

106TH CONGRESS
1ST SESSION

S. 526

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.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 1999

Mr. GRAHAM (for himself, Mr. GRASSLEY, Mr. DEWINE, Mr. TORRICELLI, Mrs. HUTCHISON, and Mr. KERREY) introduced the following bill; which was read twice and referred to the Committee on Finance

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 (relating to exempt facility bond) is amended by adding
 14 at the end the following new subsection:

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

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

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

22 “(B) owned by a private, for-profit cor-
 23 poration pursuant to a public-private partner-
 24 ship agreement with a State or local edu-
 25 cational agency described in paragraph (2).

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

5 “(A) under which the corporation agrees—

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

9 “(ii) at the end of the term of the
 10 agreement, to transfer the school facility to
 11 such agency for no additional consider-
 12 ation, and

13 “(B) the term of which does not exceed the
 14 term of the issue to be used to provide the
 15 school facility.

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) ANNUAL AGGREGATE FACE AMOUNT OF
 8 TAX-EXEMPT FINANCING.—

9 “(A) IN GENERAL.—An issue shall not be
 10 treated as an issue described in subsection
 11 (a)(13) if the aggregate face amount of bonds
 12 issued by the State pursuant thereto (when
 13 added to the aggregate face amount of bonds
 14 previously so issued during the calendar year)
 15 exceeds an amount equal to the greater of—

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

18 “(ii) \$5,000,000.

19 “(B) ALLOCATION RULES.—

20 “(i) IN GENERAL.—Except as other-
 21 wise provided in this subparagraph, the
 22 State may allocate in a calendar year the
 23 amount described in subparagraph (A) for
 24 such year in such manner as the State de-
 25 termines appropriate.

1 “(ii) RULES FOR CARRYFORWARD OF
 2 UNUSED AMOUNT.—With respect to any
 3 calendar year, a State may make an elec-
 4 tion under rules similar to the rules of sec-
 5 tion 146(f), except that the sole
 6 carryforward purpose with respect to such
 7 election is the issuance of exempt facility
 8 bonds described in section 142(a)(13).”

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

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

15 (2) by striking “and environmental enhance-
 16 ments of hydroelectric generating facilities” and in-
 17 serting “environmental enhancements of hydro-
 18 electric generating facilities, and qualified public
 19 educational facilities”.

20 (d) EXEMPTION FROM LIMITATION ON USE FOR
 21 LAND ACQUISITION.—Section 147(h) of the Internal Rev-
 22 enue Code of 1986 (relating to certain rules not to apply
 23 to mortgage revenue bonds, qualified student loan bonds,
 24 and qualified 501(c)(3) bonds) is amended by adding at
 25 the end the following new paragraph:

1 “(3) EXEMPT FACILITY BONDS FOR QUALIFIED
 2 PUBLIC-PRIVATE SCHOOLS.—Subsection (c) shall not
 3 apply to any exempt facility bond issued as part of
 4 an issue described in section 142(a)(13) (relating to
 5 qualified public-private schools).”

6 (e) CONFORMING AMENDMENT.—The heading of sec-
 7 tion 147(h) of the Internal Revenue Code of 1986 is
 8 amended by striking “MORTGAGE REVENUE BONDS,
 9 QUALIFIED STUDENT LOAN BONDS, AND QUALIFIED
 10 501(c)(3) BONDS” in the heading and inserting “CERTAIN
 11 BONDS”.

12 (f) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to bonds issued after December
 14 31, 1999.

15 **SEC. 3. ADDITIONAL INCREASE IN ARBITRAGE REBATE EX-**
 16 **CEPTION FOR GOVERNMENTAL BONDS USED**
 17 **TO FINANCE EDUCATION FACILITIES.**

18 (a) SPENDING REQUIREMENT FOR PUBLIC SCHOOL
 19 CONSTRUCTION ISSUE.—Paragraph (4)(C) of section
 20 148(f) of the Internal Revenue Code of 1986 (relating to
 21 required rebate to the United States) is amended by add-
 22 ing at the end the following new clause:

23 “(xviii) 4-YEAR SPENDING REQUIRE-
 24 MENT FOR PUBLIC SCHOOL CONSTRUCTION
 25 ISSUE.—

1 “(I) IN GENERAL.—In the case
 2 of a public school construction issue,
 3 the spending requirements of clause
 4 (ii) shall be treated as met if at least
 5 10 percent of the available construc-
 6 tion proceeds of the construction issue
 7 are spent for the governmental pur-
 8 poses of the issue within the 1-year
 9 period beginning on the date the
 10 bonds are issued, 30 percent of such
 11 proceeds are spent for such purposes
 12 within the 2-year period beginning on
 13 such date, 50 percent of such pro-
 14 ceeds are spent for such purposes
 15 within the 3-year period beginning on
 16 such date, and 100 percent of such
 17 proceeds are spent for such purposes
 18 within the 4-year period beginning on
 19 such date.

20 “(II) PUBLIC SCHOOL CON-
 21 STRUCTION ISSUE.—For purposes of
 22 this clause, the term ‘public school
 23 construction issue’ means any con-
 24 struction issue if no bond which is
 25 part of such issue is a private activity

bond and all of the available construction proceeds of such issue are to be used for the construction (as defined in clause (iv)) of public school facilities to provide education or training below the postsecondary level or for the acquisition of land that is functionally related and subordinate to such facilities.

“(III) OTHER RULES TO APPLY.—Rules similar to the rules of the preceding provisions of this subparagraph which apply to clause (ii) shall apply to this clause.”

(b) INCREASE IN ARBITRAGE REBATE EXCEPTION FOR GOVERNMENTAL BONDS USED TO FINANCE EDUCATION FACILITIES.—Section 148(f)(4)(D)(vii) of the Internal Revenue Code of 1986 (relating to increase in exception for bonds financing public school capital expenditures) is amended by striking “\$5,000,000” the second place it appears and inserting “\$10,000,000”.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 1999.

1 **SEC. 4. TREATMENT OF PUBLIC SCHOOL CONSTRUCTION**
 2 **BONDS AS QUALIFIED TAX-EXEMPT OBLIGA-**
 3 **TIONS.**

4 (a) IN GENERAL.—Clause (i) of subsection (b)(3)(B)
 5 of section 265 of the Internal Revenue Code of 1986 (re-
 6 lating to expenses and interest relating to tax-exempt in-
 7 come) is amended to read as follows:

8 “(i) IN GENERAL.—For purposes of
 9 subparagraph (A), the term ‘qualified tax-
 10 exempt obligation’ means a tax-exempt
 11 obligation—

12 “(I) which is issued after August
 13 7, 1986, by a qualified small issuer, is
 14 not a private activity bond (as defined
 15 in section 141), and is designated by
 16 the issuer for purposes of this para-
 17 graph, or

18 “(II) which is a public school
 19 construction bond (within the mean-
 20 ing of section 148(f)(4)(C)(xviii))
 21 issued by a qualified small education
 22 bond issuer (as defined in subpara-
 23 graph (F)).”

24 (b) DEFINITION OF QUALIFIED SMALL EDUCATION
 25 BOND ISSUER.—Subsection (b)(3) of section 265 of the

1 Internal Revenue Code of 1986 is amended by adding at
 2 the end the following new subparagraph:

3 “(F) QUALIFIED SMALL EDUCATION BOND
 4 ISSUER.—For purposes of subparagraph
 5 (B)(i)(II), the term ‘qualified small education
 6 bond issuer’ means, with respect to bonds
 7 issued during any calendar year, any issuer if
 8 the reasonably anticipated amount of public
 9 school construction bonds which will be issued
 10 by such issuer during such calendar year does
 11 not exceed \$25,000,000.”

12 (c) CONFORMING AMENDMENT.—Section
 13 265(b)(3)(B)(ii) of such Code is amended by striking
 14 “(i)(II)” in the matter preceding subclause (I) and insert-
 15 ing “(i)”.

16 (d) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to obligations issued after Decem-
 18 ber 31, 1999.

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