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I N A S S E M B L Y

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-- Multi-Sponsored by -- M. of A. BRENNAN, DESTITO, J. MILLER, WRIGHT
-- read once and referred to the Committee on Education

AN ACT to require annual reports and create a regents review board to audit assessments used to determine grade promotion, graduation or adequate yearly progress for validity, reliability, alignment to standards and appropriateness of use

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds that the state
2 board of regents has established five examinations to authenticate that
3 a regents diploma may be conferred upon a high school student. Examina-
4 tions established by the state board of regents in mathematics and
5 English language arts to be administered in the third through eighth
6 grades, as well as in high school, are utilized to determine whether or
7 not a school, and ultimately a school district, has made adequate yearly
8 progress (AYP) under the federal No Child Left Behind Act (NCLB).
9 Schools or districts that fail to demonstrate AYP are subject to a
10 series of sanctions culminating in closing and reorganizing the schools
11 in question. This increases the emphasis on state mandated standardized
12 examinations having real, high stakes consequences for both students and
13 schools. Therefore, it is essential that these examinations be valid and
14 reliable measures of student attainments in learning and that they be a
15 demonstratively scientifically accurate means of determining a student's
16 readiness for graduation or grade promotion, and a school's overall
17 performance. Holding students and educators to high standards demands
18 holding tests to high psychometric and curricular standards.
19 Furthermore, the federal NCLB requires that assessments used for grad-
20 uation, promotion and to determine a school's AYP be "valid and reli-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 able, and be consistent with relevant, nationally recognized profes-
2 sional and technical standards." 20 U.S.C. sec. 6311(b)(3)(C)(iii).

3 While much effort has been made by the commissioner of education and
4 the state board of regents to develop and disseminate testing instru-
5 ments used for graduation, promotion and determination of AYP, it is
6 necessary to ensure that these assessments meet professional standards
7 for validity, reliability, alignment to learning standards and appropri-
8 ateness of use. As a preliminary matter, a technical manual does not
9 exist for the various examinations, a basic requirement of the guide-
10 lines of the American Educational Research Association (AERA), the Amer-
11 ican Psychological Association (APA) and the National Council on Meas-
12 urements in Education (NCME) for scientifically valid, reliable and
13 appropriate test use. The AERA, APA and NCME are the primary national
14 organizations that set standards for the psychometric and testing
15 professions and the AERA is a primary resource for examining the curric-
16 ular alignment of tests. The commissioner of education must therefore be
17 required to produce the necessary indicia of test validity, reliability,
18 alignment to the state learning standards and appropriateness of use for
19 each assessment to determine graduation, promotion to grade or AYP in
20 accordance with requirements expressed in the scientific literature in
21 the field of test measurement. The department of education must also be
22 held accountable by an independent panel of outside experts recognized
23 as authorities in the field of psychometrics, pedagogy and curriculum
24 for the quality, validity and reliability of the examinations estab-
25 lished by the state board of regents.

26 Therefore, the legislature hereby deems it to be in the public inter-
27 est to require that the state department of education provide a written
28 report and implement an audit process to ensure validity, reliability,
29 alignment to the state learning standards and appropriateness of use for
30 each assessment used to determine graduation, promotion to grade or AYP.

31 S 2. Reporting requirements. 1. (a) Not later than September fifteenth
32 of each year, the commissioner of education shall submit to the state
33 board of regents, the temporary president of the senate and the speaker
34 of the assembly:

35 (i) A written report that conclusively demonstrates the validity,
36 reliability, alignment to the state learning standards established by
37 the department of education (learning standards) and appropriateness of
38 use for its intended purposes for each assessment (noting each instru-
39 ment and the dates of usage) used by the department of education to
40 determine a student's eligibility for a high school diploma, promotion
41 to grade, or measurement of adequate yearly progress (AYP) under the
42 federal No Child Left Behind Act of a school or district in the preced-
43 ing school year. Demonstration of assessment validity, reliability,
44 alignment to learning standards and appropriateness of use must be made
45 in accordance with applicable professional assessment guidelines and
46 standards of the American Educational Research Association (AERA), the
47 American Psychological Association (APA) and the National Council on
48 Measurement in Education (NCME) (collectively and as may be modified
49 from time to time, the joint standards), including pedagogic and curric-
50 ular, as well as psychometric, standards.

51 (ii) A technical manual for each assessment used by the department of
52 education and used to determine a student's eligibility for a high
53 school diploma, promotion to grade, or measurement of AYP of a school or
54 district in the preceding school year. The technical manual must comply
55 with the professional requirements of the assessment industry as recog-
56 nized by the AERA, APA and NCME.

1 (b) The annual report and technical manual shall be made available to
2 the public upon submission to the state board of regents and to the
3 temporary president of the senate and the speaker of the assembly.

4 2. Failure of the commissioner of education to produce a report under
5 subparagraph (i) of paragraph (a) of subdivision one of this section or
6 a technical manual under subparagraph (ii) of such paragraph for any
7 given assessment shall be deemed a failure to demonstrate the validity,
8 reliability, alignment to learning standards and appropriateness of use
9 of such assessment, and the results from such assessment shall not be
10 used to determine a student's eligibility for a high school diploma,
11 promotion to grade, or measurement of AYP of a school or district in the
12 preceding school year. The commissioner of education shall substitute an
13 alternate measure for the decision taken on the basis of the adminis-
14 tered assessment. Where a decision to graduate or promote a student
15 cannot be based on a demonstrably valid standardized assessment, the
16 decision will be based on a combination of final grade in the relevant
17 academic courses and faculty recommendations in place of the results of
18 such examination. Any part of an assessment not demonstrated to be valid
19 shall not be used for any subsequent determination.

20 S 3. Audit requirements. The state board of regents shall appoint an
21 independent panel of experts on curricular assessments qualified to
22 determine whether or not an assessment meets professional standards of
23 the measurement industry and scholarly associations for validity, reli-
24 ability, alignment to learning standards and appropriateness of use. The
25 panel shall be known as the regents review board, hereafter referred to
26 as the board. The board shall consist of five members. The members of
27 the board will be members of the AERA or the APA. Each member of the
28 board will be a recognized expert in the field of testing psychometrics
29 or curriculum evaluation and will have at least ten years experience in
30 evaluating validity, reliability, alignment with learning standards and
31 appropriateness of use of tests at the primary and secondary school
32 levels.

33 1. The board shall review each assessment used by the department of
34 education to determine a student's eligibility for a high school diplo-
35 ma, promotion to grade, or measurement of AYP of a school or district to
36 determine whether the assessment meets the joint standards for assess-
37 ment validity, reliability, alignment to learning standards and appro-
38 priateness of use. The board shall also review the commissioner of
39 education's annual report and supporting materials concerning the valid-
40 ity, reliability, alignment to learning standards and appropriateness of
41 use of the assessments, and the technical manual of each assessment. The
42 board shall have complete access to all documents of the department of
43 education relating to the assessments reviewed by the board, including
44 pilot and/or field test results for such assessments and any changes to
45 materials or practices relating to such assessments implemented as a
46 result of such pilot and/or field tests. The board shall maintain the
47 confidentiality of all documents deemed to contain proprietary informa-
48 tion.

49 2. The board shall determine whether or not each assessment used by
50 the department of education for graduation, promotion or determination
51 of AYP is valid, reliable, aligned to the learning standards, and appro-
52 priate for use. The board shall submit, not later than October fifteenth
53 of each year, a written report of its findings to the state board of
54 regents, the temporary president of the senate and the speaker of the
55 assembly. The report shall be made available to the public upon its
56 submission as provided in this subdivision.

1 3. If the board determines that any part of an assessment used by the
2 department of education does not meet the standards for validity, reli-
3 ability, alignment to learning standards or appropriateness of use under
4 the joint standards, such part or parts of those assessments shall be
5 considered invalid, and the results from such assessment shall not be
6 used to determine a student's eligibility for a high school diploma,
7 promotion to grade, or measurement of AYP of a school or district in any
8 school year. The commissioner of education shall substitute an alternate
9 measure for the decision taken on the basis of the administered assess-
10 ment. Where a decision to graduate or promote a student is based on an
11 assessment not demonstrably valid, the decision will be based on a
12 combination of final grade in the relevant academic courses and faculty
13 recommendations in place of the results of such examination. The deter-
14 mination of the board shall be final as to the use of those assessments.

15 4. If any part of an assessment used by the department of education
16 has been determined by the board to fail to meet the joint standards and
17 related research for assessment validity, reliability, alignment to
18 learning standards or appropriateness of use, the commissioner of educa-
19 tion shall not use such part or parts of the assessment in any subse-
20 quent test administrations.

21 S 4. Pilot testing. 1. No later than sixty days prior to the depart-
22 ment of education's scheduled administration of any assessment to deter-
23 mine a student's eligibility for a high school diploma, promotion to
24 grade, or measurement of AYP of a school or district in the preceding
25 school year, the commissioner of education shall submit to the board,
26 the state board of regents and the temporary president of the senate and
27 the speaker of the assembly the results of all pilot and/or field tests
28 conducted for that assessment and make available to the board all
29 records relating to such pilot and/or field tests and results. Pilot
30 and/or field tests are assessments administered by the department of
31 education that are not being used for decisions of graduation, promotion
32 to grade, or measurement of AYP but contain individual questions that
33 are to be used on assessments to determine a student's eligibility for a
34 high school diploma, promotion to grade, or measurement of AYP. For
35 purposes of this section, results of pilot and/or field tests shall
36 include, but not be limited to, analysis of answers to questions on the
37 administered pilot and/or field test based on percentage answered
38 correctly, breakdown of results according to race and gender, an expla-
39 nation of how the pilot and/or field test was administered, and an
40 explanation of the learning standard a question purports to test. The
41 failure to submit and identify pilot and/or field test results or to
42 provide access to records as required under this subdivision shall
43 preclude the department of education from using or administering the
44 assessment.

45 2. Where the board has received from the commissioner of education the
46 results of the pilot and/or field test for an assessment as required
47 under subdivision one of this section, the board shall, not later than
48 thirty days prior to the department of education's scheduled adminis-
49 tration of such assessment, deliver to the state board of regents and
50 the temporary president of the senate and the speaker of the assembly a
51 written report evaluating the pilot and/or field tests and the results
52 of the pilot and/or field tests provided by the department of education.
53 The written report of the board shall be made available to the public.

54 3. In its evaluation, the board will identify any recognizable short-
55 comings of the pilot and/or field tests. If the board determines that
56 any part of the pilot and/or field tests were not conducted in accord-

1 ance with the joint standards, that they fall short of needed prepara-
2 tion, or if it appears to the board that the assessment for which the
3 pilot and/or field tests were conducted is likely to fail to meet the
4 criteria for validity, reliability, alignment to learning standards, or
5 appropriateness of use under the joint standards, the board shall recom-
6 mend to the state board of regents that the department of education
7 shall not use or administer the assessment for which the pilot and/or
8 field tests were conducted. The state board of regents shall, within
9 fourteen days of receipt of the board's report, provide to the board,
10 the temporary president of the senate and the speaker of the assembly
11 written notice of the actions proposed to be taken by the state board of
12 regents with respect to the recommendations of the board contained in
13 such report.

14 S 5. This act shall take effect on the ninetieth day after it shall
15 have become a law; provided, however, that effective immediately, the
16 addition, amendment and/or repeal of any rule or regulation necessary
17 for the implementation of this act on its effective date are authorized
18 and directed to be made and completed on or before such effective date.