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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.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Promoting Energy Alternatives is Key to Emission Reductions Act of 2021'' or the ''PEAKER Act of 2021''.

SEC. 2. DEFINITIONS.

In this Act:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means—

(A) the Committee on Finance of the Senate;

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

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

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

(E) the Committee on Energy and Commerce of the House of Representatives.

(2) DISADVANTAGED COMMUNITY.—The term ''disadvantaged community'' means a community that—

(A) is located in an area with a high concentration of individuals who—

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

570.3 of title 24, Code of Federal Regulations (or a successor regulation));

(ii) experience high levels of unemployment;

(iii) face a high rent burden;

(iv) face a high energy burden;

(v) have low levels of home ownership;

(vi) have low levels of educational attainment; or

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

(B) is burdened by high cumulative environmental pollution or other hazards that can lead to negative public health effects; or

(C) is determined to be a disadvantaged community, an environmental justice community, a climate-burdened community, or an otherwise similarly vulnerable community pursuant to any Federal or State-level initiative, including any relevant mapping initiative.

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

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

(4) PEAKER PLANT.—The term ''peaker plant'' means a fossil fuel-fired power plant or unit of a power plant that is run primarily to meet peak electricity demand, as determined by the Secretary, in coordination with the Administrator of the Environmental Protection Agency and the applicable local electrical grid operator.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

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

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

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

(2) for each peaker plant identified under paragraph (1)—

(A) describes the location of the peaker plant and related socioeconomic and demographic data for that location, including whether the peaker plant is located in or adjacent to a disadvantaged community;

(B) evaluates the quantity of carbon dioxide, nitric oxides, sulfur oxides, fine particulate matter ($PM_{2.5}$), and methane emitted per unit of electricity generated by the peaker plant;

(C) identifies—

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

(ii) the capacity factor of the plant;

(iii) the average number of hours that the peaker plant generates electricity each time that the peaker plant generates electricity; and

(iv) the percentage of the total number of instances in which the peaker plant is started that result in the peaker plant generating electricity for—

(I) not less than 4 hours;

(II) not less than 8 hours; and

(III) not less than 12 hours; and

(D) identifies, for each day on which the 3 air monitors closest to the peaker plant indicate that Federal ozone or particulate matter standards have been exceeded, the percentage of peak demand met by the peaker plant for the electrical grid load zone served by the peaker plant.

(b) COMMUNITY ENGAGEMENT.—In preparing a report under subsection (a), the Secretary shall initiate and carry out public engagement with residents and stakeholders from disadvantaged communities containing a peaker plant.

SEC. 4. CREDIT FOR GENERATION AND STORAGE OF ENERGY FROM RENEWABLE SOURCES.

(a) IN GENERAL.—Subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 48C the following new section:

"SEC. 48D. RENEWABLE ENERGY GENERATION AND STORAGE CREDIT.

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

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

''(b) QUALIFIED INVESTMENT WITH RESPECT TO QUALIFIED RENEWABLE ENERGY FACILITIES.—

''(1) IN GENERAL.—For purposes of subsection (a), the qualified investment with respect to a qualified renewable energy facility for any taxable year is the basis of any qualified property placed in service by the taxpayer during such taxable year which is part of a qualified renewable energy facility.

''(2) QUALIFIED PROPERTY.—For purposes of this subsection, the term 'qualified property' means property—

''(A) which is—

''(i) tangible personal property, or

''(ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified renewable energy facility,

''(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

"(C) which is constructed, reconstructed, erected, installed, or acquired by the taxpayer, and

"(D) the original use of which commences with the taxpayer.

"(3) QUALIFIED RENEWABLE ENERGY FACILITY.—

"(A) IN GENERAL.—Subject to subparagraph (B), the term 'qualified renewable energy facility' means a facility which—

"(i) uses solar, wind, low-impact hydroelectric (as certified by the Low Impact Hydropower Institute), geothermal, tidal, or wave energy to generate electricity which will be received and stored by property described in clause (ii),

"(ii) contains property which receives, stores, and delivers electricity described in clause (i), provided that such electricity is—

"(I)(aa) sold by the taxpayer to an unrelated person, or

"(bb) in the case of a facility which is equipped with a metering device which is owned and operated by

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

"(II) at a minimum, discharged at such times as a peaker plant within the same electrical grid load zone would operate to meet peak electricity demand (as determined by the grid operator for such electrical grid), and

"(iii) which is placed in service—

"(I) in a disadvantaged community which is located within—

"(aa) the same census tract as a peaker plant, or

"(bb) a census tract that is adjacent to a census tract in which a peaker plant is located, and

"(II) after December 31, 2021.

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

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

property described in clause (ii) of such subparagraph,

''(ii) such taxpayer has, with respect to the property described in clause (ii) of such subparagraph, entered into a contract which ensures that such property operates primarily to receive, store, and deliver electricity from any property described in clause (i) of such subparagraph, or

''(iii) the property described in clause (ii) of such subparagraph receives electricity during periods of typically high production of electricity, as a percentage of the grid generation mix, from sources described in clause (i) of such subparagraph, as determined by the grid operator for the electrical grid.

''(c) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

''(d) DEFINITIONS.—The terms 'disadvantaged community' and 'peaker plant' have the same meanings given such term under section 2 of the PEAKER Act of 2021.''.

(b) CONFORMING AMENDMENTS.—

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

(A) by striking ''and'' at the end of paragraph (5),

(B) by striking the period at the end of paragraph (6) and inserting '', and'', and

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

''(7) the renewable energy generation and storage credit.''.

(2) Section 49(a)(1)(C) of such Code is amended—

(A) by striking ''and'' at the end of clause (iv),

(B) by striking the period at the end of clause (v) and inserting '', and'', and

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

''(vi) the basis of any qualified property which is part of a qualified renewable energy facility under section 48D.''.

(3) Section 50(a)(2)(E) of such Code is amended by striking ''or 48C(b)(2)'' and inserting ''48C(b)(2), or 48D(c)''.

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

''48D. Renewable energy generation and storage credit.''.

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

SEC. 5. RENEWABLE ENERGY GRANT PROGRAM.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE ENTITY.—The term ''eligible entity'' means each of the following:

(A) A unit of State or local government.

(B) A tax-exempt nonprofit organization.

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

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

munity who are pursuing an eligible project described in subsection (d).

(E) A partnership between—

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

(ii)(I) an electric utility; or

(II) a private entity.

(2) ENERGY STORAGE FACILITY.—The term ''energy storage facility'' means a facility that receives, stores, and delivers electricity.

(3) PROGRAM.—The term ''program'' means the grant program established under subsection (b).

(4) QUALIFYING COMMUNITY ENERGY PROPOSAL.—The term ''qualifying community energy proposal'' means a proposal to deploy and implement renewable energy generation, energy storage technology, energy efficiency upgrades, energy demand management strategies, or distributed renewable energy resources that a qualifying community energy study determines can reduce the runtime of an existing or planned peaker plant or otherwise reduce or replace the need for an existing or planned peaker plant.

(5) QUALIFYING COMMUNITY ENERGY STUDY.—The term ''qualifying community energy study'' means a study or assessment that—

(A) seeks to identify clean energy strategies to reduce the runtime of an existing or planned peaker plant or otherwise reduce or replace the need for an existing or planned peaker plant, including strategies that involve—

(i) renewable energy generation;

(ii) energy storage technology;

(iii) energy efficiency upgrades;

(iv) energy demand management strategies; or

(v) distributed renewable energy deployment; and

(B) is led by or performed in partnership with the communities directly impacted by pollution from a peaker plant that is located within the same or an adjacent census tract.

(6) QUALIFYING ENERGY STORAGE FACILITY.—The term ''qualifying energy storage facility'' means an energy storage facility that—

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

erated by that qualifying renewable energy facility;

(B) has entered into a contract with 1 or more qualifying renewable energy facilities such that the energy storage system operates primarily to receive, store, and deliver renewable energy generated by those qualifying renewable energy facilities; or

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

(7) QUALIFYING RENEWABLE ENERGY FACILITY.—The term ''qualifying renewable energy facility'' means a facility that—

(A) generates renewable energy; and

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

(ii) has entered into a contract described in paragraph (6)(B) with 1 or more qualifying energy storage facilities.

(8) RENEWABLE ENERGY.—The term ''renewable energy'' means electricity that is generated by or derived from, as applicable—

(A) a low-impact hydroelectric facility certified by the Low Impact Hydropower Institute;

(B) solar energy;

(C) wind energy;

(D) geothermal energy;

(E) tidal energy; or

(F) wave energy.

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

(1) carrying out projects for the construction, reconstruction, erection, installation, or acquisition of qualifying renewable energy facilities and qualifying energy storage facilities;

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

(3) developing and carrying out qualifying community energy studies.

(c) APPLICATIONS.—To be eligible to receive a grant under the program, an eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(d) ELIGIBLE PROJECTS AND QUALIFYING COMMUNITY ENERGY STUDIES.—The Secretary may provide a grant under the program for—

(1) a project described in subsection (b)(1) only if each qualifying renewable energy facility and qualifying energy storage facility to be constructed, reconstructed, erected, installed, or acquired pursuant to the project will—

(A) be located in, or provide a direct and significant benefit to, a disadvantaged community that is located within—

(i) the same census tract as an existing or planned peaker plant; or

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

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

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

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

(3) the development and carrying out of a qualifying community energy study only if the qualifying community energy study will provide for engagement with, and incorporate feedback from, each disadvantaged community that is located within a census tract described in clause (i) or (ii) of paragraph (1)(A).

(e) TECHNICAL ASSISTANCE GRANTS.—The Secretary may use amounts appropriated under subsection (i) to provide grants to eligible entities for the cost of acquiring technical assistance for the preparation and submission of an application under subsection (c).

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

(g) COST SHARING.—

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

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

(A) the construction, reconstruction, erection, installation, or acquisition of the applicable qualifying renewable energy facility or qualifying energy storage facility; or

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

(2) LOCAL, COMMUNITY-BASED ORGANIZATIONS AND ENERGY COOPERATIVES.—With respect to a project described in paragraph (1) that is carried out by, or for which an application is submitted by, a local, community-based organization or an energy cooperative, the maximum amount provided for the project under the program shall not exceed 80 percent of the total cost incurred by the local, community-based organization or energy cooperative for the activities described in subparagraph (A) or (B) of that paragraph, as applicable.

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

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

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

(B) based on that input, the program best addresses the needs and circumstances of disadvantaged communities; and

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

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

(B) the ways in which disadvantaged communities can best use the program to address the clean energy goals of those disadvantaged communities.

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

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