

111TH CONGRESS  
2D SESSION

# S. 3206

To establish an Education Jobs Fund.

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## IN THE SENATE OF THE UNITED STATES

APRIL 14, 2010

Mr. HARKIN (for himself, Mrs. BOXER, Mr. BEGICH, Mr. BINGAMAN, Mr. BROWN of Ohio, Mr. BURRIS, Mr. DODD, Mr. DURBIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. KERRY, Mr. LAUTENBERG, Mr. MERKLEY, Ms. MIKULSKI, Mrs. MURRAY, Mr. SCHUMER, and Ms. STABENOW) 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 establish an Education Jobs Fund.

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 “Keep Our Educators  
5 Working Act of 2010”.

6 **SEC. 2. RETAINING EDUCATORS.**

7 (a) EDUCATION JOBS FUND.—There is appropriated,  
8 for fiscal year 2010, for necessary expenses for an Edu-  
9 cation Jobs Fund, \$23,000,000,000. Such amount shall  
10 be appropriated, out of any money in the Treasury not

1 otherwise appropriated, for the Department of Education.  
2 The amount shall remain available for obligation by the  
3 Department through the date that is 180 days after the  
4 date of enactment of this Act. The amount shall be admin-  
5 istered by the Secretary of Education under the terms and  
6 conditions of titles XIV and XV of division A of the Amer-  
7 ican Recovery and Reinvestment Act of 2009 (Public Law  
8 111–5), subject to the provisions of subsection (b).

9 (b) SPECIAL RULES.—

10 (1) ALLOTMENTS TO STATES AND OUTLYING  
11 AREAS.—The funds appropriated under this Act  
12 shall be available only for allocations by the Sec-  
13 retary of Education under subsections (a) and (d) of  
14 section 14001 of the American Recovery and Rein-  
15 vestment Act of 2009 (Public Law 111–5), except  
16 that the Secretary may reserve not more than  
17 \$1,000,000 for administration and oversight of this  
18 Act, including for program administration.

19 (2) RESERVATION BY STATE.—With respect to  
20 funds appropriated under this Act, a State that re-  
21 ceives an allocation of such funds in accordance with  
22 section 14001(d) of such Act may reserve a total of  
23 not more than 5 percent of the State’s allocation  
24 for—

1 (A) the administrative costs of carrying  
2 out the State's responsibilities with respect to  
3 such funds, except that in no case shall the  
4 State reserve more than 1 percent of its total  
5 allocation for those costs; and

6 (B) the costs of retaining or creating posi-  
7 tions in the State educational agency or the  
8 State agency for higher education, and other  
9 State agency positions related to the adminis-  
10 tration or support of early childhood, elemen-  
11 tary, secondary, or postsecondary education.

12 (3) AWARDS TO LOCAL EDUCATIONAL AGEN-  
13 CIES AND PUBLIC INSTITUTIONS OF HIGHER EDU-  
14 CATION.—

15 (A) USE OF FUNDS.—Subsections (a) and  
16 (b) of section 14002 of the American Recovery  
17 and Reinvestment Act of 2009 (Public Law  
18 111–5) shall not apply to an allocation of funds  
19 appropriated under this Act. Except as provided  
20 under paragraph (2), an allocation of such  
21 funds shall be used only for awards to local  
22 educational agencies and public institutions of  
23 higher education for the support of early child-  
24 hood, elementary, secondary, and postsecondary  
25 education in accordance with subparagraph (B).

1 (B) DISTRIBUTION BY GOVERNOR.—

2 (i) IN GENERAL.—The Governor of a  
3 State receiving an allocation of funds ap-  
4 propriated under this Act shall use the ap-  
5 propriated funds to award grants to local  
6 educational agencies (through the State’s  
7 primary elementary and secondary funding  
8 formulae) and public institutions of higher  
9 education in order to restore the reduc-  
10 tions in State funding for elementary and  
11 secondary education and for public institu-  
12 tions of higher education, respectively, that  
13 remain for fiscal years 2010 and 2011, as  
14 determined in accordance with clause (iv).

15 (ii) INSUFFICIENT AMOUNT.—

16 (I) IN GENERAL.—In the case of  
17 a State that receives an allocation of  
18 funds appropriated under this Act for  
19 a fiscal year that is less than the  
20 amount necessary to carry out clause  
21 (i), the Governor of the State shall  
22 distribute the State’s allocation for  
23 such fiscal year between local edu-  
24 cational agencies (through the State’s  
25 primary elementary and secondary

1 funding formulae) and public institu-  
2 tions of higher education in propor-  
3 tion to the relative reductions in State  
4 support for these two categories of  
5 education for such fiscal year.

6 (II) EXCEPTION.—The Governor  
7 may adjust the amount of funds  
8 awarded to local educational agencies  
9 (in the aggregate) and the amount of  
10 funds awarded to public institutions  
11 of higher education (in the aggregate)  
12 for a fiscal year pursuant to subclause  
13 (I) by increasing or decreasing such  
14 amounts of funds by the amount that  
15 is not more than 10 percent of the  
16 larger of the 2 amounts of funds.

17 (iii) DISTRIBUTION OF EXCESS  
18 AMOUNT.—In the case of a State that re-  
19 ceives an allocation of funds appropriated  
20 under this Act that is more than the  
21 amount necessary to carry out clause (i),  
22 the Governor of the State shall use any  
23 funds remaining after the application of  
24 clause (i) to provide local educational agen-  
25 cies in the State with awards, based on the

1 local educational agencies' relative shares  
2 of funds under part A of title I of the Ele-  
3 mentary and Secondary Education Act of  
4 1965 (20 U.S.C. 6311 et seq.) for the  
5 most recent fiscal year for which data are  
6 available.

7 (iv) CALCULATION OF REDUCTIONS.—

8 For purposes of calculating reductions in  
9 State funding under this subparagraph for  
10 a fiscal year—

11 (I) the amount of reductions in  
12 State funding for elementary and sec-  
13 ondary education or for public institu-  
14 tions of higher education for a fiscal  
15 year shall be determined by com-  
16 paring the level of such State funding  
17 for such fiscal year with the level of  
18 such State funding for the preceding  
19 fiscal year; and

20 (II) the levels of such State fund-  
21 ing shall include any funds received  
22 by the State under section 14001(d)  
23 of the American Recovery and Rein-  
24 vestment Act of 2009 (Public Law  
25 111–5) and, for fiscal year 2011, any

1 funds received by the State under this  
2 section for fiscal year 2010.

3 (4) INAPPLICABILITY OF EDUCATION REFORM  
4 ASSURANCES.—Subsection (b), and paragraphs (2)  
5 through (5) of subsection (d), of section 14005 of  
6 the American Recovery and Reinvestment Act of  
7 2009 (Public Law 111–5) shall not apply to any ap-  
8 plication for an allocation of funds appropriated  
9 under this Act from a State that has an approved  
10 application for Phase II of the State Fiscal Sta-  
11 bilization Fund under title XIV of division A of such  
12 Act that was submitted in accordance with the appli-  
13 cation notice published in the Federal Register on  
14 November 17, 2009 (74 Fed. Reg. 59142).

15 (5) REQUIREMENT TO USE FUNDS TO RETAIN  
16 OR CREATE EDUCATION JOBS.—Notwithstanding  
17 sections 14003(a) and 14004(a) of such Act, funds  
18 appropriated under this Act may be used only for—

19 (A) compensation and benefits and other  
20 expenses necessary to retain existing employees,  
21 and for the hiring of new employees, in order  
22 to provide early childhood, elementary, sec-  
23 ondary, or postsecondary educational and re-  
24 lated services; or

1 (B) on-the-job training activities, as de-  
2 fined in section 101(31) of the Workforce In-  
3 vestment Act of 1998 (29 U.S.C. 2801(31)), for  
4 education-related careers.

5 (6) PROHIBITION ON USE OF FUNDS FOR RAINY  
6 DAY FUNDS OR DEBT RETIREMENT.—

7 (A) IN GENERAL.—Subject to subpara-  
8 graph (B), a State that receives an allocation of  
9 funds appropriated under this Act may not use  
10 such funds to—

11 (i) establish, restore, or supplement a  
12 reserve or rainy day fund of the State or  
13 to supplant State funds in a manner that  
14 has the effect of establishing, restoring, or  
15 supplementing a reserve or rainy day fund;  
16 or

17 (ii) reduce or retire debt obligations  
18 incurred by the State or to supplant State  
19 funds in a manner that has the effect of  
20 reducing or retiring debt obligations in-  
21 curred by the State.

22 (B) EXCEPTION.—Subparagraph (A) shall  
23 not apply to fund balances that are necessary to  
24 comply with any State requirement to maintain  
25 a balanced budget.



1           (7) APPLICATION CONSIDERATIONS.—If, by a  
2           date set by the Secretary of Education, a Governor  
3           has not submitted an approvable application under  
4           section 14005(a) of the American Recovery and Re-  
5           investment Act of 2009 (Public Law 111–5), the  
6           Secretary may provide for the distribution of funds  
7           appropriated under this Act that are allocated under  
8           section 14001(d) of the American Recovery and Re-  
9           investment Act of 2009 for the State to 1 or more  
10          other entities in the State, in such amounts and  
11          under such terms and conditions as the Secretary  
12          may establish, as long as all terms and conditions  
13          that apply to the appropriation under this Act shall  
14          apply to such funds distributed to such entity or en-  
15          tities.

16          (8) LOCAL EDUCATIONAL AGENCY APPLICA-  
17          TION.—The requirements of section 442 of the Gen-  
18          eral Education Provisions Act (20 U.S.C. 1232e)  
19          shall not apply to a local educational agency that  
20          has previously submitted an application to the State  
21          under title XIV of division A of the American Recov-  
22          ery and Reinvestment Act of 2009 (Public Law  
23          111–5) and wishes to receive funds appropriated  
24          under this Act, as the assurances provided under the

1 previous application shall continue to apply to funds  
2 awarded under this Act.

3 (9) MAINTENANCE OF EFFORT.—

4 (A) IN GENERAL.—In order for a State to  
5 receive an allocation of funds appropriated  
6 under this Act, the Governor of a State shall,  
7 in lieu of the assurances required under section  
8 14005(d)(1) of the American Recovery and Re-  
9 investment Act of 2009 (Public Law 111–5),  
10 provide assurances to the Secretary of Edu-  
11 cation that, for each of fiscal years 2010 and  
12 2011, the State will—

13 (i) meet the requirements of section  
14 14005(d)(1) for such fiscal year; or

15 (ii) provide, for elementary and sec-  
16 ondary education and for public institu-  
17 tions of higher education (not including  
18 support for capital projects or for research  
19 and development or tuition and fees paid  
20 by students), percentages of the total reve-  
21 nues available to the State for each fiscal  
22 year that—

23 (I) for fiscal year 2010, are not  
24 less than such percentages, respec-  
25 tively, for fiscal year 2006; and

1 (II) for fiscal year 2011, are not  
2 less than such percentages, respec-  
3 tively, for fiscal year 2009.

4 (B) INAPPLICABLE REQUIREMENT.—Sec-  
5 tion 14012(c) of the American Recovery and  
6 Reinvestment Act of 2009 (Public Law 111–5)  
7 shall not apply with respect to any allocations  
8 made for fiscal year 2011 from funds appro-  
9 priated under this Act.

10 (10) PERIOD FOR OBLIGATION OF FUNDS.—  
11 The Secretary of Education may extend the period  
12 of time available to States and recipients of awards  
13 under this section to obligate the funds appropriated  
14 under this Act for one additional fiscal year beyond  
15 the period provided for under section 421(b)(1) of  
16 the General Education Provisions Act (20 U.S.C.  
17 1225(b)(1)).

18 **SEC. 3. EMERGENCY DESIGNATION.**

19 This Act is designated as an emergency requirement  
20 pursuant to section 403(a) of S. Con. Res. 13 (111th Con-  
21 gress), the concurrent resolution on the budget for fiscal  
22 year 2010.

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