

# Session #4: Review State Level Responsibilities in Federal School Facilities Legislation

**Objective:** Prepare for state responsibilities in a federal facilities program



**MODERATOR:** Juan Mireles, 2021 NCSF President and Director of School Facilities & Transportation Services at the California Department of Education



**Presenter:** Mary Filardo, Executive Director, 21st Century School Fund, Director of NCSF, leader of the [Re]Build America's School Infrastructure Coalition (BASIC)

The National Council  
on School Facilities  
**EMPOWERS**  
state facilities  
officials with

- **Research**
- **Advocacy**
- **Connections**
- **Data**

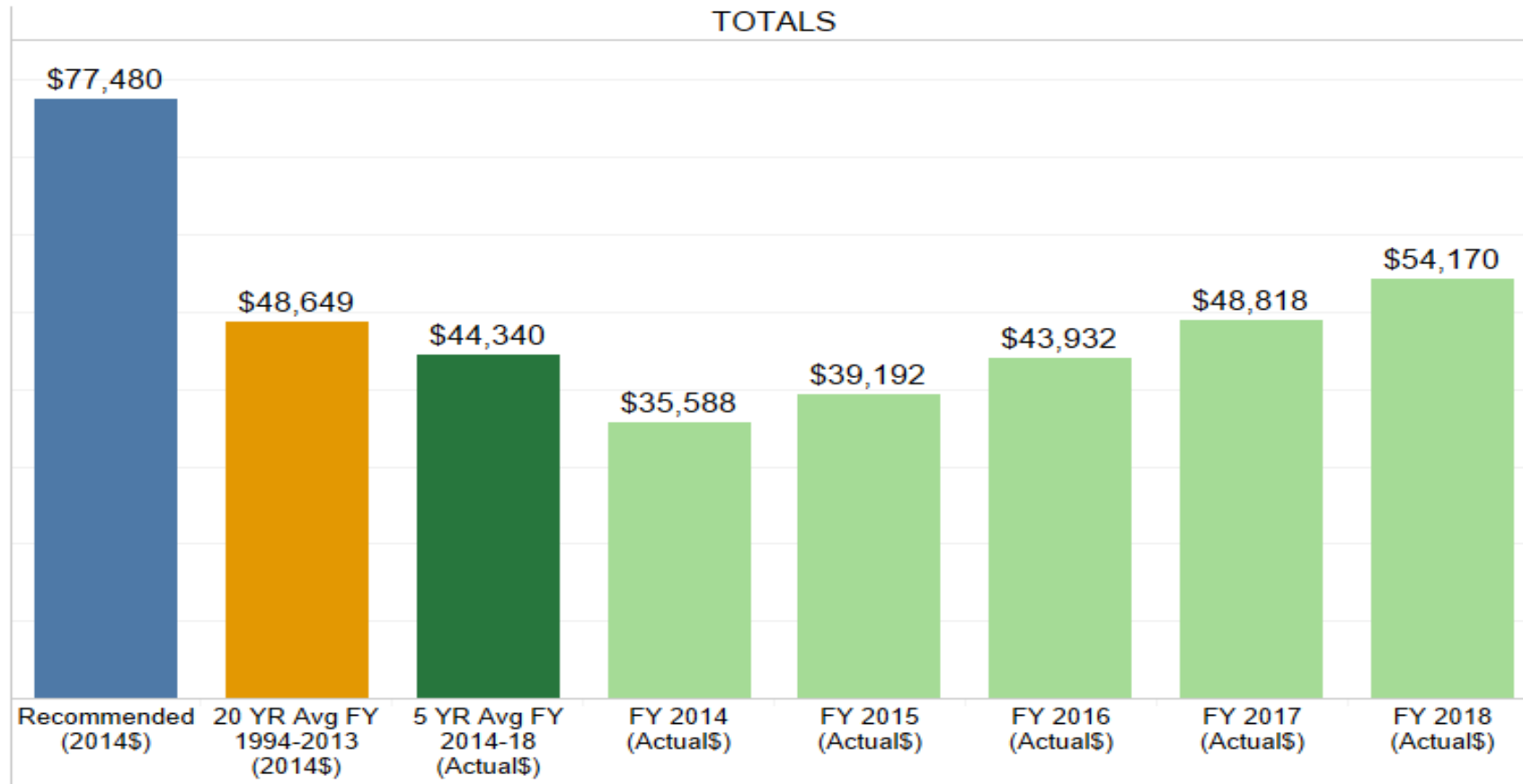
**What will State Responsibilities likely  
be in a Federal Facilities Program?**

# Why FEDERAL funds for school facilities?

## STATE AND LOCAL EFFORT FALLS SHORT

Public School Enrollment 2018-19 (Includes Adult Ed)	Long Term Debt of Local School Districts (end of FY2018)	FY18 Local Debt per SY18-19 Student	FY14-18 Avg. Capital Outlay per SY18-19 Student	FY16-18 Avg. M&O per SY18-19 Student	FY16-18 Avg M&O per 2014 Building GSF
50,611,827	\$477,891,038,000	\$9,442	\$876	\$1,069	\$7.16

**School Construction Capital Outlay in Millions**



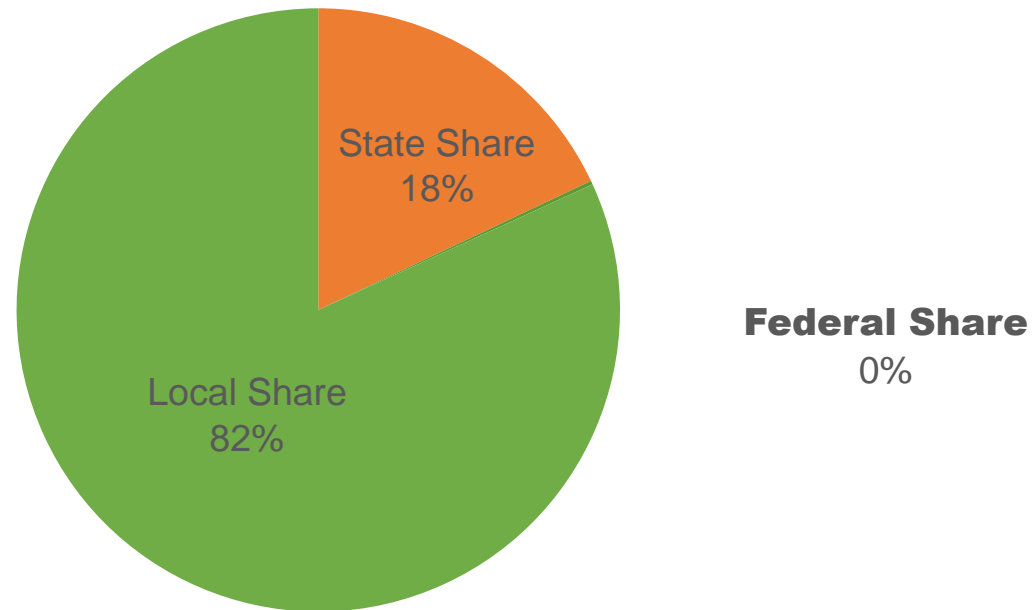
# Why FEDERAL funds for school facilities?

## CAPITAL FUNDING IS INEQUITABLE

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Local communities were responsible for 82% of capital construction project costs FY1994-2013.

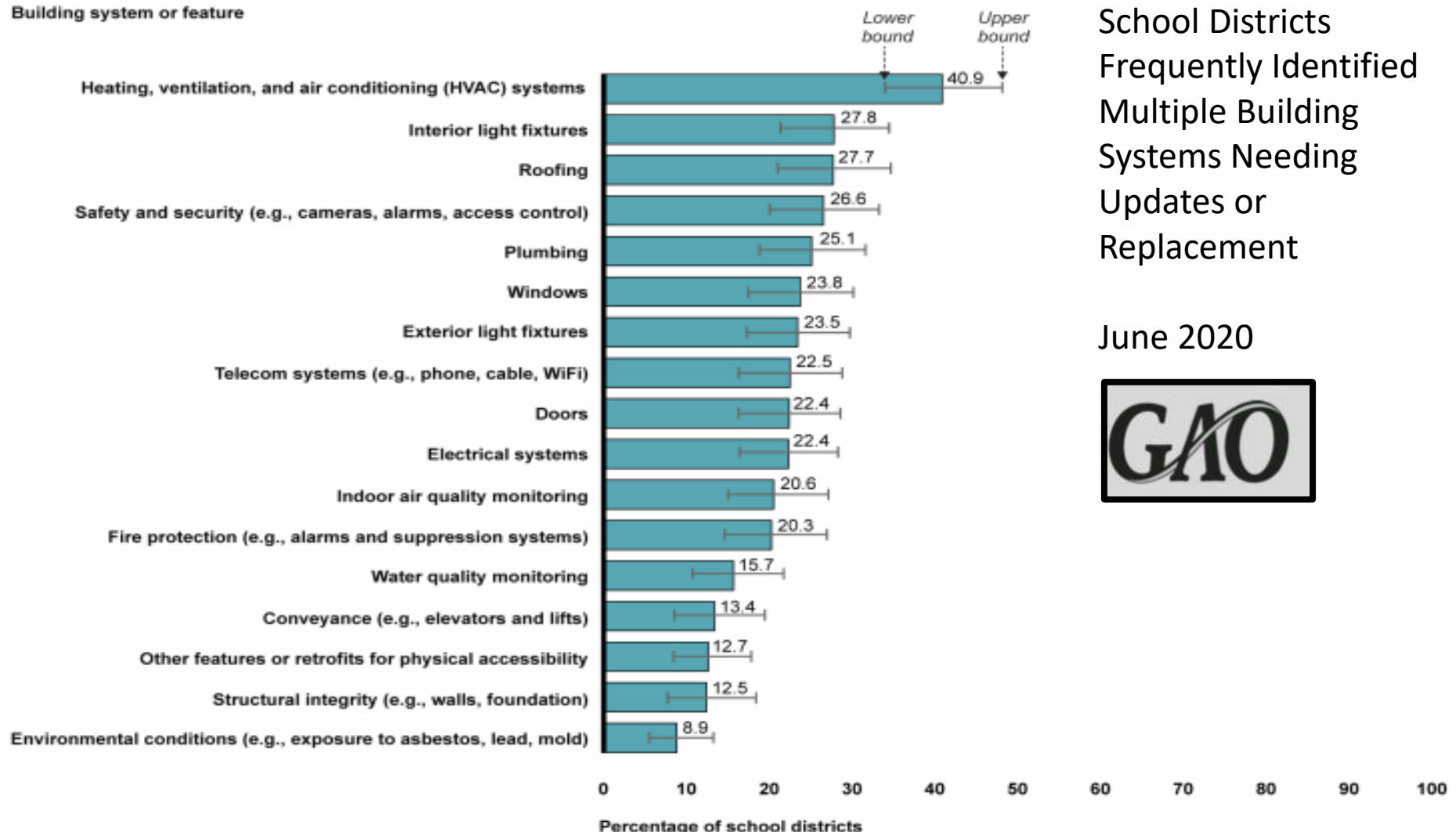
CAPITAL COSTS



# Why invest in school facilities?

## SCHOOL FACILITIES NEED MODERNIZING

Percentage of school districts in which at least half the schools need updates or replacements of key building systems or features.



# Why invest in school facilities?

There are new programs and standards critical for today and the future.

- Early Childhood
- Expanded Programming
- Special Education
- Student Support Services
- Technology
- Safety and Security
- Athletic Requirements
- Environmental Issues
- Energy Systems & Efficiencies
- Building Codes
- Emergency Response

# H.R. 2

## THE MOVING FORWARD ACT

FOR THE PEOPLE

\$1.5 T plan to rebuild American infrastructure

“It's about investing in infrastructure that is smarter, safer, and made to last.”

**Roads - Bridges - Transit systems -  
Schools - Housing - Broadband access**

# H.R. 2 Division K – The Reopen and Rebuild America’s Schools

## **Title I— GRANTS FOR THE LONG-TERM IMPROVEMENT OF PUBLIC SCHOOL FACILITIES**

### **Subtitle A—Reservation and Allocation of Funds**

#### **Reservation of Funds**

- (A) This section **reserves 0.5% of funds for the outlying areas** proportionate to their share of funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA),
- (B) This section reserves **0.5% of funds for schools funded by the Bureau of Indian Education (BIE)**.

#### **SEC. 70102. Allocation to States**

- (A) Each state that has a plan approved by the Secretary shall be allocated funds in proportion to the funds that all Local Education Agencies (LEAs) in the State receive under Title I, Part A of the ESEA.



State/Entity	Grants - State Amount, HR 2 RRASA each Year for 5 Years	Bonds - Maximum Face Amount of Bonds, each Year for 3 Years
Alabama	\$ 324,720,000	\$ 162,360,000
Alaska	\$ 57,420,000	\$ 28,710,000
Arizona	\$ 415,800,000	\$ 207,900,000
Arkansas	\$ 192,060,000	\$ 96,030,000
California	\$ 2,465,100,000	\$ 1,232,550,000
Colorado	\$ 180,180,000	\$ 90,090,000
Connecticut	\$ 166,320,000	\$ 83,160,000
Delaware	\$ 65,340,000	\$ 32,670,000
District of Columbia	\$ 63,360,000	\$ 31,680,000
Florida	\$ 1,152,360,000	\$ 576,180,000
Georgia	\$ 685,080,000	\$ 342,540,000
Hawaii	\$ 65,340,000	\$ 32,670,000
Idaho	\$ 71,280,000	\$ 35,640,000
Illinois	\$ 851,400,000	\$ 425,700,000
Indiana	\$ 320,760,000	\$ 160,380,000
Iowa	\$ 106,920,000	\$ 53,460,000
Kansas	\$ 126,720,000	\$ 63,360,000
Kentucky	\$ 289,080,000	\$ 144,540,000
Louisiana	\$ 429,660,000	\$ 214,830,000
Maine	\$ 65,340,000	\$ 32,670,000
Maryland	\$ 310,860,000	\$ 155,430,000
Massachusetts	\$ 320,760,000	\$ 160,380,000
Michigan	\$ 584,100,000	\$ 292,050,000
Minnesota	\$ 209,880,000	\$ 104,940,000
Mississippi	\$ 253,440,000	\$ 126,720,000
Missouri	\$ 312,840,000	\$ 156,420,000
Montana	\$ 61,380,000	\$ 30,690,000

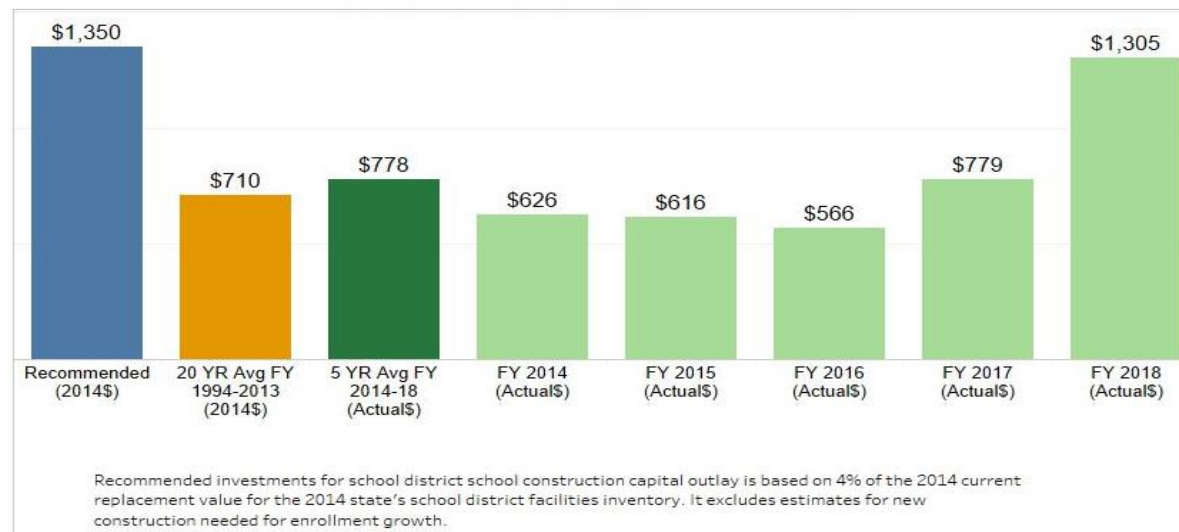
State/Entity	Grants - State Amount, HR 2 RRASA each Year for 5 Years	Bonds - Maximum Face Amount of Bonds, each Year for 3 Years
Nebraska	\$ 97,020,000	\$ 48,510,000
Nevada	\$ 176,220,000	\$ 88,110,000
New Hampshire	\$ 55,440,000	\$ 27,720,000
New Jersey	\$ 465,300,000	\$ 232,650,000
New Mexico	\$ 162,360,000	\$ 81,180,000
New York	\$ 1,552,320,000	\$ 776,160,000
North Carolina	\$ 594,000,000	\$ 297,000,000
North Dakota	\$ 49,500,000	\$ 24,750,000
Ohio	\$ 732,600,000	\$ 366,300,000
Oklahoma	\$ 241,560,000	\$ 120,780,000
Oregon	\$ 182,160,000	\$ 91,080,000
Pennsylvania	\$ 784,080,000	\$ 392,040,000
Puerto Rico	\$ 522,720,000	\$ 261,360,000
Rhode Island	\$ 69,300,000	\$ 34,650,000
South Carolina	\$ 324,720,000	\$ 162,360,000
South Dakota	\$ 61,380,000	\$ 30,690,000
Tennessee	\$ 388,080,000	\$ 194,040,000
Texas	\$ 1,924,560,000	\$ 962,280,000
Utah	\$ 100,980,000	\$ 50,490,000
Vermont	\$ 47,520,000	\$ 23,760,000
Virginia	\$ 356,400,000	\$ 178,200,000
Washington	\$ 324,720,000	\$ 162,360,000
West Virginia	\$ 128,700,000	\$ 64,350,000
Wisconsin	\$ 261,360,000	\$ 130,680,000
Wyoming	\$ 49,500,000	\$ 24,750,000
Outlying Areas	\$ 100,000,000	\$ 50,000,000
Bureau of Indian Education	\$ 100,000,000	\$ 50,000,000

## Quick Math on Scale of Federal Funding – 10 year Plan COLORADO

Assessed Need for Capital Improvements	\$14,000,000,000
10 Year annual assessed need—State Assessment	\$1,400,000,000
10 Year annual assessed need—State of our Schools 2016	\$1,350,000,000
20 year annual average state & local school construction capital outlay 1994-2013 (2014\$)	\$710,000,000
5 year annual average, state and local expenditures 2014-2018 (current\$)	\$778,000,000
Proposed Federal Share TOTAL in H.R. 2 (grants only)	\$900,900,000
10 year annual estimate – 6% of 10 year needs	\$90,090,000

**H.R. 2 would provide Colorado with 6% of its 10 year assessed needs.**

School Construction Capital Outlay *in Millions*



# H.R. 2 State reservation of 1%

(2) A State may reserve not more than 1 percent of its allocation under paragraph (1) to carry out its responsibilities under this division, which—

(A) shall include—

- i. **Technical assistance** to districts
- ii. Online publicly accessible **database of facilities** inventory
- iii. **Updating database** at least every two years
- iv. Ensuring that it is **publicly accessible and regularly distributed**
- v. **Issue and review regulations** to ensure occupant health and safety during construction or renovation
- vi. **Issue and review regulations** to ensure safe, healthy, and high-performing school buildings
- vii. **Create a plan to reduce or eliminate exposure to toxins and chemicals**, including mercury, radon, PCBs, lead, vapor intrusions and asbestos.

If Colorado expended its 1% over ten years, then administrative support for these responsibilities would be about \$900,000 per year.

*NOTE: Senate Economic Justice Act has a state reservation of 5% to carry out state the same list of state responsibilities under the act*

## (b) STATE PLAN

- (1) IN GENERAL.—To be eligible to receive an allocation under this section, a State shall submit to the Secretary a plan that—
- (A) describes how the State will use the allocation to make long-term improvements to public school facilities;
  - (B) explains how the State will carry out each of its responsibilities under subsection (a)(2);
  - (C) explains how the State will make the determinations under subsections (b) and (c) of section 70111;
  - (D) identifies how long, and at what levels, the State will maintain fiscal effort for the activities supported by the allocation after the State no longer receives the allocation; and
  - (E) includes such other information as the Secretary may require.

# State Matching - Conditions for Allocation (1)

## (1) Matching Requirement.—

- (A) IN GENERAL.—The State shall contribute, from **non-Federal sources**, an amount equal to **10 percent** of the amount of the allocation received under this section to carry out the activities supported by the allocation.

(B) DEADLINE.—The State shall provide any contribution required under subparagraph **(A) not later than September 30, 2029.**

(C) CERTAIN FISCAL YEARS.—With respect to a fiscal year for which **more than \$7,000,000,000** are appropriated to carry out this title, subparagraph (A) shall be applied as if “, from non-Federal sources,” were struck.

# Maintenance of Effort - Conditions for Allocation (2)

## (2) MAINTENANCE OF EFFORT.—

The State shall provide an assurance to the Secretary that the combined fiscal effort or the aggregate expenditures of the State with respect to the activities supported by the allocation under this section for fiscal years beginning with the fiscal year for which the allocation is received **will be not less than 90 percent of the 5 year average for total capital outlay of the combined fiscal effort or aggregate expenditures by the State** for the purposes for which the allocation is received.

# Supplement not Supplant - Conditions for Allocation (3)

## (3) SUPPLEMENT NOT SUPPLANT.—

The State shall **use an allocation under this section only to supplement the level of Federal, State, and local public funds** that would, in absence of such allocation, be made available for the activities supported by the allocation, and not to supplant such funds.

# H.R. 2 Subtitle B– Grants to Local Educational Agencies

## Need-Based Grants to Qualified Local Education Agencies

States shall **allocate all funds competitively to LEAs** based on:

- the poverty level of the school,
- fiscal limitations to raise funds to improve school facilities, and
- the severity of the need to improve school facilities.
- geographic diversity of the State

For the FY 2020 funds, **States must prioritize subgrants to fund projects necessary to reopen schools in line with Center for Disease and Control and Prevention (CDC) guidelines.**

States may distribute up to 10% of the total allocation of grants to enable LEAs to leverage existing public programs or public-private partnerships to expand access to high-speed broadband sufficient for digital learning.



## H.R. 2 LEA Requirements in State Application

Comprehensive 10 year master plan in consultation with teachers, principals, school leaders, local and central facilities staff, first responders, students, families, community residents, and Indian Tribes and Tribal organizations, addressing:

- Adequacy
- Condition
- Health and safety
- Environmental conditions
- Enrollment levels
- Amount of funds from LEA for capital and M&O

# H.R. 2 - Allowable Uses



- (1) develop **the facilities master plan** required under section 70111(e);
- (2) **construct, modernize, renovate, or retrofit public school facilities**, which may include seismic retrofitting for schools vulnerable to seismic natural disasters;
- (3) carry out **major repairs** of public school facilities;
- (4) install **furniture or fixtures with at least a 10-year life** in public school facilities;
- (5) **construct new public school facilities**;
- (6) **acquire and prepare sites** on which new public school facilities will be constructed;
- (7) **extend the life of basic systems and components** of public school facilities;
- (8) **ensure current or anticipated enrollment does not exceed the physical and instructional capacity** of public school facilities;
- (9) ensure the building envelopes and interiors of public school facilities **protect occupants from natural elements and human threats, and are structurally sound and secure**;
- 10) **compose building design plans that strengthen the safety and security** on school premises by utilizing design elements, principles, and technology that—
  - (A) guarantee layers of security throughout the school premises; and
  - (B) uphold the aesthetics of the school premises as a learning and teaching environment;
- (11) **improve energy and water efficiency** to lower the costs of energy and water consumption in public school facilities;
- (12) **improve indoor air quality** in public school facilities;
- (13) **reduce or eliminate** the presence of—
  - (A) toxic substances, including mercury, radon, PCBs, lead, and asbestos;
  - (B) mold and mildew; or
  - (C) rodents and pests;

## H.R. 2 Allowable Uses, Title I *continued...*

(14) **ensure the safety of drinking water** at the tap and water used for meal preparation in public school facilities, which may include testing of the potability of water at the tap for the presence of lead and other contaminants;

(15) **bring public school facilities into compliance** with applicable fire, health, and safety codes;(16) make public school facilities accessible to people with disabilities through compliance with the Americans with Disabilities Act of 1990 (42 U.S.C.12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(17) **provide instructional program space improvements** (including through the construction of outdoor instructional space) for programs relating to early learning (including early learning programs operated by partners of the agency), special education, science, technology, career and technical education, physical education, music, the arts, and literacy (including library programs);

(18) **increase the use of public school facilities for the purpose of community-based partnerships** that provide students with academic, health, and social services;

(19) **ensure the health of students and staff during the construction or modernization** of public school facilities; or

(20) **reduce or eliminate excessive classroom noise** due to activities allowable under this section.

(b) ALLOWANCE FOR DIGITAL LEARNING. —A local educational agency may use funds received under section 70111(a)(2) to leverage existing public programs or public-private partnerships to expand access to high-speed broadband sufficient for digital learning.

# H.R. 2 Prohibited Uses

A local educational agency that receives covered funds **may not use such funds for—**

- (1) payment of routine and predictable maintenance costs and minor repairs;**
- (2) any facility that is primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;**
- (3) vehicles; or**
- (4) central offices, operation centers, or other facilities that are not primarily used to educate students.**

# H.R. 2 - Standards

**Requirements for Hazard-Resistance and Energy and Water Conservation.** Requires LEAs that receive funds for new construction to meet or exceed the requirements of a nationally recognized, consensus-based model building code, and the performance criteria under the Water Sense program of the Energy Policy and Conservation Act (42 U.S.C. 6294b).

**Green Practices** outlines the requirements for green practices for Title I. (a) **GENERAL.**—In a given fiscal year, a local educational agency that uses covered funds for a new construction project or renovation project shall use not less than the applicable percentage (as described in subsection (b)) of the funds used for such project for construction or renovation that is certified, verified, or consistent with the applicable provisions of—

- (1) 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”);
- (2) the Living Building Challenge developed by the International Living Future Institute;
- (3) a green building rating program developed by the Collaborative for High-Performance Schools (commonly known as “CHPS”) that is CHPS verified; or
- (4) a program that—

(A) has standards that are equivalent to or more stringent than the standards of a program described in paragraphs (1) through (3);

(B) is adopted by the State or another jurisdiction with authority over the agency; and

(C) includes a verifiable method to demonstrate compliance with such program.

## H.R. 2 Subtitle C—Annual Report and Authorization of Appropriations

**Annual Report on Grant Program** requires that the Secretary annually submit to Congress a report that includes a description of the projects carried out under the grant program as well as the demographic information of students attending schools that used funds from the grant program.

**Authorization of Appropriations** authorizes to be appropriated \$100 billion total for Title I of this Act from FY 2020 through FY 2024 and provides States until September 30, 2029 to spend allocations.

# H.R. 2 Title II Other Reports, Development of Standards, And Information Clearinghouse

**Comptroller General** requires the Comptroller General to submit to Congress a report that must include the geographic distribution of projects, the impact of projects on student and staff health and safety, and how funds under these projects could be made more accessible to high-poverty schools and those with limited fiscal capacities.

**Study and Report of Physical Conditions of Public Schools** requires that the Institute of Educational Sciences carry out a national study that includes the condition of public-school facilities, the impact of such facilities on students and staff, and a cost estimate for bringing schools to good condition.

**Development of Data Standards** requires that the Secretary, in consultation with the Environmental Protection Agency, CDC, Department of Energy, and the National Institute for Occupational Safety and Health, develop guidance on data to be collected by States under Section 70102.

**Information Clearinghouse** requires that the Secretary, in consultation with the officials in Section 70203, to disseminate information to schools on financing for green projects.

**Sense of Congress on Opportunity Zones** that opportunity zones, when combined with public infrastructure investment, can provide an innovative approach to help rebuild local schools and economies.

# H.R. 2 Title III—Impact Aid Construction

**Section 70301.** Temporary Increase in Funding for Impact Aid Construction temporarily increases authorized funding for the Impact Aid Construction program under Elementary and Secondary Education Act by **\$500 million** for each of FY 2020 2021, 2022, 2023, 2024.

## **Title IV—Assistance for Repair of School Foundations Affected by Pyrrhotite**

**Section 70401. Allocations to States** requires the Secretary to create a program, within 180 days of enactment, that would provide federal funding to states to distribute grants to LEAs for the repair or replacement of crumbling foundations due to pyrrhotite. Requires the Secretary to publish on the Department of Education’s website instructions on how a state may receive funding for this program.

**Section 70402. Grants to Local Educational Agencies** requires the Secretary to award funds to states to either pay the future costs of repairing foundations deteriorating due to pyrrhotite, or to reimburse LEAs for the cost of repairs or replacement during the previous five-year period prior to this provision becoming law.



# Session #5: Discussions on the State Responsibilities in Proposed Legislation

## Legislation Elements for Discussion

- 1) State level PK12 public educational facilities inventory database
- 2) Technical assistance to districts
- 3) Facilities standards and regulations
- 4) Facilities ombudsman
- 5) Criteria for selecting districts and projects to award federal funding to
- 6) State match

# NCSF 2016 Federal Policy Resolution

The National Council on School Facilities is the nonprofit membership association of state-level facilities officials of U.S. states, territories, and federal agencies. The mission of the Council is to educate, serve, and advocate on behalf of states in their responsibilities for the nation's public school buildings and grounds.

Whereas: Sufficient infrastructure is critical to the health, safety, and economic productivity of our nation;

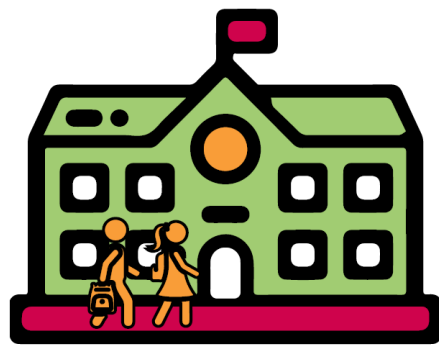
Whereas: Public school buildings and grounds are a major component of our nation's public infrastructure, with a current replacement value of \$2 trillion; and

Whereas: \$380 billion nationally over ten years<sup>1</sup> is required to close the gap between historic spending and accepted industry standards for the capital requirements of our nation's PK–12 public school facilities;

**Therefore be it resolved that:**

The National Council on School Facilities advocates that PK–12 public school buildings and grounds be included in federal programs to address infrastructure needs.

Approved by unanimous vote of the members of the National Council present on December 6, 2016.



# BASIC

[Re] Build America's School Infrastructure Coalition

A non-partisan civic, public sector, labor, and industry coalition that supports federal funding to help under-served public school districts modernize and build PK-12 public school facilities.

We believe that ALL children should attend school in healthy, safe, and educationally appropriate facilities. It's BASIC.

To learn more & join **BASIC** go to [www.buildUSschools.org](http://www.buildUSschools.org)

Contact: Mary Filardo at [mfilardo@21csf.org](mailto:mfilardo@21csf.org)