

117TH CONGRESS
1ST SESSION

S. 2289

To amend the Internal Revenue Code of 1986 to provide for direct-pay credit bonds in the case of certain bonds the proceeds of which are used for the replacement of lead drinking water service lines.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. MENENDEZ (for himself and Mr. BOOKER) 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 provide for direct-pay credit bonds in the case of certain bonds the proceeds of which are used for the replacement of lead drinking water service lines.

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 “Lead-Free America
5 Bonds Act of 2021”.

1 **SEC. 2. CREDIT TO ISSUER FOR LEAD DRINKING WATER**
 2 **SERVICE LINE BONDS.**

3 (a) IN GENERAL.—Subchapter B of chapter 65 of the
 4 Internal Revenue Code of 1986 is amended by adding at
 5 the end the following new section:

6 **“SEC. 6431. CREDIT ALLOWED TO ISSUER FOR LEAD DRINK-**
 7 **ING WATER SERVICE LINE BONDS.**

8 “(a) IN GENERAL.—In the case of a qualified lead
 9 drinking water service line bond, the issuer of such bond
 10 shall be allowed a credit with respect to each interest pay-
 11 ment under such bond which shall be payable by the Sec-
 12 retary as provided in subsection (b).

13 “(b) PAYMENT OF CREDIT.—

14 “(1) IN GENERAL.—The Secretary shall pay
 15 (contemporaneously with each date on which interest
 16 is so payable) to the issuer of such bond (or to any
 17 person who makes such interest payments on behalf
 18 of such issuer) an amount equal to so much of such
 19 interest that is payable at a rate not in excess of the
 20 applicable interest rate determined under paragraph
 21 (2).

22 “(2) APPLICABLE INTEREST RATE.—

23 “(A) IN GENERAL.—The applicable inter-
 24 est rate determined under this paragraph for
 25 any qualified lead drinking water service line
 26 bond shall be the rate which the Secretary esti-

1 mates will permit the issuance of qualified lead
2 drinking water service line bonds with a speci-
3 fied maturity or redemption date without dis-
4 count and without additional interest cost.

5 “(B) PROCEDURE FOR RATE DETERMINA-
6 TIONS.—

7 “(i) IN GENERAL.—Such rate with re-
8 spect to any qualified lead drinking water
9 service line bond shall be determined as of
10 the first day on which there is a binding,
11 written contract for the sale or exchange of
12 the bond.

13 “(ii) METHOD AND FREQUENCY.—For
14 purposes of this paragraph, the Secretary
15 will determine and announce credit rates
16 daily for qualified lead drinking water serv-
17 ice line bonds based on the Secretary’s es-
18 timate of the yields on outstanding bonds
19 from market sectors selected at the discre-
20 tion of the Secretary that, for the business
21 day immediately preceding the sale date of
22 the bonds, have an investment grade rating
23 of between A and BBB for bonds of a
24 similar maturity and for which the interest
25 would be included in gross income.

1 “(c) QUALIFIED LEAD DRINKING WATER SERVICE
2 LINE BOND.—

3 “(1) IN GENERAL.—For purposes of this sec-
4 tion, the term ‘qualified lead drinking water service
5 line bond’ means any bond (other than a private ac-
6 tivity bond) issued as part of an issue if—

7 “(A) 100 percent of the available project
8 proceeds of such issue are to be used for replac-
9 ing lead components of 1 or more eligible public
10 water systems that are not lead free, including
11 any publicly or privately owned portion of a
12 lead service line of the eligible public water sys-
13 tem,

14 “(B) the interest on such bond would (but
15 for this section) be excludable from gross in-
16 come under section 103,

17 “(C) the issue price has not more than a
18 de minimis amount (determined under rules
19 similar to the rules of section 1273(a)(3)) of
20 premium over the stated principal amount of
21 the bond, and

22 “(D) prior to the issuance of such bond,
23 the issuer makes an irrevocable election to have
24 this section apply.

1 Except upon approval by the Environmental Protec-
 2 tion Agency for circumstances in which there are
 3 emergent public health risks, none of the available
 4 project proceeds of such issue shall be used for a
 5 partial lead service line replacement.

6 “(2) APPLICABLE RULES.—For purposes of ap-
 7 plying paragraph (1)—

8 “(A) NOT TREATED AS FEDERALLY GUAR-
 9 ANTEED.—For purposes of section 149(b), a
 10 qualified lead drinking water service line bond
 11 shall not be treated as federally guaranteed by
 12 reason of the credit allowed under this section.

13 “(B) APPLICATION OF ARBITRAGE
 14 RULES.—For purposes of section 148, the yield
 15 on a qualified lead drinking water service line
 16 bond shall be reduced by the credit allowed
 17 under this section.

18 “(d) DEFINITION AND SPECIAL RULES.—For pur-
 19 poses of this section—

20 “(1) INTEREST INCLUDIBLE IN GROSS IN-
 21 COME.—For purposes of this title, interest on any
 22 qualified lead drinking water service line bond shall
 23 be includible in gross income.

24 “(2) ELIGIBLE PUBLIC WATER SYSTEM.—

1 “(A) IN GENERAL.—The term ‘eligible
2 public water system’ means, with respect to any
3 bond—

4 “(i) in the case of a public water sys-
5 tem with respect to which the owner or op-
6 erator was, during the 6-year period pre-
7 ceding the date of enactment of the Lead-
8 Free America Bonds Act of 2021, required
9 to give lead action level notice, such bond
10 was issued during the 3-year period subse-
11 quent to the date of enactment of such
12 Act, or

13 “(ii) in the case of a public water sys-
14 tem with respect to which the owner or op-
15 erator was, at any time subsequent to the
16 date of enactment of the Lead-Free Amer-
17 ica Bonds Act of 2021, required to give
18 lead action level notice, such bond was
19 issued during the 3-year period subsequent
20 to such notice.

21 “(B) PUBLIC WATER SYSTEM.—The term
22 ‘public water system’ has the meaning given
23 such term in section 1401(4) of such Act (42
24 U.S.C. 300f(4)).

1 “(C) LEAD FREE.—The term ‘lead free’
 2 has the meaning given such term in section
 3 1417(d) of such Act (42 U.S.C. 300g-6(d)).

4 “(D) LEAD SERVICE LINE.—The term
 5 ‘lead service line’ has the meaning given such
 6 term in section 1459B(a)(4) of such Act (42
 7 U.S.C. 300j-19b(a)(4)).

8 “(E) LEAD ACTION LEVEL NOTICE.—The
 9 term ‘lead action level notice’ means notice
 10 under section 1414(c)(1)(D) of the Safe Water
 11 Drinking Act (42 U.S.C. 300g- 3(c)(1)(D)) that
 12 the public water system exceeded the lead ac-
 13 tion level.

14 “(3) FAILURE TO SPEND REQUIRED AMOUNT
 15 OF BOND PROCEEDS WITHIN 5 YEARS.—

16 “(A) IN GENERAL.—If at the close of the
 17 5-year period beginning on the date of issuance
 18 less than 100 percent of the available project
 19 proceeds of the issue are expended for the pur-
 20 poses specified in subsection (c)(1)(A), the
 21 issuer shall redeem all of the nonqualified bonds
 22 within 90 days after the end of such period.
 23 For purposes of this paragraph, the amount of
 24 the nonqualified bonds required to be redeemed

1 shall be determined in the same manner as
 2 under section 142.

3 “(B) EXTENSION OF PERIOD.—Upon sub-
 4 mission of a request prior to the expiration of
 5 the 5-year period under subparagraph (A), the
 6 Secretary may extend such period if the issuer
 7 establishes that the failure to expend the pro-
 8 ceeds within such period is due to reasonable
 9 cause and the expenditures for the purposes de-
 10 scribed in subsection (c)(1)(A) will continue to
 11 proceed with due diligence.

12 “(4) AVAILABLE PROJECT PROCEEDS.—The
 13 term ‘available project proceeds’ means—

14 “(A) the excess of—

15 “(i) the proceeds from the sale of an
 16 issue, over

17 “(ii) the sum of—

18 “(I) issuance costs financed by
 19 the issue (the extent that such costs
 20 do not exceed 2 percent of such pro-
 21 ceeds), and

22 “(II) amounts in a reasonably re-
 23 quired reserve (within the meaning of
 24 section 150(a)(3)) with respect to
 25 such issue), and

1 “(B) the proceeds from any investment of
2 the excess described in clause (i).

3 “(5) CURRENT REFUNDINGS ALLOWED.—

4 “(A) IN GENERAL.—In the case of a bond
5 issued to refund a qualified lead drinking water
6 service line bond, such refunding bond shall be
7 treated as a qualified lead drinking water serv-
8 ice line bond for purposes of this section if—

9 “(i) the average maturity date of the
10 issue of which the refunding bond is a part
11 is not later than the average maturity date
12 of the bonds to be refunded by such issue,

13 “(ii) the amount of the refunding
14 bond does not exceed the outstanding
15 amount of the refunded bond, and

16 “(iii) the refunded bond is redeemed
17 not later than 90 days after the date of the
18 issuance of the refunding bond.

19 “(B) DETERMINATION OF AVERAGE MATU-
20 RITY.—For purposes of subparagraph (A)(i),
21 average maturity shall be determined in accord-
22 ance with section 147(b)(2)(A).

23 “(6) APPLICATION OF DAVIS-BACON ACT RE-
24 QUIREMENTS WITH RESPECT TO QUALIFIED LEAD
25 DRINKING WATER SERVICE LINE BONDS.—Sub-

1 chapter IV of chapter 31 of title 40, United States
 2 Code, shall apply to projects financed with the pro-
 3 ceeds of qualified lead drinking water service line
 4 bonds (other than bonds issued to refund a bond
 5 originally issued before the date of the enactment of
 6 this Act).

7 “(e) REGULATIONS.—The Secretary may prescribe
 8 such regulations and other guidance as may be necessary
 9 or appropriate to carry out this section.”.

10 (b) PAYMENTS MADE UNDER SECTION 6431 OF THE
 11 INTERNAL REVENUE CODE OF 1986.—Section
 12 255(g)(1)(A) of the Balanced Budget and Emergency
 13 Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is
 14 amended by inserting: “Payments made under section
 15 6431 of the Internal Revenue Code of 1986” after the
 16 item related to Payment to Radiation Exposure Com-
 17 pensation Trust Fund.

18 (c) CLERICAL AMENDMENT.—The table of sections
 19 for subchapter B of chapter 65 of the Internal Revenue
 20 Code of 1986 is amended by adding at the end the fol-
 21 lowing new item:

“Sec. 6431. Credit allowed to issuer for qualified lead drinking water service
 line bonds.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to bonds issued more than 30 days
3 after the date of the enactment of this Act.

