

106TH CONGRESS  
1ST SESSION

# S. 1048

To provide for a more competitive electric power industry, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 13, 1999

Mr. MURKOWSKI (for himself and Mr. BINGAMAN) (by request) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide for a more competitive electric power industry,  
and for other purposes.

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 “Comprehensive Elec-  
5       tricity Competition Tax Act”.

6       **SEC. 2. TABLE OF CONTENTS.**

Sec. 1. Short title.

Sec. 2. Table of contents.

### TITLE I—AMENDMENTS TO INTERNAL REVENUE CODE

Sec. 101. Treatment of bonds issued to finance electric output facilities.

Sec. 102. Nuclear decommissioning costs.

Sec. 103. Depreciation treatment of distributed power property.

Sec. 104. Tax credit for combined heat and power system property.

1       **TITLE I—AMENDMENTS TO**  
 2       **INTERNAL REVENUE CODE**

3   **SEC. 101. TREATMENT OF BONDS ISSUED TO FINANCE**  
 4       **ELECTRIC OUTPUT FACILITIES.**

5       (a) IN GENERAL.—Section 141 of the Internal Rev-  
 6   enue Code of 1986 (relating to private activity bond; quali-  
 7   fied bond) is amended by redesignating subsection (e) as  
 8   subsection (f) and inserting after subsection (d) the fol-  
 9   lowing new subsection:

10       “(e) BONDS FOR ELECTRIC OUTPUT FACILITIES.—

11               “(1) BONDS ISSUED BEFORE ENACTMENT OF  
 12       COMPREHENSIVE ELECTRICITY COMPETITION ACT.—

13               “(A) IN GENERAL.—The determination of  
 14       whether any pre-effective date electric output  
 15       facility bond is a private activity bond (or an in-  
 16       dustrial development bond under the Internal  
 17       Revenue Code of 1954) shall be made without  
 18       regard to any permissible competitive actions  
 19       taken by the issuer.

20               “(B) PRE-EFFECTIVE DATE ELECTRIC  
 21       OUTPUT FACILITY BOND.—For purposes of sub-  
 22       paragraph (A), the term ‘pre-effective date elec-  
 23       tric output facility bond’ means any bond issued  
 24       as part of an issue if—

1 “(i) such bond was issued before the  
2 date of the enactment of the Comprehen-  
3 sive Electricity Competition Act,

4 “(ii) any portion of the proceeds of  
5 such issue was used with respect to an  
6 electric output facility, and

7 “(iii) the bond was not, as of such  
8 date of enactment, a private activity bond  
9 (or an industrial development bond under  
10 the Internal Revenue Code of 1954).

11 “(C) PERMISSIBLE COMPETITIVE AC-  
12 TIONS.—For purposes of subparagraph (A), the  
13 term ‘permissible competitive actions’ means  
14 any action taken by the issuer on or after the  
15 date of the enactment of the Comprehensive  
16 Electricity Competition Act regarding—

17 “(i) transmission property owned by  
18 the issuer if the issuer is subject to an  
19 order of the Federal Energy Regulatory  
20 Commission requiring nondiscriminatory,  
21 open access to transmission facilities in a  
22 manner consistent with rules promulgated  
23 by the Commission under sections 205 and  
24 206 of the Federal Power Act (as in effect

on the date of the enactment of the Comprehensive Electricity Competition Act), or

“(ii) generation property or distribution property owned by the issuer if the issuer—

“(I) implements retail competition under section 609 of the Public Utility Regulatory Policies Act of 1978, or

“(II) enters into a contract for the sale of electricity or use of its distribution property which will not become effective prior to the date that the issuer implements retail competition under section 609 of the Public Utility Regulatory Policies Act of 1978.

“(2) BOND ISSUED ON OR AFTER ENACTMENT OF COMPREHENSIVE ELECTRICITY COMPETITION ACT.—

“(A) IN GENERAL.—For purposes of this title, the term ‘private activity bond’ includes any bond issued as part of an issue any of the proceeds of which are to be used (directly on in-

1 directly) for electric output facilities other than  
 2 distribution property.

3 “(B) DISTRIBUTION PROPERTY.—For pur-  
 4 poses of subparagraph (A), the term ‘distribu-  
 5 tion property’ means any output facility, includ-  
 6 ing functionally related and subordinate prop-  
 7 erty, that operates at 69 kilovolts or less.”.

8 (b) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as otherwise pro-  
 10 vided in this subsection, the amendment made by  
 11 this section shall apply to obligations issued on or  
 12 after the date of the enactment of this Act.

13 (2) TREATMENT OF PRE-EFFECTIVE DATE  
 14 BONDS.—Section 141(e)(1) of the Internal Revenue  
 15 Code of 1986, as added by this section, shall take  
 16 effect on the date of enactment of this Act.

17 (3) REFUNDING BONDS.—

18 (A) IN GENERAL.—For purposes of this  
 19 subsection and the amendment made by this  
 20 section, section 141(e)(2) of the Internal Rev-  
 21 enue Code of 1986, as added by this section,  
 22 shall not apply to any qualified refunding bond.

23 (B) QUALIFIED REFUNDING BOND.—For  
 24 purposes of subparagraph (A), the term “quali-  
 25 fied refunding bond” means any bond (or a

1           bond that is part of a series of refundings)  
 2           issued to refund a pre-effective date electric  
 3           output facility bond if—

4                   (i) the weighted average maturity of  
 5                   the issue of which the refunding bond is a  
 6                   part does not exceed 120 percent of the av-  
 7                   erage reasonably expected economic life of  
 8                   the facilities being financed with the net  
 9                   proceeds of such issue (determined under  
 10                  section 147(b) of such Code),

11                  (ii) the amount of the refunding bond  
 12                  does not exceed the outstanding amount of  
 13                  the refunded bond, and

14                  (iii) the net proceeds of the refunding  
 15                  bond are used to redeem the refunded  
 16                  bond not later than 90 days after the date  
 17                  of issuance of the refunding bond.

18 **SEC. 102. NUCLEAR DECOMMISSIONING COSTS.**

19           (a) IN GENERAL.—Subsection (b) of section 468A of  
 20 the Internal Revenue Code of 1986 is amended to read  
 21 as follows:

22           “(b) LIMITATION ON AMOUNT PAID INTO FUND.—  
 23 The amount which a taxpayer may pay into the Fund for  
 24 any taxable year shall not exceed the ruling amount appli-  
 25 cable to such taxable year.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to taxable years beginning after  
 3 December 31, 1999.

4 **SEC. 103. DEPRECIATION TREATMENT OF DISTRIBUTED**  
 5 **POWER PROPERTY.**

6 (a) IN GENERAL.—Section 168(e)(3)(E) of the Inter-  
 7 nal Revenue Code (classifying certain property as 15-year  
 8 property) is amended by striking “and” at the end of  
 9 clause (ii), striking the period at the end of clause (iii)  
 10 and inserting “, and”, and by adding the following new  
 11 clause:

12 “(iv) any distributed power prop-  
 13 erty.”.

14 (b) CONFORMING AMENDMENTS.—(1) Section 168(i)  
 15 is amended by adding at the end following new paragraph:

16 “(15) DISTRIBUTED POWER PROPERTY.—The  
 17 term ‘distributed power property’ means property—

18 “(A) which is used in the generation of  
 19 electricity for primary use—

20 “(i) in nonresidential real or residen-  
 21 tial rental property used in the taxpayer’s  
 22 trade or business, or

23 “(ii) in the taxpayer’s industrial man-  
 24 ufacturing process or plant activity, with a

1           rated total capacity in excess of 500 kilo-  
2           watts,

3           “(B) which also may produce usable ther-  
4           mal energy or mechanical power for use in a  
5           heating or cooling application, as long as at  
6           least 40 percent of the total useful energy pro-  
7           duced consists of—

8                   “(i) with respect to assets described in  
9                   subparagraph (A)(i), electrical power  
10                  (whether sold or used by the taxpayer), or

11                  “(ii) with respect to assets described  
12                  in subparagraph (A)(ii), electrical power  
13                  (whether sold or used by the taxpayer) and  
14                  thermal or mechanical energy used in the  
15                  taxpayer’s industrial manufacturing proc-  
16                  ess or plant activity,

17           “(C) which is not used to transport pri-  
18           mary fuel to the generating facility or to dis-  
19           tribute energy within or outside of the facility,  
20           and

21           “(D) where it is reasonably expected that  
22           not more than 50 percent of the produced elec-  
23           tricity will be sold to, or used by, unrelated per-  
24           sons.



1 For purposes of subparagraph (B), energy output is  
 2 determined on the basis of expected annual output  
 3 levels, measured in British thermal units (Btu),  
 4 using standard conversion factors established by the  
 5 Secretary.”.

6 (2) Subparagraph (B) of section 168(g)(3) is  
 7 amended by inserting after the item relating to sub-  
 8 paragraph (E)(iii) in the table contained therein the  
 9 following new line:

10 “(E)(iv) 22”.

11 (c) EFFECTIVE DATE.—The amendments made by  
 12 this section are effective for property placed in service on  
 13 or after the date of enactment.

14 **SEC. 104. TAX CREDIT FOR COMBINED HEAT AND POWER**  
 15 **SYSTEM PROPERTY.**

16 (a) IN GENERAL.—Subpart E of part IV of sub-  
 17 chapter A of chapter 1 of the Internal Revenue Code of  
 18 1986 is amended by inserting after section 48 the fol-  
 19 lowing new section:

20 **“SEC. 48A. ENERGY CREDIT.**

21 “(a) IN GENERAL.—For purposes of section 46, the  
 22 energy credit for any taxable year is the amount equal to  
 23 the energy percentage of the basis of each energy property  
 24 placed in service during such taxable year.

25 “(b) ENERGY PERCENTAGE.—

1           “(1) IN GENERAL.—Except as otherwise pro-  
 2       vided in this subsection, the energy percentage is 10  
 3       percent.

4           “(2) COMBINED HEAT AND POWER PROP-  
 5       ERTY.—The energy percentage is 8 percent in the  
 6       case of combined heat and power property.

7           “(3) PERIOD FOR WHICH CREDIT IS ALLOWED  
 8       FOR COMBINED HEAT AND POWER PROPERTY.—In  
 9       the case of combined heat and power property, the  
 10      credit under subsection (a) shall be allowed only for  
 11      the period beginning on January 1, 2000 and ending  
 12      on December 31, 2002.

13          “(4) COORDINATION WITH REHABILITATION.—  
 14      The energy percentage does not apply to that por-  
 15      tion of the basis of any property which is attrib-  
 16      utable to qualified rehabilitation expenditures.

17          “(5) TRANSITION RULES.—Rules similar to the  
 18      rule of section 48(m) (as in effect on the day before  
 19      the date of the enactment of the Revenue Reconcili-  
 20      ation Act of 1990) shall apply for purposes of this  
 21      subsection.

22          “(c) ENERGY PROPERTY DEFINED.—

23               “(1) IN GENERAL.—For purposes of this sub-  
 24      part, the term ‘energy property’ means any  
 25      property—

1 “(A) which is—

2 “(i) solar energy property,

3 “(ii) geothermal energy property, or

4 “(iii) combined heat and power system  
5 property,

6 “(B)(i) the construction, reconstruction, or  
7 erection of which is completed by the taxpayer,  
8 or

9 “(ii) which is acquired by the taxpayer if  
10 the original use of such property commences  
11 with the taxpayer,

12 “(C) with respect to which depreciation (or  
13 amortization in lieu of depreciation) is allow-  
14 able, and

15 “(D) which meets—

16 “(i) the performance and quality  
17 standards (if any), and the certification re-  
18 quirements (if any), which have been pre-  
19 scribed by the Secretary by regulations  
20 (after consultation with the Secretary of  
21 Energy or the EPA Administrator, as ap-  
22 propriate), and

23 “(ii) are in effect at the time the  
24 property is placed in service.

1           “(2) EXCEPTION.—Such term shall not include  
 2           any property which is public utility property (as de-  
 3           fined in section 46(f)(5) as in effect on the day be-  
 4           fore the date of the enactment of the Revenue Rec-  
 5           onciliation Act of 1990). The preceding sentence  
 6           shall not apply to combined heat and power system  
 7           property.

8           “(d) DEFINITIONS RELATING TO TYPES OF ENERGY  
 9           PROPERTY.—For purposes of this section—

10           “(1) SOLAR ENERGY PROPERTY.—The term  
 11           ‘solar energy property’ means equipment which uses  
 12           solar energy—

13                   “(A) to generate electricity,

14                   “(B) to heat or cool (or provide hot water  
 15                   for use in) a structure, or

16                   “(C) to provide solar process heat.

17           “(2) GEOTHERMAL ENERGY PROPERTY.—The  
 18           term ‘geothermal energy property’ means equipment  
 19           used to produce, distribute, or use energy derived  
 20           from a geothermal deposit (within the meaning of  
 21           section 613(e)(2)), but only, in the case of electricity  
 22           generated by geothermal power, up to (but not in-  
 23           cluding) the electrical transmission stage.

24           “(3) COMBINED HEAT AND POWER SYSTEM  
 25           PROPERTY.—

1           “(A) IN GENERAL.—The term ‘combined  
2           heat and power system property’ means prop-  
3           erty comprising a system—

4                   “(i) which uses the same energy  
5                   source for the simultaneous or sequential  
6                   generation of electrical power, mechanical  
7                   shaft power, or both, in combination with  
8                   the generation of steam or other forms of  
9                   useful thermal energy (including heating  
10                  and cooling applications),

11                  “(ii) which has an electrical capacity  
12                  of more than 50 kilowatts or a mechanical  
13                  energy capacity of more than 67 horse-  
14                  power or an equivalent combination of elec-  
15                  trical and mechanical energy capacities,

16                  “(iii) which produces—

17                          “(I) at least 20 percent of its  
18                          total useful energy in the form of  
19                          thermal energy, and

20                          “(II) at least 20 percent of its  
21                          total energy in the form of electrical  
22                          or mechanical power (or a combina-  
23                          tion thereof), and

24                          “(iv) the energy efficiency percentage  
25                          of which exceeds 60 percent (70 percent in

1 the case of a system with an electrical ca-  
2 pacity in excess of 50 megawatts or a me-  
3 chanical energy capacity in excess of  
4 67,000 horsepower (or a combination  
5 thereof)).

6 “(B) SPECIAL RULES.—

7 “(i) ENERGY EFFICIENCY PERCENT-  
8 AGE.—For purposes of subparagraph  
9 (A)(iv), the energy efficiency percentage of  
10 a system is the fraction—

11 “(I) the numerator of which is  
12 the total useful electrical, thermal,  
13 and mechanical power produced by  
14 the system at normal operating rates,  
15 and

16 “(II) the denominator of which is  
17 the lower heating value of the primary  
18 fuel source for the system.

19 “(ii) DETERMINATIONS MADE ON BTU  
20 BASIS.—The energy efficiency percentage  
21 and the percentages under subparagraph  
22 (A)(iii) shall be determined on a Btu basis.

23 “(iii) INPUT AND OUTPUT PROPERTY  
24 NOT INCLUDED.—The term ‘combined heat  
25 and power system property’ does not in-

1           clude property used to transport the en-  
2           ergy source to the facility or to distribute  
3           energy produced by the facility.

4           “(iv) ACCOUNTING RULE FOR PUBLIC  
5           UTILITY PROPERTY.—In the case that  
6           combined heat and power system property  
7           is public utility property (as defined in sec-  
8           tion 46(f)(5) as in effect on the day before  
9           the date of the enactment of the Revenue  
10          Reconciliation Act of 1990), the taxpayer  
11          may claim the credit under subsection  
12          (a)(1) only if, with respect to such prop-  
13          erty, the taxpayer uses a normalization  
14          method of accounting.

15          “(v) DEPRECIATION.—No credit shall  
16          be allowed for any combined heat and  
17          power system property unless the taxpayer  
18          elects to treat such property for purposes  
19          of section 168 as having a class life of not  
20          less than 22 years.

21          “(e) SPECIAL RULES.—For purposes of this  
22          section—

23               “(1) SPECIAL RULE FOR PROPERTY FINANCED  
24               BY SUBSIDIZED ENERGY FINANCING OR INDUSTRIAL  
25               DEVELOPMENT BONDS.—

1           “(A) REDUCTION OF BASIS.—For purposes  
2 of applying the energy percentage to any prop-  
3 erty, if such property is financed in whole or in  
4 part by—

5                   “(i) subsidized energy financing, or

6                   “(ii) the proceeds of a private activity  
7 bond (within the meaning of section 141)  
8 the interest on which is exempt from tax  
9 under section 103, the amount taken into  
10 account as the basis of such property shall  
11 not exceed the amount which (but for this  
12 subparagraph) would be so taken into ac-  
13 count multiplied by the fraction deter-  
14 mined under subparagraph (B).

15           “(B) DETERMINATION OF FRACTION.—For  
16 purposes of subparagraph (A), the fraction de-  
17 termined under this subparagraph is 1 reduced  
18 by a fraction—

19                   “(i) the numerator of which is that  
20 portion of the basis of the property which  
21 is allocable to such financing or proceeds,  
22 and

23                   “(ii) the denominator of which is the  
24 basis of the property.



1                   “(C) SUBSIDIZED ENERGY FINANCING.—

2                   For purposes of subparagraph (A), the term  
3                   ‘subsidized energy financing’ means financing  
4                   provided under a Federal, State, or local pro-  
5                   gram a principal purpose of which is to provide  
6                   subsidized financing for projects designed to  
7                   conserve or produce energy.

8                   “(2) CERTAIN PROGRESS EXPENDITURE RULES  
9                   MADE APPLICABLE.—Rules similar to the rules of  
10                  subsections (c)(4) and (d) of section 46 (as in effect  
11                  on the day before the date of the enactment of the  
12                  Revenue Reconciliation Act of 1990) shall apply for  
13                  purposes of this section.”.

14                  (b) CONFORMING AMENDMENTS.—

15                  (1) Section 48 of such Code is amended to read  
16                  as follows:

17       **“SEC. 48. REFORESTATION CREDIT.**

18                  “(a) IN GENERAL.—For purposes of section 46, the  
19                  reforestation credit for any taxable year is 10 percent of  
20                  the portion of the amortizable basis of any qualified timber  
21                  property which was acquired during such taxable year and  
22                  which is taken into account under section 194 (after the  
23                  application of section 194(b)(1)).

24                  “(b) DEFINITIONS.—For purposes of this subpart,  
25                  the terms ‘amortizable basis’ and ‘qualified timber prop-

erty’ have the respective meanings given to such terms by  
section 194.”.

(2) Subsection (d) of section 39 of such Code  
is amended by adding at the end the following new  
paragraph:

“(9) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy credit determined under section 48A, except for the credit determined with respect to solar energy property and geothermal energy property, may be carried back to a taxable year ending before the date of the enactment of section 48A.”.

(3) Paragraph (3) of section 50(c) of such Code  
is amended by adding at the end the following flush  
sentence:

“In the case of the energy credit, the preceding sentence shall apply only to so much of such credit as relates to solar energy property and geothermal property (as such terms are defined in section 48A(e)).”.

(4) Subclause (III) of section 29(b)(3)(A)(i) of  
such Code is amended by striking “section  
48(a)(4)(C)” and inserting “section 48A(g)(1)(C)”.

1           (5) Subparagraph (E) of section 50(a)(2) of  
 2           such Code is amended by striking “section 48(a)(5)”  
 3           and inserting “section 48A(g)(2)”.

4           (6) Subparagraph (B) of section 168(e)(3) of  
 5           such Code is amended—

6                   (A) in clause (vi)(I) by striking “section  
 7                   48(a)(3)” and inserting “paragraphs (1) and  
 8                   (2) of section 48A(d)”, and

9                   (B) in the last sentence by striking “sec-  
 10                  tion 48(a)(3)” and inserting “section  
 11                  48A(c)(2)”.

12          (7) Subparagraph (E) of section 168(e)(3) of  
 13          such Code, as amended by section 803(a), is further  
 14          amended by striking “and” at the end of clause (iii),  
 15          by striking the period at the end of clause (iv) and  
 16          inserting “, and”, and by inserting after clause (iv)  
 17          the following new clause:

18                   “(v) any combined heat and power  
 19                   system property (as defined in section  
 20                   48A(d)(4)) for which a credit is allowed  
 21                   under section 48A and which, but for this  
 22                   clause, would have a recovery period of less  
 23                   than 15 years.”.

24          (8) The table contained in subparagraph (B) of  
 25          section 168(g)(3) of such Code, as amended by sec-

1       tion 803(b)(2), is further amended by adding at the  
2       end the following:

3                       “(E)(v) 22”.

4       (c) CLERICAL AMENDMENT.—The table of sections  
5       for subpart E of part IV of subchapter A of chapter 1  
6       of such Code is amended by striking the item relating to  
7       section 48 and inserting the following new items:

                  “Sec. 48. Reforestation credit.

                  “Sec. 48A. Energy credit.”.

8       (d) EFFECTIVE DATE.—The amendments made by  
9       this section shall apply to periods after December 31,  
10      1999, under rules similar to the rules of section 48(m)  
11      of the Internal Revenue Code of 1986 (as in effect on the  
12      day before the date of the enactment of the Revenue Rec-  
13      onciliation Act of 1990).

○