

# THE BOND BUYER

## What CRS wants lawmakers to know about private activity bonds

By

**Brian Tumulty**

Published

March 15, 2018, 3:48pm EDT

WASHINGTON – A newly updated report by the Congressional Research Service details how Congress has expanded private activity bonds to 27 different uses from their original purpose as industrial revenue bonds.

The [new report](#) issued on March 9 by the nonpartisan CRS doesn't discuss the Trump administration's plan for expanding the use of PABs even further for public infrastructure projects.

It could be used by as a resource by lawmakers if any infrastructure bills with PAB provisions surface.

However, the report said the Joint Committee on Taxation said at the time of the Tax Reform Act of 1986 that these bonds: represent an inefficient allocation of capital; increase the cost of financing traditional governmental activities; allow higher income persons to avoid taxes by means of tax-exempt investments and; contribute to mounting federal revenue losses.

PABs were first defined by Congress in the Revenue and Expenditure Control Act of 1968.

“The 1968 act legislated that the interest payments on industrial development bonds (IDBs, the original private activity bonds) were to be included in taxable income,” the report said. “This was a shift from the previous Internal Revenue Service (IRS) position, which held that the interest on these bonds was not taxable income.”

At the same time, the 1968 law established the basis for the current private use and payments tests and created 12 categories for tax-exempt PABs, including the bonds of small issuers.

The 1986 law added qualified hazardous waste facilities as a PAB use. It also “kept most of the activities listed in the 1968 act and reorganized the private activity bond section of the federal tax code.”

In addition, the 1986 law also set state volume caps for PAB issuance based on population estimates. The caps were \$50 per capita, or \$150 million, whichever was greater. This year the cap for each state is the greater of \$105 per capita or \$311.38 million.

“Because of the \$311.38 million floor, many smaller states are allowed to issue relatively more private activity bonds ... than larger states,” on a per capita basis, CRS said. “Also, more recent additions to the list of qualified activities have been exempt from a state-by-state cap and subject to a national aggregate cap.”

Only 14 of the 27 categories of PABs are subject to the annual statewide volume caps, according to CRS.

Two of those 14 categories are treated differently than the others, and four others are subject to a separate cap, according to CRS.

For instance, “states are required to count only 25% of the bonds issued for high-speed intercity rail facilities against the annual cap,” said CRS. “If the facility is government-owned and operated, no cap allocation is required. Second, bonds issued for solid waste disposal facilities are not subject to the cap if the facility is government owned and operated.”