

## The Impact Aid Program Statute

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

### 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.