

112TH CONGRESS
1ST SESSION

S. 92

To amend the public charter school provisions of the Elementary and Secondary Education Act of 1965, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

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

A BILL

To amend the public charter school provisions of the Elementary and Secondary Education Act of 1965, and for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “21st Century Charter School Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Program authorized.
- Sec. 4. Applications.
- Sec. 5. Administration.

- Sec. 6. National activities.
- Sec. 7. Federal formula allocation.
- Sec. 8. Credit enhancement.
- Sec. 9. Definitions.
- Sec. 10. Authorization of appropriations.
- Sec. 11. Reorganization.
- Sec. 12. Conforming amendments.

1 **SEC. 2. PURPOSE.**

2 Section 5201 of the Elementary and Secondary Edu-
3 cation Act of 1965 (20 U.S.C. 7221) is amended—

4 (1) in paragraph (3), by striking “and”;

5 (2) by redesignating paragraph (4) as para-
6 graph (6);

7 (3) by inserting after paragraph (3) the fol-
8 lowing:

9 “(4) encouraging the growth of high-quality
10 charter schools through the replication and expan-
11 sion of successful charter school models;

12 “(5) disseminating charter school innovations
13 throughout public education; and”; and

14 (4) in paragraph (6) (as redesignated by para-
15 graph (2))—

16 (A) by striking “more nearly”; and

17 (B) by striking “have typically provided”
18 and inserting “provide”.

19 **SEC. 3. PROGRAM AUTHORIZED.**

20 Section 5202 of the Elementary and Secondary Edu-
21 cation Act of 1965 (20 U.S.C. 7221a) is amended—

22 (1) in subsection (a)—

1 (A) by striking “State educational agen-
2 cies” and inserting “eligible entities”;

3 (B) by striking “such agencies” and insert-
4 ing “such entities”; and

5 (C) by striking “this subpart” and insert-
6 ing “section 5204”;

7 (2) in subsection (b)—

8 (A) by striking “SPECIAL RULE.—If” and
9 inserting the following: “SPECIAL RULE; RE-
10 SERVE ACCOUNT.—

11 “(1) SPECIAL RULE.—If”;

12 (B) by striking “a State educational agen-
13 cy” and inserting “an eligible entity”;

14 (C) by striking “subpart” and inserting
15 “section”; and

16 (D) by adding at the end the following:

17 “(2) RESERVE ACCOUNTS.—

18 “(A) IN GENERAL.—In order to assist eli-
19 gible entities to accomplish the purposes de-
20 scribed in section 5201, an eligible entity receiv-
21 ing a grant under this section shall, directly or
22 indirectly, alone or in collaboration with others,
23 deposit the funds received under this section in
24 a reserve account established and maintained

1 by the eligible entity for this purpose, in accord-
2 ance with State and local law.

3 “(B) INVESTMENT.—Funds received under
4 this section that are deposited in the reserve ac-
5 count established under subparagraph (A), shall
6 be invested, to the extent practicable, in obliga-
7 tions issued or guaranteed by the United States
8 or a State, or in other similarly low risk securi-
9 ties, in the same manner as funds of a State
10 are invested under chapter 65 of title 31,
11 United States Code.

12 “(C) REINVESTMENT OF EARNINGS.—Any
13 earnings on funds received under this section
14 shall be deposited in a reserve account and used
15 in support of public charter schools in accord-
16 ance with activities authorized under this Act.”;
17 (3) in subsection (c)—

18 (A) by striking “subpart” each place the
19 term occurs and inserting “section”;

20 (B) in paragraph (1)—

21 (i) by striking “State educational
22 agencies” and inserting “eligible entities”;
23 and

1 (ii) by striking “not more than 3
2 years” and inserting “not more than 5
3 years”; and

4 (C) in paragraph (2)—

5 (i) by striking “State educational
6 agencies” and inserting “eligible entities”;
7 and

8 (ii) by striking “not more than 3
9 years” and all that follows through the pe-
10 riod at the end and inserting “not more
11 than 5 years. An eligible applicant may use
12 a portion of the grant period for planning
13 and program design.”;

14 (4) by striking subsection (d) and inserting the
15 following:

16 “(d) CHARTER SCHOOLS WITH MULTIPLE CAM-
17 PUSES.—The Secretary shall allow an eligible entity to
18 award multiple subgrants under section 5204(f)(1) to an
19 eligible applicant in order to support multiple campuses
20 of a charter school.”;

21 (5) in subsection (e)—

22 (A) by striking paragraph (1) and insert-
23 ing the following:

24 “(1) IN GENERAL.—In awarding grants under
25 this section for fiscal year 2011 or any succeeding

1 fiscal year from any funds appropriated under sec-
 2 tion 5212 (other than funds reserved to carry out
 3 section 5205(c)), the Secretary shall give priority to
 4 an eligible entity to the extent that the State in
 5 which the eligible entity proposes to carry out the
 6 activities under the grant meets the criteria de-
 7 scribed in paragraph (2) and one or more of the cri-
 8 teria described in subparagraphs (A) through (H) of
 9 paragraph (3).”;

10 (B) in paragraph (3)—

11 (i) in subparagraph (A)—

12 (I) by striking “a State edu-
 13 cational agency” and inserting “an el-
 14 igible entity”; and

15 (II) by striking “subpart” and
 16 inserting “section”;

17 (ii) by redesignating subparagraph

18 (C) as subparagraph (D);

19 (iii) in subparagraph (B)—

20 (I) by redesignating clause (ii) as
 21 subparagraph (C), and aligning the
 22 margins of such subparagraph with
 23 the margins of subparagraph (A);

24 (II) by striking “The State” and
 25 all that follows through “provides”

1 and inserting “The State provides”;

2 and

3 (III) by striking “law; or” and

4 inserting “law.”;

5 (iv) in subparagraph (C) (as redesign-

6 nated by clause (iii)(I)), by striking “in the

7 case” and all that follows through “allows”

8 and inserting “The State allows”;

9 (v) in subparagraph (D) (as redesign-

10 nated by clause (ii))—

11 (I) by striking “school has a”

12 and inserting “school has—

13 “(i) a”;

14 (II) by striking “expenditures.”

15 and inserting “expenditures; and”;

16 and

17 (III) by adding at the end the

18 following:

19 “(iii) an independent governing board

20 that enters into a written performance con-

21 tract with an authorized public chartering

22 agency.”; and

23 (vi) by adding at the end the fol-

24 lowing:

25 “(E) The State—

1 “(i) provides public charter schools
2 with funding commensurate with the fund-
3 ing provided to other public schools, in-
4 cluding capital or facilities aid distributed
5 through a formula or revenue generated by
6 bonds; and

7 “(ii) ensures that the State and local
8 educational agencies provide public charter
9 schools with the Federal, State, and local
10 funds to which the public charter schools
11 are entitled in a timely manner.

12 “(F) The State makes it a priority to cre-
13 ate charter schools in local educational agencies
14 with large numbers of schools designated as in
15 need of improvement, corrective action, or re-
16 structuring under paragraph (1), (7), or (8) of
17 section 1116(b).

18 “(G) The State has developed a trans-
19 parent authorizer accreditation, training, or re-
20 view process for evaluating the effectiveness and
21 quality of the State’s authorized public char-
22 tering agencies, or each authorized public char-
23 tering agency in the State has implemented
24 such a process, including—

1 “(i) a process for reviewing and evalu-
2 ating the performance of the authorized
3 public chartering agencies in the State in
4 authorizing or approving public charter
5 schools, including a process that enables
6 the authorized public chartering agencies
7 to respond to any State concerns or defi-
8 ciencies regarding such authorizing or ap-
9 proving; and

10 “(ii) any other necessary policies to
11 ensure effective charter school authorizing
12 in the State that are developed in conjunc-
13 tion with the State’s charter school com-
14 munity and in accordance with the prin-
15 ciples of high quality charter school au-
16 thorizing, as determined by the State in
17 consultation with the charter school com-
18 munity and stakeholders.

19 “(H) The State does not have a cap on
20 charter schools that constrains growth and lim-
21 its parental options in an unreasonable man-
22 ner.”; and

23 (6) in subsection (f)—

1 (A) by striking “subpart to a State edu-
 2 cational agency” and inserting “section to an
 3 eligible entity”; and

4 (B) by striking “in the State” and insert-
 5 ing “in the State where the grant activities will
 6 be carried out”.

7 **SEC. 4. APPLICATIONS.**

8 Section 5203 of the Elementary and Secondary Edu-
 9 cation Act of 1965 (20 U.S.C. 7221b) is amended—

10 (1) by striking “this subpart” each place the
 11 term appears and inserting “section 5202”;

12 (2) in subsection (a), by striking “STATE
 13 AGENCIES.—Each State educational agency” and in-
 14 serting “ELIGIBLE ENTITIES.—An eligible entity”;

15 (3) in subsection (b)—

16 (A) in the subsection heading, by striking
 17 “A STATE EDUCATIONAL AGENCY” and insert-
 18 ing “AN ELIGIBLE ENTITY”;

19 (B) in paragraph (1)—

20 (i) by striking “State educational
 21 agency’s” each place the term appears and
 22 inserting “eligible entity’s”; and

23 (ii) by striking “State educational
 24 agency” and inserting “eligible entity”;

25 (C) in paragraph (2)—

1 (i) in the matter preceding subpara-
2 graph (A), by striking “describe how the
3 State educational agency—” and inserting
4 “describe the State’s level of participation
5 and involvement in the grant, including a
6 letter from the State describing how the
7 State—”;

8 (ii) in the matter preceding clause (i)
9 of subparagraph (A), by striking “in the
10 State” and inserting “area served by the
11 grant”;

12 (iii) in subparagraph (B)—

13 (I) by striking “in the State” and
14 inserting “in the area served by the
15 grant”; and

16 (II) by striking “and” after the
17 semicolon;

18 (iv) in subparagraph (C), by striking
19 “to each local” and all that follows
20 through “; and” and inserting “related to
21 such areas as budgeting, scheduling, staff-
22 ing, and instruction to public schools, in-
23 cluding public charter schools in the
24 State;”; and

25 (v) by adding at the end the following:

1 “(D) will ensure the proper handling and
2 management of Federal funds; and

3 “(E) will oversee and hold accountable the
4 authorized public chartering agencies in the
5 State, including through a transparent author-
6 izer accreditation, training, and review process
7 described in subsection (e)(3)(G);”;

8 (D) by redesignating paragraph (3) as
9 paragraph (4);

10 (E) by inserting after paragraph (2) the
11 following:

12 “(3) describe the criteria that the eligible entity
13 will use to award subgrants to eligible applicants to
14 ensure high-quality charter schools;”;

15 (F) in paragraph (4) (as redesignated by
16 subparagraph (D))—

17 (i) in the matter preceding subpara-
18 graph (A), by striking “State educational
19 agency” each place the term appears and
20 inserting “eligible entity”;

21 (ii) in subparagraph (A)—

22 (I) by redesignating clauses (ii)
23 and (iii) as clauses (iii) and (iv), re-
24 spectively; and

1 (II) by inserting after clause (i)
2 the following:

3 “(ii) the charter school’s plan for
4 using academic assessments to measure
5 and report student academic progress;”;

6 (iii) in subparagraph (B), by striking
7 “managed;” and inserting the following:
8 “managed, including—

9 “(i) the charter school’s financial plan
10 and policies, including financial controls
11 and annual audit requirements;

12 “(ii) a clear description of the roles
13 and responsibilities for the charter school’s
14 governing board, leadership, and manage-
15 ment team, and any other organizations
16 critical to the charter school’s operations
17 or success;

18 “(iii) plans for recruiting and devel-
19 oping the charter school’s leadership and
20 staff;

21 “(iv) the charter school’s leadership
22 and teacher employment policies, including
23 performance evaluation plans;

24 “(v) the proposed governing bylaws of
25 the charter school; and

1 “(vi) a detailed charter school start-up
2 plan, that identifies tasks, timelines, and
3 responsible parties;”;

4 (iv) in subparagraph (E), by inserting
5 “, including documentation of the parents’
6 and community members’ support for the
7 school” before the semicolon;

8 (v) in subparagraph (F), by striking
9 “a description of how” and inserting “an
10 assurance from the authorized public char-
11 tering agency that”;

12 (vi) in subparagraph (H), by inserting
13 “and how such funds will be used for plan-
14 ning, program design, and the initial im-
15 plementation of a charter school” before
16 the semicolon at the end;

17 (vii) in subparagraph (I)(ii), by insert-
18 ing “, including through a lottery process
19 if the number of applicants exceeds the
20 number of seats available at the charter
21 school” before the semicolon;

22 (viii) in subparagraphs (J) and (K),
23 by striking “State educational agency”
24 each place the term appears and inserting
25 “eligible entity”;

1 (ix) by striking subparagraph (M);

2 (x) by redesignating subparagraph

3 (N) as subparagraph (O);

4 (xi) by inserting after subparagraph

5 (L) the following:

6 “(M) demonstration of support for the
7 charter school from the State’s charter school
8 community;

9 “(N) a description of how the independent
10 governing board of the charter school, including
11 a board overseeing multi-campus charters, is
12 encouraged to include individuals with a diver-
13 sity of skills, including business management,
14 financial management, real estate finance, and
15 curriculum and instruction; and”;

16 (xii) in subparagraph (O) (as redesi-
17 gnated by clause (x))—

18 (I) by striking “State educational
19 agency” and inserting “eligible enti-
20 ty”; and

21 (II) by striking the period at the
22 end and inserting “; and”; and

23 (G) by adding at the end the following:

24 “(5) in the case of an eligible entity that is an
25 authorized public chartering agency—

1 “(A) describe such eligible entity’s stra-
2 tegic goal for chartering schools and progress
3 towards that goal; and

4 “(B) provide an assurance that the eligible
5 entity will annually file a plan with the State in
6 which the eligible entity is located that covers
7 such topics necessary for effective charter
8 school oversight, including, at a minimum—

9 “(i) the academic and financial per-
10 formance of all operating public charter
11 schools overseen by the eligible entity, ac-
12 cording to the performance expectations
13 for each public charter school set forth in
14 the school’s contract;

15 “(ii) the status of the eligible entity’s
16 public charter school portfolio, identifying
17 all public charter schools in each of the fol-
18 lowing categories: approved (but not yet
19 open), operating, renewed, transferred, re-
20 voked, not renewed, voluntarily closed, or
21 never opened;

22 “(iii) the authorizing functions pro-
23 vided by the eligible entity to the public
24 charter schools the eligible entity oversees,
25 including the eligible entity’s operating

1 costs and expenses detailed in annual au-
2 dited financial statements that conform
3 with generally accepted accounting prin-
4 ciples; and

5 “(iv) the services purchased from the
6 eligible entity by the public charter schools
7 overseen by the eligible entity, including an
8 itemized accounting of the actual costs of
9 these services.”; and

10 (4) in subsection (d)—

11 (A) in paragraph (1)—

12 (i) by striking “(A) through (N)” and
13 inserting “(A) through (O)”;

14 (ii) by striking “and (N)” and insert-
15 ing “and (O)”;

16 (iii) by striking “State educational
17 agency” and inserting “eligible entity”;
18 and

19 (B) in paragraph (2)—

20 (i) in the matter preceding subpara-
21 graph (A), by striking “State educational
22 agency” and inserting “eligible entity”;
23 and

24 (ii) in paragraph (3)—

1 (I) by striking “State educational
2 agency” and inserting “eligible enti-
3 ty”; and

4 (II) by striking “subgrant if”
5 and all that follows through the period
6 and inserting “subgrant.”.

7 **SEC. 5. ADMINISTRATION.**

8 Section 5204 of the Elementary and Secondary Edu-
9 cation Act of 1965 (20 U.S.C. 7221c) is amended—

10 (1) in subsection (a)—

11 (A) in the subsection heading, by striking
12 “STATE EDUCATIONAL AGENCIES” and insert-
13 ing “ELIGIBLE ENTITIES”;

14 (B) by striking “this subpart” each place
15 the term appears and inserting “section 5202”;

16 (C) in the matter preceding paragraph (1),
17 by striking “State educational agencies” and in-
18 sserting “eligible entities”;

19 (D) in paragraph (1), by inserting “, in-
20 cluding efforts at closing the achievement gap
21 by meeting the annual objectives described in
22 section 1111(b)(2)(C)(v)” before the semicolon;

23 (E) in paragraph (2), by inserting “and
24 autonomy” after “flexibility”;

1 (F) in paragraph (5), by inserting “and”
2 after the semicolon;

3 (G) in paragraph (6), by striking “; and”
4 and inserting a period; and

5 (H) by striking paragraph (7);

6 (2) in subsection (b)—

7 (A) by striking “this subpart” and insert-
8 ing “section 5202”; and

9 (B) by striking paragraph (7);

10 (3) in subsection (c)—

11 (A) by striking “this subpart” and insert-
12 ing “section 5202”; and

13 (B) by striking “State educational agency”
14 and inserting “eligible entity”;

15 (4) in subsection (d)—

16 (A) in the matter preceding paragraph
17 (1)—

18 (i) by striking “State educational
19 agency receiving a grant under this sub-
20 part” and inserting “eligible entity receiv-
21 ing a grant under section 5202”; and

22 (ii) by striking “this subpart in” and
23 inserting “such section in”; and

1 (B) in paragraph (2), by inserting “or use
2 non-traditional curricula” before the period at
3 the end;

4 (5) in subsection (e)—

5 (A) in the matter preceding subparagraph
6 (1), by striking “5210(1)” and inserting
7 “5211(1)”; and

8 (B) in paragraph (1), by striking “this
9 subpart” and inserting “section 5203”;

10 (6) in subsection (f)—

11 (A) in paragraph (1)—

12 (i) in the paragraph heading, by strik-
13 ing “STATE EDUCATIONAL AGENCIES.—
14 Each State educational agency” and in-
15 serting the following: “ELIGIBLE ENTI-
16 TIES.—

17 “(A) IN GENERAL.—Each eligible entity”;

18 (ii) by striking “under this subpart”
19 and inserting “under section 5202”;

20 (iii) by inserting “, including a new
21 campus or expansion of an existing charter
22 school,” after “charter school”;

23 (iv) by striking “in the State” and in-
24 serting “in the area to be served by the
25 grant”; and

1 (v) by striking “except that” and all
2 that follows through “paragraph (6).” and
3 inserting a period;

4 (B) by striking paragraph (6);

5 (C) by redesignating paragraphs (2)
6 through (5) as paragraphs (4) through (7), re-
7 spectively;

8 (D) by inserting after paragraph (1) the
9 following:

10 “(2) CHARTER SCHOOL DEVELOPERS.—In
11 awarding subgrants under this section, an eligible
12 entity shall ensure that—

13 “(A) most of the subgrant funds are
14 awarded to eligible applicants described in sec-
15 tion 5211(3)(A); and

16 “(B) subgrants are awarded, to the extent
17 practicable, to a mix of such eligible applicants.

18 “(3) AMOUNT OF SUBGRANTS.—An eligible en-
19 tity may vary the amount of a subgrant under this
20 section based upon a variety of factors, including—

21 “(A) whether the eligible applicant is a
22 start-up charter school or a conversion charter
23 school (as defined by the eligible entity); and

1 “(B) whether the eligible applicant is cre-
2 ating a charter school under a new charter or
3 an existing charter.”;

4 (E) in paragraph (4) (as redesignated by
5 subparagraph (C))—

6 (i) by striking “a State educational
7 agency” and inserting “an eligible entity”;
8 and

9 (ii) by striking “, or to disseminate in-
10 formation about the charter school and
11 successful practices in the charter school,”;

12 (F) in paragraph (5) (as redesignated by
13 subparagraph (C))—

14 (i) in the matter preceding subpara-
15 graph (A), by striking “this subpart” and
16 inserting “section 5202”;

17 (ii) in subparagraph (A)(ii), by strik-
18 ing “and” after the semicolon;

19 (iii) in subparagraph (B)(iv), by strik-
20 ing the period and inserting “; and”;

21 (iv) by adding at the end the fol-
22 lowing:

23 “(C) providing assistance, through activi-
24 ties described in section 5205(b)(4), in imple-
25 menting charter school innovations and dissemi-

1 nating information regarding such innova-
2 tions.”;

3 (G) in paragraph (6)(A) (as redesignated
4 by subparagraph (C))—

5 (i) in the subparagraph heading, by
6 striking “STATE EDUCATIONAL AGENCY”
7 and inserting “ELIGIBLE ENTITY”;

8 (ii) by striking “State educational
9 agency” and inserting “eligible entity”;

10 (iii) by striking “pursuant to this sub-
11 part” and inserting “pursuant to section
12 5202”;

13 (iv) by striking “this subpart” and in-
14 serting “such section”; and

15 (v) by adding at the end the following:
16 “An eligible entity may use a portion of
17 the reserved funds to improve the charter
18 school authorizing policies and practices of
19 the area served by the eligible entity, which
20 may include the approval, monitoring, and
21 renewal of charter schools.”; and

22 (H) in paragraph (7) (as redesignated by
23 subparagraph (C))—

24 (i) by striking “State educational
25 agency” and inserting “eligible entity”;

1 (ii) by striking “this subpart” and in-
2 serting “section 5202”;

3 (iii) by striking “10” and inserting
4 “20”; and

5 (iv) by striking “the State educational
6 agency” and all that follows through
7 “sources.” and inserting “the eligible enti-
8 ty, for expenses necessary to plan, begin
9 operations, and subsequently operate a
10 public charter school.”; and

11 (7) by striking subsection (g).

12 **SEC. 6. NATIONAL ACTIVITIES.**

13 Section 5205 of the Elementary and Secondary Edu-
14 cation Act of 1965 (20 U.S.C. 7221d) is amended—

15 (1) in subsection (a)—

16 (A) in paragraph (3)(E), by striking
17 “schools” each place the term occurs and in-
18 serting “schools, authorized public chartering
19 agencies, and charter support organizations”;
20 and

21 (B) by adding at the end the following:

22 “(6) To provide technical assistance to charter
23 schools on how to meet the requirements of part B
24 of the Individuals with Disabilities Education Act.”;

1 (2) by redesignating subsections (b) and (c) as
2 subsections (c) and (d), respectively;

3 (3) by inserting after subsection (a) the fol-
4 lowing:

5 “(b) NATIONAL DISSEMINATION.—

6 “(1) IN GENERAL.—To carry out this sub-
7 section, the Secretary shall reserve for each fiscal
8 year not more than \$8,000,000 of the amount ap-
9 propriated to carry out this subpart.

10 “(2) ELIGIBILITY.—In order to receive a grant
11 under this subsection, an entity shall—

12 “(A) be—

13 “(i) a charter school;

14 “(ii) an eligible applicant;

15 “(iii) an eligible entity; or

16 “(iv) a consortium of entities de-
17 scribed in clauses (i), (ii), and (iii); and

18 “(B) submit an application to the Sec-
19 retary at such time, in such manner, and con-
20 taining such information as the Secretary may
21 require.

22 “(3) CRITERIA.—The Secretary shall award
23 grants under this subsection on the basis of—

24 “(A) the quality of the application;

1 “(B) the capacity of the applicant to exe-
2 cute the application; and

3 “(C) the scale of the expected impact of
4 the application.

5 “(4) ACTIVITIES.—A recipient of a grant under
6 this subsection shall use funds received under the
7 grant to assist other schools in the recipient’s State
8 and in other States in adopting charter school inno-
9 vations, or to disseminate information about charter
10 school innovations, through activities such as—

11 “(A) assisting other entities with the plan-
12 ning and start-up of one or more new public
13 schools, including charter schools;

14 “(B) developing partnerships designed to
15 improve student academic achievement;

16 “(C) developing curriculum materials, as-
17 sessments, and other materials that promote in-
18 creased student achievement and are based on
19 successful practices at charter schools;

20 “(D) conducting evaluations and devel-
21 oping materials that document successful prac-
22 tices at charter schools and that are designed to
23 improve student performance in other schools;
24 and

1 “(E) training, regarding the innovative
2 practices developed at the original site, for per-
3 sonnel of—

4 “(i) local educational agencies that
5 are adopting innovations or successful
6 practices used at charter schools;

7 “(ii) authorized public chartering
8 agencies; or

9 “(iii) charter support organizations.”;

10 and

11 (4) in subsection (c) (as redesignated by para-
12 graph (2))—

13 (A) in paragraph (2)(A), by striking
14 “paragraphs (2) and (3)(B) of section 5211(b)”
15 and inserting “section 5212”;

16 (B) by redesignating paragraphs (5) and
17 (6) as paragraphs (6) and (7), respectively;

18 (C) by inserting after paragraph (4) the
19 following:

20 “(5) SPECIAL RULE.—A State that provides
21 public charter schools with access to existing ade-
22 quate facility space may apply for a grant under this
23 subsection, if the State agrees that the State will,
24 upon receipt of the grant, develop a capital aid pro-

1 gram consistent with the program described in this
2 subsection during the grant period.”; and

3 (D) in paragraph (7) (as redesignated by
4 subparagraph (B)), by striking “(A), (B), and
5 (C)” and inserting “(A) through (F)”.

6 **SEC. 7. FEDERAL FORMULA ALLOCATION.**

7 Section 5206 of the Elementary and Secondary Edu-
8 cation Act of 1965 (20 U.S.C. 7221e) is amended—

9 (1) by striking the section heading and insert-
10 ing the following:

11 **“SEC. 5206. FEDERAL FORMULA ALLOCATION.”;**

12 and

13 (2) in subsection (a), by inserting “or is in op-
14 eration” after “actually opens”.

15 **SEC. 8. CREDIT ENHANCEMENT.**

16 Subpart 1 of part B of title V of the Elementary and
17 Secondary Education Act of 1965 (as amended by this
18 Act) (20 U.S.C. 7221 et seq.) is further amended—

19 (1) by redesignating sections 5207 through
20 5211 as sections 5208 through 5212, respectively;
21 and

22 (2) by inserting after section 5206 the fol-
23 lowing:

1 **“SEC. 5207. CREDIT ENHANCEMENT FOR CHARTER SCHOOL**
2 **FACILITIES PROGRAMS.**

3 “(a) PURPOSE.—The purpose of this section is to
4 provide grants to eligible entities to permit the eligible en-
5 tities to demonstrate innovative credit enhancement initia-
6 tives that assist charter schools to address the cost of ac-
7 quiring, constructing, and renovating facilities.

8 “(b) GRANTS TO ELIGIBLE ENTITIES.—After reserv-
9 ing any funds as necessary for grant evaluation or admin-
10 istration consistent with any applicable provisions (includ-
11 ing section 9601(a) of this Act and section 402(b)(1) of
12 the Department of Education Organization Act), the Sec-
13 retary shall use the amounts available to carry out this
14 section to award, on a competitive basis, not less than 3
15 grants to eligible entities that have applications approved
16 under this section to demonstrate innovative methods of
17 assisting charter schools to address the cost of acquiring,
18 constructing, and renovating facilities by enhancing the
19 availability of loans or bond financing for charter schools.

20 “(c) GRANTEE SELECTION.—

21 “(1) EVALUATION OF APPLICATION.—The Sec-
22 retary shall evaluate each application submitted
23 under subsection (e), and shall determine whether
24 the application is sufficient to merit approval.

25 “(2) DISTRIBUTION OF GRANTS.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B) and paragraph (3), the Secretary
3 shall award—

4 “(i) not less than 1 grant to an eligi-
5 ble entity described in section 5211(6)(A);

6 “(ii) not less than 1 grant to an eligi-
7 ble entity described in section 5211(6)(B);

8 and

9 “(iii) not less than 1 grant to an eligi-
10 ble entity described in section 5211(6)(C).

11 “(B) EXCEPTION.—Subparagraph (A)
12 shall only apply if applications are submitted
13 that permit the Secretary to do so without ap-
14 proving an application that is not of sufficient
15 quality to merit approval.

16 “(3) SPECIAL RULE.—In the event the Sec-
17 retary determines that the funds made available
18 under this section are insufficient to permit the Sec-
19 retary to award not less than 3 grants in accordance
20 with this section, the 3-grant minimum under para-
21 graph (2) shall not apply, and the Secretary may de-
22 termine the appropriate number of grants to be
23 awarded in accordance with subsection (d).

24 “(d) GRANT CHARACTERISTICS.—Grants under this
25 section shall be of a sufficient size, scope, and quality so

1 as to ensure an effective demonstration of an innovative
2 means of enhancing credit for the financing of charter
3 school acquisition, construction, or renovation.

4 “(e) APPLICATIONS.—

5 “(1) IN GENERAL.—To receive a grant under
6 this section, an eligible entity shall submit to the
7 Secretary an application in such form as the Sec-
8 retary may reasonably require.

9 “(2) CONTENTS.—An application submitted
10 under paragraph (1) shall contain—

11 “(A) a statement identifying the activities
12 proposed to be undertaken with funds received
13 under this section, including how the eligible
14 entity will determine which charter schools will
15 receive assistance, and how much and what
16 types of assistance charter schools will receive;

17 “(B) a description of the involvement of
18 charter schools in the application’s development
19 and the design of the proposed activities;

20 “(C) a description of the eligible entity’s
21 expertise in capital market financing;

22 “(D) a description of how the proposed ac-
23 tivities will leverage the maximum amount of
24 private-sector financing capital relative to the
25 amount of Federal and State funds used and

1 otherwise enhance credit available to charter
2 schools, including how the applicant will offer a
3 combination of rates and terms more favorable
4 than rates and terms that a charter school
5 could receive without assistance under this sec-
6 tion;

7 “(E) a description of how the eligible enti-
8 ty possesses sufficient expertise in education to
9 evaluate the likelihood of success of a charter
10 school program for which facilities financing is
11 sought;

12 “(F) in the case of an application sub-
13 mitted by an eligible entity that is a State gov-
14 ernmental entity, a description of the actions
15 that the entity has taken, or will take, to ensure
16 that charter schools within the State receive the
17 funding needed to have adequate facilities; and

18 “(G) such other information as the Sec-
19 retary may reasonably require.

20 “(f) CHARTER SCHOOL OBJECTIVES.—An eligible en-
21 tity receiving a grant under this section shall use the funds
22 deposited in the reserve account established under sub-
23 section (g)(1) to assist 1 or more charter schools to access
24 private sector capital in order to accomplish one or more
25 of the following objectives:

1 “(1) The acquisition (by purchase, lease, dona-
2 tion, or otherwise) of an interest (including an inter-
3 est held by a third party for the benefit of a charter
4 school) in improved or unimproved real property
5 that is necessary to commence or continue the oper-
6 ation of a charter school.

7 “(2) The construction (including predevelop-
8 ment costs in a case where construction or renova-
9 tion cannot proceed as a result of predevelopment
10 findings) of new facilities, or the renovation, repair,
11 or alteration of existing facilities, necessary to com-
12 mence or continue the operation of a charter school.

13 “(g) RESERVE ACCOUNT.—

14 “(1) USE OF FUNDS.—To assist charter schools
15 to accomplish the objectives described in subsection
16 (f), an eligible entity receiving a grant under this
17 section shall, in accordance with State and local law,
18 directly or indirectly, alone or in collaboration with
19 others, deposit the funds received under this section
20 (other than funds used for administrative costs in
21 accordance with subsection (h)) in a reserve account
22 established and maintained by the eligible entity for
23 this purpose. Amounts deposited in such account
24 shall be used by the eligible entity for one or more
25 of the following purposes:

1 “(A) Guaranteeing, insuring, and rein-
2 suring bonds, notes, evidences of debt, loans,
3 and interests therein, the proceeds of which are
4 used for an objective described in subsection (f).

5 “(B) Guaranteeing and insuring leases of
6 personal and real property for an objective de-
7 scribed in subsection (f).

8 “(C) Facilitating financing by identifying
9 potential lending sources, encouraging private
10 lending, and other similar activities that di-
11 rectly promote lending to, or for the benefit of,
12 charter schools.

13 “(D) Facilitating the issuance of bonds by
14 charter schools, or by other public entities for
15 the benefit of charter schools, by providing
16 technical, administrative, and other appropriate
17 assistance (including the recruitment of bond
18 counsel, underwriters, and potential investors
19 and the consolidation of multiple charter school
20 projects within a single bond issue).

21 “(E) Making limited loans to charter
22 schools, under such terms and conditions as the
23 Secretary may prescribe.

24 “(2) INVESTMENT.—Funds received under this
25 section and deposited in the reserve account estab-

1 lished under paragraph (1) shall be invested in obli-
2 gations issued or guaranteed by the United States or
3 a State, or in other similarly low-risk securities.

4 “(3) REINVESTMENT OF EARNINGS.—Any earn-
5 ings on funds received under this section shall be de-
6 posited in the reserve account established under
7 paragraph (1) and used in accordance with such
8 paragraph.

9 “(h) LIMITATION ON ADMINISTRATIVE COSTS.—An
10 eligible entity may use not more than 2 percent of the
11 funds received for any fiscal year under this section for
12 the administrative costs of carrying out its responsibilities
13 under this section.

14 “(i) AUDITS AND REPORTS.—

15 “(1) FINANCIAL RECORD MAINTENANCE AND
16 AUDIT.—The financial records of each eligible entity
17 receiving a grant under this section shall be main-
18 tained in accordance with generally accepted ac-
19 counting principles and shall be subject to an annual
20 audit by an independent public accountant.

21 “(2) REPORTS.—

22 “(A) GRANTEE ANNUAL REPORTS.—Each
23 eligible entity receiving a grant under this sec-
24 tion annually shall submit to the Secretary a re-

1 port of the eligible entity's operations and ac-
2 tivities under this section.

3 “(B) CONTENTS.—Each annual report
4 submitted under subparagraph (A) shall in-
5 clude—

6 “(i) a copy of the most recent finan-
7 cial statements, and any accompanying
8 opinion on such statements, prepared by
9 the independent public accountant review-
10 ing the financial records of the eligible en-
11 tity;

12 “(ii) a copy of any report made on an
13 audit of the financial records of the eligible
14 entity that was conducted under paragraph
15 (1) during the reporting period;

16 “(iii) an evaluation by the eligible en-
17 tity of the effectiveness of its use of the
18 Federal funds provided under this section
19 in leveraging private funds;

20 “(iv) a listing and description of the
21 charter schools served during the reporting
22 period;

23 “(v) a description of the activities car-
24 ried out by the eligible entity to assist

1 charter schools in meeting the objectives
2 set forth in subsection (f); and

3 “(vi) a description of the characteris-
4 ties of lenders and other financial institu-
5 tions participating in the activities under-
6 taken by the eligible entity under this sec-
7 tion during the reporting period.

8 “(C) SECRETARIAL REPORT.—The Sec-
9 retary shall review the reports submitted under
10 paragraph (2)(A) and shall provide a com-
11 prehensive annual report to Congress on the ac-
12 tivities conducted under this section.

13 “(j) NO FULL FAITH AND CREDIT FOR GRANTEE
14 OBLIGATIONS.—No financial obligation of an eligible enti-
15 ty entered into pursuant to this section (such as an obliga-
16 tion under a guarantee, bond, note, evidence of debt, or
17 loan) shall be an obligation of, or guaranteed in any re-
18 spect by, the United States. The full faith and credit of
19 the United States is not pledged to the payment of funds
20 which may be required to be paid under any obligation
21 made by an eligible entity pursuant to any provision of
22 this section.

23 “(k) RECOVERY OF FUNDS.—

1 “(1) IN GENERAL.—The Secretary, in accord-
2 ance with chapter 37 of title 31, United States
3 Code, shall collect—

4 “(A) all of the funds in a reserve account
5 established by an eligible entity under sub-
6 section (g)(1) if the Secretary determines, not
7 earlier than 2 years after the date on which the
8 eligible entity first received funds under this
9 section, that the eligible entity has failed to
10 make substantial progress in carrying out the
11 purposes described in this section; or

12 “(B) all or a portion of the funds in a re-
13 serve account established by an eligible entity
14 under subsection (g)(1) if the Secretary deter-
15 mines that the eligible entity has permanently
16 ceased to use all or a portion of the funds in
17 such account to accomplish any purpose de-
18 scribed in this section.

19 “(2) EXERCISE OF AUTHORITY.—The Secretary
20 shall not exercise the authority provided in para-
21 graph (1) to collect from any eligible entity any
22 funds that are being properly used to achieve one or
23 more of the objectives described in subsection (f).

24 “(3) PROCEDURES.—The provisions of sections
25 451, 452, and 458 of the General Education Provi-

1 sions Act shall apply to the recovery of funds under
2 paragraph (1).

3 “(4) CONSTRUCTION.—Nothing in this section
4 shall be construed to impair or affect the authority
5 of the Secretary to recover funds under part D of
6 the General Education Provisions Act.

7 “(1) RESERVATION.—To carry out this section, the
8 Secretary shall reserve for each fiscal year not less than
9 5 percent and not more than 15 percent of the amount
10 appropriated under section 5212.”.

11 **SEC. 9. DEFINITIONS.**

12 Section 5211 of the Elementary and Secondary Edu-
13 cation Act of 1965 (as redesignated by section 8(1)) (20
14 U.S.C. 7221i) is amended—

15 (1) in paragraph (1)—

16 (A) by striking subparagraph (L);

17 (B) by redesignating subparagraphs (D)
18 through (K) as subparagraphs (E) through (L),
19 respectively;

20 (C) by inserting after subparagraph (B)
21 the following:

22 “(C) has an independent governing board
23 that enters into a performance-based agreement
24 that encompasses one or more campuses with
25 an authorized public chartering agency in the

1 State, which agreement shall include a descrip-
2 tion of—

3 “(i) how student performance will be
4 measured in each charter school pursuant
5 to the State assessments that are required
6 of other schools and any other assessments
7 or evaluations mutually agreeable to the
8 authorized public chartering agency and
9 the charter school; and

10 “(ii) criteria for renewal or revocation
11 of the charter;”;

12 (D) in subparagraph (E) (as redesignated
13 by subparagraph (B)), by striking “elementary
14 or secondary education, or both” and inserting
15 “prekindergarten, elementary, or secondary
16 education, or adult education if permitted by
17 State charter law, or any combination of such
18 types of education”;

19 (E) in subparagraph (I) (as redesignated
20 by subparagraph (B))—

21 (i) by striking “school to” and insert-
22 ing “school—

23 “(i) to”;

24 (ii) by striking “children, and that”
25 and inserting “children;

1 “(ii) that”; and
2 (iii) by striking “accommodated;” and
3 inserting “accommodated; and
4 “(iii) that does not give admissions
5 preference to any student on the basis of
6 prior academic achievement;”;
7 (F) in subparagraph (K) (as redesignated
8 by subparagraph (B)), by inserting “and” after
9 the semicolon; and
10 (G) in subparagraph (L) (as redesignated
11 by subparagraph (B)), by striking “; and” and
12 inserting a period;
13 (2) by striking paragraph (3) and inserting the
14 following:
15 “(3) ELIGIBLE APPLICANT.—The term ‘eligible
16 applicant’ means—
17 “(A) a developer that has applied to an au-
18 thorized public chartering agency to operate a
19 charter school and provided adequate and time-
20 ly notice to that authority under section
21 5203(d)(3); or
22 “(B) a charter support organization.”;
23 (3) by adding at the end the following:
24 “(5) CHARTER SUPPORT ORGANIZATION.—The
25 term ‘charter support organization’ means a public

1 or private nonprofit organization that provides as-
 2 sistance to a developer of a charter school during the
 3 planning, program design, and initial implementa-
 4 tion of a charter school.

5 “(6) ELIGIBLE ENTITY.—The term ‘eligible en-
 6 tity’ means—

7 “(A) a public entity, such as a State edu-
 8 cational agency or other State or local govern-
 9 mental entity;

10 “(B) a private nonprofit entity; or

11 “(C) a consortium of entities described in
 12 subparagraph (A) or (B).”; and

13 (4) by redesignating paragraphs (1) through
 14 (6) as paragraphs (2), (4), (5), (1), (3), and (6), re-
 15 spectively.

16 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

17 Section 5212 of the Elementary and Secondary Edu-
 18 cation Act of 1965 (as redesignated by section 8(1)) (20
 19 U.S.C. 7221j) is amended to read as follows:

20 **“SEC. 5212. AUTHORIZATION OF APPROPRIATIONS.**

21 “(a) IN GENERAL.—There are authorized to be ap-
 22 propriated to carry out this subpart \$650,000,000 for fis-
 23 cal year 2011 and such sums as may be necessary for each
 24 of the 5 succeeding fiscal years.

1 “(b) ALLOCATION.—In allocating funds under this
 2 subpart for any fiscal year, the Secretary shall consider
 3 the relative need between the programs under section
 4 5202, section 5205(c), and section 5211 and the quality
 5 of the applications submitted under such sections.”.

6 **SEC. 11. REORGANIZATION.**

7 Part B of title V of the Elementary and Secondary
 8 Education Act of 1965 (20 U.S.C. 7221 et seq.) is amend-
 9 ed—

10 (1) by striking subpart 2; and

11 (2) by redesignating subpart 3 as subpart 2.

12 **SEC. 12. CONFORMING AMENDMENTS.**

13 (a) CONFORMING AMENDMENT.—Section 5247(1) of
 14 the Elementary and Secondary Education Act of 1965 (20
 15 U.S.C. 7225f(1)) is amended by striking “5210” and in-
 16 serting “5211”.

17 (b) TABLE OF CONTENTS.—The table of contents in
 18 section 2 of the Elementary and Secondary Education Act
 19 of 1965 is amended—

20 (1) by striking the items relating to sections
 21 5206 through 5211 and inserting the following:

“Sec. 5206. Federal formula allocation.

“Sec. 5207. Credit enhancement for charter school facilities programs.

“Sec. 5208. Solicitation of input from charter school operators.

“Sec. 5209. Records transfer.

“Sec. 5210. Paperwork reduction.

“Sec. 5211. Definitions.

“Sec. 5212. Authorization of appropriations.”;

1 (2) by striking the item relating to subpart 2
2 of part B of title V;

3 (3) by striking the items relating to sections
4 5221 through 5231; and

5 (4) by striking the item relating to subpart 3
6 of part B of title V and inserting the following:

“SUBPART 2—VOLUNTARY PUBLIC SCHOOL CHOICE PROGRAMS”.

○