A BILL FOR AN ACT

CONCERNING AN EVALUATION OF THE STATEWIDE SYSTEMS USED TO MEASURE THE PERFORMANCE OF THE ELEMENTARY AND SECONDARY PUBLIC EDUCATION SYSTEM OF THE STATE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill directs the state auditor to contract with a public or private entity (contractor) to conduct a performance audit of the statewide system of standards and assessments and the statewide education accountability system. The bill specifies the issues that the performance audit must address. By November 15, 2022, and following release by the legislative...
audit committee, the final report of the performance audit must be submitted to the commissioner of education, the state board of education, and the education committees of the general assembly.

The bill specifies the authority of the state auditor and the contractor to access nonfinancial records and information held by the department of education or held by public schools, school districts, boards of cooperative services, and the state charter school institute, if the records and information are not available from the department.
ASSEMBLY’S ORIGINAL INTENT IN ADOPTING THE SYSTEMS;

(III) THE GENERAL ASSEMBLY DESIRES TO REVIEW THE STATEWIDE SYSTEM OF STANDARDS AND ASSESSMENTS AND THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM TO ENSURE THAT THEY DO NOT CONTAIN INSTITUTIONAL OR CULTURAL BIASES BASED ON RACE, ETHNICITY, RELIGION, SEX, SEXUAL ORIENTATION, NATIONALITY, DISABILITY, AGE, OR ECONOMIC STATUS; AND TO ENSURE THAT THE SYSTEMS PROVIDE AN ACCURATE, CREDIBLE, AND COMPARABLE ASSESSMENT OF THE DELIVERY OF PUBLIC EDUCATION THROUGHOUT THE STATE;

(IV) THE GENERAL ASSEMBLY ACKNOWLEDGES ITS CONSTITUTIONAL OBLIGATION TO ESTABLISH AND MAINTAIN A THOROUGH AND UNIFORM SYSTEM OF PUBLIC EDUCATION IN THE STATE, AND THE GENERAL ASSEMBLY AND DEPARTMENT OF EDUCATION ARE CONSTANTLY LOOKING FOR WAYS TO IMPROVE COLORADO’S SYSTEM OF PUBLIC EDUCATION AND BETTER SERVE ITS RESIDENTS; AND

(V) A THOROUGH, INDEPENDENT, THIRD-PARTY REVIEW OF THE EXISTING STATEWIDE SYSTEM OF STANDARDS AND ASSESSMENTS AND THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM WILL PROVIDE VALUABLE INFORMATION ABOUT THE EFFICACY OF THE STATE'S CURRENT SYSTEMS, INCLUDING AREAS IN WHICH THE SYSTEMS MAY BE IMPROVED, AND HELP TO IDENTIFY AND INFORM THE ALLOCATION OF RESOURCES TO MEET THE INCREASED NEEDS AT THE STATE AND LOCAL LEVELS, TO ADVANCE PUBLIC EDUCATION IN COLORADO.

(b) THE GENERAL ASSEMBLY FINDS, THEREFORE, THAT IT IS APPROPRIATE TO OBTAIN AN INDEPENDENT PERFORMANCE AUDIT OF THE STATEWIDE SYSTEM OF STANDARDS AND ASSESSMENTS AND THE
STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM. THE OBJECTIVE OF THE
AUDIT IS TO DETERMINE WHETHER THE CURRENT SYSTEMS:

(I) MEET THE GOALS AND INTENTIONS OF THE GENERAL ASSEMBLY
AS STATED IN THE LEGISLATIVE DECLARATIONS SET FORTH IN SECTIONS
22-7-1002 AND 22-11-102;

(II) CONTAIN INSTITUTIONAL OR CULTURAL BIASES BASED ON
RACE, ETHNICITY, RELIGION, SEX, SEXUAL ORIENTATION, NATIONALITY,
DISABILITY, AGE, OR ECONOMIC STATUS; AND

(III) PROVIDE AN ACCURATE, CREDIBLE, AND COMPARABLE
ASSESSMENT OF PUBLIC EDUCATION THROUGHOUT THE STATE.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
REQUIRES:

(a) "CONTRACTOR" MEANS A PUBLIC OR PRIVATE ENTITY SELECTED
BY THE STATE AUDITOR TO CONDUCT A PERFORMANCE AUDIT OF THE
STATEWIDE IMPLEMENTATION OF THE STATEWIDE SYSTEM OF STANDARDS
AND ASSESSMENTS AND THE STATEWIDE EDUCATION ACCOUNTABILITY
SYSTEM.

(b) "STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM" MEANS
THE SYSTEM FOR ACCREDITING SCHOOLS AND SCHOOL DISTRICTS
DESCRIBED IN ARTICLE 11 OF TITLE 22 AND AS IMPLEMENTED BY RULES
ADOPTED BY THE STATE BOARD OF EDUCATION.

(c) "STATEWIDE SYSTEM OF STANDARDS AND ASSESSMENTS"
MEANS THE SYSTEM OF STANDARDS AND ASSESSMENTS DESCRIBED IN PART
10 OF ARTICLE 7 OF TITLE 22 AND AS IMPLEMENTED BY RULES ADOPTED BY
THE STATE BOARD OF EDUCATION.

(3) NO LATER THAN OCTOBER 1, 2021, THE STATE AUDITOR,
THROUGH A COMPETITIVE BIDDING PROCESS, SHALL SELECT AND

(a) THE EFFECTIVENESS OF THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM IN OBJECTIVELY MEASURING THE PERFORMANCE OF PUBLIC SCHOOLS AND SCHOOL DISTRICTS IN DELIVERING A STATEWIDE SYSTEM OF THOROUGH AND UNIFORM PUBLIC EDUCATION FOR ALL GROUPS OF STUDENTS;

(b) WHETHER AND TO WHAT EXTENT THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM EFFECTIVELY IDENTIFIES SUCCESS AND DRIVES EFFECTIVE SUPPORT FOR IMPROVEMENT AT EACH LEVEL OF THE STATEWIDE SYSTEM OF PUBLIC EDUCATION;

(c) WHETHER AND TO WHAT EXTENT THE DATA GENERATED BY THE STATEWIDE SYSTEM OF STANDARDS AND ASSESSMENTS AND THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM ARE USED IN PRACTICE BY SCHOOL DISTRICTS TO MEASURE THE EFFECTIVENESS OF CLASSROOM INSTRUCTION AND SCHOOL LEADERSHIP WITHIN A SCHOOL;
(d) WHETHER AND TO WHAT EXTENT THE FOLLOWING, OR OTHER, COMPONENTS OF THE STATEWIDE SYSTEM OF STANDARDS AND ASSESSMENTS AND THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM MAINTAIN INSTITUTIONAL OR CULTURAL BIASES BASED ON STUDENTS' OR THEIR FAMILIES' RACE, ETHNICITY, RELIGION, SEX, SEXUAL ORIENTATION, NATIONALITY, DISABILITY, AGE, OR ECONOMIC STATUS:

(I) ACADEMIC ACHIEVEMENT AS MEASURED BY THE SCORES ON STATE ASSESSMENTS;

(II) ACADEMIC GROWTH AS MEASURED BY THE COLORADO GROWTH MODEL ADOPTED PURSUANT TO SECTION 22-11-202; AND

(III) POSTSECONDARY AND WORKFORCE READINESS AS MEASURED BY GRADUATION RATES, DROPOUT RATES, SCORES ON STANDARDIZED COLLEGE ENTRANCE EXAMS, AND MATRICULATION INTO COLLEGE OR CAREER CERTIFICATE PROGRAMS;

(e) WHETHER AND TO WHAT EXTENT INTERVENTIONS IMPLEMENTED UNDER THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM ARE EFFECTIVE IN SUPPORTING AND IMPROVING OUTCOMES FOR SCHOOLS THAT SERVE PREDOMINANTLY LOW-INCOME STUDENTS, STUDENTS OF COLOR, OR STUDENTS WITH DISABILITIES, INCLUDING INTERVENTIONS THAT FOCUS PRIMARILY ON INCREASING STUDENTS' PERFORMANCE ON STATEWIDE STANDARDIZED TESTS IN LIEU OF OTHER NON-TESTING-RELATED COURSES AND ACTIVITIES WITHIN A SCHOOL;

(f) WHETHER AND TO WHAT EXTENT INTERVENTIONS, INCLUDING INTERVENTIONS IDENTIFIED BY THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM, EFFECTIVELY SUPPORT STUDENTS WHO ARE IN POVERTY OR STUDENTS WITH DISABILITIES AND SCHOOLS AND SCHOOL DISTRICTS SERVING HIGH PERCENTAGES OF STUDENTS IN POVERTY OR
STUDENTS WITH DISABILITIES;

(g) WHETHER AND TO WHAT EXTENT THE OUTCOMES IDENTIFIED
AND MEASURED BY THE STATEWIDE SYSTEM OF STANDARDS AND
ASSESSMENTS AND THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM
REFLECT INEQUITIES AND CORRELATE TO THE LEVEL OF POVERTY PRESENT
WITHIN, AND CONCENTRATION OF STUDENTS WITH DISABILITIES WITHIN,
THE STUDENT POPULATIONS ENROLLED IN THE PUBLIC SCHOOLS, SCHOOL
DISTRICTS, AND BOARDS OF COOPERATIVE SERVICES;

(h) WHETHER AND TO WHAT EXTENT LOW-INCOME STUDENTS AND
STUDENTS WITH DISABILITIES ENROLLED IN PUBLIC SCHOOLS, SCHOOL
DISTRICTS, AND BOARDS OF COOPERATIVE SERVICES ARE GIVEN ACCESS TO
LEARNING OPPORTUNITIES THAT WILL ALLOW THEM TO ACHIEVE THE SAME
LEVELS OF ATTAINMENT THAT THEIR HIGHER-INCOME PEERS ACHIEVE ON
THE PRESCHOOL THROUGH ELEMENTARY AND SECONDARY EDUCATION
STANDARDS ADOPTED PURSUANT TO SECTION 22-7-1005;

(i) WHETHER AND TO WHAT EXTENT, IN RESPONSE TO THE
STATEWIDE SYSTEM OF STANDARDS AND ASSESSMENTS AND THE
STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM, SCHOOL DISTRICTS
SHIFT EDUCATIONAL RESOURCES AND INTERVENTIONS TO STUDENTS WHO
ARE CLOSE TO ACHIEVING GRADE-LEVEL SCORES OR MODIFY THEIR
INSTRUCTIONAL PRACTICES AND TARGET PARTICULAR COHORTS OF
STUDENTS;

(j) WHETHER AND TO WHAT EXTENT VARIATIONS IN THE SIZE OF
STUDENT POPULATIONS HAVE A DISPROPORTIONATE IMPACT ON THE
ACCURACY AND COMPARABILITY OF RESULTS ACHIEVED THROUGH THE
STATEWIDE SYSTEM OF STANDARDS AND ASSESSMENTS AND THE
STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM;

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(k) Whether and to what extent the outcomes measured by the statewide system of standards and assessments and the statewide education accountability system accurately correlate to a school’s effectiveness in helping students develop the skills and capacities that are relevant to families and employers, including but not limited to innovation, academic rigor, career and technical education, and workforce readiness and essential skills;

(l) Whether and to what extent participation rates on statewide standardized tests affect the results achieved through the statewide system of standards and assessments and the statewide education accountability system;

(m) Whether the Colorado growth model continues to meet the requirements specified in section 22-11-202 (1)(b);

(n) Whether the statewide system of standards and assessments and the statewide education accountability system provide a credible basis for comparison between and among public schools and between and among school districts, boards of cooperative services, and the state charter school institute;

(o) Whether and to what extent information regarding assessments and accountability is accessible to educators, parents, and families, and communicated in a language parents and families can understand, with clear guidance on actions to support student learning; and

(p) Whether and to what extent the statewide system of standards and assessments and the statewide education accountability system identify schools and school districts...
THAT ARE STRUGGLING TO SERVE GROUPS OF STUDENTS, INCLUDING GROUPS BASED ON RACE, ETHNICITY, RELIGION, SEX, SEXUAL ORIENTATION, NATIONALITY, DISABILITY, AGE, AND ECONOMIC STATUS, AND WHETHER INTERVENTIONS TO SERVE THE STUDENTS IN THESE GROUPS ARE SUCCESSFUL IN INCREASING ACADEMIC ACHIEVEMENT FOR THE STUDENTS IN THESE GROUPS.

(4) (a) The state auditor shall ensure the performance audit is completed no later than November 15, 2022. To limit the cost of the audit, the contractor shall obtain the information required for the audit from the Department of Education to the greatest extent possible, which may include obtaining information from previous studies or evaluations for which the Department previously contracted. The contractor may request information directly from a public school, school district, or Board of Cooperative Services or the State Charter School Institute only if the information is not available from the Department. If deemed useful, the auditor may hold focus groups with various education stakeholders to obtain input on the issues addressed in the audit.

(b) For purposes of conducting the audit described in this section, the Department of Education shall designate the State Auditor and the contractor as "School Officials" with "Legitimate Educational Interests" in the Department's educational records, as those terms are defined in the federal "Family Educational Rights and Privacy Act of 1974", 20 U.S.C. sec. 1232g, and the federal regulations adopted to implement the act, referred to in this subsection (4)(b) as "FERPA". The
STATE AUDITOR AND THE CONTRACTOR SHALL COMPLY WITH THE LIMITATIONS AND REQUIREMENTS IMPOSED ON SCHOOL OFFICIALS IN FERPA IN CONDUCTING THE AUDIT.

(c) NOTWITHSTANDING ANY PROVISION OF FEDERAL OR STATE LAW, OTHER THAN LAWS THAT PROTECT THE PRIVACY OF STUDENT INFORMATION, TO THE CONTRARY, FOR PURPOSES OF THE AUDIT DESCRIBED IN THIS SECTION ONLY, THE STATE AUDITOR AND THE CONTRACTOR ARE AUTHORIZED TO ACCESS FROM THE DEPARTMENT OF EDUCATION ALL OF THE NONFINANCIAL BOOKS, ACCOUNTS, REPORTS, VOUCHERS, OR OTHER RECORDS OR INFORMATION SUBMITTED TO THE DEPARTMENT BY A PUBLIC SCHOOL, SCHOOL DISTRICT, OR BOARD OF COOPERATIVE SERVICES OR THE STATE CHARTER SCHOOL INSTITUTE, INCLUDING RECORDS OR INFORMATION REQUIRED TO BE KEPT CONFIDENTIAL OR EXEMPT FROM PUBLIC DISCLOSURE UPON SUBPOENA, SEARCH WARRANT, DISCOVERY PROCEEDINGS, OR OTHERWISE. IF ANY NONFINANCIAL BOOKS, ACCOUNTS, REPORTS, VOUCHERS, OR OTHER RECORDS OR INFORMATION THAT ARE REQUIRED TO COMPLETE THE AUDIT ARE NOT AVAILABLE FROM THE DEPARTMENT OF EDUCATION, THE STATE AUDITOR AND THE CONTRACTOR ARE AUTHORIZED TO ACCESS SAID BOOKS, ACCOUNTS, REPORTS, VOUCHERS, OR OTHER RECORDS OR INFORMATION FROM A PUBLIC SCHOOL, SCHOOL DISTRICT, OR BOARD OF COOPERATIVE SERVICES OR THE STATE CHARTER SCHOOL INSTITUTE, INCLUDING RECORDS OR INFORMATION REQUIRED TO BE KEPT CONFIDENTIAL OR EXEMPT FROM PUBLIC DISCLOSURE UPON SUBPOENA, SEARCH WARRANT, DISCOVERY PROCEEDINGS, OR OTHERWISE. IN ACCESSING AND USING INFORMATION FOR THE AUDIT, THE STATE AUDITOR AND THE CONTRACTOR SHALL COMPLY WITH ALL FEDERAL AND STATE LAWS THAT PROTECT THE
PRIVACY OF STUDENT INFORMATION.

(d) In preparing the audit, the contractor may consult with the technical advisory panel appointed pursuant to section 22-11-202 (2)(a) regarding data used for calculating longitudinal academic growth and for determining the performance plans that schools, school districts, boards of cooperative services, and the state charter school institute implement.

(e) The legislative audit committee shall review and release the audit report at the first committee hearing held on or after November 15, 2022. After the audit report is released, the state auditor and the contractor shall submit the audit report to the commissioner of education, the state board of education, and the education committees of the house of representatives and the senate, or any successor committees. The state board and the education committees, jointly or individually, may hold a hearing to review the audit report. Upon the request of the state board or the education committees, whichever is appropriate, the state auditor and the contractor shall attend the hearing and present the audit report. The legislative audit committee and the technical advisory panel shall not, without the consent of the contractor, make changes to the audit after the contractor completes the audit.

(5) This section is repealed, effective July 1, 2023.

SECTION 2. In Colorado Revised Statutes, 2-3-103.7, amend (1) as follows:

-11-  HB21-1294
2-3-103.7. Disclosure of reports before filing. (1) Any state employee or other individual acting in an oversight role as a member of a committee, board, or commission, or any employee or other individual acting in an oversight role with respect to any audit conducted pursuant to sections 2-3-120, 2-3-123, 2-3-126, 10-22-105 (4)(c), and 25.5-10-209 (4), who willfully and knowingly discloses the contents of any report prepared by or at the direction of the state auditor's office prior to the release of such report by a majority vote of the committee as provided in section 2-3-103 (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

SECTION 3. In Colorado Revised Statutes, 2-3-107, amend (2)(a)(I) introductory portion, (2)(a)(I)(C), and (2)(a)(I)(D); and add (2)(a)(I)(E) as follows:

2-3-107. Authority to subpoena witnesses - access to records. (2)(a)(I) Notwithstanding any provision of law to the contrary, the state auditor or his or her designated representative shall have access at all times, except as provided by sections 39-1-116, 39-4-103, and 39-5-120, to all of the books, accounts, reports, vouchers, or other records or information in any department, institution, or agency, including but not limited to records or information required to be kept confidential or exempt from public disclosure upon subpoena, search warrant, discovery proceedings, or otherwise. The authority of the state auditor or his or her designated representative to access at all times the books, accounts, reports, vouchers, or other records or information in accordance with this subsection (2)(a) also extends to any fiscal or performance audit the state auditor or his or her designated representative conducts of:
(C) The health benefit exchange created in section 10-22-104 in accordance with section 10-22-105 (4)(c); and

(D) Community-centered boards in accordance with section 25.5-10-209 (4); and

(E) The statewide implementation of the statewide system of standards and assessments and the statewide education accountability system in accordance with section 2-3-126; except that, for purposes of said audit, the state auditor or his or her designated representative shall not have access to the financial records, including books, accounts, and vouchers, of a public school, school district, or board of cooperative services or of the state charter school institute.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.