

The Impact Aid Program Statute

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

as amended through January 12, 2002

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, 81st 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, 81st 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.'