

118TH CONGRESS
1ST SESSION

S. 2808

To provide Federal-local community partnership construction funding to local educational agencies eligible to receive payments under the Impact Aid program.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2023

Ms. HIRONO (for herself, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. DURBIN, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. HEINRICH, Ms. KLOBUCHAR, Mr. LUJÁN, Mr. PADILLA, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide Federal-local community partnership construction funding to local educational agencies eligible to receive payments under the Impact Aid program.

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 “Impact Aid Infrastruc-
5 ture Partnership Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) A significant percentage of federally im-
2 pacted local educational agencies serve schools with
3 facilities that fall far short of meeting basic life-safe-
4 ty standards that ensure a safe learning environ-
5 ment for students and staff alike.

6 (2) The American Society of Civil Engineers
7 rated school facilities nationally a D+. Many school
8 buildings of schools served by federally impacted
9 local educational agencies were built more than 65
10 years ago.

11 (3) A 2009 study by the Government Account-
12 ability Office found that better school facilities were
13 associated with positive student outcomes in aca-
14 demic achievement, attendance, and higher gradua-
15 tion rates. A second Government Accountability Of-
16 fice study conducted in 2020, concluded that many
17 school facilities of schools served by federally im-
18 pacted local educational agencies are in need of re-
19 pair, modernization, renovation, or replacement.

20 (4) Data compiled through surveys of federally
21 impacted local educational agencies by both the Na-
22 tional Association of Federally Impacted Schools and
23 the National Indian Impacted Schools Association
24 revealed the following:

1 (A) 65 percent of respondents indicated
2 their facilities are in fair to poor condition.

3 (B) 26 percent of respondents have build-
4 ings that are more than 80 years old.

5 (C) 53 percent of respondents have no
6 practical capacity to issue bonds.

7 (D) 82 percent of respondents identified
8 “lack of funds” as a reason for delaying con-
9 struction projects. Construction costs in rural,
10 many times geographically remote, local edu-
11 cational agencies have increased by 30 percent
12 or more in recent years making facility up-
13 grades and replacement even more challenging.

14 (5) Local educational agencies with some bond-
15 ing capacity or that have access to other sources of
16 funding are still in need of assistance to improve
17 their buildings to ensure a safe learning environ-
18 ment.

19 (6) Federally impacted local educational agen-
20 cies located in rural settings have generally higher
21 labor costs and transportation costs for workers and
22 materials that have to be brought to a school con-
23 struction site than local educational agencies located
24 in an urban setting with school construction costs.

1 Such costs are normally built in by the contractor
2 effecting the total cost of the project.

3 (7) Teacher recruitment and retention is a
4 major challenge for local educational agencies serv-
5 ing students residing on Indian Treaty and Federal
6 trust land as well as land conveyed pursuant to the
7 Alaska Native Claims Settlement Act (43 U.S.C.
8 1601 et seq.). Because there is no private housing
9 or rental units available to non-Tribal members, the
10 local educational agency must build and maintain
11 rental units. Without local educational agency owned
12 housing, the daily commute can be as much as 90
13 miles or more each way. One Arizona local edu-
14 cational agency estimated that the cost to rebuild
15 antiquated teacher housing to be \$100,000,000.

16 (8) It is common practice that State edu-
17 cational agencies compile infrastructure needs in the
18 local educational agencies located in the State. As
19 example, the Hawaii Department of Education has
20 identified more than \$2,000,000,000 in needed re-
21 pair, renovation, and construction projects to ad-
22 dress—

23 (A) structural and health and safety needs;

24 (B) compliance with the Americans with

25 Disabilities Act of 1990 (42 U.S.C. 12101 et

1 seq.) and title IX of the Education Amend-
2 ments of 1972 (20 U.S.C. 1681 et seq.); and

3 (C) various other infrastructure and con-
4 struction needs.

5 (b) PURPOSES.—The purpose of this Act is to provide
6 a collaborative Federal-local community partnership that
7 will provide both Federal and local funding to address the
8 facility needs of federally impacted local educational agen-
9 cies. The partnership shall be designed to—

10 (1) provide grants in full to federally impacted
11 local educational agencies that have no capacity to
12 issue bonds because of the presence of large parcels
13 of non-taxable Federal property;

14 (2) provide partnership grants requiring a local
15 match to local educational agencies that have a lim-
16 ited capacity to provide facility funding;

17 (3) base local matching dollars on the learning
18 opportunity threshold total percentage, as described
19 in subparagraph (B)(i) of section 7003(b)(3) of the
20 Elementary and Secondary Education Act of 1965
21 (20 U.S.C. 7703(b)(3)); and

22 (4) provide grants under section 7007(a) of the
23 Elementary and Secondary Education Act of 1965
24 (20 U.S.C. 7707(a)) to address local educational

1 agency needs to modernize and provide basic build-
2 ing improvements.

3 **SEC. 3. IMPACT AID CONSTRUCTION GRANTS AUTHORIZED.**

4 (a) FUNDING AND SUNSET.—

5 (1) AUTHORIZATION OF APPROPRIATIONS.—

6 (A) IN GENERAL.—There are authorized to
7 be appropriated \$250,000,000 for each of fiscal
8 years 2024, 2025, 2026, and 2027 to carry out
9 this Act.

10 (B) DESIGNATION.—Of the amount appro-
11 priated for each fiscal year, the Secretary of
12 Education shall designate—

13 (i) 75 percent for grants awarded
14 under paragraphs (1) and (2) of section 4;
15 and

16 (ii) 25 percent for grants awarded
17 under section 4(3).

18 (2) SUPPLEMENTAL FUNDING.—The amount
19 authorized under paragraph (1) shall be in addition
20 to any amounts authorized to be appropriated or
21 otherwise made available to carry out section 7007
22 of the Elementary and Secondary Education Act of
23 1965 (20 U.S.C. 7707).

1 (3) AVAILABILITY OF FUNDS.—Any amounts
2 appropriated under paragraph (1) shall remain
3 available until expended.

4 (4) SUNSET.—The authority to award grants
5 under this Act shall expire at the end of the 4-year
6 period beginning on the date in which funds are first
7 made available to award a grant under this Act.

8 (b) RESERVATION FOR MANAGEMENT AND OVER-
9 SIGHT.—From the funds appropriated under subsection
10 (a)(1), the Secretary of Education may reserve not more
11 than half of 1 percent for management and oversight of
12 the activities carried out with those funds.

13 **SEC. 4. GRANT AWARDS BASED ON FACILITY CONDITION.**

14 The Secretary of Education shall, based on applica-
15 tions submitted by local educational agencies under sec-
16 tion 5 and eligible for payments under section 7002 of
17 the Elementary and Secondary Education Act of 1965 (20
18 U.S.C. 7702) or section 7003 of the Elementary and Sec-
19 ondary Education Act of 1965 (20 U.S.C. 7703), establish
20 a facility condition priority listing for grant awards as fol-
21 lows:

22 (1) EMERGENCY GRANTS PRIORITY ONE.—The
23 Secretary of Education shall award grants by first
24 identifying those local educational agencies—

25 (A) that have a facility—

1 (i) as certified by a State, county, or
2 Tribal official or a licensed architect or en-
3 gineer, that is in violation of a Federal,
4 State, county, or Tribal building code rep-
5 resenting a health hazard to students and
6 school personnel;

7 (ii) that fails to meet building and
8 classroom standards to ensure the health
9 and life-safety of students and staff, as set
10 by the Centers for Disease Control and
11 Prevention, requiring classroom building
12 modification or replacement to—

13 (I) ensure quality ventilation sys-
14 tems;

15 (II) ensure classroom space to re-
16 duce class sizes and ensure social
17 distancing guidelines when required;

18 (III) address structural defi-
19 ciencies, and

20 (IV) address other health, safety,
21 and environmental conditions that
22 would impact the health, life-safety,
23 and learning ability of students;

24 (iii) that is not in compliance in meet-
25 ing student capacity standards as required

1 by the State, including failure to meet ac-
2 cessibility standards for persons with dis-
3 abilities; or

4 (iv) that lacks adequate service capaci-
5 ty or infrastructure necessary to utilize
6 technology to offer a curriculum that
7 meets the current standards in the State
8 in which the local educational agency is lo-
9 cated; or

10 (B) in the case of local educational agen-
11 cies eligible for payments under section
12 7003(a)(1)(C) of the Elementary and Sec-
13 ondary Education Act of 1965 (20 U.S.C.
14 7703(a)(1)(C)), that have teacher housing that
15 is in need of repair or new construction to meet
16 the needs of school personnel residing in such
17 housing.

18 (2) EMERGENCY GRANTS PRIORITY TWO.—

19 After identifying those local educational agencies as
20 described in paragraph (1) for priority in grant
21 awards, the Secretary of Education shall then award
22 grants by identifying those local educational agencies
23 that—

24 (A) have a facility that—

1 (i) does not meet minimum structural
2 or health and safety standards as adopted
3 by the American Society of Civil Engineers
4 and is considered to be in poor condition
5 and represents a potential health or safety
6 hazard to students and school personnel,
7 including due to—

8 (I) poor indoor air quality;

9 (II) the presence of hazardous
10 and toxic substances and chemicals;

11 (III) the lack of safe drinking
12 water at the tap and water used for
13 meal preparation, including due to the
14 level of lead and other contaminants
15 in such water;

16 (IV) energy and water ineffi-
17 ciency;

18 (V) excessive classroom noise;

19 (VI) structural deficiencies; or

20 (VII) other health, life-safety,
21 and environmental conditions that
22 would impact the health, safety, and
23 learning ability of students;

24 (ii) is not in compliance in meeting
25 student capacity standards as required by

1 the State, including failure to meet accessi-
2 bility standards for persons with disabil-
3 ities; or

4 (iii) lacks adequate services necessary
5 to utilize technology to offer a curriculum
6 that meets the current standards in the
7 State in which the local educational agency
8 is located; or

9 (B) in the case of local educational agen-
10 cies eligible for payments under section
11 7003(a)(1)(C) of the Elementary and Sec-
12 ondary Education Act of 1965 (20 U.S.C.
13 7703(a)(1)(C)), have an identified need for
14 teacher housing to ensure a safe living environ-
15 ment for teachers and their families or a need
16 for repair of existing housing or new construc-
17 tion to meet the basic needs of school personnel
18 residing in such housing.

19 (3) FORMULA GRANTS.—From funds des-
20 ignated under section 3(a)(1)(B)(ii), the Secretary
21 of Education shall make payments in accordance
22 with section 7007(a) of the Elementary and Sec-
23 ondary Education Act of 1965 (20 U.S.C. 7707(a)),
24 except that—

1 (A) when calculating the total number of
2 weighted student units as described in para-
3 graph (3)(A)(i)(II) of section 7007(a) of the El-
4 elementary and Secondary Education of 1965 (20
5 U.S.C. 7707(a)), the Secretary of Education
6 shall include the total number of weighted stu-
7 dent units of children described in subpara-
8 graphs (B) and (D)(i) of section 7003(a)(1) of
9 such Act for the preceding year for all local
10 educational agencies not meeting the require-
11 ments as described in section 7007(a)(2)(B) of
12 such Act but that meet the requirements of sec-
13 tion 572(a)(2) of the National Defense Author-
14 ization Act for Fiscal Year 2006 (20 U.S.C.
15 7703b(a)(2)); and

16 (B) when calculating the total number of
17 weighted student units as described in section
18 7003(a)(1)(C) of the Elementary and Sec-
19 ondary Education of 1965 (20 U.S.C.
20 7703(a)(1)(C)), the Secretary of Education
21 shall include the number of children determined
22 under section 7003(a)(1)(C) of such Act for the
23 preceding school year that constituted at least
24 20 percent of the total student enrollment in

1 the schools of the agency during the preceding
2 school year.

3 **SEC. 5. APPLICATION.**

4 A local educational agency eligible to apply for a
5 grant under paragraph (1) or (2) of section 4 that desires
6 to receive a grant shall submit an application in accord-
7 ance with regulations prescribed by the Secretary of Edu-
8 cation.

9 **SEC. 6. AWARD CRITERIA.**

10 When awarding a grant under paragraph (1) or (2)
11 of section 4, the Secretary of Education shall—

12 (1) first consider those local educational agen-
13 cies (or, in the case of a local educational agency
14 that does not have the authority to tax or issue
15 bonds, the agency's fiscal agent) that have limited or
16 no capacity to issue bonds or have a total assessed
17 value of real property that may be taxed for school
18 purposes of less than \$50,000,000;

19 (2) next consider those local educational agen-
20 cies not described in paragraph (1) that—

21 (A) have a total assessed value of real
22 property that may be taxed for school purposes
23 of less than \$100,000,000; or

24 (B) have an assessed value of real property
25 that may be taxed for school purposes per stu-

1 dent that is less than the average of the as-
2 sessed value of real property that may be taxed
3 for school purposes per student in the State in
4 which the local educational agency is located;
5 and

6 (3) finally consider—

7 (A) the number and percentages of chil-
8 dren described in subparagraphs (A), (B), (C),
9 and (D) of section 7003(a)(1) of the Elemen-
10 tary and Secondary Education Act of 1965 (20
11 U.S.C. 7703(a)(1)) enrolled in the school facil-
12 ity to be supported with grant funds;

13 (B) the learning opportunity threshold
14 total percentage as described in subparagraph
15 (B)(i) of section 7003(b)(3) of such Act (20
16 U.S.C. 7703(b)(3));

17 (C) with respect to local educational agen-
18 cies eligible for payments under section 7002 of
19 such Act (20 U.S.C. 7702), the percentage of
20 land in the local educational agency that is
21 Federal property;

22 (D) the potential use for community pro-
23 grams and events in the school facility to be
24 supported with grant funds;

1 (E) the feasibility of project completion
2 within 24 months from the grant award; and

3 (F) the availability of other resources for
4 the proposed project including the use of in-
5 kind contributions.

6 **SEC. 7. PAYMENTS.**

7 (a) IN GENERAL.—When making payments for
8 grants awarded under this Act, the Secretary of Education
9 shall comply with the following:

10 (1) Make payment as required in full for those
11 local educational agencies described in section 4(1)
12 with no capacity to issue bonds.

13 (2) Require those local educational agencies not
14 described in paragraph (1) to pay a percentage of
15 the total cost of the project supported with grant
16 funds as follows:

17 (A) For those local educational agencies
18 with a learning opportunity threshold total per-
19 centage, as described in subparagraph (B)(i) of
20 section 7003(b)(3) of the Elementary and Sec-
21 ondary Education Act of 1965 (20 U.S.C.
22 7703(b)(3))—

23 (i) that is 80 percent or greater, such
24 agencies shall pay a non-Federal share

1 equal to 10 percent of the total cost of the
2 project;

3 (ii) that is less than 80 percent but
4 50 percent or greater, such agencies shall
5 pay a non-Federal share equal to 20 per-
6 cent of the total cost of the project; and

7 (iii) that is less than 50 percent, such
8 agencies shall pay a non-Federal share
9 equal to 25 percent of the total cost of the
10 project.

11 (B) For those local educational agencies el-
12 igible to receive a payment under section 7002
13 of the Elementary and Secondary Education
14 Act of 1965 (20 U.S.C. 7702) that are not de-
15 scribed in paragraph (1) of section 4, such
16 agencies shall pay a non-Federal share equal to
17 25 percent of the total cost of the project.

18 (3) Make payment as required in full for those
19 local educational agencies described in paragraph (1)
20 or (2) of section 4, whose payment is \$5,000,000 or
21 less for the year in which they are to receive the
22 grant.

23 (4) Make payment to those local educational
24 agencies described in paragraph (1) or (2) of section
25 4, whose payment is more than \$5,000,000 for the

1 year in which they are to receive the grant, after
2 final drawings and specifications have been approved
3 by the Secretary of Education and the construction
4 contract has been entered into, in accordance with
5 regulations prescribed by the Secretary and at such
6 times and in such installments as may be reason-
7 able.

8 (b) Any funds paid to a local educational agency
9 under this Act and not expended for the purposes for
10 which paid shall be redistributed to make payments under
11 section 7007(a) of the Elementary and Secondary Edu-
12 cation Act of 1965 (20 U.S.C. 7707(a)).

13 **SEC. 8. GENERAL PROVISIONS.**

14 (a) USE OF FUNDS.—

15 (1) IN-KIND CONTRIBUTIONS.—A local edu-
16 cational agency may use in-kind contributions to
17 meet the non-Federal share requirement under sec-
18 tion 7(a)(2).

19 (2) PROHIBITIONS ON USE OF FUNDS.—A local
20 educational agency may not use a grant awarded
21 under paragraph (1) or (2) of section 4 for—

22 (A) a project for a school facility for which
23 the agency does not have—

24 (i) full title;

1 (ii) a long-term Tribal lease agree-
2 ment; or

3 (iii) another interest as defined in reg-
4 ulation; and

5 (B) the acquisition of real property.

6 (3) SUPPLEMENT, NOT SUPPLANT.—A local
7 educational agency shall use funds awarded under
8 this Act only to supplement the amount of funds
9 that would, in the absence of the Federal funds pro-
10 vided under the grant, be made available from non-
11 Federal sources to carry out repairs of school facili-
12 ties as described in section 4 and not to supplant
13 such funds.

14 (b) ANNUAL REPORT ON GRANT PROGRAM.—Not
15 later than September 30 of each fiscal year, the Secretary
16 of Education shall submit to the appropriate congressional
17 committees a report on the projects carried out with funds
18 made available under this Act.

19 (c) CARRY-OVER OF CERTAIN APPLICATIONS.—

20 (1) IN GENERAL.—A local educational agency
21 that applies for a grant under this Act for a fiscal
22 year and does not receive the grant for the fiscal
23 year shall have the application for the grant consid-
24 ered for the following fiscal year not to exceed the
25 end of the 4-year period as described in paragraph

1 (4) of section 3(a), subject to the priority require-
2 ments of paragraphs (1) and (2) of section 4.

3 (2) PRIORITY LISTING.—The Secretary of Edu-
4 cation shall—

5 (A) maintain a priority listing of local edu-
6 cational agencies meeting the eligibility require-
7 ments found in—

8 (i) paragraph (1) of section 4; and

9 (ii) paragraph (2) of section 4; and

10 (B) update the listing for each of para-
11 graphs (1) and (2) of section (4), including
12 those local educational agencies that applied for
13 the previous fiscal year, but were not funded
14 and for those agencies applying the succeeding
15 fiscal year.

16 (d) LOCAL EDUCATIONAL AGENCY DEFINED.—In
17 this Act, the term “local educational agency” has the
18 meaning given the term in section 7013 of the Elementary
19 and Secondary Education Act of 1965 (20 U.S.C. 7713).

○