

# CRS Report for Congress

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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 continues to be an issue in the 109<sup>th</sup> Congress, although school construction has generally been considered a state and local responsibility. According to the National Center for Education Statistics (NCES), the unmet need for school construction and renovation is estimated to be \$127 billion, a higher amount than the Government Accountability Office (GAO, formerly the General Accounting Office) previous estimate of \$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 estimated at 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) 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. P.L. 108-311 extended Qualified Zone Academy Bonds through 2005. In the wake of hurricane Katrina an estimated 400 schools need to be rebuilt in Louisiana and Mississippi. S. 1765 and S. 1766 were introduced to authorize grants for schools affected by Katrina for repair, alteration and construction, as well as help with the influx of displaced students entering other schools. See sections on Legislative Action and Legislation in the 109<sup>th</sup> Congress for updated legislative activity.

### Legislative Action

The ESEA reauthorization, the No Child Left Behind Act, P.L. 107-110, contained a cursory reference to school renovation in general; 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 under **Impact Aid**

construction. The Labor, Health and Human Services, Education and Related Agencies Appropriations for FY2006 (H.R. 3010/P.L.109-149) provided \$17.8 million (excluding the across-the-board rescission) for Impact Aid construction. The final FY2006 appropriation provided \$36.6 million (excluding the across-the-board rescission) for credit enhancement for charter school facilities, whereas the Senate Committee would eliminate funding for the program.

## Background

One major issue of concern in the 109<sup>th</sup> 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.<sup>1</sup> 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.<sup>2</sup> QZABs were extended through calendar year 2003 by the Job Creation and Worker Assistance Act of 2002 (P.L. 107-147) and then through calendar year 2005 by the Working Families Tax Relief Act of 2004, P.L. 108-311.

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 for school construction. Some relief bills during the New Deal expanded definitions<sup>3</sup> 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.<sup>4</sup> In the 103<sup>rd</sup> Congress, the **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.<sup>5</sup>

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<sup>1</sup> 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.

<sup>2</sup> See CRS Report RS20606, *Qualified Zone Academy Bonds: A Brief Explanation*; and CRS Report RS20699, *Funding School Renovation: Qualified Zone Academy Bonds vs. Traditional Tax-Exempt Bonds*, both by Steven Maguire.

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

<sup>4</sup> For further information on Impact Aid, see CRS Report RL31885, *Impact Aid for Public K-12 Education: General Overview and Current Status*, by Rebecca R. Skinner and Richard N. Apling. Beginning with FY2002, Impact Aid construction increased from \$12.8 million to \$48 million in appropriations.

<sup>5</sup> The Infrastructure Act authorized direct federal grants for repair, renovation, alteration and  
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## 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. However, GAO and NCES have surveyed needs and projected costs to fulfill those needs.

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

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<sup>5</sup> (...continued)

construction of public elementary and secondary schools, school libraries, and media centers. Grants were authorized for LEAs that lacked fiscal capacity and where school buildings were 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.

<sup>6</sup> 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 research from NEA affiliates in all 50 states.

## 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. School construction reports indicate that growing enrollment is crowding both high schools and middle schools in a large number of school districts. According to the *School Planning and Management's 2005 School Construction Report*, school construction valued at an estimated \$20.2 billion was completed in calendar year 2004, rallying from a low point in 2003 (\$19.96 billion). From the 2004 construction level, an estimated \$12.2 billion went into the design and construction of *new* schools, with the remainder of the money for renovation and additions to existing school buildings. Plans for 2005 project approximately \$19.6 billion in construction dollars, representing a slight decline. The school construction “explosion that started in 1996 appears to have continued virtually unabated” until 2003, but has rallied again in 2004. The national median cost of building a new elementary school is estimated at \$11.0 million for a school serving 600 students; for a middle school the national median cost would be \$15.0 million for a school serving 750 students; and for a high school serving 1,200 students the national median cost would be approximately \$31.0 million.

## FY2006 Budget

President Bush's FY2006 budget proposal to fund the Credit Enhancement for Charter School Facilities program was \$37.0 million, the same as the FY2005 appropriation, and Impact Aid Construction's proposed funding was \$45.5 million. President Bush's education agenda in the FY2006 budget recommended that local funds and private activity bonds pay for school construction, that grants were to leverage funds for charter school construction, and indicated that supplemental federal funds were to be used for those schools with large percentages of federally connected students.

## Legislative Action in the 106<sup>th</sup>-109<sup>th</sup> Congresses: Some Selected Legislation

**P.L. 106-170, Ticket to Work and Work Incentives Improvement Act of 1999**, extended authority to issue QZABs for 2000 and 2001 with an allocation of \$400 million.

**P.L. 106-554, The Consolidated Appropriations Act, 2001** 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 received 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 were for competitive grants for use under the Individuals with Disabilities Education Act (IDEA) or school technology, at the discretion of the local educational agencies.

## 107<sup>th</sup> Congress

**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 see CRS Report RS20932, *Tax Exempt Bond Provisions in the “Economic Growth and Tax Relief Reconciliation Act of 2001”*, by Steve Maguire.

**P.L. 107-110, No Child Left Behind Act. (H.R. 1)** This reauthorization for most elementary and secondary education programs under ESEA was signed into law on January 8, 2002. As initially passed in the Senate, it would have allowed LEAs to use funds for construction under “Innovative Education Program Strategies.” However, the law did *not* retain the Senate amendment’s school construction initiative. H.R. 1 contained a credit enhancement plan for charter school facilities construction, as well as a school facility emergency repair and modernization program under Impact Aid construction. This section is primarily directed toward impacted school districts serving children of parents in the military or children living on Indian land. It gives priority for emergency repair to impacted districts based on severity of conditions and repairs needed; and for LEAs that have a limited capacity to issue bonds.

**P.L. 107-116, FY2002 Department of Labor, HHS, and ED 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 P.L. 106-554. Funds would have been distributed to state educational agencies based on Title I-A, ESEA allocations. **However, P.L. 107-116 did *not* contain funding for school construction except for Impact Aid Construction** (\$48 million, reserving \$1 million for Ronan School District in Ronan, Montana for a new middle school, and providing \$50 million to build and repair schools specific to Iowa).

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

## 108<sup>th</sup> Congress

**P.L. 108-7, Consolidated Appropriations Act for FY2003.** Provided \$44.7 million for Impact Aid school construction and \$24.8 million for the Credit enhancement for Charter school facilities program, with no general funding for emergency repair and renovation of schools for FY2003.

**P.L. 108-199, Consolidated Appropriations Act for FY2004.** Provided \$37.3 million for the credit enhancement for charter school facilities program and \$45.9 million for Impact Aid Construction. There was no funding for school repair in general.<sup>7</sup>

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<sup>7</sup> **Other Legislative Proposals in the 108<sup>th</sup> Congress: H.R. 120 (Hoekstra).** (Introduced January 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.  
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**P.L. 108-311, Working Families Tax Relief Act.** Extends Qualified Zone Academy Bonds through calendar year 2005.

**P.L. 108-447, Consolidated Appropriations Act, FY2005.** For Impact Aid construction, the final appropriation provided \$48.5 million for Impact Aid construction. For Charter school credit enhancement the final appropriation provided \$37.0 million for charter school credit enhancement for FY2005.

## **109<sup>th</sup> Congress (First Session)**

**S. 1055 (Kennedy)** (introduced May 17, 2005). **No Child Left Behind Improvement Act of 2005.** Authorizes \$250 million for FY2006 for school construction and renovation grants aimed at overcrowded schools and those LEAs fulfilling school choice requirements. No action.

**S. 1538 (Rockefeller)** (introduced July 28, 2005)/**H.R. 1742 (Rangel)** (introduced April 20, 2005)/**America's Better Classroom Act of 2005.** To amend the Internal Revenue Code to expand incentives for construction and renovation of public schools. Provides for a tax credit and allocation formula for qualified public school modernization bonds, qualified school construction bonds, and qualified zone academy bonds. (similar to H.R. 1076 in the 107<sup>th</sup> Congress) authorizes new tax credit school modernization bonds patterned after QZABs with bond limits of \$11 billion for 2006 and 2007, expands QZABs to include new construction, and provides the QZAB limit of \$1.4 billion for 2006 and 2007. No action.

**S. 1765 (Landrieu)/S. 1766 (Vitter)** (introduced September 22, 2005) **Louisiana Katrina Reconstruction Act.** Assists areas impacted by Katrina to repair, renovate, alter or construct facilities critical to the educational needs of students. Also assists areas impacted by the large influx of displaced students. No action.

**H.R. 4297 (Thomas)/S. 2020 (Grassley).** **Tax Relief Extension Reconciliation Act of 2005.** Would extend Qualified Zone Academy Bonds through 2006. H.R. 4297 passed the House 12/8/05. S. 2020 passed the Senate 11/18/05.

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<sup>7</sup> (...continued)

No action.

**H.R. 740 (Sanchez).** (Introduced February 12, 2003.) To amend the Internal Revenue Code to encourage school construction through the creation of a new class of bond. No action.

**H.R. 1844 (Andrews).** (Introduced April 29, 2003.) To establish state revolving funds for school construction. Sets up a state revolving fund pilot program. No action.

**S. 856 (Rockefeller).** (Introduced April 10, 2003.) To amend the Internal Revenue Code to expand incentives for construction and renovation of public schools. No action.