

107TH CONGRESS  
1ST SESSION

# S. 243

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs of the Department of the Interior, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 2001

Mr. JOHNSON (for himself, Mr. BINGAMAN, Mr. DASCHLE, Mr. INOUE, Mr. COCHRAN, Mr. BAUCUS, Mr. REID, Mr. AKAKA, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs of the Department of the Interior, 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 “Indian School Con-  
5       struction Act”.

6       **SEC. 2. INDIAN SCHOOL CONSTRUCTION.**

7       (a) DEFINITIONS.—In this section:

1           (1) BUREAU.—The term “Bureau” means the  
2 Bureau of Indian Affairs of the Department of the  
3 Interior.

4           (2) INDIAN.—The term “Indian” means any in-  
5 dividual who is a member of a tribe.

6           (3) SECRETARY.—The term “Secretary” means  
7 the Secretary of the Interior.

8           (4) TRIBAL SCHOOL.—The term “tribal school”  
9 means an elementary school, secondary school, or  
10 dormitory that is operated by a tribal organization  
11 or the Bureau for the education of Indian children  
12 and that receives financial assistance for its oper-  
13 ation under an appropriation for the Bureau under  
14 section 102, 103(a), or 208 of the Indian Self-Deter-  
15 mination and Education Assistance Act (25 U.S.C.  
16 450f, 450h(a), and 458d) or under the Tribally Con-  
17 trolled Schools Act of 1988 (25 U.S.C. 2501 et seq.)  
18 under a contract, a grant, or an agreement, or for  
19 a Bureau-operated school.

20           (5) TRIBE.—The term “tribe” has the meaning  
21 given the term “Indian tribal government” by sec-  
22 tion 7701(a)(40) of the Internal Revenue Code of  
23 1986, including the application of section 7871(d) of  
24 such Code. Such term includes any consortium of  
25 tribes approved by the Secretary.

1 (b) ISSUANCE OF BONDS.—

2 (1) IN GENERAL.—The Secretary shall establish  
3 a pilot program under which eligible tribes have the  
4 authority to issue qualified tribal school moderniza-  
5 tion bonds to provide funding for the construction,  
6 rehabilitation, or repair of tribal schools, including  
7 the advance planning and design thereof.

8 (2) ELIGIBILITY.—

9 (A) IN GENERAL.—To be eligible to issue  
10 any qualified tribal school modernization bond  
11 under the program under paragraph (1), a tribe  
12 shall—

13 (i) prepare and submit to the Sec-  
14 retary a plan of construction that meets  
15 the requirements of subparagraph (B);

16 (ii) provide for quarterly and final in-  
17 spection of the project by the Bureau; and

18 (iii) pledge that the facilities financed  
19 by such bond will be used primarily for ele-  
20 mentary and secondary educational pur-  
21 poses for not less than the period such  
22 bond remains outstanding.

23 (B) PLAN OF CONSTRUCTION.—A plan of  
24 construction meets the requirements of this  
25 subparagraph if such plan—

1 (i) contains a description of the con-  
2 struction to be undertaken with funding  
3 provided under a qualified tribal school  
4 modernization bond;

5 (ii) demonstrates that a comprehen-  
6 sive survey has been undertaken con-  
7 cerning the construction needs of the tribal  
8 school involved;

9 (iii) contains assurances that funding  
10 under the bond will be used only for the  
11 activities described in the plan;

12 (iv) contains response to the evalua-  
13 tion criteria contained in Instructions and  
14 Application for Replacement School Con-  
15 struction, Revision 6, dated February 6,  
16 1999; and

17 (v) contains any other reasonable and  
18 related information determined appropriate  
19 by the Secretary.

20 (C) PRIORITY.—In determining whether a  
21 tribe is eligible to participate in the program  
22 under this subsection, the Secretary shall give  
23 priority to tribes that, as demonstrated by the  
24 relevant plans of construction, will fund  
25 projects—

1 (i) described in the Education Facili-  
2 ties Replacement Construction Priorities  
3 List as of FY 2000 of the Bureau of In-  
4 dian Affairs (65 Fed. Reg. 4623–4624);

5 (ii) described in any subsequent prior-  
6 ities list published in the Federal Register;  
7 or

8 (iii) which meet the criteria for rank-  
9 ing schools as described in Instructions  
10 and Application for Replacement School  
11 Construction, Revision 6, dated February  
12 6, 1999.

13 (D) ADVANCE PLANNING AND DESIGN  
14 FUNDING.—A tribe may propose in its plan of  
15 construction to receive advance planning and  
16 design funding from the tribal school mod-  
17 ernization escrow account established under  
18 paragraph (6)(B). Before advance planning and  
19 design funds are allocated from the escrow ac-  
20 count, the tribe shall agree to issue qualified  
21 tribal school modernization bonds after the re-  
22 ceipt of such funds and agree as a condition of  
23 each bond issuance that the tribe will deposit  
24 into such account or a fund managed by the  
25 trustee as described in paragraph (4)(C) an

1 amount equal to the amount of such funds re-  
2 ceived from the escrow account.

3 (3) PERMISSIBLE ACTIVITIES.—In addition to  
4 the use of funds permitted under paragraph (1), a  
5 tribe may use amounts received through the issuance  
6 of a qualified tribal school modernization bond to—

7 (A) enter into and make payments under  
8 contracts with licensed and bonded architects,  
9 engineers, and construction firms in order to  
10 determine the needs of the tribal school and for  
11 the design and engineering of the school;

12 (B) enter into and make payments under  
13 contracts with financial advisors, underwriters,  
14 attorneys, trustees, and other professionals who  
15 would be able to provide assistance to the tribe  
16 in issuing bonds; and

17 (C) carry out other activities determined  
18 appropriate by the Secretary.

19 (4) BOND TRUSTEE.—

20 (A) IN GENERAL.—Notwithstanding any  
21 other provision of law, any qualified tribal  
22 school modernization bond issued by a tribe  
23 under this subsection shall be subject to a trust  
24 agreement between the tribe and a trustee.

1           (B) TRUSTEE.—Any bank or trust com-  
2           pany that meets requirements established by  
3           the Secretary may be designated as a trustee  
4           under subparagraph (A).

5           (C) CONTENT OF TRUST AGREEMENT.—A  
6           trust agreement entered into by a tribe under  
7           this paragraph shall specify that the trustee,  
8           with respect to any bond issued under this sub-  
9           section shall—

10                   (i) act as a repository for the proceeds  
11                   of the bond;

12                   (ii) make payments to bondholders;

13                   (iii) receive, as a condition to the  
14                   issuance of such bond, a transfer of funds  
15                   from the tribal school modernization es-  
16                   crow account established under paragraph  
17                   (6)(B) or from other funds furnished by or  
18                   on behalf of the tribe in an amount, which  
19                   together with interest earnings from the  
20                   investment of such funds in obligations of  
21                   or fully guaranteed by the United States or  
22                   from other investments authorized by para-  
23                   graph (10), will produce moneys sufficient  
24                   to timely pay in full the entire principal

1 amount of such bond on the stated matu-  
 2 rity date therefor;

3 (iv) invest the funds received pursuant  
 4 to clause (iii) as provided by such clause;  
 5 and

6 (v) hold and invest the funds in a seg-  
 7 regated fund or account under the agree-  
 8 ment, which fund or account shall be ap-  
 9 plied solely to the payment of the costs of  
 10 items described in paragraph (3).

11 (D) REQUIREMENTS FOR MAKING DIRECT  
 12 PAYMENTS.—

13 (i) IN GENERAL.—Notwithstanding  
 14 any other provision of law, the trustee  
 15 shall make any payment referred to in sub-  
 16 paragraph (C)(v) in accordance with re-  
 17 quirements that the tribe shall prescribe in  
 18 the trust agreement entered into under  
 19 subparagraph (C). Before making a pay-  
 20 ment to a contractor under subparagraph  
 21 (C)(v), the trustee shall require an inspec-  
 22 tion of the project by a local financial in-  
 23 stitution or an independent inspecting ar-  
 24 chitect or engineer, to ensure the comple-  
 25 tion of the project.

1                   (ii) CONTRACTS.—Each contract re-  
2                   ferred to in paragraph (3) shall specify, or  
3                   be renegotiated to specify, that payments  
4                   under the contract shall be made in ac-  
5                   cordance with this paragraph.

6                   (5) PAYMENTS OF PRINCIPAL AND INTEREST.—

7                   (A) PRINCIPAL.—No principal payments  
8                   on any qualified tribal school modernization  
9                   bond shall be required until the final, stated  
10                  maturity of such bond, which stated maturity  
11                  shall be within 15 years from the date of  
12                  issuance. Upon the expiration of such period,  
13                  the entire outstanding principal under the bond  
14                  shall become due and payable.

15                  (B) INTEREST.—In lieu of interest on a  
16                  qualified tribal school modernization bond there  
17                  shall be awarded a tax credit under section  
18                  1400K of the Internal Revenue Code of 1986.

19                  (6) BOND GUARANTEES.—

20                  (A) IN GENERAL.—Payment of the prin-  
21                  cipal portion of a qualified tribal school mod-  
22                  ernization bond issued under this subsection  
23                  shall be guaranteed solely by amounts deposited  
24                  with each respective bond trustee as described  
25                  in paragraph (4)(C)(iii).

1 (B) ESTABLISHMENT OF ACCOUNT.—

2 (i) IN GENERAL.—Notwithstanding  
3 any other provision of law, beginning in  
4 fiscal year 2002, from amounts made  
5 available for school replacement under the  
6 construction account of the Bureau, the  
7 Secretary is authorized to deposit not more  
8 than \$30,000,000 each fiscal year into a  
9 tribal school modernization escrow account.

10 (ii) PAYMENTS.—The Secretary shall  
11 use any amounts deposited in the escrow  
12 account under clauses (i) and (iii) to make  
13 payments to trustees appointed and acting  
14 pursuant to paragraph (4) or to make pay-  
15 ments described in paragraph (2)(D).

16 (iii) TRANSFERS OF EXCESS PRO-  
17 CEEDS.—Excess proceeds held under any  
18 trust agreement that are not needed for  
19 any of the purposes described in clauses  
20 (iii) and (v) of paragraph (4)(C) shall be  
21 transferred, from time to time, by the  
22 trustee for deposit into the tribal school  
23 modernization escrow account.

24 (7) LIMITATIONS.—

1           (A) OBLIGATION TO REPAY.—Notwith-  
2 standing any other provision of law, the prin-  
3 cipal amount on any qualified tribal school  
4 modernization bond issued under this sub-  
5 section shall be repaid only to the extent of any  
6 escrowed funds furnished under paragraph  
7 (4)(C)(iii). No qualified tribal school moderniza-  
8 tion bond issued by a tribe shall be an obliga-  
9 tion of, nor shall payment of the principal  
10 thereof be guaranteed by, the United States,  
11 the tribes, nor their schools.

12           (B) LAND AND FACILITIES.—Any land or  
13 facilities purchased or improved with amounts  
14 derived from qualified tribal school moderniza-  
15 tion bonds issued under this subsection shall  
16 not be mortgaged or used as collateral for such  
17 bonds.

18           (8) SALE OF BONDS.—Qualified tribal school  
19 modernization bonds may be sold at a purchase price  
20 equal to, in excess of, or at a discount from the par  
21 amount thereof.

22           (9) TREATMENT OF TRUST AGREEMENT EARN-  
23 INGS.—Any amounts earned through the investment  
24 of funds under the control of a trustee under any

1 trust agreement described in paragraph (4) shall not  
2 be subject to Federal income tax.

3 (10) INVESTMENT OF SINKING FUNDS.—Any  
4 sinking fund established for the purpose of the pay-  
5 ment of principal on a qualified tribal school mod-  
6 ernization bond shall be invested in obligations  
7 issued by or guaranteed by the United States or in  
8 such other assets as the Secretary of the Treasury  
9 may by regulation allow.

10 (c) EXPANSION OF INCENTIVES FOR TRIBAL  
11 SCHOOLS.—Chapter 1 of the Internal Revenue Code of  
12 1986 is amended by adding at the end the following new  
13 subchapter:

14 **“Subchapter XI—Tribal School**  
15 **Modernization Provisions**

“Sec. 1400K. Credit to holders of qualified tribal school modernization bonds.

16 **“SEC. 1400K. CREDIT TO HOLDERS OF QUALIFIED TRIBAL**  
17 **SCHOOL MODERNIZATION BONDS.**

18 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-  
19 payer who holds a qualified tribal school modernization  
20 bond on a credit allowance date of such bond which occurs  
21 during the taxable year, there shall be allowed as a credit  
22 against the tax imposed by this chapter for such taxable  
23 year an amount equal to the sum of the credits determined

1 under subsection (b) with respect to credit allowance dates  
2 during such year on which the taxpayer holds such bond.

3 “(b) AMOUNT OF CREDIT.—

4 “(1) IN GENERAL.—The amount of the credit  
5 determined under this subsection with respect to any  
6 credit allowance date for a qualified tribal school  
7 modernization bond is 25 percent of the annual  
8 credit determined with respect to such bond.

9 “(2) ANNUAL CREDIT.—The annual credit de-  
10 termined with respect to any qualified tribal school  
11 modernization bond is the product of—

12 “(A) the applicable credit rate, multiplied  
13 by

14 “(B) the outstanding face amount of the  
15 bond.

16 “(3) APPLICABLE CREDIT RATE.—For purposes  
17 of paragraph (1), the applicable credit rate with re-  
18 spect to an issue is the rate equal to an average  
19 market yield (as of the date of sale of the issue) on  
20 outstanding long-term corporate obligations (as de-  
21 termined by the Secretary).

22 “(4) SPECIAL RULE FOR ISSUANCE AND RE-  
23 DEMPTION.—In the case of a bond which is issued  
24 during the 3-month period ending on a credit allow-  
25 ance date, the amount of the credit determined

1 under this subsection with respect to such credit al-  
2 lowance date shall be a ratable portion of the credit  
3 otherwise determined based on the portion of the 3-  
4 month period during which the bond is outstanding.  
5 A similar rule shall apply when the bond is re-  
6 deemed.

7 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

8 “(1) IN GENERAL.—The credit allowed under  
9 subsection (a) for any taxable year shall not exceed  
10 the excess of—

11 “(A) the sum of the regular tax liability  
12 (as defined in section 26(b)) plus the tax im-  
13 posed by section 55, over

14 “(B) the sum of the credits allowable  
15 under part IV of subchapter A (other than sub-  
16 part C thereof, relating to refundable credits).

17 “(2) CARRYOVER OF UNUSED CREDIT.—If the  
18 credit allowable under subsection (a) exceeds the  
19 limitation imposed by paragraph (1) for such taxable  
20 year, such excess shall be carried to the succeeding  
21 taxable year and added to the credit allowable under  
22 subsection (a) for such taxable year.

23 “(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION  
24 BOND; OTHER DEFINITIONS.—For purposes of this  
25 section—

1           “(1) QUALIFIED TRIBAL SCHOOL MODERNIZA-  
2           TION BOND.—

3           “(A) IN GENERAL.—The term ‘qualified  
4           tribal school modernization bond’ means, sub-  
5           ject to subparagraph (B), any bond issued as  
6           part of an issue under section 2(c) of the In-  
7           dian School Construction Act, as in effect on  
8           the date of the enactment of this section, if—

9                   “(i) 95 percent or more of the pro-  
10                   ceeds of such issue are to be used for the  
11                   construction, rehabilitation, or repair of a  
12                   school facility funded by the Bureau of In-  
13                   dian Affairs of the Department of the Inte-  
14                   rior or for the acquisition of land on which  
15                   such a facility is to be constructed with  
16                   part of the proceeds of such issue,

17                   “(ii) the bond is issued by a tribe,

18                   “(iii) the issuer designates such bond  
19                   for purposes of this section, and

20                   “(iv) the term of each bond which is  
21                   part of such issue does not exceed 15  
22                   years.

23           “(B) NATIONAL LIMITATION ON AMOUNT  
24           OF BONDS DESIGNATED.—

1           “(i) NATIONAL LIMITATION.—There is  
2 a national qualified tribal school mod-  
3 ernization bond limitation for each cal-  
4 endar year. Such limitation is—

5                   “(I) \$200,000,000 for 2002,

6                   “(II) \$200,000,000 for 2003,

7                   and

8                   “(III) zero after 2004.

9           “(ii) ALLOCATION OF LIMITATION.—  
10 The national qualified tribal school mod-  
11 ernization bond limitation shall be allo-  
12 cated to tribes by the Secretary of the In-  
13 terior subject to the provisions of section 2  
14 of the Indian School Construction Act, as  
15 in effect on the date of the enactment of  
16 this section.

17           “(iii) DESIGNATION SUBJECT TO LIM-  
18 ITATION AMOUNT.—The maximum aggre-  
19 gate face amount of bonds issued during  
20 any calendar year which may be designated  
21 under subsection (d)(1) with respect to any  
22 tribe shall not exceed the limitation  
23 amount allocated to such government  
24 under clause (ii) for such calendar year.

1                   “(iv) CARRYOVER OF UNUSED LIMITA-  
2                   TION.—If for any calendar year—

3                               “(I) the limitation amount under  
4                               this subparagraph, exceeds

5                               “(II) the amount of qualified  
6                               tribal school modernization bonds  
7                               issued during such year,

8                   the limitation amount under this subpara-  
9                   graph for the following calendar year shall  
10                  be increased by the amount of such excess.

11                  The preceding sentence shall not apply if  
12                  such following calendar year is after 2010.

13                  “(2) CREDIT ALLOWANCE DATE.—The term  
14                  ‘credit allowance date’ means—

15                               “(A) March 15,

16                               “(B) June 15,

17                               “(C) September 15, and

18                               “(D) December 15.

19                  Such term includes the last day on which the bond  
20                  is outstanding.

21                  “(3) BOND.—The term ‘bond’ includes any ob-  
22                  ligation.

23                  “(4) TRIBE.—The term ‘tribe’ has the meaning  
24                  given the term ‘Indian tribal government’ by section  
25                  7701(a)(40), including the application of section

1       7871(d). Such term includes any consortium of  
2       tribes approved by the Secretary of the Interior.

3       “(e) CREDIT INCLUDED IN GROSS INCOME.—Gross  
4       income includes the amount of the credit allowed to the  
5       taxpayer under this section (determined without regard to  
6       subsection (c)) and the amount so included shall be treat-  
7       ed as interest income.

8       “(f) BONDS HELD BY REGULATED INVESTMENT  
9       COMPANIES.—If any qualified tribal school modernization  
10      bond is held by a regulated investment company, the credit  
11      determined under subsection (a) shall be allowed to share-  
12      holders of such company under procedures prescribed by  
13      the Secretary.

14      “(g) CREDITS MAY BE STRIPPED.—Under regula-  
15      tions prescribed by the Secretary—

16              “(1) IN GENERAL.—There may be a separation  
17              (including at issuance) of the ownership of a quali-  
18              fied tribal school modernization bond and the entitle-  
19              ment to the credit under this section with respect to  
20              such bond. In case of any such separation, the credit  
21              under this section shall be allowed to the person who  
22              on the credit allowance date holds the instrument ev-  
23              idencing the entitlement to the credit and not to the  
24              holder of the bond.

1           “(2) CERTAIN RULES TO APPLY.—In the case  
2 of a separation described in paragraph (1), the rules  
3 of section 1286 shall apply to the qualified tribal  
4 school modernization bond as if it were a stripped  
5 bond and to the credit under this section as if it  
6 were a stripped coupon.

7           “(h) TREATMENT FOR ESTIMATED TAX PUR-  
8 POSES.—Solely for purposes of sections 6654 and 6655,  
9 the credit allowed by this section to a taxpayer by reason  
10 of holding a qualified tribal school modernization bonds  
11 on a credit allowance date shall be treated as if it were  
12 a payment of estimated tax made by the taxpayer on such  
13 date.

14           “(i) CREDIT MAY BE TRANSFERRED.—Nothing in  
15 any law or rule of law shall be construed to limit the trans-  
16 ferability of the credit allowed by this section through sale  
17 and repurchase agreements.

18           “(j) CREDIT TREATED AS ALLOWED UNDER PART  
19 IV OF SUBCHAPTER A.—For purposes of subtitle F, the  
20 credit allowed by this section shall be treated as a credit  
21 allowable under part IV of subchapter A of this chapter.

22           “(k) REPORTING.—Issuers of qualified tribal school  
23 modernization bonds shall submit reports similar to the  
24 reports required under section 149(e).”.

25           (d) ADDITIONAL PROVISIONS.—

1           (1) SOVEREIGN IMMUNITY.—This section and  
2           the amendments made by this section shall not be  
3           construed to impact, limit, or affect the sovereign  
4           immunity of the Federal Government or any State  
5           or tribal government.

6           (2) APPLICATION.—This section and the  
7           amendments made by this section shall take effect  
8           on the date of the enactment of this Act with respect  
9           to bonds issued after December 31, 2001, regardless  
10          of the status of regulations promulgated thereunder.

○