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SENATE BILL NO. 1138

Offered January 9, 2019  
Prefiled December 30, 2018

A BILL to amend and reenact § 22.1-253.13:3 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1.5 of Chapter 13 of Title 22.1 a section numbered 22.1-212.33, relating to School Divisions of Innovation; performance-based assessments.

Patron—Favola

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-253.13:3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1.5 of Chapter 13 of Title 22.1 a section numbered 22.1-212.33 as follows:

§ 22.1-212.33. Performance-based assessments.

A. In its initial application for designation as an SDI or at any time during its SDI designation period, a local school board may apply to the Board to replace certain Standards of Learning assessments with performance-based assessments.

B. Such application shall specify the individual schools and the Standards of Learning assessments for which the school board is applying. Individual schools within an SDI may vary in terms of which Standards of Learning assessments are replaced.

C. In its review of any such application, the Board shall determine if the local school board has the capacity to administer and score performance-based assessments. In determining such capacity, the Board shall consider, in addition to any other factors it deems relevant, the following factors:

1. Experience administering and scoring performance-based assessments at participating schools;

2. Implementation of project-based learning at participating schools;

3. Robust and ongoing professional development relating to performance-based assessments and project-based learning;

4. Evidence of the school division's commitment to instilling critical thinking, creativity, collaboration, communication, and citizenship in its students;

5. Any partnerships with nationally recognized experts in the fields of performance assessment; and

6. The articulation of a plan that includes provisions for objective third-party scoring of a sample of each type of performance assessment, combined with professional learning tied to the results of the third-party audit in order to reinforce and extend the capacity of the SDI to score performance assessments in a valid, reliable manner.

D. Such application shall demonstrate, to the satisfaction of the Board, that the proposed performance-based assessment is an adequate replacement of the relevant Standards of Learning assessment. Any such performance-based assessment shall require that students demonstrate the knowledge and skills required by the relevant Standards of Learning and that students demonstrate one or more of critical thinking, creativity, collaboration, communication, or citizenship.

E. The Standards of Learning assessments for (i) Virginia Studies, (ii) Civics and Economics, (iii) elementary school science, and (iv) middle school science shall be eligible for replacement. However, the Standards of Learning assessments for elementary school science and middle school science shall be eligible for replacement only if such replacement is permitted under the federal Elementary and Secondary Education Act of 1965, P.L. 89-10, as amended, and the Board obtains any necessary approval from the U.S. Department of Education.

F. The Board shall establish general requirements for any such application and shall promulgate any necessary regulations for the implementation of this section.

§ 22.1-253.13:3. Standard 3. Accreditation, other standards, assessments, and releases from state regulations.

A. The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.

The Board of Education shall promulgate regulations establishing standards for accreditation of

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59 public virtual schools under the authority of the local school board that enroll students full time.

60 The Board's regulations establishing standards for accreditation shall ensure that the accreditation  
61 process is transparent and based on objective measurements and that any appeal of the accreditation  
62 status of a school is heard and decided by the Board.

63 The Board shall review annually the accreditation status of all schools in the Commonwealth. The  
64 Board shall review the accreditation status of a school once every three years if the school has been  
65 fully accredited for three consecutive years. Upon such triennial review, the Board shall review the  
66 accreditation status of the school for each individual year within that triennial review period. If the  
67 Board finds that the school would have been accredited every year of that triennial review period the  
68 Board shall accredit the school for another three years. The Board may review the accreditation status of  
69 any other school once every two years or once every three years, provided that any school that receives  
70 a multiyear accreditation status other than full accreditation shall be covered by a Board-approved  
71 multiyear corrective action plan for the duration of the period of accreditation. Such multiyear corrective  
72 action plan shall include annual written progress updates to the Board. A multiyear accreditation status  
73 shall not relieve any school or division of annual reporting requirements.

74 Each local school board shall maintain schools that are fully accredited pursuant to the standards for  
75 accreditation as prescribed by the Board of Education. Each local school board shall report the  
76 accreditation status of all schools in the local school division annually in public session. Within the time  
77 specified by the Board of Education, each school board shall submit corrective action plans for any  
78 schools within its school division that have been designated as not meeting the standards as approved by  
79 the Board.

80 When the Board of Education determines through the school academic review process that the failure  
81 of schools within a division to achieve full accreditation status is related to division-level failure to  
82 implement the Standards of Quality or other division-level action or inaction, the Board may require a  
83 division-level academic review. After the conduct of such review and within the time specified by the  
84 Board of Education, each school board shall submit to the Board for approval a corrective action plan,  
85 consistent with criteria established by the Board setting forth specific actions and a schedule designed to  
86 ensure that schools within its school division achieve full accreditation status. If the Board determines  
87 that the proposed corrective action plan is not sufficient to enable all schools within the division to  
88 achieve full accreditation, the Board may return the plan to the local school board with directions to  
89 submit an amended plan pursuant to Board guidance. Such corrective action plans shall be part of the  
90 relevant school division's comprehensive plan pursuant to § 22.1-253.13:6.

91 With such funds as are appropriated or otherwise received for this purpose, the Board shall adopt and  
92 implement an academic review process, to be conducted by the Department of Education, to assist  
93 schools that are accredited with warning. The Department shall forward a report of each academic  
94 review to the relevant local school board, and such school board shall report the results of such  
95 academic review and the required annual progress reports in public session. The local school board shall  
96 implement any actions identified through the academic review and utilize them for improvement  
97 planning.

98 B. The Superintendent of Public Instruction shall develop and the Board of Education shall approve  
99 criteria for determining and recognizing educational performance in the Commonwealth's public school  
100 divisions and schools. Such criteria, when approved, shall become an integral part of the accreditation  
101 process and shall include student outcome measurements. The Superintendent of Public Instruction shall  
102 annually report to the Board on the accreditation status of all school divisions and schools. Such report  
103 shall include an analysis of the strengths and weaknesses of public education programs in the various  
104 school divisions in Virginia and recommendations to the General Assembly for further enhancing student  
105 learning uniformly across the Commonwealth. In recognizing educational performance in the school  
106 divisions, the Board shall include consideration of special school division accomplishments, such as  
107 numbers of dual enrollments and students in Advanced Placement and International Baccalaureate  
108 courses, and participation in academic year Governor's Schools.

109 The Superintendent of Public Instruction shall assist local school boards in the implementation of  
110 action plans for increasing educational performance in those school divisions and schools that are  
111 identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor  
112 the implementation of and report to the Board of Education on the effectiveness of the corrective actions  
113 taken to improve the educational performance in such school divisions and schools.

114 C. With such funds as are available for this purpose, the Board of Education shall prescribe  
115 assessment methods to determine the level of achievement of the Standards of Learning objectives by all  
116 students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and  
117 skills related to the Standards of Learning being assessed. The Board shall, with the assistance of  
118 independent testing experts, conduct a regular analysis and validation process for these assessments. The  
119 Department of Education shall make available to school divisions Standards of Learning assessments  
120 typically administered by the middle and high schools by December 1 of the school year in which such

121 assessments are to be administered or when newly developed assessments are available, whichever is  
122 later.

123 The Board shall also provide the option of industry certification and state licensure examinations as a  
124 student-selected credit.

125 The Board of Education shall make publicly available such assessments in a timely manner and as  
126 soon as practicable following the administration of such tests, so long as the release of such assessments  
127 does not compromise test security or deplete the bank of assessment questions necessary to construct  
128 subsequent tests, or limit the ability to test students on demand and provide immediate results in the  
129 web-based assessment system.

130 The Board shall include in the student outcome measures that are required by the Standards for  
131 Accreditation end-of-course or end-of-grade assessments for various grade levels and classes, including  
132 the completion of the alternative assessments implemented by each local school board, in accordance  
133 with the Standards of Learning. These assessments shall include end-of-course or end-of-grade tests for  
134 English, mathematics, science, and history and social science and may be integrated to include multiple  
135 subject areas.

136 The Board shall prescribe alternative methods of Standards of Learning assessment administration for  
137 children with disabilities, as that term is defined in § 22.1-213, who meet criteria established by the  
138 Board to demonstrate achievement of the Standards of Learning. An eligible student's Individual  
139 Education Program team shall make the final determination as to whether an alternative method of  
140 administration is appropriate for the student.

141 The Standards of Learning assessments administered to students in grades three through eight shall  
142 not exceed (a) reading and mathematics in grades three and four; (b) reading, mathematics, and science  
143 in grade five; (c) reading and mathematics in grades six and seven; (d) reading, writing, and  
144 mathematics in grade eight; (e) science after the student receives instruction in the grade six science, life  
145 science, and physical science Standards of Learning and before the student completes grade eight; and  
146 (f) Virginia Studies and Civics and Economics once each at the grade levels deemed appropriate by each  
147 local school board.

148 *Pursuant to § 22.1-212.33, certain prescribed Standards of Learning assessments may be replaced by*  
149 *performance-based assessments.*

150 Each school board shall annually certify that it has provided instruction and administered an  
151 alternative assessment, consistent with Board guidelines, to students in grades three through eight in  
152 each Standards of Learning subject area in which a Standards of Learning assessment was not  
153 administered during the school year. Such guidelines shall (1) incorporate options for age-appropriate,  
154 authentic performance assessments and portfolios with rubrics and other methodologies designed to  
155 ensure that students are making adequate academic progress in the subject area and that the Standards of  
156 Learning content is being taught; (2) permit and encourage integrated assessments that include multiple  
157 subject areas; and (3) emphasize collaboration between teachers to administer and substantiate the  
158 assessments and the professional development of teachers to enable them to make the best use of  
159 alternative assessments.

160 Local school divisions shall provide targeted mathematics remediation and intervention to students in  
161 grades six through eight who show computational deficiencies as demonstrated by their individual  
162 performance on any diagnostic test or grade-level Standards of Learning mathematics test that measures  
163 non-calculator computational skills.

164 The Department of Education shall award recovery credit to any student in grades three through eight  
165 who fails a Standards of Learning assessment in English reading or mathematics, receives remediation,  
166 and subsequently retakes and passes such an assessment, including any such student who subsequently  
167 retakes such an assessment on an expedited basis.

168 In addition, to assess the educational progress of students, the Board of Education shall (A) develop  
169 appropriate assessments, which may include criterion-referenced tests and other assessment instruments  
170 that may be used by classroom teachers; (B) select appropriate industry certification and state licensure  
171 examinations; and (C) prescribe and provide measures, which may include nationally normed tests to be  
172 used to identify students who score in the bottom quartile at selected grade levels. An annual  
173 justification that includes evidence that the student meets the participation criteria defined by the  
174 Virginia Department of Education shall be provided for each student considered for the Virginia Grade  
175 Level Alternative. Each Individual Education Program team shall review such justification and make the  
176 final determination as to whether or not the Virginia Grade Level Alternative is appropriate for the  
177 student. The superintendent and the school board chairman shall certify to the Board of Education, as a  
178 part of certifying compliance with the Standards of Quality, that there is a justification in the Individual  
179 Education Program for every student who takes the Virginia Grade Level Alternative. Compliance with  
180 this requirement shall be monitored as a part of the special education monitoring process conducted by  
181 the Department of Education. The Board shall report to the Governor and General Assembly in its

182 annual reports pursuant to § 22.1-18 any school division that is not in compliance with this  
183 requirement.

184 The Standards of Learning requirements, including all related assessments, shall be waived for any  
185 student awarded a scholarship under the Brown v. Board of Education Scholarship Program, pursuant to  
186 § 30-231.2, who is enrolled in a preparation program for a high school equivalency examination  
187 approved by the Board of Education or in an adult basic education program or an adult secondary  
188 education program to obtain the high school diploma or a high school equivalency certificate.

189 The Department of Education shall develop processes for informing school divisions of changes in  
190 the Standards of Learning.

191 The Board of Education may adopt special provisions related to the administration and use of any  
192 Standards of Learning test or tests in a content area as applied to accreditation ratings for any period  
193 during which the Standards of Learning content or assessments in that area are being revised and phased  
194 in. Prior to statewide administration of such tests, the Board of Education shall provide notice to local  
195 school boards regarding such special provisions.

196 The Board of Education shall not include in its calculation of the passage rate of a Standards of  
197 Learning assessment for the purposes of state accountability any student whose parent has decided to not  
198 have his child take such Standards of Learning assessment, unless such exclusions would result in the  
199 school's not meeting any required state or federal participation rate.

200 D. The Board of Education may pursue all available civil remedies pursuant to § 22.1-19.1 or  
201 administrative action pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration  
202 of test materials or test results.

203 The Board may initiate or cause to be initiated a review or investigation of any alleged breach in  
204 security, unauthorized alteration, or improper administration of tests, including the exclusion of students  
205 from testing who are required to be assessed, by local school board employees responsible for the  
206 distribution or administration of the tests.

207 Records and other information furnished to or prepared by the Board during the conduct of a review  
208 or investigation may be withheld pursuant to subdivision 10 of § 2.2-3705.3. However, this section shall  
209 not prohibit the disclosure of records to (i) a local school board or division superintendent for the  
210 purpose of permitting such board or superintendent to consider or to take personnel action with regard to  
211 an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a)  
212 does not reveal the identity of any person making a complaint or supplying information to the Board on  
213 a confidential basis and (b) does not compromise the security of any test mandated by the Board. Any  
214 local school board or division superintendent receiving such records or other information shall, upon  
215 taking personnel action against a relevant employee, place copies of such records or information relating  
216 to the specific employee in such person's personnel file.

217 Notwithstanding any other provision of state law, no test or examination authorized by this section,  
218 including the Standards of Learning assessments, shall be released or required to be released as  
219 minimum competency tests, if, in the judgment of the Board, such release would breach the security of  
220 such test or examination or deplete the bank of questions necessary to construct future secure tests.

221 E. With such funds as may be appropriated, the Board of Education may provide, through an  
222 agreement with vendors having the technical capacity and expertise to provide computerized tests and  
223 assessments, and test construction, analysis, and security, for (i) web-based computerized tests and  
224 assessments, including computer-adaptive Standards of Learning assessments, for the evaluation of  
225 student progress during and after remediation and (ii) the development of a remediation item bank  
226 directly related to the Standards of Learning.

227 F. To assess the educational progress of students as individuals and as groups, each local school  
228 board shall require the use of Standards of Learning assessments, alternative assessments, and other  
229 relevant data, such as industry certification and state licensure examinations, to evaluate student progress  
230 and to determine educational performance. Each local school shall require the administration of  
231 appropriate assessments to students, which may include criterion-referenced tests and teacher-made tests  
232 and shall include the Standards of Learning assessments, the local school board's alternative assessments,  
233 and the National Assessment of Educational Progress state-by-state assessment. Each school board shall  
234 analyze and report annually, in compliance with any criteria that may be established by the Board of  
235 Education, the results from the Stanford Achievement Test Series, Ninth Edition (Stanford Nine)  
236 assessment, if administered, industry certification examinations, and the Standards of Learning  
237 Assessments to the public.

238 The Board of Education shall not require administration of the Stanford Achievement Test Series,  
239 Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance with the  
240 requirements for home instruction pursuant to § 22.1-254.1.

241 The Board shall include requirements for the reporting of the Standards of Learning assessment  
242 scores and averages for each year, regardless of accreditation frequency, as part of the Board's  
243 requirements relating to the School Performance Report Card. Such scores shall be disaggregated for

244 each school by student subgroups on the Virginia assessment program as appropriate and shall be  
 245 reported to the public within three months of their receipt. These reports (i) shall be posted on the  
 246 portion of the Department of Education's website relating to the School Performance Report Card, in a  
 247 format and in a manner that allows year-to-year comparisons, and (ii) may include the National  
 248 Assessment of Educational Progress state-by-state assessment.

249 G. Each local school division superintendent shall regularly review the division's submission of data  
 250 and reports required by state and federal law and regulations to ensure that all information is accurate  
 251 and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list of the  
 252 required reports and data to division superintendents annually. The status of compliance with this  
 253 requirement shall be included in the Board of Education's annual report to the Governor and the General  
 254 Assembly as required by § 22.1-18.

255 H. Any school board may request the Board of Education for release from state regulations or, on  
 256 behalf of one or more of its schools, for approval of an Individual School Accreditation Plan for the  
 257 evaluation of the performance of one or more of its schools as authorized for certain other schools by  
 258 the Standards of Accreditation pursuant to 8VAC20-131-280 C of the Virginia Administrative Code.  
 259 Waivers of regulatory requirements may be granted by the Board of Education based on submission of a  
 260 request from the division superintendent and chairman of the local school board. The Board of  
 261 Education may grant, for a period up to five years, a waiver of regulatory requirements that are not (i)  
 262 mandated by state or federal law or (ii) designed to promote health or safety. The school board shall  
 263 provide in its waiver request a description of how the releases from state regulations are designed to  
 264 increase the quality of instruction and improve the achievement of students in the affected school or  
 265 schools. The Department of Education shall provide (a) guidance to any local school division that  
 266 requests releases from state regulations and (b) information about opportunities to form partnerships with  
 267 other agencies or entities to any local school division in which the school or schools granted releases  
 268 from state regulations have demonstrated improvement in the quality of instruction and the achievement  
 269 of students.

270 The Board of Education may also grant local school boards waivers of specific requirements in  
 271 § 22.1-253.13:2, based on submission of a request from the division superintendent and chairman of the  
 272 local school board, permitting the local school board to assign instructional personnel to the schools with  
 273 the greatest needs, so long as the school division employs a sufficient number of personnel divisionwide  
 274 to meet the total number required by § 22.1-253.13:2 and all pupil/teacher ratios and class size  
 275 maximums set forth in subsection C of § 22.1-253.13:2 are met. The school board shall provide in its  
 276 request a description of how the waivers from specific Standards of Quality staffing standards are  
 277 designed to increase the quality of instruction and improve the achievement of students in the affected  
 278 school or schools. The waivers may be renewed in up to five-year increments, or revoked, based on  
 279 student achievement results in the affected school or schools.

280 **2. That the Board of Education shall, by September 1, 2019, submit to the U.S. Department of**  
 281 **Education any amendments necessary to implement the provisions of this act to its consolidated**  
 282 **state plan under the Elementary and Secondary Education Act of 1965, as amended by the Every**  
 283 **Student Succeeds Act.**