

112TH CONGRESS
1ST SESSION

S. 280

To provide for flexibility and improvements in elementary and secondary education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2011

Ms. COLLINS (for herself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide for flexibility and improvements in elementary and secondary education, 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 “No Child Left Behind
5 Flexibility and Improvements Act”.

6 **SEC. 2. DISCRETION TO MODIFY ADEQUATE YEARLY**
7 **PROGRESS TIMELINE.**

8 Section 1111(b)(2)(F) of the Elementary and Sec-
9 ondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(F))
10 is amended—

1 (1) by striking “(F) TIMELINE.—Each State”
2 and inserting the following:

3 “(F) TIMELINE.—

4 “(i) IN GENERAL.—Each State”; and

5 (2) by adding at the end the following:

6 “(ii) DISCRETION OF SECRETARY TO
7 MODIFY THE TIMELINE.—Every 3 years,
8 the Secretary—

9 “(I) shall review the require-
10 ments of the timeline established in
11 clause (i); and

12 “(II) may issue guidance or regu-
13 lations modifying such requirements if
14 the Secretary determines, at the Sec-
15 retary’s discretion and after a review
16 of the progress of the States towards
17 making adequate yearly progress for
18 the 2013–2014 school year, that
19 modifications to the timeline are in
20 the interests of improving student
21 achievement and are in keeping with
22 the purposes of this title.”.

1 **SEC. 3. ALTERNATIVE ACCOUNTABILITY SYSTEMS.**

2 Section 1111(b)(2) of the Elementary and Secondary
3 Education Act of 1965 (20 U.S.C. 6311(b)(2)) is further
4 amended—

5 (1) by striking subparagraph (I) and inserting
6 the following:

7 “(I) ANNUAL IMPROVEMENT FOR
8 SCHOOLS.—

9 “(i) IN GENERAL.—Each year, for a
10 school to make adequate yearly progress
11 under this paragraph—

12 “(I) each group of students de-
13 scribed in subparagraph (C)(v) must
14 meet or exceed the objectives set by
15 the State under subparagraph (G), ex-
16 cept that if any group described in
17 subparagraph (C)(v) does not meet
18 those objectives in any particular
19 year, the school shall be considered to
20 have made adequate yearly progress
21 if—

22 “(aa) the percentage of stu-
23 dents in that group who did not
24 meet or exceed the proficient
25 level of academic achievement on
26 the State assessment under para-

1 graph (3) decreased by 5 percent
2 over the past year, or an aggregate
3 of 10 percent over 2 years,
4 and that group has made
5 progress on 1 or more of the academic
6 indicators described in
7 clause (vi) or (vii) of subparagraph
8 (C); or

9 “(bb) the students in that
10 group demonstrate that the students
11 are making progress towards
12 proficiency through an additional
13 model or system for
14 measuring student progress described
15 in subparagraph (J) and
16 that group has made progress on
17 1 or more of the academic indicators
18 described in clause (vi) or
19 (vii) of subparagraph (C); and

20 “(II) not less than 95 percent of
21 each group of students described in
22 subparagraph (C)(v) who are enrolled
23 in the school are required to take the
24 assessments, consistent with paragraph
25 (3)(C)(xi) and with accom-

1 modations, guidelines, and alternative
2 assessment provided in the same man-
3 ner as those provided under section
4 612(a)(16)(A) of the Individuals with
5 Disabilities Education Act and para-
6 graph (3), on which adequate yearly
7 progress is based (except that the 95
8 percent requirement described in this
9 clause shall not apply in a case in
10 which the number of students in a
11 category is insufficient to yield statis-
12 tically reliable information or the re-
13 sults would reveal personally identifi-
14 able information about an individual
15 student).

16 “(ii) CHILDREN WITH DISABIL-
17 ITIES.—In the case of a child with a dis-
18 ability (as defined in section 602(3) of the
19 Individuals with Disabilities Education
20 Act), a State may deem the child to have
21 met the State’s proficient level of academic
22 achievement on the State assessments for
23 purposes of calculating adequate yearly
24 progress under this section if—

1 “(I) the student’s individualized
2 education program team (as defined
3 in section 614(d)(1)(B) of such Act)
4 designates an alternate assessment
5 based on alternate or modified student
6 academic achievement standards as a
7 more appropriate measure of the stu-
8 dent’s academic progress and achieve-
9 ment for purposes of the assessment
10 requirements under this part; and

11 “(II) the student achieves a pro-
12 ficient score on such alternate assess-
13 ment.

14 “(iii) STATE EDUCATIONAL AGENCY
15 REPORT.—For any year that a State edu-
16 cational agency makes use of the flexibility
17 provided by this section to allow alternate
18 assessments for more than 3 percent of the
19 total student population statewide, the
20 State educational agency shall make avail-
21 able to the public a report that includes
22 the percentage of all special education stu-
23 dents in the State who were assessed ac-
24 cording to clause (ii).”;

1 (2) by redesignating subparagraphs (J) and (K)
2 as subparagraphs (L) and (M), respectively; and

3 (3) by inserting after subparagraph (I) (as
4 amended by paragraph (1)) the following:

5 “(J) ADDITIONAL MODELS AND SYSTEMS
6 FOR MEASURING STUDENT PROGRESS.—In de-
7 veloping a single, statewide State accountability
8 system pursuant to subparagraph (A), a State
9 may establish models and systems for meas-
10 uring student progress for purposes of deter-
11 mining whether an agency or school has made
12 adequate yearly progress that are in addition to
13 the models and systems otherwise described in
14 this paragraph if the models and systems are in
15 keeping with the purposes of this title. Addi-
16 tional models and systems that measure student
17 progress under this paragraph may include—

18 “(i) cohort growth models that—
19 “(I) demonstrate progress based
20 on longitudinal student assessment re-
21 sults indicating improvement in the
22 academic performance of the same co-
23 hort of students over time; and

24 “(II) may in some instances
25 specify different starting points, dif-

1 ferent intermediate goals, and dif-
2 ferent annual measurable objectives
3 for different cohorts;

4 “(ii) indexing systems that dem-
5 onstrate progress based on improvement in
6 assessment scores for students below the
7 proficient level, such as improvements from
8 the below basic to basic level, or from basic
9 to another intermediate level below the
10 proficient level, if the system does not in-
11 clude improvement in students’ scores for
12 students who scored at the proficient level
13 and higher; or

14 “(iii) a system that demonstrates
15 progress based on improvements in closing
16 the achievement gap or making progress
17 toward another State-established high-
18 achievement target, such as a system that
19 demonstrates progress towards having all
20 subgroups meet or exceed the current per-
21 centage of proficient students at the
22 State’s top-performing schools (such as the
23 top 20 percent of schools), if the system
24 requires continued improvement towards

1 subsequently higher targets until all stu-
2 dents have reached the proficient level.

3 “(K) REQUIREMENT FOR GUIDANCE FROM
4 THE SECRETARY ON ADDITIONAL MODELS AND
5 SYSTEMS FOR MEASURING STUDENT
6 PROGRESS.—

7 “(i) IN GENERAL.—Not later than
8 120 days after the date of enactment of
9 the No Child Left Behind Flexibility and
10 Improvements Act, the Secretary shall es-
11 tablish specific models of additional models
12 and systems for measuring student
13 progress that meet the requirements of
14 subparagraph (J), including models of co-
15 hort-growth systems, indexing systems, or
16 high-achievement target systems described
17 in such subparagraph.

18 “(ii) MAXIMUM FLEXIBILITY OF MOD-
19 ELS.—To the extent possible, the models
20 described in clause (i) shall demonstrate
21 the maximum amount of flexibility avail-
22 able under this part in the design of addi-
23 tional models and systems for measuring
24 student progress.

1 “(iii) TASK FORCE.—The Secretary
 2 shall create a task force to provide guid-
 3 ance and other technical assistance to
 4 those States interested in incorporating ad-
 5 ditional models and systems for measuring
 6 student progress into their State account-
 7 ability plan.”.

8 **SEC. 4. STATE OPTION REGARDING STUDENTS WITH LIM-**
 9 **ITED ENGLISH PROFICIENCY.**

10 Section 1111(b)(2) of the Elementary and Secondary
 11 Education Act of 1965 (20 U.S.C. 6311(b)(2)) (as amend-
 12 ed by section 3) is further amended by adding at the end
 13 the following:

14 “(N) STATE OPTION REGARDING STU-
 15 DENTS WITH LIMITED ENGLISH PRO-
 16 FICIENCY.—

17 “(i) IN GENERAL.—In determining
 18 whether a school, local educational agency,
 19 or State has made adequate yearly
 20 progress under this subsection, a State
 21 shall have the option to include in the stu-
 22 dents with limited English proficiency sub-
 23 group a student who was formerly included
 24 in the subgroup and subsequently acquired
 25 proficiency in English.

1 “(ii) DURATION OF INCLUSION IN
2 THE SUBGROUP.—A State may include a
3 student described in clause (i) in the stu-
4 dents with limited English proficiency sub-
5 group until the student completes sec-
6 ondary school.

7 “(iii) RULES OF CONSTRUCTION.—
8 Nothing in this subparagraph shall be con-
9 strued—

10 “(I) to count a student described
11 in clause (i) as a student with limited
12 English proficiency for purposes of—

13 “(aa) determining a State-
14 defined minimum subgroup size;
15 and

16 “(bb) allocating funds under
17 title III; or

18 “(II) to require a student de-
19 scribed in clause (i)—

20 “(aa) to continue to take a
21 limited English proficiency as-
22 sessment under paragraph (7);
23 and

1 “(bb) to receive language
2 services provided to students with
3 limited English proficiency.”.

4 **SEC. 5. LOCAL ACADEMIC ASSESSMENTS.**

5 Section 1111(b)(3)(A) of the Elementary and Sec-
6 ondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(A))
7 is amended—

8 (1) by striking “(A) IN GENERAL.—Each State
9 plan” and inserting the following:

10 “(A) IMPLEMENTATION OF ASSESS-
11 MENTS.—

12 “(i) IN GENERAL.—Each State plan”;

13 and

14 (2) by adding at the end the following:

15 “(ii) RULE OF CONSTRUCTION RE-
16 GARDING USE OF LOCAL ASSESSMENTS.—

17 Nothing in this Act shall be construed to
18 prohibit a State from using a local assess-
19 ment system or a mixed system of State
20 and local assessments in carrying out
21 clause (i), if the assessment system—

22 “(I) is aligned with the State’s
23 content and achievement standards
24 and provides coherent information

1 about student attainment of those
2 standards;

3 “(II) is valid and reliable, and
4 consistent with relevant professional
5 and technical standards;

6 “(III) provides individual student
7 reports and itemized score analysis;
8 and

9 “(IV) allows the State to aggregate,
10 with confidence, data from disparate
11 local assessments.

12 “(iii) REQUIRED TECHNICAL ASSIST-
13 ANCE.—Not later than 120 days after the
14 date of enactment of the No Child Left
15 Behind Flexibility and Improvements Act,
16 the Secretary shall provide models of local
17 assessment systems or mixed systems of
18 State and local assessments meeting the
19 requirements described in clause (ii), and
20 shall provide guidance and technical assist-
21 ance to States on ways that these systems
22 may be used to satisfy the assessment re-
23 quirements of this part.”.

1 **SEC. 6. DEFERRAL OF ACADEMIC ASSESSMENTS.**

2 Section 1111(b)(3)(D) of the Elementary and Sec-
 3 ondary Education Act of 1965 (20 U.S.C. 6311(b)(3)(D))
 4 is amended by striking clauses (i) through (iv) and insert-
 5 ing the following:

6 “(i) \$640,000,000 for fiscal year
 7 2011; and

8 “(ii) \$670,000,000 for fiscal year
 9 2012.”.

10 **SEC. 7. ADEQUATE YEARLY PROGRESS BY GROUP AND SUB-**
 11 **JECT.**

12 Section 1116(b) of the Elementary and Secondary
 13 Education Act of 1965 (20 U.S.C. 6316(b)) is amended—

14 (1) in subparagraph (A) of paragraph (1), by
 15 inserting “with respect to the performance of a par-
 16 ticular group of students described in section
 17 1111(b)(2)(C)(v) in the same academic subject,”
 18 after “that fails, for 2 consecutive years,”;

19 (2) in the matter preceding subparagraph (A)
 20 of paragraph (5), by inserting “with respect to the
 21 performance of a particular group of students de-
 22 scribed in section 1111(b)(2)(C)(v) in the same aca-
 23 demic subject,” after “that fails to make adequate
 24 yearly progress,”;

25 (3) in the matter preceding clause (i) of para-
 26 graph (7)(C), by inserting “with respect to the per-

1 performance of a particular group of students described
 2 in section 1111(b)(2)(C)(v) in the same academic
 3 subject,” after “that fails to make adequate yearly
 4 progress,”; and

5 (4) in the matter preceding clause (i) of para-
 6 graph (8)(A), by inserting “with respect to the per-
 7 formance of a particular group of students described
 8 in section 1111(b)(2)(C)(v) in the same academic
 9 subject,” after “continues to fail to make adequate
 10 yearly progress,”.

11 **SEC. 8. MODIFICATION OF THE DEFINITION OF HIGHLY**
 12 **QUALIFIED TEACHER.**

13 (a) IN GENERAL.—Subpart 1 of part A of title I of
 14 the Elementary and Secondary Education Act of 1965 (20
 15 U.S.C. 6311 et seq.) is amended by adding at the end
 16 the following:

17 **“SEC. 1120C. MODIFICATION OF THE DEFINITION OF HIGH-**
 18 **LY QUALIFIED TEACHER.**

19 “(a) HIGHLY QUALIFIED TEACHERS OF MULTIPLE
 20 ACADEMIC SUBJECTS.—Notwithstanding section
 21 9101(23) or any other provision of law, a middle or sec-
 22 ondary school teacher employed to teach multiple aca-
 23 demic subjects shall be deemed to be highly qualified for
 24 purposes of this part, if—

1 “(1) the teacher meets the requirements of sec-
2 tion 9101(23)(A);

3 “(2) the teacher has a bachelor’s degree;

4 “(3) the teacher has demonstrated a high level
5 of competency in at least one subject taught by the
6 teacher by—

7 “(A) passing a test described in section
8 9101(23)(B)(ii)(I) that is applicable to such
9 subject; or

10 “(B) successful completion of a course of
11 study, certification, or credential described in
12 section 9101(23)(B)(ii) that is applicable to
13 such subject; and

14 “(4)(A) the State educational agency makes a
15 determination, for a period of not more than 3 years
16 at a time, that—

17 “(i) the teacher should be considered high-
18 ly qualified for purposes of this part based on
19 a showing that the teacher is making progress
20 toward becoming highly qualified as defined in
21 section 9101(23); and

22 “(ii) at the time the State educational
23 agency makes such determination, the teacher
24 teaches in a local educational agency of the
25 State that has provided the State educational

1 agency with evidence (that may include the fact
2 that the local educational agency serves a small
3 and rural school facing unique staffing or hir-
4 ing challenges that require teachers to teach
5 multiple academic subjects) that the local edu-
6 cational agency has made a reasonable effort to
7 provide teachers who are highly qualified as de-
8 fined in section 9101(23) to every student
9 served by the local educational agency; or

10 “(B) the teacher has an academic minor con-
11 sisting of not less than 15 credit hours, or the equiv-
12 alent of an academic minor as defined by the State
13 educational agency in its State plan pursuant to sec-
14 tion 1119(a)(2), in each academic subject that is
15 taught by the teacher (other than a subject for
16 which the teacher has demonstrated a high level of
17 competency under paragraph (3)), and each such
18 subject is related to a subject for which the teacher
19 has demonstrated a high level of competency under
20 paragraph (3).

21 “(b) REPORT.—For each year that a teacher in a
22 State is deemed to be highly qualified under subsection
23 (a), the State educational agency in the State shall make
24 available to the public a report that includes—

1 “(1) the number of teachers in the State that
2 are deemed highly qualified under subsection (a);
3 and

4 “(2) the total amount of subgrant funds made
5 available under subpart 2 of part A of title II that
6 the State awards to local educational agencies under
7 such subpart that are available to assist the teachers
8 described in paragraph (1) with the process of be-
9 coming highly qualified as defined in section
10 9101(23).”.

11 (b) TABLE OF CONTENTS.—The table of contents of
12 the Elementary and Secondary Education Act of 1965 is
13 amended by inserting after the item relating to section
14 1120B the following:

 “Sec. 1120C. Modification of the definition of highly qualified teacher.”.

15 **SEC. 9. REAUTHORIZATION OF READING FIRST AND EARLY**
16 **READING FIRST PROGRAMS.**

17 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
18 1002(b) of the Elementary and Secondary Education Act
19 of 1965 (20 U.S.C. 6302(b)) is amended—

20 (1) in paragraph (1), by striking “2002” and
21 inserting “2012”; and

22 (2) in paragraph (2), by striking “2002” and
23 inserting “2012”.

24 (b) USE OF FUNDS FOR READING ACTIVITIES.—

1 (1) FINDING.—Congress finds that, based on
2 the Office of Inspector General of the Department of
3 Education’s September 2006 report entitled “The
4 Reading First Program’s Grant Application Proc-
5 ess”, it is crucial to achieving the goals of the Read-
6 ing First program under subpart 1 of part B of title
7 I of the Elementary and Secondary Education Act
8 of 1965 (20 U.S.C. 6361 et seq.) that greater flexi-
9 bility is afforded to program participants, including
10 allowing participants to choose from a variety of sci-
11 entifically based reading programs.

12 (2) USE OF FUNDS FOR READING ACTIVI-
13 TIES.—Section 1202(c)(7) of the Elementary and
14 Secondary Education Act of 1965 (20 U.S.C.
15 6362(c)(7)) is amended by adding at the end the fol-
16 lowing:

17 “(C) READING ACTIVITIES FOR INDI-
18 VIDUAL STUDENTS.—Notwithstanding any
19 other provision of this subpart, an eligible local
20 educational agency may use the funds provided
21 under the subgrant for any activity described in
22 subparagraph (A) that is provided to a student
23 in a manner other than on a classwide instruc-
24 tion basis, including small group instruction
25 and one-to-one instruction.”.

1 **SEC. 10. DEFINITION OF HIGHLY QUALIFIED.**

2 Section 9101(23)(B)(ii)(II) of the Elementary and
3 Secondary Education Act of 1965 (20 U.S.C.
4 7801(23)(B)(ii)(II)) is amended by striking
5 “credentialing; and” and inserting the following:
6 “credentialing,
7 “except that the Secretary shall promul-
8 gate regulations permitting a teacher to
9 demonstrate subject area competence in
10 history, geography, economics, government,
11 civics, or related subjects at middle or sec-
12 ondary schools in the State through a
13 State social studies certificate that quali-
14 fies the teacher to teach such subjects;
15 and”.

○