SENATE CONCURRENT
RESOLUTION No. 132

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED NOVEMBER 10, 2016

Sponsored by:
Senator NIA H. GILL
District 34 (Essex and Passaic)
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)

Co-Sponsored by:
Senators Codey, Diegnan, Sacco, Vitale and Greenstein

SYNOPSIS

Determines that State Board of Education regulations to revise assessment required for students to demonstrate graduation proficiency are inconsistent with legislative intent.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/16/2017)
A CONCURRENT RESOLUTION concerning legislative review of State Board of Education regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.

WHEREAS, Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation of an administrative agency to determine if the rule or regulation is consistent with the intent of the Legislature as expressed in the language of the statute that the rule or regulation is intended to implement; and

WHEREAS, Section 1 of P.L.1979, c.241 (C.18A:7C-1) requires the Commissioner of Education, with the approval of the State Board of Education, to establish a program of standards for graduation from high school, including “a Statewide assessment test in reading, writing and computational skills to be administered to all secondary school pupils,” and section 2 of P.L.1979, c.241 (C.18A:7C-2) requires each school district to “establish standards for graduation from its secondary schools” including “[s]atisfactory performance on the Statewide assessment test”; and

WHEREAS, In 1988, section 6 of P.L.1979, c.241 (C.18A:7C-6) was amended to provide that the State graduation proficiency test “be administered to all 11th grade pupils and to any 11th or 12th grade pupil who has previously failed to demonstrate mastery of State graduation proficiency standards on said test”; and

WHEREAS, Beginning in the 1993-1994 school year, the State satisfied the statutory requirement for a graduation proficiency test by administering the High School Proficiency Test, and later its successor the High School Proficiency Assessment (HSPA), to all 11th grade students in the fall. Any student who did not demonstrate proficiency was retested in the spring and, if necessary, in the fall and spring of the subsequent school year; and

WHEREAS, On August 3, 2016, the State Board of Education adopted regulations to revise the rules governing the assessment required for students to demonstrate graduation proficiency; and

WHEREAS, The newly-adopted State Board of Education regulations are designed to provide for the transition to the Partnership for Assessment of Readiness for College and Careers (PARCC) 10th grade English Language Arts (ELA 10) and Algebra I end-of-course tests as the identified means to demonstrate proficiency for graduation, in place of the HSPA; and

WHEREAS, N.J.A.C.6A:8-5.1, listing the requirements for a State-endorsed diploma, now includes “[t]he requirement that all students demonstrate proficiency in the high school end-of-course PARCC assessments in ELA 10 and Algebra I, or through the alternative means set forth at [N.J.A.C.6A:8-5.1] (f) through (i).” The alternative means are other PARCC exams, substitute competency
tests, and the portfolio appeal, with different alternatives available
to different graduating classes; and

WHEREAS, The new Statewide graduation assessment is not an 11th
grade exam as required by statute. The PARCC ELA 10 is
administered in 10th grade and explicitly tied to a 10th grade
course, and the PARCC Algebra I test is also not an 11th grade
exam, as it is administered at the end of the year that a student takes
the Algebra I course, which could be any grade; and

WHEREAS, Various sections of State law regarding high school
graduation standards refer to a single, comprehensive graduation
assessment, but the PARCC tests designated as the new graduation
assessment requirement, ELA 10 and Algebra I, are two separate
tests given at the end of the relevant course, with administration of
one PARCC exam having no connection to the administration of
another. These tests do not have to be given in the same grade, let
alone in the same sitting as one comprehensive assessment; and

WHEREAS, Section 6 of P.L.1979, c.241 (C.18A:7C-6) requires that
students who previously failed to demonstrate mastery of
graduation proficiency standards on the State graduation
proficiency test be given opportunities to retake that same test in the
11th and 12th grades. The new regulations at N.J.A.C.6A:8-5.1(f)
provide that students who have not demonstrated proficiency on the
ELA 10 and Algebra I assessments must be provided “the
opportunity to demonstrate such competence through one of the
alternative means”; and

WHEREAS, For the classes of 2016 through 2020, the alternative
means include substitute competency tests, which are third-party
assessments such as the SAT, PSAT, and ACT, other PARCC
assessments, or the portfolio appeal, with no provision for retesting
using the exams which have been designated through these
regulations as the graduation assessment requirement, the PARCC
ELA 10 and Algebra I tests; and

WHEREAS, For the classes of 2021 and thereafter, N.J.A.C.6A:8-5.1(g)
refers to retesting opportunities for the ELA 10 and Algebra I tests,
but it is unclear how this could be implemented, since these
assessments are end-of-course tests designed to be taken as students
are taught the course’s content, and, additionally, in order to
comply with the statute these opportunities would need to be given
in the 11th and 12th grades, which for a senior taking Algebra I, for
example, would not be possible; and

12th grade student who does not meet [the State and district
examination] requirements but who has met all the credit,
curriculum and attendance requirements shall be eligible for a
comprehensive assessment of said proficiencies utilizing techniques
and instruments other than standardized tests.” The Alternative
High School Assessment (AHSA) functioned as this alternative
assessment prior to the new State board regulations; and
WHEREAS, The Department of Education has described both the substitute competency tests and the portfolio appeal as replacing the AHSA, but the substitute competency tests are standardized tests which are prohibited under the provisions of section 3 of P.L.1979, c.241 (C.18A:7C-3); and

WHEREAS, The new regulations at N.J.A.C.6A:8-5.1(f)(2) and (g) also provide that for the classes of 2020 and beyond, access to non-PARCC options is only available to students who “take all applicable high school end-of-course PARCC assessments for all courses in which they are enrolled,” thereby conditioning access to the statutorily required option of an alternative pathway on prior participation in PARCC; and

WHEREAS, Section 3 of P.L.1979, c.241 (C.18A:7C-3) does not make access to the alternative exam conditional on participation in the primary Statewide assessment, and has not previously been interpreted in that manner by the State board. The new regulations not only condition access to the alternative options on the designated primary graduation exams, the PARCC ELA 10 and Algebra I, but also condition access on participation in all PARCC exams for which the student is enrolled in courses; and

WHEREAS, The regulations adopted by the State Board of Education on August 3, 2016 and published in the New Jersey Register on September 6, 2016 to revise the assessments required for students to demonstrate graduation proficiency are inconsistent with the intent of the Legislature; now, therefore,

BE IT RESOLVED by the Senate of the State of New Jersey (the General Assembly concurring):

1. The Legislature declares that the regulations adopted by the State Board of Education on August 3, 2016 and published in the New Jersey Register on September 6, 2016 to revise the assessments required for students to demonstrate graduation proficiency are not consistent with legislative intent.

2. Copies of this resolution, as filed with the Secretary of State, shall be transmitted by the Clerk of the General Assembly or the Secretary of the Senate to the Governor, the State Board of Education, and the Commissioner of Education.

3. The State Board of Education, pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, shall have 30 days following transmittal of this resolution to amend or withdraw the adopted regulations or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the regulations.
This concurrent resolution embodies the finding of the Legislature that the State Board of Education’s regulations to revise the assessments required for students to demonstrate graduation proficiency, adopted on August 3, 2016 and published in the New Jersey Register on September 6, 2016, are not consistent with the intent of the Legislature.

The State Board of Education will have 30 days from the date of transmittal of this resolution to amend or withdraw the regulations, or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the regulations.