

112TH CONGRESS  
1ST SESSION

# S. 1208

To provide an election to terminate certain capital construction funds without penalties.

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IN THE SENATE OF THE UNITED STATES

JUNE 15, 2011

Mr. WYDEN (for himself, Ms. MURKOWSKI, Mrs. MURRAY, Mr. BEGICH, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide an election to terminate certain capital construction funds without penalties.

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. ELECTION TO TERMINATE CERTAIN CAPITAL**  
4 **CONSTRUCTION FUNDS.**

5 (a) AMENDMENTS TO CHAPTER 535 OF TITLE 46,  
6 UNITED STATES CODE.—

7 (1) IN GENERAL.—Chapter 535 of title 46,  
8 United States Code, is amended by adding at the  
9 end the following new section:

1 **“§ 53518. Election to terminate**

2 “(a) IN GENERAL.—

3 “(1) ELECTION.—Any person who has entered  
4 into an agreement under this chapter with respect to  
5 a vessel operated in the fisheries of the United  
6 States may make an election under this paragraph  
7 to terminate the capital construction fund estab-  
8 lished under such agreement.

9 “(2) EFFECT OF ELECTION ON INDIVIDUALS.—

10 In the case of an individual who makes an election  
11 under paragraph (1) with respect to a capital con-  
12 struction fund—

13 “(A) any amount remaining in such capital  
14 construction fund on the date of such election  
15 shall be distributed to such individual as a non-  
16 qualified withdrawal, except that—

17 “(i) in computing the tax on such  
18 withdrawal, except as provided in para-  
19 graph (4), subsections (c)(3)(B) and (f) of  
20 section 53511 shall not apply; and

21 “(ii) the taxpayer may elect to aver-  
22 age the income from such withdrawal as  
23 provided in subsection (b); and

24 “(B) such individual shall not be eligible to  
25 enter into, directly or indirectly, any future  
26 agreement to establish a capital construction

1 fund under this chapter with respect to a vessel  
2 operated in the fisheries of the United States.

3 “(3) EFFECT OF ELECTION FOR ENTITIES.—

4 “(A) IN GENERAL.—In the case of a per-  
5 son (other than an individual) who makes an  
6 election under paragraph (1)—

7 “(i) the total amount in the capital  
8 construction fund on the date of such elec-  
9 tion shall be distributed to the share-  
10 holders, partners, or members of such per-  
11 son in accordance with the terms of the in-  
12 struments setting forth the ownership in-  
13 terests of such shareholders, partners, or  
14 members;

15 “(ii) each shareholder, partner, or  
16 member shall be treated as having estab-  
17 lished a special temporary capital construc-  
18 tion fund and having deposited amounts  
19 received in the distribution into such spe-  
20 cial temporary capital construction fund;

21 “(iii) no gain or loss shall be recog-  
22 nized with respect to such distribution;

23 “(iv) the basis of any shareholder,  
24 partner, or member in the person shall not  
25 be reduced as a result of such distribution;

1           “(v) any amounts not distributed pur-  
2           suant to clause (i) shall be distributed in  
3           a nonqualified withdrawal; and

4           “(vi) such person shall not be eligible  
5           to enter into, directly or indirectly, any fu-  
6           ture agreement to establish a capital con-  
7           struction fund under this chapter with re-  
8           spect to a vessel operated in the fisheries  
9           of the United States.

10          “(B) SPECIAL TEMPORARY CAPITAL CON-  
11          STRUCTION FUNDS.—For purposes of this chap-  
12          ter, a special temporary capital construction  
13          fund shall be treated in the same manner as a  
14          capital construction fund established under sec-  
15          tion 53503, except that the following rules shall  
16          apply:

17                 “(i) A special temporary capital con-  
18                 struction fund shall be established without  
19                 regard to any agreement under section  
20                 53503 and without regard to any eligible  
21                 or qualified vessel.

22                 “(ii) Section 53505 shall not apply  
23                 and no amounts may be deposited into a  
24                 special temporary capital construction fund  
25                 other than amounts received pursuant to a

1 distribution described in subparagraph  
2 (A)(i).

3 “(iii) In the case of any amounts dis-  
4 tributed from a special temporary capital  
5 construction fund directly to a capital con-  
6 struction fund of the taxpayer established  
7 under section 53505—

8 “(I) no gain or loss shall be rec-  
9 ognized;

10 “(II) the limitation under section  
11 53505 shall not apply with respect to  
12 any amount so transferred;

13 “(III) such amounts shall not re-  
14 duce taxable income under section  
15 53507(a)(1); and

16 “(IV) for purposes of section  
17 53511(e), such amounts shall be  
18 treated as deposited in the capital  
19 construction fund on the date that  
20 such funds were deposited in the cap-  
21 ital construction fund with respect to  
22 which the election under paragraph  
23 (1) was made.

24 “(iv) In the case of any amounts dis-  
25 tributed from a special temporary capital

1 construction fund pursuant to an election  
2 under paragraph (1), clauses (i) and (ii) of  
3 paragraph (2)(A) shall not apply to so  
4 much of such amounts as are attributable  
5 to earnings accrued after the date of the  
6 establishment of such special temporary  
7 capital construction fund.

8 “(v) Any amount not distributed from  
9 a special temporary capital construction  
10 fund before the due date of the tax return  
11 (including extension) for the last taxable  
12 year of the individual ending before Janu-  
13 ary 1, 2017, shall be treated as distributed  
14 to the taxpayer on the day before such due  
15 date as if an election under paragraph (1)  
16 were made by the taxpayer on such day.

17 “(C) REGULATIONS.—The joint regula-  
18 tions shall provide rules for—

19 “(i) assigning the amounts received by  
20 the shareholders, partners, or members in  
21 a distribution described in subparagraph  
22 (A)(i) to the accounts described in section  
23 53508(a) in special temporary capital con-  
24 struction funds; and

1                   “(ii) preventing the abuse of the pur-  
2                   poses of this section.

3                   “(4) TAX BENEFIT RULE.—Rules similar to the  
4                   rules under section 53511(f)(3) shall apply for pur-  
5                   poses of determining tax liability on any nonqualified  
6                   withdrawal under paragraph (2)(A), (3)(A)(v), or  
7                   (3)(B)(v).

8                   “(5) ELECTION.—Any election under paragraph  
9                   (1)—

10                   “(A) may only be made—

11                   “(i) by a person who maintains a cap-  
12                   ital construction fund with respect to a  
13                   vessel operated in the fisheries of the  
14                   United States on the date of the enactment  
15                   of this section; or

16                   “(ii) by a person who maintains a  
17                   capital construction fund which was estab-  
18                   lished pursuant to paragraph (3)(A)(ii) as  
19                   a result of an election made by an entity  
20                   in which such person was a shareholder,  
21                   partner, or member;

22                   “(B) shall be made not later than the due  
23                   date of the tax return (including extensions) for  
24                   the person’s last taxable year ending on or be-  
25                   fore December 31, 2016; and

1           “(C) shall apply to all amounts in the cap-  
 2           ital construction fund with respect to which the  
 3           election is made.

4           “(b) ELECTION TO AVERAGE INCOME.—At the elec-  
 5           tion of an individual who has received a distribution de-  
 6           scribed in subsection (a), for purposes of section 1301 of  
 7           the Internal Revenue Code of 1986—

8           “(1) such individual shall be treated as engaged  
 9           in a fishing business, and

10          “(2) such distribution shall be treated as in-  
 11          come attributable to a fishing business for such tax-  
 12          able year.”.

13          (2) CONFORMING AMENDMENTS.—

14                 (A) Section 53511 of title 46, United  
 15                 States Code, is amended by striking “section  
 16                 53513” and inserting “sections 53513 and  
 17                 53518”.

18                 (B) The table of sections for chapter 535  
 19                 of title 46, United States Code, is amended by  
 20                 inserting after the item relating to section  
 21                 53517 the following new item:

“53518. Election to terminate.”.

22          (b) AMENDMENTS TO THE INTERNAL REVENUE  
 23          CODE OF 1986.—



1           (1) IN GENERAL.—Section 7518 of the Internal  
2 Revenue Code of 1986 is amended by adding at the  
3 end the following new subsection:

4           “(j) ELECTION TO TERMINATE CAPITAL CONSTRUCTION FUNDS.—

5           “(1) IN GENERAL.—Any person who has entered into an agreement under chapter 535 of title  
6 46 of the United States Code, with respect to a vessel operated in the fisheries of the United States  
7 may make an election under this paragraph to terminate the capital construction fund established  
8 under such agreement.  
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10           “(2) EFFECT OF ELECTION ON INDIVIDUALS.—  
11 In the case of an individual who makes an election under paragraph (1) with respect to a capital construction fund, any amount remaining in such capital construction fund on the date of such election shall be distributed to such individual as a non-qualified withdrawal, except that—  
12

13           “(A) in computing the tax on such withdrawal, except as provided in paragraph (4), paragraphs (3)(C)(ii) and (6) of subsection (g) shall not apply, and  
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1           “(B) the taxpayer may elect to average the  
2 income from such withdrawal as provided in  
3 paragraph (6).

4           “(3) EFFECT OF ELECTION FOR ENTITIES.—

5           “(A) IN GENERAL.—In the case of a per-  
6 son (other than an individual) who makes an  
7 election under paragraph (1)—

8           “(i) the total amount in the capital  
9 construction fund on the date of such elec-  
10 tion shall be distributed to the share-  
11 holders, partners, or members of such per-  
12 son in accordance with the terms of the in-  
13 struments setting forth the ownership in-  
14 terests of such shareholders, partners, or  
15 members,

16           “(ii) each shareholder, partner, or  
17 member shall be treated as having estab-  
18 lished a special temporary capital construc-  
19 tion fund and having deposited amounts  
20 received in the distribution into such spe-  
21 cial temporary capital construction fund,

22           “(iii) no gain or loss shall be recog-  
23 nized with respect to such distribution,

24           “(iv) the basis of any shareholder,  
25 partner, or member in the person shall not

1 be reduced as a result of such distribution,  
2 and

3 “(v) any amounts not distributed pur-  
4 suant to clause (i) shall be distributed as  
5 a nonqualified withdrawal.

6 “(B) SPECIAL TEMPORARY CAPITAL CON-  
7 STRUCTION FUNDS.—For purposes of this sec-  
8 tion, a special temporary capital construction  
9 fund shall be treated in the same manner as a  
10 capital construction fund established under sec-  
11 tion 53503 of title 46, United States Code, ex-  
12 cept that the following rules shall apply:

13 “(i) Subsection (a) shall not apply  
14 and no amounts may be deposited into a  
15 special temporary capital construction fund  
16 other than amounts received pursuant to a  
17 distribution described in subparagraph  
18 (A)(i).

19 “(ii) In the case of any amounts dis-  
20 tributed from a special temporary capital  
21 construction fund directly to a capital con-  
22 struction fund of the taxpayer established  
23 under section 53505 of title 46, United  
24 States Code—

1                   “(I) no gain or loss shall be rec-  
2                   ognized;

3                   “(II) the limitation under sub-  
4                   section (a) shall not apply with re-  
5                   spect to any amount so transferred;

6                   “(III) such amounts shall not re-  
7                   duce taxable income under subsection  
8                   (c)(1)(A); and

9                   “(IV) for purposes of subsection  
10                  (g)(5), such amounts shall be treated  
11                  as deposited in the capital construc-  
12                  tion fund on the date that such funds  
13                  were deposited in the capital construc-  
14                  tion fund with respect to which the  
15                  election under paragraph (1) was  
16                  made.

17                  “(iii) In the case of any amounts dis-  
18                  tributed from a special temporary capital  
19                  construction fund pursuant to an election  
20                  under paragraph (1), subparagraphs (A)  
21                  and (B) of paragraph (2) shall not apply  
22                  to so much of such amounts as are attrib-  
23                  utable to earnings accrued after the date  
24                  of the establishment of such special tem-  
25                  porary capital construction fund.

1           “(iv) Any amount not distributed  
2           from a special temporary capital construc-  
3           tion fund before the due date of the tax re-  
4           turn (including extension) for the last tax-  
5           able year of the individual ending before  
6           January 1, 2017, shall be treated as dis-  
7           tributed to the taxpayer on the day before  
8           such due date as if an election under para-  
9           graph (1) were made by the taxpayer on  
10          such day.

11          “(C) REGULATIONS.—The joint regula-  
12          tions shall provide rules for—

13               “(i) assigning the amounts received by  
14               the shareholders, partners, or members in  
15               a distribution described in subparagraph  
16               (A)(i) to the accounts described in sub-  
17               section (d)(1) in special temporary capital  
18               construction funds; and

19               “(ii) preventing the abuse of the pur-  
20               poses of this section.

21          “(4) TAX BENEFIT RULE.—Rules similar to the  
22          rules under subsection (g)(6)(B) shall apply for pur-  
23          poses of determining tax liability on any nonqualified  
24          withdrawal under paragraph (2), (3)(A)(v), or  
25          (3)(B)(iv).

1           “(5) ELECTION.—Any election under paragraph  
2 (1)—

3                   “(A) may only be made—

4                           “(i) by a person who maintains a cap-  
5 ital construction fund with respect to a  
6 vessel operated in the fisheries of the  
7 United States on the date of the enactment  
8 of this subsection, or

9                           “(ii) by a person who maintains a  
10 capital construction fund which was estab-  
11 lished pursuant to subparagraph (3)(A)(ii)  
12 as a result of an election made by an enti-  
13 ty in which such person was a shareholder,  
14 partner, or member,

15                   “(B) shall be made not later than the due  
16 date of the tax return (including extensions) for  
17 the person’s last taxable year ending on or be-  
18 fore December 31, 2016, and

19                   “(C) shall apply to all amounts in the cap-  
20 ital construction fund with respect to which the  
21 election is made.

22           “(6) ELECTION TO AVERAGE INCOME.—At the  
23 election of an individual who has received a distribu-  
24 tion described in paragraph (2), for purposes of sec-  
25 tion 1301—

1           “(A) such individual shall be treated as en-  
2           gaged in a fishing business, and

3           “(B) such distribution shall be treated as  
4           income attributable to a fishing business for  
5           such taxable year.”.

6           (2)    CONFORMING    AMENDMENT.—Section  
7           7518(g)(1) of such Code is amended by striking  
8           “subsection (h)” and inserting “subsections (h) and  
9           (j)”.

○