

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2187
OFFERED BY MR. GEORGE MILLER OF
CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “21st Century Green High-Performing Public School Fa-
4 cilities Act”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—GRANTS FOR MODERNIZATION, RENOVATION, OR
REPAIR OF PUBLIC SCHOOL FACILITIES

Sec. 101. Purpose.

Sec. 102. Allocation of funds.

Sec. 103. Allowable uses of funds.

TITLE II—SUPPLEMENTAL GRANTS FOR LOUISIANA, MISSISSIPPI,
AND ALABAMA

Sec. 201. Purpose.

Sec. 202. Allocation to local educational agencies.

Sec. 203. Allowable uses of funds.

TITLE III—GENERAL PROVISIONS

Sec. 301. Impermissible uses of funds.

Sec. 302. Supplement, not supplant.

Sec. 303. Prohibition regarding State aid.

Sec. 304. Maintenance of effort.

Sec. 305. Special rule on contracting.

Sec. 306. Use of American iron, steel, and manufactured goods.

Sec. 307. Labor standards.
Sec. 308. Charter schools.
Sec. 309. Green schools.
Sec. 310. Reporting.
Sec. 311. Authorization of appropriations.
Sec. 312. Special rules.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) The term “Bureau-funded school” has the
4 meaning given to such term in section 1141 of the
5 Education Amendments of 1978 (25 U.S.C. 2021).

6 (2) The term “charter school” has the meaning
7 given such term in section 5210 of the Elementary
8 and Secondary Education Act of 1965 (20 U.S.C.
9 7221).

10 (3) The term “CHPS Criteria” means the
11 green building rating program developed by the Col-
12 laborative for High Performance Schools.

13 (4) The term “Energy Star” means the Energy
14 Star program of the United States Department of
15 Energy and the United States Environmental Pro-
16 tection Agency.

17 (5) The term “Green Globes” means the Green
18 Building Initiative environmental design and rating
19 system referred to as Green Globes.

20 (6) The term “LEED Green Building Rating
21 System” means the United States Green Building
22 Council Leadership in Energy and Environmental

1 Design green building rating standard referred to as
2 LEED Green Building Rating System.

3 (7) The term “local educational agency”—

4 (A) has the meaning given to that term in
5 section 9101 of the Elementary and Secondary
6 Education Act of 1965 (20 U.S.C. 7801), and
7 shall also include the Recovery School District
8 of Louisiana and the New Orleans Public
9 Schools; and

10 (B) includes any public charter school that
11 constitutes a local educational agency under
12 State law.

13 (8) The term “outlying area”—

14 (A) means the United States Virgin Is-
15 lands, Guam, American Samoa, and the Com-
16 monwealth of the Northern Mariana Islands;
17 and

18 (B) includes the freely associated states of
19 the Republic of the Marshall Islands, the Fed-
20 erated States of Micronesia, and the Republic
21 of Palau.

22 (9) The term “public school facilities” means
23 an existing public school facility, including a public
24 charter school facility, or another existing facility
25 planned for adaptive reuse as such a school facility.

1 (10) The term “State” means each of the 50
2 States, the District of Columbia, and the Common-
3 wealth of Puerto Rico.

4 **TITLE I—GRANTS FOR MOD-**
5 **ERNIZATION, RENOVATION,**
6 **OR REPAIR OF PUBLIC**
7 **SCHOOL FACILITIES**

8 **SEC. 101. PURPOSE.**

9 Grants under this title shall be for the purpose of
10 modernizing, renovating, or repairing public school facili-
11 ties, based on their need for such improvements, to be
12 safe, healthy, high-performing, and up-to-date techno-
13 logically.

14 **SEC. 102. ALLOCATION OF FUNDS.**

15 (a) RESERVATION.—

16 (1) IN GENERAL.—From the amount appro-
17 priated to carry out this title for each fiscal year
18 pursuant to section 311(a), the Secretary shall re-
19 serve 1 percent of such amount, consistent with the
20 purpose described in section 101—

21 (A) to provide assistance to the outlying
22 areas; and

23 (B) for payments to the Secretary of the
24 Interior to provide assistance to Bureau-funded
25 schools.

1 (2) USE OF RESERVED FUNDS.—In each fiscal
2 year, the amount reserved under paragraph (1) shall
3 be divided between the uses described in subpara-
4 graphs (A) and (B) of such paragraph in the same
5 proportion as the amount reserved under section
6 1121(a) of the Elementary and Secondary Edu-
7 cation Act of 1965 (20 U.S.C. 6331(a)) is divided
8 between the uses described in paragraphs (1) and
9 (2) of such section 1121(a) in such fiscal year.

10 (b) ALLOCATION TO STATES.—

11 (1) STATE-BY-STATE ALLOCATION.—Of the
12 amount appropriated to carry out this title for each
13 fiscal year pursuant to section 311(a), and not re-
14 served under subsection (a), each State shall be allo-
15 cated an amount in proportion to the amount re-
16 ceived by all local educational agencies in the State
17 under part A of title I of the Elementary and Sec-
18 ondary Education Act of 1965 (20 U.S.C. 6311 et
19 seq.) for the previous fiscal year relative to the total
20 amount received by all local educational agencies in
21 every State under such part for such fiscal year.

22 (2) STATE ADMINISTRATION.—A State may re-
23 serve up to 1 percent of its allocation under para-
24 graph (1) to carry out its responsibilities under this
25 title, which include—

1 (A) providing technical assistance to local
2 educational agencies;

3 (B) developing an online, publicly search-
4 able database that includes an inventory of pub-
5 lic school facilities in the State, including for
6 each, its design, condition, modernization, ren-
7 ovation and repair needs, usage, utilization, en-
8 ergy use, and carbon footprint; and

9 (C) creating voluntary guidelines for high-
10 performing school buildings, including guide-
11 lines concerning the following:

12 (i) Site location, storm water manage-
13 ment, outdoor surfaces, outdoor lighting,
14 and transportation (location near public
15 transit and easy access for pedestrians and
16 bicycles).

17 (ii) Outdoor water systems, land-
18 scaping to minimize water use, including
19 elimination of irrigation systems for land-
20 scaping, and indoor water use reduction.

21 (iii) Energy efficiency (including min-
22 imum and superior standards, such as for
23 heating, ventilation, and air conditioning
24 systems), use of alternative energy sources,
25 commissioning, and training.

1 (iv) Use of durable, sustainable mate-
2 rials and waste reduction.

3 (v) Indoor environmental quality, such
4 as day lighting in classrooms, lighting
5 quality, indoor air quality, acoustics, and
6 thermal comfort.

7 (vi) Operations and management,
8 such as use of energy efficient equipment,
9 indoor environmental management plan,
10 maintenance plan, and pest management.

11 (3) GRANTS TO LOCAL EDUCATIONAL AGEN-
12 CIES.—From the amount allocated to a State under
13 paragraph (1), each local educational agency in the
14 State that meets the requirements of section
15 1112(a) of the Elementary and Secondary Edu-
16 cation Act of 1965 (20 U.S.C. 6312(a)) shall receive
17 an amount in proportion to the amount received by
18 such local educational agency under part A of title
19 I of that Act (20 U.S.C. 6311 et seq.) for the pre-
20 vious fiscal year relative to the total amount received
21 by all local educational agencies in the State under
22 such part for such fiscal year, except that no local
23 educational agency that received funds under part A
24 of title I of that Act for such fiscal year shall receive

1 a grant of less than \$5,000 in any fiscal year under
2 this title.

3 (4) SPECIAL RULE.—Section 1122(c)(3) of the
4 Elementary and Secondary Education Act of 1965
5 (20 U.S.C. 6332(c)(3)) shall not apply to paragraph
6 (1) or (3).

7 (c) SPECIAL RULES.—

8 (1) DISTRIBUTIONS BY SECRETARY.—The Sec-
9 retary shall make and distribute the reservations
10 and allocations described in subsections (a) and (b)
11 not later than 30 days after an appropriation of
12 funds for this title is made.

13 (2) DISTRIBUTIONS BY STATES.—A State shall
14 make and distribute the allocations described in sub-
15 section (b)(3) within 30 days of receiving such funds
16 from the Secretary.

17 **SEC. 103. ALLOWABLE USES OF FUNDS.**

18 A local educational agency receiving a grant under
19 this title shall use the grant for modernization, renovation,
20 or repair of public school facilities, including, where appli-
21 cable, early learning facilities—

22 (1) repairing, replacing, or installing roofs, in-
23 cluding extensive, intensive or semi-intensive green
24 roofs, electrical wiring, plumbing systems, sewage
25 systems, storm water runoff systems, lighting sys-

1 tems, or components of such systems, windows, or
2 doors, including security doors;

3 (2) repairing, replacing, or installing heating,
4 ventilation, air conditioning systems, or components
5 of such systems (including insulation), including in-
6 door air quality assessments;

7 (3) bringing public schools into compliance with
8 fire, health, seismic, and safety codes, including pro-
9 fessional installation of fire/life safety alarms, in-
10 cluding modernizations, renovations, and repairs
11 that ensure that schools are prepared for emer-
12 gencies, such as improving building infrastructure to
13 accommodate security measures;

14 (4) modifications necessary to make public
15 school facilities accessible to comply with the Ameri-
16 cans with Disabilities Act of 1990 (42 U.S.C. 12101
17 et seq.) and section 504 of the Rehabilitation Act of
18 1973 (29 U.S.C. 794);

19 (5) abatement, removal, or interim controls of
20 asbestos, polychlorinated biphenyls, mold, mildew, or
21 lead-based hazards, including lead-based paint haz-
22 ards;

23 (6) measures designed to reduce or eliminate
24 human exposure to classroom noise and environ-
25 mental noise pollution;

1 (7) modernizations, renovations, or repairs nec-
2 essary to reduce the consumption of coal, electricity,
3 land, natural gas, oil, or water;

4 (8) upgrading or installing educational tech-
5 nology infrastructure to ensure that students have
6 access to up-to-date educational technology;

7 (9) modernization, renovation, or repair of
8 science and engineering laboratory facilities, librar-
9 ies, and career and technical education facilities, in-
10 cluding those related to energy efficiency and renew-
11 able energy, and improvements to building infra-
12 structure to accommodate bicycle and pedestrian ac-
13 cess;

14 (10) renewable energy generation and heating
15 systems, including solar, photovoltaic, wind, geo-
16 thermal, or biomass, including wood pellet, woody
17 biomass, waste-to-energy, and solar-thermal systems
18 or components of such systems, and energy audits;

19 (11) other modernization, renovation, or repair
20 of public school facilities to—

21 (A) improve teachers' ability to teach and
22 students' ability to learn;

23 (B) ensure the health and safety of stu-
24 dents and staff;

25 (C) make them more energy efficient; or

1 (D) reduce class size; and
2 (12) required environmental remediation related
3 to public school modernization, renovation, or repair
4 described in paragraphs (1) through (11).

5 **TITLE II—SUPPLEMENTAL**
6 **GRANTS FOR LOUISIANA, MIS-**
7 **SISSIPPI, AND ALABAMA**

8 **SEC. 201. PURPOSE.**

9 Grants under this title shall be for the purpose of
10 modernizing, renovating, repairing, or constructing public
11 school facilities, including, where applicable, early learning
12 facilities, based on their need for such improvements, to
13 be safe, healthy, high-performing, and up-to-date techno-
14 logically.

15 **SEC. 202. ALLOCATION TO LOCAL EDUCATIONAL AGEN-**
16 **CIES.**

17 (a) **IN GENERAL.**—Of the amount appropriated to
18 carry out this title for each fiscal year pursuant to section
19 311(b), the Secretary shall allocate to local educational
20 agencies in Louisiana, Mississippi, and Alabama an
21 amount equal to the infrastructure damage inflicted on
22 public school facilities in each such district by Hurricane
23 Katrina or Hurricane Rita in 2005 relative to the total
24 of such infrastructure damage so inflicted in all such dis-
25 tricts, combined.

1 (b) DISTRIBUTION BY SECRETARY.—The Secretary
2 shall determine and distribute the allocations described in
3 subsection (a) not later than 60 days after an appropria-
4 tion of funds for this title is made.

5 **SEC. 203. ALLOWABLE USES OF FUNDS.**

6 A local educational agency receiving a grant under
7 this title shall use the grant for one or more of the activi-
8 ties described in section 103, except that an agency receiv-
9 ing a grant under this title also may use the grant for
10 the construction of new public school facilities.

11 **TITLE III—GENERAL**
12 **PROVISIONS**

13 **SEC. 301. IMPERMISSIBLE USES OF FUNDS.**

14 No funds received under this Act may be used for—

15 (1) payment of maintenance costs;

16 (2) stadiums or other facilities primarily used
17 for athletic contests or exhibitions or other events
18 for which admission is charged to the general public;

19 (3) improvement or construction of facilities the
20 purpose of which is not the education of children, in-
21 cluding central office administration or operations or
22 logistical support facilities; or

23 (4) purchasing carbon offsets.

1 **SEC. 302. SUPPLEMENT, NOT SUPPLANT.**

2 A local educational agency receiving a grant under
3 this Act shall use such Federal funds only to supplement
4 and not supplant the amount of funds that would, in the
5 absence of such Federal funds, be available for moderniza-
6 tion, renovation, repair, and construction of public school
7 facilities.

8 **SEC. 303. PROHIBITION REGARDING STATE AID.**

9 A State shall not take into consideration payments
10 under this Act in determining the eligibility of any local
11 educational agency in that State for State aid, or the
12 amount of State aid, with respect to free public education
13 of children.

14 **SEC. 304. MAINTENANCE OF EFFORT.**

15 (a) IN GENERAL.—A local educational agency may
16 receive a grant under this Act for any fiscal year only if
17 either the combined fiscal effort per student or the aggre-
18 gate expenditures of the agency and the State involved
19 with respect to the provision of free public education by
20 the agency for the preceding fiscal year was not less than
21 90 percent of the combined fiscal effort or aggregate ex-
22 penditures for the second preceding fiscal year.

23 (b) REDUCTION IN CASE OF FAILURE TO MEET
24 MAINTENANCE OF EFFORT REQUIREMENT.—

25 (1) IN GENERAL.—The State educational agen-
26 cy shall reduce the amount of a local educational

1 agency's grant in any fiscal year in the exact propor-
2 tion by which a local educational agency fails to
3 meet the requirement of subsection (a) by falling
4 below 90 percent of both the combined fiscal effort
5 per student and aggregate expenditures (using the
6 measure most favorable to the local agency).

7 (2) SPECIAL RULE.—No such lesser amount
8 shall be used for computing the effort required
9 under subsection (a) for subsequent years.

10 (c) WAIVER.—The Secretary shall waive the require-
11 ments of this section if the Secretary determines that a
12 waiver would be equitable due to—

13 (1) exceptional or uncontrollable circumstances,
14 such as a natural disaster; or

15 (2) a precipitous decline in the financial re-
16 sources of the local educational agency.

17 **SEC. 305. SPECIAL RULE ON CONTRACTING.**

18 Each local educational agency receiving a grant under
19 this Act shall ensure that, if the agency carries out mod-
20 ernization, renovation, repair, or construction through a
21 contract, the process for any such contract ensures the
22 maximum number of qualified bidders, including local,
23 small, minority, and women- and veteran-owned busi-
24 nesses, through full and open competition.

1 **SEC. 306. USE OF AMERICAN IRON, STEEL, AND MANUFAC-**
2 **TURED GOODS.**

3 (a) IN GENERAL.—None of the funds appropriated
4 or otherwise made available by this Act may be used for
5 a project for the modernization, renovation, repair or con-
6 struction of a public school facility unless all of the iron,
7 steel, and manufactured goods used in the project are pro-
8 duced in the United States.

9 (b) EXCEPTIONS.—Subsection (a) shall not apply in
10 any case or category of cases in which the Secretary finds
11 that—

12 (1) applying subsection (a) would be incon-
13 sistent with the public interest;

14 (2) iron, steel, and the relevant manufactured
15 goods are not produced in the United States in suffi-
16 cient and reasonably available quantities and of a
17 satisfactory quality; or

18 (3) inclusion of iron, steel, and manufactured
19 goods produced in the United States will increase
20 the cost of the overall project by more than 25 per-
21 cent.

22 (c) PUBLICATION OF JUSTIFICATION.—If the Sec-
23 retary determines that it is necessary to waive the applica-
24 tion of subsection (a) based on a finding under subsection
25 (b), the Secretary shall publish in the Federal Register
26 a detailed written justification of the determination.

1 (d) CONSTRUCTION.—This section shall be applied in
2 a manner consistent with United States obligations under
3 international agreements.

4 **SEC. 307. LABOR STANDARDS.**

5 The grant programs under this Act are applicable
6 programs (as that term is defined in section 400 of the
7 General Education Provisions Act (20 U.S.C. 1221)) sub-
8 ject to section 439 of such Act (20 U.S.C. 1232b).

9 **SEC. 308. CHARTER SCHOOLS.**

10 A local educational agency receiving an allocation
11 under this Act shall use an equitable portion of that allo-
12 cation for allowable activities benefitting charter schools
13 within its jurisdiction, as determined based on the percent-
14 age of students from low-income families in the schools
15 of the agency who are enrolled in charter schools and on
16 the needs of those schools as determined by the agency.

17 **SEC. 309. GREEN SCHOOLS.**

18 (a) IN GENERAL.—In a given fiscal year, a local edu-
19 cational agency shall use not less than the applicable per-
20 centage (described in subsection (b)) of funds received
21 under this Act for public school modernization, renovation,
22 repairs, or construction that are certified, verified, or con-
23 sistent with any applicable provisions of—

24 (1) the LEED Green Building Rating System;

25 (2) Energy Star;

1 (3) the CHPS Criteria;

2 (4) Green Globes; or

3 (5) an equivalent program adopted by the State
4 or another jurisdiction with authority over the local
5 educational agency, which shall include a verifiable
6 method to demonstrate compliance with such pro-
7 gram.

8 (b) **APPLICABLE PERCENTAGES.**—The applicable
9 percentage described in subsection (a) is—

10 (1) in fiscal year 2010, 50 percent;

11 (2) in fiscal year 2011, 60 percent;

12 (3) in fiscal year 2012, 70 percent;

13 (4) in fiscal year 2013, 80 percent;

14 (5) in fiscal year 2014, 90 percent; and

15 (6) in fiscal year 2015, 100 percent.

16 (c) **TECHNICAL ASSISTANCE.**—The Secretary, in con-
17 sultation with the Secretary of Energy and the Adminis-
18 trator of the Environmental Protection Agency, shall pro-
19 vide outreach and technical assistance to States and local
20 educational agencies concerning the best practices in
21 school modernization, renovation, repair, and construc-
22 tion, including those related to student academic achieve-
23 ment, student and staff health, energy efficiency, and envi-
24 ronmental protection.

1 (d) YOUTHBUILD PROGRAMS.—The Secretary of
2 Education, in consultation with the Secretary of Labor,
3 shall work with recipients of funds under this Act to pro-
4 mote appropriate opportunities for participants in a
5 YouthBuild program (as defined in section 173A of the
6 Workforce Investment Act of 1998 (29 U.S.C. 2918a)) to
7 gain employment experience on modernization, renovation,
8 and repair projects funded under this section.

9 **SEC. 310. REPORTING.**

10 (a) REPORTS BY LOCAL EDUCATIONAL AGENCIES.—
11 Local educational agencies receiving a grant under this
12 Act shall annually compile a report describing the projects
13 for which such funds were used, including—

14 (1) the number of public schools in the agency,
15 including the number of charter schools, and for
16 each, in the aggregate, the number of students from
17 low-income families;

18 (2) the total amount of funds received by the
19 local educational agency under this Act and the
20 amount of such funds expended, including the
21 amount expended for modernization, renovation, re-
22 pair, or construction of charter schools;

23 (3) the number of public schools in the agency
24 with a metro-centric locale code of 41, 42, or 43 as
25 determined by the National Center for Education

1 Statistics and the percentage of funds received by
2 the agency under title I or title II of this Act that
3 were used for projects at such schools;

4 (4) the number of public schools in the agency
5 that are eligible for schoolwide programs under sec-
6 tion 1114 of the Elementary and Secondary Edu-
7 cation Act of 1965 (20 U.S.C. 6314) and the per-
8 centage of funds received by the agency under title
9 I or title II of this Act that were used for projects
10 at such schools;

11 (5) for each project—

12 (A) the cost;

13 (B) the standard described in section
14 309(a) with which the use of the funds com-
15 plied or, if the use of funds did not comply with
16 a standard described in section 309(a), the rea-
17 son such funds were not able to be used in com-
18 pliance with such standards and the agency's
19 efforts to use such funds in an environmentally
20 sound manner;

21 (C) if flooring was installed, whether—

22 (i) it was low- or no-VOC (Volatile
23 Organic Compounds) flooring;

24 (ii) it was made from sustainable ma-
25 terials; and

1 (iii) use of flooring described in clause

2 (i) or (ii) was cost-effective; and

3 (D) any demonstrable or expected benefits

4 as a result of the project (such as energy sav-

5 ings, improved indoor environmental quality,

6 improved climate for teaching and learning,

7 etc.); and

8 (6) the total number and amount of contracts

9 awarded, and the number and amount of contracts

10 awarded to local, small, minority, women, and vet-

11 eran-owned businesses.

12 (b) AVAILABILITY OF REPORTS.—A local educational

13 agency shall—

14 (1) submit the report described in subsection

15 (a) to the State educational agency, which shall com-

16 pile such information and report it annually to the

17 Secretary; and

18 (2) make the report described in subsection (a)

19 publicly available, including on the agency's website.

20 (c) REPORTS BY SECRETARY.—Not later than De-

21 cember 31 of each fiscal year, the Secretary shall submit

22 to the Committee on Education and Labor of the House

23 of Representatives and the Committee on Health, Edu-

24 cation, Labor, and Pensions of the Senate, and make

25 available on the Department of Education's website, a re-

1 port on grants made under this Act, including the infor-
2 mation described in subsection (b)(1), the types of mod-
3 ernization, renovation, repair, and construction funded,
4 and the number of students impacted, including the num-
5 ber of students counted under section 1113(a)(5) of the
6 Elementary and Secondary Education Act of 1965 (20
7 U.S.C. 6313(a)(5)).

8 **SEC. 311. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) TITLE I.—To carry out title I, there are author-
10 ized to be appropriated \$6,400,000,000 for fiscal year
11 2010 and such sums as may be necessary for each of fiscal
12 years 2011 through 2015.

13 (b) TITLE II.—To carry out title II, there are author-
14 ized to be appropriated \$100,000,000 for each of fiscal
15 years 2010 through 2015.

16 **SEC. 312. SPECIAL RULES.**

17 Notwithstanding any other provision of this Act, none
18 of the funds authorized by this Act may be—

19 (1) used to employ workers in violation of sec-
20 tion 274A of the Immigration and Nationality Act
21 (8 U.S.C. 1324a); or

22 (2) distributed to a local educational agency
23 that does not have a policy that requires a criminal
24 background check on all employees of the agency.

