

111TH CONGRESS
1ST SESSION

H. R. 3651

To reauthorize the Impact Aid Program under the Elementary and Secondary Education Act of 1965.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2009

Mr. BOREN introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To reauthorize the Impact Aid Program under the Elementary and Secondary Education Act of 1965.

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 Fairness
5 and Equity Act of 2009”.

1 **SEC. 2. AMENDMENTS TO SECTION 8002 (PAYMENTS RELAT-**
2 **ING TO FEDERAL ACQUISITION OF REAL**
3 **PROPERTY).**

4 Section 8002 of the Elementary and Secondary Edu-
5 cation Act of 1965 (20 U.S.C. 7702) is amended to read
6 as follows:

7 **“SEC. 8002. PAYMENTS RELATING TO FEDERAL ACQUI-**
8 **TION OF REAL PROPERTY.**

9 “(a) IN GENERAL.—Where the Secretary, after con-
10 sultation with any local educational agency and with the
11 appropriate State educational agency, determines for a fis-
12 cal year ending prior to October 1, 2003—

13 “(1) that the United States owns Federal prop-
14 erty in the local educational agency, and that such
15 property—

16 “(A) has been acquired by the United
17 States since 1938;

18 “(B) was not acquired by exchange for
19 other Federal property in the local educational
20 agency which the United States owned before
21 1939; and

22 “(C) had an assessed value (according to
23 original records (including reproductions of
24 those records) documenting the assessed value
25 of such property (determined as of the time or
26 times when so acquired) prepared by the local

1 official referred to in subsection (b)(3) or, when
2 such original records are not available due to
3 unintentional destruction (such as natural dis-
4 aster, fire, flooding, pest infestation, or deterio-
5 ration due to age), other records, including
6 Federal agency records, local historical records,
7 or other records that the Secretary determines
8 to be appropriate and reliable) aggregating 10
9 percent or more of the assessed value of—

10 “(i) all real property in the local edu-
11 cational agency (similarly determined as of
12 the time or times when such Federal prop-
13 erty was so acquired); or

14 “(ii) all real property in the local edu-
15 cational agency as assessed in the first
16 year preceding or succeeding acquisition,
17 whichever is greater, only if—

18 “(I) the assessment of all real
19 property in the local educational agen-
20 cy is not made at the same time or
21 times that such Federal property was
22 so acquired and assessed; and

23 “(II) State law requires an as-
24 sessment be made of property so ac-
25 quired; and

1 “(2) that such agency is not being substantially
2 compensated for the loss in revenue resulting from
3 such ownership by increases in revenue accruing to
4 the agency from the conduct of Federal activities
5 with respect to such Federal property, then such
6 agency shall be eligible to receive the amount de-
7 scribed in subsection (b).

8 “(b) AMOUNT.—

9 “(1) IN GENERAL.—(A)(i)(I) Subject to sub-
10 clauses (II) and (III), the amount that a local edu-
11 cational agency shall be paid under subsection (a)
12 for a fiscal year shall be calculated in accordance
13 with paragraph (2).

14 “(II) Except as provided in subclause (III), the
15 Secretary may not reduce the amount of a payment
16 under this section to a local educational agency for
17 a fiscal year by (aa) the amount equal to the
18 amount of revenue, if any, the agency received dur-
19 ing the previous fiscal year from activities conducted
20 on Federal property eligible under this section and
21 located in a school district served by the agency, in-
22 cluding amounts received from any Federal depart-
23 ment or agency (other than the Department of Edu-
24 cation) from such activities, by reason of receipt of

1 such revenue, or (bb) any other amount by reason
2 of receipt of such revenue.

3 “(III) If the amount equal to the sum of (aa)
4 the proposed payment under this section to a local
5 educational agency for a fiscal year and (bb) the
6 amount of revenue described in subclause (II)(aa)
7 received by the agency during the previous fiscal
8 year, exceeds the maximum amount the agency is el-
9 igible to receive under this section for the fiscal year
10 involved, then the Secretary shall reduce the amount
11 of the proposed payment under this section by an
12 amount equal to such excess amount.

13 “(ii) For purposes of clause (i), the amount of
14 revenue that a local educational agency receives dur-
15 ing the previous fiscal year from activities conducted
16 on Federal property shall not include payments re-
17 ceived by the agency from the Secretary of Defense
18 to support—

19 “(I) the operation of a domestic dependent
20 elementary or secondary school; or

21 “(II) the provision of a free public edu-
22 cation to dependents of members of the Armed
23 Forces residing on or near a military installa-
24 tion.

1 “(B) If funds appropriated under section
2 8014(a) are insufficient to pay the amount deter-
3 mined under subparagraph (A), the Secretary shall
4 calculate the payment for each eligible local edu-
5 cational agency in accordance with subsection (h).

6 “(C) Notwithstanding any other provision of
7 this subsection, a local educational agency may not
8 be paid an amount under this section that, when
9 added to the amount such agency receives under sec-
10 tion 8003(b), exceeds the maximum amount that
11 such agency is eligible to receive for such fiscal year
12 under section 8003(b)(1)(C), or the maximum
13 amount that such agency is eligible to receive for
14 such fiscal year under this section, whichever is
15 greater.

16 “(D) Notwithstanding any other provision of
17 this subsection, a local educational agency may not
18 be paid an amount under this section that exceeds
19 the total current expenditures of the agency in the
20 second prior fiscal year.

21 “(E) Notwithstanding any other provision of
22 this subsection, in fiscal years 2010, 2011, and 2012
23 a local educational agency may not be paid an
24 amount under this section that is less than 85 per-

1 cent of its payment under this section for the prior
2 fiscal year.

3 “(2) APPLICATION OF CURRENT LEVIED REAL
4 PROPERTY TAX RATE.—In calculating the amount
5 that a local educational agency is eligible to receive
6 for a fiscal year, the Secretary shall apply the cur-
7 rent levied real property tax rate for current expend-
8 itures levied by fiscally independent local educational
9 agencies, or imputed for fiscally dependent local edu-
10 cational agencies, to the current annually deter-
11 mined aggregate assessed value of such acquired
12 Federal property.

13 “(3) DETERMINATION OF AGGREGATE AS-
14 SSESSED VALUE.—Such aggregate assessed value of
15 such acquired Federal property shall be determined
16 on the basis of the highest and best use of property
17 adjacent to such acquired Federal property as of the
18 time such value is determined, and provided to the
19 Secretary, by the local official responsible for assess-
20 ing the value of real property located in the jurisdic-
21 tion of such local educational agency for the purpose
22 of levying a property tax.

23 “(c) APPLICABILITY TO TENNESSEE VALLEY AU-
24 THORITY ACT.—For the purpose of this section, any real
25 property with respect to which payments are being made

1 under section 13 of the Tennessee Valley Authority Act
2 of 1933 shall not be regarded as Federal property.

3 “(d) OWNERSHIP BY UNITED STATES.—The United
4 States shall be deemed to own Federal property for the
5 purposes of this Act, where—

6 “(1) prior to the transfer of Federal property,
7 the United States owned Federal property meeting
8 the requirements of subparagraphs (A), (B), and (C)
9 of subsection (a)(1); and

10 “(2) the United States transfers a portion of
11 the property referred to in paragraph (1) to another
12 nontaxable entity, and the United States—

13 “(A) restricts some or any construction on
14 such property;

15 “(B) requires that the property be used in
16 perpetuity for the public purposes for which the
17 property was conveyed;

18 “(C) requires the grantee of the property
19 to report to the Federal Government (or its
20 agent) regarding information on the use of the
21 property;

22 “(D) except with the approval of the Fed-
23 eral Government (or its agent), prohibits the
24 sale, lease, assignment, or other disposal of the
25 property unless such sale, lease, assignment, or

1 other disposal is to another eligible government
2 agency; and

3 “(E) reserves to the Federal Government a
4 right of reversion at any time the Federal Gov-
5 ernment (or its agent) deems it necessary for
6 the national defense.

7 “(e) LOCAL EDUCATIONAL AGENCY CONTAINING
8 FOREST SERVICE LAND AND SERVING CERTAIN COUN-
9 TIES.—Beginning with fiscal year 1995, a local edu-
10 cational agency shall be deemed to meet the requirements
11 of subsection (a)(1)(C) if such local educational agency
12 meets the following requirements:

13 “(1) ACREAGE AND ACQUISITION BY THE FOR-
14 EST SERVICE.—The local educational agency serves
15 a school district that contains between 20,000 and
16 60,000 acres of land that has been acquired by the
17 Forest Service of the Department of Agriculture be-
18 tween 1915 and 1990, as demonstrated by written
19 evidence from the Forest Service satisfactory to the
20 Secretary.

21 “(2) COUNTY CHARTER.—The local educational
22 agency serves a county chartered under State law in
23 1875 or 1890.

24 “(f) SPECIAL RULE.—(1) Beginning with fiscal year
25 1994, and notwithstanding any other provision of law lim-

1 iting the period during which fiscal year 1994 funds may
2 be obligated, the Secretary shall treat the local educational
3 agency serving the Wheatland R–II School District,
4 Wheatland, Missouri, as meeting the eligibility require-
5 ments of section 2(a)(1)(C) of the Act of September 30,
6 1950 (Public Law 874, 81st Congress) (as such section
7 was in effect on the day preceding the date of enactment
8 of the Improving America’s Schools Act of 1994) (20
9 U.S.C. 237(a)(1)(C)) or subsection (a)(1)(C).

10 “(2) For each fiscal year beginning with fiscal year
11 1999, the Secretary shall treat the Webster School Dis-
12 trict, Day County, South Dakota as meeting the eligibility
13 requirements of subsection (a)(1)(C) of this section.

14 “(3) For each fiscal year beginning with fiscal year
15 2000, the Secretary shall treat the Central Union, Cali-
16 fornia; Island, California; Hill City, South Dakota; and
17 Wall, South Dakota local educational agencies as meeting
18 the eligibility requirements of subsection (a)(1)(C) of this
19 section.

20 “(4) For the purposes of payments under this section
21 for each fiscal year beginning with fiscal year 2000, the
22 Secretary shall treat the Hot Springs, South Dakota local
23 educational agency as if it had filed a timely application
24 under section 8002 of the Elementary and Secondary
25 Education Act of 1965 for fiscal year 1994 if the Sec-

1 retary has received the fiscal year 1994 application, as
2 well as exhibits A and B not later than December 1, 1999.

3 “(5) For purposes of payments under this section for
4 each fiscal year beginning with fiscal year 2000, the Sec-
5 retary shall treat the Hueneme, California local edu-
6 cational agency as if it had filed a timely application under
7 section 8002 of the Elementary and Secondary Education
8 Act of 1965 if the Secretary has received the fiscal year
9 1995 application not later than December 1, 1999.

10 “(g) FORMER DISTRICTS.—

11 “(1) IN GENERAL.—Where the school district of
12 any local educational agency described in paragraph
13 (2) is formed at any time after 1938 by the consoli-
14 dation of two or more former school districts, such
15 agency may elect (at any time such agency files an
16 application under section 8005) for any fiscal year
17 after fiscal year 1994 to have (A) the eligibility of
18 such local educational agency, and (B) the amount
19 which such agency shall be eligible to receive, deter-
20 mined under this section only with respect to such
21 of the former school districts comprising such con-
22 solidated school districts as such agency shall des-
23 ignate in such election.

24 “(2) ELIGIBLE LOCAL EDUCATIONAL AGEN-
25 CIES.—A local educational agency referred to in

1 paragraph (1) is any local educational agency that,
2 for fiscal year 1994 or any preceding fiscal year, ap-
3 plied for and was determined eligible under section
4 2(c) of the Act of September 30, 1950 (Public Law
5 874, 81st Congress) as such section was in effect for
6 such fiscal year.

7 “(h) PAYMENTS WITH RESPECT TO FISCAL YEARS
8 IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED.—
9 For any fiscal year for which the amount appropriated
10 under section 8014(a) is insufficient to pay to each eligible
11 local educational agency the full amount determined under
12 subsection (b), the Secretary shall ratably reduce the pay-
13 ment to each local educational agency under subsection
14 (b).

15 “(i) SPECIAL RULE.—For purposes of payments
16 under this section for each fiscal year beginning with fiscal
17 year 1998—

18 “(1) the Secretary shall, for the Stanley Coun-
19 ty, South Dakota local educational agency, calculate
20 payments as if subsection (e) had been in effect for
21 fiscal year 1994; and

22 “(2) the Secretary shall treat the Delaware Val-
23 ley, Pennsylvania local educational agency as if it
24 had filed a timely application under section 2 of
25 Public Law 81–874 for fiscal year 1994.

1 “(j) PRIOR YEAR DATA.—Notwithstanding any other
2 provision of this section, in determining the eligibility of
3 a local educational agency for a payment under subsection
4 (b) or (h)(4)(B) of this section for a fiscal year, and in
5 calculating the amount of such payment, the Secretary—

6 “(1) shall use data from the prior fiscal year
7 with respect to the Federal property involved, includ-
8 ing data with respect to the assessed value of the
9 property and the real property tax rate for current
10 expenditures levied against or imputed to the prop-
11 erty; and

12 “(2) shall use data from the second prior fiscal
13 year with respect to determining the amount of rev-
14 enue referred to in subsection (b)(1)(A)(i).

15 “(k) ELIGIBILITY.—

16 “(1) OLD FEDERAL PROPERTY.—Except as
17 provided in paragraph (2), a local educational agen-
18 cy that is eligible to receive a payment under this
19 section for Federal property acquired by the Federal
20 Government, before the date of the enactment of the
21 Impact Aid Reauthorization Act of 2000, shall be el-
22 ible to receive the payment only if the local edu-
23 cational agency submits an application for a pay-
24 ment under this section not later than 7 years after
25 the date of the enactment of such Act.

1 “(2) COMBINED FEDERAL PROPERTY.—A local
2 educational agency that is eligible to receive a pay-
3 ment under this section for Federal property ac-
4 quired by the Federal Government before the date of
5 the enactment of the Impact Aid Reauthorization
6 Act of 2000 shall be eligible to receive the payment
7 if—

8 “(A) the Federal property, when combined
9 with other Federal property in the school dis-
10 trict served by the local educational agency ac-
11 quired by the Federal Government after the
12 date of the enactment of such Act, meets the
13 requirements of subsection (a); and

14 “(B) the local educational agency submits
15 an application for a payment under this section
16 not later than 7 years after the date of acquisi-
17 tion of the Federal property acquired after the
18 date of the enactment of such Act.

19 “(3) NEW FEDERAL PROPERTY.—A local edu-
20 cational agency that is eligible to receive a payment
21 under this section for Federal property acquired by
22 the Federal Government after the date of the enact-
23 ment of the Impact Aid Reauthorization Act of 2000
24 shall be eligible to receive the payment only if the
25 local educational agency submits an application for

1 a payment under this section not later than 7 years
2 after the date of acquisition.

3 “(1) LOSS OF ELIGIBILITY.—

4 “(1) IN GENERAL.—Notwithstanding any other
5 provision of this section, the Secretary shall make a
6 minimum payment to a local educational agency de-
7 scribed in paragraph (2), for the first fiscal year
8 that the agency loses eligibility for assistance under
9 this section as a result of property located within the
10 school district served by the agency failing to meet
11 the definition of Federal property under section
12 8013(5)(C)(iii), in an amount equal to 90 percent of
13 the amount received by the agency under this section
14 for the preceding year.

15 “(2) LOCAL EDUCATIONAL AGENCY DE-
16 SCRIBED.—A local educational agency described in
17 this paragraph is an agency that—

18 “(A) was eligible for, and received, a pay-
19 ment under this section for fiscal year 2002;
20 and

21 “(B) beginning in fiscal year 2003 or a
22 subsequent fiscal year, is no longer eligible for
23 payments under this section as provided for in
24 subsection (a)(1)(C) as a result of the transfer

1 of the Federal property involved to a non-Fed-
2 eral entity.”.

3 **SEC. 3. AMENDMENTS TO SECTION 8003 (PAYMENTS FOR**
4 **ELIGIBLE FEDERALLY CONNECTED CHIL-**
5 **DREN).**

6 Section 8003 of the Elementary and Secondary Edu-
7 cation Act of 1965 (20 U.S.C. 7703) is amended—

8 (1) in subsection (a)—

9 (A) in paragraph (1), in the matter pre-
10 ceeding subparagraph (A), by inserting after
11 “such agency,” the following: “including those
12 children enrolled in a State that has a State
13 open enrollment policy (but not including chil-
14 dren enrolled in a distance learning program
15 not residing within the defined boundaries of
16 the agency),”;

17 (B) in paragraph (2)—

18 (i) by redesignating subparagraphs
19 (D) through (F) as (E) through (G), re-
20 spectively;

21 (ii) by inserting after subparagraph
22 (C) the following:

23 “(D) Multiply the number of children de-
24 scribed in subparagraphs (A) and (B) of para-
25 graph (1) by a factor of 1.35 if the local edu-

1 cational agency has a total student enrollment
2 of not less than 25,000 students, of which not
3 less than 50 percent are children described in
4 paragraph (1) and not less than 6,000 of such
5 children are children described in subparagraph
6 (A) and (B) of paragraph (1).”;

7 (2) in subsection (b)(2)—

8 (A) in subparagraph (B)—

9 (i) in the subparagraph heading by
10 striking “CONTINUING”;

11 (ii) in clause (i) by striking subclauses
12 (I) and (II) and inserting the following:

13 “(I) is a local educational agency
14 whose boundaries are the same as a
15 Federal military installation or the
16 boundaries are the same as island
17 property designated by the Secretary
18 of the Interior to be property that is
19 held in trust by the Federal Govern-
20 ment and the agency has no taxing
21 authority;

22 “(II) has an enrollment of chil-
23 dren described in subsection (a)(1)
24 that constitutes a percentage of the

1 total student enrollment of the agency
2 that is not less than 45 percent;

3 “(III) has a per-pupil expendi-
4 ture that is less than—

5 “(aa) for a local educational
6 agency that has a total student
7 enrollment of 350 or more stu-
8 dents, 150 percent of the average
9 per-pupil expenditure of the
10 State in which the agency is lo-
11 cated; or

12 “(bb) for a local educational
13 agency that has a total student
14 enrollment of less than 350 stu-
15 dents—

16 “(AA) 150 percent of
17 the average per-pupil ex-
18 penditure of the State in
19 which the agency is located;
20 or

21 “(BB) the average per-
22 pupil expenditure of three
23 comparable local educational
24 agencies in the State in
25 which the agency is located;

1 “(IV) has a tax rate for general
2 fund purposes that is at least 95 per-
3 cent of the average tax rate for gen-
4 eral fund purposes of comparable local
5 educational agencies in the State; and

6 “(V) for a local educational agen-
7 cy that has an enrollment of children
8 described in subsection (a)(1) that
9 constitutes a percentage of the total
10 student enrollment of the agency
11 which is not less than 30 percent, and
12 has a tax rate for general fund pur-
13 poses which is not less than 125 per-
14 cent of the average tax rate for gen-
15 eral fund purposes for comparable
16 local educational agencies in the
17 State;”;

18 (iii) by adding at the end the fol-
19 lowing:

20 “(iv) SPECIAL RULE.—Notwith-
21 standing clause (i)(II), a local educational
22 agency shall be considered eligible to re-
23 ceive a basic support payment under sub-
24 paragraph (A) with respect to the number

1 of children determined under subsection
2 (a)(1) if the agency—

3 “(I) has an enrollment of chil-
4 dren described in subsection (a)(1)
5 that constitutes a percentage of the
6 total student enrollment of the agency
7 that is not less than 35 percent in-
8 cluding for purposes of determining
9 eligibility those children described in
10 subparagraph (F) and (G) of sub-
11 section (a)(1); and

12 “(II) was eligible to receive as-
13 sistance under this paragraph in fiscal
14 year 2001.”;

15 (B) by striking subparagraphs (C), (D),
16 and (E);

17 (C) by inserting after subparagraph (B)
18 the following:

19 “(C) MAXIMUM AMOUNT FOR HEAVILY IM-
20 PACTED LOCAL EDUCATIONAL AGENCIES.—

21 “(i) IN GENERAL.—The maximum
22 amount that a heavily impacted local edu-
23 cational agency is eligible to receive under
24 this paragraph for any fiscal year is the
25 sum of the total weighted student units, as

1 computed under subsection (a)(2) and sub-
2 ject to clause (ii), multiplied by the greater
3 of—

4 “(I) four-fifths of the average
5 per-pupil expenditure of the State in
6 which the local educational agency is
7 located for the third fiscal year pre-
8 ceding the fiscal year for which the
9 determination is made; or

10 “(II) four-fifths of the average
11 per-pupil expenditure of all of the
12 States for the third fiscal year pre-
13 ceding the fiscal year for which the
14 determination is made.

15 “(ii) SPECIAL RULE.—(I)(aa) For a
16 local educational agency with respect to
17 which 35 percent or more of the total stu-
18 dent enrollment of the schools of the agen-
19 cy are children described in subparagraph
20 (D) or (E) (or a combination thereof) of
21 subsection (a)(1), and has an enrollment of
22 children described in subparagraph (A),
23 (B), or (C) of such subsection equal to at
24 least 10 percent of the agency’s total en-
25 rollment, the Secretary shall calculate the

1 weighted student units of those children
2 described in subparagraph (D) or (E) of
3 such subsection by multiplying the number
4 of such children by a factor of 0.55.

5 “(bb) For any local educational agen-
6 cy that received a payment under this
7 clause in fiscal year 2006, the local edu-
8 cational agency shall not be required to
9 have an enrollment of children described in
10 subparagraphs (A), (B), or (C) of such
11 subsection equal to at least 10 percent of
12 the agency’s total enrollment.

13 “(II) For a local educational agency
14 that has an enrollment of 100 or fewer
15 children described in subsection (a)(1), the
16 Secretary shall calculate the total number
17 of weighted student units for purposes of
18 subsection (a)(2) by multiplying the num-
19 ber of such children by a factor of 1.75.

20 “(III) For a local educational agency
21 that does not qualify under (B)(i)(I) of
22 this subsection and has an enrollment of
23 more than 100 but not more than 1,000
24 children described in subsection (a)(1), the
25 Secretary shall calculate the total number

1 of weighted student units for purposes of
2 subsection (a)(2) by multiplying the num-
3 ber of such children by a factor of 1.25.

4 “(iii) PAYMENT CAP.—The amount of
5 such payment to a local educational agency
6 under this subparagraph shall be no more
7 than needed to raise the per-pupil expendi-
8 ture of such local educational agency to the
9 higher of 110 percent of the State average
10 per-pupil expenditure of the State in which
11 the local educational agency is located or
12 the average per-pupil expenditure of three
13 comparable local educational agencies.”;

14 (D) by redesignating subparagraph (F) as
15 (D) and, in that subparagraph—

16 (i) by striking clause (ii);

17 (ii) by striking “; and” at the end of
18 clause (i) and inserting a period; and

19 (iii) by striking “the Secretary—” and
20 all that follows through “shall use” and in-
21 serting “the Secretary shall use”;

22 (E) by redesignating subparagraph (G) as
23 (E) and, in that subparagraph, in the matter
24 preceding clause (i), by striking “(C)(i)(II)(bb)”
25 and inserting “(B)(i)(II)(bb)”; and

1 (F) by redesignating subparagraph (H) as
2 (F) and, in that subparagraph—

3 (i) in clause (i)—

4 (I) by striking “(B), (C), (D), or
5 (E),” and inserting “(B) or (C),”;

6 (II) by striking “by reason of”
7 and inserting “due to”;

8 (III) by inserting after “clause
9 (iii),” the following: “or as the direct
10 result of base realignment and closure
11 or modularization as determined by
12 the Secretary of Defense and force
13 structure change or force relocation,”;
14 and

15 (IV) by inserting before the pe-
16 riod at the end the following: “or dur-
17 ing such time as activities associated
18 with base closure and realignment,
19 modularization, force structure
20 change, or force relocation is ongo-
21 ing”; and

22 (ii) in clause (ii)—

23 (I) by striking “(D) or (E), as
24 the case may be,” and inserting
25 “(C)”; and

1 (II) by striking “(D) or (E)
2 under” and inserting “(C) under”;

3 (3) in subsection (b)(3)(B)—

4 (A) by redesignating clause (iv) as (v); and

5 (B) by inserting after clause (iii) the fol-
6 lowing:

7 “(iv) For any local educational agency
8 that is providing a program of distant
9 learning to children not residing within the
10 legally defined boundaries of the agency,
11 the Secretary shall disregard such children
12 from such agency’s total enrollment when
13 calculating the percentage under subclause
14 (I) of clause (i) and shall disregard any
15 funds received for such children when cal-
16 culating the total current expenditures at-
17 tributed to the operation of such agency
18 when calculating the percentage under sub-
19 clause (II) of clause (i).”;

20 (4) in subsection (b)(3)(C) by striking “or (E)
21 of paragraph (2), as the case may be” and inserting
22 “of paragraph (2)”.

23 (5) in subsection (b)(3), by amending subpara-
24 graph (D) to read as follows:

1 “(D) RATABLE DISTRIBUTION.—For any
2 fiscal year described in subparagraph (A) for
3 which the sums available exceed the amount re-
4 quired to pay each local educational agency 100
5 percent of its threshold payment the Secretary
6 shall distribute the excess sums to each eligible
7 local educational agency that has not received
8 its full amount computed under paragraph (1)
9 or (2) (as the case may be) by multiplying—

10 “(i) a percentage, the denominator of
11 which is the difference between the full
12 amount computed under paragraph (1) or
13 (2) (as the case may be) for all local edu-
14 cational agencies and the amount of the
15 threshold payment (as calculated under
16 subparagraphs (B) and (C) of all local
17 educational agencies, and the numerator of
18 which is the aggregate amount of the ex-
19 cess sums, by:

20 “(ii) the difference between the full
21 amount computed under paragraph (1) or
22 (2) (as the case may be) for the agency
23 and the amount of the threshold payment
24 as calculated under subparagraphs (B) and
25 (C) of the agency.”;

1 (6) in subsection (c) by amending paragraph
2 (2) to read as follows:

3 “(2) EXCEPTION.—Calculation of payments for
4 a local educational agency shall be based on data
5 from the fiscal year for which the agency is making
6 an application for payment if such agency is newly
7 established by a State (first year of operation
8 only).”;

9 (7) in subsection (e) by striking paragraphs (1)
10 and (2) and inserting the following:

11 “(1) IN GENERAL.—Subject to paragraph (2),
12 the total amount the Secretary shall pay a local edu-
13 cation agency received under subsection (b)(1),
14 (b)(2), or (b)(2)(B)(ii)—

15 “(A) for fiscal year 2010 shall not be less
16 than 90 percent of the total amount that the
17 local education agency received under sub-
18 section (b)(1), (b)(2), or (b)(2)(B)(ii) for fiscal
19 year 2008;

20 “(B) for fiscal year 2011 shall not be less
21 than 80 percent of the total amount that the
22 local educational agency received under sub-
23 section (b)(1), (b)(2), or (b)(2)(B)(ii) for fiscal
24 year 2008;

1 “(C) for fiscal year 2012 shall not be less
2 than 70 percent of the total amount that the
3 local educational agency received under sub-
4 section (b)(1), (b)(2), or (b)(2)(B)(ii) for fiscal
5 year 2008, of which such amount shall be con-
6 sidered a foundation payment for each suc-
7 ceeding fiscal year until such time as the agen-
8 cy’s maximum payment as determined under
9 paragraphs (1) or (2) of subsection (b) as the
10 case may be, exceeds the amount provided for
11 under this subparagraph.

12 “(2) RATABLE REDUCTION.—

13 “(A) IN GENERAL.—If the sums made
14 available under this title for any fiscal year are
15 insufficient to pay the full amounts that all
16 local educational agencies in all States are eligi-
17 ble to receive under paragraph (1) for such
18 year, then the Secretary shall ratably reduce
19 the payments to all agencies for such year.

20 “(B) ADDITIONAL FUNDS.—If additional
21 funds become available for making payments
22 under paragraph (1) for such fiscal year, pay-
23 ments that were reduced under subparagraph
24 (A) shall be increased on the same basis as
25 such payments were reduced.”; and

1 (8) by striking subsection (g).

2 **SEC. 4. AMENDMENTS TO SECTION 8007 (CONSTRUCTION).**

3 Section 8007 of the Elementary and Secondary Edu-
4 cation Act of 1965 (20 U.S.C. 7707) is amended to read
5 as follows:

6 **“SEC. 8007. CONSTRUCTION.**

7 “(a) SCHOOL FACILITY EMERGENCY AND MOD-
8 ERNIZATION GRANTS AUTHORIZED.—

9 “(1) IN GENERAL.—From 100 percent of the
10 amount appropriated for each fiscal year under sec-
11 tion 8014(e), the Secretary—

12 “(A) shall award emergency grants in ac-
13 cordance with this subsection to eligible local
14 educational agencies to enable the agencies to
15 carry out emergency repairs of school facilities;
16 and

17 “(B) shall award modernization grants in
18 accordance with this subsection to eligible local
19 educational agencies to enable the agencies to
20 carry out the modernization of school facilities.

21 “(2) PRIORITY.—In approving applications
22 from local educational agencies for emergency grants
23 and modernization grants under this subsection, the
24 Secretary shall give priority to applications in ac-
25 cordance with the following:

1 “(A) The Secretary shall first give priority
2 to applications for emergency grants from local
3 educational agencies that meet the requirements
4 of paragraph (3)(A) and, among such applica-
5 tions for emergency grants, shall give priority
6 to those applications from local educational
7 agencies based on the severity of the emer-
8 gency, as determined by the Secretary.

9 “(B) The Secretary shall next give priority
10 to applications for modernization grants from
11 local educational agencies that meet the re-
12 quirements of paragraph (3)(B) and, among
13 such applications for modernization grants,
14 shall give priority to those applications from
15 local educational agencies based on the severity
16 of the need for modernization, as determined by
17 the Secretary.

18 “(3) ELIGIBILITY REQUIREMENTS.—

19 “(A) EMERGENCY GRANTS.—A local edu-
20 cational agency is eligible to receive an emer-
21 gency grant under paragraph (2)(A) if—

22 “(i) the agency (or in the case of a
23 local educational agency that does not have
24 the authority to tax or issue bonds, the
25 agency’s fiscal agent)—

1 “(I) has no practical capacity to
2 issue bonds; or

3 “(II) has minimal capacity to
4 issue bonds and is at not less than 75
5 percent of the agency’s limit of bond-
6 ed indebtedness; or

7 “(ii) the agency is eligible to receive
8 assistance under subsection (a) for the fis-
9 cal year and has a school facility emer-
10 gency, as determined by the Secretary,
11 that poses a health or safety hazard to the
12 students and school personnel assigned to
13 the school facility.

14 “(B) MODERNIZATION GRANTS.—A local
15 educational agency is eligible to receive a mod-
16 ernization grant under paragraph (2)(B) if—

17 “(i) the agency receives a basic sup-
18 port payment under section 8003(b) for
19 the fiscal year; or

20 “(ii) the agency receives a federal
21 properties payment under section 8002 for
22 the fiscal year.

23 “(C) RULE OF CONSTRUCTION.—For pur-
24 poses of subparagraph (A)(i), a local edu-
25 cational agency—

1 “(i) has no practical capacity to issue
2 bonds if the total assessed value of real
3 property that may be taxed for school pur-
4 poses is less than \$25,000,000; and

5 “(ii) has minimal capacity to issue
6 bonds if the total assessed value of real
7 property that may be taxed for school pur-
8 poses is at least \$25,000,000 but not more
9 than \$50,000,000.

10 “(4) AWARD CRITERIA.—In awarding emer-
11 gency grants and modernization grants under this
12 subsection, the Secretary shall consider the following
13 factors:

14 “(A) The ability of the local educational
15 agency to respond to the emergency, or to pay
16 for the modernization project, as the case may
17 be, as measured by—

18 “(i) the agency’s level of bonded in-
19 debtedness;

20 “(ii) the assessed value of real prop-
21 erty per student that may be taxed for
22 school purposes compared to the average of
23 the assessed value of real property per stu-
24 dent that may be taxed for school purposes
25 in the State in which the agency is located;

1 “(iii) the agency’s total tax rate for
2 school purposes (or for capital expendi-
3 tures, if applicable) compared to the aver-
4 age total tax rate for school purposes (or
5 the average capital expenditure tax rate, if
6 applicable) in the State in which the agen-
7 cy is located; and

8 “(iv) funds that are available to the
9 agency, from any other source, including
10 subsection (a), that may be used for cap-
11 ital expenditures.

12 “(B) The percentage of property in the
13 agency that is nontaxable due to the presence
14 of the Federal Government.

15 “(C) The number and percentages of chil-
16 dren described in subparagraphs (A), (B), (C),
17 and (D) of section 8003(a)(1) served in the
18 school facility with the emergency or served in
19 the school facility proposed for modernization,
20 as the case may be.

21 “(D) In the case of an emergency grant,
22 the severity of the emergency, as measured by
23 the threat that the condition of the school facil-
24 ity poses to the health, safety, and well-being of
25 students.

1 “(E) In the case of a modernization
2 grant—

3 “(i) the severity of the need for mod-
4 ernization, as measured by such factors
5 as—

6 “(I) overcrowding, as evidenced
7 by the use of portable classrooms, or
8 the potential for future overcrowding
9 because of increased enrollment; or

10 “(II) the agency’s inability to uti-
11 lize technology or offer a curriculum
12 in accordance with contemporary
13 State standards due to the physical
14 limitations of the current school facil-
15 ity; and

16 “(ii) the age of the school facility pro-
17 posed for modernization.

18 “(5) OTHER AWARD PROVISIONS.—

19 “(A) GENERAL PROVISIONS.—

20 “(i) LIMITATIONS ON AMOUNT OF
21 FUNDS.—

22 “(I) IN GENERAL.—The amount
23 of funds provided under an emergency
24 grant or a modernization grant
25 awarded under this subsection to a

1 local educational agency that meets
2 the requirements of subclause (II) of
3 paragraph (3)(A)(i) for purposes of
4 eligibility under subparagraph (A) or
5 (B) of paragraph (3)—

6 “(aa) shall not exceed 50
7 percent of the total cost of the
8 project to be assisted under this
9 subsection; and

10 “(bb) shall not exceed
11 \$4,000,000 during any 4-year pe-
12 riod.

13 “(II) IN-KIND CONTRIBUTIONS.—

14 A local educational agency may use
15 in-kind contributions to meet the
16 matching requirement of subclause
17 (I)(aa).

18 “(ii) PROHIBITIONS ON USE OF
19 FUNDS.—A local educational agency may
20 not use funds provided under an emer-
21 gency grant or modernization grant award-
22 ed under this subsection for—

23 “(I) a project for a school facility
24 for which the agency does not have
25 full title or other interest;

1 “(II) stadiums or other school fa-
2 cilities that are primarily used for
3 athletic contests, exhibitions, or other
4 events for which admission is charged
5 to the general public; or

6 “(III) the acquisition of real
7 property.

8 “(iii) SUPPLEMENT, NOT SUP-
9 PLANT.—A local educational agency shall
10 use funds provided under an emergency
11 grant or modernization grant awarded
12 under this subsection only to supplement
13 the amount of funds that would, in the ab-
14 sence of the Federal funds provided under
15 the grant, be made available from non-
16 Federal sources to carry out emergency re-
17 pairs of school facilities or to carry out the
18 modernization of school facilities, as the
19 case may be, and not to supplant such
20 funds.

21 “(iv) MAINTENANCE COSTS.—Nothing
22 in this subsection shall be construed to au-
23 thorize the payment of maintenance costs
24 in connection with any school facility mod-

1 ernized in whole or in part with Federal
2 funds provided under this subsection.

3 “(v) ENVIRONMENTAL SAFE-
4 GUARDS.—All projects carried out with
5 Federal funds provided under this sub-
6 section shall comply with all relevant Fed-
7 eral, State, and local environmental laws
8 and regulations.

9 “(vi) CARRY-OVER OF CERTAIN APPLI-
10 CATIONS.—A local educational agency that
11 applies for an emergency grant or a mod-
12 ernization grant under this subsection for
13 a fiscal year and does not receive the grant
14 for the fiscal year shall have the applica-
15 tion for the grant considered for the fol-
16 lowing fiscal year, subject to the priority
17 requirements of paragraph (2) and the
18 award criteria requirements of paragraph
19 (4).

20 “(B) EMERGENCY GRANTS; PROHIBITION
21 ON USE OF FUNDS.—A local educational agency
22 that is awarded an emergency grant under this
23 subsection may not use amounts under the
24 grant for the complete or partial replacement of
25 an existing school facility unless such replace-

1 ment is less expensive or more cost-effective
2 than correcting the identified emergency.

3 “(6) APPLICATION.—A local educational agency
4 that desires to receive an emergency grant or a mod-
5 ernization grant under this subsection shall submit
6 an application to the Secretary at such time, in such
7 manner, and accompanied by such information as
8 the Secretary may require. Each application shall
9 contain the following:

10 “(A) A description of how the local edu-
11 cational agency meets the award criteria under
12 paragraph (4), including the information de-
13 scribed in clauses (i) through (iv) of paragraph
14 (4)(A) and subparagraphs (B) and (C) of para-
15 graph (4).

16 “(B) In the case of an application for an
17 emergency grant—

18 “(i) a description of the school facility
19 deficiency that poses a health or safety
20 hazard to the occupants of the facility and
21 a description of how the deficiency will be
22 repaired; and

23 “(ii) a signed statement from an ap-
24 propriate local official certifying that a de-
25 ficiency in the school facility threatens the

1 health or safety of the occupants of the fa-
2 cility or that prevents the use of all or a
3 portion of the building.

4 “(C) In the case of an application for a
5 modernization grant—

6 “(i) an explanation of the need for the
7 school facility modernization project;

8 “(ii) the date on which original con-
9 struction of the facility to be modernized
10 was completed;

11 “(iii) a listing of the school facilities
12 to be modernized, including the number
13 and percentage of children determined
14 under section 8003(a)(1) in average daily
15 attendance in each school facility; and

16 “(iv) a description of the ownership of
17 the property on which the current school
18 facility is located or on which the planned
19 school facility will be located.

20 “(D) A description of the project for which
21 a grant under this subsection will be used, in-
22 cluding a cost estimate for the project.

23 “(E) A description of the interest in, or
24 authority over, the school facility involved, such

1 as an ownership interest or a lease arrange-
2 ment.

3 “(F) Such other information and assur-
4 ances as the Secretary may reasonably require.

5 “(7) REPORT.—

6 “(A) IN GENERAL.—Not later than Janu-
7 ary 1 of each year, the Secretary shall prepare
8 and submit to the appropriate congressional
9 committees a report that contains a justifica-
10 tion for each grant awarded under this sub-
11 section for the prior fiscal year.

12 “(B) DEFINITION.—In this paragraph, the
13 term ‘appropriate congressional committees’
14 means—

15 “(i) the Committee on Appropriations
16 and the Committee on Education and
17 Labor of the House of Representatives;
18 and

19 “(ii) the Committee on Appropriations
20 and the Committee on Health, Education,
21 Labor, and Pensions of the Senate.”.

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