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I N A S S E M B L Y

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Introduced by M. of A. PAULIN, ARROYO, BENEDETTO -- Multi-Sponsored by
-- M. of A. BRENNAN, 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 stan-
dards and appropriateness of use

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

1 Section 1. Reporting requirements. 1. (a) Not later than September
2 fifteenth of each year, the commissioner of education shall submit to
3 the state board of regents, the temporary president of the senate and
4 the speaker of the assembly:
5 (i) A written report that conclusively demonstrates the validity,
6 reliability, alignment to the state learning standards established by
7 the department of education (learning standards) and appropriateness of
8 use for its intended purposes for each assessment (noting each instru-
9 ment and the dates of usage) used by the department of education to
10 determine a student's eligibility for a high school diploma, promotion
11 to grade, or measurement of adequate yearly progress (AYP) under the
12 federal No Child Left Behind Act of a school or district in the preced-
13 ing school year. Demonstration of assessment validity, reliability,
14 alignment to learning standards and appropriateness of use must be made
15 in accordance with applicable professional assessment guidelines and
16 standards of the American Educational Research Association (AERA), the
17 American Psychological Association (APA) and the National Council on
18 Measurement in Education (NCME) (collectively and as may be modified
19 from time to time, the joint standards), including pedagogic and curric-
20 ular, as well as psychometric, standards.
21 (ii) A technical manual for each assessment used by the department of
22 education and used to determine a student's eligibility for a high

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

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1 school diploma, promotion to grade, or measurement of AYP of a school or
2 district in the preceding school year. The technical manual must comply
3 with the professional requirements of the assessment industry as recog-
4 nized by the AERA, APA and NCME.

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

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

24 S 2. Audit requirements. The state board of regents shall appoint an
25 independent panel of experts on curricular assessments qualified to
26 determine whether or not an assessment meets professional standards of
27 the measurement industry and scholarly associations for validity, reli-
28 ability, alignment to learning standards and appropriateness of use. The
29 panel shall be known as the regents review board, hereafter referred to
30 as the board. The board shall consist of five members. The members of
31 the board will be members of the AERA or the APA. Each member of the
32 board will be a recognized expert in the field of testing psychometrics
33 or curriculum evaluation and will have at least ten years experience in
34 evaluating validity, reliability, alignment with learning standards and
35 appropriateness of use of tests at the primary and secondary school
36 levels.

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

53 2. The board shall determine whether or not each assessment used by
54 the department of education for graduation, promotion or determination
55 of AYP is valid, reliable, aligned to the learning standards, and appro-
56 priate for use. The board shall submit, not later than October fifteenth

1 of each year, a written report of its findings to the state board of
2 regents, the temporary president of the senate and the speaker of the
3 assembly. The report shall be made available to the public upon its
4 submission as provided in this subdivision.

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

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

25 S 3. Pilot testing. 1. No later than sixty days prior to the depart-
26 ment of education's scheduled administration of any assessment to deter-
27 mine a student's eligibility for a high school diploma, promotion to
28 grade, or measurement of AYP of a school or district in the preceding
29 school year, the commissioner of education shall submit to the board,
30 the state board of regents and the temporary president of the senate and
31 the speaker of the assembly the results of all pilot and/or field tests
32 conducted for that assessment and make available to the board all
33 records relating to such pilot and/or field tests and results. Pilot
34 and/or field tests are assessments administered by the department of
35 education that are not being used for decisions of graduation, promotion
36 to grade, or measurement of AYP but contain individual questions that
37 are to be used on assessments to determine a student's eligibility for a
38 high school diploma, promotion to grade, or measurement of AYP. For
39 purposes of this section, results of pilot and/or field tests shall
40 include, but not be limited to, analysis of answers to questions on the
41 administered pilot and/or field test based on percentage answered
42 correctly, breakdown of results according to race and gender, an expla-
43 nation of how the pilot and/or field test was administered, and an
44 explanation of the learning standard a question purports to test. The
45 failure to submit and identify pilot and/or field test results or to
46 provide access to records as required under this subdivision shall
47 preclude the department of education from using or administering the
48 assessment.

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

1 of the pilot and/or field tests provided by the department of education.
2 The written report of the board shall be made available to the public.

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

19 S 4. This act shall take effect on the ninetieth day after it shall
20 have become a law; provided, however, that effective immediately, the
21 addition, amendment and/or repeal of any rule or regulation necessary
22 for the implementation of this act on its effective date is authorized
23 and directed to be made and completed on or before such effective date.