H. R. 2378

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2013

Mr. MULLIN (for himself, Mr. BUCSHON, and Mr. O’ROURKE) 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 2013”.

SEC. 2. AMENDMENTS TO THE IMPACT AID IMPROVEMENT ACT OF 2012.

Section 563(c) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1748) is amended—
(1) in paragraphs (1), by inserting “paragraphs
(2) and (3) of” before “subsection (b)”; and
(2) in paragraph (4), by inserting “paragraphs
(2) and (3) of” before “subsection (b)”.

SEC. 3. AMENDMENTS TO SECTION 8002 (PAYMENTS RELATING TO FEDERAL ACQUISITION OF REAL PROPERTY) OF THE ESEA.

Section 8002(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7702) is amended—

(1) in paragraph (1), by amending subpara-
graph (C) to read as follows:

“(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 dis-
aster, fire, flooding, pest infestation, or deterio-
ration 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) by amending paragraph (2) to read as follows:

“(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).”.
SEC. 4. AMENDMENTS TO SECTION 8003 (PAYMENTS FOR ELIGIBLE FEDERALLY CONNECTED CHILDREN) OF THE ESEA.

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),”;

(2) subsection (b)(2)—

(A) in subparagraph (B)—

(i) in the subparagraph heading, by striking “CONTINUING”;

(ii) by amending clause (i) to read as follows:

“(i) IN GENERAL.—A heavily impacted local educational agency is eligible to receive a basic support payment under subparagraph (A) with respect to a number of children determined under subsection (a)(1) if the agency—
“(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 Government and the agency has no taxing authority;

“(II) is a local educational agency—

“(aa) that has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency that is not less than 45 percent;

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

“(AA) for an agency that has a total student enrollment of 500 or more students, 125 percent of the average per-pupil expenditure
of the State in which the 
agency is located; or 

“(BB) for an agency 
that has a total student en-
rollment of less than 500, 
150 percent of the average 
per-pupil expenditure of the 
State in which the agency is 
located, or the average per-
pupil expenditure of 3 or 
more comparable local edu-
cational agencies in the 
State in which the agency is 
located; and 

“(cc) that is an agency 
that—

“(AA) has a tax rate 
for general fund purposes 
that is at least 95 percent of 
the average tax rate for gen-
eral fund purposes of com-
parable local educational 
agencies in the State; or 

“(BB) was eligible to 
receive a payment under this
subsection for fiscal year 2008 and is located in a State that by State law has eliminated ad valorem tax as a revenue source for local educational agencies;

“(III) is a local educational agency that has a total student enrollment of not less than 25,000 students, of which not less than 50 percent are children described in subsection (a)(1) and not less than 5,500 of such children are children described in subparagraphs (A) and (B) of subsection (a)(1); or

“(IV) is a local educational agency that—

“(aa) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency that is not less than 20 percent;

“(bb) for the 3 fiscal years preceding the fiscal year for
which the determination is made, the average enrollment of children who are not described in subsection (a)(1) and who are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act constitutes a percentage of the total student enrollment of the agency that is not less than 65 percent; and

“(cc) has a tax rate for general fund purposes which is not less than 1.25 percent of the average tax rate for general fund purposes for comparable local educational agencies in the State.”; and

(iii) by amending clause (ii) to read as follows:

“(ii) LOSS OF ELIGIBILITY.—

“(I) IN GENERAL.—Subject to subclause (II), a heavily impacted local education agency that met the requirements of clause (i) for a fiscal
year shall be ineligible to receive a basic support payment under subparagraph (A) if the agency fails to meet the requirements of clause (i) for a subsequent fiscal year, except that such agency shall continue to receive a basic support payment under this paragraph for the fiscal year for which the ineligibility determination is made.

“(II) EXCEPTION.—For a local educational agency that is eligible under subparagraph (A) but whose tax rate for general fund purposes falls below 95 percent of the average tax rate for general fund purposes of local educational agencies in the State for two consecutive years shall lose its eligibility and be subject to subclause (I).”; and

(iv) by adding at the end, the following:

“(iv) SPECIAL RULE.—Notwithstanding clause (i)(II), a local educational agency shall be considered eligible to re-
receive a basic support payment under sub-
paragraph (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),
including, for purposes of determining
eligibility, those children described in
subparagraphs (F) and (G) of such
subsection, that constitutes a percent-
age of the total student enrollment of
the agency that is not less than 35
percent; and

“(II) was eligible to receive as-
sistance under subsection (b)(2) for
fiscal year 2001.”;

(B) by amending subparagraph (C) to read
as follows:

“(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 subparagraphs (D) or (E) (or a combination thereof) of subsection (a)(1), and has 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, the Secretary shall calculate the
weighted student units of those children described in subparagraphs (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 for fiscal year 2006, the local educational agency shall not be required to have 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.

“(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 subparagraph (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.”;

(C) by amending subparagraph (D) to read as follows:

“(D) MAXIMUM AMOUNT FOR LARGE HEAVILY IMPacted LOCAL EDUCATIONAL AGENCIES.—(i)(I) Subject to clause (ii), the maximum amount that a heavily impacted local educational agency described in subclause (II) is eligible to receive under this paragraph for any fiscal year shall be determined in accordance with the formula described in paragraph (1)(C).

“(II) A heavily impacted local educational agency described in this subclause is a local educational agency that has a total student enrollment of not less than 25,000 students, of which not less than 50 percent are children described in subsection (a)(1) and not less than 5,500 of such children are children described in subparagraph (A) and (B) of subsection (a)(1).

“(ii) For purposes of calculating the maximum amount described in clause (i), the factor
used in determining the weighted student units
under subsection (a)(2) with respect to children
described in subparagraph (A) and (B) of sub-
section (a)(1) shall be 1.35.”;

(D) by striking subparagraph (E);

(E) by redesignating subparagraph (F) as

(F) in subparagraph (E) (as so redesig-
nated by subparagraph (G))—

(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 in-
serting “the Secretary shall use”;

(G) by redesignating subparagraph (G) as

subparagraph (F);

(H) in subparagraph (F) (as so redesig-
nated by subparagraph (I)), in the matter pre-
ceeding clause (i), by striking “(C)(i)(II)(bb)”
and inserting “(B)(i)(II)(bb)”;

(I) by redesignating subparagraph (H) as

subparagraph (G); and

(J) in subparagraph (G) (as so redesig-
nated by subparagraph (K))—
(i) in clause (i)—

(I) by striking “(B), (C), (D), or (E),” and inserting “(B), (C), or (D),”;

(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 period at the end the following: “or during such time as activities associated with base closure and realignment, modularization, force structure change, or force relocation is ongoing”; and

(ii) in clause (ii) by striking “(D) or (E)” in both places such term appears and inserting “(C) or (D),”;

(3) in subsection (b)(3)(B)—

(A) by redesignating clause (iv) as (v); and
(B) by inserting after clause (iii) the follow-
ing:

“(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 cal-
culating the total current expenditures at-
tributed to the operation of such agency

when calculating the percentage under sub-
clause (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 subpara-
graph (D) to read as follows:

“(D) RATABLE DISTRIBUTION.—For any

fiscal year described in subparagraph (A) for

which the sums available exceed the amount re-
quired 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 educational agency—

“(A) for fiscal year 2014 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 2011;

“(B) for fiscal year 2015 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 2011;

“(C) for fiscal year 2016 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 2011, of which such amount shall be considered a foundation payment for each succeeding fiscal year until such time as the agen-
cy'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. 5. AMENDMENTS TO SECTION 8007 (CONSTRUCTION) OF THE ESEA.

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 expenditures, 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 supplant.—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 absence of the Federal funds provided under the grant, be made available from non-Federal sources to carry out emergency repairs 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 authorize the payment of maintenance costs in connection with any school facility modernized 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 Fed-
general, 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 edu-
cational agency meets the award criteria under
paragraph (4), including the information de-
scribed in clauses (i) through (iv) of paragraph
(4)(A) and subparagraphs (B) and (C) of para-
graph (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 ap-
propriate local official certifying that a de-
ficiency in the school facility threatens the
health or safety of the occupants of the fa-
cility 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.”.