H. Bill 21-1294

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, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 2-3-126 as follows:

2-3-126. Audit of statewide education accountability systems - report - legislative declaration - definitions - repeal. (1) (a) The general assembly finds that:

(I) In the 2018-19 school year, statewide assessment data shows considerable achievement gaps as measured by assessment scores for Colorado students. The assessment scores on the statewide assessment in English language arts demonstrated that approximately forty-five percent of all Colorado students were performing at grade level, while approximately thirty percent of Latino or Black students and approximately twenty-eight percent of low-income students were performing at grade level. Similarly, the assessment scores on the statewide assessment in mathematics demonstrated that approximately thirty-five percent of all students were performing at grade level, while approximately eighteen percent of Latino or Black students and approximately eighteen percent of low-income students were performing at grade level.
(II) HOWEVER, IN COLORADO THERE ARE ALSO EXAMPLES OF
SCHOOLS AND SCHOOL DISTRICTS IN WHICH A HIGH PERCENTAGE OF
LOW-INCOME STUDENTS AND STUDENTS OF COLOR BREAK WITH THESE
TRENDS AND MEET OR EXCEED GRADE-LEVEL EXPECTATIONS ON
STATEWIDE ASSESSMENTS; AND

(III) IN 1965, CONGRESS PASSED THE "ELEMENTARY AND
SECONDARY EDUCATION ACT OF 1965", 20 U.S.C. SEC. 6301 ET SEQ., TO
ADDRESS PERSISTENT INEQUITIES FOR HISTORICALLY UNDERSERVED
STUDENTS. RESEARCH SHOWS THAT DISPARITIES IN ACADEMIC
ACHIEVEMENT ARE OFTEN CAUSED BY DISPARITIES IN OPPORTUNITIES,
such as the inequitable distribution of funding, preschool
access, advanced course work, highly effective teachers, and
wraparound services. Research also shows that Latino and
Black students are more likely to have less-experienced and
lower-paid teachers as a result of a gap in funding and more
likely to be disciplined more harshly in school.

(b) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

(I) COLORADO ADOPTED THE STATEWIDE SYSTEM OF STANDARDS
AND ASSESSMENTS IN 2008 AND THE STATEWIDE EDUCATION
ACCOUNTABILITY SYSTEM IN 2009 TO COMPLY WITH FEDERAL STATEWIDE
TESTING REQUIREMENTS, GAUGE THE SUCCESS OF PUBLIC SCHOOLS IN
EDUCATING STUDENTS, AND IDENTIFY AREAS IN WHICH THE STATE, THE
DEPARTMENT OF EDUCATION, PUBLIC SCHOOLS, SCHOOL DISTRICTS,
BOARDS OF COOPERATIVE SERVICES, AND THE STATE CHARTER SCHOOL
INSTITUTE COULD BETTER SUPPORT STUDENTS, TEACHERS, AND FAMILIES
IN MEETING THEIR CHILDREN'S EDUCATIONAL NEEDS;

(II) THE REQUIREMENTS OF THE STATEWIDE SYSTEM OF
STANDARDS AND ASSESSMENTS AND THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM CURRENTLY EXCEED THE FEDERAL TESTING REQUIREMENTS AND HAVE UNDERGONE SEVERAL SIGNIFICANT MODIFICATIONS OVER THE PAST DECADE, CAUSING POLICYMAKERS TO QUESTION WHETHER THE SYSTEMS STILL ALIGN WITH THE GENERAL 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) One of the main goals of the statewide system of standards and assessments and the statewide education accountability system is to identify the areas in which schools and school districts are struggling, due to several factors, to best serve their students and ensure that those schools and school district are able to best serve their students;

(V) 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
(VI) 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.

(c) 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
(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 contract with a public or private entity to conduct a performance audit of the statewide implementation of the statewide system of standards and assessments and the statewide education accountability system. The State Auditor shall make every effort to ensure that the contractor is independent and impartial. The State Auditor shall also ensure that the contractor has the necessary expertise and is competent to evaluate the efficacy of the statewide system of standards and assessments and the statewide education accountability system and whether the systems are implemented statewide in accordance with the requirements specified in federal and state statute and rule. At a minimum, the performance audit must address:

(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 UNINTENDED BARRIERS OR
OBSTACLES EXIST THAT INADVERTENTLY IMPACT THE PERFORMANCE OF
STUDENTS FROM DIFFERENT RACIAL, ETHNIC, SOCIOECONOMIC, OR
DISABILITY COMMUNITIES, AS MEASURED BY THE STATEWIDE SYSTEM OF
STANDARDS AND ASSESSMENTS AND THE STATEWIDE EDUCATION
ACCOUNTABILITY SYSTEM, INCLUDING HOW THESE SYSTEMS ARE
IMPLEMENTED BY SCHOOLS AND SCHOOL DISTRICTS;

(d) 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;

(e) 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;

(f) 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;

(g) 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;

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

(i) 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;

(j) 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;

(k) 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;

(l) WHETHER THE COLORADO GROWTH MODEL CONTINUES TO MEET THE REQUIREMENTS SPECIFIED IN SECTION 22-11-202 (1)(b);

(m) 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;

(n) 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

(o) WHETHER AND TO WHAT EXTENT THE STATEWIDE SYSTEM OF STANDARDS AND ASSESSMENTS AND THE STATEWIDE EDUCATION ACCOUNTABILITY SYSTEM MEETING THE REQUIREMENTS SPECIFIED IN SECTION 22-11-202 (1)(b);
ACCOUNTABILITY SYSTEM IDENTIFY SCHOOLS AND SCHOOL DISTRICTS THAT ARE NOT MEETING THE ACADEMIC NEEDS OF UNDER-REPRESENTED 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) No later than January 15, 2022, the State Auditor, the Contractor, and the Department of Education shall enter into a data sharing agreement for audit purposes in a form consistent with 34 C.F.R. 99.35(a)(3) and in compliance with the federal "Family Educational Rights and Privacy Act of 1974", 20 U.S.C. Sec. 1232g, as amended.

(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
COORDERATIVE 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 AND ARE NOT
AVAILABLE FROM OTHER SOURCES AS DETERMINED BY THE STATE
AUDITOR'S AND CONTRACTOR'S GOOD FAITH EFFORTS TO OBTAIN THEM
FROM OTHER SOURCES, 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 COORDERATIVE 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.


(5) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2023.

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

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. Appropriation. (1) For the 2021-22 state fiscal year, $300,000 is appropriated to the legislative department for use by the office of the state auditor. This appropriation is from the general fund. To implement this act, the office of the state auditor may use this appropriation for the audit of statewide education accountability systems.

(2) For the 2021-22 state fiscal year, $52,000 is appropriated to the department of education. This appropriation is from the general fund. To implement this act, the department may use this appropriation for information technology services.

SECTION 5. 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.