

# Clean Energy for America Act

## Summary of the Chairman's Mark

### TITLE I – INCENTIVES FOR CLEAN ELECTRICITY

#### Clean Electricity Production and Investment Credits

**Current Law:** There are several different incentives for the production of clean electricity, including the section 45 production tax credit and section 48 investment tax credit, along with provisions for accelerated depreciation, tax-favored bonds, and allocated credits. While the production and investment tax credits have helped spur investments in the technologies that qualify for them, this patchwork of incentives features several temporary provisions with differing rules and expirations, provides different incentive levels for technologies with similar emission profiles, and omits several new and emerging technologies.

**Proposal:** The proposal creates an emissions-based incentive that would be neutral and flexible between clean electricity technologies. Taxpayers are able to choose between a production tax credit (PTC) or an investment tax credit (ITC), which is provided based on the carbon emissions of the electricity generated – measured as grams of carbon dioxide equivalents (CO<sub>2e</sub>) emitted per KWh generated. Any power facility of any technology can qualify for the credits, so long as the facility's carbon emissions are at or below zero.

Taxpayers electing the PTC will receive a credit equal to 2.5 cents per kilowatt hour (KWh) of electricity produced and sold in the 10 year period after a qualifying facility is placed in service. Taxpayers electing the ITC will receive a credit worth 30 percent of the investment in the year the facility is placed in service. Taxpayers wishing to receive credits must pay wages at not less than local prevailing rates and utilize registered apprenticeship programs. Taxpayers are provided the option of receiving the credits as direct refunds; those wishing to avail themselves of this election must inform the Treasury Department before the facility to which the election relates begins construction.

For combined heat and power systems (CHP), the emissions rate is calculated using both electrical and useful thermal energy. Under the proposal, the British thermal units (BTUs) of useful thermal energy in a CHP system are converted to kilowatt hours using the facility's heat rate (the number of BTUs required to generate 1 KWh). These converted KWhs are also accounted for as production for purposes of the PTC. Qualifying microgrid systems may elect to use an avoided emissions calculation for purposes of determining their credit rates.

Qualifying grid improvements, which can enable the deployment of additional zero emission power and improve grid stability, are also eligible for the full 30 percent ITC. Qualifying grid improvements includes standalone energy storage property and transmission property. Storage technologies, which are not limited to co-location with power plants, include any technologies that can receive, store, and provide electricity or energy for conversion to electricity.

Transmission property includes transmission lines of 275 kilovolts (kv) or higher, along with any necessary ancillary equipment. Regulated utilities are provided the option of opting-out of tax normalization requirements for purposes of the grid improvement credit.

Investments in zero emission renewable electricity or energy storage property with a maximum output of 5 MW or less in qualifying low-income areas qualify for higher credit rates.

Homeowners wishing to install onsite generation – including rooftop solar or small wind turbines – are eligible for an investment tax credit under the proposal. This credit is calculated in the same manner as the ITC for business taxpayers, equal to 30 percent of the installation cost for zero emission distributed generation or energy storage property. Labor and other installation costs are included for purposes of the credit for homeowners.

Carbon emission rates for the credits are determined by the Treasury Department and Environmental Protection Agency (EPA), which are directed to publish safe harbor emission rates for similar technologies.

The credits are set to phase out when emission targets are achieved: when EPA and the Department of Energy (DOE) certify that the electric power sector emits 75 percent less carbon than 2021 levels, the incentives will be phased out over five years. Facilities will be able to claim a credit at 100 percent value in the first year, then 75 percent, then 50 percent, and then 0 percent.

### **Transition from Current Law**

To provide transition relief and time for administrative coordination between the Treasury Department, EPA, and DOE, The proposal extends, through December 31, 2022, current expiring clean energy provisions. The carryforward period with respect to current sec. 45 credits is extended from 20 to 25 years.

To incentivize additional emissions reductions from existing fossil fuel power plants and industrial sources, the section 45Q tax credit is extended until the power and industrial sectors meet emissions goals. The qualifying capture thresholds are modified to require a minimum percentage of emissions be captured, and the credits for enhanced oil recovery are terminated on a prospective basis, with respect to facilities which commence construction after December 31, 2026.

## **TITLE II – INCENTIVES FOR CLEAN TRANSPORTATION**

### **Clean Fuel Production Credit**

**Current Law:** Under current law, there are numerous incentives for various alternative fuels and fuel mixtures, including income and excise tax credits ranging from \$0.50 to \$1.01. These credits are for a few specified types of fuels, including natural gas and propane, hydrogen, cellulosic

biofuels, and biodiesel. These incentives are largely temporary and expired on December 31, 2017.

**Proposal:** The proposal creates a technology-neutral incentive for the domestic production of clean fuels. The level of the incentive depends on the lifecycle carbon emissions of a given fuel. Lifecycle emissions take into account the “well to wheel” emissions profile, from production of the feedstock for the fuel through to its use in a vehicle. Fuels may qualify for the credit if the fuel’s lifecycle emissions are at least 25 percent less than the current U.S. nationwide average. Zero and net-negative emission fuels qualify for the maximum incentive of \$1.00 per gallon. Qualifying production is restricted to production in the United States of fuel that is used or sold.

Between now and 2030, qualifying fuels must become increasingly cleaner in order to qualify for the credit. Fuels produced before 2026 may qualify if the fuel’s lifecycle emissions are less than 75 kilograms of carbon dioxide equivalents per million British thermal units (kg CO<sub>2e</sub> per mmBtu). This amount is reduced to 50 kg CO<sub>2e</sub> per mmBtu for 2026 and 2027, 25 kg CO<sub>2e</sub> per mmBtu for years 2028 and 2029, and, starting in 2030, only fuels with lifecycle emissions at or below zero may qualify for any incentive.

Fuels must be at least transportation grade – suitable for use in a highway vehicle or aircraft – but may be used for any business purpose, including as transportation fuel, industrial fuel, or for residential or commercial heat. Taxpayers wishing to receive credits must pay wages at not less than local prevailing rates and utilize registered apprenticeship programs.

The Treasury Department and the Department of Energy are required to establish safe harbors for fuels that are produced using similar feedstocks and production pathways. The proposal simplifies the task for these agencies by allowing similar technologies (no more than 10% emissions profile difference) to be grouped together for purposes of calculating credit rates. For emerging fuels that are produced using feedstocks or pathways that have not been previously reviewed, Treasury and EPA are directed to offer provisional guidance for credit rates no later than one year after a taxpayer requests approval of the pathway. Final guidance is required no later than two years after request.

The credits are set to phase out when emission targets are achieved: when EPA certifies that the transportation sector emits 75 percent less carbon than 2021 levels, the incentives will be phased out over five years. Facilities will be able to claim a credit at 100 percent value in the first year, then 75 percent, then 50 percent, and then 0 percent.

### **Transportation Electrification**

**Current Law:** Under current law, taxpayers can claim credits for plug-in electric vehicles, electric motorcycles, and fuel cell electric vehicles. However, the credits for electric motorcycles and fuel cell vehicles are temporary and have frequently lapsed over the past five years. Similarly, the credit for plug-in electric vehicles is subject to a per-manufacturer cap that has resulted in disparate treatment of similar electric vehicles. The credits also provide only limited incentive to

low- and middle-income consumers, who struggle to claim the full value of the credits, and credits to shift toward electric options for medium and heavy duty vehicles are limited. While the fuel cell vehicle credit increases in value for heavier vehicles classes, the plug-in electric vehicle is not available for any vehicle in excess of 14,000 pounds.

**Proposal:** The proposal provides for more equitable and robust incentives for electric transportation options. The per-manufacturer cap limiting access to the plug-in electric vehicle tax credit (EV tax credit) is repealed, and the credit for individuals is made refundable. Commercial operators will have access to a non-refundable credit worth 30 percent of the purchase of an electric vehicle.

The credits will be made available until the Treasury Department and Department of Transportation (DOT) determine that electric vehicles represent more than 50 percent of annual vehicle sales, at which point the credits will phase-out.

### **Transition from Current Law**

To provide transition relief and time for administrative coordination between the Treasury Department, EPA, DOE, and DOT, the proposal provides extensions of current expired and expiring clean energy provisions. The current law credit for refueling and recharging infrastructure is expanded and extended along the lines of S. 975.

## **TITLE III – INCENTIVES FOR ENERGY EFFICIENCY**

### **Energy Efficient Homes**

**Current Law:** Under current law there are three major incentives for residential energy efficiency. One provides incentives to contractors for new homes that are at least 50 percent more efficient than 2006 International Energy Conservation Code (IECC) standards, and two others provide incentives to homeowners for various improvements to their homes. These provisions provide incentives for specific types of improvement, using standards that are largely out of date. All of these provisions are also temporary and scheduled to expire within the next three years.

**Proposal:** The proposal reforms the current incentive for energy efficient new homes. In order to qualify, new homes must meet the latest national program requirements of the Energy Star program for new residential construction, which require homes to exceed state code standards by at least 10 percent, or the Department of Energy's Zero Energy Ready program, which, when combined with onsite generation, like rooftop solar, will lead to homes with zero net energy demand. The credit for new homes is set to \$2,500 for homes meeting Energy Star requirements, and \$5,000 for homes meeting the Zero Energy Ready requirements. In order to qualify for the incentive, contractors must comply with prevailing wage requirements and utilize registered apprenticeship programs.

The proposal also provides an incentive for homeowners to make energy efficient improvements to their current homes. The Energy Efficient Home Improvement credit provides homeowners with a tax credit equal to the lesser of 30 percent of the cost or \$600 per improvement, with an overall annual limit of \$1,500 for all home improvements. The credit is available for furnaces, boilers, water heaters, heat pumps, central-air conditioning, and building envelope improvements that meet the requirements highest, non-advanced rating tier set by the Consortium for Energy Efficiency, or, in the case of building envelope improvements, the latest Energy Star, IECC, or Attachment Energy Ratings Council (AERC) standards.

Homeowners installing heat pumps are provided an increased credit or \$800 for air-source heat pumps or \$10,000 for ground-source heat pumps, which have the potential to both dramatically increase home efficiency and shift toward cleaner forms of heating and cooling.

### **Energy Efficient Commercial Buildings**

**Current Law:** Under current law, there is one major incentive for energy efficiency in commercial buildings, the section 179D energy efficient commercial buildings deduction, which provides a per square foot tax deduction for certain energy efficient building components and was recently permanently extended.

**Proposal:** The proposal builds on the extension of the section 179D by providing greater flexibility and encouraging taxpayers to pursue bigger efficiency gains. The deduction limitation is adjusted to operate on a sliding scale, with taxpayers qualifying for an incentive so long as they make at least a 25 percent improvement over the required baseline, with the deduction limitation increasing for larger efficiency gains.

The maximum value of the deduction ranges from \$2.50 per square foot up to \$5.00 per square foot for efficiency upgrades that result in efficiency gains of 25 to 50 percent over the required baseline – generally, the relevant 90.1 standard established by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE). To qualify for the incentive, taxpayers must comply with prevailing wage requirements and utilize registered apprenticeship programs. The mark also conforms the calculations of earnings and profits and taxable income for real estate investment trusts (REITs) to allow REITs to fully pass through the benefit of the deduction.

To promote greater electrification of heating and cooling systems, the credit for geothermal heat pump systems in commercial buildings is increased to 30 percent and made permanent.

## **TITLE IV – CLEAN ENERGY BONDS**

**Current Law:** Prior to the passage of the 2017 Republican tax law, certain clean and renewable energy facilities and conservation improvements could qualify for tax-preferred debt instruments. These instruments included Qualified Energy Conservation Bonds and Clean Renewable Energy Bonds. Under current law, there are also tax exempt bonds for public power providers and tax exempt private activity bonds for certain green buildings, among others.

**Proposal:** The proposal creates a tax credit bond for facilities producing clean electricity or clean transportation fuels. As with the clean electricity and clean fuel credits, facilities begin qualifying if they are zero emission, in the case of power facilities, or 25 percent cleaner than the current average, in the case of clean fuels. The maximum credit is 70 percent of the interest on the bond, for facilities producing zero emission electricity or fuel.

The instrument is available to state, local, and tribal governments, in addition to public power providers and electric cooperatives. These entities have the option of offering the bond as a tax credit bond, or of electing a direct pay bond, where the Treasury Department reimburses the bond issuer at a rate of up to 70 percent of the interest cost.

The bonds are available for clean electricity or fuel facilities that would qualify under the electricity or transportation fuel credits. Clean Energy Bonds are subject to the same issuance and arbitrage rules as those in effect for tax credit bonds prior to the 2017 tax law.

## **TITLE V – REPEAL OF TAX INCENTIVES FOR FOSSIL FUELS**

**Current Law:** Fossil fuel companies receive a variety of special tax incentives under current law. These include the ability to immediately write-off so-called intangible drilling costs and the ability to deduct a fixed percentage over cost depletion.

The 2017 Republican tax law provided an additional windfall by repealing the taxation of the foreign, non-extraction income of multinational oil companies under subpart F of the tax code and by exempting foreign oil extraction income from the law’s new minimum tax.

It also allowed the “small business deduction,” created under new section 199A of the tax code, to be claimed by oil companies avoiding corporate-level tax through an exception to the publicly-traded partnership rules under section 7704. This “Lone Star Loophole” allows shareholders of these companies to deduct up to 20 percent of their fossil fuel related income.

**Proposal:** The proposal repeals preferential incentives for fossil fuel companies, including expensing of intangible drilling costs, percentage depletion, deductions for tertiary injectants, and credits for enhanced oil recovery, marginal oil wells, coal gasification, and advanced coal projects. It repeals the special treatment of oil and gas taxpayers under the passive loss rules, expands the scope of the Oil Spill Liability Trust Fund financing tax to ensure it covers oil from tar sands, and adjusts the treatment of dual capacity taxpayers for purposes of determining which taxes are creditable under the foreign tax credit.

The proposal also reinstates the current taxation of multinational oil companies’ non-extraction income and ensures multinational oil companies are not specially exempted from the 2017 tax law’s global minimum tax. It also repeals the special treatment of fossil fuels under the publicly traded partnership rules, putting them on equal footing with other energy companies and closing down the “Lone Star Loophole.”

## TITLE VI – WORKFORCE DEVELOPMENT REQUIREMENTS

**Proposal:** The proposal defines the requirements for compliance with both the apprenticeship and prevailing wage requirements with respect to qualifying investments under the bill. For a taxpayer who fails to meet the prevailing wage requirements during original construction, the taxpayer faces recapture of the credits in full. If the taxpayer fails to comply during the five, 10, or 12 year periods after a qualifying facility is placed in service, recapture is limited to the amount of the credit that would otherwise have been allowed for that year, or to the unvested portion of the investment tax credit.

A taxpayer may avoid recapture if they pay effected workers the difference between prevailing wages and the wages that were paid, plus interest and a penalty of \$5,000 per effected worker.

For purposes of the apprenticeship requirements, a taxpayer failing to comply is subject to a penalty of \$500 per non-compliant work-hour.

## TITLE VII – DOMESTIC MANUFACTURING INCENTIVES FOR CLEAN ENERGY

**Current law:** In 2009, Congress enacted the section 48C qualifying advanced energy project credit, under which the Treasury Department and Department of Energy allocated \$2.3 billion of investment tax credits to taxpayers to build, retrofit, or expand facilities for manufacturing of various clean energy technology, including for renewable electricity, alternative fuel production, alternative vehicles, carbon capture and sequestration, and energy storage.

**Proposal:** The proposal revives and modifies the sec. 48C credit, providing up to \$8 billion in additional credit allocations, of which not less than \$4 billion is set aside for projects located in census tracts in which a coal mine or coal power plant has closed. The proposal also makes additional clarifying amendments related to qualifying projects along the lines of S. 622, the American Jobs in Energy Manufacturing Act.

Projects receiving credits under the proposal are required to pay wages at prevailing rates and utilize registered apprenticeship programs. Taxpayers are given the option of electing to receive the credits as direct refunds.