To amend the Internal Revenue Code of 1986 to increase excise taxes on fuel used by private jets, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Markey (for himself, Ms. Warren, and Mr. Whitehouse) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 to increase excise taxes on fuel used by private jets, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fueling Alternative Transportation with a Carbon Aviation Tax Act of 2023”.

SEC. 2. INCREASE IN EXCISE TAX FOR FUEL USED BY PRIVATE JETS.

(a) In General.—
(1) RETAIL EXCISE TAX.—Section 4041(c) of the Internal Revenue Code of 1986 is amended by striking paragraph (3) and inserting the following:

“(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be—

“(A) with respect to any sale or use for commercial aviation, 4.3 cents per gallon, and

“(B) with respect to any sale or use which is not described in subparagraph (A), an amount equal to the sum of—

“(i) 35.9 cents per gallon, plus

“(ii) $1.589 per gallon.

“(4) INFLATION ADJUSTMENT.—In the case of any calendar year beginning after 2024, the dollar amount in paragraph (3)(B)(ii) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2023’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.”.

(2) MANUFACTURERS EXCISE TAX.—Section 4081(a)(2) of such Code is amended—
(A) in subparagraph (C), by striking clause (ii) and inserting the following:

“(ii) in the case of use for aviation not described in clause (i), an amount equal to the sum of—

“(I) 35.9 cents per gallon, plus

“(II) $1.589 per gallon.”, and

(B) by adding at the end the following:

“(E) INFLATION ADJUSTMENT.—In the case of any calendar year beginning after 2024, the dollar amount in subparagraph (C)(ii)(II) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2023’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.”.

(3) CONFORMING AMENDMENTS.—

(A) Section 4081(d)(2) of such Code is amended by striking “(a)(2)(C)(ii)” and inserting “(a)(2)(C)(ii)(I)”.

(B) Section 6427(l)(4)(B)(ii)(II) of such Code is amended by striking “section
4081(a)(2)(C)(ii)” and inserting “section 4081(a)(2)(C)(ii)(I)”.

(C) Section 9503(c)(5)(B) of such Code is amended by striking “21.8 cents” and inserting “35.9 cents”.

(b) REFUND OR CREDIT IN CASES OF REASONABLE CAUSE.—Section 6427 of the Internal Revenue Code of 1986 is amended by inserting after subsection (e) the following new subsection:

“(f) EXCEPTION FROM INCREASE IN RATE OF TAX FOR CERTAIN LIQUIDS USED AS FUEL IN NON-COMMER-CIAL AVIATION.—

“(1) RETAIL EXCISE TAX.—Except as provided in subsection (k), in the case of any fuel on the sale of which tax was imposed under section 4041(c) for which the rate of tax was determined under para-graph (3)(B) of such section, if the Secretary determines (pursuant to such regulations as are pre-scribed by the Secretary) that there is reasonable cause that the increase in the rate of tax pursuant to clause (ii) of such paragraph should not apply with respect to such fuel (such as in cases where the fuel was used in an aircraft which was engaged in scientific research, an evacuation from a natural dis-aster, or assistance in a medical emergency), the
Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the increase in the amount of the tax imposed on such fuel pursuant to such clause.

“(2) MANUFACTURERS EXCISE TAX.—Except as provided in subsection (k), in the case of any kerosene on which tax was imposed under section 4081 for which the rate of tax was determined under subsection (a)(2)(C)(ii) of such section, if the Secretary determines (pursuant to such regulations as are prescribed by the Secretary) that there is reasonable cause that the increase in the rate of tax pursuant to subclause (II) of such subsection should not apply with respect to such kerosene (such as in cases where the kerosene was used in an aircraft which was engaged in scientific research, an evacuation from a natural disaster, or assistance in a medical emergency), the Secretary shall pay (without interest) to the ultimate purchaser of such kerosene an amount equal to the increase in the amount of the tax imposed on such kerosene pursuant to such subclause.

“(3) TERMINATION.—This subsection shall not apply to any fuel sold or used after January 1, 2026.”.
(c) Elimination of Exemption From Air Transportation Excise Tax.—Section 4261(f) of the Internal Revenue Code of 1986 is amended to read as follows:

“(f) Exemption for Certain Uses.—

“(1) In general.—No tax shall be imposed under subsection (a) or (b) on air transportation by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees.

“(2) Requirement.—Paragraph (1) shall apply only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use.”.

(d) Effective Date.—The amendments made by this section shall take effect on January 1, 2024.

SEC. 3. FUNDING TO SUPPORT CLEAN COMMUNITIES TRUST FUND.

(a) In General.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:
"SEC. 9512. FUNDING TO SUPPORT CLEAN COMMUNITIES TRUST FUND.

"(a) Establishment and Funding.—There is hereby established in the Treasury of the United States a trust fund to be referred to as the ‘Funding to Support Clean Communities Trust Fund’, consisting of such amounts as may be appropriated or credited to such trust fund as provided for in this section and section 9602(b).

"(b) Transfers to Trust Fund.—There are hereby appropriated to the Funding to Support Clean Communities Trust Fund amounts equivalent to the taxes received in the Treasury under—

"(1) section 4041(c) to the extent attributable to the rate specified in paragraph (3)(B)(ii) of such section, and

"(2) section 4081 with respect to kerosene to the extent attributable to the rate specified in section 4081(a)(2)(C)(ii)(II).

"(c) Expenditures From Trust Fund.—

"(1) In general.—Subject to paragraph (2), amounts in the Funding to Support Clean Communities Trust Fund shall be available, as provided by appropriation Acts, for making expenditures for grants and other activities—

"(A) authorized under subsections (a) through (c) of section 103 and section 105 of
the Clean Air Act (42 U.S.C. 7403(a)-(c),
7405), including grants and other activities
to—

“(i) deploy, integrate, support, and
maintain fenceline air monitoring, screen-
ing air monitoring, national air toxics
trend stations, and other air toxics and
community monitoring,

“(ii) expand the national ambient air
quality monitoring network with new
multipollutant monitoring stations,

“(iii) replace, repair, operate, and
maintain existing monitors, and

“(iv) deploy, integrate, and operate
air quality sensors in low-income and dis-
advantaged communities,

“(B) to expand, connect, replace, repair,
operate, and maintain public transit and pas-
senger rail infrastructure or systems that are
located 20 miles or less from an airport, and

“(C) to improve public transportation, par-
ticularly in underserved communities, including
costs associated with efforts to provide more
safe, frequent, and reliable bus service.
“(2) Set aside for environmental justice communities.—

“(A) In general.—For any calendar year, not less than 50 percent of the amounts made available under paragraph (1) shall be designated for expenditures for grants and other activities within environmental justice communities.

“(B) Prioritization of funds for communities disproportionately impacted by air pollution.—With respect to making expenditures for grants and other activities described in paragraph (1) to environmental justice communities, priority shall be given to communities that are disproportionately impacted by air pollution (as determined by the Secretary in consultation with the Administrator of the Environmental Protection Agency).

“(d) Environmental justice community.—For purposes of this section—

“(1) In general.—The term ‘environmental justice community’ means a community with significant representation of communities of color, low-income communities, or Tribal and Indigenous communities, that experiences, or is at risk of experi-
(2) COMMUNITY OF COLOR.—For purposes of paragraph (1), the term ‘community of color’ means a geographically distinct area in which the population of any of the following categories of individuals is higher than the average population of that category for the State in which the community is located:

(A) Black.
(B) African American.
(C) Asian.
(D) Pacific Islander.
(E) Other non-White race.
(F) Hispanic.
(G) Latino.
(H) Linguistically isolated.
(I) Middle Eastern and North African.

(3) TRIBAL AND INDIGENOUS COMMUNITY.—
For purposes of paragraph (1), the term ‘Tribal and Indigenous community’ means a population of people who are members of—
(A) a Federally recognized Indian Tribe,
(B) a State-recognized Indian Tribe,
“(C) an Alaska Native community or organization,

“(D) a Native Hawaiian community or organization, or

“(E) any other Indigenous community located in a State

“(4) LOW-INCOME COMMUNITY.—For purposes of paragraph (1), the term ‘low-income community’ means any census block group in which 30 percent or more of the population are individuals with an annual household income equal to, or less than, the greater of—

“(A) an amount equal to 80 percent of the median income of the area in which the household is located, as reported by the Department of Housing and Urban Development, and

“(B) 200 percent of the Federal poverty line.

“(5) POPULATION.—For purposes of paragraphs (2), (3), and (4), the term ‘population’ means a census block group or series of geographically contiguous blocks representing certain common characteristics, such as race, ethnicity, national origin, income-level, health disparities, or other public health and socioeconomic attributes.”.
(b) Conforming Amendments to Airport and Airway Trust Fund.—Section 9502(b)(1) of the Internal Revenue Code of 1986 is amended—

(1) in subparagraph (A), by inserting “to the extent attributable to the rates specified in subparagraphs (A) and (B)(i) of section 4041(c)(3),” after “(relating to aviation fuels),”, and

(2) in subparagraph (D), by striking “rate specified in” and inserting “rates specified in clauses (i) and (ii)(I) of”.

(c) Clerical Amendment.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“Sec. 9512. Funding to Support Clean Communities Trust Fund.”.

(d) Effective Date.—The amendments made by this section shall take effect on January 1, 2024.