

106TH CONGRESS  
1ST SESSION

# H. R. 721

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 1999

Mr. HAYWORTH (for himself and Mr. MATSUI) introduced the following bill;  
which was referred to the Committee on Ways and Means

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## 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 that are consistent with  
3           State-administered laws, rules, or or-  
4           ders providing for open transmission  
5           access.

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, 1996 or 1997).

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

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

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

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

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

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

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

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

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

5                   “(B) any eligible refunding bond,

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

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

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

21           “(4) DEFINITIONS.—For purposes of this  
22      subsection—

23                   “(A) ELECTRIC OUTPUT FACILITY.—The  
24      term ‘electric output facility’ means an output

1 facility that is an electric generation, trans-  
 2 mission, or distribution facility.

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

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

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

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

20 (c) EFFECTIVE DATE, APPLICABILITY, AND TRANSI-  
 21 TION RULES.—

22 (1) EFFECTIVE DATE.—The amendments made  
 23 by this section take effect on the date of enactment  
 24 of this Act, except that a governmental unit may  
 25 elect to apply section 141(b)(6)(C) of the Internal



1 Revenue Code of 1986, as added by subsection (a),  
2 with respect to permitted open access transactions  
3 on or after July 9, 1996.

4 (2) APPLICABILITY.—References in this Act to  
5 sections of the Internal Revenue Code of 1986 shall  
6 be deemed to include references to comparable sec-  
7 tions of the Internal Revenue Code of 1954.

8 (3) TRANSITION RULES.—

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

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

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