

112TH CONGRESS  
1ST SESSION

# S. 1764

To amend the Internal Revenue Code of 1986 to extend the qualifying advanced energy project credit.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 31, 2011

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 extend the qualifying advanced energy project credit.

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 “Make It in America  
5 Tax Credit Act of 2011”.

6 **SEC. 2. EXTENSION AND MODIFICATION OF THE ADVANCED**  
7 **ENERGY PROJECT CREDIT.**

8 (a) EXTENSION.—

9 (1) IN GENERAL.—Subsection (d) of section  
10 48C of the Internal Revenue Code of 1986 is

1 amended by adding at the end the following new  
2 paragraph:

3 “(6) ADDITIONAL 2011 ALLOCATIONS.—

4 “(A) IN GENERAL.—Not later than 180  
5 days after the date of the enactment of this  
6 paragraph, the Secretary, in consultation with  
7 the Secretary of Energy, shall establish a pro-  
8 gram to consider and award certifications for  
9 qualified investments eligible for credits under  
10 this section to qualifying advanced energy  
11 project sponsors with respect to applications re-  
12 ceived on or after the date of the enactment of  
13 this paragraph.

14 “(B) LIMITATION.—The total amount of  
15 credits that may be allocated under the pro-  
16 gram described in subparagraph (A) shall not  
17 exceed the 2011 allocation amount reduced by  
18 so much of the 2011 allocation amount as is  
19 taken into account as an increase in the limita-  
20 tion described in paragraph (1)(B).

21 “(C) APPLICATION OF CERTAIN RULES.—  
22 Rules similar to the rules of paragraphs (2),  
23 (3), (4), and (5) shall apply for purposes of the  
24 program described in subparagraph (A), except  
25 that—

1           “(i)       CERTIFICATION.—Applicants  
2           shall have 2 years from the date that the  
3           Secretary establishes such program to sub-  
4           mit applications.

5           “(ii) SELECTION CRITERIA.—For pur-  
6           poses of paragraph (3)(B)(i), the term ‘do-  
7           mestic job creation (both direct and indi-  
8           rect)’ means the creation of direct jobs in  
9           the United States producing the property  
10          manufactured at the manufacturing facility  
11          described under subsection (c)(1)(A)(i),  
12          and the creation of indirect jobs in the  
13          manufacturing supply chain for such prop-  
14          erty in the United States.

15          “(iii) REVIEW AND REDISTRIBU-  
16          TION.—The Secretary shall conduct a sep-  
17          arate review and redistribution under para-  
18          graph (5) with respect to such program  
19          not later than 4 years after the date of the  
20          enactment of this paragraph.

21          “(D) 2011 ALLOCATION AMOUNT.—For  
22          purposes of this subsection, the term ‘2011 allo-  
23          cation amount’ means \$5,000,000,000.

24          “(E) MODIFICATION OF CREDIT PERCENT-  
25          AGE.—For purposes of this paragraph, in ap-

1           plying for and making a determination of an al-  
2           location from the 2011 allocation amount (de-  
3           termined without regard to any amount taken  
4           into account under paragraph (1)(B)), sub-  
5           section (a) shall be applied by substituting ‘not  
6           more than 30 percent (as determined by the  
7           Secretary)’ for ‘30 percent’.

8           “(F) DIRECT PAYMENTS.—In lieu of any  
9           qualifying advanced energy project credit which  
10          would otherwise be determined under this sec-  
11          tion with respect to an allocation to a taxpayer  
12          under this paragraph, the Secretary shall, upon  
13          the election of the taxpayer, make a grant to  
14          the taxpayer in the amount of such credit as so  
15          determined. Rules similar to the rules of section  
16          50 shall apply with respect to any grant made  
17          under this subparagraph.”.

18          (2) PORTION OF 2011 ALLOCATION ALLOCATED  
19          TOWARD PENDING APPLICATIONS UNDER ORIGINAL  
20          PROGRAM.—Subparagraph (B) of section 48C(d)(1)  
21          of such Code is amended by inserting “(increased by  
22          so much of the 2011 allocation amount (not in ex-  
23          cess of \$1,500,000,000) as the Secretary determines  
24          necessary to make allocations to qualified invest-  
25          ments with respect to which qualifying applications

1 were submitted before the date of the enactment of  
2 paragraph (6))” after “\$2,300,000,000”.

3 (3) CONFORMING AMENDMENT.—Paragraph (2)  
4 of section 1324(b) of title 31, United States Code,  
5 is amended by inserting “48C(d)(6)(F),” after  
6 “36C,”.

7 (b) BIOBASED MANUFACTURING ELIGIBLE FOR  
8 CREDIT.—

9 (1) IN GENERAL.—Clause (i) of section  
10 48C(e)(1)(A) of the Internal Revenue Code of 1986  
11 is amended by striking “or” at the end of subclause  
12 (VI), by redesignating subclause (VII) as subclause  
13 (VIII), and by inserting after subclause (VI) the fol-  
14 lowing new subclause:

15 “(VII) qualifying biobased prod-  
16 uct, or”.

17 (2) DEFINITION.—Subsection (c) of section  
18 48C of such Code is amended by adding at the fol-  
19 lowing new paragraph:

20 “(3) QUALIFYING BIOBASED PRODUCT.—

21 “(A) IN GENERAL.—The term ‘qualifying  
22 biobased product’ means any product, including  
23 a product that may be used as a petrochemical  
24 alternative, the biobased content of which is not  
25 less than—

1 “(i) 25 percent, or

2 “(ii) in any instance in which the De-  
3 partment of Agriculture has established a  
4 minimum content level for a designated  
5 biobased item pursuant to section 9002 of  
6 the Farm Security and Rural Investment  
7 Act of 2002, such minimum content level.

8 “(B) EXCLUSION.—Such term shall not in-  
9 clude the following:

10 “(i) Any product which is sold or used  
11 as food, feed, fuel, or an ingredient there-  
12 of.

13 “(ii) Any product which is primarily  
14 composed of lignocellulosic matter and  
15 which is sold or used as a paper or wood  
16 product, unless such product is manufac-  
17 tured from—

18 “(I) wood fiber harvested from  
19 lands certified as well managed by any  
20 forest management certification pro-  
21 gram approved by the Secretary, or

22 “(II) wood fiber harvested from  
23 Federal public lands, including Na-  
24 tional Forest System and Bureau of  
25 Land Management lands, in accord-

1                   ance with an approved land manage-  
2                   ment project and a valid timber sale  
3                   or stewardship contract.

4                   “(C) **BIOBASED CONTENT.**—The term  
5                   ‘biobased content’ means, with respect to any  
6                   qualifying biobased product, the amount of car-  
7                   bon from biological sources contained in such  
8                   product, as determined by the testing of prod-  
9                   uct samples using the generally accepted meth-  
10                  odology of the American Society of Testing and  
11                  Materials D6866.”.

12               (c) **NEW NAME FOR CREDIT TO REFLECT PUR-**  
13 **POSE.**—

14               (1) **IN GENERAL.**—Paragraph (5) of section 46  
15               and subsection (a) of section 48C of the Internal  
16               Revenue Code of 1986 are each amended by striking  
17               “qualifying advanced energy project credit” and in-  
18               serting “Make It in America credit”.

19               (2) **CLERICAL AMENDMENTS.**—

20               (A) The heading for section 48C of such  
21               Code is amended by striking “**QUALIFYING**  
22               **ADVANCED ENERGY PROJECT CREDIT**” and  
23               inserting “**MAKE IT IN AMERICA CREDIT**”.

24               (B) The item relating to section 48C in the  
25               table of sections for subpart E of part IV of

1 subchapter A of chapter 1 of such Code is  
2 amended by striking “Qualifying advanced en-  
3 ergy project credit” and inserting “Make It in  
4 America credit”.

5 (d) EFFECTIVE DATE.—The amendments made by  
6 this section shall take effect on the date of the enactment  
7 of this Act.

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