

112TH CONGRESS
1ST SESSION

S. 1568

To amend section 9401 of the Elementary and Secondary Education Act of 1965 with regard to waivers of statutory and regulatory requirements.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2011

Mr. ALEXANDER (for himself, Mr. BURR, Mr. RUBIO, Mr. GRASSLEY, Mr. ROBERTS, Mr. WICKER, and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend section 9401 of the Elementary and Secondary Education Act of 1965 with regard to waivers of statutory and regulatory requirements.

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 “State Innovation Pilot
5 Act of 2011”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to support State, local, and tribal leadership
9 and innovation in preparing all students to meet

1 State-developed college and career ready academic
2 content standards and student academic achieve-
3 ment standards, by establishing a process to permit
4 State, local, and tribal educational leaders to imple-
5 ment alternative and innovative strategies to im-
6 prove student academic achievement and otherwise
7 meet the purposes of the Elementary and Secondary
8 Education Act of 1965 (20 U.S.C. 6301 et seq.);
9 and

10 (2) to direct the Secretary of Education to
11 defer to State, local, and tribal judgments regarding
12 how best to accomplish the purposes of the Elemen-
13 tary and Secondary Education Act of 1965.

14 **SEC. 3. WAIVERS OF STATUTORY AND REGULATORY RE-**
15 **QUIREMENTS.**

16 Section 9401 of the Elementary and Secondary Edu-
17 cation Act of 1965 (20 U.S.C. 7861) is amended—

18 (1) by striking subsection (a) and inserting the
19 following:

20 “(a) IN GENERAL.—

21 “(1) REQUEST FOR WAIVER.—A State edu-
22 cational agency, local educational agency, or Indian
23 tribe that receives funds under a program authorized
24 under this Act may submit a request to the Sec-

1 retary to waive any statutory or regulatory require-
2 ment of this Act.

3 “(2) RECEIPT OF WAIVER.—Except as provided
4 in subsection (c), the Secretary shall waive any stat-
5 utory or regulatory requirement of this Act for a
6 State educational agency, local educational agency,
7 Indian tribe, or school (through a local educational
8 agency), that submits a waiver request pursuant to
9 this subsection.”;

10 (2) in subsection (b)—

11 (A) in paragraph (1)—

12 (i) in the matter preceding subpara-
13 graph (A), by inserting “, which shall in-
14 clude a plan” after “waiver request to the
15 Secretary”;

16 (ii) in subparagraph (B), by striking
17 “and how the waiving of those require-
18 ments will” and all that follows through
19 the end, and inserting a semicolon;

20 (iii) by redesignating subparagraph
21 (E) as subparagraph (F); and

22 (iv) by striking subparagraphs (C)
23 and (D), and inserting the following:

24 “(C) reasonably demonstrates that the
25 waiver will improve instruction for students, ad-

1 vance student academic achievement, and con-
2 tribute to student mastery of knowledge and
3 skills, consistent with the State’s college and
4 career ready academic content standards and
5 student academic achievement standards;

6 “(D) describes the methods the State edu-
7 cational agency, local educational agency, or In-
8 dian tribe will use to—

9 “(i) monitor the effectiveness of the
10 implementation of the plan; and

11 “(ii) assure regular evaluation and
12 continuous improvement of the plan;

13 “(E) as applicable to the waiver request—

14 “(i) describes the State educational
15 agency, local educational agency, or Indian
16 tribe’s process for making valid and mean-
17 ingful accountability determinations, based
18 on student academic achievement, to re-
19 view the success of schools and local edu-
20 cational agencies or Indian tribes in imple-
21 menting the State’s college and career
22 ready academic content standards and stu-
23 dent academic achievement standards;

24 “(ii) describes the State educational
25 agency, local educational agency, or Indian

1 tribe’s process for accurately and meaning-
2 fully identifying, supporting, and inter-
3 vening in underperforming schools, con-
4 sistent with applicable State or local policy;
5 and

6 “(iii) includes information on how the
7 State educational agency, local educational
8 agency, or Indian tribe will maintain and
9 improve transparency in reporting to par-
10 ents and the public on student achievement
11 and school performance, including the
12 achievement of students according to the
13 student subgroups described in subclauses
14 (I) through (IV) of section
15 1111(b)(2)(B)(viii); and”;

16 (B) in paragraph (2)(B)(i)(II), by striking
17 “(on behalf of, and based on the requests of,
18 local educational agencies)” and inserting “(on
19 their own behalf, or on behalf of, and based on
20 the requests of, local educational agencies in the
21 State)”;

22 (C) in paragraph (3)(A), in the matter
23 preceding clause (i), by inserting “or on behalf
24 of local educational agencies in the State,” after
25 “acting on its own behalf,”; and

1 (D) by adding at the end the following:

2 “(4) PEER REVIEW.—

3 “(A) PEER REVIEW TEAM.—

4 “(i) IN GENERAL.—The Secretary
5 shall establish multi-disciplinary peer re-
6 view teams and appoint members to such
7 teams, including persons who have experi-
8 ence with a State educational agency (or
9 local educational agency or Indian tribe, as
10 appropriate) and broader education reform
11 experience, to review waiver requests under
12 this section if—

13 “(I) the Secretary requests such
14 input in order to approve a waiver re-
15 quest; or

16 “(II) the Secretary intends to
17 disapprove a request.

18 “(ii) TEAM IN PLACE FOR ALL WAIV-
19 ER REQUESTS.—The Secretary may, at the
20 Secretary’s discretion, have a peer review
21 team review all waiver requests submitted
22 under this section.

23 “(B) APPLICABILITY.—The Secretary may
24 approve a waiver request under this section
25 without conducting a peer review of the request,

1 but shall use the peer review process under this
2 paragraph before disapproving such a request.

3 “(C) PURPOSE OF PEER REVIEW.—The
4 peer review process shall be designed to—

5 “(i) promote effective implementation
6 of State-developed college and career ready
7 academic content standards and student
8 academic achievement standards, through
9 State and local innovation; and

10 “(ii) provide transparent feedback to
11 State educational agencies, local edu-
12 cational agencies, or Indian tribes, de-
13 signed to strengthen the applicant’s plan
14 described under paragraph (1)(C).

15 “(D) STANDARD AND NATURE OF RE-
16 VIEW.—Peer reviewers shall conduct a good
17 faith review of waiver requests submitted to
18 them under this section. Peer reviewers shall re-
19 view such waiver requests—

20 “(i) in their totality;

21 “(ii) in deference to State and local
22 judgment; and

23 “(iii) with the goal of promoting
24 State- and local-led innovation.

1 “(5) WAIVER DETERMINATION, DEMONSTRATION,
2 TION, AND REVISION.—

3 “(A) IN GENERAL.—The Secretary shall
4 approve a waiver request not more than 90
5 days after the date on which such request is
6 submitted, unless the Secretary determines and
7 demonstrates that—

8 “(i) the waiver request does not meet
9 the requirements of this section;

10 “(ii) the waiver is not permitted under
11 subsection (c);

12 “(iii) the plan that is required under
13 paragraph (1)(C), and reviewed with def-
14 erence to State and local judgment, pro-
15 vides no reasonable basis to determine that
16 a waiver will enhance student academic
17 achievement; or

18 “(iv) the waiver request does not pro-
19 vide for adequate evaluation to ensure re-
20 view and continuous improvement of the
21 plan, consistent with paragraph (1)(D).

22 “(B) WAIVER DETERMINATION AND REVI-
23 SION.—If the Secretary determines and dem-
24 onstrates that the waiver request does not meet

1 the requirements of this section, the Secretary
2 shall—

3 “(i) immediately—

4 “(I) notify the State educational
5 agency, local educational agency, or
6 Indian tribe of such determination;
7 and

8 “(II) at the request of the State
9 educational agency, local educational
10 agency, or Indian tribe, provide de-
11 tailed reasons for such determination
12 in writing;

13 “(ii) offer the State educational agen-
14 cy, local educational agency, or Indian
15 tribe an opportunity to revise and resubmit
16 the waiver request not more than 60 days
17 after the date of such determination; and

18 “(iii) if the Secretary determines that
19 the resubmission does not meet the re-
20 quirements of this section, at the request
21 of the State educational agency, local edu-
22 cational agency, or Indian tribe, conduct a
23 public hearing not more than 30 days after
24 the date of such resubmission.

1 “(C) WAIVER DISAPPROVAL.—The Sec-
2 retary may disapprove a waiver request if—

3 “(i) the State educational agency,
4 local educational agency, or Indian tribe
5 has been notified and offered an oppor-
6 tunity to revise and resubmit the waiver
7 request, as described under clauses (i) and
8 (ii) of subparagraph (B); and

9 “(ii) the State educational agency,
10 local educational agency, or Indian tribe—

11 “(I) does not revise and resubmit
12 the waiver request; or

13 “(II) revises and resubmits the
14 waiver request, and the Secretary de-
15 termines that such waiver request
16 does not meet the requirements of this
17 section after a hearing conducted
18 under subparagraph (B)(iii).

19 “(D) EXTERNAL CONDITIONS.—The Sec-
20 retary shall not disapprove a waiver request
21 under this section based on conditions outside
22 the scope of the waiver request.”;

23 (3) in subsection (d)—

1 (A) in the heading, by adding “; LIMITA-
2 TIONS” after “DURATION AND EXTENSION OF
3 WAIVER”; and

4 (B) by adding at the end the following:

5 “(3) SPECIFIC LIMITATIONS.—The Secretary
6 shall not require a State educational agency, local
7 educational agency, or Indian tribe, as a condition of
8 approval of a waiver request, to—

9 “(A) include in, or delete from, such re-
10 quest, specific academic content standards or
11 academic achievement standards;

12 “(B) use specific academic assessment in-
13 struments or items; or

14 “(C) include in, or delete from, such waiv-
15 er request any criterion that specifies, defines,
16 or prescribes the standards or measures that a
17 State or local educational agency uses to estab-
18 lish, implement, or improve—

19 “(i) State academic content standards
20 or academic achievement standards;

21 “(ii) assessments;

22 “(iii) State accountability systems;

23 “(iv) systems that measure student
24 growth;

1 “(v) measures of other academic indi-
2 cators; or

3 “(vi) teacher and principal evaluation
4 systems.”;

5 (4) in subsection (e)—

6 (A) in paragraph (1)—

7 (i) by striking the heading and insert-
8 ing “WAIVER REPORTS”;

9 (ii) in the matter preceding subpara-
10 graph (A)—

11 (I) by striking “local educational
12 agency that receives” and inserting
13 “State educational agency, local edu-
14 cational agency, or Indian tribe that
15 receives”; and

16 (II) by striking “submit a report
17 to the State educational agency that”
18 and inserting “submit a report to the
19 Secretary that”;

20 (B) by striking paragraphs (2) and (3);

21 (C) by redesignating paragraph (4) as
22 paragraph (2); and

23 (D) in paragraph (2), (as redesignated by
24 subparagraph (C)), by striking “Beginning in
25 fiscal year 2002 and for each subsequent year,

1 the Secretary shall submit to the Committee”
2 and inserting “The Secretary shall annually
3 submit to the Committee”; and

4 (5) in subsection (f), by inserting “and the re-
5 cipient of the waiver has failed to make revisions
6 needed to carry out the purpose of the waiver,” after
7 “has been inadequate to justify a continuation of the
8 waiver”.

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