

107TH CONGRESS  
1ST SESSION

# S. 972

To amend the Internal Revenue Code of 1986 to improve electric reliability, enhance transmission infrastructure, and to facilitate access to the electric transmission grid.

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## IN THE UNITED STATES SENATE

MAY 25, 2001

Mr. MURKOWSKI (for himself, Mr. BREAUX, Mr. THOMPSON, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to improve electric reliability, enhance transmission infrastructure, and to facilitate access to the electric transmission grid.

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 “Electric Power Indus-  
5 try Tax Modernization Act”.

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

8 (a) RULES APPLICABLE TO ELECTRIC OUTPUT FA-  
9 CILITIES.—Subpart A of part IV of subchapter B of chap-

1 ter 1 of the Internal Revenue Code of 1986 (relating to  
2 tax exemption requirements for State and local bonds) is  
3 amended by adding after section 141 the following new  
4 section:

5 **“SEC. 141A. ELECTRIC OUTPUT FACILITIES.**

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

9 “(1) IN GENERAL.—A governmental unit may  
10 make an irrevocable election under this paragraph to  
11 terminate the issuance of certain obligations de-  
12 scribed in section 103(a) for electric output facilities.  
13 If the governmental unit makes such election,  
14 then—

15 “(A) except as provided in paragraph (2),  
16 on or after the date of such election the govern-  
17 mental unit may not issue with respect to any  
18 electric output facility any bond the interest on  
19 which is excluded from gross income under sec-  
20 tion 103, and

21 “(B) notwithstanding paragraph (1) or (2)  
22 of section 141(a) or paragraph (4) or (5) of  
23 section 141(b), no bond—

24 “(i) which was issued by such unit  
25 with respect to an electric output facility

1 before the date of enactment of this sub-  
2 section, the interest on which was exempt  
3 from tax on such date,

4 “(ii) which is an eligible refunding  
5 bond that directly or indirectly refunds a  
6 bond issued prior to the date of enactment  
7 of this section, or

8 “(iii) which is described in paragraph  
9 (2)(D), (E), or (F),

10 shall be treated as a private activity bond.

11 “(2) EXCEPTIONS.—If an election is made  
12 under paragraph (1), paragraph (1)(A) does not  
13 apply to any of the following bonds:

14 “(A) Any qualified bond (as defined in sec-  
15 tion 141(e)).

16 “(B) Any eligible refunding bond (as de-  
17 fined in subsection (d)(6)).

18 “(C) Any bond issued to finance a quali-  
19 fying transmission facility or a qualifying dis-  
20 tribution facility owned by the governmental  
21 unit.

22 “(D) Any bond issued to finance equip-  
23 ment or facilities necessary to meet Federal or  
24 State environmental requirements applicable to

1 an existing generation facility owned by the  
2 governmental unit.

3 “(E) Any bond issued to finance repair of  
4 any existing generation facility owned by the  
5 governmental unit. Repairs of facilities may not  
6 increase the generation capacity of the facility  
7 by more than 3 percent above the greater of its  
8 nameplate or rated capacity as of the date of  
9 enactment of this section.

10 “(F) Any bond issued to acquire or  
11 construct—

12 “(i) a qualified facility (as defined in  
13 section 45(c)(3)) if such facility is owned  
14 by the governmental unit and is placed in  
15 service during a period in which a qualified  
16 facility may be placed in service under  
17 such section, or

18 “(ii) any energy property (as defined  
19 in section 48(a)(3)) that is owned by the  
20 governmental unit.

21 This subparagraph shall not apply to any facil-  
22 ity or property that is constructed, acquired or  
23 financed for the principal purpose of providing  
24 the facility (or the output thereof) to non-  
25 governmental persons.

1           “(3) FORM AND EFFECT OF ELECTION.—

2                   “(A) IN GENERAL.—An election under  
3 paragraph (1) shall be made in such a manner  
4 as the Secretary prescribes and shall be binding  
5 on any successor in interest to, or any related  
6 party with respect to, the electing governmental  
7 unit. For purposes of this paragraph, a govern-  
8 mental unit shall be treated as related to an-  
9 other governmental unit if it is a member of the  
10 same controlled group.

11                   “(B) TREATMENT OF ELECTING GOVERN-  
12 MENTAL UNIT.—A governmental unit which  
13 makes an election under paragraph (1) shall be  
14 treated for purposes of section 141 as a person  
15 which is not a governmental unit and which is  
16 engaged in a trade or business, with respect to  
17 its purchase of electricity generated by an elec-  
18 tric output facility placed in service after such  
19 election, if such purchase is under a contract  
20 executed after such election.

21           “(4) DEFINITIONS.—For purposes of this sub-  
22 section:

23                   “(A) EXISTING GENERATION FACILITY.—  
24 The term ‘existing generation facility’ means an  
25 electric generation facility owned by the govern-

1           mental unit on the date of enactment of this  
 2           subsection and either in service on such date or  
 3           the construction of which commenced prior to  
 4           June 1, 2000.

5           “(B) QUALIFYING DISTRIBUTION FACIL-  
 6           ITY.—The term ‘qualifying distribution facility’  
 7           means a distribution facility over which open  
 8           access distribution services described in sub-  
 9           section (b)(2)(C) are available.

10           “(C) QUALIFYING TRANSMISSION FACIL-  
 11           ITY.—The term ‘qualifying transmission facil-  
 12           ity’ means a local transmission facility (as de-  
 13           scribed in subsection (c)(3)(A)) over which open  
 14           access transmission services described in sub-  
 15           paragraph (A) or (B) of subsection (b)(2) are  
 16           available.

17           “(b) PERMITTED OPEN ACCESS ACTIVITIES AND  
 18           SALES TRANSACTIONS NOT A PRIVATE BUSINESS USE  
 19           FOR BONDS THAT REMAIN SUBJECT TO PRIVATE USE  
 20           RULES.—

21           “(1) GENERAL RULE.—For purposes of this  
 22           section and section 141, the term ‘private business  
 23           use’ shall not include a permitted open access activ-  
 24           ity or a permitted sales transaction.

1           “(2) PERMITTED OPEN ACCESS ACTIVITIES.—

2           For purposes of this section, the term ‘permitted  
3           open access activity’ means any of the following  
4           transactions or activities with respect to an electric  
5           output facility owned by a governmental unit:

6                   “(A) Providing nondiscriminatory open ac-  
7                   cess transmission service and ancillary  
8                   services—

9                           “(i) pursuant to an open access trans-  
10                           mission tariff filed with and approved by  
11                           FERC, including an acceptable reciprocity  
12                           tariff but, in the case of a voluntarily filed  
13                           tariff, only if the governmental unit volun-  
14                           tarily files a report with the FERC within  
15                           90 days of the date of enactment of this  
16                           section relating to whether or not the  
17                           issuer will join a regional transmission or-  
18                           ganization,

19                           “(ii) under an independent system op-  
20                           erator or regional transmission organiza-  
21                           tion agreement approved by FERC, or

22                           “(iii) in the case of an ERCOT utility  
23                           (as defined in section 212(k)(2)(B) of the  
24                           Federal Power Act (16 U.S.C.  
25                           824k(k)(2)(B))), pursuant to a tariff ap-

1                   proved by the Public Utility Commission of  
2                   Texas.

3                   “(B) Participation in—

4                       “(i) an independent system operator  
5                       agreement, or

6                       “(ii) a regional transmission organiza-  
7                       tion agreement,

8                   which has been approved by FERC, or by the  
9                   Public Utility Commission of Texas in the case  
10                  of an ERCOT utility (as so defined). Such par-  
11                  ticipation may include transfer of control of  
12                  transmission facilities to an organization de-  
13                  scribed in clause (i) or (ii).

14                  “(C) Delivery on a nondiscriminatory open  
15                  access basis of electric energy sold to end-users  
16                  served by distribution facilities owned by such  
17                  governmental unit.

18                  “(D) Delivery on a nondiscriminatory open  
19                  access basis of electric energy generated by gen-  
20                  eration facilities connected to distribution facili-  
21                  ties owned by such governmental unit.

22                  “(3) PERMITTED SALES TRANSACTION.—For  
23                  purposes of this subsection, the term ‘permitted  
24                  sales transaction’ means any of the following sales of

1 electric energy from existing generation facilities (as  
2 defined in subsection (a)(4)(A)):

3 “(A) The sale of electricity to an on-system  
4 purchaser, if the seller makes available open ac-  
5 cess distribution service under paragraph (2)(C)  
6 and, in the case of a seller that owns or oper-  
7 ates transmission facilities, if such seller makes  
8 available open access transmission under sub-  
9 paragraph (A) or (B) of paragraph (2).

10 “(B) The sale of electricity to a wholesale  
11 native load purchaser or in a wholesale strand-  
12 ed cost mitigation sale—

13 “(i) if the seller makes available open  
14 access transmission service described in  
15 subparagraph (A) or (B) of paragraph (2),  
16 or

17 “(ii) if the seller owns or operates no  
18 transmission facilities and transmission  
19 providers to the seller’s wholesale native  
20 load purchasers make available open access  
21 transmission service described in subpara-  
22 graph (A) or (B) of paragraph (2).

23 “(4) DEFINITIONS AND SPECIAL RULES.—For  
24 purposes of this subsection:

1           “(A) ON-SYSTEM PURCHASER.—The term  
2           ‘on-system purchaser’ means a person whose  
3           electric facilities or equipment are directly con-  
4           nected with transmission or distribution facili-  
5           ties which are owned by such governmental  
6           unit, and such person—

7                   “(i) purchases electric energy from  
8                   such governmental unit at retail and either  
9                   was within such unit’s distribution area in  
10                  the base year or is a person as to whom  
11                  the governmental unit has a service obliga-  
12                  tion, or

13                  “(ii) is a wholesale native load pur-  
14                  chaser from such governmental unit.

15           “(B) WHOLESALe NATIVE LOAD PUR-  
16           CHASER.—The term ‘wholesale native load pur-  
17           chaser’ means a wholesale purchaser as to  
18           whom the governmental unit had—

19                   “(i) a service obligation at wholesale  
20                   in the base year, or

21                   “(ii) an obligation in the base year  
22                   under a requirements contract, or under a  
23                   firm sales contract that has been in effect  
24                   for (or has an initial term of) at least 10  
25                   years,

1 but only to the extent that in either case such  
2 purchaser resells the electricity (I) directly at  
3 retail to persons within the purchaser's dis-  
4 tribution area or (II) indirectly through one or  
5 more intermediate wholesale purchasers (each  
6 of whom as of June 30, 2000, was a party to  
7 a requirements contract or a firm power con-  
8 tract described in clause (ii)) to retail pur-  
9 chasers in the ultimate wholesale purchaser's  
10 distribution area.

11 “(C) WHOLESALE STRANDED COST MITI-  
12 GATION SALE.—The term ‘wholesale stranded  
13 cost mitigation sale’ means one or more whole-  
14 sale sales made in accordance with the following  
15 requirements:

16 “(i) A governmental unit’s allowable  
17 sales under this subparagraph during the  
18 recovery period may not exceed the sum of  
19 its annual load losses for each year of the  
20 recovery period.

21 “(ii) The governmental unit’s annual  
22 load loss for each year of the recovery pe-  
23 riod is the amount (if any) by which—

24 “(I) sales in the base year to  
25 wholesale native load purchasers

1 which do not constitute a private busi-  
2 ness use, exceed

3 “(II) sales during that year of  
4 the recovery period to wholesale native  
5 load purchasers which do not con-  
6 stitute a private business use.

7 “(iii) If actual sales under this sub-  
8 paragraph during the recovery period are  
9 less than allowable sales under clause (i),  
10 the amount not sold (but not more than 10  
11 percent of the aggregate allowable sales  
12 under clause (i)) may be carried over and  
13 sold as wholesale stranded cost mitigation  
14 sales in the calendar year following the re-  
15 covery period.

16 “(D) RECOVERY PERIOD.—The recovery  
17 period is the 7-year period beginning with the  
18 start-up year.

19 “(E) START-UP YEAR.—The start-up year  
20 is whichever of the following calendar years the  
21 governmental unit elects:

22 “(i) The year the governmental unit  
23 first offers open transmission access.

24 “(ii) The first year in which at least  
25 10 percent of the governmental unit’s

1 wholesale customers' aggregate retail na-  
2 tive load is open to retail competition.

3 “(iii) The calendar year which in-  
4 cludes the date of the enactment of this  
5 section, if later than the year described in  
6 clause (i) or (ii).

7 “(F) PERMITTED SALES TRANSACTIONS  
8 UNDER EXISTING CONTRACTS.—A sale to a  
9 wholesale native load purchaser (other than a  
10 person to whom the governmental unit had a  
11 service obligation) under a contract which re-  
12 sulted in private business use in the base year  
13 shall be treated as a permitted sales transaction  
14 only to the extent that sales under the contract  
15 exceed the lesser of—

16 “(i) in any year the private business  
17 use that resulted from the contract during  
18 the base year, or

19 “(ii) the maximum amount of private  
20 business use which could occur (absent the  
21 enactment of this section) without causing  
22 the bonds to be private activity bonds.

23 This subparagraph shall only apply to the ex-  
24 tent that the sale is allocable to bonds issued

1 prior to the date of enactment of this section  
2 (or bonds issued to refund such bonds).

3 “(G) TIME OF SALE RULE.—For purposes  
4 of paragraphs (C)(ii) and (F), private business  
5 use shall be determined under the law in effect  
6 in the year of the sale.

7 “(H) JOINT ACTION AGENCIES.—A joint  
8 action agency, or a member of (or a wholesale  
9 native load purchaser from) a joint action agen-  
10 cy, which is entitled to make a sale described in  
11 subparagraph (A) or (B) in a year, may trans-  
12 fer the entitlement to make that sale to the  
13 member (or purchaser), or the joint action  
14 agency, respectively.

15 “(c) CERTAIN BONDS FOR TRANSMISSION AND DIS-  
16 TRIBUTION FACILITIES NOT TAX EXEMPT.—

17 “(1) GENERAL RULE.—For purposes of this  
18 title, no bond the interest on which is exempt from  
19 taxation under section 103 may be issued on or after  
20 the date of enactment of this subsection if any of the  
21 proceeds of such issue are used to finance—

22 “(A) any transmission facility which is not  
23 a local transmission facility, or

24 “(B) a start-up utility distribution facility.

1           “(2) EXCEPTIONS.—Paragraph (1) shall not  
2 apply to—

3                   “(A) any qualified bond (as defined in sec-  
4 tion 141(e)),

5                   “(B) any eligible refunding bond (as de-  
6 fined in subsection (d)(6)), or

7                   “(C) any bond issued to finance—

8                           “(i) any repair of a transmission facil-  
9 ity in service on the date of the enactment  
10 of this section, so long as the repair does  
11 not increase the voltage level over its level  
12 in the base year or increase the thermal  
13 load limit of the transmission facility by  
14 more than 3 percent over such limit in the  
15 base year,

16                           “(ii) any qualifying upgrade of a  
17 transmission facility in service on the date  
18 of the enactment of this section, or

19                           “(iii) a transmission facility necessary  
20 to comply with an obligation under a  
21 shared or reciprocal transmission agree-  
22 ment in effect on the date of enactment of  
23 this section.

24           “(3) LOCAL TRANSMISSION FACILITY DEFINI-  
25 TIONS.—For purposes of this subsection—

1           “(A) LOCAL TRANSMISSION FACILITY.—  
2           The term ‘local transmission facility’ means a  
3           transmission facility which is located within the  
4           governmental unit’s distribution area or which  
5           is, or will be, necessary to supply electricity to  
6           serve retail native load or wholesale native load  
7           of 1 or more governmental units. For purposes  
8           of this subparagraph, the distribution area of a  
9           public power authority which was created in  
10          1931 by a State statute and which, as of Janu-  
11          ary 1, 1999, owned at least one-third of the  
12          transmission circuit miles rated at 230 kV or  
13          higher in the State, shall be determined under  
14          regulations of the Secretary.

15          “(B) RETAIL NATIVE LOAD.—The term  
16          ‘retail native load’ with respect to a govern-  
17          mental unit (or an entity other than a govern-  
18          mental unit that operates an electric utility) is  
19          the electric load of end-users in the distribution  
20          area of the governmental unit or entity.

21          “(C) WHOLESALE NATIVE LOAD.—The  
22          term ‘wholesale native load’ is—

23                  “(i) the retail native load of such  
24                  unit’s wholesale native load purchasers (or

1 of an ultimate wholesale purchaser de-  
2 scribed in subsection (b)(4)(B)(ii)), and

3 “(ii) the electric load of purchasers  
4 (not described in clause (i)) under whole-  
5 sale requirements contracts which—

6 “(I) do not constitute private  
7 business use under the rules in effect  
8 absent this subsection, and

9 “(II) were in effect in the base  
10 year.

11 “(D) NECESSARY TO SERVE LOAD.—For  
12 purposes of determining whether a transmission  
13 or distribution facility is, or will be, necessary  
14 to supply electricity to retail native load or  
15 wholesale native load—

16 “(i) the governmental unit’s available  
17 transmission rights shall be taken into ac-  
18 count,

19 “(ii) electric reliability standards or  
20 requirements of national or regional reli-  
21 ability organizations, regional transmission  
22 organizations and the Electric Reliability  
23 Council of Texas shall be taken into ac-  
24 count, and

1           “(iii) transmission, siting and con-  
2           struction decisions of regional transmission  
3           organizations or independent system opera-  
4           tors and State and Federal regulatory and  
5           siting agencies, after a proceeding that  
6           provides for public input, shall be pre-  
7           sumptive evidence regarding whether  
8           transmission facilities are necessary to  
9           serve native load.

10           “(E) QUALIFYING UPGRADE.—The term  
11           ‘qualifying upgrade’ means an improvement or  
12           addition to transmission facilities of the govern-  
13           mental unit in service on the date of enactment  
14           of this section which is ordered or approved by  
15           a regional transmission organization, by an  
16           independent system operator, or by a State reg-  
17           ulatory or siting agency, after a proceeding that  
18           provides for public input.

19           “(4) START-UP UTILITY DISTRIBUTION FACIL-  
20           ITY DEFINED.—For purposes of this subsection, the  
21           term ‘start-up utility distribution facility’ means any  
22           distribution facility to provide electric service to the  
23           public that is placed in service—

1           “(A) by a governmental unit that did not  
2           operate an electric utility on the date of the en-  
3           actment of this section, and

4           “(B) during the first ten years after the  
5           date such governmental unit begins operating  
6           an electric utility.

7           A governmental unit is treated as having operated  
8           an electric utility on the date of the enactment of  
9           this section if it operates electric output facilities  
10          which were operated by another governmental unit  
11          to provide electric service to the public on such date.

12          “(d) DEFINITIONS; SPECIAL RULES.—For purposes  
13 of this section—

14           “(1) BASE YEAR.—The term ‘base year’ means  
15           the calendar year which includes the date of the en-  
16           actment of this section or, at the election of the gov-  
17           ernmental unit, either of the 2 immediately pre-  
18           ceding calendar years.

19           “(2) DISTRIBUTION AREA.—The term ‘distribu-  
20           tion area’ means the area in which a governmental  
21           unit (or an entity other than a governmental unit  
22           that operates an electric utility) owns distribution  
23           facilities.

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

1 that is an electric generation, transmission, or dis-  
2 tribution facility.

3 “(4) DISTRIBUTION FACILITY.—The term ‘dis-  
4 tribution facility’ means an electric output facility  
5 that is not a generation or transmission facility.

6 “(5) TRANSMISSION FACILITY.—The term  
7 ‘transmission facility’ means an electric output facil-  
8 ity (other than a generation facility) that operates at  
9 an electric voltage of 69 kV or greater, except that  
10 the owner of the facility may elect to treat any out-  
11 put facility that the FERC determines is a trans-  
12 mission facility under standards applied by FERC  
13 under the Federal Power Act as a transmission facil-  
14 ity for purposes of this section.

15 “(6) ELIGIBLE REFUNDING BOND.—The term  
16 ‘eligible refunding bond’ means any State or local  
17 bond issued after an election described in subsection  
18 (a) that directly or indirectly refunds any bond de-  
19 scribed in section 103(a) (other than a qualified  
20 bond) issued before such election, if the weighted av-  
21 erage maturity of the issue of which the refunding  
22 bond is a part does not exceed the remaining weight-  
23 ed average maturity of the bonds issued before the  
24 election. In applying such term for purposes of sub-  
25 section (c)(2)(B), the date of election shall be

1 deemed to be the date of the enactment of this sec-  
2 tion.

3 “(7) FERC.—The term ‘FERC’ means the  
4 Federal Energy Regulatory Commission.

5 “(8) GOVERNMENT-OWNED FACILITY.—An elec-  
6 tric output facility shall be treated as ‘owned by a  
7 governmental unit’ if it is an electric output facility  
8 that either is—

9 “(A) owned or leased by such govern-  
10 mental unit, or

11 “(B) a transmission facility in which the  
12 governmental unit acquired before the base year  
13 long-term firm capacity for the purposes of  
14 serving customers to which the unit had at that  
15 time either—

16 “(i) a service obligation, or

17 “(ii) an obligation under a require-  
18 ments contract.

19 “(9) REPAIR.—The term ‘repair’ shall include  
20 replacement of components of an electric output fa-  
21 cility, but shall not include replacement of the facil-  
22 ity either at one time or incrementally.

23 “(10) SERVICE OBLIGATION.—The term ‘service  
24 obligation’ means an obligation under State or Fed-  
25 eral law (exclusive of an obligation arising solely

1 under a contract entered into with a person) to pro-  
 2 vide electric distribution services or electric sales  
 3 service, as provided in such law.

4 “(11) CONTRACT MODIFICATIONS.—A contract  
 5 is treated as a new contract if it is substantially  
 6 modified.

7 “(e) SAVINGS CLAUSE.—Subsection (b) does not af-  
 8 fect the applicability of section 141 to (or the Secretary’s  
 9 authority to prescribe, amend or rescind regulations re-  
 10 specting) (1) any transaction that is not a permitted open  
 11 access transaction or permitted sales transaction, or (2)  
 12 any facilities other than electric output facilities.”.

13 (b) REPEAL OF EXCEPTION FOR CERTAIN NON-  
 14 GOVERNMENTAL ELECTRIC OUTPUT FACILITIES.—Sec-  
 15 tion 141(d)(5) of the Internal Revenue Code of 1986 is  
 16 amended by inserting “(except in the case of an electric  
 17 output facility that is a distribution facility),” after “this  
 18 subsection”.

19 (c) CONFORMING AMENDMENT.—The table of sec-  
 20 tions for subpart A of part IV of subchapter B of chapter  
 21 1 of the Internal Revenue Code of 1986 is amended by  
 22 inserting after the item relating to section 141 the fol-  
 23 lowing new item:

“Sec. 141A. Electric output facilities.”

24 (d) EFFECTIVE DATE; APPLICABILITY.—

1           (1) EFFECTIVE DATE.—The amendments made  
2           by this section take effect on the date of enactment  
3           of this Act, except that a governmental unit may  
4           elect to apply paragraphs (1) and (2) of section  
5           141A(b), as added by subsection (a), with respect to  
6           permitted open access activities entered into on or  
7           after April 14, 1996.

8           (2) CERTAIN EXISTING AGREEMENTS.—The  
9           amendment made by subsection (b) (relating to re-  
10          peal of the exception for certain nongovernmental  
11          output facilities) does not apply to any acquisition of  
12          facilities made pursuant to an agreement that was  
13          entered into before the date of the enactment of this  
14          Act.

15          (3) APPLICABILITY.—References in this Act to  
16          sections of the Internal Revenue Code of 1986, shall  
17          be deemed to include references to comparable sec-  
18          tions of the Internal Revenue Code of 1954.

19 **SEC. 3. INDEPENDENT TRANSMISSION COMPANIES.**

20          (a) SALES OR DISPOSITIONS TO IMPLEMENT FED-  
21          ERAL ENERGY REGULATORY COMMISSION OR STATE  
22          ELECTRIC RESTRUCTURING POLICY.—

23               (1) IN GENERAL.—Section 1033 of the Internal  
24          Revenue Code of 1986 (relating to involuntary con-  
25          versions) is amended by redesignating subsection (k)

1 as subsection (l), and by inserting after subsection  
2 (j) the following new subsection:

3 “(k) SALES OR DISPOSITIONS TO IMPLEMENT FED-  
4 ERAL ENERGY REGULATORY COMMISSION OR STATE  
5 ELECTRIC RESTRUCTURING POLICY.—

6 “(1) IN GENERAL.—For purposes of this sub-  
7 title, if a taxpayer elects the application of this sub-  
8 section to a qualifying electric transmission trans-  
9 action and the proceeds received from such trans-  
10 action are invested in exempt utility property, such  
11 transaction shall be treated as an involuntary con-  
12 version to which this section applies. The part of the  
13 gain, if any, on a sale or exchange to which section  
14 1033 is not applied by reason of section 1245 shall  
15 nevertheless not be recognized, if the taxpayer so  
16 elects, to the extent that it is applied to reduce the  
17 basis for determining gain or loss on sale or ex-  
18 change of property, of a character subject to the al-  
19 lowance for depreciation under section 167, remain-  
20 ing in the hands of the taxpayer immediately after  
21 the sale or exchange, or acquired in the same tax-  
22 able year. The manner and amount of such reduc-  
23 tion shall be determined under regulations pre-  
24 scribed by the Secretary. Any election made by the  
25 taxpayer under this section shall be made by a state-

1 ment to that effect in his return for the taxable year  
2 in which the sale or exchange takes place, and such  
3 election shall be binding for the taxable year and all  
4 subsequent taxable years.

5 “(2) EXTENSION OF REPLACEMENT PERIOD.—  
6 In the case of any involuntary conversion described  
7 in paragraph (1), subsection (a)(2)(B) shall be ap-  
8 plied by substituting ‘4 years’ for ‘2 years’ in clause  
9 (i) thereof.

10 “(3) QUALIFYING ELECTRIC TRANSMISSION  
11 TRANSACTION.—For purposes of this subsection, the  
12 term ‘qualifying electric transmission transaction’  
13 means any sale or other disposition of property used  
14 in the trade or business of electric transmission, or  
15 an ownership interest in a person whose primary  
16 trade or business consists of providing electric trans-  
17 mission services, to another person that is an inde-  
18 pendent transmission company.

19 “(4) INDEPENDENT TRANSMISSION COM-  
20 PANY.—For purposes of this subsection, the term  
21 ‘independent transmission company’ means—

22 “(A) a regional transmission organization  
23 approved by the Federal Energy Regulatory  
24 Commission,

25 “(B) a person—

1           “(i) who the Federal Energy Regu-  
2           latory Commission determines in its au-  
3           thorization of the transaction under section  
4           203 of the Federal Power Act (16 U.S.C.  
5           823b) is not a market participant within  
6           the meaning of such Commission’s rules  
7           applicable to regional transmission organi-  
8           zations, and

9           “(ii) whose transmission facilities to  
10          which the election under this subsection  
11          applies are placed under the operational  
12          control of a Federal Energy Regulatory  
13          Commission-approved regional trans-  
14          mission organization within the period  
15          specified in such order, but not later than  
16          the close of the replacement period, or

17          “(C) in the case of facilities subject to the  
18          exclusive jurisdiction of the Public Utility Com-  
19          mission of Texas, a person which is approved by  
20          that Commission as consistent with Texas State  
21          law regarding an independent transmission or-  
22          ganization.

23          “(5) EXEMPT UTILITY PROPERTY.—For pur-  
24          poses of this subsection, the term ‘exempt utility  
25          property’ means—

1           “(A) property used in the trade or business  
2 of generating, transmitting, distributing, or sell-  
3 ing electricity or producing, transmitting, dis-  
4 tributing, or selling natural gas, or

5           “(B) stock acquired in the acquisition of  
6 control of a corporation whose primary trade or  
7 business consists of generating, transmitting,  
8 distributing, or selling electricity or producing,  
9 transmitting, distributing, or selling natural  
10 gas.

11           “(6) SPECIAL RULES FOR CONSOLIDATED  
12 GROUPS.—

13           “(A) INVESTMENT BY QUALIFYING GROUP  
14 MEMBERS.—

15           “(i) IN GENERAL.—This subsection  
16 shall apply to a qualifying electric trans-  
17 mission transaction engaged in by a tax-  
18 payer if the proceeds are invested in ex-  
19 empt utility property by a qualifying group  
20 member.

21           “(ii) QUALIFYING GROUP MEMBER.—  
22 For purposes of this subparagraph, the  
23 term ‘qualifying group member’ means any  
24 member of a consolidated group within the  
25 meaning of section 1502 and the regula-

1                   tions promulgated thereunder of which the  
2                   taxpayer is also a member.

3                   “(B) COORDINATION WITH CONSOLIDATED  
4                   RETURN PROVISIONS.—A sale or other disposi-  
5                   tion of electric transmission property or an  
6                   ownership interest in a qualifying electric trans-  
7                   mission transaction, where an election is made  
8                   under this subsection, shall not result in the  
9                   recognition of income or gain under the consoli-  
10                  dated return provisions of subchapter A of  
11                  chapter 6. The Secretary shall prescribe such  
12                  regulations as may be necessary to provide for  
13                  the treatment of any exempt utility property re-  
14                  ceived in a qualifying electric transmission  
15                  transaction as successor assets subject to the  
16                  application of such consolidated return provi-  
17                  sions.

18                  “(7) ELECTION.—Any election made by a tax-  
19                  payer under this subsection shall be made by a  
20                  statement to that effect in the return for the taxable  
21                  year in which the qualifying electric transmission  
22                  transaction takes place in such form and manner as  
23                  the Secretary shall prescribe, and such election shall  
24                  be binding for that taxable year and all subsequent  
25                  taxable years.”

1           (2) SAVINGS CLAUSE.—Nothing in section  
 2           1033(k) of the Internal Revenue Code of 1986, as  
 3           added by subsection (a), shall affect Federal or  
 4           State regulatory policy respecting the extent to  
 5           which any acquisition premium paid in connection  
 6           with the purchase of an asset in a qualifying electric  
 7           transmission transaction can be recovered in rates.

8           (3) EFFECTIVE DATE.—The amendments made  
 9           by this subsection shall apply to transactions occur-  
 10          ring after the date of the enactment of this Act.

11          (b) DISTRIBUTIONS OF STOCK TO IMPLEMENT FED-  
 12          ERAL ENERGY REGULATORY COMMISSION OR STATE  
 13          ELECTRIC RESTRUCTURING POLICY.—

14           (1) IN GENERAL.—Section 355(e)(4) of the In-  
 15          ternal Revenue Code of 1986 is amended by redesign-  
 16          ating subparagraphs (C), (D), and (E) as subpara-  
 17          graphs (D), (E), and (F), respectively, and by in-  
 18          serting after subparagraph (B) the following new  
 19          subparagraph:

20                   “(C) DISTRIBUTIONS OF STOCK TO IMPLE-  
 21                   MENT FEDERAL ENERGY REGULATORY COMMIS-  
 22                   SION OR STATE ELECTRIC RESTRUCTURING  
 23                   POLICY.—

24                           “(i) IN GENERAL.—Paragraph (1)  
 25                           shall not apply to any distribution that is

1 a qualifying electric transmission trans-  
2 action. For purposes of this subparagraph,  
3 a ‘qualifying electric transmission trans-  
4 action’ means any distribution of stock in  
5 a corporation whose primary trade or busi-  
6 ness consists of providing electric trans-  
7 mission services, where such stock is later  
8 acquired (or where the assets of such cor-  
9 poration are later acquired) by another  
10 person that is an independent transmission  
11 company.

12 “(ii) INDEPENDENT TRANSMISSION  
13 COMPANY.—For purposes of this sub-  
14 section, the term ‘independent trans-  
15 mission company’ means—

16 “(I) a regional transmission or-  
17 ganization approved by the Federal  
18 Energy Regulatory Commission,

19 “(II) a person who the Federal  
20 Energy Regulatory Commission deter-  
21 mines in its authorization of the  
22 transaction under section 203 of the  
23 Federal Power Act (16 U.S.C. 824b)  
24 is not a market participant within the  
25 meaning of such Commission’s rules

1 applicable to regional transmission or-  
2 ganizations, and whose transmission  
3 facilities transferred as a part of such  
4 qualifying electric transmission trans-  
5 action are placed under the oper-  
6 ational control of a Federal Energy  
7 Regulatory Commission-approved re-  
8 gional transmission organization with-  
9 in the period specified in such order,  
10 but not later than the close of the re-  
11 placement period (as defined in sec-  
12 tion 1033(k)(2)), or

13 “(III) in the case of facilities  
14 subject to the exclusive jurisdiction of  
15 the Public Utility Commission of  
16 Texas, a person that is approved by  
17 that Commission as consistent with  
18 Texas State law regarding an inde-  
19 pendent transmission organization.”

20 (2) EFFECTIVE DATE.—The amendments made  
21 by this subsection shall apply to distributions occur-  
22 ring after the date of the enactment of this Act.

1 **SEC. 4. CERTAIN AMOUNTS RECEIVED BY ELECTRIC UTILI-**  
2 **TIES EXCLUDED FROM GROSS INCOME AS**  
3 **CONTRIBUTIONS TO CAPITAL.**

4 (a) IN GENERAL.—Subsection (c) of section 118 of  
5 the Internal Revenue Code of 1986 (relating to contribu-  
6 tions to the capital of a corporation) is amended—

7 (1) by striking “WATER AND SEWAGE DIS-  
8 POSAL” in the heading, and inserting “CERTAIN”,

9 (2) by striking “water or,” in the matter pre-  
10 ceding subparagraph (A) of paragraph (1) and in-  
11 serting “electric energy, water, or”,

12 (3) by striking “water or” in paragraph  
13 (1)(B) and inserting “electric energy (but not includ-  
14 ing assets used in the generation of electricity),  
15 water, or”,

16 (4) by striking “water or” in paragraph  
17 (2)(A)(ii) and inserting “electric energy (but not in-  
18 cluding assets used in the generation of electricity),  
19 water, or”,

20 (5) by inserting “such term shall include  
21 amounts paid as customer connection fees (including  
22 amounts paid to connect the customer’s line to an  
23 electric line or a main water or sewer line) and”  
24 after “except that” in paragraph (3)(A), and

25 (6) by striking “water or” in paragraph (3)(C)  
26 and inserting “electric energy, water, or”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to amounts received after the date  
3 of the enactment of this Act.

4 **SEC. 5. TAX TREATMENT OF NUCLEAR DECOMMISSIONING**  
5 **FUNDS.**

6 (a) INCREASE IN AMOUNT PERMITTED TO BE PAID  
7 INTO NUCLEAR DECOMMISSIONING RESERVE FUND.—  
8 Subsection (b) of section 468A of the Internal Revenue  
9 Code of 1986 (relating to special rules for nuclear decom-  
10 missioning costs) is amended to read as follows:

11 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

12 “(1) IN GENERAL.—The amount which a tax-  
13 payer may pay into the Fund for any taxable year  
14 during the funding period shall not exceed the level  
15 funding amount determined pursuant to subsection  
16 (d), except—

17 “(A) where the taxpayer is permitted by  
18 Federal or State law or regulation (including  
19 authorization by a public service commission) to  
20 charge customers a greater amount for nuclear  
21 decommissioning costs, in which case the tax-  
22 payer may pay into the Fund such greater  
23 amount, or

24 “(B) in connection with the transfer of a  
25 nuclear powerplant, where the transferor or

1 transferee (or both) is required pursuant to the  
2 terms of the transfer to contribute a greater  
3 amount for nuclear decommissioning costs, in  
4 which case the transferor or transferee (or  
5 both) may pay into the Fund such greater  
6 amount.

7 “(2) CONTRIBUTIONS AFTER FUNDING PE-  
8 RIOD.—Notwithstanding any other provision of this  
9 section, a taxpayer may make deductible payments  
10 to the Fund in any taxable year between the end of  
11 the funding period and the termination of the license  
12 issued by the Nuclear Regulatory Commission for  
13 the nuclear powerplant to which the Fund relates  
14 provided such payments do not cause the assets of  
15 the Fund to exceed the nuclear decommissioning  
16 costs allocable to the taxpayer’s current or former  
17 interest in the nuclear powerplant to which the Fund  
18 relates. The foregoing limitation shall be applied by  
19 taking into account a reasonable rate of inflation for  
20 the nuclear decommissioning costs and a reasonable  
21 after-tax rate of return on the assets of the Fund  
22 until such assets are anticipated to be expended.”

23 (b) DEDUCTION FOR NUCLEAR DECOMMISSIONING  
24 COSTS WHEN PAID.—Paragraph (2) of section 468A(c)  
25 of the Internal Revenue Code of 1986 (relating to income

1 and deductions of the taxpayer) is amended to read as  
2 follows:

3           “(2) DEDUCTION OF NUCLEAR DECOMMISS-  
4           SIONING COSTS.—In addition to any deduction under  
5           subsection (a), nuclear decommissioning costs paid  
6           or incurred by the taxpayer during any taxable year  
7           shall constitute ordinary and necessary expenses in  
8           carrying on a trade or business under section 162.”

9           (c) LEVEL FUNDING AMOUNTS.—Subsection (d) of  
10 section 468A of the Internal Revenue Code of 1986 is  
11 amended to read as follows:

12           “(d) LEVEL FUNDING AMOUNTS.—

13           “(1) ANNUAL AMOUNTS.—For purposes of this  
14           section, the level funding amount for any taxable  
15           year shall equal the annual amount required to be  
16           contributed to the Fund in each year remaining in  
17           the funding period in order for the Fund to accumu-  
18           late the nuclear decommissioning costs allocable to  
19           the taxpayer’s current or former interest in the nu-  
20           clear powerplant to which the Fund relates. The an-  
21           nual amount described in the foregoing sentence  
22           shall be calculated by taking into account a reason-  
23           able rate of inflation for the nuclear decommis-  
24           sioning costs and a reasonable after-tax rate of re-

1 turn on the assets of the Fund until such assets are  
2 anticipated to be expended.

3 “(2) FUNDING PERIOD.—The funding period  
4 for a Fund shall end on the last day of the last tax-  
5 able year of the expected operating life of the nu-  
6 clear powerplant.

7 “(3) NUCLEAR DECOMMISSIONING COSTS.—For  
8 purposes of this section—

9 “(A) IN GENERAL.—The term ‘nuclear de-  
10 commissioning costs’ means all costs to be in-  
11 curred in connection with entombing, decon-  
12 taminating, dismantling, removing, and dis-  
13 posing of a nuclear powerplant, and shall in-  
14 clude all associated preparation, security, fuel  
15 storage, and radiation monitoring costs. Such  
16 term shall include all such costs which, outside  
17 of the decommissioning context, might other-  
18 wise be capital expenditures.

19 “(B) IDENTIFICATION OF COSTS.—The  
20 taxpayer may identify nuclear decommissioning  
21 costs by reference either to a site-specific engi-  
22 neering study or to the financial assurance  
23 amount calculated pursuant to section 50.75 of  
24 title 10 of the Code of Federal Regulations.”.

1           (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to amounts paid after June 30,  
3 2000, in taxable years ending after such date.

○