

112TH CONGRESS
2D SESSION

H. R. 5546

To amend the Elementary and Secondary Education Act of 1965 to provide States and high-need local educational agencies with flexibility in using Federal funds provided under such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2012

Mr. BACA introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Elementary and Secondary Education Act of 1965 to provide States and high-need local educational agencies with flexibility in using Federal funds provided under such Act, 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 The Act may be cited as the “Relief for Educators
5 To Adjust if Necessary Act” or the “RETAIN Act”.

1 **SEC. 2. FLEXIBILITY TO USE FEDERAL FUNDS.**

2 (a) IN GENERAL.—Subpart 2 of part A of title VI
3 of the Elementary and Secondary Education Act of 1965
4 (20 U.S.C. 7305 et seq.) is amended to read as follows:

5 **“Subpart 2—Funding Flexibility for States and High-
6 Need Local Educational Agencies**

7 **“SEC. 6121. SHORT TITLE.**

8 “This subpart may be cited as the ‘State and Local
9 Funding Flexibility Act’.

10 **“SEC. 6122. PURPOSE.**

11 “The purpose of this subpart is to allow States and
12 high-need local educational agencies the flexibility to—

13 “(1) design flexible programs that use Federal
14 funds to support student achievement for all stu-
15 dents, including students most at risk of failing to
16 meet the State’s academic achievement standards;
17 and

18 “(2) extend and enhance the funding flexibility
19 provided to rural local educational agencies under
20 section 6211 to all State educational agencies and
21 local educational agencies by providing such agencies
22 flexibility in using Federal formula funds received to
23 prevent the layoff or termination of teachers or
24 other staff.

1 **“SEC. 6123. FLEXIBILITY TO USE FEDERAL FUNDS.**

2 “(a) ALTERNATIVE USES OF FEDERAL FUNDS FOR
3 STATE EDUCATIONAL AGENCIES.—

4 “(1) IN GENERAL.—Subject to subsections (c)
5 and (d) and notwithstanding any other provision of
6 law, a State educational agency may use the applica-
7 ble funding that the agency receives for a fiscal year
8 to provide funds to high-need local educational agen-
9 cies under the jurisdiction of the State educational
10 agency to prevent the layoff or termination of teach-
11 ers or other staff in such local educational agencies.

12 “(2) NOTIFICATION.—Not later than June 1 of
13 each year, a State educational agency shall notify
14 the Secretary of the State educational agency’s in-
15 tention to use the applicable funding for the alter-
16 native uses under paragraph (1).

17 “(3) APPLICABLE FUNDING DEFINED.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), in this subsection, the term
20 ‘applicable funding’ means funds provided to
21 carry out State activities under one or more of
22 the following provisions:

23 “(i) Section 1003(g)(2).

24 “(ii) Section 1004.

25 “(iii) Subpart I of Part B of title I.

26 “(iv) Part C of title I.

1 “(v) Part D of title I.

2 “(vi) Part A of title II.

3 “(vii) Part B of title II.

4 “(viii) Part A of title III.

5 “(ix) Part B of title IV.

6 “(x) Part A of title V.

7 “(xi) Title I of Public Law 111–226.

8 “(B) LIMITATION.—In this subsection, the
9 term ‘applicable funding’ does not include funds
10 provided under any of the provisions listed in
11 subparagraph (A) that State educational agen-
12 cies are required by this Act—

13 “(i) to reserve, allocate, or spend for
14 required activities;

15 “(ii) to allot or award to local edu-
16 cational agencies or other entities eligible
17 to receive such funds; or

18 “(iii) to use for technical assistance or
19 monitoring.

20 “(4) DISBURSEMENT.—The Secretary shall dis-
21 burse the applicable funding to State educational
22 agencies for alternative uses under paragraph (1) for
23 a fiscal year at the same time as the Secretary dis-
24 burses the applicable funding to State educational

1 agencies that do not intend to use the applicable
2 funding for such alternative uses for the fiscal year.

3 “(b) ALTERNATIVE USES OF FEDERAL FUNDS FOR
4 HIGH-NEED LOCAL EDUCATIONAL AGENCIES.—

5 “(1) IN GENERAL.—Subject to subsections (c)
6 and (d) and notwithstanding any other provision of
7 law, a high-need local educational agency may use
8 the applicable funding that the agency receives for
9 a fiscal year to prevent the layoff or termination of
10 teachers or other staff in the agency.

11 “(2) NOTIFICATION.—A high-local educational
12 agency shall notify the State educational agency of
13 the local educational agency’s intention to use the
14 applicable funding for the alternative uses under
15 paragraph (1) by a date that is established by the
16 State educational agency for the notification.

17 “(3) APPLICABLE FUNDING DEFINED.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), in this subsection, the term
20 ‘applicable funding’ means funds provided to
21 carry out local activities under one or more of
22 the following provisions:

23 “(i) Part A of title I.

24 “(ii) Part C of title I.

25 “(iii) Part D of title I.

1 “(iv) Part A of title II.

2 “(v) Part A of title III.

3 “(vi) Part A of title V.

4 “(vii) Part A of title VII.

5 “(viii) Title I of Public Law 111–226.

6 “(B) LIMITATION.—In this subsection, the
7 term ‘applicable funding’ does not include funds
8 provided under any of the provisions listed in
9 subparagraph (A) that high-need local edu-
10 cational agencies are required by this Act—

11 “(i) to reserve, allocate, or spend for
12 required activities;

13 “(ii) to allot or award to entities eligi-
14 ble to receive such funds; or

15 “(iii) to use for technical assistance or
16 monitoring.

17 “(4) DISBURSEMENT.—Each State educational
18 agency that receives applicable funding for a fiscal
19 year shall disburse the applicable funding to local
20 educational agencies for alternative uses under para-
21 graph (1) for the fiscal year at the same time as the
22 State educational agency disburses the applicable
23 funding to high-need local educational agencies that
24 do not intend to use the applicable funding for such
25 alternative uses for the fiscal year.

1 “(c) RULE FOR ADMINISTRATIVE COSTS.—A State
 2 educational agency or a high-need local educational agency
 3 may only use applicable funding (as defined in subsection
 4 (a)(3) or (b)(3), respectively) for administrative costs in-
 5 curred in carrying out a provision listed in subsection
 6 (a)(1) or (b)(1), respectively, to the extent that the agen-
 7 cy, in the absence of this section, could have used funds
 8 for administrative costs with respect to a program listed
 9 in subsection (a)(3) or (b)(3), respectively.

10 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
 11 tion shall be construed to relieve a State educational agen-
 12 cy or local educational agency of any requirements relating
 13 to—

14 “(1) maintenance of effort;

15 “(2) use of Federal funds to supplement, not
 16 supplant, non-Federal funds;

17 “(3) comparability of services;

18 “(4) equitable participation of private school
 19 students and teachers;

20 “(5) applicable civil rights requirements;

21 “(6) the selection of school attendance areas or
 22 schools under subsections (a) and (b), and alloca-
 23 tions to such areas or schools under subsection (c),
 24 of section 1113;

25 “(7) section 1111;

1 “(8) section 1116; or

2 “(9) section 3122.

3 “(e) DEFINITIONS.—For purposes of this subpart:

4 “(1) HIGH-NEED LOCAL EDUCATIONAL AGEN-
5 CY.—The term ‘high-need local educational agency’
6 means a local educational agency—

7 “(A)(i) that serves not fewer than 10,000
8 children from families with incomes below the
9 poverty line;

10 “(ii) for which not less than 20 percent of
11 the children served by the agency are from fam-
12 ilies with incomes below the poverty line; or

13 “(iii) which has a teacher-to-student ratio
14 of 1:25; and

15 “(B)(i) for which there is a high percent-
16 age of teachers not teaching in the academic
17 subjects or grade levels that the teachers were
18 trained to teach; or

19 “(ii) for which there is a high percentage
20 of teachers with emergency, provisional, or tem-
21 porary certification or licensing.

22 “(2) OTHER STAFF.—The term ‘other staff’
23 does not include administrators or administrative
24 personnel.”.

1 (b) CONFORMING AMENDMENT.—The table of con-
2 tents of the Elementary and Secondary Education Act of
3 1965 (20 U.S.C. 6301 et seq.) is amended by striking the
4 items relating to subpart 2 of part A of title VI and insert-
5 ing the following:

 “Subpart 2—Funding Flexibility for State and Local Educational Agencies

 “Sec. 6121. Short title.

 “Sec. 6122. Purpose.

 “Sec. 6123. Flexibility to use Federal funds.”.

