

105TH CONGRESS  
2D SESSION

# S. 2397

To amend the Internal Revenue Code of 1986 to allow issuance of tax-exempt private activity bonds to finance public-private partnership activities relating to school facilities in public elementary and secondary schools, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 31, 1998

Mr. GRAHAM (for himself, Mr. COVERDELL, Mr. TORRICELLI, and Mrs. FEINSTEIN) 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 allow issuance of tax-exempt private activity bonds to finance public-private partnership activities relating to school facilities in public elementary and secondary schools, 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. SHORT TITLE.**

4 This Act may be cited as the “Public School Con-  
5 struction Partnership Act”.

1 **SEC. 2. TREATMENT OF QUALIFIED PUBLIC EDUCATIONAL**  
 2 **FACILITY BONDS AS EXEMPT FACILITY**  
 3 **BONDS.**

4 (a) TREATMENT AS EXEMPT FACILITY BOND.—Sub-  
 5 section (a) of section 142 of the Internal Revenue Code  
 6 of 1986 (relating to exempt facility bond) is amended by  
 7 striking “or” at the end of paragraph (11), by striking  
 8 the period at the end of paragraph (12) and inserting “,  
 9 or”, and by adding at the end the following:

10 “(13) qualified public educational facilities.”

11 (b) QUALIFIED PUBLIC EDUCATIONAL FACILI-  
 12 TIES.—Section 142 of the Internal Revenue Code of 1986  
 13 is amended by adding at the end the following:

14 “(k) QUALIFIED PUBLIC EDUCATIONAL FACILI-  
 15 TIES.—

16 “(1) IN GENERAL.—For purposes of subsection  
 17 (a)(13), the term ‘qualified public educational facil-  
 18 ity’ means any school facility which is—

19 “(A) part of a public elementary school or  
 20 a public secondary school,

21 “(B) except as provided in paragraph  
 22 (6)(B)(iii), located in a high-growth school dis-  
 23 trict, and

24 “(C) owned by a private, for-profit cor-  
 25 poration pursuant to a public-private partner-

1 ship agreement with a State or local edu-  
 2 cational agency described in paragraph (2).

3 “(2) PUBLIC-PRIVATE PARTNERSHIP AGREE-  
 4 MENT DESCRIBED.—A public-private partnership  
 5 agreement is described in this paragraph if it is an  
 6 agreement—

7 “(A) under which the corporation agrees—

8 “(i) to do 1 or more of the following:  
 9 construct, rehabilitate, refurbish, or equip  
 10 a school facility, and

11 “(ii) at the end of the contract term,  
 12 to transfer the school facility to such agen-  
 13 cy for no additional consideration, and

14 “(B) the term of which does not exceed the  
 15 term of the underlying issue.

16 “(3) SCHOOL FACILITY.—For purposes of this  
 17 subsection, the term ‘school facility’ means—

18 “(A) school buildings,

19 “(B) functionally related and subordinate  
 20 facilities and land with respect to such build-  
 21 ings, including any stadium or other facility pri-  
 22 marily used for school events, and

23 “(C) any property, to which section 168  
 24 applies (or would apply but for section 179), for  
 25 use in the facility.

1           “(4) PUBLIC SCHOOLS.—For purposes of this  
 2           subsection, the terms ‘elementary school’ and ‘sec-  
 3           ondary school’ have the meanings given such terms  
 4           by section 14101 of the Elementary and Secondary  
 5           Education Act of 1965 (20 U.S.C. 8801), as in ef-  
 6           fect on the date of the enactment of this subsection.

7           “(5) HIGH-GROWTH SCHOOL DISTRICT.—For  
 8           purposes of this subsection, the term ‘high-growth  
 9           school district’ means a school district established  
 10          under State law which had an enrollment of at least  
 11          5,000 students in the second academic year preced-  
 12          ing the date of the issuance of the bond and an in-  
 13          crease in student enrollment of at least 20 percent  
 14          during the 5-year period ending with such academic  
 15          year.

16          “(6) ANNUAL AGGREGATE FACE AMOUNT OF  
 17          TAX-EXEMPT FINANCING.—

18               “(A) IN GENERAL.—An issue shall not be  
 19               treated as an issue described in subsection  
 20               (a)(13) if the aggregate face amount of bonds  
 21               issued by the State pursuant thereto (when  
 22               added to the aggregate face amount of bonds  
 23               previously so issued during the calendar year)  
 24               exceeds an amount equal to the greater of—

1 “(i) \$10 multiplied by the State popu-  
2 lation, or

3 “(ii) \$5,000,000.

4 “(B) ALLOCATION RULES.—

5 “(i) IN GENERAL.—Except as other-  
6 wise provided in this subparagraph, the  
7 State may allocate in a calendar year the  
8 amount described in subparagraph (A) for  
9 such year in such manner as the State de-  
10 termines appropriate.

11 “(ii) RULES FOR CARRYFORWARD OF  
12 UNUSED AMOUNT.—With respect to any  
13 calendar year, a State may make an elec-  
14 tion under rules similar to the rules of sec-  
15 tion 146(f), except that the sole  
16 carryforward purpose with respect to such  
17 election is the issuance of exempt facility  
18 bonds described in section 142(a)(13).

19 “(iii) SPECIAL ALLOCATION RULE FOR  
20 SCHOOLS OUTSIDE HIGH-GROWTH SCHOOL  
21 DISTRICTS.—A State may elect to allocate  
22 an aggregate face amount of bonds not to  
23 exceed \$5,000,000 from the amount de-  
24 scribed in subparagraph (A) for each cal-  
25 endar year for qualified public educational

1 facilities without regard to the requirement  
 2 under paragraph (1)(A).”

3 (c) EXEMPTION FROM GENERAL STATE VOLUME  
 4 CAPS.—Paragraph (3) of section 146(g) of the Internal  
 5 Revenue Code of 1986 (relating to exception for certain  
 6 bonds) is amended—

7 (1) by striking “or (12)” and inserting “(12),  
 8 or (13)”, and

9 (2) by striking “and environmental enhance-  
 10 ments of hydroelectric generating facilities” and in-  
 11 serting “environmental enhancements of hydro-  
 12 electric generating facilities, and qualified public  
 13 educational facilities”.

14 (d) EXEMPTION FROM LIMITATION ON USE FOR  
 15 LAND ACQUISITION.—Section 147(h) of the Internal Rev-  
 16 enue Code of 1986 (relating to certain rules not apply)  
 17 is amended—

18 (1) by adding at the end the following:

19 “(3) EXEMPT FACILITY BONDS FOR QUALIFIED  
 20 PUBLIC-PRIVATE SCHOOLS.—Subsection (c) shall not  
 21 apply to any exempt facility bond issued as part of  
 22 an issue described in section 142(a)(13) (relating to  
 23 qualified public-private schools).”, and

24 (2) by striking “MORTGAGE REVENUE BONDS,  
 25 QUALIFIED STUDENT LOAN BONDS, AND QUALI-

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to bonds issued after December 31, 1998.

6 SEC. 3. ADDITIONAL INCREASE IN ARBITRAGE REBATE EX-  
7 CEPTION FOR GOVERNMENTAL BONDS USED  
8 TO FINANCE EDUCATION FACILITIES.

9 (a) IN GENERAL.—Section 148(f)(4)(D)(vii) of the  
10 Internal Revenue Code of 1986 (relating to increase in  
11 exception for bonds financing public school capital expend-  
12 itures) is amended by striking “\$5,000,000” the second  
13 place it appears and inserting “\$10,000,000”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after December 31, 1998.

