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Private Activity Bonds: An Analysis of State Use, 2001 to 2005

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Steven Maguire
Specialist in Public Finance
Government and Finance Division

Heather Negley
Information Research Specialist
Knowledge Services Group

Prepared for Members and Committees of Congress

Congressional Research Service

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Summary

State and local governments often issue debt instruments in exchange for the use of individuals' and businesses' savings. This debt obligates state and local governments to make interest payments for the use of these savings and to repay, at some time in the future, the amount borrowed. State and local governments finance capital facilities with debt rather than out of current tax revenue in order to match the time pattern of benefits from these capital facilities with the time pattern of tax payments.

The federal government subsidizes the cost of most state and local debt by excluding the interest income from federal income taxation. This tax exemption of interest income is granted because it is believed that state and local capital facilities will be under-provided if state and local taxpayers have to pay the full cost.

Generally, state and local governments issue two types of tax-exempt bonds: (1) governmental bonds and (2) private activity bonds. A portion of private activity bonds are subject to a federally legislated state-specific annual limit. The annual limit for each state is the greater of (1) state population from the previous year multiplied by an inflation adjusted dollar amount ($85 in 2007); or (2) an inflation adjusted annual minimum ($256.235 million in 2007). Most private activity bond volume (64.9%), however, is not subject to the state volume cap. This report identifies how each state, over the previous several years, has allocated private activity bond volume, including abandoned volume capacity.

The report also discusses the expansion of the types of projects eligible for private activity bond financing since 2001. Approximately $55 billion in new private activity bond volume has been created by Congress over the 2001 to 2005 time frame. A series of estimates by the Joint Committee on Taxation suggests that the new bonds could reduce federal tax revenue by as much as $5.6 billion. In the 110th Congress, various new proposals would further expand the types of private activities eligible for tax-exempt financing and modify the rules for existing qualified private activities. These proposals are listed and summarized in this report.

For more on tax-exempt bonds generally and private activity bonds specifically, see CRS Report RL30638, *Tax-Exempt Bonds: A Description of State and Local Government Debt*, and CRS Report RL31457, *Private Activity Bonds: An Introduction*. For more on tax credit bonds, see CRS Report RS20606, *Tax Credit Bonds: A Brief Explanation*. This report will be updated when new data become available.

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Overview

Observers of the bond market group tax-exempt state and local government bonds into two broad categories: governmental and private activity.[1] Broadly speaking, Congress limits the use of tax-exempt private activity bonds (PABs) to selected activities. Recently, the opportunity to issue PABs has expanded as Congress has increased the range of projects and activities that qualify for tax-exempt status. This report focuses on state use of private activity bonds and the recently added activities eligible for tax-exempt financing. Approximately $55 billion of additional capacity has been added since 2001. In separate estimates, the Joint Committee on Taxation (JCT) projected that these new provisions would reduce federal tax revenue by approximately $5.6 billion over a 10-year period.[2]

In the 110th Congress, several legislative proposals have been introduced that would likely expand the volume of private activity bonds. The next section describes governmental and private activity bonds in more depth and is followed by a presentation of recently published bond data. The last section discusses legislation.

Governmental Bonds

Governmental bonds are issued by state and local governments to finance governmental activities and public infrastructure construction such as roads, courthouses, and schools. The bonds are tax-exempt, meaning the holder does not have to pay income taxes on the interest income earned on the bonds. There is no federal limit on the volume of governmental bonds. In 2004, roughly 26,000 governmental bonds were issued, with a total volume of $330.4 billion.[3]

Private Activity Bonds

In contrast to governmental bonds, Congress places restrictions on the issuance of private activity bonds (PABs) to limit their use . PABs are bonds where (1) more

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[1] Technically, private activity bonds that receive tax-exempt status are called *qualified* private activity bonds. For this report, the modifier "qualified" has been dropped.

[2] The $5.6 billion is the sum of each, separate, JCT revenue loss estimate as published in their *General Explanation* documents for each respective Congress. Full citations are available in the sources note for **Table 3** of this report.

[3] Cynthia Belmonte, "Tax-Exempt Bonds, 2003-2004," *SOI Bulletin*, Fall 2006, vol. 26, no. 2.

than 10% of the activity financed by the bonds is private activity and (2) more than 10% of the revenue used to repay the bonds is generated by activity at the financed facility. Congress has identified a subset of private activities that can be financed with tax-exempt bonds. The so-called *qualified* PABs, thus, are more like governmental bonds. Some qualified PABs are subject to a federally imposed annual state-by-state limit or "cap." Other qualified PABs are subject to a national limit, a separate state cap, or no cap at all.

The IRS reports that in 2004, total PAB volume was $47.9 billion and of that, $16.6 billion was subject to the volume cap. Each state is free to select the mix of qualified activities subject to the cap and to determine the total amount of private activity bond volume. Most states use the total annual volume cap, though some states do "abandon" capacity — that is, leave some capacity unused.

State use of PABs is of interest to Congress as the number of activities eligible for tax-exempt financing has expanded significantly since 1986 and accelerated since 2001.[4] If additional new activities are subject to the same cap as existing activities, competition for cap space could limit the effectiveness of the tax preferences for these activities. In addition, expanding the number of private activities eligible for tax-exempt financing, particularly proposals with separate caps, may influence the market for governmental bonds, as the new bonds would put upward pressure on market interest rates. Higher interest rates, in turn, may constrain the ability of some state and local governments to issue debt. And finally, issuing more tax-exempt bonds would reduce federal revenues, contributing to a larger budget deficit. Congressional action in the tax-exempt, private activity bond market will have a disparate impact on the states, as each state has different objectives for PABs.

The next section uses two data sources to analyze the activities financed by private activity bonds in each state. The first set of data, from the Internal Revenue Service (IRS), examines all state and local bonds issued in 2004. The second set of data, from a survey administered by the *Bond Buyer* publication, a unit of Thomson Financial Inc., is more narrowly focused on bonds subject to the volume cap and includes data for 2001 through 2005.

Use of Private Activity Bonds

Periodically, the Internal Revenue Service (IRS) compiles bond data contained in the information return, Form 8038.[5] This form is filed by issuers of tax-exempt bonds. In 2004, the most recent year where IRS data are available, *new money*, long-term *governmental* bonds raised a total of $157.7 billion, with $49.8 billion (31.6%) used for education. Bonds identified as "new money" are in contrast to "refunding" bonds. "New money" means the bond proceeds are to be used for a new project and

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[4] For more, see CRS Report RL31457, *Private Activity Bonds: An Introduction*, by Steven Maguire.

[5] IRS data are all from Cynthia Belmonte, "Tax-Exempt Bonds, 2003-2004," *SOI Bulletin*, Fall 2006, vol. 26, no. 2.

are not used to retire outstanding debt. By comparison, also in 2004, state and local governments issued $47.9 billion of long-term, new money, *private activity* bonds (about 23.2% of new money, long-term tax-exempt debt). Most private activity bond volume is issued for non-profit organizations ($26.728 billion; 55.8%). These bonds are typically issued for non-profit hospitals and post secondary schools.

Private Activity Bond Issuance by State

Not all PABs are subject to the federally imposed cap. Notably, the bonds issued for nonprofit activities are not subject to the volume cap (see **Table 1**). In fact, the amount of private activity bonds subject to the state volume cap is approximately one-third of total private activity bond volume (35.1% of the $47.9 billion). After bonds issued for non-profit organizations, the next two largest categories are housing related bond issues. The variation among states, however, is significant. The variation is due in part to the timing of large projects and the preferences of citizens. For example, in Idaho, Montana, and Nebraska, over 50% of private activity bond volume was used for mortgage bonds, considerably higher than the average across all states of 10.58%.[6]

The IRS data in **Table 1**, though generally instructive, do not provide sufficiently detailed information on the amount and allocation of private activity bonds that are subject to the state-by-state volume cap to permit detailed analysis. More detail about the bonds subject to the cap would help federal policymakers analyze options for either expanding or reducing the private activities eligible for tax-exempt financing.

[6] 26 U.S.C. § 143. Mortgage bond proceeds can be applied to the purchase, improvement, or rehabilitation of owner-occupied residences.

Table 1. New Money, Private Activity Bond Volume, by Activity and State, 2004

("d" indicates IRS deleted the data to avoid possible disclosure of taxpayer information)

State	Hospital 501(c)(3)	Other 501(c)(3)	Residential Rental	Mortgage	Airports	Water	Small Issue	All Other Bonds*
US Total	3.3%	5.8%	11.6%	10.6%	1.4%	23.1%	32.7%	11.5%
Alabama	d	0.0%	d	0.0%	10.7%	20.0%	54.0%	0.0%
Alaska	0.0%	0.0%	0.0%	0.0%	0.0%	d	d	d
Arizona	0.0%	0.0%	14.5%	d	0.0%	42.1%	24.1%	d
Arkansas	d	d	8.2%	d	0.0%	8.2%	d	d
California	1.3%	3.8%	18.0%	8.7%	0.6%	10.5%	54.0%	3.1%
Colorado	d	7.5%	2.6%	d	1.1%	45.4%	26.4%	d
Connecticut	0.0%	0.0%	d	d	0.0%	26.5%	35.9%	0.0%
Delaware	0.0%	0.0%	0.0%	d	0.0%	d	d	d
District of Columbia	0.0%	d	d	0.0%	d	0.0%	14.7%	d
Florida	8.8%	11.6%	17.0%	2.4%	2.2%	22.1%	35.6%	0.3%
Georgia	2.0%	d	19.3%	d	2.0%	13.7%	35.1%	0.0%
Hawaii	d	d	d	d	d	d	d	d
Idaho	0.0%	0.0%	0.0%	91.6%	d	0.0%	d	0.0%
Illinois	d	d	14.2%	d	2.0%	32.5%	40.6%	0.0%
Indiana	16.0%	d	3.4%	d	1.0%	11.6%	22.5%	d
Iowa	0.0%	0.0%	0.0%	28.4%	9.2%	6.6%	53.1%	3.0%
Kansas	d	0.0%	d	22.7%	7.3%	25.3%	37.3%	0.0%
Kentucky	d	0.0%	d	d	d	42.5%	5.3%	d
Louisiana	d	d	d	16.8%	2.1%	18.8%	36.1%	d
Maine	d	0.0%	0.0%	d	9.9%	d	16.3%	0.0%

State	Hospital 501(c)(3)	Other 501(c)(3)	Residential Rental	Mortgage	Airports	Water	Small Issue	All Other Bonds*
Maryland	d	0.0%	9.2%	7.8%	d	16.5%	64.3%	0.0%
Massachusetts	d	0.0%	13.0%	7.6%	2.1%	16.8%	51.5%	d
Michigan	d	0.0%	10.3%	0.0%	d	18.1%	19.0%	47.2%
Minnesota	d	0.0%	13.4%	13.7%	0.9%	29.4%	39.5%	d
Mississippi	d	d	7.8%	3.2%	d	d	4.5%	d
Missouri	0.0%	0.0%	19.1%	d	3.0%	9.5%	43.3%	d
Montana	0.0%	d	d	69.4%	0.0%	d	21.2%	0.0%
Nebraska	0.0%	d	0.0%	53.0%	2.1%	d	36.8%	0.0%
Nevada	d	d	8.7%	0.0%	d	d	d	d
New Hampshire	0.0%	0.0%	d	25.1%	0.0%	d	16.9%	d
New Jersey	4.3%	0.0%	d	d	2.2%	42.6%	32.6%	d
New Mexico	0.0%	d	14.6%	d	0.0%	48.6%	d	0.0%
New York	d	d	19.4%	6.0%	0.6%	9.5%	37.1%	25.9%
North Carolina	d	d	2.9%	8.9%	1.3%	31.6%	11.4%	d
North Dakota	0.0%	0.0%	d	d	d	0.0%	7.4%	0.0%
Ohio	10.1%	0.0%	5.1%	d	d	42.1%	37.5%	0.0%
Oklahoma	d	d	6.6%	10.5%	4.5%	d	17.8%	d
Oregon	0.0%	0.0%	11.5%	d	d	52.8%	17.2%	0.0%
Pennsylvania	10.1%	d	d	14.7%	1.7%	22.2%	32.4%	16.2%
Rhode Island	d	0.0%	d	d	d	6.2%	41.2%	d
South Carolina	d	0.0%	5.9%	d	0.0%	51.4%	12.4%	d
South Dakota	d	d	0.0%	d	2.4%	d	50.6%	0.0%
Tennessee	0.0%	0.0%	4.2%	d	0.7%	20.1%	20.7%	d

State	Hospital 501(c)(3)	Other 501(c)(3)	Residential Rental	Mortgage	Airports	Water	Small Issue	All Other Bonds*
Texas	d	9.2%	20.2%	12.6%	d	20.1%	15.2%	15.0%
Utah	0.0%	0.0%	d	49.5%	0.0%	0.0%	0.0%	d
Vermont	0.0%	0.0%	d	20.0%	0.0%	38.4%	12.0%	d
Virginia	d	1.3%	4.8%	d	0.9%	32.9%	26.6%	0.0%
Washington	d	17.2%	19.6%	5.3%	d	22.0%	21.3%	d
West Virginia	0.0%	0.0%	d	32.2%	0.0%	59.1%	d	0.0%
Wisconsin	0.0%	d	d	13.8%	4.8%	37.5%	36.7%	0.0%
Wyoming	0.0%	0.0%	0.0%	d	0.0%	0.0%	0.0%	d

Source: CRS calculations based on data from: Cynthia Belmonte, "Tax-Exempt Bonds, 2003-2004," *SOI Bulletin*, Fall 2006, vol. 26, no. 2.

*The "all other bonds" category includes all issues for which a specific purpose either did not apply or was not clearly indicated on the Form 8038 return, as well as bonds for: local furnishing of energy or gas, local district heating or cooling facilities, hazardous waste facilities, facilities issued under a transitional rule of the TRA 1986, mass commuting facilities, qualified enterprise zone facility bonds, qualified empowerment zone facility bonds, District of Columbia Enterprise Zone facility bonds, Liberty bonds, veterans' mortgage bonds, student loan bonds, redevelopment bonds, and nongovernmental output property bonds.

The Volume Cap on Private Activity Bonds

The current structure of the annual limit on PABs was first implemented as part of the Deficit Reduction Act of 1984 (P.L. 98-369). In that year, the statewide annual volume cap was the greater of $150 per capita or $200 million. In 1986, in addition to myriad other changes to the private activity bond rules and tax-exempt bonds more generally, the Tax Reform Act of 1986 (TRA 1986, P.L. 99-514) reduced the volume cap to the greater of $50 per capita or $150 million, effective in 1988. The volume cap remained unchanged until 1998 when the Omnibus Appropriations Act of 1998 (OBRA98, P.L. 105-277) increased the volume cap to the greater of $55 per capita or $165 million, beginning in 2003. The 1998 rules were superceded in 2000 by the Community Renewal Tax Relief Act of 2000 (CRTRA, P.L. 106-554), which indexed the per capita and minimum amounts for inflation.

Table 2 reports the per capita and minimum limits for 2001 through 2007 under current law. States choose the greater of the per capita amount multiplied by state population or the annual minimum amount. In most years, 21 less populous states and the District of Columbia are subject to the annual minimum.[7] If population grows significantly faster than the cost of living index used to increase the cap, then the per capita amount is determinative.

Table 2. State Private Activity Bond Annual Volume Limits, 2001 to 2007

Year	States Choose the Greater of the Per Capita Amount Multiplied by Population or the Minimum	
	Per Capita Amount	State Annual Minimum Amount ($ 000s)
2001	$62.50	$187,500
2002	$75.00	$225,000
2003	$75.00	$228,600
2004	$80.00	$233,795
2005	$80.00	$239,180
2006	$80.00	$246,610
2007	$85.00	$256,235
Percentage Change 2001 to 2007	36.00%	36.66%
	Total for 2001 to 2005 period	$1,114,075

Source: 26 U.S.C § 146(d).

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[7] For all years except 2004, 21 states and the District were subject to the minimum. In 2004, Iowa was subject to a higher population-based cap.

The volume cap was originally introduced to limit the use of tax-exempt private activity bonds and to encourage states to prioritize projects, as volume cap space was intentionally scarce. Since 2001, however, Congress has enacted legislation creating new types of private activities not subject to the existing state-by-state cap. Congress has also allowed selected private activity bonds to "advance refund" existing debt under the same recently passed legislation.[8] The total new volume capacity of these new private activity bonds is at least $54.8 billion (see **Table 3**). The new volume authorized under the bond legislation enacted from 2001 to 2005 was $54.8 billion. This amount is in addition to the pre-existing total volume cap available for all states and the District of Columbia over the same time period of $119.6 billion (see **Table 5**).

Table 3. New Private Activity Bond Volume Created Since 2001

Facility Purpose	Year Authorized	Code Section	New Volume Authorized ($ millions)	Estimated Revenue Loss ($ millions)
Public Education[a]	2001	142(a)(13)	$15,000	$1,404
New York Liberty Zone[b]	2002	1400L	$8,000	$1,714
Green Building[c]	2004	142(a)(13)	$2,000	$231
Highway and Surface Transfer[d]	2005	142(a)(13)	$15,000	$738
Gulf Opportunity Zone[e]	2005	1400N	$14,800	$1,556
Total			**$54,800**	**$5,643**

Sources: The revenue loss estimates are from: U.S. Congress, Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 107th Congress*, 107th Cong., 2nd sess. (Washington: GPO, 2003); U.S. Congress, Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 108th Congress*, 108th Cong., 1st sess. (Washington: GPO, 2005); U.S. Congress, Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 109th Congress*, 109th Cong., 2nd sess. (Washington: GPO, 2007).

Notes:

a. Created by P.L. 107-16; the volume cap is $3 billion per year for five years (2001 to 2005) and the revenue loss is for the 2001-2012 budget window.

b. Created by P.L. 107-147 and modified by P.L. 108-311. The revenue loss represents the original cost (2001-2012 budget window) estimate plus the cost of the modification (2003-2014). The advance refunding provisions in the two bills increased the revenue cost $1.03 billion and is not included in the revenue loss reported in the table.

c. Created by P.L. 108-357.

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[8] Current refunding is the practice of issuing bonds to replace existing bonds. Issuers typically do this to "lock-in" lower interest rates or more favorable borrowing terms. Current refunding is allowed as long as the "old" bonds are redeemed within 90 days of the issuance of the refunding bonds. *Advance* refunding is the practice of issuing new bonds to replace existing bonds, but not immediately (within 90 days) retiring the old bonds. Thus, two sets of tax-exempt bonds are outstanding for the same project.

dCreated by P.L. 109-59. The volume limit is to be split between highway projects and transfer facility projects. The revenue loss is for the 2005-2016 budget window.

e. Created by P.L. 109-135. The volume limit is estimated based on the population of the three states eligible for the bonds: Alabama ($2.2 billion); Louisiana ($7.8 billion); and Mississippi ($4.8 billion). The revenue loss is for the 2005-2016 budget window. The legislation includes an advance refunding provision that would cost $741 million and is not reflected in the table amount.

Private Activity Bonds Subject to Volume Cap by State

Table 4 compares the IRS data to the *Bond Buyer* data for 2004 and also reports the 2005 *Bond Buyer* data. For each year, the *Bond Buyer* data is for bonds subject to the cap. The difference between the two amounts is likely attributable to two factors. First, the *Bond Buyer* data include the bond capacity carried forward from previous years, and second, the definitions used by the *Bond Buyer* are not the same as the IRS definitions. For more robust analysis, the IRS data would need to include more detail on the type of activity financed, by state, but for taxpayer confidentiality reasons, the IRS has not reported these data.[9] Thus, to assess more than the magnitude of private activity bond volume for each state, one must rely on data provided by the *Bond Buyer*.

Table 5 reports the five-year total (2001 to 2005) amount of bonds allocated to selected activities, by state, as reported by the *Bond Buyer*. The total volume capacity is the sum of each year's available capacity. The column marked "Housing" includes bonds issued for (1) mortgages for single family residences, (2) multifamily housing projects, (3) mortgage credit certificates, and (4) other unspecified housing programs. The column labeled "industrial development bonds" (IDBs) is primarily small issue bonds for manufacturing. The *Bond Buyer* "exempt facilities" category includes the following: airports, commuter facilities, docks and wharves, sewer and water facilities, and solid waste disposal facilities. Student loan bonds are used to subsidize loans for qualified students.

Table 4. Comparison of IRS and Bond Buyer Private Activity Bond Data, by State

("d" indicates IRS deleted the data to avoid possible disclosure of taxpayer information)

State	2004 IRS Data		Bond Buyer Data	
	Total Volume	Subject to Cap	2004 Cap Volume	2005 Cap Volume
US Total	**47,877**	**16,648**	**23,178.7**	**21,941.9**
Alabama	150	39	36.6	20.9
Alaska	165	32	186.2	162.8
Arizona	744	253	396.9	486.4
Arkansas	257	217	285.6	181.2
California	5,859	1,846	2,164.4	2,429.7
Colorado	1,214	251	411.7	381.9
Connecticut	287	109	246.7	276.1
Delaware	189	69	68.6	96.5
D.C.	360	47	58.5	11.5
Florida	1,626	493	1,356.2	861.0

[9] IRS data are from Cynthia Belmonte, "Tax-Exempt Bonds, 2003-2004," SOI Bulletin, Fall 2006, vol. 26, no. 2., footnotes to Figure J, p. 259.

State	2004 IRS Data		Bond Buyer Data	
	Total Volume	Subject to Cap	2004 Cap Volume	2005 Cap Volume
Georgia	2,008	481	458.3	323.7
Hawaii	d	d	30.0	0.0
Idaho	131	124	0.0	109.2
Illinois	2,023	436	914.1	784.6
Indiana	1,340	425	548.7	439.1
Iowa	303	114	246.8	256.8
Kansas	300	111	211.1	239.2
Kentucky	487	253	478.1	388.2
Louisiana	613	208	270.3	172.3
Maine	141	117	136.8	371.4
Maryland	1,150	221	194.4	275.3
Massachusetts	1,671	520	632.4	394.7
Michigan	1,114	698	1,261.8	536.6
Minnesota	954	297	310.8	471.9
Mississippi	308	128	159.1	202.2
Missouri	854	403	483.2	629.9
Montana	193	139	499.5	68.3
Nebraska	234	129	125.6	145.4
Nevada	587	68	126.6	175.3
New Hampshire	343	205	321.4	356.3
New Jersey	1,039	249	600.3	485.1
New Mexico	329	128	347.0	234.6
New York	4,748	1,295	1,262.0	1,875.8
North Carolina	1,189	591	652.1	653.8
North Dakota	121	113	116.6	175.3
Ohio	2,003	408	406.6	771.0
Oklahoma	286	153	371.8	248.6
Oregon	844	252	247.5	87.8
Pennsylvania	2,110	930	1,140.9	659.3
Rhode Island	357	189	321.8	4.3
South Carolina	917	332	499.6	303.5
South Dakota	170	48	42.9	451.0
Tennessee	1,106	655	615.7	396.5
Texas	2,418	1,231	1,641.5	1,618.2
Utah	220	220	333.7	214.9
Vermont	466	231	518.3	198.5
Virginia	1,175	460	299.5	1,003.5
Washington	1,209	418	563.0	429.0
West Virginia	264	89	250.3	142.2
Wisconsin	1,040	223	178.1	396.9
Wyoming	101	d	149.1	343.7

Source: IRS data are from Cynthia Belmonte, "Tax-Exempt Bonds, 2003-2004," *SOI Bulletin*, Fall 2006, vol. 26, no. 2. The *Bond Buyer* data are from "State Allocations and Use of Private Activity Bonds in 2004," *The Bond Buyer*, May 2, 2005, p. 7; and "State Allocations and Use of Private Activity Bonds in 2005," *The Bond Buyer*, May 1, 2006, p. 7.

The "carryforward" and "abandon capacity" columns are important in understanding state allocations. Under current law, states can reserve unused capacity and add the amount to the next year.[10] Capacity can be carried forward up to three years, and states will often use the carry forward to finance large projects that may exceed the *annual* cap. The total accumulated carryforward to 2006 was $26.3 billion for all states and territories. Because the carryforward amount includes

[10] 26 U.S.C. § 146(f)(3).

allocations from more than one year, the "percent of total" amounts in **Table 6** do not sum to 100%. The District of Columbia allocated the largest carryforward to 2006, 75.6% of the total cap available. The average carryforward was 22.0%.

The last category is abandon capacity. Just as the name implies, abandon capacity is the volume capacity the state did not allocate within three years. For the 2001 to 2005 time period, $2.4 billion was abandon capacity or just 2.0% of all capacity. Delaware abandoned the most, $446.5 million, or approximately 40% of the state's available capacity (and about one-fifth of the U.S. total abandon capacity). In contrast, 23 states did not abandon any capacity over the 2001 to 2005 period.

Some could argue that states that abandoned a significant amount of capacity in the past would seem unlikely to change behavior and begin authorizing the use of tax-exempt debt to finance new projects. Alternatively, the newly created range of tax-exempt bonds for new projects may entice states to use capacity that would have otherwise been abandoned. The distribution of abandon capacity could be instructive.

From 2001 to 2005, 20 states and the District of Columbia were subject to the cumulative volume capacity minimum of $1,114.1 million over those five years (see **Table 2**). These are the less populous states where the statutory annual minimum amount was greater than the population based minimum. In these states, the abandon capacity was roughly 2.31% of capacity ($1.3 billion); the 30 more populous states abandoned considerably less (0.87% or $1.1 billion). From these data, it appears the volume cap is relatively less binding for the less populous states; there is "excess capacity" in these states. Thus, increasing or expanding the amount available for new projects would be relatively less effective in inducing new investment in less populous states relative to more populous states.

Table 5. State Use of Private Activity Bond Volume Cap, 2001 to 2005

(in $ millions)

State	Total Cap*	Housing	IDB — Small Issue	Exempt Facility	Student Loan	Carry-forward to 2006	Abandon Capacity
US Total	**119,562.9**	**56,159.5**	**6,367.3**	**12,887.2**	**17,303.0**	**26,337.1**	**2,401.8**
Alabama	1,671.7	152.8	148.9	115.9	0.0	1,100.3	48.1
Alaska	1,114.1	396.9	0.0	148.1	192.2	450.7	90.6
Arizona	2,033.9	1,122.2	16.2	378.9	474.8	45.5	73.4
Arkansas	1,114.1	332.2	98.5	137.1	299.9	234.0	176.0
California	13,048.5	9,054.5	213.4	1,081.5	837.9	1,378.7	9.9
Colorado	1,670.3	1,045.1	59.7	154.8	394.3	165.6	0.0
Connecticut	1,288.2	1,122.0	23.9	18.3	75.0	127.1	41.1
Delaware	1,114.1	306.2	4.5	15.4	0.0	686.2	446.5
D.C.	1,114.1	440.1	15.0	0.0	0.0	842.4	142.2
Florida	6,235.4	2,505.1	323.1	707.1	984.2	2,031.6	280.8
Georgia	3,183.6	1,693.5	233.8	197.1	0.0	1,015.0	116.4
Hawaii	1,114.1	82.6	0.0	40.0	50.0	651.8	138.4
Idaho	1,114.1	461.8	26.7	20.0	20.0	359.9	0.0
Illinois	4,641.1	1,333.4	479.8	154.7	89.0	283.5	0.0
Indiana	2,295.2	1,063.8	435.7	557.2	231.7	60.0	0.0
Iowa	1,115.8	524.0	70.4	77.9	229.4	142.3	0.0
Kansas	1,114.1	947.0	98.3	36.8	0.0	0.0	0.0

State	Total Cap*	Housing	IDB — Small Issue	Exempt Facility	Student Loan	Carry-forward to 2006	Abandon Capacity
Kentucky	1,525.6	821.8	63.4	338.5	473.4	22.7	0.0
Louisiana	1,671.4	518.1	118.3	199.7	381.6	188.8	55.8
Maine	1,114.1	517.0	132.1	0.0	225.0	311.2	0.0
Maryland	2,028.8	1,007.3	66.3	40.6	0.0	1,040.3	74.1
Massachusetts	2,385.7	1,153.0	184.2	372.9	683.6	140.4	0.0
Michigan	3,739.7	840.2	241.7	582.9	1,575.1	714.9	16.0
Minnesota	1,869.8	1,458.8	72.6	58.4	127.4	194.6	0.0
Mississippi	1,114.1	341.6	62.0	79.7	183.7	438.2	3.8
Missouri	2,114.1	1,016.1	103.9	205.0	398.8	338.6	18.0
Montana	1,114.1	607.5	3.0	178.0	394.1	322.0	0.0
Nebraska	1,114.1	441.5	54.5	0.0	0.0	660.8	0.0
Nevada	1,114.1	371.7	77.9	93.5	0.0	323.8	32.3
New Hampshire	1,114.1	523.7	36.4	243.0	440.0	179.5	0.0
New Jersey	3,193.5	805.6	225.6	502.7	846.0	794.2	158.4
New Mexico	1,114.1	704.9	23.0	109.7	408.7	4.7	0.0
New York	7,122.1	5,352.4	183.9	106.3	0.0	1,014.5	0.0
North Carolina	3,096.9	582.8	176.2	394.5	1,056.6	546.6	83.3
North Dakota	1,114.1	574.6	3.7	15.0	1.0	642.0	31.3
Ohio	4,250.8	1,357.4	381.1	417.0	348.4	1,766.9	10.4
Oklahoma	1,300.0	728.7	55.9	218.0	333.1	108.0	0.1
Oregon	1,310.8	783.5	52.6	79.5	0.0	387.1	0.0
Pennsylvania	4,595.9	1,315.4	663.5	1,292.2	745.0	1,156.3	0.0
Rhode Island	1,114.1	477.0	20.1	100.1	370.1	234.9	0.0
South Carolina	1,510.3	386.2	113.0	347.8	502.0	237.4	52.3
South Dakota	1,114.1	697.3	18.8	0.0	0.0	457.4	214.8
Tennessee	2,160.3	680.7	67.6	240.4	811.2	549.9	0.0
Texas	8,104.8	3,955.1	204.9	1,657.9	1,443.9	940.7	39.7
Utah	1,114.1	581.0	46.9	85.4	410.3	52.9	0.0
Vermont	1,114.1	350.1	13.0	209.2	676.9	99.0	9.0
Virginia	2,716.2	1,684.3	116.9	156.7	0.0	703.2	28.9
Washington	2,259.5	1,148.4	101.8	358.4	428.7	304.5	0.0
West Virginia	1,114.1	373.8	171.8	82.2	0.0	621.6	0.0
Wisconsin	2,026.9	881.2	195.3	51.0	0.0	909.6	10.2
Wyoming	1,114.1	537.6	67.5	230.2	160.0	355.3	0.0

Source: Author calculations based on *Bond Buyer* data.

Note: *Does not include the new volume created by legislation identified in **Table 3** of this report.

Table 6. State Use of Private Activity Bond Volume Cap as Percent of Total, 2001 to 2005

State	Housing	IDB — Small Issue	Exempt Facility	Student Loan	Carry-forward to 2006	Abandon Capacity
US Total	47.0%	5.3%	10.8%	14.5%	22.0%	2.0%
Alabama	9.1%	8.9%	6.9%	0.0%	65.8%	2.9%
Alaska	35.6%	0.0%	13.3%	17.3%	40.5%	8.1%
Arizona	55.2%	0.8%	18.6%	23.3%	2.2%	3.6%
Arkansas	29.8%	8.8%	12.3%	26.9%	21.0%	15.8%
California	69.4%	1.6%	8.3%	6.4%	10.6%	0.1%
Colorado	62.6%	3.6%	9.3%	23.6%	9.9%	0.0%
Connecticut	87.1%	1.9%	1.4%	5.8%	9.9%	3.2%
Delaware	27.5%	0.4%	1.4%	0.0%	61.6%	40.1%
D.C.	39.5%	1.3%	0.0%	0.0%	75.6%	12.8%
Florida	40.2%	5.2%	11.3%	15.8%	32.6%	4.5%
Georgia	53.2%	7.3%	6.2%	0.0%	31.9%	3.7%

State	Housing	IDB — Small Issue	Exempt Facility	Student Loan	Carry-forward to 2006	Abandon Capacity
Hawaii	7.4%	0.0%	3.6%	4.5%	58.5%	12.4%
Idaho	41.5%	2.4%	1.8%	1.8%	32.3%	0.0%
Illinois	28.7%	10.3%	3.3%	1.9%	6.1%	0.0%
Indiana	46.3%	19.0%	24.3%	10.1%	2.6%	0.0%
Iowa	47.0%	6.3%	7.0%	20.6%	12.8%	0.0%
Kansas	85.0%	8.8%	3.3%	0.0%	0.0%	0.0%
Kentucky	53.9%	4.2%	22.2%	31.0%	1.5%	0.0%
Louisiana	31.0%	7.1%	11.9%	22.8%	11.3%	3.3%
Maine	46.4%	11.9%	0.0%	20.2%	27.9%	0.0%
Maryland	49.7%	3.3%	2.0%	0.0%	51.3%	3.7%
Massachusetts	48.3%	7.7%	15.6%	28.7%	5.9%	0.0%
Michigan	22.5%	6.5%	15.6%	42.1%	19.1%	0.4%
Minnesota	78.0%	3.9%	3.1%	6.8%	10.4%	0.0%
Mississippi	30.7%	5.6%	7.2%	16.5%	39.3%	0.3%
Missouri	48.1%	4.9%	9.7%	18.9%	16.0%	0.9%
Montana	54.5%	0.3%	16.0%	35.4%	28.9%	0.0%
Nebraska	39.6%	4.9%	0.0%	0.0%	59.3%	0.0%
Nevada	33.4%	7.0%	8.4%	0.0%	29.1%	2.9%
New Hampshire	47.0%	3.3%	21.8%	39.5%	16.1%	0.0%
New Jersey	25.2%	7.1%	15.7%	26.5%	24.9%	5.0%
New Mexico	63.3%	2.1%	9.8%	36.7%	0.4%	0.0%
New York	75.2%	2.6%	1.5%	0.0%	14.2%	0.0%
North Carolina	18.8%	5.7%	12.7%	34.1%	17.6%	2.7%
North Dakota	51.6%	0.3%	1.3%	0.1%	57.6%	2.8%
Ohio	31.9%	9.0%	9.8%	8.2%	41.6%	0.2%
Oklahoma	56.1%	4.3%	16.8%	25.6%	8.3%	0.0%
Oregon	59.8%	4.0%	6.1%	0.0%	29.5%	0.0%
Pennsylvania	28.6%	14.4%	28.1%	16.2%	25.2%	0.0%
Rhode Island	42.8%	1.8%	9.0%	33.2%	21.1%	0.0%
South Carolina	25.6%	7.5%	23.0%	33.2%	15.7%	3.5%
South Dakota	62.6%	1.7%	0.0%	0.0%	41.1%	19.3%
Tennessee	31.5%	3.1%	11.1%	37.6%	25.5%	0.0%
Texas	48.8%	2.5%	20.5%	17.8%	11.6%	0.5%
Utah	52.1%	4.2%	7.7%	36.8%	4.7%	0.0%
Vermont	31.4%	1.2%	18.8%	60.8%	8.9%	0.8%
Virginia	62.0%	4.3%	5.8%	0.0%	25.9%	1.1%
Washington	50.8%	4.5%	15.9%	19.0%	13.5%	0.0%
West Virginia	33.6%	15.4%	7.4%	0.0%	55.8%	0.0%
Wisconsin	43.5%	9.6%	2.5%	0.0%	44.9%	0.5%
Wyoming	48.3%	6.1%	20.7%	14.4%	31.9%	0.0%

Source: Author calculations based on *Bond Buyer* data.

Note: The carryforward amount includes allocations from more than one year, thus, the "percent of total" amounts do not sum to 100%.

Recent Private Activity Bond Legislation

Members of the 110th Congress have enacted one private activity bond law and introduced several bills that would change the tax treatment of state and local bonds issued to finance private activities. These activities include housing, construction of research park facilities, renewable energy and recycling initiatives, and agriculture.

On May 25, 2007, the *U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act* (H.R. 2206, P.L. 110-28) was enacted. The legislation relaxes the tax-exempt mortgage revenue bond rules for repairs and reconstruction of homes in the areas affected by the 2005 Hurricanes Katrina, Rita, and Wilma. The underlying bonds are subject to the volume limits that apply to Qualified Gulf Opportunity Bonds and do not create additional capacity.

The *Katrina Housing Tax Relief Act of 2007* (H.R. 1562) would extend, to the end of 2010, tax-exempt mortgage revenue bonds issued to finance rehabilitation loans for repair and reconstruction of homes in areas devastated by Hurricane Katrina. The legislation passed the House on March 27, 2007, by voice vote. The Senate has not yet acted on the legislation.

Two companion bills, the *Research and Development Tax Credit Act of 2007* (H.R. 1712) and the *Research Competitiveness Act of 2007* (S. 41), would allow the issuance of tax-exempt facility bonds for research park facilities used in connection with research and experimentation. These bonds would be subject to the existing state volume cap. Similarly, the *Rural Community Renewable Energy Bonds Act* (S. 672) would allow the issuance of tax-exempt small issue bonds to finance qualified renewable energy facilities. The tax-exempt bonds created by S. 672 would not be subject to a volume cap.

Two bills would allow bonds that are guaranteed by the federal government and by the quasi-federal home loan bank to also be tax-exempt. Generally, federally guaranteed debt cannot be tax-exempt. H.R. 1959 would permit interest on federally guaranteed water, wastewater, and essential community facilities loans to be tax exempt. H.R. 2091 would allow the federal home loan banks (FHLBs) to guarantee tax-exempt bonds. FHLBs guarantees would likely be used for bonds issued by state and local governments, or private entities acting on behalf of state and local governments, such as water and sewer authorities. In the Senate, S. 1963 would also allow bonds guaranteed by the FHLB to be tax-exempt.

Under H.R. 2110, tax-exempt small issue bonds could be used to finance the purchase of property or land used primarily for the processing of agricultural products. These bonds would be subject to the state volume cap.

The *Spaceport Equality Act of 2007* (H.R. 2285 and S. 1355) would create a new facility eligible for tax-exempt financing: spaceports. The new bonds would not be subject to the state volume cap as long as the facility is government owned. The tax treatment of the new bonds would be similar to that for airports.

The *Empowerment Zone and Renewal Community Enhancement Act of 2007* (H.R. 2578 and S. 1627) would expand the empowerment zone and enterprise community program by creating "rural enterprise communities." Each community would be subject to an individual volume limit of $200 million, but they would not be subject to the state volume cap. The legislation also does not include a national cap.

The *Clean Air and Water Investment Act of 2007* (H.R. 2812) would create a new qualified exempt facility: air or water pollution control facilities. The legislation identifies such facilities as those intended "...to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat...." The bonds would be subject to the state volume cap.

The *Tribal Government Tax-Exempt Bond Parity Act of 2007* (H.R. 3164 and S. 1850) would expand the range of activities that tribal governments can use tax-exempt debt to finance. Under current law, tribal governments can use tax-exempt bonds to finance spending on "essential government services," but not other activities. However, no consistent definition of essential government service has been identified. The legislation defines "essential government service" as "...any function which is performed by a State or local government with general taxing powers." Qualified private activities would likely not be included in essential government function under this definition.

The *Recycling Investment Saves Energy Act* (S. 1587) would allow for the tax-exempt bond financing of qualified recycling facilities. The tax-exempt bonds issued to finance these facilities would be subject to the state volume cap.

The *Community Forestry Conservation Act of 2007* (S. 1952) would allow the issuance of $10 billion in tax-exempt bonds to finance the purchase and conservation of forests by qualified organizations as defined in the legislation. The bonds would be allocated by region and would not be subject to the state volume cap.