

HOUSE BILL NO. 585

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on February 7, 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

27 accredited for three consecutive years. Upon such triennial review, the Board shall review the accreditation  
28 status of the school for each individual year within that triennial review period. If the Board finds that the  
29 school would have been accredited every year of that triennial review period the Board shall accredit the  
30 school for another three years. The Board may review the accreditation status of any other school once  
31 every two years or once every three years, provided that any school that receives a multiyear accreditation  
32 status other than full accreditation shall be covered by a Board-approved multiyear corrective action plan  
33 for the duration of the period of accreditation. Such multiyear corrective action plan shall include annual  
34 written progress updates to the Board. A multiyear accreditation status shall not relieve any school or  
35 division of annual reporting requirements.

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

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

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

48 When the Board determines through its review process that the failure of schools within a division  
49 to meet the standards established by the Board is related to division-level failure to implement the  
50 Standards of Quality or other division-level action or inaction, the Board may require a division-level  
51 academic review. After the conduct of such review and within the time specified by the Board, each school  
52 board shall enter into a memorandum of understanding with the Board and shall subsequently submit to  
53 the Board for approval a corrective action plan, consistent with criteria established by the Board setting

54 forth specific actions and a schedule designed to ensure that schools within its school division meet the  
55 standards established by the Board. If the Board determines that the proposed corrective action plan is not  
56 sufficient to enable all schools within the division to meet the standards established by the Board, the  
57 Board may return the plan to the local school board with directions to submit an amended plan pursuant  
58 to Board guidance. Such corrective action plans shall be part of the relevant school division's  
59 comprehensive plan pursuant to § 22.1-253.13:6.

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

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

77 C. With such funds as are available for this purpose, the Board shall prescribe assessment methods  
78 to determine the level of achievement of the Standards of Learning objectives by all students. Such  
79 assessments shall evaluate knowledge, application of knowledge, critical thinking, and skills related to the  
80 Standards of Learning being assessed. The Board shall, with the assistance of independent testing experts,

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

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

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

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

104 The Board shall prescribe alternative methods of Standards of Learning assessment administration  
105 for children with disabilities, as that term is defined in § 22.1-213, who meet criteria established by the  
106 Board to demonstrate achievement of the Standards of Learning. An eligible student's Individual

107 Education Program team shall make the final determination as to whether an alternative method of  
108 administration is appropriate for the student.

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

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

123 Except for those middle and high school students with significant cognitive disabilities who  
124 participate in an alternate assessment, each student in middle and high school shall take only those end-  
125 of-course Standards of Learning assessments necessary to meet federal accountability requirements,  
126 established by the federal Elementary and Secondary Education Act of 1965, P.L.89-10, as amended, and  
127 to meet Virginia high school graduation requirements. The end-of-course Standards of Learning  
128 assessments in biology and Virginia and U.S. history shall include items that require the student to apply  
129 knowledge and skills in preparing a response. Such items shall include open-ended questions with student  
130 responses scored by the Department according to statewide scoring rubrics. Student performance on each  
131 such assessment shall account for 10 percent of the student's final grade in each such course.

132 Each school board shall annually certify that it has provided instruction and administered an  
133 alternative assessment, consistent with Board guidelines, to students in grades three through eight in each

134 Standards of Learning subject area in which a Standards of Learning assessment was not administered  
135 during the school year. Such guidelines shall (a) incorporate options for age-appropriate, authentic  
136 performance assessments and portfolios with rubrics and other methodologies designed to ensure that  
137 students are making adequate academic progress in the subject area and that the Standards of Learning  
138 content is being taught; (b) permit and encourage integrated assessments that include multiple subject  
139 areas; and (c) emphasize collaboration between teachers to administer and substantiate the assessments  
140 and the professional development of teachers to enable them to make the best use of alternative  
141 assessments.

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

146           The Department shall award recovery credit to any student in grades three through eight who  
147 performs below grade level on a Standards of Learning assessment in English reading or mathematics,  
148 receives remediation, and subsequently retakes and performs at or above grade level on such an  
149 assessment, including any such student who subsequently retakes such an assessment on an expedited  
150 basis.

151           In addition, to assess the educational progress of students, the Board shall (1) develop appropriate  
152 assessments, which may include criterion-referenced tests and other assessment instruments that may be  
153 used by classroom teachers; (2) select appropriate industry certification and state licensure examinations;  
154 and (3) prescribe and provide measures, which may include nationally normed tests to be used to identify  
155 students who score in the bottom quartile at selected grade levels. An annual justification that includes  
156 evidence that the student meets the participation criteria defined by the Department shall be provided for  
157 each student considered for the Virginia Grade Level Alternative. Each Individual Education Program  
158 team shall review such justification and make the final determination as to whether or not the Virginia  
159 Grade Level Alternative is appropriate for the student. The superintendent and the school board chairman  
160 shall certify to the Board, as a part of certifying compliance with the Standards of Quality, that there is a

161 justification in the Individual Education Program for every student who takes the Virginia Grade Level  
162 Alternative. Compliance with this requirement shall be monitored as a part of the special education  
163 monitoring process conducted by the Department. The Board shall report to the Governor and General  
164 Assembly in its annual reports pursuant to § 22.1-18 any school division that is not in compliance with  
165 this requirement.

166           The Standards of Learning requirements, including all related assessments, shall be waived for any  
167 student awarded a scholarship under the Brown v. Board of Education Scholarship Program, pursuant to  
168 § 30-231.2, who is enrolled in a preparation program for a high school equivalency examination approved  
169 by the Board or in an adult basic education program or an adult secondary education program to obtain  
170 the high school diploma or a high school equivalency certificate.

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

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

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

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

186           The Board may initiate or cause to be initiated a review or investigation of any alleged breach in  
187 security, unauthorized alteration, or improper administration of tests, including the exclusion of students

188 from testing who are required to be assessed, by local school board employees responsible for the  
189 distribution or administration of the tests.

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

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

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

210           F. To assess the educational progress of students as individuals and as groups, each local school  
211 board shall require the use of Standards of Learning assessments, alternative assessments, and other  
212 relevant data, such as industry certification and state licensure examinations, to evaluate student progress  
213 and to determine educational performance. Each local school shall require the administration of  
214 appropriate assessments to students, which may include criterion-referenced tests and teacher-made tests

215 and shall include the Standards of Learning assessments, the local school board's alternative assessments,  
216 and the National Assessment of Educational Progress state-by-state assessment. Each school board shall  
217 analyze and report annually, in compliance with any criteria that may be established by the Board, the  
218 results from the Stanford Achievement Test Series, Ninth Edition (Stanford Nine) assessment, if  
219 administered, industry certification examinations, and the Standards of Learning Assessments to the  
220 public.

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

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

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

237 H. Any school board may request the Board for release from state regulations or, on behalf of one  
238 or more of its schools, for approval of an Individual School Accreditation Plan for the evaluation of the  
239 performance of one or more of its schools as authorized for certain other schools by the Standards for  
240 Accreditation pursuant to 8VAC20-131-280 C of the Virginia Administrative Code. Waivers of regulatory  
241 requirements may be granted by the Board based on submission of a request from the division

242 superintendent and chairman of the local school board. The Board may grant, for a period up to five years,  
243 a waiver of regulatory requirements that are not (i) mandated by state or federal law or (ii) designed to  
244 promote health or safety. The school board shall provide in its waiver request a description of how the  
245 releases from state regulations are designed to increase the quality of instruction and improve the  
246 achievement of students in the affected school or schools. The Department shall provide (a) guidance to  
247 any local school division that requests releases from state regulations and (b) information about  
248 opportunities to form partnerships with other agencies or entities to any local school division in which the  
249 school or schools granted releases from state regulations have demonstrated improvement in the quality  
250 of instruction and the achievement of students.

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

261 **2. That the provisions of the first enactment of this act shall become effective on July 1, 2027, and**  
262 **the first assessments administered pursuant to such provisions shall occur during the spring of the**  
263 **2027–2028 school year.**

264 **3. That the Department of Education shall semiannually during the 2022–2023 through 2026–2027**  
265 **school years publish on a publicly accessible portion of its website sample assessment items in**  
266 **biology and Virginia and U.S. history that require the student to apply knowledge and skills in**  
267 **preparing a response.**

268 4. That the Department of Education shall annually administer a pilot program during the 2023–  
269 2024 through 2026–2027 school years whereby it administers to high school juniors in select school  
270 divisions assessments in biology and Virginia and U.S. history that include items that require the  
271 student to apply knowledge and skills in preparing a response to determine the validity of such  
272 assessment items and make such adjustments as may be necessary before the first such assessments  
273 are administered statewide during the spring of the 2027–2028 school year.

274 5. That the Department of Education shall convene and consult at least annually prior to the  
275 beginning of the 2027–2028 school year a work group consisting of representatives of the  
276 Department of Education, the Board of Education, the House Committee on Appropriations, the  
277 Senate Committee on Finance and Appropriations, and the Division of Legislative Services for the  
278 purpose of monitoring the Department's process for and progress toward fully implementing the  
279 provisions of this act.

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