

105TH CONGRESS
2D SESSION

S. 2182

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

JUNE 17, 1998

Mr. GORTON (for himself, Mr. KERREY, Mr. JEFFORDS, Mr. BUMPERS, and Mrs. MURRAY) 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. TAX-EXEMPT BOND FINANCING OF CERTAIN**
4 **ELECTRIC FACILITIES.**

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

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

1 “(i) IN GENERAL.—For purposes of
2 this subsection, the term ‘private business
3 use’ shall not include a permitted open ac-
4 cess transaction.

5 “(ii) PERMITTED OPEN ACCESS
6 TRANSACTION DEFINED.—For purposes of
7 clause (i), the term ‘permitted open access
8 transaction’ means any of the following
9 transactions or activities with respect to an
10 electric output facility (as defined in sub-
11 section (f)(5)(A)) owned or leased by a
12 governmental unit or in which a govern-
13 mental unit has capacity rights:

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

1 providing for open transmission ac-
2 cess.

3 “(II) Participation in an inde-
4 pendent system operator agreement,
5 regional transmission group, or power
6 exchange agreement approved by such
7 Commission.

8 “(III) Delivery on an open access
9 basis of electric energy sold by other
10 entities to end-users served by such
11 governmental unit’s distribution facili-
12 ties.

13 “(IV) If open access service is
14 provided under subclause (I) or (III),
15 the sale of electric output of electric
16 output facilities on terms other than
17 those available to the general public if
18 such sale is (1) to an on-system pur-
19 chaser, (2) an existing off-system sale,
20 or (3) a qualifying load loss sale.

21 “(V) Such other transactions or
22 activities as may be provided in regu-
23 lations prescribed by the Secretary.

24 “(iii) QUALIFYING LOAD LOSS
25 SALE.—For purposes of clause (ii)(IV), a

1 sale of electric energy by a governmental
2 unit is a qualifying load loss sale in any
3 calendar year after 1997, if it is a new off-
4 system sale, and the aggregate of new off-
5 system sales in such year does not exceed
6 lost load, and if the term of the sale does
7 not exceed three years, and such govern-
8 mental unit has elected under subsection
9 (f)(2) to suspend issuance of certain tax-
10 exempt bonds for not less than the term of
11 the sale (or for any period equal to the
12 term of the sale that includes the first year
13 of the sale).

14 “(iv) OTHER DEFINITIONS; SPECIAL
15 RULES.—For purposes of this subpara-
16 graph—

17 “(I) ON-SYSTEM PURCHASER.—

18 The term ‘on-system purchaser’
19 means a person who purchases electric
20 energy from a governmental unit and
21 who is directly connected with trans-
22 mission or distribution facilities that
23 are owned or leased by such govern-
24 mental unit or in which such govern-
25 mental unit has capacity rights that

1 are treated under FERC tariffs or ex-
2 isting contracts as equivalent to own-
3 ership.

4 “(II) OFF-SYSTEM PUR-
5 CHASER.—The term ‘off-system pur-
6 chaser’ means a purchaser of electric
7 energy from a governmental unit
8 other than an on-system purchaser.

9 “(III) EXISTING OFF-SYSTEM
10 SALE.—The term ‘existing off-system
11 sale’ means a sale of electric energy to
12 a person that was an off-system pur-
13 chaser of electric energy in the base
14 year, but not in excess of the KWH
15 purchased by such person in such
16 year.

17 “(IV) NEW OFF-SYSTEM SALE.—
18 The term ‘new off-system sale’ means
19 an off-system sale other than an exist-
20 ing off-system sale.

21 “(V) LOST LOAD.—The term
22 ‘lost load’ for the purposes of deter-
23 mining qualifying load loss sales for
24 any year, means the amount (if any)
25 by which (1) the sum of on-system

1 sales of electric energy and existing
2 off-system sales of electric energy in
3 such year is less than (2) the sum of
4 such sales of electric energy in the
5 base year.

6 “(VI) BASE YEAR.—The term
7 ‘base year’ means 1997 (or, at the
8 election of such unit, in 1995 or
9 1996).

10 “(VII) JOINT ACTION AGEN-
11 CIES.—A member of a joint action
12 agency that is entitled to make a
13 qualifying load loss sale in a year may
14 transfer that entitlement to the joint
15 action agency in accordance with rules
16 of the Secretary.”.

17 (b) ELECTION TO TERMINATE TAX EXEMPT FI-
18 NANCING.—Section 141 of the Internal Revenue Code of
19 1986 (relating to private activity bond; qualified bond) is
20 amended by adding at the end the following:

21 “(f) ELECTION TO TERMINATE OR SUSPEND TAX-
22 EXEMPT BOND FINANCING FOR CERTAIN ELECTRIC OUT-
23 PUT FACILITIES.—

24 “(1) TERMINATION ELECTION.—An issuer may
25 make an irrevocable election under this paragraph to

1 terminate certain tax-exempt financing for electric
2 output facilities. If the issuer makes such election,
3 then—

4 “(A) except as provided in paragraph (3),
5 no bond the interest on which is exempt from
6 tax under section 103 may be issued on or after
7 the date of such election with respect to an elec-
8 tric output facility; and

9 “(B) notwithstanding paragraph (1) or (2)
10 of subsection (a) or paragraph (5) of subsection
11 (b), with respect to an electric output facility no
12 bond that was issued before the date of enact-
13 ment of this subsection, the interest on which
14 was exempt from tax on such date, shall be
15 treated as a private activity bond, for so long
16 as such facility continues to be owned by a gov-
17 ernmental unit.

18 “(2) SUSPENSION ELECTION.—For purposes of
19 subsection (b)(6)(C)(iii), an issuer may elect to sus-
20 pend certain tax-exempt financing for electric output
21 facilities for a calendar year. If the issuer makes
22 such election, then (except as provided in paragraph
23 (3)) no bond, the interest on which is exempt from
24 tax under section 103, may be issued in such cal-
25 endar year with respect to an electric output facility.

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

3 “(A) any qualified bond (as defined in sub-
4 section (e)),

5 “(B) any eligible refunding bond, or

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

8 “(D) any bond issued to finance repairs or
9 pollution control equipment for electric output
10 facilities. Repairs cannot increase by more than
11 a de minimis degree the capacity of the facility
12 beyond its original design.

13 “(4) FORM AND EFFECT OF ELECTIONS.—An
14 election under paragraph (1) or (2) shall be made in
15 such a manner as the Secretary prescribes and shall
16 be binding on any successor in interest to the issuer.

17 “(5) Definitions.—For purposes of this sub-
18 section—

19 “(A) ELECTRIC OUTPUT FACILITY.—The
20 term ‘electric output facility’ means an output
21 facility that is an electric generation, trans-
22 mission, or distribution facility.

23 “(B) ELIGIBLE REFUNDING BOND.—The
24 term ‘eligible refunding bond’ means state or
25 local bonds issued after an election described in

1 paragraph (1) or (2) that directly or indirectly
 2 refund state or local bonds issued before such
 3 election, if the weighted average maturity of the
 4 refunding bonds do not exceed the remaining
 5 weighted average maturity of the bonds issued
 6 before the election.

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

9 “(i) transmission facilities over which
 10 services described in subsection
 11 (b)(6)(C)(ii)(I) are provided, or

12 “(ii) distribution facilities over which
 13 services described in subsection
 14 (b)(6)(C)(ii)(III) are provided.”

15 (c) EFFECTIVE DATE, APPLICABILITY, AND TRANSI-
 16 TION RULES.—

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

24 (2) APPLICABILITY.—References in the Act to
 25 sections of the Internal Revenue Code of 1986, as

1 amended, shall be deemed to include references to
2 comparable sections of the Internal Revenue Code of
3 1954, as amended.

4 (3) TRANSITION RULES.—

5 (A) PRIVATE BUSINESS USE.—Any activity
6 that was not a private business use prior to the
7 effective date of the amendment made by sub-
8 section (a) shall not be deemed to be a private
9 business use by reason of the enactment of such
10 amendment.

11 (B) ELECTION.—An issuer making the
12 election under section 141(f) of the Internal
13 Revenue Code of 1986, as added by subsection
14 (b), shall not be liable under any contract in ef-
15 fect on the date of enactment of this Act for
16 any claim under section 141(f) of such Code
17 arising from having made the election.

18 (d) SHORT TITLE.—This Act may be cited as the
19 “Private Use Competition Reform Act of 1998”.

○