

111TH CONGRESS  
1ST SESSION

# S. 2887

To amend title V of the Elementary and Secondary Education Act of 1965 to reduce class size through the use of highly qualified teachers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2009

Mrs. MURRAY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend title V of the Elementary and Secondary Education Act of 1965 to reduce class size through the use of highly qualified teachers, and for other purposes.

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. CLASS SIZE REDUCTION.**

4 Title V of the Elementary and Secondary Education  
5 Act of 1965 (20 U.S.C. 7201 et seq.) is amended by add-  
6 ing at the end the following:

1                   **“PART E—CLASS SIZE REDUCTION**

2   **“SEC. 5701. SHORT TITLE.**

3           “‘This part may be cited as the ‘Facilitating Out-  
4 standing Classrooms Using Size Act’ (FOCUS Act).

5   **“SEC. 5702. GRANT PROGRAM.**

6           “(a) PURPOSE.—The purposes of this section are—

7                   “(1) to reduce class size through the use of  
8 highly qualified teachers;

9                   “(2) to assist States and local educational agen-  
10 cies in recruiting, hiring, and training 100,000  
11 teachers in order to reduce class sizes nationally, in  
12 kindergarten through third grade, to an average of  
13 18 students per regular classroom; and

14                   “(3) to improve teaching in those grades so  
15 that all students can learn to read independently  
16 and well by the end of the 3rd grade.

17           “(b) ALLOTMENT TO STATES.—

18                   “(1) RESERVATION.—From the amount made  
19 available to carry out this part for a fiscal year, the  
20 Secretary shall reserve not more than 1 percent for  
21 the Secretary of the Interior (on behalf of the Bu-  
22 reau of Indian Affairs) and the outlying areas for  
23 activities carried out in accordance with this section.

24                   “(2) STATE ALLOTMENTS.—

25                           “(A) FORMULA.—Subject to subpara-  
26 graphs (B) and (C), from the funds made avail-

1           able to carry out this part for a fiscal year and  
2           not reserved under paragraph (1) or subsection  
3           (j), the Secretary shall allot to each State an  
4           amount that bears the same relation to such  
5           funds as the sum of the amounts the State re-  
6           ceived under subparagraphs (A) and (B) of sec-  
7           tion 2111(b)(2) for the preceding fiscal year  
8           bears to the sums all States received under  
9           such subparagraphs for the preceding fiscal  
10          year.

11           “(B) HOLD HARMLESS.—

12           “(i) IN GENERAL.—Subject to sub-  
13           paragraph (C) and clause (ii), from the  
14           amount made available to carry out this  
15           part for a fiscal year and not reserved  
16           under paragraph (1) or subsection (j), the  
17           Secretary shall allot to each State an  
18           amount equal to the amount that such  
19           State received for the preceding fiscal year  
20           under this section.

21           “(ii) RATABLE REDUCTION.—If the  
22           amount made available to carry out this  
23           part for a fiscal year and not reserved  
24           under paragraph (1) or subsection (j) is in-  
25           sufficient to pay the full amounts that all

1 States are eligible to receive under clause  
2 (i) for such fiscal year, the Secretary shall  
3 ratably reduce such amounts for such fis-  
4 cal year.

5 “(C) ALLOTMENT OF ADDITIONAL  
6 FUNDS.—

7 “(i) IN GENERAL.—Subject to clause  
8 (ii), for any fiscal year for which the  
9 amount made available to carry out this  
10 part and not reserved under paragraph (1)  
11 or subsection (j) exceeds the amount made  
12 available to the States for the preceding  
13 fiscal year under section 2111(b), the Sec-  
14 retary shall allot to each State the percent-  
15 age of the excess amount that is the great-  
16 er of—

17 “(I) the percentage the State re-  
18 ceived for the preceding fiscal year of  
19 the total amount made available to  
20 the States under section 1122; or

21 “(II) the percentage so received  
22 of the total amount made available to  
23 the States under section 2111(b).

24 “(ii) RATABLE REDUCTIONS.—If the  
25 excess amount for a fiscal year is insuffi-

1           cient to pay the full amounts that all  
2           States are eligible to receive under clause  
3           (i) for such fiscal year, the Secretary shall  
4           ratably reduce such amounts for such fis-  
5           cal year.

6           “(D) REALLOTMENT.—If any State does  
7           not apply for an allotment under this subsection  
8           or does not have an application approved under  
9           this part for any fiscal year, the Secretary shall  
10          reallot the amount of the allotment to the re-  
11          maining States in accordance with this sub-  
12          section.

13          “(c) ALLOCATION TO LOCAL EDUCATIONAL AGEN-  
14          CIES.—

15               “(1) ALLOCATION.—Each State that receives  
16          funds under this section shall allocate 100 percent  
17          of those funds to local educational agencies within  
18          the State, of which—

19                       “(A) 80 percent shall be allocated to those  
20          local educational agencies in proportion to the  
21          number of children, age 5 through 17, from  
22          families with incomes below the poverty line,  
23          who reside in the school district served by that  
24          local educational agency for the most recent fis-  
25          cal year for which satisfactory data are avail-

1           able, compared to the number of those children  
2           who reside in the school districts served by all  
3           the local educational agencies in the State for  
4           that fiscal year; and

5                   “(B) 20 percent shall be allocated to those  
6           local educational agencies within the State in  
7           accordance with the relative enrollments of chil-  
8           dren, age 5 through 17, in public and private  
9           nonprofit elementary schools and secondary  
10          schools within the areas served by those local  
11          educational agencies.

12                   “(2) EXCEPTION.—Notwithstanding paragraph  
13          (1) and subsection (d)(2)(B), if the award to a local  
14          educational agency under this section is less than  
15          the starting salary for a new highly qualified teacher  
16          for a school served by that local educational agency,  
17          that local educational agency may use funds made  
18          available under this section to—

19                           “(A) help pay the salary of a full- or part-  
20          time highly qualified teacher hired to reduce  
21          class size, which may be done in combination  
22          with the expenditure of other Federal, State, or  
23          local funds; or

1           “(B) pay for activities described in sub-  
2           section (d)(2)(A)(iii) that may be related to  
3           teaching in smaller classes.

4           “(3) REALLOCATION.—If a local educational  
5           agency does not apply for an allocation under this  
6           subsection or if the local educational agency’s appli-  
7           cation is not approved, the State shall reallocate the  
8           local educational agency’s allocation to the remain-  
9           ing local educational agencies in the State in accord-  
10          ance with paragraph (1).

11          “(d) USE OF FUNDS.—

12           “(1) MANDATORY USES.—Each local edu-  
13          cational agency that receives funds under this sec-  
14          tion shall use those funds—

15           “(A) to carry out effective approaches to  
16          reducing class size through use of highly quali-  
17          fied teachers to improve educational achieve-  
18          ment for both regular and special needs chil-  
19          dren, with particular consideration given to re-  
20          ducing class size in the early elementary grades  
21          for which some research has shown class size  
22          reduction is most effective; and

23           “(B) to create a continuum of small class-  
24          es at each grade level for all students served by  
25          the local educational agency as the students

1 progress from kindergarten through third  
2 grade.

3 “(2) PERMISSIBLE USES.—

4 “(A) IN GENERAL.—Each local educational  
5 agency that receives funds under this section  
6 may use those funds for—

7 “(i) recruiting (including through the  
8 use of signing bonuses, and other financial  
9 incentives), hiring, and training highly  
10 qualified regular and special education  
11 teachers (which may include hiring special  
12 education teachers to team-teach with reg-  
13 ular teachers in classrooms that contain  
14 children with disabilities and non-disabled  
15 children) and teachers of special needs  
16 children;

17 “(ii) testing new teachers for aca-  
18 demic content knowledge, and to meet  
19 State certification or licensing require-  
20 ments that are consistent with title II of  
21 the Higher Education Act of 1965; and

22 “(iii) providing professional develop-  
23 ment (which may include such activities as  
24 promoting retention and mentoring) for  
25 teachers, including special education teach-



1           ers and teachers of special needs children,  
2           in order to meet the goal of ensuring that  
3           all teachers have the general knowledge,  
4           teaching skills, and subject matter knowl-  
5           edge necessary to teach effectively in the  
6           content areas in which the teachers teach,  
7           consistent with title II of the Higher Edu-  
8           cation Act of 1965.

9           “(B) LIMITATION ON TESTING AND PRO-  
10          FESSIONAL DEVELOPMENT.—

11           “(i) IN GENERAL.—Except as pro-  
12           vided in clause (ii), a local educational  
13           agency may use not more than a total of  
14           25 percent of the funds received by the  
15           local educational agency under this section  
16           for activities described in clauses (ii) and  
17           (iii) of subparagraph (A).

18           “(ii) SPECIAL RULE.—A local edu-  
19           cational agency may use more than 25 per-  
20           cent of the funds the local educational  
21           agency receives under this section for ac-  
22           tivities described in subparagraph (A)(iii)  
23           for the purpose of helping teachers who are  
24           not yet highly qualified become highly  
25           qualified, if—

1                   “(I) 10 percent or more of the el-  
2                   mentary school classes in a school  
3                   served by the local educational agency  
4                   are taught by individuals who are not  
5                   highly qualified teachers; or

6                   “(II) the State educational agen-  
7                   cy has waived State certification or li-  
8                   censing requirements for 10 percent  
9                   or more of such teachers.

10                   “(C) USE OF FUNDS BY AGENCIES THAT  
11                   HAVE REDUCED CLASS SIZE.—Notwithstanding  
12                   subparagraph (B), a local educational agency  
13                   that has already reduced class size in the early  
14                   elementary grades to 18 or fewer children (or  
15                   has already reduced class size to a State or  
16                   local class size reduction goal that was in effect  
17                   on November 28, 1999, if that goal is 20 or  
18                   fewer children) may use funds received under  
19                   this section—

20                   “(i) to make further class size reduc-  
21                   tions in kindergarten through third grade;

22                   “(ii) to reduce class size in other  
23                   grades; or

24                   “(iii) to carry out activities to improve  
25                   teacher quality (particularly instructional

1 practices in small classes), including pro-  
2 fessional development.

3 “(3) SUPPLEMENT, NOT SUPPLANT.—Each  
4 local educational agency that receives funds made  
5 available under this section shall use those funds  
6 only to supplement, and not to supplant, State and  
7 local funds that, in the absence of funds made avail-  
8 able under this section, would otherwise be expended  
9 for activities described in this section.

10 “(4) LIMITATION ON USE FOR SALARIES AND  
11 BENEFITS.—

12 “(A) IN GENERAL.—Except as provided in  
13 subparagraph (B), no funds made available  
14 under this section may be used to increase the  
15 salaries of, or provide benefits (other than par-  
16 ticipation in professional development and en-  
17 richment programs) to, teachers who are not  
18 hired under this section.

19 “(B) EXCEPTION.—Funds made available  
20 under this section may be used to pay the sala-  
21 ries of teachers hired under section 306 of the  
22 Department of Education Appropriations Act,  
23 2001.

24 “(e) APPLICATIONS.—

1           “(1) STATES.—Each State desiring an allot-  
2           ment under this section shall submit an application  
3           to the Secretary that includes such information as  
4           the Secretary may require.

5           “(2) LOCAL EDUCATIONAL AGENCIES.—Each  
6           local educational agency desiring an allocation under  
7           this section shall submit an application to the State  
8           that includes such information as the State may re-  
9           quire. Each such application shall include a descrip-  
10          tion of the local educational agency’s program to re-  
11          duce class size by hiring additional highly qualified  
12          teachers.

13          “(f) REPORTS.—

14                 “(1) STATE ACTIVITIES.—Each State receiving  
15                 funds under this section shall prepare and submit to  
16                 the Secretary a biennial report on activities carried  
17                 out in the State under this section that provides the  
18                 information described in section 5122(a)(2) with re-  
19                 spect to the activities.

20                 “(2) PROGRESS CONCERNING CLASS SIZE AND  
21                 QUALIFIED TEACHERS.—Each State and local edu-  
22                 cational agency receiving funds under this section  
23                 shall annually report to parents and the public, in  
24                 numeric form as compared to the previous year,  
25                 on—

1           “(A) the State’s and local educational  
2           agency’s progress in reducing class size, and in-  
3           creasing the percentage of classes in core aca-  
4           demic subjects taught by highly qualified teach-  
5           ers; and

6           “(B) the impact that hiring additional  
7           highly qualified teachers and reducing class  
8           size, has had, if any, on increasing student aca-  
9           demic achievement.

10          “(3) NOTICE.—Each local educational agency  
11          that receives funds under this section shall provide  
12          to each individual parent of a child who attends a  
13          school served by such local educational agency time-  
14          ly, written notice if the child has been assigned or  
15          has been taught for 2 or more consecutive weeks by  
16          a substitute teacher, as defined by such local edu-  
17          cational agency, or a teacher who is not highly quali-  
18          fied.

19          “(g) PRIVATE SCHOOLS.—If a local educational  
20          agency uses funds made available under this section for  
21          professional development activities, the local educational  
22          agency shall ensure the equitable participation of private  
23          nonprofit elementary schools and secondary schools in  
24          such activities in accordance with section 5142. Section

1 5142 shall not apply to other activities carried out under  
2 this section.

3 “(h) ADMINISTRATIVE EXPENSES.—A local edu-  
4 cational agency that receives funds under this section may  
5 use not more than 3 percent of such funds for local admin-  
6 istrative costs.

7 “(i) CERTIFICATION, LICENSING, AND COM-  
8 PETENCY.—No funds made available under this section  
9 may be used to pay the salary of any teacher unless such  
10 teacher is highly qualified.

11 “(j) NATIONAL EVALUATION.—

12 “(1) IN GENERAL.—From amounts appro-  
13 priated to carry out this part for each of the fiscal  
14 years 2010 through 2014, the Secretary shall re-  
15 serve not more than \$5,000,000 to award a grant or  
16 contract to an independent organization outside of  
17 the Department for an independent evaluation of the  
18 impact of the demonstration program under this sec-  
19 tion.

20 “(2) COMPETITIVE BASIS.—The grant or con-  
21 tract described in paragraph (1) shall be awarded on  
22 a competitive basis.

23 “(3) PROCESS.—The evaluation under this sub-  
24 section shall be conducted by an organization that is  
25 capable of designing and carrying out an inde-

1       pendent evaluation that identifies the effects of spe-  
2       cific activities carried out by State educational agen-  
3       cies and local educational agencies under this part  
4       on reducing class size and improving the pedagogy  
5       in small classrooms. Such evaluation shall take into  
6       account factors influencing student performance that  
7       are not controlled by teachers or education adminis-  
8       trators.

9               “(4) MATTERS EVALUATED.—The evaluation  
10       described in this subsection shall—

11               “(A) determine the number of students  
12       who benefitted by reduced class size pursuant  
13       to this part, including an analysis by student  
14       subgroup;

15               “(B) identify barriers to the effectiveness  
16       of the class size reduction program under this  
17       part;

18               “(C) compare the impact of students bene-  
19       fitting from class size reduction under this part  
20       to participants in comparison groups (of similar  
21       demographics) in schools that did not receive  
22       class size reduction funds under this part;

23               “(D) identify the impact of the program  
24       assisted under this part on teachers;

1           “(E) measure the extent to which profes-  
2           sional development programs implemented by  
3           State educational agencies and local educational  
4           agencies using funds received under this sub-  
5           part improve instruction;

6           “(F) an analysis of whether receipt of class  
7           size reduction funds under this part results in  
8           an improvement in student academic achieve-  
9           ment; and

10           “(G) include any other analysis or meas-  
11           urement pertinent to this part that is deter-  
12           mined to be appropriate by the Secretary.

13           “(5) DISSEMINATION.—The findings of the  
14           evaluation under this subsection shall be widely dis-  
15           seminated to the public by—

16           “(A) the organization conducting the eval-  
17           uation; and

18           “(B) the Secretary.

19   **“SEC. 5703. NATIONAL CLASS SIZE DATABASE.**

20           “(a) IN GENERAL.—Of the amounts appropriated to  
21           carry out this part, the Secretary shall reserve not more  
22           than \$3,500,000 to develop and maintain, through the Na-  
23           tional Center for Education Statistics, a database that ac-  
24           curately calculates class size for every school, school dis-  
25           trict, and State in each of the 50 States, the District of



1 Columbia, and the Commonwealth of Puerto Rico through  
2 the collection of student and teacher data.

3 “(b) CONTRACT.—The Secretary, acting through the  
4 National Center for Education Statistics, may award a  
5 contract, on a competitive basis, for the development and  
6 maintenance of the database described in subsection (a),  
7 to an organization, institution, or entity with expertise in  
8 data collection and class size reduction.

9 “(c) REPORTING.—Each State educational agency  
10 that receives funds under this Act shall report to the Sec-  
11 retary the following information:

12 “(1) Annual student enrollment data for each  
13 school and school district in the State, disaggregated  
14 by grade level, subgroup of student, core academic  
15 subject, and free or reduced price lunch recipient  
16 status.

17 “(2) Classroom teacher data, including the  
18 number of teachers at each grade level, at each sub-  
19 ject, and by highly qualified teacher status.

20 “(d) DIGEST OF EDUCATION STATISTICS.—The Na-  
21 tional Center for Education Statistics shall report class  
22 size data in addition to pupil-teacher ratios in the National  
23 Center’s Digest of Education Statistics.

1 **“SEC. 5704. DEFINITION OF CLASS SIZE.**

2       “(a) IN GENERAL.—In this part the term ‘class size’  
3 means the number of students, averaged over an academic  
4 year or the length of a course, who regularly appear in  
5 a teacher’s classroom and for whom the teacher is pri-  
6 marily responsible and accountable, which averaged num-  
7 ber shall reflect students who have joined a class or left  
8 a class throughout the duration of a course.

9       “(b) CALCULATIONS.—In calculating class size under  
10 subsection (a)—

11           “(1) multiple classes of the same subject shall  
12 be counted individually, including classes of the  
13 same subject taught at different times by the same  
14 teacher; and

15           “(2) paraprofessionals and teacher’s aides shall  
16 not be counted as teachers.

17 **“SEC. 5705. AUTHORIZATION OF APPROPRIATIONS.**

18       “‘There are authorized to be appropriated to carry out  
19 this part \$2,000,000,000 for fiscal year 2010 and such  
20 sums as may be necessary for fiscal years 2011 through  
21 2014.’”.

22 **SEC. 2. NATIONAL CLEARINGHOUSE ON CLASS SIZE.**

23       Section 133(a) of the Education Sciences Reform Act  
24 of 2002 (20 U.S.C. 9533(a)) is amended—

25           (1) in paragraph (10)(D), by striking “and”  
26 after the semicolon;

1           (2) in paragraph (11), by striking the period  
2 and inserting “; and”; and

3           (3) by adding at the end the following:

4           “(12) reserve not more than \$500,000 from the  
5 amount made available to carry out this part for  
6 each fiscal year in order to develop and maintain, di-  
7 rectly or through a contract awarded on a competi-  
8 tive basis to an entity, institution, or organization  
9 with expertise in class size reduction research and  
10 resources, a web-based National Clearinghouse on  
11 Class Size to make publicly available—

12                   “(A) research on class size;

13                   “(B) resources on school modernization  
14 planning;

15                   “(C) resources for maximizing existing  
16 classroom space; and

17                   “(D) best practices in small classroom in-  
18 struction.”.

○