualified inter-
20 connection property’ means, with respect
21 to a qualified facility which is not a
22 microgrid, any tangible property—

23 “(I) which is part of an addition,
24 modification, or upgrade to a trans-
25 mission or distribution system which

1 is required at or beyond the point at
2 which the qualified facility intercon-
3 nects to such transmission or distribu-
4 tion system in order to accommodate
5 such interconnection,

6 “(II) either—

7 “(aa) which is constructed,
8 reconstructed, or erected by the
9 taxpayer, or

10 “(bb) for which the cost
11 with respect to the construction,
12 reconstruction, or erection of
13 such property is paid or incurred
14 by such taxpayer, and

15 “(III) the original use of which,
16 pursuant to an interconnection agree-
17 ment, commences with the utility.

18 “(ii) INTERCONNECTION AGREE-
19 MENT.—The term ‘interconnection agree-
20 ment’ means an agreement entered into by
21 a utility and the taxpayer for the purposes
22 of interconnecting the qualified facility
23 owned by such taxpayer to the trans-
24 mission or distribution system of such util-
25 ity.

1 “(iii) UTILITY.—The term ‘utility’
2 means the owner or operator of an elec-
3 trical transmission or distribution system
4 which is subject to the regulatory authority
5 of—

6 “(I) the Federal Energy Regu-
7 latory Commission, or

8 “(II) a State public utility com-
9 mission or other appropriate State
10 agency.

11 “(C) SPECIAL RULE FOR INTERCONNEC-
12 TION PROPERTY.—In the case of expenses paid
13 or incurred for interconnection property,
14 amounts otherwise chargeable to capital ac-
15 count with respect to such expenses shall be re-
16 duced under rules similar to the rules of section
17 50(c).

18 “(4) ALLOCATIONS.—

19 “(A) IN GENERAL.—Not later than 180
20 days after the date of enactment of this sub-
21 section, the Secretary shall establish a program
22 to allocate amounts of environmental justice
23 solar capacity limitation to qualified solar facili-
24 ties.

1 “(B) LIMITATION.—The amount of envi-
2 ronmental justice solar capacity limitation allo-
3 cated by the Secretary under subparagraph (A)
4 during any calendar year shall not exceed the
5 annual capacity limitation with respect to such
6 year.

7 “(C) ANNUAL CAPACITY LIMITATION.—For
8 purposes of this paragraph, the term ‘annual
9 capacity limitation’ means 1.8 gigawatts for
10 each of calendar years 2022 through 2031, and
11 zero thereafter.

12 “(D) CARRYOVER OF UNUSED LIMITA-
13 TION.—If the annual capacity limitation for any
14 calendar year exceeds the aggregate amount al-
15 located for such year under this paragraph,
16 such limitation for the succeeding calendar year
17 shall be increased by the amount of such excess.
18 No amount may be carried under the preceding
19 sentence to any calendar year after 2033.

20 “(E) PLACED IN SERVICE DEADLINE.—

21 “(i) IN GENERAL.—Paragraph (1)
22 shall not apply with respect to any prop-
23 erty which is placed in service after the
24 date that is 4 years after the date of the

1 allocation with respect to the facility of
2 which such property is a part.

3 “(ii) APPLICATION OF CARRYOVER.—

4 Any amount of environmental justice solar
5 capacity limitation which expires under
6 clause (i) during any calendar year shall be
7 taken into account as an excess described
8 in subparagraph (C) (or as an increase in
9 such excess) for such calendar, subject to
10 the limitation imposed by the last sentence
11 of such subparagraph.

12 “(F) SELECTION CRITERIA.—In deter-
13 mining to which qualified solar facilities to allo-
14 cate environmental justice solar capacity limita-
15 tion under this paragraph, the Secretary shall
16 take into consideration which facilities will re-
17 sult in—

18 “(i) the greatest health and economic
19 benefits for individuals described in section
20 45D(e)(2),

21 “(ii) the greatest employment and
22 wages for such individuals, and

23 “(iii) the greatest engagement with,
24 outreach to, or ownership by, such individ-
25 uals, including through partnerships with

1 local governments and community-based
2 organizations.

3 “(G) DISCLOSURE OF ALLOCATIONS.—The
4 Secretary shall, upon making an allocation of
5 environmental justice solar capacity limitation
6 under this paragraph, publicly disclose the iden-
7 tity of the applicant and the amount of the en-
8 vironmental justice solar capacity limitation al-
9 located to such applicant.

10 “(5) RECAPTURE.—The Secretary shall, by reg-
11 ulations or other guidance, provide for recapturing
12 the benefit of any increase in the credit allowed
13 under subsection (a) by reason of this subsection
14 with respect to any property which ceases to be
15 property eligible for such increase (but which does
16 not cease to be investment credit property within the
17 meaning of section 50(a)). The period and percent-
18 age of such recapture shall be determined under
19 rules similar to the rules of section 50(a). Such re-
20 capture shall not apply with respect to any property
21 if, within 12 months after the date the taxpayer be-
22 comes aware (or reasonably should have become
23 aware) of the such property ceasing to be property
24 eligible for such increase, the eligibility of such prop-
25 erty for such increase is restored. The preceding

1 sentence shall not apply more than once with respect
2 to any facility.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to periods after December 31,
5 2021, under rules similar to the rules of section 48(m)
6 of the Internal Revenue Code of 1986 (as in effect on the
7 day before the date of the enactment of the Revenue Rec-
8 onciliation Act of 1990).

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