

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5879  
OFFERED BY MR. BRADY OF TEXAS**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. MODIFICATIONS OF CREDIT FOR PRODUCTION**  
2 **FROM ADVANCED NUCLEAR POWER FACILI-**  
3 **TIES.**

4 (a) TREATMENT OF UNUTILIZED LIMITATION  
5 AMOUNTS.—Section 45J(b) of the Internal Revenue Code  
6 of 1986 is amended—

7 (1) in paragraph (4), by inserting “or any  
8 amendment to” after “enactment of”, and

9 (2) by adding at the end of subsection (b) the  
10 following new paragraph:

11 “(5) ALLOCATION OF UNUTILIZED LIMITA-  
12 TION.—

13 “(A) IN GENERAL.—Any unutilized na-  
14 tional megawatt capacity limitation shall be al-  
15 located by the Secretary under paragraph (3)  
16 as rapidly as is practicable after December 31,  
17 2020—

1           “(i) first to facilities placed in service  
2           on or before such date to the extent that  
3           such facilities did not receive an allocation  
4           equal to their full nameplate capacity, and

5           “(ii) then to facilities placed in service  
6           after such date in the order in which such  
7           facilities are placed in service.

8           “(B) UNUTILIZED NATIONAL MEGAWATT  
9           CAPACITY LIMITATION.—The term ‘unutilized  
10          national megawatt capacity limitation’ means  
11          the excess (if any) of—

12           “(i) 6,000 megawatts, over

13           “(ii) the aggregate amount of national  
14          megawatt capacity limitation allocated by  
15          the Secretary before January 1, 2021, re-  
16          duced by any amount of such limitation  
17          which was allocated to a facility which was  
18          not placed in service before such date.

19           “(C) COORDINATION WITH OTHER PROVI-  
20          SIONS.—In the case of any unutilized national  
21          megawatt capacity limitation allocated by the  
22          Secretary pursuant to this paragraph—

23           “(i) such allocation shall be treated  
24          for purposes of this section in the same

1 manner as an allocation of national mega-  
2 watt capacity limitation, and

3 “(ii) subsection (d)(1)(B) shall not  
4 apply to any facility which receives such al-  
5 location.”.

6 (b) TRANSFER OF CREDIT BY CERTAIN PUBLIC EN-  
7 TITIES.—

8 (1) IN GENERAL.—Section 45J of such Code is  
9 amended—

10 (A) by redesignating subsection (e) as sub-  
11 section (f), and

12 (B) by inserting after subsection (d) the  
13 following new subsection:

14 “(e) TRANSFER OF CREDIT BY CERTAIN PUBLIC EN-  
15 TITIES.—

16 “(1) IN GENERAL.—If, with respect to a credit  
17 under subsection (a) for any taxable year—

18 “(A) the taxpayer would be a qualified  
19 public entity, and

20 “(B) such entity elects the application of  
21 this paragraph for such taxable year with re-  
22 spect to all (or any portion specified in such  
23 election) of such credit,

24 the eligible project partner specified in such election  
25 (and not the qualified public entity) shall be treated

1 as the taxpayer for purposes of this title with re-  
2 spect to such credit (or such portion thereof).

3 “(2) DEFINITIONS.—For purposes of this sub-  
4 section—

5 “(A) QUALIFIED PUBLIC ENTITY.—The  
6 term ‘qualified public entity’ means—

7 “(i) a Federal, State, or local govern-  
8 ment entity, or any political subdivision,  
9 agency, or instrumentality thereof,

10 “(ii) a mutual or cooperative electric  
11 company described in section 501(e)(12) or  
12 section 1381(a)(2), or

13 “(iii) a not-for-profit electric utility  
14 which has or had received a loan or loan  
15 guarantee under the Rural Electrification  
16 Act of 1936.

17 “(B) ELIGIBLE PROJECT PARTNER.—The  
18 term ‘eligible project partner’ means—

19 “(i) any person responsible for, or  
20 participating in, the design or construction  
21 of the advanced nuclear power facility to  
22 which the credit under subsection (a) re-  
23 lates,

24 “(ii) any person who participates in  
25 the provision of the nuclear steam supply

1 system to the advanced nuclear power fa-  
2 cility to which the credit under subsection  
3 (a) relates,

4 “(iii) any person who participates in  
5 the provision of nuclear fuel to the ad-  
6 vanced nuclear power facility to which the  
7 credit under subsection (a) relates, or

8 “(iv) any person who has an owner-  
9 ship interest in such facility.

10 “(3) SPECIAL RULES.—

11 “(A) APPLICATION TO PARTNERSHIPS.—In  
12 the case of a credit under subsection (a) which  
13 is determined at the partnership level—

14 “(i) for purposes of paragraph (1)(A),  
15 a qualified public entity shall be treated as  
16 the taxpayer with respect to such entity’s  
17 distributive share of such credit, and

18 “(ii) the term ‘eligible project partner’  
19 shall include any partner of the partner-  
20 ship.

21 “(B) TAXABLE YEAR IN WHICH CREDIT  
22 TAKEN INTO ACCOUNT.—In the case of any  
23 credit (or portion thereof) with respect to which  
24 an election is made under paragraph (1), such  
25 credit shall be taken into account in the first

1 taxable year of the eligible project partner end-  
2 ing with, or after, the qualified public entity's  
3 taxable year with respect to which the credit  
4 was determined.

5 “(C) TREATMENT OF TRANSFER UNDER  
6 PRIVATE USE RULES.—For purposes of section  
7 141(b)(1), any benefit derived by an eligible  
8 project partner in connection with an election  
9 under this subsection shall not be taken into ac-  
10 count as a private business use.”.

11 (2) SPECIAL RULE FOR PROCEEDS OF TRANS-  
12 FERS FOR MUTUAL OR COOPERATIVE ELECTRIC  
13 COMPANIES.—Section 501(c)(12) of such Code is  
14 amended by adding at the end the following new  
15 subparagraph:

16 “(I) In the case of a mutual or cooperative  
17 electric company described in this paragraph or  
18 an organization described in section 1381(a)(2),  
19 income received or accrued in connection with  
20 an election under section 45J(e)(1) shall be  
21 treated as an amount collected from members  
22 for the sole purpose of meeting losses and ex-  
23 penses.”.

24 (c) EFFECTIVE DATES.—

1           (1) TREATMENT OF UNUTILIZED LIMITATION  
2           AMOUNTS.—The amendment made by subsection (a)  
3           shall take effect on the date of the enactment of this  
4           Act.

5           (2) TRANSFER OF CREDIT BY CERTAIN PUBLIC  
6           ENTITIES.—The amendments made by subsection  
7           (b) shall apply to taxable years beginning after De-  
8           cember 31, 2016.

