

106TH CONGRESS  
1ST SESSION

# H.R. 3097

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

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IN THE HOUSE OF REPRESENTATIVES

OCTOBER 18, 1999

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

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## 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(e)(2) without regard to private busi-  
24 ness use.

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

10           “(D) TRADE OR BUSINESS.—For purposes  
11           of subparagraph (A), the term ‘trade or busi-  
12           ness’ includes the sponsorship of trade shows  
13           and similar exhibitions and the leasing of space  
14           to exhibitors, without regard to whether the  
15           sponsor is organized as a not-for-profit organi-  
16           zation, but only if one or more of the exhibitors  
17           are engaged in the active conduct of a trade or  
18           business for profit.

19           “(4) QUALIFIED REHABILITATIONS.—A bond  
20           shall not be treated as a bond described in para-  
21           graph (1) if it is issued as part of an issue substan-  
22           tially all of the proceeds of which are used for the  
23           reconstruction or rehabilitation of a facility, but only  
24           if such facility is not materially expanded as the re-  
25           sult 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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