



Legislative Bulletin.....June 4, 2008

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

**H.R. 3021—21st Century Green High-Performing Public School Facilities Act
(Chandler, D-KY)**

Please note the conservative concerns below.

Order of Business: The bill is scheduled to be considered on Wednesday, June 4, likely subject to a structured rule. The RSC will circulate a subsequent document summarizing the rule and any amendments made in order therein.

Summary: H.R. 3021 would make grants to local education agencies (LEA) for the construction, modernization, and/or repair of public schools.

The bill authorizes \$6.4 billion for FY 2009 and such sums as may be necessary for FY 2010 through 2013 to award grants to help modernize and renovate public schools. Furthermore, the bill would authorize the appropriation of \$100 million for each of fiscal years beginning in 2009 through 2013 to help repair and construct new public schools damaged by Hurricanes Katrina and Rita. Of the amounts appropriated under the bill, each state will receive an amount in proportion to the amount received by all LEAs in the state.

The bill requires that one percent of all funds appropriated each year (for example, \$64 million in FY 2009) must be used to “provide assistance” to areas surrounding those receiving the grant aid. Furthermore, the bill would allow states to reserve up to one percent of their allocation under this bill to provide technical assistance to LEAs, and develop a plan for 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. In addition, such funds may be used to develop a school energy efficiency quality plan.

The bill lists the following modernizations, renovations, and repairs as allowable uses of funds:

- Roofs, electrical wiring, plumbing systems, sewage systems, lighting systems, or components of such systems, windows, or doors;

- Heating, ventilation, air conditioning systems, or components of such systems (including insulation), including indoor air quality assessments;
- Bringing public schools into compliance with fire and safety codes;
- Preparations for emergencies;
- Modifications to bring schools into compliance with the Americans with Disabilities Act;
- Asbestos abatement or removal;
- Elimination of lead-based paint hazards including abatement and removal;
- Upgrading or installing educational technology infrastructure;
- Anything that “improves teachers’ ability to teach and students’ ability to learn”, “ensure the health and safety of students and staff”, or “makes them more energy efficient”;
- Any required environmental remediation.

The bill sets up supplemental grants for Louisiana, Mississippi, and Alabama in order to address needs caused by damage from Hurricane Katrina and Rita. Schools that were closed for 60 days or more during the period beginning on August 29, 2005 and ending December 31, 2005 would be applicable to receive this additional funding. The state can reserve up to one half of the money granted for this purpose for “administrative purposes.” The allowable uses for these funds are the same as those listed above, but may also include the construction of new schools.

The bill lists that no funds in this act may be used to pay for maintenance costs, stadiums, or other facilities primarily used for athletic contests (including events which charge admission to the general public).

The bill requires that an LEA receiving funds under this grant must use federal funds only to supplement current modernization, renovation, and repair activities and not to supplant such funds.

The bill also requires that the state and LEA must continue to spend at least 90 percent of the amount it spent in previous years (called “maintenance of effort”) to be eligible for grants under this act.

H.R. 3021 also requires that any contracting done with provided funds ensures the maximum number of qualified bidders, including local, small, minority-owned, women-owned, and veteran-owned businesses, through full and open competition. By placing this new program directly under the General Education Provisions Act (GEPA), the bill makes these grants subject to Davis-Bacon prevailing wage requirements.

Green Schools Provision. H.R. 3021 mandates that LEAs who plan to utilize federal funds under this act must use a certain percentage of all funds on modernizations, renovations, and repairs that are consistent with the provisions of the [LEED Green Building Rating System](#), are [LEED Green Building certified](#), or are [Energy Star](#) certified. Each year, the required use of funds increases from 50 percent in FY 2009 to **90 percent in FY 2013**.

H.R. 3021 requires that all LEAs receiving funds under this act submit an annual report to Congress outlining the projects which received funding, including any expected benefits from any energy savings incurred, improvement in environmental quality, or improved climate for teaching and learning. Although included in such a report must be any reason why new construction did not

meet LEED certification or Energy Star certification, there is nothing in the bill that explicitly exempts any school district from complying with the green schools mandate.

Committee Action: On July 12, 2007, the bill was introduced and referred to the House Committee on Education and Labor, which, on April 30, 2008, marked up, amended, and ordered the bill reported to the full House by a vote of 28-19.

Conservative Concerns: Some conservatives, including Education and Labor Committee Ranking Member and RSC Member Buck McKeon (R-CA), have expressed various concerns about the legislation. The House Education and Labor Committee released the following statement in a press release on April 29, 2008:

A massive and unproven federal school construction program would undermine efforts to increase funding for key education priorities, weaken efforts at the state level to fund school construction, dramatically increase the cost of elementary and secondary schools, and significantly expand the size and scope of the federal government. These were among the findings of a new congressional staff analysis on the impact of federal school construction mandates ... ¹

RSC Member, and Ranking Member McKeon is quoted in the press release as saying,

“As this analysis shows, imposition of a federal school construction mandate threatens to do far more harm than good for our nation’s students, teachers, classrooms, and communities ... instead of fulfilling existing commitments to our nation’s schools, these misguided school construction directives could diminish support for programs that serve disadvantaged students while driving up construction costs—and all without having a meaningful impact on our educational infrastructure needs.” Furthermore, Rep. McKeon goes on to say, “The burdens of a federal school construction program stand in stark contrast with our commitment to promote flexibility and local control in education. Just as we reject a one-size-fits-all approach to student academic standards, we must also reject any effort to federalize the building and maintenance of the school facilities that play such an integral role in individual communities across this nation. The federal investment in education must remain focused on ensuring educational opportunity and excellence for all students.”

In addition, many conservatives may have concerns with H.R. 3021 for the following reasons:

Increasing Federal Responsibility and Undermining Current Programs

Many conservatives may be concerned that historically, the federal government has had an extremely limited financial responsibility with regard to school infrastructure projects. According to the minority views expressed in [House Report 110-623](#), 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. Since then, federal funds have been used mostly for building and repairing schools which the federal government is directly responsible for—schools on Indian reservations and on

¹ The report that Committee staff authored, entitled “It Doesn’t Add Up: The Dangers of a Federal School Construction Mandate,” can be found here:

http://republicans.edlabor.house.gov/Media/File/PDFs/school_construction_mandate.pdf.

military bases. The limited role by the federal government has allowed more resources to be spent on increasing student achievement—primarily through Title I of the Elementary and Secondary Education Act (ESEA) (which provides funding for the education of disadvantaged children), and the Individuals with Disabilities Act (IDEA). Many conservatives may be concerned that this legislation would undermine Congress’ ability to fund the Title I program and the IDEA by diverting necessary funds from programs designed to increase student achievement.

Furthermore, the historical role of states and local governments in providing K-12 educational funds far exceeds that of the federal government. The federal government is responsible for nine percent of annual K-12 education spending, with state governments contributing 47 percent and local sources contributing 44 percent. As such, it is clear why the federal government has focused on funding academic programs over infrastructure programs.

Ambiguous Allowable Uses for Funds

The bill would allow grant funds to be used for “anything that improves teachers’ ability to teach and students’ ability to learn”, “ensure the health and safety of students and staff”, or “makes them more energy efficient.” Many conservatives may be concerned that this language is vague, and may allow grant funds to pay for the renovation of school-based health clinics, playgrounds, or other non-academic public school facilities.

Unprecedented Spending

Statistics show that the unmet need for school construction and renovation is estimated to be \$112 billion, while states and local governments are spending an average of \$20 billion annually on such improvements. The Department of Education receives \$22 billion—total—for the Office of Elementary and Secondary Education. Many conservatives are concerned that this bill creates a new federal funding stream for school construction—authorizing 30% of the current funding that the Office of Elementary and Secondary Education receives for academic achievement programs.

Green School Mandate

Many conservatives may be concerned that this legislation would mandate that by FY 2013, 90 percent of all funds on modernizations, renovations, and repairs must be consistent with the provisions of the LEED Green Building Rating System, be LEED Green Building certified, or be Energy Star certified. While such rating systems and certifications are growing in interest around the U.S., some conservatives may be concerned that this requirement is mandated.

Furthermore, many conservatives from smaller and/or rural communities may be concerned that this mandate would cut into funding for more necessary projects if they are required to follow strict green building procedures and practices. For instance, if a school is in need of a roof repair, they may be required to replace the entire roof in order to comply with the green mandate. This would undoubtedly cost the school more money, leaving less money for other needed renovations or repairs.

Davis-Bacon Wage Requirement

Many conservatives may also be concerned that this legislation is subject to the requirements of the Davis-Bacon Act. To read more on Davis-Bacon, please see this [RSC Informational Document](#). [House Report 110-623](#) has the following information on how the Davis-Bacon wage requirement has been affecting school construction costs:

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.

Administration Position:

While they have yet to release an official Statement of Administration Policy, it is expected that the President will veto the bill if it is presented to him.

Furthermore, Department of Education Secretary Spellings wrote the following letter to Chairman Miller regarding their opposition to H.R. 3021:

I am writing to advise you that the Administration strongly opposes H.R. 3021, the “21st Century High-Performing Public School Facilities Act,” which I understand your Committee will soon consider ... as you know, the primary responsibility for elementary and secondary education in this country rests with State and local governments, and that is particularly true in the case of the construction and repair of schools. Currently, the Federal Government provides school construction assistance in very limited circumstances, such as to school districts serving large numbers of United States military families and to Indian reservation schools and schools within the Bureau of Indian Education system.

The Federal Government’s role should not be expanded to fund school construction at thousands of school districts across the Nation, as it would be under H.R. 3021. Decisions about which schools to open or close, build or renovate, and the financial responsibility for carrying out those decisions, must remain at the State and local level.

The Federal responsibility in K-12 education is properly focused on raising the academic achievement of all students and improving accountability. Launching a costly new school construction program drains resources from the immediate task of closing achievement gaps.

I also note that the bill suffers from various defects, including a complex funding scheme and inconsistency with the Federal Credit Reform Act, but fixing these problems would not alter our strong opposition to such an expansion of the Federal role in school construction.

The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the President’s program.

Outside Groups Opposing Final Passage:

Americans for Tax Reform
Associated Builders and Contractors
Independent Electrical Contractors
National Federation of Independent Business
U.S. Chamber of Commerce

Many of these organizations are opposed to final passage due to Davis-Bacon wage requirement concerns. If you would like to see the letters sent by these organizations in opposition to H.R. 3021, please feel free to e-mail RSC staff.

Cost to Taxpayers: CBO estimates that H.R. 3021 would authorize the appropriation of \$6.4 billion for FY 2009 and such sums as may be necessary for FY 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. 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.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, H.R. 3021 would authorize funds to make grants available for public school construction, modernization, and/or repair. Historically, school construction has been funded at the state and local level and such grants are an unprecedented expansion of federal government authority. In addition, the bill would set new mandates for green construction of public schools.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. Many conservatives may argue that Section 306 of H.R. 3021 institutes new intergovernmental mandates, requiring that through FY 2009—2013, increasing percentages of all construction paid for with these funds be “green construction.” While CBO does not regard these as mandates under the Unfunded Mandates Reform Act, many conservatives may still view this provision as a federal government mandate on local school construction projects.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Education and Labor Committee, in [House Report 110-623](#), asserts that, “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.”

Constitutional Authority: The Education and Labor Committee, in [House Report 110-623](#), cites constitutional authority in Article I, Section 8, Clause 18 (Congress’ power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers). **This constitutional authority statement fails to cite a foregoing power of Congress.** House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

Note: Article VI, Clause 3 of the U.S. Constitution states that, “The Senators and Representatives...and all executive and judicial Officers...shall be bound by Oath or Affirmation, to support this Constitution.” **Many conservatives may argue that this legislation is not constitutionally authorized.**

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