

103D CONGRESS
1ST SESSION

S. 874

To reauthorize Public Law 81–874 (Impact Aid), and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4 (legislative day, APRIL 19), 1993

Mr. PRESSLER (for himself, Mr. WARNER, Mr. DASCHLE, Mr. KRUEGER, Mr. SHELBY, Mr. GORTON, Mr. BURNS, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To reauthorize Public Law 81–874 (Impact Aid), 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 “Impact Aid Reauthor-
5 ization Act of 1993”.

6 **SEC. 2. REAUTHORIZATION.**

7 Public Law 81–874 (20 U.S.C. 236 et seq.) is amend-
8 ed to read as follows:

1 **“TITLE I—FINANCIAL ASSIST-**
2 **ANCE FOR LOCAL EDUCA-**
3 **TIONAL AGENCIES IN AREAS**
4 **AFFECTED BY FEDERAL AC-**
5 **TIVITY**

6 **“SEC. 101. DECLARATION OF POLICY.**

7 “(a) POLICY.—In recognition of the responsibility of
8 the United States to provide an educational program to
9 local educational agencies impacted by the Federal pres-
10 ence of Federal land or that serve dependents of federally
11 connected personnel, including children of those in the
12 uniformed service, children residing on Federal Indian
13 trust land and children residing on nontaxable federally
14 subsidized low-rent housing projects, it shall be the policy
15 of the United States to acknowledge that—

16 “(1) the need to ensure fair access and equi-
17 table treatment of our Nation’s children in the area
18 of free public education;

19 “(2) such fair access and equitable treatment of
20 our Nation’s children is hampered when Federal
21 ownership of real property or Federal activities with-
22 in a community adversely affect any or all of the
23 basic revenue sources which local educational agen-
24 cies depend upon for such fair access and equitable
25 treatment;

1 “(3) such local educational agencies are entitled
2 to relief from the unique burdens placed upon them
3 by the Federal ownership of real property or Federal
4 activity in the form of compensation for the basic
5 educational program of the federally connected stu-
6 dent;

7 “(4) education is central to our Nation’s quality
8 of life and the survival of our Nation’s democratic
9 society;

10 “(5) education is at the heart of our Nation’s
11 economic strength and security, creativity, invest-
12 ment in the sciences, and the perpetuation of our
13 Nation’s cultural values;

14 “(6) education is the key to United States
15 international competitiveness;

16 “(7) every child should be given an equal oppor-
17 tunity to learn;

18 “(8) the United States presence creates a re-
19 sponsibility to assure fair access and equitable edu-
20 cational opportunity for all children residing on Fed-
21 eral land or otherwise affected adversely by the Fed-
22 eral presence;

23 “(9) the United States presence should not re-
24 duce the ability of a school district to achieve our
25 Nation’s education goals; and

1 “(10) the failure to fully compensate such
2 affected local educational agencies, or the reduction
3 in such compensation, places the education and fu-
4 ture of such students in jeopardy.

5 “(b) DECLARATION OF POLICY.—The Congress de-
6 clares it to be the policy of the United States to provide
7 financial assistance (as set forth in the following sections
8 of this Act) for those local educational agencies upon
9 which the United States has placed financial burdens by
10 reason of the fact that—

11 “(1) the revenues available to such agencies
12 from State and local sources have been reduced as
13 the result of—

14 “(A) the acquisition of real property by the
15 United States; and

16 “(B) providing retail services on the prop-
17 erty owned by the United States;

18 “(2) such agencies provide education for chil-
19 dren residing on Federal property;

20 “(3) such agencies provide education for chil-
21 dren whose parents are employed on Federal prop-
22 erty; or

23 “(4) there has been a sudden and substantial
24 increase in school attendance as the result of Fed-
25 eral activities.

1 “(c) AUTHORIZATION OF APPROPRIATIONS.—

2 “(1) IN GENERAL.—There are authorized to be
3 appropriated \$900,000,000 for fiscal year 1994, and
4 such sums as may be necessary for each of the 4
5 succeeding fiscal years, to carry out this Act.

6 “(2) CONTINGENCY FUND.—There are author-
7 ized to be appropriated \$14,000,000 for fiscal year
8 1994, which shall be deposited into the contingency
9 fund established under section 202.

10 “(d) RESERVATIONS.—

11 “(1) FEDERAL ACQUISITION OF REAL PROP-
12 erty.—The Secretary shall reserve 2.5 percent of
13 the amount appropriated pursuant to the authority
14 of subsection (c)(1) in each fiscal year to carry out
15 section 102.

16 “(2) DEPARTMENT OF EDUCATION CONTIN-
17 gency fund.—Beginning in fiscal year 1995 and in
18 each succeeding fiscal year through fiscal year 1998,
19 the Secretary shall annually reserve from the
20 amount appropriated pursuant to the authority of
21 subsection (c)(1) and deposit into the contingency
22 fund established under section 202 an amount which
23 is necessary to make the balance of such contingency
24 fund in such fiscal year (prior to withdrawal of any
25 funds from such fund for such fiscal year) equal to

1 2 percent of the amount appropriated pursuant to
2 the authority of subsection (c)(1) for such fiscal
3 year.

4 “(3) RESERVATION FOR HEAVILY IMPACTED
5 HIGH NEED AREAS.—The Secretary, based on the
6 annual estimate developed pursuant to section
7 103(d)(3)(D), shall annually reserve from the
8 amount appropriated pursuant to the authority of
9 subsection (c)(1) in each fiscal year the amount nec-
10 essary to carry out the provisions of section
11 103(d)(3).

12 “(e) FORWARD FUNDING.—

13 “(1) AVAILABILITY FOR OBLIGATION.—For the
14 purpose of affording adequate notice of funding
15 available under this Act, amounts appropriated in an
16 appropriation Act for any fiscal year to carry out
17 this Act shall become available for obligation on July
18 1 of that fiscal year.

19 “(2) EFFECTUATION OF FORWARD FUNDING.—
20 In order to effect a transition to the forward funding
21 method of timing appropriation action described in
22 paragraph (1), there are authorized to be appro-
23 priated, in an appropriation Act or Acts for the
24 same fiscal year, two separate appropriations to

1 carry out this Act, the first of which shall not be
2 subject to paragraph (1).

3 **“SEC. 102. FEDERAL ACQUISITION OF REAL PROPERTY.**

4 “(a) IN GENERAL.—Where the Secretary, after con-
5 sultation with any local educational agency and with the
6 appropriate State educational agency, determines for any
7 fiscal year ending prior to October 1, 1998, that the Unit-
8 ed States owns Federal property in the school district of
9 such local educational agency, and that such property—

10 “(1) has been acquired by the United States
11 since 1938;

12 “(2) was not acquired by exchange for other
13 Federal property in the school district which the
14 United States owned before 1939; and

15 “(3) had an assessed value (determined as of
16 the time or times when so acquired) aggregating 10
17 percent or more of the assessed value of all real
18 property in the school district (similarly determined
19 as of the time or times when such Federal property
20 was so acquired);

21 then such local educational agency shall be entitled to re-
22 ceive for such fiscal year such amount as, in the judgment
23 of the Secretary, is equal to the continuing Federal re-
24 sponsibility for the additional financial burden with re-
25 spect to current expenditures placed on such agency by

1 such acquisition of property (in accordance with section
2 222.98 of title 34, Code of Federal Regulations (as in ef-
3 fect on December 5, 1991), and without regard to the pro-
4 visions of section 222.101 of title 34, Code of Federal Reg-
5 ulations (as in effect on December 5, 1991)). Such entitled
6 amount shall be reduced by any revenue received during
7 the preceding fiscal year by the local educational agency
8 that was generated directly from the Federal property or
9 activities in or on that property and was exclusively pro-
10 vided to such local educational agency.

11 “(b) APPLICABILITY TO THE TENNESSEE VALLEY
12 AUTHORITY ACT.—For the purposes of this section any
13 real property with respect to which payments are being
14 made under section 13 of the Tennessee Valley Authority
15 Act of 1933, as amended, shall not be regarded as Federal
16 property.

17 “(c) CONSOLIDATED DISTRICTS.—Where the school
18 district of any local educational agency shall have been
19 formed at any time after 1938 by the consolidation of two
20 or more former school districts, such agency may elect (at
21 the time such agency files application under section 105)
22 for any fiscal year to have—

23 “(1) the eligibility of such local educational
24 agency; and

1 “(2) the amount which such agency shall be en-
2 titled to receive,
3 determined under this section only with respect to such
4 of the former school districts comprising such consolidated
5 school districts as the agency shall designate in such elec-
6 tion.

7 “(d) OWNERSHIP.—The United States shall be
8 deemed to own Federal property for the purposes of this
9 Act where—

10 “(1) prior to the transfer of Federal property,
11 the United States owned Federal property meeting
12 the requirements of paragraphs (1), (2), and (3) of
13 subsection (a); and

14 “(2) the United States transfers a portion of
15 the property referred to in paragraph (1) to another
16 nontaxable entity, and the United States—

17 “(A) requires that the property be used in
18 perpetuity for the public purposes for which it
19 was conveyed;

20 “(B) requires the grantee of the property
21 to report to the Federal Government (or its
22 agent) setting forth information on the use of
23 the property;

24 “(C) prohibits the sale, lease assignment or
25 other disposal of the property unless to another

1 eligible government agency and with the ap-
2 proval of the Federal Government (or its
3 agent); and

4 “(D) reserved to the Federal Government
5 a right of reversion at any time the Federal
6 Government (or its agent) deems it necessary
7 for the national defense.

8 “(e) SPECIAL RULE.—Beginning with fiscal year
9 1991, any school district which (1) as demonstrated by
10 written evidence from the United States Forest Service
11 satisfactory to the Secretary, contains between 50,000 and
12 55,000 acres of land that has been acquired by the United
13 States Forest Service between 1915 and 1990; and (2)
14 serves a county chartered by State law in 1875, shall be
15 deemed to have met the requirements of subsection (a)(3).

16 “(f) HOLD HARMLESS.—No local educational agency
17 which is eligible for a payment under this section in any
18 fiscal year shall receive a payment under this section in
19 such fiscal year in an amount which is less than 90 per-
20 cent of the amount such agency received under this section
21 in the preceding fiscal year.

22 “(g) ADDITIONAL INFORMATION.—Whenever the
23 Secretary, after receiving an application from any local
24 educational agency under this section requests further in-
25 formation from the local educational agency for the Sec-

1 retary's review of the application, the Secretary shall take
2 such measures as are necessary to ensure that all informa-
3 tion is gathered in a reasonable time, pursuant to regula-
4 tions promulgated by the Secretary, in order to ensure
5 that payments under this section for that fiscal year are
6 provided to all applicant local educational agencies not
7 later than December 1 of such fiscal year.

8 **"SEC. 103. FEDERALLY CONNECTED CHILDREN.**

9 "(a) COMPUTATION OF PAYMENT.—

10 "(1) IN GENERAL.—For the purpose of comput-
11 ing the amount to which a local educational agency
12 is to be paid under this section for any fiscal year,
13 the Secretary shall first determine the number of
14 children who were in average daily attendance at the
15 schools of such agency, and for whom such agency
16 provided free public education, during the preceding
17 fiscal year, and—

18 "(A) while residing on Federal property
19 did so with a parent employed on Federal prop-
20 erty situated (i) in whole or in part in the coun-
21 ty in which the school district of such agency is
22 located, or (ii) if not in such county, in whole
23 or in part in the same State as the school dis-
24 trict of such agency;

1 “(B) while residing on Federal property
2 had a parent who was on active duty in the uni-
3 formed services (as defined in section 101 of
4 title 37, United States Code);

5 “(C) while in attendance at such schools,
6 either—

7 “(i) resided on Federal property;

8 “(ii) resided with a parent employed
9 on Federal property situated (I) in whole
10 or in part in the county in which the
11 school district of such agency is located, or
12 in whole or in part in the school district of
13 such agency if the school district is located
14 in more than one county, or (II) if not in
15 such county or district, in whole or in part
16 in the same State as the school district of
17 such agency; or

18 “(iii) resided in any low-rent housing
19 project as defined in section 204(a)(1)(C)
20 of this Act; or

21 “(D) had a parent who was on active duty
22 in the uniformed services (as defined in section
23 101 of title 37, United States Code).

24 “(2) CHILDREN RESIDING ON INDIAN LANDS.—

25 In making a determination under paragraph (1)(B)

1 with respect to a local educational agency for any
2 fiscal year, the Secretary shall include the number of
3 children who were in average daily attendance at the
4 schools of such agency, and for whom such agency
5 provided free public education, during the preceding
6 fiscal year, and who, while in attendance at such
7 schools, resided on Indian lands, as described in sub-
8 paragraph (A) of section 204(1).

9 “(b) ELIGIBILITY FOR PAYMENTS.—

10 “(1) IN GENERAL.—Except as provided in para-
11 graph (2), no local educational agency shall be enti-
12 tled to receive a payment for any fiscal year with re-
13 spect to a number of children determined under sub-
14 section (a), unless—

15 “(A) the number of children so determined
16 with respect to such agency amounts to—

17 “(i) at least 400 such children; or

18 “(ii) a number of such children which
19 equals at least 3 percent of the total num-
20 ber of children who were in average daily
21 attendance, during the preceding year, at
22 the schools of such agency and for whom
23 such agency provided free public education,
24 whichever is the lesser;

1 “(B) such local educational agency is mak-
2 ing a tax effort, or complying with other State
3 fiscal requirements, required for eligibility for
4 State education funding; and

5 “(C) such local educational agency—

6 “(i) is certified or accredited by a—

7 “(I) State educational agency or
8 regional accrediting association recog-
9 nized by the Secretary, or is a can-
10 didate in good standing for such cer-
11 tification or accreditation under the
12 rules of the State educational agency
13 or regional accrediting association; or

14 “(II) tribal department of edu-
15 cation if such certification or accredi-
16 tation is accepted by a generally rec-
17 ognized regional or State certification
18 or accreditation agency; or

19 “(ii) demonstrates to the satisfaction
20 of the Secretary that credits achieved by
21 the students of such local educational
22 agency are, or will be, accepted at grade
23 level by a State or regional accrediting
24 agency or association.

1 “(2) CONTINUING ELIGIBILITY; SPECIAL
2 RULES.—(A) If a local educational agency is eligible
3 for a payment for any fiscal year by the operation
4 of paragraph (1)(A)(ii), such agency shall continue
5 to be so eligible for the 2 succeeding fiscal years
6 even if such agency fails to meet the requirement of
7 such paragraph during such succeeding fiscal years,
8 except that the number of children determined for
9 the second such succeeding fiscal year with respect
10 to such agency for the purpose of subsection (c)
11 shall not exceed 50 percent of the number of chil-
12 dren determined with respect to such agency for the
13 purpose of such paragraph for the last fiscal year
14 which such agency was so eligible.

15 “(B) If the Secretary determines with respect
16 to any local educational agency for any fiscal year
17 that—

18 “(i) such agency does not meet the require-
19 ment of paragraph (1)(A)(ii); and

20 “(ii) the application of such requirement,
21 because of exceptional circumstances, would de-
22 feat the purposes of this title,

23 then the Secretary is authorized to waive such re-
24 quirement with respect to such agency.

1 “(c) ALLOTMENT FORMULA; DETERMINATION OF
2 EQUAL OPPORTUNITY COST.—

3 “(1) ALLOTMENT FORMULA.—The amount of
4 the payment to which a local educational agency
5 shall be entitled to receive under this section is equal
6 to such agency’s equal opportunity cost. A local edu-
7 cational agency’s equal opportunity cost shall be de-
8 termined as follows:

9 “(A) Calculate the total number of weight-
10 ed student units (determined in accordance with
11 paragraph (2)) for each child eligible to be
12 counted by such agency in accordance with sub-
13 section (a).

14 “(B) Multiply the total number of weight-
15 ed student units determined under subpara-
16 graph (A) by the local contribution rate (deter-
17 mined in accordance with paragraph (3)).

18 “(2) DETERMINATION OF WEIGHTED STUDENT
19 UNIT.—The Secretary shall calculate the total num-
20 ber of weighted student units for a local educational
21 agency as follows:

22 “(A) CHILDREN LIVING ON INDIAN
23 LANDS.—(i) Each child described in subsection
24 (a)(2) who is not receiving services under the
25 Individuals with Disabilities Education Act

1 shall be assigned a weighted student unit of
2 1.350.

3 “(ii) Each child described in subsection
4 (a)(2) who is eligible for services under the In-
5 dividuals with Disabilities Education Act and
6 for whom such local educational agency is pro-
7 viding a program designed to meet the special
8 educational and related needs of such children
9 shall be assigned a weighted student unit of
10 2.025.

11 “(B) MILITARY CONNECTED CHILDREN.—
12 (i) Each child described in subsection (a)(1)(B)
13 who is not receiving services under Individuals
14 with Disabilities Education Act shall be as-
15 signed a weighted student unit 1.100.

16 “(ii) Each child described in subsection
17 (a)(1)(B) who is receiving services under Indi-
18 viduals with Disabilities Education Act shall be
19 assigned a weighted student unit of 1.650.

20 “(iii) Each child described in subsection
21 (a)(1)(D) who is not receiving services under
22 Individuals with Disabilities Education Act
23 shall be assigned a weighted student unit 0.300.

24 “(iv) Each child described in subsection
25 (a)(1)(D) who is receiving services under Indi-

1 viduals with Disabilities Education Act shall be
2 assigned a weighted student unit 0.450.

3 “(C) OTHER FEDERALLY CONNECTED
4 CHILDREN.—(i) Each child described in sub-
5 section (a)(1)(A) (who is not described in sub-
6 paragraph (A) or (B)) shall be assigned a
7 weighted student unit of 1.000.

8 “(ii) Each child described in subsection
9 (a)(1)(C)(iii) (who is not described in subpara-
10 graph (A) or (B)) shall be assigned a weighted
11 student unit of 0.300.

12 “(iii) Each child described in subsection
13 (a)(1)(C)(i) or (a)(1)(C)(ii) (who is not de-
14 scribed in subparagraph (A) or (B)) shall be as-
15 signed a weighted student unit of 0.200.

16 “(D) DATA.—Calculations of weighted stu-
17 dent units for a local educational agency pursu-
18 ant to this paragraph shall be made on the
19 basis of data from the fiscal year preceding the
20 fiscal year in which such agency applies for a
21 payment under this section in accordance with
22 section 105.

23 “(3) LOCAL CONTRIBUTION RATE.—(A) Except
24 as provided in subparagraph (B), in order to com-
25 pute the local contribution rate for a local edu-

1 cational agency for any fiscal year, the Secretary,
2 after consulting with the State educational agency of
3 the State in which the local educational agency is lo-
4 cated and with the local educational agency, shall
5 determine which school districts within such State
6 are generally comparable to the school district of the
7 local educational agency for which the computation
8 is being made. The local contribution rate for such
9 agency shall be the quotient of—

10 “(i) the aggregate current expenditures,
11 during the third fiscal year preceding the fiscal
12 year for which the computation is made, which
13 the local educational agencies of such com-
14 parable school districts derived from local
15 sources, divided by

16 “(ii) the aggregate number of children in
17 average daily attendance for whom such agency
18 provided free public education during such third
19 preceding fiscal year.

20 “(B)(i) The local contribution rate for a local
21 educational agency in any State shall not be less
22 than—

23 “(I) 50 percent of the average per pupil
24 expenditure in such State; or

1 “(II) 50 percent of such expenditures in all
2 the States,
3 whichever is greater, except that clause (II) shall not
4 operate in such a manner as to make the local con-
5 tribution rate for any local educational agency in
6 any State exceed an amount equal to the average
7 per pupil expenditure in such State.

8 “(ii) If the current expenditures in those school
9 districts which the Secretary has determined to be
10 generally comparable to the school district of the
11 local educational agency for which a computation is
12 made under subparagraph (A) are not reasonably
13 comparable because of unusual geographical factors
14 which affect the current expenditures necessary to
15 maintain, in the school district of such agency, a
16 level of education equivalent to that maintained in
17 such other school districts, then the Secretary shall
18 increase the local contribution rate for such agency
19 by such an amount which the Secretary determines
20 will compensate such agency for the increase in cur-
21 rent expenditures necessitated by such unusual geo-
22 graphical factors. The amount of any such supple-
23 mentary payment may not exceed the per pupil
24 share (computed with regard to all children in aver-
25 age daily attendance), as determined by the Sec-

1 retary, of the increased current expenditures neces-
2 sitated by such unusual geographic factors.

3 “(iii) The local contribution rate for any local
4 educational agency in—

5 “(I) the Commonwealth of Puerto Rico,
6 Wake Island, Guam, American Samoa, the
7 Commonwealth of the Northern Mariana Is-
8 lands, or the Virgin Islands;

9 “(II) any State in which a substantial pro-
10 portion of the land is in unorganized territory;
11 or

12 “(III) any State in which there is only one
13 local educational agency,

14 shall be determined for any fiscal year by the Sec-
15 retary in accordance with policies and principles
16 which will best achieve the purposes of this section
17 and which are consistent with the policies and prin-
18 ciples provided in this paragraph for determining
19 local contribution rates in States where it is possible
20 to determine generally comparable school districts.

21 “(C) The local contribution rate for a local edu-
22 cational agency shall include current expenditures
23 from that portion of a real property tax required to
24 be levied, collected, and distributed to local edu-
25 cational agencies by county governments pursuant to

1 State law where the remainder of such real property
2 tax is transferred to the State.

3 “(D) Because local educational agencies for
4 which the boundaries of the school district of such
5 agency are coterminous with the boundaries of a
6 military installation lack a property tax base, the
7 Secretary shall, for the fiscal year beginning October
8 1, 1993, and for each fiscal year thereafter, estab-
9 lish for such local educational agencies a local con-
10 tribution rate which is not less than 70 percent of
11 the average per pupil expenditure in all States dur-
12 ing the third preceding fiscal year prior to the fiscal
13 year for which the determination is made. The first
14 sentence of this subparagraph shall not apply to
15 local educational agencies in any State in which the
16 State equalization law would prohibit the local edu-
17 cational agency from retaining such additional funds
18 or in which State law requires that the State con-
19 tribution be reduced in proportion to such additional
20 funds, however the local contribution rate for such
21 agencies shall not be less than 50 percent of the av-
22 erage per pupil expenditure in all States during the
23 third preceding fiscal year prior to the fiscal year for
24 which the determination is made.

25 “(E) For the purposes of this paragraph—

1 “(i) the term ‘State’ does not include the
2 Commonwealth of Puerto Rico, Wake Island,
3 Guam, American Samoa, the Commonwealth of
4 the Northern Mariana Islands, or the Virgin Is-
5 lands; and

6 “(ii) the ‘average per pupil expenditure’ in
7 a State shall be—

8 “(I) the aggregate current expendi-
9 tures, during the third fiscal year preced-
10 ing the fiscal year for which the computa-
11 tion is made of all local educational agen-
12 cies in the State, divided by

13 “(II) the aggregate number of chil-
14 dren in average daily attendance for whom
15 such agencies provide free public education
16 during such third preceding fiscal year.

17 “(d) SPECIAL RULES.—

18 “(1) CHILDREN WITH DISABILITIES.—(A) The
19 Secretary shall by regulation establish criteria for
20 assuring that programs (including preschool pro-
21 grams) provided by local educational agencies for
22 children determined under subsections (a)(1)(B),
23 (a)(1)(D) and (a)(2), who are eligible for services
24 under the Individuals with Disabilities Education
25 Act, are of sufficient size, scope, and quality (taking

1 into consideration the special educational needs of
2 such children) as to give reasonable promise of sub-
3 stantial progress toward meeting those needs, and in
4 the implementation of such regulations the Secretary
5 shall consult with individuals in charge of special
6 education programs for children with disabilities in
7 the local educational agency of the State in which
8 such local educational agency is located.

9 “(B) For the purpose of this paragraph the
10 term ‘children with disabilities’ has the same mean-
11 ing given such term by section 602(a)(1) of the Indi-
12 viduals with Disabilities Education Act, and the
13 term ‘children with specific learning disabilities’ has
14 the same meaning given such term by section
15 602(a)(15) of such Act.

16 “(2) INDIANS.—Payments received for children
17 described in subsection (a)(2) may be used to pay
18 tuition for any student not eligible for funding under
19 section 1128 of the Education Amendments of 1978
20 in any school receiving assistance under this section.
21 No condition involving program or personnel shall
22 apply to such payments.

23 “(3) SPECIAL RULE FOR HEAVILY IMPACTED
24 HIGH NEED AREAS.—(A) If in any fiscal year the
25 Secretary determines that funds provided to an eligi-

1 ble local educational agency under this title, together
2 with the funds available to such agency from State
3 and local sources is less than the amount necessary
4 to enable such agency to provide a level of education
5 equivalent to the State average during the preceding
6 fiscal year or to the average of that maintained dur-
7 ing the preceding fiscal year in 3 or more of the
8 school districts of the State which are generally com-
9 parable to the school district of such agency, which-
10 ever is higher, increased or decreased, as the case
11 may be, in the same percentage as the cost of such
12 level of education increased or decreased from the
13 third preceding fiscal year to the prior fiscal year for
14 which the determination is made, then the Secretary
15 shall increase the payment made under this section
16 with respect to such agency for such fiscal year on
17 the basis of data from the fiscal year preceding the
18 fiscal year for which the determination is made to
19 the extent necessary to enable such agency to pro-
20 vide a level of education equivalent to that main-
21 tained in such comparable school districts. The in-
22 crease computed under this paragraph shall be suffi-
23 cient to allow the school district of the local edu-
24 cational agency to provide a level of education (cal-
25 culated in accordance with this subparagraph) equal

1 to the average of the three comparable districts in
2 the State or the State average, whichever is greater,
3 as described in clause (i).

4 “(B)(i) For the purpose of this paragraph the
5 term ‘eligible local educational agency’ means a local
6 educational agency—

7 “(I) that is making a reasonable tax effort
8 and exercising due diligence in availing itself of
9 State and other financial assistance;

10 “(II) in which not less than 50 percent of
11 the total number of children who were in aver-
12 age daily attendance at the schools of such
13 agency during the fiscal year for which the de-
14 termination is made and for whom such agency
15 provided free public education were, during
16 such fiscal year, determined to be children de-
17 scribed in subsection (a), except that any local
18 educational agency in which the annual average
19 percentage of such total number of children de-
20 scribed in subsection (a) for the 3 fiscal years
21 prior to the fiscal year for which the determina-
22 tion is made exceeds 50 percent of the total
23 children in average daily attendance at the
24 schools of such agency shall be deemed to meet
25 the requirements of this paragraph; and

1 “(III) in which the eligibility of such agen-
2 cy under State law for State aid with respect to
3 free public education of children residing on
4 Federal property, and the amount of such aid,
5 are determined on a basis no less favorable to
6 such agency than the basis used in determining
7 the eligibility of local educational agencies for
8 State aid, and the amount thereof, with respect
9 to the free public education of other children in
10 the State.

11 “(ii) For the purpose of clause (i)(I), the Sec-
12 retary shall determine that a reasonable tax effort
13 has been made if the tax rate of the agency in the
14 year for which the determination is made (before
15 any State mandated tax rate reductions resulting
16 from the receipt of State funds has been imple-
17 mented) is an amount that is at least equal to 95
18 percent of the average tax rate for general fund pur-
19 poses of comparable school districts for such fiscal
20 year or the agency’s total tax rate for the preceding
21 fiscal year is at least 95 percent of the average of
22 the total tax rates of comparable school districts.
23 Coterminous military districts shall be deemed to
24 meet the requirement of such reasonable tax effort.
25 Except for coterminous military districts, payments

1 made to any local educational agency under this
2 paragraph in any fiscal year shall be reduced by the
3 percentage that the average tax rate of the com-
4 parable school districts or, if none, the State average
5 tax rate, exceeds the tax rate of such agency.

6 “(C) For the purpose of clause (i)—

7 “(i) available funds may include any cash
8 balance at the end of a year allowed under
9 State law; or

10 “(ii) whenever no State law governing cash
11 balance exists, available funds shall exclude 30
12 percent of the local educational agency’s operat-
13 ing costs.

14 “(D) Except as provided in clause (ii), for any
15 fiscal year after September 30, 1993, the Secretary
16 shall annually estimate the funds required to carry
17 out the provisions of this paragraph and shall report
18 the estimate to the Committees on Appropriations
19 and Education and Labor of the House of Rep-
20 resentatives and the Committees on Appropriations
21 and Labor and Human Resources of the Senate not
22 later than 45 days after the date applications are
23 due to be submitted to the Secretary from local edu-
24 cational agencies in accordance with section 105(a).
25 Such estimate shall also include the amount of funds

1 required to pay to all local educational agencies eligi-
2 ble for payments under this paragraph in the pre-
3 ceding fiscal year an amount equal to the difference
4 between the amount all such agencies were entitled
5 to receive under this paragraph in such preceding
6 fiscal year and the amount all such agencies received
7 under this section in such preceding fiscal year.

8 “(E) If in any fiscal year in which the total
9 amount of payments made under this paragraph are
10 less than or equal to the amount reserved pursuant
11 to section 101(d)(3) to carry out this paragraph in
12 such fiscal year, then such funds as do not exceed
13 the amount so reserved shall remain available until
14 expended to carry out the provisions of this para-
15 graph.

16 “(F) If the total amount of payments to be
17 made under this paragraph in a fiscal year exceeds
18 the amount reserved pursuant to section 101(d)(3)
19 to carry out this paragraph in such fiscal year, then
20 the amount reserved to carry out this paragraph in
21 the succeeding fiscal year shall be available to pay
22 to each local educational agency eligible for pay-
23 ments under this paragraph in the preceding fiscal
24 year the difference between the amount each such
25 agency is entitled to receive under this paragraph in

1 such preceding fiscal year and the amount such
2 agency received under this paragraph in such pre-
3 ceding fiscal year.

4 “(e) ADJUSTMENTS FOR DECREASES IN FEDERAL
5 ACTIVITIES.—

6 “(1) IN GENERAL.—(A) Except as provided in
7 subparagraph (B), whenever the Secretary deter-
8 mines that—

9 “(i) for any fiscal year, the number of chil-
10 dren determined with respect to any local edu-
11 cational agency under section (a) is less than
12 90 percent of the number determined with re-
13 spect to such agency during the preceding fiscal
14 year;

15 “(ii) there has been a decrease or cessation
16 of Federal activities within the State in which
17 such agency is located; and

18 “(iii) such decrease or cessation has re-
19 sulted in a substantial decrease in the number
20 of children determined under subsection (a)
21 with respect to such agency for such fiscal year,
22 then the amount to which such agency is entitled for
23 such fiscal year and for the following fiscal year
24 shall not be less than 90 percent of the payment

1 such agency received under subsection (a) for the
2 preceding fiscal year.

3 “(B) The Secretary may adjust the amount to
4 which a local educational agency is entitled in ac-
5 cordance with the provisions of subparagraph (A)
6 for 1 additional fiscal year after the last fiscal year
7 for which such agency is eligible for an adjustment
8 under such subparagraph if the number of children
9 determined with respect to such agency under sub-
10 section (a) during such last fiscal year equals or ex-
11 ceeds 25 percent of the number of such children in
12 average daily attendance at the schools of such
13 agency in such last fiscal year.

14 “(2) AUTHORIZATION OF APPROPRIATIONS.—
15 There are authorized to be appropriated for each fis-
16 cal year such amount as may be necessary to carry
17 out the provisions of this section, which shall remain
18 available until expended.

19 “(3) EXPENDITURES.—Expenditures pursuant
20 to paragraph (2) shall be reported by the Secretary
21 to the Committees on Appropriations and Education
22 and Labor of the House of Representatives and the
23 Committees on Appropriations and Labor and
24 Human Resources of the Senate within 30 days of
25 expenditure.

1 “(4) INFORMATION ON COSTS.—The Secretary
2 shall make available to the Congress in the Depart-
3 ment of Education’s annual budget submission, the
4 amount of funds necessary to defray the costs asso-
5 ciated with the provisions of this subsection during
6 the fiscal year for which the submission is made.

7 “(f) NEW APPLICANTS; DETERMINATIONS ON THE
8 BASIS OF ESTIMATES.—

9 “(1) IN GENERAL.—Any local educational agen-
10 cy that did not apply for payments under this sec-
11 tion in a preceding fiscal year and that would be eli-
12 gible to receive payments under this section for the
13 fiscal year in which such agency is applying for the
14 first time, shall be paid on the basis of the number
15 of children described in subsection (a) who, during
16 the fiscal year for which the determination is made,
17 are in average daily attendance at the schools of
18 such agency and for whom such agency provides free
19 public education.

20 “(2) SATISFACTORY DATA.—Determinations
21 with respect to a number of children by the Sec-
22 retary under this subsection for any fiscal year shall
23 be made, whenever satisfactory data are not avail-
24 able, on the basis of estimates. No such determina-
25 tion shall operate, because of an underestimate, to

1 at the schools of such agency during the preceding
2 fiscal year and the number of such children whose
3 attendance during such year resulted from base con-
4 solidation or realignment activities of the Depart-
5 ment of Defense (including children who resided on
6 Federal property or with a parent employed on Fed-
7 eral property), then the amount to which such agen-
8 cy is otherwise entitled under this section shall be
9 paid on the basis of the number of children who,
10 during the fiscal year for which the application is
11 made, are in average daily attendance at the schools
12 of such agency and for whom such agency provided
13 free public education. Such application shall include
14 a certificate from the appropriate local base com-
15 mander that the increase is the result of Depart-
16 ment of Defense base closure or realignment activi-
17 ties.

18 “(B) The Secretary shall not make a payment
19 to a local educational agency for any fiscal year
20 under subparagraph (A) unless such agency submits
21 a written request for such payment to the Secretary
22 by January 31 of such year.

23 “(2) PAYMENT REDUCTIONS.—If in any fiscal
24 year the amount appropriated pursuant to the au-
25 thority of paragraph (3) is insufficient to carry out

1 the provisions of this subsection for such fiscal year,
2 then the Secretary shall make a reduction in the
3 amount that such agency receives under this sub-
4 section in such year on the basis of the number of
5 children in average daily attendance at the schools
6 of a local educational agency compared to the total
7 number of children in average daily attendance in
8 the schools of all local educational agencies in all
9 States.

10 “(3) AUTHORIZATION OF APPROPRIATIONS.—

11 (A) There are authorized to be appropriated for each
12 fiscal year such amount as may be necessary to
13 carry out this subsection.

14 “(B) Funds appropriated pursuant to the au-
15 thority of subparagraph (A) shall remain available
16 until expended.

17 “(b) ADJUSTMENT FOR CERTAIN DECREASES IN
18 FEDERAL ACTIVITY.—Whenever the Secretary determines
19 that—

20 “(1) a local educational agency has made prep-
21 arations to provide during a fiscal year free public
22 education for a certain number of children to whom
23 subsection (a) applies;

24 “(2) such preparations were in the Secretary’s
25 judgment reasonable in the light of the information

1 available to such agency at the time such prepara-
2 tions were made; and

3 “(3) such number has been substantially re-
4 duced by reason of a decrease in or cessation of
5 Federal activities or by reason of a failure of any
6 such activities to occur,

7 then the amount to which such agency is otherwise enti-
8 tled under this section for such year shall be increased
9 to the amount to which, in the judgment of the Secretary,
10 such agency would have been entitled but for such de-
11 crease in or cessation of Federal activities or the failure
12 of such activities to occur, minus any reduction in current
13 expenditures for such year which the Secretary determines
14 that such agency has effected, or reasonably should have
15 effected, by reason of such decrease in or cessation of Fed-
16 eral activities or the failure of such activities to occur.

17 “(c) CONSULTATION WITH STATE AND LOCAL AU-
18 THORITIES.—All determinations of the Secretary under
19 subsection (a)(2) and subsection (b) of this section shall
20 be made only after consultation with the State educational
21 agency and the local educational agency.

22 “(d) REPORT ON EXPENDITURES.—Expenditures of
23 funds appropriated pursuant to the authority of sub-
24 sections (a)(3)(A) and (f)(1) shall be reported by the Sec-
25 retary to the Committees on Appropriations and Edu-

1 cation and Labor of the House of Representatives and the
2 Committees on Appropriations and Labor and Human Re-
3 sources of the Senate within 30 days of expenditure.

4 “(e) ANNUAL BUDGET SUBMISSION.—The Secretary
5 shall make available to the Congress in the Department
6 of Education’s annual budget submission, the amount of
7 funds necessary to defray the costs associated with the
8 provisions of this section during the fiscal year for which
9 the submission is made.

10 “(f) AUTHORIZATION OF APPROPRIATIONS.—

11 “(1) IN GENERAL.—There are authorized to be
12 appropriated for each fiscal year such amount as
13 may be necessary to carry out subsections (b)
14 through (e) of this section.

15 “(2) AVAILABILITY.—Funds appropriated pur-
16 suant to the authority of paragraph (1) shall remain
17 available until expended.

18 **“SEC. 105. METHOD OF MAKING PAYMENTS.**

19 “(a) APPLICATIONS.—

20 “(1) IN GENERAL.—Any local educational agen-
21 cy desiring to receive the payments to which it is en-
22 titled for any fiscal year under section 102, 103, or
23 104 shall submit an application therefore to the Sec-
24 retary and file a copy with the State educational
25 agency. Each such application shall be submitted in

1 such form, and containing such information as the
2 Secretary may reasonably require to determine
3 whether such agency is entitled to a payment under
4 any of such sections and the amount of such pay-
5 ment.

6 “(2) DEADLINE.—The Secretary shall establish
7 a deadline for the receipt of applications under this
8 section. For each fiscal year beginning after the date
9 of enactment of the Impact Aid Reauthorization Act
10 of 1993, the Secretary shall accept an approvable
11 application received not more than 60 days after the
12 deadline, but shall reduce the payment based on
13 such late application by 10 percent of the amount
14 that would otherwise be paid. The Secretary shall
15 not accept or approve any application submitted
16 more than 60 days after the application deadline.

17 “(3) SPECIAL RULE.—Notwithstanding any
18 other provision of law or regulation, a State edu-
19 cational agency that had been accepted as an appli-
20 cant for funds under section 103 for fiscal years
21 1985, 1986, 1987, and 1988 shall be permitted to
22 continue as an applicant under the same conditions
23 by which it made application during such fiscal
24 years only if such State educational agency distrib-
25 utes all funds received for the students for which ap-

1 plication is being made by such State educational
2 agency to the local educational agencies providing
3 educational services to such students.

4 “(b) PAYMENTS BY THE SECRETARY.—

5 “(1) IN GENERAL.—The Secretary shall pay to
6 each local educational agency, rounded to the near-
7 est whole dollar, making application pursuant to
8 subsection (a), the amount to which it is entitled
9 under section 102, 103, or 104. Sums appropriated
10 for any fiscal year, to enable the Secretary to make
11 payments pursuant to this title shall, notwithstand-
12 ing any other provision of law unless enacted in ex-
13 press limitation of this subsection, remain available
14 for obligation and payments with respect to amounts
15 due local educational agencies under this title for
16 such fiscal year, until the end of the fiscal year suc-
17 ceeding the fiscal year for which such sums are ap-
18 propriated. The Secretary shall return to the United
19 States Treasury any funds appropriated for pay-
20 ments under this title for fiscal year 1988, and
21 thereafter that, as the result of overpayment and un-
22 controllable expenditures, are recovered by the De-
23 partment of Education after or following the end of
24 the fifth fiscal year in which the sums were appro-

1 priated, or that remain in Department of Education
2 accounts after that time.

3 “(2) DATA AND TIMING.—Except as otherwise
4 provided in this title, the Secretary shall—

5 “(A) make payments to those local edu-
6 cational agencies eligible to receive funds under
7 sections 102, 103, and 104.

8 “(B) make such payments in accordance
9 with section 101(e) or as soon as possible in a
10 manner determined by the Secretary.

11 “(3) INDIAN PROVISIONS.—(A) The portion of
12 payment for a local educational agency under section
13 103 which is attributable to the difference be-
14 tween—

15 “(i) the total number of weighted student
16 units for children determined under section
17 103(c)(2)(A)(i); and

18 “(ii) the total number of weighted student
19 units for children determined under section
20 103(c)(2)(C)(i),

21 shall be made only to a local educational agency
22 which has, within 1 year of the date of enactment
23 of this Act, or when a local educational agency is
24 formed after such date of enactment, within 1 year
25 of its formation, established such policies and proce-

1 dures with respect to information received from In-
2 dian parents and tribes as required by this para-
3 graph and which has made assurances to the Sec-
4 retary, at such time and in such manner as shall be
5 determined by regulations promulgated by the Sec-
6 retary, that such policies and procedures have been
7 established. The Secretary is authorized to waive
8 such 1-year limit for good cause, and in writing to
9 the tribes affected.

10 “(B) Each local educational agency shall estab-
11 lish such policies and procedures as are necessary to
12 ensure that—

13 “(i) Indian children determined under sec-
14 tion 103(a)(2) participate on an equal basis in
15 the school program with all other children edu-
16 cated by the local educational agency;

17 “(ii) applications, evaluations, and pro-
18 gram plans are adequately disseminated to the
19 tribes and parents of Indian children deter-
20 mined under section 103(a)(2); and

21 “(iii) tribes and parents of Indian children
22 determined under section 103(a)(2) are—

23 “(I) afforded an opportunity to
24 present their views with respect to the ap-
25 plication, including the opportunity to

1 make recommendations concerning the
2 needs of their children and the ways by
3 which they can assist their children in real-
4 izing the benefits to be derived from the
5 educational program assisted under this
6 paragraph;

7 “(II) actively consulted and involved
8 in the planning and development of pro-
9 grams assisted under this paragraph; and

10 “(III) afforded a general opportunity
11 to present their overall views on the edu-
12 cational program, including the operations
13 of such programs, and the degree of paren-
14 tal participation allowed.

15 “(C)(i) Any tribe, or its designee, which has
16 students in attendance at a local educational agency
17 may, in its discretion and without regard to the re-
18 quirement of any other provision of law, file a writ-
19 ten complaint with the Secretary regarding any ac-
20 tion of a local educational agency taken pursuant to,
21 or relevant to, the requirements of subparagraph (B)
22 of this paragraph.

23 “(ii) Within 10 working days from receipt of
24 the complaint, the Secretary shall—

1 “(I) designate a time and place for a hear-
2 ing into the matters relating to the complaint
3 at a location in close proximity to the local edu-
4 cational agency involved, or, if the Secretary de-
5 termines there is good cause, at some other lo-
6 cation convenient to both the tribe, or its des-
7 ignees, and the local educational agency;

8 “(II) designate a hearing examiner to con-
9 duct the hearing; and

10 “(III) notify the affected tribe or tribes
11 and the local educational agency involved of the
12 time, place, and nature of the hearing and send
13 copies of the complaint to the local educational
14 agency and the affected tribe or tribes.

15 “(iii) The hearing shall be held within 30 days
16 of the designation of a hearing examiner and shall
17 be open to the public. A record of the proceedings
18 shall be established and maintained.

19 “(iv) The complaining tribe, or its designees,
20 and the local educational agency shall be entitled to
21 present evidence on matters relevant to the com-
22 plaint and to make recommendations concerning the
23 appropriate remedial actions. Each party to the
24 hearing shall bear only its own costs in the proceed-
25 ing.

1 “(v) Within 30 days of the completion of the
2 hearing, the hearing examiner shall, on the basis of
3 the record, make written findings of fact and rec-
4 ommendations concerning appropriate remedial ac-
5 tions (if any) which should be taken. The hearing
6 examiner’s findings and recommendations, along
7 with the hearing record, shall be forwarded to the
8 Secretary.

9 “(vi) Within 30 days of the Secretary’s receipt
10 of the findings, recommendations, and record, the
11 Secretary, on the basis of the record, shall make a
12 written determination of the appropriate remedial
13 action, if any, to be taken by the local educational
14 agency, the schedule for completion of the remedial
15 action, and the reasons for the Secretary’s decision.

16 “(vii) Upon completion of the Secretary’s final
17 determination, the Secretary shall provide the com-
18 plaining tribe, or its designee, and the local edu-
19 cational agency with copies of the hearing record,
20 the hearing examiner’s findings and recommenda-
21 tions, and the Secretary’s final determination. The
22 final determination of the Secretary shall be subject
23 to judicial review.

24 “(viii) In all actions under this subparagraph,
25 the Secretary shall have discretion to consolidate

1 complaints involving the same tribe or local edu-
2 cational agency.

3 “(D) If the local educational agency rejects the
4 determination of the Secretary, or if the remedy re-
5 quired is not undertaken within the time established
6 and the Secretary determines that an extension of
7 the time established will not effectively encourage
8 the remedy required, the Secretary shall withhold
9 payment of all moneys to which such local agency is
10 entitled under section 103 until such time as the
11 remedy required is undertaken, except—

12 “(i) where the complaining tribe or its des-
13 ignees formally requests that such funds be re-
14 leased to the local educational agency; and

15 “(ii) that the Secretary may not withhold
16 such moneys during the course of the school
17 year if the Secretary determines that it would
18 substantially disrupt the educational programs
19 of the local educational agency.

20 “(E) If the local educational agency rejects the
21 determination of the Secretary and a tribe exercises
22 the option under section 1101(d) of the Education
23 Amendments of 1978, to have education services
24 provided either directly by the Bureau of Indian Af-
25 fairs or by contract with that Agency, any Indian

1 students affiliated with that tribe who wish to re-
2 main in attendance at the local educational agency
3 against whom the complaint which led to the tribal
4 action under such subsection (d) was lodged may be
5 counted with respect to that local educational agency
6 for the purpose of receiving funds under section
7 103(c)(2)(A) of this Act. In such event, funds under
8 such section shall not be withheld pursuant to sub-
9 paragraph (D) and no further complaints with re-
10 spect to such students may be filed under subpara-
11 graph (C)(i).

12 “(F) This paragraph is based upon the special
13 relationship between the Indian nations and the
14 United States and nothing in this paragraph shall be
15 deemed to relieve any State of any duty with respect
16 to any citizens of that State.

17 “(4) MILITARY CONNECTED CHILDREN.—(A)
18 The portion of a payment under section 103 to a
19 local educational agency which is attributable to the
20 difference between—

21 “(i) the total number of weighted student
22 units for children determined under section
23 103(c)(2)(B); and

24 “(ii) the total number of weighted student
25 units for children determined under section

1 103(c)(2)(C) shall be made only to a local edu-
2 cational agency which has within 1 year of the
3 date of enactment of the Impact Aid Reauthor-
4 ization Act of 1993, or when a local educational
5 agency is formed after such date of enactment,
6 within 1 year of its formation, established a
7 process, in accordance with regulations promul-
8 gated by the Secretary, which ensures the in-
9 volvement of the local military base commander
10 or such commander's designee for the purpose
11 of better meeting the educational, emotional,
12 and social needs of the children determined
13 under such sections.

14 “(B) The Secretary shall annually review the
15 process established under subparagraph (A) to en-
16 sure that local educational agencies receiving funds
17 for children determined under section 103(c)(2)(B)
18 are addressing the needs of such children.

19 “(c) THE LEARNING OPPORTUNITY THRESHOLD;
20 ADJUSTMENTS WHERE NECESSITATED BY APPROPRIA-
21 TIONS.—

22 “(1) IN GENERAL.—Except as provided in para-
23 graph (5), if the sums appropriated for any fiscal
24 year for making payments on the basis of entitle-
25 ments under section 103 are not sufficient to pay in

1 full the total amounts that the Secretary calculated
2 all local educational agencies are entitled to receive
3 under section 103 in such fiscal year, then the Sec-
4 retary, shall allocate such sums as do not exceed the
5 total amount necessary to pay the learning oppor-
6 tunity threshold (described in paragraph (2)) for all
7 local educational agencies eligible for a payment
8 under such section in such year, among local edu-
9 cational agencies by paying to each such agency an
10 amount equal to such agencies' learning opportunity
11 threshold.

12 “(2) DETERMINATION OF LEARNING OPPOR-
13 TUNITY THRESHOLD.—(A) Except as provided in
14 paragraph (3), the Secretary shall calculate a local
15 educational agency's learning opportunity threshold
16 by determining the percentage of federally connected
17 children served by such agency (in accordance with
18 subparagraph (B)), adding to such percentage the
19 equal opportunity cost percentage (determined in ac-
20 cordance with subparagraph (C)), and multiply the
21 resulting percentage by the equal opportunity cost
22 determined in accordance with section 103(c).

23 “(B) DETERMINATION OF THE PERCENTAGE OF
24 FEDERALLY CONNECTED CHILDREN.—The Secretary
25 shall determine the percentage of federally connected

1 children for a local educational agency in any fiscal
2 year by calculating a fraction, the numerator of
3 which is the number of children served by such
4 agency in the preceding fiscal year who are described
5 in section 103(c)(2), and the denominator of which
6 is the total number of children in average daily at-
7 tendance at the schools served by such agency in the
8 preceding fiscal year, and multiplying such fraction
9 by 100.

10 “(C) DETERMINATION OF THE EQUAL OPPOR-
11 TUNITY COST PERCENTAGE.—(i) The Secretary shall
12 determine the equal opportunity cost percentage for
13 a local educational agency in any fiscal year by cal-
14 culating a fraction, the numerator of which is the
15 equal opportunity cost (determined in accordance
16 with section 103(c)(1)) for such agency in the pre-
17 ceding fiscal year, and the denominator of which is
18 the total current expenditures for such agency in
19 such preceding fiscal year, and multiplying such
20 fraction by 100.

21 “(ii) The Secretary shall subtract payments
22 provided pursuant to section 103(d)(3) from the cal-
23 culation of a local educational agency’s total current
24 expenditures before calculating such agency’s equal

1 opportunity cost percentage in accordance with this
2 paragraph.

3 “(iii) No local educational agency’s equal oppor-
4 tunity cost percentage as determined under this sub-
5 section shall exceed 100 percent.

6 “(D) MAXIMUM PAYMENT.—No local edu-
7 cational agency shall receive a payment under this
8 subsection that is greater than such agency’s equal
9 opportunity cost calculated in accordance with sec-
10 tion 103(c)(1) of this Act.

11 “(3) LEARNING OPPORTUNITY THRESHOLD
12 MODIFIER PERCENTAGE.—(A) If a local educational
13 agency has an average daily attendance (hereafter
14 referred to in this Act as the ‘ADA’) of fewer than
15 1,000 children, then the Secretary shall modify the
16 learning opportunity threshold (calculated in accord-
17 ance with paragraph (2)) by adding an additional
18 learning opportunity threshold modifier percentage
19 for such agency (determined in accordance with sub-
20 paragraph (B)) to the percentage described in para-
21 graph (2) before multiplying the resultant percent-
22 age by the equal opportunity cost (in accordance
23 with paragraph (2)).

24 “(B) The Secretary shall calculate a local edu-
25 cational agency’s learning opportunity threshold

1 modifier percentage by calculating the percentage
 2 determined in accordance with the following formula:

$$25 \times \left(\frac{1,000 - \text{the total number of students in ADA at the schools served}}{\text{by the local educational agency in the preceding fiscal year}} \right) \frac{1}{1,000}$$

3 “(4) SPECIAL RULE REGARDING ADDITIONAL
 4 FUNDS.—If the sums appropriated pursuant to the
 5 authority of section 103(c) in any fiscal year are suf-
 6 ficient to pay learning opportunity threshold (deter-
 7 mined in accordance with paragraph (2)) for all local
 8 educational agencies eligible to receive assistance
 9 under section 103 in such year but are insufficient
 10 to pay the equal opportunity cost (determined in ac-
 11 cordance with section 103(c)(1)) of all such agencies
 12 in such year, then such funds as exceed the amount
 13 necessary to pay the learning opportunity threshold
 14 for all such agencies in such year shall be distrib-
 15 uted to such agencies in such year on the basis of
 16 the total number of weighted student units (cal-
 17 culated in accordance with section 103(c)(2)) appli-
 18 cable to each local educational agency eligible to re-
 19 ceive assistance under section 103 in such year com-
 20 pared to the total number of weighted student units
 21 applicable to all such agencies in such year, except
 22 that in no case shall the payment to a local edu-
 23 cational agency under this subsection exceed the
 24 amount equal to such local educational agency’s

1 equal opportunity cost (determined in accordance
2 with section 103(c)(1)).

3 “(5) INSUFFICIENT APPROPRIATIONS.—If the
4 sums appropriated pursuant to the authority of sec-
5 tion 101(c) in any fiscal year are insufficient to pay
6 the amount necessary to make payments in accord-
7 ance with paragraph (1), then the Secretary shall
8 determine the amount of such deficiency and reduce
9 the payments to each local educational agency as fol-
10 lows:

11 “(A) 50 percent of any deficiency shall be
12 addressed by ratably reducing the payments of
13 all local educational agencies receiving assist-
14 ance under this title in such year; and

15 “(B) 50 percent of any deficiency shall be
16 addressed by reducing the payments to all local
17 educational agencies receiving assistance under
18 this title in such year on the basis of the total
19 number of weighted student units applicable to
20 a local educational agency receiving assistance
21 under this title in such year compared to the
22 total number of weighted student units applica-
23 ble to all such agencies in such year.

1 “(d) TREATMENT OF PAYMENT BY THE STATES IN
2 DETERMINING ELIGIBILITY FOR, AND THE AMOUNT OF,
3 STATE AID.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2), the Secretary may withhold payments, in
6 accordance with paragraph (3), for any fiscal year to
7 any State educational agency in any State if—

8 “(A) that State has taken into consider-
9 ation during that fiscal year or the preceding
10 fiscal year payments under this Act in deter-
11 mining—

12 “(i) the eligibility of any local edu-
13 cational agency in that State for State aid
14 for free public education of children;

15 “(ii) the amount of such State aid
16 with respect to any such agency during
17 that fiscal year or the preceding fiscal
18 year; or

19 “(iii) a reduction in the amount of
20 such State aid based on an end-of-year bal-
21 ance in any fund of the local educational
22 agency into which payments under this Act
23 have been deposited, unless such reduction
24 is calculated in a manner that excludes the
25 amount of funds deposited into such fund

1 in any fiscal year that are attributable to
2 payments under this Act; or

3 “(B) that State makes such State aid
4 available to local educational agencies in such a
5 manner as to result in less State aid to any
6 local educational agency which is eligible for
7 payments under this Act than such agency
8 would receive if such agency were not so eligi-
9 ble.

10 “(2) SPECIAL RULES.—(A) Notwithstanding
11 paragraph (1) of this subsection, if a State’s per
12 pupil expenditure is equal to or greater than the av-
13 erage per pupil expenditure of all the States and has
14 in effect a program of State aid for free public edu-
15 cation for any fiscal year, which is designed to
16 equalize expenditures for free public education
17 among the local educational agencies of that State,
18 payments under this title for any fiscal year may be
19 taken into consideration by such State in determin-
20 ing the relative—

21 “(i) financial resources available to local
22 educational agencies in that State; and

23 “(ii) financial need of such agencies for the
24 provision of free public education for children
25 served by such agency,

1 except that a State may consider as local resources
2 funds received under this Act only in proportion to
3 that share that local revenues covered under a State
4 equalization program are of total local revenues.

5 “(B) The amount of a payment to a local edu-
6 cational agency under section 103 which is attrib-
7 utable to the sum of—

8 “(i)(I) the total number of weighted stu-
9 dent units for students determined under sec-
10 tions 103(c)(2)(A), 103(c)(2)(B)(i), and
11 103(c)(2)(B)(ii); less

12 “(II) the total number of the weighted stu-
13 dent units for such students if such students
14 had been determined under section
15 103(c)(2)(C); plus

16 “(ii) the increase in payments described in
17 sections 103(c)(3)(B)(ii) and 103(d)(3),
18 shall not be taken into consideration by the State for
19 the purpose of this paragraph.

20 “(C) Whenever a State educational agency or
21 local education agency will be adversely affected by
22 the operation of this subsection, such agency shall be
23 afforded notice and an opportunity for a hearing

1 prior to the reduction or termination of payments
2 pursuant to this subsection.

3 “(D) The terms ‘State aid, State school finance
4 program’, and ‘equalize expenditures’ as used in this
5 subsection shall be defined by the Secretary by regu-
6 lations after consultation with the National Panel
7 established in paragraph (4) and the State and local
8 education agencies affected by this subsection, ex-
9 cept that such terms shall be defined in a manner
10 that ensures that adequate provisions are made for
11 the costs required to—

12 “(i) provide free public education for meet-
13 ing the special educational needs of particular
14 groups or categories of at-risk students such as
15 children with disabilities, economically dis-
16 advantaged children, children who need bilin-
17 gual education, and gifted and talented chil-
18 dren;

19 “(ii) enable local educational agencies to
20 provide equivalent programs and services; and

21 “(iii) recognize the special conditions
22 among the diverse local educational agencies in
23 the State.

24 “(E)(i) In making the determination as to a
25 State’s eligibility to consider payments under this

1 title in the calculation of State payments to local
2 educational agencies in accordance with subpara-
3 graph (A), equalization shall be calculated on the
4 basis of expenditure disparity per pupil. The State
5 school finance program shall be considered equalized
6 when the disparity in per pupil expenditures is not
7 greater than 105 percent in terms of the relationship
8 of the spending level per pupil in the highest spend-
9 ing local educational agency to the spending level
10 per pupil in the lowest spending local educational
11 agency after excluding the highest spending local
12 educational agencies with 5 percent of the students.
13 In reviewing a State's eligibility to carry out the pro-
14 visions of subparagraph (A), the National Panel es-
15 tablished in paragraph (4) may recommend to the
16 Secretary that the equalization calculations exclude
17 low spending local educational agencies that serve
18 not more than 5 percent of the students in the State
19 on a case-by-case basis when the National Panel de-
20 termines that unusual circumstances exist.

21 “(ii) If a State desires to take payments under
22 this section into consideration as provided in this
23 paragraph for any fiscal year, that State shall, not
24 later than 60 days prior to the beginning of such fis-
25 cal year, submit notice to the Secretary of its inten-

1 tion to do so. Such notice shall be in such form and
2 be accompanied by such information as to enable the
3 Secretary to determine the extent to which the pro-
4 gram of State aid of that State is consistent with
5 the provisions of subparagraph (A). In addition,
6 such notice shall be accompanied by a narrative de-
7 scription of the State's school finance program and
8 include appropriate documentation of the manner in
9 which the State's school finance program provides
10 adequate recognition of special students and special
11 conditions. If the Secretary determines that the pro-
12 gram of State aid of a State submitting notice under
13 this subparagraph is consistent with the provisions
14 of subparagraph (A), the Secretary shall certify such
15 determination to that State.

16 “(iii) A State shall not be eligible to carry out
17 the provisions of subparagraph (A) if such State's
18 allocation of funds under the State school finance
19 program results in a local education agency having
20 less revenues per pupil for current operations than
21 the minimum per pupil provided in the State school
22 finance program.

23 “(iv) Prior to certifying any determination
24 under clause (i) for any State for any fiscal year, the
25 Secretary shall give the local educational agencies in

1 that State an opportunity for a hearing at which
2 such agencies may present their views with respect
3 to the consistency of the State aid program of that
4 State with the provisions of subparagraph (A).

5 “(v) The Secretary shall not finally deny to any
6 State for any fiscal year certification of denial of
7 payments under clause (i) without first giving that
8 State an opportunity for a hearing.

9 “(vi) Any State certified in accordance with sec-
10 tion 5(d)(2)(A) of this Act (as such section was in
11 effect prior to the date of enactment of this sub-
12 section) shall have 3 years from the date of the en-
13 actment of the Impact Aid Reauthorization Act of
14 1993 to comply with the requirements of this para-
15 graph.

16 “(3) WITHHOLDING AUTHORIZED.—If, prior to
17 a certification determination of eligibility by the Sec-
18 retary in accordance with paragraph (2)(E)(i), a
19 State takes payments under this title for any fiscal
20 year into consideration in determining the financial
21 resources available to local educational agencies
22 within the State or the financial need of such agen-
23 cies to provide for free public education, the Sec-
24 retary shall withhold all funds payable to the State
25 educational agency for State administrative expenses

1 associated with any Federal elementary and second-
2 ary education programs.

3 “(4) NATIONAL ADVISORY PANEL ESTAB-
4 LISHED.—(A)(i) There is hereby established a Na-
5 tional Advisory Panel on School Finance and Impact
6 Aid Equalization (hereafter in this Act referred to as
7 the ‘National Panel’), which shall consist of 11
8 members appointed by the Secretary, of which—

9 “(I) 5 members shall be employed in local
10 educational agencies;

11 “(II) 3 members shall be employed in
12 State educational agencies; and

13 “(III) 3 members shall be persons with ex-
14 perience in the design and structure of State
15 school finance programs, one of whom shall
16 have particular knowledge of funding for special
17 needs populations.

18 “(ii) The Secretary shall give consideration to
19 ensuring that the National Panel’s membership in-
20 cludes representatives of—

21 “(I) States with large numbers of students
22 described in section 103(a); and

23 “(II) local educational agencies with dif-
24 ferent types of such students.

1 “(iii) Prior to making the appointments de-
2 scribed in clause (i), the Secretary shall request
3 nominees from the National Association of Federally
4 Impacted Schools and the Council of Chief State
5 School Officers.

6 “(B) The National Panel shall—

7 “(i) advise the Secretary with respect to
8 the development of regulations and administra-
9 tive practices and policies under this subsection;

10 “(ii) advise the Secretary relative to the
11 evidence that each State is to submit when
12 seeking a determination under paragraph
13 (2)(A); and

14 “(iii) submit a recommendation to the Sec-
15 retary regarding a State’s equalization status
16 and eligibility to consider payments under this
17 title in making State payments to local edu-
18 cational agencies, after reviewing the narrative
19 and statistical documents that each State sub-
20 mits to the Secretary when seeking an equali-
21 zation certification under paragraph (2)(E)(i)
22 in terms of the extent to which the State’s
23 school finance program makes provision for suf-
24 ficient funds to ensure an adequate program of
25 free public education for all children and recog-

1 nizes the diversity of conditions among local
2 educational agencies in the State.

3 “(C) The National Panel may—

4 “(i) review applications submitted to the
5 Secretary for, and make recommendations re-
6 garding, funding from the contingency fund es-
7 tablished in section 202; and

8 “(ii) respond to other requests from the
9 Secretary regarding any other provision of this
10 Act.

11 “(D) Members of the National Panel shall not
12 be compensated for their service on the National
13 Panel, but while serving away from their homes or
14 regular places of business, members of the National
15 Panel may be reimbursed for travel expenses, includ-
16 ing per diem in lieu of subsistence, as authorized by
17 section 5703 of title 5, United States Code, for per-
18 sons in government service employed intermittently.

19 “(e) PHASE-IN PROVISION.—

20 “(1) IN GENERAL.—(A) Notwithstanding any
21 other provision of this Act and except as provided in
22 paragraph (2), each local educational agency
23 which—

24 “(i) received a payment in fiscal year 1993
25 under section 3 of this Act (as such Act was in

1 existence prior to the date of enactment of the
2 Impact Aid Reauthorization Act of 1993) and is
3 eligible to receive a payment under section 103
4 in any of the fiscal years 1994, 1995, and
5 1996; or

6 “(ii) is applying for funds under section
7 103 for the first time in any of the fiscal years
8 1994, 1995, and 1996,

9 shall receive a payment under section 103 in any of
10 the fiscal years 1994, 1995, and 1996 in an amount
11 determined on the basis of the total number of
12 weighted student units applicable to such agency in
13 the fiscal year preceding the fiscal year for which
14 the determination is made compared to the total
15 number of weighted student units applicable to all
16 such agencies in all States in such preceding fiscal
17 year.

18 “(B) The payment a local educational agency
19 receives pursuant to the operation of subparagraph
20 (A) in any of the fiscal years 1994, 1995, and 1996
21 shall not be more than 10 percent greater than, nor
22 less than 10 percent lesser than, the amount such
23 agency received by operation of subparagraph (A) in
24 the preceding fiscal year.

1 “(2) SPECIAL RULES.—(A) If the amount ap-
2 propriated to carry out this title is insufficient to
3 carry out the provisions of paragraph (1), then the
4 Secretary shall determine the amount of such defi-
5 ciency and reduce the payments described in para-
6 graph (1) in accordance with the provisions of sub-
7 paragraphs (A) and (B) of section 105(c)(5).

8 “(3) NEW APPLICANTS.—In the case of a local
9 educational agency applying for funds under section
10 103 for the first time in any of the fiscal years
11 1994, 1995, and 1996, the Secretary, prior to mak-
12 ing a payment pursuant to paragraph (1), shall de-
13 termine the total number of weighted student units
14 applicable to such agency in the fiscal year preceding
15 the fiscal year in which such agency submits its ini-
16 tial application under section 103, and shall apply
17 the provisions of paragraph (1) on the basis of such
18 determination.

19 “(f) CHILDREN WITH DISABILITIES.—

20 “(1) INDIAN LANDS CONNECTED CHILDREN.—
21 If in any fiscal year the number of children deter-
22 mined under section 103(c)(2)(A)(ii) for a local edu-
23 cational agency who are eligible to receive payments
24 under section 103 exceeds the average number of
25 children eligible for services under the Individuals

1 with Disabilities Education Act for local educational
2 agencies in the State, then the Secretary of the Inte-
3 rior shall make available in such year, from funds
4 available to the Secretary of the Interior to carry out
5 the Individuals with Disabilities Education Act, the
6 funds required to pay the portion of payments under
7 section 103 to such local educational agency which
8 are attributable to the difference between—

9 “(A) the sum of the total number of
10 weighted student units for children determined
11 under section 103(c)(2)(A)(ii); and

12 “(B) the total number of weighted student
13 units for children determined under section
14 103(c)(2)(C)(i).

15 “(2) DEFENSE CONNECTED CHILDREN.—(A) If
16 in any fiscal year the number of children determined
17 under sections 103(c)(2)(B)(ii) and 103(c)(2)(B)(iv)
18 for a local educational agency who are eligible to re-
19 ceive payments under section 103 exceeds the aver-
20 age number of children eligible for services under
21 the Individuals with Disabilities Education Act for
22 local educational agencies in the State, then the Sec-
23 retary of Defense shall make available, either di-
24 rectly or through contract, from funds appropriated

1 to carry out section 106, to such local educational
2 agency—

3 “(A) the funds required to pay the portion
4 of payments under section 103 which are attrib-
5 utable to the difference between—

6 “(i) the sum of the total number of
7 weighted student units for children deter-
8 mined under sections 103(c)(2)(B)(ii) and
9 103(c)(2)(B)(iv); and

10 “(ii) the total number of weighted stu-
11 dent units for children determined under
12 section 103(c)(2)(C)(i); and

13 “(B) the total cost associated with any
14 child determined under sections
15 103(c)(2)(B)(ii) and 103(c)(2)(B)(iv) who is
16 enrolled by such local educational agency be-
17 cause of a disability, in an educational program
18 provided outside the schools of such local edu-
19 cational agency.

20 “(3) USE OF FUNDS.—The amount of funds
21 provided to a local educational agency by reason of
22 the operation of paragraph (2) shall be used by such
23 agency for special educational programs designed to
24 meet the special educational needs of children with

1 “(1) if no tax revenues of the State or any po-
2 litical subdivision thereof may be expended for the
3 free public education of such children; or

4 “(2) if it is the judgment of the Secretary, after
5 the Secretary has consulted with the appropriate
6 State educational agency, that no local educational
7 agency is able to provide suitable free public edu-
8 cation for such children,

9 then the Secretary shall make such arrangements (other
10 than arrangements with respect to the acquisition of land,
11 the erection of facilities, interest, or debt service) as may
12 be necessary to provide free public education for such chil-
13 dren. Such arrangements to provide free public education
14 may also be made for children of members of the Armed
15 Forces on active duty, if the schools in which the free pub-
16 lic education is usually provided for such children are
17 made unavailable to such children as a result of official
18 action by State or local governmental authority and it is
19 the judgment of the Secretary, after the Secretary has
20 consulted with the appropriate State educational agency,
21 that no local educational agency is able to provide suitable
22 free public education for such children. To the maximum
23 extent practicable, the local educational agency, or the
24 head of the Federal department or agency, with which any
25 arrangement is made under this section shall take such

1 action as may be necessary to ensure that the education
2 provided pursuant to such arrangement is comparable to
3 free public education provided for children in comparable
4 communities in the State or in the case of education pro-
5 vided under this section outside the continental United
6 States, Alaska, and Hawaii, comparable to free public edu-
7 cation provided for children in the District of Columbia.
8 For the purpose of providing such comparable education,
9 personnel may be employed and the compensation, tenure,
10 leave, hours of work, and other incidents of the employ-
11 ment relationship may be fixed without regard to the pro-
12 visions of title 5 of the United States Code. Personnel pro-
13 vided for under this subsection outside of the continental
14 United States, Alaska, and Hawaii, shall receive such com-
15 pensation, tenure, leave, hours of work, and other inci-
16 dents of employment on the same basis as provided for
17 similar positions in the public schools of the District of
18 Columbia. In any case where education was being provided
19 on January 1, 1955, or thereafter under an arrangement
20 made under this subsection for children residing on an
21 Army, Navy (including the Marine Corps), or Air Force
22 installation, it shall be presumed, for the purposes of this
23 subsection, that no local educational agency is able to pro-
24 vide suitable free public education for the children residing
25 on such installation, until the Secretary and the Secretary

1 of the military department concerned jointly determine,
2 after consultation with the appropriate State educational
3 agency, that a local educational agency is able to do so.

4 “(b) ADJACENT PROPERTY.—In any case in which
5 the Secretary makes such arrangements for the provision
6 of free public education in facilities situated on Federal
7 property, the Secretary may also make arrangements for
8 providing free public education in such facilities for chil-
9 dren residing in any area adjacent to such property with
10 a parent who during some portion of the fiscal year in
11 which such education is provided, was employed on such
12 property, but only if the Secretary determines after con-
13 sultation with the appropriate State educational agency—

14 “(1) that the provision of such education is ap-
15 propriate to carry out the purposes of this title;

16 “(2) that no local educational agency is able to
17 provide suitable free public education for such chil-
18 dren; and

19 “(3) in any case where in the judgment of the
20 Secretary the need for the provision of such edu-
21 cation will not be temporary in duration, that the
22 local educational agency of the school district in
23 which such children reside, or the State educational
24 agency, or both, will make reasonable tuition pay-
25 ments to the Secretary for the education of such

1 children. Such payments may be made either directly
2 or through deductions from amounts to which the
3 local educational agency is entitled under this title,
4 or both, as may be agreed upon between such agency
5 and the Secretary. Any amounts paid to the Sec-
6 retary by a State or local educational agency pursu-
7 ant to this section shall be covered into the Treasury
8 as miscellaneous receipts.

9 “(c) OUTLYING AREAS.—In any case in which the
10 Secretary makes arrangements under this section for the
11 provision of free public education in facilities situated on
12 Federal property in the Commonwealth of Puerto Rico,
13 Wake Island, Guam, American Samoa, the Commonwealth
14 of the Northern Mariana Islands, or the Virgin Islands,
15 the Secretary may also make arrangements for providing
16 free public education in such facilities for children residing
17 with a parent employed by the United States, in a grade,
18 position, or classification subject by policy and practice to
19 transfer or reassignment to areas where English is the
20 language of instruction in the schools normally attended
21 by children of Federal employees. Dependents of excepted
22 service professional employees of the schools shall be eligi-
23 ble to attend the schools. In any case where education is
24 being provided under an arrangement made under this
25 subsection, it shall be presumed that no local educational

1 agency is able to provide suitable free public education for
2 the children of eligible parents employed by the United
3 States until the Secretary determines, after consultation
4 with the appropriate State educational agency, that a local
5 educational agency is able to do so.

6 “(d) ARRANGEMENTS.—The Secretary may make an
7 arrangement under this section only with a local edu-
8 cational agency or with the head of a Federal department
9 or agency administering Federal property on which chil-
10 dren reside who are to be provided education pursuant to
11 such arrangement or, in the case of children to whom the
12 second sentence of subsection (a) applies, with the head
13 of any Federal department or agency having jurisdiction
14 over the parents of some or all of such children. Except
15 where the Secretary makes arrangements pursuant to the
16 second sentence of subsection (a), arrangements may be
17 made under this section only for the provision of education
18 in facilities of a local educational agency or in facilities
19 situated on Federal property. The Secretary shall ensure
20 that funds provided under such arrangement or arrange-
21 ments are expended in an efficient manner, and shall re-
22 quire an accounting of funds by such agency at least on
23 an annual basis. The Secretary shall further be provided
24 with data relating to the quality and type of education

1 provided to such children under such arrangement or ar-
2 rangements.

3 “(e) LIMITATION ON PAYMENTS.—To the maximum
4 extent practicable, the Secretary shall limit the total pay-
5 ments made pursuant to any such arrangement for edu-
6 cating children within the continental United States, Alas-
7 ka, or Hawaii, to an amount per pupil which will not ex-
8 ceed the per pupil cost of free public education provided
9 for children in comparable communities in the State. The
10 Secretary shall limit the total payments made pursuant
11 to any arrangement for educating children outside the
12 continental United States, Alaska, or Hawaii, to an
13 amount per pupil which will not exceed the amount the
14 Secretary determines to be necessary to provide education
15 comparable to the free public education provided for chil-
16 dren in the District of Columbia.

17 “(f) EXPENDITURE OF TAX REVENUES.—If no tax
18 revenues of a State or of any political subdivision of the
19 State may be expended for the free public education of
20 children who reside on any Federal property within the
21 State, or if no tax revenues of a State are allocated for
22 the free public education of such children, then the prop-
23 erty on which such children reside shall not be considered
24 Federal property for the purposes of sections 103 and 104
25 of this Act. If a local educational agency refuses for any

1 other reason to provide in any fiscal year free public edu-
2 cation for children who reside on Federal property which
3 is within the school district of that agency or which, in
4 the determination of the Secretary, would be within the
5 school district if it were not Federal property, there shall
6 be deducted from any amount to which the local edu-
7 cational agency is otherwise entitled for that year under
8 section 103 or 104 an amount equal to—

9 “(1) the amount (if any) by which the cost to
10 the Secretary of providing free public education for
11 that year for each such child exceeds the local con-
12 tribution rate of that agency for that year, multi-
13 plied by

14 “(2) the number of such children.

15 “(g) ELECTIVE SCHOOL BOARD.—The Secretary
16 shall ensure the establishment of an elective school board
17 in schools assisted under this section. Such school board
18 shall be composed of a minimum of 3 members, elected
19 by the parents of students in attendance at such school.
20 The Secretary shall, by regulation, establish procedures
21 for carrying out such school board elections as provided
22 in this subsection.

23 “(h) POWERS OF ELECTIVE SCHOOL BOARDS.—A
24 school board established pursuant to subsection (g) shall
25 be empowered to oversee school expenditures and oper-

1 ations, subject to audit procedures established by the Sec-
2 retary, and other provisions of this section.

3 “(i) SPECIAL RULE.—

4 “(1) IN GENERAL.—Notwithstanding any other
5 provision of law, a local educational agency receiving
6 funds under section 103 may also receive funds
7 under this section, if—

8 “(A) at least 30 percent of the students
9 enrolled in the schools served by such agency
10 are students determined under section
11 103(c)(2)(B);

12 “(B) such agency applied for and received,
13 or will receive, financial assistance from all
14 available Federal, State, and local revenue
15 sources, including revenue available from other
16 sections of this title; and

17 “(C) such agency provides educational
18 services to students determined under section
19 103(c)(2)(B) free of charge.

20 “(2) RESERVATIONS.—The Secretary of De-
21 fense shall reserve—

22 “(A) 80 percent of the amount available to
23 carry out this subsection for distribution to
24 local educational agencies in accordance with
25 the provisions of this subsection whose per

1 pupil expenditure is less than the State average
2 per pupil expenditure; and

3 “(B) 20 percent of such amount for dis-
4 tribution to local educational agencies whose
5 per pupil expenditure is higher than the State
6 average per pupil expenditure.

7 “(3) COUNTING.—Beginning in fiscal year 1994
8 and in each succeeding fiscal year, payments to a
9 local educational agency in a fiscal year under this
10 subsection shall be made on the basis of the total
11 number of students determined under clauses (i) and
12 (ii) of section 103(c)(2)(B) applicable to such agency
13 compared to the total number of students deter-
14 mined under such clauses applicable to all local edu-
15 cational agencies receiving payments under this sub-
16 section in such fiscal year.

17 **“SEC. 107. ASSISTANCE FOR CURRENT SCHOOL EXPENDI-**
18 **TURES IN CASES OF CERTAIN DISASTERS.**

19 “(a) IN GENERAL.—In any case in which—

20 “(1) the Director of the Federal Emergency
21 Management Agency determines with respect to any
22 local educational agency (including for the purpose
23 of this section any other public agency which oper-
24 ates schools providing technical, vocational, or other
25 special education to children of elementary or sec-

1 ondary school age) that such agency is located in
2 whole or in part within an area which after August
3 30, 1965, and prior to October 1, 1998, has suffered
4 a major disaster as the result of any flood, drought,
5 fire, hurricane, earthquake, storm, or other catas-
6 trophe which, in the determination of the President
7 pursuant to sections 102(2) and 401 of the Robert
8 T. Stafford Disaster Relief and Emergency Assist-
9 ance Act, is or threatens to be of sufficient severity
10 and magnitude to warrant disaster assistance by the
11 Federal Government, and

12 “(2) the Governor of the State in which such
13 agency is located has certified the need for disaster
14 assistance under this section, and has given assur-
15 ance of expenditure of a reasonable amount of the
16 funds of the government of such State, or of any po-
17 litical subdivision thereof, for the same or similar
18 purposes with respect to such catastrophe,

19 and if the Secretary determines with respect to such agen-
20 cy that—

21 “(A) such agency is utilizing or will utilize
22 all State and other financial assistance available
23 to it for the purpose of meeting the cost of pro-
24 viding free public education for the children at-
25 tending the schools of such agency, but as a re-

1 sult of such disaster it is unable to obtain suffi-
2 cient funds for such purpose and requires an
3 amount of additional assistance equal to at
4 least \$10,000 or 5 percent of such agency's cur-
5 rent operating expenditures during the fiscal
6 year preceding the fiscal year in which such dis-
7 aster occurred, whichever is less, and

8 “(B) in the case of any such major disas-
9 ter to the extent that the operation of private
10 elementary and secondary schools in the school
11 attendance area of such local educational agen-
12 cy has been disrupted or impaired by such dis-
13 aster, such local educational agency has made
14 provisions for the conduct of educational pro-
15 grams under public auspices and administration
16 in which children enrolled in such private ele-
17 mentary and secondary schools may attend and
18 participate, except that nothing contained in
19 this Act shall be construed to authorize the
20 making of any payment under this Act for reli-
21 gious worship or instruction,

22 then the Secretary may provide to such agency the addi-
23 tional assistance necessary to provide free public education
24 to the children attending the schools of such agency, upon
25 such terms and in such amounts (subject to the provisions

1 of this section) as the Secretary may consider to be in
2 the public interest. Such additional assistance may be pro-
3 vided for a period not greater than a 5-fiscal-year period
4 beginning with the fiscal year in which it is determined
5 pursuant to paragraph (1) of this subsection that such
6 agency suffered a disaster. The amount so provided for
7 any fiscal year shall not exceed the amount which the Sec-
8 retary determines to be necessary to enable such agency,
9 with the State, local, and other Federal funds available
10 to it for such purpose, to provide a level of education
11 equivalent to that maintained in the schools of such agen-
12 cy prior to the occurrence of such disaster, taking into
13 account the additional costs reasonably necessary to carry
14 out the provisions of paragraph (2)(B) of this subsection.
15 The amount, if any, so provided for the second, third, and
16 fourth fiscal years following the fiscal year in which it is
17 so determined that such agency has suffered a disaster
18 shall not exceed 75 percent, 50 percent, and 25 percent,
19 respectively, of the amount so provided for the first fiscal
20 year following such determination.

21 “(b) ADDITIONAL FUNDS.—In addition to and apart
22 from the funds provided under subsection (a), the Sec-
23 retary is authorized to provide to such agency an amount
24 which the Secretary determines to be necessary to replace
25 instructional and maintenance supplies, equipment, and

1 materials (including textbooks) destroyed or seriously
2 damaged as a result of such disaster, to make minor re-
3 pairs, and to lease or otherwise provide (other than by ac-
4 quisition of land or erection of facilities) school and cafe-
5 teria facilities needed to replace temporarily such facilities
6 which have been made unavailable as a result of the disas-
7 ter.

8 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated for each fiscal year such
10 amounts as may be necessary to carry out the provisions
11 of this section. Pending such appropriation, the Secretary
12 is authorized to expend (without regard to the provisions
13 of sections 1341 and 1515 of title 31, United States Code)
14 from any funds appropriated to the Department of Edu-
15 cation and at that time available to the Secretary, such
16 sums as may be necessary for providing immediate assist-
17 ance under this section. Expenditures pursuant to the pre-
18 ceding sentence shall—

19 “(1) be reported by the Secretary to the Com-
20 mittees on Appropriations and Education and Labor
21 of the House of Representatives and the Committees
22 on Appropriations and Labor and Human Resources
23 of the Senate within 30 days of the expenditure; and

24 “(2) be reimbursed from the appropriations au-
25 thorized by the first sentence of this subsection.

1 The report required to be submitted to the Committees
2 on Appropriations by paragraph (1) of the preceding sen-
3 tence shall constitute a budget estimate with the meaning
4 of section 3109 of title 31, United States Code.

5 “(d) APPLICATION REQUIRED.—No payment may be
6 made to any local educational agency under this section
7 except upon application therefore which is submitted
8 through the appropriate State educational agency and is
9 filed with the Secretary in accordance with the regulations
10 prescribed by the Secretary. In determining the order in
11 which such applications shall be approved, the Secretary
12 shall consider the relative educational and financial needs
13 of the local educational agencies which have submitted ap-
14 proved applications. The Secretary shall complete action
15 of approval or disapproval of an application within 90 days
16 of the filing of an application.

17 “(e) PAYMENT.—Amounts paid by the Secretary to
18 local educational agencies under this section may be paid
19 in advance or by way of reimbursement and in such in-
20 stallments as the Secretary may determine. Any funds
21 paid to a local educational agency and not expended or
22 otherwise used for the purposes for which paid shall be
23 repaid to the Treasury of the United States.

24 “(f) AVAILABILITY.—Funds available for this section
25 for any fiscal year shall also be available for section 16

1 of the Act of September 23, 1950 (Public Law 815, 81st
2 Congress).

3 **“TITLE II—GENERAL**
4 **PROVISIONS**

5 **“SEC. 201. ADMINISTRATION.**

6 “(a) IN GENERAL.—The Secretary shall administer
7 this Act, and the Secretary may make such regulations
8 and perform such other functions as the Secretary finds
9 necessary to carry out the provisions of this Act.

10 “(b) REPORT.—The Secretary shall include in the
11 Secretary’s annual report to the Congress a full report of
12 the administration of the Secretary’s functions under this
13 Act, including a detailed statement of receipts and dis-
14 bursements.

15 **“SEC. 202. DEPARTMENT OF EDUCATION CONTINGENCY**
16 **FUND.**

17 “(a) ESTABLISHMENT.—

18 “(1) IN GENERAL.—There is established a De-
19 partment of Education Contingency Fund (hereafter
20 in this Act referred to as the ‘Fund’).

21 “(2) CONTENTS.—The Fund shall consist of
22 amounts appropriated to the Fund pursuant to sec-
23 tion 101(c)(2), amounts deposited into the Fund
24 pursuant to section 101(d)(2), and any interest on
25 or earnings from the Fund.

1 “(b) USES.—The Secretary shall use amounts in the
2 Fund to meet emergencies and unforeseen contingencies
3 affecting the local educational agencies assisted under this
4 Act (including local educational agencies assisted under
5 section 103(d)(3)) when other funding sources have been
6 exhausted. The Secretary shall consider as examples of
7 emergencies to be funded under this section—

8 “(1) a local educational agency eligible for pay-
9 ment under section 103(e);

10 “(2) a local educational agency that experiences
11 an increase in the number of federally connected
12 children described in section 103(a) from the prior
13 fiscal year to the fiscal year in which the determina-
14 tion is made, but is not eligible for a payment under
15 section 104; and

16 “(3) a local educational agency that does not
17 receive a payment under section 102 because of the
18 operation of subsection (g) of such section due to
19 circumstances beyond the control of such agency.

20 “(c) AVAILABILITY.—Amounts in the Fund shall be
21 available to the Secretary to carry out the provisions of
22 this section and shall remain available without fiscal year
23 limitation until expended.

24 “(d) REPORT.—Whenever the Secretary makes funds
25 available under this section, or denies the availability of

1 such funds, to a local educational agency, the Secretary
2 shall report such action to the Committees on Appropria-
3 tions and Education and Labor of the House of Rep-
4 resentatives and the Committees on Appropriations and
5 Labor and Human Resources of the Senate within 30 days
6 of such expenditure. Such report shall include a descrip-
7 tion of the request for funding under this section from
8 the local educational agency applying for such funding
9 along with the Secretary's justification for approval or dis-
10 approval of such request.

11 “(e) APPLICATION.—Each local educational agency
12 desiring assistance under this section in any fiscal year
13 shall submit an application, in accordance with such regu-
14 lations as the Secretary may promulgate, to the Secretary
15 postmarked not later than January 31 of such fiscal year.

16 **“SEC. 203. USE OF OTHER FEDERAL AGENCIES; TRANSFER**
17 **AND AVAILABILITY OF APPROPRIATIONS.**

18 “(a) USE OF OTHER FEDERAL AGENCIES.—In carry-
19 ing out the Secretary's functions under this Act, the Sec-
20 retary is authorized, pursuant to proper agreement with
21 any other Federal department or agency, to utilize the
22 services and facilities of such department or agency, and,
23 when the Secretary deems it necessary or appropriate, to
24 delegate to any officer or employee thereof the function
25 under section 106 of making arrangements for providing

1 free public education. Payment to cover the cost of such
2 utilization or of carrying out such delegated function shall
3 be made either in advance of or by way of reimbursement,
4 as may be provided in such agreement.

5 “(b) REQUESTS FOR INFORMATION.—All Federal de-
6 partments or agencies administering Federal property on
7 which children reside, and all such departments or agen-
8 cies principally responsible for Federal activities which
9 may occasion assistance under title I, shall to the maxi-
10 mum extent practicable comply with requests of the Sec-
11 retary for information the Secretary may require in carry-
12 ing out the purposes of title I.

13 **“SEC. 204. DEFINITIONS; ATTENDANCE DETERMINATION.**

14 “(a) DEFINITIONS.—As used in this Act:

15 “(1) The term ‘Federal property’ means real
16 property which is owned by the United States or is
17 leased by the United States, and which is not sub-
18 ject to taxation by any State or any political subdivi-
19 sion of a State or by the District of Columbia. Such
20 term includes (A) except for purposes of section 106,
21 real property held in trust by the United States for
22 individual Indians or Indian tribes, and real prop-
23 erty held by individual Indians or Indian tribes,
24 which is subject to restrictions on alienation imposed
25 by the United States, (B) for one year beyond the

1 end of the fiscal year in which occurred the sale or
2 transfer thereof by the United States, any property
3 considered prior to such sale or transfer to be Fed-
4 eral property for the purposes of this Act, (C) any
5 low-rent housing (whether or not owned by the Unit-
6 ed States) which is part of a low-rent housing
7 project assisted under the United States Housing
8 Act of 1937, section 516 of the Housing Act of
9 1949, or part B of title III of the Economic Oppor-
10 tunity Act of 1964, (D) any school which is provid-
11 ing flight training to members of the Air Force
12 under contractual arrangements with the Depart-
13 ment of the Air Force at an airport which is owned
14 by a State or a political subdivision of a State and
15 (E) any property owned by a foreign government or
16 by an international organization which by reason of
17 such ownership is not subject to taxation by the
18 State in which it is located or a subdivision thereof.
19 Such term also includes any interest in Federal
20 property (as defined in the foregoing provisions of
21 this paragraph) under an easement, lease, license,
22 permit, or other arrangement, as well as any im-
23 provements of any nature (other than pipelines or
24 utility lines) on such property even though such in-
25 terests or improvements are subject to taxation by a

1 State or political subdivision of a State or by the
2 District of Columbia. Notwithstanding the foregoing
3 provisions of this paragraph, such term does not in-
4 clude any real property under the jurisdiction of the
5 United States Postal Service and used primarily for
6 the provision of postal service. Real property which
7 qualifies as Federal property under clause (A) of
8 this paragraph shall not lose such qualification be-
9 cause it is used for a low-rent housing project. Any
10 real property that was designated by treaty as tribal
11 land, or was formerly property described under sub-
12 paragraph (A) and is currently owned by an Indian
13 housing authority and used for low-rent housing de-
14 scribed in subparagraph (C) (including a mutual
15 help homeownership opportunity project assisted
16 under section 202 of the United States Housing Act
17 of 1937), shall be deemed to qualify as Federal
18 property under subparagraph (A).

19 “(2) The term ‘child’ means any child who is
20 within the age limits for which the applicable State
21 provides free public education.

22 “(3) The term ‘parent’ includes a legal guard-
23 ian or other person standing in loco parentis.

24 “(4) The term ‘free public education’ means
25 education which is provided at public expense, under

1 public supervision and direction, and without tuition
2 charge, and which is provided as preschool, kinder-
3 garten, elementary or secondary school education in
4 the applicable State.

5 “(5)(A) The term ‘current expenditures’ means
6 expenditures for free public education, including ex-
7 penditures for administration, instruction, attend-
8 ance and health services, pupil transportation serv-
9 ices, operation and maintenance of plant, fixed
10 charges, and net expenditures to cover deficits for
11 food services and student body activities, but not in-
12 cluding expenditures for community services, capital
13 outlay, and debt service, or any expenditures made
14 of funds granted under chapter 1 or chapter 2 of
15 title I of the Elementary and Secondary Education
16 Act of 1965, the Indian Education Act of 1988 and
17 the Johnson-O’Malley Act.

18 “(B) The determination of whether an expendi-
19 ture for the replacement of equipment is considered
20 a current expenditure or a capital outlay shall be de-
21 termined in accordance with generally accepted
22 State accounting principles.

23 “(6)(A) For purposes of title I, the term ‘local
24 educational agency’ means a board of education or
25 other legally constituted local school authority hav-

1 ing administrative control and direction of free pub-
2 lic elementary and secondary education through
3 grade 12 in a county, township, independent, or
4 other school district located within a State. Such
5 term includes any State agency which directly oper-
6 ates and maintains facilities for providing free public
7 education. Such term does not include any agency or
8 school authority that the Secretary determines on a
9 case-by-case basis—

10 “(i) was constituted or reconstituted pri-
11 marily for the purpose of receiving assistance
12 under this Act or increasing the amount of that
13 assistance;

14 “(ii) is not constituted or reconstituted for
15 legitimate educational purposes; or

16 “(iii) was previously part of a school dis-
17 trict upon being constituted or reconstituted.

18 “(B) For the purpose of carrying out the provi-
19 sions of section 103(a)(1)(B), such term includes
20 any agency or school authority that has had an ar-
21 rangement with a nonadjacent school district for the
22 education of children of persons who reside or work
23 on an installation of the Department of Defense for
24 more than 25 years, but only if the Secretary deter-
25 mines that there is no single school district adjacent

1 to the school district in which the installation is lo-
2 cated that is capable of educating all such children.

3 “(7) The term ‘State educational agency’ means
4 the officer or agency primarily responsible for the
5 State supervision of public elementary and secondary
6 schools.

7 “(8) The term ‘State’ means a State, the Com-
8 monwealth of Puerto Rico, Wake Island, Guam, the
9 District of Columbia, American Samoa, the Com-
10 monwealth of the Northern Mariana Islands, or the
11 Virgin Islands.

12 “(9) The term ‘Secretary’ means the Secretary
13 of Education.

14 “(10) The term ‘county’ means those divisions
15 of a State utilized by the Secretary of Commerce in
16 compiling and reporting data regarding counties.

17 “(11) The term ‘construction’ includes the
18 preparation of drawings and specifications for school
19 facilities; erecting, building, acquiring, altering, re-
20 modeling, improving, or extending school facilities;
21 and the inspection and supervision of the construc-
22 tion of school facilities.

23 “(12) The term ‘school facilities’ means class-
24 rooms and related facilities (including initial equip-
25 ment) for free public education and interests in land

1 (including site, grading, and improvements) on
2 which such facilities are constructed, except that
3 such term does not include those gymnasiums and
4 similar facilities intended primarily for exhibitions
5 for which admission is to be charged to the general
6 public.

7 “(13) The term ‘equipment’ includes machin-
8 ery, utilities, and built-in equipment and any nec-
9 essary enclosures or structures to house them, and
10 includes all other items necessary for the functioning
11 of a particular facility as a facility for the provision
12 of educational services, including items such as in-
13 structional equipment and necessary furniture,
14 printed, published, and audio-visual instructional
15 materials, and books, periodicals, documents, and
16 other related materials.

17 “(b) ATTENDANCE DETERMINATION.—For the pur-
18 pose of this Act, average daily attendance shall be deter-
19 mined in accordance with State law, except that (A) the
20 average daily attendance of children with respect to whom
21 payment is to be made under section 103 or 104 of this
22 Act shall be determined in accordance with regulations of
23 the Secretary, and (B) notwithstanding any other provi-
24 sion of this Act, where the local educational agency of the
25 school district in which any child resides makes or con-

1 tracts to make a tuition payment for the free public edu-
2 cation of such child in a school situated in another school
3 district, for purposes of this Act the attendance of such
4 child at such school shall be held and considered (i) to
5 be attendance at a school of the local educational agency
6 so making or contracting to make such tuition payment
7 and (ii) not to be attendance at a school of the local edu-
8 cational agency receiving such tuition payment or entitled
9 to receive such payment under the contract. A child shall,
10 for the purposes of section 103, be deemed to be in attend-
11 ance at a school of a local educational agency if such child
12 is determined to be federally connected under section
13 103(a) for any fiscal year and if such child is attending
14 a school other than a school of such agency because such
15 child is a child with a disability (as such term is defined
16 in section 602(a)(1) of the Individuals with Disabilities
17 Education Act) and if such agency makes a tuition pay-
18 ment on behalf of such child to such school for such fiscal
19 year. Regulations promulgated by the Secretary in accord-
20 ance with subparagraph (A) of this paragraph shall permit
21 the conversion of average daily membership to average
22 daily attendance for local educational agencies in States
23 which reimburse local educational agencies based upon av-
24 erage daily membership and which do not require local

1 educational agencies to keep records based on average
 2 daily attendance.

3 **“SEC. 205. REGULATION REQUIREMENTS.**

4 “The Secretary is authorized to promulgate such reg-
 5 ulations as the Secretary considers necessary to reason-
 6 ably ensure compliance with the provisions of this Act in
 7 accordance with the procedures provided for under section
 8 1431 of the Elementary and Secondary Education Act of
 9 1965.”.

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S 874 IS—3

S 874 IS—4

S 874 IS—5

S 874 IS—6

S 874 IS—7