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HOUSE BILL NO. 585

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 11, 2022)

(Patron Prior to Substitute—Delegate VanValkenburg)

A BILL to amend and reenact § 22.1-253.13:3 of the Code of Virginia, relating to middle and high school end-of-course assessments; number and type.

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 as follows:

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

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

The Board 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.

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

Each local school board shall maintain schools that are fully accredited pursuant to the standards for accreditation as prescribed by the Board. Each local school board shall report the accreditation status of all schools in the local school division annually in public session.

The Board shall establish a review process to assist any school that does not meet the standards established by the Board. The relevant school board shall report the results of such review and any annual progress reports in public session and shall implement any actions identified through such review and utilize them for improvement planning.

The Board shall establish a corrective action plan process for any school that does not meet the standards established by the Board. Such process shall require (a) each school board to submit a corrective action plan for any school in the local school division that does not meet the standards established by the Board and (b) any school board that fails to demonstrate progress in developing or implementing any such corrective action plan to enter into a memorandum of understanding with the Board.

When the Board determines through its review process that the failure of schools within a division to meet the standards established by the Board is related to division-level failure to implement the Standards of Quality or other division-level action or inaction, the Board may require a division-level academic review. After the conduct of such review and within the time specified by the Board, each school board shall enter into a memorandum of understanding with the Board and shall subsequently submit to the Board for approval a corrective action plan, consistent with criteria established by the Board setting forth specific actions and a schedule designed to ensure that schools within its school division meet the standards established by the Board. If the Board determines that the proposed corrective action plan is not sufficient to enable all schools within the division to meet the standards established by the Board, the Board may return the plan to the local school board with directions to submit an amended plan pursuant to Board guidance. Such corrective action plans shall be part of the

60 relevant school division's comprehensive plan pursuant to § 22.1-253.13:6.

61 B. The Superintendent of Public Instruction shall develop, subject to revision by the Board, criteria
62 for determining and recognizing educational performance in the Commonwealth's local school divisions
63 and public schools. The portion of such criteria that measures individual student growth shall become an
64 integral part of the accreditation process for schools in which any grade level in the grade three through
65 eight range is taught. The Superintendent of Public Instruction shall annually report to the Board on the
66 accreditation status of all school divisions and schools. Such report shall include an analysis of the
67 strengths and weaknesses of public education programs in the various school divisions in Virginia and
68 recommendations to the General Assembly for further enhancing student learning uniformly across the
69 Commonwealth. In recognizing educational performance and individual student growth in the school
70 divisions, the Board shall include consideration of special school division accomplishments, such as
71 numbers of dual enrollments and students in Advanced Placement and International Baccalaureate
72 courses, and participation in academic year Governor's Schools.

73 The Superintendent of Public Instruction shall assist local school boards in the implementation of
74 action plans for increasing educational performance and individual student growth in those school
75 divisions and schools that are identified as not meeting the approved criteria. The Superintendent of
76 Public Instruction shall monitor the implementation of and report to the Board on the effectiveness of
77 the corrective actions taken to improve the educational performance in such school divisions and
78 schools.

79 C. With such funds as are available for this purpose, the Board shall prescribe assessment methods to
80 determine the level of achievement of the Standards of Learning objectives by all students. Such
81 assessments shall evaluate knowledge, application of knowledge, critical thinking, and skills related to
82 the Standards of Learning being assessed. The Board shall, with the assistance of independent testing
83 experts, conduct a regular analysis and validation process for these assessments. In lieu of a one-time
84 end-of-year assessment, the Board shall establish, for the purpose of providing measures of individual
85 student growth over the course of the school year, a through-year growth assessment system, aligned
86 with the Standards of Learning, for the administration of reading and mathematics assessments in grades
87 three through eight. Such through-year growth assessment system shall include at least one
88 beginning-of-year, one mid-year, and one end-of-year assessment in order to provide individual student
89 growth scores over the course of the school year, but the total time scheduled for taking all such
90 assessments shall not exceed 150 percent of the time scheduled for taking a single end-of-year
91 proficiency assessment. The Department shall ensure adequate training for teachers and principals on
92 how to interpret and use student growth data from such assessments to improve reading and mathematics
93 instruction in grades three through eight throughout the school year. With such funds and content as are
94 available for such purpose, such through-year growth assessment system shall provide accurate
95 measurement of a student's performance, through computer adaptive technology, using test items at,
96 below, and above the student's grade level as necessary.

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

99 The Department shall make available to school divisions Standards of Learning assessments typically
100 administered by high schools by December 1 of the school year in which such assessments are to be
101 administered or when newly developed assessments are available, whichever is later.

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

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

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

118 The Standards of Learning assessments administered to students in grades three through eight shall
119 not exceed (i) reading and mathematics in grades three and four; (ii) reading, mathematics, and science
120 in grade five; (iii) reading and mathematics in grades six and seven; (iv) reading, writing, and
121 mathematics in grade eight; (v) 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 (vi) Virginia Studies and Civics and Economics once each at the grade levels deemed appropriate by each local school board. The reading and mathematics assessments administered to students in grades three through eight shall be through-year growth assessments.

Except for those middle and high school students with significant cognitive disabilities who participate in an alternate assessment, each student in middle and high school shall take only those end-of-course Standards of Learning assessments necessary to meet federal accountability requirements, established by the federal Elementary and Secondary Education Act of 1965, P.L. 89-10, as amended, and to meet Virginia high school graduation requirements.

With such funds as may be appropriated for such purpose, and except in the case of students who participate in an alternate assessment, the Standards of Learning assessments for Virginia Studies, Civics and Economics, Virginia and U.S. history, and biology shall include items that require the student to apply knowledge and skills in preparing a response. Such items shall include open-ended questions, long-form writing, and other tasks, with student responses scored by the Department according to statewide scoring rubrics. Student performance on the Virginia and U.S. history and biology end-of-course assessments shall account for 10 percent of the student's final grade in each such course.

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 (a) 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; (b) permit and encourage integrated assessments that include multiple subject areas; and (c) 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 shall award recovery credit to any student in grades three through eight who performs below grade level on a Standards of Learning assessment in English reading or mathematics, receives remediation, and subsequently retakes and performs at or above grade level on 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 shall (1) develop appropriate assessments, which may include criterion-referenced tests and other assessment instruments that may be used by classroom teachers; (2) select appropriate industry certification and state licensure examinations; and (3) 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 Department 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, 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. 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 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 shall develop processes for informing school divisions of changes in the Standards of Learning.

The Board 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

183 statewide administration of such tests, the Board shall provide notice to local school boards regarding
184 such special provisions.

185 The Board shall not include in its calculation of the passage rate for a Standards of Learning
186 assessment or the level of achievement of the Standards of Learning objectives for an individual student
187 growth assessment for the purposes of state accountability any student whose parent has decided to not
188 have his child take such Standards of Learning assessment, unless such exclusions would result in the
189 school's not meeting any required state or federal participation rate.

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

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

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

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

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

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

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

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

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

244 H. Any school board may request the Board for release from state regulations or, on behalf of one or

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

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

2. That the Department of Education shall convene and consult a work group consisting of representatives of the Department of Education and the Board of Education and other appropriate stakeholders to develop a plan for the implementation of the provisions of the first enactment of this act no later than the beginning of the 2027-2028 school year. In developing such plan, the work group shall include (i) a timeline for implementation of the new assessment items set forth in the first enactment of this act, giving consideration to implementation prior to the 2027-2028 school year; (ii) alternative approaches to the new assessment items set forth in the first enactment of this act, including subject areas and methods of grading such items; (iii) appropriate pilot implementation of such assessment items prior to the 2027-2028 school year as necessary to determine the validity of such items; (iv) development of a bank of vetted sample assessment items set forth in the first enactment of this act that shall be comprehensive of skills being assessed and made available to local school divisions by the beginning of the 2025-2026 school year; and (v) legislative and regulatory changes and funding necessary to implement alternative approaches considered by the work group pursuant to clause (ii). Such work group shall convene at least annually prior to the beginning of the 2027-2028 school year to adjust such plan as appropriate.

3. That the Department of Education shall submit its initial plan developed pursuant to the second enactment of this act to the Chairmen of the House Committee on Education, the Senate Committee on Education and Health, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations no later than November 1, 2022, and provide updates on the implementation of such plan no later than November 1 of each year thereafter through 2027.