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Introduced by M. of A. PAULIN, ARROYO, BENEDETTO, N. RIVERA, SCHROEDER -- 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:

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

Furthermore, the federal NCLB requires that assessments used for graduation, 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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able, and be consistent with relevant, nationally recognized professional and technical standards." 20 U.S.C. sec. 6311(b)(3)(C)(iii).

While much effort has been made by the commissioner of education and the state board of regents to develop and disseminate testing instruments used for graduation, promotion and determination of AYP, it is necessary to ensure that these assessments meet professional standards for validity, reliability, alignment to learning standards and appropriateness of use. As a preliminary matter, a technical manual does not exist for the various examinations, a basic requirement of the guidelines of the American Educational Research Association (AERA), the American Psychological Association (APA) and the National Council on Measurements in Education (NCME) for scientifically valid, reliable and appropriate test use. The AERA, APA and NCME are the primary national organizations that set standards for the psychometric and testing professions and the AERA is a primary resource for examining the curricular alignment of tests. The commissioner of education must therefore be required to produce the necessary indicia of test validity, reliability, alignment to the state learning standards and appropriateness of use for each assessment to determine graduation, promotion to grade or AYP in accordance with requirements expressed in the scientific literature in the field of test measurement. The department of education must also be held accountable by an independent panel of outside experts recognized as authorities in the field of psychometrics, pedagogy and curriculum for the quality, validity and reliability of the examinations established by the state board of regents.

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

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

(i) A written report that conclusively demonstrates the validity, reliability, alignment to the state learning standards established by the department of education (learning standards) and appropriateness of use for its intended purposes for each assessment (noting each instrument and the dates of usage) used by the department of education to determine a student's eligibility for a high school diploma, promotion to grade, or measurement of adequate yearly progress (AYP) under the federal No Child Left Behind Act of a school or district in the preceding school year. Demonstration of assessment validity, reliability, alignment to learning standards and appropriateness of use must be made in accordance with applicable professional assessment guidelines and standards of the American Educational Research Association (AERA), the American Psychological Association (APA) and the National Council on Measurement in Education (NCME) (collectively and as may be modified from time to time, the joint standards), including pedagogic and curricular, as well as psychometric, standards.

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

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

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

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

1. The board shall review each assessment used by the department of education to determine a student's eligibility for a high school diploma, promotion to grade, or measurement of AYP of a school or district to determine whether the assessment meets the joint standards for assessment validity, reliability, alignment to learning standards and appropriateness of use. The board shall also review the commissioner of education's annual report and supporting materials concerning the validity, reliability, alignment to learning standards and appropriateness of use of the assessments, and the technical manual of each assessment. The board shall have complete access to all documents of the department of education relating to the assessments reviewed by the board, including pilot and/or field test results for such assessments and any changes to materials or practices relating to such assessments implemented as a result of such pilot and/or field tests. The board shall maintain the confidentiality of all documents deemed to contain proprietary information.

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

3. If the board determines that any part of an assessment used by the department of education does not meet the standards for validity, reliability, alignment to learning standards or appropriateness of use under the joint standards, such part or parts of those assessments shall be considered invalid, and the results from such assessment shall not be used to determine a student's eligibility for a high school diploma, promotion to grade, or measurement of AYP of a school or district in any school year. The commissioner of education shall substitute an alternate measure for the decision taken on the basis of the administered assessment. Where a decision to graduate or promote a student is based on an assessment not demonstrably valid, the decision will be based on a combination of final grade in the relevant academic courses and faculty recommendations in place of the results of such examination. The determination of the board shall be final as to the use of those assessments.

4. If any part of an assessment used by the department of education has been determined by the board to fail to meet the joint standards and related research for assessment validity, reliability, alignment to learning standards or appropriateness of use, the commissioner of education shall not use such part or parts of the assessment in any subsequent test administrations.

S 4. Pilot testing. 1. No later than sixty days prior to the department of education's scheduled administration of any assessment to determine a student's eligibility for a high school diploma, promotion to grade, or measurement of AYP of a school or district in the preceding school year, the commissioner of education shall submit to the board, the state board of regents and the temporary president of the senate and the speaker of the assembly the results of all pilot and/or field tests conducted for that assessment and make available to the board all records relating to such pilot and/or field tests and results. Pilot and/or field tests are assessments administered by the department of education that are not being used for decisions of graduation, promotion to grade, or measurement of AYP but contain individual questions that are to be used on assessments to determine a student's eligibility for a high school diploma, promotion to grade, or measurement of AYP. For purposes of this section, results of pilot and/or field tests shall include, but not be limited to, analysis of answers to questions on the administered pilot and/or field test based on percentage answered correctly, breakdown of results according to race and gender, an explanation of how the pilot and/or field test was administered, and an explanation of the learning standard a question purports to test. The failure to submit and identify pilot and/or field test results or to provide access to records as required under this subdivision shall preclude the department of education from using or administering the assessment.

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

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

ance with the joint standards, that they fall short of needed preparation, or if it appears to the board that the assessment for which the pilot and/or field tests were conducted is likely to fail to meet the criteria for validity, reliability, alignment to learning standards, or appropriateness of use under the joint standards, the board shall recommend to the state board of regents that the department of education shall not use or administer the assessment for which the pilot and/or field tests were conducted. The state board of regents shall, within fourteen days of receipt of the board's report, provide to the board, the temporary president of the senate and the speaker of the assembly written notice of the actions proposed to be taken by the state board of regents with respect to the recommendations of the board contained in such report.

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