

111TH CONGRESS  
2D SESSION

# H. R. 5989

To amend the Elementary and Secondary Education Act to enhance the credit program for charter schools through green initiatives, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2010

Mr. POLIS of Colorado introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend the Elementary and Secondary Education Act to enhance the credit program for charter schools through green initiatives, 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 “Green Credit Enhance-  
5 ment Program Act of 2010”.

6 **SEC. 2. GREEN CREDIT ENHANCEMENT PROGRAM.**

7 (a) Section 5205 of the Elementary and Secondary  
8 Education Act of 1965 (20 U.S.C. 7221 et seq.) is amend-  
9 ed—

1           (1) by redesignating subsection (c) as sub-  
2           section (d); and

3           (2) by inserting after subsection (b) the fol-  
4           lowing new subsection:

5           “(d) GREEN CREDIT ENHANCEMENT INITIATIVES TO  
6 ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CON-  
7 STRUCTION, AND RENOVATION.—

8           “(1) PURPOSE.—The purpose of this subsection  
9           is to provide grants to eligible entities to permit such  
10          entities to demonstrate innovative credit enhance-  
11          ment initiatives of assisting charter schools for ad-  
12          dressing the costs of acquiring, constructing, and  
13          renovating facilities.

14          “(2) GRANTS TO ELIGIBLE ENTITIES.—

15                 “(A) GRANTS.—Subject only to subpara-  
16                 graph (E), the Secretary shall award not less  
17                 than three grants to eligible entities that have  
18                 submitted applications that have been approved  
19                 under this subsection for use to demonstrate in-  
20                 novative methods of assisting charter schools in  
21                 addressing the cost of acquiring, constructing,  
22                 and renovating facilities by enhancing the avail-  
23                 ability of loans or bond financing.

24                 “(B) ELIGIBILITY.—For purposes of this  
25                 subsection, an eligible entity is—

1 “(i) a public entity, such as a State or  
2 local governmental entity;

3 “(ii) a private nonprofit entity; or

4 “(iii) a consortium of entities de-  
5 scribed in clauses (i) or (ii).

6 “(C) GRANTEE SELECTION.—

7 “(i) EVALUATION OF APPLICATION.—

8 The Secretary shall evaluate each applica-  
9 tion submitted under paragraph (3), and  
10 may approve only applications that the  
11 Secretary determines are sufficient to  
12 merit approval.

13 “(ii) PRIORITY.—In evaluating each  
14 application, the Secretary shall give pri-  
15 ority to the applications of eligible entities  
16 that propose to use at least 65 percent of  
17 the amounts received from a grant under  
18 this subsection to fund modernization, ren-  
19 ovation, repair, or construction projects  
20 consistent with the applicable provisions of  
21 any one of the green building certification  
22 programs specified in paragraph (4)(B)(i).

23 “(iii) DISTRIBUTION OF GRANTS.—If  
24 a sufficient number of applications are  
25 submitted that the Secretary determines

1 are of sufficient quality to merit approval,  
2 the Secretary shall award at least one  
3 grant to an eligible entity described in sub-  
4 paragraph (A)(i), at least one grant to an  
5 eligible entity described in paragraph  
6 (A)(ii), and at least one grant to an eligi-  
7 ble entity described in paragraph (A)(iii).

8 “(D) GRANT CHARACTERISTICS.—Grants  
9 under this subsection shall be of a sufficient  
10 size, scope, and quality so as to ensure an effec-  
11 tive demonstration of an innovative means of  
12 enhancing credit for the financing of charter  
13 school acquisition, construction, or renovation.

14 “(E) SPECIAL RULE.—If the Secretary de-  
15 termines that the funds made available under  
16 this subsection are insufficient to permit the  
17 Secretary to award three or more grants in ac-  
18 cordance with subparagraphs (A), (C), and (D),  
19 the requirement to award three grants under  
20 subparagraph (A) and the requirements related  
21 to the distribution of grants under subpara-  
22 graph (C)(iii) shall not apply, and the Secretary  
23 may determine the appropriate number of  
24 grants to be awarded in accordance with sub-  
25 paragraph (D).

1 “(3) APPLICATIONS.—

2 “(A) IN GENERAL.—To be eligible to re-  
3 ceive a grant under this subsection, an eligible  
4 entity shall submit to the Secretary an applica-  
5 tion in such form as the Secretary may reason-  
6 ably require.

7 “(B) CONTENTS.—An application sub-  
8 mitted under subparagraph (A) shall contain—

9 “(i) a statement identifying the activi-  
10 ties the eligible entity proposes to under-  
11 take with funds received under this sub-  
12 section, including the methods such entity  
13 shall use to determine which charter  
14 schools receive assistance, and how much  
15 and what types of assistance charter  
16 schools shall receive;

17 “(ii) a description of the involvement  
18 of charter schools in the development of  
19 such application and the design of the pro-  
20 posed activities described in such applica-  
21 tion;

22 “(iii) a description of the expertise of  
23 the eligible entity in capital market financ-  
24 ing;

1 “(iv) a description of how the pro-  
2 posed activities leverage the maximum  
3 amount of private-sector capital relative to  
4 the amount of government funding used  
5 and how such activities otherwise enhance  
6 credit available to charter schools, includ-  
7 ing how the eligible entity plans to offer a  
8 combination of financing rates and terms  
9 more favorable than such rates and terms  
10 that a charter school could receive without  
11 assistance under this subsection;

12 “(v) a description of how the eligible  
13 entity possesses sufficient expertise in edu-  
14 cation to evaluate the likelihood of success  
15 of a charter school program for which fa-  
16 cilities financing is sought;

17 “(vi) in the case of an application  
18 submitted by a State governmental entity,  
19 a description of the actions that the entity  
20 has taken, or intends to take, to ensure  
21 that charter schools within the State re-  
22 ceive the funding the charter schools need  
23 to have adequate facilities; and

24 “(vii) such other information as the  
25 Secretary may reasonably require.

1 “(4) CHARTER SCHOOL OBJECTIVES.—

2 “(A) IN GENERAL.—Subject to subpara-  
3 graph (B), an eligible entity receiving a grant  
4 under this subsection shall use the funds depos-  
5 ited in the reserve account established under  
6 paragraph (5)(A) to assist one or more charter  
7 schools to access private-sector capital to ac-  
8 complish one or both of the following objectives:

9 “(i) The acquisition (by purchase,  
10 lease, donation, or otherwise) of an interest  
11 (including an interest held by a third party  
12 for the benefit of a charter school) in im-  
13 proved or unimproved real property that is  
14 necessary to commence or continue the op-  
15 eration of a charter school.

16 “(ii) The construction of new facilities  
17 (including predevelopment costs), or the  
18 renovation, repair, or alteration of existing  
19 facilities, necessary to commence or con-  
20 tinue the operation of a charter school.

21 “(B) CONDITION.—

22 “(i) IN GENERAL.—Except as pro-  
23 vided in clause (ii), as a condition of re-  
24 ceiving a grant under this subsection, an  
25 eligible entity shall agree to use not less

1 than 50 percent of the amounts received  
2 from a grant under this subsection to fund  
3 projects consistent with the applicable pro-  
4 visions of any one of the following green  
5 building certification programs:

6 “(I) The United States Green  
7 Building Council Leadership in En-  
8 ergy and Environmental Design green  
9 building rating standard referred to  
10 as LEED Green Building Rating Sys-  
11 tem.

12 “(II) The Energy Star program  
13 of the United States Department of  
14 Energy and the United States Envi-  
15 ronmental Protection Agency.

16 “(III) The CHPS green building  
17 rating program developed by the Col-  
18 laborative for High Performance  
19 Schools.

20 “(IV) The Green Building Initia-  
21 tive environmental design and rating  
22 system referred to as Green Globes.

23 “(V) Any other program adopted  
24 by a State or entity within a State  
25 having authority over a local edu-



1                    cational agency that provides for  
2                    green building certification.

3                    “(ii) SPECIAL RULE.—The condition  
4                    under clause (i) shall not apply if—

5                    “(I) the Secretary waives such  
6                    condition upon application to the Sec-  
7                    retary for such waiver by the eligible  
8                    entity; or

9                    “(II) compliance with such condi-  
10                    tion causes the cost of a project fund-  
11                    ed under the grant to increase by  
12                    more than 10 percent.

13                    “(5) RESERVE ACCOUNT.—

14                    “(A) USE OF FUNDS.—To assist charter  
15                    schools to accomplish the objectives described in  
16                    paragraph (4), an eligible entity receiving a  
17                    grant under this subsection shall, in accordance  
18                    with State and local law, directly or indirectly,  
19                    alone or in collaboration with others, deposit  
20                    the funds received under this subsection (other  
21                    than funds used for administrative costs in ac-  
22                    cordance with paragraph (6)) in a reserve ac-  
23                    count established and maintained by the eligible  
24                    entity. Amounts deposited in such account shall  
25                    be used by the eligible entity for the objectives

described in paragraph (4) through one or more  
of the following methods:

“(i) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein.

“(ii) Guaranteeing and insuring leases of personal and real property.

“(iii) Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, charter schools.

“(iv) Facilitating the issuance of bonds by charter schools, or by other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (including the recruitment of bond counsel, underwriters, and potential investors and the consolidation of multiple charter school projects within a single bond issue).

“(B) INVESTMENT.—Funds received under this subsection and deposited in the reserve account established under subparagraph (A) shall be invested in obligations issued or guaranteed

1 by the United States or a State, or in other  
2 similarly low-risk securities.

3 “(C) REINVESTMENT OF EARNINGS.—Any  
4 earnings on funds received under this sub-  
5 section shall be deposited in the reserve account  
6 established under subparagraph (A) and used in  
7 accordance with such subparagraph.

8 “(6) LIMITATION AND ADMINISTRATIVE  
9 COSTS.—An eligible entity may use not more than  
10 2.5 percent of the funds received under this sub-  
11 section for the administrative costs of carrying out  
12 this subsection.

13 “(7) AUDITS AND REPORTS.—

14 “(A) FINANCIAL RECORD MAINTENANCE  
15 AND AUDIT.—The financial records of each eli-  
16 gible entity receiving a grant under this sub-  
17 section shall be maintained in accordance with  
18 generally accepted accounting principles and  
19 shall be audited by an independent public ac-  
20 countant.

21 “(B) REPORTS.—

22 “(i) GRANTEE ANNUAL REPORTS.—  
23 Each eligible entity receiving a grant under  
24 this subsection shall annually submit to the

1 Secretary a report of its operations and ac-  
2 tivities under this subsection.

3 “(ii) CONTENTS.—Each annual report  
4 submitted under clause (i) shall include—

5 “(I) a copy of the most recent fi-  
6 nancial statements of the eligible enti-  
7 ty, and any accompanying opinion on  
8 such statements, prepared by the  
9 independent public accountant review-  
10 ing the financial records of the eligible  
11 entity;

12 “(II) a copy of any report made  
13 on the audit of the financial records  
14 of the eligible entity that was con-  
15 ducted under subparagraph (A) dur-  
16 ing the annual reporting period;

17 “(III) an evaluation by the eligi-  
18 ble entity of the effectiveness of its  
19 use of the funds provided under this  
20 subsection in leveraging private funds;

21 “(IV) a listing and description of  
22 the charter schools served by the eligi-  
23 ble entity during the annual reporting  
24 period, including the amount of funds  
25 used by each charter school and the

1 type of project facilitated by the fund-  
2 ing;

3 “(V) a description of the activi-  
4 ties carried out by the eligible entity  
5 to assist charter schools in meeting  
6 the objectives set forth in paragraph  
7 (4); and

8 “(VI) a description of the charac-  
9 teristics of lenders and other financial  
10 institutions participating in the activi-  
11 ties undertaken by the eligible entity  
12 under this subsection during the re-  
13 porting period.

14 “(iii) SECRETARIAL REPORT.—The  
15 Secretary shall review the reports sub-  
16 mitted under clause (i) and shall provide a  
17 comprehensive annual report to the Con-  
18 gress on the activities conducted under this  
19 subsection.

20 “(8) NO FULL FAITH AND CREDIT FOR GRANT-  
21 EE OBLIGATIONS.—No financial obligation of an eli-  
22 gible entity entered into pursuant to this subsection  
23 (such as an obligation under a guarantee, bond,  
24 note, evidence of debt, or loan) shall be an obligation  
25 of, or guaranteed in any respect by, the United

1 States. The full faith and credit of the United States  
2 is not pledged to the payment of funds which may  
3 be required to be paid under any obligation made by  
4 an eligible entity pursuant to any provision of this  
5 subsection.

6 “(9) RECOVERY OF FUNDS.—

7 “(A) IN GENERAL.—The Secretary, in ac-  
8 cordance with chapter 37 of title 31, United  
9 States Code, shall collect—

10 “(i) all of the funds in a reserve ac-  
11 count established by an eligible entity  
12 under paragraph (5)(A) if the Secretary  
13 determines, not earlier than 2 years after  
14 the date on which the eligible entity first  
15 received funds under this subsection, that  
16 the eligible entity has failed to make sub-  
17 stantial progress in carrying out the pur-  
18 poses described in such paragraph; or

19 “(ii) all or a portion of the funds in  
20 a reserve account established by an eligible  
21 entity under such paragraph if the Sec-  
22 retary determines that the eligible entity  
23 has permanently ceased to use all or a por-  
24 tion of the funds in such account to accom-

1           publish any purpose described in such para-  
2           graph.

3           “(B) LIMITATION.—The Secretary shall  
4           not exercise the authority under subparagraph  
5           (A) to collect from any eligible entity any funds  
6           that are being properly used to achieve one or  
7           more of the purposes described in paragraph  
8           (5)(A).

9           “(C) PROCEDURES.—The provisions of  
10          sections 451, 452, and 458 of the General Edu-  
11          cation Provisions Act (20 U.S.C. 1234, 1234a,  
12          and 1234g) shall apply to the recovery of funds  
13          under subparagraph (A).

14          “(D) OTHER AUTHORITY TO RECOVER  
15          FUNDS.—This paragraph shall not be construed  
16          to impair or affect the authority of the Sec-  
17          retary to recover funds under part D of the  
18          General Education Provisions Act.”.

19          (b) CONFORMING AMENDMENTS.—Part B of title V  
20          of such Act (20 U.S.C. 7221 et seq.) is amended—

21                 (1) by striking subpart 2;

22                 (2) by redesignating subpart 3 as subpart 2;

23                 (3) by redesignating sections 5241 through  
24                 5248 as sections 5231 through 5238, respectively;

25                 and

1           (4) by amending the items of the table of con-  
 2           tents of such Act that follow subpart 1 to read as  
 3           follows:

“SUBPART 2—VOLUNTARY PUBLIC SCHOOL CHOICE PROGRAMS

“Sec. 5231. Grants.

“Sec. 5232. Uses of funds.

“Sec. 5233. Applications.

“Sec. 5234. Priorities.

“Sec. 5235. Requirements and voluntary participation.

“Sec. 5236. Evaluations.

“Sec. 5237. Definitions.

“Sec. 5238. Authorization of appropriations.”.

4 **SEC. 3. FUNDING.**

5           (a) AUTHORIZATION OF APPROPRIATIONS.—Section  
 6 5211 of the Elementary and Secondary Education Act of  
 7 1965 (20 U.S.C. 7221j) is amended to read as follows:

8 **“SEC. 5211. AUTHORIZATION OF APPROPRIATIONS.**

9           “(a) IN GENERAL.—There are authorized to be ap-  
 10 propriated to carry out this subpart \$750,000,000 for fis-  
 11 cal year 2011 and such sums as may be necessary for each  
 12 of the 5 succeeding fiscal years.

13           “(b) ALLOCATION.—In allocating funds made avail-  
 14 able pursuant to subsection (a), for any fiscal year, the  
 15 Secretary shall consider—

16                   “(1) the relative need for assistance under the  
 17 programs established under sections 5202 and 5205;  
 18 and

19                   “(2) the relative quality of the applications sub-  
 20 mitted for grants funded under such sections.”.

21           (b) CONFORMING AMENDMENTS.—



1           (1) PRIORITY TREATMENT.—Section 5202(e)(1)  
2       of such Act (20 U.S.C. 7221a(e)(1)) is amended by  
3       striking “5211 (other than funds reserved to carry  
4       out section 5205(b)),” and inserting “5211,”.

5           (2) NATIONAL ACTIVITIES.—Section 5205 of  
6       such Act (20 U.S.C. 7221d) is amended—

7           (A) in subsection (a), in the matter pre-  
8       ceding paragraph (1), by striking “reserve for  
9       each fiscal year the greater of 5 percent or  
10      \$5,000,000 of the amount appropriated to carry  
11      out this subpart, except that in no fiscal year  
12      shall the total amount so reserved exceed  
13      \$8,000,000, to”; and

14          (B) in subsection (b)(2)(A), by striking  
15      “From the amount made available to carry out  
16      this subsection under paragraphs (2) and  
17      (3)(B) of section 5211(b) for any fiscal year,  
18      the” and inserting “The”.

○