

## The Impact Aid Program Statute

(Title VIII of the Elementary and Secondary Education Act of 1965),

as amended through January 12, 2002

### SEC. 8001. [20 U.S.C. 7701] PURPOSE.

In order to fulfill the Federal responsibility to assist with the provision of educational services to federally connected children in a manner that promotes control by local educational agencies with little or no Federal or State involvement, because certain activities of the Federal Government, such as activities to fulfill the responsibilities of the Federal Government with respect to Indian tribes and activities under section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574), place a financial burden on the local educational agencies serving areas where such activities are carried out, and to help such children meet challenging State standards, it is the purpose of this title to provide financial assistance to local educational agencies that--

- (1) experience a substantial and continuing financial burden due to the acquisition of real property by the United States;
- (2) educate children who reside on Federal property and whose parents are employed on Federal property;
- (3) educate children of parents who are in the military services and children who live in low-rent housing;
- (4) educate heavy concentrations of children whose parents are civilian employees of the Federal Government and do not reside on Federal property; or
- (5) need special assistance with capital expenditures for construction activities because of the enrollments of substantial numbers of children who reside on Federal lands and because of the difficulty of raising local revenue through bond referendums for capital projects due to the inability to tax Federal property.

### SEC. 8002. [20 U.S.C. 7702] PAYMENTS RELATING TO FEDERAL ACQUISITION OF REAL PROPERTY.

(a) IN GENERAL --Where the Secretary, after consultation with any local educational agency and with the appropriate State educational agency, determines for a fiscal year ending prior to October 1, 2003--

- (1) that the United States owns Federal property in the local educational agency, and that such property--
  - (A) has been acquired by the United States since 1938;
  - (B) was not acquired by exchange for other Federal property in the local educational agency which the United States owned before 1939; and
  - (C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 percent or more of the assessed value of--
    - (i) all real property in the local educational agency (similarly determined as of the time or times when such Federal property was so acquired); or
    - (ii) all real property in the local educational agency as assessed in the first year preceding or succeeding acquisition, whichever is greater, only if--
      - (I) the assessment of all real property in the local educational agency is not made at the same time or times that such Federal property was so acquired and assessed; and
      - (II) State law requires an assessment be made of property so acquired; and
- (2) that such agency is not being substantially compensated for the loss in revenue resulting from such ownership by increases in revenue accruing to the agency from the conduct of Federal activities with respect to such Federal property,

then such agency shall be eligible to receive the amount described in subsection (b).

(b) AMOUNT--

- (1) IN GENERAL— (A)(i)(I) Subject to subclauses (II) and (III), the amount that a local educational agency shall be paid under subsection (a) for a fiscal year shall be calculated in accordance with paragraph (2).
- (II) Except as provided in subclause (III), the Secretary may not reduce the amount of a payment under this section to a local educational agency for a fiscal year by (aa) the amount equal to the amount of revenue, if any, the agency received during the previous fiscal year from activities conducted on Federal property eligible under this section and located in a school district served by the agency, including amounts received from any Federal department or agency (other than the Department of Education) from such activities, by reason of receipt of such revenue, or
- (bb) any other amount by reason of receipt of such revenue.
- (III) If the amount equal to the sum of (aa) the proposed payment under this section to a local educational agency for a fiscal year and (bb) the amount of revenue described in subclause (II)(aa) received by the agency during the previous fiscal year, exceeds the maximum amount the agency is eligible to receive under this section for the fiscal year involved, then the Secretary shall reduce the amount of the proposed payment under this section by an amount equal to such excess amount.
- (ii) For purposes of clause (i), the amount of revenue that a local educational agency receives during the previous fiscal year from activities conducted on Federal property shall not include payments received by the agency from the Secretary of Defense to support--
- (I) the operation of a domestic dependent elementary or secondary school; or
- (II) the provision of a free public education to dependents of members of the Armed Forces residing on or near a military installation.
- (B) If funds appropriated under section 8014(a) are insufficient to pay the amount determined under subparagraph (A), the Secretary shall calculate the payment for each eligible local educational agency in accordance with subsection (h).
- (C) Notwithstanding any other provision of this subsection, a local educational agency may not be paid an amount under this section that, when added to the amount such agency receives under section 8003(b), exceeds the maximum amount that such agency is eligible to receive for such fiscal year under section 8003(b)(1)(C), or the maximum amount that such agency is eligible for such fiscal year under this section, whichever is greater.
- (2) APPLICATION OF CURRENT LEVIED REAL PROPERTY TAX RATE --In calculating the amount that a local educational agency is eligible to receive for a fiscal year, the Secretary shall apply the current levied real property tax rate for current expenditures levied by fiscally independent local educational agencies, or imputed for fiscally dependent local educational agencies, to the current annually determined aggregate assessed value of such acquired Federal property.
- (3) DETERMINATION OF AGGREGATE ASSESSED VALUE --Such aggregate assessed value of such acquired Federal property shall be determined on the basis of the highest and best use of property adjacent to such acquired Federal property as of the time such value is determined, and provided to the Secretary, by the local official responsible for assessing the value of real property located in the jurisdiction of such local educational agency for the purpose of levying a property tax.
- (c) APPLICABILITY TO TENNESSEE VALLEY AUTHORITY ACT- For the purpose of this section, any real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933 shall not be regarded as Federal property.
- (d) OWNERSHIP BY UNITED STATES- The United States shall be deemed to own Federal property for the purposes of this Act, where--
- (1) prior to the transfer of Federal property, the United States owned Federal property meeting the requirements of subparagraphs (A), (B), and (C) of subsection (a)(1); and

- (2) the United States transfers a portion of the property referred to in paragraph (1) to another nontaxable entity, and the United States--
  - (A) restricts some or any construction on such property;
  - (B) requires that the property be used in perpetuity for the public purposes for which the property was conveyed;
  - (C) requires the grantee of the property to report to the Federal Government (or its agent) regarding information on the use of the property;
  - (D) except with the approval of the Federal Government (or its agent), prohibits the sale, lease, assignment, or other disposal of the property unless such sale, lease, assignment, or other disposal is to another eligible government agency; and
  - (E) reserves to the Federal Government a right of reversion at any time the Federal Government (or its agent) deems it necessary for the national defense.
- (e) LOCAL EDUCATIONAL AGENCY CONTAINING FOREST SERVICE LAND AND SERVING CERTAIN COUNTIES- Beginning with fiscal year 1995, a local educational agency shall be deemed to meet the requirements of subsection (a)(1)(C) if such local educational agency meets the following requirements:
  - (1) ACREAGE AND ACQUISITION BY THE FOREST SERVICE- The local educational agency serves a school district that contains between 20,000 and 60,000 acres of land that has been acquired by the Forest Service of the Department of Agriculture between 1915 and 1990, as demonstrated by written evidence from the Forest Service satisfactory to the Secretary.
  - (2) COUNTY CHARTER- The local educational agency serves a county chartered under State law in 1875 or 1890.
- (f) SPECIAL RULE- (1) Beginning with fiscal year 1994, and notwithstanding any other provision of law limiting the period during which fiscal year 1994 funds may be obligated, the Secretary shall treat the local educational agency serving the Wheatland R-II School District, Wheatland, Missouri, as meeting the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) (20 U.S.C. 237(a)(1)(C)) or subsection (a)(1)(C).
  - (2) For each fiscal year beginning with fiscal year 1999, the Secretary shall treat the Webster School District, Day County, South Dakota as meeting the eligibility requirements of subsection (a)(1)(C) of this section.
  - (3) For each fiscal year beginning with fiscal year 2000, the Secretary shall treat the Central Union, California; Island, California; Hill City, South Dakota; and Wall, South Dakota local educational agencies as meeting the eligibility requirements of subsection (a)(1)(C) of this section.
  - (4) For the purposes of payments under this section for each fiscal year beginning with fiscal year 2000, the Secretary shall treat the Hot Springs, South Dakota local educational agency as if it had filed a timely application under section 8002 of the Elementary and Secondary Education Act of 1965 for fiscal year 1994 if the Secretary has received the fiscal year 1994 application, as well as Exhibits A and B not later than December 1, 1999.
  - (5) For purposes of payments under this section for each fiscal year beginning with fiscal year 2000, the Secretary shall treat the Hueneme, California local educational agency as if it had filed a timely application under section 8002 of the Elementary and Secondary Education Act of 1965 if the Secretary has received the fiscal year 1995 application not later than December 1, 1999.
- (g) FORMER DISTRICTS—
  - (1) IN GENERAL.—Where the school district of any local educational agency described in paragraph (2) is formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at any time such agency files an application under section 8005) for any fiscal year after fiscal year 1994 to have (A) the eligibility of such local educational agency, and (B) the amount which such agency shall be eligible to receive, determined under this section only with respect to such of the former school

district comprising such consolidated school districts as such agency shall designate in such election.

- (2) ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—A local educational agency referred to in paragraph (1) is any local educational agency that, for fiscal year 1994 or any preceding fiscal year, applied for and was determined eligible under section 2(c) of the Act of September 30, 1950 (Public Law 874, 81<sup>st</sup> Congress) as such section was in effect for such fiscal year.
- (h) PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED.—For any fiscal year for which the amount appropriated under section 8014(a) is insufficient to pay to each eligible local educational agency the full amount determined under subsection (b), the Secretary shall make payments to each local educational agency under this section as follows:
- (1) FOUNDATION PAYMENTS FOR PRE-1995 RECIPIENTS. —
- (A) IN GENERAL.—The Secretary shall first make a foundation payment to each local educational agency that is eligible to receive a payment under this section for the fiscal year involved and that filed, or has been determined pursuant to statute to have filed a timely application, and met, or has been determined pursuant to statute to meet the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 (Public Law 874, 81<sup>st</sup> Congress) (as such section was in effect on the day preceding the date of the enactment of the Improving America's Schools Act of 1994) for any of the fiscal years 1989 through 1994.
- (B) AMOUNT. —The amount of a payment under subparagraph (A) for a local educational agency shall be equal to 38 percent of the local educational agency's maximum entitlement amount under section 2 of the Act of September 30, 1950, for fiscal year 1994 (or if the local educational agency did not meet, or has not been determined pursuant to statute to meet, the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 for fiscal year 1994, the local educational agency's maximum entitlement amount under such section 2 for the most recent fiscal year preceding 1994).
- (C) INSUFFICIENT APPROPRIATIONS. —If the amount appropriated under section 8014(a) is insufficient to pay the full amount determined under this paragraph for all eligible local educational agencies for the fiscal year, then the Secretary shall ratably reduce the payment to each local educational agency under this paragraph.
- (2) PAYMENTS FOR 1995 RECIPIENTS.—
- (A) IN GENERAL.—From any amounts remaining for the fiscal year involved, the Secretary shall make a payment to each eligible local educational agency that received a payment under this section for fiscal year 1995 or whose application under this section for fiscal year 1995 was determined pursuant to statute to be timely filed for purposes of payments for subsequent fiscal years.
- (B) AMOUNT.—The amount of a payment under subparagraph (A) for a local educational agency shall be determined as follows:
- (i) Calculate the difference between the amount appropriated to carry out this section for fiscal year 1995 and the total amount of foundation payments made under paragraph (1) for the fiscal year.
- (ii) Determine the percentage share for each local educational agency described in subparagraph (A) by dividing the assessed value of the Federal property of the local educational agency for fiscal year 1995 determined in accordance with subsection (b)(3), by the total eligible national assessed value of the eligible Federal property of all such local educational agencies for fiscal year 1995, as so determined.
- (iii) Multiply the percentage share described in clause (ii) for the local educational agency by the amount determined under clause (i).
- (3) SUBSECTION (I) RECIPIENTS.—From any funds remaining after making payments under paragraphs (1) and (2) for the fiscal year involved, the Secretary shall make payments in accordance with subsection (I).

- (4) REMAINING FUNDS.—From any funds remaining after making payments under paragraphs (1), (2) and (3) for the fiscal year involved—
- (A) the Secretary shall make a payment to each local educational agency that received a foundation payment under paragraph (1) for the fiscal year involved in an amount that bears the same relation to 25 percent of the remainder as the amount the local educational agency received under paragraph (1) for the fiscal year involved bears to the amount all local educational agencies received under paragraph (1) for the fiscal year involved; and
  - (B) the Secretary shall make a payment to each local educational agency that is eligible to receive a payment under this section for the fiscal year involved in an amount that bears the same relation to 75 percent of the remainder as a percentage share determined for the local educational (by dividing the maximum amount that the agency is eligible to receive under subsection (b) by the total of the maximum amounts for all such agencies) bears to the percentage share determined (in the same manner) for all local educational agencies eligible to receive a payment under this section for the fiscal year involved, except that, for the purpose of calculating a local educational agency's maximum amount under subsection (b), data from the most current fiscal year shall be used.
- (i) SPECIAL PAYMENTS—
- (1) IN GENERAL.—For any fiscal year beginning with fiscal year 2000 for which the amount appropriated to carry out this section exceeds the amount so appropriated for fiscal year 1996 and for which subsection (b)(1)(B) applies, the Secretary shall use the remainder described in subsection (h)(3) for the fiscal year involved (not to exceed the amount equal to the difference between (A) the amount appropriated to carry out this section for fiscal year 1997 and (A) the amount appropriated to carry out this section for fiscal year 1996) to increase the payment that would otherwise be made under this section to not more than 50 percent of the maximum amount determined under subsection (b) for any local educational agency described in paragraph (2).
  - (2) LOCAL EDUCATIONAL AGENCY DESCRIBED.—A local educational agency described in this paragraph is a local educational agency that—
    - (A) received a payment under this section for fiscal year 1996;
    - (B) serves a school district that contains all or a portion of a United States military academy;
    - (C) serves a school district in which the local tax assessor has certified that at least 60 percent of the real property is federally owned; and
    - (D) demonstrates to the satisfaction of the Secretary that such agency's per-pupil revenue derived from local sources for current expenditures is not less than that revenue for the preceding year.
- (j) (Deleted by P.L. 107-110, January 8, 2002)
- (k) SPECIAL RULE.—For purposes of payments under this section for each fiscal year beginning with fiscal year 1998—
- (1) the Secretary shall, for the Stanley County, South Dakota local educational agency, calculate payments as if subsection (e) had been in effect for fiscal year 1994; and
  - (2) the Secretary shall treat the Delaware Valley, Pennsylvania local educational agency as if it had filed a timely application under section 2 of Public Law 81-874 for fiscal year 1994.
- (l) PRIOR YEAR DATA.—Notwithstanding any other provision of this section, in determining the eligibility of a local educational agency for a payment under subsection (b) or (h)(4)(B) of this section for a fiscal year, and in calculating the amount of such payment, the Secretary—
- (1) shall use data from the prior fiscal year with respect to the Federal property involved including data with respect to the assessed value of the property and the real property tax rate for current expenditures levied against or imputed to the property; and
  - (2) shall use data from the second prior fiscal year with respect to determining the amount of revenue referred to in subsection (b)(1)(A)(l).
- (m) ELIGIBILITY.—

- (1) OLD FEDERAL PROPERTY.—Except as provided in paragraph (2), a local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government before the date of enactment of the Impact Aid Reauthorization Act of 2000 shall be eligible to receive the payment only if the local educational agency submits an application for a payment under this section not later than 5 years after the date of the enactment of such Act.
- (2) COMBINED FEDERAL PROPERTY.—A local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government before the date of enactment of the Impact Aid Reauthorization Act of 2000 shall be eligible to receive the payment if—
  - (A) the Federal property, when combined with other Federal property in the school district served by the local educational agency acquired by the Federal Government after the date of the enactment of such Act, meets the requirements of subsection (a); and
  - (B) the local educational agency submits an application for a payment under this section not later than 5 years after the date of acquisition of the Federal property acquired after the date of the enactment of such Act.
- (3) NEW FEDERAL PROPERTY.—A local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government after the date of enactment of the Impact Aid Reauthorization Act of 2000 shall be eligible to receive the payment only if the local educational agency submits an application for a payment under this section not later than 5 years after the date of acquisition.

(n) LOSS OF ELIGIBILITY-

- (1) IN GENERAL- Notwithstanding any other provision of this section, the Secretary shall make a minimum payment to a local educational agency described in paragraph (2), for the first fiscal year that the agency loses eligibility for assistance under this section as a result of property located within the school district served by the agency failing to meet the definition of Federal property under section 8013(5)(C)(iii), in an amount equal to 90 percent of the amount received by the agency under this section for the preceding year.
- (2) LOCAL EDUCATIONAL AGENCY DESCRIBED- A local educational agency described in this paragraph is an agency that —
  - (A) was eligible for, and received, a payment under this section for fiscal year 2002; and
  - (B) beginning in fiscal year 2003 or a subsequent fiscal year, is no longer eligible for payments under this section as provided for in subsection (a)(1)(C) as a result of the transfer of the Federal property involved to a non-Federal entity.'

SEC. 8003. [20 U.S.C. 7703] PAYMENTS FOR ELIGIBLE FEDERALLY CONNECTED CHILDREN.

(a) COMPUTATION OF PAYMENT—

- (1) IN GENERAL —For the purpose of computing the amount that a local educational agency is eligible to receive under subsection (b) or (d) for any fiscal year, the Secretary shall determine the number of children who were in average daily attendance in the schools of such agency, and for whom such agency provided free public education, during the preceding school year and who, while in attendance at such schools—
  - (A)(i) resided on Federal property with a parent employed on Federal property situated in whole or in part within the boundaries of the school district of such agency; or
  - (ii) resided on Federal property with a parent who is an official of, and accredited by, a foreign government and is a foreign military officer;
  - (B) resided on Federal property and had a parent on active duty in the uniformed services (as defined in section 101 of title 37, United States Code);
  - (C) resided on Indian lands;
  - (D) (i) had a parent on active duty in the uniformed services (as defined by section 101 of title 37, United States Code) but did not reside on Federal property; or
  - (ii) had a parent who is an official of, and has been accredited by, a foreign government and is a foreign military officer but did not reside on Federal property;
  - (E) resided in low-rent housing;
  - (F) resided on Federal property and is not described in subparagraph (A) or (B); or

- (G) resided with a parent employed on Federal property situated--
  - (i) in whole or in part in the county in which such agency is located, or in whole or in part in such agency if such agency is located in more than one county; or
  - (ii) if not in such county, in whole or in part in the same State as such agency.
- (2) DETERMINATION OF WEIGHTED STUDENT UNITS. –For the purpose of computing the basic support payment under subsection (b), the Secretary shall calculate the total number of weighted student units for a local educational agency by adding together the results obtained by the following computations:
  - (A) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of 1.0.
  - (B) Multiply the number of children described in paragraph (1)(C) by a factor of 1.25.
  - (C) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of .35 if the local educational agency has—
    - (i) a number of such children described in such subparagraphs which exceeds 6,500; and
    - (ii) an average daily attendance for all children which exceeds 100,000.
  - (D) Multiply the number of children described in subparagraph (D) of paragraph (1) by a factor of .20.
  - (E) Multiply the number of children described in subparagraph (E) of paragraph (1) by a factor of .10.
  - (F) Multiply the number of children described in subparagraphs (F) and (G) of paragraph (1) by a factor of .05.
- (3) SPECIAL RULE. –The Secretary shall only compute a payment for a local educational agency for children described in subparagraph (F) or (G) of paragraph (1) if the number of such children equals or exceeds 1,000 or such number equals or exceeds 10 percent of the total number of students in average daily attendance in the schools of such agency.
- (4) MILITARY INSTALLATION AND INDIAN HOUSING UNDERGOING RENOVATION OR REBUILDING.
  - (A) IN GENERAL.—
    - (i) For purposes of computing the amount of a payment for a local educational agency for children described in paragraph (1)(D)(i), the Secretary shall consider such children to be children described in paragraph (1)(B) if the Secretary determines, on the basis of a certification provided to the Secretary by a designated representative of the Secretary of Defense, that such children would have resided in housing on Federal property in accordance with paragraph (1)(B) except that such housing was undergoing renovation or rebuilding on the date for which the Secretary determines the number of children under paragraph (1).
    - (ii) For purposes of computing the amount of a payment for a local educational agency that received a payment for children that resided on Indian lands in accordance with paragraph (1)(C) for the fiscal year prior to the fiscal year for which the local educational agency is making an application, the Secretary shall consider such children to be children described in paragraph (1)(C) if the Secretary determines, on the basis of a certification provided to the Secretary by a designated representative of the Secretary of the Interior or the Secretary of Housing and Urban Development, that such children would have resided in housing on Indian lands in accordance with paragraph (1)(C) except that such housing was undergoing renovation or rebuilding on the date for which the Secretary determines the number of children under paragraph (1).
  - (B) LIMITATIONS. –
    - (i) (I) Children described in paragraph (1)(D)(i) may be deemed to be children described in paragraph (1)(B) with respect to housing on Federal property undergoing renovation or rebuilding in accordance with subparagraph (A)(i) for a period not to exceed 3 fiscal years.

- (II) The number of children described in paragraph (1)(D)(I) who are deemed to be children described in paragraph (1)(B) with respect to housing on Federal property undergoing renovation or rebuilding in accordance with subparagraph (A)(i) for any fiscal year may not exceed the maximum number of children who are expected to occupy that housing upon completion of the renovation or rebuilding.
- (ii)
  - (I) Children that resided on Indian lands in accordance with paragraph (1)(C) for the fiscal year prior to the fiscal year for which the local educational agency is making an application may be deemed to be children described in paragraph (1)(C) with respect to housing on Indian lands undergoing renovation or rebuilding in accordance with subparagraph (A)(ii) for a period not to exceed 3 fiscal years.
  - (II) The number of children that resided on Indian lands in accordance with paragraph (1)(C) for the fiscal year prior to the fiscal year for which the local educational agency is making an application who are deemed to be children described in paragraph (1)(C) with respect to housing on Indian lands undergoing renovation or rebuilding in accordance with subparagraph (A)(ii) for any fiscal year may not exceed the maximum number of children who are expected to occupy that housing upon completion of the renovation or rebuilding.

**EFFECTIVE DATE FOR AMENDMENTS MADE TO SECTION 8003(a)(4). The Impact Aid Reauthorization Act of 2000, enacted by P.L. 106-398, provides that the amendments made to section 8003(a)(4) by that Act “shall apply with respect to payments to a local educational agency for fiscal years beginning before, on, or after [October 30, 2000]”.**

(5) MILITARY “BUILD TO LEASE” PROGRAM HOUSING.—

- (A) IN GENERAL.—For purposes of computing the amount of payment for a local educational agency for children identified under paragraph (1), the Secretary shall consider children residing in housing initially acquired or constructed under the former section 2828(g) of title 10, United States Code (commonly known as the “Build to Lease” program), as added by section 801 of the Military Construction Authorization Act, 1984, to be children described under paragraph (1)(B) if the property described is within the fenced security perimeter of the military facility upon which such housing is situated.
- (B) ADDITIONAL REQUIREMENTS.—If the property described in subparagraph (A) is not owned by the Federal Government, is subject to taxation by a State or political subdivision of a State, and thereby generates revenues for a local educational agency that is applying to receive a payment under this section, then the Secretary—
  - (i) shall require the local educational agency to provide certification from an appropriate official of the Department of Defense that the property is being used to provide military housing; and
  - (ii) shall reduce the amount of the payment under this section by an amount equal to the amount of revenue from such taxation received in the second preceding fiscal year by such local educational agency, unless the amount of such revenue was taken into account by the State for such second preceding fiscal year and already resulted in a reduction in the amount of State aid paid to such local educational agency.

(b) BASIC SUPPORT PAYMENTS AND PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED-

(1) BASIC SUPPORT PAYMENTS-



- (A) **IN GENERAL.** —From the amount appropriated under section 8014(b) for a fiscal year, the Secretary is authorized to make basic support payments to eligible local educational agencies with children described in subsection (a).
- (B) **ELIGIBILITY.** —A local educational agency is eligible to receive a basic support payment under subparagraph (A) for a fiscal year with respect to a number of children determined under subsection (a)(1) only if the number of children so determined with respect to such agency amounts to the lesser of—
- (i) at least 400 such children; or
  - (ii) a number of such children which equals at least 3 percent of the total number of children who were in average daily attendance, during such year, at the schools of such agency and for whom such agency provided free public education.
- (C) **MAXIMUM AMOUNT.** —The maximum amount that a local educational agency is eligible to receive under this paragraph for any fiscal year is the sum of the total weighted student units, as computed under subsection (a)(2), multiplied by the greater of—
- (i) one-half of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made;
  - (ii) one-half of the average per-pupil expenditure of all of the States for the third fiscal year preceding the fiscal year for which the determination is made;
  - (iii) the comparable local contribution rate certified by the State, as determined under regulations prescribed to carry out the Act of September 30, 1950 (Public Law 874, 81st Congress), as such regulations were in effect on January 1, 1994; or
  - (iv) the average per-pupil expenditure of the State in which the local educational agency is located, multiplied by the local contribution percentage.
- (D) **DATA.**—If satisfactory data from the third preceding fiscal year are not available for any of the expenditures described in clause (i) or (ii) of subparagraph (C), the Secretary shall use data from the most recent fiscal year for which data that are satisfactory to the Secretary are available.
- (E) **SPECIAL RULE.**—For purposes of determining the comparable local contribution rate under subparagraph (C)(iii) for a local educational agency described in section 222.39(c)(3) of title 34, Code of Federal Regulations, that had its comparable local contribution rate for fiscal year 1998 calculated pursuant to section 222.39 of title 34, Code of Federal Regulations, the Secretary shall determine such comparable local contribution rate as the rate upon which payments under this subsection for fiscal year 2000 were made to the local educational agency adjusted by the percentage increase or decrease in the per pupil expenditure in the State serving the local educational agency calculated on the basis of the second most recent preceding school year compared to the third most recent preceding school year for which school year data are available.
- (F) **INCREASE IN LOCAL CONTRIBUTION RATE DUE TO UNUSUAL GEOGRAPHIC FACTORS.** —If the current expenditures in those local educational agencies which the Secretary has determined to be generally comparable to the local educational agency for which a computation is made under subparagraph (C) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in such agency, a level of education equivalent to that maintained in such other agencies, then the Secretary shall increase the local contribution rate for such agency under subparagraph (C)(iii) by such an amount which the Secretary determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors. The amount of any such supplementary payment may not exceed the per-pupil share (computed with regard to all children in average daily attendance), as determined by the Secretary, of the increased current expenditures necessitated by such unusual geographic factors.

(2) BASIC SUPPORT PAYMENTS FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—

(A) IN GENERAL.—

- (i) From the amount appropriated under section 8014(b) for a fiscal year, the Secretary is authorized to make basic support payments to eligible heavily impacted local educational agencies with children described in subsection (a).
- (ii) A local educational agency that receives a basic support payment under this paragraph for a fiscal year shall not be eligible to receive a basic support payment under paragraph (1) for that fiscal year

(B) ELIGIBILITY FOR CONTINUING HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—

- (i) IN GENERAL.—A heavily impacted local educational agency is eligible to receive a basic support payment under subparagraph (A) with respect to a number of children determined under subsection (a)(1) if the agency—
  - (I) received an additional assistance payment under subsection (f) (as such subsection was in effect on the day before the date of the enactment of the Impact Aid Reauthorization Act of 2000) for fiscal year 2000; and
  - (II) (aa) is a local educational agency whose boundaries are the same as a Federal military installation;
  - (bb) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency which is not less than 35 percent, has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located or the average per-pupil expenditure of all States (whichever average per-pupil expenditure is greater), except that a local educational agency with a total student enrollment of less than 350 students shall be deemed to have satisfied such per-pupil expenditure requirement, and has a tax rate for general fund purposes which is not less than 95 percent of the average tax rate for general fund purposes of local educational agencies in the State;
  - (cc) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency which is not less than 30 percent, and has a tax rate for general fund purposes which is not less than 125 percent of the average tax rate for general fund purposes for comparable local educational agencies in the State;
  - (dd) has a total student enrollment of not less than 25,000 students, of which not less than 50 percent are children described in subsection (a)(1) and not less than 6,000 of such children are children described in subparagraphs (A) and (B) of subsection (a)(1); or
  - (ee) meets the requirements of subsection (f)(2) applying the data requirements of subsection (f)(4) (as such subsections were in effect on the day before the date of the enactment of the Impact Aid Reauthorization Act of 2000).
- (ii) LOSS OF ELIGIBILITY.—A heavily impacted local educational agency that met the requirements of clause (i) for a fiscal year shall be ineligible to receive a basic support payment under subparagraph (A) if the agency fails to meet the requirements of clause (i) for a subsequent fiscal year, except that such agency shall continue to receive a basic support payment under this paragraph for the fiscal year for which the ineligibility determination is made.
- (iii) RESUMPTION OF ELIGIBILITY.—A heavily impacted local educational agency described in clause (i) that becomes ineligible under such clause for 1 or more fiscal years may resume eligibility for a basic support payment under this paragraph for a subsequent fiscal year only if the agency meets the requirements of clause (i) for that subsequent fiscal year, except that such agency shall not

receive a basic support payment under this paragraph until the fiscal year succeeding the fiscal year for which the eligibility determination is made.

(C) ELIGIBILITY FOR NEW HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.

- (i) IN GENERAL.—A heavily impacted local educational agency that did not receive an additional assistance payment under subsection (f) (as such subsection was in effect on the day before the date of the enactment of the Impact Aid Reauthorization Act of 2000) for fiscal year 2000 is eligible to receive a basic support payment under subparagraph (A) for fiscal year 2002 and any subsequent fiscal year with respect to a number of children determined under subsection (a) (1) only if the agency is a local educational agency whose boundaries are the same as a Federal military installation (or if the agency is a qualified local educational agency as described in clause (iv)) or the agency—
- (I) has an enrollment of children described in subsection (a)(1) that constitutes a percentage of the total student enrollment of the agency that—
- (aa) is not less than 50 percent if such agency receives a payment on behalf of children described in subparagraphs (F) and (G) of such subsection; or
- (bb) is not less than 40 percent if such agency does not receive a payment on behalf of such children;
- (II) (aa) for a local educational agency that has a total student enrollment of 350 or more students, has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located; or
- (bb) for a local educational agency that has a total student enrollment of less than 350 students, has a per-pupil expenditure that is less than the average per-pupil expenditure that is less than the average per-pupil expenditure of a comparable local educational agency in the State in which the agency is located; and
- (III) has a tax rate for general fund purposes that is at least 95 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State.
- (ii) RESUMPTION OF ELIGIBILITY.—A heavily impacted local educational agency described in clause (i) that becomes ineligible under such clause for 1 or more fiscal years may resume eligibility for a basic support payment under this paragraph for a subsequent fiscal year only if the agency is a local educational agency whose boundaries are the same as a Federal military installation (or if the agency is a qualified local educational agency as described in clause (iv)), or meets the requirements of clause (i), for that subsequent fiscal year, except that such agency shall continue to receive a basic support payment under this paragraph for the fiscal year for which the ineligibility determination is made.
- (iii) APPLICATION.—With respect to the first fiscal year for which a heavily impacted local educational agency described in clause (i) applies for a basic support payment under subparagraph (A), or with respect to the first fiscal year for which a heavily impacted local educational agency applies for a basic support payment under subparagraph (A) after becoming ineligible under clause (i) for 1 or more preceding fiscal years, the agency shall apply for such payment at least 1 year prior to the start of that first fiscal year.
- (iv) QUALIFIED LOCAL EDUCATIONAL AGENCY- A qualified local educational agency described in this clause is an agency that meets the following requirements:
- (I) The boundaries of the agency are the same as island property designated by the Secretary of the Interior to be property that is held in trust by the Federal Government.

(II) The agency has no taxing authority.

(III) The agency received a payment under paragraph (1) for fiscal year 2001.'.

(2) EFFECTIVE DATE- The Secretary shall consider an application for a payment under section 8003(b)(2) for fiscal year 2002 from a qualified local educational agency described in section 8003(b)(2)(C)(iv), as added by paragraph (1), as meeting the requirements of section 8003(b)(2)(C)(iii), and shall provide a payment under section 8003(b)(2) for fiscal year 2002, if the agency submits to the Secretary an application for payment under such section not later than 30 days after the date of enactment of this Act.

(D) MAXIMUM AMOUNT FOR REGULAR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.—

- (i) Except as provided in subparagraph (E), the maximum amount that a heavily impacted local educational agency is eligible to receive under this paragraph for any fiscal year is the sum of the total weighted student units, as computed under subsection (a)(2) and subject to clause (ii), multiplied by the greater of—
  - (I) four-fifths of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made; or
  - (II) four-fifths of the average per-pupil expenditure of all the States for the third fiscal year preceding the fiscal year for which the determination is made.
- (ii)
  - (I) For a local educational agency with respect to which 35 percent or more of the total student enrollment of the schools of the agency are children described in subparagraph (D) or (E) (or a combination thereof) of subsection (a)(1), the Secretary shall calculate the weighted student units of such children for purposes of subsection (a)(2) by multiplying the number of such children by a factor of 0.55.
  - (II) For a local educational agency that has an enrollment of 100 or fewer children described in subsection (a)(1), the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) by multiplying the number of such children by a factor of 1.75.
  - (III) For a local educational agency that has an enrollment of more than 100 but not more than 750 children described in subsection (a)(1), the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) by multiplying the number of such children by a factor of 1.25.

(E) MAXIMUM AMOUNT FOR LARGE HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.--

- (i)
  - (I) Subject to clause (ii), the maximum amount that a heavily impacted local educational agency described in subclause (II) is eligible to receive under this paragraph for any fiscal year shall be determined in accordance with the formula described in paragraph (1)(C).
  - (II) A heavily impacted local educational agency described in this subclause is a local educational agency that has a total student enrollment of not less than 25,000 students, of which not less than 50 percent are children described in subsection (a)(1) and not less than 6,000 of such children are children described in subparagraphs (A) and (B) of subsection (a)(1).
- (ii) For purposes of calculating the maximum amount described in clause (i), the factor used in determining the weighted student units under subsection (a)(2) with respect to children described in subparagraphs (A) and (B) of subsection (a)(1) shall be 1.35.

(F) DATA.—For purposes of providing assistance under this paragraph the Secretary—

- (i) shall use student, revenue expenditure, and tax data from the third fiscal year preceding the fiscal year for which the local educational agency is applying for assistance under this paragraph; and
  - (ii) except as provided in subparagraph (C)(i)(I), shall include all of the children described in subparagraphs (F) and (G) of subsection (a)(1) enrolled in schools of the local educational agency in determining (I) the eligibility of the agency for assistance under this paragraph, and (II) the amount of such assistance if the number of such children meet the requirements of subsection (a)(3).
- (G) DETERMINATION OF AVERAGE TAX RATES FOR GENERAL FUND PURPOSES—For the purpose of determining average tax rates for general fund purposes for local educational agencies in a State under this paragraph (except under subparagraph (C)(i)(II)(bb)), the Secretary shall use either—
- (i) the average tax rate for general fund purposes for comparable local educational agencies, as determined by the Secretary in regulations; or
  - (ii) the average tax rate of all the local educational agencies in the State.
- (3) PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH INSUFFICIENT FUNDS ARE APPROPRIATED-
- (A) IN GENERAL—For any fiscal year in which the sums appropriated under section 8014(b) are insufficient to pay to each local educational agency the full amount computed under paragraphs (1) and (2), the Secretary shall make payments in accordance with this paragraph.
- (B) LEARNING OPPORTUNITY THRESHOLD IN LIEU OF PAYMENTS UNDER PARAGRAPH (1).
- (i) For fiscal years described in subparagraph (A), the Secretary shall compute a learning opportunity threshold payment (hereafter in this title referred to as the “threshold payment”) in lieu of basic support payments under paragraph (1) by multiplying the amount obtained under paragraph (1)(C) by the total percentage obtained by adding—
    - (I) the percentage of federally connected children for each local educational agency determined by calculating the fraction, the numerator of which is the total number of children described under subsection (a)(1) and the denominator of which is the total number of children in average daily attendance at the schools served by such agency; and
    - (II) the percentage that funds under paragraph (1)(C) represent of the total budget of the local educational agency, determined by calculating the fraction, the numerator of which is the total amount of funds calculated for each local educational agency under this paragraph, and the denominator of which is the total current expenditures for such agency in the second preceding fiscal year for which the determination is made.
  - (ii) Such total percentage used to calculate threshold payments under paragraph (1) shall not exceed 100.
  - (iii) For the purpose of determining the percentages described in subclauses (I) and (II) of clause (i) that are applicable to the local educational agency providing free public education to students in grades 9 through 12 residing on Hanscom Air Force Base, Massachusetts, the Secretary shall consider only that portion of such agency's total enrollment of students in grades 9 through 12 when calculating the percentage under such subclause (I) and only that portion of the total current expenditures attributed to the operation of grades 9 through 12 in such agency when calculating the percentage under subclause (II).
  - (iv) In the case of a local educational agency that has a total student enrollment of fewer than 1,000 students and that has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located or less than the average per-pupil expenditure of all the States, the total percentage used to calculate threshold payments under clause (i) shall not be less than 40 percent.

- (C) LEARNING OPPORTUNITY THRESHOLD PAYMENTS IN LIEU OF PAYMENTS UNDER PARAGRAPH (2).—For fiscal years described in subparagraph (A), the learning opportunity threshold payment in lieu of basic support payments under paragraph (2) shall be equal to the amount obtained under subparagraph (D) or (E) of paragraph (2), as the case may be.
- (D) RATABLE DISTRIBUTION. —For fiscal years described in subparagraph (A), the Secretary shall make payments as a ratable distribution based upon computations made under subparagraphs (B) and (C).
- (4) STATES WITH ONLY ONE LOCAL EDUCATIONAL AGENCY.—
- (A) IN GENERAL.—In any of the 50 States of the United States in which there is only one local educational agency, the Secretary shall, for purposes of subparagraphs (B) and (C) of paragraph (1) or subparagraphs (B) through (D) of paragraph (2), as the case may be, paragraph (3) of this subsection, and subsection (e), consider each administrative school district in the State to be a separate local educational agency.
- (B) COMPUTATION OF MAXIMUM AMOUNT OF BASIC SUPPORT PAYMENT AND THRESHOLD PAYMENT.—In computing the maximum payment amount under paragraph (1)(C) or subparagraph (D) or (E) of paragraph (2), as the case may be, and the learning opportunity threshold payment under subparagraph (B) or (C) of paragraph (3), as the case may be, for an administrative school district described in subparagraph (A)—
- (i) the Secretary shall first determine the maximum payment amount and the total current expenditures for the State as a whole; and
- (ii) the Secretary shall then—
- (I) proportionately allocate such maximum payment amount among the administrative school districts on the basis of the respective weighted student units of such districts; and
- (II) proportionately allocate such total current expenditures among the administrative school districts on the basis of the respective number of students in average daily attendance at such districts.
- (5) LOCAL EDUCATIONAL AGENCIES AFFECTED BY REMOVAL OF FEDERAL PROPERTY.—
- (A) IN GENERAL.—In computing the amount of basic support payment under this subsection for a fiscal year for a local educational agency described in subparagraph (B), the Secretary shall meet the additional requirements described in subparagraph (C).
- (B) LOCAL EDUCATIONAL AGENCY DESCRIBED.—A local educational agency described in this subparagraph is a local educational agency with respect to which Federal property (i) located within the boundaries of the agency and (ii) on which one or more children reside who are receiving a free public education at a school of the agency, is transferred by the Federal Government to another entity in any fiscal year beginning on or after the date of the enactment of the Impact Aid Reauthorization Act of 2000 so that the property is subject to taxation by the State or a political subdivision of the State.
- (C) ADDITIONAL REQUIREMENTS.—The additional requirements described in this subparagraph are the following:
- (i) For each fiscal year beginning after the date on which the Federal property is transferred, a child described in subparagraph (B) who continues to reside on such property and who continues to receive a free public education at a school of the agency shall be deemed to be a child who resides on Federal property for purposes of computing under the applicable subparagraph of subsection (a)(1) the amount that the agency is eligible to receive under this subsection.
- (ii) (I) For the third fiscal year beginning after the date on which the Federal property is transferred, and for each fiscal year thereafter, the Secretary shall, after computing the amount that the agency is otherwise eligible to receive under this subsection for the fiscal year involved, deduct from such

amount an amount equal to the revenue received by the agency for the immediately preceding fiscal year as a result of the taxable status of the former Federal property.

- (II) For purposes of determining the amount of revenue to be deducted in accordance with subclause (I), the local educational agency—
  - (aa) shall provide for a review and certification of such amount by an appropriate local tax authority; and
  - (bb) shall submit to the Secretary a report containing the amount certified under item (aa).
- (c) PRIOR YEAR DATA—
  - (1) IN GENERAL—Except as provided in subsections (b)(1)(D), (b)(2) and paragraph (2), all calculations under this section shall be based on data for each local educational agency from not later than the fiscal year preceding the fiscal year for which the agency is making application for payment.
  - (2) EXCEPTION—Calculations for a local educational agency that is newly established by a State shall, for the first year of operation of such agency, be based on data from the fiscal year for which the agency is making application for payment.
- (d) CHILDREN WITH DISABILITIES—
  - (1) IN GENERAL—From the amount appropriated under section 8014(c) for a fiscal year, the Secretary shall pay to each eligible local educational agency, on a pro rata basis, the amounts determined by—
    - (A) multiplying the number of children described in subparagraphs (A)(ii), (B) and (C) of subsection (a)(1) who are eligible to receive services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) by a factor of 1.0; and
    - (B) multiplying the number of children described in subparagraph (D) of subsection (a)(1) who are eligible to receive services under such Act by a factor of 0.5.
  - (2) USE OF FUNDS—A local educational agency that receives funds under paragraph (1) shall use such funds to provide a free appropriate public education to children described in paragraph (1) in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).
- (e) HOLD HARMLESS.—
  - (1) IN GENERAL.—Subject to paragraphs (2) and (3), the total amount the Secretary shall pay a local educational agency under subsection (b)—
    - (A) for fiscal year 2001 shall not be less than 85 percent of the total amount that the local educational agency received under subsections (b) and (f) for fiscal year 2000; and
    - (B) for fiscal year 2002 shall not be less than 70 percent of the total amount that the local educational agency received under subsections (b) and (f) for fiscal year 2000.
  - (2) MAXIMUM AMOUNT.—The total amount provided to a local educational agency under subparagraph (A) or (B) of paragraph (1) for a fiscal year shall not exceed the maximum basic support payment amount for such agency determined under paragraph (1) or (2) of subsection (b), as the case may be.
  - (3) RATABLE REDUCTIONS.—
    - (A) IN GENERAL.—If the sums made available under this title for any fiscal year are insufficient to pay the full amounts that all local educational agencies in all States are eligible to receive under paragraph (1) for such year, then the Secretary shall ratably reduce the payments to all such agencies for such year.
    - (B) ADDITIONAL FUNDS.—If additional funds become available for making payments under paragraph (1) for such fiscal year, payments that were reduced under subparagraph (A) shall be increased on the same basis as such payments were reduced.
- (f) OTHER FUNDS.—Notwithstanding any other provision of law, a local educational agency receiving funds under this section may also receive funds under section 386 of the National Defense Authorization Act for Fiscal Year 1993 or such section's successor authority.
- (g) MAINTENANCE OF EFFORT.—A local educational agency may receive funds under sections 8002 and 8003(b) for any fiscal year only if the State educational agency finds that either the

combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

SEC. 8004. [20 U.S.C. 7704] POLICIES AND PROCEDURES RELATING TO CHILDREN RESIDING ON INDIAN LANDS.

- (a) IN GENERAL.—A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall establish policies and procedures to ensure that—
- (1) such children participate in programs and activities supported by such funds on an equal basis with all other children;
  - (2) parents of such children and Indian tribes are afforded an opportunity to present their views on such programs and activities, including an opportunity to make recommendations on the needs of those children and how the local educational agency may help such children realize the benefits of such programs and activities;
  - (3) parents and Indian tribes are consulted and involved in planning and developing such programs and activities;
  - (4) relevant applications, evaluations, and program plans are disseminated to the parents and Indian tribes; and
  - (5) parents and Indian tribes are afforded an opportunity to present their views to such agency regarding such agency's general educational program.
- (b) RECORDS. —A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall maintain records demonstrating such agency's compliance with the requirements contained in subsection (a).
- (c) WAIVER. —A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall not be required to comply with the requirements of subsection (a) and (b) for any fiscal year with respect to any Indian tribe from which such agency has received a written statement that the agency need not comply with those subsections because the tribe is satisfied with the provision of educational services by such agency to such children.
- (d) TECHNICAL ASSISTANCE AND ENFORCEMENT.—The Secretary shall—
- (1) provide technical assistance to local educational agencies, parents, and Indian tribes to enable such agencies, parents, and tribes to carry out this section; and
  - (2) enforce this section through such actions, which may include the withholding of funds, as the Secretary determines to be appropriate, after affording the affected local educational agency, parents, and Indian tribe an opportunity to present their views.
- (e) COMPLAINTS.—
- (1) IN GENERAL. —
    - (A) Any tribe, or its designee, which has students in attendance at a local educational agency may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Secretary regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of this section.
    - (B) Within ten working days from receipt of a complaint, the Secretary shall—
      - (i) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or if the Secretary determines there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;
      - (ii) designate a hearing examiner to conduct the hearing; and
      - (iii) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.



- (2) HEARING. –The hearing shall be held within 30 days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.
  - (3) EVIDENCE; RECOMMENDATIONS; COST. –The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceedings.
  - (4) FINDINGS AND RECOMMENDATIONS. –Within 30 days of the completion of the hearing, the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial action, if any, which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Secretary.
  - (5) WRITTEN DETERMINATION. –Within 30 days of the Secretary's receipt of the findings, recommendations, and record, the Secretary shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for the Secretary's decision.
  - (6) COPIES PROVIDED. –Upon completion of the Secretary's final determination, the Secretary shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Secretary's final determination. The final determination of the Secretary shall be subject to judicial review.
  - (7) CONSOLIDATION. –In all actions under this subsection, the Secretary shall have discretion to consolidate complaints involving the same tribe or local educational agency.
  - (8) WITHHOLDING. –If the local educational agency rejects the determination of the Secretary, or if the remedy required is not undertaken within the time established and the Secretary determines that an extension of the time established will not effectively encourage the remedy required, the Secretary shall withhold payment of all moneys to which such local agency is eligible under section 8003 until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency, except that the Secretary may not withhold such moneys during the course of the school year if the Secretary determines that such withholding would substantially disrupt the educational programs of the local educational agency.
  - (9) REJECTION OF DETERMINATION. –If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978, to have education services provided either directly by the Bureau of Indian Affairs or by contract with the Bureau of Indian Affairs, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which led to the tribal action under such subsection (d) was lodged may be counted with respect to that local educational agency for the purpose of receiving funds under section 8003. In such event, funds under such section shall not be withheld pursuant to paragraph (8) and no further complaints with respect to such students may be filed under paragraph (1).
- (f) CONSTRUCTION. –This section is based upon the special relationship between the Indian nations and the United States and nothing in this section shall be construed to relieve any State of any duty with respect to any citizens of that State.

SEC. 8005. [20 U.S.C. 7705] APPLICATION FOR PAYMENTS UNDER SECTIONS 8002 AND 8003.

- (a) IN GENERAL. –A local educational agency desiring to receive a payment under section 8002 or 8003 shall—
  - (1) submit an application for such payment to the Secretary; and
  - (2) provide a copy of such application to the State educational agency.
- (b) CONTENTS. –Each such application shall be submitted in such form and manner, and shall contain such information, as the Secretary may require, including—

- (1) information to determine the eligibility of the local educational agency for a payment and the amount of such payment; and
  - (2) where applicable, an assurance that such agency is in compliance with section 8004 (relating to children residing on Indian lands).
- (c) DEADLINE FOR SUBMISSION. –The Secretary shall establish deadlines for the submission of applications under this section.
- (d) APPROVAL. –
- (1) IN GENERAL. – The Secretary shall approve an application submitted under this section that—
    - (A) except as provided in paragraph (2), is filed by the deadline established under subsection (c); and
    - (B) otherwise meets the requirements of this title.
  - (2) REDUCTION IN PAYMENT. –The Secretary shall approve an application filed not more than 60 days after a deadline established under subsection (c), or not more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to paragraph (3)(A), as the case may be, that otherwise meets the requirements of this title, except that, notwithstanding section 8003(e), the Secretary shall reduce the payment based on such late application by 10 percent of the amount that would otherwise be paid.
  - (3) LATE APPLICATIONS. —
    - (A) NOTICE. –The Secretary shall, as soon as practicable after the deadline established under subsection (c), provide to each local educational agency that applied for a payment under section 8002 or 8003 for the prior fiscal year, and with respect to which the Secretary has not received an application for a payment under either such section (as the case may be) for the fiscal year in question, written notice of the failure to comply with the deadline and instruction to ensure that the application is filed not later than 60 days after the date on which the Secretary sends the notice.
    - (B) ACCEPTANCE AND APPROVAL OF LATE APPLICATIONS. –The Secretary shall not accept or approve any application of a local educational agency that is filed more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to subparagraph (A).
  - (4) STATE APPLICATION AUTHORITY. –Notwithstanding any other provision of law, a State educational agency that had been accepted as an applicant for funds under section 3 of the Act of September 30, 1950 (Public Law 874, 81<sup>st</sup> Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) in fiscal year 1994 shall be permitted to continue as an applicant under the same conditions by which such agency made application during such fiscal year only if such State educational agency distributes all funds received for the students for which application is being made by such State educational agency to the local educational agencies providing educational services to such students.

SEC. 8006. Deleted by P.L. 106-398 on October 30, 2000.

SEC. 8007. [20 U.S.C. 7707] CONSTRUCTION.

(a) CONSTRUCTION PAYMENTS AUTHORIZED. –

- (1) IN GENERAL. –From 40 percent of the amount appropriated for each fiscal year under section 8014(e), the Secretary shall make payments in accordance with this subsection to each local educational agency that receives a basic support payment under section 8003(b) for that fiscal year.
- (2) ADDITIONAL REQUIREMENTS. –A local educational agency that receives a basic support payment under section 8003(b)(1) shall also meet at least one of the following requirements:

- (A) The number of children determined under section 8003(a)(1)(C) for the agency for the preceding school year constituted at least 50 percent of the total student enrollment in the schools of the agency during the preceding school year.
- (B) The number of children determined under subparagraphs (B) and (D)(i) of section 8003(a)(1) for the agency for the preceding school year constituted at least 50 percent of the total student enrollment in the schools of the agency during the preceding school year.
- (3) AMOUNT OF PAYMENTS. –
  - (A) LOCAL EDUCATIONAL AGENCIES IMPACTED BY MILITARY DEPENDENT CHILDREN. –The amount of a payment to each local educational agency described in this subsection that is impacted by military dependent children for a fiscal year shall be equal to
    - (i) (I) 20 percent of the amount appropriated under section 8014(e) for such fiscal year; divided by
      - (II) the total number of weighted students units of children described in subparagraphs (B) and (D)(i) of section 8003(a)(1) for all local educational agencies described in this subsection (as calculated under section 8003(a)(2)), including the number of weighted student units of such children attending a school facility described in section 8008(a) if the Secretary does not provide assistance for the school facility under that section for the prior fiscal year; multiplied by
      - (ii) the total number of such weighted student units for the agency.
    - (B) LOCAL EDUCATIONAL AGENCIES IMPACTED BY CHILDREN WHO RESIDE ON INDIAN LANDS. –The amount of a payment to each local educational agency described in this subsection that is impacted by children who reside on Indian lands for a fiscal year shall be equal to—
      - (i) (I) 20 percent of the amount appropriated under section 8014(e) for such fiscal year; divided by
        - (II) the total number of weighted student units of children described in section 8003(a)(1)(C) for all local educational agencies described in this subsection (as calculated under section 8003(a)(2); multiplied by
        - (ii) the total number of such weighted student units for the agency.
  - (4) USE OF FUNDS. –Any local educational agency that receives funds under this subsection shall use such funds for construction, as defined in section 8013(3).
- (b) SCHOOL FACILITY EMERGENCY AND MODERNIZATION GRANTS AUTHORIZED-
  - (1) IN GENERAL- From 60 percent of the amount appropriated for each fiscal year under section 8014(e), the Secretary —
    - (B) shall award emergency grants in accordance with this subsection to eligible local educational agencies to enable the agencies to carry out emergency repairs of school facilities; and
    - (C) shall award modernization grants in accordance with this subsection to eligible local educational agencies to enable the agencies to carry out the modernization of school facilities.
  - (2) PRIORITY- In approving applications from local educational agencies for emergency grants and modernization grants under this subsection, the Secretary shall give priority to applications in accordance with the following:
    - (A) The Secretary shall first give priority to applications for emergency grants from local educational agencies that meet the requirements of paragraph (3)(A) and, among such applications for emergency grants, shall give priority to those applications of local educational agencies based on the severity of the emergency, as determined by the Secretary.
    - (B) The Secretary shall next give priority to applications for emergency grants from local educational agencies that meet the requirements of subparagraph (C) or (D) of paragraph (3) and, among such applications for emergency grants, shall give priority to

those applications of local educational agencies based on the severity of the emergency, as determined by the Secretary.

(C) The Secretary shall next give priority to applications for modernization grants from local educational agencies that meet the requirements of paragraph (3)(B) and, among such applications for modernization grants, shall give priority to those applications of local educational agencies based on the severity of the need for modernization, as determined by the Secretary.

(D) The Secretary shall next give priority to applications for modernization grants from local educational agencies that meet the requirements of subparagraph (C) or (D) of paragraph (3) and, among such applications for modernization grants, shall give priority to those applications of local educational agencies based on the severity of the need for modernization, as determined by the Secretary.

(3) ELIGIBILITY REQUIREMENTS-

(A) EMERGENCY GRANTS- A local educational agency is eligible to receive an emergency grant under paragraph (2)(A) if —

(i) the agency (or in the case of a local educational agency that does not have the authority to tax or issue bonds, the agency's fiscal agent) —

(I) has no practical capacity to issue bonds;

(II) has minimal capacity to issue bonds and is at not less than 75 percent of the agency's limit of bonded indebtedness; or

(III) does not meet the requirements of subclauses (I) and (II) but is eligible to receive funds under section 8003(b)(2) for the fiscal year; and

(ii) the agency is eligible to receive assistance under subsection (a) for the fiscal year and has a school facility emergency, as determined by the Secretary, that poses a health or safety hazard to the students and school personnel assigned to the school facility.

(B) MODERNIZATION GRANTS- A local educational agency is eligible to receive a modernization grant under paragraph (2)(C) if —

(i) the agency is eligible to receive assistance under this title for the fiscal year;

(ii) the agency (or in the case of a local educational agency that does not have the authority to tax or issue bonds, the agency's fiscal agent) meets the requirements of subclause (I), (II), or (III) of subparagraph (A)(i); and

(iii) the agency has facility needs resulting from the presence of the Federal Government, such as the enrollment of federally connected children, the presence of tax-exempt Federal property, or an increase in enrollment due to the expansion of Federal activities, housing privatization, or the acquisition of Federal property.

(C) ADDITIONAL ELIGIBILITY FOR EMERGENCY AND MODERNIZATION GRANTS- (i) A local educational agency is eligible to receive an emergency grant or a modernization grant under subparagraph (B) or (D) of paragraph (2), respectively, if the agency meets the following requirements:

(I) The agency receives a basic support payment under section 8003(b) for the fiscal year and the agency meets at least one of the following requirements:

(aa) The number of children determined under section 8003(a)(1)(C) for the agency for the preceding school year constituted at least 40 percent of the total student enrollment in the schools of the agency during the preceding school year.

(bb) The number of children determined under subparagraphs (B) and (D)(i) of section 8003(a)(1) for the agency for the preceding school year constituted at least 40 percent of the total student enrollment in the schools of the agency during the preceding school year.

(II) The agency (or in the case of a local educational agency that does not have the authority to tax or issue bonds, the agency's fiscal agent) is at not less than 75 percent of the agency's limit of bonded indebtedness.

(III) The agency has an assessed value of real property per student that may be taxed for school purposes that is less than the average of the assessed value of real property per student that may be taxed for school purposes in the State in which the local educational agency is located.

(ii) A local educational agency is also eligible to receive a modernization grant under this subparagraph if the agency is eligible to receive assistance under section 8002 for the fiscal year and meets the requirements of subclauses (II) and (III) of clause (i).

(D) SPECIAL RULE-

(i) IN GENERAL- Any school described in clause (ii) that desires to receive an emergency grant or a modernization grant under subparagraph (B) or (D) of paragraph (2), respectively, shall, except as provided in the following sentence, submit an application in accordance with paragraph (6), and shall otherwise be treated as a local educational agency for the purpose of this subsection. The school shall submit an application for the grant to the local educational agency of such school and the agency shall submit the application on behalf of the school to the Secretary.

(ii) SCHOOL DESCRIBED- A school described in this clause is a school that meets the following requirements:

(I) The school is located within the geographic boundaries of a local educational agency that does not meet the applicable eligibility requirements under subparagraph (A), (B), or (C) for a grant under this subsection.

(II) The school meets at least one of the following requirements:

(aa) The number of children determined under section 8003(a)(1)(C) for the school for the preceding school year constituted at least 40 percent of the total student enrollment in the school during the preceding school year.

(bb) The number of children determined under subparagraphs (B) and (D)(i) of section 8003(a)(1) for the school for the preceding school year constituted at least 40 percent of the total student enrollment in the school during the preceding school year.

(III) The school is located within the geographic boundaries of a local educational agency that meets the requirements of subclauses (II) and (III) of subparagraph (C)(i).

(E) RULE OF CONSTRUCTION- For purposes of subparagraph (A)(i), a local educational agency —

(i) has no practical capacity to issue bonds if the total assessed value of real property that may be taxed for school purposes is less than \$25,000,000; and

(ii) has minimal capacity to issue bonds if the total assessed value of real property that may be taxed for school purposes is at least \$25,000,000 but not more than \$50,000,000.

(4) AWARD CRITERIA- In awarding emergency grants and modernization grants under this subsection, the Secretary shall consider the following factors:

(A) The ability of the local educational agency to respond to the emergency, or to pay for the modernization project, as the case may be, as measured by —

(i) the agency's level of bonded indebtedness;

(ii) the assessed value of real property per student that may be taxed for school purposes compared to the average of the assessed value of real property per student that may be taxed for school purposes in the State in which the agency is located;

(iii) the agency's total tax rate for school purposes (or, if applicable, for capital expenditures) compared to the average total tax rate for school purposes (or the average capital expenditure tax rate, if applicable) in the State in which the agency is located; and

(iv) funds that are available to the agency, from any other source, including subsection (a), that may be used for capital expenditures.

(B) The percentage of property in the agency that is nontaxable due to the presence of the Federal Government.

(C) The number and percentages of children described in subparagraphs (A), (B), (C), and (D) of section 8003(a)(1) served in the school facility with the emergency or served in the school facility proposed for modernization, as the case may be.

(D) In the case of an emergency grant, the severity of the emergency, as measured by the threat that the condition of the school facility poses to the health, safety, and well-being of students.

(E) In the case of a modernization grant —

(i) the severity of the need for modernization, as measured by such factors as —

(I) overcrowding, as evidenced by the use of portable classrooms, or the potential for future overcrowding because of increased enrollment; or

(II) the agency's inability to utilize technology or offer a curriculum in accordance with contemporary State standards due to the physical limitations of the current school facility; and

(ii) the age of the school facility proposed for modernization.

(5) OTHER AWARD PROVISIONS-

(A) GENERAL PROVISIONS-

(i) LIMITATIONS ON AMOUNT OF FUNDS-

(I) IN GENERAL- The amount of funds provided under an emergency grant or a modernization grant awarded under this subsection to a local educational agency that meets the requirements of subclause (II) or (III) of paragraph (3)(A)(i) for purposes of eligibility under subparagraph (A) or (B) of paragraph (3) or that meets the requirements of clause (i) or (ii) of paragraph (3)(C) for purposes of eligibility under such paragraph (3)(C), or to a school that is eligible under paragraph (3)(D) —

(aa) shall not exceed 50 percent of the total cost of the project to be assisted under this subsection; and

(bb) shall not exceed \$4,000,000 during any 4-year period.

(II) IN-KIND CONTRIBUTIONS- A local educational agency may use in-kind contributions to meet the matching requirement of subclause (I)(aa).

(ii) PROHIBITIONS ON USE OF FUNDS- A local educational agency may not use funds provided under an emergency grant or modernization grant awarded under this subsection for —

(I) a project for a school facility for which the agency does not have full title or other interest;

(II) stadiums or other school facilities that are primarily used for athletic contests, exhibitions, or other events for which admission is charged to the general public; or

(III) the acquisition of real property.

(iii) SUPPLEMENT, NOT SUPPLANT- A local educational agency shall use funds provided under an emergency grant or modernization grant awarded under this subsection only to supplement the amount of funds that would, in the absence of the Federal funds provided under the grant, be made available from non-Federal sources to carry out emergency repairs of school facilities or to carry out the modernization of school facilities, as the case may be, and not to supplant such funds.

(iv) MAINTENANCE COSTS- Nothing in this subsection shall be construed to authorize the payment of maintenance costs in connection with any school facility modernized in whole or in part with Federal funds provided under this subsection.

(v) ENVIRONMENTAL SAFEGUARDS- All projects carried out with Federal funds provided under this subsection shall comply with all relevant Federal, State, and local environmental laws and regulations.

(vi) CARRY-OVER OF CERTAIN APPLICATIONS- A local educational agency that applies for an emergency grant or a modernization grant under this subsection for a fiscal year and does not receive the grant for the fiscal year shall have the application for the grant considered for the following fiscal year, subject to the priority requirements of paragraph (2) and the award criteria requirements of paragraph (4).

(B) EMERGENCY GRANTS; PROHIBITION ON USE OF FUNDS- A local educational agency that is awarded an emergency grant under this subsection may not use amounts under the grant for the complete or partial replacement of an existing school facility unless such replacement is less expensive or more cost-effective than correcting the identified emergency.

(6) APPLICATION- A local educational agency that desires to receive an emergency grant or a modernization grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each application shall contain the following:

(A) A description of how the local educational agency meets the award criteria under paragraph (4), including the information described in clauses (i) through (iv) of paragraph (4)(A) and subparagraphs (B) and (C) of paragraph (4).

(B) In the case of an application for an emergency grant —

(i) a description of the school facility deficiency that poses a health or safety hazard to the occupants of the facility and a description of how the deficiency will be repaired; and

(ii) a signed statement from an appropriate local official certifying that a deficiency in the school facility threatens the health or safety of the occupants of the facility or that prevents the use of all or a portion of the building.

(C) In the case of an application for a modernization grant —

(i) an explanation of the need for the school facility modernization project;

(ii) the date on which original construction of the facility to be modernized was completed;

- (iii) a listing of the school facilities to be modernized, including the number and percentage of children determined under section 8003(a)(1) in average daily attendance in each school facility; and
- (iv) a description of the ownership of the property on which the current school facility is located or on which the planned school facility will be located.
- (D) A description of the project for which a grant under this subsection will be used, including a cost estimate for the project.
- (E) A description of the interest in, or authority over, the school facility involved, such as an ownership interest or a lease arrangement.
- (F) Such other information and assurances as the Secretary may reasonably require.
- (7) REPORT-
  - (A) IN GENERAL- Not later than January 1 of each year, the Secretary shall prepare and submit to the appropriate congressional committees a report that contains a justification for each grant awarded under this subsection for the prior fiscal year.
  - (B) DEFINITION- In this paragraph, the term appropriate congressional committees' means —
    - (i) the Committee on Appropriations and the Committee on Education and the Workforce of the House of Representatives; and
    - (ii) the Committee on Appropriations and the Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 8008. [20 U.S.C. 7708] FACILITIES.

- (a) CURRENT FACILITIES. –From the amount appropriated for any fiscal year under section 8014(f), the Secretary may continue to provide assistance for school facilities that were supported by the Secretary under section 10 of the Act of September 23, 1950 (Public Law 815, 81<sup>st</sup> Congress) (as such Act was in effect on the day preceding the date of the enactment of the Improving America's Schools Act of 1994).
- (b) TRANSFER OF FACILITIES.—
  - (1) IN GENERAL. –The Secretary shall, as soon as practicable, transfer to the appropriate local education agency or another appropriate entity all the right, title, and interest of the United States in and to each facility provided under section 10 of the Act of September 23, 1950 (Public Law 815, 81<sup>st</sup> Congress), or under section 204 or 310 of the Act of September 30, 1950 (Public Law 874, 81<sup>st</sup> Congress)(as such Acts were in effect on January 1, 1958).
  - (2) OTHER REQUIREMENTS. –Any such transfer shall be without charge to such agency or entity, and prior to such transfer, the transfer shall be consented to by the local educational agency or other appropriate entity, and may be made on such terms and conditions as the Secretary deems appropriate to carry out the purposes of this title.

SEC. 8009. [20 U.S.C. 7709] STATE CONSIDERATION OF PAYMENTS IN PROVIDING STATE AID.

- (a) GENERAL PROHIBITION. –Except as provided in subsection (b), a State may not—
  - (1) consider payments under this title in determining for any fiscal year—
    - (A) the eligibility of a local educational agency for State aid for free public education; or
    - (B) the amount of such aid; or
  - (2) make such aid available to local educational agencies in a manner that results in less State aid to any local educational agency that is eligible for such payment than such agency would receive if such agency were not so eligible.
- (b) STATE EQUALIZATION PLANS.—
  - (1) IN GENERAL. –A State may reduce State aid to a local educational agency that receives a payment under section 8002 or 8003(b) (except the amount calculated in excess of 1.0 under section 8003(a)(2)(B)) and, with respect to a local educational agency that receives a payment under agency would receive if the agency were deemed to be an agency eligible to receive a payment under section 8003(b)(1) and not section 8003(b)(2) for any fiscal year if the Secretary determines, and certifies under subsection (c)(3)(A), that the

State has in effect a program of State aid that equalizes expenditures for free public education among local educational agencies in the State.

(2) COMPUTATION.—

(A) IN GENERAL. —For purposes of paragraph (1), a program of State aid equalizes expenditures among local educational agencies if, in the second fiscal year preceding the fiscal year for which the determination is made, the amount of per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the highest such per-pupil expenditures or revenues did not exceed the amount of such per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the lowest such expenditures or revenues by more than 25 percent.

(B) OTHER FACTORS. —In making a determination under this subsection, the Secretary shall—

- (i) disregard local educational agencies with per-pupil expenditures or revenues above the 95<sup>th</sup> percentile or below the 5<sup>th</sup> percentile of such expenditures or revenues in the State; and
- (ii) take into account the extent to which a program of State aid reflects the additional cost of providing free public education in particular types of local educational agencies, such as those that are geographically isolated, or to particular types of students, such as children with disabilities.

(3) EXCEPTION. —Notwithstanding paragraph (2), if the Secretary determines that the State has substantially revised its program of State aid, the Secretary may certify such program for any fiscal year only if—

(A) the Secretary determines, on the basis of projected data, that the State's program will meet the disparity standard described in paragraph (2) for the fiscal year for which the determination is made; and

(B) the State provides an assurance to the Secretary that, if final data do not demonstrate that the State's program met such standard for the fiscal year for which the determination is made, the State will pay to each affected local educational agency the amount by which the State reduced State aid to the local educational agency.

(c) PROCEDURES FOR REVIEW OF STATE EQUALIZATION PLANS.—

(1) WRITTEN NOTICE.—

(A) IN GENERAL. —Any State that wishes to consider payments described in subsection (b)(1) in providing State aid to local educational agencies shall submit to the Secretary, not later than 120 days before the beginning of the State's fiscal year, a written notice of such State's intention to do so.

(B) CONTENTS.—Such notice shall be in the form and contain the information the Secretary requires, including evidence that the State has notified each local educational agency in the State of such State's intention to consider such payments in providing State aid.

(2) OPPORTUNITY TO PRESENT VIEWS. —Before making a determination under subsection (b), the Secretary shall afford the State, and local educational agencies in the State, an opportunity to present their views.

(3) QUALIFICATION PROCEDURES. —If the Secretary determines that a program of State aid qualifies under subsection (b), the Secretary shall—

(A) certify the program and so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 8011(a), to any local educational agency adversely affected by such certification.

(4) NON-QUALIFICATION PROCEDURES.—If the Secretary determines that a program of State aid does not qualify under subsection (b), the Secretary shall—

(A) so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 8011(a), to the State, and to any local educational agency adversely affected by such determination.

(d) TREATMENT OF STATE AID.—



- (1) IN GENERAL. –If a State has in effect a program of State aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local educational agencies of that State, payments under this title for any fiscal year may be taken into consideration by such State in determining the relative—
    - (A) financial resources available to local educational agencies in that State; and
    - (B) financial need of such agencies for the provision of free public education for children served by such agency, except that a State may consider as local resources funds received under this title only in proportion to the share that local tax revenues covered under a State equalization program are of total local tax revenues.
  - (2) PROHIBITION. –A State may not take into consideration payments under this title before such State's program of State aid has been certified by the Secretary under subsection (c)(3).
- (e) REMEDIES FOR STATE VIOLATIONS.—
- (1) IN GENERAL. –The Secretary or any aggrieved local educational agency may, not earlier than 150 days after an adverse determination by the Secretary against a State for violation of subsections (a) or (d)(2) or for failure to carry out an assurance under subsection (b)(3)(B), and if an administrative proceeding has not been concluded within such time, bring an action in a United States district court against such State for such violations or failure.
  - (2) IMMUNITY. –A State shall not be immune under the 11<sup>th</sup> amendment to the Constitution of the United State from an action described in paragraph (1).
  - (3) RELIEF. –The court shall grant such relief as the court determines is appropriate.

SEC. 8010. [20 U.S.C. 7710] FEDERAL ADMINISTRATION.

- (a) PAYMENTS IN WHOLE DOLLAR AMOUNTS. –The Secretary shall round any payments under this title to the nearest whole dollar amount.
- (b) OTHER AGENCIES. – Each Federal agency administering Federal property on which children reside, and each agency principally responsible for an activity that may occasion assistance under this title, shall, to the maximum extent practicable, comply with requests of the Secretary for information the Secretary may require to carry out this title.
- (c) SPECIAL RULES.—
  - (1) CERTAIN CHILDREN ELIGIBLE UNDER SUBPARAGRAPHS (A) AND (G) (ii) OF SECTION 8003(a)(1). –
    - (A) The Secretary shall treat as eligible under subparagraph (A) of section 8003(a)(1) any child who would be eligible under such subparagraph except that the Federal property on which the child resides or on which the child's parent is employed is not in the same State in which the child attends school, if such child meets the requirements of paragraph (3) of this subsection.
    - (B) The Secretary shall treat as eligible under subparagraph (G) of section 8003(a)(1) any child who would be eligible under such subparagraph except that such child does not meet the requirements of paragraph (3) of this subsection.
  - (2) REQUIREMENTS. –A child meets the requirements of this paragraph if—
    - (A) such child resides—
      - (i) in a State adjacent to the State in which the local educational agency serving the school such child attends is located; or
      - (ii) with a parent employed on Federal property in a State adjacent to the State in which such agency is located;
    - (B) the schools of such agency are within a more reasonable commuting distance of such child's home than the schools of the local educational agency that serves the school attendance area where such child resides;
    - (C) attending the schools of the local educational agency that serves the school attendance area where such child resides will impose a substantial hardship on such child.;

- (D) the State in which such child attends school provides funds for the education of such child on the same basis as all other public school children in the State unless otherwise permitted under section 8009(b) of this title; and
- (E) such agency received a payment for fiscal year 1999 under section 8003(b) on behalf of children described in paragraph (1).

SEC. 8011. [20 U.S.C. 7711] ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW.

(a) ADMINISTRATIVE HEARINGS. —

- (1) A local educational agency and a State that is adversely affected by any action of the Secretary under this title or under the Act of September 30, 1950 (Public Law 874) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) shall be entitled to a hearing on such action in the same manner as if such agency were a person under chapter 5 of title 5, United States Code if the local educational agency or State, as the case may be, submits to the Secretary a request for the hearing not later than 60 days after the date of the action of the Secretary under this title.

EFFECTIVE DATE OF AMENDMENTS TO SECTION 8011(a). The Impact Aid Reauthorization Act of 2000, enacted by P.L. 106-398, provides that the amendments made to section 8011(a) by that Act "shall apply with respect to an action of the Secretary under title VIII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7701 et seq.) initiated on or after [October 30, 2000]".

(b) JUDICIAL REVIEW OF SECRETARIAL ACTION.—

- (1) IN GENERAL. —A local educational agency or a State aggrieved by the Secretary's final decision following an agency proceeding under subsection (a) may, within 30 working days (as determined by the local educational agency or State) after receiving notice of such decision, file with the United States court of appeals for the circuit in which such agency or State is located a petition for review of that action. The clerk of the court shall promptly transmit a copy of the petition to the Secretary. The Secretary shall then file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.
- (2) FINDINGS OF FACT. —The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence. The Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.
- (3) REVIEW. —The court shall have exclusive jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

SEC. 8012. [20 U.S.C. 7712] FORGIVENESS OF OVERPAYMENTS.

Notwithstanding any other provision of law, the Secretary may forgive the obligation of a local educational agency to repay, in whole or in part, the amount of any overpayment received under this title, or under this title's predecessor authorities, if the Secretary determines that the overpayment was made as a result of an error made by—

- (1) the Secretary; or
- (2) the local educational agency and repayment of the full amount of the overpayment will result in an undue financial hardship on the agency and seriously harm the agency's educational program.

SEC. 8013. [20 U.S.C. 7713] DEFINITIONS.

For purposes of this title:

- (1) ARMED FORCES. –The term “Armed Forces” means the Army, Navy, Air Force, and Marine Corps.
- (2) AVERAGE PER-PUPIL EXPENDITURES. –The term “average per-pupil expenditure” means—
  - (A) the aggregate current expenditures of all local educational agencies in the State; divided by
  - (B) the total number of children in average daily attendance for whom such agencies provided free public education.
- (3) CONSTRUCTION. –The term “construction” means—
  - (A) the preparation of drawings and specifications for school facilities;
  - (B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities;
  - (C) inspecting and supervising the construction of school facilities; and
  - (D) debt service for such activities.
- (4) CURRENT EXPENDITURES. –The term “current expenditures” means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but does not include expenditures for community services, capital outlay, and debt service, or any expenditures made from funds awarded under part A of title I and title VI. The determination of whether an expenditure for the replacement of equipment is considered a current expenditure or a capital outlay shall be determined in accordance with generally accepted accounting principles as determined by the State.
- (5) FEDERAL PROPERTY.—
  - (A) IN GENERAL.—Except as provided in subparagraphs (B) through (F), the term “Federal property” means real property that is not subject to taxation by any State or any political subdivision of a State due to Federal agreement, law, or policy, and that is—
    - (i) owned by the United States or leased by the United States from another entity;
    - (ii) (I) held in trust by the United States for individual Indians or Indian tribes;
    - (II) held by individual Indians or Indian tribes subject to restrictions on alienation imposed by the United States;
    - (III) conveyed at any time under the Alaska Native Claims Settlement Act to a Native individual, Native group, or village or regional corporation;
    - (IV) public land owned by the United States that is designated for the sole use and benefit of individual Indians or Indian tribes; or
    - (V) used for low-rent housing, as described in paragraph (10), that is located on land described in subclause (I), (II), (III), or (IV) of this clause or on land that met one of those descriptions immediately before such property’s use for such housing;
  - (iii) (I) part of a low-rent housing project assisted under the United States Housing Act of 1937;
  - (II) used to provide housing for homeless children at closed military installations pursuant to section 501 of the Stewart B. McKinney Homeless Assistance Act; or
  - (III) used for affordable housing assisted under the Native American Housing Assistance and Self-Determination Act of 1996; or
  - (iii) owned by a foreign government or by an international organization.
- (B) SCHOOLS PROVIDING FLIGHT TRAINING TO MEMBERS OF AIR FORCE. –The term “Federal property” includes, so long as not subject to taxation by any State or any political subdivision of a State, and whether or not that tax exemption is due to Federal agreement, law, or policy, any school providing flight training to members of

- the Air Force under contract with the Air Force at an airport owned by a State or political subdivision of a State.
- (C) NON-FEDERAL EASEMENTS, LEASES, LICENSES, PERMITS, IMPROVEMENTS, AND CERTAIN OTHER REAL PROPERTY. –The term “Federal property” includes, whether or not subject to taxation by a State or a political subdivision of a State—
- (i) any non-Federal easement, lease, license, permit, or other such interest in Federal property as otherwise described in this paragraph, but not including any non-Federal fee-simple interest;
  - (ii) any improvement on Federal property as otherwise described in this paragraph; and
  - (iii) real property that, immediately before its sale or transfer to a non-Federal party, was owned by the United States and otherwise qualified as Federal property described in this paragraph, but only for one year beyond the end of the fiscal year of such sale or transfer.
- (D) CERTAIN POSTAL SERVICE PROPERTY AND PIPELINES AND UTILITY LINES. – Notwithstanding any other provision of this paragraph, the term “Federal property” does not include—
- (i) any real property under the jurisdiction of the United States Postal Service that is used primarily for the provision of postal services; or
  - (ii) pipelines and utility lines.
- (E) PROPERTY WITH RESPECT TO WHICH STATE OR LOCAL TAX REVENUES MAY NOT BE EXPENDED, ALLOCATED, OR AVAILABLE FOR FREE PUBLIC EDUCATION. –Notwithstanding any other provision of this paragraph, “Federal property” does not include any property on which children reside that is otherwise described in this paragraph if—
- (i) no tax revenues of the State or of any political subdivision of the State may be expended for the free public education of children who reside on that Federal property; or
  - (ii) no tax revenues of the State are allocated or available for the free public education of such children.
- (F) PROPERTY LOCATED IN THE STATE OF OKLAHOMA OWNED BY INDIAN HOUSING AUTHORITY FOR LOW-INCOME HOUSING. – The term “Federal property” includes any real property located in the State of Oklahoma that—
- (i) is owned by an Indian housing authority and used for low-income housing (including housing assisted under or authorized by the native American Housing Assistance and Self-Determination Act of 1996); and
  - (ii) at any time—
    - (I) was designated by treaty as tribal land; or
    - (II) satisfied the definition of Federal property under section 403(1)(A) of the Act of September 30, 1950 (Public Law 874, 81<sup>st</sup> Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America’s Schools Act of 1994).
- (6) FREE PUBLIC EDUCATION. –The term “free public education” means education provided—
- (A) at public expense, under public supervision and direction, and without tuition charge; and
  - (B) as elementary or secondary education, as determined under State law, except that, notwithstanding State law, such term—
    - (i) includes preschool education; and
    - (ii) does not include any education provided beyond grade 12.
- (7) INDIAN LANDS. –The term “Indian lands” means any Federal property described in paragraph (5)(A)(ii) or (5)(F).
- (8) LOCAL CONTRIBUTION PERCENTAGE.—

- (A) IN GENERAL. –The term “local contribution percentage” means the percentage of current expenditures in the State derived from local and intermediate sources, as reported to and verified by the National Center for Education Statistics.
  - (B) HAWAII AND DISTRICT OF COLUMBIA. –Notwithstanding subparagraph (A), the local contribution percentage for Hawaii and for the District of Columbia shall be the average local contribution percentage for the 50 States and the District of Columbia.
- (9) LOCAL EDUCATIONAL AGENCY.—
- (A) IN GENERAL. –Except as provided in subparagraph (B), the term “local educational agency” –
    - (i) means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent school district, or other school district; and
    - (ii) includes any State agency that directly operates and maintains facilities for providing free public education.
  - (B) EXCEPTION. –The term “local educational agency” does not include any agency or school authority that the Secretary determines on a case-by-case basis—
    - (i) was constituted or reconstituted primarily for the purpose of receiving assistance under this title or the Act of September 30, 1950 (Public Law 874, 81<sup>st</sup> Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) or increasing the amount of such assistance; or
    - (ii) is not constituted or reconstituted for legitimate educational purposes.
- (10) LOW-RENT HOUSING. –The term “low-rent housing” means housing located on property that is described in paragraph (5)((A)(iii).
- (11) MODERNIZATION. –The term “modernization” means repair, renovation, alteration, or construction, including—
- (A) the concurrent installation of equipment; and
  - (B) the complete or partial replacement of an existing school facility, but only if such replacement is less expensive and more cost-effective than repair, renovation, or alteration of the school facility.
- (12) REVENUE DERIVED FROM LOCAL SOURCES. –The term “revenue derived from local sources” means—
- (A) revenue produced within the boundaries of a local educational agency and available to such agency for such agency” use; or
  - (B) funds collected by another governmental unit, but distributed back to a local educational agency in the same proportion as such funds were collected as a local revenue source.
- (13) SCHOOL FACILITIES. –The term “school facilities” includes—
- (A) classrooms and related facilities; and
  - (B) equipment, machinery, and utilities necessary or appropriate for school purposes.

SEC. 8014. [20 U.S.C. 7714] AUTHORIZATION OF APPROPRIATIONS.

- (a) PAYMENTS FOR FEDERAL ACQUISITION OF REAL PROPERTY. –For the purpose of making payments under section 8002, there are authorized to be appropriated \$32,000,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.
- (b) BASIC PAYMENTS; PAYMENTS FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES. –For the purpose of making payments under section 8003(b), there are authorized to be appropriated \$809,400,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.
- (c) PAYMENTS FOR CHILDREN WITH DISABILITIES. –For the purpose of making payments under section 8003(d), there are authorized to be appropriated \$50,000,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.
- (d) PAYMENTS FOR INCREASES IN MILITARY CHILDREN. –Repealed by § 1817(d) of the Appendix to P.L. 106-398, Oct. 30, 2000

- (e) CONSTRUCTION. –For the purpose of carrying out section 8007, there are authorized to be appropriated \$10,052,000 for fiscal year 2000 and such sums as may be necessary for fiscal year 2001, \$150,000,000 for fiscal year 2002, and such sums as may be necessary for each of the five succeeding fiscal years.
- (f) FACILITIES MAINTENANCE. –For the purpose of carrying out section 8008, there are authorized to be appropriated \$5,000,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding years.