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

introduced the following bill; which was read twice and referred to the Committee on

A BILL

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

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “State Innovation Pilot Act of 2011”.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to support State, local, and tribal leadership
and innovation in preparing all students to meet
State-developed college and career ready academic
content standards and student academic achievement standards, by establishing a process to permit State, local, and tribal educational leaders to implement alternative and innovative strategies to improve student academic achievement and otherwise meet the purposes of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et. seq.); and

(2) to direct the Secretary of Education to defer to State, local, and tribal judgments regarding how best to accomplish the purposes of the Elementary and Secondary Education Act of 1965.

SEC. 3. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.

Section 9401 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7861) is amended—

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

“(a) IN GENERAL.—

“(1) REQUEST FOR WAIVER.—A State educational agency, local educational agency, or Indian tribe that receives funds under a program authorized under this Act may submit a request to the Secretary to waive any statutory or regulatory requirement of this Act.
“(2) Receipt of waiver.—Except as provided in subsection (e), the Secretary shall waive any statutory or regulatory requirement of this Act for a State educational agency, local educational agency, Indian tribe, or school (through a local educational agency), that submits a waiver request pursuant to this subsection.”;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting “, which shall include a plan” after “waiver request to the Secretary”;

(ii) in subparagraph (B), by striking “and how the waiving of those requirements will” and all that follows through the end, and inserting a semicolon;

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

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

“(C) reasonably demonstrates that the waiver will improve instruction for students, advance student academic achievement, and contribute to student mastery of knowledge and
skills, consistent with the State’s college and
career ready academic content standards and
student academic achievement standards;

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

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

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

“(E) as applicable to the waiver request—

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

“(ii) describes the State educational
agency, local educational agency, or Indian
tribe’s process for accurately and meaning-
fully identifying, supporting, and inter-
vening in underperforming schools, consistent with applicable State or local policy; and

“(iii) includes information on how the State educational agency, local educational agency, or Indian tribe will maintain and improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of students according to the student subgroups described in subclauses (I) through (IV) of section 1111(b)(2)(B)(viii); and’’;

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

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

(D) by adding at the end the following:

“(4) Peer review.—
“(A) Peer review team.—

“(i) In general.—The Secretary shall establish multi-disciplinary peer review teams and appoint members to such teams, including persons who have experience with a State educational agency (or local educational agency or Indian tribe, as appropriate) and broader education reform experience, to review waiver requests under this section if—

“(I) the Secretary requests such input in order to approve a waiver request; or

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

“(ii) Team in place for all waiver requests.—The Secretary may, at the Secretary’s discretion, have a peer review team review all waiver requests submitted under this section.

“(B) Applicability.—The Secretary may approve a waiver request under this section without conducting a peer review of the request, but shall use the peer review process under this paragraph before disapproving such a request.
“(C) Purpose of peer review.—The peer review process shall be designed to—

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

“(ii) provide transparent feedback to State educational agencies, local educational agencies, or Indian tribes, designed to strengthen the applicant’s plan described under paragraph (1)(C).

“(D) Standard and nature of review.—Peer reviewers shall conduct a good faith review of waiver requests submitted to them under this section. Peer reviewers shall review such waiver requests—

“(i) in their totality;

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

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

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

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

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

“(iii) the plan that is required under paragraph (1)(C), and reviewed with deference to State and local judgment, provides no reasonable basis to determine that a waiver will enhance student academic achievement; or

“(iv) the waiver request does not provide for adequate evaluation to ensure review and continuous improvement of the plan, consistent with paragraph (1)(D).

“(B) WAIVER DETERMINATION AND REVISION.—If the Secretary determines and demonstrates that the waiver request does not meet the requirements of this section, the Secretary shall—

“(i) immediately—
“(I) notify the State educational agency, local educational agency, or Indian tribe of such determination; and

“(II) at the request of the State educational agency, local educational agency, or Indian tribe, provide detailed reasons for such determination in writing;

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

“(iii) if the Secretary determines that the resubmission does not meet the requirements of this section, at the request of the State educational agency, local educational agency, or Indian tribe, conduct a public hearing not more than 30 days after the date of such resubmission.

“(C) WAIVER DISAPPROVAL.—The Secretary may disapprove a waiver request if—

“(i) the State educational agency,
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has been notified and offered an oppor-

tunity to revise and resubmit the waiver

request, as described under clauses (i) and

(ii) of subparagraph (B); and

“(ii) the State educational agency,

local educational agency, or Indian tribe—

“(I) does not revise and resubmit

the waiver request; or

“(II) revises and resubmits the

waiver request, and the Secretary de-
termines that such waiver request
does not meet the requirements of this
section after a hearing conducted
under subparagraph (B)(iii).

“(D) EXTERNAL CONDITIONS.—The Sec-

retary shall not disapprove a waiver request
under this section based on conditions outside
the scope of the waiver request.”;

(3) in subsection (d)—

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

(B) by adding at the end the following:

“(3) SPECIFIC LIMITATIONS.—The Secretary

shall not require a State educational agency, local
educational agency, or Indian tribe, as a condition of approval of a waiver request, to—

“(A) include in, or delete from, such request, specific academic content standards or academic achievement standards;

“(B) use specific academic assessment instruments or items; or

“(C) include in, or delete from, such waiver request any criterion that specifies, defines, or prescribes the standards or measures that a State or local educational agency uses to establish, implement, or improve—

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

“(ii) assessments;

“(iii) State accountability systems;

“(iv) systems that measure student growth;

“(v) measures of other academic indicators; or

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

(4) in subsection (e)—

(A) in paragraph (1)—
(i) by striking the heading and inserting “WAIVER REPORTS”;

(ii) in the matter preceding subparagraph (A)—

(I) by striking “local educational agency that receives” and inserting “State educational agency, local educational agency, or Indian tribe that receives”; and

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

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

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

(D) in paragraph (2), (as redesignated by subparagraph (C)), by striking “Beginning in fiscal year 2002 and for each subsequent year, the Secretary shall submit to the Committee” and inserting “The Secretary shall annually submit to the Committee”; and

(5) in subsection (f), by inserting “and the recipient of the waiver has failed to make revisions needed to carry out the purpose of the waiver,” after
“has been inadequate to justify a continuation of the waiver”.