

106TH CONGRESS
1ST SESSION

H.R. 3097

To prevent governmental entities from using tax-exempt financing to engage in unfair competition against private enterprise.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 18, 1999

Mr. SANFORD introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To prevent governmental entities from using tax-exempt financing to engage in unfair competition against private enterprise.

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 “Private Enterprise Protec-
5 tion Act”.

1 **SEC. 2. DENIAL OF TAX-EXEMPT FINANCING FOR CERTAIN**
 2 **FACILITIES THAT USE TAX-EXEMPT FINANC-**
 3 **ING TO COMPETE WITH PRIVATE SECTOR FA-**
 4 **CILITIES.**

5 (a) IN GENERAL.—Section 141 of the Internal Rev-
 6 enue Code of 1986 (defining private activity bond and
 7 qualified bond) is amended by redesignating subsection (e)
 8 as subsection (f) and by inserting after subsection (d) the
 9 following new subsection:

10 “(e) CERTAIN ISSUES USED FOR FACILITIES THAT
 11 COMPETE WITH PRIVATE SECTOR FACILITIES.—

12 “(1) IN GENERAL.—For purposes of this title,
 13 the term ‘private activity bond’ includes any bond
 14 that is issued as part of an issue if the amount of
 15 the proceeds of the issue which are to be used (di-
 16 rectly or indirectly) to finance the construction, re-
 17 construction, rehabilitation, or expansion of a dis-
 18 qualified facility exceeds the lesser of—

19 “(A) 5 percent of such proceeds, or

20 “(B) \$1,000,000.

21 “(2) BOND NOT TREATED AS A QUALIFIED
 22 BOND.—Except as provided in subparagraph (3)(B),
 23 a facility financed with a qualified bond, as defined
 24 in subsection (f), shall not be treated as disqualified
 25 facility.

1 “(3) DISQUALIFIED FACILITY.—For purposes
2 of this subsection—

3 “(A) IN GENERAL.—The term ‘disqualified
4 facility’ means real property or related improve-
5 ments which are to be used (directly or indi-
6 rectly) by one or more nongovernmental persons
7 in connection with a trade or business con-
8 ducted by such person or persons (whether or
9 not such use otherwise constitutes ‘private busi-
10 ness use’ within the meaning of subsection
11 (b)(6)) if—

12 “(i) on or before the date on which
13 the bonds are issued to finance the con-
14 struction, reconstruction, rehabilitation, or
15 expansion of such disqualified facility, a fa-
16 cility substantially similar in purpose or
17 use to the disqualified facility has been
18 placed in service by one or more non-
19 governmental persons within 5 miles of
20 such disqualified facility;

21 “(ii) such other facility was not fi-
22 nanced with bonds the interest on which
23 was or is exempt under section 103; and

24 “(iii) with respect to any calendar
25 year, the aggregate use of the disqualified

1 facility by one or more of the nongovern-
2 mental persons who have used, or do use
3 the facility referred to in clause (i) in con-
4 nection with a trade or business conducted
5 by such person or persons exceeds 25 per-
6 cent of the days on which the disqualified
7 facility practically and ordinarily would be
8 used (by custom and usage in the indus-
9 try) by all persons.

10 “(B) The term ‘disqualified facility’ shall
11 include any facility (including a facility financed
12 with a qualified bond as defined in subsection
13 (f)) described in subdivisions (i) and (ii) of sub-
14 paragraph (A) without regard to subdivision
15 (iii), if—

16 “(i) the function served by the facility
17 could be served by a facility substantially
18 similar in purpose or use to the disquali-
19 fied facility and owned by one or more
20 nongovernmental person; and

21 “(ii) the facility is of the kind de-
22 scribed in subparagraphs (A) of section
23 142(c)(2) without regard to private busi-
24 ness use.

“(C) The term ‘disqualified facility’ shall not include any facility that (i) constitutes an integral part of a school, a hospital or similar facility the principal purpose of which is to provide on a regular basis educational instruction, in accordance with an established curriculum, or medical care, or (ii) is designed and used principally for professional sports exhibitions or games.

“(D) TRADE OR BUSINESS.—For purposes of subparagraph (A), the term ‘trade or business’ includes the sponsorship of trade shows and similar exhibitions and the leasing of space to exhibitors, without regard to whether the sponsor is organized as a not-for-profit organization, but only if one or more of the exhibitors are engaged in the active conduct of a trade or business for profit.

“(4) QUALIFIED REHABILITATIONS.—A bond shall not be treated as a bond described in paragraph (1) if it is issued as part of an issue substantially all of the proceeds of which are used for the reconstruction or rehabilitation of a facility, but only if such facility is not materially expanded as the result of such rehabilitation.

1 “(5) ANTI-ABUSE REGULATIONS.—The Sec-
 2 retary shall prescribe such regulations as may be ap-
 3 propriate to carry out the purposes of this sub-
 4 section, including such regulations as may be appro-
 5 priate to prevent avoidance of such purposes through
 6 multiple bond issues, related persons, use of related
 7 facilities or multi-use complexes or otherwise.”

8 (b) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in this
 10 subsection (b), the amendments made by this section
 11 shall apply to bonds issued on or after October 18,
 12 1999.

13 (2) EXCEPTION FOR CONSTRUCTION AND CER-
 14 TAIN BINDING AGREEMENTS.—

15 (A) The amendments made by this section
 16 shall not apply to bonds the proceeds of which
 17 are used for the construction, reconstruction,
 18 rehabilitation or expansion of a facility—

19 (i) if such construction, reconstruc-
 20 tion, rehabilitation or expansion has phys-
 21 ically commenced in a material fashion
 22 (other than site testing, site preparation or
 23 similar activities) before October 18, 1999,
 24 and has resulted in significant expendi-

1 tures before such date, and was completed
2 on or after such date, or

3 (ii) if a State or political subdivision
4 thereof has entered into a binding contract
5 before October 18, 1999, that require the
6 incurrence of significant expenditures for
7 such construction, reconstruction, rehabili-
8 tation or expansion (other than expendi-
9 tures related to the issuance of bonds or to
10 architectural or engineering plans), and
11 some or all of such expenditures are in-
12 curred on or after such date.

13 (B) For purposes of subparagraph (A), the
14 term “significant expenditures” means expendi-
15 tures equal to or exceeding 10 percent of the
16 reasonably anticipated cost of the construction,
17 reconstruction, and rehabilitation.

18 (3) EXCEPTION FOR CERTAIN FACILITIES.—

19 The amendments made to section 141(e)(3)(B) as
20 added by this Act, shall be effective as of date of en-
21 actment.

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