

111TH CONGRESS
1ST SESSION

S. 1121

To amend part D of title V of the Elementary and Secondary Education Act of 1965 to provide grants for the repair, renovation, and construction of elementary and secondary schools, including early learning facilities at the elementary schools.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2009

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend part D of title V of the Elementary and Secondary Education Act of 1965 to provide grants for the repair, renovation, and construction of elementary and secondary schools, including early learning facilities at the elementary schools.

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 “School Building Fair-
5 ness Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Providing safe, healthy, and up-to-date pub-
2 lic elementary and secondary school facilities is a
3 crucial component of improving student academic
4 performance and retaining high-quality, committed
5 educators.

6 (2) The 2009 Infrastructure Report Card com-
7 piled by the American Society of Civil Engineers
8 gives public schools a D grade.

9 (3) The National Center for Education Statis-
10 tics, in 2000, reported that the Nation's elementary
11 and secondary schools required approximately
12 \$127,000,000,000 to repair or upgrade facilities.

13 (4) A State-by-State analysis by the American
14 Federation of Teachers in 2008 concluded that the
15 Nation's school infrastructure needs total an esti-
16 mated \$254,600,000,000.

17 (5) The Department of Education documented
18 in 1998 that the average age of a public elementary
19 or secondary school building was estimated at 42
20 years old, an age when schools tend to deteriorate.

21 (6) School districts spent more than
22 \$304,000,000,000 for public school construction
23 contracts from 1995 through 2004, according to
24 data collected by McGraw-Hill Construction.

1 (7) According to a 2006 report by the Building
2 Educational Success Together coalition, the per-stu-
3 dent investment made in the most affluent school
4 districts to repair or construct schools was nearly
5 double the amount of the per-student investment
6 made in the most disadvantaged school districts.

7 (8) Since 1998, the Iowa Demonstration Con-
8 struction Grant Program has provided \$121,000,000
9 in Federal assistance to over 300 school districts for
10 school repair and construction. That Federal invest-
11 ment in school repair and construction has leveraged
12 more than \$600,000,000 of additional local funding
13 through a match required by the State government.

14 (9) Green schools use an average of 33 percent
15 less energy than conventionally built schools, and
16 generate financial savings of about \$70 per square
17 foot, according to the 2006 report “Greening Amer-
18 ica’s Schools: Costs and Benefits”.

19 **SEC. 3. GRANTS FOR SCHOOL REPAIR, RENOVATION, AND**
20 **CONSTRUCTION.**

21 Part D of title V of the Elementary and Secondary
22 Education Act of 1965 (20 U.S.C. 7241 et seq.) is amend-
23 ed by adding at the end the following:

1 **“Subpart 22—School Facilities**
2 **“SEC. 5621. GRANTS FOR SCHOOL REPAIR, RENOVATION,**
3 **AND CONSTRUCTION.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) CHARTER SCHOOL.—The term ‘charter
6 school’ has the meaning given the term in section
7 5210.

8 “(2) CHPS CRITERIA.—The term ‘CHPS Cri-
9 teria’ means the green building rating criteria devel-
10 oped by the Collaborative for High Performance
11 Schools.

12 “(3) ENERGY STAR.—The term ‘Energy Star’
13 means the Energy Star program of the Department
14 of Energy and the Environmental Protection Agen-
15 cy.

16 “(4) GREEN GLOBES.—The term ‘Green
17 Globes’ means the Green Building Initiative environ-
18 mental design and rating system.

19 “(5) HIGH-NEED LOCAL EDUCATIONAL AGEN-
20 CY.—The term ‘high-need local educational agency’
21 has the meaning given the term in section
22 2102(3)(A).

23 “(6) LEED GREEN BUILDING RATING SYS-
24 TEM.—The term ‘LEED Green Building Rating
25 System’ means the United States Green Building

1 Council Leadership in Energy and Environmental
2 Design green building rating system.

3 “(7) RURAL LOCAL EDUCATIONAL AGENCY.—

4 The term ‘rural local educational agency’ means a
5 local educational agency that the State determines is
6 located in a rural area using objective data and a
7 commonly employed definition of the term ‘rural’.

8 “(8) STATE.—The term ‘State’ means each of
9 the several states of the United States, the District
10 of Columbia, and the Commonwealth of Puerto Rico.

11 “(b) ALLOCATION OF FUNDS.—

12 “(1) RESERVATIONS.—From the funds appro-
13 priated under subsection (i) for a fiscal year, the
14 Secretary shall reserve 1 percent to provide assist-
15 ance to the outlying areas and for payments to the
16 Secretary of the Interior to provide assistance to
17 schools funded by the Bureau of Indian Education.
18 Funds allocated under this subparagraph shall be
19 reserved by the Secretary for distribution among the
20 outlying areas and the Secretary of the Interior on
21 the basis of their relative need for public elementary
22 school and secondary school repair, renovation, and
23 construction, as determined by the Secretary.

24 “(2) ALLOCATION TO STATE EDUCATIONAL
25 AGENCIES.—From the funds appropriated under

1 subsection (i) for a fiscal year that are not reserved
2 under paragraph (1) for the fiscal year, the Sec-
3 retary shall allocate to each State educational agen-
4 cy serving a State an amount that bears the same
5 relation to the funds as the amount the State re-
6 ceived under part A of title I for the fiscal year pre-
7 ceding the fiscal year for which the determination is
8 made bears to the amount all States received under
9 such part for such preceding fiscal year, except that
10 no such State educational agency shall receive less
11 than 0.5 percent of the amount allocated under this
12 subsection.

13 “(c) WITHIN-STATE DISTRIBUTIONS.—

14 “(1) ADMINISTRATIVE AND OTHER COSTS.—

15 “(A) STATE EDUCATIONAL AGENCY AD-
16 MINISTRATION AND OTHER COSTS.—Except as
17 provided in subparagraph (D), each State edu-
18 cational agency may reserve not more than 1
19 percent of the State educational agency’s alloca-
20 tion under subsection (b) for the purposes of
21 administering the distribution of grants under
22 this subsection and awarding grants under sub-
23 paragraph (C)(v).

1 “(B) REQUIRED USES.—The State edu-
2 cational agency shall use a portion of the funds
3 reserved under subparagraph (A)—

4 “(i) to provide technical assistance to
5 local educational agencies; and

6 “(ii) to establish or support a State-
7 level database of public elementary school
8 and secondary school facility inventory,
9 condition, design, and utilization.

10 “(C) PERMISSIBLE USES.—The State edu-
11 cational agency may use a portion of the funds
12 reserved under subparagraph (A) for—

13 “(i) developing a statewide public ele-
14 mentary school and secondary school edu-
15 cational facility master plan;

16 “(ii) developing policies, procedures,
17 and standards for high-quality, energy effi-
18 cient public elementary school and sec-
19 ondary school facilities;

20 “(iii) supporting interagency collabo-
21 ration that will lead to broad community
22 use of public elementary school and sec-
23 ondary school facilities, and school-based
24 services for students served by high-need

1 local educational agencies or rural local
2 educational agencies;

3 “(iv) helping to defray the cost of
4 issuing State bonds to finance public ele-
5 mentary school and secondary school re-
6 pair, renovation, and construction; and

7 “(v) awarding grants to State-oper-
8 ated or State-supported schools, such as a
9 State school for the deaf or for the blind,
10 to enable such schools to carry out school
11 repair, renovation, and construction activi-
12 ties in accordance with subsection (d).

13 “(D) STATE ENTITY ADMINISTRATION AND
14 OTHER COSTS.—If the State educational agency
15 transfers funds to a State entity described in
16 paragraph (2)(A), the State educational agency
17 shall transfer to such State entity not less than
18 75 percent of the amount reserved under sub-
19 paragraph (A) for the purpose of carrying out
20 the activities described in subparagraph (C).

21 “(2) DISTRIBUTION OF COMPETITIVE SCHOOL
22 REPAIR, RENOVATION, AND CONSTRUCTION GRANTS
23 TO LOCAL EDUCATIONAL AGENCIES.—

24 “(A) IN GENERAL.—Of the funds allocated
25 to a State educational agency under subsection

1 (b) that are not reserved under paragraph (1),
2 the State educational agency shall distribute
3 100 percent of such funds to local educational
4 agencies or, if the State educational agency is
5 not responsible for the financing of education
6 facilities, the State educational agency shall
7 transfer such funds to the State entity respon-
8 sible for the financing of education facilities (re-
9 ferred to in this section as the ‘State entity’)
10 for distribution by such State entity to local
11 educational agencies in accordance with this
12 paragraph, to be used, consistent with sub-
13 section (d), for public elementary school or sec-
14 ondary school repair, renovation, and construc-
15 tion.

16 “(B) COMPETITIVE GRANTS TO LOCAL
17 EDUCATIONAL AGENCIES.—The State edu-
18 cational agency or State entity shall carry out
19 a program to award grants, on a competitive
20 basis, to local educational agencies for public el-
21 elementary school or secondary school repair,
22 renovation, and construction. Of the total
23 amount available for distribution to local edu-
24 cational agencies under this paragraph, the

1 State educational agency or State entity, shall,
2 in carrying out the grant competition—

3 “(i) award to high-need local edu-
4 cational agencies, in the aggregate, not less
5 than an amount which bears the same re-
6 lationship to such total amount as the ag-
7 gregate amount such high-need local edu-
8 cational agencies received under part A of
9 title I for the fiscal year preceding the fis-
10 cal year for which the determination is
11 made bears to the aggregate amount re-
12 ceived for such preceding fiscal year under
13 such part by all local educational agencies
14 in the State;

15 “(ii) award to rural local educational
16 agencies in the State, in the aggregate, not
17 less than an amount which bears the same
18 relationship to such total amount as the
19 aggregate amount such rural local edu-
20 cational agencies received under part A of
21 title I for the fiscal year preceding the fis-
22 cal year for which the determination is
23 made bears to the aggregate amount re-
24 ceived for such preceding fiscal year under

1 such part by all local educational agencies
2 in the State; and

3 “(iii) award the remaining funds to
4 local educational agencies in the State that
5 did not receive a grant award under clause
6 (i) or (ii), including to high-need local edu-
7 cational agencies and rural local edu-
8 cational agencies that did not receive a
9 grant award under clause (i) or (ii).

10 “(C) CRITERIA FOR AWARDING GRANTS.—

11 In awarding competitive grants under this para-
12 graph, a State educational agency or State enti-
13 ty shall take into account the following criteria:

14 “(i) PERCENTAGE OF POOR CHIL-
15 DREN.—The percentage of children served
16 by the local educational agency who are be-
17 tween 5 to 17 years of age, inclusive, and
18 who are from families with incomes below
19 the poverty line.

20 “(ii) NEED FOR SCHOOL REPAIR,
21 RENOVATION, AND CONSTRUCTION.—The
22 need of a local educational agency for
23 school repair, renovation, and construction,
24 as demonstrated by the condition of the
25 public elementary school or secondary

1 school facilities of the local educational
2 agency or the local educational agency's
3 need for such facilities.

4 “(iii) GREEN SCHOOLS.—The extent
5 to which a local educational agency will
6 make use, in the repair, renovation, or con-
7 struction to be undertaken, of green prac-
8 tices that are certified, verified, or con-
9 sistent with any applicable provisions of—

10 “(I) the LEED Green Building
11 Rating System;

12 “(II) Energy Star;

13 “(III) the CHPS Criteria;

14 “(IV) Green Globes; or

15 “(V) an equivalent program
16 adopted by the State or another juris-
17 diction with authority over the local
18 educational agency.

19 “(iv) FISCAL CAPACITY.—The fiscal
20 capacity of a local educational agency to
21 meet the needs of the local educational
22 agency for repair, renovation, and con-
23 struction of public elementary school or
24 secondary school facilities without assist-
25 ance under this section, including the abil-

1 ity of the local educational agency to raise
2 funds through the use of local bonding ca-
3 pacity and otherwise.

4 “(v) LIKELIHOOD OF MAINTAINING
5 THE FACILITY.—The likelihood that a local
6 educational agency will maintain, in good
7 condition, any facility whose repair, ren-
8 ovation, or construction is assisted under
9 this section.

10 “(vi) CHARTER SCHOOL ACCESS TO
11 FUNDING.—In the case of a local edu-
12 cational agency that proposes to fund a re-
13 pair, renovation, or construction project for
14 a public charter school, the extent to which
15 the public charter school lacks access to
16 funding for the project through the financ-
17 ing methods available to other public
18 schools or local educational agencies in the
19 State.

20 “(D) MATCHING REQUIREMENT.—

21 “(i) IN GENERAL.—A State edu-
22 cational agency or State entity shall re-
23 quire local educational agencies to match
24 funds awarded under this paragraph.

1 “(ii) MATCH AMOUNT.—The amount
2 of a match described in clause (i) may be
3 established by using a sliding scale that
4 takes into account the relative poverty of
5 the population served by the local edu-
6 cational agency.

7 “(d) RULES APPLICABLE TO SCHOOL REPAIR, REN-
8 OVATION, AND CONSTRUCTION.—With respect to funds
9 made available under this section that are used for school
10 repair, renovation, and construction, the following rules
11 shall apply:

12 “(1) PERMISSIBLE USES OF FUNDS.—School
13 repair, renovation, and construction shall be limited
14 to 1 or more of the following:

15 “(A) Upgrades, repair, construction, or re-
16 placement of public elementary school or sec-
17 ondary school building systems or components
18 to improve the quality of education and ensure
19 the health and safety of students and staff, in-
20 cluding—

21 “(i) repairing, replacing, or con-
22 structing early learning facilities at public
23 elementary schools (including renovation of
24 existing facilities to serve children under 5
25 years of age);

1 “(ii) repairing, replacing, or installing
2 roofs, windows, doors, electrical wiring,
3 plumbing systems, or sewage systems;

4 “(iii) repairing, replacing, or installing
5 heating, ventilation, or air conditioning
6 systems (including insulation); and

7 “(iv) bringing such public schools into
8 compliance with fire and safety codes.

9 “(B) School facilities modifications nec-
10 essary to render public elementary school or
11 secondary school facilities accessible in order to
12 comply with the Americans with Disabilities Act
13 of 1990 (42 U.S.C. 12101 et seq.) and section
14 504 of the Rehabilitation Act of 1973 (29
15 U.S.C. 794).

16 “(C) Improvements to the environmental
17 conditions of public elementary school or sec-
18 ondary school sites, including asbestos abate-
19 ment or removal, and the reduction or elimi-
20 nation of human exposure to lead-based paint,
21 mold, or mildew.

22 “(D) Measures designed to reduce or elimi-
23 nate human exposure to classroom noise and
24 environmental noise pollution.

1 “(E) Modifications necessary to reduce the
2 consumption of electricity, natural gas, oil,
3 water, coal, or land.

4 “(F) Upgrades or installations of edu-
5 cational technology infrastructure to ensure
6 that students have access to up-to-date edu-
7 cational technology.

8 “(G) Measures that will broaden or im-
9 prove the use of public elementary school or
10 secondary school buildings and grounds by the
11 community in order to improve educational out-
12 comes.

13 “(2) IMPERMISSIBLE USES OF FUNDS.—No
14 funds received under this section may be used for—

15 “(A) payment of maintenance costs in con-
16 nection with any projects constructed in whole
17 or part with Federal funds provided under this
18 section;

19 “(B) purchase or upgrade of vehicles;

20 “(C) improvement or construction of
21 stand-alone facilities whose purpose is not the
22 education of children, including central office
23 administration or operations or logistical sup-
24 port facilities;

1 “(D) purchase of information technology
2 hardware, including computer, monitors, or
3 printers; or

4 “(E) stadiums or other facilities primarily
5 used for athletic contests or exhibitions or other
6 events for which admission is charged to the
7 general public.

8 “(3) SUPPLEMENT, NOT SUPPLANT.—A local
9 educational agency or State-operated or State-sup-
10 ported school shall use Federal funds subject to this
11 subsection only to supplement the amount of funds
12 that would, in the absence of such Federal funds, be
13 made available from non-Federal sources for school
14 repair, renovation, and construction.

15 “(e) QUALIFIED BIDDERS; COMPETITION.—Each
16 local educational agency that receives funds under sub-
17 section (c)(2) shall ensure that, if the local educational
18 agency carries out repair, renovation, or construction
19 through a contract, any such contract process ensures the
20 maximum number of qualified bidders, including small,
21 minority, and women-owned businesses, through full and
22 open competition.

23 “(f) PUBLIC COMMENT.—Each local educational
24 agency receiving funds under subsection (c)(2)—

1 “(1) shall provide an opportunity for public
2 comment, and ensure that parents, educators, and
3 all other interested members of the community in
4 which the school to be assisted is located have the
5 opportunity to consult, on the use of the funds re-
6 ceived under such subsection;

7 “(2) shall provide the public with adequate and
8 efficient notice of the opportunity described in para-
9 graph (1) in a widely read and distributed medium;
10 and

11 “(3) shall provide the opportunity described in
12 paragraph (1) in accordance with any applicable
13 State and local law specifying how the comments
14 may be received and how the comments may be re-
15 viewed by any member of the public.

16 “(g) REPORTING.—

17 “(1) LOCAL REPORTING.—Each local edu-
18 cational agency receiving funds under subsection
19 (c)(2) shall submit a report to the State educational
20 agency, at such time as the State educational agency
21 may require, describing the use of such funds for
22 school repair, renovation, and construction.

23 “(2) STATE REPORTING.—Each State edu-
24 cational agency receiving funds under subsection (b)
25 shall submit to the Secretary, at such time as the

1 Secretary may require, a report on the use of funds
2 received under this section and made available to
3 local educational agencies (and, if applicable, to
4 State-operated or State-sponsored schools) for school
5 repair, renovation, and construction.

6 “(h) REALLOCATION.—If a State educational agency
7 does not apply for an allocation of funds under subsection
8 (b) for a fiscal year, or does not use the State educational
9 agency’s entire allocation for such fiscal year, then the
10 Secretary may reallocate the amount of the State edu-
11 cational agency’s allocation (or the remainder thereof, as
12 the case may be) for such fiscal year to the remaining
13 State educational agencies in accordance with subsection
14 (b).

15 “(i) AUTHORIZATION OF APPROPRIATIONS.—There is
16 authorized to be appropriated to carry out this section,
17 \$6,000,000,000 for fiscal year 2010, and such sums as
18 may be necessary for each of fiscal years 2011 through
19 2014.

20 **“SEC. 5622. NATIONAL CENTER FOR EDUCATION STATIS-**
21 **TICS STUDY.**

22 “(a) IN GENERAL.—The National Center for Edu-
23 cation Statistics (NCES) shall conduct a study of the con-
24 dition of public elementary school and secondary school
25 facilities in the United States.

1 “(b) ESTIMATES AND MEASURES.—In conducting
2 the study, the National Center for Education Statistics
3 shall—

4 “(1) estimate the costs needed to repair and
5 renovate all public elementary schools and secondary
6 schools in the United States to good overall condi-
7 tion; and

8 “(2) measure recent expenditures of Federal,
9 State, local and private funds for public elementary
10 school and secondary school repair, renovation, and
11 construction costs in the United States.

12 “(c) ANALYSIS.—In conducting the study, the Na-
13 tional Center for Education Statistics shall examine trends
14 in expenditures of Federal, State, local, and private funds
15 since fiscal year 2001 for repair, renovation, and construc-
16 tion activities for public elementary schools and secondary
17 schools in the United States, including examining the dif-
18 ferences between the types of schools assisted, and the
19 types of repair, renovation, and construction activities con-
20 ducted, with those expenditures.

21 “(d) REPORT.—The National Center for Education
22 Statistics shall prepare and submit to Congress a report
23 containing the results of the study.

1 **“SEC. 5623. NATIONAL CLEARINGHOUSE FOR EDU-**
2 **CATIONAL FACILITIES.**

3 “(a) IN GENERAL.—From the funds appropriated
4 under subsection (c), the Secretary shall award a grant
5 or contract to maintain a clearinghouse that will collect
6 and disseminate information on effective, best educational
7 practices, and the latest research, regarding the planning,
8 design, financing, construction, improvement, operation,
9 and maintenance of safe, healthy, high-performance public
10 school facilities for nursery and pre-kindergarten, kinder-
11 garten through grade 12, and higher, education.

12 “(b) DURATION.—The grant or contract under sub-
13 section (a) shall be awarded for a period of 5 years.

14 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated to carry out this section
16 \$1,500,000 for each of fiscal years 2010 through 2014.”.

○