

113TH CONGRESS  
1ST SESSION

# S. 1141

To amend the Internal Revenue Code of 1986 to expand the rehabilitation credit, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 11, 2013

Mr. CARDIN (for himself, Ms. COLLINS, Mr. SCHUMER, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to expand the rehabilitation 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 “Creating American  
5 Prosperity through Preservation Act of 2013”.

6 **SEC. 2. INCREASE IN THE REHABILITATION CREDIT FOR**  
7 **CERTAIN SMALLER PROJECTS.**

8 (a) IN GENERAL.—Section 47 of the Internal Rev-  
9 enue Code of 1986 (relating to rehabilitation credit) is

1 amended by adding at the end the following new sub-  
 2 section:

3 “(e) SPECIAL RULE REGARDING CERTAIN SMALLER  
 4 PROJECTS.—

5 “(1) IN GENERAL.—In the case of any qualified  
 6 rehabilitated building or portion thereof—

7 “(A) which is placed in service after the  
 8 date of the enactment of this subsection, and

9 “(B) which is a smaller project,  
 10 subsection (a)(2) shall be applied by substituting ‘30  
 11 percent’ for ‘20 percent’.

12 “(2) MAXIMUM CREDIT.—The credit deter-  
 13 mined under this subsection with respect to any  
 14 smaller project for all taxable years shall not exceed  
 15 \$1,500,000.

16 “(3) SMALLER PROJECT DEFINED.—

17 “(A) IN GENERAL.—For purposes of this  
 18 subsection, the term ‘smaller project’ means  
 19 any qualified rehabilitated building or portion  
 20 thereof if—

21 “(i) the qualified rehabilitation ex-  
 22 penditures taken into account for purposes  
 23 of this section (or would have been so  
 24 taken into account if this subsection had  
 25 been in effect for all prior periods) with re-

1           spect to the rehabilitation are not over  
2           \$7,500,000, and

3           “(ii) no credit was allowed under this  
4           section for either of the 2 prior taxable  
5           years with respect to such building.

6           “(B) PROGRESS EXPENDITURES.—Credit  
7           allowable by reason of subsection (d) shall not  
8           be taken into account under subparagraph  
9           (A)(ii).”.

10          (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply to periods after the date of the  
12 enactment of this Act, under rules similar to the rules of  
13 section 48(m) of the Internal Revenue Code of 1986 (as  
14 in effect on the day before the date of the enactment of  
15 the Revenue Reconciliation Act of 1990).

16 **SEC. 3. ADDITION OF ENERGY EFFICIENCY SUPPLEMENT**  
17 **TO REHABILITATION CREDIT.**

18          (a) IN GENERAL.—Subsection (a) of section 47 of the  
19 Internal Revenue Code of 1986 is amended by striking  
20 “and” at the end of paragraph (1), by striking the period  
21 at the end of paragraph (2) and inserting “, and”, and  
22 by adding at the end the following new paragraph:

23           “(3) 2 percent of the qualified rehabilitation ex-  
24           penditures if the building is a qualified energy effi-  
25           cient rehabilitated building.”.

1 (b) QUALIFIED ENERGY EFFICIENT REHABILITATED  
 2 BUILDING.—Section 47 of such Code, as amended by sec-  
 3 tion 2, is amended by adding at the end the following new  
 4 subsection:

5 “(f) QUALIFIED ENERGY EFFICIENT REHABILI-  
 6 TATED BUILDING.—

7 “(1) IN GENERAL.—The term ‘qualified energy  
 8 efficient rehabilitated building’ means any building  
 9 (and its structural components) if—

10 “(A) the building is a qualified rehabili-  
 11 tated building, and

12 “(B)(i) the rehabilitation is certified (in  
 13 accordance with paragraph (4)) as being de-  
 14 signed to achieve at least a 30 percent energy  
 15 use reduction in the building’s energy use, or

16 “(ii) the building meets the requirements  
 17 of paragraph (2)(B)(ii) and is determined under  
 18 paragraph (2)(B) to achieve at least a 30 per-  
 19 cent energy use reduction after being rehabili-  
 20 tated.

21 “(2) DETERMINATION OF ENERGY USE REDUC-  
 22 TION.—For purposes of paragraph (1)—

23 “(A) DESIGN-BASED STANDARDS.—

24 “(i) BUILDINGS WITHIN THE SCOPE  
 25 OF STANDARD 90.1–2007.—If the building

1 is within the scope of Standard 90.1–2007,  
2 the designed reduction in energy use shall  
3 be determined using methods of calculation  
4 under paragraph (3) in comparison to a  
5 reference building which meets the min-  
6 imum requirements of such standard.

7 “(ii) RESNET BUILDINGS.—If the  
8 building is within the scope of RESNET,  
9 the designed reduction in energy use shall  
10 be determined using methods prescribed by  
11 the Secretary which are based on the Resi-  
12 dential Energy Services Network Technical  
13 Guidelines.

14 “(iii) OTHER BUILDINGS.—If neither  
15 clause (i) or (ii) apply to the building, the  
16 designed reduction in energy use shall be  
17 determined using methods of calculation  
18 prescribed by the Secretary in a manner  
19 which is consistent with principles under  
20 paragraph (3).

21 “(B) MEASURED REDUCTIONS.—

22 “(i) IN GENERAL.—In the case of  
23 buildings which meet the requirements of  
24 clause (ii), the taxpayer may determine the  
25 reduction in energy usage by comparing

1 the energy usage during the period selected  
2 by the taxpayer under clause (ii)(I) with  
3 the energy usage during the period selected  
4 by the taxpayer under clause (ii)(II).

5 “(ii) BUILDING REQUIREMENTS.—A  
6 building meets the requirements of this  
7 clause if—

8 “(I) the building is at least 75  
9 percent occupied during any period  
10 (but not less than 12 months) selected  
11 by the taxpayer which ends during the  
12 5-year period ending on the date that  
13 the rehabilitation begins, and

14 “(II) the building is at least 75  
15 percent occupied during the com-  
16 parable period selected by the tax-  
17 payer which begins during the 5-year  
18 period beginning on the date that the  
19 rehabilitation is completed.

20 “(iii) ENERGY STAR BUILDINGS.—The  
21 reduction in energy use for buildings with-  
22 in the scope of Energy Start Portfolio  
23 Manager may be determined for purposes  
24 of this subparagraph by using the Energy

1 Star Portfolio Manager Buildings Bench-  
2 mark Tool.

3 “(iv) SPECIAL RULES.—The Secretary  
4 shall prescribe regulations which preclude  
5 the use of this subparagraph, or modify  
6 the methods otherwise applicable under  
7 this subparagraph, in circumstance where  
8 vacancies, changes in use, and other fac-  
9 tors which might otherwise yield in materi-  
10 ally misleading results.

11 “(v) YEAR CREDIT ALLOWABLE.—In  
12 the case of a building which is a qualified  
13 energy efficient rehabilitated building sole-  
14 ly by reason of this subparagraph, the in-  
15 crease in the credit under subsection (a)(3)  
16 with respect to such building shall be  
17 taken into account for the taxable year  
18 which includes the end of the period se-  
19 lected by the taxpayer under clause (ii)(II)  
20 in lieu of the taxable year in which the re-  
21 habilitated building is placed in service.

22 “(3) METHODS OF CALCULATIONS.—

23 “(A) IN GENERAL.—The Secretary, after  
24 consultation with the Secretary of Energy, shall  
25 promulgate regulations which describe in detail

1 methods for calculating and verifying energy  
2 and power consumption and cost, based on Ap-  
3 pendix G of Standard 90.1–2007 (or any subse-  
4 quent version of such Appendix which is in ef-  
5 fect at the time of the certification).

6 “(B) COMPUTER SOFTWARE.—

7 “(i) IN GENERAL.—Any calculation  
8 under subparagraph (A) shall be prepared  
9 by qualified computer software.

10 “(ii) QUALIFIED COMPUTER SOFT-  
11 WARE.—For purposes of subparagraph  
12 (A), the term ‘qualified computer software’  
13 means software—

14 “(I) which is included (at the  
15 time of the certification) on the pub-  
16 lished list of qualified software by the  
17 Department of Energy,

18 “(II) which provides such infor-  
19 mation as the Secretary may require,  
20 including information that allows the  
21 user to document the energy efficiency  
22 features of the building and its pro-  
23 jected annual energy costs, and

24 “(III) which provides standard-  
25 ized outputs for building energy per-



1 formance and, to the maximum extent  
2 practicable, relies on industry best  
3 practices and existing guidelines.

4 “(4) CERTIFICATIONS.—

5 “(A) IN GENERAL.—The Secretary shall  
6 prescribe the manner and method for the mak-  
7 ing of certifications under this subsection.

8 “(B) PROCEDURES.—The Secretary shall  
9 include as part of the certification process pro-  
10 cedures for inspection and testing by qualified  
11 individuals described in subparagraph (C) to  
12 ensure compliance of buildings with energy-sav-  
13 ings plans and targets. Such procedures shall  
14 be comparable, given the difference between  
15 commercial and residential buildings, to the re-  
16 quirements in the Mortgage Industry National  
17 Accreditation Procedures for Home Energy  
18 Rating Systems.

19 “(C) QUALIFIED INDIVIDUALS.—Individ-  
20 uals qualified to determine compliance shall be  
21 only those individuals who are recognized by an  
22 organization certified by the Secretary for such  
23 purposes. For purposes of the preceding sen-  
24 tence, an individual shall not be qualified with  
25 respect to a building unless the individual is—

- 1                   “(i) a registered professional engineer,  
2                   “(ii) not a direct employee of the  
3                   owner of the commercial building or multi-  
4                   family building, and  
5                   “(iii) licensed in the State in which  
6                   such building is located.

7                   “(5) STANDARD 90.1–2007.—For purposes of  
8                   this subsection, the term ‘Standard 90.1–2007’  
9                   means Standard 90.1–2007 of the American Society  
10                  of Heating, Refrigerating, and Air Conditioning En-  
11                  gineers and the Illuminating Engineering Society of  
12                  North America (or any subsequent version of such  
13                  Standard which is in effect at the time of the certifi-  
14                  cation).

15                  “(6) ALLOCATION OF CREDIT FOR TAX-EXEMPT  
16                  PROPERTY.—Paragraphs (3) and (4) of section  
17                  50(b), and clause (v) of subsection (c)(2)(B), shall  
18                  not apply to those qualified rehabilitation expendi-  
19                  tures that are taken into account for purposes of  
20                  certifying a building as a qualified energy efficient  
21                  rehabilitated building under this subsection. Any re-  
22                  habilitation credit which is allowable by reason of  
23                  the preceding sentence may be assigned to any other  
24                  person, and such other person shall be treated as the  
25                  taxpayer with respect thereto.

1           “(7) COORDINATION.—The Secretary shall des-  
2           ignate processes for tracking the numbers and loca-  
3           tions of buildings claiming the rehabilitation by rea-  
4           son of this subsection, as well as providing informa-  
5           tion on projected and actual savings of energy and  
6           its value over time in coordination with the Depart-  
7           ment of Energy.

8           “(8) REGULATIONS.—The Secretary, after con-  
9           sultation with the Administrator of the Environ-  
10          mental Protection Agency and the Secretary of the  
11          Interior, shall promulgate such regulations as may  
12          be necessary or appropriate to carry out the pur-  
13          poses of this subsection, including regulations—

14                 “(A) to take into account new technologies  
15                 regarding energy efficiency and renewable en-  
16                 ergy for purposes of determining energy effi-  
17                 ciency and savings under this subsection, and

18                 “(B) to provide for a recapture of the cred-  
19                 it determined under this subsection if the de-  
20                 sign referred to in paragraph (1)(B) is not fully  
21                 implemented.”.

22          (c) SUBSTANTIAL REHABILITATION REQUIREMENT  
23          NOT TO APPLY TO ENERGY EFFICIENCY SUPPLEMENT.—  
24          Subparagraph (A) of section 47(c)(1) of such Code (defin-

1 ing qualified rehabilitated building) is amended by adding  
 2 at the end the following new flush sentence:

3 “Clause (i) shall not apply to so much of the  
 4 rehabilitation credit as is determined under sub-  
 5 section (a)(3).”.

6 (d) EFFECTIVE DATES.—

7 (1) IN GENERAL.—Except as provided in para-  
 8 graph (2), the amendments made by this section  
 9 shall apply to property placed in service after the  
 10 date of the enactment of this Act.

11 (2) WAIVER OF SUBSTANTIAL REHABILITATION  
 12 REQUIREMENT.—The waiver of the requirement of  
 13 section 47(c)(1)(A)(i) of the Internal Revenue Code  
 14 of 1986 made by section 47(f)(1)(A) of such Code,  
 15 as added by this Act, shall apply with respect to re-  
 16 habilitations the physical work on which begins after  
 17 the date of the enactment of this Act.

18 **SEC. 4. MODIFICATION TO DEFINITION OF QUALIFIED RE-**  
 19 **HABILITATION EXPENDITURE.**

20 (a) IN GENERAL.—Clause (i) of section 47(c)(2)(A)  
 21 of the Internal Revenue Code of 1986 (relating to the defi-  
 22 nition of qualified rehabilitation expenditures) is amended  
 23 by striking “or” at the end of subclause (III), by striking  
 24 subclause (IV), and by inserting after subclause (III) the  
 25 following new subclauses:

1 “(IV) rehabilitated building en-  
2 ergy efficiency property, or

3 “(V) an addition or improvement  
4 to property described in subclause (I),  
5 (II), (III), or (IV), and”.

6 (b) REHABILITATED BUILDING ENERGY EFFICIENCY  
7 PROPERTY.—Section 47(c)(2) of such Code is amended by  
8 adding at the end the following new subparagraph:

9 “(E) REHABILITATED BUILDING ENERGY  
10 EFFICIENCY PROPERTY.—

11 “(i) IN GENERAL.—For purposes of  
12 subparagraph (A), the term ‘rehabilitated  
13 building energy efficiency property’ means  
14 property which is certified as being—

15 “(I) affixed to, adjacent to, or in-  
16 tegral to the provision of renewable  
17 energy to a qualified rehabilitated  
18 building, or

19 “(II) installed as part of a plan  
20 designed to achieve any energy use re-  
21 duction (within the meaning of sub-  
22 section (f)).

23 Subparagraph (B)(i) shall not apply to re-  
24 habilitated building energy efficiency prop-  
25 erty.

1                   “(ii) CERTIFICATION.—The Secretary  
2                   shall prescribe the manner and method for  
3                   the making of certifications under clause  
4                   (i).”.

5           (c) ENLARGEMENTS.—Clause (iii) of section  
6 47(c)(2)(B) of such Code is amended by adding at the  
7 end the following new sentence: “The preceding sentence  
8 shall not apply to any rehabilitated building energy effi-  
9 ciency property which is an addition or improvement to  
10 a building.”.

11          (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to qualified rehabilitated buildings  
13 placed in service after the date of the enactment of this  
14 Act.

15 **SEC. 5. COORDINATION OF ENERGY CREDIT WITH REHA-**  
16 **BILITATION CREDIT.**

17          (a) IN GENERAL.—Paragraph (2) of section 48(a) of  
18 the Internal Revenue Code of 1986 is amended by striking  
19 subparagraph (B).

20          (b) CONFORMING AMENDMENTS.—Paragraph (2) of  
21 section 48(a) of such Code is amended—

22               (1) by redesignating subparagraph (A)(ii) as  
23               subparagraph (B) and moving such subparagraph 2  
24               ems to the left,

1           (2) by redesignating subclauses (I) through  
 2           (IV) of subparagraph (A)(i) as clauses (i) through  
 3           (iv), respectively, and by moving such clauses 2 ems  
 4           to the left, and

5           (3) by striking so much of such paragraph as  
 6           precedes “30 percent in the case of—” and inserting  
 7           the following:

8           “(2) ENERGY PERCENTAGE.—The energy per-  
 9           centage is—

10           “(A) 30 percent in the case of—”.

11           (c) BASIS REDUCTION.—Paragraph (3) of section  
 12           50(c) of such Code is amended by adding at the end the  
 13           following new flush sentence: “In the case of property that  
 14           qualifies for both the energy credit and the rehabilitation  
 15           credit, the preceding sentence shall be applied by sub-  
 16           stituting ‘none’ for ‘only 50 percent’ each place it ap-  
 17           pears.”.

18           (d) EFFECTIVE DATE.—The amendments made by  
 19           this section shall apply to property placed in service after  
 20           the date of the enactment of this Act.

21           **SEC. 6. DATE BY WHICH BUILDING MUST BE FIRST PLACED**  
 22           **IN SERVICE.**

23           (a) IN GENERAL.—Subparagraph (B) of section  
 24           47(c)(1) of the Internal Revenue Code of 1986 (relating

1 to the date by which building must be first placed in serv-  
 2 ice) is amended—

3 (1) by striking “BUILDING MUST BE FIRST  
 4 PLACED IN SERVICE BEFORE 1936” and inserting  
 5 “DATE BY WHICH BUILDING MUST FIRST BE  
 6 PLACED IN SERVICE”, and

7 (2) by striking “before 1936” and inserting “no  
 8 less than 50 years prior to the year in which quali-  
 9 fied rehabilitation expenditures are taken into ac-  
 10 count under subsection (b)(1)”.

11 (b) EFFECTIVE DATE.—The amendment made by  
 12 this section shall apply to property placed in service after  
 13 the date of the enactment of this Act.

14 **SEC. 7. MODIFICATIONS REGARDING CERTAIN TAX-EXEMPT**  
 15 **USE PROPERTY.**

16 (a) IN GENERAL.—Clause (I) of section  
 17 47(c)(2)(B)(v) of the Internal Revenue Code of 1986 (re-  
 18 lating to tax-exempt use property) is amended by inserting  
 19 “and subclauses (I), (II), and (III) of section  
 20 168(h)(1)(B)(ii) shall not apply” after “thereof”.

21 (b) EFFECTIVE DATE.—The amendments made by  
 22 this section shall apply to property placed in service after  
 23 the date of the enactment of this Act.



1 **SEC. 8. SPECIAL RULES FOR DISPOSITIONS OF STATE HIS-**  
 2 **TORIC TAX CREDITS.**

3 (a) IN GENERAL.—Part III of subchapter B of chap-  
 4 ter 1 of the Internal Revenue Code of 1986 (relating to  
 5 items specifically excluded from gross income) is amended  
 6 by inserting after section 139D the following new section:

7 **“SEC. 139E. DISPOSITIONS OF STATE HISTORIC TAX CRED-**  
 8 **ITS.**

9 “(a) EXCLUSION FROM INCOME; BASIS REDUC-  
 10 TION.—

11 “(1) IN GENERAL.—In the case of a taxpayer  
 12 who receives a State historic tax credit and transfers  
 13 such credit by sale, allocation, or otherwise, or re-  
 14 ceives a refund of all or a portion of such credit—

15 “(A) no portion of the net proceeds of such  
 16 allocation, disposition, or refund of such credit  
 17 shall constitute income to such taxpayer under  
 18 section 61(a), and

19 “(B) the taxpayer’s basis in the property  
 20 with respect to which the State historic tax  
 21 credit is allowed shall be reduced as determined  
 22 under paragraph (2).

23 “(2) DETERMINATION OF REDUCTION IN  
 24 BASIS.—The reduction in basis under paragraph (1)  
 25 shall be applied—

26 “(A) first, against the basis in the land,

1           “(B) second, against so much of the basis  
2 of any building or interest therein as was not  
3 treated as a qualified rehabilitation expenditure  
4 by reason of clause (ii) or (iii) of section  
5 47(c)(2)(B), and

6           “(C) third, against the remaining basis in  
7 the property.

8           “(D) ADJUSTMENT IN BASIS OF INTEREST  
9 IN PARTNERSHIP OR S CORPORATION.—The ad-  
10 justed basis of—

11           “(i) a partner’s interest in a partner-  
12 ship, or

13           “(ii) stock in an S corporation (as de-  
14 fined in section 1361(a)(1)),

15 shall be appropriately adjusted to take into ac-  
16 count adjustments made under this subsection  
17 in the basis of property held by the partnership  
18 or S corporation (if any).

19           “(b) ELECTION TO INCLUDE IN INCOME.—

20           “(1) IN GENERAL.—In the case of a taxpayer  
21 elects to have this subsection apply—

22           “(A) the net proceeds of the allocation, dis-  
23 position, or refund described in subsection (a)  
24 received by such taxpayer shall constitute in-  
25 come to such taxpayer under section 61(a), and

1           “(B) subsection (a)(1)(B) shall not apply.

2           “(2) MAKING OF ELECTION.—An election under  
3           this subsection shall be made at such time and in  
4           such manner as the Secretary of the Treasury may  
5           by regulation prescribe. Such election shall apply for  
6           the taxable year for which it is made and for all sub-  
7           sequent taxable years and may be revoked only with  
8           the consent of the Secretary of the Treasury.

9           “(c) EFFECT ON QUALIFIED REHABILITATION EX-  
10          PENDITURES AND REHABILITATION CREDITS.—For pur-  
11          poses of determining the rehabilitation credit allowable to  
12          a taxpayer under section 47, the transfer or allocation of  
13          State historic tax credits with respect to any property by  
14          a taxpayer shall not affect or reduce the amount of quali-  
15          fied rehabilitation expenditures (as defined in section  
16          47(c)(2)) incurred in connection with such property, nor  
17          shall such transfer or disposition, nor any basis adjust-  
18          ments under subsection (a), be treated as an early disposi-  
19          tion of investment credit property for purposes of the re-  
20          capture provisions of section 50.

21          “(d) STATE HISTORIC TAX CREDITS DEFINED.—For  
22          purposes of this section, the term ‘State historic tax credit’  
23          means any credit against State or local tax liabilities  
24          which—

1           “(1) is allowable under the laws of any State or  
2           political subdivision thereof to a taxpayer with re-  
3           spect to expenditures made for the rehabilitation of  
4           property identified by such laws, and

5           “(2) can be allocated, disposed, or refunded  
6           under such laws.”.

7           (b) CLERICAL AMENDMENT.—The table of sections  
8           for such part III is amended by inserting after the item  
9           relating to section 139D the following new item:

          “Sec. 139E. Dispositions of State historic tax credits.”.

10          (c) EFFECTIVE DATE.—This section shall apply to  
11          transfers or dispositions made, or refunds received, after  
12          the date of the enactment of this Act.

○