

108TH CONGRESS
2D SESSION

H. R. 4252

To amend the Elementary and Secondary Education Act of 1965 to authorize grants for the repair, renovation, alteration, and construction of public elementary and secondary school facilities.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2004

Mr. ANDREWS 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 authorize grants for the repair, renovation, alteration, and construction of public elementary and secondary school facilities.

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. SCHOOL FACILITIES INFRASTRUCTURE IM-**
4 **PROVEMENT.**

5 (a) IN GENERAL.—The Elementary and Secondary
6 Education Act of 1965 (20 U.S.C. 6301 et seq.) is amend-
7 ed by adding at the end the following:

1 **“TITLE X—SCHOOL FACILITIES**
2 **INFRASTRUCTURE IMPROVE-**
3 **MENT**

4 **“SEC. 10001. PROGRAM AUTHORIZED.**

5 “(a) IN GENERAL.—From the amount appropriated
6 for any fiscal year to carry out this title, the Secretary
7 shall award grants to States and local educational agencies
8 with applications approved under this section to carry out
9 the authorized activities described in section 10002.

10 “(b) ONE-THIRD ALLOCATED AMONG STATES.—

11 “(1) IN GENERAL.—One-third of the amount
12 appropriated for any fiscal year to carry out this
13 title shall be allocated among the States under para-
14 graph (2) by the Secretary. The amount allocated to
15 a State under the preceding sentence shall be allo-
16 cated by the State educational agency to local edu-
17 cational agencies within such State and such alloca-
18 tions may be made only if there is an approved State
19 application.

20 “(2) ALLOCATION FORMULA.—The amount to
21 be allocated under paragraph (1) for any fiscal year
22 shall be allocated among the States in proportion to
23 the respective amounts each such State received for
24 basic grants under subpart 2 of part A of title I for
25 the most recently completed fiscal year. For pur-

1 poses of the preceding sentence, basic grants attrib-
2 utable to large local educational agencies (as defined
3 in subsection (c)), and basic grants attributable to
4 high-growth local educational agencies (as defined in
5 subsection (d)), shall be disregarded.

6 “(3) MINIMUM ALLOCATIONS TO STATES.—

7 “(A) IN GENERAL.—The Secretary shall
8 adjust the allocations under this subsection for
9 any fiscal year for each State to the extent nec-
10 essary to ensure that the sum of—

11 “(i) the amount allocated to such
12 State under this subsection for such year;
13 and

14 “(ii) the aggregate amounts allocated
15 under subsections (c) and (d) to local edu-
16 cational agencies in such State for such
17 year;

18 is not less than an amount equal to such
19 State’s minimum percentage of one-third of the
20 amount appropriated for the fiscal year to carry
21 out this title.

22 “(B) MINIMUM PERCENTAGE.—A State’s
23 minimum percentage for any fiscal year is the
24 minimum percentage described in section

1 1124(d) for such State for the most recently
2 completed fiscal year.

3 “(4) ALLOCATIONS TO CERTAIN POSSES-
4 SIONS.—The amount to be allocated under para-
5 graph (1) to any outlying area shall be the amount
6 which would have been allocated if all allocations
7 under paragraph (1) were made on the basis of re-
8 spective populations of individuals below the poverty
9 line (as defined by the Office of Management and
10 Budget). In making other allocations, the amount to
11 be allocated under paragraph (1) shall be reduced by
12 the aggregate amount allocated under this para-
13 graph to the outlying areas.

14 “(5) APPROVED STATE APPLICATION.—For
15 purposes of paragraph (1), the term ‘approved State
16 application’ means an application which is approved
17 by the Secretary and which includes—

18 “(A) the results of a recent publicly avail-
19 able survey (undertaken by the State with the
20 involvement of local education officials, mem-
21 bers of the public, and experts in school con-
22 struction and management) of such State’s
23 needs for public school facilities, including de-
24 scriptions of—

1 “(i) health and safety problems at
2 such facilities;

3 “(ii) the capacity of public schools in
4 the State to house projected enrollments;
5 and

6 “(iii) the extent to which the public
7 schools in the State offer the physical in-
8 frastructure needed to provide a high-qual-
9 ity education to all students; and

10 “(B) a description of how the State will al-
11 locate to local educational agencies, or other-
12 wise use, its allocation under this subsection to
13 address the needs identified under subpara-
14 graph (A), including a description of how it
15 will—

16 “(i) give highest priority to localities
17 with the greatest needs, as demonstrated
18 by inadequate school facilities coupled with
19 a low level of resources to meet those
20 needs;

21 “(ii) use its allocation under this sub-
22 section to assist localities that lack the fis-
23 cal capacity to raise funds on their own;
24 and

1 “(iii) ensure that its allocation under
2 this subsection is used only to supplement,
3 and not supplant, the amount of school
4 construction, rehabilitation, and repair in
5 the State that would have occurred in the
6 absence of such allocation.

7 Any allocation under paragraph (1) by a State edu-
8 cation agency shall be binding if such agency reason-
9 ably determined that the allocation was in accord-
10 ance with the plan approved under this paragraph.

11 “(c) ONE-THIRD ALLOCATED AMONG LARGEST
12 SCHOOL DISTRICTS.—

13 “(1) IN GENERAL.—One-third of the amount
14 appropriated for any fiscal year to carry out this
15 title shall be allocated under paragraph (2) by the
16 Secretary among local educational agencies which
17 are large local educational agencies for such year.
18 An allocation may be made under this subsection to
19 a large local educational agency only if such agency
20 has an approved local application.

21 “(2) ALLOCATION FORMULA.—The amount to
22 be allocated under paragraph (1) for any fiscal year
23 shall be allocated among large local educational
24 agencies in proportion to the respective amounts
25 each such agency received for basic grants under

1 subpart 2 of part A of title I for the most recently
2 completed fiscal year.

3 “(3) LARGE LOCAL EDUCATIONAL AGENCY.—

4 For purposes of this section, the term ‘large local
5 educational agency’ means, with respect to a fiscal
6 year, any local educational agency (other than a
7 high-growth local educational agency, as defined in
8 subsection (d)) if such agency is—

9 “(A) among the 100 local educational
10 agencies with the largest numbers of children
11 aged 5 through 17 from families living below
12 the poverty level, as determined by the Sec-
13 retary using the most recent data available
14 from the Department of Commerce that are
15 satisfactory to the Secretary; or

16 “(B) 1 of not more than 25 local edu-
17 cational agencies (other than those described in
18 subparagraph (A)) that the Secretary deter-
19 mines (based on the most recent data available
20 satisfactory to the Secretary) are in particular
21 need of assistance, based on a low level of re-
22 sources for school construction, a high level of
23 enrollment growth, or such other factors as the
24 Secretary deems appropriate.

1 “(4) APPROVED LOCAL APPLICATION.—For
2 purposes of paragraph (1), the term ‘approved local
3 application’ means an application which is approved
4 by the Secretary and which includes—

5 “(A) the results of a recent publicly-avail-
6 able survey (undertaken by the local educational
7 agency with the involvement of school officials,
8 members of the public, and experts in school
9 construction and management) of such agency’s
10 needs for public school facilities, including de-
11 scriptions of—

12 “(i) the overall condition of the local
13 educational agency’s school facilities, in-
14 cluding health and safety problems;

15 “(ii) the capacity of the agency’s
16 schools to house projected enrollments; and

17 “(iii) the extent to which the agency’s
18 schools offer the physical infrastructure
19 needed to provide a high-quality education
20 to all students;

21 “(B) a description of how the local edu-
22 cational agency will use its allocation under this
23 subsection to address the needs identified under
24 subparagraph (A); and

1 “(C) a description of how the local edu-
2 cational agency will ensure that its allocation
3 under this subsection is used only to supple-
4 ment, and not supplant, the amount of school
5 construction, rehabilitation, or repair in the lo-
6 cality that would have occurred in the absence
7 of such allocation.

8 A rule similar to the rule of the last sentence of sub-
9 section (b)(5) shall apply for purposes of this sub-
10 section.

11 “(d) ONE-THIRD ALLOCATED AMONG HIGH-
12 GROWTH SCHOOL DISTRICTS.—

13 “(1) IN GENERAL.—One-third of the amount
14 appropriated for any fiscal year to carry out this
15 title shall be allocated under paragraph (2) by the
16 Secretary among local educational agencies which
17 are high-growth local educational agencies for such
18 year. An allocation may be made under this sub-
19 section to a high-growth local educational agency
20 only if such agency has an approved local application
21 (as defined in subsection (c)(4)). A rule similar to
22 the rule of the last sentence of subsection (b)(5)
23 shall apply for purposes of this subsection.

24 “(2) ALLOCATION FORMULA.—The amount to
25 be allocated under paragraph (1) for any fiscal year

1 shall be allocated among high-growth local edu-
2 cational agencies in proportion to the respective
3 amounts each such agency received for basic grants
4 under subpart 2 of part A of title I for the most re-
5 cently completed fiscal year.

6 “(3) HIGH-GROWTH LOCAL EDUCATIONAL
7 AGENCY.—For purposes of this section, the term
8 ‘high-growth local educational agency’ means, with
9 respect to a fiscal year, any local educational agency
10 if—

11 “(A) there has been at least a 7.5 percent
12 increase in such agency’s enrollment during the
13 5-year period ending with the preceding fiscal
14 year; and

15 “(B) such enrollment increase exceeds 150
16 students.

17 **“SEC. 10002. AUTHORIZED ACTIVITIES.**

18 “(a) IN GENERAL.—Each entity receiving a grant
19 under this title shall use the grant funds only to ensure
20 the health and safety of students through the repair, ren-
21 ovation, alteration, and construction of a public elemen-
22 tary or secondary school library, media center, or facility,
23 used for academic or vocational instruction.

24 “(b) PARTICULAR ACTIVITIES.—Subject to sub-
25 section (a), each entity receiving a grant under this title

1 may use the grant funds to meet the requirements of sec-
2 tion 504 of the Rehabilitation Act of 1973 and the Ameri-
3 cans with Disabilities Act of 1990.

4 **“SEC. 10003. GENERAL PROVISIONS.**

5 “(a) BUDGET AND ACCOUNTING.—In the perform-
6 ance of, and with respect to, the functions, powers, and
7 duties under this title, the Secretary, notwithstanding the
8 provisions of any other law, shall—

9 “(1) prepare annually and submit a budget pro-
10 gram as provided for wholly owned Government cor-
11 porations by chapter 91 of title 31, United States
12 Code; and

13 “(2) maintain a set of accounts which shall be
14 audited by the Comptroller General in accordance
15 with the provisions of chapter 35 of title 31, United
16 States Code, but such financial transactions of the
17 Secretary, as the making of loans and vouchers ap-
18 proved by the Secretary, in connection with such fi-
19 nancial transactions shall be final and conclusive
20 upon all officers of the Government.

21 “(b) USE OF FUNDS.—Funds made available to the
22 Secretary pursuant to the provisions of this title shall be
23 deposited in a checking account or accounts with the
24 Treasurer of the United States. Receipts and assets ob-
25 tained or held by the Secretary in connection with the per-

1 formance of functions under this title, and all funds avail-
2 able for carrying out the functions of the Secretary under
3 this title (including appropriations therefor, which are
4 hereby authorized), shall be available, in such amounts as
5 may from year to year be authorized by the Congress, for
6 the administrative expenses of the Secretary in connection
7 with the performance of such functions.

8 “(c) LEGAL POWERS.—In the performance of, and
9 with respect to, the functions, powers, and duties under
10 this title, the Secretary, notwithstanding the provisions of
11 any other law, may—

12 “(1) prescribe such rules and regulations as
13 may be necessary to carry out the purposes of this
14 title;

15 “(2) sue and be sued;

16 “(3) foreclose on any property or commence any
17 action to protect or enforce any right conferred upon
18 the Secretary by any law, contract, or other agree-
19 ment, and bid for and purchase at any foreclosure
20 or any other sale any property in connection with
21 which the Secretary has made a loan pursuant to
22 this title;

23 “(4) in the event of any such acquisition, not-
24 withstanding any other provision of law relating to
25 the acquisition, handling, or disposal of real property

1 by the United States, complete, administer, remodel
2 and convert, dispose of, lease, and otherwise deal
3 with, such property, but any such acquisition of real
4 property shall not deprive any State or political sub-
5 division of such State civil or criminal jurisdiction in
6 and over such property or impair the civil rights
7 under the State or local laws of the inhabitants on
8 such property;

9 “(5) sell or exchange at public or private sale,
10 or lease, real or personal property, and sell or ex-
11 change any securities or obligations, upon such
12 terms as the Secretary may fix;

13 “(6) obtain insurance against loss in connection
14 with property and other assets held; and

15 “(7) include in any contract or instrument
16 made pursuant to this title such other covenants,
17 conditions, or provisions as may be necessary to as-
18 sure that the purposes of this title will be achieved.

19 “(d) CONTRACTS FOR SUPPLIES OR SERVICES.—Sec-
20 tion 3709 of the Revised Statutes shall not apply to any
21 contract for services or supplies on account of any prop-
22 erty acquired pursuant to this title if the amount of such
23 contract does not exceed \$1,000.

24 “(e) APPLICABILITY OF GOVERNMENT CORPORATION
25 CONTROL ACT.—The provisions of section 9107(a) of title

1 31, United States Code, which are applicable to corpora-
2 tions or agencies subject to chapter 91 of such title, shall
3 also be applicable to the activities of the Secretary under
4 this title.

5 **“SEC. 10004. FAIR WAGES.**

6 “All laborers and mechanics employed by contractors
7 or subcontractors in the performance of any contract and
8 subcontract for the repair, renovation, alteration, or con-
9 struction, including painting and decorating, of any build-
10 ing or work that is financed in whole or in part by a grant
11 under this title, shall be paid wages not less than those
12 determined by the Secretary of Labor in accordance with
13 the Act of March 3, 1931 (commonly known as the Davis-
14 Bacon Act); as amended (40 U.S.C. 276a to 276a–5). The
15 Secretary of Labor shall have the authority and functions
16 set forth in reorganization plan of No. 14 of 1950 (15
17 FR 3176; 64 Stat. 1267) and section 2 of the Act of June
18 1, 1934 (commonly known as the Copeland Anti-Kickback
19 Act) as amended (40 U.S.C. 276c; 48 Stat. 948).

20 **“SEC. 10005. REQUIREMENTS.**

21 “(a) SPECIAL RULES.—

22 “(1) MAINTENANCE OF EFFORT.—An entity
23 may receive a grant under this title for any fiscal
24 year only if the Secretary finds that either the com-
25 bined fiscal effort per student or the aggregate ex-

1 penditures of that entity (or, in the case of a local
2 educational agency, that entity and the State), with
3 respect to the provision of free public education by
4 such entity for the preceding fiscal year was not less
5 than 90 percent of such combined fiscal effort or ag-
6 gregate expenditures for the fiscal year for which the
7 determination is made.

8 “(2) SUPPLEMENT NOT SUPPLANT.—An entity
9 shall use funds received under this title only to sup-
10 plement the amount of funds that would, in the ab-
11 sence of such Federal funds, be made available from
12 non-Federal sources for the repair, renovation, alter-
13 ation, and construction of school facilities used for
14 educational purposes, and not to supplant such
15 funds.

16 “(b) GENERAL LIMITATIONS.—

17 “(1) REAL PROPERTY.—No part of any grant
18 funds under this title shall be used for the acquisi-
19 tion of any interest in real property.

20 “(2) MAINTENANCE.—Nothing in this title shall
21 be construed to authorize the payment of mainte-
22 nance costs in connection with any projects con-
23 structed in whole or in part with Federal funds pro-
24 vided under this title.

1 “(3) ENVIRONMENTAL SAFEGUARDS.—All
2 projects carried out with Federal funds provided
3 under this title shall comply with all relevant Fed-
4 eral, State, and local environmental laws and regula-
5 tions.

6 “(4) ATHLETIC AND SIMILAR FACILITIES.—No
7 funds received under this title shall be used for sta-
8 diums or other facilities that are primarily used for
9 athletic contests or exhibitions or other events for
10 which admission is charged to the general public.

11 **“SEC. 10006. FEDERAL ASSESSMENT.**

12 “The Secretary shall reserve not more than 1 percent
13 of the funds appropriated to carry out this title for each
14 fiscal year—

15 “(1) to collect such data as the Secretary deter-
16 mines necessary at the school, local, and State levels;

17 “(2) to conduct studies and evaluations, includ-
18 ing national studies and evaluations, in order to—

19 “(A) monitor the progress of projects sup-
20 ported with funds provided under this title; and

21 “(B) evaluate the state of United States
22 public elementary and secondary school librar-
23 ies, media centers, and facilities; and

1 “(3) to report to the Congress regarding the
2 findings of the studies and evaluations described in
3 paragraph (2).

4 **“SEC. 10007. TREATMENT OF CHARTER SCHOOLS.**

5 “A public charter school that constitutes a local edu-
6 cational agency under State law shall be eligible for assist-
7 ance under this title under the same terms and conditions
8 as any other local educational agency.

9 **“SEC. 10008. PROMPT PAYMENT OF CONTRACTORS PER-**
10 **FORMING FEDERALLY ASSISTED WORK.**

11 “The Secretary shall ensure that recipients of grants
12 under this title promptly pay contractors performing fed-
13 erally assisted work, or pay interest penalties in the same
14 manner and to the same extent as provided in section
15 3902 of title 31, United States Code (popularly known as
16 the ‘Prompt Payment Act of 1982’).

17 **“SEC. 10009. DEFINITIONS.**

18 “For the purpose of this title—

19 “(1) the term ‘construction’ means the alter-
20 ation or renovation of a building, structure, or facil-
21 ity, including—

22 “(A) the concurrent installation of equip-
23 ment; and

24 “(B) the complete or partial replacement
25 of an existing facility, but only if such replace-

1 ment is less expensive and more cost-effective
 2 than alteration, renovation, or repair of the fa-
 3 cility;

4 “(2) the term ‘school’ means a public structure
 5 suitable for use as a classroom, laboratory, library,
 6 media center, or related facility, the primary purpose
 7 of which is the instruction of public elementary and
 8 secondary school students.”.

9 (b) CLERICAL AMENDMENT.—The table of contents
 10 for the Elementary and Secondary Education Act of 1965
 11 (20 U.S.C. 6301 et seq.) is amended by adding at the end
 12 the following:

“TITLE X—SCHOOL FACILITIES INFRASTRUCTURE
 IMPROVEMENT

“Sec. 10001. Program authorized.

“Sec. 10002. Authorized activities.

“Sec. 10003. General provisions.

“Sec. 10004. Fair wages.

“Sec. 10005. Requirements.

“Sec. 10006. Federal assessment.

“Sec. 10007. Treatment of charter schools.

“Sec. 10008. Prompt payment of contractors performing federally assisted
 work.

“Sec. 10009. Definitions.”.

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