112TH CONGRESS
1ST SESSION

S. _____

To provide assistance for the modernization, renovation, and repair of elementary school and secondary school buildings in public school districts and community colleges across the United States in order to support the achievement of improved educational outcomes in those schools, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BROWN of Ohio introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To provide assistance for the modernization, renovation, and repair of elementary school and secondary school buildings in public school districts and community colleges across the United States in order to support the achievement of improved educational outcomes in those schools, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SEC.**

Sec. 1. Short title; Table of Contents.

TITLE I—ELEMENTARY AND SECONDARY SCHOOLS

Sec. 101. Purpose.
Sec. 102. Authorization of appropriations; Appropriation of Funds.

Sec. 103. Allocation of funds.
Sec. 104. State use of funds.
Sec. 105. State and local applications.
Sec. 106. Use of funds.
Sec. 107. Additional provisions.
Sec. 108. Reports.

TITLE II—COMMUNITY COLLEGE MODERNIZATION

Sec. 201. Federal assistance for community college modernization.

TITLE III—GENERAL PROVISIONS

Sec. 301. Definitions.
Sec. 302. Buy American.
Sec. 303. Compliance with Davis-Bacon Act.
Sec. 304. Reports.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Fix America's Schools Today Act of 2011''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; Table of Contents.

TITLE I—ELEMENTARY AND SECONDARY SCHOOLS

Sec. 101. Purpose.
Sec. 102. Authorization of appropriations.
Sec. 103. Allocation of funds.
Sec. 104. State use of funds.
Sec. 105. State and local applications.
Sec. 106. Use of funds.
Sec. 107. Additional provisions.

TITLE II—COMMUNITY COLLEGE MODERNIZATION

Sec. 201. Federal assistance for community college modernization.

TITLE III—GENERAL PROVISIONS

Sec. 301. Definitions.
Sec. 302. Buy American.
Sec. 303. Compliance with Davis-Bacon Act.
Sec. 304. Reports.

TITLE I—ELEMENTARY AND SECONDARY SCHOOLS

SEC. 101. PURPOSE.

The purpose of this title is to provide assistance for the modernization, renovation, and repair of elementary school and secondary school buildings for schools that are served by local educational agencies across the United States, in order to support the achievement of improved educational outcomes in such schools.

SEC. 102. AUTHORIZATION OF APPROPRIATIONS; APPROPRIATION OF FUNDS.

There are authorized to be appropriated, and there are appropriated, $25,000,000,000 to carry out this title, which shall be available for obligation by the Secretary until September 30, 2012.

SEC. 103. ALLOCATION OF FUNDS.

(a) RESERVATIONS.—From the amount made available to carry out this title, the Secretary shall reserve—

(1) one-half of 1 percent for the Secretary of the Interior to carry out modernization, renovation, and repair activities described in section 106 in schools operated or funded by the Bureau of Indian Education;

(2) one-half of 1 percent to make grants to the outlying areas for modernization, renovation, and repair activities described in section 106; and

(3) such funds as the Secretary determines are needed to conduct a survey, through the National Center for Education Statistics, of the school construction, modernization, renovation, and repair needs of the public schools of the United States.

(b) STATE ALLOCATION.—From the amount made available to carry out this title, and not reserved under subsection (a), the Secretary shall allocate funds among the States in proportion to their respective allocations under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for fiscal year 2011, except that—

(1) the Secretary shall allocate 40 percent of such funds to the 100 local educational agencies with the largest numbers of children ages 5 to 17 living in poverty, as determined using the most recent data available from the Department of Commerce that are satisfactory to the Secretary, in proportion to such local educational agencies' respective allocations under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for fiscal year 2011; and

(2) the allocation to any State shall be reduced by the aggregate amount of the allocations under paragraph (1) to local educational agencies in such State.

(c) REMAINING ALLOCATION.—

(1) IN GENERAL.—If a State does not apply for its allocation under subsection (b), applies for less than the full allocation for which it is eligible, or does not use the allocation in a timely manner, the Secretary may—

(A) reallocate all or a portion of the allocation to the other States in accordance with subsection (b); or

(B) use all or a portion of the allocation to make direct allocations to local educational agencies within the State based on their respective allocations under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for fiscal year 2011 or such other method as the Secretary may determine.

(2) REALLOCATION OF LOCAL EDUCATIONAL AGENCY FUNDS.—If a local educational agency does not apply for its allocation under subsection (b)(1), applies for less than the full allocation for which it

is eligible, or does not use the allocation in a timely manner, the Secretary may reallocate all or a portion of such local educational agency's allocation to the State in which such agency is located.

SEC. 104. STATE USE OF FUNDS.

(a) RESERVATION.—Each State that receives a grant under this title may reserve not more than 1 percent of the State's allocation under section 103(b) for the purpose of administering the grant, except that no State may reserve more than $750,000 for this purpose.

(b) FUNDS TO LOCAL EDUCATIONAL AGENCIES.—

(1) FORMULA SUBGRANTS.—From the grant funds that are not reserved under subsection (a), a State shall allocate not less than 50 percent to local educational agencies, including charter schools that are local educational agencies, that did not receive funds under section 103(b)(1) from the Secretary, in accordance with their respective allocations under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for fiscal year 2011, except that no such local educational agency shall receive less than $10,000.

(2) ADDITIONAL SUBGRANTS.—The State shall use any funds remaining, after reserving funds under subsection (a) and allocating funds under

paragraph (1), for subgrants to local educational agencies that did not receive funds under section 103(b)(1), including charter schools that are local educational agencies, to support modernization, renovation, and repair projects that the State determines, using objective criteria, are most needed in the State, with priority given to projects in rural local educational agencies.

(c) REMAINING FUNDS.—If a local educational agency does not apply for an allocation under subsection (b)(1), applies for less than its full allocation, or fails to use the allocation in a timely manner, the State may reallocate any unused portion to other local educational agencies in accordance with subsection (b).

SEC. 105. STATE AND LOCAL APPLICATIONS.

(a) STATE APPLICATION.—A State that desires to receive a grant under this title shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require, which shall include—

(1) an identification of the State agency or entity that will administer the program;

(2) a description of the State's process for determining how the grant funds will be distributed and administered, including—

(A) how the State will determine the criteria and priorities in making subgrants under section 104(b)(2);

(B) any additional criteria the State will use in determining which projects the State will fund under such section;

(C) a description of how the State will consider—

(i) the needs of local educational agencies for assistance under this title;

(ii) the impact of potential projects on job creation in the State;

(iii) the fiscal capacity of local educational agencies applying for assistance;

(iv) the percentage of children in such local educational agencies who are from low-income families; and

(v) the potential for leveraging assistance provided by the grant program through matching or other financing mechanisms;

(D) a description of how the State will ensure that the local educational agencies receiving subgrants under this title meet the requirements of this title;

(E) a description of how the State will ensure that the State and the local educational agencies in the State meet the deadlines established in section 107;

(F) a description of how the State will give priority to the use of green practices that are certified, verified, or consistent with any applicable provisions of—

(i) the LEED Green Building Rating System;

(ii) Energy Star;

(iii) the CHPS Criteria;

(iv) Green Globes; or

(v) an equivalent program adopted by the State or another jurisdiction with authority over the local educational agency; and

(G) a description of the steps that the State will take to ensure that local educational agencies receiving subgrants will adequately maintain any facilities that are modernized, renovated, or repaired with subgrant funds under this title.

(b) LOCAL APPLICATION.—A local educational agency that is eligible to receive a grant under section

103(b)(1) and desires to receive such grant shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require, which shall include—

(1) a description of how the local educational agency will meet the deadlines and requirements of this title; and

(2) a description of the steps that the local educational agency will take to adequately maintain any facilities that are modernized, renovated, or repaired with funds under this title.

SEC. 106. USE OF FUNDS.

(a) IN GENERAL.—A local educational agency that receives funds under this title shall use such funds only for 1 or both of the following modernization, renovation, and repair activities in facilities that are used for elementary or secondary education or for early learning programs:

(1) Direct payments for school modernization, renovation, and repair.

(2) Payment of interest on bonds or payments for other financing instruments that are newly issued for the purpose of financing school modernization, renovation, and repair.

(b) SUPPLEMENT, NOT SUPPLANT.—Funds made available under this title shall be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to modernize, renovate, or repair eligible school facilities.

(c) PROHIBITION.—Funds awarded to local educational agencies under this title shall not be used for—

(1) new construction;

(2) payment of routine maintenance costs; or

(3) modernization, renovation, and repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public.

SEC. 107. ADDITIONAL PROVISIONS.

(a) FUNDS AVAILABLE FOR OBLIGATION FOR TWO YEARS.—Funds appropriated under section 102 shall be available for obligation by local educational agencies receiving grants from the Secretary under section 103(b)(1), by States reserving funds under section 104(a), and by local educational agencies receiving subgrants under section 104(b)(1) only during the period that ends 24 months after the date of enactment of this Act.

(b) FUNDS AVAILABLE FOR OBLIGATION FOR THREE YEARS.—Funds appropriated under section 102 shall be available for obligation by local educational agencies re-

ceiving subgrants under section 104(b)(2) only during the period that ends 36 months after the date of enactment of this Act.

(c) LABOR STANDARDS.—Section 439 of the General Education Provisions Act (20 U.S.C. 1232b) shall apply to funds available under this title.

(d) NOT CONSIDERED LOCAL EDUCATIONAL AGENCIES.—For purposes of section 103(b)(1), Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico are not local educational agencies.

SEC. 108. REPORTS.

(a) DIRECT GRANTS TO LEAS.—Each local educational agency that receives a grant under section 103(b)(1) shall, not later than September 30, 2012, and annually thereafter for each fiscal year in which the local educational agency expends funds received under such section, submit to the Secretary a report that includes—

(1) a description of the projects for which the grant was, or will be, used; and

(2) the number of jobs created by the projects funded under such section.

(b) SUBRANTS TO LEAS THROUGH THE STATE.—Each local educational agency that receives a subgrant from a State under paragraph (1) or (2) of section 104(b) shall, not later than September 30, 2012, and annually

thereafter for each fiscal year in which the local educational agency expends funds received under such section, submit to the State a report that includes—

(1) a description of the projects for which the subgrant was, or will be, used; and

(2) the number of jobs created by the projects funded under such section.

(c) STATE REPORT TO THE SECRETARY.—Each State that receives a report described under subsection (b) shall submit a report to the Secretary containing the information in each report that such State receives in accordance with subsection (b).

TITLE II—COMMUNITY COLLEGE MODERNIZATION

SEC. 201. FEDERAL ASSISTANCE FOR COMMUNITY COLLEGE MODERNIZATION.

(a) IN GENERAL.—

(1) GRANT PROGRAM.—From the amount made available under subsection (g), the Secretary shall award grants to States to modernize, renovate, or repair existing facilities at community colleges.

(2) ALLOCATION.—

(A) RESERVATIONS.—From the amount made available to carry out this title for a fiscal year, the Secretary shall reserve—

(i) not more than 0.25 percent for grants to institutions that are eligible to receive a grant under section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c) to provide for modernization, renovation, and repair activities described in this title; and

(ii) not more than 0.25 percent for grants to the outlying areas to provide for modernization, renovation, and repair activities described in this title.

(B) ALLOCATION.—

(i) IN GENERAL.—Except as provided in clause (ii), from the funds made available to carry out this title for a fiscal year, and not reserved under subparagraph (A), the Secretary shall allocate to each State that has an application approved by the Secretary an amount that bears the same relation to such funds as the total number of students in such State who are enrolled in institutions described in section 301(2)(A) plus the number of students who are estimated to be enrolled in and pursuing a degree or certificate that is not

a baccalaureate, master's, professional, or other advanced degree at institutions described in section 301(2)(B), based on the proportion of degrees or certificates awarded by such institutions that are not baccalaureate, master's, professional, or other advanced degrees, as reported to the Integrated Postsecondary Data System bears to the estimated total number of such students in all States.

(ii) MINIMUM ALLOCATION.—No State shall receive an allocation under clause (i) for a fiscal year that is less than $2,500,000.

(C) REALLOCATION.—Amounts not allocated under this section to a State because the State either did not submit an application under subsection (b), the State submitted an application that the Secretary determined did not meet the requirements of such subsection, or the State cannot demonstrate to the Secretary a sufficient demand for projects to warrant the full allocation of the funds, shall be proportionately reallocated under this paragraph to the other States that have a dem-

onstrated need for, and are receiving, allocations under this section.

(D) STATE ADMINISTRATION.—A State that receives a grant under this section may use not more than 1 percent of such grant for administration costs, except that no State may use more than $750,000 for this purpose.

(3) SUPPLEMENT, NOT SUPPLANT.—Funds made available under this section shall be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to modernize, renovate, or repair existing community college facilities.

(b) APPLICATION.—A State that desires to receive a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require. Such application shall include a description of—

(1) how the funds provided under this section will improve—

(A) instruction at community colleges in the State, including how faculty and staff will be consulted regarding uses of funds for projects that will improve instruction at community colleges in the State; and

(B) the ability of such colleges to educate and train students to meet the workforce needs of employers in the State;

(2) the projected start date of each project; and

(3) the estimated number of persons who will be employed through each project.

(c) PROHIBITED USES OF FUNDS.—

(1) IN GENERAL.—Funds awarded under this section shall not be used for—

(A) payment of routine maintenance costs;

(B) construction, modernization, renovation, and repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or

(C) construction, modernization, renovation, and repair of facilities—

(i) used for sectarian instruction, religious worship, or a school or department of divinity; or

(ii) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.

(2) 4-YEAR INSTITUTIONS.—Funds awarded to a 4-year public institution of higher education under

this section shall not be used for any facility, service, or program of the institution that is not available to students who are pursuing a degree or certificate that is not a baccalaureate, master's, professional, or other advanced degree.

(d) GREEN PROJECTS.—In providing assistance to community college projects under this section, the State shall consider the extent to which a community college's project involves activities that are certified, verified, or consistent with the applicable provisions of—

(1) the LEED Green Building Rating System;

(2) Energy Star;

(3) the CHPS Criteria, as applicable;

(4) Green Globes; or

(5) an equivalent program adopted by the State or the State higher education agency that includes a verifiable method to demonstrate compliance with such program.

(e) APPLICATION OF GEPA.—Section 439 of the General Education Provisions Act such Act (20 U.S.C. 1232b) shall apply to funds available under this title.

(f) REPORTS.—Each State that receives a grant under this title, shall, not later than September 30, 2012, and annually thereafter for each fiscal year in which the

State expends funds received under this title, submit to the Secretary a report that includes—

(1) a description of the projects for which the grant was, or will be, used;

(2) a description of the amount and nature of the assistance provided to each community college under this title; and

(3) the number of jobs created by the projects funded under this title.

(g) AVAILABILITY OF FUNDS.—

(1) AUTHORIZATION OF APPROPRIATIONS; APPROPRIATION OF FUNDS.—There are authorized to be appropriated, and there are appropriated, to carry out this section (in addition to any other amounts appropriated to carry out this section and out of any money in the Treasury not otherwise appropriated), $5,000,000,000 for fiscal year 2012.

(2) FUNDS AVAILABLE FOR OBLIGATION.—Funds appropriated under this subsection shall be available for obligation by community colleges only during the period that ends 36 months after the date of enactment of this Act.

TITLE III—GENERAL PROVISIONS

SEC. 301. DEFINITIONS.

In this Act:

(1) ESEA TERMS.—Except as otherwise provided, the terms ''elementary school'', ''secondary school'', ''local educational agency'', ''Secretary'', and ''State educational agency'' have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) COMMUNITY COLLEGE.—The term ''community college'' means—

(A) a junior or community college, as that term is defined in section 312(f) of the Higher Education Act of 1965 (20 U.S.C. 1058(f)); or

(B) a 4-year public institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that awards a significant number of degrees and certificates, as determined by the Secretary, that are not—

(i) baccalaureate degrees (or an equivalent); or

(ii) master's, professional, or other advanced degrees.

(3) CHPS CRITERIA.—The term ''CHPS Criteria'' means the green building rating program developed by the Collaborative for High Performance Schools.

(4) ENERGY STAR.—The term ''Energy Star'' means the Energy Star program of the Department of Energy and the Environmental Protection Agency.

(5) GREEN GLOBES.—The term ''Green Globes'' means the Green Building Initiative environmental design and rating system referred to as Green Globes.

(6) LEED GREEN BUILDING RATING SYSTEM.—The term ''LEED Green Building Rating System'' means the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard referred to as the LEED Green Building Rating System.

(7) MODERNIZATION, RENOVATION, AND REPAIR.—The term ''modernization, renovation and repair'' means—

(A) comprehensive assessments of facilities to identify—

(i) facility conditions or deficiencies that could adversely affect student and staff health, safety, performance, or productivity or energy, water, or materials efficiency; and

(ii) needed facility improvements;

(B) repairing, replacing, or installing roofs (which may be extensive, intensive, or semi-intensive ''green'' roofs), electrical wiring, water supply and plumbing systems, sewage systems, storm water runoff systems, lighting systems (or components of such systems); or building envelope, windows, ceilings, flooring, or doors, including security doors;

(C) repairing, replacing, or installing heating, ventilation, or air conditioning systems, or components of those systems (including insulation), including by conducting indoor air quality assessments;

(D) repairing, replacing, or installing an interior or exterior system that may include paint or coatings, wall covering, drywall or plaster, ceiling, baseboards, or floor covering;

(E) compliance with fire, health, seismic, and safety codes, including professional installa-

tion of fire and life safety alarms, and modernizations, renovations, and repairs that ensure that facilities are prepared for such emergencies as acts of terrorism, campus violence, and natural disasters, such as improving building infrastructure to accommodate security measures and installing or upgrading technology to ensure that a school or incident is able to respond to such emergencies;

(F) making modifications necessary to make educational facilities accessible in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), except that such modifications shall not be the primary use of a grant or subgrant;

(G) abatement, removal, or interim controls of asbestos, polychlorinated biphenyls, mold, mildew, or lead-based hazards, including lead-based paint hazards;

(H) retrofitting necessary to increase energy efficiency, which may include insulation or reducing heating and cooling costs through thermal coating of school facility roofs;

(I) measures, such as selection and substitution of products and materials, and implementation of improved maintenance and operational procedures, such as ''green cleaning'' programs, to reduce or eliminate potential student or staff exposure to—

(i) volatile organic compounds;

(ii) particles such as dust and pollens; or

(iii) combustion gases;

(J) modernization, renovation, or repair necessary to reduce the consumption of coal, electricity, land, oil, or water;

(K) installation or upgrading of educational technology infrastructure;

(L) installation or upgrading of renewable energy generation and heating systems, including solar, photovoltaic, wind, biomass (including wood pellet and woody biomass), waste-to-energy, solar-thermal, fuel cell, and geothermal systems, and energy audits;

(M) modernization, renovation, or repair activities related to energy efficiency and renewable energy, including—

(i) insulation of systems functioning as heating, venting, or air conditioning; and

(ii) improvements to building infrastructures to accommodate bicycle and pedestrian access;

(N) ground improvements, storm water management, landscaping and environmental clean-up when necessary;

(O) other modernization, renovation, or repair to—

(i) improve teachers' ability to teach and students' ability to learn;

(ii) ensure the health and safety of students and staff; or

(iii) improve classroom, laboratory, and vocational facilities in order to enhance the quality of science, technology, engineering, and mathematics instruction; and

(P) required environmental remediation related to facilities modernization, renovation, or repair activities described in subparagraphs (A) through (M).

(8) OUTLYING AREA.—The term ''outlying area'' means the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(9) STATE.—The term ''State'' means each of the 50 States of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

SEC. 302. BUY AMERICAN.

Section 1605 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) shall apply to funds made available under this Act.

SEC. 303. COMPLIANCE WITH DAVIS-BACON ACT.

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of part A of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

SEC. 304. REPORTS.

(a) REPORT BY THE SECRETARY.—The Secretary shall submit to the appropriations committees and the authorizing committees (as defined in section 103 of the Higher Education Act of 1965 (U.S.C. 1003)) of the House of Representatives and the Senate an annual report regarding the grants made under this Act, including the information described in sections 108 and 201(f).

(b) GAO.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report evaluating the programs carried out under this Act that includes an assessment of the impact and benefits of each school improvement project funded under this Act.