

By: Eissler, Zedler, Bonnen, et al.

H.B. No. 2236

Substitute the following for H.B. No. 2236:

By: Zedler

C.S.H.B. No. 2236

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the administration of certain assessment instruments in  
3 public schools; providing a criminal penalty.

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

5 SECTION 1. Section 18.006(b), Education Code, is amended to  
6 read as follows:

7 (b) In addition to other factors determined to be  
8 appropriate by the commissioner, the accountability system must  
9 include consideration of:

10 (1) student performance on the end-of-course  
11 [~~secondary exit-level~~] assessment instruments required by Section  
12 39.023(c); and

13 (2) dropout rates, including dropout rates and diploma  
14 program completion rates for the grade levels served by the diploma  
15 program.

16 SECTION 2. Section 21.006(b), Education Code, is amended to  
17 read as follows:

18 (b) In addition to the reporting requirement under Section  
19 261.101, Family Code, the superintendent or director of a school  
20 district, regional education service center, or shared services  
21 arrangement shall notify the State Board for Educator Certification  
22 if the superintendent or director has reasonable cause to believe  
23 that:

24 (1) an educator employed by or seeking employment by

1 the district, service center, or shared services arrangement has a  
2 criminal record;

3 (2) an educator's employment at the district, service  
4 center, or shared services arrangement was terminated based on a  
5 determination that the educator:

6 (A) abused or otherwise committed an unlawful act  
7 with a student or minor;

8 (B) possessed, transferred, sold, or distributed  
9 a controlled substance, as defined by Chapter 481, Health and  
10 Safety Code, or by 21 U.S.C. Section 801 et seq., and its subsequent  
11 amendments;

12 (C) illegally transferred, appropriated, or  
13 expended funds or other property of the district, service center,  
14 or shared services arrangement;

15 (D) attempted by fraudulent or unauthorized  
16 means to obtain or alter a professional certificate or license for  
17 the purpose of promotion or additional compensation; or

18 (E) committed a criminal offense or any part of a  
19 criminal offense on school property or at a school-sponsored event;  
20 [~~or~~]

21 (3) the educator resigned and reasonable evidence  
22 supports a recommendation by the superintendent or director to  
23 terminate the educator based on a determination that the educator  
24 engaged in misconduct described by Subdivision (2); or

25 (4) the educator engaged in conduct that violated the  
26 assessment instrument security procedures established under  
27 Section 39.0301.

1 SECTION 3. Section 25.005(b), Education Code, is amended to  
2 read as follows:

3 (b) A reciprocity agreement must:

4 (1) address procedures for:

5 (A) transferring student records;

6 (B) awarding credit for completed course work;

7 and

8 (C) permitting a student to satisfy the  
9 requirements of Section 39.025 through successful performance on  
10 comparable end-of-course or other exit-level assessment  
11 instruments administered in another state; and

12 (2) include appropriate criteria developed by the  
13 agency.

14 SECTION 4. Section 29.081(b), Education Code, is amended to  
15 read as follows:

16 (b) Each district shall provide accelerated instruction to  
17 a student enrolled in the district who has taken an end-of-course  
18 ~~[the secondary exit-level]~~ assessment instrument administered  
19 under Section 39.023(c) and has not performed satisfactorily on the  
20 assessment instrument ~~[each section]~~ or who is at risk of dropping  
21 out of school.

22 SECTION 5. Section 29.087(f), Education Code, as amended by  
23 Chapters 283 and 373, Acts of the 78th Legislature, Regular  
24 Session, 2003, is reenacted and amended to read as follows:

25 (f) A student participating in a program authorized by this  
26 section, other than a student ordered to participate under  
27 Subsection (d)(1), must have taken the appropriate end-of-course

1 assessment instruments specified by Section 39.023(c) [~~39.023(a)~~  
2 ~~for grade 9~~] before entering the program and must take each  
3 appropriate end-of-course [~~grade level~~] assessment instrument  
4 administered during the period in which the student is enrolled in  
5 the program. Except for a student ordered to participate under  
6 Subsection (d)(1), a student participating in the program may not  
7 take the high school equivalency examination unless the student has  
8 taken the assessment instruments required by this subsection.

9 SECTION 6. Section 30.021(e), Education Code, is amended to  
10 read as follows:

11 (e) The school shall cooperate with public and private  
12 agencies and organizations serving students and other persons with  
13 visual impairments in the planning, development, and  
14 implementation of effective educational and rehabilitative service  
15 delivery systems associated with educating students with visual  
16 impairments. To maximize and make efficient use of state  
17 facilities, funding, and resources, the services provided in this  
18 area may include conducting a cooperative program with other  
19 agencies to serve students who have graduated from high school by  
20 completing all academic requirements applicable to students in  
21 regular education, excluding satisfactory performance under  
22 Section 39.025 [~~on the exit-level assessment instrument~~], who are  
23 younger than 22 years of age on September 1 of the school year and  
24 who have identified needs related to vocational training,  
25 independent living skills, orientation and mobility, social and  
26 leisure skills, compensatory skills, or remedial academic skills.

27 SECTION 7. Section 39.023, Education Code, is amended by

1 amending Subsections (a) and (c) and adding Subsections (c-1),  
2 (c-2), and (c-3) to read as follows:

3 (a) The agency shall adopt or develop appropriate  
4 criterion-referenced assessment instruments designed to assess  
5 essential knowledge and skills in reading, writing, mathematics,  
6 social studies, and science. All students, except students  
7 assessed under Subsection (b) or (1) or exempted under Section  
8 39.027, shall be assessed in:

9 (1) mathematics, annually in grades three through  
10 seven without the aid of technology and in grade [~~grades~~] eight  
11 [~~through 11~~] with the aid of technology on any assessment  
12 instrument [~~instruments~~] that includes [~~include~~] algebra;

13 (2) reading, annually in grades three through eight  
14 [~~nine~~];

15 (3) writing, including spelling and grammar, in  
16 grades four and seven;

17 (4) [~~English language arts, in grade 10,~~  
18 [~~5~~] social studies, in grade [~~grades~~] eight [~~and~~  
19 ~~10~~];

20 (5) [~~6~~] science, in grades five and [~~7~~] eight [~~and~~  
21 ~~10~~]; and

22 (6) [~~7~~] any other subject and grade required by  
23 federal law.

24 (c) The agency shall also adopt end-of-course [~~secondary~~  
25 ~~exit-level~~] assessment instruments for secondary-level courses in  
26 Algebra I, Algebra II, geometry, biology, chemistry, physics,  
27 English I, English II, English III, world geography, world history,

1 and United States history. A school district shall comply with  
2 State Board of Education rules regarding administration of the  
3 assessment instruments listed in this subsection and shall adopt a  
4 policy that requires a student's performance on an end-of-course  
5 assessment instrument for a course listed in this subsection in  
6 which the student is enrolled to account for 15 percent of the  
7 student's final grade for the course [~~designed to be administered~~  
8 ~~to students in grade 11 to assess essential knowledge and skills in~~  
9 ~~mathematics, English language arts, social studies, and science.~~  
10 ~~The mathematics section must include at least Algebra I and~~  
11 ~~geometry with the aid of technology. The English language arts~~  
12 ~~section must include at least English III and must include the~~  
13 ~~assessment of essential knowledge and skills in writing. The social~~  
14 ~~studies section must include early American and United States~~  
15 ~~history. The science section must include at least biology and~~  
16 ~~integrated chemistry and physics. The assessment instruments must~~  
17 ~~be designed to assess a student's mastery of minimum skills~~  
18 ~~necessary for high school graduation and readiness to enroll in an~~  
19 ~~institution of higher education~~]. If a student is in a special  
20 education program under Subchapter A, Chapter 29, the student's  
21 admission, review, and dismissal committee shall determine whether  
22 any allowable modification is necessary in administering to the  
23 student an assessment instrument required under this subsection or  
24 whether the student should be exempted under Section 39.027(a)(2).  
25 The State Board of Education shall administer the assessment  
26 instruments. The State Board of Education shall adopt a schedule  
27 for the administration of end-of-course [~~secondary exit-level~~]

1 assessment instruments that complies with the requirements of  
2 Subsection (c-3). Each student who did not perform satisfactorily  
3 on any end-of-course [~~secondary exit-level~~] assessment instrument  
4 when initially tested shall be given multiple opportunities to  
5 retake that assessment instrument. [~~A student who performs at or~~  
6 ~~above a level established by the Texas Higher Education~~  
7 ~~Coordinating Board on the secondary exit-level assessment~~  
8 ~~instruments is exempt from the requirements of Section 51.306.~~]

9 (c-1) The agency shall develop any assessment instrument  
10 required under this section in a manner that allows for the  
11 measurement of annual improvement in student achievement as  
12 required by Sections 39.034(c) and (d).

13 (c-2) The agency may adopt end-of-course assessment  
14 instruments for courses not listed in Subsection (c). A student's  
15 performance on an end-of-course assessment instrument adopted  
16 under this subsection is not subject to the performance  
17 requirements established under Subsection (c) or Section 39.025.

18 (c-3) In adopting a schedule for the administration of the  
19 end-of-course assessment instruments under Subsection (c), the  
20 State Board of Education shall require each of the assessment  
21 instruments, except for the writing component of the English I,  
22 English II, or English III assessment instrument, to be  
23 administered in each school district in this state during the last  
24 20 instructional days of the school year.

25 SECTION 8. Subchapter B, Chapter 39, Education Code, is  
26 amended by adding Sections 39.0233 and 39.0234 to read as follows:

27 Sec. 39.0233. OPTIONAL QUESTIONS INCLUDED IN END-OF-COURSE

1 ASSESSMENT INSTRUMENTS. (a) The agency, in coordination with the  
2 Texas Higher Education Coordinating Board, shall adopt a series of  
3 optional questions to be included in an end-of-course assessment  
4 instrument administered under Section 39.023(c) to be used for  
5 purposes of Section 51.3062. The optional questions adopted under  
6 this subsection must be developed in a manner consistent with any  
7 college readiness standards adopted under Sections 39.113 and  
8 51.3062.

9 (b) In addition to the questions adopted under Subsection  
10 (a), the agency shall adopt a series of optional questions to be  
11 included in an end-of-course assessment instrument administered  
12 under Section 39.023(c) to be used for purposes of identifying  
13 students who are likely to succeed in an advanced high school  
14 course. A school district shall notify a student who performs at a  
15 high level on the optional questions adopted under this subsection  
16 and the student's parent or guardian of the student's performance  
17 and potential to succeed in an advanced high school course. A  
18 school district may not require a student to perform at a particular  
19 level on the optional questions adopted under this subsection in  
20 order to be eligible to enroll in an advanced high school course.

21 (c) A student's performance on an optional question adopted  
22 under this section may not be used to determine the student's  
23 performance on an end-of-course assessment instrument.

24 Sec. 39.0234. ADMINISTRATION OF ASSESSMENT INSTRUMENTS BY  
25 COMPUTER. (a) The agency shall provide for assessment instruments  
26 required under Section 39.023 to be designed so that those  
27 assessment instruments can be administered by computer.



1        (b) Not later than September 1, 2008, each school district  
2 shall provide the agency with data regarding the ability of the  
3 district to administer to students assessment instruments required  
4 under Section 39.023 by computer. The agency shall compile the data  
5 provided by school districts under this subsection into a report  
6 recommending a plan and timeline for enabling each district in this  
7 state to administer the assessment instruments by computer. Not  
8 later than December 1, 2008, the agency shall deliver the report to  
9 each member of the legislature. This subsection expires June 1,  
10 2009.

11        SECTION 9. Section 39.025, Education Code, is amended to  
12 read as follows:

13        Sec. 39.025. SECONDARY-LEVEL ~~[EXIT-LEVEL]~~ PERFORMANCE  
14 REQUIRED. (a) The commissioner shall adopt rules requiring each  
15 high school student enrolled in a course for which an end-of-course  
16 assessment instrument is adopted under Section 39.023(c) to be  
17 administered the assessment instrument. A student may not receive a  
18 high school diploma until the student has performed satisfactorily  
19 on the end-of-course ~~[secondary exit-level]~~ assessment instruments  
20 for the following courses:

- 21                (1) English language arts III;  
22                (2) either Algebra II or geometry;  
23                (3) either biology, chemistry, or physics; and  
24                (4) either world geography, world history, or United  
25 States history ~~[English language arts, mathematics, social~~  
26 studies, and science administered under Section 39.023(c)].

27        (a-1) Subsection (a) ~~[This subsection]~~ does not require a

1 student to demonstrate readiness to enroll in an institution of  
2 higher education.

3 (a-2) The commissioner by rule shall allow a student's  
4 satisfactory performance on an advanced placement test,  
5 international baccalaureate examination, a Scholastic Assessment  
6 Test (SAT) Subject Test, or another assessment instrument  
7 determined by the commissioner to be at least as rigorous as an  
8 end-of-course assessment instrument adopted under Section  
9 39.023(c) to be used to satisfy a requirement of Subsection (a).

10 (b) Each time an end-of-course [~~a secondary exit-level~~]  
11 assessment instrument is administered, a student who has not been  
12 given a high school diploma because of a failure to perform  
13 satisfactorily on the assessment instrument [~~for that subject area~~]  
14 may retake the assessment instrument.

15 (c) A student who has been denied a high school diploma  
16 under this section [~~Subsections (a) and (b)~~] and who subsequently  
17 performs satisfactorily on each necessary end-of-course [~~secondary~~  
18 ~~exit-level~~] assessment instrument shall be issued a high school  
19 diploma.

20 (d) Notwithstanding Subsection (a), the commissioner by  
21 rule shall adopt one or more alternative nationally recognized norm  
22 referenced assessment instruments under this section to administer  
23 to a student to qualify for a high school diploma if the student  
24 enrolls after January 1 of the school year in which the student is  
25 otherwise eligible to graduate:

26 (1) for the first time in a public school in this  
27 state; or

1           (2) after an absence of at least four years from any  
2 public school in this state.

3           (e) The commissioner shall establish a required performance  
4 level for an assessment instrument adopted under Subsection (d)  
5 that is at least as rigorous as the performance level for the  
6 end-of-course [~~secondary exit-level~~] assessment instrument for the  
7 same subject.

8           (f) The commissioner shall by rule adopt a transition plan  
9 to implement the amendments made by H.B. No. 2236, Acts of the 80th  
10 Legislature, Regular Session, 2007, to this section and Sections  
11 39.023(a) and (c) and 39.051(b)(5). The rules must provide for the  
12 end-of-course assessment instruments adopted under Section  
13 39.023(c) to be administered beginning with students entering the  
14 ninth grade during the 2011-2012 school year. During the period  
15 under which the transition to end-of-course assessment instruments  
16 is made:

17           (1) for students entering a grade above the ninth  
18 grade during the 2011-2012 school year, the commissioner shall  
19 retain, administer, and use for campus and district ratings under  
20 Subchapter D the assessment instruments required by Section  
21 39.023(a) or (c), as that section existed before amendment by  
22 H.B. No. 2236, Acts of the 80th Legislature, Regular Session, 2007;  
23 and

24           (2) the agency may defer releasing assessment  
25 instrument questions and answer keys as required by Section  
26 39.023(e) to the extent necessary to develop additional assessment  
27 instruments.

1       (g) Rules adopted under Subsection (f) must require that  
2 each student who will be subject to the requirements of Subsection  
3 (a) is entitled to notice of the specific requirements applicable  
4 to the student. Notice under this subsection must be provided not  
5 later than the date the student enters the seventh grade.  
6 Subsection (f) and this subsection expire September 1, 2015.

7       SECTION 10. Subchapter B, Chapter 39, Education Code, is  
8 amended by adding Section 39.0261 to read as follows:

9       Sec. 39.0261. COLLEGE PREPARATION ASSESSMENTS. (a) In  
10 addition to the assessment instruments otherwise authorized or  
11 required by this subchapter:

12           (1) each school year and at state cost, a school  
13 district shall administer to students in the spring of the eighth  
14 grade an established, valid, reliable, and nationally  
15 norm-referenced preliminary college preparation assessment  
16 instrument for the purpose of diagnosing the academic strengths and  
17 deficiencies of students before entrance into high school;

18           (2) each school year and at state cost, a school  
19 district shall administer to students in the 10th grade an  
20 established, valid, reliable, and nationally norm-referenced  
21 preliminary college preparation assessment instrument for the  
22 purpose of measuring a student's progress toward readiness for  
23 college and the workplace; and

24           (3) high school students in the spring of the 11th  
25 grade or during the 12th grade may select and take once, at state  
26 cost, one of the valid, reliable, and nationally norm-referenced  
27 assessment instruments used by colleges and universities as part of

1 their undergraduate admissions processes.

2 (b) The agency shall:

3 (1) select and approve vendors of the specific  
4 assessment instruments administered under this section; and

5 (2) pay all fees associated with the administration of  
6 the assessment instrument from funds allotted under the Foundation  
7 School Program, and the commissioner shall reduce the total amount  
8 of state funds allocated to each district from any source in the  
9 same manner described for a reduction in allotments under Section  
10 42.253.

11 (c) The agency shall ensure that vendors are not paid under  
12 Subsection (b) for the administration of an assessment instrument  
13 to a student to whom the assessment instrument is not actually  
14 administered. The agency may comply with this subsection by any  
15 reasonable means, including by creating a refund system under which  
16 a vendor returns any payment made for a student who registered for  
17 the administration of an assessment instrument but did not appear  
18 for the administration.

19 (d) A vendor that administers an assessment instrument for a  
20 district under this section shall report the results of the  
21 assessment instrument to the agency. The agency shall:

22 (1) include a student's results on the assessment  
23 instrument in the electronic student records system established  
24 under Section 7.010; and

25 (2) ensure that a student and the student's parent  
26 receive a report of the student's results on the assessment  
27 instrument.

1       (e) Subsection (a)(3) does not prohibit a high school  
2 student in the spring of the 11th grade or during the 12th grade  
3 from selecting and taking, at the student's own expense, one of the  
4 valid, reliable, and nationally norm-referenced assessment  
5 instruments used by colleges and universities as part of their  
6 undergraduate admissions processes more than once.

7       SECTION 11. Subchapter B, Chapter 39, Education Code, is  
8 amended by adding Sections 39.0301, 39.0302, 39.0303, and 39.0304  
9 to read as follows:

10       Sec. 39.0301. SECURITY IN ADMINISTRATION OF ASSESSMENT  
11 INSTRUMENTS. (a) The commissioner:

12               (1) shall establish procedures for the administration  
13 of assessment instruments adopted or developed under Section  
14 39.023, including procedures designed to ensure the security of the  
15 assessment instruments; and

16               (2) may establish record retention requirements for  
17 school district records related to the security of assessment  
18 instruments.

19       (b) The commissioner may develop and implement statistical  
20 methods and standards for identifying potential violations of  
21 procedures established under Subsection (a) to ensure the security  
22 of assessment instruments adopted or developed under Section  
23 39.023. In developing the statistical methods and standards, the  
24 commissioner may include indicators of:

25               (1) potential violations that are monitored annually;  
26 and

27               (2) patterns of inappropriate assessment practices

1 that occur over time.

2 (c) The commissioner may establish one or more advisory  
3 committees to advise the commissioner and agency regarding the  
4 monitoring of assessment practices and the use of statistical  
5 methods and standards for identifying potential violations of  
6 assessment instrument security, including standards to be  
7 established by the commissioner for selecting school districts for  
8 investigation for a potential assessment security violation under  
9 Subsection (e). The commissioner may not appoint an agency  
10 employee to an advisory committee established under this  
11 subsection.

12 (d) Any document created for the deliberation of an advisory  
13 committee established under Subsection (c) or any recommendation of  
14 such a committee is confidential and not subject to disclosure  
15 under Chapter 552, Government Code. Except as provided by  
16 Subsection (e), the statistical methods and standards adopted under  
17 this section and the results of applying those methods and  
18 standards are confidential and not subject to disclosure under  
19 Chapter 552, Government Code.

20 (e) The agency may conduct an investigation of a school  
21 district for a potential violation of assessment instrument  
22 security in accordance with the standards described by Subsection  
23 (c). Each school year, after completing all investigations of  
24 school districts selected for investigation, the agency shall  
25 disclose the identity of each district selected for investigation  
26 and the statistical methods and standards used to select the  
27 district.

1       (f) At any time, the commissioner may authorize the audit of  
2 a random sample of school districts to determine the compliance of  
3 the districts with procedures established under Subsection (a).  
4 The identity of each school district selected for audit under this  
5 subsection is confidential and not subject to disclosure under  
6 Chapter 552, Government Code, except that the agency shall disclose  
7 the identity of each district after completion of the audit.

8       Sec. 39.0302. ISSUANCE OF SUBPOENAS. (a) During an agency  
9 investigation or audit of a school district under Section  
10 39.0301(e) or (f), an accreditation investigation under Section  
11 39.075(a)(8), or an investigation by the State Board for Educator  
12 Certification of an educator for an alleged violation of an  
13 assessment instrument security procedure established under Section  
14 39.0301(a), the commissioner may issue a subpoena to compel the  
15 attendance of a relevant witness or the production, for inspection  
16 or copying, of relevant evidence that is located in this state.

17       (b) A subpoena may be served personally or by certified  
18 mail.

19       (c) If a person fails to comply with a subpoena, the  
20 commissioner, acting through the attorney general, may file suit to  
21 enforce the subpoena in a district court in this state. On finding  
22 that good cause exists for issuing the subpoena, the court shall  
23 order the person to comply with the subpoena. The court may punish  
24 a person who fails to obey the court order.

25       (d) All information and materials subpoenaed or compiled in  
26 connection with an investigation or audit described by Subsection  
27 (a):



1           (1) are confidential and not subject to disclosure  
2 under Chapter 552, Government Code; and

3           (2) are not subject to disclosure, discovery,  
4 subpoena, or other means of legal compulsion for release to any  
5 person other than:

6                   (A) the commissioner or the State Board for  
7 Educator Certification, as applicable;

8                   (B) agency employees or agents involved in the  
9 investigation, as applicable; and

10                   (C) the office of the attorney general, the state  
11 auditor's office, and law enforcement agencies.

12           Sec. 39.0303. SECURE ASSESSMENT INSTRUMENTS; CRIMINAL  
13 PENALTY. (a) A person commits an offense if:

14                   (1) the person discloses the contents of any portion  
15 of a secure assessment instrument developed or administered under  
16 this subchapter, including the answer to any item in the assessment  
17 instrument; and

18                   (2) the disclosure affects or is likely to affect the  
19 individual performance of one or more students on the assessment  
20 instrument.

21           (b) An offense under this section is a Class C misdemeanor.

22           Sec. 39.0304. TRAINING IN ASSESSMENT INSTRUMENT  
23 ADMINISTRATION. (a) To ensure that each administration of  
24 assessment instruments under Section 39.023 is valid, reliable, and  
25 in compliance with the requirements of this subchapter, the  
26 commissioner may require training for school district employees  
27 involved in the administration of the assessment instruments.

1       (b) The training under Subsection (a) may include a  
2 qualifying component to ensure that school district employees  
3 involved in the administration of assessment instruments under  
4 Section 39.023 possess the necessary skills and knowledge required  
5 to administer the assessment instruments.

6       (c) The commissioner may adopt rules necessary to implement  
7 this section.

8       SECTION 12. Section 39.034(d), Education Code, is amended  
9 to read as follows:

10       (d) The agency shall determine the necessary annual  
11 improvement required each year for a student to be prepared to  
12 perform satisfactorily on [pass] the end-of-course assessment  
13 instruments [~~exit-level assessment instrument~~] required under this  
14 subchapter for graduation. The agency shall report the necessary  
15 annual improvement required to the district. Each year, the report  
16 must state whether the student fell below, met, or exceeded the  
17 necessary target for improvement.

18       SECTION 13. Subchapter B, Chapter 39, Education Code, is  
19 amended by adding Sections 39.035 and 39.036 to read as follows:

20       Sec. 39.035. LIMITATION ON FIELD TESTING OF ASSESSMENT  
21 INSTRUMENTS. (a) The agency shall limit field testing of questions  
22 for any assessment instrument administered under Section  
23 39.023(a), (b), (c), (d), or (l) to the minimum number of field  
24 tests necessary to ensure the validity of the questions.

25       (b) The agency may conduct field testing of questions for  
26 any assessment instrument administered under Section 39.023(a),  
27 (b), (c), (d), or (l) that is separate from the administration of

1 the assessment instrument only in a manner that minimizes the  
2 frequency with which any particular campus is required to  
3 administer the field tests.

4 Sec. 39.036. VERTICAL SCALE FOR CERTAIN ASSESSMENT  
5 INSTRUMENTS. (a) The agency shall develop a vertical scale for  
6 assessing student performance on assessment instruments  
7 administered under Sections 39.023(a)(1) and (2) in a manner that  
8 allows the agency to compare the performance of a student on the  
9 assessment instruments from one grade level to the next.

10 (b) The commissioner shall adopt rules necessary to  
11 implement this section.

12 (c) Not later than June 1, 2008, the agency shall develop a  
13 vertical scale as required by Subsection (a). The agency shall  
14 implement the vertical scale in the administration of assessment  
15 instruments under Sections 39.023(a)(1) and (2) beginning with the  
16 2008-2009 school year. This subsection expires September 1, 2009.

17 SECTION 14. Section 39.051(b), Education Code, is amended  
18 to read as follows:

19 (b) Performance on the indicators adopted under this  
20 section shall be compared to state-established standards. The  
21 degree of change from one school year to the next in performance on  
22 each indicator adopted under this section shall also be considered.  
23 The indicators must be based on information that is disaggregated  
24 by race, ethnicity, gender, and socioeconomic status and must  
25 include:

26 (1) the results of assessment instruments required  
27 under Sections 39.023(a), (c), and (1), aggregated by grade level

1 and subject area;

2 (2) dropout rates, including dropout rates and  
3 district completion rates for grade levels 9 through 12, computed  
4 in accordance with standards and definitions adopted by the  
5 National Center for Education Statistics of the United States  
6 Department of Education;

7 (3) high school graduation rates, computed in  
8 accordance with standards and definitions adopted in compliance  
9 with the No Child Left Behind Act of 2001 (Pub. L. No. 107-110);

10 (4) student attendance rates;

11 (5) the percentage of graduating students who attain  
12 scores on the optional questions developed for end-of-course  
13 ~~[secondary exit-level]~~ assessment instruments under Section  
14 39.0233(a) ~~[required under Subchapter B]~~ that are equivalent to a  
15 passing score on the assessment instrument required under Section  
16 51.3062;

17 (6) the percentage of graduating students who meet the  
18 course requirements established for the recommended high school  
19 program by State Board of Education rule;

20 (7) the results of the Scholastic Assessment Test  
21 (SAT), the American College Test (ACT), articulated postsecondary  
22 degree programs described by Section 61.852, and certified  
23 workforce training programs described by Chapter 311, Labor Code;

24 (8) the percentage of students, aggregated by grade  
25 level, provided accelerated instruction under Section 28.0211(c),  
26 the results of assessments administered under that section, the  
27 percentage of students promoted through the grade placement

1 committee process under Section 28.0211, the subject of the  
2 assessment instrument on which each student failed to perform  
3 satisfactorily, and the performance of those students in the school  
4 year following that promotion on the assessment instruments  
5 required under Section 39.023;

6 (9) for students who have failed to perform  
7 satisfactorily on an assessment instrument required under Section  
8 39.023(a) or (c), the numerical progress of those students grouped  
9 by percentage on subsequent assessment instruments required under  
10 those sections, aggregated by grade level and subject area;

11 (10) the percentage of students exempted, by exemption  
12 category, from the assessment program generally applicable under  
13 this chapter;

14 (11) the percentage of students of limited English  
15 proficiency exempted from the administration of an assessment  
16 instrument under Sections 39.027(a)(3) and (4);

17 (12) the percentage of students in a special education  
18 program under Subchapter A, Chapter 29, assessed through assessment  
19 instruments developed or adopted under Section 39.023(b);

20 (13) the measure of progress toward preparation for  
21 postsecondary success; and

22 (14) the measure of progress toward dual language  
23 proficiency under Section 39.034(b), for students of limited  
24 English proficiency, as defined by Section 29.052.

25 SECTION 15. Section 39.075(a), Education Code, is amended  
26 to read as follows:

27 (a) The commissioner shall authorize special accreditation

1 investigations to be conducted:

2 (1) when excessive numbers of absences of students  
3 eligible to be tested on state assessment instruments are  
4 determined;

5 (2) when excessive numbers of allowable exemptions  
6 from the required state assessment instruments are determined;

7 (3) in response to complaints submitted to the agency  
8 with respect to alleged violations of civil rights or other  
9 requirements imposed on the state by federal law or court order;

10 (4) in response to established compliance reviews of  
11 the district's financial accounting practices and state and federal  
12 program requirements;

13 (5) when extraordinary numbers of student placements  
14 in disciplinary alternative education programs, other than  
15 placements under Sections 37.006 and 37.007, are determined;

16 (6) in response to an allegation involving a conflict  
17 between members of the board of trustees or between the board and  
18 the district administration if it appears that the conflict  
19 involves a violation of a role or duty of the board members or the  
20 administration clearly defined by this code;

21 (7) when excessive numbers of students in special  
22 education programs under Subchapter A, Chapter 29, are assessed  
23 through assessment instruments developed or adopted under Section  
24 39.023(b); [~~or~~]

25 (8) in response to an allegation regarding or an  
26 analysis using a statistical method result indicating a possible  
27 violation of an assessment instrument security procedure

1 established under Section 39.0301, including for the purpose of  
2 investigating or auditing a school district under that section; or  
3 (9) [(8)] as the commissioner otherwise determines  
4 necessary.

5 SECTION 16. Section 51.3062(q), Education Code, is amended  
6 to read as follows:

7 (q) A student who has achieved scores [~~a score~~] set by the  
8 board on the optional questions developed for end-of-course  
9 assessment instruments [~~an exit-level assessment instrument~~  
10 ~~required~~] under Section 39.0233(a) [~~39.023~~] is exempt from the  
11 requirements of this section. The exemption is effective for the  
12 three-year period following the date a student takes the last  
13 assessment instrument for purposes of this section and achieves the  
14 standard set by the board. This subsection does not apply during  
15 any period for which the board designates the optional questions  
16 developed for end-of-course assessment instruments [~~exit-level~~  
17 ~~assessment instrument required~~] under Section 39.0233(a) [~~39.023~~]  
18 as the primary assessment instrument under this section, except  
19 that the three-year period described by this subsection remains in  
20 effect for students who qualify for an exemption under this  
21 subsection [~~section~~] before that period.

22 SECTION 17. Section 39.023(j), Education Code, is repealed.

23 SECTION 18. A reference in the Education Code to an  
24 end-of-course assessment instrument administered under Section  
25 39.023(c), Education Code, includes an exit-level assessment  
26 instrument administered under that section as provided by Section  
27 39.025(f), Education Code, as added by this Act.

1           SECTION 19. (a) Except as otherwise provided by this Act,  
2 this Act applies beginning with the 2007-2008 school year.

3           (b) Beginning with the 2007-2008 school year, the  
4 commissioner of education may conduct random audits as authorized  
5 under Section 39.0301(f), Education Code, as added by this Act.  
6 Beginning with the 2008-2009 school year, the commissioner of  
7 education may conduct accreditation investigations as authorized  
8 under Section 39.075(a)(8), Education Code, as added by this Act.

9           (c) During the 2008-2009 school year, the commissioner of  
10 education may use the statistical methods and standards established  
11 under Section 39.0301(b), Education Code, as added by this Act, on a  
12 pilot basis to test the accuracy and predictive validity of the  
13 methods and standards. Pilot statistical methods and standards  
14 developed for use in the 2008-2009 school year are confidential and  
15 not subject to disclosure under Chapter 552, Government Code.  
16 Without releasing the pilot statistical methods, the commissioner  
17 of education shall release the results of any investigation  
18 conducted on the basis of those methods during the 2008-2009 school  
19 year on completion of the investigation.

20           SECTION 20. This Act takes effect September 1, 2007.