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S. 1121

To amend part D of title V of the Elementary and Secondary Education Act of 1965 to provide grants for the repair, renovation, and construction of elementary and secondary schools, including early learning facilities at the elementary schools.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2009

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To amend part D of title V of the Elementary and Secondary Education Act of 1965 to provide grants for the repair, renovation, and construction of elementary and secondary schools, including early learning facilities at the elementary schools.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''School Building Fairness Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Providing safe, healthy, and up-to-date public elementary and secondary school facilities is a crucial component of improving student academic performance and retaining high-quality, committed educators.

(2) The 2009 Infrastructure Report Card compiled by the American Society of Civil Engineers gives public schools a D grade.

(3) The National Center for Education Statistics, in 2000, reported that the Nation's elementary and secondary schools required approximately $127,000,000,000 to repair or upgrade facilities.

(4) A State-by-State analysis by the American Federation of Teachers in 2008 concluded that the Nation's school infrastructure needs total an estimated $254,600,000,000.

(5) The Department of Education documented in 1998 that the average age of a public elementary or secondary school building was estimated at 42 years old, an age when schools tend to deteriorate.

(6) School districts spent more than $304,000,000,000 for public school construction contracts from 1995 through 2004, according to data collected by McGraw-Hill Construction.

(7) According to a 2006 report by the Building Educational Success Together coalition, the per-student investment made in the most affluent school districts to repair or construct schools was nearly double the amount of the per-student investment made in the most disadvantaged school districts.

(8) Since 1998, the Iowa Demonstration Construction Grant Program has provided $121,000,000 in Federal assistance to over 300 school districts for school repair and construction. That Federal investment in school repair and construction has leveraged more than $600,000,000 of additional local funding through a match required by the State government.

(9) Green schools use an average of 33 percent less energy than conventionally built schools, and generate financial savings of about $70 per square foot, according to the 2006 report ''Greening America's Schools: Costs and Benefits''.

SEC. 3. GRANTS FOR SCHOOL REPAIR, RENOVATION, AND CONSTRUCTION.

Part D of title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7241 et seq.) is amended by adding at the end the following:

"Subpart 22—School Facilities

"SEC. 5621. GRANTS FOR SCHOOL REPAIR, RENOVATION, AND CONSTRUCTION.

''(a) DEFINITIONS.—In this section:

''(1) CHARTER SCHOOL.—The term 'charter school' has the meaning given the term in section 5210.

''(2) CHPS CRITERIA.—The term 'CHPS Criteria' means the green building rating criteria developed by the Collaborative for High Performance Schools.

''(3) ENERGY STAR.—The term 'Energy Star' means the Energy Star program of the Department of Energy and the Environmental Protection Agency.

''(4) GREEN GLOBES.—The term 'Green Globes' means the Green Building Initiative environmental design and rating system.

''(5) HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term 'high-need local educational agency' has the meaning given the term in section 2102(3)(A).

''(6) LEED GREEN BUILDING RATING SYSTEM.—The term 'LEED Green Building Rating System' means the United States Green Building

Council Leadership in Energy and Environmental Design green building rating system.

"(7) RURAL LOCAL EDUCATIONAL AGENCY.—The term 'rural local educational agency' means a local educational agency that the State determines is located in a rural area using objective data and a commonly employed definition of the term 'rural'.

"(8) STATE.—The term 'State' means each of the several states of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(b) ALLOCATION OF FUNDS.—

"(1) RESERVATIONS.—From the funds appropriated under subsection (i) for a fiscal year, the Secretary shall reserve 1 percent to provide assistance to the outlying areas and for payments to the Secretary of the Interior to provide assistance to schools funded by the Bureau of Indian Education. Funds allocated under this subparagraph shall be reserved by the Secretary for distribution among the outlying areas and the Secretary of the Interior on the basis of their relative need for public elementary school and secondary school repair, renovation, and construction, as determined by the Secretary.

"(2) ALLOCATION TO STATE EDUCATIONAL AGENCIES.—From the funds appropriated under

subsection (i) for a fiscal year that are not reserved under paragraph (1) for the fiscal year, the Secretary shall allocate to each State educational agency serving a State an amount that bears the same relation to the funds as the amount the State received under part A of title I for the fiscal year preceding the fiscal year for which the determination is made bears to the amount all States received under such part for such preceding fiscal year, except that no such State educational agency shall receive less than 0.5 percent of the amount allocated under this subsection.

''(c) WITHIN-STATE DISTRIBUTIONS.—

''(1) ADMINISTRATIVE AND OTHER COSTS.—

''(A) STATE EDUCATIONAL AGENCY ADMINISTRATION AND OTHER COSTS.—Except as provided in subparagraph (D), each State educational agency may reserve not more than 1 percent of the State educational agency's allocation under subsection (b) for the purposes of administering the distribution of grants under this subsection and awarding grants under subparagraph (C)(v).

"(B) REQUIRED USES.—The State educational agency shall use a portion of the funds reserved under subparagraph (A)—

"(i) to provide technical assistance to local educational agencies; and

"(ii) to establish or support a State-level database of public elementary school and secondary school facility inventory, condition, design, and utilization.

"(C) PERMISSIBLE USES.—The State educational agency may use a portion of the funds reserved under subparagraph (A) for—

"(i) developing a statewide public elementary school and secondary school educational facility master plan;

"(ii) developing policies, procedures, and standards for high-quality, energy efficient public elementary school and secondary school facilities;

"(iii) supporting interagency collaboration that will lead to broad community use of public elementary school and secondary school facilities, and school-based services for students served by high-need

local educational agencies or rural local educational agencies;

"(iv) helping to defray the cost of issuing State bonds to finance public elementary school and secondary school repair, renovation, and construction; and

"(v) awarding grants to State-operated or State-supported schools, such as a State school for the deaf or for the blind, to enable such schools to carry out school repair, renovation, and construction activities in accordance with subsection (d).

"(D) STATE ENTITY ADMINISTRATION AND OTHER COSTS.—If the State educational agency transfers funds to a State entity described in paragraph (2)(A), the State educational agency shall transfer to such State entity not less than 75 percent of the amount reserved under subparagraph (A) for the purpose of carrying out the activities described in subparagraph (C).

"(2) DISTRIBUTION OF COMPETITIVE SCHOOL REPAIR, RENOVATION, AND CONSTRUCTION GRANTS TO LOCAL EDUCATIONAL AGENCIES.—

"(A) IN GENERAL.—Of the funds allocated to a State educational agency under subsection

(b) that are not reserved under paragraph (1), the State educational agency shall distribute 100 percent of such funds to local educational agencies or, if the State educational agency is not responsible for the financing of education facilities, the State educational agency shall transfer such funds to the State entity responsible for the financing of education facilities (referred to in this section as the 'State entity') for distribution by such State entity to local educational agencies in accordance with this paragraph, to be used, consistent with subsection (d), for public elementary school or secondary school repair, renovation, and construction.

"(B) COMPETITIVE GRANTS TO LOCAL EDUCATIONAL AGENCIES.—The State educational agency or State entity shall carry out a program to award grants, on a competitive basis, to local educational agencies for public elementary school or secondary school repair, renovation, and construction. Of the total amount available for distribution to local educational agencies under this paragraph, the

State educational agency or State entity, shall, in carrying out the grant competition—

"(i) award to high-need local educational agencies, in the aggregate, not less than an amount which bears the same relationship to such total amount as the aggregate amount such high-need local educational agencies received under part A of title I for the fiscal year preceding the fiscal year for which the determination is made bears to the aggregate amount received for such preceding fiscal year under such part by all local educational agencies in the State;

"(ii) award to rural local educational agencies in the State, in the aggregate, not less than an amount which bears the same relationship to such total amount as the aggregate amount such rural local educational agencies received under part A of title I for the fiscal year preceding the fiscal year for which the determination is made bears to the aggregate amount received for such preceding fiscal year under

such part by all local educational agencies in the State; and

"(iii) award the remaining funds to local educational agencies in the State that did not receive a grant award under clause (i) or (ii), including to high-need local educational agencies and rural local educational agencies that did not receive a grant award under clause (i) or (ii).

"(C) CRITERIA FOR AWARDING GRANTS.—In awarding competitive grants under this paragraph, a State educational agency or State entity shall take into account the following criteria:

"(i) PERCENTAGE OF POOR CHILDREN.—The percentage of children served by the local educational agency who are between 5 to 17 years of age, inclusive, and who are from families with incomes below the poverty line.

"(ii) NEED FOR SCHOOL REPAIR, RENOVATION, AND CONSTRUCTION.—The need of a local educational agency for school repair, renovation, and construction, as demonstrated by the condition of the public elementary school or secondary

school facilities of the local educational agency or the local educational agency's need for such facilities.

"(iii) GREEN SCHOOLS.—The extent to which a local educational agency will make use, in the repair, renovation, or construction to be undertaken, of green practices that are certified, verified, or consistent with any applicable provisions of—

"(I) the LEED Green Building Rating System;

"(II) Energy Star;

"(III) the CHPS Criteria;

"(IV) Green Globes; or

"(V) an equivalent program adopted by the State or another jurisdiction with authority over the local educational agency.

"(iv) FISCAL CAPACITY.—The fiscal capacity of a local educational agency to meet the needs of the local educational agency for repair, renovation, and construction of public elementary school or secondary school facilities without assistance under this section, including the abil-

ity of the local educational agency to raise funds through the use of local bonding capacity and otherwise.

"(v) LIKELIHOOD OF MAINTAINING THE FACILITY.—The likelihood that a local educational agency will maintain, in good condition, any facility whose repair, renovation, or construction is assisted under this section.

"(vi) CHARTER SCHOOL ACCESS TO FUNDING.—In the case of a local educational agency that proposes to fund a repair, renovation, or construction project for a public charter school, the extent to which the public charter school lacks access to funding for the project through the financing methods available to other public schools or local educational agencies in the State.

"(D) MATCHING REQUIREMENT.—

"(i) IN GENERAL.—A State educational agency or State entity shall require local educational agencies to match funds awarded under this paragraph.

"(ii) MATCH AMOUNT.—The amount of a match described in clause (i) may be established by using a sliding scale that takes into account the relative poverty of the population served by the local educational agency.

"(d) RULES APPLICABLE TO SCHOOL REPAIR, RENOVATION, AND CONSTRUCTION.—With respect to funds made available under this section that are used for school repair, renovation, and construction, the following rules shall apply:

"(1) PERMISSIBLE USES OF FUNDS.—School repair, renovation, and construction shall be limited to 1 or more of the following:

"(A) Upgrades, repair, construction, or replacement of public elementary school or secondary school building systems or components to improve the quality of education and ensure the health and safety of students and staff, including—

"(i) repairing, replacing, or constructing early learning facilities at public elementary schools (including renovation of existing facilities to serve children under 5 years of age);

"(ii) repairing, replacing, or installing roofs, windows, doors, electrical wiring, plumbing systems, or sewage systems;

"(iii) repairing, replacing, or installing heating, ventilation, or air conditioning systems (including insulation); and

"(iv) bringing such public schools into compliance with fire and safety codes.

"(B) School facilities modifications necessary to render public elementary school or secondary school facilities accessible in order 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).

"(C) Improvements to the environmental conditions of public elementary school or secondary school sites, including asbestos abatement or removal, and the reduction or elimination of human exposure to lead-based paint, mold, or mildew.

"(D) Measures designed to reduce or eliminate human exposure to classroom noise and environmental noise pollution.

"(E) Modifications necessary to reduce the consumption of electricity, natural gas, oil, water, coal, or land.

"(F) Upgrades or installations of educational technology infrastructure to ensure that students have access to up-to-date educational technology.

"(G) Measures that will broaden or improve the use of public elementary school or secondary school buildings and grounds by the community in order to improve educational outcomes.

"(2) IMPERMISSIBLE USES OF FUNDS.—No funds received under this section may be used for—

"(A) payment of maintenance costs in connection with any projects constructed in whole or part with Federal funds provided under this section;

"(B) purchase or upgrade of vehicles;

"(C) improvement or construction of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities;

"(D) purchase of information technology hardware, including computer, monitors, or printers; or

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

"(3) SUPPLEMENT, NOT SUPPLANT.—A local educational agency or State-operated or State-supported school shall use Federal funds subject to this subsection only to supplement the amount of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for school repair, renovation, and construction.

"(e) QUALIFIED BIDDERS; COMPETITION.—Each local educational agency that receives funds under subsection (c)(2) shall ensure that, if the local educational agency carries out repair, renovation, or construction through a contract, any such contract process ensures the maximum number of qualified bidders, including small, minority, and women-owned businesses, through full and open competition.

"(f) PUBLIC COMMENT.—Each local educational agency receiving funds under subsection (c)(2)—

"(1) shall provide an opportunity for public comment, and ensure that parents, educators, and all other interested members of the community in which the school to be assisted is located have the opportunity to consult, on the use of the funds received under such subsection;

"(2) shall provide the public with adequate and efficient notice of the opportunity described in paragraph (1) in a widely read and distributed medium; and

"(3) shall provide the opportunity described in paragraph (1) in accordance with any applicable State and local law specifying how the comments may be received and how the comments may be reviewed by any member of the public.

"(g) REPORTING.—

"(1) LOCAL REPORTING.—Each local educational agency receiving funds under subsection (c)(2) shall submit a report to the State educational agency, at such time as the State educational agency may require, describing the use of such funds for school repair, renovation, and construction.

"(2) STATE REPORTING.—Each State educational agency receiving funds under subsection (b) shall submit to the Secretary, at such time as the

Secretary may require, a report on the use of funds received under this section and made available to local educational agencies (and, if applicable, to State-operated or State-sponsored schools) for school repair, renovation, and construction.

''(h) REALLOCATION.—If a State educational agency does not apply for an allocation of funds under subsection (b) for a fiscal year, or does not use the State educational agency's entire allocation for such fiscal year, then the Secretary may reallocate the amount of the State educational agency's allocation (or the remainder thereof, as the case may be) for such fiscal year to the remaining State educational agencies in accordance with subsection (b).

''(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $6,000,000,000 for fiscal year 2010, and such sums as may be necessary for each of fiscal years 2011 through 2014.

"SEC. 5622. NATIONAL CENTER FOR EDUCATION STATISTICS STUDY.

''(a) IN GENERAL.—The National Center for Education Statistics (NCES) shall conduct a study of the condition of public elementary school and secondary school facilities in the United States.

"(b) ESTIMATES AND MEASURES.—In conducting the study, the National Center for Education Statistics shall—

"(1) estimate the costs needed to repair and renovate all public elementary schools and secondary schools in the United States to good overall condition; and

"(2) measure recent expenditures of Federal, State, local and private funds for public elementary school and secondary school repair, renovation, and construction costs in the United States.

"(c) ANALYSIS.—In conducting the study, the National Center for Education Statistics shall examine trends in expenditures of Federal, State, local, and private funds since fiscal year 2001 for repair, renovation, and construction activities for public elementary schools and secondary schools in the United States, including examining the differences between the types of schools assisted, and the types of repair, renovation, and construction activities conducted, with those expenditures.

"(d) REPORT.—The National Center for Education Statistics shall prepare and submit to Congress a report containing the results of the study.

"SEC. 5623. NATIONAL CLEARINGHOUSE FOR EDUCATIONAL FACILITIES.

"(a) IN GENERAL.—From the funds appropriated under subsection (c), the Secretary shall award a grant or contract to maintain a clearinghouse that will collect and disseminate information on effective, best educational practices, and the latest research, regarding the planning, design, financing, construction, improvement, operation, and maintenance of safe, healthy, high-performance public school facilities for nursery and pre-kindergarten, kindergarten through grade 12, and higher, education.

"(b) DURATION.—The grant or contract under subsection (a) shall be awarded for a period of 5 years.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $1,500,000 for each of fiscal years 2010 through 2014.".

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