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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:

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. Examinations  
4 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 graduation,  
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.