

111TH CONGRESS
1ST SESSION

H. R. 2280

To reauthorize the impact aid program under the Elementary and Secondary Education Act of 1965.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2009

Ms. HIRONO (for herself, Mr. TERRY, Mr. KISSELL, Mr. YOUNG of Alaska, Mr. MCINTYRE, Mrs. CAPPS, Mr. GONZALEZ, Mr. DICKS, Mr. COSTELLO, Mr. LARSEN of Washington, and Mr. SIRES) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To reauthorize the impact aid program under the Elementary and Secondary Education Act of 1965.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Funding for
5 Schools Act of 2009”.

6 **SEC. 2. PAYMENTS RELATING TO FEDERAL ACQUISITION**
7 **OF REAL PROPERTY.**

8 Section 8002 of the Elementary and Secondary Edu-
9 cation Act of 1965 (20 U.S.C. 7702) is amended—

1 (1) in subsection (a)(1)(C), by amending the
2 matter preceding clause (i) to read as follows:

3 “(C) had an assessed value (according to
4 original records (including facsimiles or other
5 reproductions of those records) documenting
6 the assessed value of such property (determined
7 as of the time or times when so acquired) pre-
8 pared by a legally authorized official or other
9 records that the Secretary determines to be ap-
10 propriate and reliable, including Federal agency
11 records or local historical records) aggregating
12 10 percent or more of the assessed value
13 of—”;

14 (2) in subsection (f) by striking paragraphs (4)
15 and (5);

16 (3) in subsection (h) by striking paragraphs (1)
17 through (4) and inserting the following:

18 “(1) FOUNDATION PAYMENTS FOR CURRENT
19 ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—

20 “(A) IN GENERAL.—The Secretary shall
21 first make a foundation payment to each local
22 educational agency that was eligible for a pay-
23 ment under this section for fiscal year 2006.

24 “(B) AMOUNT.—The amount of payment
25 under subparagraph (A) for a local educational

1 agency shall be equal to 90 percent of the
2 amount received by such local educational agen-
3 cy under subsection (a) for fiscal year 2006.

4 “(C) INSUFFICIENT APPROPRIATIONS.—If
5 the amount appropriated under section 8014(a)
6 is insufficient to pay the full amount deter-
7 mined under this paragraph for all eligible local
8 educational agencies for the fiscal year, then
9 the Secretary shall ratably reduce the payment
10 to each local educational agency under this
11 paragraph.

12 “(2) FOUNDATION PAYMENTS FOR LOCAL EDU-
13 CATIONAL AGENCIES DEEMED ELIGIBLE AFTER FIS-
14 CAL YEAR 2006.—

15 “(A) IN GENERAL.—From the funds re-
16 maining after making payments under para-
17 graph (1), the Secretary shall make a founda-
18 tion payment to each local educational agency
19 eligible for a payment under this section after
20 fiscal year 2006 for the first fiscal year after
21 fiscal year 2006 such local educational agency
22 is eligible for such payment.

23 “(B) AMOUNTS.—The amount of a pay-
24 ment under subparagraph (A) for a local edu-
25 cational agency shall be determined as follows:

1 “(i) Calculate the local educational
2 agency’s maximum payment under sub-
3 section (b).

4 “(ii) Calculate the percentage that the
5 amount appropriated under section
6 8014(a) for the most recent fiscal year for
7 which the Secretary has completed making
8 payments under this section is of the total
9 maximum payments for such fiscal year for
10 all eligible local educational agencies and
11 multiply the agency’s maximum payment
12 by such percentage.

13 “(iii) Multiply the amount determined
14 under clause (ii) by 90 percent.

15 “(3) REMAINING FUNDS.—From any funds re-
16 maining after making payments under paragraphs
17 (1) and (2) for a fiscal year, the Secretary shall
18 make a payment to each local educational agency
19 that receives a foundation payment under paragraph
20 (1) or (2) for the fiscal year in an amount that
21 bears the same relation to the funds remaining as a
22 percentage share determined for the local edu-
23 cational agency (by dividing the maximum amount
24 that the agency is eligible to receive under sub-
25 section (b) by the total of the maximum amounts for

1 all such agencies) bears to the percentage share de-
2 termined (in the same manner) for all local edu-
3 cational agencies eligible to receive a payment under
4 this section for the fiscal year, except that, for the
5 purpose of calculating a local educational agency's
6 maximum payment under subsection (b), data from
7 the most current fiscal year shall be used.”;

8 (4) by striking subsections (i), (k), and (m);
9 and

10 (5) by redesignating subsection (l) and (n) as
11 (i) and (j), respectively.

12 **SEC. 3. PAYMENTS FOR ELIGIBLE FEDERALLY CONNECTED**
13 **CHILDREN.**

14 Section 8003 of that Act (20 U.S.C. 7703) is amend-
15 ed—

16 (1) in subsection (a)—

17 (A) in paragraph (1), in the matter pre-
18 ceding subparagraph (A), by inserting after
19 “such agency,” the following: “including those
20 children enrolled in a State that has a State
21 open enrollment policy (but not including chil-
22 dren enrolled in a distance learning program
23 not residing within the geographic boundaries
24 of the agency),”;

25 (B) in paragraph (2)—

1 (i) by redesignating subparagraphs
2 (D) through (F) as (E) through (G), re-
3 spectively;

4 (ii) by inserting after subparagraph
5 (C) the following:

6 “(D) Multiply the number of children de-
7 scribed in subparagraphs (A) and (B) of para-
8 graph (1) by a factor of 1.35 if the local edu-
9 cational agency has a total student enrollment
10 of not less than 25,000 students, of which not
11 less than 50 percent are children described in
12 paragraph (1) and not less than 6,000 are chil-
13 dren described in subparagraphs (A) and (B) of
14 paragraph (1).”; and

15 (iii) in subparagraph (F) (as so reded-
16 icated) by striking “.10” and inserting
17 “.05”;

18 (C) in paragraph (4)(B), in each of clauses
19 (i)(I) and (ii)(I), by striking “3 fiscal years”
20 and inserting “4 fiscal years”; and

21 (D) in paragraph (5)(A) by inserting after
22 “1984,” the following: “or under lease of off-
23 base property under subchapter IV of chapter
24 169 of part IV on subtitle A of title 10, United
25 States Code (10 U.S.C. 2871 et. seq.),”;

1 (2) subsection (b)(2)—

2 (A) in subparagraph (B)—

3 (i) in the subparagraph heading by
4 striking “CONTINUING”;

5 (ii) in clause (i) by striking subclauses
6 (I) and (II) and inserting the following:

7 “(I) is a local educational agency
8 whose boundaries are the same as a
9 Federal military installation or the
10 boundaries are the same as island
11 property designated by the Secretary
12 of the Interior to be property that is
13 held in trust by the Federal Govern-
14 ment and the agency has no taxing
15 authority, or the agency;

16 “(II) has an enrollment of chil-
17 dren described in subsection (a)(1)
18 that constitutes a percentage of the
19 total student enrollment of the agency
20 that is not less than 40 percent;

21 “(III) has a per-pupil expendi-
22 ture that is less than—

23 “(aa) for a local educational
24 agency that has a total student
25 enrollment of 350 or more stu-

1 dents, 120 percent of the average
2 per-pupil expenditure of the
3 State in which the agency is lo-
4 cated; or

5 “(bb) for a local educational
6 agency that has a total student
7 enrollment of less than 350—

8 “(AA) 120 percent of
9 the average per-pupil ex-
10 penditure of the State in
11 which the agency is located;
12 or

13 “(BB) the average per-
14 pupil expenditure of 3 com-
15 parable local educational
16 agencies in the State in
17 which the agency is located;

18 “(IV) has a tax rate for general
19 fund purposes that is at least 95 per-
20 cent of the average tax rate for gen-
21 eral fund purposes of comparable local
22 educational agencies in the State;

23 “(V) for a local educational agen-
24 cy that has an enrollment of children
25 described in subsection (a)(1) that

1 constitutes a percentage of the total
2 student enrollment of the agency
3 which is not less than 30 percent, and
4 has a tax rate for general fund pur-
5 poses which is not less than 125 per-
6 cent of the average tax rate for gen-
7 eral fund purposes for comparable
8 local educational agencies in the
9 State; and

10 “(VI) for a local educational
11 agency that was eligible to receive a
12 payment under this subsection for fis-
13 cal year 2008 and is located in a
14 State that by State law has eliminated
15 ad valorem tax as a revenue source
16 for local educational agencies, the Sec-
17 retary shall consider such agency as
18 meeting the requirements of subclause
19 (IV).”; and

20 (iii) by adding at the end of the fol-
21 lowing:

22 “(iv) SPECIAL RULE.—Notwith-
23 standing clause (i)(II), a local educational
24 agency shall be considered eligible to re-
25 ceive a basic support payment under sub-

1 paragraph (A) with respect to the number
2 of children determined under subsection
3 (a)(1) if the agency—

4 “(I) has an enrollment of chil-
5 dren described in subsection (a)(1),
6 including, for purposes of determining
7 eligibility, those children described in
8 subparagraphs (F) and (G) of such
9 subsection, that constitutes a percent-
10 age of the total student enrollment of
11 the agency that is not less than 35
12 percent; and

13 “(II) was eligible to receive as-
14 sistance under subsection (b)(2) for
15 fiscal year 2001.”;

16 (B) by striking subparagraphs (C), (D),
17 and (E);

18 (C) by inserting after subparagraph (B)
19 the following:

20 “(C) MAXIMUM AMOUNT FOR HEAVILY IM-
21 PACTED LOCAL EDUCATIONAL AGENCIES.—

22 “(i) IN GENERAL.—The maximum
23 amount that a heavily impacted local edu-
24 cational agency is eligible to receive under
25 this paragraph for any fiscal year is the

1 sum of the total weighted student units, as
2 computed under subsection (a)(2) and sub-
3 ject to clause (ii), multiplied by the greater
4 of—

5 “(I) four-fifths of the average
6 per-pupil expenditure of the State in
7 which the local educational agency is
8 located for the third fiscal year pre-
9 ceeding the fiscal year for which the
10 determination is made; or

11 “(II) four-fifths of the average
12 per-pupil expenditure of all of the
13 States for the third fiscal year pre-
14 ceeding the fiscal year for which the
15 determination is made.

16 “(ii) SPECIAL RULE.—(I)(aa) For a
17 local educational agency with respect to
18 which 35 percent or more of the total stu-
19 dent enrollment of the schools of the agen-
20 cy are children described in subparagraphs
21 (D) or (E) (or a combination thereof) of
22 subsection (a)(1), and has an enrollment of
23 children described in subparagraphs (A),
24 (B), or (C) of such subsection equal to at
25 least 10 percent of the agency’s total en-

1 rollment, the Secretary shall calculate the
2 weighted student units of those children
3 described in subparagraphs (D) or (E) of
4 such subsection by multiplying the number
5 of such children by a factor of 0.55.

6 “(bb) For any local educational agen-
7 cy that received a payment under this
8 clause for fiscal year 2006, the local edu-
9 cational agency shall not be required to
10 have an enrollment of children described in
11 subparagraph (A), (B), or (C) of such sub-
12 section equal to at least 10 percent of the
13 agency’s total enrollment.

14 “(II) For a local educational agency
15 that has an enrollment of 100 or fewer
16 children described in subsection (a)(1), the
17 Secretary shall calculate the total number
18 of weighted student units for purposes of
19 subsection (a)(2) by multiplying the num-
20 ber of such children by a factor of 1.75.

21 “(III) For a local educational agency
22 that does not qualify under subparagraph
23 (B)(i)(I) of this subsection and has an en-
24 rollment of more than 100 but not more
25 than 1000 children described in subsection

1 (a)(1), the Secretary shall calculate the
2 total number of weighted student units for
3 purposes of subsection (a)(2) by multi-
4 plying the number of such children by a
5 factor of 1.25.”;

6 (D) by redesignating subparagraph (F) as
7 (D) and, in that subparagraph—

8 (i) by striking clause (ii);

9 (ii) by striking “; and” at the end of
10 clause (i) and inserting a period; and

11 (iii) by striking “the Secretary” and
12 all that follows through “shall use and in-
13 serting the Secretary shall use”;

14 (E) by redesignating subparagraph (G) as
15 (E) and, in that subparagraph, in the matter
16 preceding clause (i), by striking “(C)(i)(II)(bb)”
17 and inserting “(B)(i)(II)(bb)”;

18 (F) by redesignating subparagraph (H) as
19 (F) and, in that subparagraph—

20 (i) in clause (i)—

21 (I) by striking “(B), (C), (D), or
22 (E),” and inserting “(B) or (C),”;

23 (II) by striking “by reason of”
24 and inserting “due to”;

1 (III) by inserting after “clause
2 (iii),” the following: “or as the direct
3 result of base realignment and closure
4 or modularization as determined by
5 the Secretary of Defense and force
6 structure change or force relocation,”;
7 and

8 (IV) by inserting before the pe-
9 riod at the end the following: “or dur-
10 ing such time as activities associated
11 with base closure and realignment,
12 modularization, force structure
13 change, or force relocation is ongo-
14 ing”; and

15 (ii) in clause (ii) by striking “(D) or
16 (E)” in both places such term appears and
17 inserting “(C)”;

18 (3) in subsection (b)(3)(B)—

19 (A) by redesignating clause (iv) as (v); and

20 (B) by inserting after clause (iii) the fol-
21 lowing:

22 “(iv) For any local educational agency
23 that is providing a program of distant
24 learning to children not residing within the
25 geographic boundaries of the agency, the

1 Secretary shall disregard such children
2 from such agency's total enrollment when
3 calculating the percentage under subclause
4 (I) of clause (i) and shall disregard any
5 funds received for such children when cal-
6 culating the total current expenditures at-
7 tributed to the operation of such agency
8 when calculating the percentage under sub-
9 clause (II) of clause (i).”;

10 (4) in subsection (b)(3)(C) by striking “or (E)
11 of paragraph (2), as the case may be” and inserting
12 “of paragraph (2)”.

13 (5) in subsection (b)(3), by amending subpara-
14 graph (D) to read as follows:

15 “(D) RATABLE DISTRIBUTION.—For any
16 fiscal year described in subparagraph (A) for
17 which the sums available exceed the amount re-
18 quired to pay each local educational agency 140
19 percent of its threshold payment the Secretary
20 shall distribute the excess sums to each eligible
21 local educational agency that has not received
22 its full amount computed under paragraphs (1)
23 or (2) (as the case may be) by multiplying—

24 “(i) a percentage, the denominator of
25 which is the difference between the full

1 amount computed under paragraphs (1) or
2 (2) (as the case may be) for all local edu-
3 cational agencies and the amount of the
4 threshold payment as calculated under sub-
5 paragraphs (B) and (C) of all local edu-
6 cational agencies, and the numerator of
7 which is the aggregate amount of the ex-
8 cess sums by:

9 “(ii) the difference between the full
10 amount computed under paragraphs (1) or
11 (2) (as the case may be) for the agency
12 and the amount of the threshold payment
13 as calculated under subparagraphs (B) and
14 (C) of the agency.”;

15 (6) in subsection (c) by amending paragraph
16 (2) to read as follows:

17 “(2) EXCEPTION.—Calculation of payments for
18 a local educational agency shall be based on data
19 from the fiscal year for which the agency is making
20 an application for payment if such agency—

21 “(A) is newly established by a State, for
22 the first year of operation of such agency only;
23 or

24 “(B) was eligible to receive a payment
25 under this section for the previous fiscal year

1 and has had an overall increase in enrollment
2 (as determined by the Secretary of Education
3 in consultation with the Secretary of Defense,
4 the Secretary of Interior, or the heads of other
5 Federal agencies)—

6 “(i) of not less than 10 percent, or
7 100 students, of children described in—

8 “(I) subparagraph (A), (B), (C),
9 or (D) of subsection (a)(1); or

10 “(II) subparagraph (F) or (G) of
11 subsection (a)(1), but only to the ex-
12 tent such children are civilian depend-
13 ents of employees of the Department
14 of Defense or the Department of the
15 Interior; and

16 “(ii) that is the direct result of closure
17 or realignment of military installations
18 under the base closure process or the relo-
19 cation of members of the Armed Forces
20 and civilian employees of the Department
21 of Defense as part of force structure
22 changes or movements of units or per-
23 sonnel between military installations or be-
24 cause of actions initiated by the Secretary

1 of Interior or the head of another Federal
2 agency.”;

3 (7) in subsection (e) by striking paragraphs (1)
4 and (2) and inserting the following:

5 “(1) IN GENERAL.—Subject to paragraph (2),
6 the total amount the Secretary shall pay a local edu-
7 cation agency—

8 “(A) for fiscal year 2009, shall be not less
9 than 95 percent of the total amount that the
10 local educational agency received under sub-
11 section (b)(1), (b)(2), or (b)(2)(B)(ii) for fiscal
12 year 2008;

13 “(B) for fiscal year 2010, shall be not less
14 than 90 percent of the total amount that the
15 local educational agency received under sub-
16 section (b)(1), (b)(2), or (b)(2)(B)(ii) for fiscal
17 year 2008; and

18 “(C) for fiscal year 2011, shall be not less
19 than 85 percent of the total amount that the
20 local educational agency received under sub-
21 section (b)(1), (b)(2), or (b)(2)(B)(ii) for fiscal
22 year 2008 of which such amount shall be con-
23 sidered a foundation payment for each suc-
24 ceeding fiscal year until such time as the agen-
25 cy’s maximum payment as determined under

1 paragraphs (1) or (2) of subsection (b), as the
2 case may be, exceeds the amount provided for
3 under this subparagraph.

4 “(2) RATABLE REDUCTION.—

5 “(A) IN GENERAL.—If the sums made
6 available under this title for any fiscal year are
7 insufficient to pay the full amounts that all
8 local educational agencies in all States are eligi-
9 ble to receive under paragraph (1) for such fis-
10 cal year, then the Secretary shall ratably reduce
11 the payments to all agencies for such year.

12 “(B) ADDITIONAL FUNDS.—If additional
13 funds become available for making payments
14 under paragraph (1) for such fiscal year, pay-
15 ments that were reduced under subparagraph
16 (A) shall be increased on the same basis as
17 such payments were reduced.”; and

18 (8) by striking subsection (g).

19 **SEC. 4. APPLICATION FOR PAYMENTS UNDER SECTIONS**
20 **8002 AND 8003.**

21 Section 8005 of that Act (20 U.S.C. 7705) is amend-
22 ed by inserting a new subsection (e) as follows:

23 “(e) For the purpose of meeting the requirements of
24 section 222.35 of the Code of Federal Regulations, the
25 Secretary shall establish a third option for an applicant

1 when counting its federally connected children by using
2 the date established by the applicant to register the stu-
3 dents of such applicant for the fiscal year for which the
4 application is filed.”.

5 **SEC. 5. CONSTRUCTION.**

6 Section 8007 of that Act (20 U.S.C. 7707) is amend-
7 ed—

8 (1) in subsection (a)—

9 (A) in paragraph (1), by striking “40 per-
10 cent” and inserting “80 percent.”;

11 (B) in paragraph (2) by adding at the end
12 the following:

13 “(C) The agency is eligible under section
14 8003(b)(2) or is receiving a basic support pay-
15 ment under circumstances described in section
16 8003 (b)(2)(B)(ii).”; and

17 (C) by striking paragraph (3) and insert-
18 ing the following:

19 “(2) AMOUNT OF PAYMENTS.—

20 “(A) LOCAL EDUCATION AGENCIES IM-
21 PACTED BY MILITARY DEPENDENT CHIL-
22 DREN.—The amount of a payment to each local
23 educational agency described in this subsection
24 that is impacted by military dependent children
25 for a fiscal year shall be equal to—

1 “(i)(I) 40 percent of the amount ap-
2 propriated under section 8014(e) for such
3 fiscal year; divided by

4 “(II) the number of children described
5 in subparagraphs (B) and (D)(i) of section
6 (8003)(a)(1) who were in average daily at-
7 tendance for all local educational agencies
8 described in paragraph (2), including the
9 number of children attending a school fa-
10 cility described in section 8008(a) if the
11 Secretary does not provide assistance for
12 the school facility under that section for
13 the fiscal year; multiplied by

14 “(ii) the number of children deter-
15 mined for such agency;

16 “(I) but not less than \$25,000,
17 except that this subparagraph shall
18 not apply if the amount available to
19 carry out paragraph (1) for such fis-
20 cal year is less than \$32,000,000; and

21 “(II) not more than \$4,000,000.

22 “(B) LOCAL EDUCATIONAL AGENCIES IM-
23 PACTED BY CHILDREN WHO RESIDE ON INDIAN
24 LANDS.—The amount of a payment to each
25 local educational agency described in the sub-

1 section that is impacted by children who reside
2 on Indian lands for a fiscal year shall be equal
3 to—

4 “(i)(I) 40 percent of the amount ap-
5 propriated under section 8014(e) for such
6 fiscal year divided by

7 “(II) the number of children described
8 in section 8003(a)(1)(C) who were in aver-
9 age daily attendance for all local edu-
10 cational agencies described in paragraph
11 (2); multiplied by—

12 “(ii) the number of children deter-
13 mined for such agency;

14 “(I) but not less than \$25,000,
15 except that this subparagraph shall
16 not apply if the amount available to
17 carry out paragraph (1) for such fis-
18 cal year is less than \$32,000,000; and

19 “(II) not more than
20 \$4,000,000.”; and

21 (2) in subsection (b)—

22 (A) in paragraph (1), in the matter pre-
23 ceding subparagraph (A), by striking “60 per-
24 cent” and inserting “20 percent”;

1 (B) in paragraph (3)(A), in the matter
2 preceding clause (i), by inserting after “an
3 emergency grant under paragraph (2)(A)” the
4 following: “if the agency is covered by para-
5 graph (7), or”;

6 (C) in paragraph (3)(C)(i)(I) by striking
7 “the agency meets at least one” and all that
8 follows through the period at the end and in-
9 serting “the number of children determined
10 under section 8003(a)(1)(C) for the agency for
11 the preceding school year constituted at least
12 40 percent of the total student enrollment in
13 the schools of the agency during the preceding
14 school year.”;

15 (D) by striking paragraph (3)(D)(ii)(II)
16 and inserting the following:

17 “(II) The number of children de-
18 termined under section 8003(a)(1)(C)
19 for the school for the preceding school
20 year constituted at least 40 percent of
21 the total student enrollment in the
22 school during the preceding school
23 year.”.

1 (E) in paragraph (4)(C) by striking “(A),
2 (B), (C), and (D)” and inserting “(A) and
3 (C)”;

4 (F) by redesignating paragraph (7) as
5 paragraph (8); and

6 (G) by inserting after paragraph (6) the
7 following:

8 “(7) SPECIAL RULE.—Notwithstanding para-
9 graphs (3)(C)(i)(I) and (3)(D)(ii)(II), a local edu-
10 cational agency is eligible to receive a grant under
11 this subsection not to exceed \$4,000,000 in any one
12 fiscal year if such agency—

13 “(A) was eligible to receive a payment
14 under section 8003 for the fiscal year prior to
15 the year for which the application is made; and

16 “(B) has had an overall increase in enroll-
17 ment—

18 “(i) during the period between the end
19 of the school year preceding the fiscal year
20 for which the application is made and the
21 beginning of the school year immediately
22 preceding that school year;

23 “(ii) of not less than 100 students or
24 10 percent (whichever is lower), are chil-
25 dren described in—

1 “(I) subparagraphs (A), (B), (C),
2 or (D) of section 8003(a)(1); or

3 “(II) subparagraphs (F) or (G)
4 of section 8003(a)(1), but only to the
5 extent such children are civilian de-
6 pendants of employees of the Depart-
7 ment of Defense; and

8 “(iii) that is the direct result of one or
9 more of the following:

10 “(I) Base realignment and clo-
11 sure or global rebasing, as determined
12 by the Secretary of Defense.

13 “(II) Force structure changes or
14 force reductions.

15 “(III) An action initiated by the
16 Secretary of Interior or head of an-
17 other Federal agency.”.

18 **SEC. 6. STATE CONSIDERATION OF PAYMENTS IN PRO-**
19 **VIDING STATE AID.**

20 Section 8009 of that Act (20 U.S.C. 7709) is amend-
21 ed—

22 (1) in subsection (b)(1) by inserting before the
23 period at the end the following: “and for which the
24 average per-pupil expenditure is equal to or greater
25 than the average per-pupil expenditure of all the

1 States in the third fiscal year preceding the fiscal
2 year for which the State is applying for equalization
3 under this section”;

4 (2) in subsection (b)(2) by striking subpara-
5 graphs (A) and (B) and inserting the following:

6 “(A) STATES CURRENTLY QUALIFYING.—

7 “(i) IN GENERAL.—For purposes of
8 paragraph (1), a program of State aid for
9 any State qualifying under this section for
10 fiscal year 2006 equalizes expenditures
11 among local educational agencies if, in the
12 second fiscal year preceding the fiscal year
13 for which the determination is made the
14 amount of per-pupil expenditures made by,
15 or per-pupil revenues available to, the local
16 educational agency in the State with the
17 highest such per-pupil expenditures or rev-
18 enues did not exceed the amount of such
19 per-pupil expenditures made by, or per-
20 pupil revenues available to, the local edu-
21 cational agency in the State with the low-
22 est such expenditures or revenues by more
23 than 25 percent as calculated under clause
24 (ii).

1 “(ii) OTHER FACTORS.—Notwith-
2 standing regulations in effect prior to the
3 date of enactment of this subparagraph, in
4 making a determination under this sub-
5 paragraph, the Secretary shall—

6 “(I) arrange all local educational
7 agencies in the State by per-pupil ex-
8 penditures or revenues in descending
9 order from the highest to the lowest;

10 “(II) using per-pupil expendi-
11 tures or revenues as the only criteria
12 disregard those local educational
13 agencies that are spending above the
14 95th percentile and those spending
15 below the 5th percentile;

16 “(III) identify the local edu-
17 cational agency at the 95th percentile
18 and the local educational agency at
19 the 5th percentile;

20 “(IV) subtract the amount of
21 per-pupil expenditures or revenues of
22 the local educational agency at the
23 5th percentile from the amount of
24 per-pupil expenditures or revenues of
25 the local educational agency at the

1 95th percentile and divide the dif-
2 ference by the per-pupil expenditures
3 or revenues of the local educational
4 agency at the 5th percentile; and

5 “(V) take into account the extent
6 to which a program of State aid re-
7 flects the additional cost of providing
8 free public education in particular
9 types of local educational agencies,
10 such as those that are geographically
11 isolated, or to particular types of stu-
12 dents, such as children with disabil-
13 ities.

14 “(B) NEW STATES APPLICANTS.—

15 “(i) IN GENERAL.—For purposes of
16 paragraph (1), a program of State aid for
17 any State qualifying under this section
18 after fiscal year 2006 equalizes expendi-
19 tures among local educational agencies if,
20 in the second fiscal year preceding the fis-
21 cal year for which the determination is
22 made, the amount of per-pupil expendi-
23 tures made by, or per-pupil revenues avail-
24 able to, the local educational agency in the
25 State with the highest such per-pupil ex-

1 penditures or revenues did not exceed the
2 amount of such per-pupil expenditures
3 made by, or per-pupil revenues available
4 to, the local educational agency in the
5 State with the lowest such expenditures or
6 revenues by more than 10 percent as cal-
7 culated under clause (ii).

8 “(ii) OTHER FACTORS.—Notwith-
9 standing regulations in effect prior to the
10 date of the enactment of this subpara-
11 graph, in making a determination under
12 this subparagraph, the Secretary shall—

13 “(I) arrange all local educational
14 agencies in the State by per-pupil ex-
15 penditures or revenues in descending
16 order from the highest to the lowest;

17 “(II) using per-pupil expendi-
18 tures or revenues as the only criteria
19 disregard those local educational
20 agencies that are spending above the
21 95th percentile and those spending
22 below the 5th percentile;

23 “(III) identify the local edu-
24 cational agency at the 95th percentile

1 and the local educational agency at
2 the 5th percentile;

3 “(IV) subtract the amount of
4 per-pupil expenditures or revenues of
5 the local educational agency at the
6 5th percentile from the amount of
7 per-pupil expenditures or revenues of
8 the local educational agency at the
9 95th percentile and divide the dif-
10 ference by the per-pupil expenditures
11 or revenues of the local educational
12 agency at the 5th percentile; and

13 “(V) take into account the extent
14 to which a program of State aid re-
15 flects the additional cost of providing
16 free public education in particular
17 types of local educational agencies,
18 such as those that are geographically
19 isolated, or to particular types of stu-
20 dents, such as children with disabil-
21 ities.”; and

22 (3) in subsection (d)(2)—

23 (A) by striking “A State” and inserting
24 the following:

25 “(A) IN GENERAL.—A State”; and

1 (B) by adding at the end of the following:

2 “(B) STATES THAT ARE NOT EQUALIZED
3 STATES.—A State that has not been approved
4 as an equalized State under subsection (b) shall
5 not consider funds received under section 8002
6 or section 8003 of this title in any State for-
7 mula or place a limit or direct the use of such
8 funds.”.

9 **SEC. 7. DEFINITIONS.**

10 Section 8013 of that Act (20 U.S.C. 7713) is amend-
11 ed—

12 (1) in paragraph (1) by striking “and Marine
13 Corps” and inserting “Marine Corps, and Coast
14 Guard”;

15 (2) in paragraph (4)—

16 (A) in the first sentence thereof, by strik-
17 ing “part (A) of title I and title VI” and insert-
18 ing “title I and part A of title V”; and

19 (B) in the second sentence, by striking “be
20 determined” and inserting “be made”;

21 (3) in paragraph (5)(A)(iii), by amending sub-
22 clauses (II) and (III) to read as follows:

23 “(II) used to provide housing for
24 homeless children at closed military
25 installations pursuant to section 501

1 of the McKinney-Vento Homeless As-
2 sistance Act (42 U.S.C. 11411);

3 “(III) used for affordable hous-
4 ing assisted under the Native Amer-
5 ican Housing Assistance and Self-De-
6 termination Act of 1996 (25 U.S.C.
7 4101 et seq.);”;

8 (4) in paragraph (8)(A), by inserting commas
9 before and after “and verified by”; and

10 (5) in paragraph (9)—

11 (A) by amending subparagraph (A) to read
12 as follows:

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), the term local educational
15 agency—

16 “(i) means a board of education or
17 other legally constituted local school au-
18 thority having administrative control and
19 direction of free public education in a
20 county, township, independent school dis-
21 trict, or other school district; and

22 “(ii) includes any State agency that
23 directly operates and maintains facilities
24 for providing free public education;

1 that, except for those local educational agencies
2 determined to be eligible to receive a payment
3 under section 8003 prior to the date of the en-
4 actment of the Fair Funding for Schools Act of
5 2009, when submitting an application under
6 this title for the first time on or after the date
7 of the enactment of such Act, has the authority
8 to tax and has boundaries as defined by appli-
9 cable State law for the purposes of levying such
10 taxes, or has been granted the authority to re-
11 ceive an imputed tax from a city, county, town-
12 ship, or other general-purpose political subdivi-
13 sion of a State.”; and

14 (B) in subparagraph (B), by inserting a
15 comma after “Secretary determines”.

16 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

17 Section 8014 of that Act (20 U.S.C. 7714) is amend-
18 ed—

19 (1) in subsection (a) by striking “\$32,000,000
20 for fiscal year 2000” and inserting “\$75,000,000 for
21 fiscal year 2010”;

22 (2) in subsection (b) by striking “\$809,400,000
23 for fiscal year 2000” and inserting “\$1,225,000,000
24 for fiscal year 2010”;

1 (3) in subsection (c) by striking “\$50,000,000
2 for fiscal year 2000” and inserting “\$55,000,000 for
3 fiscal year 2010”;

4 (4) by redesignating subsection (e) as (d) and,
5 in that subsection, by striking “\$10,052,000” and
6 all that follows through “and such sums” and insert-
7 ing “\$150,000,000 for fiscal year 2010 and such
8 sums”;

9 (5) by redesignating subsection (f) as (e) and,
10 in that subsection, by striking “\$5,000,000 for fiscal
11 year 2000” and inserting “\$10,000,000 for fiscal
12 year 2010”; and

13 (6) by adding at the end of the following:

14 “(f) ALLOCATION OF DOLLARS FROM PREVIOUS FIS-
15 CAL YEARS.—When final payments are made for a fiscal
16 year the Secretary shall add any remaining funds to those
17 funds appropriated for such section for the next fiscal year
18 for the purpose of making payments subject to the provi-
19 sions of the applicable section.”.

20 **SEC. 9. ADDITIONAL AND CONFORMING AMENDMENTS.**

21 (a) Subpart 20 (20 U.S.C. 7281 et seq.) of part D
22 of title V of that Act (relating to additional assistance for
23 certain local educational agencies impacted by Federal
24 property acquisition) is repealed.

1 (b) Title VIII of Elementary and Secondary Edu-
2 cation Act (20 U.S.C. 7701 et seq.) is further amended—

3 (1) in section 8004 (20 U.S.C. 7704)—

4 (A) in subsection (e)(1)(B)(i), by striking
5 “involved, or if” and inserting “involved or, if”;

6 (B) in subsection (f), by striking “upon”
7 and inserting “on”;

8 (2) in section 8008(a) (20 U.S.C. 7708(a)), by
9 striking “section 8014(f)” and inserting “section
10 8014(e)”;

11 (3) in section 8010 (20 U.S.C. 7710)—

12 (A) in subsection (b), by striking out “re-
13 quire” and inserting in lieu thereof “need”; and

14 (B) in subsection (c)(1)—

15 (i) in subparagraph (A), by striking
16 “paragraph (3)” and inserting “paragraph
17 (2)”; and

18 (ii) in subparagraph (B), by striking
19 “paragraph (3)” and inserting “paragraph
20 (2)”; and

21 (4) in section 8011(a) (20 U.S.C. 7711 (a)), by
22 striking “or under” and all that follows through “of
23 1994”.

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