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School Facilities Infrastructure: Background and Legislative Proposals

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Summary

The federal government's role in financing school construction and renovation will continue to be an issue in the 108th Congress, although school construction has generally been considered a state and local responsibility. According to a National Center for Education Statistics (NCES) study, the unmet need for school construction and renovation is estimated to be **\$127 billion**, a higher amount than the General Accounting Office (GAO) had previously estimated (**\$112 billion**) using a similar methodology. NCES indicates that three-quarters of the nation's schools report needing funds to bring their buildings into a "good overall condition." The Department of Education (ED) has documented that the average age of a public school building is 42 years, an age when schools tend to deteriorate. *Indirect* federal support for school construction is currently provided by exempting the interest on state and local governmental bonds from federal income taxes, as well as other tax code provisions. P.L. 106-554 provided *direct* funding of \$1.2 billion for emergency school renovation and repair. The No Child Left Behind Act (P.L. 107-110, the Elementary and Secondary Education Act (ESEA) reauthorization) increased funds for Impact Aid construction and established a credit enhancement plan for charter school construction. P.L. 107-16, the Tax Relief Reconciliation Act of 2001, aided tax-exempt bond financing by loosening arbitrage rebate rules and by expanding the definition of private activity bonds. See "Legislative Action" below and "Legislative Action in the 106th and 107th , and 108th Congress" in this report, for updated legislative activity.

Legislative Action

H.R. 1, the ESEA reauthorization bill, entitled the No Child Left Behind Act of 2001, was signed into law on January 8, 2001 as P.L. 107-110. The final conference report on H.R. 1 contained only a cursory reference to school renovation in general as it pertained to health and safety of schools; but it did include enhanced credit provisions for construction under an expanded **charter school** demonstration program, and provided for school facility emergency repair and modernization in a construction section under **Impact Aid**. The Senate-passed version of the FY2002 Labor, Health and Human

Services, and Education, and Related Agencies (L-HHS-ED) Appropriations bill, **H.R. 3061**, included \$925 million for emergency renovation of schools. However, the final conference version did *not* contain the Senate's proposed funding level (\$925 million) for an emergency construction, renovation and repair program, but under Impact Aid, increased the funding level for construction to \$48 million (reserving \$2 million for Killeen Independent School District in Texas, and \$1 million for Ronan School District in Ronan, Montana for a new middle school), and provided \$50 million for a construction demonstration program specific to Iowa. The L-HHS-ED Appropriations Act for FY2002 was signed into law on January 10, 2002 as P.L. 107-116.

Background

One major issue of concern in the 108th Congress is whether the federal government should assume greater responsibility for school construction. Some argue that the federal government already provides *indirect* financial support for school construction by exempting the interest on state and local governmental bonds from federal income taxation, at a varying annual cost to the federal government.¹ The exemption allows bonds to be issued at lower interest rates that still provide competitive returns. In addition, the Taxpayer Relief Act of 1997 (P.L. 105-34) authorized tax credits for a new form of obligation called "qualified zone academy bonds (QZABs)." QZABs may be used for schools based in Empowerment Zones or Enterprise Communities, or with 35% of students qualified for free or reduced price lunches under the federal school lunch program.² QZABs were extended through 2003 by the Job Creation and Worker Assistance Act of 2002 (P.L. 107-147).

The federal government's *direct* role in financing elementary and secondary school construction began with Impact Aid laws in 1950. There were also some precursors to the Impact Aid legislation that provided funds indirectly for school construction. Some relief bills during the New Deal expanded definitions³ of relief and public works to include school construction. However, there has been a gap in federal funding for a formal program for school construction, other than through the Impact Aid construction program, which has had a substantial reduction in funding in the past.⁴ In the 103rd Congress, the

¹ The *total* revenue loss on the outstanding stock of tax-exempt bonds was estimated in 2000 at \$22.6 billion. The portion of that loss represented by construction bonds has not been calculated. See CRS Report RL30638, *Tax-Exempt Bonds: A Description of State and Local Government Debt*, by Steven Maguire.

² See CRS Report RS20606, *Qualified Zone Academy Bonds: A Description of Tax Credit Bonds*; and CRS Report RS20699, *Funding school Renovation: Qualified Zone Academy Bonds vs. Traditional Tax-Exempt Bonds*, both by Steven Maguire.

³ An extension of the Lanham Act (P.L. 137, 77th Congress) authorized funds for and included school construction in the definition of "public works" projects.

⁴ For further information on Impact Aid, see CRS Report RL30075, *Impact Aid: Overview and Reauthorization Issues*, by Richard Apling. The Consolidated Appropriations Act for FY2001 provided \$12.8 million for Impact Aid construction. For FY2002, Impact Aid construction received \$48 million in appropriations.

Education Infrastructure Act of 1994, Title XII of the ESEA, was enacted as a federal grant program for school infrastructure. The grant program was never funded.⁵

Estimates of Construction Needs

Accurate estimates of school construction needs are difficult to obtain and most are based on opinion surveys of local school officials.

GAO Reports. Eight GAO reports have been issued (three in 1995, three in 1996, one in 1997, and one in March 2000) dealing with school facilities. *America's Schools Report Differing Conditions* (GAO, June 1996) surveyed a national sample of 10,000 schools. School officials were asked to estimate costs to repair or upgrade facilities to a "good overall condition." At a minimum, officials estimated that \$11 billion was needed to comply with federal mandates, with a total estimated need of \$112 billion.

The last in a series of GAO reports, *School Facilities: Construction Expenditures Have Grown Significantly in Recent Years* (GAO-HEHS-00-41, March 2000) concludes that construction expenditures for public elementary and secondary schools (86,000) across the nation have grown by 39% from FY1990 to FY1997, to about **\$25 billion** in inflation-adjusted 1998 dollars. However, average annual construction expenditures varied widely from state to state ranging from \$934 per pupil in Nevada to \$37 per pupil in Connecticut, with the national average at \$473. According to GAO, states with the largest per pupil expenditures for construction (e.g., Nevada), also had high enrollment growth rates. **Most school construction is financed by state and local governmental bonds, the interest on which is basically exempt from federal income tax.** In most states there is some combination of local and state funding, although 15 states provided little or no state funding for school construction in 1998-1999. GAO indicated the data are incomplete with regard to funding sources for school construction, and an accurate estimate of the cost for construction needs is also difficult to obtain.

National Center for Education Statistics (NCES) Study. An NCES study, *Condition of America's Public School Facilities (NCES2000-032, 1999)*, from its Fast Response Survey System, used a similar methodology to GAO's based on local school officials' reported construction needs. The study indicates that approximately three-quarters of schools reported needing money for repairs, renovations and modernizations to place the schools' current buildings in a "good overall condition." NCES estimates the

⁵ The Infrastructure Act authorized direct federal grants for repair, renovation, alteration and construction of public elementary and secondary schools, school libraries, and media centers. Grants are authorized for LEAs that lack fiscal capacity and where school buildings are in urgent need of repair. The initial funding for the Infrastructure Act, Title XII ESEA for FY1995 (\$100 million), was rescinded with no subsequent funding.

need at **\$127 billion**.⁶ The average dollar amount per school is about \$2.2 million and the average cost per student for repair and modernization is \$3,800 per student.

Enrollment Projections and Construction

According to the *Projections of Education Statistics to 2010* by NCES, the projection for total K-12 enrollment for 2010 will be over 53 million students. According to the *2002 Construction Report* by *School Planning and Management Magazine*, growing enrollment is crowding high schools and middle schools in a large number of school districts. In 2000, \$21.2 billion worth of school construction was completed, the largest annual construction expenditure of all time, and in 2001, school districts spent an estimated \$20.34 billion on construction, the second largest construction year in U.S. history. It is projected that 2002 will be the third year in a row during which school construction will total over \$20 billion, although results are not final. The *Construction Report* indicates that school districts appear to be building the “classrooms they have needed for the last decade.”

Legislative Action in the 106th and 107th Congress

P.L. 106-170, the “**Ticket to Work and Work Incentives Improvement Act of 1999**,” contained an extension of authority to issue QZABs. The proposal expanded QZABs with an allocation of \$400 million for both 2000 and 2001.

The Consolidated Appropriations Act, 2001, **P.L. 106-554**, contained **\$1.2 billion** for *direct* federal funding of school renovation and repair. Of the \$1.2 billion, \$25 million was appropriated to fund a **charter school** demonstration project and \$75 million was for schools with at least 50% of their students living on Native American lands (only these schools can use these funds for *new* construction). Also from the \$1.2 billion, P.L. 106-554 provided \$3.25 million for grants to local educational agencies in outlying areas for the renovation and repair of high-need schools. The Consolidated Appropriation Act provided that the remaining amount (\$1,096,750,000) be distributed to states under the Title I, ESEA formula, with a set-aside of one-half of 1% minimum for small states. School districts receive 75% of the funds through competitive grants for renovation and repair, targeted to poverty level schools and rural schools. Twenty-five percent of the funds are for competitive grants for use under the Individuals with Disabilities Education Act (IDEA) or school technology, at the discretion of the local educational agencies. Application forms were published for the program on May 18, 2001 and a distribution table was printed delineating state allocations.

FY2003 Budget. President Bush’s FY2003 budget proposed to fund the Credit Enhancement for Charter School Facilities program at \$100 million, and Impact Aid construction at \$45 million (in FY2002 Impact Aid construction received \$48 million, and

⁶ The highest estimate is from a National Education Association (NEA) study published in 2000, *Modernizing Our Schools: What Will it Cost?* NEA suggests that the total funding need for public school modernization is \$321.9 billion. Of that total, \$268.2 billion of the need is for school infrastructure, and \$53.7 billion of the need is for education technology. This report was prepared as a state-by-state assessment, using several databases and research from NEA affiliates in all 50 states.

in FY2001 it received \$12.802 million in appropriations.) President Bush's education agenda in the FY2002 budget proposed expanding the use of private activity bonds for public school construction, increasing construction funds for schools with large numbers of Native Americans, and increasing the Impact Aid Construction program.

H.R. 1076 (Johnson) (107th Congress). America's Better Classrooms Act. Authorizes new tax credit school modernization bonds patterned after QZABs with limits of \$11 billion annually on bond authority. Expands QZABs to include new construction and increases the QZAB limit to \$1.4 billion each year for 2 years. Both the expanded QZABs and the new tax credit school modernization bonds would require compliance with Davis-Bacon provisions.⁷ There was no further action.

P.L. 107-16, Economic Growth and Tax Relief Reconciliation Act of 2001. This law contains two provisions aimed at encouraging more tax-exempt bond financing of public school construction: loosening the arbitrage rebate rules for some issuers and expanding the definition of *private activity bonds*. For a description of these provisions and their likely effects on public school construction, see CRS Report RS20932, *Tax Exempt Bond Provisions in the Economic Growth and Tax Relief Reconciliation Act of 2001*.

H.R. 1 / P.L. 107-110. The authorization for most programs of federal aid to elementary and secondary education under ESEA technically expired in FY2000. On January 8, 2002, the President signed into law (P.L. 107-110) the ESEA reauthorization bill, H.R. 1, entitled the No Child Left Behind Act. H.R. 1, as it initially passed the Senate, would have allowed LEAs to use funds for construction under "Innovative Education Program Strategies." However, the conference version did *not* contain the Senate amendment's school construction initiative. H.R. 1 *did* contain an expansion of the charter school demonstration program and a credit enhancement plan for charter school facilities construction, as well as a school facility emergency repair and modernization program under a construction section in Impact Aid. This construction section is primarily directed toward impacted school districts serving children of parents in the military or children living on Indian land. This section gives priority for emergency repair to impacted districts in order of the severity of conditions and repairs needed; for modernization in relation to the severity of the need for modernization; and for LEAs that have a limited capacity to issue bonds. An expanded definition for school district eligibility includes districts that are "40 percent impacted and are part of an LEA that has no bonding capacity or has used up at least 75 percent of its bonding capacity, and has an assessed value of taxable property per student that is in the lowest 50 percent of school districts within the state."

H.R. 3061 / P.L. 107-116, FY2002 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act. The Senate version of H.R. 3061 included \$925 million for grants to local educational agencies for emergency school renovation and repair, patterned after the emergency program in P.L. 106-554. Funds would have been distributed to state educational agencies based on Title

⁷ See CRS Report 94-908, *Davis Bacon: The Act and the Literature*; and CRS Report RL31063, *The Davis-Bacon Act: Issues and Legislation During the 107th Congress*, both by William Whittaker.

I-A, ESEA allocations. State funds would have been distributed to LEAs as competitive grants. In the event the LEAs' renovation applications were of insufficient quality and quantity, any excess allocation could be used for any purpose (according to Section 5331 of H.R. 1), including professional development, acquisition of instructional materials and school improvement activities. An amendment by Senator Gregg (S.Amdt. 2056, November 1, 2001) attempted to take the \$925 million for renovation and move that authority into the "targeted grants" Title I formula, which would have increased the money under Title I for low-income children, but would have eliminated a separate authority for school construction. His amendment failed. However, the conference version of H.R. 3061 did *not* contain funding for school construction except for Impact Aid construction (\$48 million) and a \$50 million demonstration program to build and repair schools in Iowa.

P.L. 107-147, Job Creation and Worker Assistance Act of 2002. Extends the current Qualified Zone Academy Bond program through 2003.

Legislative Action in the 108th Congress

H.R. 120 (Hoekstra). (Introduced 1/7/2003). To amend the Internal Revenue Code of 1986 to allow a credit against income tax for contributions for scholarships to attend elementary and secondary schools,... for *upgrading elementary and secondary school facilities*. (Referred to House Committee on Ways and Means)