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H.B. No. 4402

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the administration of certain assessment instruments,
3 the accountability rating system for assessing campus and district
4 performance, public school career and technology education
5 programs, and an extracurricular and cocurricular allotment under
6 the Foundation School Program.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 29.182(b), Education Code, is amended to
9 read as follows:

10 (b) The state plan must include procedures designed to
11 ensure that:

12 (1) all secondary and postsecondary students have the
13 opportunity to participate in career and technology education
14 programs;

15 (2) the state complies with requirements for
16 supplemental federal career and technology education funding;

17 (3) career and technology education is established as
18 a part of the total education system of this state and constitutes
19 an option for student learning that provides a rigorous course of
20 study consistent with the required curriculum under Section 28.002
21 and under which a student may receive specific education in a career
22 and technology program that:

23 (A) incorporates competencies leading to
24 academic and technical skill attainment;

1 (B) leads to:

2 (i) an industry-recognized license,
3 credential, or certificate; or

4 (ii) at the postsecondary level, an
5 associate or baccalaureate degree;

6 (C) includes opportunities for students to earn
7 college credit for coursework; and

8 (D) includes, as an integral part of the program,
9 participation by students and teachers in activities of career and
10 technical student organizations supported by the agency and the
11 State Board of Education; ~~and~~

12 (4) a school district provides, to the greatest extent
13 possible, to a student participating in a career and technology
14 education program opportunities to enroll in dual credit courses
15 designed to lead to a degree, license, or certification as part of
16 the program; and

17 (5) courses of study in a Junior Reserve Officer
18 Training Corps program or Leadership Officer Training Corps program
19 are provided as part of a career and technology education program.

20 SECTION 2. Sections 39.023(e), (h), and (o), Education
21 Code, are amended to read as follows:

22 (e) Under rules adopted by the State Board of Education,
23 every ~~third~~ year, the agency shall release the questions and
24 answer keys to each assessment instrument administered under
25 Subsection (a), (b), (c), (d), or (l), excluding any assessment
26 instrument administered to a student for the purpose of retaking
27 the assessment instrument, after the last time the instrument is

1 administered for that school year. To ensure a valid bank of
2 questions for use each year, the agency is not required to release a
3 question that is being field-tested and was not used to compute the
4 student's score on the instrument. The agency shall also release,
5 under board rule, each question that is no longer being
6 field-tested and that was not used to compute a student's score.
7 ~~[During the 2014-2015 and 2015-2016 school years, the agency shall~~
8 ~~release the questions and answer keys to assessment instruments as~~
9 ~~described by this subsection each year.]~~

10 (h) The agency shall notify school districts and campuses of
11 the results of assessment instruments administered under this
12 section not later than the 21st day after the last date on which the
13 assessment instrument may be ~~[is]~~ administered, except that the
14 agency may delay the notification if necessary to maintain validity
15 and reliability standards. The school district shall disclose to
16 each district teacher the results of assessment instruments
17 administered to students taught by the teacher in the subject for
18 the school year in which the assessment instrument is administered.

19 (o) The agency shall adopt or develop optional interim
20 assessment instruments for each subject or course for each grade
21 level for which a through-year assessment instrument under Section
22 39.0236 is not required ~~[subject to assessment under this section]~~.

23 A school district or open-enrollment charter school may not be
24 required to administer interim assessment instruments adopted or
25 developed under this subsection. An interim assessment instrument:

26 (1) must be:

27 (A) when possible, predictive of the assessment

1 instrument for the applicable subject or course for that grade
2 level required under this section; and

3 (B) administered electronically; and

4 (2) may not be used for accountability purposes.

5 SECTION 3. Subchapter B, Chapter 39, Education Code, is
6 amended by adding Section 39.02301 to read as follows:

7 Sec. 39.02301. OPTIONAL USE OF WRITING PORTFOLIO
8 ASSESSMENT. (a) A school district may elect to use a writing
9 portfolio assessment to assess writing performance for students
10 enrolled in the district as an alternative to administering the
11 portion of a reading assessment instrument under Section 39.023(a)
12 or English I or English II end-of-course assessment instrument
13 under Section 39.023(c) that is not presented in a multiple choice
14 format.

15 (b) A school district that elects to use a writing portfolio
16 assessment under this section shall design the assessment in
17 consultation with a public or private institution of higher
18 education and submit the assessment to the agency for approval. The
19 agency shall approve the assessment if the assessment is:

20 (1) determined by the public or private institution of
21 higher education that consulted on the design of the assessment to
22 be valid and reliable; and

23 (2) designed to assess:

24 (A) a student's mastery of the essential
25 knowledge and skills in writing through timed writing samples;

26 (B) improvement of a student's writing skills
27 from the beginning of the school year to the end of the school year;

1 (C) a student's ability to follow the writing
2 process from rough draft to final product; and

3 (D) a student's ability to produce more than one
4 type of writing style.

5 (c) A school district that elects to use a writing portfolio
6 assessment under this section may adopt a policy allowing the
7 assessment to be scored by a classroom teacher assigned to the same
8 campus as the student to whom the assessment is administered. The
9 district may coordinate with the regional education service center
10 for the district's region in grading the assessments.

11 (d) A school district that elects to use a writing portfolio
12 assessment under this section is not required to administer the
13 portion of a reading assessment instrument under Section 39.023(a)
14 or English I or English II end-of-course assessment instrument
15 under Section 39.023(c) that is not presented in a multiple choice
16 format during the period the district is administering the writing
17 portfolio assessment. The agency shall, to the greatest extent
18 practicable, apply cost savings that result from the exemption
19 under this subsection to offset the costs accrued under this
20 section.

21 (e) The commissioner shall adopt rules as necessary to
22 implement this section.

23 SECTION 4. Subchapter B, Chapter 39, Education Code, is
24 amended by adding Section 39.02342 to read as follows:

25 Sec. 39.02342. PAPER ADMINISTRATION OF ASSESSMENT
26 INSTRUMENTS ON REQUEST. (a) Subject to Subsection (c), a school
27 district shall administer an assessment instrument required under

1 Section 39.023(a), (c), or (l) in paper format to any student whose
2 parent or guardian requests the assessment instrument be
3 administered to the student in paper format.

4 (b) A request for the administration of an assessment
5 instrument in paper format to a student under this section must be
6 submitted to the school district not later than December 1 of the
7 school year in which the assessment instrument will be
8 administered.

9 (c) The number of students enrolled at a school district who
10 are administered an assessment instrument in paper format for any
11 single administration under this section may not exceed three
12 percent of the number of students enrolled in the district. On
13 receipt of more requests for administration of an assessment
14 instrument than the maximum number permitted under this subsection,
15 the district shall accept the requests in the order received until
16 the maximum number is reached.

17 SECTION 5. Section 39.0236, Education Code, is amended to
18 read as follows:

19 Sec. 39.0236. THROUGH-YEAR [~~INTEGRATED~~ ~~FORMATIVE~~]
20 ASSESSMENT [PILOT] PROGRAM. (a) Notwithstanding any other law and
21 except as otherwise provided by commissioner rule, beginning with
22 the 2027-2028 school year, the agency shall adopt or develop a
23 through-year assessment for each subject and grade for which an
24 assessment instrument is required under Section 39.023(a) or (c),
25 including a through-year assessment in Spanish for administration
26 to emergent bilingual students, as required under Section
27 39.023(1), for each subject and grade level for which an assessment

1 instrument in Spanish may be administered under that subsection. A
2 through-year assessment adopted or developed under this section
3 shall consist of the administration of not more than three
4 assessment instruments over the course of a school year [~~The agency~~
5 ~~shall establish a pilot program in which participating school~~
6 ~~districts administer to students integrated formative assessment~~
7 ~~instruments for subjects or courses for a grade level subject to~~
8 ~~assessment under Section 28.006 or 39.023~~].

9 (b) The agency shall develop and implement a plan to
10 transition each assessment instrument required under Sections
11 39.023(a), (c), and (1) to a through-year assessment instrument
12 beginning with the 2027-2028 school year. The plan must:

13 (1) evaluate the administration of through-year
14 assessment instruments in this state, including an analysis of
15 instructional support improvements provided by school districts
16 administering through-year assessment instruments; and

17 (2) identify the actions necessary to improve the
18 administration of through-year assessment instruments, including
19 necessary changes to state law or policy [~~A school district may~~
20 ~~elect to participate in the pilot program~~].

21 (c) The agency may require a school district to:

22 (1) participate in a pilot program for the
23 administration of through-year assessment instruments to district
24 students; and

25 (2) report information to the agency regarding the
26 implementation of through-year assessment instruments under this
27 section [~~A school district's participation in the pilot program~~

1 ~~does not affect the district's obligations regarding the~~
2 ~~administration of assessment instruments required under Section~~
3 ~~39.023].~~

4 (d) The score on a through-year assessment instrument
5 administered to a student in grades three through eight shall be
6 calculated as a summative score of each instrument administered
7 during the school year as part of the through-year assessment. The
8 commissioner shall adopt rules regarding the relative weights that
9 must be given to each individual assessment instrument administered
10 as part of the through-year assessment [~~Not later than December 1 of~~
11 ~~each even-numbered year, the agency shall submit to the governor,~~
12 ~~the lieutenant governor, and the members of the legislature a~~
13 ~~report on the pilot program that includes:~~

14 [~~(1) an analysis of whether the administration of~~
15 ~~integrated formative assessment instruments under the pilot~~
16 ~~program provided any improvement in instructional support during~~
17 ~~the preceding two school years; and~~

18 [~~(2) a determination of the feasibility of replacing~~
19 ~~the assessment instruments required under Section 39.023 with~~
20 ~~integrated formative assessment instruments].~~

21 SECTION 6. Section 39.0263, Education Code, is amended by
22 adding Subsection (e) to read as follows:

23 (e) This section expires September 1, 2027.

24 SECTION 7. Section 39.053, Education Code, is amended by
25 amending Subsections (c) and (c-2) and adding Subsections (c-4) and
26 (c-5) to read as follows:

27 (c) School districts and campuses must be evaluated based on

1 three domains of indicators of achievement adopted under this
2 section that include:

3 (1) in the student achievement domain, indicators of
4 student achievement that must include:

5 (A) for evaluating the performance of districts
6 and campuses generally:

7 (i) an indicator that accounts for the
8 results of assessment instruments required under Sections
9 39.023(a), (c), and (l), as applicable for the district and campus,
10 ~~[including the results of assessment instruments required for~~
11 ~~graduation retaken by a student,]~~ aggregated across grade levels by
12 subject area, including:

13 (a) for the performance standard
14 determined by the commissioner under Section 39.0241(a), the
15 percentage of students who performed satisfactorily on the
16 assessment instruments, aggregated across grade levels by subject
17 area; and

18 (b) for the college readiness
19 performance standard as determined under Section 39.0241, the
20 percentage of students who performed satisfactorily on the
21 assessment instruments, aggregated across grade levels by subject
22 area; ~~and~~

23 (ii) an indicator that accounts for the
24 results of assessment instruments required under Section
25 39.023(b), as applicable for the district and campus, including the
26 percentage of students who performed satisfactorily on the
27 assessment instruments, as determined by the performance standard

1 adopted by the agency, aggregated across grade levels by subject
2 area;

3 (iii) an indicator that accounts for
4 extracurricular and cocurricular student success in accordance
5 with Section 39.0533;

6 (iv) an indicator that accounts for
7 successful completion of middle school career and technology
8 education courses; and

9 (v) an indicator that accounts for middle
10 school student success in accelerated mathematics; and

11 (B) for evaluating the performance of high school
12 campuses and districts that include high school campuses,
13 indicators that account for:

14 (i) students who satisfy the Texas Success
15 Initiative (TSI) college readiness benchmarks prescribed by the
16 Texas Higher Education Coordinating Board under Section 51.334 on
17 an assessment instrument in reading or mathematics designated by
18 the coordinating board under that section;

19 (ii) students who satisfy relevant
20 performance standards on advanced placement tests or similar
21 assessments;

22 (iii) students who earn dual course credits
23 in the dual credit courses;

24 (iv) students who demonstrate military
25 readiness by:

26 (a) enlisting [~~enlist~~] in the armed
27 forces of the United States or the Texas National Guard;

1 (b) achieving a passing score set by
2 the applicable military branch on the Armed Services Vocational
3 Aptitude Battery test; or

4 (c) successfully completing a Junior
5 Reserve Officer Training Corps program;

6 (v) students who earn industry
7 certifications;

8 (vi) students admitted into postsecondary
9 industry certification programs that require as a prerequisite for
10 entrance successful performance at the secondary level;

11 (vii) students whose successful completion
12 of a course or courses under Section 28.014 indicates the student's
13 preparation to enroll and succeed, without remediation, in an
14 entry-level general education course for a baccalaureate degree or
15 associate degree;

16 (viii) students who successfully met
17 standards on a composite of indicators that through research
18 indicates the student's preparation to enroll and succeed, without
19 remediation, in an entry-level general education course for a
20 baccalaureate degree or associate degree;

21 (ix) high school graduation rates, computed
22 in accordance with standards and definitions adopted in compliance
23 with the Every Student Succeeds Act (20 U.S.C. Section 6301 et seq.)
24 subject to the exclusions provided by Subsections (g), (g-1),
25 (g-2), (g-3), and (g-4);

26 (x) students who successfully completed an
27 OnRamps dual enrollment course;

1 (xi) students who successfully completed a
2 practicum or internship approved by the State Board of Education;

3 (xii) students who are awarded an associate
4 degree; and

5 (xiii) students who successfully completed
6 a program of study in career and technical education;

7 (2) in the school progress domain, indicators for
8 effectiveness in promoting student learning, which must include:

9 (A) for assessment instruments, including
10 assessment instruments under Subdivisions (1)(A)(i) and (ii), the
11 percentage of students who met the standard for improvement, as
12 determined by the commissioner; and

13 (B) for evaluating relative performance, the
14 performance of districts and campuses compared to similar districts
15 or campuses; and

16 (3) in the closing the gaps domain, the use of
17 disaggregated data to demonstrate the differentials among students
18 from different racial and ethnic groups and [7] socioeconomic
19 backgrounds [~~and other factors, including:~~

20 [~~(A) students formerly receiving special~~
21 ~~education services,~~

22 [~~(B) students continuously enrolled, and~~

23 [~~(C) students who are mobile]~~.

24 (c-2) The commissioner by rule shall determine a method by
25 which a student's performance may be included in determining the
26 performance rating of a school district or campus under Section
27 [39.054](#) if, before the student graduates, the student[+]

1 ~~[(1)]~~ satisfies the Texas Success Initiative (TSI)
2 college readiness benchmarks prescribed by the Texas Higher
3 Education Coordinating Board under Section 51.334 on an assessment
4 instrument designated by the coordinating board under that section
5 ~~[, or~~

6 ~~[(2) performs satisfactorily on an assessment~~
7 ~~instrument under Section 39.023(c), notwithstanding Subsection (d)~~
8 ~~of this section].~~

9 (c-4) Notwithstanding any other provision of this section,
10 an indicator adopted under Subsection (c) may not be included in
11 determining the performance rating of a school district or campus
12 under Section 39.054 unless it has been determined to be valid and
13 reliable by the commissioner and through a peer review process.

14 (c-5) Beginning with the 2027-2028 school year, in
15 calculating the performance of a campus providing instruction in
16 grades three through eight in the student achievement domain under
17 Subsection (c)(1):

18 (1) indicators adopted under Subsections (c)(1)(A)(i)
19 and (ii) may not collectively contribute more than 80 percent of the
20 score assigned to the campus; and

21 (2) indicators adopted under Subsections
22 (c)(1)(A)(iii), (iv), and (v) may not collectively contribute more
23 than 20 percent of the score assigned to the campus.

24 SECTION 8. Sections 39.0533(a), (b), and (c), Education
25 Code, are amended to read as follows:

26 (a) Beginning with the 2027-2028 school year, the [The]
27 commissioner shall [study the feasibility of incorporating] adopt

1 for evaluating school district and campus performance under this
2 subchapter an indicator that accounts for student participation in
3 extracurricular and cocurricular activities as provided by Section
4 39.053(c)(1)(A)(iii) [~~student activity~~].

5 (b) In adopting an indicator under Subsection (a), the
6 commissioner may [~~If the commissioner determines that an~~
7 ~~extracurricular and cocurricular student activity indicator is~~
8 ~~appropriate, the commissioner may adopt the indicator.~~

9 [~~(b) To determine the feasibility of adopting an indicator~~
10 ~~under this section, the commissioner may~~] require a school district
11 or campus to:

12 (1) participate in a pilot program implementing an
13 indicator under Subsection (a); or

14 (2) implement components of and report requested
15 information necessary to develop and implement an indicator under
16 Subsection (a) [~~relating to extracurricular and cocurricular~~
17 ~~student activity~~].

18 (c) The commissioner shall [~~may~~] establish an advisory
19 committee to assist in developing and [~~determining the feasibility~~
20 ~~of~~] incorporating the [~~an extracurricular and cocurricular student~~
21 ~~activity~~] indicator under Subsection (a) [~~for evaluating school~~
22 ~~district and campus performance~~].

23 SECTION 9. Section 39.054, Education Code, is amended by
24 adding Subsection (f) to read as follows:

25 (f) Notwithstanding any other law or regulation, for
26 purposes of assigning school districts and campuses overall and
27 domain performance ratings under Subsection (a) for the 2022-2023

1 and 2023-2024 school years, the commissioner shall set the rating
2 standards for the college, career, and military readiness
3 indicators under Section 39.053(c)(1)(B) using the specific
4 criteria and calculations for 2022 described by 19 T.A.C. Section
5 97.1001(b) as that rule existed on January 1, 2023, including cut
6 scores, scaling, and targets. If the commissioner determines that a
7 waiver or authorization from the United States Department of
8 Education is necessary for the implementation of this subsection,
9 the commissioner shall request the waiver or authorization and may
10 delay the implementation of this subsection until the waiver or
11 authorization is granted. This subsection expires December 1, 2024.

12 SECTION 10. Subchapter C, Chapter 39, Education Code, is
13 amended by adding Section 39.0547 to read as follows:

14 Sec. 39.0547. LOCAL ACCOUNTABILITY SYSTEM GRANT PROGRAM.
15 From money appropriated for that purpose, the agency shall provide
16 grants to school districts and open-enrollment charter schools for
17 the planning and implementation of local accountability systems
18 under Section 39.0544.

19 SECTION 11. Subchapter C, Chapter 48, Education Code, is
20 amended by adding Section 48.116 to read as follows:

21 Sec. 48.116. EXTRACURRICULAR AND COCURRICULAR ALLOTMENT. A
22 school district is entitled to an annual allotment for each student
23 in average daily attendance equal to the basic allotment, or, if
24 applicable, the sum of the basic allotment and the allotment under
25 Section 48.101 to which the district is entitled, multiplied by
26 .003.

27 SECTION 12. Sections 39.023(g) and 39.0533(d) and (e),

1 Education Code, are repealed.

2 SECTION 13. (a) Except as provided by Subsection (b) of
3 this section, this Act applies beginning with the 2023-2024 school
4 year.

5 (b) The expiration of Section 39.0263, Education Code,
6 applies with respect to the statewide assessment program under
7 Chapter 39 of that code, beginning with the 2027-2028 school year.

8 SECTION 14. (a) Except as provided by Subsection (b) of
9 this section, this Act takes effect immediately if it receives a
10 vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2023.

14 (b) Section 48.116, Education Code, as added by this Act,
15 takes effect September 1, 2023.