Congressional Research Service
Informing the legislative debate since 1914

The Rebuild America's Schools Act of 2019 (H.R. 865/S. 266): In Brief

June 12, 2019

Congressional Research Service
https://crsreports.congress.gov
R45767

Congressional Research Service
Informing the legislative debate since 1914

The Rebuild America's Schools Act of 2019 (H.R. 865/S. 266): In Brief

SUMMARY

R45767

June 12, 2019

Kyle D. Shohfi
Analyst in Education Policy

A 2014 study conducted by the National Center for Education Statistics within the U.S. Department of Education (ED) found that 53% of public elementary and secondary schools need to spend money on repairs, renovations, and modernizations to put their onsite buildings in good overall condition. The study estimated that the nationwide spending necessary to reach this standard would be approximately $197 billion, or about $4.5 million per school that needs improvements. This report provides a description of and background for selected provisions in the Rebuild America's Schools Act of 2019 (H.R. 865/S. 266), which would provide federal funding for public school construction. H.R. 865 was ordered to be reported by the House Committee on Education and Labor on February 26, 2019. As no action has been taken on the identical companion bill S. 266 since it was introduced in the Senate, this report addresses H.R. 865.

While the construction, renovation, repair, and maintenance of public school facilities are typically the responsibility of state and local governments, the federal government has provided some funding for construction and renovation for specific purposes. H.R. 865 proposes to authorize $70 billion in grants and facilitate $30 billion in school infrastructure tax credit bonds to be used toward the construction and repair of public elementary and secondary school facilities. Funds would be allocated to states proportionally based on their prior-year share of grant allocations under Title I-A of the Elementary and Secondary Education Act (ESEA), a grant program designed to provide educational and related services to low-achieving and other students attending schools with relatively high concentrations of students from low-income families. States are directed to award grant funds provided through the bill to local educational agencies (LEAs) with the highest numbers or percentages of students who are "counted" in the formulas used to allocate ESEA Title I-A grants—and among LEAs meeting this criterion, to those prioritizing improvement of facilities of public schools that serve the highest percentages of students who qualify for free or reduced price lunches. Additional consideration in the awarding of grants to LEAs may be given to those with school facilities that pose a severe health or safety threat. Funds would also be authorized under H.R. 865 for Impact Aid construction for FY2020 through FY2023 at levels substantially higher than current authorization of appropriations levels.

H.R. 865 would place certain restrictions on how funds from grants or bonds may be used. For instance, it specifies for each fiscal year a certain percentage of covered funds that must be used for construction or renovation that is consistent with "green" standards. Additionally, LEAs that receive covered funds from grants or bonds authorized by the bill would be required to ensure that any iron, steel, and manufactured products used in projects are produced in the United States. However, the Secretary of Education would have authority to waive this requirement under certain circumstances.

The bill would also require the Institute of Education Sciences to carry out and submit to the appropriate congressional committees a comprehensive study of the physical condition of all public schools in the United States at least once every five years.

The Congressional Budget Office estimates that enactment of H.R. 865 would result in an increase of approximately $8.4 billion in direct spending, a decrease of approximately $1.2 billion in revenues, and an increase of approximately $55.6 billion in outlays subject to appropriation in the period from FY2019 to FY2029.

Contents

Contacts

Introduction

According to a 2014 study conducted by the National Center for Education Statistics (NCES) within the U.S. Department of Education (ED), 53% of public elementary and secondary schools need to spend money on repairs, renovations, and modernizations to put their onsite buildings in good overall condition.[1] The study estimated that the nationwide spending necessary to reach this standard would be approximately $197 billion, or about $4.5 million per school that needs improvements.[2] The 2014 study was the first by NCES to estimate such costs since a 2000 report and is the most recent available. As there is no ongoing federal data collection on the physical condition of schools, it is difficult to assess the current state of the nation's school facilities and the need for infrastructure investment.[3]

While the construction, renovation, repair, and maintenance of public school facilities have primarily and typically been the responsibility of state and local governments, the federal government has provided some funding for construction and renovation for specific purposes. This report provides a description of and background for selected provisions of the Rebuild America's Schools Act of 2019 (H.R. 865/S. 266), which was ordered to be reported by the House Committee on Education and Labor on February 26, 2019.[4] H.R. 865 proposes to authorize $70 billion in grants and facilitate $30 billion in school infrastructure tax credit bonds to be used toward the construction and repair of public elementary and secondary school facilities. Grant funds and school infrastructure bond limits would be allocated to states proportionally based on their prior-year local educational agency (LEA) grant allocations under Title I-A of the Elementary and Secondary Education Act (ESEA). Additional funds would also be authorized for Impact Aid construction payments authorized under Section 7007 of the ESEA for FY2020 through FY2023.

Background

Funding public schools has traditionally been primarily the responsibility of state and local governments. In school year 2015-2016, for instance, public elementary and secondary schools in the United States collectively received about 47% of their revenue from state governments and about 45% from local governments.[5] Of the local revenue, the majority—approximately 81%—was derived from property taxes.[6] While different states and LEAs have access to various other funding streams and mechanisms to finance school construction,[7] a common practice to raise funds for this purpose is to issue a general obligation bond (backed by the credit of the state or local government) and repay the debt over time with revenue from sources such as property taxes.

---

[1] D. Alexander and L. Lewis, *Condition of America's Public School Facilities: 2012–13* (NCES 2014-022), U.S. Department of Education, National Center for Education Statistics, 2014, http://nces.ed.gov/pubsearch.

[2] Ibid.

[3] This report addresses infrastructure spending for public elementary and secondary schools only. It does not cover private schools, child care facilities, or institutions of higher education.

[4] As no action has been taken on the identical companion bill S. 266 since it was introduced in the Senate, the remainder of this report will address H.R. 865.

[5] National Center for Education Statistics (NCES), *Digest of Education Statistics 2018*, Table 235.10.

[6] Ibid.

[7] For instance, Georgia's constitution allows LEAs to call for a referendum to seek approval for a temporary Special Purpose Local Option Sales Tax to fund capital expenditures.

Nationwide, public schools spent approximately $48 billion on facilities acquisition and construction in the 2015-2016 school year.[8]

While state and local governments typically provide the majority of support for facilities-related expenditures in public K-12 schools, the federal government also provides some direct and indirect support for school infrastructure.[9] Federal direct support is provided through loans and grants to K-12 schools with specific needs or serving certain populations of students. For example, there are school infrastructure grant programs respectively for schools with high populations of students with disabilities or students who are Alaska Natives, Native Hawaiians, American Indians, or children of military parents. Funding is also available to schools affected by natural disasters or located in rural areas. Additionally, there are facilities financing assistance programs to encourage the development of charter schools. Although ED administers several of the grant programs funding facilities at elementary and secondary schools, other agencies, such as the Department of the Interior and the Department of Defense, also administer programs.

Aside from the targeted efforts, a one-time appropriation of $1.2 billion was made under the Consolidated Appropriations Act for FY2001 (P.L. 106-554) for emergency school renovation and repair activities, as well as activities under Part B of the Individuals with Disabilities Education Act and technology activities. Most recently, Congress provided a one-time appropriation in 2009, as part of the response to the Great Recession, that could be used for renovation and construction, among other purposes. The American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5) authorized a $54 billion State Fiscal Stabilization Fund (SFSF). States were required to use at least 81.8% of their share of the SFSF to restore support of public elementary, secondary, and postsecondary schools, and, as applicable, early childhood education programs and services. Among the allowable uses of restoration funds were modernization, renovation, or repair of public school facilities. States were required to use the remaining 18.2% of their share of the SFSF for education, public safety, and other government services, which included modernization, renovation, or repair of public school and public or private college facilities, depending on the criteria that the state's governor used to allocate the funds. ED issued guidance specifically allowing a portion of the SFSF to be used for the construction of K-12 schools but not institutions of higher education.[10]

Another large source of federal contributions to school facilities—the forgone revenue attributable to the exemption of interest on state and local governmental bonds used for school construction, modernization, renovation, and repair—is indirect. The Internal Revenue Code (IRC, or Chapter 26 of the U.S. Code) provides for the federal government to exempt interest income earned on bonds issued by state, local, and tribal governments for a "public" purpose from federal income tax (26 U.S.C. §103).[11] Examples of public projects include elementary, secondary, and postsecondary schools; public buildings; and roads. The tax exemption lowers the cost of capital for state and local governments because investors are generally willing to accept a

---

[8] This figured was calculated by CRS by summing the expenditures of states and outlying areas on facilities acquisitions and construction services, using data from the National Center for Education Statistics (NCES), *National Public Education Financial Survey, School Year 2015-16*.

[9] For more information, see CRS Report R41142, *School Construction and Renovation: A Review of Federal Programs*.

[10] The Education Stabilization Fund, which comprises 81.8% of each state's SFSF allocation, may not be used for the construction of institutions of higher education. The Government Services Fund, which comprises 18.2% of each state's SFSF allocation, may be used for such a purpose. U.S. Department of Education, *Guidance on the State Fiscal Stabilization Fund Program*, Washington, DC, April 2009, pp. 18, 27.

[11] For additional information, see CRS Report RL30638, *Tax-Exempt Bonds: A Description of State and Local Government Debt*.

lower rate of return when it is not subject to federal taxation. There is no bond volume cap on tax exempt state and local government bonds.

Major Provisions of H.R. 865

H.R. 865 would support public elementary and secondary school construction through several approaches. ED would administer federal grants, the Department of the Treasury would administer tax credit bonds, and regular reports on the condition and need for school facilities would fill a knowledge gap in order to inform future federal support.

The following sections summarize the major provisions of the four titles included in H.R. 865. Title I would authorize grants for the long-term improvement of public school facilities, Title II would authorize school infrastructure bonds, Title III would cover general provisions, and Title IV would authorize a temporary increase in funding for Impact Aid construction.

Title I: Grants

H.R. 865 would authorize $7 billion in grants per fiscal year from FY2020 to FY2029 to support long-term improvements to public school facilities. Of the amounts appropriated, 0.5% would be reserved for the outlying areas,[12] and 0.5% would be reserved for schools funded by the Bureau of Indian Education. The remainder would be allocated to the states[13] in proportion to their share of all ESEA Title I-A state grants allocated during the prior fiscal year with no hold harmless provision applied.[14] The states would then award competitive grants to qualified LEAs.

To be eligible for an allocation, a state would have to submit a plan to ED that describes how it would use the funds to make long-term improvements to public school facilities and how it would maintain fiscal effort for the funded activities after it no longer receives the allocation. The plan would also need to explain how the state would determine the eligibility and priority of grant recipients and carry out its state-level responsibilities.

States would be required to match 10% of the allocated amount from nonfederal sources to support the activities funded by the allocation. A maintenance of effort provision would also require that the fiscal effort per student or aggregate expenditure by the states on public school facilities could not be less than 90% of the level in the prior fiscal year. Further, states would be required to use their allocations to supplement not supplant federal, state, and local public funds that would otherwise be available for supported activities.

The bill would allow states to reserve no more than 1% of their allocation for their state-level responsibilities, including providing technical assistance to LEAs and developing an online database that contains an inventory of the infrastructure of all public school facilities in the state. Such funds could also be used for issuing and reviewing health and safety regulations and creating a plan to reduce exposure to toxins and chemicals.

[12] For the purposes of the state formula grant program, "outlying areas" include American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands.

[13] For the purposes of the state formula grant program, "states" include the 50 states, the District of Columbia, and Puerto Rico.

[14] The requirement to determine state grants with no hold harmless provisions applied is in Section 1122(c)(3) of the ESEA. For more information on ESEA Title I-A formulas, see CRS Report R44461, *Allocation of Funds Under Title I-A of the Elementary and Secondary Education Act*.

To be eligible to receive a competitive grant from the state, an LEA would have to have received an ESEA Title I-A grant in the previous year. Further, an LEA would have to be among those with the highest number or percentage of children "counted"[15] in the formulas used to allocate ESEA Title I-A state grants.[16] LEAs meeting these criteria would also be required to prioritize improvement of facilities of public schools that serve the highest percentages of students who qualify for free or reduced price lunches.[17] Additional consideration in the awarding of grants to LEAs may be given to those with school facilities that pose a severe health or safety threat. States would have to ensure that LEA grantees represent the geographic diversity of the state. In addition, states would have the option of including the need to improve facilities or having the most limited capacity to raise funds for that purpose in the LEA eligibility criteria.

States would be required to prioritize applications from LEAs by comparing these eligibility criteria. Additionally, states would be able to prioritize applications for grants to improve access to broadband or grants for schools without access to broadband.

To be considered for a competitive grant, qualifying LEAs would have to submit an application to the state. Application requirements could be determined by the individual states, but H.R. 865 would require all applications to include certain information:

- information necessary for the state to determine eligibility and priority;
- a description of the projects that the LEA plans to carry out with the grant;
- an explanation of how such projects will reduce risks to the health and safety of staff and students at schools served by the LEA; and
- for charter schools, whether the operator has control or ownership of the facility, and the extent to which the charter schools lack access to funding through financing methods available to public schools or LEAs in the state.

After grants are awarded, the bill would require certain actions by LEAs, states, and ED. Within 180 days of receiving a grant, an LEA would be required to submit to the state a 10-year facilities master plan. Each LEA that receives a grant would also be required to annually compile, publish, and submit to the state certain information about the LEA, its student population, and projects funded by the grant. States would then be required to compile, publish, and distribute such information to the LEAs, the public, and tribal governments in the state. In addition, states would be required to submit the information to the Secretary of Education. By the end of each fiscal year, the Secretary of Education would be required to submit a report to the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor, and Pensions (hereinafter, the "appropriate congressional committees") containing the information collected from the states.

Title II: Bonds

H.R. 865 would reauthorize certain repealed tax credit bonds (TCBs) and authorize a new TCB, School Infrastructure Bonds. TCBs are an alternative to tax-exempt bonds that offer investors a federal tax credit or the issuer a direct payment proportional to the bond's value in lieu of a

[15] These are primarily students from low-income families.

[16] For more information on the inclusion of children in the ESEA Title I-A formulas, see CRS Report R44164, *ESEA Title I-A Formulas: In Brief*.

[17] For more information on Title I-A of the ESEA and the National School Lunch Program, see CRS Report R44568, *Overview of ESEA Title I-A and the School Meals' Community Eligibility Provision*.

federal tax exemption. Before the 2017 tax revision (P.L. 115-97) repealed the authority to issue new TCBs after December 31, 2017, Qualified School Construction Bonds (QSCBs) and Qualified Zone Academy Bonds (QZABs) were TCBs used to fund school construction and renovation, among other purposes.[18] The bill would also apply certain wage rate requirements to any school infrastructure bond, as have been required for QZABs issued since the date of the enactment of the ARRA.[19]

The remainder of this section provides more-detailed information about the various bond provisions included in H.R. 865.

QSCBs and QZABs

H.R. 865 would amend the Internal Revenue Code to authorize QSCBs and QZABs for the first time since 2017. QSCBs made bond proceeds available for the construction, rehabilitation, or repair of, or the acquisition of land for, a public school facility, including charter schools but excluding postsecondary facilities. They were generally allocated to states based on a state's share of ESEA Title I-A grants. The bonds had a national limit of $11 billion in each of 2009 and 2010. The authority to issue QSCBs expired at the end of calendar year 2010. H.R. 865 would not authorize a new bond limitation for QSCBs, but it would restore a subparagraph in statute (formerly 26 U.S.C. 54A(d)(1)(E)) listing QSCBs as a qualified tax credit bond.

H.R. 865 would also reauthorize QZABs, remove the former private business contribution requirement associated with them, and set the bond limitation at $1.4 billion for each calendar year into perpetuity. In addition to school renovation, the bill would authorize QZABs to be used to fund school construction as well. To be eligible to receive the proceeds from QZABs, a school must be public; be providing education or training below the postsecondary level in an empowerment zone or enterprise community, or have 35% or more of its students qualified for free or reduced price lunches; and cooperate with businesses to enhance the school's curriculum, increase graduation and employment rates, and prepare students for college and the workforce.

School Infrastructure Bonds

Under H.R. 865, School Infrastructure Bonds would function as a new type of tax credit bond to support long-term improvements to public school facilities. The bill would authorize a national volume cap of $10 billion in School Infrastructure Bonds per calendar year from 2020 to 2022. As with the grant appropriation, 0.5% of the annual bond limitation of $10 billion would be allocated to possessions of the United States,[20] and 0.5% would be allocated to the Secretary of the Interior for schools funded by the Bureau of Indian Education. The remainder would be allocated to the states[21] in proportion to their share of all prior-year Title I-A state grants, as authorized under the ESEA, with no hold harmless provision applied.[22] State educational agencies

[18] Funds received from QSCBs were allowed to be used for both school construction and renovation. Funds received from QZABs were allowed to be used only for school renovation.

[19] These requirements are found in Subchapter IV, Chapter 31, Title 40 of the United States Code.

[20] The bill would not define "possessions of the United States." However, regulations for Title 26 of the U.S. Code generally refer to Puerto Rico, Guam, American Samoa, and the Northern Mariana Islands as possessions of the United States (26 CFR §§1.957-3 and 1.931-1). But, to the extent that the proposal would provide an allocation to "possessions" other than Puerto Rico, that would appear to include the U.S. Virgin Islands in the term "possession."

[21] For the purposes of allocating the limitation, "states" include the 50 states, the District of Columbia, and Puerto Rico.

[22] The requirement to determine state grants with no hold harmless provisions applied is in Section 1122(c)(3) of the ESEA. For more information on ESEA Title I-A formulas, see CRS Report R44461, *Allocation of Funds Under Title I-A of the Elementary and Secondary Education Act*.

and the U.S. possessions would then allocate their share of the bond limitation to issuers within their jurisdictions using the same required eligibility and priority criteria established for the competitive grant program in Title I of H.R. 865.

The new School Infrastructure Bond program would provide bond holders with a tax credit equal to 100% of the amount of interest payable by the issuer, and any unused credit could be carried over to the succeeding taxable year. The bill would require bond issuers to spend 100% of the available project proceeds within six years of the date of issuance.

By the end of each fiscal year, the Secretary of the Treasury would be required to submit an annual report on the bond program to the appropriate congressional committees.

Title III: General Provisions

Uses of Funds

H.R. 865 would place certain restrictions on how funds from grants or bonds may be used. Allowable uses would generally include new construction, renovation, major repairs, site acquisition, the reduction or elimination of toxins and pests, the expansion of access to broadband, and compliance with the Americans with Disabilities Act, among other uses for public school facilities. Funds could also be used to develop the facilities master plans required by the bill. LEAs would be prohibited from using funds for routine and predictable maintenance, minor repairs, facilities used primarily for athletic contests or other events that charge admission, vehicles, or facilities that are not primarily used to educate students.

The bill also specifies, for each year, a certain percentage of funds used for new construction or renovation that would have to be used for such activities that are certified, verified, or consistent with "green" standards.[23] The applicable percentage would be 60% in FY2020, 70% in FY2021, 80% in FY2022, 90% in FY2023, and 100% in FY2024 through FY2029. For FY2030 and thereafter, there would be no such requirement for QZABs.[24]

LEAs that receive covered funds[25] from grants or bonds authorized by H.R. 865 would be required to ensure that any iron, steel, and manufactured products used in projects are produced in the United States.[26] However, the Secretary of Education would have authority to waive this

[23] Such standards include the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard (commonly known as the "LEED Green Building Rating System"), the Living Building Challenge developed by the International Living Future Institute, a green building rating program developed by the Collaborative for High-Performance Schools (commonly known as "CHPS") that is CHPS-verified, or a program with equivalent standards that has been adopted by the state or another jurisdiction with authority over the LEA and includes a verifiable method to demonstrate compliance.

[24] The lack of such a requirement in FY2030 and beyond is only relevant to QZABs because they would be authorized in perpetuity, whereas the competitive grants and School Infrastructure Bonds authorized by H.R. 865 would have expired.

[25] Covered funds are those received under Title I of H.R. 865, from a school infrastructure bond, or from a QZAB.

[26] With respect to a manufactured product, which is any construction material or end product that is not an iron or steel product, "produced in the United States" means the product was manufactured in the United States and the cost of the components of the product that were mined, produced, or manufactured in the United States exceeds 60% of the total cost of all components of the product. When used with respect to iron or steel products, or an individual component of a manufactured product, "produced in the United States" means that all manufacturing processes for the iron or steel products or components, from the initial melting stage through the application of coatings, occurred in the United States. However, this does not include steel or iron material or products manufactured abroad from semi-finished steel or iron from the United States, or steel or iron material or products manufactured in the United States from semi-finished steel or iron of foreign origin.

requirement if applying it would be inconsistent with the national interest, if materials produced in the United States are not sufficiently available or of satisfactory quality, or if using materials produced in the United States would increase the cost of the overall project by more than 25%.

Reporting and Information

Within two years of enactment, H.R. 865 would require the Government Accountability Office (GAO) to submit a report on projects carried out by covered funds to the appropriate congressional committees. The report would include the types of projects carried out, their geographic distribution, and an assessment of their impacts on the health and safety of staff and students. The report would also address how the Secretary of Education or the states could make covered funds more accessible to schools with the highest numbers and percentages of students counted in ESEA Title I-A allocation formulas and schools with fiscal challenges in raising capital for school infrastructure projects. GAO would be required to prepare an updated version of the report between 5 and 6 years after enactment and again between 10 and 11 years after enactment.

The bill would also require ED's Institute of Education Sciences to carry out and submit to the appropriate congressional committees a comprehensive study of the physical condition of all public schools in the United States at least once every five years. The report would include an assessment of the effect of school facilities on health, safety, and academic outcomes; the condition of facilities, categorized by geographic region, racial and ethnic groups, and economic status of students; the accessibility of school facilities for students and staff with disabilities; and any differences in these areas of disaggregation between LEAs that received covered funds and those that did not. H.R. 865 does not include an authorization of appropriations for this purpose.

Additionally, H.R. 865 would require the Secretary of Education to establish a clearinghouse to disseminate information on federal programs and financing mechanisms that may be used to assist schools in initiating, developing, and financing energy efficient, energy retrofitting, and distributed generation projects. The bill does not include an authorization of appropriations for this purpose.

Title IV: Impact Aid

The Impact Aid program, administered by ED and authorized by Title VII of the ESEA, compensates LEAs for a "substantial and continuing financial burden" resulting from federal activities, such as federal ownership of certain lands, as well as the enrollments in LEAs of children whose parents work or live on federal property and of children living on tribal lands.[27] The Impact Aid program authorizes several types of payments, including a construction payment (ESEA, Section 7007). The construction payment provides funds for construction and facilities upgrades to certain LEAs, such as those serving high percentages of children living on tribal lands or children with parents on active duty in the uniformed services. These funds are used to make formula and competitive grants.[28] For FY2019, Section 7007 was appropriated $17.4 million. Authorizations of appropriations for Section 7007 are provided through FY2020.

---

[27] For more information about the Impact Aid programs and construction payments, see CRS Report R45400, *Impact Aid, Title VII of the Elementary and Secondary Education Act: A Primer*.

[28] For the past several fiscal years, provisions included in the Labor, Health and Human Services, Education, and Related Agencies (L-HHS-ED) appropriations acts have specified that Section 7007 grants be made using formula grants only or competitive grants only and have specified which of the two grant types would be used for a given fiscal year.

H.R. 865 would extend the authorization of appropriations for Section 7007 through FY2023 at levels substantially higher than current authorization of appropriations levels. For FY2020, Section 7007 has an existing authorization of appropriations level of $18,756,765. H.R. 865 would increase that level to $50,406,000 for FY2021 and FY2022 and $52,756,765 for FY2023.

Cost Estimate

The Congressional Budget Office (CBO) estimates that enactment of H.R. 865 would result in an increase of approximately $8.4 billion in direct spending, a decrease of approximately $1.2 billion in revenues, and an increase of approximately $55.6 billion in outlays subject to appropriation in the period from FY2019 to FY2029.[29] In producing this estimate, CBO assumes that H.R. 865 would be enacted near the end of FY2019 and that authorized and estimated funds would be appropriated every year.

Author Information

Kyle D. Shohfi
Analyst in Education Policy

Disclaimer

[29] Congressional Budget Office, *Cost Estimate of* H.R. 865*, Rebuild America's Schools Act of 2019*, April 8, 2019, https://www.cbo.gov/publication/55105.