

REBUILD AMERICA’S SCHOOLS ACT OF 2019

DECEMBER 21, 2020.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. SCOTT of Virginia, from the Committee on Education and  
Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 865]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred  
the bill (H.R. 865) to provide for the long-term improvement of public  
school facilities, and for other purposes, having considered the  
same, reports favorably thereon with amendments and recommends  
that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary .....	24
Committee Action .....	25
Committee Views .....	30
Section-by-Section Analysis .....	43
Explanation of Amendments .....	49
Application of Law to the Legislative Branch .....	49
Unfunded Mandate Statement .....	49
Earmark Statement .....	49
Roll Call Votes .....	49
Statement of Performance Goals and Objectives .....	60
Duplication of Federal Programs .....	60
Hearings .....	60
Statement of Oversight Findings and Recommendations of the Committee .....	60
New Budget Authority and CBO Cost Estimate .....	60
Committee Cost Estimate .....	68
Changes in Existing Law Made by the Bill, as Reported .....	68
Minority Views .....	81

The amendments are as follows:

Strike section 1 and all that follows through the end of title I and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Rebuild America’s Schools Act of 2019”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.

**TITLE I—GRANTS FOR THE LONG-TERM IMPROVEMENT OF PUBLIC SCHOOL FACILITIES**

Sec. 101. Purpose and reservation.  
Sec. 102. Allocation to States.  
Sec. 103. Need-based grants to qualified local educational agencies.  
Sec. 104. Annual report on grant program.  
Sec. 105. Authorization of Appropriations.

**TITLE II—SCHOOL INFRASTRUCTURE BONDS**

Sec. 201. Restoration of certain qualified tax credit bonds.  
Sec. 202. School infrastructure bonds.  
Sec. 203. Annual report on bond program.

**TITLE III—GENERAL PROVISIONS**

Sec. 301. Allowable uses of funds.  
Sec. 302. Prohibited uses.  
Sec. 303. Requirements for hazard-resistance and energy and water conservation.  
Sec. 304. Green Practices.  
Sec. 305. Use of American iron, steel, and manufactured products.  
Sec. 306. Comptroller general report.  
Sec. 307. Study and report physical condition of public schools.  
Sec. 308. Development of data standards.  
Sec. 309. Information clearinghouse.  
Sec. 310. Prohibition on use of funds for facilities of for-profit charter schools.  
Sec. 311. Prohibition on use of funds for certain charter schools.  
Sec. 312. Sense of congress on Opportunity Zones.

**TITLE IV—IMPACT AID CONSTRUCTION**

Sec. 401. Temporary increase in funding for impact aid construction.

**TITLE V—ASSISTANCE FOR REPAIR OF SCHOOL FOUNDATIONS AFFECTED BY PYRRHOTITE**

Sec. 501. Allocations to States.  
Sec. 502. Grants to local educational agencies.  
Sec. 503. Definitions.  
Sec. 504. Authorization of appropriations.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate.

(2) **BUREAU-FUNDED SCHOOL.**—The term “Bureau-funded school” has the meaning given that term in section 1141 of the Education Amendments of 1978 (25 U.S.C. 2021).

(3) **COVERED FUNDS.**—The term “covered funds” means funds received—

(A) under title I of this Act;

(B) from a school infrastructure bond; or

(C) from a qualified zone academy bond (as such term is defined in section 54E of the Internal Revenue Code of 1986 (as restored by section 201)).

(4) **ESEA TERMS.**—The terms “elementary school”, “outlying area”, and “secondary school” have the meanings given those terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(5) **LOCAL EDUCATIONAL AGENCY.**—The term “local educational agency” has the meaning given that term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) except that such term does not include a Bureau-funded school.

(6) **PUBLIC SCHOOL FACILITIES.**—The term “public school facilities” means the facilities of a public elementary school or a public secondary school.

(7) **QUALIFIED LOCAL EDUCATIONAL AGENCY.**—The term “qualified local educational agency” means a local educational agency that receives funds under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.).

(8) **SCHOOL INFRASTRUCTURE BOND.**—The term “school infrastructure bond” has the meaning given such term in section 54BB of the Internal Revenue Code of 1986 (as added by section 202).

(9) **SECRETARY.**—The term “Secretary” means the Secretary of Education.

(10) **STATE.**—The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(11) **ZERO ENERGY SCHOOL.**—The term “zero energy school” means a public elementary school or public secondary school that—

(A) generates renewable energy on-site; and

(B) on an annual basis, exports an amount of such renewable energy that equals or exceeds the total amount of renewable energy that is delivered to the school from outside sources.

## **TITLE I—GRANTS FOR THE LONG-TERM IMPROVEMENT OF PUBLIC SCHOOL FACILITIES**

### **SEC. 101. PURPOSE AND RESERVATION.**

(a) **PURPOSE.**—Funds made available under this title shall be for the purpose of supporting long-term improvements to public school facilities in accordance with this Act.

(b) **RESERVATION FOR OUTLYING AREAS AND BUREAU-FUNDED SCHOOLS.**—

(1) **IN GENERAL.**—For each of fiscal years 2020 through 2029, the Secretary shall reserve, from the amount appropriated to carry out this title—

(A) one-half of 1 percent, to make allocations to the outlying areas in accordance with paragraph (3); and

(B) one-half of 1 percent, for payments to the Secretary of the Interior to provide assistance to Bureau-funded schools.

(2) **USE OF RESERVED FUNDS.**—

(A) IN GENERAL.—Funds reserved under paragraph (1) shall be used in accordance with sections 301 through 305.

(B) SPECIAL RULES FOR BUREAU-FUNDED SCHOOLS.—

(i) APPLICABILITY.—Sections 301 through 305 shall apply to a Bureau-funded school that receives assistance under paragraph (1)(B) in the same manner that such sections apply to a qualified local educational agency that receives covered funds. The facilities of a Bureau-funded school shall be treated as public school facilities for purposes of the application of such sections.

(ii) TREATMENT OF TRIBALLY OPERATED SCHOOLS.—The Secretary of the Interior shall provide assistance to Bureau-funded schools under paragraph (1)(B) without regard to whether such schools are operated by the Bureau of Indian Education or by an Indian Tribe. In the case of a Bureau-funded school that is a contract or grant school (as that term is defined in section 1141 of the Education Amendments of 1978 (25 U.S.C. 2021)) operated by an Indian Tribe, the Secretary of the Interior shall provide assistance under such paragraph to the Indian Tribe concerned.

(3) ALLOCATION TO OUTLYING AREAS.—From the amount reserved under paragraph (1)(A) for a fiscal year, the Secretary shall allocate to each outlying area an amount in proportion to the amount received by the outlying area under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the previous fiscal year relative to the total such amount received by all outlying areas for such previous fiscal year.

#### **SEC. 102. ALLOCATION TO STATES.**

(a) ALLOCATION TO STATES.—

(1) STATE-BY-STATE ALLOCATION.—Of the amount appropriated to carry out this title for each fiscal year and not reserved under section 101(b), each State that has a plan approved by the Secretary under subsection (b) shall be allocated an amount in proportion to the amount received by all local educational agencies in the State under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the previous fiscal year relative to the total such amount received by all local educational agencies in every State that has a plan approved by the Secretary under subsection (b).

(2) STATE RESERVATION.—A State may reserve not more than 1 percent of its allocation under paragraph (1) to carry out its responsibilities under this Act, which—

(A) shall include—

(i) providing technical assistance to local educational agencies, including by—

(I) identifying which State agencies have programs, resources, and expertise relevant to the activities supported by the allocation under this section; and

(II) coordinating the provision of technical assistance across such agencies;

(ii) in accordance with the guidance issued by the Secretary under section 308, developing an online, publicly searchable database that contains an inventory of the infrastructure of all public school facilities in the State (including the facilities of Bureau-funded schools, as appropriate), including, with respect to each such facility, an identification of—

(I) the information described in subclauses (I) through (VII) of clause (vi);

(II) the age (including an identification of the date of any retrofits or recent renovations) of—

(aa) the facility;

(bb) its roof;

(cc) its lighting system;

(dd) its windows;

(ee) its ceilings;

(ff) its plumbing; and

(gg) its heating, ventilation, and air conditioning system;

(III) fire safety inspection results;

(IV) the proximity of the facilities to toxic sites or the vulnerability of the facilities to natural disasters, including the extent to which facilities that are vulnerable to seismic natural disasters are seismically retrofitted; and

(V) any previous inspections showing the presence of toxic substances;

(iii) updating the database developed under clause (ii) not less frequently than once every 2 years;

(iv) ensuring that the information in the database developed under clause (ii)—

(I) is posted on a publicly accessible State website; and

(II) is regularly distributed to local educational agencies and Tribal governments in the State;

(v) issuing and reviewing regulations to ensure the health and safety of students and staff during construction or renovation projects; and

(vi) issuing or reviewing regulations to ensure safe, healthy, and high-performing school buildings, including regulations governing—

(I) indoor environmental quality and ventilation, including exposure to carbon monoxide, carbon dioxide, lead-based paint, and other combustion by-products such as oxides of nitrogen;

(II) mold, mildew, and moisture control;

(III) the safety of drinking water at the tap and water used for meal preparation, including regulations that—

(aa) address the presence of lead and other contaminants in such water; and

(bb) require the regular testing of the potability of water at the tap;

(IV) energy and water efficiency;

(V) excessive classroom noise due to activities allowable under section 301;

(VI) the levels of maintenance work, operational spending, and capital investment needed to maintain the quality of public school facilities; and

(VII) the construction or renovation of such facilities, including applicable building codes; and

(vii) creating a plan to reduce or eliminate exposure to toxic substances, including mercury, radon, PCBs, lead, vapor intrusions, and asbestos; and

(B) may include the development of a plan to increase the number of zero energy schools in the State.

(b) STATE PLAN.—

(1) IN GENERAL.—To be eligible to receive an allocation under this section, a State shall submit to the Secretary a plan that—

(A) describes how the State will use the allocation to make long-term improvements to public school facilities;

(B) explains how the State will carry out each of its responsibilities under subsection (a)(2);

(C) explains how the State will make the determinations under subsections (b) and (c) of section 103;

(D) identifies how long, and at what levels, the State will maintain fiscal effort for the activities supported by the allocation after the State no longer receives the allocation; and

(E) includes such other information as the Secretary may require.

(2) APPROVAL AND DISAPPROVAL.—The Secretary shall have the authority to approve or disapprove a State plan submitted under paragraph (1).

(c) **CONDITIONS.**—As a condition of receiving an allocation under this section, a State shall agree to the following:

(1) **MATCHING REQUIREMENT.**—The State shall contribute, from non-Federal sources, an amount equal to 10 percent of the amount of the allocation received under this section to carry out the activities supported by the allocation.

(2) **MAINTENANCE OF EFFORT.**—The State shall provide an assurance to the Secretary that the combined fiscal effort or the aggregate expenditures of the State with respect to the activities supported by the allocation under this section for fiscal years beginning with the fiscal year for which the allocation is received will be not less than 90 percent of the 5 year average for total capital outlay of the combined fiscal effort or aggregate expenditures by the State for the purposes for which the allocation is received.

(3) **SUPPLEMENT NOT SUPPLANT.**—The State shall use an allocation under this section only to supplement the level of Federal, State, and local public funds that would, in absence of such allocation, be made available for the activities supported by the allocation, and not to supplant such funds.

**SEC. 103. NEED-BASED GRANTS TO QUALIFIED LOCAL EDUCATIONAL AGENCIES.**

(a) **GRANTS TO LOCAL EDUCATIONAL AGENCIES.**—

(1) **IN GENERAL.**—Subject to paragraph (2), from the amounts allocated to a State under section 102(a) and contributed by the State under section 102(c)(1), the State shall award grants to qualified local educational agencies, on a competitive basis, to carry out the activities described in section 301(a).

(2) **ALLOWANCE FOR DIGITAL LEARNING.**—A State may use up to 10 percent of the amount described in paragraph (1) to make grants to qualified local educational agencies carry out activities to improve digital learning in accordance with section 301(b).

(b) **ELIGIBILITY.**—

(1) **IN GENERAL.**—To be eligible to receive a grant under this section a qualified local educational agency—

(A) shall be among the local educational agencies in the State with the highest numbers or percentages of students counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c));

(B) shall agree to prioritize the improvement of the facilities of public schools that serve the highest percentages of students who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) (which, in the case of a high school, may be calculated using comparable data from the schools that feed into the high school), as com-

pared to other public schools in the jurisdiction of the agency; and

(C) may be among the local educational agencies in the State—

(i) with the greatest need to improve public school facilities, as determined by the State, which may include consideration of threats posed by the proximity of the facilities to toxic sites or brownfield sites or the vulnerability of the facilities to natural disasters; and

(ii) with the most limited capacity to raise funds for the long-term improvement of public school facilities, as determined by an assessment of—

(I) the current and historic ability of the agency to raise funds for construction, renovation, modernization, and major repair projects for schools;

(II) whether the agency has been able to issue bonds or receive other funds to support school construction projects; and

(III) the bond rating of the agency.

(2) GEOGRAPHIC DISTRIBUTION.—The State shall ensure that grants under this section are awarded to qualified local educational agencies that represent the geographic diversity of the State.

(3) STATEWIDE THRESHOLDS.—The State shall establish reasonable thresholds for determining whether a local educational agency is among agencies in the State with the highest numbers or percentages of students counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)) as required under paragraph (1)(A).

(c) PRIORITY OF GRANTS.—In awarding grants under this section, the State—

(1) shall give priority to qualified local educational agencies that—

(A) demonstrate the greatest need for such a grant, as determined by a comparison of the factors described in subsection (b)(1) and other indicators of need in the public school facilities of such local educational agencies, including—

(i) the median age of facilities;

(ii) the extent to which student enrollment exceeds physical and instructional capacity;

(iii) the condition of major building systems such as heating, ventilation, air conditioning, electrical, water, and sewer systems;

(iv) the condition of roofs, windows, and doors; and

(v) other critical health and safety conditions; and

(B) will use the grant to improve the facilities of—



(i) elementary schools or middle schools that have an enrollment of students who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) that constitutes not less than 40 percent of the total student enrollment at such schools; or

(ii) high schools that have an enrollment of students who are eligible for a free or reduced price lunch under such Act that constitutes not less than 30 percent of the total student enrollment at such schools (which may be calculated using comparable data from the schools that feed into the high school); and

(C) operate public school facilities that pose a severe health and safety threat to students and staff, which may include a threat posed by the proximity of the facilities to toxic sites or the vulnerability of the facilities to natural disasters; and

(2) may give priority to qualified local educational agencies that—

(A) will use the grant to improve access to high-speed broadband sufficient to support digital learning accordance with section 301(b);

(B) serve elementary schools or secondary schools, including rural schools, that lack such access; and

(C) meet one or more of the requirements set forth in subparagraphs (A) through (C) of paragraph (1).

(d) APPLICATION.—To be considered for a grant under this section, a qualified local educational agency shall submit an application to the State at such time, in such manner, and containing such information as the State may require. Such application shall include, at minimum—

(1) the information necessary for the State to make the determinations under subsections (b) and (c);

(2) a description of the projects that the agency plans to carry out with the grant;

(3) an explanation of how such projects will reduce risks to the health and safety of staff and students at schools served by the agency; and

(4) in the case of a local educational agency that proposes to fund a repair, renovation, or construction project for a public charter school, the extent to which—

(A) the public charter school lacks access to funding for school repair, renovation, and construction through the financing methods available to other public schools or local educational agencies in the State; and

(B) the charter school operator owns or has care and control of the facility that is to be repaired, renovated, or constructed.

(e) FACILITIES MASTER PLAN.—

(1) PLAN REQUIRED.—Not later than 180 days after receiving a grant under this section, a qualified local educational agency shall submit to the State a comprehensive 10-year facilities master plan.

(2) ELEMENTS.—The facilities master plan required under paragraph (1) shall include, with respect to all public school facilities of the qualified local educational agency, a description of—

(A) the extent to which public school facilities meet students' educational needs and support the agency's educational mission and vision;

(B) the physical condition of the public school facilities;

(C) the current health, safety, and environmental conditions of the public school facilities, including—

(i) indoor air quality;

(ii) the presence of toxic substances;

(iii) the safety of drinking water at the tap and water used for meal preparation, including the level of lead and other contaminants in such water;

(iv) energy and water efficiency;

(v) excessive classroom noise; and

(vi) other health, safety, and environmental conditions that would impact the health, safety, and learning ability of students;

(D) how the local educational agency will address any conditions identified under subparagraph (C);

(E) the impact of current and future student enrollment levels (as of the date of application) on the design of current and future public school facilities, as well as the financial implications of such enrollment levels;

(F) the dollar amount and percentage of funds the local educational agency will dedicate to capital construction projects for public school facilities, including—

(i) any funds in the budget of the agency that will be dedicated to such projects; and

(ii) any funds not in the budget of the agency that will be dedicated to such projects, including any funds available to the agency as the result of a bond issue; and

(G) the dollar amount and percentage of funds the local educational agency will dedicate to the maintenance and operation of public school facilities, including—

(i) any funds in the budget of the agency that will be dedicated to the maintenance and operation of such facilities; and

(ii) any funds not in the budget of the agency that will be dedicated to the maintenance and operation of such facilities.

(3) CONSULTATION.—In developing the facilities master plan required under paragraph (1)—

(A) a qualified local educational agency shall consult with teachers, principals and other school leaders, custodial and maintenance staff, emergency first responders, school facilities directors, students and families, community residents, and Indian Tribes; and

(B) in addition to the consultation required under subparagraph (A), a Bureau-funded school shall consult with the Bureau of Indian Education.

(f) SUPPLEMENT NOT SUPPLANT.—A qualified local educational agency shall use a grant received under this section only to supplement the level of Federal, State, and local public funds that would, in the absence of such grant, be made available for the activities supported by the grant, and not to supplant such funds.

**SEC. 104. ANNUAL REPORT ON GRANT PROGRAM.**

(a) IN GENERAL.—Not later than September 30 of each fiscal year beginning after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees a report on the projects carried out with funds made available under this title.

(b) ELEMENTS.—The report under subsection (a) shall include, with respect to the fiscal year preceding the year in which the report is submitted, the following:

(1) An identification of each local educational agency that received a grant under this title.

(2) With respect to each such agency, a description of—

(A) the demographic composition of the student population served by the agency, disaggregated by—

(i) race;

(ii) the number and percentage of students counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)); and

(iii) the number and percentage of students who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);

(B) the population density of the geographic area served by the agency;

(C) the projects for which the agency used the grant received under this title, described using measurements of school facility quality from the most recent available version of the Common Education Data Standards published by the National Center for Education Statistics;

(D) the demonstrable or expected benefits of the projects; and

(E) the estimated number of jobs created by the projects.

- (3) The total dollar amount of all grants received by local educational agencies under this title.
- (c) LEA INFORMATION COLLECTION.—A local educational agency that receives a grant under this title shall—
  - (1) annually compile the information described in subsection (b)(2);
  - (2) make the information available to the public, including by posting the information on a publicly accessible agency website; and
  - (3) submit the information to the State.
- (d) STATE INFORMATION DISTRIBUTION.—A State that receives information from a local educational agency under subsection (c) shall—
  - (1) compile the information and report it annually to the Secretary at such time and in such manner as the Secretary may require;
  - (2) make the information available to the public, including by posting the information on a publicly accessible State website; and
  - (3) regularly distribute the information to local educational agencies and Tribal governments in the State.

**SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated \$7,000,000,000 for each of fiscal years 2020 through 2029 to carry out this title.

Strike titles III and IV and insert the following:

## **TITLE III—GENERAL PROVISIONS**

**SEC. 301. ALLOWABLE USES OF FUNDS.**

- (a) IN GENERAL.—Except as provided in section 302, a local educational agency that receives covered funds may use such funds to—
  - (1) develop the facilities master plan required under section 103(e);
  - (2) construct, modernize, renovate, or retrofit public school facilities, which may include seismic retrofitting for schools vulnerable to seismic natural disasters;
  - (3) carry out major repairs of public school facilities;
  - (4) install furniture or fixtures with at least a 10-year life in public school facilities;
  - (5) construct new public school facilities;
  - (6) acquire and prepare sites on which new public school facilities will be constructed;
  - (7) extend the life of basic systems and components of public school facilities;
  - (8) ensure current or anticipated enrollment does not exceed the physical and instructional capacity of public school facilities;
  - (9) ensure the building envelopes and interiors of public school facilities protect occupants from natural elements and human threats, and are structurally sound and secure;

(10) compose building design plans that strengthen the safety and security on school premises by utilizing design elements, principles, and technology that—

(A) guarantee layers of security throughout the school premises; and

(B) uphold the aesthetics of the school premises as a learning and teaching environment;

(11) improve energy and water efficiency to lower the costs of energy and water consumption in public school facilities;

(12) improve indoor air quality in public school facilities;

(13) reduce or eliminate the presence of—

(A) toxic substances, including mercury, radon, PCBs, lead, and asbestos;

(B) mold and mildew; or

(C) rodents and pests;

(14) ensure the safety of drinking water at the tap and water used for meal preparation in public school facilities, which may include testing of the potability of water at the tap for the presence of lead and other contaminants;

(15) bring public school facilities into compliance with applicable fire, health, and safety codes;

(16) make public school facilities accessible to people with disabilities through compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(17) provide instructional program space improvements for programs relating to early learning (including early learning programs operated by partners of the agency), special education, science, technology, career and technical education, physical education, music, the arts, and literacy (including library programs);

(18) increase the use of public school facilities for the purpose of community-based partnerships that provide students with academic, health, and social services;

(19) ensure the health of students and staff during the construction or modernization of public school facilities; or

(20) reduce or eliminate excessive classroom noise due to activities allowable under this section.

(b) ALLOWANCE FOR DIGITAL LEARNING.—A local educational agency may use funds received under section 103(a)(2) or proceeds from a school infrastructure bond limitation allocated under section 54BB(g) of the Internal Revenue Code of 1986 (as added by section 202) to leverage existing public programs or public-private partnerships to expand access to high-speed broadband sufficient for digital learning.

**SEC. 302. PROHIBITED USES.**

A local educational agency that receives covered funds may not use such funds for—

- (1) payment of routine and predictable maintenance costs and minor repairs;
- (2) any facility that is primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;
- (3) vehicles; or
- (4) central offices, operation centers, or other facilities that are not primarily used to educate students.

**SEC. 303. REQUIREMENTS FOR HAZARD-RESISTANCE AND ENERGY AND WATER CONSERVATION.**

A local educational agency that receives covered funds shall ensure that any new construction, modernization, or renovation project carried out with such funds meets or exceeds the requirements of the following:

- (1) Requirements for such projects set forth in the most recent published edition of a nationally recognized, consensus-based model building code.
- (2) Requirements for such projects set forth in the most recent published edition of a nationally recognized, consensus-based model energy conservation code.
- (3) Performance criteria under the WaterSense program, established under section 324B of the Energy Policy and Conservation Act (42 U.S.C. 6294b), applicable to such projects within a nationally recognized, consensus-based model code.

**SEC. 304. GREEN PRACTICES.**

(a) **IN GENERAL.**—In a given fiscal year, a local educational agency that uses covered funds for a new construction project or renovation project shall use not less than the applicable percentage (as described in subsection (b)) of the funds used for such project for construction or renovation that is certified, verified, or consistent with the applicable provisions of—

- (1) the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard (commonly known as the “LEED Green Building Rating System”);
- (2) the Living Building Challenge developed by the International Living Future Institute;
- (3) a green building rating program developed by the Collaborative for High-Performance Schools (commonly known as “CHPS”) that is CHPS-verified;
- (4) the International Green Construction Code; or
- (5) a program that—
  - (A) has standards that are equivalent to or more stringent than the standards of a program described in paragraphs (1) through (3);
  - (B) is adopted by the State or another jurisdiction with authority over the agency; and
  - (C) includes a verifiable method to demonstrate compliance with such program.

(b) **APPLICABLE PERCENTAGE.**—The applicable percentage described in this subsection is—

- (1) for fiscal year 2020, 60 percent;
- (2) for fiscal year 2021, 70 percent;
- (3) for fiscal year 2022, 80 percent;
- (4) for fiscal year 2023, 90 percent; and
- (5) for each of fiscal years 2024 through 2029, 100 percent.

**SEC. 305. USE OF AMERICAN IRON, STEEL, AND MANUFACTURED PRODUCTS.**

(a) **IN GENERAL.**—A local educational agency that receives covered funds shall ensure that any iron, steel, and manufactured products used in projects carried out with such funds are produced in the United States.

(b) **WAIVER AUTHORITY.**—

(1) **IN GENERAL.**—The Secretary may waive the requirement of subsection (a) if the Secretary determines that—

(A) applying subsection (a) would be inconsistent with the public interest;

(B) iron, steel, and manufactured products produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality; or

(C) using iron, steel, and manufactured products produced in the United States will increase the cost of the overall project by more than 25 percent.

(2) **PUBLICATION.**—Before issuing a waiver under paragraph (1), the Secretary shall publish in the Federal Register a detailed written explanation of the waiver determination.

(c) **CONSISTENCY WITH INTERNATIONAL AGREEMENTS.**—This section shall be applied in a manner consistent with the obligations of the United States under international agreements.

(d) **DEFINITIONS.**—In this section:

(1) **PRODUCED IN THE UNITED STATES.**—The term “produced in the United States” means the following:

(A) When used with respect to a manufactured product, the product was manufactured in the United States and the cost of the components of such product that were mined, produced, or manufactured in the United States exceeds 60 percent of the total cost of all components of the product.

(B) When used with respect to iron or steel products, or an individual component of a manufactured product, all manufacturing processes for such iron or steel products or components, from the initial melting stage through the application of coatings, occurred in the United States, except that the term does not include—

- (i) steel or iron material or products manufactured abroad from semi-finished steel or iron from the United States; and

(ii) steel or iron material or products manufactured in the United States from semi-finished steel or iron of foreign origin.

(2) **MANUFACTURED PRODUCT.**—The term “manufactured product” means any construction material or end product (as such terms are defined in part 25.003 of the Federal Acquisition Regulation) that is not an iron or steel product, including—

(A) electrical components; and

(B) non-ferrous building materials, including, aluminum and polyvinylchloride (PVC), glass, fiber optics, plastic, wood, masonry, rubber, manufactured stone, any other non-ferrous metals, and any unmanufactured construction material.

**SEC. 306. COMPTROLLER GENERAL REPORT.**

(a) **IN GENERAL.**—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the projects carried out with covered funds.

(b) **ELEMENTS.**—The report under subsection (a) shall include an assessment of—

(1) State activities, including—

(A) the types of public school facilities data collected by each State, if any;

(B) technical assistance with respect to public school facilities provided by each State, if any;

(C) future plans of each State with respect to public school facilities;

(D) criteria used by each State to determine high-need students and facilities for purposes of the projects carried out with covered funds; and

(E) whether the State issued new regulations to ensure the health and safety of students and staff during construction or renovation projects or to ensure safe, healthy, and high-performing school buildings;

(2) the types of projects carried out with covered funds, including—

(A) the square footage of the improvements made with covered funds;

(B) the total cost of each such project; and

(C) the cost described in subparagraph (B), disaggregated by, with respect to such project, the cost of planning, design, construction, site purchase, and improvements;

(3) the geographic distribution of the projects;

(4) the demographic composition of the student population served by the projects, disaggregated by—

(A) race;

(B) the number and percentage of students counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 USC 6333(c)); and



(C) the number and percentage of students who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 USC 1751 et seq.);

(5) an assessment of the impact of the projects on the health and safety of school staff and students; and

(6) how the Secretary or States could make covered funds more accessible—

(A) to schools with the highest numbers and percentages of students counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)); and

(B) to schools with fiscal challenges in raising capital for school infrastructure projects.

(c) **UPDATES.**—The Comptroller General shall update and resubmit the report to the appropriate congressional committees—

(1) on a date that is between 5 and 6 years after the date of the enactment of this Act; and

(2) on a date that is between 10 and 11 years after such date of enactment.

**SEC. 307. STUDY AND REPORT PHYSICAL CONDITION OF PUBLIC SCHOOLS.**

(a) **STUDY AND REPORT.**—Not less frequently than once in each 5-year period beginning after the date of the enactment of this Act, the Secretary, acting through the Director of the Institute of Education Sciences, shall—

(1) carry out a comprehensive study of the physical conditions of all public schools in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands; and

(2) submit a report to the appropriate congressional committees that includes the results of the study.

(b) **ELEMENTS.**—Each study and report under subsection (a) shall include—

(1) an assessment of—

(A) the effect of school facility conditions on student and staff health and safety;

(B) the effect of school facility conditions on student academic outcomes;

(C) the condition of school facilities, set forth separately by geographic region;

(D) the condition of school facilities for economically disadvantaged students as well as students from major racial and ethnic subgroups;

(E) the accessibility of school facilities for students and staff with disabilities;

(F) the prevalence of school facilities at which student enrollment exceeds the physical and instructional capacity of the facility and the effect of such excess enrollment on instructional quality and delivery of school wraparound services;

(G) the condition of school facilities affected by natural disasters;

(H) the effect that projects carried out with covered funds have on the communities in which such projects are conducted, including the vitality, jobs, population, and economy of such communities; and

(I) the ability of building envelopes and interiors of public school facilities to protect occupants from natural elements and human threats;

(2) an explanation of any differences observed with respect to the factors described in subparagraphs (A) through (H) of paragraph (1); and

(3) a cost estimate for bringing school facilities to a state of good repair, as determined by the Secretary.

#### **SEC. 308. DEVELOPMENT OF DATA STANDARDS.**

(a) DATA STANDARDS.—Not later than 120 days after the date of the enactment of this Act, the Secretary, in consultation with the officials described in subsection (b), shall—

(1) identify the data that States should collect and include in the databases developed under section 102(a)(2)(A)(ii);

(2) develop standards for the measurement of such data; and

(3) issue guidance to States concerning the collection and measurement of such data.

(b) OFFICIALS.—The officials described in this subsection are—

(1) the Administrator of the Environmental Protection Agency;

(2) the Secretary of Energy;

(3) the Director of the Centers for Disease Control and Prevention; and

(4) the Director of the National Institute for Occupational Safety and Health.

#### **SEC. 309. INFORMATION CLEARINGHOUSE.**

(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall establish a clearinghouse to disseminate information on Federal programs and financing mechanisms that may be used to assist schools in initiating, developing, and financing—

(1) energy efficiency projects;

(2) distributed generation projects; and

(3) energy retrofitting projects.

(b) ELEMENTS.—In carrying out subsection (a), the Secretary shall—

(1) consult with the officials described in section 308(b) to develop a list of Federal programs and financing mechanisms to be included in the clearinghouse; and

(2) coordinate with such officials to develop a collaborative education and outreach effort to streamline communications and promote the Federal programs

and financing mechanisms included in the clearing-house, which may include the development and maintenance of a single online resource that includes contact information for relevant technical assistance that may be used by States, outlying areas, local educational agencies, and Bureau-funded schools effectively access and use such Federal programs and financing mechanisms.

**SEC. 310. PROHIBITION ON USE OF FUNDS FOR FACILITIES OF FOR-PROFIT CHARTER SCHOOLS.**

No covered funds may be used for the facilities of a public charter school that is operated by a for-profit entity.

**SEC. 311. PROHIBITION ON USE OF FUNDS FOR CERTAIN CHARTER SCHOOLS.**

No covered funds may be used for the facilities of a public charter school if—

- (1) the school leases the facilities from an individual or private sector entity; and
- (2) such individual, or an individual with a direct or indirect financial interest in such entity, has a management or governance role in such school.

**SEC. 312. SENSE OF CONGRESS ON OPPORTUNITY ZONES.**

(a) FINDINGS.—The Congress finds as follows:

(1) Opportunity Zones were championed by prominent leaders of both parties as an innovative way to tackle longstanding challenges.

(2) As of December 2018, 8,763 low-income communities had been designated as Opportunity Zones, representing all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and American Samoa.

(3) Schools are integral parts of communities, and a key part of communities' economic and work force development efforts could be modernizing school facilities.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that opportunity zones, when combined with public infrastructure investment, can provide an innovative approach to capital financing that has the potential to unleash creativity and help local communities rebuild schools, rebuild economics, and get people back to work.

## **TITLE IV—IMPACT AID CONSTRUCTION**

**SEC. 401. TEMPORARY INCREASE IN FUNDING FOR IMPACT AID CONSTRUCTION.**

Section 7014(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7714(d)) is amended to read as follows:

“(d) CONSTRUCTION.—For the purpose of carrying out section 7007, there are authorized to be appropriated \$100,000,000 for each of fiscal years 2020 through 2024.”.

## **TITLE V—ASSISTANCE FOR REPAIR OF SCHOOL FOUNDATIONS AFFECTED BY PYRRHOTITE**

### **SEC. 501. ALLOCATIONS TO STATES.**

(a) **IN GENERAL.**—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary shall carry out a program under which the Secretary makes allocations to States to pay the Federal share of the costs of making grants to local educational agencies under section 502.

(b) **WEBSITE.**—Not later than 180 days after the date of enactment of this Act, the Secretary shall publish, on a publicly accessible website of the Department of Education, instructions describing how a State may receive an allocation under this section.

### **SEC. 502. GRANTS TO LOCAL EDUCATIONAL AGENCIES.**

(a) **IN GENERAL.**—From the amounts allocated to a State under section 501(a) and contributed by the State under subsection (e)(2), the State shall award grants to local educational agencies—

- (1) to pay the future costs of repairing concrete school foundations damaged by the presence of pyrrhotite; or
- (2) to reimburse such agencies for costs incurred by the agencies in making such repairs in the five-year period preceding the date of enactment of this Act.

(b) **LOCAL EDUCATIONAL AGENCY ELIGIBILITY.**—

(1) **ELIGIBILITY FOR GRANTS FOR FUTURE REPAIRS.**—

To be eligible to receive a grant under subsection (a)(1), a local educational agency shall—

(A) with respect to each school for which the agency seeks to use grant funds, demonstrate to the State that—

(i) the school is a pyrrhotite-affected school; and

(ii) any laboratory tests, core tests, and visual inspections of the school's foundation used to determine that the school is a pyrrhotite-affected school were conducted—

(I) by a professional engineer licensed in the State in which the school is located; and

(II) in accordance with applicable State standards or standards approved by any independent, non-profit, or private entity authorized by the State to oversee construction, testing, or financial relief efforts for damaged building foundations; and

(B) provide an assurance that—

(i) the local educational agency will use the grant only for the allowable uses described in subsection (f)(1); and

(ii) all work funded with the grant will be conducted by a qualified contractor or architect licensed in the State.

(2) ELIGIBILITY FOR REIMBURSEMENT GRANTS.—To be eligible to receive a grant under subsection (a)(2), a local educational agency shall demonstrate that it met the requirements of paragraph (1) at the time it carried out the project for which the agency seeks reimbursement.

(c) APPLICATION.—

(1) IN GENERAL.—A local educational agency that seeks a grant under this section shall submit to the State an application at such time, in such manner, and containing such information as the State may require, which upon approval by the State under subsection (d)(1)(A), the State shall submit to the Secretary for approval under subsection (d)(1)(B).

(2) CONTENTS.—At minimum, each application shall include—

(A) information and documentation sufficient to enable the State to determine if the local educational agency meets the eligibility criteria under subsection (b);

(B) in the case of an agency seeking a grant under subsection (a)(1), an estimate of the costs of carrying out the activities described in subsection (f);

(C) in the case of an agency seeking a grant under subsection (a)(2)—

(i) an itemized explanation of—

(I) the costs incurred by the agency in carrying out any activities described subsection (f);

(II) any amounts contributed from other Federal, State, local, or private sources for such activities; and

(ii) the amount for which the local educational agency seeks reimbursement; and

(D) the percentage of any costs described in subparagraph (B) or (C) that are covered by an insurance policy.

(d) APPROVAL AND DISBURSEMENT.—

(1) APPROVAL.—

(A) STATE.—The State shall approve the application of each local educational agency for submission to the Secretary that—

(i) submits a complete and correct application under subsection (c); and

(ii) meets the criteria for eligibility under subsection (b).

(B) SECRETARY.—Not later than 60 days after receiving an application of a local educational

agency submitted by a State under subsection (c)(1), the Secretary shall—

(i) approve such application, in a case in which the Secretary determines that such application meets the requirements of subparagraph (A); or

(ii) deny such application, in the case of an application that does not meet such requirements.

(2) DISBURSEMENT.—

(A) ALLOCATION.—The Secretary shall disburse an allocation to a State not later than 60 days after the date on which the Secretary approves an application under paragraph (1)(B).

(B) GRANT.—The State shall disburse grant funds to a local educational agency not later than 60 days after the date on which the State receives an allocation under subparagraph (A).

(e) FEDERAL AND STATE SHARE.—

(1) FEDERAL SHARE.—The Federal share of each grant under this section shall be an amount that is not more than 50 percent of the total cost of the project for which the grant is awarded.

(2) STATE SHARE.—

(A) IN GENERAL.—Subject to subparagraph (B), the State share of each grant under this section shall be an amount that is not less than 40 percent of the total cost of the project for which the grant is awarded, which the State shall contribute from non-Federal sources.

(B) SPECIAL RULE FOR REIMBURSEMENT GRANTS.—In the case of a reimbursement grant made to a local educational agency under subsection (a)(2) a State shall be treated as meeting the requirement of subparagraph (A) if the State demonstrates that it contributed, from non-Federal sources, not less than 40 percent of the total cost of the project for which the reimbursement grant is awarded.

(f) USES OF FUNDS.—

(1) ALLOWABLE USES OF FUNDS.—A local educational agency that receives a grant under this section shall use such grant only for costs associated with—

(A) the repair or replacement of the concrete foundation or other affected areas of a pyrrhotite-affected school in the jurisdiction of such agency to the extent necessary—

(i) to restore the structural integrity of the school to the safety and health standards established by the professional licensed engineer or architect associated with the project; and

(ii) to restore the school to the condition it was in before the school's foundation was

damaged due to the presence of pyrrhotite;  
and

(B) engineering reports, architectural design, core tests, and other activities directly related to the repair or replacement project.

(2) PROHIBITED USES OF FUNDS.—A local educational agency that receives a grant under this section may not use the grant for any costs associated with—

(A) work done to outbuildings, sheds, or barns, swimming pools (whether in-ground or above-ground), playgrounds or ballfields, or any ponds or water features;

(B) the purchase of items not directly associated with the repair or replacement of the school building or its systems, including items such as desks, chairs, electronics, sports equipment, or other school supplies; or

(C) any other activities not described in paragraph (1).

(g) LIMITATION.—A local educational agency may not, for the same project, receive a grant under both—

(1) this section; and

(2) title I.

#### **SEC. 503. DEFINITIONS.**

In this title:

(1) PYRRHOTITE-AFFECTED SCHOOL.—The term “pyrrhotite-affected school” means an elementary school or a secondary school that meets the following criteria:

(A) The school has a concrete foundation.

(B) Pyrrhotite is present in the school’s concrete foundation, as demonstrated by a petrographic or other type of laboratory core analysis or core inspection.

(C) A visual inspection of the school’s concrete foundation indicates that the presence of pyrrhotite is causing the foundation to deteriorate at an unsafe rate.

(D) A qualified engineer determined that the deterioration of the school’s foundation, due to the presence of pyrrhotite—

(i) caused the school to become structurally unsound; or

(ii) will result in the school becoming structurally unsound within the next five years.

(2) QUALIFIED CONTRACTOR.—The term “qualified contractor” means a contractor who is qualified under State law, or approved by any State agency or other State-sanctioned independent or nonprofit entity, to repair or replace residential or commercial building foundations that are deteriorating due to the presence of pyrrhotite.

**SEC. 504. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this title such sums as may be necessary for fiscal year 2020 and each fiscal year thereafter.

**PURPOSE AND SUMMARY**

H.R. 865, the *Rebuild America's Schools Act of 2019* supports the efforts of states and local educational agencies (LEAs) to achieve equity in school facilities and digital infrastructure, assists states in their role in creating safe and healthy schools, and improves regulation of, and data collection on the condition of public school facilities and the impact of such conditions on health and safety.

The *Rebuild America's Schools Act of 2019*, as amended, would authorize a \$100 billion federal investment in public school construction and modernization, creating more than 1.9 million good-paying jobs<sup>1</sup> over 10 years by addressing critical physical and digital infrastructure needs in communities nationwide.

Title I of the bill would authorize a grant program that targets federal support to high-poverty LEAs with public school facilities that pose health and safety risks to students and staff. It allocates to each state the same proportion of funds that the state receives under title I, part A of the *Elementary and Secondary Education Act of 1965* (ESEA Title I) and provides reservations of funds for the outlying areas and the Bureau of Indian Education (BIE). States must distribute 99 percent of such allocation to high-poverty LEAs based on their relative need to improve school facilities, while ensuring the distribution of subgrants is also geographically equitable within the state. LEAs receiving a subgrant are required to submit to their state a comprehensive 10-year facilities master plan. States must provide a 10 percent match and promulgate regulations to ensure healthy, safe, and high-performing school buildings both during and after construction. The bill also directs participating states to develop a comprehensive database on the condition of public school facilities, a data set that does not currently exist and will provide comprehensive, non-partisan insight on the state of America's public schools.

Title II proposes \$30 billion in tax-free bond authority to states, again allocated in proportion to state ESEA Title I program funds. As title II is not within the jurisdiction of the Committee, it is not discussed at length in this report.

Title III enumerates allowable uses of the grant and bond funds, prohibiting the funds from being spent on minor repairs, predictable or routine maintenance, vehicles, or athletic facilities for which admission is charged to the public. Provisions in title III encourage the use of green practices in construction, and, with a few exceptions, require construction projects to use American iron, steel, and manufactured products. The bill directs the Institute of Educational Sciences (IES) to carry out a national study on public school facilities and the impact of such facilities on students and staff. It also directs the Comptroller General to conduct a Government Accountability Office (GAO) audit on the condition of public

<sup>1</sup>JOSH BIVENS & HUNTER BLAIR, ECONOMIC POLICY INSTITUTE A PUBLIC INVESTMENT AGENDA THAT DELIVERS THE GOODS FOR AMERICAN WORKERS NEEDS TO BE LONG-LIVED, BROAD, AND SUBJECT TO DEMOCRATIC OVERSIGHT. 8 (2016) available at <https://www.epi.org/files/pdf/117041.pdf>. (calculating that each \$1 billion spent on construction creates 17,785 jobs).



school facilities and to produce recommendations to maximize the ability of under-resourced LEAs to access funds authorized under the bill.

Title IV of the bill authorizes five years of increased funding for Impact Aid school construction. Finally, title V authorizes federal grants to support states impacted by the presence of pyrrhotite, a ferrous mineral found in the concrete of certain regions of the United States causing significant damage to facilities, including public schools. Under the program, states could apply for grants in support of construction to restore the condition of any public school facility with a foundation compromised due to the presence of pyrrhotite. Funds under title V could also be used by states to reimburse LEAs for past construction on crumbling school foundations due to pyrrhotite impact. Grants distributed under title V require a state match of 40 percent of the project's total cost and are prohibited from covering more than 50 percent of the project's total cost.

A diverse array of stakeholders have called upon Congress to pass the *Rebuild America's Schools Act of 2019* to address our nation's crumbling education infrastructure. Such stakeholders include educators, parents, school administrators, laborers, experts in child development, health and safety experts, civil rights advocates, and more.<sup>2</sup>

## COMMITTEE ACTION

### 110TH CONGRESS

On July 12, 2007, Rep. Ben Chandler (D-KY), with original co-sponsors Rep. Dale Kildee (D-MI), and Chairman George Miller (D-CA), introduced H.R. 3021, the *21st Century High-Performing Public School Facilities Act*, a bill to direct the Secretary of Education to make grants and low-interest loans to LEAs for the construction, modernization, or repair of public kindergarten, elementary, and secondary educational facilities, and for other purposes.

On February 13, 2008, the Committee held a hearing in Washington, D.C. entitled "*Modern Public School Facilities: Investing in the Future.*" The purpose of the hearing was to highlight the poor quality of public school buildings throughout the United States, particularly in low-income areas, and the need for federal investment in public school buildings. Testifying before the full Committee on the first panel were: Representatives Chandler, Michael

<sup>2</sup>As of the filing of this report, supporters of H.R. 865 include: Tilt-Up Concrete Association, The School Superintendents Association, American Concrete Pavement Association, American Concrete Pipe Association, American Concrete Pressure Pipe Association, American Concrete Pumping Association, American Federation of State, County and Municipal Employees, Association for Supervision and Curriculum Development, Association of Educational Service Agencies, Association of Latino Administrators and Superintendents, Association of School Business Officials International, Blue Green Alliance, Build America's School Infrastructure Coalition, Californians for School Facilities, Coalition for Healthier Schools, Concrete Foundations Association, Concrete Reinforcing Steel Institute, International Union of Operating Engineers, International Union of Painters and Allied Trades, National Association of Elementary School Principals, National Association of Federally Impacted Schools, National Association of School Nurses, National Association of Secondary School Principals, National Concrete Masonry Association, National Precast Concrete Association, National PTA, National Ready Mixed Concrete, National Rural Education Association, National Urban League, North American Concrete Alliance, Organizations Concerned About Rural Education, Parents for School Safety, Portland Cement Association, Precast/Prestressed Concrete Institute, Public Advocacy for Kids, Rebuild America's Schools Coalition, Rural School and Community Trust, Teach Plus, The Brick Industry Association, U.S. Green Building Council, International Association of Sheet Metal, Air, Rail and Transportation Workers.

N. Castle (R–DE), Bob Etheridge (D–NC), David Loebsack (D–IA), Charles Boustany (R–LA), Darlene Hooley (D–OR), Steve King (R–IA) and Rush Holt (D–NJ). On the second panel, the Committee heard testimony from: Kathleen J. Moore, Director, School Facilities Planning Division, California Department of Education (Sacramento, California); Judi Caddick, Teacher, Memorial Junior High School, Illinois Education Association (Lansing, Illinois); Mary Cullinane, Director, Innovation and Business Development Team, Microsoft Corporation (New York, New York); Dr. Paula Vincent, Superintendent, Clear Creek Amana School District (Oxford, Iowa); Paul Vallas, Superintendent, Louisiana Recovery School District (New Orleans, Louisiana); Jim Waters, Director, Policy and Communications, Bluegrass Institute for Public Policy Solutions (Bowling Green, Kentucky); and Neal McCluskey, Associate Director, Center for Educational Freedom, CATO Institute (Washington, D.C.).

On April 30, 2008, the Committee considered H.R. 3021 in a legislative session, and reported the bill favorably, as amended, to the House of Representatives by a vote of 28–19. The House of Representatives passed H.R. 3021 on June 4, 2008, by a bipartisan vote of 250–164. The bill was messaged to the Senate and referred to the Senate Committee on Health, Education, Labor and Pensions. The Senate took no further action on the bill.

#### *Related Legislative Action*

On September 26, 2008, by a bipartisan vote of 265–158, the House passed H.R. 7110, the *Job Creation and Unemployment Relief Act of 2008*, introduced by Representative David Obey (D–WI), Chairman of the Committee on Appropriations. H.R. 7110 appropriated \$3 billion for public school modernization, renovation and repair, modeled after the provisions in title I of H.R. 3021. The Senate took no further action on the bill.

#### 111TH CONGRESS

On January 28, 2009, the House passed H.R. 1, the *American Recovery and Reinvestment Act* (ARRA), introduced by Chairman Obey. H.R. 1 appropriated \$14 billion for public school modernization, renovation and repair, modeled after provisions in title I of H.R. 3021 (110th Congress). On February 12, 2009, the House passed the Conference Report to H.R. 1. While the Conference Report did not include dedicated funds for public school modernization, renovation and repair, title XIV of the Conference Report authorized the State Fiscal Stabilization Fund, \$48.6 billion for states and LEAs, which included public school modernization, renovation and repair (including modernization, renovation and repair that complies with a recognized green building standard) as authorized uses. The Conference Report also maintained provisions in H.R. 1 that authorized a multi-billion dollar qualified school construction bond authority for school construction and modernization. ARRA was signed into law by President Obama on February 17, 2009.

On April 30, 2009, Representative Chandler, Chairman Miller, and fifteen other members of the Committee<sup>3</sup> introduced H.R.

<sup>3</sup> Reps. Kildee, Loebsack (D–IA), John Tierney (D–MA), Joe Courtney (D–CT), Phil Hare (D–IL), Holt, Rob Andrews (D–NJ), Raul Grijalva (D–AZ), Pedro Pierluisi (D–PR), Lynn Woolsey

2187, the *21st Century Green High-Performing Public School Facilities Act*. This bill, which was substantively similar to H.R. 3021 (110th Congress), directed the Secretary of Education to make grants and low-interest loans to LEAs for the modernization, renovation, or repair of public early learning, kindergarten, elementary, and secondary educational facilities, and for other purposes.

On May 6, 2009, the Committee considered H.R. 2187 in a legislative session, and reported the bill favorably, as amended, to the House of Representatives by a vote of 31–14. The House of Representatives passed H.R. 2187 on May 14, 2009, by a bipartisan vote of 275–155. The bill was messaged to the Senate and referred to the Senate committee on Health, Education, Labor, and Pensions. The Senate took no further action on the bill.

#### 115TH CONGRESS

On May 17, 2017, the 63rd anniversary of the U.S. Supreme Court's landmark decision in *Brown v. Board of Education of Topeka*,<sup>4</sup> Ranking Member Bobby Scott (D–VA) and Rep. Donald Norcross (D–NJ) along with 57 other House colleagues (including nine Committee members<sup>5</sup>), introduced H.R. 2475, the *Rebuild America's Schools Act of 2017*. The bill was referred to the Committee, and Ranking Member Scott requested a legislative hearing on the state of public school facilities in a letter to Committee Chairwoman Virginia Foxx (R–NC).

On January 17, 2018, Ranking Member Scott and House Committee on Transportation and Infrastructure Ranking Member Peter DeFazio (D–OR) led 153 House colleagues in sending a letter to President Trump urging him to make federal investment in school construction a focal point of any federal infrastructure package considered for passage.

On October 23, 2018, Ranking Member Scott again wrote to Chairwoman Foxx urging her to hold a hearing on H.R. 2475 before the end of the 115th Congress. No hearing was held.

#### 116TH CONGRESS

On January 30, 2019, Chairman Scott along with Rep. Norcross and 151 other original co-sponsors (including all Democratic members of the Committee), introduced H.R. 865, the *Rebuild America's Schools Act of 2019*. The bill's authorization of a \$100 billion investment in public school facilities in the form of grants and bonds would leverage an additional \$7 billion in state funding for an overall investment of \$107 billion that would generate 1.9 million good-paying jobs over 10 years.

On February 12, 2019, the Committee held a hearing in Washington, D.C., entitled “*Underpaid Teachers and Crumbling Schools: How Underfunding Public Education Shortchanges America's Students*.” The purpose of the hearing was to highlight the poor quality of public school infrastructure across the country, especially in low-income communities, and to inform Committee members on

(D–CA), David Wu (D–OR), Paul Tonko (D–NY), Jared Polis (D–CO), Mazie Hirono (D–HI), and Kili Sablan (D–MP).

<sup>4</sup>347 U.S. 483 (1954).

<sup>5</sup>Reps. Sablan, Adriano Espaillat (D–NY), Suzanne Bonamici (D–OR), Alma Adams (D–NC), Frederica Wilson (D–FL), Marcia Fudge (D–OH), Lisa Blunt Rochester (D–DE), Mark Takano (D–CA), and Mark DeSaulnier (D–CA).

how recent cuts to public education, in combination with historic underfunding of public education, have resulted in LEAs that do not have the resources to provide a quality education to all students. Such underfunding contributes to an average gap of \$46 billion between what the U.S. spends on K–12 facilities every year and what should be spent according to building industry and best-practice standards.<sup>6</sup> Testifying before the Committee were Dr. Sharon Contreras, Superintendent, Guilford County Schools, North Carolina; Anna King, Board Member, National PTA, Oklahoma City, Oklahoma; Randi Weingarten, President, American Federation of Teachers, Washington, D.C.; and Dr. Ben Scafidi, Professor of Economics and Director, Education Economics Center, Kennesaw State University, Kennesaw, Georgia.

On February 26, 2019 the Committee considered H.R. 865 in legislative session, and reported the bill favorably, as amended, to the House of Representatives by a vote of 26–20. The Committee considered and adopted the following amendments to H.R. 865:

- Chairman Scott offered a manager’s amendment, adopted by voice vote, which made several improvements to H.R. 865, including:

- Adding a new definition of a “zero energy school” to highlight schools that both use and produce their own sources of renewable energy;
- Clarifying language on the allocation of funds;
- Adding requirements for the inclusion of existing toxin tests in the state database of public school facilities required in the bill;
- Adding to the list of approved statewide activities the promulgation or review of regulations related to the exposure to lead-based paint and other combustion by-products to ensure the health and safety of students; the promulgation or review of building codes for public schools construction; and the development of a plan to increase the number of zero energy schools in the state;
- Amending state maintenance of effort requirements in the bill to be based on an average of the previous five fiscal years;
- Requiring that the state establish thresholds for determining LEA eligibility for funds authorized under title I of the bill;
- Adding comparison factors states must consider in giving priority for subgrants to LEAs based on the greatest need, including age of facilities, overcrowding conditions, the condition of major building systems (e.g., HVAC, electrical, water, and sewer systems), the condition of roofs, windows, and doors, and other critical health and safety conditions on school property;
- Allowing a state to consider a school’s proximity to a “brownfield site”, an area where expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant, when prioritizing schools near toxic areas;

<sup>6</sup>U.S. GREEN BUILDING COUNCIL, 21ST CENTURY SCHOOLS FUND, & NATIONAL COUNCIL ON SCHOOL FACILITIES, THE STATE OF OUR SCHOOLS: AMERICA’S K–12 FACILITIES REPORT 26 (2016) available at <https://www.usgbc.org/articles/groundbreaking-schools-report-shows-systemic-in-equity-statebystate-analysis-investment-amer>.

- Clarifying that BIE should consult with BIE-funded schools in developing facilities master plans; and
- Requiring that data measurements on projects included in the annual grant report by the Secretary of Education be aligned to the latest measurements in the Common Education Data Standards by the National Center for Education Statistics (NCES).
- Rep. Frederica Wilson (D-FL) offered an amendment to clarify that improving school security through building design plans is an allowable use of funds. The amendment was adopted by voice vote.
- Rep. Lucy McBath (D-GA) offered an amendment to add the study of school security to the Institute of Education Sciences (IES) report required in the bill. The amendment was adopted by voice vote.
- Rep. Raul Grijalva (D-AZ) offered an amendment to prohibit for-profit charter schools from accessing funds authorized under the Act. The amendment was adopted by a recorded vote of 26–20.
- Rep. Jahana Hayes (D-CT) offered an amendment to prohibit self-dealing charter schools from accessing the funds authorized under the Act. The amendment was adopted by a voice vote.
- Rep. Dan Meuser (R-PA) offered an amendment expressing the sense of Congress that Opportunity Zones are an alternative source to support school infrastructure financing. Rep. Haley Stevens (D-MI) offered an amendment to Mr. Meuser's amendment expressing the sense of Congress that Opportunity Zones can help rebuild communities when combined with public infrastructure investment. The Stevens amendment to the Meuser amendment was adopted by a recorded vote of 42–1. The Meuser amendment was adopted by a voice vote.

The Committee also considered the following amendments:

- Rep. Glenn Thompson (R-PA) offered an amendment proposing that no funds authorized under the Act be made available in any fiscal year unless part B of the Individuals with Disabilities Education Act (IDEA) was fully funded for that same year. The amendment was ruled non-germane to H.R. 865, and a motion to appeal the ruling of the chair was tabled by a recorded vote of 23–19.
- Rep. Rick Allen (R-GA) offered an amendment proposing that nothing in the Act could be construed to prohibit a State or LEA from receiving funds under the Act based on a decision to permit teachers or other school personnel to possess firearms on school grounds. The amendment was ruled non-germane to H.R. 865, and a motion to appeal the ruling of the chair was tabled by a recorded vote of 28–17.
- Rep. Elise Stefanik (R-NY) offered an amendment requiring the reservation of funds for rural LEAs. The amendment was defeated on a recorded vote of 20–26.
- Rep. Jim Banks (R-IN) offered an amendment to delay authorization of funds until all other programs within the jurisdiction of the Committee are authorized. The amendment was withdrawn.
- Rep. James Comer (R-KY) offered an amendment to delay expenditure of funds authorized under the Act until an independent auditor determined that state and local agencies will incur no compliance costs related to the Act. The amendment was defeated on a recorded vote of 20–26.

- Rep. Banks offered an amendment to ban funds authorized by the act from being used for lobbying activities. The amendment was defeated on a voice vote.
- Rep. Ron Wright (R-TX) offered an amendment to condition a State's receipt of funds under the Act on an assurance the State would not award a grant to any LEA that does not have a policy prohibiting the hiring of registered sex offenders. The amendment was ruled non-germane to H.R. 865, and a motion to appeal the ruling of the chair was tabled by a recorded vote of 24–14.
- Rep. Glenn Grothman (R-WI) offered an amendment to delay implementation until the Environmental Protection Agency (EPA) certifies “green requirements” in the Act will not result in cost incurred by school districts. The amendment was defeated on a recorded vote of 20–26.
- Ranking Member Foxx offered an amendment to rename the bill the “Trojan Horse Act”. The amendment was defeated on a recorded vote of 20–26.

#### COMMITTEE VIEWS

The federal government has played a pivotal role over the last 75 years in making our nation's inherently inequitable public education system more equitable. During this same period, the federal government has periodically provided funds to states and localities for school construction, both to improve equity of educational opportunity and to promote economic stimulus. H.R. 865, the *Rebuild America's Schools Act of 2019*, is an opportunity to reaffirm the federal government's position at the nexus of these two roles. If passed and funded, the bill would provide resources to ensure that all public school students have an opportunity to learn in a safe, healthy, and high-quality school facility, while at the same time creating almost two million jobs.

#### *H.R. 865 Addresses Persistent Inequity in Public Education Facilities*

Compulsory public education in America proliferated during an era of *de jure* segregation. *Plessy v. Ferguson*<sup>7</sup> sanctioned the maintenance of “separate but equal” public facilities in 1896, a sanction applied in the following decades to the then-emerging public school system. While the Supreme Court in *Brown v. Board of Education of Topeka* that rightfully concluded racially segregated schools inherently cannot be equal,<sup>8</sup> the notion that Black and white public school facilities were ever substantially equal was a legal fiction. A pre-*Brown* report from the American Council on Education in 1941 describes the state of a typical Black schoolhouse in Alabama:

It is in a dilapidated building, once whitewashed, standing in a rocky field unfit for cultivation. Dust-covered weeds spread a carpet all around, except for an uneven, bare area on one side that looks like a ball field. Behind the school is a small building with a broken, sagging door. As we approach, a nervous, middle-aged woman comes to the door of the school. She greets us in a discouraged voice marked by a speech impediment. Escorted inside, we ob-

<sup>7</sup> 163 U.S. 537 (1896).

<sup>8</sup> *Brown*, 347 U.S. at 495.

serve that the broken benches are crowded to three times their normal capacity. Only a few battered books are in sight, and we look in vain for maps or charts. We learn that four grades are assembled here.<sup>9</sup>

Ten years after *Brown*, many school districts across the South had failed to fully integrate, leaving many students stuck in the same inferior school buildings, and in some cases no school buildings whatsoever.<sup>10</sup> Recognizing a constitutional duty to remedy inequality and inequity, President Lyndon Johnson and Congress solidified the federal role in public education as an arbiter of equity, first with the Civil Rights Act of 1964,<sup>11</sup> and subsequently with the *Elementary and Secondary Education Act of 1965* (ESEA).<sup>12</sup> The *Civil Rights Act of 1964* gave the federal government the legal tools to realize the promise of *Brown*. The law gave the federal government the power to enforce desegregation plans in local school districts under threat of federal sanction, but also authorized grants to support desegregation in communities that took voluntary action.<sup>13</sup> ESEA sought to close opportunity and achievement gaps in public education through grants which targeted resources and services to communities with high concentrations of poverty. This poverty fueled low-quality schools and school buildings due to inequitable public education financing systems,<sup>14</sup> many of which still persist. Since most communities fund their public school systems via property taxes,<sup>15</sup> wealthier communities with higher property tax bases invariably are able to provide more resources for their educational facilities. Communities surrounding schools continue to be largely homogenized by wealth, or the significant lack thereof, due in large part to the impact of local, state, and federal housing policies intended to segregate white from nonwhite families. These policies continue to deny nonwhites access to asset accumulation and upward mobility, and have corresponding effects on the school buildings in these communities as well.<sup>16</sup>

Simply put, students in wealthy communities have better-resourced school infrastructure, which in turn prepares them better for long-term success. Students in poor communities disproportionately attend under-resourced schools. Studies show the highest poverty school districts in the country spend about \$1,000 (seven per-

<sup>9</sup>PETER IRONS, *JIM CROW'S CHILDREN* 34 (1st ed. 2002).

<sup>10</sup>*E.g.*, CHARLES OGLETREE, *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF BROWN V. BOARD OF EDUCATION* Ch. 8 (“In fact, the southern segregated school system remained almost completely segregated for a full decade after *Brown*. By 1964, only one-fiftieth of all southern Black children attended integrated schools.”).

<sup>11</sup>Pub. L. 88–352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000a et seq.(2012)).

<sup>12</sup>Pub. L. 89–10, 79 Stat. 27 (codified as amended at 20 U.S.C. § 6301(2012)).

<sup>13</sup>42 U.S.C. § 2000c (2012).

<sup>14</sup>*E.g.*, Jeff Raikes & Linda Darling-Hammond, *Money Matters: Why Our Education Funding systems Are Derailing the American Dream*, LPI BLOG (Feb. 18, 2019), <https://learningpolicyinstitute.org/blog/why-our-education-funding-systems-are-derailing-american-dream>.

<sup>15</sup>Andrew Reschovsky, *The Future of U.S. Public School Revenue from the Property Tax 1* (LINCOLN INST. OF LAND POLICY, 2017) available at <https://www.lincolnst.edu/sites/default/files/pubfiles/future-us-public-school-revenue-policy-brief-0.pdf>.

<sup>16</sup>Angela Hanks, et al., *Systematic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap*, CTR. FOR AM. PROGRESS (Feb. 21, 2018, 9:03 am), <https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/>; see generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017) (describing the legacy of local, state, and federal policy in creating segregated neighborhoods throughout the United States, including the systemic destruction of integrated neighborhoods, and the subsidization of suburbs which denied land sale to African-Americans through restrictive covenants).

cent) less per student than the lowest poverty school districts.<sup>17</sup> Research also demonstrates that those disparities are significant along racial lines. School districts that serve mostly students of color receive about \$1,800 (13 percent) per pupil less than those serving mostly white students.<sup>18</sup> Students in these better-resourced schools have a better chance at graduating from high school and ultimately obtaining a college degree.<sup>19</sup> This is particularly troubling since students from low-income communities stand to benefit the most from graduating from high school and college. Students from families in the lowest quintile of income have a 90 percent chance of climbing the income ladder if they graduate from college.<sup>20</sup> To make it that far, they must first have a strong K–12 foundation, and sadly the deck is stacked against them.

States have proven unable to solve the problem of educational equity by themselves. While state-level public education financing formulas often send more funding to lower-wealth communities than to high-wealth communities, this distribution is not enough to close the resource gap between localities in most states. And, in some states, state financing formulas actually exacerbate the existing inequities.<sup>21</sup> The federal investment of ESEA sought to level the playing field and provide the equal opportunity promised by the Fourteenth Amendment, and the *Civil Rights Act of 1964* ensured that discriminating with the new federal funds would be illegal.<sup>22</sup> While the federal government has put substantial resources into making classroom instruction funding more equitable, it has not brought that same focus to ensuring that physical classrooms and schools themselves are equitable for all students.

Decades after the *Brown* decision and the enactment ESEA, public school infrastructure spending remains a source of education inequity. Low-wealth communities that have difficulty providing adequate funding for school operations can neither raise the funds necessary to keep pace with building modernization needs nor adequately accommodate growing student populations, relegating children to outdated and sometimes hazardous public school facilities. The most recent Government Accountability Office (GAO) report on this issue, released in 1996, determined that poor school facility conditions were most concentrated in high-poverty schools that serve students of color.<sup>23</sup> A 2006 Building Education Success Together report found that high-poverty school systems are unable to adequately invest in school facilities.<sup>24</sup> Districts that predomi-

<sup>17</sup> Ivy Morgan & Ary Amerikaner, *An Analysis of School Funding Equity Across the U.S. and Within Each State*, EDUC. TRUST (Feb. 27, 2018), <https://edtrust.org/resource/funding-gaps-2018/>.

<sup>18</sup> *Id.*

<sup>19</sup> Michael Mitchell et al., *Unkept Promises: State Cuts to Higher Education Threaten Access and Equity*, CTR. ON BUDG. & POL'Y PRIORITIES (Oct. 4, 2018), <https://www.cbpp.org/research/state-budget-and-tax/unkept-promises-state-cuts-to-higher-education-threaten-access-and>.

<sup>20</sup> PEW CHARITABLE TRUSTS, PURSUING THE AMERICAN DREAM: ECONOMIC MOBILITY ACROSS GENERATIONS 25 (2012), available at [https://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/economic\\_mobility/pursuingamericandreampdf.pdf](https://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/economic_mobility/pursuingamericandreampdf.pdf).

<sup>21</sup> U.S. COMM'N ON C.R., PUBLIC EDUCATION FUNDING INEQUITY IN AN ERA OF INCREASING CONCENTRATION OF POVERTY AND RESEGREGATION 14 (2018), available at <https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf>.

<sup>22</sup> 42 U.S.C. § 2000d (2012) (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

<sup>23</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO/HEHS-96-103, SCHOOL FACILITIES: AMERICA'S SCHOOLS REPORT DIFFERING CONDITIONS 18 (1996).

<sup>24</sup> BUILDING EDUCATIONAL SUCCESS TOGETHER, GROWTH AND DISPARITY: A DECADE OF U.S. PUBLIC SCHOOL CONSTRUCTION 20–21 (October 2006), available at <http://www.21csf.org/csf-home/publications/best-growth-disparity-2006.pdf>.



nantly serve white students spend nearly 50 percent more on capital construction than those that predominantly serve students of color, and wealthy districts spend nearly triple the amount their high-poverty counterparts do.<sup>25</sup>

While state spending has sometimes made a positive difference when it comes to inequity in school operations, that is rarely the case when it comes to school construction. Half of states contribute little to nothing toward the cost of capital school construction: 12 states actually contribute nothing, and 13 states contribute between only one and nine percent of costs.<sup>26</sup> Federally-impacted schools, including schools on or near military bases, reservation lands, and public housing facilities face a dire infrastructure need as well, with even fewer resources to rely on due to the lack of taxable property to fund schools. According to a recent report, these schools face a \$13 billion backlog in school construction needs, \$4 billion of which is considered a “pressing need”.<sup>27</sup> Congress has a responsibility to address this persistent critical gap; every day of inaction maintains a system that not only fails to provide quality education infrastructure for all students, but also disproportionately impacts the quality of education for students of color.

To fight the persistent inequity in school facilities, provisions of H.R. 865 ensure that funds authorized for school construction, rehabilitation, and modernization are allocated equitably. This begins by allocating funds authorized by title I of the bill (\$70 billion over 10 years) proportional to state allocations under ESEA Title I. To ensure equitable distribution of funds to LEAs within each state, the bill requires that states subgrant to LEAs that are among those with either the highest *number or percentage* of low-income students. The Committee intends this provision to give the state the power to make subgrants both to LEAs that serve large populations of low-income students (often LEAs serving densely populated urban areas) and districts that serve high concentrations of low-income students (often LEAs serving less-densely populated rural areas). The legislation’s goal of intrastate equity is also furthered by the requirement that a participating state award subgrants to a geographically diverse slate of LEAs.

#### *Federal Government’s Historic Role in School Construction*

Over the last century, the federal government has either directly or indirectly provided billions of dollars to states and LEAs for new public school construction and the rehabilitation and modernization of existing public schools. The effects of these federal programs can last decades, even when a period of investment in public school facilities is relatively short-lived. A one-time investment in school construction as envisioned by the *Rebuild America’s Schools Act of 2019* has the potential to improve the trajectory of public education outcomes in America for generations to come.

<sup>25</sup> *Id.* at 21–24.

<sup>26</sup> Aline Althen, *2016 State of Our Schools: America’s K–12 Facilities*, CTR FOR GREEN SCHS. (Mar. 23, 2016), <https://centerforgreenschools.org/infographic-2016-state-our-schools-americas-k-12-facilities>.

<sup>27</sup> Letter from National Association of Federally Impacted Schools to Rep. Bobby C. Scott and Sen. Jack Reed in support of the Rebuild America’s Schools Act, (Feb. 25, 2019) *available at* <https://edlabor.house.gov/imo/media/doc/NAFIS%20Mark%20up%20Support%20Rebuild%20Americas%20Schools%20Act.pdf>.

While it is outside the committee's jurisdiction, indirect federal spending on public school infrastructure via the federal tax code is too large to be ignored. Since 1913, federal law has given favorable tax treatment to state and local municipal bonds, bonds often used to fund public school construction.<sup>28</sup> By exempting interest paid on these bonds from taxable income, the federal government has made these bonds an attractive investment vehicle, incentivizing billions of dollars in public school infrastructure investment, and forgoing billions of dollars in federal tax revenue in the process. As recently as 2009, the Congress acted to create new bond authority specifically for school construction. The *American Reinvestment and Recovery Act* created Qualified School Construction Bonds (QSCBs). The federal government issued up to \$22 billion in bond authority to states over two years.<sup>29</sup> In effect, QSCBs operated as an interest-free loan to LEAs because the federal government covered 100 percent of the interest paid to the bondholder. While many communities took advantage of the bonds, communities with the least ability to raise funds (the highest poverty LEAs) were not able to use the bonds due to their inability to raise the principal and repay the bond, even though the interest would have been paid by the federal government. In the history of federal spending on school construction, indirect spending via the tax code has been the tool most often used, and regrettably, the least equitable one. Reliance on indirect investment in public school facilities via the tax code has widened the opportunity gap between high-poverty and wealthier school districts.

H.R. 865 recognizes that making investment in public school infrastructure more affordable through tax-friendly benefits can help districts with the means to take advantage of such tools both defray costs and budget for school construction more effectively. Title II of the bill includes tax incentives designed to result in \$30 billion for public school construction, modernization and rehabilitation. This title is within the jurisdiction of the Committee on Ways and Means and was not considered by this Committee during legislative session on H.R. 865.

Recognizing that it will take more than tax incentives to fix our public school infrastructure gap, H.R. 865 authorizes \$70 billion in grant aid to states and LEAs. The scope of investment envisioned in H.R. 865 harkens back to the last large-scale effort to provide federal grant funding for public school facilities: the New Deal.

The New Deal's comprehensive response to the Great Depression included the funding of thousands of local public works projects paid for with federal funds, including public schools. In the first year of the New Deal, the Civil Works Administration (CWA) rehabilitated or constructed 30,000 schools.<sup>30</sup> While local labor was employed in the process, the buildings were constructed directly by funds from the federal government. The follow-up to the CWA, the Works Progress Administration (WPA) lasted from 1935–43. During that time, the WPA constructed more than 5,900 school buildings and over 2,100 additions to existing school buildings. The WPA also constructed over 1,800 (and improved over 8,200) public

<sup>28</sup> CASSANDRIA DORTCH, CONG. RESEARCH SERV. R41142, SCHOOL CONSTRUCTION AND RENOVATION: A REVIEW OF FEDERAL PROGRAMS 3 (2013).

<sup>29</sup> 26 U.S.C. § 54F (2012) (repealed 2017).

<sup>30</sup> FEDERAL WORKS AGENCY, FINAL REPORT ON THE WPA PROGRAM, 1935–1943 4 (1946).

school playgrounds,<sup>31</sup> and renovated or modernized over 31,000 public school buildings.<sup>32</sup> WPA school projects were funded through a combination of federal grant and/or loan funds, usually coupled with a local share. Many of the schools built with WPA funds during the New Deal are still in use today as schools or school-related facilities. There is no comprehensive list of all the schools built with New Deal funds that are still open and operating as schools, but the following facilities are still open and operating in districts represented by members of the Committee:<sup>33</sup>

- Herbert Hoover High School, San Diego, CA
- Avondale Elementary School (now an administration building), Avondale, AZ
- Grossmont High School, El Cajon, CA
- Lyme Consolidated School, Lyme, CT
- McAlister Intermediate School, Suffield, CT
- Near West Intergenerational School, Cleveland, OH
- Acalanes High School, Lafayette, CA
- All City High School, Rochester, NY
- Pen Argyl Area High School, Pen Argyl, PA
- Burbank Elementary School, Modesto, CA
- Enslen Elementary School, Modesto California
- Wilson Elementary School, Modesto, CA
- Meridian Elementary School, Kent, WA
- Ranier School, Buckley, WA
- Housatonic Valley Regional High School, Falls Village, CT
- Thomaston Center School, Thomaston, CT
- Canton Intermediate School, Canton, CT
- Shenandoah Middle School, Miami, FL
- Coral Way School, Miami, FL
- Fort Hill High School, Cumberland, MD
- Tennessee High School, Bristol, TN
- Farnsworth Middle School, Sheboygan, WI
- Keene Central School, Keene Valley, NY
- J.P. McCaskey High School, Lancaster, PA
- Lawsonville Avenue Elementary School, Reidsville, NC
- Frances School Gymnasium, Marion, KY
- Canyon Springs High School, Caldwell, ID
- New York Elementary School, Lawrence, KS
- Kookan School, Arlington, TX
- Williams Middle School, Sturgis, SD

An \$100 billion investment in public school facilities is long overdue. While there have been attempts at the federal level to provide direct investment in school infrastructure in recent years, most have not been successful. Congress authorized more than \$200 million for public school construction, modernization and repair in the 1994 reauthorization of ESEA, but never appropriated money to

<sup>31</sup>*Id.* at 50. H.R. 865 includes as allowable uses of grant funds the construction, modernization, renovation and retrofitting of public playgrounds and playground on public school facilities as an eligible use of funds, noting the proven benefits of recreation both to student health and academic success.

<sup>32</sup>*Id.* at 52.

<sup>33</sup>This list is not exhaustive. No official record currently exists of schools built using New Deal funds that are still in use as schools. The list does not include New Deal projects that were solely renovations or improvements to existing buildings, like murals or athletic fields. There are many New Deal school buildings that are still in use but not for educational purposes; New Deal schools in Committee member districts have been converted to local government buildings, senior living facilities, and town halls. THE LIVING NEW DEAL, <http://livingnewdeal.org> (last visited Oct. 21, 2019).

the program.<sup>34</sup> In 2001, Congress appropriated \$1.2 billion for public school facility renovation and repairs and ensured distribution to low-wealth, rural, and federally-connected schools.<sup>35</sup> In 2009, House Democrats tried unsuccessfully for the inclusion of public school infrastructure grant funds in the American Recovery and Reinvestment Act. While \$14 billion in grant funds for the repair, modernization, and renovation of public schools were included in the House-passed bill (H.R. 1), the provisions were stripped in Conference with the Senate. Typically, “infrastructure” is limited to federal buildings, roads, tunnels, bridges and water products. Under ESEA, the use of funds for schools must be explicit since the law expressly prohibits the use of funds on construction unless specifically authorized.

Since 2009, as states have slowly recovered from the Great Recession, the need for federal investment in public school construction has only grown. Half of states spend less on education now than they did before the Recession.<sup>36</sup> As AFT President Randi Weingarten noted in her testimony before the Committee, during the 2018 midterm elections, voters in 77 school districts voted to pass referendums “to enable school districts to borrow money for capital projects or exceed their state-mandated revenue limits to maintain or expand programming” signaling both the overall need and the limited financial backing with which to accomplish that goal.

The unmet need for capital investments is not merely a philosophical debate about federalism. As long as states maintain these inequitable funding systems, wealthy, primarily white neighborhoods will continue to fund high-quality schools, and non-wealthy, primarily communities of color, will continue to struggle to fund their schools to parity even with additional help from state and federal funding. Proponents of returning sole education funding responsibility to the states cannot deny the fact that in more than half of states, the least-wealthy school districts especially those that primarily serve students of color, still receive less funding—about \$1,800 less per student.<sup>37</sup> Increasingly, citizens are holding their state governments accountable; there are currently 12 states facing lawsuits for inadequate or inequitable education funding.<sup>38</sup>

Inequitable school funding is not simply a question of fairness on paper. It creates life-long consequences that bar individual economic independence and dignity that every American should know. In the face of overwhelming evidence that wealthy schools produce results for their students and non-wealthy schools do not, it is the Committee view that Congress keep its promise to close the gap on quality and equality. School funding makes a marked difference in the quality of education a student receives—better course offerings, smaller class size, more-qualified teachers, and environments con-

<sup>34</sup> CASSANDRIA DORTCH, CONG. RESEARCH SERV. R41142, SCHOOL CONSTRUCTION AND RENOVATION: A REVIEW OF FEDERAL PROGRAMS 3–4 (2013).

<sup>35</sup> *Id.* at 4.

<sup>36</sup> AMERICAN FEDERATION OF TEACHERS, A DECADE OF NEGLECT, PUBLIC EDUCATION FUNDING IN THE AFTERMATH OF THE GREAT RECESSION 2 (2018) available at <https://www.aft.org/sites/default/files/decade-of-neglect-2018.pdf>.

<sup>37</sup> Morgan & Amerikaner, *supra* note 17, at 4.

<sup>38</sup> Courtney Sanders, *These 12 States Are Being Sued for not Funding Schools Equitably*, EDUC. POST (May 16, 2018), <https://educationpost.org/these-12-states-are-being-sued-for-not-funding-schools-equitably/>. The states are: Arizona, Arkansas, Delaware, Florida, Iowa, Kansas, New Mexico, New York, North Carolina, Pennsylvania, Tennessee, and Washington.

ducive for learning. As funding gaps persist, so do gaps in school infrastructure quality. A federal response is necessary as this problem has real world implications not only for equity in education offerings but also for the health and safety of students and teachers nationwide.

*H.R. 865 Addresses Unsafe Learning and Working Conditions and Other Deficits Caused by Inadequate School Infrastructure Funding*

On any given school day, nearly one-sixth of Americans spends time in one of our country's approximately 100,000 public K–12 school facilities.<sup>39</sup> On average these facilities are nearly 50 years old.<sup>40</sup> While these statistics are nationwide averages, we know that facilities in need of repair are concentrated in high-poverty school districts. Additionally, a growing body of research shows that high-quality facilities help improve academic achievement, reduce student and staff absences, and reduce suspensions.<sup>41</sup> As the setting for learning, public school facility conditions either hinder or help student performance.<sup>42</sup> Despite the positive effects of adequate facilities, far too many children and adults continue to learn and work in public schools that are unsafe and unhealthy.

It is well-documented that our nation's public school facilities pose significant health and safety threats to many of the more than 50 million students and 6 million teachers.<sup>43</sup> Despite an expanding research base to improve understanding of how health quality affects student learning, not much has changed at the state level to ensure healthy school buildings. The 1996 GAO report found that more than 15,000 public schools were circulating air unfit to breathe.<sup>44</sup> Low air circulation has been linked to missed school days for respiratory infections and asthma exacerbation and increased student visits to the nurse.<sup>45</sup> Time has not significantly improved such deplorable conditions. More than 20 years after the GAO audit, reports of poor air quality in schools persist.<sup>46</sup> According to a 2014 CDC report, less than half of the country's schools

<sup>39</sup> MARY FILARDO & JEFFREY VINCENT, ADEQUATE & EQUITABLE U.S. PK–12 INFRASTRUCTURE: PRIORITY ACTIONS FOR SYSTEMIC REFORM, (PK–12 School Infrastructure National Initiative, 2017), available at <http://www.centerforgreenschools.org/sites/default/files/resource-files/infrastructure-priority-actions-report.pdf>.

<sup>40</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO/HEHS–95–61, SCHOOL FACILITIES: CONDITION OF AMERICA'S SCHOOLS (1995), available at <https://www.gao.gov/assets/230/220864.pdf>.

<sup>41</sup> E.g., CTR. FOR EVAL. & POL'Y ANAL., PENN STATE UNIVERSITY, THE IMPORTANCE OF SCHOOL FACILITIES IN IMPROVING STUDENT OUTCOMES (June 2015) available at <https://sites.psu.edu/ceepa/2015/06/07/the-importance-of-school-facilities-in-improving-student-outcomes/>; Mark Schneider, *Do School Facilities Affect Academic Outcomes?*, NAT'L CLEARINGHOUSE FOR EDUC. FACILITIES (Nov. 2002), <http://www.ncef.org/pubs/outcomes.pdf>.

<sup>42</sup> The Center for Green Schools, *Green school buildings are better for teachers and students*, (July 1, 2018), <https://www.centerforgreenschools.org/green-schools-are-better-learning>.

<sup>43</sup> LINDSAY BAKER & HARVEY BERNSTEIN, THE IMPORTANCE OF SCHOOL BUILDINGS ON STUDENT HEALTH AND PERFORMANCE (2012) available at [http://www.centerforgreenschools.org/sites/default/files/resource-files/McGrawHill\\_ImpactOnHealth.pdf](http://www.centerforgreenschools.org/sites/default/files/resource-files/McGrawHill_ImpactOnHealth.pdf).

<sup>44</sup> See AMERICA'S SCHOOLS REPORT DIFFERING CONDITIONS, *supra* note 22, at 43.

<sup>45</sup> Oluyemi Toyinbo, et al., *Modeling Associations between Principals' Reported Indoor Environmental Quality and Students' Self-Reported Respiratory Health Outcomes Using GLMM and ZIP Models*, 13 INT'L J. ENVTL. RES. & PUB. HEALTH 385 (April 2016) available at <https://www.ncbi.nlm.nih.gov/pubmed/27043595>.

<sup>46</sup> Courtney Vaughn and Nick Budnick, *Portland teacher fights to fix school's air quality*, PORTLAND TRIB., June 27, 2019, available at <https://pamplinmedia.com/pt/9-news/432100-340532-portland-teacher-fights-to-fix-schools-air-quality>.

have a program in place to address indoor air quality.<sup>47</sup> Research also shows a correlation between test scores and air temperature,<sup>48</sup> yet due to financial constraints, many schools across the country cannot afford to replace or even maintain heating, ventilation, and air conditioning (HVAC) units. As recently as the 2018–19 school year, public schools in the United States have either been forced to close or have had students and teachers “bundled up” to withstand winter weather indoors<sup>49</sup>.

The 1996 GAO report also found that 21 percent of schools responding to their survey spent funds on removing lead in either paint or water, and another 16 percent needed to spend more on lead abatement to meet safety standards.<sup>50</sup> Twenty-two years later, a GAO report on lead in water specifically, found that half of U.S. schools tested positive for lead in drinking water.<sup>51</sup> A recent study by the T. H. Chan School of Public Health at Harvard University and the Nutrition Policy Institute at the University of California found that only 25 states had a school drinking water testing initiative between January 1, 2016 and February 28, 2018.<sup>52</sup> Even in the states that did test drinking water in schools, the researchers found that there was no uniformity in how the testing was done, or what actions schools took as a result of testing positive for lead. This inadequacy and inconsistency across states leaves students and staff vulnerable to serious health hazards, as we saw in Flint, Michigan. The continuing presence of lead in any form in public schools, nearly 50 years after Congress first recognized its toxicity and outlawed its use in paint in public housing,<sup>53</sup> is endemic of the state of our school infrastructure crisis.<sup>54</sup> H.R. 865 would require states to review and issue regulations to encourage safe construction practices and healthy school facilities, thereby ensuring the most effective use of the funding provided by the bill.

H.R. 865 also addresses specific dangerous conditions that impact public schools, such as crumbling building foundations. Pyrrhotite, a naturally-occurring mineral, can cause the rapid deterioration of building foundations when it is found in the concrete used to pour the foundation. New England generally, and Northeast and Northcentral Connecticut in particular, are experiencing hundreds, possibly thousands, of crumbling foundations in homes

<sup>47</sup> Elena Page, et al., *Evaluation of Indoor Environmental Quality and Health Concerns in a Public Elementary School*, HEALTH HAZARD EVAL. PROG., No. 2015–0025–3237, (HHS, CDC, NIOSH) (2015) available at <https://www.cdc.gov/niosh/hhe/reports/pdfs/2015-0025-3237.pdf>.

<sup>48</sup> Jisung Park, *Temperature, Test Scores, and Human Capital Production*, (2017) available at [http://scholar.harvard.edu/files/jisungpark/files/temperature\\_test\\_scores\\_and\\_human\\_capital\\_production\\_-\\_j\\_park\\_-\\_2-26-17.pdf](http://scholar.harvard.edu/files/jisungpark/files/temperature_test_scores_and_human_capital_production_-_j_park_-_2-26-17.pdf).

<sup>49</sup> *Underpaid Teachers and Crumbling Schools: How Underfunding Public Education Shortchanges America's Students: Hearing Before H. Comm. on Educ. & Lab.*, 116th Cong. (2019) (statement of Randi Weingarten, President, American Federation of Teachers) (“Baltimore, last winter, teachers called on the city to close schools because of chronic heating problems as indoor temperatures plunged into the 30s, and children tried to learn bundled in coats and hats.”).

<sup>50</sup> AMERICA’S SCHOOLS REPORT DIFFERING CONDITIONS, *supra* note 22, at 5–6.

<sup>51</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO–18–382, K–12 EDUCATION: LEAD TESTING OF SCHOOL DRINKING WATER WOULD BENEFIT FROM IMPROVED FEDERAL GUIDANCE (2018) available at <https://www.gao.gov/assets/700/692979.pdf>.

<sup>52</sup> ANGIE CRADOCK, ET AL., EARLY ADOPTERS: STATE APPROACHES TO TESTING SCHOOL DRINKING WATER FOR LEAD IN THE UNITED STATES (Harvard T.H. Chan School of Public Health, 2019) available at <http://npi.ucanr.edu/files/296549.pdf>.

<sup>53</sup> Lead-Based Paint Poisoning Prevention Act, Pub. L. No. 91–695, 84 Stat. 2078 (1971).

<sup>54</sup> Aside from presence in drinking water, U.S. schools still have problems related to lead paint as in some schools it is still peeling from school walls, severely poisoning students who ingest it. Wendy Ruderman, et al., *Philadelphia school kids will get added protections from lead paint perils*, PHILA. INQ., Dec. 13, 2018 available at <https://www.inquirer.com/news/philadelphia/lead-paint-philadelphia-schools-protections-toxic-city-20181213.html>.

and public buildings, including schools, due to the use of concrete composed in part of quarried rock containing pyrrhotite.<sup>55</sup> Engineers discovered the problem in 2015 and contractors now test for the presence of pyrrhotite before pouring concrete foundations. But all school buildings in this region with concrete foundations built between 1983 and 2015 could experience foundation crumbling at some point over the next 20 years.

As an immediate precaution, public schools built during that 1983–2015 period have been forced to close on days when winds reach over 60 miles per hour. Many schools have taken the precaution of moving students to temporary classroom sites while LEAs consider or acquire the financial means to rebuild.<sup>56</sup> Repairs can cost a school community millions of dollars and take up to two years for each affected school. Title V of the bill would authorize a federal grant program to states to reimburse pyrrhotite-affected school districts within their state. The program would cover up to 50 percent of the unexpected costs provided that the state in which affected school is located contributes at least 40 percent of the share. Only LEAs that fail to qualify for funds under either title I or title II of the bill are eligible for funds authorized under title V.

There are other issues caused by the lack of investment in educational infrastructure addressed in H.R. 865. The Committee recognizes the overcrowding problem schools face as student populations grow. The bill, therefore allows grants to be used to address that need, along with ensuring the building exteriors and interiors are well-protected and secure. The Committee also notes that air temperature is a prevalent issue schools face, due to insufficient heating or cooling systems, and H.R. 865 allows for major repairs or new investments in these systems to regulate a healthy learning temperature. Grants and bonds may also be used to improve energy and water efficiency to lower costs and energy consumption and to build modernizations that reduce reliance on fossil fuels and expand the use of solar power, wind power, and other renewable energy resources. H.R. 865 funds can be used to ensure safe drinking water and to take other steps to generally ensure the health and safety of students and staff during construction. States and LEAs may also use funds to bring a school facility into compliance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973. And, recognizing the classroom of yesterday and the classroom of tomorrow are not the same, grants and bonds under H.R. 865 may be used to build appropriate instructional space according to school course offerings and services. For example, funds can be used to build collaborative workspaces such as makerspaces, which allow for creative approaches to science, technology, and math (STEM) disciplines, or to soundproof a school music room. Likewise, any construction to expand or support facilities that house or support school-provided services is also covered under the bill.

<sup>55</sup> George Colli, *Courtney Tours Crumbling School in Tolland*, WTNH NEWS 8, Mar. 5, 2019, available at <https://www.wtnh.com/news/news-8-investigators/courtney-tours-crumbling-school-in-tolland/1829040015>.

<sup>56</sup> Rob Polansky, et al., *Town wide meeting held to discuss crumbling foundation at Tolland school*, WFSB EYEWITNESS NEWS 3, Mar. 5, 2019, available at [https://www.wfsb.com/news/town-wide-meeting-held-to-discuss-crumbling-foundation-at-tolland/article\\_e5842d46-3f43-11e9-ae92-bfd158ac6ff5.html](https://www.wfsb.com/news/town-wide-meeting-held-to-discuss-crumbling-foundation-at-tolland/article_e5842d46-3f43-11e9-ae92-bfd158ac6ff5.html).

*H.R. 865 increases support for existing sources of federal funding of school construction*

Aside from indirect spending via the tax code, and direct grant aid to states, the federal government currently provides direct funding for public school construction in two other areas: schools with distinct federal roles (Impact Aid) and schools affected by natural disasters. H.R. 865 builds on both of these existing programs

Federally impacted school districts, those with high percentages of federally owned (and therefore untaxed) land have long relied on federal aid to supplement both public school operation and construction budgets. The Impact Aid program, which provides funds for the operations of these school districts, also includes a line item specifically for school construction.<sup>57</sup> While support for school construction via Impact Aid has been a longstanding federal investment, the amount authorized and appropriated is relatively low in the face of the outsized need.<sup>58</sup> H.R. 865 authorizes an additional \$500 million a year for Impact Aid school construction over the next five fiscal years, an increase of over 400 percent compared to the current authorization.

The federal government also provides grant funding via the Federal Emergency Management Agency (FEMA) to public entities for school repair or new school construction in the wake of a federally declared disaster. H.R. 865 does not directly address recovery from disasters, but instead allows school districts to use funds to prepare for natural disasters before they occur. Climate change, due in part to human activity, has increased the frequency and severity of natural disasters. Thirteen federal agencies recently released a report that predicts the effects of climate change will worsen and make protecting American infrastructure more difficult if steps are not taken to curb global warming.<sup>59</sup> California has already lost public schools to wildfires exacerbated by drought, schools on the nation's coasts are constantly facing the threat of destruction due to hurricanes, and schools in inland areas are impacted by record-setting seasonal flooding.<sup>60</sup> According to a CRS report of federal disaster relief funds, the U.S. has spent approximately \$5.7 billion just between fiscal years 2005 and 2017 repairing public school facilities that have not withstood major natural disasters.

H.R. 865 attempts to fix two major drawbacks in the use of FEMA funds for school construction. First, FEMA funds, by design, can only be used to address recovery *after a disaster has occurred*. In contrast, funds from H.R. 865 can be used to mitigate threats

<sup>57</sup> 20 U.S.C. § 7714(d)(2012).

<sup>58</sup> NAT'L ASSN. OF FEDERALLY IMPACTED SCHS., FOUNDATIONS FOR LEARNING: THE FACILITIES NEEDS OF FEDERALLY IMPACTED SCHOOLS, 8 (2017), available at <https://www.nafisdc.org/wp-content/uploads/2017/07/2017-school-construction-report.pdf>.

<sup>59</sup> U.S. GLOBAL CHANGE RESEARCH PROGRAM, FOURTH NATIONAL CLIMATE ASSESSMENT 34 (Vol. II, 2018), available at [https://nca2018.globalchange.gov/downloads/NCA4\\_2018\\_FullReport.pdf](https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf); see also Brady Dennis & Chris Mooney, *Major Trump administration climate report says damage is 'intensifying across the country'*, WASH. POST, Nov. 23, 2018, available at <https://www.washingtonpost.com/energy-environment/2018/11/23/major-trump-administration-climate-report-says-damages-are-intensifying-across-country/>.

<sup>60</sup> David Washburn & Diana Lambert, *Plans come into focus for California schools ravaged by wildfires*, EDSOURCE, Nov. 28, 2018, available at <https://edsource.org/2018/plans-come-into-focus-for-schools-ravaged-by-wildfires/605409>; Nicole Acevedo, *In Puerto Rico, new school year begins after Hurricane Maria, big changes to education system*, NBCNEWS, Aug. 13, 2018, available at <https://www.nbcnews.com/storyline/puerto-rico-crisis/puerto-rico-new-school-year-begins-after-hurricane-maria-big-n899866>; Scott Olson, *For the Midwest, Epic Flooding is the Face of Climate Change*, WIRED, May 4, 2019, available at <https://www.wired.com/story/for-the-midwest-epic-flooding-is-the-face-of-climate-change/>.



posed by climate change and natural disasters before they occur, allowing communities to proactively prepare for coming disasters. Second, FEMA funds are provided only to restore facilities to *pre-disaster conditions*. This restoration is done without consideration of modernized building codes or materials that could equip schools to withstand future disasters better. For example, Super Typhoon Yutu, the strongest storm to hit any American territory in over 80 years,<sup>61</sup> destroyed public schools with tin roofs in the Commonwealth of the Northern Mariana Islands.<sup>62</sup> In a time of increasingly volatile global temperatures that, according to the Trump Administration, will result in more frequent and more powerful natural disasters,<sup>63</sup> mandating that these destroyed tin roofs be replaced with new tin roofs and not with more resilient roofs is shortsighted. Under H.R. 865, grant funds could be used for seismic retrofitting, protecting existing buildings from the elements, and hazard resistance. And to ensure that new construction with federal dollars does not exacerbate climate change, all construction funded under H.R. 865 must conform to some extent with green building practices, with a requirement that 100 percent of funds spent in the last year of authorization be used in accordance with green building practices.

*H.R. 865 Provides Funds To Remedy Inequitable Access to the Internet*

Digital inequality is yet another symptom of inequitable public school funding. More than thirty years after the advent of the Internet, far too many public schools lack the high-speed digital infrastructure necessary to support modern teaching and learning, a critical resource inequity that research suggests may be contributing to persistent achievement gaps.<sup>64</sup> Currently, 6.5 million students in 40 states lack the minimum Federal Communications Commission's recommended bandwidth for Internet-connected digital learning, according to a 2017 Education Super Highway Report.<sup>65</sup> Over 2,000 school districts still lack access to fiber networks; 77% of those districts are located in rural areas with fewer resources to cover the cost of construction of a fiber network.<sup>66</sup> To help bridge the digital divide, H.R. 865 would allow LEAs to use grant funding to expand access to high-speed broadband to ensure digital learning necessary for the 21st century.

*H.R. 865 Promotes Effective School Safety Design*

The Committee recognizes all public school facilities must be safe, secure, and welcoming for students and staff. H.R. 865 allows

<sup>61</sup> Allyson Chiu et al., *Extreme Category 5 typhoon, the worst U.S. storm since 1935, leaves Northern Mariana Islands devastated*, WASH. POST, Oct. 25, 2018, available at <https://www.washingtonpost.com/energy-environment/2018/10/24/extreme-category-typhoon-yutu-makes-devastating-landfall-northern-mariana-islands-us-commonwealth/>.

<sup>62</sup> *This is Not a Drill: Education-Related Response and Recovery in the Wake of Natural Disasters: Hearing Before H. Subcomm. on Early Childhood, Elem. & Sec. Educ. of the H. Comm. on Educ. & Lab.*, 116th Cong. (2019) (statement of Glenn Muña, Commissioner, CNMI Public School System) available at <https://edlabor.house.gov/imo/media/doc/Muna%20Testimony%20060519.pdf>.

<sup>63</sup> See sources cited *supra* note 58.

<sup>64</sup> ANGELINA KEWALRAMANI ET AL., STUDENT ACCESS TO DIGITAL LEARNING RESOURCES OUTSIDE OF THE CLASSROOM XIV (NCES 2017–098: 2017) available at <https://nces.ed.gov/pubs2017/2017098/index.asp>.

<sup>65</sup> EDUCATION SUPERHIGHWAY, 2017 STATE OF THE STATES FULFILLING OUR PROMISE TO AMERICA'S STUDENTS 9 (2017) available at <http://stateofthestates.educationsuperhighway.org/2017/>.

<sup>66</sup> *Id.* at 14.

for funding to be used on creating building designs that address security. The Committee believes the best way to address a school building's physical security issues is as part of a modernization and rehabilitation program. Secure and intentional building design considers student health, productivity, and sense of safety. Architects were able to design a safer school campus for Sandy Hook Elementary School in Newtown, Connecticut by using best design practices such as creating more visibility and using a layered strategic approach to mitigate threats.<sup>67</sup> For example, the newly designed school allows for more natural light, which has been shown to increase productivity, not necessarily more physical barriers that make students feel barricaded as they are learning.

The Committee notes that this redesign is not the same as school hardening, a measure the Committee believes is not an allowable use of grant funds under H.R. 865. The research failed to conclude that hardening—such as in the form of fewer windows, metal detectors, intrusive surveillance systems, physical traits evident in prisons—actually makes schools safer.<sup>68</sup> On the contrary, studies show students feel less safe because of the presence of such hardening, so its use is not authorized here.<sup>69</sup>

*H.R. 865 Provides Transparency To Hold Government Accountable for State of School Facilities*

Local, state, and federal law created our nation's universal system of free public education. Its goal is to provide all children, regardless of family wealth or zip code, quality schooling in a safe learning environment. Sadly, the government at all levels has broken this promise to many communities. Children are compelled to learn in decrepit facilities that not only deny them equity of educational opportunity but are also making them sick. As Ms. Weingarten pointed out in her testimony, "How do we send children to school with black toxic mold on floors, classrooms without heat or air conditioning, leaking ceilings and contaminated water? [. . .] We send our children to schools in these conditions, and we expect them to thrive."<sup>70</sup> Government must act boldly to remedy this injustice and make good on its promise of a safe and healthy public school for every child.

The Committee notes that H.R. 865 proposes a comprehensive solution that brings all levels of government together to close our education infrastructure gap. Under H.R. 865, the federal government fulfills its role to ensure equity in education through targeted support. The state is empowered to fulfill its role as the primary custodian of public schools within its borders. And the LEA is

<sup>67</sup>Tom Dobbins, *Sandy Hook School Architect Testifies in Front of Congress About School Safety*, ARCH DAILY, (8:00 am, Aug. 25, 2018) available at <https://www.archdaily.com/900588/speaking-to-congress-jay-brotman-outlines-how-the-profession-intends-to-improve-school-safety>; But see Grieg O'Brien, *Architect Jay Brotman testifying Before White house cabinet Secretaries on School Design Today*, ARCHITECT, Aug. 16 2018, available at [https://www.architectmagazine.com/design/architect-jay-brotman-testifying-before-white-house-cabinet-secretaries-on-school-design-today\\_o](https://www.architectmagazine.com/design/architect-jay-brotman-testifying-before-white-house-cabinet-secretaries-on-school-design-today_o). (Correctly reporting that the Mr. Brotman's testimony was before the Federal Commission on School Safety and not Congress).

<sup>68</sup>Valerie Strauss, *Study: There's no evidence that hardening schools to make kids safer from gun violence actually works*, WASH. POST, Apr. 16, 2019, available at <https://www.washingtonpost.com/education/2019/04/16/study-theres-no-evidence-that-hardening-schools-make-kids-safer-gun-violence-actually-works/>.

<sup>69</sup>Bayliss Fiddiman, et al., *Smart Investments for Safer Schools*, CTR. FOR AM. PROGRESS (9:02 am, Dec. 19, 2018), <https://www.americanprogress.org/issues/education-k-12/reports/2018/12/19/464445/smart-investments-safer-schools/>.

<sup>70</sup>*Underpaid Teachers*, *supra* note 48.

charged with to identifying and addressing needs specific to local schools.

And to ensure this accountability continues after the period of federal funding ends, the bill requires each state that receives funds under title I of the bill to build and maintain a comprehensive, publicly searchable school facilities online database. Currently there is no comprehensive national database on the condition of public school facilities. With increased transparency in each state, stakeholders can understand the extent of the problem from a wider lens and can better hold their government accountable for gaps in resources. State-level data collection and reporting will also allow policymakers and practitioners across states to learn from one another and share best practices. As a condition of the receipt of funds, states must also review existing health and safety regulations and issue updated regulations if necessary to ensure safe construction practices and healthy school environments.

### *Conclusion*

H.R. 865 is a necessary and long-overdue step toward closing the infrastructure gap in our nation's schools. The Committee believes that if passed and fully funded, H.R. 865 will bring public education closer to achieving the equality promised in Brown, and help ensure that every student, regardless of his or her zip code or family wealth, can learn in a high-quality, safe and healthy public school building.

## SECTION-BY-SECTION ANALYSIS

### *Section 1. Short title*

This cites the short title of the Act as the “Rebuild America’s Schools Act of 2019.”

### *Section 2. Definitions*

This section provides definitions for the terms “appropriate congressional committees,” “Bureau-funded school,” “covered funds,” “elementary school,” “local educational agency,” “outlying area,” “secondary school,” “public school facilities,” “qualified local educational agency,” “school infrastructure bond,” “Secretary,” “State,” and “zero energy school”.

## TITLE I—GRANTS FOR THE LONG-TERM IMPROVEMENT OF PUBLIC SCHOOL FACILITIES

### *Section 101. Purpose and reservation*

This section states the purpose of this Act, which is to support “long-term improvements to public school facilities.” It also reserves 0.5 percent of total authorized funds for the outlying areas proportionate to their share of funds under ESEA Title I, and 0.5 percent of funds for schools funded by the Bureau of Indian Education (BIE).

### *Section 102. Allocation to states*

This section outlines the allocation of funds to states as well as state responsibilities under this Act. States shall be allocated funds in proportion to the funds that all local education agencies (LEAs) in the state receive under ESEA Title I. In exchange, states must

review and issue regulations to ensure safe, healthy, and high-performing buildings and develop an online, publicly searchable database that outlines the condition of all public school facilities in the state. Other state requirements include a 10 percent matching requirement, a maintenance of effort assurance, and a supplement-not-supplant assurance. This section also requires that states submit a plan to the Secretary of Education for approval to carry out the competitive grant program described in section 103.

*Section 103. Need-based grants to qualified local education agencies*

Section 103 provides for awarding funds by the state to qualified LEAs on a competitive basis. A qualified LEA must be receiving ESEA Title I funds. For a qualified LEA to be eligible to receive a need-based grant from the state it must meet at least one of multiple eligibility criteria.

All qualified LEAs in the state with the highest numbers of students counted under section 1124(c) of ESEA must be considered eligible for a need-based grant. All LEAs in the state with the highest percentages of students counted under section 1124(c) of ESEA must be considered eligible. In some instances, a LEA may meet both student eligibility criteria based on having both a high number and a high percentage of ESEA Title I-counted students.

The state is expected to set both number and percentage thresholds in determining grant eligibility from among all qualified LEAs. The number and percentage thresholds are intended to reasonably define the eligible subset of qualified LEAs across the state demonstrating the highest number of ESEA Title I-counted students and those agencies demonstrating the highest percentage of ESEA Title I-counted students respectively.

Additionally, once the state identifies the eligible LEAs determined by the number and the percentage of ESEA Title I-eligible students, it may extend eligibility for the need-based grants to LEAs with the greatest need to improve school facilities that may include consideration of proximity to toxic sites, brownfield areas, or vulnerability to natural disasters. And, the state may also extend eligibility to LEAs with the most limited capacity to raise funds for facility improvements based on assessing its current and historic ability to raise facility funds, ability to issue bonds or to receive other funds for school construction, and its bond rating.

Any LEA that is awarded need-based funds must prioritize the use of the funds in schools with highest percentage of students eligible for the free and reduced priced lunch program.

The state will give priority in awarding funds to the qualified LEAs determined to be eligible for need-based grants that can demonstrate the greatest need for a grant by comparing the relative concentrations of ESEA Title I-counted students (both for numbers and for percentages), specific facility improvement needs such as proximity to toxic hazards or natural disaster vulnerability, as well as other indicators of need including age of facilities, over enrollment, condition of major building systems, condition of roofs, windows and doors, and other critical health and safety conditions.

Priority for funding shall be given to eligible LEAs that commit to using the grant to improve facilities in elementary and middle schools with not less than 40 percent of students eligible for the free and reduced-price lunch program, in high schools with not less

than 30 percent school or feeder-school eligibility, or in a school operating under a severe health or safety threat. States may also give priority to eligible LEAs that serve schools that lack access to high-speed broadband, including from rural areas, to improve such access, if such schools also meet one or more of the previously stated needs.

The state may reserve up to 10 percent of funds for grants to qualified LEAs to improve digital learning by leveraging other public funds or public-private partnerships to increase broadband access. The state also must ensure that grants are awarded to qualified LEAs that represent the geographic diversity of the state.

*Section 104. Annual report on grant program*

The Secretary of Education must annually submit to Congress a report that includes a description of the projects carried out under the grant program as well as the demographic information of students attending schools that used funds from the grant program.

*Section 105. Authorization of appropriations*

\$70 billion total is authorized for title I of this Act from FY 2020 through FY 2029.

TITLE II—SCHOOL INFRASTRUCTURE BONDS

*Sec. 201. Restoration of certain qualified tax credit bonds*

This section restores sections 54A, 54E, and 6431 of the Internal Revenue Code of 1986 as if the repeals by the Tax Cuts and Jobs Act of 2017 had not taken effect. It amends section 54(E)(d)(3) of the Code to allow proceeds from Qualified Zone Academy Bonds (QZABs) to be used for construction and retrofitting of public school facilities. Section 201 permanently increases the national limitation for QZABs from \$400 million annually to \$1.4 billion annually and removes the private business contribution requirement for LEAs to participate in the QZAB program.

*Sec. 202. School Infrastructure Bonds*

This section amends the Internal Revenue Code of 1986 by adding “Section 54BB. School Infrastructure Bonds.” Section 202 designates a total national bond limitation of \$30 billion for qualified school infrastructure bonds (QSIBs), \$10 billion each for FY 2020, FY 2021, and FY 2022. States may distribute up to 10 percent of the total bond limitation to enable LEAs to leverage existing public programs or public-private partnerships to expand access to high-speed broadband sufficient for digital learning.

Section 202 also allocates bond authority to states based on the proportion of funds that states receive under ESEA Title I. It requires that the federal government provide a tax credit of 100 percent of the interest on any QSIB—such credit may be issued as a tax credit to the bondholder or as a direct payment to the bond issuer. Section 202 reserves 0.5 percent of the bond allocation for outlying areas, and 0.5 percent of the bond allocation for schools funded by the BIE and requires states to use the same criteria outlined in section 103 in distribution of bond authority to LEAs, excluding provisions related to fiscal capacity.

*Section 203. Annual report on bond program*

The Secretary of Education must annually submit to Congress a report that includes the LEAs that participated in the bond program as well as LEAs that were unable to participate due to fiscal challenges.

TITLE III—GENERAL PROVISIONS

*Section 301. Allowable uses*

This section outlines the allowable uses of funds for titles I and II. Funds may be used to develop the facilities master plan required under section 103(e) and generally to construct, modernize, renovate, build new schools, and retrofit public school facilities. Retrofitting may include seismic retrofitting for schools vulnerable to seismic natural disasters, as well as other retrofitting to bring facilities up to code to withstand other natural disasters, or otherwise bring facilities to compliance for fire, safety, and other health codes.

LEAs may also use grants to install suitable furniture or fixtures with at-least a ten-year life-span. This can include installing size-appropriate fixtures if retrofitting a building for younger children, updating, science lab infrastructure, and construction and improvement of public playgrounds. Allowable uses also include: improvements to building exteriors and interiors to ensure they are well-protected and secure; major repairs or new investments in HVAC systems; improvements to energy and water efficiency to lower costs and energy consumption including building modernizations that reduce reliance on fossil fuels and expand the use of solar power, wind power, and other renewable energy resources; improvements to ensure safe drinking water, or to generally ensure the health and safety of students and staff during construction; efforts to bring a school into compliance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973; construction of appropriate instructional space according to school course offerings and services; and any construction to expand or support facilities that house or support school-provided services.

*Section 302. Prohibited uses*

Funds under titles I and II may not be used on athletic facilities or grounds that charge an admission fee, vehicles, central offices, or other facilities not primarily used to educate students. Funds also may not be used on routine maintenance or minor repairs.

*Section 303. Requirements for Hazard-Resistance and Energy and Water Conservation.*

Section 303 requires LEAs that receive funds for new construction to meet or exceed the requirements of a nationally recognized, consensus-based model building code, and the performance criteria under the WaterSense program of the *Energy Policy and Conservation Act*, 42 U.S.C. 6294b.

*Section 304. Green practices*

Section 304 outlines the requirements for green practices for projects funded under titles I and II.

*Section 305. Use of American iron, steel, and manufactured products*

This section includes a “Buy America” provision for iron, steel, and manufactured products.

*Section 306. Comptroller General*

This section requires the Comptroller General to submit to Congress a report that must include the geographic distribution of projects, the impact of projects on student and staff health and safety, and how funds under these projects could be made more accessible to high-poverty schools and those with fiscal capacities.

*Section 307. Study and report of physical conditions of public schools*

This section requires that the Institute of Educational Sciences (IES) carry out a national study that includes the condition of public school facilities, the impact of such facilities on students and staff, and a cost estimate for bringing schools to good condition. Such a comprehensive report would capture school facilities that represent the breadth of schools in the country—urban, suburban, rural, from different geographic regions, and high poverty and high wealth schools.

*Section 308. Development of data standards*

This section requires that the Secretary of Education, in consultation with the Environmental Protection Agency (EPA), Centers for Disease Control (CDC), Department of Energy (DOE), and National Institute for Occupational Safety and Health (NIOSH), develop guidance on data to be collected by states under section 102.

*Section 309. Information clearinghouse*

The Secretary of Education, in consultation with the officials in section 307, must disseminate information to schools on financing for green projects.

TITLE IV—IMPACT AID CONSTRUCTION

*Section 401. Temporary increase in funding for Impact Aid Construction*

This title temporarily increases funding for the Impact Aid Construction program under ESEA by \$500 million over fiscal years 2020 through 2024.

TITLE V—ASSISTANCE FOR REPAIR OF SCHOOL FOUNDATIONS  
AFFECTED BY PYRRHOTITE

*Section 501. Allocations to states*

The Secretary of Education is directed to create a program, within 180 days of the bill’s enactment into law, that would provide federal funding to states to distribute grants to LEAs for the repair or replacement of crumbling foundations due to pyrrhotite. It requires the Secretary to publish on the Department of Education’s website instructions on how a state may receive funding for this program.

For schools with a pyrrhotite emergency that already qualify for a grant under title I of this Act, such schools may use their title I grant to address the emergency, and do not need to apply for this separate program.

*Section 502. Grants to local educational agencies*

This section requires the Secretary to award funds to states to either pay the future costs of repairing foundations deteriorating due to pyrrhotite, or to reimburse LEAs for the cost of repairs or replacement during the previous five-year period prior to this provision becoming law. LEAs must demonstrate that the school contains pyrrhotite in the foundation through proper laboratory, core, or visual inspections by a professional engineer licensed in the state. LEAs must also have had any testing of the foundation done through the proper channels outlined by the state or other entity overseeing relief efforts for crumbling foundations. The LEA must also only use the funding for the allowable uses described in the bill and must have all work performed by a contractor or architect licensed in the state. The LEA must meet these same requirements for a reimbursement grant and must provide information indicating that the project was carried out with these parameters at the time it was completed.

LEAs must submit an application to the state that includes at minimum, information pertaining to the LEA's eligibility requirements, and an estimate of the cost of construction. If the LEA is applying for reimbursement, their application must include: proof of eligibility requirements, an itemized explanation of the costs incurred for the project, amounts already received from other federal, state, local, or private sources, the amount of reimbursement funds requested, and the percentage of funds covered by an insurance policy.

The state must approve any application from an LEA that is complete with the criteria outlined above. The state will then transmit an application to the Secretary. Within 60 days of receiving the application from the state, the Secretary must either approve or deny the application. If the Secretary approves the application, the Secretary must disburse funds to the state within 60 days of the application's approval. Once the state has received the funds from the Secretary, the state must disburse those funds to the LEA within 60 days.

To be eligible for federal funds, the state must provide at least 40 percent of the project's total costs, in the case of both reimbursement and grants made out in the future. In addition, the federal government may not provide any more than 50 percent of the total cost of the project.

Funds may be used to repair or replace a concrete foundation and other affected areas of a school to restore the structural integrity of the school to the health and safety standards outlined by the project's architect or engineer, and to restore the school to the condition it was in prior to the foundation's damage due to pyrrhotite. Funding may be used on other activities directly related to the project such as engineering reports, architectural design, and core tests.

LEAs receiving federal funds for a project may not use this funding for any work done to outbuildings, sheds, barns, swimming



pools, playgrounds, ballfields, ponds, or water features. Funds may not be used for the purchase of any items not directly related to the repair or replacement of the school's crumbling foundation. Prohibited items include desks, chairs, electronics, sports equipment, or other school supplies. Any other activities not explicitly described in the "allowable uses" section are also prohibited. LEAs may not use funds under this title and title I for the same project.

*Section 503. Definitions*

This section defines the terms "Pyrrhotite-affected school" and "qualified contractor".

*Section 504. Authorization of appropriations*

This section requires funds to be authorized to carry out the program for fiscal year 2020 and each fiscal year afterwards.

EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the descriptive portions of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

H.R. 865, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104-4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 865, as amended, prepared by the Director of the Congressional Budget Office.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 865 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 865:

Date: 2/26/2019

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 1

Bill: H.R. 865

Amendment Number: Motion

Disposition: Agreed to by a vote of 23-19

Sponsor/Amendment: Sablan/to table the appeal of the ruling of the Chair pertaining to the germaneness of amendment number 4 offered by Mr. Thompson

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)	X			Mr. ROE (TN)			X
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)		X	
Mr. SABLON (MP)	X			Mr. BYRNE (AL)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)			X	Mr. SMUCKER (PA)		X	
Mr. NORCROSS (NJ)			X	Mr. BANKS (IN)		X	
Ms. JAYAPAL (WA)	X			Mr. WALKER (NC)		X	
Mr. MORELLE (NY)	X			Mr. COMER (KY)		X	
Ms. WILD (PA)	X			Mr. CLINE (VA)		X	
Mr. HARDER (CA)	X			Mr. FULCHER (ID)			X
Mrs. MCBATH (GA)	X			Mr. TAYLOR (TX)		X	
Ms. SCHRIER (WA)	X			Mr. WATKINS (KS)		X	
Ms. UNDERWOOD (IL)	X			Mr. WRIGHT (TX)		X	
Mrs. HAYES (CT)	X			Mr. MEUSER (PA)		X	
Ms. SHALALA (FL)	X			Mr. TIMMONS (SC)		X	
Mr. LEVIN (MI)	X			Mr. JOHNSON (SD)		X	
Ms. OMAR (MN)			X				
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)			X				
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)			X <sup>A</sup>				

TOTALS: Ayes: 23

Nos: 19

Not Voting: 8

Total: 50 / Quorum: 26 / Report:

(28 D - 22 R)

<sup>A</sup>Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.<sup>A</sup>Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 2/26/2019

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 2

Bill: H.R. 865

Amendment Number: 5

Disposition: Adopted by a vote of 26-20

Sponsor/Amendment: Grijalva/to prohibit for-profit charter schools from accessing funds in this Act

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)			X	Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)		X	
Mr. SABLAN (MP)	X			Mr. BYRNE (AL)			X
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)			X	Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)	X			Mr. SMUCKER (PA)		X	
Mr. NORCROSS (NJ)	X			Mr. BANKS (IN)		X	
Ms. JAYAPAL (WA)	X			Mr. WALKER (NC)		X	
Mr. MORELLE (NY)	X			Mr. COMER (KY)		X	
Ms. WILD (PA)	X			Mr. CLINE (VA)		X	
Mr. HARDER (CA)	X			Mr. FULCHER (ID)		X	
Mrs. MCBATH (GA)	X			Mr. TAYLOR (TX)		X	
Ms. SCHRIER (WA)	X			Mr. WATKINS (KS)		X	
Ms. UNDERWOOD (IL)	X			Mr. WRIGHT (TX)		X	
Mrs. HAYES (CT)	X			Mr. MEUSER (PA)		X	
Ms. SHALALA (FL)	X			Mr. TIMMONS (SC)		X	
Mr. LEVIN (MI)	X			Mr. JOHNSON (SD)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 26

Nos: 20

Not Voting: 4

Total: 50 / Quorum: / Report:

(28 D - 22 R)

Date: 2/26/2019

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 3

Bill: H.R. 865

Amendment Number: Motion

Disposition: Agreed to by a vote of 28-17

Sponsor/Amendment: Sablan/to table the appeal of the ruling of the Chair pertaining to germaneness  
of amendment number 6 offered by Mr. Allen

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)	X			Mr. ROE (TN)			X
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)			X
Mr. SABLON (MP)	X			Mr. BYRNE (AL)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)	X			Mr. SMUCKER (PA)			X
Mr. NORCROSS (NJ)	X			Mr. BANKS (IN)		X	
Ms. JAYAPAL (WA)	X			Mr. WALKER (NC)		X	
Mr. MORELLE (NY)	X			Mr. COMER (KY)		X	
Ms. WILD (PA)	X			Mr. CLINE (VA)		X	
Mr. HARDER (CA)	X			Mr. FULCHER (ID)		X	
Mrs. MCBATH (GA)	X			Mr. TAYLOR (TX)			X*
Ms. SCHRIER (WA)	X			Mr. WATKINS (KS)		X	
Ms. UNDERWOOD (IL)	X			Mr. WRIGHT (TX)		X	
Mrs. HAYES (CT)	X			Mr. MEUSER (PA)		X	
Ms. SHALALA (FL)	X			Mr. TIMMONS (SC)		X	
Mr. LEVIN (MI)	X			Mr. JOHNSON (SD)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 28

Nos: 17

Not Voting: 5

Total: 50 / Quorum: 26 / Report:

(28 D - 22 R)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 2/26/2019

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 4

Bill: H.R. 865

Amendment Number: 8

Disposition: Defeated by a vote of 20-26

Sponsor/Amendment: Stefanik/to require reservation of funds for rural local educational agencies

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)			X	Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLON (MP)		X		Mr. BYRNE (AL)			X
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)			X	Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)		X		Mr. SMUCKER (PA)	X		
Mr. NORCROSS (NJ)		X		Mr. BANKS (IN)	X		
Ms. JAYAPAL (WA)		X		Mr. WALKER (NC)	X		
Mr. MORELLE (NY)		X		Mr. COMER (KY)	X		
Ms. WILD (PA)		X		Mr. CLINE (VA)	X		
Mr. HARDER (CA)		X		Mr. FULCHER (ID)	X		
Mrs. MCBATH (GA)		X		Mr. TAYLOR (TX)	X		
Ms. SCHRIER (WA)		X		Mr. WATKINS (KS)	X		
Ms. UNDERWOOD (IL)		X		Mr. WRIGHT (TX)	X		
Mrs. HAYES (CT)		X		Mr. MEUSER (PA)	X		
Ms. SHALALA (FL)		X		Mr. TIMMONS (SC)	X		
Mr. LEVIN (MI)		X		Mr. JOHNSON (SD)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 20

Nos: 26

Not Voting: 4

Total: 50 / Quorum: 26 / Report:

(28 D - 22 R)

Date: 2/26/2019

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 5

Bill: H.R. 865

Amendment Number: 10

Disposition: Defeated by a vote of 20-26

Sponsor/Amendment: Comer/to delay expenditure of funds until an independent auditor determines that state and local agencies will incur no compliance cost

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)			X	Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLON (MP)		X		Mr. BYRNE (AL)			X
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)			X	Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)		X		Mr. SMUCKER (PA)	X		
Mr. NORCROSS (NJ)		X		Mr. BANKS (IN)	X		
Ms. JAYAPAL (WA)		X		Mr. WALKER (NC)	X		
Mr. MORELLE (NY)		X		Mr. COMER (KY)	X		
Ms. WILD (PA)		X		Mr. CLINE (VA)	X		
Mr. HARDER (CA)		X		Mr. FULCHER (ID)	X		
Mrs. MCBATH (GA)		X		Mr. TAYLOR (TX)	X		
Ms. SCHRIER (WA)		X		Mr. WATKINS (KS)	X		
Ms. UNDERWOOD (IL)		X		Mr. WRIGHT (TX)	X		
Mrs. HAYES (CT)		X		Mr. MEUSER (PA)	X		
Ms. SHALALA (FL)		X		Mr. TIMMONS (SC)	X		
Mr. LEVIN (MI)		X		Mr. JOHNSON (SD)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 20

Nos: 26

Not Voting: 4

Total: 50 / Quorum: 26 / Report:

(28 D - 22 R)

Date: 2/26/2019

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 6

Bill: H.R. 865

Amendment Number: Motion

Disposition: Agreed to by a vote of 24-14

Sponsor/Amendment: Sablan/to table the appeal of the ruling of the Chair pertaining to germaneness

of amendment number 12 offered by Mr. Wright

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)	X			Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)			X
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)			X*
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)			X
Mr. SABLON (MP)	X			Mr. BYRNE (AL)			X
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)			X	Ms. STEFANIK (NY)			X
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)	X			Mr. SMUCKER (PA)		X	
Mr. NORCROSS (NJ)	X			Mr. BANKS (IN)		X	
Ms. JAYAPAL (WA)			X^	Mr. WALKER (NC)			X
Mr. MORELLE (NY)	X			Mr. COMER (KY)		X	
Ms. WILD (PA)	X			Mr. CLINE (VA)		X	
Mr. HARDER (CA)			X	Mr. FULCHER (ID)		X	
Mrs. MCBATH (GA)	X			Mr. TAYLOR (TX)		X	
Ms. SCHRIER (WA)	X			Mr. WATKINS (KS)		X	
Ms. UNDERWOOD (IL)	X			Mr. WRIGHT (TX)		X	
Mrs. HAYES (CT)	X			Mr. MEUSER (PA)			X
Ms. SHALALA (FL)	X			Mr. TIMMONS (SC)		X	
Mr. LEVIN (MI)	X			Mr. JOHNSON (SD)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)			X^				

TOTALS: Ayes: 24

Nos: 14

Not Voting: 12

Total: 50 / Quorum: 26 / Report:

(28 D - 22 R)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 2/26/2019

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 7

Bill: H.R. 865

Amendment Number: 13

Disposition: Defeated by a vote of 26-20

Sponsor/Amendment: Grothman/to delay implementation until the EPA certifies that the bill's green requirements will not result in cost incurred by school districts

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)			X	Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLON (MP)		X		Mr. BYRNE (AL)			
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		X
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)			X	Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)		X		Mr. SMUCKER (PA)	X		
Mr. NORCROSS (NJ)		X		Mr. BANKS (IN)	X		
Ms. JAYAPAL (WA)		X		Mr. WALKER (NC)	X		
Mr. MORELLE (NY)		X		Mr. COMER (KY)	X		
Ms. WILD (PA)		X		Mr. CLINE (VA)	X		
Mr. HARDER (CA)		X		Mr. FULCHER (ID)	X		
Mrs. MCBATH (GA)		X		Mr. TAYLOR (TX)	X		
Ms. SCHRIER (WA)		X		Mr. WATKINS (KS)	X		
Ms. UNDERWOOD (IL)		X		Mr. WRIGHT (TX)	X		
Mrs. HAYES (CT)		X		Mr. MEUSER (PA)	X		
Ms. SHALALA (FL)		X		Mr. TIMMONS (SC)	X		
Mr. LEVIN (MI)		X		Mr. JOHNSON (SD)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 20

Nos: 26

Not Voting: 4

Total: 50 / Quorum: 26 / Report:

(28 D - 22 R)



Date: 2/26/2019

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 8

Bill: H.R. 865

Amendment Number: 14a (2nd degree)

Disposition: Adopted by a vote of 41-1

Sponsor/Amendment: Stevens/ amendment to Meuser amendment (no.14) expressing the sense of

Congress that opportunity zones can help rebuild communities

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)	X			Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)			X
Mr. COURTNEY (CT)	X			Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)			X	Mr. GUTHRIE (KY)			X
Mr. SABLON (MP)	X			Mr. BYRNE (AL)			X
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)	X			Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)			X	Mr. SMUCKER (PA)	X		
Mr. NORCROSS (NJ)	X			Mr. BANKS (IN)	X		
Ms. JAYAPAL (WA)			X^	Mr. WALKER (NC)			X
Mr. MORELLE (NY)	X			Mr. COMER (KY)	X		
Ms. WILD (PA)	X			Mr. CLINE (VA)		X	
Mr. HARDER (CA)	X			Mr. FULCHER (ID)	X		
Mrs. MCBATH (GA)	X			Mr. TAYLOR (TX)	X		
Ms. SCHRIER (WA)	X			Mr. WATKINS (KS)	X		
Ms. UNDERWOOD (IL)	X			Mr. WRIGHT (TX)	X		
Mrs. HAYES (CT)	X			Mr. MEUSER (PA)	X		
Ms. SHALALA (FL)	X			Mr. TIMMONS (SC)	X		
Mr. LEVIN (MI)	X			Mr. JOHNSON (SD)	X		
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 41

Nos: 1

Not Voting: 8

Total: 50 / Quorum: / Report:

(28 D - 22 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 2/26/2019

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 9

Bill: H.R. 865

Amendment Number: 15

Disposition: Defeated by a vote of 20-26

Sponsor/Amendment: Foxx/to rename the bill the Trojan Horse Act

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)			X	Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)		X		Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)		X		Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)		X		Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)		X		Mr. BYRNE (AL)			X
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)			X	Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)		X		Mr. SMUCKER (PA)	X		
Mr. NORCROSS (NJ)		X		Mr. BANKS (IN)	X		
Ms. JAYAPAL (WA)		X		Mr. WALKER (NC)	X		
Mr. MORELLE (NY)		X		Mr. COMER (KY)	X		
Ms. WILD (PA)		X		Mr. CLINE (VA)	X		
Mr. HARDER (CA)		X		Mr. FULCHER (ID)	X		
Mrs. MCBATH (GA)		X		Mr. TAYLOR (TX)	X		
Ms. SCHRIER (WA)		X		Mr. WATKINS (KS)	X		
Ms. UNDERWOOD (IL)		X		Mr. WRIGHT (TX)	X		
Mrs. HAYES (CT)		X		Mr. MEUSER (PA)	X		
Ms. SHALALA (FL)		X		Mr. TIMMONS (SC)	X		
Mr. LEVIN (MI)		X		Mr. JOHNSON (SD)	X		
Ms. OMAR (MN)		X					
Mr. TRONE (MD)		X					
Ms. STEVENS (MI)		X					
Mrs. LEE (NV)		X					
Mrs. TRAHAN (MA)		X					
Mr. CASTRO (TX)		X					

TOTALS: Ayes: 20

Nos: 26

Not Voting: 4

Total: 50 / Quorum: 26 / Report:

(28 D - 22 R)

Date: 2/26/2019

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 10

Bill: H.R. 865

Amendment Number: Motion

Disposition: Agreed to by a vote of 26-20

Sponsor/Amendment: Mr. Sablan/to report bill to the House with amendment and with the recommendation

that the amendment be agreed to, and the bill as amended, do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)			X	Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)		X	
Mr. SABLON (MP)	X			Mr. BYRNE (AL)			X
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)			X	Mr. ALLEN (GA)			
Ms. ADAMS (NC)	X			Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)	X			Mr. SMUCKER (PA)		X	
Mr. NORCROSS (NJ)	X			Mr. BANKS (IN)		X	
Ms. JAYAPAL (WA)	X			Mr. WALKER (NC)		X	
Mr. MORELLE (NY)	X			Mr. COMER (KY)		X	
Ms. WILD (PA)	X			Mr. CLINE (VA)		X	
Mr. HARDER (CA)	X			Mr. FULCHER (ID)		X	
Mrs. MCBATH (GA)	X			Mr. TAYLOR (TX)		X	
Ms. SCHRIER (WA)	X			Mr. WATKINS (KS)		X	
Ms. UNDERWOOD (IL)	X			Mr. WRIGHT (TX)		X	
Mrs. HAYES (CT)	X			Mr. MEUSER (PA)		X	
Ms. SHALALA (FL)	X			Mr. TIMMONS (SC)		X	
Mr. LEVIN (MI)	X			Mr. JOHNSON (SD)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 26

Nos: 20

Not Voting: 4

Total: 50 / Quorum: / Report:

(28 D - 22 R)

## STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 865 are to ensure equity in school facilities and digital infrastructure, assist states in their role in creating safe and healthy schools, and improve regulation of and data collection on the condition of public school facilities and the impact of such conditions on health and safety.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 865 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## HEARINGS

Pursuant to section 103(i) of H. Res. 6, the [hearing/hearings] that the Committee held on February 12, 2019 entitled “*Underpaid Teachers and Crumbling Schools: How Underfunding Public Education Shortchanges America’s Students*” as the legislative hearing that was used to develop or consider H.R. 865.

## STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 865 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 8, 2019.*

Hon. BOBBY SCOTT,  
*Chairman, Committee on Education and Labor,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 865, the Rebuild America’s Schools Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Leah Koestner.

Sincerely,

KEITH HALL,  
Director.

Enclosure.

At a Glance			
H.R. 865, Rebuild America's Schools Act of 2019			
As ordered reported by the House Committee on Education and Labor on February 26, 2019			
Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	3,030	8,367
Revenues	0	-255	-1,209
Deficit Effect	0	3,285	9,576
Spending Subject to Appropriation (Outlays)	0	20,071	55,639
Pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	> \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

The bill would

- Reauthorize certain qualified tax credit bonds and create a new school infrastructure bond program
- Authorize the appropriation of \$7 billion for each year from 2020 through 2030 for need-based grants to qualified local education agencies for school construction and renovation
- Require a study of and report on the physical condition of all U.S. public schools
- Authorize the appropriation of a total of \$562 million for the 2020–2025 period to fund Impact Aid construction grants under the Elementary and Secondary Education Act
- Permanently authorize the appropriation of such sums as may be necessary for grants to states to repair school foundations affected by pyrrhotite

Estimated budgetary effects would primarily stem from

- The school infrastructure bond program
- New and increased authorizations of appropriations for school improvement and construction

Areas of significant uncertainty include

- Interest rates over the next decade
- The scope and funding required for a comprehensive study of the physical condition of all public schools
- The number of schools affected by pyrrhotite

Bill summary: H.R. 865 would reauthorize certain qualified tax credit bonds and amend the Internal Revenue Code of 1986 to create a new bond program to fund school construction and renovations. The bill also would create a need-based grant program for improvement and construction of public schools, increase funding for Impact Aid construction grants, and create a grant program to identify and repair buildings affected by pyrrhotite (a mineral that can compromise building materials such as concrete). In addition,

H.R. 865 would direct the Department of Education, through the Institute of Education Sciences (IES), to conduct a comprehensive study of the physical condition of all public schools in the United States.

Estimated Federal cost: The estimated budgetary effect of H.R. 865 is shown in Table 1. The costs of the legislation fall within budget function 500 (education, training, employment, and social services).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 865

	By fiscal year, millions of dollars—												
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019–2024	2019–2029
	Increases in Direct Spending												
Estimated Budget Authority .....	0	54	273	635	968	1,100	1,089	1,078	1,067	1,057	1,046	3,030	8,367
Estimated Outlays .....	0	54	273	635	968	1,100	1,089	1,078	1,067	1,057	1,046	3,030	8,367
	Decreases in Revenues												
Estimated Revenues .....	0	– 2	– 13	– 39	– 80	– 122	– 153	– 174	– 191	– 207	– 228	– 255	– 1,209
Net Increase in the Deficit From Changes in Direct Spending and Revenues .....	0	56	286	674	1,048	1,222	1,242	1,253	1,258	1,264	1,275	3,285	9,576
	Increases in Spending Subject to Appropriation Estimated Authorization												
Estimated Authorization .....	0	7,129	7,130	7,150	7,151	7,152	7,153	7,054	7,056	7,056	7,058	35,712	71,089
Estimated Outlays .....	0	731	1,804	3,938	6,421	7,153	7,179	7,150	7,115	7,066	7,054	20,047	55,611

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.  
Components may not sum to totals because of rounding.

Basis of estimate: CBO assumes that H.R. 865 would be enacted near the end of fiscal year 2019 and that authorized and estimated funds would be appropriated every year.

#### *Direct Spending and Revenues*

Title II of H.R. 865 would authorize a new tax credit bond program for Qualified School Infrastructure Bonds (QSIBs). Under that program, the Treasury would offer tax credits or make direct payments to the holders of those bonds. The bill would authorize up to \$10 billion in QSIBs in each of 2020, 2021, and 2022. Title II also would reauthorize two tax credit bond programs—Qualified Zone Academy Bonds (QZABs) and Qualified School Construction Bonds (QSCBs). For QZABs, the bill would authorize up to \$1.4 billion in 2020 and each year thereafter but the bill would make no allocation for QSCBs. The staff of the Joint Committee on Taxation (JCT) estimate that enacting those provisions would increase direct spending by \$8.4 billion over the 2019–2029 period and reduce revenues by \$1.2 billion over the same period.

#### *Spending Subject to Appropriation*

H.R. 865 would authorize the appropriation of \$35.5 billion over the 2020–2024 period and CBO estimates that the bill would authorize additional appropriations totaling about \$0.2 billion over the same period. Assuming the appropriation of the authorized and estimated amounts, CBO estimates that implementing the bill would cost \$20.0 billion over the 2020–2024 period (see Table 2).

TABLE 2.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 865 <sup>a</sup>

	By fiscal year, millions of dollars—						
	2019	2020	2021	2022	2023	2024	2019–2024
Grants for Public School Facilities:							
Authorization .....	0	7,000	7,000	7,000	7,000	7,000	35,000
Estimated Outlays .....	0	700	1,750	3,850	6,300	7,000	19,600
Impact Aid Construction:							
Authorization .....	0	81	81	100	100	100	462
Estimated Outlays .....	0	8	20	47	78	104	257
Study and Report:							
Estimated Authorization .....	0	25	26	26	27	27	131
Estimated Outlays .....	0	20	25	26	26	27	124
Assistance for Schools Affected by Pyrrhotite:							
Estimated Authorization .....	0	23	23	24	24	25	119
Estimated Outlays .....	0	3	9	15	17	22	66
Total Changes:							
Estimated Authorization .....	0	7,129	7,130	7,150	7,151	7,152	35,712
Estimated Outlays .....	0	732	1,805	3,938	6,421	7,152	20,047

<sup>a</sup> CBO estimates spending subject to appropriation would total \$35.6 billion over the 2019–2029 period.

*Grants for Public School Facilities.* The bill would authorize the appropriation of \$7 billion for each year over the 2020–2029 period for the long-term improvement of public school facilities. Under the General Education Provisions Act (GEPA), those authorizations would be extended automatically for an additional year, through fiscal year 2030. Based on historical spending patterns for similar programs, CBO estimates that implementing this provision would cost \$19.6 billion over the 2020–2024 period, an additional \$35 billion through 2029, and about \$22 billion after 2029.



*Impact Aid Construction.* The federal Impact Aid Program provides funds to school districts that serve children who live on military installations and other federal lands that are exempt from local property taxes. The bill would authorize the appropriation of \$100 million for construction under that program for each year from 2020 through 2024. (Under GEPA, that funding would be extended automatically through 2025.) Currently, \$19 million is authorized to be appropriated for 2020 and 2021 and the Congress appropriated \$17 million for those purposes for 2019. CBO expects the newly authorized funds would spend more slowly at first than is ordinarily the case for this program because the bill would authorize a substantial increase over current funding amounts. CBO estimates that implementing this provision would cost \$257 million over the 2020–2024 period and an additional \$306 million through 2029.

*Study and Report.* The bill would require IES to complete a comprehensive study of the physical condition of all U.S. public schools. CBO assumes that IES would conduct the study by aggregating available information and augmenting that data with survey results and with inspections of a sample set of schools. CBO expects that IES would need to collect information from about 10 percent of U.S. public schools over a five-year period. In addition, CBO estimates that the institute would need to hire five full-time employees, conduct site visits, and hire contractors. On that basis, CBO estimates that implementing those provisions would cost \$124 million over the 2020–2024 period and an additional \$144 million through 2029.

*Assistance for Schools Affected by Pyrrhotite.* H.R. 865 would permanently authorize the appropriation of whatever amounts are necessary for grants to schools with concrete foundations that contain pyrrhotite, which can cause building foundations to crack and crumble. CBO is unaware of any comprehensive data on schools affected by pyrrhotite; only one school is currently known to be affected as far as CBO knows. CBO estimates that approximately one school per year would receive such a grant, and that, based on the estimated cost of a similar repair, the federal share of the total cost would be \$23 million in 2020. CBO estimates that implementing this provision would cost \$66 million over the 2020–2024 period and an additional \$114 million through 2029.

#### *Uncertainty*

JCT's estimate of the provisions related to tax credit bonds are closely tied to CBO's projections of interest rates over the next decade. Those projections are inherently uncertain. The estimate also depends on anticipated behavioral responses including taxpayers' willingness to purchase the bonds of state and local governments and those governments' willingness to incur such debt.

CBO has identified two additional areas of significant uncertainty regarding its estimates of spending subject to appropriation in H.R. 865:

- The bill's language regarding the comprehensive survey of the physical condition of all U.S. public schools is broad enough that CBO expects the Department of Education could exercise considerable judgment in designing and conducting the study of school buildings. The cost would depend in part on how the

department structured the required study. CBO based its estimate on information from discussions with experts in this area.

- The number of public schools that are affected by pyrrhotite is quite uncertain and little information to identify such schools is currently available; testing is under way in only a few places. If the number of affected schools is larger than current data indicate, the cost may be greater and more funds may be necessary.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 3.

TABLE 3.—CBO'S ESTIMATE OF PAY-AS-YOU-GO EFFECTS OF H.R. 865

	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2019-2024	2019-2029
	By fiscal year, millions of dollars—												
	Net Increase in the Deficit												
Statutory Pay-As-You-Go Effect .....	0	56	286	674	1,048	1,222	1,242	1,253	1,258	1,264	1,275	3,285	9,576
Memorandum:													
Changes in Outlays .....	0	54	273	635	968	1,100	1,089	1,078	1,067	1,057	1,046	3,030	8,367
Changes in Revenues .....	0	-2	-13	-39	-80	-122	-153	-174	-191	-207	-228	-255	-1,209

Components may not sum to totals because of rounding.

Increase in long-term deficits: JCT estimates that enacting H.R. 865 would increase on-budget deficits by more than \$5 billion in at least one of the four consecutive 10-year periods beginning in 2030.

Mandates: None

Estimate prepared by: Spending Subject to Appropriation: Leah Koestner; Direct Spending and Revenues: Staff of the Joint Committee on Taxation; Mandates: Zachary Byrum.

Estimate reviewed by: Sheila Dacey, Chief, Income Security and Education Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis; Theresa Gullo, Assistant Director for Budget Analysis.

#### COMMITTEE COST ESTIMATE

Clause 3(d)(1) of House rule XIII requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 865. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 865, as reported, are shown as follows:

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

### INTERNAL REVENUE CODE OF 1986

\* \* \* \* \*

## Subtitle A—Income Taxes

### CHAPTER 1—NORMAL TAXES AND SURTAXES

#### Subchapter A—Determination of Tax Liability

#### PART IV—CREDITS AGAINST TAX

#### Subpart I—Qualified Tax Credit Bonds

**[Section 201 of H.R. 865 (as reported) restores sections 54A, 54E, and 6431 of the Internal Revenue Code of 1986. The following reflects a version of the provisions as so restored prior to its repeal by Public Law 115-97 and is further amended by the bill.]**

**SEC. 54A. CREDIT TO HOLDERS OF QUALIFIED TAX CREDIT BONDS.**

(a) **ALLOWANCE OF CREDIT.**—If a taxpayer holds a qualified tax credit bond on one or more credit allowance dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

(b) **AMOUNT OF CREDIT.**—

(1) **IN GENERAL.**—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tax credit bond is 25 percent of the annual credit determined with respect to such bond.

(2) **ANNUAL CREDIT.**—The annual credit determined with respect to any qualified tax credit bond is the product of—

- (A) the applicable credit rate, multiplied by
- (B) the outstanding face amount of the bond.

(3) **APPLICABLE CREDIT RATE.**—For purposes of paragraph (2), the applicable credit rate is the rate which the Secretary estimates will permit the issuance of qualified tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond.

(4) **SPECIAL RULE FOR ISSUANCE AND REDEMPTION.**—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(c) **LIMITATION BASED ON AMOUNT OF TAX.**—

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

- (A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over
- (B) the sum of the credits allowable under this part (other than subparts C and J and this subpart).

(2) **CARRYOVER OF UNUSED CREDIT.**—If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

(d) **QUALIFIED TAX CREDIT BOND.**—For purposes of this section—

(1) **QUALIFIED TAX CREDIT BOND.**—The term “qualified tax credit bond” means—

- [(A) a qualified forestry conservation bond,
- [(B) a new clean renewable energy bond,
- [(C) a qualified energy conservation bond,]
- (D) a qualified zone academy bond, or

(E) a qualified school construction bond, which is part of an issue that meets requirements of paragraphs (2), (3), (4), (5), and (6).

(2) SPECIAL RULES RELATING TO EXPENDITURES.—

(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects—

(i) 100 percent of the available project proceeds to be spent for 1 or more qualified purposes within the 3-year period beginning on such date of issuance, and

(ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance.

(B) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 3 YEARS.—

(i) IN GENERAL.—To the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(ii) EXPENDITURE PERIOD.—For purposes of this subpart, the term “expenditure period” means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

(iii) EXTENSION OF PERIOD.—Upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

(C) QUALIFIED PURPOSE.—For purposes of this paragraph, the term “qualified purpose” means—

(i) in the case of a qualified forestry conservation bond, a purpose specified in section 54B(e),

(ii) in the case of a new clean renewable energy bond, a purpose specified in section 54C(a)(1),

(iii) in the case of a qualified energy conservation bond, a purpose specified in section 54D(a)(1),

(iv) in the case of a qualified zone academy bond, a purpose specified in section 54E(a)(1), and

(v) in the case of a qualified school construction bond, a purpose specified in section 54F(a)(1).

(D) REIMBURSEMENT.—For purposes of this subtitle, available project proceeds of an issue shall be treated as spent for a qualified purpose if such proceeds are used to reimburse the issuer for amounts paid for a qualified pur-

pose after the date that the Secretary makes an allocation of bond limitation with respect to such issue, but only if—

(i) prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a qualified tax credit bond,

(ii) not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

(3) REPORTING.—An issue shall be treated as meeting the requirements of this paragraph if the issuer of qualified tax credit bonds submits reports similar to the reports required under section 149(e).

(4) SPECIAL RULES RELATING TO ARBITRAGE.—

(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if the issuer satisfies the requirements of section 148 with respect to the proceeds of the issue.

(B) SPECIAL RULE FOR INVESTMENTS DURING EXPENDITURE PERIOD.—An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any investment of available project proceeds during the expenditure period.

(C) SPECIAL RULE FOR RESERVE FUNDS.—An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any fund which is expected to be used to repay such issue if—

(i) such fund is funded at a rate not more rapid than equal annual installments,

(ii) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue, and

(iii) the yield on such fund is not greater than the discount rate determined under paragraph (5)(B) with respect to the issue.

(5) MATURITY LIMITATION.—

(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if the maturity of any bond which is part of such issue does not exceed the maximum term determined by the Secretary under subparagraph (B).

(B) MAXIMUM TERM.—During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is

not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(6) PROHIBITION ON FINANCIAL CONFLICTS OF INTEREST.—An issue shall be treated as meeting the requirements of this paragraph if the issuer certifies that—

(A) applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, and

(B) if the Secretary prescribes additional conflicts of interest rules governing the appropriate Members of Congress, Federal, State, and local officials, and their spouses, such additional rules are satisfied with respect to such issue.

(e) OTHER DEFINITIONS.—For purposes of this subchapter—

(1) CREDIT ALLOWANCE DATE.—The term “credit allowance date” means—

(A) March 15,

(B) June 15,

(C) September 15, and

(D) December 15.

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

(2) BOND.—The term “bond” includes any obligation.

(3) STATE.—The term “State” includes the District of Columbia and any possession of the United States.

(4) AVAILABLE PROJECT PROCEEDS.—The term “available project proceeds” means—

(A) the excess of—

(i) the proceeds from the sale of an issue, over

(ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and

(B) the proceeds from any investment of the excess described in subparagraph (A).

(f) CREDIT TREATED AS INTEREST.—For purposes of this subtitle, the credit determined under subsection (a) shall be treated as interest which is includible in gross income.

(g) S CORPORATIONS AND PARTNERSHIPS.—In the case of a tax credit bond held by an S corporation or partnership, the allocation of the credit allowed by this section to the shareholders of such corporation or partners of such partnership shall be treated as a distribution.

(h) BONDS HELD BY REAL ESTATE INVESTMENT TRUSTS.—If any qualified tax credit bond is held by a real estate investment trust, the credit determined under subsection (a) shall be allowed to beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be distributed to such beneficiaries) under procedures prescribed by the Secretary.

(i) CREDITS MAY BE STRIPPED.—Under regulations prescribed by the Secretary—

(1) IN GENERAL.—There may be a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allow-



ance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

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

**SEC. 54E. QUALIFIED ZONE ACADEMY BONDS.**

(a) QUALIFIED ZONE ACADEMY BONDS.—For purposes of this subchapter, the term “qualified zone academy bond” means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,

(2) the bond is issued by a State or local government within the jurisdiction of which such academy is located, and

(3) the issuer—

(A) designates such bond for purposes of this section, and

[(B) certifies that it has written assurances that the private business contribution requirement of subsection (b) will be met with respect to such academy, and]

[(C)] (B) certifies that it has the written approval of the eligible local education agency for such bond issuance.

[(b) PRIVATE BUSINESS CONTRIBUTION REQUIREMENT.—For purposes of subsection (a), the private business contribution requirement of this subsection is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.]

(c) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

(1) NATIONAL LIMITATION.—There is a national zone academy bond limitation for each calendar year. Such limitation is \$400,000,000 for 2008, \$1,400,000,000 for 2009 and 2010, [and \$400,000,000] *\$400,000,000 for 2011, 2012, 2013, 2014, 2015, and 2016 [and, except as provided in paragraph (4), zero thereafter.], and \$1,400,000,000 for 2020 and each year thereafter.*

(2) ALLOCATION OF LIMITATION.—The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

(3) DESIGNATION SUBJECT TO LIMITATION AMOUNT.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

(4) CARRYOVER OF UNUSED LIMITATION.—

(A) IN GENERAL.—If for any calendar year—

- (i) the limitation amount for any State, exceeds
  - (ii) the amount of bonds issued during such year which are designated under subsection (a) with respect to qualified zone academies within such State,
- the limitation amount for such State for the following calendar year shall be increased by the amount of such excess.

(B) LIMITATION ON CARRYOVER.—Any carryforward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

(C) COORDINATION WITH SECTION 1397E.—Any carryover determined under section 1397E(e)(4) (relating to carryover of unused limitation) with respect to any State to calendar year 2008 or 2009 shall be treated for purposes of this section as a carryover with respect to such State for such calendar year under subparagraph (A), and the limitation of subparagraph (B) shall apply to such carryover taking into account the calendar years to which such carryover relates.

(d) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED ZONE ACADEMY.—The term “qualified zone academy” means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if—

(A) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,

(B) students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,

(C) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

(D)(i) such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), or

(ii) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

(2) ELIGIBLE LOCAL EDUCATION AGENCY.—For purposes of this section, the term “eligible local education agency” means any local educational agency as defined in section 8101 of the Elementary and Secondary Education Act of 1965.

(3) **QUALIFIED PURPOSE.**—The term “qualified purpose” means, with respect to any qualified zone academy—

(A) **[rehabilitating or repairing]** *constructing, rehabilitating, retrofitting, or repairing* the public school facility in which the academy is established,

(B) providing equipment for use at such academy,

(C) developing course materials for education to be provided at such academy, and

(D) training teachers and other school personnel in such academy.

(4) **QUALIFIED CONTRIBUTIONS.**—The term “qualified contribution” means any contribution (of a type and quality acceptable to the eligible local education agency) of—

(A) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),

(B) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,

(C) services of employees as volunteer mentors,

(D) internships, field trips, or other educational opportunities outside the academy for students, or

(E) any other property or service specified by the eligible local education agency.

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### ***Subpart J—School Infrastructure Bonds***

*Sec. 54BB. School infrastructure bonds.*

#### **SEC. 54BB. SCHOOL INFRASTRUCTURE BONDS.**

(a) **IN GENERAL.**—*If a taxpayer holds a school infrastructure bond on one or more interest payment dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.*

(b) **AMOUNT OF CREDIT.**—*The amount of the credit determined under this subsection with respect to any interest payment date for a school infrastructure bond is 100 percent of the amount of interest payable by the issuer with respect to such date.*

(c) **LIMITATION BASED ON AMOUNT OF TAX.**—

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

(A) *the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over*

(B) *the sum of the credits allowable under this part (other than subpart C and this subpart).*

(2) **CARRYOVER OF UNUSED CREDIT.**—*If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).*

(d) **SCHOOL INFRASTRUCTURE BOND.**—

(1) *IN GENERAL.*—For purposes of this section, the term “school infrastructure bond” means any bond issued as part of an issue if—

(A) 100 percent of the available project proceeds of such issue are to be used for the purposes described in section 301 of the Rebuild America’s Schools Act of 2019,

(B) the interest on such obligation would (but for this section) be excludable from gross income under section 103,

(C) the issue meets the requirements of paragraph (3), and

(D) the issuer designates such bond for purposes of this section.

(2) *APPLICABLE RULES.*—For purposes of applying paragraph (1)—

(A) for purposes of section 149(b), a school infrastructure bond shall not be treated as federally guaranteed by reason of the credit allowed under section 6431(a),

(B) for purposes of section 148, the yield on a school infrastructure bond shall be determined without regard to the credit allowed under subsection (a), and

(C) a bond shall not be treated as a school infrastructure bond if the issue price has more than a de minimis amount (determined under rules similar to the rules of section 1273(a)(3)) of premium over the stated principal amount of the bond.

(3) *6-YEAR EXPENDITURE PERIOD.*—

(A) *IN GENERAL.*—An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects 100 percent of the available project proceeds to be spent for purposes described in section 301 of the Rebuild America’s Schools Act of 2019 within the 6-year period beginning on such date of issuance.

(B) *FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 6 YEARS.*—To the extent that less than 100 percent of the available project proceeds of the issue are expended at the close of the period described in subparagraph (A) with respect to such issue, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(e) *LIMITATION ON AMOUNT OF BONDS DESIGNATED.*—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (d) by any issuer shall not exceed the limitation amount allocated under subsection (g) for such calendar year to such issuer.

(f) *NATIONAL LIMITATION ON AMOUNT OF BONDS DESIGNATED.*—The national qualified school infrastructure bond limitation for each calendar year is—

(1) \$10,000,000,000 for 2020,

(2) \$10,000,000,000 for 2021, and

(3) \$10,000,000,000 for 2022.

(g) *ALLOCATION OF LIMITATION.*—

(1) *ALLOCATIONS.*—

(A) *STATES*.—After application of subparagraph (B) and paragraph (3)(A), the limitation applicable under subsection (f) for any calendar year shall be allocated by the Secretary among the States in proportion to the respective amounts received by all local educational agencies in each State under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the previous fiscal year relative to the total such amount received by all local educational agencies in for the most recent fiscal year ending before such calendar year.

(B) *CERTAIN POSSESSIONS*.—One-half of 1 percent of the amount of the limitation applicable under subsection (f) for any calendar year shall be allocated by the Secretary to possessions of the United States other than Puerto Rico for such calendar year shall be one-half of 1 percent.

(2) *ALLOCATIONS TO SCHOOLS*.—The limitation amount allocated to a State or possession under paragraph (1) shall be allocated by the State educational agency (or such other agency as is authorized under State law to make such allocation) to issuers within such State or possession in accordance with the priorities described in section 103(c) of the Rebuild America’s Schools Act of 2019 and the eligibility requirements described in section 103(b) of such Act, except that paragraph (1)(C) of such section shall not apply to the determination of eligibility for such allocation.

(3) *ALLOCATIONS FOR INDIAN SCHOOLS*.—

(A) *IN GENERAL*.—One-half of 1 percent of the amount of the limitation applicable under subsection (f) for any calendar year shall be allocated by the Secretary to the Secretary of the Interior for schools funded by the Bureau of Indian Affairs for such calendar year.

(B) *ALLOCATION TO SCHOOLS*.—The limitation amount allocated to the Secretary of the Interior under paragraph (1) shall be allocated by such Secretary to issuers or schools funded as described in paragraph (2). In the case of amounts allocated under the preceding sentence, Indian tribal governments (as defined in section 7701(a)(40)) shall be treated as qualified issuers for purposes of this subchapter.

(4) *DIGITAL LEARNING*.—Up to 10 percent of the limitation amount allocated under paragraph (1) or (3)(A) may be allocated by the State to issuers within such State to carry out activities to improve digital learning in accordance with section 301(b) of the Rebuild America’s Schools Act of 2019.

(h) *INTEREST PAYMENT DATE*.—For purposes of this section, the term “interest payment date” means any date on which the holder of record of the school infrastructure bond is entitled to a payment of interest under such bond.

(i) *SPECIAL RULES*.—

(1) *INTEREST ON SCHOOL INFRASTRUCTURE BONDS INCLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES*.—For purposes of this title, interest on any school infrastructure bond shall be includible in gross income.

(2) *APPLICATION OF CERTAIN RULES.*—Rules similar to the rules of subsections (f), (g), (h), and (i) of section 54A shall apply for purposes of the credit allowed under subsection (a).

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## Subtitle F—Procedure and Administration

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### CHAPTER 65—ABATEMENTS, CREDITS, AND REFUND

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#### Subchapter B—Rules of Special Application

##### SEC. 6431. CREDIT FOR QUALIFIED BONDS ALLOWED TO ISSUER.

(a) *IN GENERAL.*—In the case of a qualified bond issued before January 1, 2011, the issuer of such bond shall be allowed a credit with respect to each interest payment under such bond which shall be payable by the Secretary as provided in subsection (b).

(b) *PAYMENT OF CREDIT.*—The Secretary shall pay (contemporaneously with each interest payment date under such bond) to the issuer of such bond (or to any person who makes such interest payments on behalf of the issuer) 35 percent of the interest payable under such bond on such date.

(c) *APPLICATION OF ARBITRAGE RULES.*—For purposes of section 148, the yield on a qualified bond shall be reduced by the credit allowed under this section.

(d) *INTEREST PAYMENT DATE.*—For purposes of this subsection, the term “interest payment date” means each date on which interest is payable by the issuer under the terms of the bond.

(e) *QUALIFIED BOND.*—For purposes of this subsection, the term “qualified bond” has the meaning given such term in section 54AA(g).

(f) *APPLICATION OF SECTION TO CERTAIN QUALIFIED TAX CREDIT BONDS.*—

(1) *IN GENERAL.*—In the case of any specified tax credit bond—

(A) such bond shall be treated as a qualified bond for purposes of this section,

(B) subsection (a) shall be applied without regard to the requirement that the qualified bond be issued before January 1, 2011,

(C) the amount of the payment determined under subsection (b) with respect to any interest payment due under such bond shall be equal to the lesser of—

(i) the amount of interest payable under such bond on such date, or

(ii) the amount of interest which would have been payable under such bond on such date if such interest were determined at the applicable credit rate determined under section 54A(b)(3),

(D) interest on any such bond shall be includible in gross income for purposes of this title,

(E) no credit shall be allowed under section 54A with respect to such bond,

(F) any payment made under subsection (b) shall not be includible as income for purposes of this title, and

(G) the deduction otherwise allowed under this title to the issuer of such bond with respect to interest paid under such bond shall be reduced by the amount of the payment made under this section with respect to such interest.

(2) SPECIAL RULE FOR NEW CLEAN RENEWABLE ENERGY BONDS AND QUALIFIED ENERGY CONSERVATION BONDS.—In the case of any specified tax credit bond described in clause (i) or (ii) of paragraph (3)(A), the amount determined under paragraph (1)(C)(ii) shall be 70 percent of the amount so determined without regard to this paragraph and sections 54C(b) and 54D(b).

(3) SPECIFIED TAX CREDIT BOND.—For purposes of this subsection, the term “specified tax credit bond” means *any school infrastructure bond (as defined in section 54BB) or any qualified tax credit bond (as defined in section 54A(d))* if—

(A) such bond is—

(i) a new clean renewable energy bond (as defined in section 54C),

(ii) a qualified energy conservation bond (as defined in section 54D),

(iii) a qualified zone academy bond (as defined in section 54E) determined without regard to any allocation relating to the national zone academy bond limitation for years after 2010 or any carryforward of any such allocation, or

(iv) a qualified school construction bond (as defined in section 54F), and

(B) the issuer of such bond makes an irrevocable election to have this subsection apply.

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## SECTION 1601 OF THE AMERICAN RECOVERY AND REINVESTMENT TAX ACT OF 2009

### SEC. 1601. APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS

Subchapter IV of chapter 31 of the title 40, United States Code, shall apply to projects financed with the proceeds of—

(1) any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(2) any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

[(3) any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,]

[(4)] (3) any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and

[(5)] (4) any recovery zone economic development bond (as defined in section 1400U-2 of the Internal Revenue Code of 1986).

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## ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

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## TITLE VII—IMPACT AID

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### SEC. 7014. AUTHORIZATION OF APPROPRIATIONS.

(a) PAYMENTS FOR FEDERAL ACQUISITION OF REAL PROPERTY.—For the purpose of making payments under section 7002, there are authorized to be appropriated \$66,813,000 for each of fiscal years 2017 through 2019, and \$71,997,917 for fiscal year 2020.

(b) BASIC PAYMENTS; PAYMENTS FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—For the purpose of making payments under section 7003(b), there are authorized to be appropriated \$1,151,233,000 for each of fiscal years 2017 through 2019, and \$1,240,572,618 for fiscal year 2020.

(c) PAYMENTS FOR CHILDREN WITH DISABILITIES.—For the purpose of making payments under section 7003(d), there are authorized to be appropriated \$48,316,000 for each of fiscal years 2017 through 2019, and \$52,065,487 for fiscal year 2020.

[(d) CONSTRUCTION.—For the purpose of carrying out section 7007, there are authorized to be appropriated \$17,406,000 for each of fiscal years 2017 through 2019, and \$18,756,765 for fiscal year 2020.]

(d) CONSTRUCTION *For the purpose of carrying out section 7007, there are authorized to be appropriated \$100,000,000 for each of fiscal years 2020 through 2024.*

(e) FACILITIES MAINTENANCE.—For the purpose of carrying out section 7008, there are authorized to be appropriated \$4,835,000 for each of fiscal years 2017 through 2019, and \$5,210,213 for fiscal year 2020.

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## MINORITY VIEWS

### INTRODUCTION

All students deserve access to an excellent education that prepares them for postsecondary success. This includes attending schools with adequate facilities to support teaching and learning. The condition of America's public school facilities appears mixed. A 2014 study from NCES surveyed local school districts and found that 53 percent of public schools needed repairs, renovations, and modernizations, and that an estimated \$197 billion would be needed to bring all public schools into good condition.<sup>1</sup> However, that same report indicated that only 3 percent of public school buildings were described as being in poor condition while 76 percent were described as being in excellent or good condition.<sup>2</sup>

The federal government funds the Impact Aid Construction program, which provides funding to school districts to build and repair schools impacted by the loss of tax revenue because of the presence of the federal government. In most cases, the federal government also exempts interest income from municipal bonds, including municipal bonds used to finance school construction projects, from federal income tax. A handful of small funding streams in specialized programs in various agencies throughout the federal government can also be used to build, repair, or modernize facilities. Otherwise, the federal government has traditionally played a very limited role in school construction.

This is because building and repairing public school facilities has appropriately been primarily a state and local responsibility. H.R. 865, the *Rebuild America's Schools Act*, would, in theory, dramatically expand the federal government's financial and regulatory role in school construction. In reality, it would amount to another broken promise from the federal government.

### BROKEN PROMISES

Congress has made promises regarding school construction before. Twenty-five years ago, Congress enacted H.R. 6, the *Improving America's Schools Act of 1994* (IASA), to reauthorize the *Elementary and Secondary Education Act* (ESEA). Included within the IASA was the *Education Infrastructure Act of 1994*, which authorized the Secretary to award grants to school districts "to ensure the health and safety of students through the repair, renovation, alteration, and construction of a public elementary or secondary school library, media center, or facility, used for academic or vocational in-

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<sup>1</sup> *Condition of America's Public School Facilities: 2012–2013*, page 3. <https://nces.ed.gov/pubs2014/2014022.pdf>

<sup>2</sup> *Condition of America's Public School Facilities: 2012–2013*, page 3.

struction.”<sup>3</sup> School districts were eligible for grants based on their population of low-income students, a lack of local fiscal capacity, and the current state of the public school facilities in the district. In other words, while some of the details were different, the program authorized by Congress 25 years ago was almost identical in effect to the program proposed in the *Rebuild America's Schools Act*. What effect did the 1994 program have on school district facilities and student achievement? None. No school district ever saw a dime, because the program was never appropriated a single dollar.

Sadly, this is the not the only commitment Congress has failed to keep. In 1975, Congress enacted the predecessor to the *Individuals with Disabilities Education Act* (IDEA). In that law, Congress promised a maximum grant to every state equal to 40 percent of the national average per-pupil expenditure (APPE). When Republicans took over the House in 1995 for the first time in more than 40 years, and nearly 20 years after IDEA was originally enacted, the federal government was funding IDEA at 8 percent of the national APPE and Republicans more than doubled that contribution. When Democrats regained the majority in 2007, the federal government was funding IDEA at 17 percent of the national APPE. Unfortunately, the federal government's contribution has steadily declined since then. In fiscal year (FY) 2019 the federal government is funding IDEA at about 14 percent of the national APPE.

Why has funding progress on this core program stalled? Because Democrats have pursued other agendas. For example, in FYs 2012 and 2013, Republicans controlled the House, but Democrats controlled the Senate and the White House. In FY 2012, IDEA was funded at \$11.578 billion. The Republican House proposal for FY 2013 was \$12.078 billion while President Obama proposed flat funding and Senate Democrats proposed a modest increase to \$11.678 billion. The President's level-funding proposal was enacted.

Where did funding increases for the Department of Education go? Among other places, Democrats in Congress and the White House spent nearly \$6 billion on Race to the Top, a program used to coerce states into sweeping policy changes, but which provided actual funding to only a lucky few school districts nationwide. Republicans have consistently prioritized IDEA while Democrats have short-changed this core program to fund their own pet projects.

Now here we are again. The Democrats are advancing H.R. 865, yet another federal program at the Department of Education to address a local challenge. This story will end in one of two ways. One, this school construction program will follow in the footsteps of its predecessor and never receive funding. Or two, this program will receive some funding and some community somewhere will benefit, while special education students everywhere else continue to be shortchanged.

#### INCREASED COSTS AND BURDENS

In the unlikely event this bill is enacted *and* funded, states and school districts will face a sobering reality. As with so many other programs, the federal government offers money then hides within

<sup>3</sup> *Elementary and Secondary Education Act* as amended by the *Improving America's Schools Act of 1994*. Section 12007(a).

the bill regulatory and compliance burdens that will increase costs and make it harder for states and school districts to take necessary steps to improve their public school facilities.

This bill contains numerous regulatory burdens that will increase costs to states and school districts, including the following:

- States are required to create, maintain, and update every two years a database containing detailed information on every public school facility in the state. It is unlikely any current state meets this requirement.
  - The database must comply with national data standards established by the Secretary.
  - The database must include information on 31 elements for every public school in the state.
- States must develop regulations on 28 different elements of a state's school renovation and construction work.
- States must submit a state plan for how funds will be spent.
  - The Secretary is authorized to request any information he or she chooses in the state plan, whether or not the information is relevant to the state's school construction and renovation work.
- States are required to maintain at least 90 percent of the average fiscal effort for capital expenditures over the previous five years.
- School districts receiving grants are required to create a 10-year facilities master plan that includes 52 elements for every public school facility in the district.
- States and school districts are required to submit information for separate reports by the Secretary, the Government Accountability Office, and the Institute of Education Sciences.
  - A precise count of the reporting elements collectively required in these reports is impossible because there would be some variation between school districts, but for most school districts the number of elements would easily exceed 50.
- School districts would be required to ensure that projects are certified "green" and meet national building, water conservation, and energy conservation codes (that might not match the state's regulations also required in the bill).

Again, H.R. 865 is the wrong answer. This bill will, under a best case scenario, provide funding to a handful of school districts in exchange for increased costs and regulatory burdens for everyone. Committee Republicans believe there is a better way.

#### OPPORTUNITY ZONES

In the 115th Congress, Republicans enacted, as part of the *Tax Cuts and Jobs Act*, historic bipartisan reforms to potentially unleash trillions of dollars in private capital into communities left behind during the current economic expansion. Senators Tim Scott (R-SC) and Cory Booker (D-NJ) championed the provision they and many others saw as an innovative way to break the cycle of failed government programs by using the energy and ingenuity of the private sector to revitalize communities.

Under the program, governors nominate, and the Internal Revenue Service certifies, communities as Opportunity Zones. To be nominated and certified, a community must have a poverty rate of

20 percent or higher or a median household income that is less than 80 percent of the surrounding area. Governors are allowed to designate 25 percent of a state's eligible communities as Opportunity Zones. As of December 2018, 8,763 low-income communities had been designated as Opportunity Zones, representing all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and American Samoa. An estimated \$6.1 trillion of paper profits currently rests on American corporate balance sheets.<sup>4</sup>

The Opportunity Zones provision would provide tax incentives for much of that capital to be reinvested in Opportunity Funds that would in turn invest in communities designated as Opportunity Zones. Investments in so-called vice businesses (e.g., liquor stores) are prohibited, but beyond that, investment opportunities are open-ended.

Decades of top-down mandates from Washington have failed to revitalize communities, and those communities are desperate for new solutions driven by local leaders working with local citizens to address local needs. Schools are integral parts of communities, and a key part of communities' economic and workforce development efforts could be modernizing school facilities through the Opportunity Zones provision of the *Tax Cuts and Jobs Act*.

#### COMMITTEE CONSIDERATION OF H.R. 865

On February 26, 2019, the House Committee on Education and Labor met to mark up H.R. 865.

#### REJECTED AMENDMENTS THAT WOULD HAVE IMPROVED THE BILL

During consideration of H.R. 865, Committee Republicans offered several amendments to improve the bill. Unfortunately, the amendments were rejected by the Democrats. Those amendments were as follows:

- Rep. Elise Stefanik (R-NY) offered an amendment that would have ensured rural school districts received a fair share of funds under the program. Rural school districts are often at a disadvantage when states award grants competitively. Rural districts lack the capacity to dedicate staff resources to comply with application processes. Unfortunately, the majority chose not to protect these districts and rejected the amendment by a vote of 20–26.
- Rep. James Comer (R-KY) offered an amendment to ensure funds would only be awarded under the bill after an independent auditor certifies the bill will not raise costs on states and school districts. As outlined before, the bill contains numerous provisions that will increase the regulatory burden on states and districts and increase the costs of construction projects. Rep. Comer's amendment would have provided vital protection against these increased costs for states and school districts but was rejected by the majority by a vote of 20–26.
- Rep. Jim Banks (R-IN) offered an amendment to ensure no funds under the bill could be used for lobbying activities. If this bill is ever funded, then those funds should be used by school districts

<sup>4</sup>“An Unlikely Group of Billionaires and Politicians Has Created the Most Unbelievable Tax Break Ever.” *Forbes*. July 18, 2018. <https://www.forbes.com/sites/forbesdigitalcovers/2018/07/17/an-unlikely-group-of-billionaires-and-politicians-has-created-the-most-unbelievable-tax-break-ever/#29f02e941485>.

to renovate or construct schools. This amendment would have protected taxpayers from the misuse of federal funds, but the majority rejected the amendment by voice vote.

- Rep. Glenn Grothman (R-WI) offered an amendment that would have prohibited funds from being awarded under the bill until the Secretary of Education, in consultation with the Environmental Protection Agency, certifies the bill's green requirements would not add to states' and school districts' costs. The majority rejected this effort to protect states and school districts from a portion of the regulatory burdens in this bill by a vote of 20–26.

- Ranking Member Virginia Foxx (R-NC) offered an amendment to rename the bill the *Trojan Horse Act*. Too often, Congress enacts bills with promises of new funding while downplaying the ways it would increase costs. This amendment would have ensured states and school districts understand that the bill's promised funding also brings hidden costs and regulatory burdens that would overwhelm them with red tape.

#### *Unprecedented Attack on Minority Rights*

The majority also took unprecedented steps to stifle debate and trample on the rights of the minority. Two amendments were ruled non-germane that were demonstrably germane; both were offered by Republicans.

First, Rep. Rick Allen (R-GA) offered an amendment to ensure no state or school district could be denied funding under the bill based on the state's or school district's decision to permit teachers or other school personnel from possessing firearms on school grounds. Second, Rep. Ron Wright (R-TX) offered an amendment to prohibit school districts from receiving funds under the bill unless the school district has and follows a policy that prohibits the hiring of any individual required to register as a sex offender. Based on conversations with the House parliamentarians and on the long precedents of this Committee, Committee Republicans believe ruling these amendments non-germane was and remains indefensible.

With respect to Rep. Allen's amendment, negative rules of construction have a long history of being considered germane, regardless of topic, as they by nature construe the text of the underlying legislation. In addition, the amendment addresses a specific weakness in the underlying bill. In section 102(b)(1)(E) of the manager's amendment offered by Chairman Bobby Scott (D-VA), the Secretary is given authority to request in state plans "such other information as the Secretary may require." This language gives the Secretary open-ended authority to add state plan requirements. A Secretary would be well within her or his authority to demand a state include in its state plan a description of how the state will avoid awarding grants to school districts that choose to permit teachers or other school personnel to possess firearms on school grounds.

With respect to Rep. Wright's amendment, additional plan and eligibility requirements for federal grants also have a long history of being considered germane as conditions and qualifications. Here, too, the amendment addresses specific provisions of the underlying bill. The amendment adds a new state plan requirement and school district eligibility criterion that is related to the purpose of the bill,

which is ensuring the safety of children in facilities under construction from those performing the work. The underlying bill does not limit its requirements only to those related specifically to the authorized activities under the bill. The aforementioned provision in section 102(b)(1)(E) does not limit the Secretary's open-ended authority to add requirements to the plan only to those that would be specifically related to school construction.

The rulings of these amendments as non-germane represent an abuse of the majority's power. We urge the majority to return to Committee precedent.

In addition, Rep. Glenn "GT" Thompson (R-PA) offered an amendment that would have forced Congress to live up to its commitment under IDEA before funds could be awarded under this bill. Committee Republicans note that the substance of this amendment and a similar amendment related to Title I of the ESEA were offered and voted on during consideration of another school construction bill, H.R. 2187, the *21st Century Green High-Performing Public School Facilities Act*, during the 111th Congress. During this markup though, the majority ruled this amendment not germane. Given Congress's long record of broken promises, Committee Republicans believe any bill proposing massive new spending and regulatory burdens should include a debate about existing unfulfilled obligations.

Our Committee has always been willing to debate difficult issues. We have understood that an open debate and amendment process gives every Member a chance for his or her voice to be heard and strengthens legislation before it is reported for consideration by the whole House. We urge the majority to respect this tradition.

#### ADOPTED AMENDMENTS THAT WILL IMPROVE THE BILL

Multiple worthwhile amendments were adopted, including one offered by Rep. Jahana Hayes (D-CT). Her amendment will ensure that no funds will be awarded to a charter school if the building is owned by an individual or private sector entity with a management or governance role in the charter school. The amendment was adopted by a voice vote. Committee Republicans agree that conflicts of interest should be avoided. We do note, however, that charter schools often struggle to support construction and renovation of facilities because they do not possess the same capacity for raising capital as traditional school districts. While it is unlikely this program will ever be funded, if funds are appropriated and grants awarded, Committee Republicans urge school districts to consult with charter schools and include charter schools in their plans.

#### CONCLUSION

As outlined in these Minority Views, H.R. 865 presents us a choice. We can try the same old approach that has failed literally for decades. That approach demands more sacrifice from taxpayers, offers more regulations from Washington, and makes promises we know will not be kept. That is the Democrat way.

The Republican way is to give communities the tools they need to unleash innovation, investment, and revitalization, with the flexibility to tailor local solutions for local challenges. For this reason, Congress should reject H.R. 865, so that Democrats and Re-

publicans can work across the aisle to pursue strategies that will work.

VIRGINIA FOXX,  
*Ranking Member.*  
DAVID P. ROE, M.D.  
GLENN “GT” THOMPSON.  
TIM WALBERG.  
BRETT GUTHRIE.  
BRADLEY BYRNE.  
GLENN GROTHMAN.  
ELISE M. STEFANIK.  
RICK W. ALLEN.  
JIM BANKS.  
LLOYD SMUCKER.  
JAMES COMER.  
MARK WALKER.  
RUSS FULCHER.  
RON WRIGHT.  
DANIEL MEUSER.  
DUSTY JOHNSON.  
FRED KELLER.  
GREGORY F. MURPHY.

