

**AMENDMENT TO H.R. 1, AS REPORTED**  
**OFFERED BY MR. TIBERI OF OHIO**  
**(Tiberi–Castle Amendment)**

At the end of the provision proposed to be added by section 701 of the bill, add the following:

1 **“PART C—LOCAL FLEXIBILITY DEMONSTRATION**

2 **“SEC. 7301. SHORT TITLE.**

3 This part may be cited as the “Local Flexibility Dem-  
4 onstration Act”.

5 **“SEC. 7302. PURPOSE.**

6 “The purpose of this part is to create options for local  
7 educational agencies—

8 “(1) to improve the academic achievement of all  
9 students, and to focus the resources of the Federal  
10 Government upon such achievement;

11 “(2) to improve teacher quality and subject  
12 matter mastery, especially in mathematics, reading,  
13 and science;

14 “(3) to empower parents and schools to effec-  
15 tively address the needs of their children and stu-  
16 dents;

17 “(4) to give local educational agencies max-  
18 imum freedom in determining how to boost academic  
19 achievement and implement education reforms;



1 “(5) to eliminate Federal barriers to imple-  
2 menting effective local education programs;

3 “(6) to hold local educational agencies account-  
4 able for boosting the academic achievement of all  
5 students, especially disadvantaged children; and

6 “(7) to narrow achievement gaps between the  
7 lowest and highest performing groups of students so  
8 that no child is left behind.

9 **“SEC. 7303. AGREEMENTS TO PROVIDE LOCAL FLEXIBILITY.**

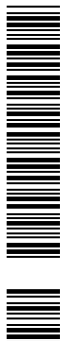
10 “(a) **AUTHORITY.**—Except as otherwise provided in  
11 this part, the Secretary shall enter into performance  
12 agreements—

13 “(1) with local educational agencies that meet  
14 their State’s definition of adequate yearly progress,  
15 that submit approvable performance agreement pro-  
16 posals, and that are selected under paragraph (2);  
17 and

18 “(2) under which the agencies may consolidate  
19 and use funds as described in section 7304.

20 “(b) **SELECTION OF LOCAL EDUCATIONAL AGEN-**  
21 **CIES.**—

22 “(1) **IN GENERAL.**—Subject to paragraph (2),  
23 the Secretary shall enter into performance agree-  
24 ments under this part with not more than 100 local  
25 educational agencies. Each such local educational



1 agency shall be selected from among those local edu-  
2 cational agencies that—

3 “(A) submit a proposed performance  
4 agreement to the Secretary and demonstrate, to  
5 the satisfaction of the Secretary, that the agree-  
6 ment)

7 “(i) has substantial promise of meet-  
8 ing the requirements of this part; and

9 “(ii) describes a plan to combine and  
10 use funds (as authorized under section  
11 7304) under the agreement to meet the  
12 State’s definition of adequate yearly  
13 progress);

14 “(B) provide information in the proposed  
15 performance agreement regarding how the local  
16 educational agency has notified the State of the  
17 local educational agency’s intent to submit a  
18 proposed performance agreement; and

19 “(C) have consulted and involved parents  
20 and educators in the development of the pro-  
21 posed performance agreement.

22 “(2) GEOGRAPHIC DISTRIBUTION.—

23 “(A) IN GENERAL.—

24 “(i) INITIAL AGREEMENTS.—During  
25 the period of time that expires 3 years



1 after the date of enactment of the No  
2 Child Left Behind Act of 2001, the Sec-  
3 retary may enter into not more than 2 per-  
4 formance agreements under this part with  
5 local educational agencies in each State.

6 “(ii) SUBSEQUENT AGREEMENTS.—  
7 After the expiration of the 3-year period  
8 beginning on the date of enactment of the  
9 No Child Left Behind Act of 2001, the  
10 Secretary may enter into performance  
11 agreements under this part with any num-  
12 ber of local educational agencies in each  
13 State until the total number of such agree-  
14 ments equals 100.

15 “(B) URBAN AND RURAL AREAS.—If more  
16 than 2 local educational agencies in a State  
17 submit approvable performance agreements  
18 under this part, the Secretary shall select local  
19 educational agencies for performance agree-  
20 ments under this part in a manner that ensures  
21 an equitable distribution among such agencies  
22 serving urban and rural areas.

23 “(c) REQUIRED TERMS OF PERFORMANCE AGREE-  
24 MENT.—Each performance agreement entered into with



1 the Secretary under this part shall have each of the fol-  
2 lowing terms:

3           “(1) TERM.— The performance agreement shall  
4 be for a term of 5 years.

5           “(2) APPLICATION OF PROGRAM REQUIRE-  
6 MENTS.—The performance agreement shall provide  
7 that no requirements of any program described in  
8 section 7304(b) and included by the local edu-  
9 cational agency in the scope of the agreement shall  
10 apply to the agency, except as otherwise provided in  
11 this part.

12           “(3) LIST OF PROGRAMS.—The performance  
13 agreement shall list which of the programs described  
14 in section 7304(b) are included in the scope of the  
15 performance agreement.

16           “(4) USE OF FUNDS TO IMPROVE STUDENT  
17 ACHIEVEMENT.— The performance agreement shall  
18 contain a 5-year plan describing how the local edu-  
19 cational agency intends to combine and use the  
20 funds from programs included in the scope of the  
21 performance agreement to advance the education  
22 priorities of the State and the local educational  
23 agency, meet the general purposes of the included  
24 programs, improve student achievement, and narrow  
25 achievement gaps.



1           “(5) LOCAL INPUT.—The performance agree-  
2           ment shall contain an assurance that the local edu-  
3           cational agency will provide parents, teachers, and  
4           schools with notice and an opportunity to comment  
5           on the proposed terms of the performance agreement  
6           in accordance with State law.

7           “(6) FISCAL RESPONSIBILITIES.—The perform-  
8           ance agreement shall contain an assurance that the  
9           local educational agency will use fiscal control and  
10          fund accounting procedures that will ensure proper  
11          disbursement of, and accounting for, Federal funds  
12          consolidated and used under the performance agree-  
13          ment.

14          “(7) CIVIL RIGHTS.—The performance agree-  
15          ment shall contain an assurance that the local edu-  
16          cational agency will meet the requirements of appli-  
17          cable Federal civil rights laws in carrying out the  
18          agreement and in consolidating and using the funds  
19          under the agreement.

20          “(8) PRIVATE SCHOOL PARTICIPATION.—The  
21          performance agreement shall contain an assurance  
22          that the local educational agency agrees that in con-  
23          solidating and using funds under the performance  
24          agreement—



1           “(A) the local educational agency will pro-  
2           vide for the equitable participation of students  
3           and professional staff in private schools; and

4           “(B) that sections 8504, 8505, and 8506  
5           shall apply to all services and assistance pro-  
6           vided with such funds in the same manner as  
7           such sections apply to services and assistance  
8           provided in accordance with section 8503.

9           “(9) ANNUAL REPORTS.—The performance  
10          agreement shall contain an assurance that the local  
11          educational agency agrees that not later than 1 year  
12          after the date on which the Secretary enters into the  
13          performance agreement, and annually thereafter  
14          during the term of the performance agreement, the  
15          local educational agency shall disseminate widely to  
16          parents and the general public, transmit to its State  
17          educational agency and the Secretary, distribute to  
18          print and broadcast media, and post on the Internet,  
19          a report that includes a detailed description of how  
20          the local educational agency used the funds consoli-  
21          dated under the agreement to improve student aca-  
22          demic achievement and reduce achievement gaps.

23          “(c) APPROVAL.—Not later than 60 days after the  
24          receipt of a proposed performance agreement submitted  
25          by a local educational agency under this part, the Sec-



1 retary shall approve the performance agreement or provide  
2 the local educational agency with a written determination  
3 that such agreement fails to satisfy the requirements of  
4 this part.

5 “(d) AMENDMENT TO PERFORMANCE AGREE-  
6 MENT.—

7 “(1) IN GENERAL.—In each of the following  
8 circumstances, the Secretary shall agree to amend a  
9 performance agreement entered into with a local  
10 educational agency under this part:

11 “(A) REDUCTION IN SCOPE OF PERFORM-  
12 ANCE AGREEMENT.—Not later than 1 year  
13 after entering into the performance agreement,  
14 a State seeks to amend the agreement to re-  
15 move from the scope any program described in  
16 section 7304(b).

17 “(B) EXPANSION OF SCOPE OF PERFORM-  
18 ANCE AGREEMENT.—Not later than 1 year  
19 after entering into the performance agreement,  
20 a State seeks to amend the agreement to in-  
21 clude in its scope any additional program de-  
22 scribed in section 7304(b) or any additional  
23 achievement indicators for which the State will  
24 be held accountable.

25 “(2) APPROVAL OF AMENDMENT.—





1           “(1) IN GENERAL.—Not later than 60  
2           days after the receipt of a proposed amendment  
3           to the performance agreement submitted by a  
4           local educational agency, the Secretary shall ap-  
5           prove the amendment or provide the agency  
6           with a written determination that the amend-  
7           ment fails to satisfy the requirements of this  
8           part.

9           “(B) TREATMENT AS APPROVED.—Each  
10          amendment for which the Secretary fails to  
11          take the action required in subparagraph (A) in  
12          the time period described in such subparagraph  
13          shall be considered to be approved.

14          “(3) TREATMENT OF PROGRAM FUNDS WITH-  
15          DRAWN FROM AGREEMENT.—Beginning on the effec-  
16          tive date of an amendment executed under para-  
17          graph (1)(A), each program requirement of each  
18          program removed from the scope of a performance  
19          agreement shall apply to the local educational agen-  
20          cy’s use of funds made available under the program.

21       **“SEC. 7304. CONSOLIDATION AND USE OF FUNDS.**

22          “(a) IN GENERAL.—

23               “(1) AUTHORITY.—Under a performance agree-  
24               ment entered into under this part, a local edu-  
25               cational agency may consolidate, subject to sub-



1 section (c), Federal funds made available to the  
2 agency under the provisions listed in subsection (b)  
3 and use such funds for any educational purpose per-  
4 mitted under this Act.

5 “(2) PROGRAM REQUIREMENTS.—Except as  
6 otherwise provided in this part, a local educational  
7 agency may use funds under paragraph (1) notwith-  
8 standing the program requirements of the program  
9 under which the funds were made available to the  
10 State.

11 “(b) ELIGIBLE PROGRAMS.—Funds made available  
12 under programs under each of the following provisions of  
13 this Act may be consolidated and used under subsection  
14 (a):

15 “(1) Title II.

16 “(2) Part A of title IV.

17 “(3) Subpart 1 of part A of title V.

18 “(4) Part B of title V.

19 **“SEC. 7305. LIMITATIONS ON ADMINISTRATIVE EXPENDI-**  
20 **TURES.**

21 Each local educational agency that has entered into  
22 a performance agreement with the Secretary under this  
23 part may use for administrative purposes not more than  
24 4 percent of the total amount of funds allocated to the



1 agency under the programs included in the scope of the  
2 performance agreement.

3 **“SEC. 7306. PERFORMANCE REVIEW AND PENALTIES.**

4 “(a) MIDTERM REVIEW.—The Secretary may not  
5 enter into a performance agreement under this part unless  
6 the agreement includes a provision permitting the Sec-  
7 retary, after notice and an opportunity for a hearing, to  
8 terminate the agreement if, during the term of the agree-  
9 ment, the local educational agency that is party to the  
10 agreement fails to make adequate yearly progress for 3  
11 consecutive years.

12 “(b) FINAL REVIEW.—If, at the end of the 5-year  
13 term of a performance agreement entered into under this  
14 part, a local educational agency that is party to the agree-  
15 ment has not met the achievement goals contained in the  
16 performance agreement, the Secretary may not renew the  
17 agreement under section 7307 and, beginning on the date  
18 on which such term ends, the local educational agency  
19 shall be required to comply with each of the program re-  
20 quirements in effect on such date for each program in-  
21 cluded in the performance agreement.

22 **“SEC. 7307. RENEWAL OF PERFORMANCE AGREEMENT.**

23 “(a) IN GENERAL.—Except as provided in section  
24 7306(b) and in accordance with this section, the Secretary  
25 shall renew for 1 additional 5-year term a performance



1 agreement entered into under this part if the State that  
2 is party to the agreement has met or has substantially  
3 met, by the end of the original term of the agreement,  
4 the achievement goals contained in the agreement.

5 “(b) NOTIFICATION.—The Secretary may not renew  
6 a performance agreement under this part unless, not less  
7 than 6 months before the end of the original term of the  
8 agreement, the local educational agency seeking the re-  
9 newal notifies the Secretary of its intention to renew.

10 “(c) EFFECTIVE DATE.—A renewal under this sec-  
11 tion shall be effective at the end of the original term of  
12 the agreement or on the date on which the local edu-  
13 cational agency seeking renewal provides to the Secretary  
14 all data required under the agreement, whichever is later.

15 **“SEC. 7308. REPORTS.**

16 “(a) TRANSMITTAL TO CONGRESS.—Not later than  
17 60 days after the Secretary receives a report described in  
18 section 7303(c)(9), the Secretary shall make the report  
19 available to the Committee on Education and the Work-  
20 force of the House of Representatives and the Committee  
21 on Health, Education, Labor and Pensions of the Senate.

22 “(b) LIMITATION.—A State in which a local edu-  
23 cational agency that is party to a performance agreement  
24 entered into under this part is located may not require  
25 such local educational agency to provide any application



1 information with respect to the programs included within  
2 the scope of such performance agreement other than that  
3 information that is required to be included in the report  
4 described in section 7303(c)(9).

5 **“SEC. 7309. DEFINITIONS.**

6 “In this part, the following definitions apply:

7 “(1) ADEQUATE YEARLY PROGRESS.—The term  
8 ‘adequate yearly progress’ means the adequate year-  
9 ly progress determined by the State in which a local  
10 educational agency is located pursuant to section  
11 1111(b)(2)(C).

12 “(2) ALL STUDENTS.—The term ‘all students’  
13 means all students attending public schools or char-  
14 ter schools that are participating in the State’s ac-  
15 countability and assessment system.”.

