

111TH CONGRESS  
2D SESSION

# S. 3771

To amend the Elementary and Secondary Education Act of 1965 to provide competitive grants for creating and implementing innovative assessments.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2010

Mr. FEINGOLD (for himself and Mr. LEAHY) 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 provide competitive grants for creating and implementing innovative assessments.

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 “Improving Student  
5 Testing Act of 2010”.

1 **SEC. 2. IMPROVEMENTS TO FORMULA GRANTS FOR CRE-**  
2 **ATING AND IMPLEMENTING HIGH-QUALITY**  
3 **AND INNOVATIVE ASSESSMENTS.**

4 Section 6111 of the Elementary and Secondary Edu-  
5 cation Act of 1965 (20 U.S.C. 7301) is amended—

6 (1) by striking “The Secretary” and inserting  
7 the following:

8 “(a) IN GENERAL.—The Secretary”;

9 (2) by striking paragraph (1) and inserting the  
10 following:

11 “(1) to pay the costs of the development of the  
12 additional State assessments and standards required  
13 by section 1111(b), which may include the costs of  
14 working in voluntary partnerships with other States,  
15 at the sole discretion of each such State, and which  
16 may also include—

17 “(A) partnering with institutions of higher  
18 education and nonprofit organizations to design  
19 and implement high-quality and innovative as-  
20 sements, including performance assessments,  
21 technology-based assessments, through-course  
22 assessments, adaptive assessments, and appro-  
23 priate assessments for students with disabilities  
24 and English language learners;

25 “(B) aligning high-quality and innovative  
26 assessments with the common core standards or

1 State challenging academic content standards  
2 and challenging student academic achievement  
3 standards;

4 “(C) partnering with institutions of higher  
5 education and other nonprofit entities with ex-  
6 perience in high-quality professional develop-  
7 ment to train teachers and principals in—

8 “(i) how to design balanced assess-  
9 ment systems that include summative, in-  
10 terim, and formative assessments;

11 “(ii) how to effectively embed high-  
12 quality and innovative assessments in  
13 classroom instruction;

14 “(iii) how to interpret the data gen-  
15 erated by multiple types of assessments;  
16 and

17 “(iv) how to use the data generated  
18 by assessments to improve student achieve-  
19 ment;

20 “(D) designing and implementing alter-  
21 native assessments that are fair, valid, and reli-  
22 able for students with disabilities and English  
23 language learners;

24 “(E) developing scoring mechanisms that  
25 enable high-quality and innovative assessments

1 to be scored in such a way as to produce fair,  
2 valid, reliable, and comparable results for all  
3 students;

4 “(F) integrating the use of technology in  
5 both the design, implementation, and scoring of  
6 assessments;

7 “(G) implementing assessment systems  
8 that use multiple sources of evidence collected  
9 throughout the course of a school year for the  
10 purposes of calculating adequate yearly  
11 progress under section 1111(b)(2)(C); and

12 “(H) collaborating with other State edu-  
13 cational agencies to share information and best  
14 practices about assessment design and imple-  
15 mentation; and”;

16 (3) in paragraph (2), by adding at the end the  
17 following:

18 “(I) Developing and admin-  
19 istering formative and interim assess-  
20 ments to help measure student  
21 growth, improve classroom instruc-  
22 tion, and provide timely feedback to  
23 teachers, principals, and parents dur-  
24 ing the academic year.”.

1 **SEC. 3. COMPETITIVE GRANTS FOR CREATING AND IMPLE-**  
2 **MENTING INNOVATIVE ASSESSMENTS.**

3 (a) IN GENERAL.—Section 6112 of the Elementary  
4 and Secondary Education Act of 1965 (20 U.S.C. 7301a)  
5 is amended to read as follows:

6 **“SEC. 6112. COMPETITIVE GRANTS FOR CREATING AND IM-**  
7 **PLEMENTING INNOVATIVE ASSESSMENTS.**

8 “(a) PURPOSES.—The purposes of this section are as  
9 follows:

10 “(1) To provide additional resources to States  
11 and State educational agencies so that accountability  
12 decisions about students and schools are based on  
13 well-designed multiple measures rather than 1 high  
14 stakes standardized test.

15 “(2) To assist States, State educational agen-  
16 cies, local educational agencies, and schools in the  
17 design and implementation of high-quality and inno-  
18 vative assessments, including technology-based as-  
19 sessments, adaptive assessments, formative assess-  
20 ments, performance assessments, standardized port-  
21 folio assessments, interim assessments, appropriate  
22 assessments for students with disabilities and  
23 English language learners, through-course assess-  
24 ments, and other assessments that measure higher-  
25 order thinking skills and are aligned with common  
26 core standards or State challenging academic con-

1 tent standards and challenging student academic  
2 achievement standards, in order to create multiple  
3 measures that—

4 “(A) are used for Federal and State ac-  
5 countability purposes;

6 “(B) improve classroom instruction; and

7 “(C) provide timely and meaningful feed-  
8 back to students, teachers, principals, and par-  
9 ents.

10 “(b) DEFINITIONS.—In this section:

11 “(1) ADAPTIVE ASSESSMENT.—The term  
12 ‘adaptive assessment’ means an assessment in which  
13 questions are administered to students based on the  
14 students’ answers to previous questions both on and  
15 out of grade level.

16 “(2) ELIGIBLE ENTITY.—The term ‘eligible en-  
17 tity’ means—

18 “(A) a consortium of States;

19 “(B) a State educational agency;

20 “(C) a consortium of local education agen-  
21 cies; or

22 “(D) a local education agency.

23 “(3) FORMATIVE ASSESSMENT.—The term  
24 ‘formative assessment’ means an assessment that—

1           “(A) is integrated into classroom instruc-  
2           tion;

3           “(B) produces evidence about student  
4           learning and achievement in a timely manner;  
5           and

6           “(C) provides students and teachers with  
7           meaningful feedback so that teachers can mod-  
8           ify, improve, and target instructional strategies  
9           based on individual student need, and so that  
10          teachers and students can assess the students’  
11          academic growth.

12          “(4) INTERIM ASSESSMENT.—The term ‘interim  
13          assessment’ means an assessment that—

14               “(A) is given at regular and specified in-  
15               tervals throughout the school year;

16               “(B) is designed to evaluate students’  
17               knowledge and skills relative to a specific set of  
18               academic standards; and

19               “(C) produces results that can be aggre-  
20               gated by course, grade level, school, or local  
21               educational agency in order to inform students,  
22               teachers, and administrators at the student,  
23               classroom, school, and local educational agency  
24               levels.

1           “(5) MULTIPLE MEASURES.—The term ‘mul-  
2           tiple measures’ means evidence gained from different  
3           forms of assessment that offer all students various  
4           ways to fairly, validly, and reliably demonstrate aca-  
5           demic achievement and academic growth.

6           “(6) PERFORMANCE ASSESSMENT.—The term  
7           ‘performance assessment’ means an assessment that  
8           measures the ability of students to apply knowledge  
9           and skills, and demonstrate achievement through  
10          performance-based tasks.

11          “(7) STANDARDIZED PORTFOLIO ASSESS-  
12          MENT.—The term ‘standardized portfolio assess-  
13          ment’ means an assessment that accumulates the  
14          same types of student work, created under similar  
15          conditions across all schools within a State, to use  
16          as formative or summative evidence of student aca-  
17          demic progress.

18          “(8) TECHNOLOGY-BASED ASSESSMENT.—The  
19          term ‘technology-based assessment’ means an assess-  
20          ment that utilizes technology such as computers in  
21          the development, administration, and scoring of the  
22          assessment.

23          “(9) THROUGH-COURSE ASSESSMENT.—The  
24          term ‘through-course assessment’ means an assess-  
25          ment system or component or set of assessment sys-



1       tem components that is administered periodically  
 2       during the academic year, in which a student’s re-  
 3       sults are combined to produce the student’s total  
 4       summative assessment score for such academic year.

5               “(10) UNIVERSAL DESIGN FOR LEARNING.—  
 6       The term ‘universal design for learning’ means a sci-  
 7       entifically valid framework for guiding educational  
 8       practice that—

9                       “(A) provides flexibility in the ways infor-  
 10                      mation is presented, in the ways students re-  
 11                      spond or demonstrate knowledge and skills, and  
 12                      in the ways students are engaged; and

13                     “(B) reduces barriers in instruction, pro-  
 14                      vides appropriate accommodations, supports,  
 15                      and challenges, and maintains high achievement  
 16                      expectations for all students, including students  
 17                      with disabilities and students who are English  
 18                      language learners.

19               “(c) GRANTS AUTHORIZED.—The Secretary is au-  
 20       thorized to award grants to eligible entities to enable the  
 21       eligible entities to carry out the authorized activities de-  
 22       scribed in subsection (d).

23               “(d) AUTHORIZED ACTIVITIES.—

24                     “(1) IN GENERAL.—An eligible entity that re-  
 25       ceives a grant under this section shall use the funds

1 made available under this section for the design or  
2 implementation of high-quality and innovative as-  
3 sessments in local classrooms, including—

4 “(A) partnering with institutions of higher  
5 education and nonprofit organizations to de-  
6 sign, test, and implement assessments in class-  
7 rooms;

8 “(B) aligning the assessments with com-  
9 mon core standards or State challenging aca-  
10 demic content standards and challenging stu-  
11 dent academic achievement standards under  
12 section 1111(b)(1);

13 “(C) partnering with institutions of higher  
14 education, local educational agencies, and non-  
15 profit organizations that provide high-quality  
16 professional development to train teachers and  
17 principals in—

18 “(i) how to utilize the assessments de-  
19 scribed in subsection (a)(2) in the teach-  
20 ers’ classrooms;

21 “(ii) how to interpret the data gen-  
22 erated by these assessments; and

23 “(iii) how to use the data generated  
24 by these assessments to improve student  
25 achievement;

1 “(D) designing achievement reports that—

2 “(i) detail assessment results, includ-  
3 ing student achievement and student-level  
4 and school-level growth;

5 “(ii) are desegregated by student sub-  
6 groups listed in section  
7 1111(b)(2)(C)(v)(II); and

8 “(iii) can be used to inform classroom  
9 instruction and provide parents and the  
10 community with timely information on stu-  
11 dent-level and school-level progress;

12 “(E) designing and implementing alter-  
13 native assessments that are fair, valid, and reli-  
14 able for students with disabilities and English  
15 language learners;

16 “(F) developing scoring mechanisms that  
17 enable the assessments to be scored in such a  
18 way as to produce fair, valid, reliable, and com-  
19 parable results for all students;

20 “(G) integrating the use of technology in  
21 both the design, implementation, and scoring of  
22 assessments;

23 “(H) collaborating with other eligible enti-  
24 ties to share information and best practices

1 about assessment development and implementa-  
2 tion across the States; and

3 “(I) implementing assessment systems that  
4 use multiple measures collected throughout the  
5 course of a school year for purposes of calcu-  
6 lating school-level and district-level achievement  
7 in Federal and State accountability systems.

8 “(2) REQUIREMENTS.—Assessments designed  
9 or implemented with funds provided under this sec-  
10 tion shall—

11 “(A) be aligned with common core stand-  
12 ards or State challenging academic content  
13 standards and challenging student academic  
14 achievement standards under section  
15 1111(b)(1);

16 “(B) be capable of measuring student aca-  
17 demic growth and achievement of State chal-  
18 lenging academic content standards and chal-  
19 lenging student academic achievement stand-  
20 ards;

21 “(C) be fair, valid, reliable, and capable of  
22 producing comparable and disaggregated results  
23 for all students, including all the student sub-  
24 groups identified under section  
25 1111(b)(2)(C)(v)(II);

1           “(D) be able to measure readiness for col-  
2           lege or the workplace;

3           “(E) use scoring mechanisms that enable  
4           the assessments to be scored in such a way as  
5           to produce fair, valid, reliable, and comparable  
6           results for all students;

7           “(F) incorporate principles of universal de-  
8           sign for learning;

9           “(G) produce evidence about student learn-  
10          ing and achievement in a timely manner; and

11          “(H) provide teachers with meaningful  
12          feedback so that the teachers can modify, im-  
13          prove, and target instructional strategies based  
14          on individual student need.

15          “(3) RESTRICTIONS.—Grant funds received  
16          under this section—

17                 “(A) shall be used only for the authorized  
18                 activities described under this subsection; and

19                 “(B) may not be used for the purchase or  
20                 development of high stakes, large scale assess-  
21                 ments or for test preparation materials for high  
22                 stakes testing.

23          “(e) OTHER ELIGIBLE PARTNER ENTITIES.—

24                 “(1) IN GENERAL.—Each eligible entity that re-  
25                 ceives a grant under this section, upon receipt of the

1 grant funds, may partner with an entity described in  
2 paragraph (2), in order to carry out the activities as-  
3 sisted under the grant.

4 “(2) PARTNER ENTITIES.—A partner entity re-  
5 ferred to in paragraph (1) is—

6 “(A) an institution of higher education; or

7 “(B) a nonprofit entity with experience in  
8 designing high-quality and innovative assess-  
9 ments.

10 “(f) APPLICATION.—To be eligible to receive a grant  
11 under this section, an eligible entity shall submit an appli-  
12 cation to the Secretary at such time, in such manner, and  
13 containing such information as the Secretary may require,  
14 including, at a minimum—

15 “(1) a proposal to use the grant funds to design  
16 or implement the assessments and assessment sys-  
17 tems described in subsection (a)(2);

18 “(2) a description of how the eligible entity  
19 plans to ensure that teachers and principals are pro-  
20 vided meaningful and effective professional develop-  
21 ment in the use of such assessments in the teachers’  
22 and principals’ classrooms and schools, including  
23 how to interpret and utilize data generated from the  
24 assessments to improve student learning and out-  
25 comes;

1           “(3) a description of how the eligible entity  
2 plans to assess the effectiveness of the assessments  
3 and assessment systems in raising student achieve-  
4 ment and narrowing the achievement gap among the  
5 State’s student population;

6           “(4) a description of how the eligible entity  
7 plans to ensure that the assessments and assessment  
8 systems will be used to improve teaching and provide  
9 detailed and timely feedback to students and par-  
10 ents; and

11           “(5) a description of how the eligible entity  
12 plans to ensure that there is a transparent and fair  
13 process for scoring assessments designed or imple-  
14 mented with funds provided under this section so  
15 that scores are accurate, valid, and reliable.

16           “(g) DURATION.—A grant under this section shall be  
17 awarded for a period of not more than 3 fiscal years.

18           “(h) AWARD CONSIDERATIONS.—In awarding grants  
19 under this section, the Secretary shall select eligi-  
20 ble entities that demonstrate the greatest need for the grants and  
21 the greatest potential benefit from receipt of the grants.

22           “(i) REPORT AND EVALUATION.—

23           “(1) STATE REPORTS.—Each eligible entity  
24 that receives a grant under this section shall sub-  
25 mit—

1           “(A) an annual report to the Secretary de-  
2 tailing how the eligible entity is using the grant  
3 funds and detailing ongoing evaluation of—

4                   “(i) the design of the assessments as-  
5 sisted under this section;

6                   “(ii) the training of educators in using  
7 the assessments;

8                   “(iii) the effectiveness of the assess-  
9 ments as measured by student achievement  
10 and growth based on multiple measures;  
11 and

12                   “(iv) the reliability and validity of the  
13 scoring process for the assessments;

14           “(B) a comprehensive 3-year report at the  
15 end of the 3-year grant period including a de-  
16 tailed analysis of—

17                   “(i) how the grant funds were used;  
18 and

19                   “(ii) the impact of the grant on stu-  
20 dent achievement, narrowing the achieve-  
21 ment gap, and the quality of teaching,  
22 based on multiple measures.

23           “(2) FEDERAL EVALUATION AND REPORT.—

24           Not later than 5 years after the date of enactment



1 of the Improving Student Testing Act of 2010, the  
2 Secretary shall—

3 “(A) develop and execute a plan for evalu-  
4 ating the assessments assisted under this sec-  
5 tion and section 6111 and the strategies fi-  
6 nanced under this section; and

7 “(B) submit a report to Congress detail-  
8 ing—

9 “(i) how eligible entities used the  
10 grant funds provided under this section;

11 “(ii) the impact of the grants on stu-  
12 dent achievement and teaching in the  
13 States; and

14 “(iii) any recommendations for im-  
15 provements that can be made to the grant  
16 programs under this section and section  
17 6111.

18 “(j) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
19 tion to the amounts authorized to be appropriated under  
20 section 6113(b)(2), there are authorized to be appro-  
21 priated to carry out this section \$10,000,000 for each of  
22 fiscal years 2011 through 2015.”.

23 (b) TABLE OF CONTENTS.—The table of contents in  
24 section 2 of the Elementary and Secondary Education Act

1 of 1965 is amended by striking the item relating to section  
2 6112 and inserting the following:

“Sec. 6112. Competitive grants for creating and implementing innovative as-  
sessments.”.

3 (c) ENDING TAXPAYER SUBSIDIES FOR EXPORT-  
4 ERS.—

5 (1) IN GENERAL.—Not later than 1 year after  
6 the date of enactment of this Act, the Secretary of  
7 Commerce shall develop and implement a program  
8 to impose fees on businesses that benefit from the  
9 trade promotion activities of the International Trade  
10 Administration.

11 (2) BUDGET NEUTRALITY.—The fees shall be  
12 imposed in an amount that ensures that any Federal  
13 expenditures on trade promotion activities of the  
14 International Trade Administration are offset by the  
15 fees collected under the program in a budget neutral  
16 manner.

○