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2D SESSION

H. R. 3021

IN THE SENATE OF THE UNITED STATES

JUNE 6, 2008

Received

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Read twice and referred to the Committee on Health, Education, Labor, and
Pensions

AN ACT

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.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “21st Century Green High-Performing Public School Fa-
4 cilities Act”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 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 States.
Sec. 203. Allowable uses of funds.

TITLE III—GENERAL PROVISIONS

Sec. 301. Impermissible uses of funds.
Sec. 302. Supplement, not supplant.
Sec. 302A. Prohibition regarding State aid.
Sec. 303. Maintenance of effort.
Sec. 304. Special rule on contracting.
Sec. 305. Special rule on use of iron and steel produced in the United States.
Sec. 306. Application of GEPA.
Sec. 307. Green Schools.
Sec. 308. Reporting.
Sec. 309. Authorization of appropriations.
Sec. 310. Special rules.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) The term “Bureau-funded school” has the
10 meaning given to such term in section 1141 of the
11 Education Amendments of 1978 (25 U.S.C. 2021).

1 (2) The term “charter school” has the meaning
2 given such term in section 5210 of the Elementary
3 and Secondary Education Act of 1965.

4 (3) The term “local educational agency”—

5 (A) has the meaning given to that term in
6 section 9101 of the Elementary and Secondary
7 Education Act of 1965, and shall also include
8 the Recovery School District of Louisiana and
9 the New Orleans Public Schools; and

10 (B) includes any public charter school that
11 constitutes a local educational agency under
12 State law.

13 (4) The term “outlying area”—

14 (A) means the United States Virgin Is-
15 lands, Guam, American Samoa, and the Com-
16 monwealth of the Northern Mariana Islands;
17 and

18 (B) includes the freely associated states of
19 the Republic of the Marshall Islands, the Fed-
20 erated States of Micronesia, and the Republic
21 of Palau.

22 (5) The term “State” means each of the 50
23 States, the District of Columbia, and the Common-
24 wealth of Puerto Rico.

1 (6) The term “LEED Green Building Rating
2 System” means the United States Green Building
3 Council Leadership in Energy and Environmental
4 Design green building rating standard referred to as
5 LEED Green Building Rating System.

6 (7) The term “Energy Star” means the Energy
7 Star program of the United States Department of
8 Energy and the United States Environmental Pro-
9 tection Agency.

10 (8) The term “CHPS Criteria” means the
11 green building rating program developed by the Col-
12 laborative for High Performance Schools.

13 (9) The term “public school facilities” includes
14 charter schools.

15 (10) The term “Green Globes” means the
16 Green Building Initiative environmental design and
17 rating system referred to as Green Globes.

18 **TITLE I—GRANTS FOR MOD-**
19 **ERNIZATION, RENOVATION,**
20 **OR REPAIR OF PUBLIC**
21 **SCHOOL FACILITIES**

22 **SEC. 101. PURPOSE.**

23 Grants under this title shall be for the purpose of
24 modernizing, renovating, or repairing public school facili-
25 ties, based on their need for such improvements, to be

1 safe, healthy, high-performing, and up-to-date techno-
2 logically.

3 **SEC. 102. ALLOCATION OF FUNDS.**

4 (a) RESERVATION.—From the amount appropriated
5 to carry out this title for each fiscal year pursuant to sec-
6 tion 309(a), the Secretary shall reserve 1 percent of such
7 amount, consistent with the purpose described in section
8 101—

9 (1) to provide assistance to the outlying areas;
10 and

11 (2) for payments to the Secretary of the Inte-
12 rior to provide assistance to Bureau-funded schools.

13 (b) ALLOCATION TO STATES.—

14 (1) STATE-BY-STATE ALLOCATION.—Of the
15 amount appropriated to carry out this title for each
16 fiscal year pursuant to section 309(a), and not re-
17 served under subsection (a), each State shall be allo-
18 cated an amount in proportion to the amount re-
19 ceived by all local educational agencies in the State
20 under part A of title I of the Elementary and Sec-
21 ondary Education Act of 1965 for the previous fiscal
22 year relative to the total amount received by all local
23 educational agencies in every State under such part
24 for such fiscal year.

1 (2) STATE ADMINISTRATION.—A State may re-
2 serve up to 1 percent of its allocation under para-
3 graph (1) to carry out its responsibilities under this
4 title, including—

5 (A) providing technical assistance to local
6 educational agencies;

7 (B) developing within 6 months of receiv-
8 ing its allocation under paragraph (1) a plan to
9 develop a database that includes an inventory of
10 public school facilities in the State and the
11 modernization, renovation, and repair needs of,
12 energy use by, and the carbon footprint of such
13 schools; and

14 (C) developing a school energy efficiency
15 quality plan.

16 (3) GRANTS TO LOCAL EDUCATIONAL AGEN-
17 CIES.—From the amount allocated to a State under
18 paragraph (1), each local educational agency in the
19 State that meets the requirements of section
20 1112(a) of the Elementary and Secondary Edu-
21 cation Act of 1965 shall receive an amount in pro-
22 portion to the amount received by such local edu-
23 cational agency under part A of title I of that Act
24 for the previous fiscal year relative to the total
25 amount received by all local educational agencies in

1 the State under such part for such fiscal year, ex-
2 cept that no local educational agency that received
3 funds under part A of title I of that Act for such
4 fiscal year shall receive a grant of less than \$5,000
5 in any fiscal year under this title.

6 (4) SPECIAL RULE.—Section 1122(c)(3) of the
7 Elementary and Secondary Education Act of 1965
8 shall not apply to paragraph (1) or (3).

9 (c) SPECIAL RULES.—

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

15 (2) DISTRIBUTIONS BY STATES.—A State shall
16 make and distribute the allocations described in sub-
17 section (b)(3) within 30 days of receiving such funds
18 from the Secretary.

19 (3) DISTRIBUTIONS BY LOCAL EDUCATIONAL
20 AGENCIES.—A local educational agency receiving a
21 grant under this title may give priority, in using the
22 grant, to projects to be carried out in a public sec-
23 ondary school recognized as a Science and Tech-
24 nology High School or as a secondary school with a
25 science and technology program.

1 **SEC. 103. ALLOWABLE USES OF FUNDS.**

2 A local educational agency receiving a grant under
3 this title shall use the grant for modernization, renovation,
4 or repair of public school facilities, including—

5 (1) repairing, replacing, or installing roofs, in-
6 cluding extensive, intensive or semi-intensive green
7 roofs, electrical wiring, plumbing systems, sewage
8 systems, lighting systems, or components of such
9 systems, windows, or doors, including security doors;

10 (2) repairing, replacing, or installing heating,
11 ventilation, air conditioning systems, or components
12 of such systems (including insulation), including in-
13 door air quality assessments;

14 (3) bringing public schools into compliance with
15 fire, health, and safety codes, including professional
16 installation of fire/life safety alarms, including mod-
17 ernizations, renovations, and repairs that ensure
18 that schools are prepared for emergencies, such as
19 improving building infrastructure to accommodate
20 security measures;

21 (4) modifications necessary to make public
22 school facilities accessible to comply with the Ameri-
23 cans with Disabilities Act of 1990 (42 U.S.C. 12101
24 et seq.) and section 504 of the Rehabilitation Act of
25 1973 (29 U.S.C. 794), except that such modifica-
26 tions shall not be the primary use of the grant;

1 (5) asbestos or polychlorinated biphenyls abate-
2 ment or removal from public school facilities;

3 (6) implementation of measures designed to re-
4 duce or eliminate human exposure to lead-based
5 paint hazards through methods including interim
6 controls, abatement, or a combination of each;

7 (7) implementation of measures designed to re-
8 duce or eliminate human exposure to mold or mil-
9 dew;

10 (8) upgrading or installing educational tech-
11 nology infrastructure to ensure that students have
12 access to up-to-date educational technology;

13 (9) modernization, renovation, or repair of
14 science and engineering laboratory facilities, librar-
15 ies, and career and technical education facilities, in-
16 cluding those related to energy efficiency and renew-
17 able energy, and improvements to building infra-
18 structure to accommodate bicycle and pedestrian ac-
19 cess;

20 (10) renewable energy generation and heating
21 systems, including solar, photovoltaic, wind, geo-
22 thermal, or biomass, including wood pellet, systems
23 or components of such systems;

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

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

3 (B) ensure the health and safety of stu-
4 dents and staff;

5 (C) make them more energy efficient; or

6 (D) reduce class size; and

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

10 **TITLE II—SUPPLEMENTAL**
11 **GRANTS FOR LOUISIANA, MIS-**
12 **SISSIPPI, AND ALABAMA**

13 **SEC. 201. PURPOSE.**

14 Grants under this title shall be for the purpose of
15 modernizing, renovating, repairing or constructing public
16 school facilities, based on their need for such improve-
17 ments, to be safe, healthy, high-performing, and up-to-
18 date technologically.

19 **SEC. 202. ALLOCATION TO STATES.**

20 (a) STATE-BY-STATE ALLOCATION.—Of the amount
21 appropriated to carry out this title for each fiscal year pur-
22 suant to section 309(b), the Secretary shall allocate to
23 Louisiana, Mississippi, and Alabama an amount equal to
24 the number of schools in each of those States that were
25 closed for 60 days or more during the period beginning

1 on August 29, 2005, and ending on December 31, 2005,
2 due to Hurricane Katrina or Hurricane Rita, relative to
3 the number of schools in all of those States combined that
4 were so closed.

5 (b) STATE ADMINISTRATION.—A State that receives
6 funds under this title may reserve one-half of one percent
7 of such funds for administrative purposes related to this
8 title.

9 (c) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—
10 States receiving funds under subsection (a) shall allocate
11 such funds to local educational agencies within the State
12 according to the criteria described in subsection (a).

13 (d) SPECIAL RULES.—

14 (1) DISTRIBUTIONS BY SECRETARY.—The Sec-
15 retary shall make and distribute the allocations de-
16 scribed in subsection (a) not later than 30 days after
17 an appropriation of funds for this title is made.

18 (2) DISTRIBUTIONS BY STATES.—A State shall
19 make and distribute the allocations described in sub-
20 section (c) within 30 days of receiving such funds
21 from the Secretary.

22 **SEC. 203. ALLOWABLE USES OF FUNDS.**

23 A local educational agency receiving a grant under
24 this title shall use the grant for one or more of the activi-
25 ties described in section 103, except that an agency receiv-

1 ing a grant under this title also may use such grant for
2 such activities for the construction of new public school
3 facilities.

4 **TITLE III—GENERAL** 5 **PROVISIONS**

6 **SEC. 301. IMPERMISSIBLE USES OF FUNDS.**

7 No funds received under this Act may be used for—

8 (1) payment of maintenance costs;

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

13 (3) purchasing carbon offsets.

14 **SEC. 302. SUPPLEMENT, NOT SUPPLANT.**

15 A local educational agency receiving a grant under
16 this Act shall use such Federal funds only to supplement
17 and not supplant the amount of funds that would, in the
18 absence of such Federal funds, be available for moderniza-
19 tion, renovation, repair, and construction of public school
20 facilities.

21 **SEC. 302A. PROHIBITION REGARDING STATE AID.**

22 A State shall not take into consideration payments
23 under this Act in determining the eligibility of any local
24 educational agency in that State for State aid, or the

1 amount of State aid, with respect to free public education
2 of children.

3 **SEC. 303. MAINTENANCE OF EFFORT.**

4 (a) IN GENERAL.—A local educational agency may
5 receive a grant under this Act for any fiscal year only if
6 either the combined fiscal effort per student or the aggregate
7 expenditures of the agency and the State involved
8 with respect to the provision of free public education by
9 the agency for the preceding fiscal year was not less than
10 90 percent of the combined fiscal effort or aggregate expenditures
11 for the second preceding fiscal year.

12 (b) REDUCTION IN CASE OF FAILURE TO MEET.—

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

22 (2) SPECIAL RULE.—No such lesser amount
23 shall be used for computing the effort required
24 under subsection (a) of this section for subsequent
25 years.

1 (c) WAIVER.—The Secretary shall waive the require-
2 ments of this section if the Secretary determines that a
3 waiver would be equitable due to—

4 (1) exceptional or uncontrollable circumstances,
5 such as a natural disaster; or

6 (2) a precipitous decline in the financial re-
7 sources of the local educational agency.

8 **SEC. 304. SPECIAL RULE ON CONTRACTING.**

9 Each local educational agency receiving a grant under
10 this Act shall ensure that, if the agency carries out mod-
11 ernization, renovation, repair, or construction through a
12 contract, the process for any such contract ensures the
13 maximum number of qualified bidders, including local,
14 small, minority, and women- and veteran-owned busi-
15 nesses, through full and open competition.

16 **SEC. 305. SPECIAL RULE ON USE OF IRON AND STEEL PRO-**
17 **DUCED IN THE UNITED STATES.**

18 (a) IN GENERAL.—A local educational agency shall
19 not obligate or expend funds received under this Act for
20 a project for the modernization, renovation, or repair of
21 public school facility unless all of the iron and steel used
22 in such project is produced in the United States.

23 (b) EXCEPTIONS.—The provisions of subsection (a)
24 shall not apply in any case in which the local educational
25 agency finds that—

1 (1) their application would be inconsistent with
2 the public interest;

3 (2) iron and steel are not produced in the
4 United States in sufficient and reasonably available
5 quantities and of a satisfactory quality;

6 (3) inclusion of iron and steel produced in the
7 United States will increase the cost of the overall
8 project contract by more than 25 percent.

9 **SEC. 306. APPLICATION OF GEPA.**

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

14 **SEC. 307. GREEN SCHOOLS.**

15 (a) IN GENERAL.—In a given fiscal year, a local edu-
16 cational agency shall use not less than the applicable per-
17 centage of funds received under this Act described in sub-
18 section (b) for public school modernization, renovation, re-
19 pairs, or construction that are certified, verified, or con-
20 sistent with any applicable provisions of—

21 (1) the LEED Green Building Rating System;

22 (2) Energy Star;

23 (3) the CHPS Criteria;

24 (4) Green Globes; or

1 (5) an equivalent program adopted by the State
2 or another jurisdiction with authority over the local
3 educational agency.

4 (b) **APPLICABLE PERCENTAGES.**—The applicable
5 percentages described in subsection (a) are—
6 (1) in fiscal year 2009, 50 percent;
7 (2) in fiscal year 2010, 60 percent;
8 (3) in fiscal year 2011, 70 percent;
9 (4) in fiscal year 2012, 80 percent; and
10 (5) in fiscal year 2013, 90 percent.

11 (c) **TECHNICAL ASSISTANCE.**—The Secretary, in con-
12 sultation with the Secretary of Energy and the Adminis-
13 trator of the Environmental Protection Agency, shall pro-
14 vide outreach and technical assistance to States and school
15 districts concerning the best practices in school mod-
16 ernization, renovation, repair, and construction, including
17 those related to student academic achievement and stu-
18 dent and staff health, energy efficiency, and environmental
19 protection.

20 **SEC. 308. REPORTING.**

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

1 (1) the number of public schools in the agency,
2 including the number of charter schools;

3 (2) the total amount of funds received by the
4 local educational agency under this Act and the
5 amount of such funds expended, including the
6 amount expended for modernization, renovation, re-
7 pair, or construction of charter schools;

8 (3) the number of public schools in the agency
9 with a metro-centric locale code of 41, 42, or 43 as
10 determined by the National Center for Education
11 Statistics and the percentage of funds received by
12 the agency under title I or title II of this Act that
13 were used for projects at such schools;

14 (4) the number of public schools in the agency
15 that are eligible for schoolwide programs under sec-
16 tion 1114 of the Elementary and Secondary Edu-
17 cation Act of 1965 and the percentage of funds re-
18 ceived by the agency under title I or title II of this
19 Act that were used for projects at such schools;

20 (5) for each project—

21 (A) the cost;

22 (B) the standard described in section
23 307(a) with which the use of the funds com-
24 plied or if the use of funds did not comply with
25 a standard described in section 307(a), the rea-

1 son such funds were not able to be used in com-
2 pliance with such standards and the agency's
3 efforts to use such funds in an environmentally
4 sound manner;

5 (C) if flooring was installed, whether—

6 (i) it was low- or no-VOC (Volatile
7 Organic Compounds) flooring;

8 (ii) it was made from sustainable ma-
9 terials; and

10 (iii) use of flooring described in clause

11 (i) or (ii) was cost-effective; and

12 (D) any demonstrable or expected benefits
13 as a result of the project (such as energy sav-
14 ings, improved indoor environmental quality,
15 improved climate for teaching and learning,
16 etc.); and

17 (6) the total number and amount of contracts
18 awarded, and the number and amount of contracts
19 awarded to local, small, minority, women, and vet-
20 eran-owned businesses.

21 (b) AVAILABILITY OF REPORTS.—A local educational
22 agency shall—

23 (1) submit the report described in subsection

24 (a) to the State educational agency, which shall com-

1 pile such information and report it annually to the
2 Secretary; and

3 (2) make the report described in subsection (a)
4 publicly available, including on the agency's website.

5 (c) REPORTS BY SECRETARY.—Not later than De-
6 cember 31 of each fiscal year, the Secretary shall submit
7 to the Committee on Education and Labor of the House
8 of Representatives and the Committee on Health, Edu-
9 cation, Labor, and Pensions of the Senate a report on
10 grants made under this Act, including the information de-
11 scribed in subsection (b)(1), the types of modernization,
12 renovation, repair, and construction funded, and the num-
13 ber of students impacted, including the number of stu-
14 dents counted under section 1113(a)(5) of the Elementary
15 and Secondary Education Act of 1965.

16 **SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) TITLE I.—To carry out title I, there are author-
18 ized to be appropriated \$6,400,000,000 for fiscal year
19 2009 and such sums as may be necessary for each of fiscal
20 years 2010 through 2013.

21 (b) TITLE II.—To carry out title II, there are author-
22 ized to be appropriated \$100,000,000 for each of fiscal
23 years 2009 through 2013.

(1) used to employ workers in violation of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a); or

Passed the House of Representatives June 4, 2008.

Attest: LORRAINE C. MILLER,
Clerk.