

105TH CONGRESS
1ST SESSION

S. 1472

To amend the Internal Revenue Code of 1986 to provide a tax credit for public elementary and secondary school construction, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 1997

Ms. MOSELEY-BRAUN (for herself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a tax credit for public elementary and secondary school construction, 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 “School Repair and
5 Construction Act of 1997”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act to help school districts
8 to improve their crumbling and overcrowded school facili-
9 ties through the use of Federal tax credits.

1 **SEC. 3. TAX CREDIT FOR PUBLIC ELEMENTARY AND**
 2 **SECONDARY SCHOOL CONSTRUCTION.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
 4 chapter A of chapter 1 of the Internal Revenue Code of
 5 1986 (relating to general business credits) is amended by
 6 adding at the end the following new section:

7 **“SEC. 45D. CREDIT FOR PUBLIC ELEMENTARY AND**
 8 **SECONDARY SCHOOL CONSTRUCTION.**

9 “(a) IN GENERAL.—For purposes of section 38, the
 10 amount of the school construction credit determined under
 11 this section for an eligible taxpayer for any taxable year
 12 with respect to an eligible school construction project shall
 13 be an amount equal to the lesser of—

14 “(1) the applicable percentage of the qualified
 15 school construction costs, or

16 “(2) the excess (if any) of—

17 “(A) the taxpayer’s allocable school con-
 18 struction amount with respect to such project
 19 under subsection (d), over

20 “(B) any portion of such allocable amount
 21 used under this section for preceding taxable
 22 years.

23 “(b) ELIGIBLE TAXPAYER; ELIGIBLE SCHOOL CON-
 24 STRUCTION PROJECT.—For purposes of this section—

25 “(1) ELIGIBLE TAXPAYER.—The term ‘eligible
 26 taxpayer’ means any person which—

1 “(A) has entered into a contract with a
2 local educational agency for the performance of
3 construction or related activities in connection
4 with an eligible school construction project, and

5 “(B) has received an allocable school con-
6 struction amount with respect to such contract
7 under subsection (d).

8 “(2) ELIGIBLE SCHOOL CONSTRUCTION
9 PROJECT.—

10 “(A) IN GENERAL.—The term ‘eligible
11 school construction project’ means any project
12 related to a public elementary school or second-
13 ary school that is conducted for 1 or more of
14 the following purposes:

15 “(i) Construction of school facilities in
16 order to ensure the health and safety of all
17 students, which may include—

18 “(I) the removal of environ-
19 mental hazards,

20 “(II) improvements in air qual-
21 ity, plumbing, lighting, heating and
22 air conditioning, electrical systems, or
23 basic school infrastructure, and

24 “(III) building improvements
25 that increase school safety.

1 “(ii) Construction activities needed to
2 meet the requirements of section 504 of
3 the Rehabilitation Act of 1973 (29 U.S.C.
4 794) or of the Americans with Disabilities
5 Act of 1990 (42 U.S.C. 12101 et seq.).

6 “(iii) Construction activities that in-
7 crease the energy efficiency of school
8 facilities.

9 “(iv) Construction that facilitates the
10 use of modern educational technologies.

11 “(v) Construction of new school facili-
12 ties that are needed to accommodate
13 growth in school enrollments.

14 “(vi) Such other construction as the
15 Secretary of Education determines
16 appropriate.

17 “(B) SPECIAL RULES.—For purposes of
18 this paragraph—

19 “(i) the term ‘construction’ includes
20 reconstruction, renovation, or other sub-
21 stantial rehabilitation, and

22 “(ii) an eligible school construction
23 project shall not include the costs of ac-
24 quiring land (or any costs related to such
25 acquisition).

1 “(c) QUALIFIED SCHOOL CONSTRUCTION COSTS; AP-
2 PLICABLE PERCENTAGE.—For purposes of this section—

3 “(1) IN GENERAL.—The term ‘qualified school
4 construction costs’ means the aggregate amounts
5 paid to an eligible taxpayer during the taxable year
6 under the contract described in subsection (b)(1).

7 “(2) APPLICABLE PERCENTAGE.—The term
8 ‘applicable percentage’ means, in the case of an eli-
9 gible school construction project related to a local
10 educational agency, the higher of the following
11 percentages:

12 “(A) If the local educational agency has a
13 percentage or number of children described in
14 clause (i)(I) or (ii)(I) of section 1125(c)(2)(A)
15 of the Elementary and Secondary Education
16 Act of 1965 (20 U.S.C. 6335(c)(2)(A)), the ap-
17 plicable percentage is 10 percent.

18 “(B) If the local educational agency has a
19 percentage or number of children described in
20 clause (i)(II) or (ii)(II) of such section, the ap-
21 plicable percentage is 15 percent.

22 “(C) If the local educational agency has a
23 percentage or number of children described in
24 clause (i)(III) or (ii)(III) of such section, the
25 applicable percentage is 20 percent.

1 “(D) If the local educational agency has a
2 percentage or number of children described in
3 clause (i)(IV) or (ii)(IV) of such section, the ap-
4 plicable percentage is 25 percent.

5 “(E) If the local educational agency has a
6 percentage or number of children described in
7 clause (i)(V) or (ii)(V) of such section, the ap-
8 plicable percentage is 30 percent.

9 “(d) ALLOCABLE AMOUNT.—For purposes of this
10 section—

11 “(1) IN GENERAL.—Subject to paragraph (3), a
12 local educational agency may allocate to any person
13 a school construction amount with respect to any eli-
14 gible school construction project.

15 “(2) TIME FOR MAKING ALLOCATION.—An allo-
16 cation shall be taken into account under paragraph
17 (1) only if the allocation is made at the time the
18 contract described in subsection (b)(1) is entered
19 into (or such later time as the Secretary may by reg-
20 ulation allow).

21 “(3) COORDINATION WITH STATE PROGRAM.—
22 A local educational agency may not allocate school
23 construction amounts for any calendar year—

24 “(A) which in the aggregate exceed the
25 amount of the State school construction ceiling

1 allocated to such agency for such calendar year
 2 under subsection (e), or

3 “(B) if such allocation is inconsistent with
 4 any specific allocation required by the State or
 5 this section.

6 “(e) STATE CEILINGS AND ALLOCATION.—

7 “(1) IN GENERAL.—A State educational agency
 8 shall allocate to local educational agencies within the
 9 State for any calendar year a portion of the State
 10 school construction ceiling for such year. Such allo-
 11 cations shall be consistent with the State application
 12 which has been approved under subsection (f) and
 13 with any requirement of this section.

14 “(2) STATE SCHOOL CONSTRUCTION CEILING.—

15 “(A) IN GENERAL.—The State school con-
 16 struction ceiling for any State for any calendar
 17 year shall be an amount equal to the State’s al-
 18 locable share of the national school construction
 19 amount.

20 “(B) STATE’S ALLOCABLE SHARE.—The
 21 State’s allocable share of the national school
 22 construction amount for a fiscal year shall bear
 23 the same relation to the national school con-
 24 struction amount for the fiscal year as the
 25 amount the State received under section 1124

1 of the Elementary and Secondary Education
2 Act of 1965 (20 U.S.C. 6333) for the preceding
3 fiscal year bears to the total amount received by
4 all States under such section for such preceding
5 fiscal year.

6 “(C) NATIONAL SCHOOL CONSTRUCTION
7 AMOUNT.—The national school construction
8 amount for any calendar year is the lesser of—
9 “(i) \$1,000,000,000, or
10 “(ii) the amount made available for
11 such year under the School Infrastructure
12 Improvement Trust Fund established
13 under section 9512,
14 reduced by any amount described in paragraph
15 (3).

16 “(3) SPECIAL ALLOCATIONS FOR INDIAN
17 TRIBES AND TERRITORIES.—

18 “(A) ALLOCATION TO INDIAN TRIBES.—
19 The national school construction amount under
20 paragraph (2)(C) shall be reduced by 1.5 per-
21 cent for each calendar year and the Secretary
22 of Interior shall allocate such amount among
23 Indian tribes according to their respective need
24 for assistance under this section.

1 “(B) ALLOCATION TO TERRITORIES.—The
2 national school construction amount under
3 paragraph (2)(C) shall be reduced by 0.5 per-
4 cent for each calendar year and the Secretary
5 of Education shall allocate such amount among
6 the territories according to their respective need
7 for assistance under this section.

8 “(4) REALLOCATION.—If the Secretary of Edu-
9 cation determines that a State is not making satis-
10 factory progress in carrying out the State’s plan for
11 the use of funds allocated to the State under this
12 section, the Secretary may reallocate all or part of
13 the State school construction ceiling to 1 or more
14 other States that are making satisfactory progress.

15 “(e) STATE APPLICATION.—

16 “(1) IN GENERAL.—A State educational agency
17 shall not be eligible to allocate any amount to a local
18 educational agency for any calendar year unless the
19 agency submits to the Secretary of Education (and
20 the Secretary approves) an application containing
21 such information as the Secretary may require,
22 including—

23 “(A) an estimate of the overall condition of
24 school facilities in the State, including the pro-

1 jected cost of upgrading schools to adequate
2 condition;

3 “(B) an estimate of the capacity of the
4 schools in the State to house projected student
5 enrollments, including the projected cost of ex-
6 panding school capacity to meet rising student
7 enrollment;

8 “(C) the extent to which the schools in the
9 State have the basic infrastructure elements
10 necessary to incorporate modern technology into
11 their classrooms, including the projected cost of
12 upgrading school infrastructure to enable the
13 use of modern technology in classrooms;

14 “(D) the extent to which the schools in the
15 State offer the physical infrastructure needed to
16 provide a high-quality education to all students;
17 and

18 “(E) an identification of the State agency
19 that will allocate credit amounts to local edu-
20 cational agencies within the State.

21 “(2) SPECIFIC ITEMS IN ALLOCATION.—The
22 State shall include in the State’s application the
23 process by which the State will allocate the credits
24 to local educational agencies within the State. The

1 State shall consider in its allocation process the ex-
2 tent to which—

3 “(A) the school district served by the local
4 educational agency has—

5 “(i) a high number or percentage of
6 the total number of children aged 5 to 17,
7 inclusive, in the State who are counted
8 under section 1124(e) of the Elementary
9 and Secondary Education Act of 1965 (20
10 U.S.C. 6333(c)); or

11 “(ii) a high percentage of the total
12 number of low-income residents in the
13 State;

14 “(B) the local educational agency lacks the
15 fiscal capacity, including the ability to raise
16 funds through the full use of such agency’s
17 bonding capacity and otherwise, to undertake
18 the eligible school construction project without
19 assistance;

20 “(C) the local area makes an unusually
21 high local tax effort, or has a history of failed
22 attempts to pass bond referenda;

23 “(D) the local area contains a significant
24 percentage of federally owned land that is not
25 subject to local taxation;

1 “(E) the threat the condition of the phys-
2 ical facility poses to the safety and well-being of
3 students;

4 “(F) there is a demonstrated need for the
5 construction, reconstruction, renovation, or re-
6 habilitation based on the condition of the
7 facility;

8 “(G) the extent to which the facility is
9 overcrowded; and

10 “(H) the extent to which assistance pro-
11 vided will be used to support eligible school con-
12 struction projects that would not otherwise be
13 possible to undertake.

14 “(3) IDENTIFICATION OF AREAS.—The State
15 shall include in the State’s application the process
16 by which the State will identify the areas of greatest
17 needs (whether those areas are in large urban cen-
18 ters, pockets of rural poverty, fast-growing suburbs,
19 or elsewhere) and how the State intends to meet the
20 needs of those areas.

21 “(4) ALLOCATIONS ON BASIS OF APPLICA-
22 TION.—The Secretary of Education shall evaluate
23 applications submitted under this subsection and
24 shall approve any such application which meets the
25 requirements of this section.

1 “(g) REQUIRED ALLOCATIONS.—Notwithstanding
2 any process for allocation under a State application under
3 subsection (f), in the case of a State which contains 1 or
4 more of the 100 school districts within the United States
5 which contains the largest number of poor children (as de-
6 termined by the Secretary of Education), the State shall
7 allocate each calendar year to the local educational agency
8 serving such districts that portion of the State school con-
9 struction ceiling which bears the same ratio to such ceiling
10 as the number of children in such district for the preced-
11 ing calendar year who are counted for purposes of section
12 1124(c) of the Elementary and Secondary Education Act
13 of 1965 (20 U.S.C. 6333(e)) bears to the total number
14 of children in such State who are so counted.

15 “(h) DEFINITIONS.—For purposes of this section—

16 “(1) ELEMENTARY SCHOOL; LOCAL EDU-
17 CATIONAL AGENCY; SECONDARY SCHOOL; STATE
18 EDUCATIONAL AGENCY.—The terms ‘elementary
19 school’, ‘local educational agency’, ‘secondary
20 school’, and ‘State educational agency’ have the
21 meanings given the terms in section 14101 of the
22 Elementary and Secondary Education Act of 1965
23 (20 U.S.C. 8801).

24 “(2) TERRITORIES.—The term ‘territories’
25 means the United States Virgin Islands, Guam,

1 American Samoa, the Commonwealth of the North-
2 ern Mariana Islands, the Republic of the Marshall
3 Islands, the Federated States of Micronesia, and the
4 Republic of Palau.

5 “(3) STATE.—The term ‘State’ means each of
6 the several States of the United States, the District
7 of Columbia, and the Commonwealth of Puerto
8 Rico.”

9 (b) INCLUSION IN GENERAL BUSINESS CREDIT.—

10 (1) IN GENERAL.—Section 38(b) of the Internal
11 Revenue Code of 1986 is amended by striking
12 “plus” at the end of paragraph (11), by striking the
13 period at the end of paragraph (12) and inserting “,
14 plus”, and by adding at the end the following new
15 paragraph:

16 “(13) the school construction credit determined
17 under section 45D(a).”

18 (2) TRANSITION RULE.—Section 39(d) of such
19 Code is amended by adding at the end the following
20 new paragraph:

21 “(8) NO CARRYBACK OF SECTION 45D CREDIT
22 BEFORE ENACTMENT.—No portion of the unused
23 business credit for any taxable year which is attrib-
24 utable to the school construction credit determined
25 under section 45D may be carried back to a taxable

1 year ending before the date of the enactment of sec-
 2 tion 45D.”

3 (c) ESTABLISHMENT OF SCHOOL INFRASTRUCTURE
 4 IMPROVEMENT TRUST FUND.—

5 (1) IN GENERAL.—Subchapter A of chapter 98
 6 of the Internal Revenue Code of 1986 is amended by
 7 adding at the end the following new section:

8 **“SEC. 9512. SCHOOL INFRASTRUCTURE IMPROVEMENT**
 9 **TRUST FUND.**

10 “(a) CREATION OF TRUST FUND.—There is estab-
 11 lished in the Treasury of the United States a trust fund
 12 to be known as the ‘School Infrastructure Improvement
 13 Trust Fund’, consisting of such amounts as may be cred-
 14 ited or paid to such Trust Fund as provided in this section
 15 or section 9602(b).

16 “(b) TRANSFERS TO TRUST FUND.—

17 “(1) IN GENERAL.—There are hereby appro-
 18 priated to the Trust Fund for any calendar year an
 19 amount equal to the lesser of—

20 “(A) the revenue surplus determined under
 21 paragraph (2) for the preceding calendar year,

22 or

23 “(B) \$1,000,000,000.

1 “(2) REVENUE SURPLUS.—The revenue surplus
2 determined under this paragraph for any calendar
3 year is an amount equal to the excess (if any) of—

4 “(A) the Secretary’s estimate of revenues
5 received in the Treasury of the United States
6 for the calendar year, over

7 “(B) the amount the Director of the Con-
8 gressional Budget Office estimated would be so
9 received in the report provided to the Commit-
10 tees on the Budget of the House and the Sen-
11 ate pursuant to section 202(f)(1) of the Con-
12 gressional Budget Act of 1974.

13 “(c) EXPENDITURES FROM TRUST FUND.—Amounts
14 in the Trust Fund shall be transferred to the general fund
15 of the Treasury at such times as the Secretary determines
16 appropriate to offset any decrease in Federal revenues by
17 reason of credits allowed under section 38 which are at-
18 tributable to the school construction credit determined
19 under section 45D.”

20 (2) CONFORMING AMENDMENT.—The table of
21 section for subchapter A of chapter 98 of such Code
22 is amended by adding at the end the following new
23 item:

 “Sec. 9512. School Infrastructure Improvement Trust Fund.

24 (d) CONFORMING AMENDMENT.—The table of sec-
25 tions for subpart D of part IV of subchapter A of chapter

1 1 of the Internal Revenue Code of 1986 is amended by
2 adding at the end the following new item:

“Sec. 45D. Credit for public elementary and secondary school
construction.”

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 1997.

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