



# Office of the Governor

JIM GIBBONS  
GOVERNOR

February 4, 2009

The Honorable Barack Obama  
President of the United States  
The White House  
1600 Pennsylvania Ave, N.W.  
Washington, DC 20500

The Honorable Harry Reid  
Senator of Nevada  
Senate Majority Leader  
528 HSOB  
Washington, DC 20510

The Honorable Nancy Pelosi  
Representative of California  
Speaker, U.S. House of Representatives  
2371 RHOB H-204  
Washington, DC 20515

**RE:** A Proposal to Amend the Internal Revenue Code of 1986 for Tax exempt private activity bond financing for qualified renewable energy transmission facilities as part of American Recovery and Reinvestment Plan: Clean, Efficient, American Energy

Dear President Obama, Majority Leader Reid, and Speaker Pelosi:

I am writing you today to express my support for a coordinated congressional effort to turn around our nation's economy. Historically, we have emerged from economic challenges stronger through diversification. Hence, I strongly support your focus on developing our bountiful renewable energy resources, creating jobs, and becoming an energy independent nation.

Our opportunities in our nation for renewable and clean energy are endless. To move to our renewable-powered future, we need to overcome the challenges caused by long permitting processes, inadequate transmission infrastructure, and limited incentives.

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We in Nevada are making progress in all of our major challenge areas and have already started the process to streamline Nevada's permitting process for the development of renewable energy.

I also created the Renewable Energy Transmission Access Advisory Committee (RETAAC) in May 2007 to identify renewable energy zones, review our current transmission capabilities, and identify ways to ensure that our renewable resources are brought efficiently and cost effectively to the market. We support and collaborate with WGA for the Western Renewable Energy Zones project.

As is true throughout most of the western United States, major electric transmission system improvements are needed in Nevada for the development and use of geothermal, solar, wind, biomass and other renewable energy resources. As also is true of most States in the western United States, FERC has not approved any independent system operator or regional transmission organization to own or operate electric transmission facilities in Nevada. To date, private developers and utilities have been unable to undertake these ambitious projects.

The State of Nevada is now forming a nonprofit corporation, controlled by the State of Nevada, to develop and own one or more major new transmission lines and associated facilities in Nevada. A principal purpose of these facilities will be to transmit or enable the transmission of electricity from renewable energy resources.

Similarly, the State of New Mexico adopted legislation establishing the New Mexico Renewable Energy Transmission Authority for similar purposes. Programs encouraging the development of transmission facilities for renewable energy resources also are being pursued actively by the States of Colorado, Texas, California and other States in the western United States.

Especially during this time of turmoil in the capital markets, successful development of projects for transmission of electricity from renewable energy resources requires that the owner be allowed to enter into long-term, market-rate transmission service contracts with public and private purchasers of output from renewable energy resources and/or with producers of electricity from renewable energy resources. Given the anticipated scope of these projects, and that project costs ultimately will be born by retail consumers of electricity, it also is important that federally tax-exempt financing be available to fund the costs of acquiring or constructing these projects. Nationally recognized bond counsel has advised that these two objectives cannot both be met under existing Federal tax laws.

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Attached are proposed amendments to Sections 142 and 146 of the Internal Revenue Code of 1986 (the "Code") that would allow these two objectives to be met. This proposal is limited to tax-exempt financing for electric transmission facilities that are both:

1. owned by an agency or instrumentality of a State or local government or by a governmentally-controlled nonprofit corporation that is recognized by the IRS as "charitable" under Section 501(c)(3) of the Code; and
2. certified by a Federal, State or local agency, exercising jurisdiction, as being acquired or constructed in furtherance of the purpose of transmitting or enabling the transmission of electricity from renewable energy resources.

I hope you will consider this proposed amendment as part of the American Recovery and Reinvestment Plan.

Sincerely,

A handwritten signature in blue ink, reading "Jim Gibbons". The signature is fluid and cursive, with the first name "Jim" and last name "Gibbons" clearly legible.

JIM GIBBONS  
Governor

**CC:** Senator John Ensign, (R-NV)  
Congresswoman Shelley Berkley, (D-NV)  
Congressman Dean Heller, (R-NV)  
Congresswoman Dina Titus, (D-NV)

**Enclosed:** A Proposal to Amend the Internal Revenue Code of 1986 for  
Tax exempt private activity bond financing for qualified renewable energy  
transmission facilities (3 pages)

# **TAX-EXEMPT PRIVATE ACTIVITY BOND FINANCING FOR QUALIFIED RENEWABLE ENERGY TRANSMISSION FACILITIES**

## **A Proposal to Amend the Internal Revenue Code of 1986**

Jim Gibbons, Governor of Nevada  
February 4, 2009

Amend Section 142(a) to read as follows:

“GENERAL RULE. --For purposes of this part, the term ‘exempt facility bond’ means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide --

- (1) airports,
- (2) docks and wharves,
- (3) mass commuting facilities,
- (4) facilities for the furnishing of water,
- (5) sewage facilities,
- (6) solid waste disposal facilities,
- (7) qualified residential rental projects,
- (8) facilities for the local furnishing of electric energy or gas,
- (9) local district heating or cooling facilities,
- (10) qualified hazardous waste facilities,
- (11) high-speed intercity rail facilities,
- (12) environmental enhancements of hydroelectric generating facilities,
- (13) qualified public educational facilities,
- (14) qualified green building and sustainable design projects, ~~or~~
- (15) qualified highway or surface freight transfer facilities, or
- (16) qualified renewable energy transmission facilities.”

Amend Section 142(b) to read as follows:

“SPECIAL EXEMPT FACILITY BOND RULES. --For purposes of subsection (a) --

(1) CERTAIN FACILITIES MUST BE GOVERNMENTALLY OWNED. --

(A) IN GENERAL. --A facility shall be treated as described in paragraph (1), (2), (3), or (12) of subsection (a) only if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit. A facility shall be treated as described in paragraph (16) of subsection (a) only if all of the property to be financed by the net proceeds of the issue is to be owned either by a governmental unit, by an agency or instrumentality of a governmental unit, or by an organization described in section 501(c)(3) which is controlled by a governmental unit.

(B) SAFE HARBOR FOR LEASES AND MANAGEMENT CONTRACTS. --For purposes of subparagraph (A), property leased by a governmental unit, by an agency or instrumentality of a governmental unit, or by an organization described in section 501(c)(3) shall be treated as owned by such ~~governmental unit~~entity if -

(i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property,

(ii) the lease term (as defined in section 168(i)(3)) is not more than 80 percent of the reasonably expected economic life of the property (as determined under section 147(b)), and

(iii) the lessee has no option to purchase the property other than at fair market value (as of the time such option is exercised).

Rules similar to the rules of the preceding sentence shall apply to transmission service contracts, management contracts and similar types of operating agreements.

(2) LIMITATION ON OFFICE SPACE. --An office shall not be treated as described in a paragraph of subsection (a) unless --

(A) the office is located on the premises of a facility described in such a paragraph, and

(b)(2)(B) not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations at such facility.”



Add a new Section 142(n) to read as follows:

“QUALIFIED RENEWABLE ENERGY TRANSMISSION FACILITIES. -- For purposes of subsection (a)(16), the term ‘qualified renewable energy transmission facility’ means any project which a Federal, State or local governmental agency, exercising jurisdiction, has certified is being acquired or constructed in furtherance of the purpose of transmitting or enabling the transmission of electric energy generated or to be generated by facilities described in section 45(d), but without regard to placed in service dates of those generating facilities.

Amend Section 146(g) to read as follows:

EXCEPTION FOR CERTAIN BONDS. --Only for purposes of this section, the term “private activity bond” shall not include --

- (1) any qualified veterans’ mortgage bond,
- (2) any qualified 501(c)(3) bond,
- (3) any exempt facility bond issued as part of an issue described in paragraph (1), (2), (12), (13), (14), (15) or ~~(15)~~(16) of section 142(a), and
- (4) 75 percent of any exempt facility bond issued as part of an issue described in paragraph (11) of section 142(a) (relating to high-speed intercity rail facilities).

Paragraph (4) shall be applied without regard to ‘75 percent of’ if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1)).”

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