

Minority Views on H.R. 2187, 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.

The federal government has historically had an extremely limited role in directly financing school infrastructure projects and facility improvement programs. The U.S. Department of Education operates the Impact Aid Construction program, which provides funding to school districts to build and repair schools impacted by the loss of tax revenue because of the presence of military bases, federal lands, and Indian reservations in the area; that is, assistance to children who historically have been a federal responsibility. The federal government also provides indirect financial support for school construction by providing enhanced credit provisions for construction of charter schools by incentivizing the private sector to make loans to charter schools for facilities.¹

But, overall, the construction and modernization of public elementary and secondary schools has historically been a State and local responsibility. For more than 40 years, Congress has deliberately limited the scope of federal intervention in elementary and secondary education to those efforts that increase student academic achievement. That is, until Democrats on the House Education and Labor Committee took up and passed legislation creating a massive new federal school construction program, which would be administered through the U.S. Department of Education. The bill, H.R. 2187, the 21st Century Green High-Performing Public School Facilities Act, would nationalize and regulate school construction projects; threaten state, local, and private support for educational infrastructure; jeopardize Congress' ability to reduce federal spending; push the country further into debt; dramatically increase the cost of elementary and secondary schools; and siphon resources from longstanding education priorities while failing to improve academic achievement.

H.R. 2187 nationalizes and regulates school construction projects.

States and local communities have the primary responsibility to set public policy over education, particularly public elementary and secondary education. When the federal government has intervened to fulfill a pressing need, it has done so while maintaining the autonomy and authority of local communities to make those decisions that impact students in their classrooms. The federal government does not have the right to replace the responsibilities that lie with states and school districts to set their own priorities and to provide funding for programs that assist in the education of children.

¹ The federal government also exempts the interest on state and local governmental bonds from federal income taxes. States and local areas are provided tax credits for issuing Qualified Zone Academy Bonds or QZABs, which may be used for schools based in Empowerment Zones or Enterprise Communities, or schools with 35 percent of students qualified for free or reduced price lunches under the Federal School Lunch Program.

The introduction of a new federal program for school construction, like that envisioned under H.R. 2187, would fundamentally change this dynamic by giving the federal government responsibility for funding and regulating school construction projects. This would undermine the basic premise of elementary and secondary education: that education policy should be set at the local level by teachers, parents, and superintendents. Instead of passing legislation that would reinforce local control, the Democratic Majority proposes to nationalize school construction projects, forcing states and school districts to meet a variety of impractical requirements and guidelines set by federal bureaucrats, including regulations that building materials meet certain environmental rules. These restrictive federal regulations will needlessly increase project costs and provide less flexibility for states and school districts to meet the needs of their students.

H.R. 2187 threatens state, local, and private support for educational infrastructure.

While accurate estimates are difficult to obtain, the U.S. Department of Education has attempted to project the needs and costs of school construction, modernization, renovation, and repair. According to a report 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 three-quarters of the nation's schools reporting a need for funds to bring their buildings into a "good overall condition." However, it should be noted that much of the data on which the Department relied was from self-reporting of construction needs by school superintendents and other officials. There has been no comprehensive independent analysis, such as by an independent assessor, conducted to determine the true infrastructure needs across the country.

In order to deal with the need for new construction or renovations to existing buildings, states and local school districts have made a significant commitment to public funding of school construction, modernization, renovation, and repair. According to "*The 2009 Annual School Construction Report*" recently released by School Planning and Management, school construction valued at an estimated \$19.5 billion was completed in 2008. Of this amount, \$13 billion was spent on the design and construction of new schools (accounting for 66.5 percent of the construction dollars), \$3.2 billion (16.6 percent) on additions to existing buildings, and just under \$3.3 billion (16.9 percent) on retrofit and modernization of existing structures. According to the report, the percentage of construction dollars spent on new buildings was the highest since 1979. During the past seven years, school districts have completed construction projects totaling more than \$144 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 billion annually on school construction, it is valid to wonder how a new federal school construction program administered by the U.S. Department of Education (which annually receives roughly \$25 billion for the entire range of programs authorized under the Elementary and Secondary Education Act) could do a better job at building schools than state and local officials. Yet despite the relatively miniscule impact this new federal intervention will have, the mere presence of federal spending could have the unintended consequence of signaling that other parties are no longer responsible for these key investments. With passage of H.R. 2187, there is a great possibility that states, local communities, and private sector investors will back away from their responsibility to build and maintain safe and modern schools.

H.R. 2187 jeopardizes Congress' ability to reduce federal spending, pushing the country further into debt.

America is in the midst of an economic and financial crisis. The national debt now stands at more than \$11 trillion, and this year alone, the federal government is projected to run a deficit of close to \$2 trillion, a fact that is hard for most Americans to comprehend when they have to balance their family checkbook. With these sobering facts, it's time for Congress to get the federal budget under control. During the recent campaign and in his first few months in office, President Obama has pledged repeatedly that his Administration will embrace fiscal discipline by taking a scalpel to the massive federal budget and going through it line-by-line to "stop wasteful, obsolete federal government programs that make no financial sense." A complementary effort is for Congress to resist the temptation to create new programs when the existing need is already being addressed at the state and local level.

Instead of standing up to the out-of-control spending spree, the Democratic majority is proposing to add an estimated \$20 billion to the federal debt over the next five years, significantly increasing the size and scope of the federal government and undermining Congress' ability to reduce the deficit and get the federal budget under control.

H.R. 2187 dramatically increases the cost of building elementary and secondary schools.

One of the most troubling aspects of the massive new federal school construction program authorized through H.R. 2187 is that it will be subject to the requirements of the Depression-era Davis-Bacon Act, which requires construction projects to 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 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.

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.

Given all of this information, it is clear that H.R. 2187 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 the economic downturn, Congress should not impose this unnecessary and outdated mandate on local school districts, which will only serve to overinflate school construction prices, limit competition, and reduce jobs for entry-level workers.

H.R. 2187 siphons resources from longstanding education priorities and fails to improve academic achievement.

Since passage of the Elementary and Secondary Education Act of 1965, the federal government has spent nearly \$500 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 to help 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.

By passing H.R. 2187 and creating a new and massive federal school construction program, Congressional Democrats will weaken Congress’ ability to focus on current priorities and force us to back away from the federal focus on adequately funding programs that increase student achievement, including the Title I program and IDEA. 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.

Committee consideration of H.R. 2187

On May 6, 2009, the House Education and Labor Committee met to mark-up H.R. 2187, the 21st Century Green High-Performing Public School Facilities Act. The Democratic majority scheduled consideration

of the legislation even though no hearings were held in advance to explore the merits of a new federal school construction program.² 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.

Rejected amendments that would have improved the bill

During consideration of H.R. 2187, Committee Republicans offered a pair of amendments to reinforce the longstanding federal education priorities of Title I and IDEA. Unfortunately, both of the amendments were rejected by the majority.

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

Congressman Mike Castle (R-DE) offered an amendment to require the Title I program for low-income students to be fully funded before federal resources could be redirected to support a new federal school construction program. The amendment was offered to address the fact that the underlying bill would divert significant resources from programs that are properly focused on raising the academic achievement of all students, mainly through the Title I program for low-income 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. Recently, the Democrat-controlled Congress provided \$14.5 billion for the Title I program, more than \$10 billion below the authorized funding level. Even though the Castle amendment would ensure that Congress keeps making progress toward meeting the funding goals for the Title I program for low-income students, it was rejected by a vote of 15-28.

Congressman John Kline (R-MN) offered an amendment to require the Individuals with Disabilities Education Act (IDEA) to be fully funded before creating a new federal school construction program. When the federal government set up the IDEA program in 1975, Congress promised states and local school districts that it would provide 40 percent of the excess costs of educating children with disabilities to ensure that they receive a free appropriate public education. But despite enormous progress, especially over the past decade, Congress still is not meeting that commitment. Earlier this year, Congress provided \$12.3 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 account for 17% of excess costs. The Kline amendment would ensure that Congress keeps making progress toward meeting the funding goals for IDEA; however, it was rejected by a vote of 15-28.

Adopted amendments that will improve the bill

Congressman Jared Polis (D-CO) 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

² It should be noted that, last year, the Democratic majority held a single hearing on the issue of school construction, which is more than what has been afforded Members of the House Education and Labor Committee this year. At that time, however, there was no opportunity to question the expert witnesses that were called before the Committee as the Chairman abruptly ended the hearing after the witnesses presented their oral testimony.

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. It is perhaps no coincidence that charter schools 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%, according to some estimates. Through the Polis amendment, charter schools will be guaranteed the same equitable access to facilities assistance as regular public schools under the bill. The amendment was adopted by voice vote.

Congressman Howard P. “Buck” McKeon (R-CA) 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 and it is nearly impossible to ascertain the true construction and maintenance needs of public schools at the state and local level. The McKeon amendment, similar to amendments offered by Congressman Tom Price (R-GA) in the past, seeks to address this situation by ensuring that school districts independently and accurately assess the state of their elementary and secondary schools to guide how resources would be allocated under this bill. It was adopted by a voice 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 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 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 academic achievement.

Committee Republicans would urge Congress to reject H.R. 2187 and any attempt to create a federal school construction program. These efforts would undermine state and local educational agencies’ responsibility for school construction, add billions of dollars to the national debt, and dramatically increase the size and scope of the federal government; and it would do these things while diminishing support for programs that serve disadvantaged students.

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