

108TH CONGRESS
1ST SESSION

S. 594

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

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2003

Mr. JOHNSON (for himself, Mr. DASCHLE, Mr. CAMPBELL, Mr. COCHRAN, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs, 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:

8 (1) BUREAU.—The term “Bureau” means the
9 Bureau of Indian Affairs of the Department.

1 (2) DEPARTMENT.—The term “Department”
2 means the Department of the Interior.

3 (3) ESCROW ACCOUNT.—The term “escrow ac-
4 count” means the tribal school modernization escrow
5 account established under subsection (b)(6)(B)(i).

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

8 (5) INDIAN TRIBE.—

9 (A) IN GENERAL.—The term “Indian
10 tribe” has the meaning given the term “Indian
11 tribal government” by section 7701(a)(40) of
12 the Internal Revenue Code of 1986 (including
13 the application of section 7871(d) of that
14 Code).

15 (B) INCLUSION.—The term “Indian tribe”
16 includes a consortium of Indian tribes approved
17 by the Secretary.

18 (6) SECRETARY.—The term “Secretary” means
19 the Secretary of the Interior.

20 (7) TRIBAL SCHOOL.—The term “tribal school”
21 means an elementary school, secondary school, or
22 dormitory that—

23 (A) is operated by a tribal organization or
24 the Bureau for the education of Indian chil-
25 dren; and

1 (B) under a contract, a grant, or an agree-
2 ment, or for a Bureau-operated school, receives
3 financial assistance to pay the costs of oper-
4 ation from funds made available under—

5 (i) section 102, 103(a), or 208 of the
6 Indian Self-Determination and Education
7 Assistance Act (25 U.S.C. 450f, 450h(a),
8 458d); or

9 (ii) the Tribally Controlled Schools
10 Act of 1988 (25 U.S.C. 2501 et seq.).

11 (b) ISSUANCE OF BONDS.—

12 (1) IN GENERAL.—The Secretary shall establish
13 a pilot program under which eligible Indian tribes
14 may issue qualified tribal school modernization
15 bonds to provide funding for the construction, reha-
16 bilitation, or repair of tribal schools (including the
17 advance planning and design of tribal schools).

18 (2) ELIGIBILITY.—

19 (A) IN GENERAL.—To be eligible to issue
20 any qualified tribal school modernization bond
21 under the program under paragraph (1), an In-
22 dian tribe shall—

23 (i) prepare and submit to the Sec-
24 retary a plan of construction that meets
25 the requirements of subparagraph (B);

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

3 (iii) pledge that the facilities financed
4 by the bond will be used primarily for ele-
5 mentary and secondary educational pur-
6 poses for not less than the period during
7 which the bond remains outstanding.

8 (B) PLAN OF CONSTRUCTION.—A plan of
9 construction referred to in subparagraph (A)(i)
10 meets the requirements of this subparagraph if
11 the plan—

12 (i) contains a description of the con-
13 struction to be carried out with funding
14 provided under a qualified tribal school
15 modernization bond;

16 (ii) demonstrates that a comprehen-
17 sive survey has been completed to deter-
18 mine the construction needs of the tribal
19 school involved;

20 (iii) contains assurances that funding
21 under the bond will be used only for the
22 activities described in the plan;

23 (iv) contains a response to the evalua-
24 tion criteria contained in Instructions and
25 Application for Replacement School Con-

1 construction, Revision 6, dated February 6,
2 1999; and

3 (v) contains any other reasonable and
4 related information determined to be ap-
5 propriate by the Secretary.

6 (C) PRIORITY.—In determining whether an
7 Indian tribe is eligible to participate in the pro-
8 gram under this subsection, the Secretary shall
9 give priority to an Indian tribe that, as dem-
10 onstrated by the relevant plans of construction,
11 will fund projects—

12 (i) described in the Education Facili-
13 ties Replacement Construction Priorities
14 List, as of fiscal year 2000, of the Bureau
15 (65 Fed. Reg. 4623);

16 (ii) described in any subsequent prior-
17 ities list published in the Federal Register;
18 or

19 (iii) that meet the criteria for ranking
20 schools as described in Instructions and
21 Application for Replacement School Con-
22 struction, Revision 6, dated February 6,
23 1999.

24 (D) ADVANCE PLANNING AND DESIGN
25 FUNDING.—

1 (i) IN GENERAL.—An Indian tribe
2 may propose in the plan of construction of
3 the Indian tribe to receive advance plan-
4 ning and design funding from the escrow
5 account.

6 (ii) CONDITIONS ON ALLOCATION OF
7 FUNDS.—As a condition to the allocation
8 to an Indian tribe of advance planning and
9 design funds from the escrow account
10 under clause (i), the Indian tribe shall
11 agree—

12 (I) to issue qualified tribal school
13 modernization bonds after the date of
14 receipt of the funds; and

15 (II) as a condition of each bond
16 issuance, that the Indian tribe will de-
17 posit into the escrow account, or a
18 fund managed by the trustee as de-
19 scribed in paragraph (4)(C), an
20 amount equal to the amount of funds
21 received from the escrow account.

22 (3) PERMISSIBLE ACTIVITIES.—In addition to
23 the use of funds permitted under paragraph (1), an
24 Indian tribe may use amounts received through the

1 issuance of a qualified tribal school modernization
2 bond—

3 (A) to enter into and make payments
4 under contracts with licensed and bonded archi-
5 tects, engineers, and construction firms—

6 (i) to determine the needs of the tribal
7 school; and

8 (ii) for the design and engineering of
9 the tribal school;

10 (B) enter into and make payments under
11 contracts with financial advisers, underwriters,
12 attorneys, trustees, and other professionals who
13 would be able to provide assistance to the In-
14 dian tribe in issuing bonds; and

15 (C) carry out other activities determined to
16 be appropriate by the Secretary.

17 (4) BOND TRUSTEE.—

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

24 (B) TRUSTEE.—Any bank or trust com-
25 pany that meets requirements established by

1 the Secretary may be designated as a trustee
2 under subparagraph (A).

3 (C) CONTENT OF TRUST AGREEMENT.—A
4 trust agreement entered into by an Indian tribe
5 under this paragraph shall specify that the
6 trustee, with respect to any bond issued under
7 this subsection, shall—

8 (i) act as a repository for the proceeds
9 of the bond;

10 (ii) make payments to bondholders;

11 (iii) receive, as a condition to the
12 issuance of the bond, a transfer of funds
13 from the escrow account, or from other
14 funds furnished by or on behalf of the In-
15 dian tribe, in an amount that (including
16 interest earnings from the investment of
17 the funds in obligations of, or fully guaran-
18 teed by, the United States, or from other
19 investments authorized by paragraph (10))
20 will produce funds sufficient to timely pay
21 in full the entire principal amount of the
22 bond on the stated maturity date of the
23 bond;

1 (iv) invest the funds transferred under
 2 clause (iii) in an investment described in
 3 that clause; and

4 (v)(I) hold and invest the funds trans-
 5 ferred under clause (iii) in a segregated
 6 fund or account under the agreement; and

7 (II) use the fund or account solely for
 8 payment of the costs of items described in
 9 paragraph (3).

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

12 (i) PAYMENTS.—

13 (I) IN GENERAL.—Notwith-
 14 standing any other provision of law,
 15 the trustee shall make any payment
 16 referred to in subparagraph (C)(v) in
 17 accordance with such requirements as
 18 the Indian tribe shall prescribe in the
 19 trust agreement entered into under
 20 subparagraph (C).

21 (II) INSPECTION.—Before mak-
 22 ing a payment for a project to a con-
 23 tractor under subparagraph (C)(v), to
 24 ensure completion of the project, the

1 trustee shall require an inspection of
2 the project by—

3 (aa) a local financial institu-
4 tion; or

5 (bb) an independent inspect-
6 ing architect or engineer.

7 (ii) CONTRACTS.—Each contract re-
8 ferred to in paragraph (3) shall specify, or
9 be renegotiated to specify, that payments
10 under the contract shall be made in ac-
11 cordance with this paragraph.

12 (5) PAYMENTS OF PRINCIPAL AND INTEREST.—

13 (A) PRINCIPAL.—

14 (i) IN GENERAL.—No principal pay-
15 ment on any qualified tribal school mod-
16 ernization bond shall be required under
17 this subsection until the final, stated date
18 on which the bond reaches maturity.

19 (ii) MATURITY; OUTSTANDING PRIN-
20 CIPAL.—With respect to a qualified tribal
21 school modernization bond issued under
22 this subsection—

23 (I) the bond shall reach maturity
24 not later than 15 years after the date
25 of issuance of the bond; and

1 (II) on the date on which the
2 bond reaches maturity, the entire out-
3 standing principal under the bond
4 shall become due and payable.

5 (B) INTEREST.—There shall be awarded a
6 tax credit under section 1400M of the Internal
7 Revenue Code of 1986 in lieu of interest on a
8 qualified tribal school modernization bond
9 issued under this subsection.

10 (6) BOND GUARANTEES.—

11 (A) IN GENERAL.—Payment of the prin-
12 cipal portion of a qualified tribal school mod-
13 ernization bond issued under this subsection
14 shall be guaranteed solely by amounts deposited
15 with each respective bond trustee as described
16 in paragraph (4)(C)(iii).

17 (B) ESTABLISHMENT OF ACCOUNT.—

18 (i) IN GENERAL.—Notwithstanding
19 any other provision of law, the Secretary
20 may—

21 (I) establish a tribal school mod-
22 ernization escrow account; and

23 (II) beginning in fiscal year
24 2004, from amounts made available
25 for school replacement under the con-

1 struction account of the Bureau, de-
 2 posit not more than \$30,000,000 for
 3 each fiscal year into the escrow ac-
 4 count.

5 (ii) TRANSFERS OF EXCESS PRO-
 6 CEEDS.—Excess proceeds held under any
 7 trust agreement that are not needed for
 8 any of the purposes described in clauses
 9 (iii) and (v) of paragraph (4)(C) shall be
 10 transferred, from time to time, by the
 11 trustee for deposit into the escrow account.

12 (iii) PAYMENTS.—The Secretary shall
 13 use any amounts deposited in the escrow
 14 account under clauses (i) and (ii)—

15 (I) to make payments to trustees
 16 appointed and acting in accordance
 17 with paragraph (4); or

18 (II) to make payments described
 19 in paragraph (2)(D).

20 (7) LIMITATIONS.—

21 (A) OBLIGATION TO REPAY.—

22 (i) IN GENERAL.—Notwithstanding
 23 any other provision of law, the principal
 24 amount on any qualified tribal school mod-
 25 ernization bond issued under this sub-

1 section shall be repaid only to the extent of
2 any escrowed funds provided under para-
3 graph (4)(C)(iii).

4 (ii) NO GUARANTEE.—No qualified
5 tribal school modernization bond issued by
6 an Indian tribe under this subsection shall
7 be an obligation of, and no payment of the
8 principal of such a bond shall be guaran-
9 teed by—

10 (I) the United States;

11 (II) the Indian tribe; or

12 (III) the tribal school for which
13 the bond was issued.

14 (B) LAND AND FACILITIES.—No land or
15 facility purchased or improved with amounts
16 derived from a qualified tribal school mod-
17 ernization bond issued under this subsection
18 shall be mortgaged or used as collateral for the
19 bond.

20 (8) SALE OF BONDS.—A qualified tribal school
21 modernization bond may be sold at a purchase price
22 equal to, in excess of, or at a discount from, the par
23 amount of the bond.

24 (9) TREATMENT OF TRUST AGREEMENT EARN-
25 INGS.—No amount earned through the investment of

1 funds under the control of a trustee under any trust
 2 agreement described in paragraph (4) shall be sub-
 3 ject to Federal income taxation.

4 (10) INVESTMENT OF SINKING FUNDS.—A
 5 sinking fund established for the purpose of the pay-
 6 ment of principal on a qualified tribal school mod-
 7 ernization bond issued under this subsection shall be
 8 invested in—

9 (A) obligations issued by or guaranteed by
 10 the United States; or

11 (B) such other assets as the Secretary of
 12 the Treasury may by regulation allow.

13 (c) EXPANSION OF INCENTIVES FOR TRIBAL
 14 SCHOOLS.—Chapter 1 of the Internal Revenue Code of
 15 1986 is amended by adding at the end the following new
 16 subchapter:

17 **“Subchapter Z—Tribal School Modernization**
 18 **Provisions**

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

19 **“SEC. 1400M. CREDIT TO HOLDERS OF QUALIFIED TRIBAL**
 20 **SCHOOL MODERNIZATION BONDS.**

21 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-
 22 payer who holds a qualified tribal school modernization
 23 bond on a credit allowance date of such bond which occurs
 24 during the taxable year, there shall be allowed as a credit

1 against the tax imposed by this chapter for such taxable
2 year an amount equal to the sum of the credits determined
3 under subsection (b) with respect to credit allowance dates
4 during such year on which the taxpayer holds such bond.

5 “(b) AMOUNT OF CREDIT.—

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

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

14 “(A) the applicable credit rate, multiplied
15 by

16 “(B) the outstanding face amount of the
17 bond.

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

24 “(4) SPECIAL RULE FOR ISSUANCE AND RE-
25 DEMPTION.—In the case of a bond which is issued

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

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

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

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

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

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

1 “(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION
2 BOND; OTHER DEFINITIONS.—For purposes of this sec-
3 tion—

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

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

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

20 “(ii) the bond is issued by an Indian
21 tribe,

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

1 “(iv) the term of each bond which is
2 part of such issue does not exceed 15
3 years.

4 “(B) NATIONAL LIMITATION ON AMOUNT
5 OF BONDS DESIGNATED.—

6 “(i) NATIONAL LIMITATION.—There is
7 a national qualified tribal school mod-
8 ernization bond limitation for each cal-
9 endar year. Such limitation is—

10 “(I) \$200,000,000 for 2004,

11 “(II) \$200,000,000 for 2005,

12 and

13 “(III) zero after 2005.

14 “(ii) ALLOCATION OF LIMITATION.—
15 The national qualified tribal school mod-
16 ernization bond limitation shall be allo-
17 cated to Indian tribes by the Secretary of
18 the Interior subject to the provisions of
19 section 2 of the Indian School Construc-
20 tion Act, as in effect on the date of the en-
21 actment of this section.

22 “(iii) DESIGNATION SUBJECT TO LIM-
23 TATION AMOUNT.—The maximum aggre-
24 gate face amount of bonds issued during
25 any calendar year which may be designated

1 under subsection (d)(1) with respect to any
2 Indian tribe shall not exceed the limitation
3 amount allocated to such government
4 under clause (ii) for such calendar year.

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

7 “(I) the limitation amount under
8 this subparagraph, exceeds

9 “(II) the amount of qualified
10 tribal school modernization bonds
11 issued during such year,

12 the limitation amount under this subpara-
13 graph for the following calendar year shall
14 be increased by the amount of such excess.

15 The preceding sentence shall not apply if
16 such following calendar year is after 2012.

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

19 “(A) March 15,

20 “(B) June 15,

21 “(C) September 15, and

22 “(D) December 15.

23 Such term includes the last day on which the bond
24 is outstanding.

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

3 “(4) TRIBE.—The term ‘tribe’ has the meaning
4 given the term ‘Indian tribal government’ by section
5 7701(a)(40), including the application of section
6 7871(d). Such term includes any consortium of
7 tribes approved by the Secretary of the Interior.

8 “(e) CREDIT INCLUDED IN GROSS INCOME.—Gross
9 income includes the amount of the credit allowed to the
10 taxpayer under this section (determined without regard to
11 subsection (c)) and the amount so included shall be treat-
12 ed as interest income.

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

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

21 “(1) IN GENERAL.—There may be a separation
22 (including at issuance) of the ownership of a quali-
23 fied tribal school modernization bond and the entitle-
24 ment to the credit under this section with respect to
25 such bond. In case of any such separation, the credit

1 under this section shall be allowed to the person who
2 on the credit allowance date holds the instrument ev-
3 idencing the entitlement to the credit and not to the
4 holder of the bond.

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

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

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

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

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

4 (d) CONFORMING AMENDMENT.—The table of sub-
5 chapters for chapter 1 of the Internal Revenue Code of
6 1986 is amended by adding at the end the following new
7 item:

“SUBCHAPTER Z. Tribal school modernization provisions.”.

8 (e) ADDITIONAL PROVISIONS.—

9 (1) SOVEREIGN IMMUNITY.—This section and
10 the amendments made by this section shall not be
11 construed to impact, limit, or affect the sovereign
12 immunity of the Federal Government or any State
13 or tribal government.

14 (2) APPLICATION.—This section and the
15 amendments made by this section shall take effect
16 on the date of the enactment of this Act with respect
17 to bonds issued after December 31, 2003, regardless
18 of the status of regulations promulgated thereunder.

○