

*Colorado Legislative Council Staff Fiscal Note*

**FINAL  
FISCAL NOTE**

---

<b>Drafting Number:</b> LLS 15-0789	<b>Date:</b> July 9, 2015
<b>Prime Sponsor(s):</b> Sen. Holbert; Todd Rep. Lebsack; Ransom	<b>Bill Status:</b> Postponed Indefinitely <b>Fiscal Analyst:</b> Josh Abram (303-866-3561)

---

**BILL TOPIC:** REMOVE PENALTY WHEN PARENT OPTS CHILD OUT OF TEST

<b>Fiscal Impact Summary*</b>	<b>FY 2015-2016</b>	<b>FY 2016-2017</b>
<b>State Revenue</b>		
<b>State Expenditures</b> General Fund Federal Funds	See State Expenditures section.	
<b>FTE Position Change</b>		
<b>Appropriation Required:</b>		

\* This summary shows changes from current law under the bill for each fiscal year.

**Summary of Legislation**

The bill requires that local education providers (LEPs; i.e., school districts, Boards of Cooperative Educational Services, charter schools) establish a written policy to allow a parent to excuse his or her child from participating in a standardized assessment required either by the state or by the LEP. If a parent opts a child out of testing, the LEP cannot penalize the student, the student's teacher and principal, or the public school that the student attends. Further, the Colorado Department of Education (CDE) cannot penalize the LEP that enrolls the student when a parent excuses his or her child from participation in statewide or locally administered standardized assessments.

**Background**

State Board of Education Rules for the Administration of Statewide Accountability ("SB 163 Rules") require that the rates of student participation in statewide assessments be considered in the assignment of district accreditation ratings and school plan types.<sup>1</sup> Generally, if a district or school fails to meet the 95 percent participation rate requirement in two or more content areas under current practice (reading, writing, math, science, social studies, or ACT), the district or school are assigned to an accreditation category or school plan type that is one ranking lower than what they would otherwise be assigned; however, recent action by the State Board indicates that a district's accreditation will not be impacted if participation in statewide assessments falls below 95 percent.

---

<sup>1</sup> 1 CCR 301-1, sections 5.02 and 10.01(A)

The 95 percent participation rate for students and subgroups of students is a federal requirement under the Elementary and Secondary Education Act, commonly referred to as No Child Left Behind (NCLB). Every school district must adhere to this requirement as part of Colorado's NCLB waiver. Under current state law, every student enrolled in a public school is required to take the assessments administered at the grade level in which that student is enrolled.<sup>2</sup> Should an individual school or a district fail to test every student, the CDE has multiple enforcement actions available to it to enforce state accountability laws.

### **State Expenditures**

The bill increases workload in the CDE and may impact federal funding to the state, as discussed below.

**Colorado Department of Education.** The CDE must update information sources and fact sheets to inform LEPs and the public concerning the existence of an opt-out policy at the state and local level. The department must also adjust internal data systems to verify students whose parents have opted out of testing in order to recalculate performance indicators for schools and districts and to determine student longitudinal growth. This workload increase does not require additional appropriations.

**Title I federal funding.** If Colorado allows parents to opt students out of statewide testing, meeting the federal requirement that the state test all students may be jeopardized. If the state does not ensure that all students are tested, the federal Department of Education (DOE) has a range of enforcement actions it can take, including withholding federal funds, impacting state revenue.

The specific federal enforcement actions depend on the severity of non-compliance. These include sending a written request that the state come into compliance, increasing monitoring, placing a condition on the CDE's Title I grant award or on its NCLB waiver, placing the CDE on high-risk status, issuing a cease and desist order, entering into a compliance agreement with the CDE, withholding all or a portion of the CDE's Title I administrative funds, and suspending or withholding all or a portion of the state's Title I programmatic funds for schools. While withholding all or a portion of Title I funding could result, this fiscal note assumes that this is the least likely consequence imposed by the federal government as a result of the bill.

### **School District Impact**

The bill allows parents to opt students out of local assessments in addition to the state assessments. LEPs use multiple standardized assessments for diagnostics and for interim benchmarking in preparation of the summative standardized test administered statewide. LEPs also assess students multiple times per year for progress monitoring. Tracking students whose parents refuse participation increases administrative and reporting workload for LEPs. The LEPs must update information sources, fact sheets, websites, etc., and maintain a database to identify which students have opted in or out in order to monitor and verify database entries prior to administering any assessment. Once implemented, the LEP may have other expenses to provide educational experiences for students not participating in standardized testing.

---

<sup>2</sup> Section 22-7-409(1.2)(d)(l)(a), C.R.S.

Pursuant to Section 22-32-143, C.R.S., school districts and Boards of Cooperative Educational Services (BOCES) may submit estimates of fiscal impacts within seven days of a bill's introduction. As of the date of this fiscal note, no summaries of fiscal impacts were submitted by districts or BOCES for this bill. If summaries of fiscal impacts are submitted by districts or BOCES in the future, they will be noted in subsequent revisions to the fiscal note and posted at this address: <http://www.colorado.gov/lcs>

**Effective Date**

The bill was postponed indefinitely by the House Education Committee on May 1, 2015.

**State and Local Government Contacts**

Education

Law