

110TH CONGRESS
1ST SESSION

S. 2122

To amend title V of the Elementary and Secondary Education Act of 1965 to reduce class size through the use of highly qualified teachers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2007

Mrs. MURRAY (for herself, Mr. BIDEN, Mr. OBAMA, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title V of the Elementary and Secondary Education Act of 1965 to reduce class size through the use of highly qualified teachers, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Facilitating Out-
5 standing Classrooms Using Size reduction Act” (FOCUS
6 Act).

1 **SEC. 2. CLASS SIZE REDUCTION.**

2 Title V of the Elementary and Secondary Education
3 Act of 1965 (20 U.S.C. 7201 et seq.) is amended by add-
4 ing at the end the following:

5 **“PART E—CLASS SIZE REDUCTION**

6 **“SEC. 5701. GRANT PROGRAM.**

7 “(a) PURPOSE.—The purposes of this section are—

8 “(1) to reduce class size through the use of
9 highly qualified teachers;

10 “(2) to assist States and local educational agen-
11 cies in recruiting, hiring, and training 100,000
12 teachers in order to reduce class sizes nationally, in
13 kindergarten through third grade, to an average of
14 18 students per regular classroom; and

15 “(3) to improve teaching in those grades so
16 that all students can learn to read independently
17 and well by the end of the 3rd grade.

18 “(b) ALLOTMENT TO STATES.—

19 “(1) RESERVATION.—From the amount made
20 available to carry out this part for a fiscal year, the
21 Secretary shall reserve not more than 1 percent for
22 the Secretary of the Interior (on behalf of the Bu-
23 reau of Indian Affairs) and the outlying areas for
24 activities carried out in accordance with this section.

25 “(2) STATE ALLOTMENTS.—

“(A) FORMULA.—Subject to subparagraphs (B) and (C), from the funds made available to carry out this part for a fiscal year and not reserved under paragraph (1) or subsection (j), the Secretary shall allot to each State an amount that bears the same relation to such funds as the sum of the amounts the State received under subparagraphs (A) and (B) of section 2111(b)(2) for the preceding fiscal year bears to the sums all States received under such subparagraphs for the preceding fiscal year.

“(B) HOLD HARMLESS.—

“(i) IN GENERAL.—Subject to subparagraph (C) and clause (ii), from the amount made available to carry out this part for a fiscal year and not reserved under paragraph (1) or subsection (j), the Secretary shall allot to each State an amount equal to the amount that such State received for the preceding fiscal year under this section.

“(ii) Ratable Reduction.—If the amount made available to carry out this part for a fiscal year and not reserved

under paragraph (1) or subsection (j) is insufficient to pay the full amounts that all States are eligible to receive under clause (i) for such fiscal year, the Secretary shall ratably reduce such amounts for such fiscal year.

“(C) ALLOTMENT OF ADDITIONAL FUNDS.—

“(i) IN GENERAL.—Subject to clause (ii), for any fiscal year for which the amount made available to carry out this part and not reserved under paragraph (1) or subsection (j) exceeds the amount made available to the States for the preceding fiscal year under section 2111(b), the Secretary shall allot to each State the percentage of the excess amount that is the greater of—

“(I) the percentage the State received for the preceding fiscal year of the total amount made available to the States under section 1122; or

“(II) the percentage so received of the total amount made available to the States under section 2111(b).

1 “(ii) RATABLE REDUCTIONS.—If the
 2 excess amount for a fiscal year is insuffi-
 3 cient to pay the full amounts that all
 4 States are eligible to receive under clause
 5 (i) for such fiscal year, the Secretary shall
 6 ratably reduce such amounts for such fis-
 7 cal year.

8 “(D) REALLOTMENT.—If any State does
 9 not apply for an allotment under this subsection
 10 or does not have an application approved under
 11 this part for any fiscal year, the Secretary shall
 12 reallot the amount of the allotment to the re-
 13 maining States in accordance with this sub-
 14 section.

15 “(c) ALLOCATION TO LOCAL EDUCATIONAL AGEN-
 16 CIES.—

17 “(1) ALLOCATION.—Each State that receives
 18 funds under this section shall allocate 100 percent
 19 of those funds to local educational agencies within
 20 the State, of which—

21 “(A) 80 percent shall be allocated to those
 22 local educational agencies in proportion to the
 23 number of children, age 5 through 17, from
 24 families with incomes below the poverty line,
 25 who reside in the school district served by that

1 local educational agency for the most recent fis-
2 cal year for which satisfactory data are avail-
3 able, compared to the number of those children
4 who reside in the school districts served by all
5 the local educational agencies in the State for
6 that fiscal year; and

7 “(B) 20 percent shall be allocated to those
8 local educational agencies within the State in
9 accordance with the relative enrollments of chil-
10 dren, age 5 through 17, in public and private
11 nonprofit elementary schools and secondary
12 schools within the areas served by those local
13 educational agencies.

14 “(2) EXCEPTION.—Notwithstanding paragraph
15 (1) and subsection (d)(2)(B), if the award to a local
16 educational agency under this section is less than
17 the starting salary for a new highly qualified teacher
18 for a school served by that local educational agency,
19 that local educational agency may use funds made
20 available under this section to—

21 “(A) help pay the salary of a full- or part-
22 time highly qualified teacher hired to reduce
23 class size, which may be done in combination
24 with the expenditure of other Federal, State, or
25 local funds; or

1 “(B) pay for activities described in sub-
2 section (d)(2)(A)(iii) that may be related to
3 teaching in smaller classes.

4 “(3) REALLOCATION.—If a local educational
5 agency does not apply for an allocation under this
6 subsection or if the local educational agency’s appli-
7 cation is not approved, the State shall reallocate the
8 local educational agency’s allocation to the remain-
9 ing local educational agencies in the State in accord-
10 ance with paragraph (1).

11 “(d) USE OF FUNDS.—

12 “(1) MANDATORY USES.—Each local edu-
13 cational agency that receives funds under this sec-
14 tion shall use those funds—

15 “(A) to carry out effective approaches to
16 reducing class size through use of highly quali-
17 fied teachers to improve educational achieve-
18 ment for both regular and special needs chil-
19 dren, with particular consideration given to re-
20 ducing class size in the early elementary grades
21 for which some research has shown class size
22 reduction is most effective; and

23 “(B) to create a continuum of small class-
24 es at each grade level for all students served by
25 the local educational agency as the students

1 progress from kindergarten through third
2 grade.

3 “(2) PERMISSIBLE USES.—

4 “(A) IN GENERAL.—Each local educational
5 agency that receives funds under this section
6 may use those funds for—

7 “(i) recruiting (including through the
8 use of signing bonuses, and other financial
9 incentives), hiring, and training highly
10 qualified regular and special education
11 teachers (which may include hiring special
12 education teachers to team-teach with reg-
13 ular teachers in classrooms that contain
14 children with disabilities and non-disabled
15 children) and teachers of special needs
16 children;

17 “(ii) testing new teachers for aca-
18 demic content knowledge, and to meet
19 State certification or licensing require-
20 ments that are consistent with title II of
21 the Higher Education Act of 1965; and

22 “(iii) providing professional develop-
23 ment (which may include such activities as
24 promoting retention and mentoring) for
25 teachers, including special education teach-

ers and teachers of special needs children,
 in order to meet the goal of ensuring that
 all teachers have the general knowledge,
 teaching skills, and subject matter knowl-
 edge necessary to teach effectively in the
 content areas in which the teachers teach,
 consistent with title II of the Higher Edu-
 cation Act of 1965.

“(B) LIMITATION ON TESTING AND PRO-
 FESSIOAL DEVELOPMENT.—

“(i) IN GENERAL.—Except as pro-
 vided in clause (ii), a local educational
 agency may use not more than a total of
 25 percent of the funds received by the
 local educational agency under this section
 for activities described in clauses (ii) and
 (iii) of subparagraph (A).

“(ii) SPECIAL RULE.—A local edu-
 cational agency may use more than 25 per-
 cent of the funds the local educational
 agency receives under this section for ac-
 tivities described in subparagraph (A)(iii)
 for the purpose of helping teachers who are
 not yet highly qualified become highly
 qualified, if—

1 “(I) 10 percent or more of the el-
2 elementary school classes in a school
3 served by the local educational agency
4 are taught by individuals who are not
5 highly qualified teachers; or

6 “(II) the State educational agen-
7 cy has waived State certification or li-
8 censing requirements for 10 percent
9 or more of such teachers.

10 “(C) USE OF FUNDS BY AGENCIES THAT
11 HAVE REDUCED CLASS SIZE.—Notwithstanding
12 subparagraph (B), a local educational agency
13 that has already reduced class size in the early
14 elementary grades to 18 or fewer children (or
15 has already reduced class size to a State or
16 local class size reduction goal that was in effect
17 on November 28, 1999, if that goal is 20 or
18 fewer children) may use funds received under
19 this section—

20 “(i) to make further class size reduc-
21 tions in kindergarten through third grade;

22 “(ii) to reduce class size in other
23 grades; or

24 “(iii) to carry out activities to improve
25 teacher quality (particularly instructional

1 practices in small classes), including pro-
2 fessional development.

3 “(3) SUPPLEMENT, NOT SUPPLANT.—Each
4 local educational agency that receives funds made
5 available under this section shall use those funds
6 only to supplement, and not to supplant, State and
7 local funds that, in the absence of funds made avail-
8 able under this section, would otherwise be expended
9 for activities described in this section.

10 “(4) LIMITATION ON USE FOR SALARIES AND
11 BENEFITS.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), no funds made available
14 under this section may be used to increase the
15 salaries of, or provide benefits (other than par-
16 ticipation in professional development and en-
17 richment programs) to, teachers who are not
18 hired under this section.

19 “(B) EXCEPTION.—Funds made available
20 under this section may be used to pay the sala-
21 ries of teachers hired under section 306 of the
22 Department of Education Appropriations Act,
23 2001.

24 “(e) APPLICATIONS.—

1 “(1) STATES.—Each State desiring an allot-
 2 ment under this section shall submit an application
 3 to the Secretary that includes such information as
 4 the Secretary may require.

5 “(2) LOCAL EDUCATIONAL AGENCIES.—Each
 6 local educational agency desiring an allocation under
 7 this section shall submit an application to the State
 8 that includes such information as the State may re-
 9 quire. Each such application shall include a descrip-
 10 tion of the local educational agency’s program to re-
 11 duce class size by hiring additional highly qualified
 12 teachers.

13 “(f) REPORTS.—

14 “(1) STATE ACTIVITIES.—Each State receiving
 15 funds under this section shall prepare and submit to
 16 the Secretary a biennial report on activities carried
 17 out in the State under this section that provides the
 18 information described in section 5122(a)(2) with re-
 19 spect to the activities.

20 “(2) PROGRESS CONCERNING CLASS SIZE AND
 21 QUALIFIED TEACHERS.—Each State and local edu-
 22 cational agency receiving funds under this section
 23 shall annually report to parents and the public, in
 24 numeric form as compared to the previous year,
 25 on—

1 “(A) the State’s and local educational
2 agency’s progress in reducing class size, and in-
3 creasing the percentage of classes in core aca-
4 demic subjects taught by highly qualified teach-
5 ers; and

6 “(B) the impact that hiring additional
7 highly qualified teachers and reducing class
8 size, has had, if any, on increasing student aca-
9 demic achievement.

10 “(3) NOTICE.—Each local educational agency
11 that receives funds under this section shall provide
12 to each individual parent of a child who attends a
13 school served by such local educational agency time-
14 ly, written notice if the child has been assigned or
15 has been taught for 2 or more consecutive weeks by
16 a substitute teacher, as defined by such local edu-
17 cational agency, or a teacher who is not highly quali-
18 fied.

19 “(g) PRIVATE SCHOOLS.—If a local educational
20 agency uses funds made available under this section for
21 professional development activities, the local educational
22 agency shall ensure the equitable participation of private
23 nonprofit elementary schools and secondary schools in
24 such activities in accordance with section 5142. Section

1 5142 shall not apply to other activities carried out under
2 this section.

3 “(h) ADMINISTRATIVE EXPENSES.—A local edu-
4 cational agency that receives funds under this section may
5 use not more than 3 percent of such funds for local admin-
6 istrative costs.

7 “(i) CERTIFICATION, LICENSING, AND COM-
8 PETENCY.—No funds made available under this section
9 may be used to pay the salary of any teacher unless such
10 teacher is highly qualified.

11 “(j) NATIONAL EVALUATION.—

12 “(1) IN GENERAL.—From amounts appro-
13 priated to carry out this part for each of the fiscal
14 years 2008 through 2012, the Secretary shall re-
15 serve not more than \$5,000,000 to award a grant or
16 contract to an independent organization outside of
17 the Department for an independent evaluation of the
18 impact of the demonstration program under this sec-
19 tion.

20 “(2) COMPETITIVE BASIS.—The grant or con-
21 tract described in paragraph (1) shall be awarded on
22 a competitive basis.

23 “(3) PROCESS.—The evaluation under this sub-
24 section shall be conducted by an organization that is
25 capable of designing and carrying out an inde-

1 pendent evaluation that identifies the effects of spe-
2 cific activities carried out by State educational agen-
3 cies and local educational agencies under this part
4 on reducing class size and improving the pedagogy
5 in small classrooms. Such evaluation shall take into
6 account factors influencing student performance that
7 are not controlled by teachers or education adminis-
8 trators.

9 “(4) MATTERS EVALUATED.—The evaluation
10 described in this subsection shall—

11 “(A) determine the number of students
12 who benefitted by reduced class size pursuant
13 to this part, including an analysis by student
14 subgroup;

15 “(B) identify barriers to the effectiveness
16 of the class size reduction program under this
17 part;

18 “(C) compare the impact of students bene-
19 fitting from class size reduction under this part
20 to participants in comparison groups (of similar
21 demographics) in schools that did not receive
22 class size reduction funds under this part;

23 “(D) identify the impact of the program
24 assisted under this part on teachers;

1 “(E) measure the extent to which profes-
 2 sional development programs implemented by
 3 State educational agencies and local educational
 4 agencies using funds received under this sub-
 5 part improve instruction;

6 “(F) an analysis of whether receipt of class
 7 size reduction funds under this part results in
 8 an improvement in student academic achieve-
 9 ment; and

10 “(G) include any other analysis or meas-
 11 urement pertinent to this part that is deter-
 12 mined to be appropriate by the Secretary.

13 “(5) DISSEMINATION.—The findings of the
 14 evaluation under this subsection shall be widely dis-
 15 seminated to the public by—

16 “(A) the organization conducting the eval-
 17 uation; and

18 “(B) the Secretary.

19 **“SEC. 5702. NATIONAL CLASS SIZE DATABASE.**

20 “(a) IN GENERAL.—Of the amounts appropriated to
 21 carry out this part, the Secretary shall reserve not more
 22 than \$3,500,000 to develop and maintain, through the Na-
 23 tional Center for Education Statistics, a database that ac-
 24 curately calculates class size for every school, school dis-
 25 trict, and State in each of the 50 States, the District of

1 Columbia, and the Commonwealth of Puerto Rico through
 2 the collection of student and teacher data.

3 “(b) CONTRACT.—The Secretary, acting through the
 4 National Center for Education Statistics, may award con-
 5 tract, on a competitive basis, for the development and
 6 maintenance of the database described in subsection (a),
 7 to an organization, institution, or entity with expertise in
 8 data collection and class size reduction.

9 “(c) REPORTING.—Each State educational agency
 10 that receives funds under this Act shall report to the Sec-
 11 retary the following information:

12 “(1) Annual student enrollment data for each
 13 school and school district in the State, disaggregated
 14 by grade level, subgroup of student, core academic
 15 subject, and free or reduced price lunch recipient
 16 status.

17 “(2) Classroom teacher data, including the
 18 number of teachers at each grade level, at each sub-
 19 ject, and by highly qualified teacher status.

20 “(d) DIGEST OF EDUCATION STATISTICS.—The Na-
 21 tional Center for Education Statistics shall report class
 22 size data in addition to pupil-teacher ratios in the National
 23 Center’s Digest of Education Statistics.

1 **“SEC. 5703. DEFINITION OF CLASS SIZE.**

2 “(a) IN GENERAL.—In this part the term ‘class size’
 3 means the number of students, averaged over an academic
 4 year or the length of a course, who regularly appear in
 5 a teacher’s classroom and for whom the teacher is pri-
 6 marily responsible and accountable, which averaged num-
 7 ber shall reflect students who have joined a class or left
 8 a class throughout the duration of a course.

9 “(b) CALCULATIONS.—In calculating class size under
 10 subsection (a)—

11 “(1) multiple classes of the same subject shall
 12 be counted individually, including classes of the
 13 same subject taught at different times by the same
 14 teacher; and

15 “(2) paraprofessionals and teacher’s aides shall
 16 not be counted as teachers.

17 **“SEC. 5704. AUTHORIZATION OF APPROPRIATIONS.**

18 “There are authorized to be appropriated to carry out
 19 this part \$2,000,000,000 for fiscal year 2008 and such
 20 sums as may be necessary for fiscal years 2009 through
 21 2012.”.

22 **SEC. 3. NATIONAL CLEARINGHOUSE ON CLASS SIZE.**

23 Section 133(a) of the Education Sciences Reform Act
 24 of 2002 (20 U.S.C. 9533(a)) is amended—

25 (1) in paragraph (10)(D), by striking “and”
 26 after the semicolon;

1 (2) in paragraph (11), by striking the period
2 and inserting “; and”; and

3 (3) by adding at the end the following:

4 “(12) reserve not more than \$500,000 from the
5 amount made available to carry out this part for
6 each fiscal year in order to develop and maintain, di-
7 rectly or through a contract awarded on a competi-
8 tive basis to an entity, institution, or organization
9 with expertise in class size reduction research and
10 resources, a web-based National Clearinghouse on
11 Class Size to make publicly available—

12 “(A) research on class size;

13 “(B) resources on school modernization
14 planning;

15 “(C) resources for maximizing existing
16 classroom space; and

17 “(D) best practices in small classroom in-
18 struction.”.

○