

# Agenda Report

March 22, 1999

**To:** City Council  
**Through:** Legislative Committee  
**From:** City Manager  
**Subject:** **Bond Fairness and Protection Act of 1999**

## **RECOMMENDATION:**

It is recommended that the City Council approve the attached resolution in support of the Bond Fairness and Protection Act of 1999 - S.386 (Gorton R-WA), as amended February 6, 1999.

## **BACKGROUND:**

The City Manager's list of priority issues for federal and state legislation, which was approved by City Council on January 25, 1999, listed "protecting the rights of publicly-owned power agencies as they compete in the new market place" as one of the City's legislative priorities. The Bond Fairness and Protection Act of 1999 (S.386), as introduced by Senator Slade Gorton (R-WA) on February 6, 1999, liberalizes the "private use" rules for power facilities financed with tax-exempt bonds, which will indeed help the Pasadena Water and Power Department (Pasadena) compete in a deregulated electric industry. A copy of the bill is attached.

Gorton's bill is a simplified version of his bill introduced last year that provides a remedy for public power systems that are limited in their activities by private use restrictions on tax-exempt financing. It was introduced with ten original co-sponsors, including: Senators Slade Gorton (R-WA), Robert Kerrey (D-NE), James Jeffords (R-TV), Strom Thurmond (R-SC), Gordon Smith (R-OR), Ron Wyden (D-OR), Ernest Hollings (D-SC), Patty Murray (D-WA), Tim Johnson (D-SD), and Tom Harkin (D-IA). In the House, Ways and Means Committee, members Bob Matsui (D-CA) and J.D. Hayworth (R-AZ) introduced H.R. 721, the House companion to the Gorton bill, on Thursday, February 11, 1999.

Pasadena employs tax-exempt bonds to finance generation, transmission, and distribution facilities used to deliver electricity to Pasadena customers under tariff rates, which is a qualified tax-exempt purpose under current legislation. However, in a deregulated industry, it may be necessary for private (for-profit) entities to use public transmission and distribution to deliver electricity to direct access customers, which is not currently authorized. Likewise, Pasadena may want to establish special contracts with individual customers or sell excess energy to private wholesale customers on a long-term basis. Both of these activities are considered "private use" under the current legislation. While these activities may be desirable or necessary in a deregulated environment, the bond indentures prohibit Pasadena from engaging any activities that may jeopardize the tax-exempt status enjoyed by the bondholders.

The Gorton bill explicitly excludes the following activities from being considered "private use," thus preserving the tax-exempt status of the bonds under these conditions:

1. **Open Access Transactions:** the use of electric output facilities to provide open access to end-use customers.
2. **Independent System Operator (ISO) or Power Exchange (PX):** the use of electric output facilities by an ISO or PX.
3. **Election to Terminate Future Tax-Exempt Financing for Generation Facilities:** An issuer, such as Pasadena, may make an irrevocable election to terminate its ability to issue new tax-exempt debt for generation facilities, in exchange for the continued tax-exempt treatment of all previously issued bonds, regardless of use.

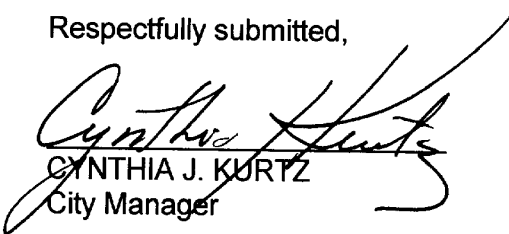
Under the rules of the bill, Pasadena could elect to forego future tax-exempt financing for generation facilities, gain the flexibility offered for its existing facilities, and preserve its ability to issue future tax-exempt debt for transmission and distribution facilities.

#### **FISCAL IMPACT:**


There is no direct fiscal impact associated with this action. However, this legislation would provide Pasadena with additional flexibility regarding the output of its generation, transmission, or distribution facilities financed with tax-exempt bonds, which will indeed help Pasadena compete in a deregulated electric industry. The proposed Gorton bill would ensure a neutral to positive fiscal impact for Pasadena.

Other competing private use legislation, which is expected to be re-introduced later this year, may have a negative fiscal impact on Pasadena, if such legislation causes municipal utilities to refinance existing tax-exempt debt. Pasadena is currently directly or indirectly responsible for approximately \$420 million of tax-exempt debt. The debt service associated with this obligation could increase as much as \$8 million per year if the City was forced to refinance with taxable debt.

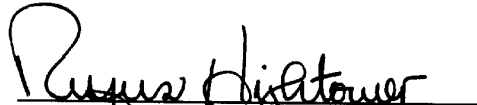
Respectfully submitted,

  
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