

105TH CONGRESS  
1ST SESSION

# S. 121

To amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. MOYNIHAN (for himself, Mr. CHAFEE, Mr. KENNEDY, and Ms. MOSELEY-BRAUN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for 501(c)(3) bonds a tax treatment similar to governmental bonds, 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 “Higher Education  
5 Bond Parity Act”.

6 **SEC. 2. TAX TREATMENT OF 501(c)(3) BONDS SIMILAR TO**  
7 **GOVERNMENTAL BONDS.**

8 (a) IN GENERAL.—Section 150(a) of the Internal  
9 Revenue Code of 1986 (relating to definitions and special

1 rules) is amended by striking paragraphs (2) and (4), by  
 2 redesignating paragraphs (5) and (6) as paragraphs (4)  
 3 and (5), respectively, and by inserting after paragraph (1)  
 4 the following:

5           “(2) EXEMPT PERSON.—

6                   “(A) IN GENERAL.—The term ‘exempt per-  
 7           son’ means—

8                           “(i) a governmental unit, or

9                           “(ii) a 501(c)(3) organization, but  
 10                           only with respect to its activities which do  
 11                           not constitute unrelated trades or busi-  
 12                           nesses as determined by applying section  
 13                           513(a).

14                   “(B) GOVERNMENTAL UNIT NOT TO IN-  
 15           CLUDE FEDERAL GOVERNMENT.—The term  
 16           ‘governmental unit’ does not include the United  
 17           States or any agency or instrumentality thereof.

18                   “(C) 501(c)(3) ORGANIZATION.—The term  
 19           ‘501(c)(3) organization’ means any organization  
 20           described in section 501(c)(3) and exempt from  
 21           tax under section 501(a).”.

22           (b) REPEAL OF QUALIFIED 501(c)(3) BOND DES-  
 23   IGNATION.—Section 145 of the Internal Revenue Code of  
 24   1986 (relating to qualified 501(c)(3) bonds) is repealed.

25           (c) CONFORMING AMENDMENTS.—

1           (1) Section 141(b)(3) of the Internal Revenue  
2 Code of 1986 is amended—

3           (A) in subparagraphs (A)(ii)(I) and  
4 (B)(ii), by striking “government use” and in-  
5 serting “exempt person use”;

6           (B) in subparagraph (B), by striking “a  
7 government use” and inserting “an exempt per-  
8 son use”;

9           (C) in subparagraphs (A)(ii)(II) and (B),  
10 by striking “related business use” and inserting  
11 “related private business use”;

12           (D) in the heading of subparagraph (B),  
13 by striking “RELATED BUSINESS USE” and in-  
14 serting “RELATED PRIVATE BUSINESS USE”;  
15 and

16           (E) in the heading thereof, by striking  
17 “GOVERNMENT USE” and inserting “EXEMPT  
18 PERSON USE”.

19           (2) Section 141(b)(6)(A) of such Code is  
20 amended by striking “a governmental unit” and in-  
21 serting “an exempt person”.

22           (3) Section 141(b)(7) of such Code is amend-  
23 ed—

24           (A) by striking “government use” and in-  
25 serting “exempt person use”; and

1 (B) in the heading thereof, by striking  
 2 “GOVERNMENT USE” and inserting “EXEMPT  
 3 PERSON USE”.

4 (4) Section 141(b) of such Code is amended by  
 5 striking paragraph (9).

6 (5) Section 141(c)(1) of such Code is amended  
 7 by striking “governmental units” and inserting “ex-  
 8 empt persons”.

9 (6) Section 141 of such Code is amended by re-  
 10 designating subsection (e) as subsection (f) and by  
 11 inserting after subsection (d) the following:

12 “(e) CERTAIN ISSUES USED TO PROVIDE RESIDEN-  
 13 TIAL RENTAL HOUSING FOR FAMILY UNITS.—

14 “(1) IN GENERAL.—Except as provided in para-  
 15 graph (2), for purposes of this title, the term ‘pri-  
 16 vate activity bond’ includes any bond issued as part  
 17 of an issue if any portion of the net proceeds of the  
 18 issue are to be used (directly or indirectly) by an ex-  
 19 empt person described in section 150(a)(2)(A)(ii) to  
 20 provide residential rental property for family units.  
 21 This paragraph shall not apply if the bond would  
 22 not be a private activity bond if the section  
 23 501(c)(3) organization were not an exempt person.

24 “(2) EXCEPTION FOR BONDS USED TO PROVIDE  
 25 QUALIFIED RESIDENTIAL RENTAL PROJECTS.—

1 Paragraph (1) shall not apply to any bond issued as  
 2 part of an issue if the portion of such issue which  
 3 is to be used as described in paragraph (1) is to be  
 4 used to provide—

5 “(A) a residential rental property for fam-  
 6 ily units if the first use of such property is pur-  
 7 suant to such issue,

8 “(B) qualified residential rental projects  
 9 (as defined in section 142(d)), or

10 “(C) property which is to be substantially  
 11 rehabilitated in a rehabilitation beginning with-  
 12 in the 2-year period ending 1 year after the  
 13 date of the acquisition of such property.

14 “(3) SUBSTANTIAL REHABILITATION.—

15 “(A) IN GENERAL.—Except as provided in  
 16 subparagraph (B), rules similar to the rules of  
 17 section 47(e)(1)(C) shall apply in determining  
 18 for purposes of paragraph (2)(C) whether prop-  
 19 erty is substantially rehabilitated.

20 “(B) EXCEPTION.—For purposes of sub-  
 21 subparagraph (A), clause (ii) of section 47(e)(1)(C)  
 22 shall not apply, but the Secretary may extend  
 23 the 24-month period in section 47(e)(1)(C)(i)  
 24 where appropriate due to circumstances not  
 25 within the control of the owner.

1           “(4) CERTAIN PROPERTY TREATED AS NEW  
2 PROPERTY.—Solely for purposes of determining  
3 under paragraph (2)(A) whether the 1st use of prop-  
4 erty is pursuant to tax-exempt financing—

5                   “(A) IN GENERAL.—If—

6                           “(i) the 1st use of property is pursu-  
7 ant to taxable financing,

8                           “(ii) there was a reasonable expecta-  
9 tion (at the time such taxable financing  
10 was provided) that such financing would be  
11 replaced by tax-exempt financing, and

12                           “(iii) the taxable financing is in fact  
13 so replaced within a reasonable period  
14 after the taxable financing was provided,

15 then the 1st use of such property shall be treat-  
16 ed as being pursuant to the tax-exempt financ-  
17 ing.

18                   “(B) SPECIAL RULE WHERE NO OPERAT-  
19 ING STATE OR LOCAL PROGRAM FOR TAX-EX-  
20 EMPT FINANCING.—If, at the time of the 1st  
21 use of property, there was no operating State or  
22 local program for tax-exempt financing of the  
23 property, the 1st use of the property shall be  
24 treated as pursuant to the 1st tax-exempt fi-  
25 nancing of the property.

1           “(C) DEFINITIONS.—For purposes of this  
2 paragraph—

3           “(i) TAX-EXEMPT FINANCING.—The  
4 term ‘tax-exempt financing’ means financ-  
5 ing provided by tax-exempt bonds.

6           “(ii) TAXABLE FINANCING.—The  
7 term ‘taxable financing’ means financing  
8 which is not tax-exempt financing.”.

9           (7) Section 141(f) of such Code, as redesign-  
10 nated by paragraph (6), is amended—

11           (A) at the end of subparagraph (E), by  
12 adding “or”;

13           (B) at the end of subparagraph (F), by  
14 striking “, or” and inserting a period; and

15           (C) by striking subparagraph (G).

16           (8) The last sentence of section 144(b)(1) of  
17 such Code is amended by striking “(determined”  
18 and all that follows to the period.

19           (9) Section 144(c)(2)(C)(ii) of such Code is  
20 amended by striking “a governmental unit” and in-  
21 serting “an exempt person”.

22           (10) Section 146(g) of such Code is amended—

23           (A) by striking paragraph (2);

24           (B) by redesignating paragraphs (3) and  
25 (4) as paragraphs (2) and (3), respectively; and

1 (C) by striking “Paragraph (4)” and in-  
2 serting “Paragraph (3)”.

3 (11) The heading of section 146(k)(3) of such  
4 Code is amended by striking “GOVERNMENTAL” and  
5 inserting “EXEMPT PERSON”.

6 (12) The heading of section 146(m) of such  
7 Code is amended by striking “GOVERNMENT” and  
8 inserting “EXEMPT PERSON”.

9 (13) Section 147(b) of such Code is amended  
10 by striking paragraph (4) and by redesignating  
11 paragraph (5) as paragraph (4).

12 (14) Section 147(h) of such Code is amended to  
13 read as follows:

14 “(h) CERTAIN RULES NOT TO APPLY TO MORTGAGE  
15 REVENUE BONDS AND QUALIFIED STUDENT LOAN  
16 BONDS.—Subsections (a), (b), (c), and (d) shall not apply  
17 to any qualified mortgage bond, qualified veterans’ mort-  
18 gage bond, or qualified student loan bond.”.

19 (15) Section 148(d)(3)(F) of such Code is  
20 amended—

21 (A) by striking “or which is a qualified  
22 501(c)(3) bond”; and

23 (B) in the heading thereof, by striking  
24 “GOVERNMENTAL USE BONDS AND QUALIFIED  
25 501(c)(3)” and inserting “EXEMPT PERSON”.

1           (16) Section 148(f)(4)(B)(ii)(II) of such Code  
2 is amended by striking “(other than a qualified  
3 501(c)(3) bond)”.

4           (17) Section 148(f)(4)(C)(iv) of such Code is  
5 amended—

6           (A) by striking “a governmental unit or a  
7 501(c)(3) organization” both places it appears  
8 and inserting “an exempt person”;

9           (B) by striking “qualified 501(c)(3)  
10 bonds,”; and

11           (C) by striking the comma after “private  
12 activity bonds” the first place it appears.

13           (18) Section 148(f)(7)(A) of such Code is  
14 amended by striking “(other than a qualified  
15 501(c)(3) bond)”.

16           (19) Section 149(d)(2) of such Code is amend-  
17 ed—

18           (A) by striking “(other than a qualified  
19 501(c)(3) bond)”;

20           (B) in the heading thereof, by striking  
21 “CERTAIN PRIVATE” and inserting “PRIVATE”.

22           (20) Section 149(e)(2) of such Code is amend-  
23 ed—

24           (A) in the second sentence, by striking  
25 “which is not a private activity bond” and in-

1 S6201 serting “which is a bond issued for an exempt  
2 person described in section 150(a)(2)(A)(i)”;  
3 and

4 (B) by adding at the end the following:  
5 “Subparagraph (D) shall not apply to any bond  
6 which is not a private activity bond but which  
7 would be such a bond if the 501(c)(3) organiza-  
8 tion using the proceeds thereof were not an ex-  
9 empt person.”.

10 (21) The heading of section 150(b) of such  
11 Code is amended by striking “TAX-EXEMPT PRI-  
12 VATE ACTIVITY BONDS” and inserting “CERTAIN  
13 TAX-EXEMPT BONDS”.

14 (22) Section 150(b)(3) of such Code is amend-  
15 ed—

16 (A) in subparagraph (A), by inserting  
17 “owned by a 501(c)(3) organization” after “any  
18 facility”;

19 (B) in subparagraph (A), by striking “any  
20 private activity bond which, when issued, pur-  
21 ported to be a tax-exempt qualified 501(c)(3)  
22 bond” and inserting “any bond which, when is-  
23 sued, purported to be a tax-exempt bond, and  
24 which would be a private activity bond if the

1           501(c)(3) organization using the proceeds  
2           thereof were not an exempt person”; and

3           (C) by striking the heading thereof and in-  
4           serting “BONDS FOR EXEMPT PERSONS OTHER  
5           THAN GOVERNMENTAL UNITS.—”.

6           (23) Section 150(b)(5) of such Code is amend-  
7           ed—

8           (A) in subparagraph (A), by striking “pri-  
9           vate activity”;

10          (B) in subparagraph (A), by inserting  
11          “and which would be a private activity bond if  
12          the 501(c)(3) organization using the proceeds  
13          thereof were not an exempt person” after “tax-  
14          exempt bond”;

15          (C) by striking subparagraph (B) and in-  
16          serting the following:

17          “(B) such facility is required to be owned  
18          by an exempt person, and”;

19          (D) in the heading thereof, by striking  
20          “GOVERNMENTAL UNITS OR 501(c)(3) ORGANIZA-  
21          TIONS” and inserting “EXEMPT PERSONS”.

22          (24) Section 150 of such Code is amended by  
23          adding at the end the following:

24          “(f) CERTAIN RULES TO APPLY TO BONDS FOR EX-  
25          EMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—

1           “(1) IN GENERAL.—Nothing in section 103(a)  
2           or any other provision of law shall be construed to  
3           provide an exemption from Federal income tax for  
4           interest on any bond which would be a private activ-  
5           ity bond if the 501(c)(3) organization using the pro-  
6           ceeds thereof were not an exempt person unless such  
7           bond satisfies the requirements of subsections (b)  
8           and (f) of section 147.

9           “(2) SPECIAL RULE FOR POOLED FINANCING  
10          OF 501(c)(3) ORGANIZATION.—

11           “(A) IN GENERAL.—At the election of the  
12           issuer, a bond described in paragraph (1) shall  
13           be treated as meeting the requirements of sec-  
14           tion 147(b) if such bond meets the require-  
15           ments of subparagraph (B).

16           “(B) REQUIREMENTS.—A bond meets the  
17           requirements of this subparagraph if—

18           “(i) 95 percent or more of the net  
19           proceeds of the issue of which such bond is  
20           a part are to be used to make or finance  
21           loans to 2 or more 501(c)(3) organizations  
22           or governmental units for acquisition of  
23           property to be used by such organizations,

24           “(ii) each loan described in clause (i)  
25           satisfies the requirements of section 147(b)

1 (determined by treating each loan as a sep-  
2 arate issue),

3 “(iii) before such bond is issued, a de-  
4 mand survey was conducted which shows a  
5 demand for financing greater than an  
6 amount equal to 120 percent of the  
7 lendable proceeds of such issue, and

8 “(iv) 95 percent or more of the net  
9 proceeds of such issue are to be loaned to  
10 501(c)(3) organizations or governmental  
11 units within 1 year of issuance and, to the  
12 extent there are any unspent proceeds  
13 after such 1-year period, bonds issued as  
14 part of such issue are to be redeemed as  
15 soon as possible thereafter (and in no  
16 event later than 18 months after issuance).

17 A bond shall not meet the requirements of this  
18 subparagraph if the maturity date of any bond  
19 issued as part of such issue is more than 30  
20 years after the date on which the bond was is-  
21 sued (or, in the case of a refunding or series of  
22 refundings, the date on which the original bond  
23 was issued).”.

24 (25) Section 1302 of the Tax Reform Act of  
25 1986 is repealed.

1           (26) Section 57(a)(5)(C) of such Code is  
2 amended by striking clause (ii) and by redesignating  
3 clauses (iii) and (iv) as clauses (ii) and (iii), respec-  
4 tively.

5           (27) Section 103(b)(3) of such Code is amend-  
6 ed by inserting “and section 150(f)” after “section  
7 149”.

8           (28) Section 265(b)(3) of such Code is amend-  
9 ed—

10           (A) in subparagraph (B), by striking  
11 clause (ii) and inserting the following:

12           “(ii) CERTAIN BONDS NOT TREATED  
13 AS PRIVATE ACTIVITY BONDS.—For pur-  
14 poses of clause (i)(II), there shall not be  
15 treated as a private activity bond any obli-  
16 gation issued to refund (or which is part of  
17 a series of obligations issued to refund) an  
18 obligation issued before August 8, 1986,  
19 which was not an industrial development  
20 bond (as defined in section 103(b)(2) as in  
21 effect on the day before the date of the en-  
22 actment of the Tax Reform Act of 1986)  
23 or a private loan bond (as defined in sec-  
24 tion 103(o)(2)(A), as so in effect, but with-  
25 out regard to any exemption from such

1 definition other than section  
2 103(o)(2)(A).”; and  
3 (B) in subparagraph (C)(ii)(I), by striking  
4 “(other than a qualified 501(c)(3) bond, as de-  
5 fined in section 145)”.

6 (d) EFFECTIVE DATES.—

7 (1) IN GENERAL.—Except as provided in para-  
8 graph (2), the amendments made by this section  
9 shall apply to bonds (including refunding bonds) is-  
10 sued with respect to capital expenditures made on or  
11 after the date of the enactment of this Act.

12 (2) EXCEPTION.—The amendments made by  
13 this section shall not apply to bonds issued before  
14 January 1, 1997, for purposes of applying section  
15 148(f)(4)(D) of the Internal Revenue Code of 1986.

○