

106TH CONGRESS
1ST SESSION

S. 386

To amend the Internal Revenue Code of 1986 to provide for tax-exempt bond financing of certain electric facilities.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 1999

Mr. GORTON (for himself, Mr. KERREY, Mr. JEFFORDS, Mr. HOLLINGS, Mr. THURMOND, Mr. HARKIN, Mrs. MURRAY, Mr. SMITH of Oregon, Mr. JOHNSON, and Mr. WYDEN) 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 tax-exempt bond financing of certain electric facilities.

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 “Bond Fairness and
5 Protection Act of 1999”.

6 **SEC. 2. TAX-EXEMPT BOND FINANCING OF CERTAIN ELEC-**
7 **TRIC FACILITIES.**

8 (a) PERMITTED OPEN ACCESS TRANSACTIONS NOT
9 A PRIVATE BUSINESS USE.—Section 141(b)(6) of the In-

1 ternal Revenue Code of 1986 (defining private business
2 use) is amended by adding at the end the following:

3 “(C) PERMITTED OPEN ACCESS TRANS-
4 ACTIONS NOT A PRIVATE BUSINESS USE.—

5 “(i) IN GENERAL.—For purposes of
6 this subsection, the term ‘private business
7 use’ shall not include a permitted open ac-
8 cess transaction.

9 “(ii) PERMITTED OPEN ACCESS
10 TRANSACTION DEFINED.—For purposes of
11 clause (I), the term ‘permitted open access
12 transaction’ means any of the following
13 transactions or activities with respect to an
14 electric output facility (as defined in sub-
15 section (f)(4)(A)) owned by a governmental
16 unit:

17 “(I) Providing open access trans-
18 mission services and ancillary services
19 that meet the reciprocity requirements
20 of Federal Energy Regulatory Com-
21 mission Order No. 888, or that are
22 ordered by the Federal Energy Regu-
23 latory Commission, or that are pro-
24 vided in accordance with a trans-
25 mission tariff of an independent sys-

1 tem operator approved by such Com-
2 mission, or are consistent with state
3 administered laws, rules or orders
4 providing for open transmission ac-
5 cess.

6 “(II) Participation in an inde-
7 pendent system operator agreement
8 (which may include transferring con-
9 trol of transmission facilities to an
10 independent system operator), in a re-
11 gional transmission group, or in a
12 power exchange agreement approved
13 by such Commission.

14 “(III) Delivery on an open access
15 basis of electric energy sold by other
16 entities to end-users served by such
17 governmental unit’s distribution facili-
18 ties.

19 “(IV) If open access service is
20 provided under subclause (I) or (III),
21 the sale of electric output of electric
22 output facilities on terms other than
23 those available to the general public if
24 such sale is to an on-system purchaser
25 or is an existing off-system sale.

1 “(V) Such other transactions or
2 activities as may be provided in regu-
3 lations prescribed by the Secretary.

4 “(iii) DEFINITIONS; SPECIAL
5 RULES.—For purposes of this
6 subparagraph—

7 “(I) ON-SYSTEM PURCHASER.—
8 The term ‘on-system purchaser’
9 means a person who purchases electric
10 energy from a governmental unit and
11 whose electric facilities or equipment
12 are directly connected with trans-
13 mission or distribution facilities that
14 are owned by such governmental unit.

15 “(II) OFF-SYSTEM PUR-
16 CHASER.—The term ‘off-system pur-
17 chaser’ means a purchaser of electric
18 energy from a governmental unit
19 other than an on-system purchaser.

20 “(III) EXISTING OFF-SYSTEM
21 SALE.—The term ‘existing off-system
22 sale’ means a sale of electric energy to
23 a person that was an off-system pur-
24 chaser of electric energy in the base
25 year, but not in excess of the kilowatt

1 hours purchased by such person in
2 such year.

3 “(IV) BASE YEAR.—The term
4 ‘base year’ means 1998 (or, at the
5 election of such unit, in 1996 or
6 1997).

7 “(V) JOINT ACTION AGENCIES.—
8 A member of a joint action agency
9 that is entitled to make a sale de-
10 scribed in clause (ii)(IV) in a year
11 may transfer that entitlement to the
12 joint action agency in accordance with
13 rules of the Secretary.

14 “(VI) GOVERNMENT-OWNED FA-
15 CILITY.—An electric output facility
16 (as defined in subsection (f)(4)(A))
17 shall be treated as owned by a govern-
18 mental unit if it is owned or leased by
19 such governmental unit or if such gov-
20 ernmental unit has capacity rights
21 therein acquired before July 9, 1996,
22 for the purposes of serving one or
23 more customers to which such govern-
24 mental unit had a service obligation

1 on such date under state law or a re-
2 quirements contract.”.

3 (b) ELECTION TO TERMINATE TAX EXEMPT FI-
4 NANCING.—Section 141 of the Internal Revenue Code of
5 1986 (relating to private activity bond; qualified bond) is
6 amended by adding at the end the following:

7 “(f) ELECTION TO TERMINATE TAX-EXEMPT BOND
8 FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILI-
9 TIES.—

10 “(1) IN GENERAL.—An issuer may make an ir-
11 revocable election under this paragraph to terminate
12 certain tax-exempt financing for electric output fa-
13 cilities. If the issuer makes such election, then—

14 “(A) except as provided in paragraph (2),
15 no bond the interest on which is exempt from
16 tax under section 103 may be issued on or after
17 the date of such election with respect to an elec-
18 tric output facility; and

19 “(B) notwithstanding paragraph (1) or (2)
20 of subsection (a) or paragraph (5) of subsection
21 (b), with respect to an electric output facility no
22 bond that was issued before the date of enact-
23 ment of this subsection, the interest on which
24 was exempt from tax on such date, shall be
25 treated as a private activity bond, for so long

1 as such facility continues to be owned by a gov-
2 ernmental unit.

3 “(2) EXCEPTIONS.—An election under para-
4 graph (1) does not apply to—

5 “(A) any qualified bond (as defined in sub-
6 section (e)),

7 “(B) any eligible refunding bond, or

8 “(C) any bond issued to finance a qualify-
9 ing T&D facility, or

10 “(D) any bond issued to finance equipment
11 necessary to meet Federal or state environ-
12 mental requirements applicable to, or repair of,
13 electric output facilities in service on the date
14 of enactment of this subsection. Repairs or
15 equipment may not increase by more than a de-
16 minimus degree the capacity of the facility be-
17 yond its original design.

18 “(3) FORM AND EFFECT OF ELECTIONS.—An
19 election under paragraph (1) shall be made in such
20 a manner as the Secretary prescribes and shall be
21 binding on any successor in interest to the electing
22 issuer.

23 “(4) DEFINITIONS.—For purposes of this
24 subsection—

1 “(A) ELECTRIC OUTPUT FACILITY.—The
2 term ‘electric output facility’ means an output
3 facility that is an electric generation, trans-
4 mission, or distribution facility.

5 “(B) ELIGIBLE REFUNDING BOND.—The
6 term ‘eligible refunding bond’ means state or
7 local bonds issued after an election described in
8 paragraph (1) that directly or indirectly refund
9 state or local bonds issued before such election,
10 if the weighted averaged maturity of the re-
11 funding bonds do not exceed the remaining
12 weighted average maturity of the bonds issued
13 before the election.

14 “(C) QUALIFYING T&D FACILITY.—The term
15 ‘qualifying T&D facility’ means—

16 “(i) transmission facilities over which
17 services described in subsection
18 (b)(6)(C)(ii)(I) are provided, or

19 “(ii) distribution facilities over which
20 services described in subsection
21 (b)(6)(C)(ii)(III) are provided.”.

22 (c) EFFECTIVE DATE, APPLICABILITY, AND TRANSI-
23 TION RULES.—

24 (1) EFFECTIVE DATE.—The amendments made
25 by this section take effect on the date of enactment

1 of this Act, except that a governmental unit may
2 elect to apply section 141(b)(6)(C) of the Internal
3 Revenue Code of 1986, as added by subsection (a),
4 with respect to permitted open access transactions
5 on or after July 9, 1996.

6 (2) APPLICABILITY.—References in the Act to
7 sections of the Internal Revenue Code of 1986, as
8 amended, shall be deemed to include references to
9 comparable sections of the Internal Revenue Code of
10 1954, as amended.

11 (3) TRANSITION RULES.—

12 (A) PRIVATE BUSINESS USE.—Any activity
13 that was not a private business use prior to the
14 effective date of the amendment made by sub-
15 section (a) shall not be deemed to be a private
16 business use by reason of the enactment of such
17 amendment.

18 (B) ELECTION.—An issuer making the
19 election under section 141(f) of the Internal
20 Revenue Code of 1986, as added by subsection
21 (b), shall not be liable under any contract in ef-
22 fect on the date of enactment of this Act for
23 any claim arising from having made the elec-
24 tion.

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