

BILL ANALYSIS

C.S.H.B. 2236
By: Eissler
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

While improving the educational attainment of students, the cumulative TAKS testing regime has created some unintended consequences. Students are provided only a single avenue to success and many do not achieve the level of college readiness of which they are capable. Teachers spend valuable time prepping students for tests rather than teaching content. They are evaluated on content outside the course they teach and therefore may not focus on the richness of the curriculum for their individual subject. Due to the high stakes nature of the test, allegations of testing irregularities have become widespread.

This bill would phase out TAKS and replace it with end of course exams in the four core subject areas in grades 9-12. The end of course exams would count as 15% of the student's overall grade in a class. The bill would maintain accountability for schools while providing multiple pathways to graduation for students by allowing a student to satisfy graduation requirements in different ways instead rather than a single pass/fail test. The bill promotes college readiness by allowing satisfactory performance on AP/IB or similar college level avenues to substitute for end of course exams. The bill also requires students to complete college readiness diagnostics and college entrance exams at state expense. Finally, the bill provides for safeguards and criminal penalties to maintain the security and integrity of our assessment system.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Education in SECTION 9, SECTION 11, and SECTION 13 of the bill. In addition, rulemaking authority previously granted to the State Board of Education is modified in SECTION 7 of the bill.

ANALYSIS

Note: Unless otherwise specified, statutory references in this BILL ANALYSIS are to the Education Code.

This bill relates to the administration of certain assessment instruments in public schools.

The bill makes conforming changes by substituting "end-of-course" assessment instruments for "secondary exit-level" assessment instruments and related terminology in various provisions of the Education Code.

The bill provides that, in addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, regional education service center, or shared services arrangement shall notify the State Board for Educator Certification if the superintendent or director has reasonable cause to believe that an educator engaged in conduct that violated the assessment instrument security procedures established under Section 39.0301.

The bill provides that the Texas Education Agency (agency) shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. All students, except students assessed under Subsection (b) or (l) of Section 39.023 or exempted under Section 39.027, shall be assessed in: mathematics, annually in grades three through seven without the aid of technology and in grade eight with the aid of technology on any assessment instrument that includes algebra; reading, annually in grades three through eight; writing, including spelling and grammar, in

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grades four and seven; social studies, in grade eight; science, in grades five and eight; and any other subject and grade required by federal law.

The bill provides that the agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I, Algebra II, geometry, biology, chemistry, physics, English I, English II, English III, world geography, world history, and United States history. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this paragraph and shall adopt a policy that requires a student's performance on an end-of-course assessment instrument for a course listed in this paragraph in which the student is enrolled to account for 15 percent of the student's final grade for the course. If a student is in a special education program under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student a required assessment instrument or whether the student should be exempted under Section 39.027(a)(2). The State Board of Education shall administer the assessment instruments. The State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements specified below in this paragraph. Each student who did not perform satisfactorily on any end-of-course assessment instrument when initially tested shall be given multiple opportunities to retake that assessment instrument. The agency shall develop any required assessment instrument in a manner that allows for the measurement of annual improvement in student achievement as required by Sections 39.034(c) and (d). The agency may adopt end-of-course assessment instruments for courses not listed in this paragraph, but a student's performance on such an assessment instrument is not subject to the performance requirements specified above in this paragraph or Section 39.025. In adopting a schedule for the administration of the end-of-course assessment instruments as specified in this paragraph, the State Board of Education shall require each of the assessment instruments, except for the writing component of the English I, English II, or English III assessment instrument, to be administered in each school district in this state during the last 20 instructional days of the school year.

The bill provides that the agency, in coordination with the Texas Higher Education Coordinating Board, shall adopt a series of optional questions to be included in an end-of-course assessment instrument administered under Section 39.023(c), as amended by this bill, to be used for purposes of Section 51.3062. The optional questions adopted must be developed in a manner consistent with any college readiness standards adopted under Sections 39.113 and 51.3062. In addition to the optional questions described above, the agency shall adopt a series of optional questions to be included in an end-of-course assessment instrument administered under Section 39.023(c), as amended by this bill, to be used for purposes of identifying students who are likely to succeed in an advanced high school course. A school district shall notify a student who performs at a high level on such optional questions and the student's parent or guardian of the student's performance and potential to succeed in an advanced high school course. A school district may not require a student to perform at a particular level on such optional questions in order to be eligible to enroll in an advanced high school course. A student's performance on an optional question adopted as specified in this paragraph may not be used to determine the student's performance on an end-of-course assessment instrument.

The bill provides that the agency shall provide for assessment instruments required under Section 39.023, as amended by this bill, to be designed so that those assessment instruments can be administered by computer. Not later than September 1, 2008, each school district shall provide the agency with data regarding the ability of the district to administer to students such assessment instruments by computer. The agency shall compile the data provided by school districts into a report recommending a plan and timeline for enabling each district in this state to administer the assessment instruments by computer. Not later than December 1, 2008, the agency shall deliver the report to each member of the legislature.

The bill provides that the commissioner shall adopt rules requiring each high school student enrolled in a course for which an end-of-course assessment instrument is adopted under Section 39.023(c), as amended by this bill, to be administered the assessment instrument. A student may not receive a high school diploma until the student has performed satisfactorily on the end-of-course assessment instruments for the following courses: English language arts III; either Algebra II or geometry; either biology, chemistry, or physics; and either world geography, world history, or United States history. This does not require a student to demonstrate readiness to

enroll in an institution of higher education. The commissioner by rule shall allow a student's satisfactory performance on an advanced placement test, international baccalaureate examination, a Scholastic Assessment Test (SAT) Subject Test, or another assessment instrument determined by the commissioner to be at least as rigorous as an end-of-course assessment instrument adopted under Section 39.023(c), as amended by this bill, to be used to satisfy a requirement specified in this paragraph. The commissioner shall by rule adopt a transition plan to implement the amendments made by this bill to Section 39.025 and Sections 39.023(a) and (c) and 39.051(b)(5). The rules must provide for the end-of-course assessment instruments adopted under Section 39.023(c), as amended by this bill, to be administered beginning with students entering the ninth grade during the 2011-2012 school year. During the period under which the transition to end-of-course assessment instruments is made: for students entering a grade above the ninth grade during the 2011-2012 school year, the commissioner shall retain, administer, and use for campus and district ratings under Subchapter D of Chapter 39 the assessment instruments required by Section 39.023(a) or (c), as that section existed before amendment by this bill; and the agency may defer releasing assessment instrument questions and answer keys as required by Section 39.023(e) to the extent necessary to develop additional assessment instruments. Rules adopted as specified above must require that each student who will be subject to the requirements of Subsection (a) of Section 39.025, as amended by this bill, is entitled to notice of the specific requirements applicable to the student. Notice must be provided not later than the date the student enters the seventh grade.

The bill provides that, in addition to the assessment instruments otherwise authorized or required by Subchapter B of Chapter 39, each school year and at state cost, a school district shall administer to students in the spring of the eighth grade an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument for the purpose of diagnosing the academic strengths and deficiencies of students before entrance into high school; each school year and at state cost, a school district shall administer to students in the 10th grade an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument for the purpose of measuring a student's progress toward readiness for college and the workplace; and high school students in the spring of the 11th grade or during the 12th grade may select and take once, at state cost, one of the valid, reliable, and nationally norm-referenced assessment instruments used by colleges and universities as part of their undergraduate admissions processes, except that this provision does not prohibit a high school student in the spring of the 11th grade or during the 12th grade from selecting and taking, at the student's own expense, one of the valid, reliable, and nationally norm-referenced assessment instruments used by colleges and universities as part of their undergraduate admissions processes more than once.

The bill provides that the agency shall select and approve vendors of the specific assessment instruments administered under Section 39.0261, as added by the bill, and pay all fees associated with the administration of the assessment instrument from funds allotted under the Foundation School Program, and the commissioner shall reduce the total amount of state funds allocated to each district from any source in the same manner described for a reduction in allotments under Section 42.253. The agency shall ensure that vendors are not paid for the administration of an assessment instrument to a student to whom the assessment instrument is not actually administered. The agency may comply with this provision by any reasonable means, including by creating a refund system under which a vendor returns any payment made for a student who registered for the administration of an assessment instrument but did not appear for the administration. A vendor that administers an assessment instrument for a district shall report the results of the assessment instrument to the agency. The agency shall: include a student's results on the assessment instrument in the electronic student records system established under Section 7.010; and ensure that a student and the student's parent receive a report of the student's results on the assessment instrument.

The bill provides that the commissioner: shall establish procedures for the administration of assessment instruments adopted or developed under Section 39.023, as amended by this bill, including procedures designed to ensure the security of the assessment instruments, and may establish record retention requirements for school district records related to the security of assessment instruments. The commissioner may develop and implement statistical methods and standards for identifying potential violations of such procedures to ensure the security of assessment instruments adopted or developed under Section 39.023. In developing the statistical

methods and standards, the commissioner may include indicators of: potential violations that are monitored annually; and patterns of inappropriate assessment practices that occur over time. The commissioner may establish one or more advisory committees to advise the commissioner and agency regarding the monitoring of assessment practices and the use of statistical methods and standards for identifying potential violations of assessment instrument security, including standards to be established by the commissioner for selecting school districts for investigation for a potential assessment security violation. The commissioner may not appoint an agency employee to such an advisory committee. Any document created for the deliberation of such an advisory committee or any recommendation of such a committee is confidential and not subject to disclosure under Chapter 552, Government Code. Except as provided below in this paragraph, the statistical methods and standards adopted under this section and the results of applying those methods and standards are confidential and not subject to disclosure under Chapter 552, Government Code. The agency may conduct an investigation of a school district for a potential violation of assessment instrument security in accordance with the standards described in this paragraph. Each school year, after completing all investigations of school districts selected for investigation, the agency shall disclose the identity of each district selected for investigation and the statistical methods and standards used to select the district. At any time, the commissioner may authorize the audit of a random sample of school districts to determine the compliance of the districts with security procedures established by the commissioner. The identity of each school district selected for audit is confidential and not subject to disclosure under Chapter 552, Government Code, except that the agency shall disclose the identity of each district after completion of the audit.

The bill provides that during an agency investigation or audit of a school district under Section 39.0301(e) or (f), an accreditation investigation under Section 39.075(a)(8), or an investigation by the State Board for Educator Certification of an educator for an alleged violation of an assessment instrument security procedure established under Section 39.0301(a), the commissioner may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is located in this state. A subpoena may be served personally or by certified mail. If a person fails to comply with a subpoena, the commissioner, acting through the attorney general, may file suit to enforce the subpoena in a district court in this state. On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order. All information and materials subpoenaed or compiled in connection with an investigation or audit described in this paragraph: are confidential and not subject to disclosure under Chapter 552, Government Code; and are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to any person other than: the commissioner or the State Board for Educator Certification, as applicable; agency employees or agents involved in the investigation, as applicable; and the office of the attorney general, the state auditor's office, and law enforcement agencies.

The bill provides that a person commits an offense if the person discloses the contents of any portion of a secure assessment instrument developed or administered under Subchapter B of Chapter 39, including the answer to any item in the assessment instrument, and the disclosure affects or is likely to affect the individual performance of one or more students on the assessment instrument. Such an offense is a Class C misdemeanor.

The bill provides that, to ensure that each administration of assessment instruments under Section 39.023 is valid, reliable, and in compliance with the requirements of Subchapter B of Chapter 39, the commissioner may require training for school district employees involved in the administration of the assessment instruments. The training may include a qualifying component to ensure that school district employees involved in the administration of assessment instruments under Section 39.023 possess the necessary skills and knowledge required to administer the assessment instruments. The commissioner may adopt rules necessary to implement these provisions.

The bill provides that the agency shall determine the necessary annual improvement required each year for a student to be prepared to perform satisfactorily on the end-of-course assessment instruments required for graduation. The agency shall report the necessary annual improvement required to the district. Each year, the report must state whether the student fell below, met, or exceeded the necessary target for improvement.

The bill provides that the agency shall limit field testing of questions for any assessment instrument administered under Section 39.023(a), (b), (c), (d), or (l) to the minimum number of field tests necessary to ensure the validity of the questions. The agency may conduct field testing of questions for any assessment instrument administered under Section 39.023(a), (b), (c), (d), or (l) that is separate from the administration of the assessment instrument only in a manner that minimizes the frequency with which any particular campus is required to administer the field tests.

The bill provides that the agency shall develop a vertical scale for assessing student performance on assessment instruments administered under Sections 39.023(a)(1) and (2) in a manner that allows the agency to compare the performance of a student on the assessment instruments from one grade level to the next. The commissioner shall adopt rules necessary to implement this provision. Not later than June 1, 2008, the agency shall develop a vertical scale as described in this paragraph. The agency shall implement the vertical scale in the administration of assessment instruments under Sections 39.023(a)(1) and (2) beginning with the 2008-2009 school year.

The bill provides that performance on the indicators adopted under this Section 39.051 shall be compared to state-established standards. The degree of change from one school year to the next in performance on each indicator adopted under this section shall also be considered. The indicators must be based on information that is disaggregated by race, ethnicity, gender, and socioeconomic status and must include: the percentage of graduating students who attain scores on the optional questions developed for end-of-course assessment instruments under Section 39.0233(a) that are equivalent to a passing score on the assessment instrument required under Section 51.3062.

The bill provides that the commissioner shall authorize special accreditation investigations to be conducted in response to an allegation regarding or an analysis using a statistical method result indicating a possible violation of an assessment instrument security procedure established under Section 39.0301, including for the purpose of investigating or auditing a school district under that section.

The bill amends Section 51.3062(q), Education Code, to read as follows: (q) A student who has achieved scores set by the board on the optional questions developed for end-of-course assessment instruments under Section 39.0233(a) is exempt from the requirements of this section. The exemption is effective for the three-year period following the date a student takes the last assessment instrument for purposes of this section and achieves the standard set by the board. This subsection does not apply during any period for which the board designates the optional questions developed for end-of-course assessment instruments under Section 39.0233(a) as the primary assessment instrument under this section, except that the three-year period described by this subsection remains in effect for students who qualify for an exemption under this subsection before that period.

The bill provides that Section 39.023(j), Education Code, is repealed.

The bill provides that a reference in the Education Code to an end-of-course assessment instrument administered under Section 39.023(c), Education Code, includes an exit-level assessment instrument administered under that section as provided by Section 39.025(f), Education Code, as added by this bill.

The bill provides that, except as otherwise provided by the bill, the Act applies beginning with the 2007-2008 school year. Beginning with the 2007-2008 school year, the commissioner of education may conduct random audits as authorized under Section 39.0301(f), Education Code, as added by this bill. Beginning with the 2008-2009 school year, the commissioner of education may conduct accreditation investigations as authorized under Section 39.075(a)(8), Education Code, as added by this bill. During the 2008-2009 school year, the commissioner of education may use the statistical methods and standards established under Section 39.0301(b), Education Code, as added by this bill, on a pilot basis to test the accuracy and predictive validity of the methods and standards. Pilot statistical methods and standards developed for use in the 2008-2009 school year are confidential and not subject to disclosure under Chapter 552, Government

Code. Without releasing the pilot statistical methods, the commissioner of education shall release the results of any investigation conducted on the basis of those methods during the 2008-2009 school year on completion of the investigation.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original provides that certain specified students shall be assessed in: reading, in grade three; reading and writing, including spelling and grammar, annually in grades four through eight; social studies, in grades five and eight; and science, in grades four and eight.

The substitute provides that certain specified students shall be assessed in: reading, annually in grades three through eight; writing, including spelling and grammar, in grades four and seven; social studies, in grade eight; and science, in grades five and eight.

The original provides that the State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments. The substitute provides that the State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3) of Section 39.023.

The substitute adds that in adopting a schedule for the administration of the end-of-course assessment instruments under Subsection (c) of Section 39.023, the State Board of Education shall require each of the assessment instruments, except for the writing component of the English I, English II, or English III assessment instrument, to be administered in each school district in this state during the last 20 instructional days of the school year.

The substitute adds that, in addition to the questions adopted under Subsection (a) of Section 39.0233, the agency shall adopt a series of optional questions to be included in an end-of-course assessment instrument administered under Section 39.023(c) to be used for purposes of identifying students who are likely to succeed in an advanced high school course. A school district shall notify a student who performs at a high level on the optional questions adopted under this provision and the student's parent or guardian of the student's performance and potential to succeed in an advanced high school course. A school district may not require a student to perform at a particular level on the optional questions adopted under this subsection in order to be eligible to enroll in an advanced high school course.

The original provides that the commissioner shall adopt rules requiring a student participating in the recommended or advanced high school program to be administered each end-of-course assessment instrument listed in Section 39.023(c) and requiring a student participating in the minimum high school program to be administered an end-of-course assessment instrument listed in Section 39.023(c) only for a course in which the student is enrolled and for which an end-of-course assessment instrument is administered. A student is required to achieve a cumulative score that is at least equal to the product of the number of end-of-course assessment instruments administered to the student and 70, with each end-of-course assessment instrument scored on a scale of 100. For purposes of this provision, a student's cumulative score is determined using the student's highest score on each end-of-course assessment instrument administered to the student. A student may not receive a high school diploma until the student has performed satisfactorily on the end-of-course assessment instruments in the manner provided in this provision. This provision does not require a student to demonstrate readiness to enroll in an institution of higher education. The commissioner by rule shall determine a method by which the following may be used as a factor in determining whether the student satisfies the above requirements, including the cumulative score requirement: a student's satisfactory performance on an advanced placement test, international baccalaureate examination, a Scholastic Assessment Test (SAT) Subject Test, or another assessment instrument determined by the commissioner to be at least as rigorous as an end-of-course assessment instrument adopted under Section 39.023(c); or a student's satisfactory performance in a dual-credit course or other course in which a student earns college credit.

The substitute provides that the commissioner shall adopt rules requiring each high school student enrolled in a course for which an end-of-course assessment instrument is adopted under Section 39.023(c), as amended by this bill, to be administered the assessment instrument. A student may not receive a high school diploma until the student has performed satisfactorily on the end-of-course assessment instruments for the following courses: English language arts III; either Algebra II or geometry; either biology, chemistry, or physics; and either world geography, world history, or United States history. This does not require a student to demonstrate readiness to enroll in an institution of higher education. The commissioner by rule shall allow a student's satisfactory performance on an advanced placement test, international baccalaureate examination, a Scholastic Assessment Test (SAT) Subject Test, or another assessment instrument determined by the commissioner to be at least as rigorous as an end-of-course assessment instrument adopted under Section 39.023(c), as amended by this bill, to be used to satisfy a requirement specified in this paragraph.

Certain implementation dates in Section 39.025(f) were changed from the 2009-2010 school year in the original to the 2011-2012 school year in the substitute.

The original provides that rules adopted under Subsection (f) of Section 39.025 must require that each student who will be subject to the requirements of Subsection (a) of such section is entitled to notice of the specific requirements applicable to the student. Such notice must be provided not later than the date the student enters the ninth grade. Subsection (f) and this provision expire September 1, 2013. The substitute provides that rules adopted under Subsection (f) of Section 39.025 must require that each student who will be subject to the requirements of Subsection (a) of such section is entitled to notice of the specific requirements applicable to the student. Such notice must be provided not later than the date the student enters the seventh grade. Subsection (f) and this provision expire September 1, 2015.

The original provides that each school year and at state cost, a school district shall administer to students in the 10th grade the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/ NMSQT) sponsored by the College Board and Educational Testing Service and the National Merit Scholarship Corporation. The substitute provides that each school year and at state cost, a school district shall administer to students in the 10th grade an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument for the purpose of measuring a student's progress toward readiness for college and the workplace.

The substitute adds that, to ensure that each administration of assessment instruments under Section 39.023 is valid, reliable, and in compliance with the requirements of Subchapter B of Chapter 39, the commissioner may require training for school district employees involved in the administration of the assessment instruments. The training may include a qualifying component to ensure that school district employees involved in the administration of assessment instruments under Section 39.023 possess the necessary skills and knowledge required to administer the assessment instruments. The commissioner may adopt rules necessary to implement these provisions

The substitute adds that the agency shall limit field testing of questions for any assessment instrument administered under Section 39.023(a), (b), (c), (d), or (l) to the minimum number of field tests necessary to ensure the validity of the questions. The agency may conduct field testing of questions for any assessment instrument administered under Section 39.023(a), (b), (c), (d), or (l) that is separate from the administration of the assessment instrument only in a manner that minimizes the frequency with which any particular campus is required to administer the field tests.

The substitute adds that the agency shall develop a vertical scale for assessing student performance on assessment instruments administered under Sections 39.023(a)(1) and (2) in a manner that allows the agency to compare the performance of a student on the assessment instruments from one grade level to the next. The commissioner shall adopt rules necessary to implement this provision. Not later than June 1, 2008, the agency shall develop a vertical scale as described in this paragraph. The agency shall implement the vertical scale in the administration of assessment instruments under Sections 39.023(a)(1) and (2) beginning with the 2008-2009 school year.

There are certain other minor, technical, or nonsubstantive changes between the original and the substitute.