

**SUBSTITUTE AMENDMENT TO THE KLINE
AMENDMENT TO H.R. 3094
OFFERED BY _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. PURPOSE.

2 The purpose of this Act is to provide assistance for
3 the modernization, renovation, and repair of elementary
4 and secondary school buildings in public school districts
5 across America in order to support the achievement of im-
6 proved educational outcomes in those schools.

7 SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

8 There are authorized to be appropriated
9 \$25,000,000,000 for fiscal year 2012 to carry out this
10 Act.

11 SEC. 3. ALLOCATION OF FUNDS.

12 (a) RESERVATIONS.—Of the amount made available
13 to carry out this Act, the Secretary of Education shall re-
14 serve—

15 (1) one-half of one percent for the Secretary of
16 the Interior to carry out modernization, renovation,
17 and repair activities described in section 6 in schools

1 operated or funded by the Bureau of Indian Edu-
2 cation;

3 (2) one-half of one percent to make grants to
4 the outlying areas for modernization, renovation,
5 and repair activities described in section 6; and

6 (3) such funds as the Secretary determines are
7 needed to conduct a survey, by the National Center
8 for Education Statistics, of the school construction,
9 modernization, renovation, and repair needs of the
10 public schools of the United States.

11 (b) STATE ALLOCATION.—After reserving funds
12 under subsection (a), the Secretary shall allocate the re-
13 maining amount among the States in proportion to their
14 respective allocations under part A of title I of the Ele-
15 mentary and Secondary Education Act of 1965 (in this
16 Act referred to as the “ESEA”) (20 U.S.C. 6311 et seq.)
17 for fiscal year 2011, except that—

18 (1) the Secretary shall allocate 40 percent of
19 such remaining amount to the 100 local educational
20 agencies with the largest numbers of children aged
21 5–17 living in poverty, as determined using the most
22 recent data available from the Department of Com-
23 merce that are satisfactory to the Secretary, in pro-
24 portion to those agencies’ respective allocations

1 under part A of title I of the ESEA for fiscal year
2 2011; and

3 (2) the allocation to any State shall be reduced
4 by the aggregate amount of the allocations under
5 paragraph (1) to local educational agencies in that
6 State.

7 (c) REMAINING ALLOCATION.—

8 (1) STATES.—If a State does not apply for its
9 allocation under subsection (b) (or applies for less
10 than the full allocation for which it is eligible) or
11 does not use that allocation in a timely manner, the
12 Secretary may—

13 (A) reallocate all or a portion of that allo-
14 cation to the other States in accordance with
15 subsection (b); or

16 (B) use all or a portion of that allocation
17 to make direct allocations to local educational
18 agencies within the State based on their respec-
19 tive allocations under part A of title I of the
20 ESEA for fiscal year 2011 or such other meth-
21 od as the Secretary may determine.

22 (2) LOCAL EDUCATIONAL AGENCIES.—If a local
23 educational agency does not apply for its allocation
24 under subsection (b)(1), applies for less than the full
25 allocation for which it is eligible, or does not use

1 that allocation in a timely manner, the Secretary
2 may reallocate all or a portion of its allocation to the
3 State in which that agency is located.

4 **SEC. 4. STATE USE OF FUNDS.**

5 (a) RESERVATION.—Each State that receives a grant
6 under this Act may reserve not more than one percent of
7 the State’s allocation under section 3(b) for the purpose
8 of administering the grant, except that no State may re-
9 serve more than \$750,000 for this purpose.

10 (b) FUNDS TO LOCAL EDUCATIONAL AGENCIES.—

11 (1) FORMULA SUBGRANTS.—From the grant
12 funds that are not reserved under subsection (a), a
13 State shall allocate at least 50 percent to local edu-
14 cational agencies, including charter schools that are
15 local educational agencies, that did not receive funds
16 under section 3(b)(1) from the Secretary, in accord-
17 ance with their respective allocations under part A
18 of title I of the ESEA for fiscal year 2011, except
19 that no such local educational agency shall receive
20 less than \$10,000.

21 (2) ADDITIONAL SUBGRANTS.—The State shall
22 use any funds remaining, after reserving funds
23 under subsection (a) and allocating funds under
24 paragraph (1), for subgrants to local educational
25 agencies that did not receive funds under section

1 3(b)(1), including charter schools that are local edu-
2 cational agencies, to support modernization, renova-
3 tion, and repair projects that the State determines,
4 using objective criteria, are most needed in the
5 State, with priority given to projects in rural local
6 educational agencies.

7 (c) REMAINING FUNDS.—If a local educational agen-
8 cy does not apply for an allocation under subsection
9 (b)(1), applies for less than its full allocation, or fails to
10 use that allocation in a timely manner, the State may re-
11 allocate any unused portion to other local educational
12 agencies in accordance with subsection (b).

13 **SEC. 5. STATE AND LOCAL APPLICATIONS.**

14 (a) STATE APPLICATION.—A State that desires to re-
15 ceive a grant under this Act shall submit an application
16 to the Secretary at such time, in such manner, and con-
17 taining such information and assurances as the Secretary
18 may require, which shall include—

19 (1) an identification of the State agency or enti-
20 ty that will administer the program under this Act;
21 and

22 (2) the State's process for determining how the
23 grant funds will be distributed and administered, in-
24 cluding—

1 (A) how the State will determine the cri-
2 teria and priorities in making subgrants under
3 section 4(b)(2);

4 (B) any additional criteria the State will
5 use in determining which projects it will fund
6 under that section;

7 (C) a description of how the State will con-
8 sider—

9 (i) the needs of local educational
10 agencies for assistance under this Act;

11 (ii) the impact of potential projects on
12 job creation in the State;

13 (iii) the fiscal capacity of local edu-
14 cational agencies applying for assistance;

15 (iv) the percentage of children in
16 those local educational agencies who are
17 from low-income families; and

18 (v) the potential for leveraging assist-
19 ance provided by the program under this
20 Act through matching or other financing
21 mechanisms;

22 (D) a description of how the State will en-
23 sure that the local educational agencies receiv-
24 ing subgrants meet the requirements of this
25 Act;

1 (E) a description of how the State will en-
2 sure that the State and its local educational
3 agencies meet the deadlines established in sec-
4 tion 8;

5 (F) a description of how the State will give
6 priority to the use of green practices that are
7 certified, verified, or consistent with any appli-
8 cable provisions of—

9 (i) the LEED Green Building Rating
10 System;

11 (ii) Energy Star;

12 (iii) the CHPS Criteria;

13 (iv) Green Globes; or

14 (v) an equivalent program adopted by
15 the State or another jurisdiction with au-
16 thority over the local educational agency;

17 (G) a description of the steps that the
18 State will take to ensure that local educational
19 agencies receiving subgrants under this Act will
20 adequately maintain any facilities that are mod-
21 ernized, renovated, or repaired with such
22 subgrant funds; and

23 (H) such additional information and assur-
24 ances as the Secretary may require.

1 (b) LOCAL APPLICATION.—A local educational agen-
2 cy that is eligible under section 3(b)(1) that desires to re-
3 ceive a grant under this Act shall submit an application
4 to the Secretary at such time, in such manner, and con-
5 taining such information and assurances as the Secretary
6 may require, which shall include—

7 (1) a description of how the local educational
8 agency will meet the deadlines and requirements of
9 this Act;

10 (2) a description of the steps that the local edu-
11 cational agency will take to adequately maintain any
12 facilities that are modernized, renovated, or repaired
13 with funds under this Act; and

14 (3) such additional information and assurances
15 as the Secretary may require.

16 **SEC. 6. USE OF FUNDS.**

17 (a) IN GENERAL.—Funds awarded to local edu-
18 cational agencies under this Act shall be used only for ei-
19 ther or both of the following modernization, renovation,
20 or repair activities in facilities that are used for elemen-
21 tary or secondary education or for early learning pro-
22 grams:

23 (1) Direct payments for school modernization,
24 renovation, or repair.

1 (2) To pay interest on bonds or payments for
2 other financing instruments that are newly issued
3 for the purpose of financing school modernization,
4 renovation, or repair.

5 (b) SUPPLEMENT, NOT SUPPLANT.—Funds made
6 available under this Act shall be used to supplement, and
7 not supplant, other Federal, State, and local funds that
8 would otherwise be expended to modernize, renovate, or
9 repair eligible school facilities.

10 (c) PROHIBITION.—Funds awarded to local edu-
11 cational agencies under this Act may not be used for—

12 (1) new construction;

13 (2) payment of routine maintenance costs; or

14 (3) modernization, renovation, or repair of sta-
15 diums or other facilities primarily used for athletic
16 contests or exhibitions or other events for which ad-
17 mission is charged to the general public.

18 **SEC. 7. PRIVATE SCHOOLS.**

19 (a) IN GENERAL.—Section 9501 of the ESEA (20
20 U.S.C. 7881) shall apply to this Act in the same manner
21 as it applies to activities under that Act, except that—

22 (1) such section 9501 shall not apply with re-
23 spect to the title to any real property modernized,
24 renovated, or repaired with assistance provided
25 under this Act;

1 (2) educational services or other benefits funded
2 under this Act for private schools shall be provided
3 only to private, nonprofit elementary or secondary
4 schools with a rate of child poverty of at least 40
5 percent and may include only—

6 (A) modifications of school facilities nec-
7 essary to meet the standards applicable to pub-
8 lic schools under the Americans with Disabil-
9 ities Act of 1990 (42 U.S.C. 12101 et seq.);

10 (B) modifications of school facilities nec-
11 essary to meet the standards applicable to pub-
12 lic schools under section 504 of the Rehabilita-
13 tion Act of 1973 (29 U.S.C. 794); and

14 (C) asbestos or polychlorinated biphenyls
15 abatement or removal from school facilities; and

16 (3) expenditures for services provided using
17 funds made available under section 6 shall be con-
18 sidered equal for purposes of section 9501(a)(4) of
19 the ESEA if the per-pupil expenditures for services
20 described in paragraph (2) for students enrolled in
21 private, nonprofit elementary and secondary schools
22 that have child-poverty rates of at least 40 percent
23 are consistent with the per-pupil expenditures under
24 this Act for children enrolled in the public schools of

1 the local educational agency receiving funds under
2 this Act.

3 (b) REMAINING FUNDS.—If the expenditure for serv-
4 ices described in subsection (a)(2) is less than the amount
5 calculated under subsection (a)(3) because of insufficient
6 need for those services, the remainder shall be available
7 to the local educational agency for modernization, renova-
8 tion, or repair of its school facilities.

9 (c) APPLICATION.—If any provision of this section,
10 or the application thereof, to any person or circumstance
11 is judicially determined to be invalid, the remainder of the
12 section and the application to other persons or cir-
13 cumstances shall not be affected thereby.

14 **SEC. 8. ADDITIONAL PROVISIONS.**

15 (a) 24-MONTH PERIOD OF AVAILABILITY.—Funds
16 made available under section 2 shall be available for obli-
17 gation by local educational agencies receiving grants from
18 the Secretary under section 3(b)(1), by States reserving
19 funds under section 4(a), and by local educational agencies
20 receiving subgrants under section 4(b)(1) only during the
21 period that ends 24 months after the date of enactment
22 of this Act.

23 (b) 36-MONTH PERIOD OF AVAILABILITY.—Funds
24 made available under section 2 shall be available for obli-
25 gation by local educational agencies receiving subgrants

1 under section 4(b)(2) only during the period that ends 36
2 months after the date of enactment of this Act.

3 (c) APPLICABILITY OF GEPA.—Section 439 of the
4 General Education Provisions Act (20 U.S.C. 1232b) shall
5 apply to funds available under this Act.

6 (d) LIMITATION.—For purposes of section 3(b)(1),
7 Hawaii, the District of Columbia, and the Commonwealth
8 of Puerto Rico are not local educational agencies.

