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

IN THE HOUSE OF REPRESENTATIVES

January 26, 2011

Mr. Boren introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Impact Aid Fairness and Equity Act of 2011”.
SEC. 2. AMENDMENTS TO SECTION 8002 (PAYMENTS RELATING TO FEDERAL ACQUISITION OF REAL PROPERTY).

Section 8002 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7702) is amended to read as follows:

“SEC. 8002. PAYMENTS RELATING TO FEDERAL ACQUISITION OF REAL PROPERTY.

“(a) In General.—Where the Secretary, after consultation with any local educational agency and with the appropriate State educational agency, determines for a fiscal year ending prior to October 1, 2003—

“(1) that the United States owns Federal property in the local educational agency, and that such property—

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

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

“(C) had an assessed value (according to original records (including reproductions of those records) documenting the assessed value of such property (determined as of the time or times when so acquired) prepared by the local
official referred to in subsection (b)(3) or, when such original records are not available due to unintentional destruction (such as natural disaster, fire, flooding, pest infestation, or deterioration due to age), other records, including Federal agency records, local historical records, or other records that the Secretary determines to be appropriate and reliable) aggregating 10 percent or more of the assessed value of—

“(i) all real property in the local educational agency (similarly determined as of the time or times when such Federal property was so acquired); or

“(ii) all real property in the local educational agency as assessed in the first year preceding or succeeding acquisition, whichever is greater, only if—

“(I) the assessment of all real property in the local educational agency is not made at the same time or times that such Federal property was so acquired and assessed; and

“(II) State law requires an assessment be made of property so acquired; and
“(2) that such agency is not being substantially compensated for the loss in revenue resulting from such ownership by increases in revenue accruing to the agency from the conduct of Federal activities with respect to such Federal property, then such agency shall be eligible to receive the amount described in subsection (b).

“(b) AMOUNT.—

“(1) IN GENERAL.—(A)(i)(I) Subject to subclauses (II) and (III), the amount that a local educational agency shall be paid under subsection (a) for a fiscal year shall be calculated in accordance with paragraph (2).

“(II) Except as provided in subclause (III), the Secretary may not reduce the amount of a payment under this section to a local educational agency for a fiscal year by (aa) the amount equal to the amount of revenue, if any, the agency received during the previous fiscal year from activities conducted on Federal property eligible under this section and located in a school district served by the agency, including amounts received from any Federal department or agency (other than the Department of Education) from such activities, by reason of receipt of
such revenue, or (bb) any other amount by reason of receipt of such revenue.

“(III) If the amount equal to the sum of (aa) the proposed payment under this section to a local educational agency for a fiscal year and (bb) the amount of revenue described in subclause (II)(aa) received by the agency during the previous fiscal year, exceeds the maximum amount the agency is eligible to receive under this section for the fiscal year involved, then the Secretary shall reduce the amount of the proposed payment under this section by an amount equal to such excess amount.

“(ii) For purposes of clause (i), the amount of revenue that a local educational agency receives during the previous fiscal year from activities conducted on Federal property shall not include payments received by the agency from the Secretary of Defense to support—

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

“(II) the provision of a free public education to dependents of members of the Armed Forces residing on or near a military installation.
“(B) If funds appropriated under section 8014(a) are insufficient to pay the amount determined under subparagraph (A), the Secretary shall calculate the payment for each eligible local educational agency in accordance with subsection (h).

“(C) Notwithstanding any other provision of this subsection, a local educational agency may not be paid an amount under this section that, when added to the amount such agency receives under section 8003(b), exceeds the maximum amount that such agency is eligible to receive for such fiscal year under section 8003(b)(1)(C), or the maximum amount that such agency is eligible to receive for such fiscal year under this section, whichever is greater.

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

“(E) Notwithstanding any other provision of this subsection, in fiscal years 2012, 2013, and 2014 a local educational agency may not be paid an amount under this section that is less than 85 per-
cent of its payment under this section for the prior fiscal year.

“(2) Application of current levied real property tax rate.—In calculating the amount that a local educational agency is eligible to receive for a fiscal year, the Secretary shall apply the current levied real property tax rate for current expenditures levied by fiscally independent local educational agencies, or imputed for fiscally dependent local educational agencies, to the current annually determined aggregate assessed value of such acquired Federal property.

“(3) Determination of aggregate assessed value.—Such aggregate assessed value of such acquired Federal property shall be determined on the basis of the highest and best use of property adjacent to such acquired Federal property as of the time such value is determined, and provided to the Secretary, by the local official responsible for assessing the value of real property located in the jurisdiction of such local educational agency for the purpose of levying a property tax.

“(e) Applicability to Tennessee Valley Authority Act.—For the purpose of this section, any real property with respect to which payments are being made
under section 13 of the Tennessee Valley Authority Act
of 1933 shall not be regarded as Federal property.

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

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

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

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

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

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

“(D) except with the approval of the Fed-
eral Government (or its agent), prohibits the
sale, lease, assignment, or other disposal of the
property unless such sale, lease, assignment, or
other disposal is to another eligible government agency; and

“(E) reserves to the Federal Government a right of reversion at any time the Federal Government (or its agent) deems it necessary for the national defense.

“(e) Local Educational Agency Containing Forest Service Land and Serving Certain Counties.—Beginning with fiscal year 1995, a local educational agency shall be deemed to meet the requirements of subsection (a)(1)(C) if such local educational agency meets the following requirements:

“(1) Acreage and Acquisition by the Forest Service.—The local educational agency serves a school district that contains between 20,000 and 60,000 acres of land that has been acquired by the Forest Service of the Department of Agriculture between 1915 and 1990, as demonstrated by written evidence from the Forest Service satisfactory to the Secretary.

“(2) County Charter.—The local educational agency serves a county chartered under State law in 1875 or 1890.

“(f) Special Rule.—(1) Beginning with fiscal year 1994, and notwithstanding any other provision of law lim-
iting the period during which fiscal year 1994 funds may
be obligated, the Secretary shall treat the local educational
agency serving the Wheatland R–II School District,
Wheatland, Missouri, as meeting the eligibility require-
ments of section 2(a)(1)(C) of the Act of September 30,
1950 (Public Law 874, 81st Congress) (as such section
was in effect on the day preceding the date of enactment
of the Improving America’s Schools Act of 1994) (20

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

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

“(4) For the purposes of payments under this section
for each fiscal year beginning with fiscal year 2000, the
Secretary shall treat the Hot Springs, South Dakota local
educational agency as if it had filed a timely application
under section 8002 of the Elementary and Secondary
Education Act of 1965 for fiscal year 1994 if the Sec-
retary has received the fiscal year 1994 application, as well as exhibits A and B not later than December 1, 1999.

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

“(g) Former Districts.—

“(1) In general.—Where the school district of any local educational agency described in paragraph (2) is formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at any time such agency files an application under section 8005) for any fiscal year after fiscal year 1994 to have (A) the eligibility of such local educational agency, and (B) the amount which such agency shall be eligible to receive, determined under this section only with respect to such of the former school districts comprising such consolidated school districts as such agency shall designate in such election.

“(2) Eligible Local Educational Agencies.—A local educational agency referred to in
paragraph (1) is any local educational agency that, for fiscal year 1994 or any preceding fiscal year, applied for and was determined eligible under section 2(c) of the Act of September 30, 1950 (Public Law 874, 81st Congress) as such section was in effect for such fiscal year.

“(h) Payments With Respect to Fiscal Years in Which Insufficient Funds Are Appropriated.—For any fiscal year for which the amount appropriated under section 8014(a) is insufficient to pay to each eligible local educational agency the full amount determined under subsection (b), the Secretary shall ratably reduce the payment to each local educational agency under subsection (b).

“(i) Special Rule.—For purposes of payments under this section for each fiscal year beginning with fiscal year 1998—

“(1) the Secretary shall, for the Stanley County, South Dakota local educational agency, calculate payments as if subsection (e) had been in effect for fiscal year 1994; and

“(2) the Secretary shall treat the Delaware Valley, Pennsylvania local educational agency as if it had filed a timely application under section 2 of Public Law 81–874 for fiscal year 1994.
“(j) PRIOR YEAR DATA.—Notwithstanding any other provision of this section, in determining the eligibility of a local educational agency for a payment under subsection (b) or (h)(4)(B) of this section for a fiscal year, and in calculating the amount of such payment, the Secretary—

“(1) shall use data from the prior fiscal year with respect to the Federal property involved, including data with respect to the assessed value of the property and the real property tax rate for current expenditures levied against or imputed to the property; and

“(2) shall use data from the second prior fiscal year with respect to determining the amount of revenue referred to in subsection (b)(1)(A)(i).

“(k) ELIGIBILITY.—

“(1) OLD FEDERAL PROPERTY.—Except as provided in paragraph (2), a local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government, before the date of the enactment of the Impact Aid Fairness and Equity Act of 2011, shall be eligible to receive the payment only if the local educational agency submits an application for a payment under this section not later than 7 years after the date of the enactment of such Act.
“(2) COMBINED FEDERAL PROPERTY.—A local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government before the date of the enactment of the Impact Aid Fairness and Equity Act of 2011 shall be eligible to receive the payment if—

“(A) the Federal property, when combined with other Federal property in the school district served by the local educational agency acquired by the Federal Government after the date of the enactment of such Act, meets the requirements of subsection (a); and

“(B) the local educational agency submits an application for a payment under this section not later than 7 years after the date of acquisition of the Federal property acquired after the date of the enactment of such Act.

“(3) NEW FEDERAL PROPERTY.—A local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government after the date of the enactment of the Impact Aid Fairness and Equity Act of 2011 shall be eligible to receive the payment only if the local educational agency submits an application
for a payment under this section not later than 7
years after the date of acquisition.

“(l) Loss of Eligibility.—

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

“(2) Local Educational Agency De-
scribed.—A local educational agency described in
this paragraph is an agency that—

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

“(B) beginning in fiscal year 2003 or a
subsequent fiscal year, is no longer eligible for
payments under this section as provided for in
subsection (a)(1)(C) as a result of the transfer
of the Federal property involved to a non-Federal entity.”

SEC. 3. AMENDMENTS TO SECTION 8003 (PAYMENTS FOR ELIGIBLE FEDERALLY CONNECTED CHILDREN).

Section 8003 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703) is amended—

(1) in subsection (a)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by inserting after “such agency,” the following: “including those children enrolled in a State that has a State open enrollment policy (but not including children enrolled in a distance learning program not residing within the defined boundaries of the agency),”;

(B) in paragraph (2)—

(i) by redesignating subparagraphs (D) through (F) as (E) through (G), respectively; and

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

“(D) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of 1.35 if the local edu-
cational agency has a total student enrollment
of not less than 25,000 students, of which not
less than 50 percent are children described in
paragraph (1) and not less than 6,000 of such
children are children described in subparagraph
(A) and (B) of paragraph (1).”;
(2) in subsection (b)(2)—
(A) in subparagraph (B)—
(i) in the subparagraph heading by
striking “CONTINUING”;
(ii) in clause (i) by striking subclauses
(I) and (II) and inserting the following:
“(I) is a local educational agency
whose boundaries are the same as a
Federal military installation or the
boundaries are the same as island
property designated by the Secretary
of the Interior to be property that is
held in trust by the Federal Govern-
ment and the agency has no taxing
authority;
“(II) has an enrollment of chil-
dren described in subsection (a)(1)
that constitutes a percentage of the
total student enrollment of the agency that is not less than 45 percent;

“(III) has a per-pupil expenditure that is less than—

“(aa) for a local educational agency that has a total student enrollment of 350 or more students, 150 percent of the average per-pupil expenditure of the State in which the agency is located; or

“(bb) for a local educational agency that has a total student enrollment of less than 350 students—

“(AA) 150 percent of the average per-pupil expenditure of the State in which the agency is located; or

“(BB) the average per-pupil expenditure of three comparable local educational agencies in the State in which the agency is located;
“(IV) has a tax rate for general fund purposes that is at least 95 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State; and

“(V) for a local educational agency that has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency which is not less than 30 percent, and has a tax rate for general fund purposes which is not less than 125 percent of the average tax rate for general fund purposes for comparable local educational agencies in the State;”; and

(iii) by adding at the end the following:

“(iv) SPECIAL RULE.—Notwithstanding clause (i)(II), a local educational agency shall be considered eligible to receive a basic support payment under subparagraph (A) with respect to the number
of children determined under subsection 
(a)(1) if the agency—

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

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

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

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

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

“(i) IN GENERAL.—The maximum 
amount that a heavily impacted local edu-
cational agency is eligible to receive under 
this paragraph for any fiscal year is the 
sum of the total weighted student units, as
computed under subsection (a)(2) and subject to clause (ii), multiplied by the greater of—

“(I) four-fifths of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made; or

“(II) four-fifths of the average per-pupil expenditure of all of the States for the third fiscal year preceding the fiscal year for which the determination is made.

“(ii) SPECIAL RULE.—(I)(aa) For a local educational agency with respect to which 35 percent or more of the total student enrollment of the schools of the agency are children described in subparagraph (D) or (E) (or a combination thereof) of subsection (a)(1), and has an enrollment of children described in subparagraph (A), (B), or (C) of such subsection equal to at least 10 percent of the agency’s total enrollment, the Secretary shall calculate the
weighted student units of those children described in subparagraph (D) or (E) of such subsection by multiplying the number of such children by a factor of 0.55.

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

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

“(III) For a local educational agency that does not qualify under (B)(i)(I) of this subsection and has an enrollment of more than 100 but not more than 1,000 children described in subsection (a)(1), the Secretary shall calculate the total number
of weighted student units for purposes of subsection (a)(2) by multiplying the number of such children by a factor of 1.25.

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

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

(i) by striking clause (ii);

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

(iii) by striking “the Secretary—” and all that follows through “shall use” and inserting “the Secretary shall use”;

(E) by redesignating subparagraph (G) as (E) and, in that subparagraph, in the matter preceding clause (i), by striking “(C)(i)(II)(bb)” and inserting “(B)(i)(II)(bb)” and
(F) by redesignating subparagraph (H) as

(F) and, in that subparagraph—

(i) in clause (i)—

(I) by striking “(B), (C), (D), or

(E),” and inserting “(B) or (C),’’;

(II) by striking “by reason of’’

and inserting “due to’’;

(III) by inserting after “clause

(iii),” the following: “or as the direct

result of base realignment and closure

or modularization as determined by

the Secretary of Defense and force

structure change or force relocation,’’;

and

(IV) by inserting before the pe-

period at the end the following: “or dur-

ing such time as activities associated

with base closure and realignment,

modularization, force structure

change, or force relocation is ongo-

ing’’; and

(ii) in clause (ii)—

(I) by striking “(D) or (E), as

the case may be,’’ and inserting

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

(3) in subsection (b)(3)(B)—  

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

(B) by inserting after clause (iii) the following:  

“(iv) For any local educational agency that is providing a program of distant learning to children not residing within the legally defined boundaries of the agency, the Secretary shall disregard such children from such agency’s total enrollment when calculating the percentage under subclause (I) of clause (i) and shall disregard any funds received for such children when calculating the total current expenditures attributed to the operation of such agency when calculating the percentage under subclause (II) of clause (i).”;

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

(5) in subsection (b)(3), by amending subparagraph (D) to read as follows:
“(D) **Ratable distribution.**—For any fiscal year described in subparagraph (A) for which the sums available exceed the amount required to pay each local educational agency 100 percent of its threshold payment the Secretary shall distribute the excess sums to each eligible local educational agency that has not received its full amount computed under paragraph (1) or (2) (as the case may be) by multiplying—

“(i) a percentage, the denominator of which is the difference between the full amount computed under paragraph (1) or (2) (as the case may be) for all local educational agencies and the amount of the threshold payment (as calculated under subparagraphs (B) and (C)) of all local educational agencies, and the numerator of which is the aggregate amount of the excess sums, by:

“(ii) the difference between the full amount computed under paragraph (1) or (2) (as the case may be) for the agency and the amount of the threshold payment as calculated under subparagraphs (B) and (C) of the agency.”;
(6) in subsection (c) by amending paragraph (2) to read as follows:

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

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

“(1) IN GENERAL.—Subject to paragraph (2), the total amount the Secretary shall pay a local education agency—

“(A) for fiscal year 2012 shall not be less than 90 percent of the total amount that the local education agency received under subsection (b)(1), (b)(2), or (b)(2)(B)(ii) for fiscal year 2009;

“(B) for fiscal year 2013 shall not be less than 80 percent of the total amount that the local educational agency received under subsection (b)(1), (b)(2), or (b)(2)(B)(ii) for fiscal year 2009;

“(C) for fiscal year 2014 shall not be less than 70 percent of the total amount that the
local educational agency received under subsection (b)(1), (b)(2), or (b)(2)(B)(ii) for fiscal year 2009, of which such amount shall be considered a foundation payment for each succeeding fiscal year until such time as the agency’s maximum payment as determined under paragraphs (1) or (2) of subsection (b) as the case may be, exceeds the amount provided for under this subparagraph.

“(2) Ratable Reduction.—

“(A) In General.—If the sums made available under this title for any fiscal year are insufficient to pay the full amounts that all local educational agencies in all States are eligible to receive under paragraph (1) for such year, then the Secretary shall ratably reduce the payments to all agencies for such year.

“(B) Additional Funds.—If additional funds become available for making payments under paragraph (1) for such fiscal year, payments that were reduced under subparagraph (A) shall be increased on the same basis as such payments were reduced.”; and

(8) by striking subsection (g).
SEC. 4. AMENDMENTS TO SECTION 8007 (CONSTRUCTION).

Section 8007 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707) is amended to read as follows:

"SEC. 8007. CONSTRUCTION.

"(a) School Facility Emergency and Modernization Grants Authorized.—

"(1) In general.—From 100 percent of the amount appropriated for each fiscal year under section 8014(e), the Secretary—

"(A) shall award emergency grants in accordance with this subsection to eligible local educational agencies to enable the agencies to carry out emergency repairs of school facilities; and

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

"(2) Priority.—In approving applications from local educational agencies for emergency grants and modernization grants under this subsection, the Secretary shall give priority to applications in accordance with the following:

"(A) The Secretary shall first give priority to applications for emergency grants from local
educational agencies that meet the requirements of paragraph (3)(A) and, among such applications for emergency grants, shall give priority to those applications from local educational agencies based on the severity of the emergency, as determined by the Secretary.

“(B) The Secretary shall next give priority to applications for modernization grants from local educational agencies that meet the requirements of paragraph (3)(B) and, among such applications for modernization grants, shall give priority to those applications from local educational agencies based on the severity of the need for modernization, as determined by the Secretary.

“(3) Eligibility Requirements.—

“(A) Emergency Grants.—A local educational agency is eligible to receive an emergency grant under paragraph (2)(A) if—

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

“(I) has no practical capacity to issue bonds; or
“(II) has minimal capacity to issue bonds and is at not less than 75 percent of the agency’s limit of bonded indebtedness; or

“(ii) the agency is eligible to receive assistance under subsection (a) for the fiscal year and has a school facility emergency, as determined by the Secretary, that poses a health or safety hazard to the students and school personnel assigned to the school facility.

“(B) Modernization Grants.—A local educational agency is eligible to receive a modernization grant under paragraph (2)(B) if—

“(i) the agency receives a basic support payment under section 8003(b) for the fiscal year; or

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

“(C) Rule of Construction.—For purposes of subparagraph (A)(i), a local educational agency—

“(i) has no practical capacity to issue bonds if the total assessed value of real
property that may be taxed for school purposes is less than $25,000,000; and

“(ii) has minimal capacity to issue bonds if the total assessed value of real property that may be taxed for school purposes is at least $25,000,000 but not more than $50,000,000.

“(4) AWARD CRITERIA.—In awarding emergency grants and modernization grants under this subsection, the Secretary shall consider the following factors:

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

“(i) the agency’s level of bonded indebtedness;

“(ii) the assessed value of real property per student that may be taxed for school purposes compared to the average of the assessed value of real property per student that may be taxed for school purposes in the State in which the agency is located;

“(iii) the agency’s total tax rate for school purposes (or for capital expendi-
tures, if applicable) compared to the average total tax rate for school purposes (or the average capital expenditure tax rate, if applicable) in the State in which the agency is located; and

“(iv) funds that are available to the agency, from any other source, including subsection (a), that may be used for capital expenditures.

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

“(C) The number and percentages of children described in subparagraphs (A), (B), (C), and (D) of section 8003(a)(1) served in the school facility with the emergency or served in the school facility proposed for modernization, as the case may be.

“(D) In the case of an emergency grant, the severity of the emergency, as measured by the threat that the condition of the school facility poses to the health, safety, and well-being of students.

“(E) In the case of a modernization grant—
“(i) the severity of the need for modernization, as measured by such factors as—

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

“(II) the agency’s inability to utilize technology or offer a curriculum in accordance with contemporary State standards due to the physical limitations of the current school facility; and

“(ii) the age of the school facility proposed for modernization.

“(5) OTHER AWARD PROVISIONS.—

“(A) GENERAL PROVISIONS.—

“(i) LIMITATIONS ON AMOUNT OF FUNDS.—

“(I) IN GENERAL.—The amount of funds provided under an emergency grant or a modernization grant awarded under this subsection to a local educational agency that meets the requirements of subclause (II) of
paragraph (3)(A)(i) for purposes of eligibility under subparagraph (A) or (B) of paragraph (3)—

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

“(bb) shall not exceed $4,000,000 during any 4-year period.

“(II) IN-KIND CONTRIBUTIONS.—

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

“(ii) PROHIBITIONS ON USE OF FUNDS.—A local educational agency may not use funds provided under an emergency grant or modernization grant awarded under this subsection for—

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

“(II) stadiums or other school facilities that are primarily used for
athletic contests, exhibitions, or other
events for which admission is charged
to the general public; or

“(III) the acquisition of real
property.

“(iii) Supplement, not sup-
plant.—A local educational agency shall
use funds provided under an emergency
grant or modernization grant awarded
under this subsection only to supplement
the amount of funds that would, in the ab-
sence of the Federal funds provided under
the grant, be made available from non-
Federal sources to carry out emergency re-
pairs of school facilities or to carry out the
modernization of school facilities, as the
case may be, and not to supplant such
funds.

“(iv) Maintenance costs.—Nothing
in this subsection shall be construed to au-
thorize the payment of maintenance costs
in connection with any school facility mod-
ernized in whole or in part with Federal
funds provided under this subsection.
“(v) Environmental safeguards.—All projects carried out with Federal funds provided under this subsection shall comply with all relevant Federal, State, and local environmental laws and regulations.

“(vi) Carry-over of certain applications.—A local educational agency that applies for an emergency grant or a modernization grant under this subsection for a fiscal year and does not receive the grant for the fiscal year shall have the application for the grant considered for the following fiscal year, subject to the priority requirements of paragraph (2) and the award criteria requirements of paragraph (4).

“(B) Emergency grants; prohibition on use of funds.—A local educational agency that is awarded an emergency grant under this subsection may not use amounts under the grant for the complete or partial replacement of an existing school facility unless such replacement is less expensive or more cost-effective than correcting the identified emergency.
“(6) APPLICATION.—A local educational agency that desires to receive an emergency grant or a modernization grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each application shall contain the following:

“(A) A description of how the local educational agency meets the award criteria under paragraph (4), including the information described in clauses (i) through (iv) of paragraph (4)(A) and subparagraphs (B) and (C) of paragraph (4).

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

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

“(ii) a signed statement from an appropriate local official certifying that a deficiency in the school facility threatens the health or safety of the occupants of the fa-
ility or that prevents the use of all or a portion of the building.

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

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

“(ii) the date on which original construction of the facility to be modernized was completed;

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

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

“(D) A description of the project for which a grant under this subsection will be used, including a cost estimate for the project.

“(E) A description of the interest in, or authority over, the school facility involved, such as an ownership interest or a lease arrangement.
“(F) Such other information and assurances as the Secretary may reasonably require.

“(7) REPORT.—

“(A) IN GENERAL.—Not later than January 1 of each year, the Secretary shall prepare and submit to the appropriate congressional committees a report that contains a justification for each grant awarded under this subsection for the prior fiscal year.

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

“(i) the Committee on Appropriations and the Committee on Education and the Workforce of the House of Representatives; and

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