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H.R. 2187 – 21st Century Green High-Performing Public School Facilities Act

**H.R. 2187—21st Century Green High-Performing Public School Facilities Act
 (Chandler, D-KY)**

***Please note the conservative concerns below.**

Order of Business: The bill is scheduled to be considered on Wednesday, May 13, 2009, subject to a structured rule. The RSC will circulate a subsequent document summarizing the rule and any amendments made in order therein. The bill is very similar to H.R. 3021 which passed by a vote of [250-164](#) in the 110th Congress.

Summary: H.R. 2187 would authorize the U.S. Secretary of Education to make grants to state educational agencies for the modernization, renovation, or repair of public school facilities. The bill authorizes \$6.4 billion for FY 2010 and such sums as may be necessary for FY 2011 through 2015 on grants to help modernize and renovate public schools. Furthermore, the bill would authorize the appropriation of \$100 million for each of fiscal years 2010 through 2015 to help repair and construct new public schools damaged by Hurricanes Katrina and Rita in 2005. Of the amounts appropriated under the bill, each state will receive an amount in proportion to the amount received by all LEAs in the state.

The bill requires that one percent of all funds appropriated each year must be used to “provide assistance” to areas surrounding those receiving the grant aid. Furthermore, the bill would allow states to reserve up to one percent of their allocation under this bill to provide technical assistance to LEAs, and develop a plan for an online database that includes an inventory of public school facilities in the state and the modernization, renovation, and repair needs of, energy use by, and the “**carbon footprint**” of such schools. In addition, such funds may be used to develop voluntary guidelines for high-performing school buildings.

Below are many of the allowable modernizations, renovations, and repairs:

- Roofs, electrical wiring, plumbing systems, sewage systems, lighting systems, or components of such systems, windows, or doors;
- Heating, ventilation, air conditioning systems, or components of such systems (including insulation), including indoor air quality assessments;
- Bringing public schools into compliance with fire and safety codes;
- Preparations for emergencies, including installation of fire/life safety alarms;
- Measures to reduce human exposure to **classroom noise and environmental noise pollution**;
- Modifications to bring schools into compliance with the Americans with Disabilities Act;
- Asbestos, polychlorinated biphenyls, mold, mildew, or lead-based hazards abatement or removal;
- Modernization to reduce the use of coal, electricity, land, natural gas, oil, or water;
- Upgrading or installing educational technology infrastructure;
- Anything that “improves teachers’ ability to teach and students’ ability to learn”, “ensure the health and safety of students and staff”, “makes them more energy efficient,” or reduces class size; and
- Any required environmental remediation.

The bill sets up supplemental grants for Louisiana, Mississippi, and Alabama in order to address needs caused by damage from Hurricane Katrina and Rita in 2005. Under Title II of this bill, LEAs will receive grants for the activities described above along with the **construction of new public school facilities**.

Impermissible Uses of Funds. The bill prohibits funds from being used to pay for maintenance costs, stadiums, or other facilities primarily used for athletic contests (including events which charge admission to the general public). Funds may also not be used for the construction of facilities that are not used for educating children, or for purchasing carbon offsets.

Supplementing Federal Funds. The bill requires that an LEA receiving funds under this grant only use federal funds to supplement current modernization, renovation, and repair activities, and not to supplant such funds.

The bill also requires that the state and LEA must continue to spend at least 90 percent of the amount it spent in previous years (called “maintenance of effort”) to be eligible for grants under this act.

Davis-Bacon. All projects under H.R. 2187 are subject to General Education Provisions Act (GEPA). GEPA requires that all laborers on all construction projects under the Department of Education be paid Davis-Bacon wages.

Charter Schools. The bill states that “A local educational agency receiving an allocation under this Act shall distribute an amount of that allocation to charter schools within its jurisdiction.” The bill further states that “individual charter schools shall receive a share

based on the needs of the schools, as determined by the agency in consultation with the charter school community.”

Green Schools Provision. H.R. 2187 mandates that LEAs that plan to utilize federal funds under this act must use a certain percentage of all funds on modernizations, renovations, and repairs that are consistent with the provisions of the [LEED Green Building Rating System](#), are [LEED Green Building certified](#), or are [Energy Star](#) certified. Each year, the required use of funds increases from 50 percent in FY 2010 to **100 percent in FY 2015**.

H.R. 2187 requires that all LEAs receiving funds under this act submit an annual report to Congress outlining the projects which received funding, including any expected benefits from any energy savings incurred, improvement in environmental quality, or improved climate for teaching and learning. Included in such a report must be any reason why new construction did not meet LEED certification or Energy Star certification, but there is nothing in the bill that explicitly exempts any school district from complying with the green schools mandate.

YouthBuild Programs. The Secretary of Education shall work with recipients of funds to promote opportunities for YouthBuild participants to gain employment experience on modernization, renovation, repair, and construction projects funded under this bill.

Committee Action: On April 30, 2009, the bill was introduced and referred to the House Committee on Education and Labor, which, on May 6, 2008, marked up, amended, and ordered the bill reported to the full House by a vote of 31-14.

Conservative Concerns: Some conservatives, including Education and Labor Committee Ranking Member and RSC Member Buck McKeon (R-CA), have expressed various concerns about the legislation. On May 6, 2009, he released the following statement:

“It costs too much. It borrows too much. It controls too much. And it’s an area that, as federal legislators, we should not be intruding upon...If passed, this bill could divert funding from the Title I program for disadvantaged students. It also could take money away from the Individuals with Disabilities Education Act, or IDEA.”

The Committee press release states the following concerns with the bill and can be found [here](#):

- Nationalizes and regulates school construction;
- Threatens state, local, and private support for educational infrastructure;
- Jeopardizes Congress’ ability to reduce federal spending, pushing the country further into debt;
- Increases project costs through imposition of Depression-era Davis-Bacon wage mandates;

- Siphons resources from longstanding education priorities and fails to improve academic achievement.

Additional Conservative Concerns:

- **Davis-Bacon Wage Requirement.** Many conservatives may also be concerned that this legislation is subject to the requirements of the Davis-Bacon Act. To read more on Davis-Bacon, please see this [RSC Informational Document](#) from March 2007. [House-Report 111-100](#) has the following information on how the Davis-Bacon wage requirement has been affecting school construction costs:

“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.”

- **Increasing Federal Responsibility and Undermining Current Programs.** Many conservatives may be concerned that historically, the federal government has had an extremely limited financial responsibility with regard to school infrastructure projects. According to the minority views section of the committee report, this legislation would undermine Congress’ ability to fund the Title I program and the IDEA by diverting necessary funds from programs designed to increase student achievement.
- **Ambiguous Allowable Uses for Funds.** The bill would allow grant funds to be used for “anything that improves teachers’ ability to teach and students’ ability to learn”, “ensure the health and safety of students and staff”, or “makes them more energy efficient.” Many conservatives may be concerned that this language is too vague.
- **Unprecedented Spending.** The Education and Labor Committee asserts that statistics show that the unmet need for school construction and renovation is estimated to be \$144 billion, while states and local governments spent \$20 billion this year alone on school construction and renovation. Many conservatives are

concerned that this bill creates a new federal funding stream for school construction which may cause state, local, and private sector investors to back away from their responsibility to build and maintain safe schools.

- **Green School Mandate.** Many conservatives may be concerned that this legislation would mandate that by FY 2015, 100 percent of all funds on modernizations, renovations, and repairs must be consistent with the provisions of the LEED Green Building Rating System, be LEED Green Building certified, or be Energy Star certified. While such rating systems and certifications are growing in interest around the U.S., some conservatives may be concerned that this requirement is mandated.

Furthermore, many conservatives from smaller and/or rural communities may be concerned that this mandate would cut into funding for more necessary projects if they are required to follow strict green building procedures and practices. For instance, if a school is in need of a roof repair, they may be required to replace the entire roof in order to comply with the green mandate. This would undoubtedly cost the school more money, leaving less money for other needed renovations or repairs.

Groups Opposed:

Americans for Tax Reform

Alliance for Worker Freedom (project within ATR)

Center for Fiscal Accountability (project within ATR)

Cost to Taxpayers: CBO estimates that H.R. 2187 would authorize the appropriation of \$6.4 billion for FY 2010 and such sums as may be necessary for FY 2011 through 2015 to award grants to help modernize and renovate public schools. It also would authorize the appropriation of \$100 million for each of fiscal years 2010 through 2015 to help repair public schools damaged by Hurricanes Katrina and Rita and to construct new schools. CBO estimates that H.R. 2187 would authorize \$32.9 billion over the 2010-2014 year period. In addition, the bill authorizes additional funding in 2015, which is not included in this five-year budget window.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, H.R. 2187 would authorize funds to make grants available for public school construction, modernization, and/or repair. Historically, school construction has been funded at the state and local level and such grants are an unprecedented expansion of federal government authority. In addition, the bill would set new mandates for green construction of public schools.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. Many conservatives may argue that Section 306 of H.R. 2187 institutes new intergovernmental mandates, requiring that through FY 2010—2015, increasing percentages of all construction paid for with these funds be “green construction.” While CBO does not regard these as mandates under the Unfunded

Mandates Reform Act, many conservatives may still view this provision as a federal government mandate on local school construction projects.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The committee report asserts that, “H.R. 2187, as amended, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e) or 9(f) of rule XXI of the House of Representatives.”

Constitutional Authority: The Education and Labor Committee, in [House Report 111-100](#) cites constitutional authority in Article I, Section 8, Clause 18 (Congress’ power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers). **This constitutional authority statement fails to cite a foregoing power of Congress.** House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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