

112TH CONGRESS
1ST SESSION

S. 902

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

IN THE SENATE OF THE UNITED STATES

MAY 5, 2011

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “School Building Fair-
5 ness Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

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

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

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

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

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

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

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

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

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

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

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

4 “(a) DEFINITIONS.—In this section:

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

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

12 “(3) EARLY LEARNING FACILITY.—The term
13 ‘early learning facility’ means a public facility that—

14 “(A) serves children who are not yet in
15 kindergarten; and

16 “(B) is under the jurisdiction of a local
17 educational agency.

18 “(4) ENERGY STAR.—The term ‘Energy Star’
19 means the Energy Star program of the Department
20 of Energy and the Environmental Protection Agen-
21 cy.

22 “(5) GREEN GLOBES.—The term ‘Green
23 Globes’ means the Green Building Initiative environ-
24 mental design and rating system.

25 “(6) HIGH-NEED LOCAL EDUCATIONAL AGEN-
26 CY.—The term ‘high-need local educational agency’

1 has the meaning given the term in section
2 2102(3)(A).

3 “(7) LEED GREEN BUILDING RATING SYS-
4 TEM.—The term ‘LEED Green Building Rating
5 System’ means the United States Green Building
6 Council Leadership in Energy and Environmental
7 Design green building rating system.

8 “(8) PUBLIC SCHOOL FACILITY.—The term
9 ‘public school facility’ means a public elementary or
10 secondary school facility, including a public charter
11 school facility or an existing facility planned for
12 adaptive reuse as a public charter school facility.

13 “(9) RURAL LOCAL EDUCATIONAL AGENCY.—
14 The term ‘rural local educational agency’ means a
15 local educational agency that meets the eligibility re-
16 quirements under—

17 “(A) section 6211(b) for participation in
18 the program described in subpart 1 of part B
19 of title VI; or

20 “(B) section 6221(b) for participation in
21 the program described in subpart 2 of part B
22 of title VI.

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

1 “(b) ALLOCATION OF FUNDS.—

2 “(1) RESERVATIONS.—From the funds appro-
3 priated under subsection (i) for a fiscal year, the
4 Secretary shall reserve 1 percent to provide assist-
5 ance to the outlying areas and for payments to the
6 Secretary of the Interior to provide assistance to
7 schools funded by the Bureau of Indian Education.
8 Funds allocated under this paragraph shall be re-
9 served by the Secretary for distribution among the
10 outlying areas and the Secretary of the Interior on
11 the basis of their relative need for public elementary
12 school and secondary school repair, renovation, and
13 construction, as determined by the Secretary.

14 “(2) ALLOCATION TO STATE EDUCATIONAL
15 AGENCIES.—From the funds appropriated under
16 subsection (i) for a fiscal year that are not reserved
17 under paragraph (1) for the fiscal year, the Sec-
18 retary shall allocate to each State educational agen-
19 cy serving a State an amount that bears the same
20 relation to the funds as the amount the State re-
21 ceived under part A of title I for the fiscal year pre-
22 ceding the fiscal year for which the determination is
23 made bears to the amount all States received under
24 such part for such preceding fiscal year, except that
25 no such State educational agency shall receive less

1 than 0.5 percent of the amount allocated under this
 2 subsection.

3 “(c) WITHIN-STATE DISTRIBUTIONS.—

4 “(1) ADMINISTRATIVE AND OTHER COSTS.—

5 “(A) STATE EDUCATIONAL AGENCY AD-
 6 MINISTRATION AND OTHER COSTS.—Except as
 7 provided in subparagraph (D), each State edu-
 8 cational agency may reserve not more than 1
 9 percent of the State educational agency’s alloca-
 10 tion under subsection (b) for the purposes of
 11 administering the distribution of grants under
 12 this subsection and awarding grants under sub-
 13 paragraph (C)(v).

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

17 “(i) to provide technical assistance to
 18 local educational agencies; and

19 “(ii) to establish or support a State-
 20 level database of public school facility in-
 21 ventory, condition, design, and utilization.

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

1 “(i) developing a statewide public
2 school educational facility master plan;

3 “(ii) developing policies, procedures,
4 and standards for high-quality, energy effi-
5 cient public school facilities;

6 “(iii) supporting interagency collabo-
7 ration that will lead to broad community
8 use of public school facilities, and school-
9 based services for students served by high-
10 need local educational agencies or rural
11 local educational agencies;

12 “(iv) helping to defray the cost of
13 issuing State bonds to finance public ele-
14 mentary school and secondary school re-
15 pair, renovation, and construction; and

16 “(v) awarding grants to State-oper-
17 ated or State-supported schools, such as a
18 State school for the deaf or for the blind,
19 to enable such schools to carry out school
20 repair, renovation, and construction activi-
21 ties in accordance with subsection (d).

22 “(D) STATE ENTITY ADMINISTRATION AND
23 OTHER COSTS.—If the State educational agency
24 transfers funds to a State entity described in
25 paragraph (2)(A), the State educational agency

1 shall transfer to such State entity not less than
2 75 percent of the amount reserved under sub-
3 paragraph (A) for the purpose of carrying out
4 the activities described in subparagraph (C).

5 “(2) DISTRIBUTION OF COMPETITIVE SCHOOL
6 REPAIR, RENOVATION, AND CONSTRUCTION GRANTS
7 TO LOCAL EDUCATIONAL AGENCIES.—

8 “(A) IN GENERAL.—Of the funds allocated
9 to a State educational agency under subsection
10 (b) that are not reserved under paragraph (1),
11 the State educational agency shall distribute
12 100 percent of such funds to local educational
13 agencies or, if the State educational agency is
14 not responsible for the financing of public
15 school facilities, the State educational agency
16 shall transfer such funds to the State entity re-
17 sponsible for the financing of public school fa-
18 cilities (referred to in this section as the ‘State
19 entity’) for distribution by such State entity to
20 local educational agencies in accordance with
21 this paragraph, to be used, consistent with sub-
22 section (d), for public elementary school or sec-
23 ondary school repair, renovation, and construc-
24 tion.

1 “(B) COMPETITIVE GRANTS TO LOCAL
2 EDUCATIONAL AGENCIES.—The State edu-
3 cational agency or State entity shall carry out
4 a program to award grants, on a competitive
5 basis, to local educational agencies for public el-
6 ementary school or secondary school repair,
7 renovation, and construction. Of the total
8 amount available for distribution to local edu-
9 cational agencies under this paragraph, the
10 State educational agency or State entity, shall,
11 in carrying out the grant competition—

12 “(i) award to high-need local edu-
13 cational agencies, in the aggregate, not less
14 than an amount which bears the same re-
15 lationship to such total amount as the ag-
16 gregate amount such high-need local edu-
17 cational agencies received under part A of
18 title I for the fiscal year preceding the fis-
19 cal year for which the determination is
20 made bears to the aggregate amount re-
21 ceived for such preceding fiscal year under
22 such part by all local educational agencies
23 in the State;

24 “(ii) award to rural local educational
25 agencies in the State, in the aggregate, not

1 less than an amount which bears the same
2 relationship to such total amount as the
3 aggregate amount such rural local edu-
4 cational agencies received under part A of
5 title I for the fiscal year preceding the fis-
6 cal year for which the determination is
7 made bears to the aggregate amount re-
8 ceived for such preceding fiscal year under
9 such part by all local educational agencies
10 in the State; and

11 “(iii) award the remaining funds to
12 local educational agencies in the State that
13 did not receive a grant award under clause
14 (i) or (ii), including to high-need local edu-
15 cational agencies and rural local edu-
16 cational agencies that did not receive a
17 grant award under clause (i) or (ii).

18 “(C) CRITERIA FOR AWARDING GRANTS.—

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

22 “(i) PERCENTAGE OF POOR CHIL-
23 DREN.—The percentage of children served
24 by the local educational agency who are be-
25 tween 5 to 17 years of age, inclusive, and

1 who are from families with incomes below
2 the poverty line.

3 “(ii) NEED FOR SCHOOL REPAIR,
4 RENOVATION, AND CONSTRUCTION.—The
5 need of a local educational agency for
6 school repair, renovation, and construction,
7 as demonstrated by the condition of the
8 public school facilities of the local edu-
9 cational agency or the local educational
10 agency’s need for such facilities.

11 “(iii) GREEN SCHOOLS.—The extent
12 to which a local educational agency will
13 make use, in the repair, renovation, or con-
14 struction to be undertaken, of green prac-
15 tices that are certified, verified, or con-
16 sistent with any applicable provisions of—

17 “(I) the LEED Green Building
18 Rating System;

19 “(II) Energy Star;

20 “(III) the CHPS Criteria;

21 “(IV) Green Globes; or

22 “(V) an equivalent program
23 adopted by the State or another juris-
24 diction with authority over the local
25 educational agency.

1 “(iv) FISCAL CAPACITY.—The fiscal
2 capacity of a local educational agency to
3 meet the needs of the local educational
4 agency for repair, renovation, and con-
5 struction of public school facilities without
6 assistance under this section, including the
7 ability of the local educational agency to
8 raise funds through the use of local bond-
9 ing capacity and otherwise.

10 “(v) LIKELIHOOD OF MAINTAINING
11 THE FACILITY.—The likelihood that a local
12 educational agency will maintain, in good
13 condition, any public school facility whose
14 repair, renovation, or construction is as-
15 sisted under this section.

16 “(vi) CHARTER SCHOOL EQUITABLE
17 ACCESS TO FUNDING.—In the case of a
18 local educational agency that proposes to
19 fund a repair, renovation, or construction
20 project for a public charter school, the ex-
21 tent to which the public charter school
22 lacks access to funding for school repair,
23 renovation, and construction through the
24 financing methods available to other public

1 schools or local educational agencies in the
2 State.

3 “(D) MATCHING REQUIREMENT.—

4 “(i) IN GENERAL.—A State edu-
5 cational agency or State entity shall re-
6 quire local educational agencies to match
7 funds awarded under this paragraph.

8 “(ii) MATCH AMOUNT.—The amount
9 of a match described in clause (i) may be
10 established by using a sliding scale that
11 takes into account the relative poverty of
12 the population served by the local edu-
13 cational agency.

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

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

22 “(A) Upgrades, repair, construction, or re-
23 placement of public elementary school or sec-
24 ondary school building systems or components
25 to improve the quality of education and ensure

1 the health and safety of students and staff, in-
2 cluding—

3 “(i) repairing, replacing, or con-
4 structing early learning facilities at public
5 elementary schools (including renovation of
6 existing facilities to serve children under 5
7 years of age);

8 “(ii) repairing, replacing, or installing
9 roofs, windows, doors, electrical wiring,
10 plumbing systems, or sewage systems;

11 “(iii) repairing, replacing, or installing
12 heating, ventilation, or air conditioning
13 systems (including insulation); and

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

16 “(B) Public school facilities modifications
17 necessary to render public school facilities ac-
18 cessible in order to comply with the Americans
19 with Disabilities Act of 1990 (42 U.S.C. 12101
20 et seq.) and section 504 of the Rehabilitation
21 Act of 1973 (29 U.S.C. 794).

22 “(C) Improvements to the environmental
23 conditions of public elementary school or sec-
24 ondary school sites, including asbestos abate-
25 ment or removal, and the reduction or elimi-

1 nation of human exposure to lead-based paint,
2 mold, or mildew.

3 “(D) Measures designed to reduce or elimi-
4 nate human exposure to classroom noise and
5 environmental noise pollution.

6 “(E) Modifications necessary to reduce the
7 consumption of electricity, natural gas, oil,
8 water, coal, or land.

9 “(F) Upgrades or installations of edu-
10 cational technology infrastructure to ensure
11 that students have access to up-to-date edu-
12 cational technology.

13 “(G) Measures that will broaden or im-
14 prove the use of public elementary school or
15 secondary school buildings and grounds by the
16 community in order to improve educational out-
17 comes.

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

20 “(A) payment of maintenance costs in con-
21 nection with any projects constructed in whole
22 or part with Federal funds provided under this
23 section;

24 “(B) purchase or upgrade of vehicles;

1 “(C) improvement or construction of
2 stand-alone facilities whose purpose is not the
3 education of children, including central office
4 administration or operations or logistical sup-
5 port facilities;

6 “(D) purchase of information technology
7 hardware, including computers, monitors, or
8 printers;

9 “(E) stadiums or other facilities primarily
10 used for athletic contests or exhibitions or other
11 events for which admission is charged to the
12 general public; or

13 “(F) purchase of carbon offsets.

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

21 “(e) QUALIFIED BIDDERS; COMPETITION.—Each
22 local educational agency that receives funds under sub-
23 section (c)(2) shall ensure that, if the local educational
24 agency carries out repair, renovation, or construction
25 through a contract, any such contract process ensures the

1 maximum number of qualified bidders, including small,
2 minority, and women-owned businesses, through full and
3 open competition.

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

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

12 “(2) shall provide the public with adequate and
13 efficient notice of the opportunity described in para-
14 graph (1) in a widely read and distributed medium;
15 and

16 “(3) shall provide the opportunity described in
17 paragraph (1) in accordance with any applicable
18 State and local law specifying how the comments
19 may be received and how the comments may be re-
20 viewed by any member of the public.

21 “(g) REPORTING.—

22 “(1) LOCAL REPORTING.—Each local edu-
23 cational agency receiving funds under subsection
24 (c)(2) shall submit a report to the State educational
25 agency, at such time as the State educational agency

1 may require, describing the use of such funds for
2 school repair, renovation, and construction.

3 “(2) STATE REPORTING.—Each State edu-
4 cational agency receiving funds under subsection (b)
5 shall submit to the Secretary, at such time as the
6 Secretary may require, a report on the use of funds
7 received under this section and made available to
8 local educational agencies (and, if applicable, to
9 State-operated or State-sponsored schools) for school
10 repair, renovation, and construction.

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

20 “(i) AUTHORIZATION OF APPROPRIATIONS.—There is
21 authorized to be appropriated to carry out this section,
22 \$1,000,000,000 for fiscal year 2012, and such sums as
23 may be necessary for each of fiscal years 2013 through
24 2016.

1 **“SEC. 5622. NATIONAL CENTER FOR EDUCATION STATIS-**
2 **TICS STUDY.**

3 “(a) IN GENERAL.—The National Center for Edu-
4 cation Statistics shall conduct a study of the condition of
5 public school facilities in the United States.

6 “(b) ESTIMATES AND MEASURES.—In conducting
7 the study, the National Center for Education Statistics
8 shall—

9 “(1) estimate the costs needed to repair and
10 renovate all public elementary schools and secondary
11 schools in the United States to good overall condi-
12 tion; and

13 “(2) measure recent expenditures of Federal,
14 State, local, and private funds for public elementary
15 school and secondary school repair, renovation, and
16 construction costs in the United States.

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

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

4 **“SEC. 5623. NATIONAL CLEARINGHOUSE FOR EDU-**
5 **CATIONAL FACILITIES.**

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

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

17 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to carry out this section
19 \$1,500,000 for each of fiscal years 2012 through 2016.”.

○