ADDITIONAL STATEMENTS

APPROPRIATIONS COMMITTEE RULES—106TH CONGRESS

● Mr. STEVENS. Mr. President, the Senate Appropriations Committee has unanimously adopted rules governing its procedures for the 106th Congress. Pursuant to Rule XXVI, paragraph 2, of the ''Standing Rules of the Senate'', I send to the desk a copy of the Committee rules for publication in the CONGRESSIONAL RECORD.

The rules follow:

SENATE APPROPRIATIONS COMMITTEE RULES—106TH CONGRESS

I. Meetings—

The Committee will meet at the call of the Chairman.

II. Quorums—

1. Reporting a bill. A majority of the members must be present for the reporting of a bill.

2. Other business. For the purpose of transacting business other than reporting a bill or taking testimony, one-third of the members of the Committee shall constitute a quorum.

3. Taking testimony. For the purpose of taking testimony, other than sworn testimony, by the Committee or any subcommittee, one member of the Committee or subcommittee shall constitute a quorum. For the purpose of taking sworn testimony by the Committee, three members shall constitute a quorum, and for the taking of sworn testimony by any subcommittee, one member shall constitute a quorum.

III. Proxies—

Except for the reporting of a bill, votes may be cast by proxy when any member so requests.

IV. Attendance of staff members at closed sessions—

Attendance of Staff Members at closed sessions of the Committee shall be limited to those members of the Committee Staff that have a responsibility associated with the matter being considered at such meeting. This rule may be waived by unanimous consent.

V. Broadcasting and photographing of Committee hearing—

The Committee or any of its subcommittees may permit the photographing and broadcast of open hearings by television and/or radio. However, if any member of a subcommittee objects to the photographing or broadcasting of an open hearing, the question shall be referred to the Full Committee for its decision.

VI. Availability of subcommittee reports—

To the extent possible, when the bill and report of any subcommittee are available, they shall be furnished to each member of the Committee thirty-six hours prior to the Committee's consideration of said bill and report.

VII. Amendments and report language—

To the extent possible, amendments and report language intended to be proposed by Senators at Full Committee markups shall be provided in writing to the Chairman and Ranking Minority Member and the appropriate Subcommittee Chairman and Ranking Minority Member twenty-four hours prior to such markups.

VIII. Points of order—

Any member of the Committee who is floor manager of an appropriation bill, is hereby authorized to make points of order against any amendment offered in violation of the Senate Rules on the floor of the Senate to such appropriation bill.●

NOTICE OF INTENT TO SUSPEND THE RULES

● Mr. DASCHLE. In accordance with rule V, on behalf of myself and Senator FEINSTEIN, I hereby give notice in writing that it is my intention to move to suspend the following:

Rule VII, paragraph 2 the phrase ''upon the calendar''; and

Rule VIII, paragraph 2 the phrase ''during the first two hours of a new legislative day.''

In order to permit a motion to proceed to a censure resolution, to be introduced on the day of the motion to proceed, notwithstanding the fact that it is not on the calendar of business.●

NOTICE OF INTENT TO SUSPEND THE RULES

● Mrs. FEINSTEIN. In accordance with rule V, on behalf of myself and Senator DASCHLE, I hereby give notice in writing that it is my intention to move to suspend the following:

Rule VII, paragraph 2 the phrase ''upon the calendar''; and

Rule VIII, paragraph 2 the phrase ''during the first two hours of a new legislative day.''

In order to permit a motion to proceed to a censure resolution, to be introduced on the day of the motion to proceed, notwithstanding the fact that it is not on the calendar of business.●

TAX TREATMENT OF TAX-EXEMPT BONDS UNDER ELECTRICITY RESTRUCTURING

● Mr. GORTON. Mr. President, last Saturday, together with my colleagues Senators KERRY, JEFFORDS, HOLLINGS, THURMOND, HARKIN, MURRAY, SMITH of Oregon, JOHNSON, and WYDEN. I introduced ''The Bond Fairness and Protection Act of 1999.'' This is a bi-partisan compromise approach to legislation addressing the tax consequences of electricity restructuring on tax-exempt bonds that are issued by municipally-owned or state-owned utilities (often referred to as ''publicly-owned'' utilities) for the generation, transmission, and distribution of electricity.

As my colleagues may recall, last Congress I introduced a substantially similar bill, S. 2182, with eleven cosponsors from both sides of the aisle. Unfortunately, the 105th Congress did not have an opportunity to address this or other proposals on electricity restructuring. This year we have worked to simplify and refine last year's legislation in response to thoughtful comments we received last year, and in an effort to facilitate timely consideration of the legislation in this Congress.

Despite the lack of Federal legislation in this policy area, 18 states have already gone forward and begun to allow retail market choice for electricity consumers at the state and local level. The era of retail competition has already started both for publicly-owned and investor-owned utilities operating in these states.

Until recently, publicly-owned utilities have been able to operate under a strict regime of Federal tax rules governing their ability to issue tax-exempt bonds. These rules were enacted in an era when decision makers did not contemplate retail or wholesale electricity competition. These so-called ''private use'' rules limit the amount of electricity that publicly-owned utilities may sell to private entities through facilities that are financed with tax-exempt bonds. For years, the private use rules were cumbersome but manageable. As states move to restructure the electricity industry however, the private use rules were threatening many public power communities with significant financial penalties as they adjust to the changing marketplace. In effect, the rules are forcing publicly-owned utilities to face the prospects of violating the private use rules, or walling off their customers from competition. In either case, this will raise rates for consumers—the precise opposite of what restructuring is intended to achieve. The consumer can only lose when the marketplace operates in this inefficient manner.

The legislation that I am introducing today would protect all consumers by grandfathering outstanding tax-exempt bonds, but only if the issuing municipality or state utility elects to terminate permanently its ability to issue tax-exempt debt to build new generating facilities. Such an election would not affect transmission and distributions facilities, which generally would still be regulated under most restructuring proposals or frameworks. Publicly-owned utilities that do not make this irrevocable election would continue to operate under a clarified version of exiting law, thus remaining subject to the private use rules.

This legislation attempts to balance and be fair to the interests of all stakeholders in electricity restructuring while keeping the interest of the consumer paramount. It strikes a compromise between publicly-owned utilities and investor-owned utilities by providing an option for publicly-owned utilities to address the problem of how to comply with private use restriction in a restructured marketplace, an option that involves significant trade-offs for the publicly-owned utilities that seek to utilize it. For investor-owned utilities, requiring publicly-owned utilities to forego the ability to issue tax-exempt debt for new generation facilities should mitigate any potential or perceived competitive advantage in the new competitive world. At the same time, it honors promises made to bondholders under contract and existing tax law, thereby avoiding the inequitable consequence of applying old rules to the newly-emerging competitive world of electricity.

In addition, for those concerned about the environment, it provides incentives to deliver electricity efficiently through open access and retail

competition. Most importantly, for consumers the legislation allows competition to thrive while providing additional local options.

Mr. President, we plan to work with all interested parties, and most importantly American consumers, to ensure that we develop the fairest and most reasonable solution to this complex problem. We want electricity restructuring to be a good deal for everyone involved, especially the American consumer who deserves the lower electric bills that a competitive marketplace should provide. I believe this legislation addresses all of these concerns and promotes fair competition in the electricity industry. I urge my colleagues to join me in co-sponsoring this legislation.

Mr. President, I ask that the text of the bill, and an explanatory memorandum be printed in the RECORD.

The material follows:

S. 386

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 ''Bond Fairness and Protection Act of 1999''.

SEC. 2. TAX-EXEMPT BOND FINANCING OF CERTAIN ELECTRIC FACILITIES.

(a) PERMITTED OPEN ACCESS TRANSACTIONS NOT A PRIVATE BUSINESS USE.—Section 141(b)(6) of the Internal Revenue Code of 1986 (defining private business use) is amended by adding at the end the following:

''(C) PERMITTED OPEN ACCESS TRANSACTIONS NOT A PRIVATE BUSINESS USE.—

''(I) IN GENERAL.—For purposes of this subsection, the term 'private business use' shall not include a permitted open access transaction.

''(ii) PERMITTED OPEN ACCESS TRANSACTION DEFINED.—For purposes of clause (I), the term 'permitted open access transaction' means any of the following transactions or activities with respect to all electric output facility (as defined in subsection (f)(4)(A)) owned by a governmental unit:

''(I) Providing open access transmission services and ancillary services that meet the reciprocity requirements of Federal Energy Regulatory Commission Order No. 888, or that are ordered by the Federal Energy Regulatory Commission, or that are provided in accordance with a transmission tariff of an independent system operator approved by such Commission, or are consistent with state administered laws, rules or orders providing for open transmission access.

''(II) Participation in an independent system operator agreement (which may include transferring control of transmission facilities to an independent system operator), in a regional transmission group, or in a power exchange agreement approved by such Commission.

''(III) Delivery on an open access basis of electric energy sold by other entities to end-users served by such governmental unit's distribution facilities.

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

''(V) Such other transactions or activities as may be provided in regulations prescribed by the Secretary.

''(iii) DEFINITIONS; SPECIAL RULES.—For purposes of this subparagraph—

''(I) ON-SYSTEM PURCHASER.—The term 'on-system purchaser' means a person who purchases electric energy from a governmental unit and whose electric facilities or equipment are directly connected with transmission or distribution facilities that are owned by such governmental unit.

''(II) OFF-SYSTEM PURCHASER.—The term 'off-system purchaser' means a purchaser of electric energy from a governmental unit other than an on-system purchaser.

''(III) EXISTING OFF-SYSTEM SALE.—The term 'existing off-system sale' means a sale of electric energy to a person that was an off-system purchaser of electric energy in the base year, but not in excess of the kilowatt hours purchased by such person in such year.

''(IV) BASE YEAR.—The term 'base year' means 1998 (or, at the election of such unit, in 1996 or 1997).

''(V) JOINT ACTION AGENCIES.—A member of a joint action agency that is entitled to make a sale described in clause (ii)(IV) in a year may transfer that entitlement to the joint action agency in accordance with rules of the Secretary.''

''(VI) GOVERNMENT-OWNED FACILITY.—An electric output facility (as defined in subsection (f)(4)(A)) shall be treated as owned by a governmental unit if it is owned or leased by such governmental unit or if such governmental unit has capacity rights therein acquired before July 9, 1996, for the purposes of serving one or more customers to which such governmental unit had a service obligation on such date under state law or a requirements contract.

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

''(f) ELECTION TO TERMINATE TAX-EXEMPT BOND FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILITIES.—

''(1) IN GENERAL.—An issuer may make an irrevocable election under this paragraph to terminate certain tax-exempt financing for electric output facilities. If the issuer makes such election, then—

''(A) except as provided in paragraph (2), no bond the interest on which is exempt from tax under section 103 may be issued on or after the date of such election with respect to an electric output facility; and

''(B) notwithstanding paragraph (1) or (2) of subsection (a) or paragraph (5) of subsection (b), with respect to an electric output facility no bond that was issued before the date of enactment of this subsection, the interest on which was exempt from tax on such date, shall be treated as a private activity bond, for so long as such facility continues to be owned by a governmental unit.

''(2) EXCEPTIONS.—An election under paragraph (1) does not apply to—

''(A) any qualified bond (as defined in subsection (e)).

''(B) any eligible refunding bond, or

''(C) any bond issued to finance a qualifying T&D facility, or

''(D) any bond issued to finance equipment necessary to meet Federal or state environmental requirements applicable to, or repair of, electric output facilities in service on the date of enactment of this subsection. Repairs or equipment may not increase by more than a de minimus degree the capacity of the facility beyond its original design.

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

''(4) DEFINITIONS.—for purposes of this subsection.

''(A) ELECTRIC OUTPUT FACILITY.—The term 'electric output facility' means an output facility that is an electric generation, transmission, or distribution facility.

''(B) ELIGIBLE REFUNDING BOND.—The term 'eligible refunding bond' means state or local bonds issued after an election described in paragraph (1) that directly or indirectly refund state or local bonds issued before such election, if the weighted average maturity of the refunding bonds do not exceed the remaining weighted average maturity of the bonds issued before the election.

''(C) QUALIFYING T&D FACILITY.—The term 'qualifying T&D facility' means—

''(I) transmission facilities over which services described in subsection (b)(6)(C)(ii)(I) are provided, or

''(ii) distribution facilities over which services described in subsection (b)(6)(C)(ii)(III) are provided.''

(c) EFFECTIVE DATE, APPLICABILITY, AND TRANSITION RULES.—

(1) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act, except that a governmental unit may elect to apply section 141(b)(6)(C) of the Internal Revenue Code of 1986, as added by subsection (a), with respect to permitted open access transactions on or after July 9, 1996.

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

(3) TRANSITION RULES.—

(A) PRIVATE BUSINESS USE.—Any activity that was not a private business use prior to the effective date of the amendment made by subsection (a) shall not be deemed to be a private business use by reason of the enactment of such amendment.

(B) ELECTION.—An issuer making the election under section 141(f) of the Internal Revenue Code of 1986, as added by subsection (b), shall not be liable under any contract in effect on the date of enactment of this Act for any claim arising from having made the election.

EXPLANATION OF S. 386

BACKGROUND

Interest on bonds issued by state and local governments is generally exempt from Federal income taxes. One exception to this general rule relates to bonds that finance output facilities used in a private business. In the case of such facilities, if the contractual arrangements for sale of the output transfer the benefits and burdens of ownership of the facility to private parties, the use is treated as a private business use and the bonds issued to finance the facility may not be tax-exempt. If at the time of issuance the issuer reasonably expected that the private business use rules would be violated or the issuer thereafter on the bonds is retroactively taxable to date of issuance.

There has been significant uncertainty as to how these private business use rules apply to public power systems in the emerging competitive wholesale and retail electricity markets. In particular, questions have been raised as to whether such systems may (1) provide open access transmission services, (2) contractually commit their transmission systems to an Independent System Operator (ISO), (3) open their distribution facilities to retail competition, or (4) lower prices to particular customers to meet competition.

PROPOSED AMENDMENTS

This legislation would amend the Internal Revenue Code of 1986 to make two modifications to the private business use rules as they apply to electric facilities: (1) to clarify the application of the existing private business use rules in the new competitive environment, and (2) to make the private business use rules inapplicable to existing tax-

exempt debt issued by any public power system that elects not to issue new tax-exempt debt for electric generation and certain other facilities.

1. Clarification of Existing Private Business Use Rules.—Subsection (a) of section 2 of the bill amends section 141 (b)(6) of the Code to make it clear that the following activities (referred to as ''permitted open access transactions'') do not result in a private business use and will not make otherwise tax-exempt bonds taxable:

(a) Providing open access transmission service consistent with Federal Energy Regulatory Commission (FERC) Order No. 888 or with State open transmission access rules.

(b) Joining a FERC approved ISO, regional transmission group (RTG), power exchange, or providing service in accordance with an ISO, RTG, or power exchange tariff.

(c) Providing open access distribution services to competing retail sellers of electricity.

(d) If open access transmission or distribution services are offered, contracting for sale or power at non-tariff rates with on-system purchasers or existing off-system purchasers.

Treasury by regulation could add to the list of permitted open access transactions.

2. Election to Terminate Issuing Future Tax-Exempt Debt.—Subsection (b) of section 2 amends section 141 of the Code to permit a public power system to elect to terminate issuing new tax-exempt bonds.

(a) Termination Election—Under new Code section 141(f)(1), if a public power system elects to terminate issuance of new tax-exempt bonds, it may then undertake transactions that are not otherwise permissible under the private business use rules (as amended above) without endangering the tax-exempt status of its existing bonds. Specifically, if the issuer makes an irrevocable termination election under this provision, then (subject to the exceptions discussed below) no tax-exempt bond may be issued on or after the date of such election with respect to an electric output facility, and no tax-exempt bond that was issued before the date of enactment will be treated as a private activity bond. This treatment continues for so long as such facility continues to be owned by a governmental unit.

Essentially, making this termination election will eliminate the possibility of a private business use challenge to existing tax-exempt debt. If a utility does not make the election, its existing tax-exempt debt for electric generation facilities would continue to be subject to applicable private business use rules and the marketing constraints thereunder.

(B) Exceptions to Termination.—Under section 141(f)(2) even if a public power system made the suspension or termination election, it could continue to issue tax-exempt bonds for the following purposes: for transmission and distribution facilities used to provide open access transmission and distribution services; for ''qualified bonds'' as defined in section 141 (e) of the Code (which are not currently subject to private business use restrictions); for eligible refunding bonds (bonds that refinance existing bonds but do not extend their average maturity); and for bonds issued to finance repairs of, or environmentally-related equipment for, electrical output facilities, so long as the capacity of the facility is not increased over a de minimis amount.

3. *Effective Dates*.—Subsection (c) makes the provisions of the bill effective on date of enactment, but an issuer may elect to make the private business use rules as clarified by the bill applicable retroactively to 1996 (when FERC issued its Order No. 888). Paragraph (2) of subsection (c) makes it clear that the provisions of the bill apply to bonds issued under the Internal Revenue Code of 1954 as well as the Internal Revenue Code of 1986. This subsection also makes clear that any activity that was not a private business use prior to the enactment of the bill will not be deemed to be a private business use by reason of the bill's enactment. In addition, an issuer making the election under the bill will not be liable under any contract in effect on the date of enactment of the bill for any contract claim arising from having made the election.●

MEASURE PLACED ON THE CALENDAR—H.R. 99

Mr. LOTT. Mr. President, there is a bill at the desk due for its second reading.

The PRESIDING OFFICER. The clerk will read.

The bill clerk read as follows:

A bill (H.R. 99) to amend title 49, United States Code, to extend Federal Aviation Administration programs through September 30, 1999, and for other purposes.

Mr. LOTT. Mr. President, I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. Objection is heard. It will be placed on the calendar.

HONORING THE LIFE AND LEGEND OF KING HUSSEIN OF JORDAN

Mr. LOTT. I now ask unanimous consent that the Senate proceed to the consideration of S. Con. Res. 7, which is at the desk.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 7) honoring the life and legacy of King Hussein ibn Talal al-Hashem.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. LOTT. Mr. President, I rise to offer, together with the distinguished Minority Leader Senator DASCHLE, a resolution recognizing the significant and lasting contributions to peace and security by His Majesty King Hussein of Jordan, who passed away just hours ago.

I was deeply saddened by the news of the death of King Hussein—a true patriot and long-time friend of the United States. His bold leadership and personal courage serve as a model to all of us. I know I speak for my colleagues when I say, our thoughts and prayers are with his family and with the people of Jordan during this difficult time.

It is worth noting that the long-standing ties between our two governments are built upon a solid bedrock of respect and shared values. Even as we consider the profound contribution King Hussein made to peace and security the Middle East, it is vitally important for both our nations to take concrete steps to strengthen those relations, for the benefit of all our peoples. That is just as King Hussein would have wanted it.

In this regard, I am pleased to not that the resolution before us expresses support and best wishes for the new government in Jordan under King Abdullah. The King has signaled his desire to maintain a high degree of continuity for Jordan, for Middle east peace, for the region, and for U.S.-Jordanian relations. This includes a strong commitment to the Jordan-Israel peace treaty.

I strongly urge my colleagues to support this bipartisan resolution, as it represents a modest but important signal of the degree to which we honor the courageous life and lasting legacy of King Hussein. I thank my colleague from South Dakota for joining me in offering this resolution and I yield the floor.

Mr. DASCHLE. Mr. President, I am proud to cosponsor this resolution honoring one of the towering figures of our time.

Peace-loving people throughout the world feel a deep sadness over the death of Jordan's King Hussein. By the sheer force of his personal and political courage, he changed the world for the better.

None of us will ever forget how he rose from his sickbed at the Mayo Clinic last fall and came to the Wye River peace talks when those talks seemed in danger of collapse. Those who were there say he restored to those talks a sense that peace was not only possible, but worth making great sacrifices for, and taking extraordinary risks for.

His was a clear voice for moderation, tolerance and accommodation as he urged the two sides to work for peace. His admonition that there had been ''enough destruction, enough death, enough waste'' helped bridge the gap and forge an agreement.

King Hussein himself took a risk for peace in 1994, when he forged the historic peace agreement between Jordan and Israel.

Another image we will perhaps always remember is the picture of King Hussein kneeling not long ago at the feet of an Israeli father whose child had been killed by Jordanian border guards, and apologizing to the man for his loss. He was a noble man and, at the same time, a humble man.

He was also a man of great vision and skill. When he became the King, the Hashemite kingdom enjoyed little of what it has now.

In just a generation and a half, he created in Jordan a system of schools and roads and all the other infrastructure of a modern state.

King Hussein was a true friend of the United States. And, like all friends, we did not always see eye-to-eye on every matter.

In the end, however, it is not our differences with him that we remember. It is how he inspired people to come together despite their differences.

A man small in physical stature, he walked among us like a giant.