

**AMENDMENT TO H.R. 3989**  
**OFFERED BY MR. ROKITA OF INDIANA**

At the end of the bill, add the following:

1 **SEC. 204. ALLOWING STATES TO OPT OUT OF K-12 EDU-**  
2 **CATION GRANT PROGRAMS.**

3 (a) DETERMINATIONS BY SECRETARY OF TREASURY  
4 AS TO WHICH STATES ARE OPT-OUT STATES.—

5 (1) DEADLINE.—Not later than February 1 of  
6 each calendar year (hereinafter in this title referred  
7 to as the “determination year”), the Secretary of the  
8 Treasury shall determine which States, if any, are  
9 opt-out States for the calendar year (hereinafter in  
10 this title referred to as the “opt-out year”) that fol-  
11 lows the determination year.

12 (2) DETERMINATION.—The Secretary of the  
13 Treasury shall determine that a State is an opt-out  
14 State for an opt-out year under subsection (a) if,  
15 and only if, there is transmitted to the Secretary a  
16 copy of a law, in effect as of January 1 of the deter-  
17 mination year, that can fairly be read to mean that  
18 the policy of the State is to not accept grant funds  
19 under the K–12 education grant programs, and

1       thereby to not be bound by the requirements of  
2       those programs, for that opt-out year.

3           (3) NOTIFICATION.—Upon making a deter-  
4       mination under subsection (a), the Secretary of the  
5       Treasury shall transmit that determination to the  
6       Secretary of Education and to Congress.

7       (b) AMOUNTS CREDITABLE TO STATES.—

8           (1) IN GENERAL.—For purposes of determina-  
9       tions relating to the refundable opt-out State edu-  
10      cation credit under section 36D of the Internal Rev-  
11      enue Code of 1986, as early as practicable for a cal-  
12      endar year, the Secretary of Education shall, for  
13      each State, determine the amount creditable to that  
14      State for that calendar year and make available that  
15      determination.

16          (2) AMOUNT CREDITABLE.—The Secretary  
17      shall determine the amount creditable to a State for  
18      a calendar year as follows:

19           (A) If the State was not an opt-out State  
20      for the preceding calendar year, the amount  
21      creditable for the calendar year shall be equal  
22      to the aggregate K–12 funding (as determined  
23      under subsection (d)) for that State for that  
24      preceding calendar year.

1 (B) If the State was an opt-out State for  
2 the preceding calendar year, the amount cred-  
3 itable for the calendar year shall be equal to—

4 (i) the extrapolated amount (as deter-  
5 mined under subsection (c)) for that pre-  
6 ceding calendar year, plus

7 (ii) the amount that results when the  
8 amount creditable for that preceding cal-  
9 endar year is subtracted from the extrapo-  
10 lated amount (as determined under sub-  
11 section (c)) for that preceding calendar  
12 year.

13 (3) EXTRAPOLATED AMOUNT.—

14 (A) IN GENERAL.—The Secretary of Edu-  
15 cation shall determine the extrapolated amount  
16 for a State for a calendar year. The determina-  
17 tion shall be based on—

18 (i) the amount of grant funds that  
19 would have been received other than on a  
20 competitive basis, as direct grants, sub-  
21 grants, or otherwise, under the K–12 edu-  
22 cation grant programs, by the State or any  
23 public educational entity in the State for  
24 that calendar year, had it elected not to be

1 an opt-out State for that calendar year;  
2 plus

3 (ii) the average annual amount of all  
4 grant funds that would have been received  
5 on a competitive basis, as direct grants,  
6 subgrants, or otherwise, under the K–12  
7 education grant programs, by the State or  
8 any public educational entity in the State  
9 for that calendar year and the four pre-  
10 ceding calendar years, had it elected not to  
11 be an opt-out State for those calendar  
12 years.

13 (B) REGULATIONS.—The Secretary shall  
14 prescribe regulations for making determinations  
15 required by this subsection. The initial regula-  
16 tions shall be prescribed not later than 6  
17 months after the date of the enactment of this  
18 Act.

19 (4) AGGREGATE K–12 FUNDING.—The aggre-  
20 gate K–12 funding for a State for a calendar year  
21 shall be equal to—

22 (A) the amount of all grant funds received  
23 other than on a competitive basis, as direct  
24 grants, subgrants, or otherwise, under the K–  
25 12 education grant programs, by the State or

1 any public educational entity in the State for  
2 that calendar year; plus

3 (B) the average annual amount of all grant  
4 funds received on a competitive basis, as direct  
5 grants, subgrants, or otherwise, under the K–  
6 12 education grant programs, by the State or  
7 any public educational entity in the State for  
8 that calendar year and the four preceding cal-  
9 endar years.

10 (c) OPT-OUT STATES NOT ELIGIBLE TO RECEIVE  
11 GRANTS UNDER K–12 EDUCATION GRANT PROGRAMS.—

12 (1) IN GENERAL.—When a State is an opt-out  
13 State for a calendar year, neither the State nor any  
14 public educational entity in the State is eligible to  
15 receive, as direct grants, subgrants, or otherwise,  
16 any funds under any of the K–12 education grant  
17 programs for that calendar year.

18 (2) REALLOCATION.—Any funds under a K–12  
19 education grant program that are not allocated to a  
20 State or public educational entity in the State by  
21 reason of subsection (a) shall be returned to the  
22 Treasury.

23 (d) REQUIREMENTS OF K–12 EDUCATION GRANT  
24 PROGRAMS DO NOT APPLY TO OPT-OUT STATES.—When  
25 a State is an opt-out State for a calendar year, neither

1 the State nor any public educational entity in the State  
2 is subject to any statutory or regulatory requirement of  
3 a K–12 education grant program for that calendar year.

4 (e) REFUNDABLE OPT-OUT STATE EDUCATION  
5 CREDIT.—

6 (1) IN GENERAL.—Subpart C of part IV of sub-  
7 chapter A of chapter 1 of the Internal Revenue Code  
8 of 1986 (relating to refundable credits) is amended  
9 by inserting after section 36C the following new sec-  
10 tion:

11 **“SEC. 36D. OPT-OUT STATE EDUCATION CREDIT.**

12 “(a) GENERAL RULE.—In the case of an eligible indi-  
13 vidual, there shall be allowed as a credit against the tax  
14 imposed by this chapter for the taxable year the opt-out  
15 State education amount.

16 “(b) OPT-OUT STATE EDUCATION AMOUNT.—For  
17 purposes of this section—

18 “(1) IN GENERAL.—The term ‘opt-out State  
19 education amount’ means, with respect to a taxpayer  
20 for a taxable year beginning in an opt-out year, the  
21 amount equal to—

22 “(A) the amount creditable under section  
23 102 of the Local Education Authority Returns  
24 Now Act to an opt-out State (determined under  
25 section 101 of such Act), multiplied by—

1 “(B) a fraction—

2 “(i) the numerator of which is the  
3 taxpayer’s household tax burden from such  
4 State for the opt-out year, and

5 “(ii) the denominator of which is the  
6 total tax revenue of such State for the opt-  
7 out year.

8 “(2) HOUSEHOLD TAX BURDEN.—The house-  
9 hold tax burden from a State for an opt-out year is  
10 the sum of—

11 “(A) the State real property taxes,

12 “(B) the State personal property taxes,

13 “(C) the State income, war profits, and ex-  
14 cess profits taxes, plus

15 “(D) the State general sales taxes,

16 for the calendar year in which the second preceding  
17 taxable year ends and within which paid or accrued  
18 by the taxpayer. For purposes of this section, terms  
19 used in the preceding sentence which are also used  
20 in section 164 shall have the respective meanings  
21 given such terms by section 164.

22 “(3) TOTAL TAX REVENUE.—The total tax rev-  
23 enue of a State for an opt-out year is the amount  
24 determined by the Secretary to be the aggregate tax

1 revenue of such State for the calendar year in which  
2 the second preceding taxable year ends.

3 “(c) ELIGIBLE INDIVIDUAL.—For purposes of this  
4 section—

5 “(1) IN GENERAL.—The term ‘eligible indi-  
6 vidual’ means an individual whose principal place of  
7 abode (within the meaning of section 121) was in  
8 the opt-out State for the entire taxable year.

9 “(2) DEPENDENTS.—The term ‘eligible indi-  
10 vidual’ does not include any individual if a deduction  
11 under section 151 with respect to such individual is  
12 allowed to another taxpayer for a taxable year begin-  
13 ning in the calendar year in which such individual’s  
14 taxable year begins.

15 “(d) OPT-OUT YEAR.—The term ‘opt-out year’ means  
16 a calendar year for which the Secretary determines a State  
17 to be an opt-out State under section 101 of the Local Edu-  
18 cation Authority Returns Now Act.

19 “(e) AMOUNT OF CREDIT SHALL BE DETERMINED  
20 UNDER TABLES.—

21 “(1) IN GENERAL.—The credit under sub-  
22 section (a) shall be determined under tables pre-  
23 scribed by the Secretary.

24 “(2) REQUIREMENTS FOR TABLES.—The tables  
25 prescribed under paragraph (1) shall—



1           “(A) reflect the provisions of this section,  
2           and

3           “(B) take into account filing status, State  
4           of residence, and adjusted gross income.”.

5           (2) CONFORMING AMENDMENTS.—

6           (A) Paragraph (2) of section 1324(b) of  
7           title 31, United States Code, is amended by in-  
8           serting “36D,” after “36C,”.

9           (B) The table of sections for subpart C of  
10          part IV of subchapter A of chapter 1 of the In-  
11          ternal Revenue Code of 1986 is amended by in-  
12          serting after the item relating to section 36C  
13          the following new item:

“Sec. 36D. Opt-out State education credit.”.

14          (3) EFFECTIVE DATE.—The amendments made  
15          by this subsection shall apply to taxable years begin-  
16          ning after the date of the enactment of this Act.

17          (f) DEFINITIONS.—In this section:

18           (1) The term “K–12 education grant program”  
19           means any grant program carried out under any  
20           title of the Elementary and Secondary Education  
21           Act of 1965, except for the following:

22           (A) INDIAN, NATIVE HAWAIIAN, AND ALAS-  
23           KA NATIVE EDUCATION.—Title VII (20 U.S.C.  
24           7401 et seq.).

1 (B) IMPACT AID.—Title VIII (20 U.S.C.  
2 7701 et seq.).

3 (2) The term “public educational entity”  
4 means, with respect to a State, the State educational  
5 agency, any local educational agency in the State, or  
6 any public elementary or secondary school in the  
7 State.

