

117TH CONGRESS
1ST SESSION

S. 1266

To amend the Internal Revenue Code of 1986 to expand the renewable electricity production credit to include electricity produced from hydrogen.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2021

Mr. YOUNG (for himself and Mr. WHITEHOUSE) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to expand the renewable electricity production credit to include electricity produced from hydrogen.

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 “Hydrogen Utilization
5 and Sustainability Act”.

6 **SEC. 2. EXPANSION OF RENEWABLE ELECTRICITY PRODUC-**
7 **TION CREDIT TO INCLUDE ELECTRICITY PRO-**
8 **DUCED FROM HYDROGEN.**

9 (a) IN GENERAL.—Section 45 of the Internal Rev-
10 enue Code of 1986 is amended—

1 (1) in subsection (c)—

2 (A) in paragraph (1)—

3 (i) in subparagraph (H), by striking
4 “and” at the end;

5 (ii) in subparagraph (I), by striking
6 the period at the end and inserting “,
7 and”; and

8 (iii) by adding at the end the fol-
9 lowing new subparagraph:

10 “(J) qualified hydrogen.”; and

11 (B) by adding at the end the following new
12 paragraph:

13 “(11) QUALIFIED HYDROGEN.—The term
14 ‘qualified hydrogen’ means, with respect to any tax-
15 able year, hydrogen fuel which has been certified
16 prior to such year by the Secretary of Energy (in
17 consultation with the Secretary) as having a carbon
18 intensity of not greater than 75 grams of CO₂e per
19 kilowatt hour of electricity produced, as determined
20 based on a lifecycle analysis.”; and

21 (2) in subsection (d), by adding at the end the
22 following new paragraph:

23 “(12) HYDROGEN FACILITY.—

24 “(A) IN GENERAL.—In the case of a facil-
25 ity using qualified hydrogen to produce elec-

1 tricity, the term ‘qualified facility’ means any
2 facility owned by the taxpayer—

3 “(i) for which not less than 70 per-
4 cent of the electricity produced at such fa-
5 cility during any taxable year is attrib-
6 utable to the use of qualified hydrogen,
7 and

8 “(ii)(I) the construction of which be-
9 gins before January 1, 2024, or

10 “(II) which—

11 “(aa) was originally placed in
12 service before the date of enactment
13 of this paragraph and, prior to the
14 modification described in item (bb),
15 did not use hydrogen to produce elec-
16 tricity, and

17 “(bb) before January 1, 2024, is
18 modified to use qualified hydrogen to
19 produce electricity.

20 “(B) MODIFICATION.—For purposes of
21 subparagraph (A)(ii)(II)(bb), a facility shall be
22 treated as modified before January 1, 2024, if
23 the construction of such modification begins be-
24 fore such date.

“(C) ELECTION.—If the owner of the facility described in subparagraph (A) makes an election under this subparagraph in such time and manner as the Secretary may prescribe by regulations, the credit under this section—

“(i) shall be allowable to the person that leases and operates such facility, and

“(ii) shall not be allowable to the owner of such facility.

“(D) SPECIAL RULES.—

“(i) EXCLUSION OF ELECTRICITY NOT PRODUCED FROM QUALIFIED HYDROGEN.—For purposes of subsection (a)(2), the total amount of kilowatt hours of electricity produced by the taxpayer at a qualified facility described in subparagraph (A) for any taxable year shall be equal to the product of—

“(I) the total amount of kilowatt hours of electricity produced by the taxpayer at such facility for such taxable year, multiplied by

“(II) an amount equal to the quotient of—

1 “(aa) the amount of quali-
 2 fied hydrogen used at such facil-
 3 ity to produce such electricity (as
 4 determined on the basis of Btu
 5 content), divided by

6 “(bb) the total amount of
 7 fuel used at such facility to
 8 produce such electricity (as deter-
 9 mined on the basis of Btu con-
 10 tent).

11 “(ii) ADJUSTMENT FOR NEGATIVE
 12 CARBON INTENSITY.—

13 “(I) IN GENERAL.—For purposes
 14 of subsection (a)(2), the total amount
 15 of kilowatt hours of electricity pro-
 16 duced by the taxpayer at a qualified
 17 facility described in subparagraph (A)
 18 for any taxable year (as determined
 19 after application of clause (i)) shall be
 20 increased by an amount equal to the
 21 applicable percentage of such total
 22 amount.

23 “(II) APPLICABLE PERCENT-
 24 AGE.—For purposes of subclause (I),
 25 the applicable percentage for a quali-

1 fied facility for any taxable year is the
 2 amount (expressed as a percentage)
 3 equal to the product of—

4 “(aa) 1 percentage point,
 5 multiplied by

6 “(bb) an amount equal to
 7 the quotient of—

8 “(AA) the total amount
 9 of carbon dioxide (expressed
 10 in metric tons) which is re-
 11 moved from the atmosphere
 12 during such taxable year
 13 through the use of qualified
 14 hydrogen (as determined
 15 pursuant to a certification of
 16 negative carbon intensity for
 17 such hydrogen under sub-
 18 section (c)(11)) at such
 19 qualified facility, divided by
 20 “(BB) 1,000.”.

21 (b) EFFECTIVE DATE.—The amendments made by
 22 this section shall take effect on the date of enactment of
 23 this Act.

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