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SENATE BILL NO. 249

Offered January 8, 2020

Prefiled January 2, 2020

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 the Virginia Studies and the Civics and Economics 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. Such application shall demonstrate, to the satisfaction of the Board, that the proposed performance-based assessment requires that students demonstrate the knowledge and skills required by the relevant Standards of Learning and that students demonstrate one or more of the skills and qualities of critical thinking, creativity, collaboration, communication, or citizenship.

D. Such application shall provide evidence of the local school board's capacity to administer and score performance-based assessments. Such evidence shall include:

1. Experience in 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;
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; and
7. Any other evidence that the Board deems relevant.

E. 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 on the basis of evidence provided pursuant to subsection D.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In addition, to assess the educational progress of students, the Board of Education shall (A) develop appropriate assessments, which may include criterion-referenced tests and other assessment instruments that may be used by classroom teachers; (B) select appropriate industry certification and state licensure examinations; and (C) prescribe and provide measures, which may include nationally normed tests to be used to identify students who score in the bottom quartile at selected grade levels. An annual justification that includes evidence that the student meets the participation criteria defined by the Virginia Department of Education shall be provided for each student considered for the Virginia Grade Level Alternative. Each Individual Education Program team shall review such justification and make the final determination as to whether or not the Virginia Grade Level Alternative is appropriate for the student. The superintendent and the school board chairman shall certify to the Board of Education, as a part of certifying compliance with the Standards of Quality, that there is a justification in the Individual Education Program for every student who takes the Virginia Grade Level Alternative. Compliance with this requirement shall be monitored as a part of the special education monitoring process conducted by the Department of Education. The Board shall report to the Governor and General Assembly in its annual reports pursuant to § 22.1-18 any school division that is not in compliance with this requirement.

The Standards of Learning requirements, including all related assessments, shall be waived for any student awarded a scholarship under the Brown v. Board of Education Scholarship Program, pursuant to

§ 30-231.2, who is enrolled in a preparation program for a high school equivalency examination approved by the Board of Education or in an adult basic education program or an adult secondary education program to obtain the high school diploma or a high school equivalency certificate.

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

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

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

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

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

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

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

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

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

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

The Board shall include requirements for the reporting of the Standards of Learning assessment scores and averages for each year, regardless of accreditation frequency, as part of the Board's requirements relating to the School Performance Report Card. Such scores shall be disaggregated for each school by student subgroups on the Virginia assessment program as appropriate and shall be reported to the public within three months of their receipt. These reports (i) shall be posted on the portion of the Department of Education's website relating to the School Performance Report Card, in a format and in a manner that allows year-to-year comparisons, and (ii) may include the National

244 Assessment of Educational Progress state-by-state assessment.

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

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

266 The Board of Education may also grant local school boards waivers of specific requirements in
267 § 22.1-253.13:2, based on submission of a request from the division superintendent and chairman of the
268 local school board, permitting the local school board to assign instructional personnel to the schools with
269 the greatest needs, so long as the school division employs a sufficient number of personnel divisionwide
270 to meet the total number required by § 22.1-253.13:2 and all pupil/teacher ratios and class size
271 maximums set forth in subsection C of § 22.1-253.13:2 are met. The school board shall provide in its
272 request a description of how the waivers from specific Standards of Quality staffing standards are
273 designed to increase the quality of instruction and improve the achievement of students in the affected
274 school or schools. The waivers may be renewed in up to five-year increments, or revoked, based on
275 student achievement results in the affected school or schools.