

111TH CONGRESS  
2D SESSION

# H. R. 5340

To allow a State to opt out of K–12 education grant programs and the requirements of those programs, to amend the Internal Revenue Code of 1986 to provide a credit to taxpayers in such a State, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2010

Mr. GARRETT of New Jersey introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To allow a State to opt out of K–12 education grant programs and the requirements of those programs, to amend the Internal Revenue Code of 1986 to provide a credit to taxpayers in such a State, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Local Education Authority Returns Now Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ABILITY OF STATES TO OPT OUT OF K–12 EDUCATION  
GRANT PROGRAMS

Sec. 101. Determinations by Secretary of Treasury as to which States are opt-out States.

Sec. 102. Amounts creditable to States.

Sec. 103. Opt-out States not eligible to receive grants under K–12 education grant programs.

Sec. 104. Requirements of K–12 education grant programs do not apply to opt-out States.

Sec. 105. Definitions.

TITLE II—CREDIT TO TAXPAYERS IN OPT-OUT STATE

Sec. 201. Refundable opt-out State education credit.

3 **TITLE I—ABILITY OF STATES TO**  
 4 **OPT OUT OF K–12 EDUCATION**  
 5 **GRANT PROGRAMS**

6 **SEC. 101. DETERMINATIONS BY SECRETARY OF TREASURY**  
 7 **AS TO WHICH STATES ARE OPT-OUT STATES.**

8 (a) DEADLINE.—Not later than February 1 of each  
 9 calendar year (hereinafter in this title referred to as the  
 10 “determination year”), the Secretary of the Treasury shall  
 11 determine which States, if any, are opt-out States for the  
 12 calendar year (hereinafter in this title referred to as the  
 13 “opt-out year”) that follows the determination year.

14 (b) DETERMINATION.—The Secretary of the Treas-  
 15 ury shall determine that a State is an opt-out State for  
 16 an opt-out year under subsection (a) if, and only if, there  
 17 is transmitted to the Secretary a copy of a law, in effect  
 18 as of January 1 of the determination year, that can fairly

1 be read to mean that the policy of the State is to not ac-  
2 cept grant funds under the K–12 education grant pro-  
3 grams, and thereby to not be bound by the requirements  
4 of those programs, for that opt-out year.

5 (c) NOTIFICATION.—Upon making a determination  
6 under subsection (a), the Secretary of the Treasury shall  
7 transmit that determination to the Secretary of Education  
8 and to Congress.

9 **SEC. 102. AMOUNTS CREDITABLE TO STATES.**

10 (a) IN GENERAL.—For purposes of determinations  
11 relating to the refundable opt-out State education credit  
12 under section 36B of the Internal Revenue Code of 1986,  
13 as early as practicable for a calendar year, the Secretary  
14 of Education shall, for each State, determine the amount  
15 creditable to that State for that calendar year and make  
16 available that determination.

17 (b) AMOUNT CREDITABLE.—The Secretary shall de-  
18 termine the amount creditable to a State for a calendar  
19 year as follows:

20 (1) If the State was not an opt-out State for  
21 the preceding calendar year, the amount creditable  
22 for the calendar year shall be equal to the aggregate  
23 K–12 funding (as determined under subsection (d))  
24 for that State for that preceding calendar year.

1           (2) If the State was an opt-out State for the  
2 preceding calendar year, the amount creditable for  
3 the calendar year shall be equal to—

4           (A) the extrapolated amount (as deter-  
5 mined under subsection (c)) for that preceding  
6 calendar year, plus

7           (B) the amount that results when the  
8 amount creditable for that preceding calendar  
9 year is subtracted from the extrapolated  
10 amount (as determined under subsection (c))  
11 for that preceding calendar year.

12       (c) EXTRAPOLATED AMOUNT.—

13           (1) IN GENERAL.—The Secretary of Education  
14 shall determine the extrapolated amount for a State  
15 for a calendar year. The determination shall be  
16 based on—

17           (A) the amount of grant funds that would  
18 have been received other than on a competitive  
19 basis, as direct grants, subgrants, or otherwise,  
20 under the K–12 education grant programs, by  
21 the State or any public educational entity in the  
22 State for that calendar year, had it elected not  
23 to be an opt-out State for that calendar year;  
24 plus

1 (B) the average annual amount of all grant  
2 funds that would have been received on a com-  
3 petitive basis, as direct grants, subgrants, or  
4 otherwise, under the K–12 education grant pro-  
5 grams, by the State or any public educational  
6 entity in the State for that calendar year and  
7 the four preceding calendar years, had it elected  
8 not to be an opt-out State for those calendar  
9 years.

10 (2) REGULATIONS.—The Secretary shall pre-  
11 scribe regulations for making determinations re-  
12 quired by this subsection. The initial regulations  
13 shall be prescribed not later than 6 months after the  
14 date of the enactment of this Act.

15 (d) AGGREGATE K–12 FUNDING.—The aggregate K–  
16 12 funding for a State for a calendar year shall be equal  
17 to—

18 (1) the amount of all grant funds received other  
19 than on a competitive basis, as direct grants, sub-  
20 grants, or otherwise, under the K–12 education  
21 grant programs, by the State or any public edu-  
22 cational entity in the State for that calendar year;  
23 plus

24 (2) the average annual amount of all grant  
25 funds received on a competitive basis, as direct

1 grants, subgrants, or otherwise, under the K–12  
 2 education grant programs, by the State or any pub-  
 3 lic educational entity in the State for that calendar  
 4 year and the four preceding calendar years.

5 **SEC. 103. OPT-OUT STATES NOT ELIGIBLE TO RECEIVE**  
 6 **GRANTS UNDER K–12 EDUCATION GRANT**  
 7 **PROGRAMS.**

8 (a) IN GENERAL.—When a State is an opt-out State  
 9 for a calendar year, neither the State nor any public edu-  
 10 cational entity in the State is eligible to receive, as direct  
 11 grants, subgrants, or otherwise, any funds under any of  
 12 the K–12 education grant programs for that calendar  
 13 year.

14 (b) REALLOCATION.—Any funds under a K–12 edu-  
 15 cation grant program that are not allocated to a State or  
 16 public educational entity in the State by reason of sub-  
 17 section (a) shall be returned to the Treasury.

18 **SEC. 104. REQUIREMENTS OF K–12 EDUCATION GRANT PRO-**  
 19 **GRAMS DO NOT APPLY TO OPT-OUT STATES.**

20 When a State is an opt-out State for a calendar year,  
 21 neither the State nor any public educational entity in the  
 22 State is subject to any statutory or regulatory requirement  
 23 of a K–12 education grant program for that calendar year.

24 **SEC. 105. DEFINITIONS.**

25 In this title:

1           (1) The term “K–12 education grant program”  
 2           means any grant program carried out under any  
 3           title of the Elementary and Secondary Education  
 4           Act of 1965, except for the following:

5                   (A) INDIAN, NATIVE HAWAIIAN, AND ALAS-  
 6                   KA NATIVE EDUCATION.—Title VII (20 U.S.C.  
 7                   7401 et seq.).

8                   (B) IMPACT AID.—Title VIII (20 U.S.C.  
 9                   7701 et seq.).

10          (2) The term “public educational entity”  
 11          means, with respect to a State, the State educational  
 12          agency, any local educational agency in the State, or  
 13          any public elementary or secondary school in the  
 14          State.

## 15                   **TITLE II—CREDIT TO** 16                   **TAXPAYERS IN OPT-OUT STATE**

### 17   **SEC. 201. REFUNDABLE OPT-OUT STATE EDUCATION CRED-** 18                   **IT.**

19          (a) IN GENERAL.—Subpart C of part IV of sub-  
 20          chapter A of chapter 1 of the Internal Revenue Code of  
 21          1986 (relating to refundable credits) is amended by insert-  
 22          ing after section 36A the following new section:

#### 23   **“SEC. 36B. OPT-OUT STATE EDUCATION CREDIT.**

24          “(a) GENERAL RULE.—In the case of an eligible indi-  
 25          vidual, there shall be allowed as a credit against the tax

1 imposed by this chapter for the taxable year the opt-out  
 2 State education amount.

3 “(b) OPT-OUT STATE EDUCATION AMOUNT.—For  
 4 purposes of this section—

5 “(1) IN GENERAL.—The term ‘opt-out State  
 6 education amount’ means, with respect to a taxpayer  
 7 for a taxable year beginning in an opt-out year, the  
 8 amount equal to—

9 “(A) the amount creditable under section  
 10 102 of the Local Education Authority Returns  
 11 Now Act to an opt-out State (determined under  
 12 section 101 of such Act), multiplied by—

13 “(B) a fraction—

14 “(i) the numerator of which is the  
 15 taxpayer’s household tax burden from such  
 16 State for the opt-out year, and

17 “(ii) the denominator of which is the  
 18 total tax revenue of such State for the opt-  
 19 out year.

20 “(2) HOUSEHOLD TAX BURDEN.—The house-  
 21 hold tax burden from a State for an opt-out year is  
 22 the sum of—

23 “(A) the State real property taxes,

24 “(B) the State personal property taxes,



1                   “(C) the State income, war profits, and ex-  
2                   cess profits taxes, plus

3                   “(D) the State general sales taxes,  
4                   for the calendar year in which the second preceding  
5                   taxable year ends and within which paid or accrued  
6                   by the taxpayer. For purposes of this section, terms  
7                   used in the preceding sentence which are also used  
8                   in section 164 shall have the respective meanings  
9                   given such terms by section 164.

10                  “(3) TOTAL TAX REVENUE.—The total tax rev-  
11                  enue of a State for an opt-out year is the amount  
12                  determined by the Secretary to be the aggregate tax  
13                  revenue of such State for the calendar year in which  
14                  the second preceding taxable year ends.

15                  “(c) ELIGIBLE INDIVIDUAL.—For purposes of this  
16                  section—

17                   “(1) IN GENERAL.—The term ‘eligible indi-  
18                   vidual’ means an individual whose principal place of  
19                   abode (within the meaning of section 121) was in  
20                   the opt-out State for the entire taxable year.

21                   “(2) DEPENDENTS.—The term ‘eligible indi-  
22                   vidual’ does not include any individual if a deduction  
23                   under section 151 with respect to such individual is  
24                   allowed to another taxpayer for a taxable year begin-

1       ning in the calendar year in which such individual's  
2       taxable year begins.

3       “(d) OPT-OUT YEAR.—The term ‘opt-out year’  
4 means a calendar year for which the Secretary determines  
5 a State to be an opt-out State under section 101 of the  
6 Local Education Authority Returns Now Act.

7       “(e) AMOUNT OF CREDIT SHALL BE DETERMINED  
8 UNDER TABLES.—

9               “(1) IN GENERAL.—The credit under sub-  
10 section (a) shall be determined under tables pre-  
11 scribed by the Secretary.

12              “(2) REQUIREMENTS FOR TABLES.—The tables  
13 prescribed under paragraph (1) shall—

14                   “(A) reflect the provisions of this section,  
15                   and

16                   “(B) take into account filing status, State  
17                   of residence, and adjusted gross income.”.

18       (b) CONFORMING AMENDMENTS.—

19               (1) Paragraph (2) of section 1324(b) of title  
20 31, United States Code, is amended by inserting  
21 “36B,” after “36A,”.

22               (2) The table of sections for subpart C of part  
23 IV of subchapter A of chapter 1 of the Internal Rev-  
24 enue Code of 1986 is amended by inserting after the  
25 item relating to section 36A the following new item:

“Sec. 36B. Opt-out State education credit.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this Act.

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