

S (69)

Senator Max Baucus and Senators Conrad and Bingaman  
Amendment No. 21 to Chairman's Discussion Draft for  
H.R. 4520: Jumpstart Our Business Strength (JOBS) Act  
(Engrossed Amendment as Agreed to by Senate)

Sen. Baucus moves to include the following sections of the JOBS Act in the Conference  
Bill for H.R. 4520:

Sec. 856. Treatment of certain income of cooperatives. to conform to

Section 1329 of Conference report  
to H.R. 6.

~~mitted by this subsection, the amount of the deduction shall not exceed the adjusted basis of such property.~~

~~(3) NEW RULING AMOUNT REQUIRED.—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.~~

~~(4) NO BASIS IN QUALIFIED FUNDS.—Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.~~

~~(2) NEW RULING AMOUNT TO TAKE INTO ACCOUNT TOTAL COSTS.—Subparagraph (A) of section 468A(d)(2) (defining ruling amount) is amended to read as follows:~~

~~“(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and”.~~

~~(d) TECHNICAL AMENDMENTS.—Section 468A(e)(2) (relating to taxation of Fund) is amended—~~

~~(1) by striking “rate set forth in subparagraph (B)” in subparagraph (A) and inserting “rate of 20 percent”;~~

~~(2) by striking subparagraph (B), and~~

~~(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.~~

~~(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.~~

**SEC. 1339. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.**

**(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—**

**(1) IN GENERAL.—**Subparagraph (C) of section 501(c)(12) is amended by striking “or” at the end of clause (i), by striking clause (ii), and by adding at the end the following new clauses:

“(ii) from any provision or sale of electric energy transmission services or ancillary services if such services are provided on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (other than income received or accrued directly or indirectly from a member),

“(iii) from the provision or sale of electric energy distribution services or ancillary services if such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the mutual or electric cooperative company—

“(I) to end-users who are served by distribution facilities not owned by such company or any of its members (other than income received or accrued directly or indirectly from a member), or

“(II) generated by a generation facility not owned or leased by such company or any of its members and which is directly connected to distribution facilities owned by such company or any of its members (other than income received or accrued directly or indirectly from a member),

"(iv) from any nuclear decommissioning transaction, or

"(v) from any asset exchange or conversion transaction."

(2) **DEFINITIONS AND SPECIAL RULES.**—Paragraph (12) of section 501(c) is amended by adding at the end the following new subparagraphs:

"(E) For purposes of subparagraph (C)(ii), the term 'FERC' means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

"(F) For purposes of subparagraph (C)(iii), the term 'nuclear decommissioning transaction' means—

"(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

"(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

"(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

"(G) For purposes of subparagraph (C)(iv), the term 'asset exchange or conversion transaction' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

"(i) generating, transmitting, distributing, or selling electric energy, or

"(ii) producing, transmitting, distributing, or selling natural gas."

(b) **TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS, ETC.**—Paragraph (12) of section 501(c), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

"(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

"(ii) For purposes of clause (i), the term 'load loss transaction' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

"(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

"(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

"(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

"(II) the megawatt hours of electric energy sold during the base year to such members.

"(v) For purposes of clause (iv)(II), the term 'base year' means—

"(I) the calendar year preceding the start-up year,

or

"(II) at the election of the mutual or cooperative electric company, the second or third calendar years preceding the start-up year.

"(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

"(vii) For purposes of this subparagraph, the start-up year is the first year that the mutual or cooperative electric company offers nondiscriminatory open access or the calendar year which includes the date of the enactment of this subparagraph, if later, at the election of such company.

"(viii) A company shall not fail to be treated as a mutual or cooperative electric company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

"(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses."

(c) **EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.**—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end the following new paragraph:

"(18) **TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.**—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof."

(d) **CROSS REFERENCE.**—Section 1381 is amended by adding at the end the following new subsection:

"(c) **CROSS REFERENCE.**—

"For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H)."

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.