

21ST CENTURY GREEN HIGH-PERFORMING PUBLIC
SCHOOL FACILITIES ACT

MAY 11, 2009.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. GEORGE MILLER of California, from the Committee on
Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2187]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2187) to direct the Secretary of Education to make grants to State educational agencies for the modernization, renovation, or repair of public school facilities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “21st Century Green High-Performing Public School Facilities Act”.

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

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

TITLE I—GRANTS FOR MODERNIZATION, RENOVATION, OR REPAIR OF PUBLIC SCHOOL FACILITIES

Sec. 101. Purpose.
Sec. 102. Allocation of funds.
Sec. 103. Allowable uses of funds.

TITLE II—SUPPLEMENTAL GRANTS FOR LOUISIANA, MISSISSIPPI, AND ALABAMA

Sec. 201. Purpose.
Sec. 202. Allocation to local educational agencies.
Sec. 203. Allowable uses of funds.

TITLE III—GENERAL PROVISIONS

- Sec. 301. Impermissible uses of funds.
- Sec. 302. Supplement, not supplant.
- Sec. 303. Prohibition regarding State aid.
- Sec. 304. Maintenance of effort.
- Sec. 305. Special rule on contracting.
- Sec. 306. Use of American iron, steel, and manufactured goods.
- Sec. 307. Labor standards.
- Sec. 308. Charter schools.
- Sec. 309. Green schools.
- Sec. 310. Reporting.
- Sec. 311. Authorization of appropriations.
- Sec. 312. Special rules.
- Sec. 313. YouthBuild programs.

SEC. 2. DEFINITIONS.

In this Act:

- (1) The term “Bureau-funded school” has the meaning given to such term in section 1141 of the Education Amendments of 1978 (25 U.S.C. 2021).
- (2) The term “charter school” has the meaning given such term in section 5210 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7221).
- (3) The term “CHPS Criteria” means the green building rating program developed by the Collaborative for High Performance Schools.
- (4) The term “Energy Star” means the Energy Star program of the United States Department of Energy and the United States Environmental Protection Agency.
- (5) The term “Green Globes” means the Green Building Initiative environmental design and rating system referred to as Green Globes.
- (6) The term “LEED Green Building Rating System” means the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard referred to as LEED Green Building Rating System.
- (7) The term “local educational agency”—
 - (A) has the meaning given to that term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), and shall also include the Recovery School District of Louisiana and the New Orleans Public Schools; and
 - (B) includes any public charter school that constitutes a local educational agency under State law.
- (8) The term “outlying area”—
 - (A) means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands; and
 - (B) includes the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
- (9) The term “public school facilities” means an existing public school facility, including a public charter school facility, or another existing facility planned for adaptive reuse as such a school facility.
- (10) The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

TITLE I—GRANTS FOR MODERNIZATION, RENOVATION, OR REPAIR OF PUBLIC SCHOOL FACILITIES

SEC. 101. PURPOSE.

Grants under this title shall be for the purpose of modernizing, renovating, or repairing public school facilities, based on their need for such improvements, to be safe, healthy, high-performing, and up-to-date technologically.

SEC. 102. ALLOCATION OF FUNDS.**(a) RESERVATION.—**

(1) **IN GENERAL.**—From the amount appropriated to carry out this title for each fiscal year pursuant to section 311(a), the Secretary shall reserve 1 percent of such amount, consistent with the purpose described in section 101—

- (A) to provide assistance to the outlying areas; and
- (B) for payments to the Secretary of the Interior to provide assistance to Bureau-funded schools.

(2) **USE OF RESERVED FUNDS.**—In each fiscal year, the amount reserved under paragraph (1) shall be divided between the uses described in subparagraphs (A) and (B) of such paragraph in the same proportion as the amount reserved under section 1121(a) of the Elementary and Secondary Education Act of 1965 (20

U.S.C. 6331(a)) is divided between the uses described in paragraphs (1) and (2) of such section 1121(a) in such fiscal year.

(b) ALLOCATION TO STATES.—

(1) STATE-BY-STATE ALLOCATION.—Of the amount appropriated to carry out this title for each fiscal year pursuant to section 311(a), and not reserved under subsection (a), each State shall be allocated an amount in proportion to the amount received by all local educational agencies in the State under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the previous fiscal year relative to the total amount received by all local educational agencies in every State under such part for such fiscal year.

(2) STATE ADMINISTRATION.—A State may reserve up to 1 percent of its allocation under paragraph (1) to carry out its responsibilities under this title, which include—

(A) providing technical assistance to local educational agencies;

(B) developing an online, publicly searchable database that includes an inventory of public school facilities in the State, including for each, its design, condition, modernization, renovation and repair needs, usage, utilization, energy use, and carbon footprint; and

(C) creating voluntary guidelines for high-performing school buildings, including guidelines concerning the following:

(i) Site location, storm water management, outdoor surfaces, outdoor lighting, and transportation (location near public transit and easy access for pedestrians and bicycles).

(ii) Outdoor water systems, landscaping to minimize water use, including elimination of irrigation systems for landscaping, and indoor water use reduction.

(iii) Energy efficiency (including minimum and superior standards, such as for heating, ventilation, and air conditioning systems), use of alternative energy sources, commissioning, and training.

(iv) Use of durable, sustainable materials and waste reduction.

(v) Indoor environmental quality, such as day lighting in classrooms, lighting quality, indoor air quality, acoustics, and thermal comfort.

(vi) Operations and management, such as use of energy efficient equipment, indoor environmental management plan, maintenance plan, and pest management.

(3) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—

(A) IN GENERAL.—From the amount allocated to a State under paragraph (1), each eligible local educational agency in the State shall receive an amount in proportion to the amount received by such local educational agency under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the previous fiscal year relative to the total amount received by all local educational agencies in the State under such part for such fiscal year, except that no local educational agency that received funds under title I of that Act for such fiscal year shall receive a grant of less than \$5,000 in any fiscal year under this title.

(B) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—For purposes of subparagraph (A), the term “eligible local educational agency” means a local educational agency that—

(i) meets the requirements of section 1112(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.); and

(ii) conducts an independent audit by a third-party entity, and is certified by the State, substantiating the overall condition of the public school facilities and the need for modernization, renovation, or repair.

(4) SPECIAL RULE.—Section 1122(c)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6332(c)(3)) shall not apply to paragraph (1) or (3).

(c) SPECIAL RULES.—

(1) DISTRIBUTIONS BY SECRETARY.—The Secretary shall make and distribute the reservations and allocations described in subsections (a) and (b) not later than 30 days after an appropriation of funds for this title is made.

(2) DISTRIBUTIONS BY STATES.—A State shall make and distribute the allocations described in subsection (b)(3) within 30 days of receiving such funds from the Secretary.

SEC. 103. ALLOWABLE USES OF FUNDS.

A local educational agency receiving a grant under this title shall use the grant for modernization, renovation, or repair of public school facilities, including, where applicable, early learning facilities—

(1) repairing, replacing, or installing roofs, including extensive, intensive or semi-intensive green roofs, electrical wiring, plumbing systems, sewage systems,

storm water runoff systems, lighting systems, or components of such systems, windows, ceilings, flooring, or doors, including security doors;

(2) repairing, replacing, or installing heating, ventilation, air conditioning systems, or components of such systems (including insulation), including indoor air quality assessments;

(3) bringing public schools into compliance with fire, health, seismic, and safety codes, including professional installation of fire/life safety alarms, including modernizations, renovations, and repairs that ensure that schools are prepared for emergencies, such as improving building infrastructure to accommodate security measures;

(4) modifications necessary to make public school facilities accessible to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(5) abatement, removal, or interim controls of asbestos, polychlorinated biphenyls, mold, mildew, or lead-based hazards, including lead-based paint hazards;

(6) measures designed to reduce or eliminate human exposure to classroom noise and environmental noise pollution;

(7) modernizations, renovations, or repairs necessary to reduce the consumption of coal, electricity, land, natural gas, oil, or water;

(8) upgrading or installing educational technology infrastructure to ensure that students have access to up-to-date educational technology;

(9) modernization, renovation, or repair of science and engineering laboratory facilities, libraries, and career and technical education facilities, including those related to energy efficiency and renewable energy, and improvements to building infrastructure to accommodate bicycle and pedestrian access;

(10) renewable energy generation and heating systems, including solar, photovoltaic, wind, geothermal, or biomass, including wood pellet, woody biomass, waste-to-energy, and solar-thermal systems or components of such systems, and energy audits;

(11) other modernization, renovation, or repair of public school facilities to—

(A) improve teachers' ability to teach and students' ability to learn;

(B) ensure the health and safety of students and staff;

(C) make them more energy efficient; or

(D) reduce class size; and

(12) required environmental remediation related to public school modernization, renovation, or repair described in paragraphs (1) through (11).

TITLE II—SUPPLEMENTAL GRANTS FOR LOUISIANA, MISSISSIPPI, AND ALABAMA

SEC. 201. PURPOSE.

Grants under this title shall be for the purpose of modernizing, renovating, repairing, or constructing public school facilities, including, where applicable, early learning facilities, based on their need for such improvements, to be safe, healthy, high-performing, and up-to-date technologically.

SEC. 202. ALLOCATION TO LOCAL EDUCATIONAL AGENCIES.

(a) **IN GENERAL.**—Of the amount appropriated to carry out this title for each fiscal year pursuant to section 311(b), the Secretary shall allocate to local educational agencies in Louisiana, Mississippi, and Alabama an amount equal to the infrastructure damage inflicted on public school facilities in each such district by Hurricane Katrina or Hurricane Rita in 2005 relative to the total of such infrastructure damage so inflicted in all such districts, combined.

(b) **DISTRIBUTION BY SECRETARY.**—The Secretary shall determine and distribute the allocations described in subsection (a) not later than 60 days after an appropriation of funds for this title is made.

SEC. 203. ALLOWABLE USES OF FUNDS.

A local educational agency receiving a grant under this title shall use the grant for one or more of the activities described in section 103, except that an agency receiving a grant under this title also may use the grant for the construction of new public school facilities.

TITLE III—GENERAL PROVISIONS

SEC. 301. IMPERMISSIBLE USES OF FUNDS.

No funds received under this Act may be used for—

- (1) payment of maintenance costs;
- (2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;
- (3) improvement or construction of facilities the purpose of which is not the education of children, including central office administration or operations or logistical support facilities; or
- (4) purchasing carbon offsets.

SEC. 302. SUPPLEMENT, NOT SUPPLANT.

A local educational agency receiving a grant under this Act shall use such Federal funds only to supplement and not supplant the amount of funds that would, in the absence of such Federal funds, be available for modernization, renovation, repair, and construction of public school facilities.

SEC. 303. PROHIBITION REGARDING STATE AID.

A State shall not take into consideration payments under this Act in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.

SEC. 304. MAINTENANCE OF EFFORT.

(a) **IN GENERAL.**—A local educational agency may receive a grant under this Act for any fiscal year only if either the combined fiscal effort per student or the aggregate expenditures of the agency and the State involved with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(b) **REDUCTION IN CASE OF FAILURE TO MEET MAINTENANCE OF EFFORT REQUIREMENT.**—

(1) **IN GENERAL.**—The State educational agency shall reduce the amount of a local educational agency's grant in any fiscal year in the exact proportion by which a local educational agency fails to meet the requirement of subsection (a) by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the local agency).

(2) **SPECIAL RULE.**—No such lesser amount shall be used for computing the effort required under subsection (a) for subsequent years.

(c) **WAIVER.**—The Secretary shall waive the requirements of this section if the Secretary determines that a waiver would be equitable due to—

- (1) exceptional or uncontrollable circumstances, such as a natural disaster; or
- (2) a precipitous decline in the financial resources of the local educational agency.

SEC. 305. SPECIAL RULE ON CONTRACTING.

Each local educational agency receiving a grant under this Act shall ensure that, if the agency carries out modernization, renovation, repair, or construction through a contract, the process for any such contract ensures the maximum number of qualified bidders, including local, small, minority, and women- and veteran-owned businesses, through full and open competition.

SEC. 306. USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS.

(a) **IN GENERAL.**—None of the funds appropriated or otherwise made available by this Act may be used for a project for the modernization, renovation, repair or construction of a public school facility unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) **EXCEPTIONS.**—Subsection (a) shall not apply in any case or category of cases in which the Secretary finds that—

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) **PUBLICATION OF JUSTIFICATION.**—If the Secretary determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the Secretary shall publish in the Federal Register a detailed written justification of the determination.

(d) CONSTRUCTION.—This section shall be applied in a manner consistent with United States obligations under international agreements.

SEC. 307. LABOR STANDARDS.

The grant programs under this Act are applicable programs (as that term is defined in section 400 of the General Education Provisions Act (20 U.S.C. 1221)) subject to section 439 of such Act (20 U.S.C. 1232b).

SEC. 308. CHARTER SCHOOLS.

A local educational agency receiving an allocation under this Act shall distribute an amount of that allocation to charter schools within its jurisdiction. The total amount to be distributed under the preceding sentence shall be determined based on the percentage of students eligible under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) in the schools of the agency who are enrolled in charter schools. Of such total, individual charter schools shall receive a share based on the needs of the schools, as determined by the agency in consultation with the charter school community. Funds shall be used only for allowable activities in accordance with this Act.

SEC. 309. GREEN SCHOOLS.

(a) IN GENERAL.—In a given fiscal year, a local educational agency shall use not less than the applicable percentage (described in subsection (b)) of funds received under this Act for public school modernization, renovation, repairs, or construction that are certified, verified, or consistent with any applicable provisions of—

- (1) the LEED Green Building Rating System;
- (2) Energy Star;
- (3) the CHPS Criteria;
- (4) Green Globes; or
- (5) an equivalent program adopted by the State or another jurisdiction with authority over the local educational agency, which shall include a verifiable method to demonstrate compliance with such program.

(b) APPLICABLE PERCENTAGES.—The applicable percentage described in subsection (a) is—

- (1) in fiscal year 2010, 50 percent;
- (2) in fiscal year 2011, 60 percent;
- (3) in fiscal year 2012, 70 percent;
- (4) in fiscal year 2013, 80 percent;
- (5) in fiscal year 2014, 90 percent; and
- (6) in fiscal year 2015, 100 percent.

(c) TECHNICAL ASSISTANCE.—The Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall provide outreach and technical assistance to States and local educational agencies concerning the best practices in school modernization, renovation, repair, and construction, including those related to student academic achievement, student and staff health, energy efficiency, and environmental protection.

SEC. 310. REPORTING.

(a) REPORTS BY LOCAL EDUCATIONAL AGENCIES.—Local educational agencies receiving a grant under this Act shall annually compile a report describing the projects for which such funds were used, including—

- (1) the number of public schools in the agency, including the number of charter schools, and for each, in the aggregate, the number of students from low-income families;
- (2) the total amount of funds received by the local educational agency under this Act and the amount of such funds expended, including the amount expended for modernization, renovation, repair, or construction of charter schools;
- (3) the number of public schools in the agency with a metro-centric locale code of 41, 42, or 43 as determined by the National Center for Education Statistics and the percentage of funds received by the agency under title I or title II of this Act that were used for projects at such schools;
- (4) the number of public schools in the agency that are eligible for schoolwide programs under section 1114 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6314) and the percentage of funds received by the agency under title I or title II of this Act that were used for projects at such schools;
- (5) for each project—
 - (A) the cost;
 - (B) the standard described in section 309(a) with which the use of the funds complied or, if the use of funds did not comply with a standard described in section 309(a), the reason such funds were not able to be used in compliance with such standards and the agency's efforts to use such funds in an environmentally sound manner;

- (C) if flooring was installed, whether—
 - (i) it was low- or no-VOC (Volatile Organic Compounds) flooring;
 - (ii) it was made from sustainable materials; and
 - (iii) use of flooring described in clause (i) or (ii) was cost-effective; and
 - (D) any demonstrable or expected benefits as a result of the project (such as energy savings, improved indoor environmental quality, improved climate for teaching and learning, etc.); and
 - (6) the total number and amount of contracts awarded, and the number and amount of contracts awarded to local, small, minority, women, and veteran-owned businesses.
- (b) AVAILABILITY OF REPORTS.—A local educational agency shall—
- (1) submit the report described in subsection (a) to the State educational agency, which shall compile such information and report it annually to the Secretary; and
 - (2) make the report described in subsection (a) publicly available, including on the agency's website.
- (c) REPORTS BY SECRETARY.—Not later than December 31 of each fiscal year, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, and make available on the Department of Education's website, a report on grants made under this Act, including the information described in subsection (b)(1), the types of modernization, renovation, repair, and construction funded, and the number of students impacted, including the number of students counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(a)(5)).

SEC. 311. AUTHORIZATION OF APPROPRIATIONS.

- (a) TITLE I.—To carry out title I, there are authorized to be appropriated \$6,400,000,000 for fiscal year 2010 and such sums as may be necessary for each of fiscal years 2011 through 2015.
- (b) TITLE II.—To carry out title II, there are authorized to be appropriated \$100,000,000 for each of fiscal years 2010 through 2015.

SEC. 312. SPECIAL RULES.

Notwithstanding any other provision of this Act, none of the funds authorized by this Act may be—

- (1) used to employ workers in violation of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a); or
- (2) distributed to a local educational agency that does not have a policy that requires a criminal background check on all employees of the agency.

SEC. 313. YOUTHBUILD PROGRAMS.

The Secretary of Education, in consultation with the Secretary of Labor, shall work with recipients of funds under this Act to promote appropriate opportunities for participants in a YouthBuild program (as defined in section 173A of the Workforce Investment Act of 1998 (29 U.S.C. 2918a)) to gain employment experience on modernization, renovation, repair, and construction projects funded under this Act.

I. PURPOSE

The purpose of H.R. 2187, the 21st Century Green High-Performing Public School Facilities Act, is to support states' and local educational agencies' efforts to provide public school students with schools that are safe, healthy, high-performing, and up-to-date technologically, and to promote green building principles.

II. COMMITTEE ACTION

110th Congress

Full Committee hearing on "Modern Public School Facilities: Investing in the Future"

On Wednesday, February 13, 2008, the Committee on Education and Labor held a hearing in Washington, D.C., on "Modern Public School Facilities: Investing in the Future." The purpose of the hearing was to highlight the poor quality of public school buildings frequently found throughout the United States, particularly in low-in-

come areas, and the importance of federal investment in public school buildings. Testifying before the full Committee were, on the first panel, Representatives Ben Chandler (D-KY), Michael N. Castle (R-DE), Bob Etheridge (D-NC), David Loebsack (D-IA), Charles Boustany (R-LA), Darlene Hooley (D-OR), Steve King (R-IA) and Rush Holt (D-NJ), and on the second panel, Kathleen J. Moore, Director, School Facilities Planning Division, California Department of Education (Sacramento, California); Judi Caddick, Teacher, Memorial Junior High School, Illinois Education Association (Lansing, Illinois); Mary Cullinane, Director, Innovation and Business Development Team, Microsoft Corporation (New York, New York); Dr. Paula Vincent, Superintendent, Clear Creek Amana School District (Oxford, Iowa); Paul Vallas, Superintendent, Louisiana Recovery School District (New Orleans, Louisiana); Jim Waters, Director, Policy and Communications, Bluegrass Institute for Public Policy Solutions (Bowling Green, Kentucky); Neal McCluskey, Associate Director, Center for Educational Freedom, CATO Institute (Washington, D.C.).

Introduction of the “21st Century High-Performing Public School Facilities Act”

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

Full Committee Markup of H.R. 3021

On Wednesday, April 30, 2008, the Committee on Education and Labor considered H.R. 3021 in legislative session, and reported the bill favorably, as amended, to the House of Representatives by a vote of 28–19. Representatives Loebsack and Kildee offered an amendment in the nature of a substitute.

The amendment in the nature of a substitute to H.R. 3021 made the following changes:

- Inserted the word “Green” into the Act’s title;
- Converted the competitive grant and loan program authorized by the bill to a formula grant program, based on each state’s and local educational agency’s allocation under Part A of Title I of the Elementary and Secondary Education Act of 1965;
- Required the Secretary of Education to distribute funds to states within thirty days of the Department’s appropriation, and states to distribute funds to local educational agencies within thirty days of having received such funds;
- Required the Secretary to provide technical assistance to states and local educational agencies;
- Required states to provide technical assistance to local educational agencies, to develop a plan to establish a database that includes an inventory of public school facilities in the state and the modernization, renovation, and repair needs of, energy use by, and carbon footprint of such schools, and to develop a school energy efficiency quality plan;

- Required local educational agencies to use an increasing percentage of funds received under the bill in compliance with sustainable building rating systems;
 - Added a title authorizing funds for grants to local educational agencies in Louisiana, Mississippi and Alabama to compensate for damage to public school facilities caused by Hurricanes Katrina and Rita in 2005; and
 - Clarified that local educational agencies are required to report publicly on the sustainable building rating systems with which their uses of funds comply, to explain any uses of funds that did not comply with such systems, and to explain the demonstrated or expected benefits from their uses of funds (such as energy savings, indoor environmental quality, improved climate for teaching and learning, etc.), and the percentage of funds used in low-income and rural schools.
- The Committee rejected six amendments by roll-call vote. The Chair ruled two other amendments out of order on the ground that they addressed issues that were beyond the scope of the amendment in the nature of a substitute. The Committee upheld both rulings by roll-call vote.

House Passage of H.R. 3021

The House of Representatives passed H.R. 3021 on June 4, 2008, by a vote of 250–164. The bill was messaged to the Senate and referred to the Senate Committee on Health, Education, Labor and Pensions Senate.

Related Legislative Action

On September 26, 2008, the House passed H.R. 7110, the Job Creation and Unemployment Relief Act of 2008, introduced by Representative David Obey (D–WI), Chairman of the Appropriations Committee. H.R. 7110 appropriated \$3 billion for public school modernization, renovation and repair, essentially as provided by Title I of H.R. 3021.

On January 28, 2009, at the beginning of the 111th Congress, the House passed H.R. 1, the American Recovery and Reinvestment Act (ARRA), also introduced by Chairman Obey. H.R. 1 appropriated \$14 billion for public school modernization, renovation and repair, again, essentially as provided by Title I of H.R. 3021. On February 12, 2009, the House passed the Conference Report to H.R. 1, which did not include dedicated funds for public school modernization, renovation and repair. However, Title XIV of the Conference Report, the State Fiscal Stabilization Fund, includes \$48.6 billion for states and local educational agencies, of which public school modernization, renovation and repair (including modernization, renovation and repair that complies with a recognized green building standard) is one authorized use.

111TH CONGRESS

Introduction of the “21st Century Green High-Performing Public School Facilities Act”

On Thursday, April 30, 2009, Representatives Ben Chandler (D–KY), George Miller (D–CA), Dale Kildee (D–MI), and Dave Loebsack (D–IA) introduced H.R. 2187, the 21st Century Green

High-Performing Public School Facilities Act. This bill, which is largely similar to H.R. 30021, directs the Secretary of Education to make grants and low-interest loans to local educational agencies for the modernization, renovation, or repair of public early learning, kindergarten, elementary, and secondary educational facilities, and for other purposes.¹

Full Committee Markup of H.R. 2187

On Wednesday, May 6, 2009, the Committee on Education and Labor considered H.R. 2187 in legislative session, and reported the bill favorably, as amended, to the House of Representatives by a vote of 31–14. Chairman Miller offered an amendment in the nature of a substitute.

The amendment in the nature of a substitute makes several changes, including:

- Makes the state database online and publicly searchable;
- Expands reporting data concerning charter schools;
- Expands the areas to be covered by voluntary high-performing school guidelines to be developed by states;
- Adds stormwater runoff, seismic code compliance, and additional renewable energy systems as allowable uses of funds;
- Expands lead-based hazards that can be mitigated with these funds;
- Allows energy audits as a use of funds; and
- Requires state or local green standards to include a method for demonstrating compliance if they are to be used to comply with the provisions of the bill.

The Committee also adopted three amendments offered by the following members: Representative Polis (to ensure that charter schools receive a share of a local education agency’s funds based on the percentage of low-income students within the agency served by charter schools and to ensure consultation between the agency and charter schools concerning the needs of individual schools); Representative Joe Sestak (D–PA) (to clarify that improvements to ceilings and floors are authorized uses of funds); and Senior Republican Member Howard P. “Buck” McKeon (to require local educational agencies to conduct a state-certified, independent third-party facilities audit to receive funds).

The Committee rejected two amendments by roll-call vote.

III. SUMMARY OF THE BILL

As reported, Title I of H.R. 2187 authorizes \$6.4 billion for fiscal year 2010 and such sums through fiscal year 2015. The bill ensures that school districts around the country will quickly receive funds for much needed public school modernization, renovation, and repair projects to improve the teaching and learning climate, student and staff health and safety, energy efficiency, and the environment. It directs the Secretary to reserve one percent of Title I funds for assistance to outlying areas and Bureau of Indian Education-funded schools and requires that such funds be distributed between the outlying areas and the Department of the Interior for Bureau of In-

¹ Other original cosponsors of the bill were Representatives Robert E. Andrews (D–NJ), Joe Courtney (D–CT), Raul M. Grijalva (D–AZ), Phil Hare (D–IL), Mazie Hirono (D–HI), Rush Holt (D–NJ), Pedro R. Pierluisi (D–PR), Jared Polis (D–CO), Gregorio Sablan (D–CNMI), John F. Tierney (D–MA), Paul D. Tonko (D–NY), Lynn C. Woolsey (D–CA), and David Wu (D–OR).

dian Education-funded schools in the same proportion as the amount reserved and distributed under section 1121(a) of the Elementary and Secondary Education Act.

H.R. 2187 allocates to each state the same percentage of funds that the state receives under Title I, Part A of the Elementary and Secondary Education Act and allocates within states the same percentage to each school district that the school district receives under such part (except that no such school district will receive less than \$5,000). To receive funds, a local educational agency must conduct an independent, third party audit of the condition of its public school facilities that is certified by the state. It also requires the Secretary to distribute funds to states within thirty days of appropriation for redistribution to school districts within thirty days of receipt.

The bill allows states to reserve one percent of their Title I allocation to carry out their responsibilities under the Act, which include technical assistance, developing an online, publicly searchable statewide database of public school facility design, condition, modernization, renovation and repair needs, usage, utilization, energy use, and carbon footprint, and creating voluntary guidelines for high-performing public school buildings.

Funds under Title I may be used for public school modernization, renovation, and repairs, including roofs, electrical, plumbing, sewage, stormwater runoff and lighting systems or components thereof, and windows, floors, ceilings and doors; heating, ventilation, and air-conditioning systems or components thereof, including insulation and indoor air quality assessments; bringing schools into compliance with fire, health, seismic and safety codes, including modernizations, renovations, and repairs that ensure that schools are prepared for emergencies; complying with the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973; abatement, removal, or interim controls of asbestos, polychlorinated biphenyls, mold, mildew, or lead-based hazards; reduction of classroom noise and environmental noise pollution; modernization, renovation, or repairs to reduce the consumption of coal, electricity, land, natural gas, oil, or water; upgrading or installing educational technology infrastructure; modernization, renovation, or repairs of laboratory facilities, libraries, career and technical education facilities and building infrastructure to accommodate bicycle and pedestrian access; renewable energy generation and heating systems and energy audits; other modernizations, renovations, or repairs that improve the teaching and learning climate, ensure the health and safety of students and staff, make schools more energy efficient or reduce class size; and required environmental remediation related to modernizations, renovations, or repairs described above.

H.R. 2187 requires that funds be used for projects that meet one of four widely recognized green standards (Leadership in Energy and Environmental Design (LEED) Green Building Rating System, Energy Star, Collaborative for High Performance Schools, or Green Globes) or an equivalent state or local standard, which must include a verifiable method to demonstrate compliance. School districts must use their funds under the Act for projects that meet one of the Act's green requirements as follows—50 percent in 2010, 60

percent in 2011, 70 percent in 2012, 80 percent in 2013, 90 percent in 2014, and 100 percent in 2015.

In Title II, the bill authorizes \$100 million for each of fiscal years 2010 through 2015 for public schools in the Gulf region in response to damages from Hurricane Katrina or Hurricane Rita. These funds are to be used for the same purposes as Title I funds, but also may be used for new construction, and must be distributed by the Secretary within 60 days of an appropriation.

The bill requires local educational agencies to ensure that the bid process for any projects carried out through a contract ensures the maximum number of qualified bidders, including local, small, minority, women- and veteran-owned businesses, through full and open competition.

It requires that all iron, steel and manufactured goods used in projects funded by this Act be produced in the United States, but allows the Secretary to waive the requirement under specified circumstances.

Davis-Bacon labor law protections apply to all funds received under the Act.

The bill requires that charter schools receive a share of a local education agency's funds under this Act based on the percentage of low-income students within the agency served by charter schools. The bill also requires consultation between the agency and charter schools on that process.

The bill requires school districts to report publicly on educational, energy, and indoor environmental benefits of projects, compliance with the green requirement, and the percentage of funds used for projects at low-income, charter and rural schools. States must compile these reports and submit them to the Secretary who shall, in turn, report to the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor, and Pensions and make that report available on the Department's website.

The bill requires the Secretary of Education (in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency) to disseminate best practices in school modernization, renovation, repair and construction of school facilities and to provide technical assistance to states and school districts concerning such best practices.

The bill prohibits funds to be used to employ workers in violation of section 274A of the Immigration and Nationality Act or to be distributed to a local educational agency that does not have a policy that requires a criminal background check on all agency employees.

Finally, the bill requires the Secretary, in consultation with the Secretary of Labor, to work with recipients of funds under this Act to promote appropriate opportunities for participants in Youthbuild programs to gain experience on projects funded by this Act.

IV. COMMITTEE VIEWS

The Committee believes that H.R. 2187 addresses a number of important issues—the quality of our nation's public school facilities, student achievement, the state of the economy, and the state of the environment. The Committee believes that these issues are inter-related and that each represents a critical national concern.

As noted above, President Obama and Congress have already endorsed these principles by making green school modernization, renovation and repair an allowable use of funds under the state fiscal stabilization fund in H.R. 1. The Committee believes H.R. 2187 is a critical next step in this effort because it is important to provide funds specifically dedicated to this purpose. Prior to ARRA, and with the exception of funding through the Impact Aid program and through the Department of the Interior for Indian schools, direct federal support for school construction has been virtually non-existent since fiscal year 2001, when Congress appropriated \$1.2 billion primarily for emergency school repair and renovation. The Committee agrees with Representative Chandler's testimony before the Committee last year, that "[w]hile Congress has recognized that educational excellence is vital to the economy and national competitiveness, too often we have failed to provide . . . the funding necessary to make these goals a reality."²

The demand for new and renovated public school facilities is unprecedented in our nation's history.³ A briefing paper delivered at an Economic Policy Institute forum, Investing in U.S. Infrastructure, in April 2008, called for \$140 billion in federal funds for capital outlays for low-income school districts and an ongoing federal role in such funding comparable to the current federal share of education operations funding (approximately 10 percent) in order to bring these districts up to parity with the highest income districts. The paper argued that such funding is necessary to ensure that "the nation's public schools are healthy, safe, environmentally sound, and built . . . to support a high-quality education."⁴

Need and disparity

The most recent comprehensive estimates of the national need for school construction and renovation were made in 1995 (\$112 billion, U.S. General Accounting Office⁵ (GAO)⁶), 2000 (\$127 billion, National Center for Education Statistics⁷ (NCES)), 2001 (\$322 billion, National Education Association⁸ (NEA)), and 2008 (\$254.6 billion, American Federation of Teachers (AFT))⁹.

Several studies highlight the inadequacy of school facilities. In 2009, the American Society of Civil Engineers, on its national infrastructure report card, gave America's public schools a D.¹⁰ A 2005 survey of school principals by NCES found that fifty-two percent of schools had no science laboratories, thirty percent had no art rooms, nineteen percent had no music rooms, and seventeen

²Testimony of Representative Ben Chandler, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (<http://edlabor.house.gov/testimony/2008-02-13-BenChandler.pdf>).

³Testimony of Kathleen J. Moore, Director, School Facilities Planning Division, California Department of Education, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (<http://edlabor.house.gov/testimony/2008-02-13-KathleenMoore.pdf>).

⁴Good Buildings, Better Schools, Filardo, M., Economic Policy Institute Briefing Paper, April 29, 2008.

⁵Condition of America's Schools, Government Accounting Office, 1995 (GAO/HEHS-95-61).

⁶In 2004, the General Accounting Office was renamed the Government Accountability Office. The Committee will use "GAO" to refer to both.

⁷Condition of America's Public School Facilities: 1999, National Center for Education Statistics.

⁸Modernizing Our Schools: What Will It Cost?, National Education Association, 2000.

⁹Building Minds, Minding Buildings: School Infrastructure Funding Need, A state-by-state assessment and an analysis of recent court cases: 2008, American Federation of Teachers.

¹⁰<http://www.infrastructurereportcard.org/fact-sheet/schools>.

percent had no gymnasium.¹¹ A 2004 NCES report found that one school in three had temporary buildings as the primary learning space for at least 160 students, and that in one in five schools, teachers routinely had to use a building's common areas for instructional purposes.¹²

Disparities in the condition of our schools are also well-documented. In 1996, GAO reported, in a follow-up to an earlier study, that on every measure—inadequate buildings or building features, unsatisfactory environmental conditions, etc.—the same subgroups of schools in central cities, western states, and schools serving higher percentages of minority or low-income students—reported having more significant problems.¹³

In 2006, a report by Building Educational Success Together (BEST) concluded that the GAO and NEA estimates “grossly underestimated” the need for school improvements, and concurred with the 1996 GAO finding that facilities in low-income and minority-serving areas tended to be in significantly worse condition. The report also concluded that despite significant state and local expenditures on school construction and renovation from 1996–2004, “there continue to be millions of students in substandard and crowded school conditions.”¹⁴

It is the Committee's intent that funds authorized by this bill be used to ensure that all children have access to a high-quality public school facility. The Committee recognizes that facility quality disparity is most likely to occur in low-income areas. Accordingly, the Committee encourages local educational agencies to take care to ensure that the needs of low-income and rural schools are addressed by giving priority to schools where modernization, renovation, and repair will most benefit students, teachers, and other staff and ensuring that the schools are safe, healthy, conducive to teaching and learning, energy efficient, and environmentally sound.

Green Schools

A 2006 report concludes that a green school (1) uses one-third less energy than a conventional school; (2) reduces harmful carbon dioxide emissions by forty percent, which helps reduce global climate change; (3) uses 30 percent less water; (4) has better lighting and temperature controls, which promotes higher student achievement; and (5) has a more comfortable indoor environment, improved ventilation and indoor air quality, which result in short-term (\$96,760 per year) and long-term savings as a result of green building.¹⁵ The average national school construction cost is \$150 per square foot; building green adds only \$3 per square foot.

According to the study, the long-term savings from green building are \$70 per square foot.¹⁶

The importance of energy savings was illustrated by hearing testimony of Representative and Committee Member Holt. Represent-

¹¹ Public School Principals Report on Their School Facilities: Fall 2005, Institute of Education Sciences, National Center for Education Statistics.

¹² Characteristics of Schools, Districts, Teachers, Principals, and School Libraries in the United States 2003–2004, Schools and Staffing Survey, National Center for Education Statistics.

¹³ America's Schools Report Differing Conditions, Government Accounting Office, 1996 (GAO/HEHS-96-103).

¹⁴ Growth and Disparity: A Decade of U.S. Public School Construction, Building Educational Success Together, 2006.

¹⁵ Greening America's Schools, Kats, G., 2006.

¹⁶ Ibid.

ative Holt noted that between 2005 and 2007, schools' energy costs increased from \$6 billion annually to \$8 billion.¹⁷ According to Committee Member Loeb sack's testimony at the same hearing, green schools save 33 percent on energy and 32 percent on water costs compared to non-green schools.¹⁸

The Committee believes that green building can serve a number of purposes. Such building will directly benefit both the larger environment and the indoor environment. The Committee further believes that green building will improve the ability of teachers to teach and students to learn as well as the health of students, teachers, and other school staff.

States, cities, and school districts around the country have adopted green building and green schools initiatives. Representative Hooley (Co-Chair of the Congressional Green Schools Caucus) testified that by 2010, the green building market will be worth \$60 billion, of which twenty-seven percent will be comprised by school facilities.¹⁹

The Committee believes that a critical component of the success of this bill will be local educational agencies' knowledge of best practices in school construction, modernization, renovation, and repair as they relate to green building.

With reference to states' responsibilities, the bill directs states to develop voluntary guidelines for high-performing school buildings. The Committee encourages states, in developing the energy efficiency components of such guidelines, to look for direction to the definition of such plans in H.R. 579, the School Building Enhancement Act, introduced by Representative Holt. That bill defines such plans as including standards for school building design, construction, and renovation; and proposals for the systematic improvement (including benchmarks and timelines) of environmental conditions in and around schools throughout the state. H.R. 579 also encourages purchasing environmentally preferable products for instruction and maintenance, increasing the use of alternative energy fuels in school buses, and maximizing transportation choices for students, staff, and other members of the community.

In addition to the voluntary state guidelines for high-performing school buildings required in the bill, the Committee encourages states to establish voluntary guidelines concerning performance monitoring, use of Energy Star equipment, alternative fuels buses, anti-idling measures, and other measures the state believes will contribute to high-performing schools.

The Committee encourages the Secretary, in carrying out the Department's technical assistance responsibilities under H.R. 2187, as amended, to examine the Illinois Resource Guide for Healthy, High-Performing School Buildings. The recommendations and information in the guide are intended to provide school administrators, school boards and other community members with guidance to make informed decisions about health and energy efficiency issues

¹⁷Testimony of Representative Rush Holt, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (<http://edlabor.house.gov/testimony/2008-02-13-RushHolt.pdf>).

¹⁸Testimony of Representative David Loeb sack, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (<http://edlabor.house.gov/testimony/2008-02-13-DaveLoeb sack.pdf>).

¹⁹Testimony of Representative Darlene Hooley, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (<http://edlabor.house.gov/testimony/2008-02-13-DarleneHooley.pdf>).

important to schools. The guide's objective is to promote long-term thinking and to ensure that school buildings are compatible with the goals of improving learning environments, reducing operating costs, supporting health and safety, and protecting our natural environment.²⁰

Impact on teaching and learning

The Committee believes that while equity alone justifies federal support for local educational agencies to ensure that every child has access to a high-quality public school facility, such support also is essential to closing the achievement gap. The Committee believes that the relationship between the quality of school facilities and student achievement and teacher performance and retention are positively intertwined.²¹ Research demonstrates that better school facilities result in improved student achievement and teacher recruitment and retention. The physical condition of schools also affects student and teacher health.

According to a 2004 report by the 21st Century School Fund, inadequate school facilities can result in alienated students, low staff morale, high teacher attrition, the inability to provide specialized curricula, reduced learning time, distractions from learning, reduced ability to meet special needs, lack of technological proficiency, health problems for students and staff, safety hazards, and less supervision of student behavior.²²

In its 2005 survey, NCES noted that a key reason for school construction and renovation is student and teacher safety, but that building quality also affects the context for learning, such that lighting, noise reduction, air quality and other factors can affect student achievement and behavior. NCES further noted that building quality affects teacher retention—forty percent of teachers who transferred schools and thirty-nine percent who left teaching cited the need for significant school repairs as a source of their dissatisfaction.²³ NCES found that one-third of school principals cited at least one environmental factor²⁴ as interfering with their ability to deliver instruction.

A 2004 study of the Los Angeles Unified School District, authored by the current Commissioner of NCES, found a positive relationship between a school's compliance with fourteen health and safety measures²⁵ and its students' academic performance on Cali-

²⁰ For a discussion of a case study in building a modern, green school, see, Testimony of Mary Cullinane, Director, Innovation and Business Development Team, Microsoft Corporation, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (<http://edlabor.house.gov/testimony/2008-02-13-MaryCullinane.pdf>).

²¹ See, e.g., Testimony of Judi Caddick, Teacher, Memorial Junior High School, Illinois Education Association, Lansing, Illinois, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (<http://edlabor.house.gov/testimony/2008-02-13-JudiCaddick.pdf>).

²² For Generations to Come, 21st Century School Fund, 2004.

²³ Another study finding a relationship between facility quality and teacher retention is The Effects of School Facility Quality on Teacher Retention in Urban School Districts, Buckley, J., Schneider, M., and Shang, Y., 2004.

²⁴ Those factors include: air conditioning, size/configuration of rooms, acoustics or noise control, ventilation, heating, physical condition, indoor air quality, natural lighting, artificial lighting.

²⁵ The fourteen health and safety measures are accident prevention, asbestos management, fire/life safety, campus security, chemical safety, pest management, lead management, restroom facilities, indoor environment, maintenance and repair, safe school plan, emergency preparedness, traffic and pedestrian safety, and science laboratory safety.

ifornia State tests.²⁶ And, the testimony at the Committee's February 13, 2008 hearing of Dr. Paula Vincent, the Superintendent of the Clear Creek Amana (Iowa) School District identifies and discusses a number of other studies linking school facilities with improved student achievement and teacher performance and retention.²⁷

The Committee encourages school districts that undertake projects to reduce or eliminate human exposure to classroom noise and environmental noise pollution, and the Secretary, in providing technical assistance concerning reducing background noise and reverberation in classrooms, to consider the American National Standards Institute (ANSI) approved Standard S12.6–2002, [Acoustical Performance Criteria, Design Requirements, and Guidelines for School].

Impact on health

A 2004 study mandated by the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act, and funded by the Department of Education found that “overall evidence suggests that poor environments in schools, due primarily to the effects of indoor pollutants, adversely affect the health, performance, and attendance of students.” Specifically, the study found that indoor environmental quality can influence health outcomes, which may, in turn, influence student and teacher performance directly and indirectly.²⁸ The study cites the 1995 GAO finding that thirty percent of schools reported unsatisfactory ventilation.

The Centers for Disease Control advises that asthma accounts for more than fourteen million missed school days per year.²⁹ A 2006 report by the American Federation of Teachers concludes that “[p]oor air quality in schools contributes to students’ asthma, absences due to illness, difficulty concentrating, and lower achievement.”³⁰

The Committee further recognizes that although lead solder with more than 0.2 percent lead and plumbing fixtures with more than 8 percent lead were banned in 1987, such products remain in schools across the country. The longer water remains in contact with leaded plumbing, the more opportunity exists for lead to leach into water. As a result, many facilities with on again/off again water use patterns, such as schools, have elevated lead concentrations in the water. The Environmental Protection Agency and the Centers for Disease Control both have concluded that there is no safe level of exposure to lead. Exposure to lead early in life has been linked to cognitive deficits, attention deficits, and extremely aggressive behavior.

²⁶ LAUSD School Facilities and Academic Performance, Buckley, J., Schneider, M. and Shang, Y., 2004.

²⁷ <http://edlabor.house.gov/testimony/2008-02-13-PaulaVincent.pdf>.

²⁸ A Summary of Scientific Findings on Adverse Effects of Indoor Environments on Students’ Health, Academic Performance and Attendance, U.S. Department of Education, Policy and Program Studies Service, 2004.

²⁹ <http://www.cdc.gov/asthma/children.htm>.

³⁰ Building Minds, Minding Buildings, American Federation of Teachers, 2006.

Impact on community

According to the 2006 BEST study, the difference between good and poor quality facilities also affects the communities in which they are located. School quality has a direct, positive impact on residential property values and can improve a community's ability to attract businesses and workers.³¹ This point also is supported by Representative Bob Etheridge's testimony at the February 13, 2008 Committee hearing on this issue.³²

The BEST study also concluded that investments in school facilities bring money into local economies through job creation and supply purchases and can help revitalize distressed neighborhoods. The Committee is persuaded by these findings and expects that this bill will produce positive results in our communities.

Impact on economy

Direct federal investment in school improvements could provide an immediate boost to our economy and generate jobs. Federal funding for the modernization, renovation, or repair of school facilities could be spent quickly and efficiently to address the loss of 1.3 million jobs in the construction industry over the last year and a half.³³

An analysis of H.R. 2187 as amended by the substitute was provided to the Committee by the Economic Policy Institute. The analysis estimates that this bill's funding would support 136,000 new jobs.

Hurricanes Katrina and Rita

H.R. 2187 provides additional support for Gulf Coast schools still recovering from damage caused by Hurricanes Katrina and Rita. The Gulf region, primarily New Orleans, has hundreds of millions of dollars in unmet school modernization, renovation, repair and construction needs, much as a result of Hurricanes Katrina and Rita.

Prior to the impacts of Hurricanes Katrina and Rita, the Recovery School District of Louisiana (RSD) already had a deferred maintenance infrastructure deficit of approximately \$1 billion. The hurricanes caused an additional \$800 million in damage to the district's schools.

The funding from this bill will help the district, and others in the Gulf region, meet these important and timely needs as they continue to recover from the hurricanes.³⁴

Davis-Bacon

Under the bill, the construction, modernization, repair, and renovation projects paid for, in whole or in part, with the grants made available by this legislation are subject to Davis-Bacon prevailing

³¹ Growth and Disparity: A Decade of U.S. Public School Construction, Building Educational Success Together, 2006.

³² Testimony of Representative Bob Etheridge, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (<http://edlabor.house.gov/testimony/2008-02-13-BobEtheridge.pdf>).

³³ See <http://www.bls.gov/news.release/empsit.nr0.htm>.

³⁴ See also Testimony of Paul Vallas, Superintendent, Louisiana Recovery School District, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (<http://edlabor.house.gov/testimony/2008-02-13-PaulVallas.pdf>).

wage requirements. Davis-Bacon prevailing wage rules ensure that taxpayer dollars are not used to undercut local wage rates. These rules require contractors to pay the local prevailing wage to their employees.

Davis-Bacon requirements will help control costs, ensure higher quality work, and improve safety. Studies have shown that, where prevailing wages are not required, contractors compete on the basis of labor costs, frequently resulting in poor construction quality as well as substantial cost and time overruns due to cheaper workers' lower levels of skill, productivity, and training.³⁵ Where prevailing wages are paid, higher rates of productivity, safety, and building quality more than offset the cost of higher wages. For example, one study by the Mechanical Electrical Sheet Metal Alliance, focusing on highway and bridge construction, found that workers who were paid more than double the wage of low-wage workers were able to build 74.4 more miles of highway and 32.8 more miles of bridges for \$557 million less.

Davis-Bacon requirements help save federal, state, and local revenue. By creating family-supporting jobs in local communities that do not drive workers' wages down, these requirements ease the burden on public programs and provide support for more economic activity. Studies have found that repeal of local prevailing wage laws results in lower incomes, loss of sales tax revenues, and a general loss of economic activity.³⁶ These are precisely the types of effects the Committee intends to avoid by providing federal assistance to local communities consistent with Davis-Bacon.

Conclusion

For the reasons stated above, the Committee believes passage of this bill will provide significant educational benefits for our nation's students, health benefits for students, teachers, and others who work in our schools, financial benefits for schools resulting from energy savings, economic benefits for hundreds of thousands of American workers and their families, and environmental benefits.³⁷

³⁵ See generally, Peter Philips, "Square Foot Construction Costs for Newly Constructed State and Local Schools, Offices and Warehouses in Nine Southwestern and Intermountain States 1992-1994," Prepared for the Legislative Education Study Committee of the New Mexico State Legislature, September 6, 1996.

³⁶ Michael P. Kelsay et al., "The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri," Council for Promoting American Business, January 2004.

³⁷ Among the many organizations supporting H.R. 2187 are 21st Century School Fund; American Association of Classified School Employees; American Association of School Administrators (AASA); American Architectural Foundation; American Congress on Surveying and Mapping; American Council of Engineering Companies; American Federation of Teachers; American Institute of Architects; American Lighting Association; American Society of Civil Engineers; American Society of Heating, Refrigerating and Air-Conditioning Engineers; American Society of Landscape Architects; Architecture 2030; The Collaborative for High Performance Schools (CHPS); The Campaign for Environmental Literacy; Center for Environmental Innovation in Roofing; Council of Educational Facility Planners International (CEFPI); Council of the Great City Schools; Environment America; Environmental and Energy Study Institute; Global Green; Green for All; Healthy Schools Campaign; International Union of Painters and Allied Trades, AFL-CIO; Mechanical Contractors Association of America; National Association of Energy Service Companies; National Association of State Energy Officials; National Construction Alliance II (NCA II)—the United Brotherhood of Carpenters and Joiners of America and the International Union of Operating Engineers; National Association of Secondary School Principals (NASSP); National Education Association; National School Plant Management Association; National Society of Professional Engineers; National Wildlife Federation; Plumbing, Heating, Cooling Contractors Association; Rebuild America's Schools; Sheet Metal and Air Conditioning Contractors' National Association; The Stella Group; Sustainable Buildings Industry Council; U.S. Green Building Council (USGBC).

V. SECTION-BY-SECTION ANALYSIS

Sec. 2. Definitions

Includes definitions of Bureau-funded school, charter school, local educational agency, outlying area, public school facilities, state, LEED Green Building Rating System, Energy Star, CHPS Criteria, and Green Globes.

TITLE I—GRANTS FOR MODERNIZATION, RENOVATION, OR REPAIR OF SCHOOL FACILITIES

Sec. 101. Purpose

Indicates the purpose of grants under Title I is for modernizing, renovating, or repairing public early learning, kindergarten, elementary, and secondary educational facilities.

Sec. 102. Allocation of funds

Directs the Secretary to reserve one percent of funds appropriated for Title I in any fiscal year for assistance to the outlying areas and for payments to the Secretary of the Interior for assistance to Bureau-funded schools and requires that such funds be distributed between the outlying areas and the Department of the Interior for schools in outlying areas and Bureau of Indian Education-funded schools in the same proportion as the amount reserved under section 1121(a) of the Elementary and Secondary Education Act is so distributed. Allows each state to reserve up to one percent of funds appropriated for Title I in any fiscal year to carry out its responsibilities under the Act, which include providing technical assistance, developing an online, publicly searchable statewide database of public school facility design, condition, modernization, renovation and repair needs, usage, utilization, energy use, and carbon footprint, and creating voluntary guidelines for high-performing public school buildings.

Allocates to each State the same percentage of funds appropriated under Title I of this Act that the state receives under Title I, Part A of the Elementary and Secondary Education Act of 1965.

Requires local educational agencies, in order to receive funds, to conduct an independent, third party audit of the condition of its public school facilities that is certified by the state. Within each state, allocates to each local educational agency the same percentage of funds appropriated under Title I of this Act that the agency receives under Title I, Part A of the Elementary and Secondary Education Act of 1965.

Requires the Secretary, in determining state and local allocations, to take into account the hold-harmless provisions of Title I, Part A of the Elementary and Secondary Education Act of 1965.

Requires the Secretary to distribute funds to states within thirty days of the Department's appropriation and requires states to distribute funds to local educational agencies within thirty days of having received them from the Secretary.

Sec. 103. Allowable uses of funds

Describes the types of public school modernizations, renovations, and repairs that are allowable uses of funds under Title I, including roofs, electrical, plumbing, sewage, stormwater runoff and

lighting systems or components thereof, and windows, floors, ceilings and doors; heating, ventilation, and air-conditioning systems or components thereof, including insulation and indoor air quality assessments; bringing schools into compliance with fire, health, seismic and safety codes, including modernizations, renovations, and repairs that ensure that schools are prepared for emergencies; complying with the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973; abatement, removal, or interim controls of asbestos, polychlorinated biphenyls, mold, mildew, or lead-based hazards; reduction of classroom noise and environmental noise pollution; modernization, renovation, or repairs to reduce the consumption of coal, electricity, land, natural gas, oil, or water; upgrading or installing educational technology infrastructure; modernization, renovation, or repairs of laboratory facilities, libraries, career and technical education facilities and building infrastructure to accommodate bicycle and pedestrian access; renewable energy generation and heating systems and energy audits; other modernizations, renovations, or repairs that improve the teaching and learning climate, ensure the health and safety of students and staff, make schools more energy efficient or reduce class size; and required environmental remediation related to modernizations, renovations, or repairs described above.

TITLE II—SUPPLEMENTAL GRANTS FOR LOUISIANA, MISSISSIPPI, AND ALABAMA

Sec. 201. Purpose

Indicates the purpose of grants under Title I is for modernizing, renovating, repairing, or constructing public early learning, kindergarten, elementary, and secondary educational facilities.

Sec. 202. Allocation to local educational agencies

Directs the Secretary to allocate funds to local educational agencies in Louisiana, Mississippi, and Alabama based on the infrastructure damage caused as a result of Hurricane Katrina or Hurricane Rita.

Requires the Secretary to distribute funds to local educational agencies within sixty days of an appropriation of funds.

Sec. 203. Allowable uses of funds

Includes the same list of allowable uses of funds as section 103, but also allows local educational agencies to use Title II funds for construction of new facilities.

TITLE III—GENERAL PROVISIONS

Sec. 301. Impermissible uses of funds

Prohibits funds received under this Act from being used for maintenance, stadiums or similar facilities whose primary use is for athletic contests or events for which admission is charged to the general public. Also prohibits the improvement or construction of facilities which purpose is not the education of children, such as administrative facilities, or the purchase of carbon offsets.

Sec. 302. Supplement, not supplant

Requires local educational agencies receiving funds under this Act to use such funds to supplement, and not supplant, funds that otherwise would be used for the same purposes.

Sec. 303. Prohibition regarding state aid

Prohibits a state from taking payments under this Act into consideration when determining the eligibility, or amount of, state aid for any local educational agencies.

Sec. 304. Maintenance of effort

Provides for a 90 percent maintenance of effort for local educational agencies with respect to the provision of a free public education from the previous to the second previous fiscal year concerning the receipt of funds under this Act.

Sec. 305. Special rule on contracting

Requires a local educational agency that receives funds under this Act and that carries out projects through a contract to ensure that the bidding process consists of the maximum number of qualified bidders, including local, small, minority, women- and veteran-owned businesses, through full and open competition.

Sec. 306. Use of American iron, steel, and manufactured goods

Requires that all of the iron, steel, and manufactured goods used in projects under this Act are produced in the United States unless the Secretary finds that the use of these products is inconsistent with the public interest, the products are not produced in sufficient and reasonably available quantities or of satisfactory quality, or the use of such products will increase the overall cost of the project by more than 25 percent. If the Secretary waives this provision due to a circumstance described above, the Secretary must publish a detailed written justification of the determination in the Federal Register. This section must be applied in a manner that is consistent with the United States' obligations under international agreements.

Sec. 307. Application of GEPA

States that the Davis-Bacon labor law provisions apply to any funds received under this Act.

Sec. 308. Charter schools

Requires that charter schools receive a portion of a local educational agency's funds under this Act, based on the percentage of low income students in the local educational agency served by charter schools and that local educational agencies consult with charter schools to determine individual schools' needs for renovation, modernization, and repair.

Sec. 309. Green schools

Requires local educational agencies receiving funds under this Act to use at least half of such funds in fiscal year 2010 (and increasing by ten percentage points per year, to one hundred percent in fiscal year 2015) for public school modernizations, renovations, repairs, or construction that meet specified green standards, in-

cluding equivalent standards adopted by the state or local authority with jurisdiction over the agency, which must include a verifiable method to demonstrate compliance.

Requires the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, to provide outreach and technical assistance to states and local educational agencies concerning best practices in school modernization, renovation, repair and construction, including those related to student academic achievement, student and staff health, energy efficiency, and environmental protection.

Directs the Secretary, in consultation with the Secretary of Labor, to work with local educational agencies to promote appropriate opportunities for participants in the YouthBuild program to gain employment experience through projects under this Act.

Sec. 310. Reporting

Describes the reporting requirements applicable to local educational agencies, states, and the Secretary, and requires local educational agencies and the Secretary to make their reports publicly available, including on their website.

Sec. 311. Authorization of appropriations

Authorizes \$6,400,000,000 for Title I for fiscal year 2010 and such sums as may be necessary for fiscal years 2011 through 2015. Authorizes \$100,000,000 for Title II for each of the fiscal years 2010 through 2015.

Sec. 312. Special rules

Prohibits funds from being used to employ workers in violation of section 274A of the Immigration and Nationality Act or from being distributed to a local educational agency that does not have a policy that requires a criminal background check on all agency employees.

Sec. 313. Youthbuild programs

Requires the Secretary of Education, in consultation with the Secretary of Labor, to work with recipients of funds under this Act to promote appropriate opportunities for participants in Youthbuild programs to gain experience on projects funded by this Act.

VI. EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is explained in the body of this report.

VII. APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act, requires a description of the application of this bill to the legislative branch. H.R. 2187, as amended, provides federal funding to help modernize and renovate public schools. The bill does not prevent legislative branch employees' coverage under this legislation.

VIII. UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. H.R. 2187, as amended, contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA).

IX. EARMARK STATEMENT

H.R. 2187, as amended, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e) or 9(f) of rule XXI of the House of Representatives.

X. ROLL CALL

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL 1 BILL H.R. 2187 DATE May 6, 2009
 AMENDMENT NUMBER 2 DEFEATED 15-28
 SPONSOR/AMENDMENT Mr. Castle/ amendment to require Congress to provide full
 funding for the Title I program before providing funding for a new Federal school
 construction program

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI		X		
Mr. SABLAN		X		
Ms. TITUS				X
<i>vacancy</i>				
Mr. McKEON, Senior Republican Member	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT				X
Mr. PLATTS	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE				X
Mr. ROB BISHOP				X
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE				X
Mr. THOMPSON	X			
TOTALS	15	28		5

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL 2 BILL H.R. 2187 DATE May 6, 2009
 AMENDMENT NUMBER 4 DEFEATED 15-28
 SPONSOR/AMENDMENT Mr. Kline / amendment to require Congress to provide full
 funding for State grants for IDEA before providing funding for a new Federal school
 construction program

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Ms. FUDGE		X		
Mr. POLIS		X		
Mr. TONKO		X		
Mr. PIERLUISI		X		
Mr. SABLAN		X		
Ms. TITUS				X
<i>vacancy</i>				
Mr. McKEON, Senior Republican Member	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT				X
Mr. PLATTS	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. PRICE				X
Mr. ROB BISHOP				X
Mr. GUTHRIE	X			
Mr. CASSIDY	X			
Mr. McCLINTOCK	X			
Mr. HUNTER	X			
Mr. ROE				X
Mr. THOMPSON	X			
TOTALS	15	28		5

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 3 BILL: H.R. 2187 DATE: 5/6/2009
 AMENDMENT NUMBER ADOPTED FAVORABLY: 31 - 14
 SPONSOR/AMENDMENT: KILDEE MOTION TO FAVORABLY REPORT THE BILL
 TO THE HOUSE AS AMENDED

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Ms. FUDGE	X			
Mr. POLIS	X			
Mr. TONKO	X			
Mr. PIERLUISI	X			
Mr. SABLAN	X			
Ms. TITUS	X			
<i>vacancy</i>				
Mr. McKEON, Senior Republican Member		X		
Mr. PETRI		X		
Mr. HOEKSTRA		X		
Mr. CASTLE		X		
Mr. SOUDER		X		
Mr. EHLERS	X			
Mrs. BIGGERT				X
Mr. PLATTS	X			
Mr. WILSON		X		
Mr. KLINE		X		
Mrs. McMORRIS RODGERS		X		
Mr. PRICE				X
Mr. ROB BISHOP				X
Mr. GUTHRIE		X		
Mr. CASSIDY		X		
Mr. McCLINTOCK		X		
Mr. HUNTER		X		
Mr. ROE		X		
Mr. THOMPSON		X		
TOTALS	31	14		3

XI. STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

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

XII. NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 2187, as amended, from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 11, 2009.

Hon. GEORGE MILLER,
*Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2187, the 21st Century Green High-Performing Public Schools Facilities Act.

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

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 2187—21st Century Green High-Performing Public School Facilities Act

Summary: H.R. 2187 would authorize the appropriation of \$6.4 billion for fiscal year 2010 and such sums as may be necessary for fiscal years 2011 through 2015 to award grants to help modernize and renovate public schools. It also would authorize the appropriation of \$100 million for each of fiscal years 2010 through 2015 to help repair public schools damaged by Hurricanes Katrina and Rita and to construct new schools. (Under the General Education Provisions Act, these authorizations automatically would be extended one year.)

As shown in the following table, CBO estimates that H.R. 2187 would increase discretionary spending by nearly \$20 billion over the 2010–2014 period. For this estimate, CBO assumes that \$32.9 billion will be appropriated over that period and that outlays will follow the historical spending patterns of similar programs. The costs of this legislation fall within budget function 500 (education, training, employment and social services). Enacting the bill would have no impact on direct spending or revenues.

By fiscal year, in millions of dollars—	2010	2011	2012	2013	2014	2010– 2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Title I:						
Estimated Authorization Level	6,400	6,438	6,476	6,508	6,565	32,387
Estimated Outlays	320	2,242	4,815	5,803	6,477	19,657
Title II:						
Authorization Level	100	100	100	100	100	500
Estimated Outlays	5	35	75	90	100	305
Total Changes.						
Estimated Authorization Level	6,500	6,538	6,576	6,608	6,665	32,887
Outlays	325	2,277	4,890	5,893	6,577	19,962

H.R. 2187 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Justin Humphrey. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

XIII. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c) of rule XIII of the House of Representatives, the goal of H.R. 2187 is to provide grants to help modernize and renovate public schools. The Committee expects the Department of Education to comply with H.R. 2187 and implement the changes to the law in accordance with these stated goals.

XIV. CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R.2187. The Committee believes that the amendments made by this bill are within Congress' authority under Article I, section 8, clause 18 of the U.S. Constitution.

XV. COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 2187. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the House of Representatives, there are no changes in existing law made by the bill, as reported.

XVII. COMMITTEE CORRESPONDENCE

None.

MINORITY VIEWS ON H.R. 2187, THE 21ST CENTURY GREEN HIGH-PERFORMING PUBLIC SCHOOL FACILITIES ACT

Introduction

Over the past decade, the condition of local public school facilities has become an important component of the education debate in communities throughout the nation. In both cities and suburbs, students, parents, teachers, and many public officials argue that school buildings are overcrowded, unsafe, and obsolete. As a result, the amount being spent on school construction, modernization, and renovation has become a significant issue in many states and local school districts.

The federal government has historically had an extremely limited role in directly financing school infrastructure projects and facility improvement programs. The U.S. Department of Education operates the Impact Aid Construction program, which provides funding to school districts to build and repair schools impacted by the loss of tax revenue because of the presence of military bases, federal lands, and Indian reservations in the area; that is, assistance to children who historically have been a federal responsibility. The federal government also provides indirect financial support for school construction by providing enhanced credit provisions for construction of charter schools by incentivizing the private sector to make loans to charter schools for facilities.¹

But, overall, the construction and modernization of public elementary and secondary schools has historically been a State and local responsibility. For more than 40 years, Congress has deliberately limited the scope of federal intervention in elementary and secondary education to those efforts that increase student academic achievement. That is, until Democrats on the House Education and Labor Committee took up and passed legislation creating a massive new federal school construction program, which would be administered through the U.S. Department of Education. The bill, H.R. 2187, the 21st Century Green High-Performing Public School Facilities Act, would nationalize and regulate school construction projects; threaten state, local, and private support for educational infrastructure; jeopardize Congress' ability to reduce federal spending; push the country further into debt; dramatically increase the cost of elementary and secondary schools; and siphon resources from longstanding education priorities while failing to improve academic achievement.

¹The federal government also exempts the interest on state and local governmental bonds from federal income taxes. States and local areas are provided tax credits for issuing Qualified Zone Academy Bonds or QZABs, which may be used for schools based in Empowerment Zones or Enterprise Communities, or schools with 35 percent of students qualified for free or reduced price lunches under the Federal School Lunch Program.

H.R. 2187 nationalizes and regulates school construction projects.

States and local communities have the primary responsibility to set public policy over education, particularly public elementary and secondary education. When the federal government has intervened to fulfill a pressing need, it has done so while maintaining the autonomy and authority of local communities to make those decisions that impact students in their classrooms. The federal government does not have the right to replace the responsibilities that lie with states and school districts to set their own priorities and to provide funding for programs that assist in the education of children.

The introduction of a new federal program for school construction, like that envisioned under H.R. 2187, would fundamentally change this dynamic by giving the federal government responsibility for funding and regulating school construction projects. This would undermine the basic premise of elementary and secondary education: that education policy should be set at the local level by teachers, parents, and superintendents. Instead of passing legislation that would reinforce local control, the Democratic Majority proposes to nationalize school construction projects, forcing states and school districts to meet a variety of impractical requirements and guidelines set by federal bureaucrats, including regulations that building materials meet certain environmental rules. These restrictive federal regulations will needlessly increase project costs and provide less flexibility for states and school districts to meet the needs of their students.

H.R. 2187 threatens state, local, and private support for educational infrastructure.

While accurate estimates are difficult to obtain, the U.S. Department of Education has attempted to project the needs and costs of school construction, modernization, renovation, and repair. According to a report released by the U.S. Department of Education's National Center for Education Statistics (NCES) entitled *Public School Principals Report on Their School Facilities: Fall 2005*, the unmet need for school construction and renovation is estimated at \$112 billion, with three-quarters of the nation's schools reporting a need for funds to bring their buildings into a "good overall condition." However, it should be noted that much of the data on which the Department relied was from self-reporting of construction needs by school superintendents and other officials. There has been no comprehensive independent analysis, such as by an independent assessor, conducted to determine the true infrastructure needs across the country.

In order to deal with the need for new construction or renovations to existing buildings, states and local school districts have made a significant commitment to public funding of school construction, modernization, renovation, and repair. According to "The 2009 Annual School Construction Report" recently released by School Planning and Management, school construction valued at an estimated \$19.5 billion was completed in 2008. Of this amount, \$13 billion was spent on the design and construction of new schools (accounting for 66.5 percent of the construction dollars), \$3.2 billion (16.6 percent) on additions to existing buildings, and just under \$3.3 billion (16.9 percent) on retrofit and modernization of existing

structures. According to the report, the percentage of construction dollars spent on new buildings was the highest since 1979. During the past seven years, school districts have completed construction projects totaling more than \$144 billion.

With statistics showing that the unmet need for school construction and renovation is estimated at \$112 billion and that states and local school districts spend an average of \$20 billion annually on school construction, it is valid to wonder how a new federal school construction program administered by the U.S. Department of Education (which annually receives roughly \$25 billion for the entire range of programs authorized under the Elementary and Secondary Education Act) could do a better job at building schools than state and local officials. Yet despite the relatively miniscule impact this new federal intervention will have, the mere presence of federal spending could have the unintended consequence of signaling that other parties are no longer responsible for these key investments. With passage of H.R. 2187, there is a great possibility that states, local communities, and private sector investors will back away from their responsibility to build and maintain safe and modern schools.

H.R. 2187 jeopardizes Congress' ability to reduce federal spending, pushing the country further into debt.

America is in the midst of an economic and financial crisis. The national debt now stands at more than \$11 trillion, and this year alone, the federal government is projected to run a deficit of close to \$2 trillion, a fact that is hard for most Americans to comprehend when they have to balance their family checkbook. With these sobering facts, it's time for Congress to get the federal budget under control. During the recent campaign and in his first few months in office, President Obama has pledged repeatedly that his Administration will embrace fiscal discipline by taking a scalpel to the massive federal budget and going through it line-by-line to "stop wasteful, obsolete federal government programs that make no financial sense." A complementary effort is for Congress to resist the temptation to create new programs when the existing need is already being addressed at the state and local level.

Instead of standing up to the out-of-control spending spree, the Democratic majority is proposing to add an estimated \$20 billion to the federal debt over the next five years, significantly increasing the size and scope of the federal government and undermining Congress' ability to reduce the deficit and get the federal budget under control.

H.R. 2187 dramatically increases the cost of building elementary and secondary schools.

One of the most troubling aspects of the massive new federal school construction program authorized through H.R. 2187 is that it will be subject to the requirements of the Depression-era Davis-Bacon Act, which requires construction projects to be paid using flawed "prevailing wages" and favors union wage workers. Under the General Education Provisions Act (GEPA), all laborers on all construction projects assisted under any program administered by the U.S. Department of Education must be paid wages at rates not less than those prevailing on similar construction in the locality as

determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

The law was originally passed in 1935 to ensure that the government's buying power did not drive down construction workers' wages during the Great Depression. Decades later, these prevailing wage rates have been proven to be fundamentally flawed, often bearing no relation to market wages. Still, they persist in adding bureaucratic complexity to federally-funded construction projects, including the administrative burden of weekly wage data filing. As such, any federal intervention into school construction carries with it significant burdens of costs and time consuming paperwork.

A number of studies have confirmed the flaws inherent in Davis-Bacon wage calculations, and point out that projects conducted under the requirements of the Davis-Bacon Act commonly cost between 22 and 26 percent more when compared to similar projects completed under market conditions. For example, the Beacon Hill Institute completed a study on the effects of paying Davis-Bacon inflated wages in public construction projects and found that when the Davis-Bacon mandated wages were followed, labor costs rose by 22 percent above the reported median wage, while overall construction costs went up 10 percent (which means that almost 10 percent of the total construction cost of a new school would be attributable to mandates imposed under the Davis-Bacon Act). In total, the study reports that Davis-Bacon costs taxpayers over \$8.6 billion annually—enough money to hire over 18,000 teachers.

Just as important, the Congressional Budget Office (CBO) and the U.S. Government Accountability Office have weighed in on this important issue. CBO estimates that the federal government could save more than \$10.5 billion in construction costs if it were to repeal the Davis-Bacon Act. It also found that the Davis-Bacon Act contributes to the backlog of maintenance projects on the federal level, because, "by raising labor costs, the act reduces the amount of maintenance that can be accomplished within a given budget." The GAO is also on record in stating that the Davis-Bacon Act is, "not susceptible to practical and effective administration" by the Department of Labor and that Davis-Bacon has resulted in unnecessary construction and administration costs, inflated prices, and inaccurate wages.

This information makes it hard to doubt that Davis-Bacon Act "prevailing wages" would inflate the costs of building our children's schools and threaten salaries for teachers and in-class dollars for technology, textbooks, and supplies. Subjecting new school construction projects to Davis-Bacon wages is unnecessary and will force local school districts to divert scarce funds away from teachers and students.

Given all of this information, it is clear that H.R. 2187 will dramatically raise the costs of school construction at the state and local level. At a time when state and local budgets are tightening or, in some cases, being cut because of the economic downturn, Congress should not impose this unnecessary and outdated mandate on local school districts, which will only serve to overinflate school construction prices, limit competition, and reduce jobs for entry-level workers.

H.R. 2187 siphons resources from longstanding education priorities and fails to improve academic achievement.

Since passage of the Elementary and Secondary Education Act of 1965, the federal government has spent nearly \$500 billion in federal funds provided by the American taxpayer on public elementary and secondary education. An overwhelming majority of this funding has been directed toward two primary programs that the federal government operates to improve student achievement—(1) Title I grants to local educational agencies (LEAs)/school districts under the Elementary and Secondary Education Act, which authorizes federal aid to state and local educational agencies to help low-income and other disadvantaged children achieve to the same high state academic achievement standards as their peers and (2) state grants for the Individuals with Disabilities Education Act, which authorizes funds to help states and LEAs provide special education and related services for children with disabilities.

Over the last five decades, the federal government has deliberately focused its attention and funding on these programs and others that provide assistance to states and school districts to help them improve student academic achievement and to comply with federal mandates that come with educating students with special needs. This targeted focus reflects the recognition that states and local communities have the primary responsibility to set public policy over education, particularly public K–12 education.

By passing H.R. 2187 and creating a new and massive federal school construction program, Congressional Democrats will weaken Congress' ability to focus on current priorities and force us to back away from the federal focus on adequately funding programs that increase student achievement, including the Title I program and IDEA. In addition, it undermines the authority and decision-making ability of state and local officials who are in a better position to tailor programs to more closely meet their students' unique needs and priorities.

Committee consideration of H.R. 2187

On May 6, 2009, the House Education and Labor Committee met to mark-up H.R. 2187, the 21st Century Green High-Performing Public School Facilities Act. The Democratic majority scheduled consideration of the legislation even though no hearings were held in advance to explore the merits of a new federal school construction program.² As has become all too common, the bill was brought directly before the Full Committee, circumventing the Subcommittee on Early Childhood, Elementary, and Secondary Education and preventing Committee members on both sides of the aisle from engaging in a thorough and open debate on issues that impact our nation's schools.

²It should be noted that, last year, the Democratic majority held a single hearing on the issue of school construction, which is more than what has been afforded Members of the House Education and Labor Committee this year. At that time, however, there was no opportunity to question the expert witnesses that were called before the Committee as the Chairman abruptly ended the hearing after the witnesses presented their oral testimony.

Rejected amendments that would have improved the bill

During consideration of H.R. 2187, Committee Republicans offered a pair of amendments to reinforce the longstanding federal education priorities of Title I and IDEA. Unfortunately, both of the amendments were rejected by the majority.

The amendments offered by Committee Republicans to improve the bill included:

Congressman Mike Castle (R-DE) offered an amendment to require the Title I program for low-income students to be fully funded before federal resources could be redirected to support a new federal school construction program. The amendment was offered to address the fact that the underlying bill would divert significant resources from programs that are properly focused on raising the academic achievement of all students, mainly through the Title I program for low-income students. Under No Child Left Behind, Congress authorized \$25 billion for the Title I program that provides financial assistance to local educational agencies and schools with high numbers or high percentages of poor children. Recently, the Democrat-controlled Congress provided \$14.5 billion for the Title I program, more than \$10 billion below the authorized funding level. Even though the Castle amendment would ensure that Congress keeps making progress toward meeting the funding goals for the Title I program for low-income students, it was rejected by a vote of 15–28.

Congressman John Kline (R-MN) offered an amendment to require the Individuals with Disabilities Education Act (IDEA) to be fully funded before creating a new federal school construction program. When the federal government set up the IDEA program in 1975, Congress promised states and local school districts that it would provide 40 percent of the excess costs of educating children with disabilities to ensure that they receive a free appropriate public education. But despite enormous progress, especially over the past decade, Congress still is not meeting that commitment. Earlier this year, Congress provided \$ 2.3 billion for IDEA. Although appropriations for IDEA grants to states have increased significantly over the last decade, funding still falls short of the amount that would be necessary to provide maximum grants to all states; some estimates conclude that appropriated amounts only account for 17% of excess costs. The Kline amendment would ensure that Congress keeps making progress toward meeting the funding goals for IDEA; however, it was rejected by a vote of 15–28.

Adopted amendments that will improve the bill

Congressman Jared Polis (D-CO) offered an amendment to ensure that public charter schools are treated in the same manner as other public schools under the federal school construction program. Committee Republicans strongly support charter schools, which are public schools created by teachers, parents, and other members of the community to educate students and to stimulate reform in the public school system. In exchange for greater accountability for student achievements, these schools are exempt from many local and state regulations. It is perhaps no coincidence that charter schools are usually among the top performers in big city school districts. Unfortunately, public charter schools are significantly underfunded

when compared to traditional public schools, falling short of traditional public school funding by 22%, according to some estimates. Through the Polis amendment, charter schools will be guaranteed the same equitable access to facilities assistance as regular public schools under the bill. The amendment was adopted by voice vote.

Congressman Howard P. “Buck” McKeon (R-CA) offered an amendment to require local educational agencies to conduct an independent audit by a third-party entity substantiating the overall condition of their public school facilities. As discussed above, there has never been a comprehensive independent audit or analysis, such as one conducted by an independent assessor, on the nation’s school construction needs and it is nearly impossible to ascertain the true construction and maintenance needs of public schools at the state and local level. The McKeon amendment, similar to amendments offered by Congressman Tom Price (R-GA) in the past, seeks to address this situation by ensuring that school districts independently and accurately assess the state of their elementary and secondary schools to guide how resources would be allocated under this bill. It was adopted by a voice vote.

Conclusion

As outlined in these Minority Views, the primary responsibility for school construction has historically been and should remain at the state and local school levels. While members of the House Education and Labor Committee continue to receive feedback from some interest groups that our nation’s elementary and secondary schools need funds for school construction and facilities repair and renovation projects, other schools may have a need to hire more teachers, to provide additional instructional programs to improve student achievement for low-income students under the Title I program, or to provide needed services for special education students under IDEA. As such, the limited role of the federal government should remain focused on assisting local schools and school districts in raising student academic achievement.

Committee Republicans would urge Congress to reject H.R. 2187 and any attempt to create a federal school construction program. These efforts would undermine state and local educational agencies’ responsibility for school construction, add billions of dollars to the national debt, and dramatically increase the size and scope of the federal government; and it would do these things while diminishing support for programs that serve disadvantaged students.

HOWARD P. McKEON.
THOMAS PRICE.
DUNCAN HUNTER.
DAVID P. ROE.
JOE WILSON.
GLENN THOMPSON.
JOHN KLINE.