

So let us all in silence kneel,
And to our God we pray,
For lasting peace to those who fell,
While we go home to stay.

TAX TREATMENT OF TAX-EXEMPT
BONDS UNDER ELECTRICITY DE-
REGULATION

HON. J.D. HAYWORTH

OF ARIZONA

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 11, 1999

Mr. HAYWORTH. Mr. Speaker, today my colleague Mr. MATSUI and I are introducing the Bond Fairness and Protection Act of 1999, a bipartisan compromise approach to addressing the tax consequences of electricity deregulation for tax-exempt bonds issued by municipally- or state-owned ("publicly-owned") utilities for the generation, transmission and distribution of electricity.

Despite the lack of federal legislation in the 105th Congress in this area, 18 states have already gone forward and begun to deregulate electricity at the state and local level. The era of competition has already started both for publicly-owned and investor-owned utilities operating in these states. Our home states of Arizona and California have taken significant steps down the road to deregulation. In Arizona, Salt River Project, a Phoenix-based municipal utility, has already opened up its territory to competition. While deregulation faced a setback last month, the Arizona Corporation Commission continues to work on a deregulation plan for all Arizona utilities that will benefit all ratepayers. In California, a statewide deregulation plan is already in operation.

Publicly-owned utilities have operated until now under a strict regime of federal tax rules governing their ability to issue tax-exempt bonds. These rules were enacted in an era that did not contemplate electricity deregulation. These so-called "private use" rules limit the amount of power that publicly-owned utilities may sell to private entities through facilities financed with tax-exempt bonds. For years, the private use rules were cumbersome but manageable. As states deregulate, however, the private use rules are threatening many communities that are served by public power with significant financial penalties as they adjust to the changing marketplace. In effect, the rules are forcing publicly-owned utilities to face the prospect of violating the private use rules, or walling off their customers from competition, and in either case raising rates to consumers—the precise opposite of what deregulation is supposed to achieve. The consumer can only lose when this happens.

The legislation that we are introducing today would protect all consumers by grandfathering outstanding tax-exempt bonds, but only if the issuing municipal 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 distribution facilities, which generally would still be regulated under most deregulation schemes. Publicly-owned utilities that do not make this irrevocable election would continue to operate under a clarified version of existing 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 deregulation while keeping the interests 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 restrictions in a deregulated world, 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 deregulated 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 new deregulated world of electricity.

In addition, for those concerned about the environment, it provides incentives to deliver electricity efficiently and encourages the retrofitting of aging facilities. Most importantly, for consumers, it allows competition to thrive while protecting local choice and local control.

We point out to our colleagues that identical legislation, S. 386, has been introduced in the other body by Senators GORTON, KERREY, JEFFORDS, HOLLINGS, THURMOND, HARKIN, MURRAY, SMITH of Oregon, JOHNSON, WYDEN, LEAHY and HAGEL.

Mr. Speaker, we plan to work with all interested parties, and most importantly American consumers, to ensure that we end up with the fairest, most reasonable solution to this complex problem. We want electricity deregulation to be a good deal for everyone involved, especially the American consumer, who certainly deserves the lower electric bills that a competitive marketplace is supposed to provide. We believe this legislation addresses all of these concerns and promotes fair competition in the electricity industry. We urge our colleagues to join us in cosponsoring this legislation.

Mr. Speaker, I submit the text of the bill to be printed in the RECORD.

H.R.—

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 an 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 that 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, 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,

“(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 minimis 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) QUALIFIED 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 this Act to sections of the Internal Revenue Code of 1986 shall be deemed to include references to comparable sections of the Internal Revenue Code of 1954.

(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.

COMMENDING SAUL BENNETT ON THE PUBLICATION OF “NEW FIELDS AND OTHER STONES/ON A CHILD’S DEATH”

HON. MAURICE D. HINCHEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 11, 1999

Mr. HINCHEY. Mr. Speaker, on August 31, 1998, the United States Senate adopted Senate Resolution 193 of the 2nd Session of the 105th Congress, as follows:

“Whereas approximately 79,000 infants, children and young adults die each year in the United States;

“Whereas the death of a child is one of the greatest tragedies suffered by a family; and

“Whereas support and understanding are critical to the healing process of a bereaved family; Now, therefore, be it

Resolved, That the Senate—

(1) designates December 13, 1998 as “National Children’s Memorial Day,” and

(2) requests that the President issue a proclamation designating December 13, 1998 as “National Children’s Memorial Day” and calls on the people of the United States to observe the day with appropriate ceremonies and activities in remembrance of infants, children, teenagers and young adults who have died.

Against the backdrop of this Resolution, I would like to commend a constituent of mine, Mr. Saul Bennett, on the publication of his book “New Fields and Other Stones/On a Child’s Death.” Mr. Bennett is himself a bereaved parent whose daughter Sara Bennett, died suddenly at the age of 24 from a brain aneurysm on July 14, 1994.

“New Fields and Other Stones” is comprised of 50 poems that eloquently and chronologically address life for an American family following the loss of a child. The book already has prompted memorable favorable reviews and laudatory comments by leading bereavement counselors and therapists. In addition, numerous newspaper articles and broadcasters have commented on the book’s importance and power. Moreover, on reading these articles, parents who have also lost a child, have contacted the author to express their camaraderie and gratitude.

Mr. Speaker, losing a loved one is certainly one of the most traumatic experiences many of us will face in our lives. The void left behind is often too large to fill and it is usually quite difficult to soothe the pain that we had been afflicted with. Saul Bennett has not only worked diligently to heal his own wounds, he has reached out to help others who have faced such tragedy. I would like to commend Mr. Bennett for his personal strength and compassion and I applaud his efforts to help others deal with a loss of their loved ones.

54TH ANNIVERSARY OF FLAG RAISING ON IWO JIMA

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 11, 1999

Mr. GILMAN. Mr. Speaker, I would like to take this opportunity to bring to the attention of our distinguished colleagues that February 23rd will be the 54th anniversary of the raising

of our American flag on Iwo Jima. It has often been said that the photograph of the flag raising on Mt. Suribachi is the most widely duplicated and famous photograph ever taken. This may or may not be true, but I do not think anyone can deny it is to this day one of the most inspirational.

It was 54 years ago this month that 70,000 American soldiers stormed the tiny Pacific island of Iwo Jima in an effort to secure a safe place for the emergency landing of American bombers en route to strategic targets in Japan. A small island in the Pacific Ocean, Iwo Jima was a vital strategic point for both the Americans and Japanese due to its location for these bombings.

I am among the Americans who participated in our war effort in the Pacific theater. I fully recall how those of us who flew bombing missions over Japan were grateful, thanks to our courageous Armed Forces, that Iwo Jima had come into our control, although with great sorrow for the tremendous sacrifice that is conquest entailed. Iwo Jima allowed us a reasonable emergency landing base to refuel and to repair our aircraft damages incurred during our missions over Japan.

It is appropriate that all Americans should join in honoring the 6,000 American lives that were sacrificed in that famous battle that helped our nation to achieve victory in the Pacific theater. The photo of the 5 Marines and 1 sailor struggling to raise the stars and stripes over Iwo Jima while battling against the brutal Pacific winds has become an enduring image to all Americans of those who gave their lives so that others may live free during that long and horrible war.

Perched high atop Mount Suribachi, our nation’s flag served as an instant memorial to the dead and wounded of our great nation reminding us of the expensive price we paid for that victory.

Mr. Speaker, in closing, I invite all of our colleagues to join in remembrance of that historic day and in extending our deepest condolences and gratitude to the families of the fallen soldiers of the battle of Iwo Jima.

ARIZONA STATEHOOD AND ENABLING ACT AMENDMENTS OF 1999

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 11, 1999

Mr. STUMP. Mr. Speaker, Sunday, February 14, 1999, marks the eighty-seventh anniversary of statehood for my home state of Arizona. On behalf of my colleagues in the Arizona House delegation, I am pleased to introduce the following piece of legislation to mark this historic event.

Mr. Speaker, the proposed bill amends the 1910 act of Congress that granted the State of Arizona’s entry into the Union. The bill makes two minor changes to the Arizona Enabling Act relating to the administration of state trust funds. This bill is supported by the Governor of Arizona, our State Treasurer, the Arizona State Legislature and most importantly the citizens of Arizona through their approval of this change through the ballot process.

Mr. Speaker, on November 3, 1998, Arizona voters passed Proposition 102 to amend the Arizona Enabling Act. The Enabling Act required the State of Arizona to establish a permanent fund for collecting the proceeds from