

110TH CONGRESS
1ST SESSION

S. 2367

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2007

Mr. JOHNSON (for himself and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for the issuance of bonds to provide funding for the construction of schools of the Bureau of Indian Affairs, and for other purposes.

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 “Indian School Con-
5 struction Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) BUREAU.—The term “Bureau” means the
9 Bureau of Indian Affairs.

1 (2) INDIAN.—The term “Indian” means any in-
2 dividual who is a member of an Indian tribe.

3 (3) INDIAN TRIBE.—

4 (A) IN GENERAL.—The term “Indian
5 tribe” has the meaning given the term “Indian
6 tribal government” in section 7701(a)(40) of
7 the Internal Revenue Code of 1986 (as modified
8 by section 7871(d) of that Code).

9 (B) INCLUSION.—The term “Indian tribe”
10 includes any consortium of Indian tribes ap-
11 proved by the Secretary.

12 (4) SECRETARY.—The term “Secretary” means
13 the Secretary of the Interior.

14 (5) TRIBAL SCHOOL.—The term “tribal school”
15 means an elementary school, secondary school, or
16 dormitory that—

17 (A) is operated by a tribal organization or
18 the Bureau for the education of Indian chil-
19 dren; and

20 (B) receives financial assistance for the op-
21 eration of the school or dormitory under an ap-
22 propriation for the Bureau under a contract,
23 grant, or agreement, or for a Bureau-operated
24 school, under—

- 1 (i) section 102, 103(a), or 208 of the
2 Indian Self-Determination and Education
3 Assistance Act (25 U.S.C. 450f, 450h(a),
4 and 458d); or
5 (ii) the Tribally Controlled Schools
6 Act of 1988 (25 U.S.C. 2501 et seq.).

7 **SEC. 3. ISSUANCE OF BONDS.**

8 (a) IN GENERAL.—The Secretary shall establish a
9 pilot program under which the Secretary shall provide to
10 eligible Indian tribes the authority to issue qualified tribal
11 school modernization bonds to provide funds for the con-
12 struction, rehabilitation, and repair of tribal schools, in-
13 cluding advance planning and design of tribal schools.

14 (b) ELIGIBILITY.—

15 (1) IN GENERAL.—To be eligible to issue a
16 qualified tribal school modernization bond under the
17 program under subsection (a), an Indian tribe
18 shall—

19 (A) prepare and submit to the Secretary a
20 plan of construction that meets the require-
21 ments of paragraph (2);

22 (B) provide for quarterly and final inspec-
23 tion by the Bureau of each project to be funded
24 by the bond; and

1 (C) ensure that the facilities to be funded
2 by the bond will be used primarily for elemen-
3 tary and secondary educational purposes for the
4 period during which the bond remains out-
5 standing.

6 (2) PLAN OF CONSTRUCTION.—The require-
7 ments referred to in paragraph (1)(A) are that the
8 plan shall—

9 (A) contain a description of the construc-
10 tion to be carried out using funds provided
11 under a qualified tribal school modernization
12 bond;

13 (B) demonstrate that a comprehensive sur-
14 vey has been carried out regarding the con-
15 struction needs of the applicable tribal school;

16 (C) contain assurances that funding under
17 the bond will be used only for the activities de-
18 scribed in the plan;

19 (D) contain a response to the evaluation
20 criteria contained in the document entitled “In-
21 structions and Application for Replacement
22 School Construction, Revision 6” and dated
23 February 6, 1999; and

1 (E) contain any other reasonable and re-
2 lated information that the Secretary determines
3 to be appropriate.

4 (3) PRIORITY.—In determining whether an In-
5 dian tribe is eligible to participate in the program
6 under this section, the Secretary shall give priority
7 to Indian tribes that, as demonstrated by the plans
8 of construction of the Indian tribes, will fund
9 projects—

10 (A) described in the list of the Bureau en-
11 titled “Education Facilities Replacement Con-
12 struction Priorities List as of FY 2004” (69
13 Fed. Reg. 13870) (or successor regulations); or

14 (B) that meet the criteria for ranking
15 schools described in the document entitled “In-
16 structions and Application for Replacement
17 School Construction, Revision 6” and dated
18 February 6, 1999.

19 (4) ADVANCE PLANNING AND DESIGN FUND-
20 ING.—

21 (A) IN GENERAL.—An Indian tribe may
22 propose in the plan of construction of the In-
23 dian tribe to receive advance planning and de-
24 sign funding from the tribal school moderniza-

1 tion escrow account established under sub-
2 section (f)(2).

3 (B) CONDITIONS.—As a condition of re-
4 ceiving advance planning and design funds
5 under subparagraph (A), an Indian tribe shall
6 agree—

7 (i) to issue qualified tribal school
8 modernization bonds after the receipt of
9 the funds; and

10 (ii) to deposit into the escrow account
11 or a fund managed by a trustee under sub-
12 section (d)(3) an amount equal to the
13 amount of funds received from the escrow
14 account.

15 (c) PERMISSIBLE ACTIVITIES.—In addition to the
16 use described in subsection (a), an Indian tribe may use
17 amounts received through the issuance of a qualified tribal
18 school modernization bond—

19 (1) to enter into, and make payments under,
20 contracts with licensed and bonded architects, engi-
21 neers, and construction firms—

22 (A) to determine the needs of a tribal
23 school; and

24 (B) for the design and engineering of a
25 tribal school;

1 (2) to enter into, and make payments under,
2 contracts with financial advisors, underwriters, at-
3 torneys, trustees, and other professionals to provide
4 assistance to the Indian tribe in issuing the bonds;
5 and

6 (3) to carry out other such activities as the Sec-
7 retary determines to be appropriate.

8 (d) BOND TRUSTEE.—

9 (1) IN GENERAL.—Notwithstanding any other
10 provision of law, any qualified tribal school mod-
11 ernization bond issued by an Indian tribe under this
12 section shall be subject to a trust agreement between
13 the Indian tribe and a trustee.

14 (2) TRUSTEE.—Any bank or trust company
15 that meets the requirements established by the Sec-
16 retary may serve as a trustee for purposes of para-
17 graph (1).

18 (3) CONTENT OF TRUST AGREEMENT.—A trust
19 agreement entered into by an Indian tribe under this
20 subsection shall specify that the trustee, with respect
21 to any bond issued under this section, shall—

22 (A) act as a repository for the proceeds of
23 the bond;

24 (B) make payments to bondholders;

1 (C) receive, as a condition to the issuance
2 of the bond, a transfer of funds from the tribal
3 school modernization escrow account under sub-
4 section (f)(2), or from other funds furnished by
5 or on behalf of the Indian tribe, in an amount
6 that, together with interest earnings from the
7 investment of the funds in obligations of or
8 fully guaranteed by the United States, or from
9 other investments under subsection (j), will be
10 sufficient to pay timely and in full the entire
11 principal amount of the bond on the stated ma-
12 turity date of the bond;

13 (D) invest the funds received in accordance
14 with subparagraph (C); and

15 (E) hold and invest the funds in a seg-
16 regated fund or account under the agreement,
17 to be used solely to pay the costs of activities
18 described in subsection (c).

19 (4) REQUIREMENTS FOR MAKING DIRECT PAY-
20 MENTS.—

21 (A) IN GENERAL.—Notwithstanding any
22 other provision of law, the trustee shall make
23 each payment described in paragraph (3)(E) in
24 accordance with such requirements as the In-

1 dian tribe may prescribe in the trust agreement
2 under paragraph (3).

3 (B) PAYMENTS TO CONTRACTORS.—As a
4 condition of making a payment to a contractor
5 under paragraph (3)(E), the trustee shall re-
6 quire an inspection of the project of the con-
7 tractor, to ensure the completion of the project,
8 by—

- 9 (i) a local financial institution; or
10 (ii) an independent inspecting archi-
11 tect or engineer.

12 (C) CONTRACTS.—Each contract under
13 paragraphs (1) and (2) of subsection (c) shall
14 require, or be renegotiated to require, that each
15 payment under the contract shall be made in
16 accordance with this subsection.

17 (e) PAYMENTS OF PRINCIPAL AND INTEREST.—

18 (1) PRINCIPAL.—

19 (A) IN GENERAL.—No principal payment
20 on any qualified tribal school modernization
21 bond shall be required until the final, stated
22 maturity of the bond.

23 (B) MATURITY.—

24 (i) IN GENERAL.—The final, stated
25 maturity of a qualified tribal school mod-

1 ernization bond shall be not later than the
2 date that is 15 years after the date of
3 issuance of the bond.

4 (ii) EXPIRATION.—On expiration of a
5 qualified tribal school modernization bond
6 under clause (i), the entire outstanding
7 principal under the bond shall become due
8 and payable.

9 (2) INTEREST.—In lieu of interest on a quali-
10 fied tribal school modernization bond, there shall be
11 provided a tax credit under section 1400U of the In-
12 ternal Revenue Code of 1986.

13 (f) BOND GUARANTEES.—

14 (1) IN GENERAL.—Payment of the principal
15 portion of a qualified tribal school modernization
16 bond issued under this section shall be guaranteed
17 solely by amounts deposited with each respective
18 bond trustee as described in subsection (d)(3)(C).

19 (2) ESCROW ACCOUNT.—

20 (A) IN GENERAL.—The Secretary may de-
21 posit not more than \$50,000,000 into a tribal
22 school modernization escrow account.

23 (B) ADDITIONAL AMOUNTS.—

24 (i) IN GENERAL.—The Secretary may
25 accept for transfer into the tribal school

1 modernization escrow account amounts
2 from, as the Secretary determines to be
3 appropriate—

4 (I) other Federal departments
5 and agencies (such as amounts made
6 available for facility improvement and
7 repairs);

8 (II) non-Federal public or private
9 sources.

10 (ii) TREATMENT.—Amounts trans-
11 ferred into the escrow account pursuant to
12 clause (i) shall not reduce the amount eli-
13 gible to be deposited into the account
14 under subparagraph (A).

15 (C) INVESTMENT OF CERTAIN FUNDS.—
16 Amounts made available to carry out any
17 project included on the list of the Bureau enti-
18 tled “Education Facilities Replacement Con-
19 struction Priorities List as of FY 2004” (or
20 successor regulations) (69 Fed. Reg. 13870)
21 shall—

22 (i) be invested in accordance with sub-
23 section (j); and

24 (ii) at the discretion of the Sec-
25 retary—

1 (I) be used to pay any increase in
2 project costs or other facility costs of
3 the project for which the amounts are
4 made available; or

5 (II) be deposited into the tribal
6 school modernization escrow account.

7 (g) LIMITATIONS.—

8 (1) OBLIGATION TO REPAY.—

9 (A) IN GENERAL.—Notwithstanding any
10 other provision of law, the principal amount of
11 any qualified tribal school modernization bond
12 issued under this section shall be repaid only to
13 the extent of any escrowed funds provided
14 under subsection (d)(3)(C).

15 (B) TREATMENT.—No qualified tribal
16 school modernization bond issued by an Indian
17 tribe shall be an obligation of, and no payment
18 of the principal of such a bond shall be guaran-
19 teed by, the United States, an Indian tribe, or
20 a tribal school.

21 (2) LAND AND FACILITIES.—No land or facility
22 purchased or improved using amounts provided
23 under a qualified tribal school modernization bond
24 issued under this section shall be mortgaged or used
25 as collateral for the bond.

1 (h) SALE OF BONDS.—A qualified tribal school mod-
 2 ernization bond may be sold at a purchase price equal to,
 3 in excess of, or at a discount from the par amount of the
 4 bond.

5 (i) TREATMENT OF TRUST AGREEMENT EARN-
 6 INGS.—Amounts earned through the investment of funds
 7 under the control of a trustee under a trust agreement
 8 described in subsection (d) shall not be subject to Federal
 9 income tax.

10 (j) INVESTMENT OF SINKING FUNDS.—Any sinking
 11 fund established for the purpose of the payment of prin-
 12 cipal on a qualified tribal school modernization bond shall
 13 be invested in—

14 (1) obligations issued or guaranteed by the
 15 United States; or

16 (2) such other assets as the Secretary of the
 17 Treasury may allow, by regulation.

18 **SEC. 4. EXPANSION OF INCENTIVES FOR TRIBAL SCHOOLS.**

19 Chapter 1 of the Internal Revenue Code of 1986 is
 20 amended by adding at the end the following new sub-
 21 chapter:

22 **“Subchapter Z—Tribal School Modernization**
 23 **Provisions**

“Sec. 1400U. Credit to holders of qualified tribal school modernization bonds.

1 **“SEC. 1400U. CREDIT TO HOLDERS OF QUALIFIED TRIBAL**
2 **SCHOOL MODERNIZATION BONDS.**

3 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-
4 payer who holds a qualified tribal school modernization
5 bond on a credit allowance date of such bond which occurs
6 during the taxable year, there shall be allowed as a credit
7 against the tax imposed by this chapter for such taxable
8 year an amount equal to the sum of the credits determined
9 under subsection (b) with respect to credit allowance dates
10 during such year on which the taxpayer holds such bond.

11 “(b) AMOUNT OF CREDIT.—

12 “(1) IN GENERAL.—The amount of the credit
13 determined under this subsection with respect to any
14 credit allowance date for a qualified tribal school
15 modernization bond is 25 percent of the annual
16 credit determined with respect to such bond.

17 “(2) ANNUAL CREDIT.—The annual credit de-
18 termined with respect to any qualified tribal school
19 modernization bond is the product of—

20 “(A) the applicable credit rate, multiplied
21 by

22 “(B) the outstanding face amount of the
23 bond.

24 “(3) APPLICABLE CREDIT RATE.—For purposes
25 of paragraph (1), the applicable credit rate with re-
26 spect to an issue is the rate equal to an average

1 market yield (as of the date of sale of the issue) on
2 outstanding long-term corporate obligations of simi-
3 lar ratings (as determined by the Secretary).

4 “(4) SPECIAL RULE FOR ISSUANCE AND RE-
5 DEMPTION.—In the case of a bond which is issued
6 during the 3-month period ending on a credit allow-
7 ance date, the amount of the credit determined
8 under this subsection with respect to such credit al-
9 lowance date shall be a ratable portion of the credit
10 otherwise determined based on the portion of the 3-
11 month period during which the bond is outstanding.
12 A similar rule shall apply when the bond is re-
13 deemed.

14 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

15 “(1) IN GENERAL.—The credit allowed under
16 subsection (a) for any taxable year shall not exceed
17 the excess of—

18 “(A) the sum of the regular tax liability
19 (as defined in section 26(b)) plus the tax im-
20 posed by section 55, over

21 “(B) the sum of the credits allowable
22 under part IV of subchapter A (other than sub-
23 part C thereof, relating to refundable credits).

24 “(2) CARRYOVER OF UNUSED CREDIT.—If the
25 credit allowable under subsection (a) exceeds the

1 limitation imposed by paragraph (1) for such taxable
2 year, such excess shall be carried to the succeeding
3 taxable year and added to the credit allowable under
4 subsection (a) for such taxable year.

5 “(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION
6 BOND; OTHER DEFINITIONS.—For purposes of this sec-
7 tion—

8 “(1) QUALIFIED TRIBAL SCHOOL MODERNIZA-
9 TION BOND.—

10 “(A) IN GENERAL.—The term ‘qualified
11 tribal school modernization bond’ means, sub-
12 ject to subparagraph (B), any bond issued as
13 part of an issue under section 2(c) of the In-
14 dian School Construction Act, as in effect on
15 the date of enactment of this section, if—

16 “(i) 95 percent or more of the pro-
17 ceeds of such issue are to be used for the
18 construction, rehabilitation, or repair of a
19 school facility funded by the Bureau of In-
20 dian Affairs of the Department of the Inte-
21 rior or for the acquisition of land on which
22 such a facility is to be constructed with
23 part of the proceeds of such issue,

24 “(ii) the bond is issued by an Indian
25 tribe,

1 “(iii) the issuer designates such bond
2 for purposes of this section, and

3 “(iv) the term of each bond which is
4 part of such issue does not exceed 15
5 years.

6 “(B) NATIONAL LIMITATION ON AMOUNT
7 OF BONDS DESIGNATED.—

8 “(i) NATIONAL LIMITATION.—There is
9 a national qualified tribal school mod-
10 ernization bond limitation for each cal-
11 endar year. Such limitation is—

12 “(I) \$200,000,000 for 2008,

13 “(II) \$200,000,000 for 2009,

14 and

15 “(III) \$200,000,000 for 2010.

16 “(ii) ALLOCATION OF LIMITATION.—
17 The national qualified tribal school mod-
18 ernization bond limitation shall be allo-
19 cated to Indian tribes by the Secretary of
20 the Interior subject to the provisions of
21 section 2 of the Indian School Construc-
22 tion Act, as in effect on the date of enact-
23 ment of this section.

24 “(iii) DESIGNATION SUBJECT TO LIM-
25 ITATION AMOUNT.—The maximum aggre-

1 gate face amount of bonds issued during
 2 any calendar year which may be designated
 3 under subsection (d)(1) with respect to any
 4 Indian tribe shall not exceed the limitation
 5 amount allocated to such government
 6 under clause (ii) for such calendar year.

7 “(iv) CARRYOVER OF UNUSED LIMITA-
 8 TION.—If for any calendar year—

9 “(I) the limitation amount under
 10 this subparagraph, exceeds

11 “(II) the amount of qualified
 12 tribal school modernization bonds
 13 issued during such year, the limitation
 14 amount under this subparagraph for
 15 the following calendar year shall be
 16 increased by the amount of such ex-
 17 cess. The preceding sentence shall not
 18 apply if such following calendar year
 19 is after 2012.

20 “(2) CREDIT ALLOWANCE DATE.—The term
 21 ‘credit allowance date’ means—

22 “(A) March 15,

23 “(B) June 15,

24 “(C) September 15, and

25 “(D) December 15.

1 Such term includes the last day on which the bond
2 is outstanding.

3 “(3) BOND.—The term ‘bond’ includes any ob-
4 ligation.

5 “(4) INDIAN TRIBE.—The term ‘Indian tribe’
6 has the meaning given the term ‘Indian tribal gov-
7 ernment’ by section 7701(a)(40), including the ap-
8 plication of section 7871(d). Such term includes any
9 consortium of Indian tribes approved by the Sec-
10 retary of the Interior.

11 “(e) CREDIT INCLUDED IN GROSS INCOME.—Gross
12 income includes the amount of the credit allowed to the
13 taxpayer under this section (determined without regard to
14 subsection (c)) and the amount so included shall be treat-
15 ed as interest income.

16 “(f) BONDS HELD BY REGULATED INVESTMENT
17 COMPANIES.—If any qualified tribal school modernization
18 bond is held by a regulated investment company, the credit
19 determined under subsection (a) shall be allowed to share-
20 holders of such company under procedures prescribed by
21 the Secretary.

22 “(g) CREDITS MAY BE STRIPPED.—Under regula-
23 tions prescribed by the Secretary—

24 “(1) IN GENERAL.—There may be a separation
25 (including at issuance) of the ownership of a quali-

1 fied tribal school modernization bond and the entitle-
2 ment to the credit under this section with respect to
3 such bond. In case of any such separation, the credit
4 under this section shall be allowed to the person who
5 on the credit allowance date holds the instrument ev-
6 idencing the entitlement to the credit and not to the
7 holder of the bond.

8 “(2) CERTAIN RULES TO APPLY.—In the case
9 of a separation described in paragraph (1), the rules
10 of section 1286 shall apply to the qualified tribal
11 school modernization bond as if it were a stripped
12 bond and to the credit under this section as if it
13 were a stripped coupon.

14 “(h) TREATMENT FOR ESTIMATED TAX PUR-
15 POSES.—Solely for purposes of sections 6654 and 6655,
16 the credit allowed by this section to a taxpayer by reason
17 of holding a qualified tribal school modernization bonds
18 on a credit allowance date shall be treated as if it were
19 a payment of estimated tax made by the taxpayer on such
20 date.

21 “(i) CREDIT MAY BE TRANSFERRED.—Nothing in
22 any law or rule of law shall be construed to limit the trans-
23 ferability of the credit allowed by this section through sale
24 and repurchase agreements.

1 “(j) CREDIT TREATED AS ALLOWED UNDER PART
2 IV OF SUBCHAPTER A.—For purposes of subtitle F, the
3 credit allowed by this section shall be treated as a credit
4 allowable under part IV of subchapter A of this chapter.

5 “(k) REPORTING.—Issuers of qualified tribal school
6 modernization bonds shall submit reports similar to the
7 reports required under section 149(e).”.

8 **SEC. 5. ADDITIONAL PROVISIONS.**

9 (a) SOVEREIGN IMMUNITY.—Nothing in this Act or
10 an amendment made by this Act impacts, limits, or other-
11 wise affects the sovereign immunity of the United States
12 or any State or Indian tribal government.

13 (b) APPLICATION.—This Act and the amendments
14 made by this Act shall take effect on the date of enactment
15 of this Act with respect to bonds issued after December
16 31, 2007, regardless of the status of regulations promul-
17 gated pursuant to this Act or an amendment made by this
18 Act.

○