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REPORT
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21ST CENTURY GREEN HIGH-PERFORMING PUBLIC SCHOOL FACILITIES ACT

MAY 8, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GEORGE MILLER of California, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3021]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 3021) to direct the Secretary of Education to make grants and low-interest loans to local educational agencies for the construction, modernization, or repair of public kindergarten, elementary, and secondary educational facilities, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "21st Century Green High-Performing Public School Facilities Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—GRANTS FOR MODERNIZATION, RENOVATION, OR REPAIR OF SCHOOL FACILITIES

Sec. 101. Purpose.
Sec. 102. Allocation of funds.
Sec. 103. Allowable uses of funds.

TITLE II—SUPPLEMENTAL GRANTS FOR LOUISIANA, MISSISSIPPI, AND ALABAMA

Sec. 201. Purpose.
Sec. 202. Allocation to States.
Sec. 203. Allowable uses of funds.

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TITLE III—GENERAL PROVISIONS

Sec. 301. Impermissible uses of funds.
Sec. 302. Supplement, not supplant.
Sec. 303. Maintenance of effort.
Sec. 304. Special rule on contracting.
Sec. 305. Application of GEPA.
Sec. 306. Green Schools.
Sec. 307. Reporting.
Sec. 308. Authorization of appropriations.

SEC. 2. DEFINITIONS.

In this Act:

(1) The term "Bureau-funded school" has the meaning given to such term in section 1141 of the Education Amendments of 1978 (25 U.S.C. 2021).

(2) The term "charter school" has the meaning given such term in section 5210 of the Elementary and Secondary Education Act of 1965.

(3) The term "local educational agency"—

(A) has the meaning given to that term in section 9101 of the Elementary and Secondary Education Act of 1965, and shall also include the Recovery School District of Louisiana and the New Orleans Public Schools; and

(B) includes any public charter school that constitutes a local educational agency under State law.

(4) The term "outlying area"—

(A) means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands; and

(B) includes the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(5) The term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) The term "LEED Green Building Rating System" means the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard referred to as LEED Green Building Rating System.

(7) The term "Energy Star" means the Energy Star program of the United States Department of Energy and the United States Environmental Protection Agency.

(8) The term "CHPS Criteria" means the green building rating program developed by the Collaborative for High Performance Schools.

TITLE I—GRANTS FOR MODERNIZATION, RENOVATION, OR REPAIR OF SCHOOL FACILITIES

SEC. 101. PURPOSE.

Grants under this title shall be for the purpose of modernizing, renovating, or repairing public kindergarten, elementary, and secondary educational facilities that are safe, healthy, high-performing, and up-to-date technologically.

SEC. 102. ALLOCATION OF FUNDS.

(a) RESERVATION.—From the amount appropriated to carry out this title for each fiscal year pursuant to section 308(a), the Secretary shall reserve 1 percent of such amount, consistent with the purpose described in section 101—

(1) to provide assistance to the outlying areas; and

(2) for payments to the Secretary of the Interior to provide assistance to Bureau-funded schools.

(b) ALLOCATION TO STATES.—

(1) STATE-BY-STATE ALLOCATION.—Of the amount appropriated to carry out this title for each fiscal year pursuant to section 308(a), and not reserved under subsection (a), each State shall be allocated an amount in proportion to the amount received by all local educational agencies in the State under part A of title I of the Elementary and Secondary Education Act of 1965 for the previous fiscal year relative to the total amount received by all local educational agencies in every State under such part for such fiscal year.

(2) STATE ADMINISTRATION.—A State may reserve up to 1 percent of its allocation under paragraph (1) to carry out its responsibilities under this title, including—

(A) providing technical assistance to local educational agencies;

(B) developing within 6 months of receiving its allocation under paragraph (1) a plan to develop a database that includes an inventory of public

school facilities in the State and the modernization, renovation, and repair needs of, energy use by, and the carbon footprint of such schools; and

(C) developing a school energy efficiency quality plan.

(3) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—From the amount allocated to a State under paragraph (1), each local educational agency in the State that meets the requirements of section 1112(a) of the Elementary and Secondary Education Act of 1965 shall receive an amount in proportion to the amount received by such local educational agency under part A of title I of that Act for the previous fiscal year relative to the total amount received by all local educational agencies in the State under such part for such fiscal year, except that no local educational agency that received funds under part A of title I of that Act for such fiscal year shall receive a grant of less than $5,000 in any fiscal year under this title.

(4) SPECIAL RULE.—Section 1122(c)(3) of the Elementary and Secondary Education Act of 1965 shall not apply to paragraphs (1) or (3).

(c) SPECIAL RULES.—

(1) DISTRIBUTIONS BY SECRETARY.—The Secretary shall make and distribute the reservations and allocations described in subsections (a) and (b) not later than 30 days after an appropriation of funds for this title is made.

(2) DISTRIBUTIONS BY STATES.—A State shall make and distribute the allocations described in subsection (b)(3) within 30 days of receiving such funds from the Secretary.

SEC. 103. ALLOWABLE USES OF FUNDS.

A local educational agency receiving a grant under this title may use the grant for modernization, renovation, or repair of public school facilities, including—

(1) repairing, replacing, or installing roofs, electrical wiring, plumbing systems, sewage systems, lighting systems, or components of such systems, windows, or doors;

(2) repairing, replacing, or installing heating, ventilation, air conditioning systems, or components of such systems (including insulation), including indoor air quality assessments;

(3) bringing public schools into compliance with fire and safety codes, including modernizations, renovations, and repairs that ensure that schools are prepared for emergencies;

(4) modifications necessary to make public school facilities accessible to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), except that such modifications shall not be the primary use of the grant;

(5) asbestos abatement or removal from public school facilities;

(6) implementation of measures designed to reduce or eliminate human exposure to lead-based paint hazards though methods including interim controls, abatement, or a combination of each;

(7) upgrading or installing educational technology infrastructure to ensure that students have access to up-to-date educational technology;

(8) other modernization, renovation, or repair of public school facilities to—

(A) improve teachers' ability to teach and students' ability to learn;

(B) ensure the health and safety of students and staff; or

(C) make them more energy efficient; and

(9) required environmental remediation related to school modernization, renovation, or repair described in paragraphs (1) though (8).

TITLE II—SUPPLEMENTAL GRANTS FOR LOUISIANA, MISSISSIPPI, AND ALABAMA

SEC. 201. PURPOSE.

Grants under this title shall be for the purpose of modernizing, renovating, repairing or constructing public kindergarten, elementary, and secondary educational facilities that are safe, healthy, high-performing, and up-to-date technologically in order to address such needs caused by damage resulting from Hurricane Katrina or Hurricane Rita.

SEC. 202. ALLOCATION TO STATES.

(a) STATE-BY-STATE ALLOCATION.—Of the amount appropriated to carry out this title for each fiscal year pursuant to section 308(b), the Secretary shall allocate to Louisiana, Mississippi, and Alabama an amount equal to the number of schools in each of those States that were closed for 60 days or more during the period beginning on August 29, 2005 and ending on December 31, 2005 due to Hurricane

Katrina or Hurricane Rita, relative to the number of schools in all of those States combined that were so closed.

(b) STATE ADMINISTRATION.—A State that receives funds under this title may reserve one-half of one percent of such funds for administrative purposes related to this title.

(c) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—States receiving funds under subsection (a) shall allocate such funds to local educational agencies within the State according to the criteria described in subsection (a).

(d) SPECIAL RULES.—

(1) DISTRIBUTIONS BY SECRETARY.—The Secretary shall make and distribute the allocations described in subsection (a) not later than 30 days after an appropriation of funds for this title is made.

(2) DISTRIBUTIONS BY STATES.—A State shall make and distribute the allocations described in subsection (c) within 30 days of receiving such funds from the Secretary.

SEC. 203. ALLOWABLE USES OF FUNDS.

A local educational agency receiving a grant under this title may use the grant for any of the activities described in section 103, except that an agency receiving a grant under this title also may use such grant for such activities for the construction of new public kindergarten, elementary, and secondary school facilities.

TITLE III—GENERAL PROVISIONS

SEC. 301. IMPERMISSIBLE USES OF FUNDS.

No funds received under this Act may be used for—

(1) payment of maintenance costs; or

(2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public.

SEC. 302. SUPPLEMENT, NOT SUPPLANT.

A local educational agency receiving a grant under this Act shall use such Federal funds only to supplement and not supplant the amount of funds that would, in the absence of such Federal funds, be available for modernization, renovation, and repair of public kindergarten, elementary, and secondary educational facilities.

SEC. 303. MAINTENANCE OF EFFORT.

A local educational agency may receive a grant under this Act for any fiscal year only if either the combined fiscal effort per student or the aggregate expenditures of the agency and the State involved with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

SEC. 304. SPECIAL RULE ON CONTRACTING.

Each local educational agency receiving a grant under this Act shall ensure that, if the agency carries out modernization, renovation, or repair through a contract, the process for any such contract ensures the maximum number of qualified bidders, including local, small, minority, and women- and veteran-owned businesses, through full and open competition.

SEC. 305. APPLICATION OF GEPA.

The grant programs under this Act are applicable programs (as that term is defined in section 400 of the General Education Provisions Act (20 U.S.C. 1221)) subject to section 439 of such Act (20 U.S.C. 1232b).

SEC. 306. GREEN SCHOOLS.

(a) IN GENERAL.—In a given fiscal year, a local educational agency shall use not less than the applicable percentage of funds received under this Act described in subsection (b) for public school modernization, renovation, or repairs that are—

(1) LEED Green Building Rating System-certified or consistent with any applicable provisions of the LEED Green Building Rating System;

(2) Energy Star-certified or consistent with any applicable provisions of Energy Star; or

(3) certified, designed, or verified under or meet any applicable provisions of an equivalent program to the LEED Green Building Rating System or Energy Star adopted by the State or another jurisdiction with authority over the local educational agency, such as the CHPS Criteria.

(b) APPLICABLE PERCENTAGES.—The applicable percentages described in subsection (a) are—

(1) in fiscal year 2009, 50 percent;
(2) in fiscal year 2010, 60 percent;
(3) in fiscal year 2011, 70 percent;
(4) in fiscal year 2012, 80 percent; and
(5) in fiscal year 2013, 90 percent.

(c) TECHNICAL ASSISTANCE.—The Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall provide outreach and technical assistance to States and school districts concerning the best practices in school modernization, renovation, and repair, including those related to student academic achievement and student and staff health, energy efficiency, and environmental protection.

SEC. 307. REPORTING.

(a) REPORTS BY LOCAL EDUCATIONAL AGENCIES.—Local educational agencies receiving a grant under this Act shall annually compile a report describing the projects for which such funds were used, including—

(1) the number of public schools in the agency;

(2) the number of schools in the agency with a metro-centric locale code of 41, 42, or 43 as determined by the National Center for Education Statistics and the percentage of funds received by the agency under title I or title II of this Act that were used for projects at such schools;

(3) the number of schools in the agency that are eligible for schoolwide programs under section 1114 of the Elementary and Secondary Education Act of 1965 and the percentage of funds received by the agency under title I or title II of this Act that were used for projects at such schools; and

(4) for each project—

(A) the cost;

(B) the standard described in section 306(a) with which the use of the funds complied or if the use of funds did not comply with a standard described in section 306(a), the reason such funds were not able to be used in compliance with such standards and the agency's efforts to use such funds in an environmentally sound manner; and

(C) any demonstrable or expected benefits as a result of the project (such as energy savings, improved indoor environmental quality, improved climate for teaching and learning, etc.).

(b) AVAILABILITY OF REPORTS.—A local educational agency shall—

(1) submit the report described in subsection (a) to the State educational agency, which shall compile such information and report it annually to the Secretary; and

(2) make the report described in subsection (a) publicly available, including on the agency's website.

(c) REPORTS BY SECRETARY.—Not later than December 31 of each fiscal year, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on grants made under this Act, including the information described in subsection (b)(1), the types of modernization, renovation, and repair funded, and the number of students impacted, including the number of students counted under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965.

SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

(a) TITLE I.—To carry out title I, there are authorized to be appropriated $6,400,000,000 for fiscal year 2009 and such sums as may be necessary for each of fiscal years 2010 through 2013.

(b) TITLE II.—To carry out title II, there are authorized to be appropriated $100,000,000 for each of fiscal years 2009 through 2013.

Amend the title so as to read:

A bill to direct the Secretary of Education to make grants to State educational agencies for the modernization, renovation, or repair of public kindergarten, elementary, and secondary educational facilities, and for other purposes.

I. PURPOSE

The purpose of H.R. 3021, the 21st Century Green High-Performing Public School Facilities Act, is to support States' and local educational agencies' efforts to provide public school students with schools that are safe, healthy, high-performing, and up-to-date technologically, and to promote green building principles.

II. COMMITTEE ACTION

110th Congress

Full Committee hearing on "Modern Public School Facilities: Investing in the Future"

On Wednesday, February 13, 2008, the Committee on Education and Labor held a hearing in Washington, D.C., on "Modern Public School Facilities: Investing in the Future." The purpose of the hearing was to highlight the poor quality of public school buildings frequently found throughout the United States, particularly in low-income areas, and the importance of federal investment in public school buildings. Testifying before the full Committee were, on the first panel, Representatives Ben Chandler (D–KY), Michael N. Castle (R–DE), Bob Etheridge (D–NC), David Loebsack (D–IA), Charles Boustany (R–LA), Darlene Hooley (D–OR), Steve King (R–IA) and Rush Holt (D–NJ), and on the second panel, Kathleen J. Moore, Director, School Facilities Planning Division, California Department of Education (Sacramento, California); Judi Caddick, Teacher, Memorial Junior High School, Illinois Education Association (Lansing, Illinois); Mary Cullinane, Director, Innovation and Business Development Team, Microsoft Corporation (New York, New York); Dr. Paula Vincent, Superintendent, Clear Creek Amana School District (Oxford, Iowa); Paul Vallas, Superintendent, Louisiana Recovery School District (New Orleans, Louisiana); Jim Waters, Director, Policy and Communications, Bluegrass Institute for Public Policy Solutions (Bowling Green, Kentucky); Neal McCluskey, Associate Director, Center for Educational Freedom, CATO Institute (Washington, D.C.).

Introduction of the "21st Century High-Performing Public School Facilities Act"

On Thursday, July 12, 2007, Representatives Ben Chandler (D–KY), George Miller (D–CA), and Dale Kildee (D–MI) introduced H.R. 3021, the 21st Century High-Performing Public School Facilities Act, a bill to direct the Secretary of Education to make grants and low-interest loans to local educational agencies for the construction, modernization, or repair of public kindergarten, elementary, and secondary educational facilities, and for other purposes.

Full Committee Markup of H.R. 3021

On Wednesday, April 30, 2008, the Committee on Education and Labor considered H.R. 3021 in legislative session, and reported the bill favorably, as amended, to the House of Representatives by a vote of 28–19. Representatives Loebsack and Kildee offered an amendment in the nature of a substitute.

The amendment in the nature of a substitute makes the following changes to H.R. 3021:

Inserts the word "Green" into the Act's title;

Converts the competitive grant and loan program authorized by the bill to a formula grant program, based on each State's and local educational agency's allocation under Part A of Title I of the Elementary and Secondary Education Act of 1965;

Requires the Secretary of Education to distribute funds to States within thirty days of the Department's appropriation,

and States to distribute funds to local educational agencies within thirty days of having received such funds;

Requires the Secretary to provide technical assistance to States and local educational agencies;

Requires States to provide technical assistance to local educational agencies, to develop a plan to establish a database that includes an inventory of public school facilities in the State and the modernization, renovation, and repair needs of, energy use by, and carbon footprint of such schools, and to develop a school energy efficiency quality plan;

Requires local educational agencies to use an increasing percentage of funds received under the bill in compliance with sustainable building rating systems;

Adds a title authorizing funds for grants to local educational agencies in Louisiana, Mississippi and Alabama to compensate for damage to public school facilities caused by Hurricanes Katrina and Rita in 2005; and

Clarifies that local educational agencies are required to report publicly on the sustainable building rating systems with which their uses of funds comply, to explain any uses of funds that did not comply with such systems, and to explain the demonstrated or expected benefits from their uses of funds (such as energy savings, indoor environmental quality, improved climate for teaching and learning, etc.), and the percentage of funds used in low-income and rural schools.

The Committee rejected six amendments by roll-call vote. The Chair ruled two other amendments out of order on the ground that they addressed issues that were beyond the scope of the amendment in the nature of a substitute. The Committee upheld both rulings by roll-call vote.

III. SUMMARY OF THE BILL

As reported, Title I of H.R. 3021 authorizes $6.4 billion for fiscal year 2009 and such sums through fiscal year 2013. The bill ensures that school districts around the country will quickly receive funds for much needed public school modernization, renovation, and repair projects to improve the teaching and learning climate, student and staff health and safety, energy efficiency, and the environment. It directs the Secretary to reserve one percent of Title I funds for assistance to outlying areas and Bureau of Indian Education-funded schools.

H.R. 3021 allocates to each State the same percentage of funds that the state receives under Title I, Part A of the Elementary and Secondary Education Act and allocates within States the same percentage to each school district that the school district receives under such part (except that no such school district will receive less than $5,000). It also requires the Secretary to distribute funds to states within thirty days of appropriation for redistribution to school districts within thirty days of receipt.

The bill allows States to reserve one percent of their Title I allocation for technical assistance and to develop a plan to create a statewide database of public school facility inventory, modernization, renovation and repair needs, energy use, and carbon footprint, and a school energy efficiency quality plan.

Funds under Title I may be used for public school modernization, renovation, and repair, including repair to roofs, electrical, plumbing, sewage and lighting systems or components thereof, heating, ventilation, and air-conditioning systems or components thereof, including insulation and indoor air quality assessments. Funds may also be used to bring schools into compliance with fire and safety codes, including modernizations, renovations, and repairs that ensure that schools are prepared for emergencies. Funds may be used to comply with the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973; however, a local educational agency's funds may not be used primarily for those purposes. Additional uses contemplated by the bill include, asbestos abatement or removal; reduction of human exposure to lead-based paint hazards; upgrading or installing educational technology infrastructure; other modernizations, renovations, or repairs that improve the teaching and learning climate, ensure the health and safety of students and staff, or make schools more energy efficient; and required environmental remediation related to modernizations, renovations, or improvements described above.

H.R. 3021, as amended, requires that funds be used for projects that meet one of three widely recognized green standards (Leadership in Energy and Environmental Design (LEED) Green Building Rating System, Energy Star, or Collaborative for High Performance Schools) or an equivalent State or local standard. School districts may waive the green requirement for a percentage of the funds (fifty percent in 2009, forty percent in 2010, thirty percent in 2011, twenty percent in 2012, and ten percent in 2013) if the circumstances make the requirement impracticable.

In Title II, the bill authorizes $100 million for each of fiscal year from 2009 through 2013 for public schools in the Gulf region in response to damages from Hurricane Katrina or Hurricane Rita. These funds are to be used for the same purposes as Title I funds, and also may be used for new construction.

The bill includes provisions to require local educational agencies to ensure that the bid process for any projects carried out through a contract ensures the maximum number of qualified bidders, including local, small, minority, women- and veteran-owned businesses, through full and open competition.

Davis-Bacon labor law protections apply to all funds received under the Act.

The bill requires school districts to report publicly on educational, energy, and environmental benefits of projects, compliance with the green requirement, and the percentage of funds used for projects at low-income and rural schools. States must compile these reports and submit them to the Secretary who shall, in turn, report to the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor, and Pensions.

Finally, the Act requires the Secretary of Education (in consultation with the Secretary of Energy and Administrator of the Environmental Protection Agency) to create a best practices in school construction database and to provide technical assistance to States and school districts concerning such best practices.

IV. COMMITTEE VIEWS

The Committee believes that H.R. 3021 addresses a number of important issues—the quality of our nation's public school facilities, student achievement, the state of the economy, and the state of the environment. The Committee believes that these issues are interrelated and that each represents a critical national concern.

With the exception of funding through the Impact Aid program and through the Department of the Interior for Indian schools, direct federal support for school construction has been virtually nonexistent since fiscal year 2001 when Congress appropriated $1.2 billion primarily for emergency school repair and renovation. The Committee agrees with Representative Ben Chandler's testimony before the Committee, that "[w]hile Congress has recognized that educational excellence is vital to the economy and national competitiveness, too often we have failed to provide . . . the funding necessary to make these goals a reality."[1]

The demand for new and renovated public school facilities is unprecedented in our nation's history.[2] A briefing paper delivered at an Economic Policy Institute forum, Investing in U.S. Infrastructure, the day before the Committee approved this legislation, called for $50 billion in federal funds for capital outlays for low-income school districts and an ongoing federal role in such funding comparable to the current federal share of education operations funding (approximately 10 percent). The paper argued that such funding is necessary to ensure that "the nation's public schools are healthy, safe, environmentally sound, and built . . . to support a high-quality education."[3]

Need and disparity

The most recent comprehensive estimates of the national need for school construction and renovation were made in 1995 ($112 billion, U.S. General Accounting Office[4] (GAO)[5]) and 2000 ($127 billion, National Center for Education Statistics[6] NCES) and $322 billion, National Education Association[7] (NEA)).

Several studies highlight the inadequacy of school facilities. In 2005, the American Society of Civil Engineers, on its national infrastructure report card, gave America's public schools a D.[8] A 2005 survey of school principals by NCES found that fifty-two percent of schools had no science laboratories, thirty percent had no art rooms, nineteen percent had no music rooms, and seventeen

[1] Testimony of Representative Ben Chandler, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008–02–13–BenChandler.pdf.

[2] Testimony of Kathleen J. Moore, Director, School Facilities Planning Division, California Department of Education, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008–02–13–KathleenMoore.pdf).

[3] Good Buildings, Better Schools, Filardo, M., Economic Policy Institute Briefing Paper, April 29, 2008.

[4] Condition of America's Schools, Government Accounting Office, 1995 (GAO/HEHS–95–61).

[5] In 2004, the General Accounting Office was renamed the Government Accountability Office. The Committee will use "GAO" to refer to both.

[6] Condition of America's Public School Facilities: 1999, National Center for Education Statistics.

[7] Modernizing Our Schools: What Will It Cost?, National Education Association, 2000.

[8] http://www.asce.org/reportcard/2005/page.cfm?id=31.

percent had no gymnasium.[9] A 2004 NCES report found that one school in three had temporary buildings as the primary learning space for at least 160 students, and that in one in five schools, teachers routinely had to use a building's common areas for instructional purposes.[10]

Disparities in the condition of our schools are also well-documented. In 1996, GAO reported, in a follow-up to an earlier study, that on every measure—inadequate buildings or building features, unsatisfactory environmental conditions, etc. the same subgroups—schools in central cities, western states, and schools serving higher percentages of minority or low-income students—reported having more significant problems.[11] In 2006, a report by Building Educational Success Together (BEST) concluded that the GAO and NEA estimates "grossly underestimated" the need for school improvements, and concurred with the 1996 GAO finding that facilities in low-income and minority-serving areas tended to be in significantly worse condition. The report also concluded that despite significant State and local expenditures on school construction and renovation from 1996–2004, "there continue to be millions of students in substandard and crowded school conditions."[12]

It is the Committee's intent that funds authorized by this bill be used to ensure that all children have access to a high-quality public school facility. The Committee recognizes that facility quality disparity is most likely to occur in low-income areas. Accordingly, the Committee encourages local educational agencies to take care to ensure that the needs of low-income and rural schools are addressed by giving priority to schools where modernization, renovation, and repair will most benefit students, teachers, and other staff and ensuring that the schools are safe, healthy, conducive to teaching and learning, energy efficient, and environmentally sound.

Green Schools

A 2006 report concludes that a green school (1) uses thirty-fifty percent less energy than a conventional school; (2) reduces harmful carbon dioxide emissions by forty percent, which helps reduce global climate change; (3) uses thirty percent less water; (4) has better lighting and temperature controls, which promotes higher student achievement; and (5) has a more comfortable indoor environment, improved ventilation and indoor air quality, which result in short-term ($96,760 per year) and long-term savings as a result of green building.[13] The average national school construction cost is $150 per square foot; building green adds only $3 per square foot. According to the study, the long-term savings from green buildings are $70 per square foot.[14]

The importance of energy savings was illustrated by hearing testimony of Representative and Committee Member Rush Holt (D–NJ). Representative Holt noted that between 2005 and 2007,

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[9] Public School Principals Report on Their School Facilities: Fall 2005, Institute of Education Sciences, National Center for Education Statistics.

[10] Characteristics of Schools, Districts, Teachers, Principals, and School Libraries in the United States 2003–2004, Schools and Staffing Survey, National Center for Education Statistics.

[11] America's Schools Report Differing Conditions, Government Accounting Office, 1996 (GAO/HEHS–96–103).

[12] Growth and Disparity: A Decade of U.S. Public School Construction, Building Educational Success Together, 2006.

[13] Greening America's Schools, Kats, G., 2006

[14] *Id.*

schools' energy costs increased from $6 billion annually to $8 billion.[15] According to Representative and Committee Member David Loebsack's testimony at the same hearing, green schools save thirty-three percent on energy and thirty-two percent on water costs compared to non-green schools.[16]

The Committee believes that green building can serve a number of purposes. Such building will directly benefit both the larger environment and the indoor environment. The Committee further believes that green building will improve the ability of teachers to teach and students to learn as well as the health of students, teachers, and other school staff.

States, cities, and school districts around the country have adopted green building and green schools initiatives. Representative Darlene Hooley (D–OR) (Co-Chair of the Congressional Green Schools Caucus) testified that by 2010, the green building market will be worth $60 billion, of which twenty-seven percent will be comprised by school facilities.[17]

The Committee believes that a critical component of the success of this bill will be local educational agencies' knowledge of best practices in school construction, modernization, renovation, and repair as they relate to green building.

With reference to States' responsibilities, the bill directs States to develop state-level school energy efficiency quality plans. The Committee encourages States, in developing such plans, to look for guidance to the definition of such plans in H.R. 3197, the School Building Enhancement Act, introduced by Representative Holt. That bill defines such plans as including standards for school building design, construction, and renovation; and proposals for the systematic improvement (including benchmarks and timelines) of environmental conditions in and around schools throughout the State. H.R. 3197 also encourages purchasing environmentally preferable products for instruction and maintenance, increasing the use of alternative energy fuels in school buses, and maximizing transportation choices for students, staff, and other members of the community.

The Committee encourages the Secretary, in carrying out the Department's technical assistance responsibilities under H.R. 3021, as amended, to examine the Illinois Resource Guide for Healthy, High-Performing School Buildings. The recommendations and information in the guide are intended to provide school administrators, school boards and other community members with guidance to make informed decisions about health and energy efficiency issues important to schools. The guide's objective is to promote long-term thinking and to ensure that school buildings are compatible with the goals of improving learning environments, reducing operating

[15] Testimony of Representative Rush Holt, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008–02–13–RushHolt.pdf.

[16] Testimony of Representative David Loebsack, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008–02–13–DaveLoebsack.pdf.

[17] Testimony of Representative Darlene Hooley, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008–02–13–DarleneHooley.pdf.

costs, supporting health and safety, and protecting our natural environment.[18]

Impact on teaching and learning

The Committee believes that while equity alone justifies federal support for local educational agencies to ensure that every child has access to a high-quality public school facility, such support also is essential to closing the achievement gap. The Committee believes that the relationship between the quality of school facilities and student achievement and teacher performance and retention are positively intertwined.[19] Research demonstrates that better school facilities result in improved student achievement and teacher recruitment and retention. The physical condition of schools also affects student and teacher health.

According to a 2004 report by the 21st Century School Fund, inadequate school facilities can result in alienated students, low staff morale, high teacher attrition, the inability to provide specialized curricula, reduced learning time, distractions from learning, reduced ability to meet special needs, lack of technological proficiency, health problems for students and staff, safety hazards, and less supervision of student behavior.[20]

In its 2005 survey, NCES noted that a key reason for school construction and renovation is student and teacher safety, but that building quality also affects the context for learning, such that lighting, noise reduction, air quality and other factors can affect student achievement and behavior. NCES further noted that building quality affects teacher retention—forty percent of teachers who transferred schools and thirty-nine percent who left teaching cited the need for significant school repairs as a source of their dissatisfaction.[21] NCES found that one-third of school principals cited at least one environmental factor[22] as interfering with their ability to deliver instruction.

A 2004 study of the Los Angeles Unified School District, authored by the current Commissioner of NCES, found a positive relationship between a school's compliance with fourteen health and safety measures[23] and its students' academic performance on California State tests.[24] And, the testimony at the Committee's February 13, 2008 hearing of Dr. Paula Vincent, the Superintendent of the Clear Creek Amana (Iowa) School District identifies and dis-

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[18] For a discussion of a case study in building a modern, green school, see, Testimony of Mary Cullinane, Director, Innovation and Business Development Team, Microsoft Corporation, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008–02–13–MaryCullinane.pdf).

[19] See, e.g., Testimony of Judi Caddick, Teacher, Memorial Junior High School, Illinois Education Association, Lansing, Illinois, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008-02-13-JudiCaddick.pdf).

[20] For Generations to Come, 21st Century School Fund, 2004.

[21] Another study finding a relationship between facility quality and teacher retention is The Effects of School Facility Quality on Teacher Retention in Urban School Districts, Buckley, J., Schneider, M., and Shang, Y., 2004.

[22] Those factors include: air conditioning, size/configuration of rooms, acoustics or noise control, ventilation, heating, physical condition, indoor air quality, natural lighting, artificial lighting.

[23] The fourteen health and safety measures are accident prevention, asbestos management, fire/life safety, campus security, chemical safety, pest management, lead management, restroom facilities, indoor environment, maintenance and repair, safe school plan, emergency preparedness, traffic and pedestrian safety, and science laboratory safety.

[24] LAUSD School Facilities and Academic Performance, Buckley, J., Schneider, M. and Shang, Y., 2004.

cusses a number of other studies linking school facilities with improved student achievement and teacher performance and retention.[25]

Impact on health

A 2004 study mandated by the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act, and funded by the Department of Education found that "overall evidence suggests that poor environments in schools, due primarily to the effects of indoor pollutants, adversely affect the health, performance, and attendance of students." Specifically, the study found that indoor environmental quality can influence health outcomes, which may, in turn, influence student and teacher performance directly and indirectly.[26] The study cites the 1995 GAO finding that thirty percent of schools reported unsatisfactory ventilation.

The Centers for Disease Control advises that asthma accounts for more than fourteen million missed school days per year.[27] A 2006 report by the American Federation of Teachers concludes that "[p]oor air quality in schools contributes to students' asthma, absences due to illness, difficulty concentrating, and lower achievement."[28]

Impact on community

According to the 2006 BEST study, the difference between good and poor quality facilities also affects the communities in which they are located. School quality has a direct, positive impact on residential property values and can improve a community's ability to attract businesses and workers.[29] This point also is supported by Representative Bob Etheridge's testimony at the February 13, 2008 Committee hearing on this issue.[30]

The BEST study also concluded that investments in school facilities bring money into local economies through job creation and supply purchases and can help revitalize distressed neighborhoods. The Committee is persuaded by these findings and expects that this bill will produce positive results in our communities.

Impact on economy

As our nation faces recession and rising unemployment, direct federal investment in school construction and renovation could provide an immediate boost to our economy and generate jobs. Federal funding for the modernization, renovation, or repair of school facilities could be spent quickly and efficiently to address the loss of

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[25] http://edlabor.house.gov/testimony/2008–02–13–PaulaVincent.pdf.

[26] A Summary of Scientific Findings on Adverse Effects of Indoor Environments on Students' Health, Academic Performance and Attendance, U.S. Department of Education, Policy and Program Studies Service, 2004.

[27] http://www.cdc.gov/asthma/children.htm.

[28] Building Minds, Minding Buildings, American Federation of Teachers, 2006.

[29] Growth and Disparity: A Decade of U.S. Public School Construction, Building Educational Success Together, 2006.

[30] Testimony of Representative Bob Etheridge, Hearing, U.S. House of Representatives, Committee on Education and Labor, Modern Public School Facilities: Investing in the Future, February 13, 2008 (http://edlabor.house.gov/testimony/2008–02–13–BobEtheridge.pdf.

394,000 construction jobs between September 2006 and March 2008.[31]

An analysis of H.R. 3021 as amended by the substitute was provided to the Committee by Rebuild America's Schools. The analysis estimates that if this bill is enacted, it would create 103,354 new jobs. Other letters received by the Committee in support of H.R. 3021 suggest that it could create 269,440 jobs.

Hurricanes Katrina and Rita

H.R. 3021 provides additional support for Gulf Coast schools still recovering from damage caused by Hurricanes Katrina and Rita. The Gulf region, primarily New Orleans, has hundreds of millions of dollars in unmet school modernization, renovation, repair and construction need as a result of Hurricanes Katrina and Rita.

Prior to the impacts of Hurricanes Katrina and Rita, the Recovery School District of Louisiana (RSD) already had a deferred maintenance infrastructure deficit of approximately $1 billion. The hurricanes wrought an additional $800 million in damage to the district's schools. Since Katrina, the district has re-opened sixty-three schools, serving approximately 26,000 students. Last year, it opened more than ten modular school facilities, spending more than $90 million of Federal Emergency Management Agency (FEMA) funds for this purpose. During the 2006–2007 school year, the district did not have the physical seat capacity for students and had a months-long "waiting list" for students to enter public schools. In the period of February through April 2008, more than 1,000 students returned to New Orleans schools.

The impact of Hurricanes Katrina and Rita has increased the urgency of the district's planning for the construction of five new schools by the start of the 2009–2010 school year. These schools will be designed to the highest standard and will incorporate substantial elements of green building. In June 2008, the RSD and Orleans Parish School Board (OPSB) will release the joint facilities Master Plan for Orleans Parish, which will lay out the long-term plan for Orleans Parish public school facilities. It will show how the school districts plan to replace (using permanent facilities) the seat capacity now provided by the modular schools, as the modular schools only have approximately a five year lifespan. The funding from this bill will help the districts, and others in the Gulf region, meet these important and timely needs as they continue to recover from the hurricanes.

Davis-Bacon

Under the bill, the construction, modernization, repair, and renovation projects paid for, in whole or in part, with the grants made available by this legislation are subject to Davis-Bacon prevailing wage requirements. Davis-Bacon prevailing wage rules ensure that taxpayer dollars are not used to undercut local wage rates. These rules require contractors to pay the local prevailing wage to their employees.

Davis-Bacon requirements will help control costs, ensure higher quality work, and improve safety. Studies have shown that, where

[31] See U.S. Department of Labor, Bureau of Labor Statistics, Employment Situation Summary, April 4, 2008.

prevailing wages are not required, contractors compete on the basis of labor costs, frequently resulting in poor construction quality as well as substantial cost and time overruns due to cheaper workers' lower levels of skill, productivity, and training.[33] Where prevailing wages are paid, higher rates of productivity, safety, and building quality more than offset the cost of higher wages. For example, one study by the Mechanical Electrical Sheet Metal Alliance, focusing on highway and bridge construction, found that workers who were paid more than double the wage of low-wage workers were able to build 74.4 more miles of highway and 32.8 more miles of bridges for $557 million less.

Davis-Bacon requirements help save federal, State, and local revenue. By creating family-supporting jobs in local communities that do not drive workers' wages down, these requirements ease the burden on public programs and provide support for more economic activity. Studies have found that repeal of local prevailing wage laws results in lower incomes, loss of sales tax revenues, and a general loss of economic activity.[34] These are precisely the types of effects the Committee intends to avoid by providing federal assistance to local communities consistent with Davis-Bacon.

Conclusion

For the reasons stated above, the Committee believes passage of this bill will provide significant educational benefits for our nation's students, health benefits for students, teachers, and others who work in our schools, financial benefits for schools resulting from energy savings, economic benefits for hundreds of thousands of American workers and their families, and environmental benefits.[35]

V. SECTION-BY-SECTION ANALYSIS

Sec. 2. Definitions.

Includes definitions of Bureau-funded school, charter school, local educational agency, outlying area, State, LEED Green Building Rating System, Energy Star, and CHPS Criteria.

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[33] See generally, Peter Philips, "Square Foot Construction Costs for Newly Constructed State and Local Schools, Offices and Warehouses in Nine Southwestern and Intermountain States 1992–1994," Prepared for the Legislative Education Study Committee of the New Mexico State Legislature, September 6, 1996.

[34] Michael P. Kelsay et al., "The Adverse Economic Impact from Repeal of the Prevailing Wage Law in Missouri," Council for Promoting American Business, January 2004.

[35] Among the many organizations supporting H.R. 3021 are AFL-CIO; American Federation of State, County, and Municipal Employees; American Federation of Teachers; American Association of School Administrators; Building and Construction Trades Department, AFL-CIO; California Small School Districts Association; Californians for School Facilities; Council of the Great City Schools; International Brotherhood of Electrical Workers; International Union of Bricklayers and Allied Craftworkers; International Union of Operating Engineers; International Union of Painters and Allied Trades; Mason Contractors Association of America; National Association of Elementary School Principals; National Association of Secondary School Principals; National Education Association; National School Boards Association; United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada; Parent Teacher Association; Rebuild America's Schools Coalition; U.S. Green Building Council.

TITLE I—GRANTS FOR MODERNIZATION, RENOVATION, OR REPAIR OF SCHOOL FACILITIES

Sec. 101. Purpose

Indicates the purpose of grants under Title I is for modernizing, renovating, or repairing public kindergarten, elementary, and secondary educational facilities.

Sec. 102. Allocation of funds

Directs the Secretary to reserve one percent of funds appropriated for Title I in any fiscal year for assistance to the outlying areas and for payments to the Secretary of the Interior for assistance to Bureau-funded schools. Allows each State to reserve up to one percent of funds appropriated for Title I in any fiscal year to provide technical assistance, and to develop a plan to create a database of information concerning the State's public school inventory, modernization, renovation and repair needs, and energy use.

Allocates to each State the same percentage of funds appropriated under Title I of this Act that the State receives under Title I, Part A of the Elementary and Secondary Education Act of 1965. Within each State, allocates to each local educational agency the same percentage of funds appropriated under Title I of this Act that the agency receives under Title I, Part A of the Elementary and Secondary Education Act of 1965.

Requires the Secretary, in determining State and local allocations, to take into account the hold-harmless provisions of Title I, Part A of the Elementary and Secondary Education Act of 1965.

Requires the Secretary to distribute funds to States within thirty days of the Department's appropriation and requires States to distribute funds to local educational agencies within thirty days of having received them from the Secretary.

Sec. 103. Allowable uses of funds

Describes the types of public school modernizations, renovations, and repairs that are allowable uses of funds under Title I, including roofs, electrical, plumbing, sewage and lighting systems, or components thereof; heating, ventilation, and air-conditioning systems, or components thereof, including insulation and indoor air quality assessments; bringing schools into compliance with fire and safety codes, including modernizations, renovations, and repairs that ensure that schools are prepared for emergencies; compliance with the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973, except that such compliance may not be the primary use of a local educational agency's funds; asbestos abatement or removal; reduction of human exposure to lead-based paint hazards; upgrading or installing educational technology infrastructure; other modernizations, renovations, or repairs that improve the teaching and learning climate, ensure the health and safety of students and staff, or make schools more energy efficient; and required environmental remediation related to modernizations, renovations, or improvements described above.

TITLE II—SUPPLEMENTAL GRANTS FOR LOUISIANA, MISSISSIPPI, AND ALABAMA

Sec. 201. Purpose

Indicates the purpose of grants under Title I is for modernizing, renovating, repairing, or constructing public kindergarten, elementary, and secondary educational facilities to address needs caused by damage resulting from Hurricane Katrina or Hurricane Rita.

Sec. 202. Allocation to States

Directs the Secretary to allocate funds to Louisiana, Mississippi, and Alabama based on the number of schools in each State that were closed for sixty or more days between August 29, 2005 and December 31, 2005 as a result of Hurricane Katrina or Hurricane Rita.

Allows each State to reserve up to one-half of one percent of its allocation under Title II for administration of Title II.

Directs each State to allocate funds to local educational agencies within the State based on the number of schools in each agency that were closed for sixty or more days between August 29, 2005 and December 31, 2005 as a result of Hurricane Katrina or Hurricane Rita.

Requires the Secretary to distribute funds to States within thirty days of the Department's appropriation and requires States to distribute funds to local educational agencies within thirty days of having received them from the Secretary.

Sec. 203. Allowable uses of funds

Includes the same list of allowable uses of funds as section 103, but also allows local educational agencies to use Title II funds for construction of new facilities.

TITLE III—GENERAL PROVISIONS

Sec. 301. Impermissible uses of funds

Prohibits funds received under this Act from being used for maintenance or stadiums or similar facilities.

Sec. 302. Supplement, not supplant

Requires local educational agencies receiving funds under this Act to use such funds to supplement, and not supplant, funds that otherwise would be used for the same purposes.

Sec. 303. Maintenance of effort

Allows only local educational agencies with at least a ninety percent maintenance of effort with respect to the provision of a free public education from the previous fiscal year to receive funds under this Act.

Sec. 304. Special rule on contracting

Requires a local educational agency that receives funds under this Act and that carries out projects through a contract to ensure that the bidding process consist of the maximum number of qualified bidders, including local, small, minority, women- and veteran-owned businesses, through full and open competition.

Sec. 305. Application of GEPA

States that the Davis-Bacon labor law provisions apply to any funds received under this Act.

Sec. 306. Green schools

Requires local educational agencies receiving funds under this Act to use at least half of such funds in fiscal year 2009 (and increasing by ten percentage points per year, to ninety percent in fiscal year 2013) for public school modernizations, renovations, or repairs that meet specified "green" standards, including equivalent standards adopted by the State or local authority with jurisdiction over the agency.

Requires the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, to provide outreach and technical assistance to States and local educational agencies concerning best practices in school modernization, renovation, and repair, including those related to student academic achievement, student and staff health, energy efficiency, and environmental protection.

Sec. 307. Reporting

Describes the reporting requirements applicable to local educational agencies, States, and the Secretary, and requires local educational agencies to make their reports publicly available, including on their website.

Sec. 308. Authorization of appropriations

Authorizes $6,400,000,000 for Title I for fiscal year 2009 and such sums as may be necessary for fiscal years 2010 through 2013. Authorizes $100,000,000 for Title II for each of the fiscal years 2009 through 2013.

VI. EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is explained in the body of this report.

VII. APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act, requires a description of the application of this bill to the legislative branch. H.R. 3021, as amended, provides federal funding to help modernize and renovate public schools. The bill does not prevent legislative branch employees' coverage under this legislation.

VIII. UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. H.R. 3021, as amended, contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA).

IX. EARMARK STATEMENT

H.R. 3021, as amended, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e) or 9(f) of rule XXI of the House of Representatives.

X. ROLLCALL

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 1 **BILL: H.R. 3021** **DATE: 4/30/2008**
AMENDMENT NUMBER: 2 **FAILED: 16 AYES / 27 NOES**
SPONSOR/AMENDMENT: McKEON / DAVIS BACON

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE				X
Mr. ANDREWS				X
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU				X
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA				X
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI		X		
Mr. HOEKSTRA	X			
Mr. CASTLE		X		
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT		X		
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL		X		
Mr. ROB BISHOP				X
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**16**	**27**		**5**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 2 **BILL: H.R. 3021** **DATE: 4/30/2008**
AMENDMENT NUMBER: 3 **FAILED: 20 AYES / 24 NOES**
SPONSOR/AMENDMENT: CASTLE / TITLE I AND IDEA FIRST

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU				X
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA				X
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP				X
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**20**	**24**		**4**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 3 **BILL: H.R. 3021** **DATE: 4/30/2008**
AMENDMENT NUMBER: 4 **FAILED: 19 AYES / 25 NOES**
SPONSOR/AMENDMENT: BISHOP (UT) / EQUITABLE TREATMENT OF CHARTER SCHOOLS

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU				X
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA				X
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL		X		
Mr. ROB BISHOP				X
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**19**	**25**		**4**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 4 **BILL: H.R. 3021** **DATE: 4/30/2008**
AMENDMENT NUMBER: **FAILED: 20 AYES / 25 NOES**
SPONSOR/AMENDMENT: KLINE / APPEAL RULING OF THE CHAIR ON KLINE AMENDMENT #5 ON MILITARY RECRUITERS

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA				X
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP				X
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**20**	**25**		**3**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 5 **BILL: H.R. 3021** **DATE: 4/30/2008**
AMENDMENT NUMBER: 6 **FAILED: 18 AYES / 26 NOES**
SPONSOR/AMENDMENT: PRICE / INDEPENDENT EVALUATION

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA				X
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS		X		
Mr. KELLER				X
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP				X
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**18**	**26**		**4**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 6 **BILL: H.R. 3021** **DATE: 4/30/2008**
AMENDMENT NUMBER: 7 **FAILED: 21 AYES / 25 NOES**
SPONSOR/AMENDMENT: PRICE / EARMARKS

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA				X
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**21**	**25**		**2**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 7 **BILL: H.R. 3021** **DATE: 4/30/2008**
AMENDMENT NUMBER: 8 **FAILED: 21 AYES / 25 NOES**
SPONSOR/AMENDMENT: EHLERS / PROHIBITION OF CARBON OFFSETS

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA				X
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**21**	**25**		**2**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 8 **BILL: H.R. 3021** **DATE: 4/30/2008**
AMENDMENT NUMBER: **FAILED: 21 AYES / 26 NOES**
SPONSOR/AMENDMENT: DAVID DAVIS (TN) / APPEAL RULING OF THE CHAIR ON DAVIS (TN) AMENDMENT #9 ON REAFFIRMING SCHOOL PRAYER

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman		X		
Mr. KILDEE, Vice Chairman		X		
Mr. PAYNE		X		
Mr. ANDREWS				X
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. SUSAN DAVIS		X		
Mr. DANNY DAVIS		X		
Mr. GRIJALVA		X		
Mr. TIMOTHY BISHOP		X		
Ms. SANCHEZ		X		
Mr. SARBANES		X		
Mr. SESTAK		X		
Mr. LOEBSACK		X		
Ms. HIRONO		X		
Mr. ALTMIRE		X		
Mr. YARMUTH		X		
Mr. HARE		X		
Ms. CLARKE		X		
Mr. COURTNEY		X		
Ms. SHEA-PORTER		X		
Mr. McKEON	X			
Mr. PETRI	X			
Mr. HOEKSTRA	X			
Mr. CASTLE	X			
Mr. SOUDER	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. KELLER	X			
Mr. WILSON	X			
Mr. KLINE	X			
Mrs. McMORRIS RODGERS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUÑO	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mr. KUHL	X			
Mr. ROB BISHOP	X			
Mr. DAVID DAVIS	X			
Mr. WALBERG	X			
[vacancy]				
TOTALS	**21**	**26**		**1**

COMMITTEE ON EDUCATION AND LABOR

ROLL CALL: 9 **BILL: H.R. 3021** **DATE: 4/30/2008**
AMENDMENT NUMBER **PASSED: 28 AYES / 19 NOES**
SPONSOR/AMENDMENT: KILDEE/REPORT THE BILL FAVORABLY AS AMENDED

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. MILLER, Chairman	X			
Mr. KILDEE, Vice Chairman	X			
Mr. PAYNE	X			
Mr. ANDREWS				X
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. SUSAN DAVIS	X			
Mr. DANNY DAVIS	X			
Mr. GRIJALVA	X			
Mr. TIMOTHY BISHOP	X			
Ms. SANCHEZ	X			
Mr. SARBANES	X			
Mr. SESTAK	X			
Mr. LOEBSACK	X			
Ms. HIRONO	X			
Mr. ALTMIRE	X			
Mr. YARMUTH	X			
Mr. HARE	X			
Ms. CLARKE	X			
Mr. COURTNEY	X			
Ms. SHEA-PORTER	X			
Mr. McKEON		X		
Mr. PETRI		X		
Mr. HOEKSTRA		X		
Mr. CASTLE		X		
Mr. SOUDER		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS	X			
Mr. KELLER		X		
Mr. WILSON		X		
Mr. KLINE		X		
Mrs. McMORRIS RODGERS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUÑO	X			
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mr. KUHL		X		
Mr. ROB BISHOP		X		
Mr. DAVID DAVIS		X		
Mr. WALBERG		X		
[vacancy]				
TOTALS	**28**	**19**		**1**

XI. STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

XII. NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 3021, as amended, from the Director of the Congressional Budget Office:

H.R. 3021—21st Century Green High-Performing Public School Facilities Act

H.R. 3021 would authorize the appropriation of $6.4 billion for fiscal year 2009 and such sums as may be necessary for fiscal years 2010 through 2013 to award grants to help modernize and renovate public schools. It also would authorize the appropriation of $100 million for each of fiscal years 2009 through 2013 to help repair public schools damaged by Hurricanes Katrina and Rita and to construct new schools.

As shown in the following table, CBO estimates that H.R. 3021 would increase discretionary spending by $20.3 billion over the 2009–2013 period. For this estimate, CBO assumes that $33.7 billion would be appropriated over that period and that outlays would follow historical patterns of similar programs. The costs of this legislation fall within budget function 500 (education, training, employment, and social services). The bill would have no impact on direct spending or revenues.

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Title I:						
Estimated Authorization Level	6,400	6,513	6,639	6,765	6,891	33,208
Estimated Outlays	320	2,246	4,846	5,895	6,647	19,954
Title II:						
Authorization Level	100	100	100	100	100	500
Estimated Outlays	5	35	76	90	100	306
Total:						
Estimated Authorization Level	6,500	6,613	6,739	6,865	6,991	33,708
Estimated Outlays	325	2,281	4,922	5,985	6,747	20,260

H.R. 3021 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on the budgets of state, local, or tribal governments. State, local, and tribal governments could benefit from the grants authorized by this bill.

The CBO staff contact for this estimate is Justin Humphrey. This estimate was approved by Keith Fontenot, Deputy Assistant

Director for Health and Human Resources, Budget Analysis Division.

XIII. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c) of rule XIII of the House of Representatives, the goal of H.R. 3021 is to provide grants to help modernize and renovate public schools. The Committee expects the Department of Education to comply with H.R. 3021 and implement the changes to the law in accordance with these stated goals.

XIV. CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 2669. The Committee believes that the amendments made by this bill are within Congress' authority under Article I, section 8, clause 18 of the U.S. Constitution.

XV. COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3021. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the House of Representatives, there are no changes in existing law made by the bill, as reported.

XVII. COMMITTEE CORRESPONDENCE

None.

MINORITY VIEWS ON H.R. 3021, THE 21ST CENTURY GREEN HIGH-PERFORMING PUBLIC SCHOOL FACILITIES ACT

INTRODUCTION

Over the past decade, the condition of local public school facilities has become an important component of the education debate in communities throughout the nation. In both cities and suburbs, students, parents, teachers, and many public officials argue that school buildings are overcrowded, unsafe, and obsolete. As a result, the amount being spent on school construction, modernization, and renovation has become a significant issue in many states and local school districts.

While strongly supportive of public education, historically, the federal government has had an extremely limited, almost non-existent role in financing school infrastructure projects and facility improvement programs, which have been a state and local responsibility. The most substantial attempts to fund school construction at the federal level were during the 1930s and 1940s as part of the Public Works Administration. At that time, the federal government contributed $611 million to build schools and help eliminate the high unemployment rates of that era.

Since that time, the federal commitment to school construction has been generally limited to building and repairing schools using Impact Aid funds or building/repairing schools on Indian reservations through the Bureau of Indian Affairs. Both of these programs focus on children who historically have been a federal responsibility—children living on military bases and children living on Indian reservations.

The federal government has chosen to maintain this limited role in school construction while focusing on adequately funding programs that increase student achievement, primarily through the Title I program for low-income students, and on helping states provide a free, appropriate public education to those students with special needs under the Individuals with Disabilities Education Act (IDEA).

For more than 40 years, Congress has deliberately limited the scope of federal intervention in K–12 education to focus on efforts to increase student achievement and ensure educational equality. That is, until Democrats on the House Education and Labor Committee quickly took up and passed legislation creating a new and massive federal school construction program to be administered through the U.S. Department of Education. The bill, H.R. 3021, the 21st Century Green High-Performing Public School Facilities Act, would undermine efforts to increase funding for the Title I program and IDEA, weaken efforts at the state level to fund school construction, significantly increase the cost of elementary and secondary

schools, and dramatically expand the size and scope of the federal government.

H.R. 3021 undermines Congress' ability to fully fund the Title I program for low-income students and IDEA

Since passage of the Elementary and Secondary Education Act of 1965, the federal government has spent more than $321 billion in federal funds provided by the American taxpayer on public elementary and secondary education.

An overwhelming majority of this funding has been directed toward two primary programs that the federal government operates to improve student achievement—(1) Title I grants to local educational agencies (LEAs)/school districts under the Elementary and Secondary Education Act, which authorizes federal aid to state and local educational agencies for helping low-income and other disadvantaged children achieve to the same high state academic achievement standards as their peers and (2) state grants for the Individuals with Disabilities Education Act, which authorizes funds to help states and LEAs provide special education and related services for children with disabilities.

Over the last five decades, the federal government has deliberately focused its attention and funding on these programs and others that provide assistance to states and school districts to help them improve student academic achievement and to comply with federal mandates that come with educating students with special needs. This targeted focus reflects the recognition that states and local communities have the primary responsibility to set public policy over education, particularly public K–12 education.

In an effort to put the federal share of education funding in context, consider the amount of funding spent on education-related activities on a yearly basis. In 2006, public school systems received $474.2 billion in funding from state and local sources to educate students in their communities. As such, states and localities provided more funding in one year for education-related matters than the federal government has provided in 43 years. The federal government is responsible for only about nine percent of annual K–12 education spending, with state governments contributing 47 percent of funding to public school systems, followed by local sources at 44 percent.

Recognizing the historical role of states and local governments in providing an overwhelming majority of education funding and the federal government's focus on academic programs, it is no surprise that the federal government has had an extremely limited, almost non-existent role in financing school infrastructure projects and facility improvement programs.

By passing H.R. 3021 and creating a new massive federal school construction program, Congressional. Democrats have weakened Congress' ability to focus on current priorities and backed away from the federal focus on adequately funding programs that increase student achievement. This undermines Congress' ability to direct greater resources toward the Title I program, which provides assistance to states and local school districts so that they can help low-income students meet proficiency standards in reading and math. It also undercuts efforts toward meeting the federal funding

promised to school districts under IDEA to educate special education students. In addition, it undermines the authority and decision-making ability of state and local officials who are in a better position to tailor programs to more closely meet their students' unique needs and priorities.

H.R. 3021 undermines state and local responsibility on school construction

In order to gain a sense of what a meaningful federal investment in this area would entail, it is important to examine the projected needs and costs of school construction at the state and local levels. While accurate estimates are difficult to obtain, the U.S. Department of Education and the U.S. Government Accountability Office (GAO) have attempted to project the needs and costs of school construction. However, it should be noted that much of the data on which both organizations relied was from selfreporting of construction needs by school superintendents and other officials. There has been no comprehensive independent analysis, such as by an independent assessor.

According to a report recently released by the U.S. Department of Education's National Center for Education Statistics (NCES) entitled *Public School Principals Report on Their School Facilities: Fall 2005,* the unmet need for school construction and renovation is estimated at $112 billion, with threequarters of the nation's schools reporting a need for funds to bring their buildings into a "good overall condition." It is also estimated that states and localities need $11 billion simply to comply with federal mandates to remove or correct hazardous substances such as asbestos, lead paint, and radon.

It is also important to examine how different states vary in their level of commitment to local districts for school construction. According to the School Planning and Management's 2008 School Construction Report, school construction valued at an estimated $20.8 billion was completed in 2007, up from $20.1 billion in 2006. This marks the seventh year in the last eight that annual construction exceeded $20 billion. From the 2007 construction level, an estimated $13.1 billion went into the design and construction of new schools, with the remainder of the money for renovation and additions to existing school buildings. The percentage of construction dollars, according to the report, spent on new buildings was the highest since 1979. According to the report, during the past eight years, school districts have completed construction projects totaling more than $166 billion.

With statistics showing that the unmet need for school construction and renovation is estimated at $112 billion and that states and local school districts spend an average of $20.7 billion annually on school construction, it's a valid question to wonder how a new federal school construction program administered by the U.S. Department of Education (which received roughly $22 billion last year for all programs under the Office of Elementary and Secondary Education) could do a better job at building schools than state and local officials. In order to even make a dent in existing school construction needs, any federal school construction program would have to

be funded at double or triple the Department's current budget for K–12 programs.

H.R. 3021 dramatically increases the cost of building elementary and secondary schools

One of the most troubling aspects of a massive new federal school construction program authorized through H.R. 3021 is that it will be subject to the requirements of the Depression-era Davis-Bacon Act, which requires construction projects be paid using flawed "prevailing wages" and favors union wage workers. Under the General Education Provisions Act (GEPA), all laborers on all construction projects assisted under any program administered by the U.S. Department of Education must be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

The law was originally passed in 1935 to ensure that the government's buying power did not drive down construction workers' wages during the Great Depression. Decades later, these prevailing wage rates have been proven to be fundamentally flawed, often bearing no relation to market wages. Still, they persist in adding bureaucratic complexity to federally-funded construction projects, including the administrative burden of weekly wage data filing. As such, any federal intervention into school construction carries with it significant burdens of costs and time consuming paperwork.

A number of studies have confirmed the flaws inherent in Davis-Bacon wage calculations, and point out that projects conducted under the requirements of the Davis-Bacon Act commonly cost between 22 and 26 percent more when compared to similar projects completed under market conditions. For example, the Beacon Hill Institute recently completed a study on the effects of paying Davis-Bacon inflated wages in public construction projects and found that when the Davis-Bacon mandated wages were followed, labor costs rose by 22 percent above the reported median wage, while overall construction costs went up 10 percent (which means that almost 10 percent of the total construction cost of a new school would be attributable to mandates imposed under the Davis-Bacon Act). In total, the study reports that Davis-Bacon costs taxpayers over $8.6 billion annually—enough money to hire over 18,000 teachers.

If we examine the impact that the Davis-Bacon Act has on specific states around the country, the costs for imposing Davis-Bacon and relevant savings from exempting Davis-Bacon from school construction projects are staggering. In 2002, a study from researchers working for the Ohio General Assembly determined that rescinding prevailing wage requirements for the state's school construction program saved the state's residents and taxpayers more than $488 million in aggregate school construction costs during the post-examination period, an overall savings of 10.7 percent. In particular, the state of Ohio saved $24.6 million in new construction project costs (1.2 percent), $408 million in school building additions (19.9 percent), and $55.2 million in school building alterations (10.7 percent). The state also estimated that it saved $310.5 million in urban counties and $177.4 million in rural counties by exempting the state's school construction program from the Davis-Bacon Act.

The study also found indications that the exemption had little impact on the quality of public school building construction. In surveys conducted of school officials, the users of the buildings indicated that they were satisfied with the buildings and provided no evidence that the exemption decreased the quality of school construction.

In 1982, the Kentucky State Legislature excluded school construction from prevailing wage requirements based on a study that found that eliminating school construction from the artificial constraints of prevailing wage legislation would result in considerable savings with "amounts at least in the tens of millions, if not in the hundreds of millions, each year." As a result of this change, the state estimated that it realized a cost savings on school construction of 11 percent annually. In 1996, Kentucky reinstated its requirement that school construction projects be subjected to prevailing wages, even though the state projected that it would increase taxpayers' cost of school construction by $35 million per year. By January of 2002, the Kentucky Legislative Research Commission released a study that showed that Davis-Bacon increased the cost of construction by 24 percent. In addition, a 2007 study from Michigan's nonprofit Mackinac Center found that exempting public school districts from the state's government-set wage scheme would reap an expected annual savings of approximately $125 million.

Just as important, the Congressional Budget Office (CBO) and the U.S. Government Accountability Office have weighed in on this important issue. CBO estimates that the federal government could save more than $10.5 billion in construction costs if it were to repeal the Davis-Bacon Act. It also found that the Davis-Bacon Act contributes to the backlog of maintenance projects on the federal level, because, "by raising labor costs, the act reduces the amount of maintenance that can be accomplished within a given budget." The GAO is also on record in stating that the Davis-Bacon Act is, "not susceptible to practical and effective administration" by the Department of Labor and that Davis-Bacon has resulted in unnecessary construction and administration costs, inflated prices, and inaccurate wages.

This information makes it hard to doubt that Davis-Bacon Act "prevailing wages" would inflate the costs of building our children's schools and threaten salaries for teachers and in-class dollars for technology, textbooks, and supplies. Subjecting new school construction projects to Davis-Bacon wages is unnecessary and will force local school districts to divert scarce funds away from teachers and students.

One partial remedy to this situation has been proposed by the U.S. Department of Labor's Office of Inspector General (OIG) and numerous experts. They argue that Congress should amend the law to require the Wage and Hour Division of the U.S. Department of Labor to base Davis-Bacon wages on accurate and scientifically valid surveys conducted by the Bureau of Labor Statistics (BLS). In 2004, for example, the OIG reported that "inaccurate survey data, potential bias, and untimely decisions are continuing concerns" and that these problems "affect the validity and usefulness of Davis-Bacon wage surveys," The Office of Management and

Budget also reported that Davis-Bacon's flawed wage determinations may "[contravene] the intent of the act not to undermine local wage and benefits standards. "

Researchers at Suffolk University have backed up this claim by comparing the current Wage and Hour Division's Davis-Bacon prevailing wage determinations and those from BLS and found that the current method inflates wages by 22 percent on average, which significantly increases the cost of building schools, and costing taxpayers $8.6 billion each year.

They also found that many construction employees are actually underpaid by using the flawed determination method set by the WHD instead of BLS figures. For instance, employees in Florida, North Carolina, Michigan, Virginia, and Maine are some of those Americans who get cheated by the current system's shortcomings.

In some cities, the wage determinations are more than 75 percent above market wages. In other cities, they are just one-third of market wages. In some states, Davis-Bacon rates are actually below the minimum wage. These wage determinations simply do not reflect prevailing market wages and this failure has serious implications for construction workers and taxpayers.

Presenting a perspective from the local school official level, the National School Boards Association (NSBA) conducted and released a study in 1999 that found that at least 38 states would have to endure significantly increased school construction costs if Davis-Bacon were imposed on their state and local school construction bonds under any possible federal legislation in this area. The report detailed the fact that approximately 25 states have no state prevailing wage laws or specifically exempt school construction, and another 15 states have thresholds for prevailing wage applicability that are higher than the federal law, which is currently at $2,000. An earlier NSBA study in 1995 found that more than 60 percent of respondents said federal or state Davis-Bacon laws were responsible for increasing the cost of a recent construction project and over half said the increase was as much as 20 percent.

These concerns were detailed in a letter that NSBA sent, along with the Associated Builders and Contractors (ABC), the U.S. Chamber of Commerce, the Independent Electrical Contractors, and the National Federation of Independent Businesses (NFIB) on February 12, 2008 to the House Education and Labor Committee in which they urged Congress to:

> . . . refrain from imposing costly Davis-Bacon Act requirements on school construction projects until serious flaws with that law's wage determination process are fixed.
>
> Federal authorities have concluded that Davis-Bacon wage rates are inaccurate. A series of audits by outside agencies, as well as the Department of Labor's (DOL) own Office of Inspector General (OIG), have revealed substantial inaccuracies in Davis-Bacon Act wage determinations and suggested they are vulnerable to fraud. In addition, DOL's OIG released three reports highly critical of the wage determination program. In fact, one report from 2004 found one or more errors in nearly 100 percent of the wage surveys reviewed. Expanding a wage determination proc-

ess that has been proven to be flawed is unfair to the American taxpayer and American businesses, as well as parents and students who see scarce resources used inefficiently.

Davis-Bacon's wage determination flaws harm the very employees the law was intended to protect. Research from the Heritage Foundation found that Tampa Bay area electricians are underpaid by 38 percent under Davis-Bacon's system when compared to the more statistically sound wage determination method used by the Bureau of Labor Statistics. Forthcoming academic research will provide further evidence from urban areas across the nation.

Davis-Bacon also has a negative impact on equal access to work opportunities. It prevents many qualified small and minority-owned businesses from even bidding on public projects, because the complexities and inefficiencies in the Act make it nearly impossible for small businesses to compete. As a result, few minority firms win Davis-Bacon contracts, and many others give up trying. That is not a lesson any of us want to teach our children.

Finally, Davis-Bacon's flaws will cost taxpayers more to provide students with less. Davis-Bacon has been shown to increase public construction costs by anywhere from 5 percent to 38 percent above what the project would have cost in the private sector. According to the Congressional Budget Office, the Davis-Bacon Act already costs taxpayers more than $9.5 billion over the 2002–2011 period relative to the 2001 appropriations and $10.5 billion relative to 2001 appropriations adjusted for inflation. Any Davis-Bacon costs from legislation your committee considers will be directly passed on to the American taxpayers in these school districts, coming at the direct expense of education dollars for children in classrooms."

Given all of this information, it is clear that H.R. 3021 will dramatically raise the costs of school construction at the state and local level. At a time when state and local budgets are tightening or, in some cases, being cut because of economic downturn, Congress should not impose this unnecessary and outdated mandate on local school districts, which will only overinflate school construction prices, limit competition, and reduce jobs for entry-level workers.

Committee consideration of H.R. 3021 rejected amendments that would have improved the bill

On April 30, 2008, the House Education and Labor Committee met to mark-up H.R. 3021, the 21st Century Green High-Performing Public School Facilities Act. Consideration of the legislation came after just a single hearing on school construction that provided no opportunity to question the expert witnesses that were called before the Committee. As has become all too common, the bill was brought directly before the Full Committee, circumventing the Subcommittee on Early Childhood, Elementary, and Secondary Education and preventing Committee members on both sides of the aisle from engaging in a thorough and open debate on issues that impact our nation's schools.

During consideration of H.R. 3021, Committee Republicans offered a number of amendments to blunt some of the most objectionable and potentially harmful provisions of the bill. Unfortunately, all of the amendments were rejected or blocked from even receiving a vote by the majority.

The amendments offered by Committee Republicans to improve the bill included:

Senior Republican Member Buck McKeon (R–CA) offered an amendment to exempt the new school construction program from the provisions of the Davis-Bacon Act. As outlined above, Committee Republicans strongly believe that adding federal wage rules to school construction, as H.R. 3021 would do, significantly drives up construction costs, draining resources that could otherwise be used to educate children. Every federal dollar that Congress spends on inflated construction costs is a dollar that cannot be spent on helping disadvantaged children learn to read, or do math, or get the extra help they need to achieve on par with their more advantaged peers. The bill, which applies Davis-Bacon provisions to all new federal school construction, will add to the cost of building and renovating schools; it will add paperwork burdens for the private sector; and it will drive women- and minority-owned businesses away from these projects. Even though the McKeon amendment would have protected students and taxpayers alike by avoiding the needless waste of resources, it was rejected by a vote of 16–27.

Congressman Mike Castle (R–DE) offered an amendment to require the Title I program for low-income students and the Individuals with Disabilities Education Act (IDEA) to be fully funded before federal resources can be redirected to support a new federal school construction program. Committee Republicans believe that H.R. 3021 will weaken the federal focus on funding programs that increase student achievement, mainly through the Title I program for low-income students and IDEA. This would undermine Congress' ability to redirect greater resources toward the Title I program which provides assistance to states and local school districts so that they can help low-income students meet proficiency standards in reading and math and towards meeting the federal funding promised to school districts under IDEA to educate special education students.

Under No Child Left Behind, Congress authorized $25 billion for the Title I program that provides financial assistance to local educational agencies and schools with high numbers or high percentages of poor children to help ensure that all children meet challenging state academic standards. Last year, the Democrat-controlled Congress provided $14.3 billion for the Title I program, more than $10 billion below the authorized funding level. Under the Individuals with Disabilities Education Act (IDEA), Congress promised states and local school districts that it would provide 40% of the excess costs of educating children with disabilities to ensure that they receive a free appropriate public education. Last year, the Democrat-controlled Congress provided $10.9 billion for IDEA. Although appropriations for IDEA grants to states have increased significantly over the last decade, funding still falls short of the amount that would be necessary to provide maximum grants to all states; some estimates conclude that appropriated amounts only ac-

count for 17.2% of excess costs. Even though the Castle amendment would ensure that Congress keeps making progress toward meeting the funding goals for both the Title I program for low-income students and IDEA, it was rejected by a vote of 20–24.

Congressman Rob Bishop (R–UT) offered an amendment to ensure that public charter schools are treated in the same manner as other public schools under the federal school construction program. Committee Republicans strongly support charter schools, which are public schools created by teachers, parents, and other members of the community to educate students and to stimulate reform in the public school system. In exchange for greater accountability for student achievements, these schools are exempt from many local and state regulations and are usually among the top performers in big city school districts. Unfortunately, public charter schools are significantly underfunded when compared to traditional public schools, falling short of traditional public school funding by 22%. Even though the Bishop amendment would have ensured that public charter schools were provided with equitable access to facilities assistance under H.R. 3021, it was rejected by a vote of 19–25.

Congressman John Kline (R–MN) offered an amendment to require each local educational agency that receives funding under H.R. 3021 to provide, on a request made by military recruiters or an institution of higher education, access to secondary student information. As a condition of receiving federal funds, the No Child Left Behind Act (NCLB) requires local schools that receive federal funds under the Elementary and Secondary Education Act to provide military recruiters, upon request, with access to students and to basic student contact information such as names, addresses, telephone numbers. It allows the nation's Armed Forces Recruiters the same access to high school students as that provided to college recruiters and job recruiters. Committee Republicans strongly believe that we must ensure that local educational agencies that want access to federal funds in order to meet their school construction needs are following the law that allows military recruiters access to secondary school students' information. Even though the Kline amendment would have protected the rights of our nation's Armed Forces and helped students interested in pursuing a military career, it was blocked trom receiving a vote.

Congressman Tom Price (R–GA) offered an amendment to require local educational agencies to conduct an independent audit by a third-party entity substantiating the overall condition of their public school facilities. As discussed above, there has never been a comprehensive independent audit or analysis, such as one conducted by an independent assessor, on the nation's school construction needs. Thus, it is difficult to ascertain the true construction and maintenance needs at the state and local level. Committee Republicans believe that, in order to address this situation, a system is needed to independently and accurately assess the state of our nation's elementary and secondary schools and to guide how resources would be allocated under this bill. Even though the Price amendment would have ensured that local educational agencies obtain the necessary expertise on the condition of their local schools and what is needed to ensure that all students are educated in safe and clean environments, it was defeated by a vote of 18–26.

Congressman Tom Price (R–GA) also offered an amendment to prohibit the earmarking of federal school construction funds under this new program through the appropriations process. Committee Republicans believe that if Congress is going to create a new school construction program, it should, at a minimum, ensure that federal funds are channeled to the schools that have the greatest need, rather than earmarked to benefit those with political connections or paid lobbyists. Even though the amendment would have ensured that federal funds would continue to be allocated to states based on a poverty-driven formula, not on the whims of the leadership of the Congress, it was defeated by a vote of 21–25.

Congressman Vernon Ehlers (R–MI) offered an amendment to prohibit states and local educational agencies that receive funding under the federal school construction program to purchase carbon offsets. While purchasing carbon offsets may make school administrators feel good, there is no accountability or commonly accepted standards available to judge the quality of carbon offsets. Even though the Ehlers amendment would have restricted the use of carbon offsets, it was rejected by a vote of 21–25.

Congressman David Davis (R–TN) offered an amendment to require a local educational agency that receives funds under H.R. 3021 to certify in writing to the state educational agency that it is complying with the school prayer provisions included in current law. NCLB denies federal funds to any local school district that prevents or otherwise denies participation in constitutionally-protected school prayer. Committee Republicans strongly believe that we must ensure that local educational agencies that want access to federal funds in order to meet their school construction needs are following the law that allows students and teachers in public schools across the nation to voluntarily pray. Even though the Davis amendment would have upheld the right to voluntary prayer, which is vital to protecting the free exercise of religion, it was not even allowed to come to a vote.

CONCLUSION

As outlined in these Minority Views, the primary responsibility for school construction has historically been and should remain at the state and local school and school district levels.

While members of the House Education and Labor Committee continue to receive feedback from some interest groups that our nation's elementary and secondary schools need funds for school construction and facilities repair and renovation projects, other schools may have a need to hire more teachers, to provide 8 additional instructional programs to improve student achievement for low-income students under the Title I program or to provide needed services for special education students under IDEA. As such, the limited role of the federal government should remain focused on assisting local schools and school districts in raising student achievement.

The effort to maintain the federal focus on assisting states and local school districts in improving student academic achievement is far more realistic and practical than enacting a massive and unproven federal school construction program, which would cost the federal government more than $100 billion to cover the cost of

repairing obsolete and out-of-date schools. This staggering funding level is almost double the Department's current discretionary budget for all of its programs and activities. Maintaining the current federal focus would also provide the maximum amount of flexibility in the use of federal funds so that schools have the full ability to tailor additional funding resources to their particular needs. Local schools and school districts must have the flexibility to use federal funds in the way in which each local school believes will improve student academic performance.

Equally as troubling, any federal school construction program is subject to the requirements of the Davis-Bacon Act. It is estimated that this requirement dramatically raises the costs of school construction by as much as one-third in some parts of the country, especially in those local communities that have lower costs and are not subject to the flawed prevailing wage structure.

Committee Republicans believe that H.R. 3021 and any federal school construction program would undermine efforts to increase funding for the Title I program and IDEA, weaken efforts at the state and local levels to fund school construction, dramatically increase the cost of elementary and secondary schools because of the new Davis-Bacon requirements, and dramatically expand the size and scope of the federal government.

Because of these alarming facts, it is prudent—indeed it is essential—that Congress reject any attempt to create a new federal school construction program. Congress owes it to the American people—students, parents, and taxpayers alike—to set our nation's priorities, to keep our promises to low-income students and students with disabilities, and to keep school construction costs affordable for states and local communities around the nation.

HOWARD P. MCKEON.
PETER HOEKSTRA.
MARK SOUDER.
RIC KELLER.
JOE WILSON.
JOHN KLINE.
CATHY MCMORRIS RODGERS.
KENNEY MARCHANT.
THOMAS PRICE.
C.W. BOUSTANY, Jr.
VIRGINIA FOXX.
ROB BISHOP.
DAVID DAVIS.
TIM WALBERG.

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