

110TH CONGRESS  
2D SESSION

# S. 3171

To amend the Internal Revenue Code of 1986 to exclude certain tax-exempt financing of energy transportation infrastructure from the private business use tests, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 19, 2008

Mr. BARRASSO 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 exclude certain tax-exempt financing of energy transportation infrastructure from the private business use tests, 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. TAX-EXEMPT FINANCING OF ENERGY TRANS-**  
4 **PORTATION INFRASTRUCTURE NOT SUBJECT**  
5 **TO PRIVATE BUSINESS USE TESTS.**

6 (a) IN GENERAL.—Section 141(b)(6) of the Internal  
7 Revenue Code of 1986 (defining private business use) is

1 amended by adding at the end the following new subpara-  
2 graph:

3 “(C) EXCEPTION FOR CERTAIN ENERGY  
4 TRANSPORTATION INFRASTRUCTURE.—

5 “(i) IN GENERAL.—For purposes of  
6 the 1st sentence of subparagraph (A), the  
7 operation or use of any property described  
8 in clause (ii) by any person which is not a  
9 governmental unit shall not be considered  
10 a private business use.

11 “(ii) PROPERTY DESCRIBED.—For  
12 purposes of clause (i), the following prop-  
13 erty is described in this clause:

14 “(I) Any tangible property used  
15 to transmit electricity at 230 or more  
16 kilovolts if such property is placed in  
17 service as part of a State or multi-  
18 State effort to improve interstate elec-  
19 tricity transmission and is physically  
20 located in not less than 2 States.

21 “(II) Any tangible property used  
22 to transmit electricity generated from  
23 renewable resources.

24 “(III) Any tangible property used  
25 as a transmission pipeline for crude

1 oil or diesel fuel produced from coal  
2 or other synthetic petroleum products  
3 produced from coal if such property is  
4 placed in service as part of a State or  
5 multi-State effort to improve the  
6 transportation of crude oil or diesel  
7 fuel produced from coal or other syn-  
8 thetic petroleum products produced  
9 from coal.

10 “(IV) Any tangible property used  
11 as a carbon dioxide transmission pipe-  
12 line if such property is placed in serv-  
13 ice as part of a State or multi-State  
14 effort to improve interstate or intra-  
15 state efforts to develop transportation  
16 infrastructure for purposes of perma-  
17 nently sequestering carbon dioxide.”.

18 (b) EXCEPTION TO PRIVATE LOAN FINANCING  
19 TEST.—Section 141(c)(2) of the Internal Revenue Code  
20 of 1986 (relating to exception for tax assessment, etc.,  
21 loans) is amended—

22 (1) by striking “or” at the end of subparagraph  
23 (B),

24 (2) by striking the period at the end of sub-  
25 paragraph (C) and inserting “, or”, and

1           (3) by adding at the end the following new sub-  
2 paragraph:

3                   “(D) enables the borrower to finance any  
4 property described in subsection (b)(6)(C)(ii).”.

5           (c) REDUCTION OF STATE VOLUME CAP BY AMOUNT  
6 OF ENERGY TRANSPORTATION INFRASTRUCTURE FI-  
7 NANCING.—Section 146 of the Internal Revenue Code of  
8 1986 (relating to volume cap) is amended by adding at  
9 the end the following new subsection:

10           “(o) REDUCTION FOR ENERGY TRANSPORTATION IN-  
11 FRASTRUCTURE FINANCING.—The volume cap of any  
12 issuing authority for any calendar year shall be reduced  
13 by the amount of bonds issued as part of an issue by such  
14 authority to provide for property described in section  
15 141(b)(6)(C)(ii).”.

16           (d) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to bonds issued after the date of  
18 the enactment of this Act and before December 31, 2015.

19 **SEC. 2. LIMITATION ON DISCRIMINATORY TAXATION OF**  
20 **CERTAIN PIPELINE PROPERTY.**

21           (a) DEFINITIONS.—For purposes of section:

22                   (1) ASSESSMENT.—The term “assessment”  
23 means valuation for a property tax levied by a taxing  
24 authority.

1           (2) ASSESSMENT JURISDICTION.—The term  
2           “assessment jurisdiction” means a geographical area  
3           used in determining the assessed value of property  
4           for ad valorem taxation.

5           (3) COMMERCIAL AND INDUSTRIAL PROP-  
6           ERTY.—The term “commercial and industrial prop-  
7           erty” means property (excluding pipeline property,  
8           public utility property, and land used primarily for  
9           agricultural purposes or timber growth) devoted to  
10          commercial or industrial use and subject to a prop-  
11          erty tax levy.

12          (4) PIPELINE PROPERTY.—The term “pipeline  
13          property” means all property, real, personal, and in-  
14          tangible, owned or used by a natural gas pipeline  
15          providing transportation or storage of natural gas,  
16          subject to the jurisdiction of the Federal Energy  
17          Regulatory Commission.

18          (5) PUBLIC UTILITY PROPERTY.—The term  
19          “public utility property” means property (excluding  
20          pipeline property) that is devoted to public service  
21          and is owned or used by any entity that performs a  
22          public service and is regulated by any governmental  
23          agency.

24          (b) DISCRIMINATORY ACTS.—The acts specified in  
25          this subsection unreasonably burden and discriminate

1 against interstate commerce. A State, subdivision of a  
2 State, authority acting for a State or subdivision of a  
3 State, or any other taxing authority (including a taxing  
4 jurisdiction and a taxing district) may not do any of the  
5 following such acts:

6           (1) Assess pipeline property at a value that has  
7           a higher ratio to the true market value of the pipe-  
8           line property than the ratio that the assessed value  
9           of other commercial and industrial property in the  
10          same assessment jurisdiction has to the true market  
11          value of the other commercial and industrial prop-  
12          erty.

13          (2) Levy or collect a tax on an assessment that  
14          may not be made under paragraph (1).

15          (3) Levy or collect an ad valorem property tax  
16          on pipeline property at a tax rate that exceeds the  
17          tax rate applicable to commercial and industrial  
18          property in the same assessment jurisdiction.

19          (4) Impose any other tax that discriminates  
20          against a pipeline providing transportation subject to  
21          the jurisdiction of the Federal Energy Regulatory  
22          Commission.

23          (c) JURISDICTION OF COURTS; RELIEF.—

24                (1) GRANT OF JURISDICTION.—Notwith-  
25          standing section 1341 of title 28, United States

1 Code, and notions of comity, and without regard to  
2 the amount in controversy or citizenship of the par-  
3 ties, the district courts of the United States shall  
4 have jurisdiction, concurrent with other jurisdiction  
5 of the courts of the United States, of States, and of  
6 all other taxing authorities and taxing jurisdictions,  
7 to prevent a violation of subsection (b).

8 (2) RELIEF.—Except as otherwise provided in  
9 this paragraph, relief may be granted under this Act  
10 only if the ratio of assessed value to true market  
11 value of pipeline property exceeds by at least 5 per-  
12 cent the ratio of assessed value to true market value  
13 of other commercial and industrial property in the  
14 same assessment jurisdiction. If the ratio of the as-  
15 sessed value of other commercial and industrial  
16 property in the assessment jurisdiction to the true  
17 market value of all other commercial and industrial  
18 property cannot be determined to the satisfaction of  
19 the court through the random-sampling method  
20 known as a sales assessment ratio study (to be car-  
21 ried out under statistical principles applicable to  
22 such a study), each of the following shall be a viola-  
23 tion of subsection (b) for which relief under this sec-  
24 tion may be granted:

1 (A) An assessment of the pipeline property  
2 at a value that has a higher ratio of assessed  
3 value to the true market value of the pipeline  
4 property than the ratio of the assessed value of  
5 all other property (excluding public utility prop-  
6 erty) subject to a property tax levy in the as-  
7 sessment jurisdiction has to the true market  
8 value of all other property (excluding public  
9 utility property).

10 (B) The collection of an ad valorem prop-  
11 erty tax on the pipeline property at a tax rate  
12 that exceeds the tax rate applicable to all other  
13 taxable property (excluding public utility prop-  
14 erty) in the taxing jurisdiction.

15 **SEC. 3. NATURAL GAS PIPELINE INTEGRITY REASSESS-**  
16 **MENT INTERVALS BASED ON RISK.**

17 (a) IN GENERAL.—Section 60109(c)(3)(B) of title  
18 49, United States Code, is amended by inserting “, until  
19 the Secretary issues regulations basing the reassessment  
20 intervals on technical data, risk factors, and engineering  
21 analysis, consistent with the recommendations of the  
22 Comptroller General of the United States in Report 06–  
23 945” after “subparagraph (A)”.

1       (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall take effect on the date of the enactment  
3 of this Act.

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