

107TH CONGRESS  
2D SESSION

# S. 2954

To amend the Elementary and Secondary Education Act of 1965 to permit States and local educational agencies to decide the frequency of using high quality assessments to measure and increase student academic achievement, to permit States and local educational agencies to obtain a waiver of certain testing requirements, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2002

Mr. FEINGOLD (for himself, Mr. JEFFORDS, Mr. WELLSTONE, Mr. LEAHY, and Mr. DAYTON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Elementary and Secondary Education Act of 1965 to permit States and local educational agencies to decide the frequency of using high quality assessments to measure and increase student academic achievement, to permit States and local educational agencies to obtain a waiver of certain testing requirements, 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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Student Testing Flexi-  
3 bility Act of 2002”.

4 **SEC. 2. FINDINGS.**

5       Congress finds that—

6           (1) State and local governments bear the ma-  
7 jority of the cost and responsibility of educating  
8 public elementary school and secondary school stu-  
9 dents;

10          (2) State and local governments often struggle  
11 to find adequate funding to provide basic edu-  
12 cational services;

13          (3) the Federal Government has not provided  
14 its share of funding for numerous federally man-  
15 dated elementary and secondary education pro-  
16 grams;

17          (4) underfunded Federal education mandates  
18 increase existing financial pressures on States and  
19 local educational agencies;

20          (5) the cost to States and local educational  
21 agencies to implement the annual student academic  
22 assessments required under section  
23 1111(b)(3)(C)(vii) of the Elementary and Secondary  
24 Education Act of 1965 (20 U.S.C.  
25 6311(b)(3)(C)(vii)) remains uncertain;

1           (6) public elementary school and secondary  
 2           school students take numerous tests each year, from  
 3           classroom quizzes and exams to standardized and  
 4           other tests required by the Federal Government,  
 5           State educational agencies, or local educational  
 6           agencies;

7           (7) multiple measures of student academic  
 8           achievement provide a more accurate picture of a  
 9           student’s strengths and weaknesses than does a sin-  
 10          gle score on a high-stakes test; and

11          (8) the frequency of the use of high quality as-  
 12          sessments as a tool to measure and increase student  
 13          achievement should be decided by State educational  
 14          agencies and local educational agencies.

15 **SEC. 3. WAIVER AUTHORITY.**

16          Section 1111(b)(3) of the Elementary and Secondary  
 17          Education Act of 1965 (20 U.S.C. 6311(b)(3)) is amended  
 18          by adding at the end the following:

19                   “(E) WAIVER AUTHORITY.—

20                           “(i) STATES.—Upon application by a  
 21                           State educational agency, the Secretary  
 22                           shall waive the requirements of subpara-  
 23                           graph (C)(vii) for a State if the State edu-  
 24                           cational agency demonstrates that the  
 25                           State—

1 “(I) significantly closed the  
2 achievement gap between the groups  
3 of students described in paragraph  
4 (2); or

5 “(II) exceeded the State’s ade-  
6 quate yearly progress, consistent with  
7 paragraph (2), for 2 or more consecu-  
8 tive years.

9 “(ii) LOCAL EDUCATIONAL AGEN-  
10 CIES.—Upon application of a local edu-  
11 cational agency located in a State that  
12 does not receive a waiver under clause (i),  
13 the Secretary shall waive the application of  
14 the requirements of subparagraph (C)(vii)  
15 for the local educational agency if the local  
16 educational agency demonstrates that the  
17 local educational agency—

18 “(I) significantly closed the  
19 achievement gap between the groups  
20 of students described in paragraph  
21 (2); or

22 “(II) exceeded the local edu-  
23 cational agency’s adequate yearly  
24 progress, consistent with paragraph  
25 (2), for 2 or more consecutive years.

1 “(iii) PERIOD OF WAIVER.—A waiver  
2 under clause (i) or (ii) shall be for a period  
3 of 3 years and may be renewed for subse-  
4 quent 3-year periods.

5 “(iv) UTILIZATION OF CERTAIN FED-  
6 ERAL FUNDS.—

7 “(I) PERMISSIVE USES.—Subject  
8 to subclause (II), a State or local edu-  
9 cational agency granted a waiver  
10 under clause (i) or (ii) shall use  
11 funds, that are awarded to the State  
12 or local educational agency, respec-  
13 tively, under this Act for the develop-  
14 ment and implementation of annual  
15 assessments under subparagraph  
16 (C)(vii), to carry out educational ac-  
17 tivities that the State educational  
18 agency or local educational agency, re-  
19 spectively, determines will improve the  
20 academic achievement of students at-  
21 tending public elementary schools and  
22 secondary schools in the State or local  
23 educational agency, respectively, that  
24 fail to make adequate yearly progress  
25 (as defined in paragraph (2)(C)).

1                   “(II) NONPERMISSIVE USE OF  
2 FUNDS.—A State or local educational  
3 agency granted a waiver under clause  
4 (i) or (ii) shall not use funds, that are  
5 awarded to the State or local edu-  
6 cational agency, respectively, under  
7 this Act for the development and im-  
8 plementation of annual assessments  
9 under subparagraph (C)(vii), to pay a  
10 student’s cost of tuition, room, board,  
11 or fees at a private school.”.

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