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Private Activity Bonds: An Analysis of State Use, 2001 to 2006

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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 2008); or (2) an inflation adjusted annual minimum ($262.095 million in 2008). Most private activity bond volume (62.4%), 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 since 2001. A series of estimates by the Joint Committee on Taxation suggests that the new bonds would 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. A selected group of legislative proposals are listed and summarized in this report including the proposed additional $10 billion in private activity bond capacity for housing.

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*, by Steven Maguire, and CRS Report RL31457, *Private Activity Bonds: An Introduction*, by Steven Maguire. For more on tax credit bonds, see CRS Report RS20606, *Tax Credit Bonds: A Brief Explanation*, by Steven Maguire. 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 including housing stimulus legislation that would increase housing PAB volume by $10 billion (H.R. 5720 and H.R. 3221). 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 2005, roughly 19,591 governmental bonds were issued, with a total volume of $311.3 billion.[3] This total includes "new money" and bonds used to refund outstanding debt. In 2005, 14,939 "new money" bonds were issued with a face value of $151 billion. Refunding bonds are typically issued during periods of relatively low interest rates.

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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, 2005," *SOI Bulletin*, Fall 2007, vol. 27, no. 2.

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 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 2005, total PAB "new money" volume was $54.7 billion and of that, $20.5 billion was subject to the volume cap. Each state is free to select the mix of qualified activities and to determine the total amount of private activity bond volume under the cap. 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 2005. 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 2006.

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

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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, 2005," *SOI Bulletin*, Fall (continued...)

bonds. In 2005, the most recent year where IRS data are available, *new money*, long-term *governmental* bonds raised a total of $151.6 billion, with $53.4 billion (35.3%) 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 are not used to retire outstanding debt. By comparison, also in 2005, state and local governments issued $54.7 billion of long-term, new money, *private activity* bonds (about 26.5% of new money, long-term tax-exempt debt). Most private activity bond volume is issued for non-profit organizations and hospitals ($27.969 billion).

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, just over half of the amount of private activity bonds are subject to the state volume cap (55% of the $54.7 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.

[5] (...continued)
2007, vol. 27, no. 2.

[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, 2005

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

State	Total Amount Issued (in millions)	Percent of Total Amount Issued in 2005							
		Airports, Docks, and Wharves	Water, Sewage, & Solid Waste Disposal	Residential Rental	Mortgage	Small Issue	Hospital	501(c)(3) Nonhospital	All Other Bonds[a]
US Total	$54,691	6.0%	3.4%	11.8%	12.1%	1.3%	22.4%	28.8%	14.3%
Alabama	$244	0.0%	0.0%	d	0.0%	d	45.1%	46.3%	0.0%
Alaska	$229	0.0%	0.0%	d	0.0%	0.0%	0.0%	d	d
Arizona	$1,562	0.0%	10.9%	d	7.2%	0.0%	68.1%	2.6%	d
Arkansas	$292	0.0%	d	0.0%	0.0%	0.0%	d	14.7%	d
California	$4,804	1.8%	5.1%	30.0%	2.0%	0.5%	23.1%	30.7%	6.7%
Colorado	$1,319	0.0%	0.0%	9.1%	6.6%	d	27.5%	45.3%	d
Connecticut	$776	0.0%	d	d	27.6%	0.0%	0.0%	66.1%	d
Delaware	$189	0.0%	0.0%	d	d	0.0%	39.7%	d	d
District of Columbia	$1,000	d	0.0%	16.3%	0.0%	0.0%	d	20.8%	d
Florida	$2,004	10.3%	d	12.3%	5.8%	2.7%	21.5%	42.6%	d
Georgia	$1,757	d	d	9.4%	d	2.8%	39.6%	44.5%	d
Hawaii	d	d	d	d	d	d	d	d	d
Idaho	$259	0.0%	d	0.0%	57.9%	d	d	4.2%	0.0%
Illinois	$1,960	d	d	13.3%	11.8%	2.6%	21.9%	47.6%	0.0%
Indiana	$1,668	d	11.8%	d	d	2.2%	55.1%	13.6%	d
Iowa	$510	0.0%	d	d	28.8%	4.7%	28.4%	20.4%	15.9%
Kansas	$185	0.0%	d	d	57.8%	9.2%	d	15.7%	0.0%
Kentucky	$538	d	7.2%	9.5%	25.7%	d	18.0%	16.4%	d
Louisiana	$596	d	d	d	28.7%	0.0%	34.9%	2.2%	d

State	Total Amount Issued (in millions)	Percent of Total Amount Issued in 2005							
		Airports, Docks, and Wharves	Water, Sewage, & Solid Waste Disposal	Residential Rental	Mortgage	Small Issue	Hospital	501(c)(3) Nonhospital	All Other Bonds[a]
Maine	$300	d	d	12.7%	38.0%	d	0.0%	27.0%	d
Maryland	$914	0.0%	0.0%	14.3%	14.3%	d	d	67.0%	0.0%
Massachusetts	$1,782	d	0.0%	6.4%	d	1.5%	33.1%	43.2%	d
Michigan	$2,320	d	d	5.1%	0.0%	1.2%	37.3%	8.8%	23.6%
Minnesota	$1,258	d	d	9.3%	14.7%	1.4%	17.4%	44.9%	6.0%
Mississippi	$217	d	0.0%	d	d	8.8%	d	d	d
Missouri	$1,320	d	d	16.4%	12.1%	1.1%	34.6%	18.0%	d
Montana	$86	0.0%	0.0%	0.0%	d	0.0%	0.0%	d	0.0%
Nebraska	$248	0.0%	d	0.0%	d	0.8%	18.1%	43.5%	0.0%
Nevada	$359	0.0%	d	12.5%	0.0%	0.0%	39.3%	d	d
New Hampshire	$357	0.0%	21.8%	d	33.9%	0.0%	0.0%	17.1%	d
New Jersey	$1,274	0.0%	2.4%	9.8%	d	3.3%	20.1%	43.0%	d
New Mexico	$246	0.0%	0.0%	16.7%	d	d	d	0.0%	d
New York	$6,823	16.2%	0.9%	22.0%	4.0%	0.3%	5.1%	21.1%	30.4%
North Carolina	$1,611	d	d	d	d	1.0%	17.9%	23.5%	d
North Dakota	$244	0.0%	0.0%	0.0%	d	d	16.8%	11.1%	0.0%
Ohio	$1,518	d	5.3%	3.2%	d	1.6%	23.5%	34.0%	d
Oklahoma	$404	0.0%	0.0%	d	18.1%	0.2%	d	45.0%	d
Oregon	$333	0.0%	0.0%	24.0%	0.0%	d	d	46.5%	d
Pennsylvania	$2,937	d	5.7%	d	11.3%	2.6%	28.7%	43.4%	d
Rhode Island	$314	d	0.0%	d	d	d	d	53.8%	0.0%
South Carolina	$417	0.0%	d	9.4%	d	d	0.0%	15.3%	d

State	Total Amount Issued (in millions)	Percent of Total Amount Issued in 2005							
		Airports, Docks, and Wharves	Water, Sewage, & Solid Waste Disposal	Residential Rental	Mortgage	Small Issue	Hospital	501(c)(3) Nonhospital	All Other Bonds[a]
South Dakota	$456	0.0%	0.0%	0.0%	95.6%	1.1%	0.0%	3.3%	0.0%
Tennessee	$911	d	0.0%	8.1%	19.2%	d	d	36.8%	d
Texas	$2,821	d	3.2%	18.5%	2.8%	d	20.9%	22.0%	31.0%
Utah	$543	0.0%	0.0%	d	23.0%	d	0.0%	51.2%	d
Vermont	$214	0.0%	0.0%	7.5%	d	0.0%	d	6.1%	d
Virginia	$1,821	6.5%	d	10.7%	d	0.5%	23.8%	16.1%	d
Washington	$1,199	d	3.8%	21.2%	d	1.2%	16.8%	37.1%	10.3%
West Virginia	$240	0.0%	0.0%	d	42.5%	d	45.8%	d	d
Wisconsin	$888	d	d	2.8%	38.4%	2.5%	26.1%	25.2%	0.0%
Wyoming	$378	0.0%	d	0.0%	37.8%	0.0%	0.0%	d	d

Source: CRS calculations based on data from: Cynthia Belmonte, "Tax-Exempt Bonds, 2005," *SOI Bulletin*, Fall 2007, vol. 27, no. 2.

a. 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 2008 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 inflation index used to increase the cap, then the per capita amount is determinative.

Table 2. State Private Activity Bond Annual Volume Limits, 2001 to 2008

Year	States Choose the Greater of the Per Capita Amount Multiplied by Population or the Minimum	
	Per Capita Amount	State Annual Minimum Amount (in thousands)
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
2008	$85.00	$262,095
Percentage Change 2001 to 2008	36.00%	39.78%
Total for 2001 to 2006 period		$1,360,685

Source: 26 U.S.C § 146(d).

[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 $146.0 billion (see **Table 5**).

Table 3. New Private Activity Bond Volume Created Since 2001

Facility Purpose	Year Authorized	Code Section	New Volume Authorized (in millions)	Estimated Revenue Loss (in 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)(14)	$2,000	$231
Highway and Surface Transfer[d]	2005	142(a)(15)	$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).

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.

d. Created 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

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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.

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 2005 and also reports the 2006 *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 six-year total (2001 to 2006) 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.

The territories (American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands) and Puerto Rico also issue bonds for qualified private activities. For the territories with population less than the least populous states, the cap is the population of the territory divided by the population of the least populous state (Wyoming) multiplied by the minimum amount ($262.095 million in 2008).[10]

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.[11] 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 2007 was $22.6 billion for all states and territories. Because the carryforward amount includes 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 2007, 52.5% of the total cap available. The average carryforward was 15.5%.

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[9] IRS data are from Cynthia Belmonte, "Tax-Exempt Bonds, 2005," SOI Bulletin, Fall 2007, vol. 27, no. 2.

[10] 26 U.S.C. § 146(d)(4).

[11] 26 U.S.C. § 146(f)(3).

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	2005 IRS Data		Bond Buyer Data	
	Total Volume	Subject to Cap	2005 Cap Volume	2006 Cap Volume
US Total	**$54,691.0**	**$20,525.8**	**$26,079.1**	**$26,437.5**
Alabama	$244.0	$20.8	$362.4	$364.6
Alaska	$229.0	d	$239.2	$246.6
Arizona	$1,562.0	$458.8	$459.5	$475.1
Arkansas	$292.0	d	$239.2	$246.6
California	$4,804.0	$2,001.0	$2,871.5	$2,890.6
Colorado	$1,319.0	$357.4	$368.1	$373.2
Connecticut	$776.0	$262.3	$280.3	$280.8
Delaware	$189.0	$96.5	$239.2	$246.6
D.C.	$1,000.0	$162.8	$239.2	$246.1
Florida	$2,004.0	$443.6	$1,391.8	$1,423.2
Georgia	$1,757.0	$268.7	$706.4	$725.8
Hawaii	d	d	$239.2	$246.6
Idaho	$259.0	$162.0	$239.2	$246.6
Illinois	$1,960.0	$595.8	$1,012.3	$1,021.1
Indiana	$1,668.0	$377.6	$499.0	$501.8
Iowa	$510.0	$238.1	$239.2	$246.6
Kansas	$185.0	$149.6	$239.2	$246.6
Kentucky	$538.0	$338.7	$331.7	$333.9
Louisiana	$596.0	$355.4	$361.3	$361.9
Maine	$300.0	$216.2	$239.2	$246.6
Maryland	$914.0	$270.8	$444.6	$448.0
Massachusetts	$1,782.0	$393.4	$513.3	$511.9
Michigan	$2,320.0	$728.5	$809.0	$809.7
Minnesota	$1,258.0	$408.4	$408.1	$410.6
Mississippi	$217.0	$188.0	$239.2	$246.6
Missouri	$1,320.0	$594.5	$460.4	$464.0
Montana	$86.0	d	$239.2	$246.6
Nebraska	$248.0	$95.4	$239.2	$246.6
Nevada	$359.0	$174.5	$239.2	$246.6
New Hampshire	$357.0	$295.8	$239.2	$246.6
New Jersey	$1,274.0	$469.9	$695.9	$697.4
New Mexico	$246.0	$218.2	$239.2	$246.6
New York	$6,823.0	$1,859.6	$1,538.2	$1,540.4
North Carolina	$1,611.0	$899.3	$683.3	$694.7
North Dakota	$244.0	$175.9	$239.2	$246.6
Ohio	$1,518.0	$636.6	$916.7	$917.1
Oklahoma	$404.0	$189.6	$281.9	$283.8
Oregon	$333.0	$83.1	$287.6	$291.3
Pennsylvania	$2,937.0	$651.0	$992.5	$994.4
Rhode Island	$314.0	$97.2	$239.2	$246.6
South Carolina	$417.0	$330.0	$335.8	$340.4
South Dakota	$456.0	$441.1	$239.2	$246.6
Tennessee	$911.0	$554.2	$472.1	$477.0
Texas	$2,821.0	$1,295.1	$1,799.2	$1,828.8
Utah	$543.0	$265.5	$239.2	$246.6
Vermont	$214.0	$189.7	$239.2	$246.6
Virginia	$1,821.0	$975.2	$596.8	$605.4
Washington	$1,199.0	$323.3	$496.3	$503.0

State	2005 IRS Data		Bond Buyer Data	
	Total Volume	Subject to Cap	2005 Cap Volume	2006 Cap Volume
West Virginia	$240.0	$122.2	$239.2	$246.6
Wisconsin	$888.0	$399.0	$440.7	$442.9
Wyoming	$378.0	$373.7	$239.2	$246.6

Source: IRS data are from Cynthia Belmonte, "Tax-Exempt Bonds, 2005," *SOI Bulletin*, Fall 2007, vol. 27, no. 2. The *Bond Buyer* data are from "State Allocations and Use of Private Activity Bonds in 2006," *The Bond Buyer*, June 25, 2007; and "State Allocations and Use of Private Activity Bonds in 2005," *The Bond Buyer*, May 1, 2006.

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 2006 time period, $3.8 billion was abandon capacity or just 2.6% of all capacity. Delaware abandoned the most, $486.5 million, or approximately 12.7% of the state's available capacity (and about one-fifth of the U.S. total abandon capacity). In contrast, 20 states did not abandon any capacity over the 2001 to 2006 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 2006, 20 states and the District of Columbia were subject to the cumulative volume capacity minimum of $1,360.7 million over those six years (see **Table 2**).[12] 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 5.8% of their capacity ($1.6 billion); the 30 more populous states abandoned considerably less 1.9% of their capacity ($2.2 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.

[12] The District of Columbia cap in 2006 reported in the *Bond Buyer* was $500,000 less than reported by the U.S. Treasury.

Table 5. State Use of Private Activity Bond Volume Cap, 2001 to 2006

(in $ millions)

State	Total Cap[a]	Housing	IDB — Small Issue	Exempt Facility	Student Loan	Carry-forward to 2007	Abandon Capacity
US Total	**146,000.0**	**73,577.0**	**7,563.0**	**15,492.0**	**21,321.0**	**22,638.0**	**3,818.0**
Alabama	2,036.3	591.4	167.5	135.3	75.0	893.4	68.1
Alaska	1,360.7	645.6	0.0	148.1	279.4	358.0	90.6
Arizona	2,509.0	1,284.2	18.7	424.5	569.8	206.5	82.4
Arkansas	1,360.7	333.2	100.7	247.8	478.5	188.1	176.0
California	15,939.1	10,882.4	248.0	1,416.8	1,047.9	1,315.8	9.9
Colorado	2,043.5	1,679.9	62.3	154.8	493.3	0.0	0.0
Connecticut	1,569.0	1,421.6	23.9	43.3	107.3	36.1	41.1
Delaware	1,360.7	602.7	4.5	15.4	0.0	596.2	486.5
D.C.	1,360.2	486.1	15.0	0.0	0.0	518.8	330.9
Florida	7,658.6	3,332.4	354.2	742.2	984.2	2,377.6	459.5
Georgia	3,909.4	1,982.8	257.1	239.6	0.0	1,130.1	363.0
Hawaii	1,360.7	142.6	0.0	180.0	125.0	575.3	138.4
Idaho	1,360.7	656.8	37.6	58.1	20.0	362.5	0.0
Illinois	5,662.2	2,191.2	504.6	171.1	89.0	n.a.	0.0
Indiana	2,797.0	1,460.0	517.1	641.4	231.7	0.0	0.0
Iowa	1,362.4	749.8	79.5	90.4	268.9	70.4	0.0
Kansas	1,360.7	1,171.3	119.4	38.0	0.0	0.0	0.0
Kentucky	1,859.5	1,054.4	79.5	388.5	530.6	1.0	0.0
Louisiana	2,033.3	669.2	236.5	199.7	472.1	161.8	55.8
Maine	1,360.7	600.6	141.3	0.0	225.0	461.8	3.2
Maryland	2,476.8	1,617.1	83.9	40.6	0.0	698.8	236.3
Massachusetts	2,897.6	1,494.2	228.1	446.1	873.6	4.0	0.0
Michigan	4,549.4	856.9	307.7	591.1	1,575.1	930.1	16.0
Minnesota	2,280.4	1,781.9	72.6	86.0	197.4	161.4	0.0
Mississippi	1,360.7	503.4	62.0	79.7	326.6	380.1	3.8
Missouri	2,578.1	1,476.6	130.2	205.0	562.9	149.2	21.8
Montana	1,360.7	733.8	3.0	178.0	628.2	208.1	0.0
Nebraska	1,360.7	793.3	107.2	0.0	0.0	500.0	0.0
Nevada	1,360.7	436.9	82.5	119.0	0.0	475.0	32.3
New Hampshire	1,360.7	662.0	38.4	243.0	515.0	86.2	0.0
New Jersey	3,890.9	935.7	272.1	570.8	1,071.0	747.0	433.4
New Mexico	1,360.7	791.3	23.0	109.7	512.6	65.2	0.0
New York	8,662.5	6,896.0	217.5	111.5	0.0	763.3	0.0
North Carolina	3,791.6	729.8	187.2	544.5	1,407.6	593.5	98.3
North Dakota	1,360.7	694.6	5.1	15.0	1.0	714.7	83.4
Ohio	5,167.9	2,439.7	426.6	524.8	598.4	1,198.5	10.4
Oklahoma	1,583.8	909.1	57.7	218.0	453.7	66.2	22.6
Oregon	1,602.1	806.0	56.3	104.5	0.0	627.3	0.3
Pennsylvania	5,590.3	1,779.4	739.5	1,403.7	970.0	638.4	0.0
Rhode Island	1,360.7	483.0	24.4	100.1	370.1	236.3	0.0
South Carolina	1,850.7	567.2	139.9	355.4	674.7	175.8	66.0
South Dakota	1,360.7	780.0	18.8	0.0	0.0	616.9	214.8
Tennessee	2,637.3	941.1	125.4	262.4	972.3	0.0	0.0
Texas	9,933.6	5,004.7	204.9	2,383.0	1,635.8	707.9	134.7
Utah	1,360.7	632.9	58.5	85.4	506.8	139.6	0.0
Vermont	1,360.7	488.3	17.3	209.2	852.2	27.8	9.0
Virginia	3,321.6	2,235.0	135.1	156.7	0.0	704.3	28.9

State	Total Cap[a]	Housing	IDB — Small Issue	Exempt Facility	Student Loan	Carry-forward to 2007	Abandon Capacity
Washington	2,762.5	1,579.2	130.1	422.7	428.7	284.2	0.0
West Virginia	1,360.7	509.8	192.8	268.2	0.0	462.5	75.7
Wisconsin	2,469.8	1,311.1	254.3	93.0	0.0	806.6	25.2
Wyoming	1,360.7	768.4	193.0	230.2	190.0	215.7	0.0

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

a. 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 2006

State	Housing	IDB — Small Issue	Exempt Facility	Student Loan	Carry-forward to 2007	Abandon Capacity
US Total	50.4%	5.2%	10.6%	14.6%	15.5%	2.6%
Alabama	29.0%	8.2%	6.6%	3.7%	43.9%	3.3%
Alaska	47.4%	0.0%	10.9%	20.5%	26.3%	6.7%
Arizona	51.2%	0.7%	16.9%	22.7%	8.2%	3.3%
Arkansas	24.5%	7.4%	18.2%	35.2%	13.8%	12.9%
California	68.3%	1.6%	8.9%	6.6%	8.3%	0.1%
Colorado	82.2%	3.0%	7.6%	24.1%	0.0%	0.0%
Connecticut	90.6%	1.5%	2.8%	6.8%	2.3%	2.6%
Delaware	44.3%	0.3%	1.1%	0.0%	43.8%	35.8%
D.C.	35.7%	1.1%	0.0%	0.0%	38.1%	24.3%
Florida	43.5%	4.6%	9.7%	12.9%	31.0%	6.0%
Georgia	50.7%	6.6%	6.1%	0.0%	28.9%	9.3%
Hawaii	10.5%	0.0%	13.2%	9.2%	42.3%	10.2%
Idaho	48.3%	2.8%	4.3%	1.5%	26.6%	0.0%
Illinois	38.7%	8.9%	3.0%	1.6%	na	0.0%
Indiana	52.2%	18.5%	22.9%	8.3%	0.0%	0.0%
Iowa	55.0%	5.8%	6.6%	19.7%	5.2%	0.0%
Kansas	86.1%	8.8%	2.8%	0.0%	0.0%	0.0%
Kentucky	56.7%	4.3%	20.9%	28.5%	0.1%	0.0%
Louisiana	32.9%	11.6%	9.8%	23.2%	8.0%	2.7%
Maine	44.1%	10.4%	0.0%	16.5%	33.9%	0.2%
Maryland	65.3%	3.4%	1.6%	0.0%	28.2%	9.5%
Massachusetts	51.6%	7.9%	15.4%	30.1%	0.1%	0.0%
Michigan	18.8%	6.8%	13.0%	34.6%	20.4%	0.4%
Minnesota	78.1%	3.2%	3.8%	8.7%	7.1%	0.0%
Mississippi	37.0%	4.6%	5.9%	24.0%	27.9%	0.3%
Missouri	57.3%	5.1%	8.0%	21.8%	5.8%	0.8%
Montana	53.9%	0.2%	13.1%	46.2%	15.3%	0.0%
Nebraska	58.3%	7.9%	0.0%	0.0%	36.7%	0.0%
Nevada	32.1%	6.1%	8.7%	0.0%	34.9%	2.4%
New Hampshire	48.7%	2.8%	17.9%	37.8%	6.3%	0.0%
New Jersey	24.0%	7.0%	14.7%	27.5%	19.2%	11.1%
New Mexico	58.2%	1.7%	8.1%	37.7%	4.8%	0.0%
New York	79.6%	2.5%	1.3%	0.0%	8.8%	0.0%

State	Housing	IDB — Small Issue	Exempt Facility	Student Loan	Carry-forward to 2007	Abandon Capacity
North Carolina	19.2%	4.9%	14.4%	37.1%	15.7%	2.6%
North Dakota	51.0%	0.4%	1.1%	0.1%	52.5%	6.1%
Ohio	47.2%	8.3%	10.2%	11.6%	23.2%	0.2%
Oklahoma	57.4%	3.6%	13.8%	28.6%	4.2%	1.4%
Oregon	50.3%	3.5%	6.5%	0.0%	39.2%	0.0%
Pennsylvania	31.8%	13.2%	25.1%	17.4%	11.4%	0.0%
Rhode Island	35.5%	1.8%	7.4%	27.2%	17.4%	0.0%
South Carolina	30.6%	7.6%	19.2%	36.5%	9.5%	3.6%
South Dakota	57.3%	1.4%	0.0%	0.0%	45.3%	15.8%
Tennessee	35.7%	4.8%	9.9%	36.9%	0.0%	0.0%
Texas	50.4%	2.1%	24.0%	16.5%	7.1%	1.4%
Utah	46.5%	4.3%	6.3%	37.2%	10.3%	0.0%
Vermont	35.9%	1.3%	15.4%	62.6%	2.0%	0.7%
Virginia	67.3%	4.1%	4.7%	0.0%	21.2%	0.9%
Washington	57.2%	4.7%	15.3%	15.5%	10.3%	0.0%
West Virginia	37.5%	14.2%	19.7%	0.0%	34.0%	5.6%
Wisconsin	53.1%	10.3%	3.8%	0.0%	32.7%	1.0%
Wyoming	56.5%	14.2%	16.9%	14.0%	15.9%	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%.

Selected 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, economic development, infrastructure investment, renewable energy, recycling, conservation initiatives, and tribal government parity.

Housing Related Proposals

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. H.R. 4312 and the related S. 2757 would further expand the Gulf Opportunity Bond provisions.

Two House bills, H.R. 3742 and the *Military Assistance Act of 2007*, H.R. 3816, would eliminate the first-time homebuyer requirement for mortgage revenue bonds issued to finance mortgages for qualified veterans. More generally, H.R. 5720, which was approved by the House Ways and Means Committee on April 9, 2008, would allocate an additional $10 billion for mortgage revenue bonds and residential rental facilities. In addition, a Senate-amended version of H.R. 3221 would also allocate an additional $10 billion.

H.R. 5239 and S. 2517 would allow the issuance of $15 billion in additional mortgage revenue bonds for the purchase of subprime mortgage loans. A related bill, S. 2574, the *Mortgage Refinancing Initiative Act of 2008,* would permit the Secretary of Treasury to allocate an additional $5 million each for 2008 and 2009. (Note that the amount may have been intended to be $5 *billion* for each year.)

Economic Development Proposals

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. The tax-exempt bonds created by S. 672 would not be subject to a volume cap. H.R. 3089 would create a new category of private activity bonds for construction of domestic use oil refineries.

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 *Trade and Globalization Assistance Act of 2007*, H.R. 3920, would increase the amount of tax-exempt bond proceeds a project can use in a newly designated "manufacturing zone."

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.

Infrastructure Investment Proposals

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.

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 *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.

Environmental and Conservation Proposals

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 *Clean Renewable Energy and Economic Development Incentives Act of 2007* (S. 1531) would expand the list of private activities to include facilities that use renewable resources for energy production. 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 *Community Forestry Conservation Act of 2007* (S. 1952 and H.R. 3456) 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.

S. 1987 would provide an additional $12 billion in private activity bond volume cap for the construction of an alternative motor vehicle facility. The bonds must be issued before January 1, 2013 and a single issuer can use a maximum of $4 billion of capacity.

Other Proposals

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.