

111TH CONGRESS
2D SESSION

S. _____

To establish an Education Jobs Fund.

IN THE SENATE OF THE UNITED STATES

Mr. HARKIN (for himself, Mr. BINGAMAN, Mr. BURRIS, Mr. DURBIN, Mr. BROWN of Ohio, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To establish an Education Jobs Fund.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Keep Our Educators
5 Working Act of 2010”.

6 **SEC. 2. RETAINING EDUCATORS.**

7 (a) EDUCATION JOBS FUND.—There is appropriated,
8 for fiscal year 2010, for necessary expenses for an Edu-
9 cation Jobs Fund, \$23,000,000,000. Such amount shall
10 be appropriated, out of any money in the Treasury not
11 otherwise appropriated, for the Department of Education.

1 The amount shall remain available for obligation by the
2 Department through the date that is 180 days after the
3 date of enactment of this Act. The amount shall be admin-
4 istered by the Secretary of Education under the terms and
5 conditions of titles XIV and XV of division A of the Amer-
6 ican Recovery and Reinvestment Act of 2009 (Public Law
7 111–5), subject to the provisions of subsection (b).

8 (b) SPECIAL RULES.—

9 (1) ALLOTMENTS TO STATES AND OUTLYING
10 AREAS.—The funds appropriated under this Act
11 shall be available only for allocations by the Sec-
12 retary of Education under subsections (a) and (d) of
13 section 14001 of the American Recovery and Rein-
14 vestment Act of 2009 (Public Law 111–5), except
15 that the Secretary may reserve not more than
16 \$1,000,000 for administration and oversight of this
17 Act, including for program administration.

18 (2) RESERVATION BY STATE.—With respect to
19 funds appropriated under this Act, a State that re-
20 ceives an allocation of such funds in accordance with
21 section 14001(d) of such Act may reserve a total of
22 not more than 5 percent of the State’s allocation
23 for—

24 (A) the administrative costs of carrying
25 out the State’s responsibilities with respect to

1 such funds, except that in no case shall the
2 State reserve more than 1 percent of its total
3 allocation for those costs; and

4 (B) the costs of retaining or creating posi-
5 tions in the State educational agency or the
6 State agency for higher education, and other
7 State agency positions related to the adminis-
8 tration or support of early childhood, elemen-
9 tary, secondary, or postsecondary education.

10 (3) AWARDS TO LOCAL EDUCATIONAL AGEN-
11 CIES AND PUBLIC INSTITUTIONS OF HIGHER EDU-
12 CATION.—

13 (A) USE OF FUNDS.—Subsections (a) and
14 (b) of section 14002 of the American Recovery
15 and Reinvestment Act of 2009 (Public Law
16 111–5) shall not apply to an allocation of funds
17 appropriated under this Act. Except as provided
18 under paragraph (2), an allocation of such
19 funds shall be used only for awards to local
20 educational agencies and public institutions of
21 higher education for the support of early child-
22 hood, elementary, secondary, and postsecondary
23 education in accordance with subparagraph (B).

24 (B) DISTRIBUTION BY GOVERNOR.—

1 (i) IN GENERAL.—The Governor of a
2 State receiving an allocation of funds ap-
3 propriated under this Act shall use the ap-
4 propriated funds to award grants to local
5 educational agencies (through the State’s
6 primary elementary and secondary funding
7 formulae) and public institutions of higher
8 education in order to restore the reduc-
9 tions in State funding for elementary and
10 secondary education and for public institu-
11 tions of higher education, respectively, that
12 remain for fiscal years 2010 and 2011, as
13 determined in accordance with clause (iv).

14 (ii) INSUFFICIENT AMOUNT.—

15 (I) IN GENERAL.—In the case of
16 a State that receives an allocation of
17 funds appropriated under this Act for
18 a fiscal year that is less than the
19 amount necessary to carry out clause
20 (i), the Governor of the State shall
21 distribute the State’s allocation for
22 such fiscal year between local edu-
23 cational agencies (through the State’s
24 primary elementary and secondary
25 funding formulae) and public institu-

1 tions of higher education in propor-
2 tion to the relative reductions in State
3 support for these two categories of
4 education for such fiscal year.

5 (II) EXCEPTION.—The Governor
6 may adjust the amount of funds
7 awarded to local educational agencies
8 (in the aggregate) and the amount of
9 funds awarded to public institutions
10 of higher education (in the aggregate)
11 for a fiscal year pursuant to subclause
12 (I) by increasing or decreasing such
13 amounts of funds by the amount that
14 is not more than 10 percent of the
15 larger of the 2 amounts of funds.

16 (iii) DISTRIBUTION OF EXCESS
17 AMOUNT.—In the case of a State that re-
18 ceives an allocation of funds appropriated
19 under this Act that is more than the
20 amount necessary to carry out clause (i),
21 the Governor of the State shall use any
22 funds remaining after the application of
23 clause (i) to provide local educational agen-
24 cies in the State with awards, based on the
25 local educational agencies' relative shares

1 of funds under part A of title I of the Ele-
2 mentary and Secondary Education Act of
3 1965 (20 U.S.C. 6311 et seq.) for the
4 most recent fiscal year for which data are
5 available.

6 (iv) CALCULATION OF REDUCTIONS.—
7 For purposes of calculating reductions in
8 State funding under this subparagraph for
9 a fiscal year—

10 (I) the amount of reductions in
11 State funding for elementary and sec-
12 ondary education or for public institu-
13 tions of higher education for a fiscal
14 year shall be determined by com-
15 paring the level of such State funding
16 for such fiscal year with the level of
17 such State funding for the preceding
18 fiscal year; and

19 (II) the levels of such State fund-
20 ing shall include any funds received
21 by the State under section 14001(d)
22 of the American Recovery and Rein-
23 vestment Act of 2009 (Public Law
24 111–5) and, for fiscal year 2011, any

1 funds received by the State under this
2 section for fiscal year 2010.

3 (4) INAPPLICABILITY OF EDUCATION REFORM
4 ASSURANCES.—Subsection (b), and paragraphs (2)
5 through (5) of subsection (d), of section 14005 of
6 the American Recovery and Reinvestment Act of
7 2009 (Public Law 111–5) shall not apply to any ap-
8 plication for an allocation of funds appropriated
9 under this Act from a State that has an approved
10 application for Phase II of the State Fiscal Sta-
11 bilization Fund under title XIV of division A of such
12 Act that was submitted in accordance with the appli-
13 cation notice published in the Federal Register on
14 November 17, 2009 (74 Fed. Reg. 59142).

15 (5) REQUIREMENT TO USE FUNDS TO RETAIN
16 OR CREATE EDUCATION JOBS.—Notwithstanding
17 sections 14003(a) and 14004(a) of such Act, funds
18 appropriated under this Act may be used only for—

19 (A) compensation and benefits and other
20 expenses necessary to retain existing employees,
21 and for the hiring of new employees, in order
22 to provide early childhood, elementary, sec-
23 ondary, or postsecondary educational and re-
24 lated services; or

1 (B) on-the-job training activities, as de-
2 fined in section 101(31) of the Workforce In-
3 vestment Act of 1998 (29 U.S.C. 2801(31)), for
4 education-related careers.

5 (6) PROHIBITION ON USE OF FUNDS FOR RAINY
6 DAY FUNDS OR DEBT RETIREMENT.—

7 (A) IN GENERAL.—Subject to subpara-
8 graph (B), a State that receives an allocation of
9 funds appropriated under this Act may not use
10 such funds to—

11 (i) establish, restore, or supplement a
12 reserve or rainy day fund of the State or
13 to supplant State funds in a manner that
14 has the effect of establishing, restoring, or
15 supplementing a reserve or rainy day fund;
16 or

17 (ii) reduce or retire debt obligations
18 incurred by the State or to supplant State
19 funds in a manner that has the effect of
20 reducing or retiring debt obligations in-
21 curred by the State.

22 (B) EXCEPTION.—Subparagraph (A) shall
23 not apply to fund balances that are necessary to
24 comply with any State requirement to maintain
25 a balanced budget.

1 (7) APPLICATION CONSIDERATIONS.—If, by a
2 date set by the Secretary of Education, a Governor
3 has not submitted an approvable application under
4 section 14005(a) of the American Recovery and Re-
5 investment Act of 2009 (Public Law 111–5), the
6 Secretary may provide for the distribution of funds
7 appropriated under this Act that are allocated under
8 section 14001(d) of the American Recovery and Re-
9 investment Act of 2009 for the State to 1 or more
10 other entities in the State, in such amounts and
11 under such terms and conditions as the Secretary
12 may establish, as long as all terms and conditions
13 that apply to the appropriation under this Act shall
14 apply to such funds distributed to such entity or en-
15 tities.

16 (8) LOCAL EDUCATIONAL AGENCY APPLICA-
17 TION.—The requirements of section 442 of the Gen-
18 eral Education Provisions Act (20 U.S.C. 1232e)
19 shall not apply to a local educational agency that
20 has previously submitted an application to the State
21 under title XIV of division A of the American Recov-
22 ery and Reinvestment Act of 2009 (Public Law
23 111–5) and wishes to receive funds appropriated
24 under this Act, as the assurances provided under the

1 previous application shall continue to apply to funds
2 awarded under this Act.

3 (9) MAINTENANCE OF EFFORT.—

4 (A) IN GENERAL.—In order for a State to
5 receive an allocation of funds appropriated
6 under this Act, the Governor of a State shall,
7 in lieu of the assurances required under section
8 14005(d)(1) of the American Recovery and Re-
9 investment Act of 2009 (Public Law 111–5),
10 provide assurances to the Secretary of Edu-
11 cation that, for each of fiscal years 2010 and
12 2011, the State will—

13 (i) meet the requirements of section
14 14005(d)(1) for such fiscal year; or

15 (ii) provide, for elementary and sec-
16 ondary education and for public institu-
17 tions of higher education (not including
18 support for capital projects or for research
19 and development or tuition and fees paid
20 by students), percentages of the total reve-
21 nues available to the State for each fiscal
22 year that—

23 (I) for fiscal year 2010, are not
24 less than such percentages, respec-
25 tively, for fiscal year 2006; and

1 (II) for fiscal year 2011, are not
2 less than such percentages, respec-
3 tively, for fiscal year 2009.

4 (B) INAPPLICABLE REQUIREMENT.—Sec-
5 tion 14012(c) of the American Recovery and
6 Reinvestment Act of 2009 (Public Law 111–5)
7 shall not apply with respect to any allocations
8 made for fiscal year 2011 from funds appro-
9 priated under this Act.

10 (10) PERIOD FOR OBLIGATION OF FUNDS.—
11 The Secretary of Education may extend the period
12 of time available to States and recipients of awards
13 under this section to obligate the funds appropriated
14 under this Act for one additional fiscal year beyond
15 the period provided for under section 421(b)(1) of
16 the General Education Provisions Act (20 U.S.C.
17 1225(b)(1)).

18 **SEC. 3. EMERGENCY DESIGNATION.**

19 This Act is designated as an emergency requirement
20 pursuant to section 403(a) of S. Con. Res. 13 (111th Con-
21 gress), the concurrent resolution on the budget for fiscal
22 year 2010.