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et al.

H.B. No. 500

A BILL TO BE ENTITLED

1 AN ACT
2 relating to state-adopted assessment instruments administered to
3 public school students.

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

5 SECTION 1. Section 28.021(c), Education Code, is amended to
6 read as follows:

7 (c) In determining promotion under Subsection (a), a school
8 district shall consider:

9 (1) the recommendation of the student's teacher;

10 (2) the student's grade in each subject or course;

11 (3) the student's score on an assessment instrument
12 administered under Section 39.023(a), (b), or (l), to the extent
13 applicable; and

14 (4) any other necessary academic information, as
15 determined by the district.

16 SECTION 2. Section 28.0211, Education Code, is amended by
17 adding Subsections (o) and (p) to read as follows:

18 (o) This section does not require the administration of a
19 fifth or eighth grade assessment instrument in a subject under
20 Section 39.023(a) to a student enrolled in the fifth or eighth
21 grade, as applicable, if the student:

22 (1) is enrolled in a course in the subject for which
23 the student will receive high school academic credit; and

24 (2) will be administered an end-of-course assessment

1 instrument adopted under Section 39.023(c) for the course.

2 (p) Notwithstanding any other provision of this section, a
3 student described by Subsection (o) may not be denied promotion on
4 the basis of failure to perform satisfactorily on an assessment
5 instrument not required to be administered to the student in
6 accordance with that subsection.

7 SECTION 3. Section 39.023, Education Code, is amended by
8 amending Subsections (a) and (c) and adding Subsection (a-2) to
9 read as follows:

10 (a) The agency shall adopt or develop appropriate
11 criterion-referenced assessment instruments designed to assess
12 essential knowledge and skills in reading, writing, mathematics,
13 social studies, and science. Except as provided by Subsection
14 (a-2), all [All] students, other than [except] students assessed
15 under Subsection (b) or (1) or exempted under Section 39.027, shall
16 be assessed in:

17 (1) mathematics, annually in grades three through
18 seven without the aid of technology and in grade eight with the aid
19 of technology on any assessment instrument that includes algebra;

20 (2) reading, annually in grades three through eight;

21 (3) writing, including spelling and grammar, in grades
22 four and seven;

23 (4) social studies, in grade eight;

24 (5) science, in grades five and eight; and

25 (6) any other subject and grade required by federal
26 law.

27 (a-2) A student is not required to be assessed in a subject

1 otherwise assessed at the student's grade level under Subsection

2 (a) if the student:

3 (1) is enrolled in a course in the subject for which
4 the student will receive high school academic credit; and

5 (2) will be administered an end-of-course assessment
6 instrument adopted under Subsection (c) for the course.

7 (c) The agency shall also adopt end-of-course assessment
8 instruments for secondary-level courses in Algebra I, Algebra II,
9 geometry, biology, chemistry, physics, English I, English II,
10 English III, world geography, world history, and United States
11 history. The Algebra I, Algebra II, and geometry end-of-course
12 assessment instruments must be administered with the aid of
13 technology. A school district shall comply with State Board of
14 Education rules regarding administration of the assessment
15 instruments listed in this subsection. A district [and] shall adopt
16 a policy addressing whether [that requires] a student's performance
17 on an end-of-course assessment instrument for a course listed in
18 this subsection in which the student is enrolled will be used by the
19 district in determining [to account for 15 percent of] the
20 student's final grade for the course and, if so, the manner in which
21 the student's performance on an end-of-course assessment
22 instrument will be used in determining the student's final grade
23 for the course. If a student retakes an end-of-course assessment
24 instrument for a course listed in this subsection, as provided by
25 Section 39.025, a ~~school~~ district shall act in accordance with
26 district policy concerning whether [is not required] to use and, if
27 so, the manner in which to use the student's performance on the

1 subsequent administration or administrations of the assessment
2 instrument in determining [~~to determine~~] the student's final grade
3 for the course. If a student is in a special education program
4 under Subchapter A, Chapter 29, the student's admission, review,
5 and dismissal committee shall determine whether any allowable
6 modification is necessary in administering to the student an
7 assessment instrument required under this subsection. The State
8 Board of Education shall administer the assessment instruments.
9 The State Board of Education shall adopt a schedule for the
10 administration of end-of-course assessment instruments that
11 complies with the requirements of Subsection (c-3).

12 SECTION 4. Subchapter B, Chapter 39, Education Code, is
13 amended by adding Section 39.0236 to read as follows:

14 Sec. 39.0236. REDUCED ASSESSMENT REQUIREMENTS PILOT
15 PROGRAM. (a) In this section, "pilot program" means the reduced
16 assessment requirements pilot program established under this
17 section.

18 (b) The commissioner by rule shall establish a pilot program
19 in which certain students in grades three through eight at a
20 participating campus have reduced assessment requirements, as
21 provided by this section.

22 (c) A campus may apply to the commissioner to participate in
23 the pilot program.

24 (d) The commissioner shall select at least 20 campuses to
25 participate in the pilot program. In selecting campuses for
26 participation in the pilot program, the commissioner shall ensure
27 that, to the greatest extent practicable, the diverse demographic,

1 geographic, socioeconomic, and academic characteristics found in
2 this state are represented and that elementary and middle or junior
3 high schools are represented.

4 (e) Notwithstanding Section 39.023, a student attending a
5 campus participating in the pilot program, other than a student
6 administered assessment instruments under Section 39.023(b) or (l)
7 or granted an exemption from administration of an assessment
8 instrument under Section 39.027, shall be assessed using assessment
9 instruments adopted or developed under Section 39.023(a) in:

10 (1) mathematics:

11 (A) in grades three and five without the aid of
12 technology; and

13 (B) in grade eight with the aid of technology on
14 any assessment instrument that includes algebra;

15 (2) reading, in grades three, five, and eight;

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

18 (4) social studies, in grade eight; and

19 (5) science, in grades five and eight.

20 (f) A student shall be assessed in grade four in mathematics
21 or reading using an assessment instrument administered under
22 Subsection (e) in grade three if, on the final assessment
23 instrument in that subject administered to the student in grade
24 three during the preceding school year, the student did not achieve
25 a score determined through the analysis of previous years' testing
26 data to predict with a high level of statistical confidence that a
27 student will pass the following year.

1 (g) A student shall be assessed in grade six in mathematics
2 or reading using an assessment instrument administered under
3 Subsection (e) in grade five if, on the final assessment instrument
4 in that subject administered to the student in grade five during the
5 preceding school year, the student did not achieve a score
6 determined through the analysis of previous years' testing data to
7 predict with a high level of statistical confidence that a student
8 will pass the following year.

9 (h) A student shall be assessed in grade seven in
10 mathematics or reading using an assessment instrument administered
11 under Subsection (g) in grade six if, on the final assessment
12 instrument in that subject administered to the student in grade six
13 during the preceding school year, the student did not achieve a
14 score determined through the analysis of previous years' testing
15 data to predict with a high level of statistical confidence that a
16 student will pass the following year.

17 (i) A participating campus may, for its own use in
18 determining whether students are performing at a satisfactory
19 level, administer to a student at the appropriate grade level,
20 other than a student required to be assessed under this section, an
21 assessment instrument. At the request of a participating campus,
22 the agency shall provide, allow for the administration of, and
23 score each assessment instrument administered under this
24 subsection in the same manner and at the same cost as for assessment
25 instruments required to be administered under the applicable
26 subsection. The results of an assessment instrument administered
27 under this subsection may not be included as an indicator of student

1 achievement under Section 39.054 or any other provision.

2 (j) If there is a conflict between this section and federal
3 law as a result of forgoing under this section certain
4 administration of assessment instruments to students who have
5 recently performed successfully on assessment instruments
6 assessing the same subject, the commissioner shall seek a waiver
7 from the application of conflicting federal law for a campus
8 participating in the pilot program.

9 (k) The commissioner shall adopt rules as necessary to
10 administer this section.

11 (l) The commissioner shall conduct a study to determine
12 whether the pilot program has been successful. The study must
13 compare the achievements in mathematics and reading of students at
14 participating and nonparticipating campuses in similar geographic
15 areas that have students of similar demographic, socioeconomic, and
16 academic characteristics. The study must evaluate the differences
17 between mathematics and reading performance of students at campuses
18 participating in the pilot program and those in matched
19 nonparticipating campuses. Not later than September 1, 2014, the
20 commissioner shall submit the results of the study to the
21 legislature.

22 (m) The commissioner by rule shall establish the pilot
23 program for the 2012-2013 and 2013-2014 school years.

24 (n) This section expires December 31, 2014.

25 SECTION 5. Section 39.025, Education Code, is amended by
26 amending Subsections (a), (a-1), (a-2), (a-3), (b), (b-2), (e),
27 (f), and (g) and adding Subsections (a-4), (a-5), and (e-1) to read

1 as follows:

2 (a) The commissioner shall adopt rules requiring a student
3 participating in the recommended or advanced high school program to
4 be administered each end-of-course assessment instrument listed in
5 Section 39.023(c) and requiring a student participating in the
6 minimum high school program to be administered an end-of-course
7 assessment instrument listed in Section 39.023(c) only for a course
8 in which the student is enrolled and for which an end-of-course
9 assessment instrument is administered. [~~A student is required to
10 achieve, in each subject in the foundation curriculum under Section
11 28.002(a)(1), a cumulative score that is at least equal to the
12 product of the number of end-of-course assessment instruments
13 administered to the student in that subject and a scale score that
14 indicates satisfactory performance, as determined by the
15 commissioner under Section 39.0241(a). A student must achieve a
16 minimum score as determined by the commissioner to be within a
17 reasonable range of the scale score under Section 39.0241(a) on an
18 end-of-course assessment instrument for the score to count towards
19 the student's cumulative score. For purposes of this subsection, a
20 student's cumulative score is determined using the student's
21 highest score on each end-of-course assessment instrument
22 administered to the student. A student may not receive a high
23 school diploma until the student has performed satisfactorily on
24 the end-of-course assessment instruments in the manner provided
25 under this subsection. This subsection does not require a student
26 to demonstrate readiness to enroll in an institution of higher
27 education.]~~

1 (a-1) The commissioner by rule shall determine a method by
2 which a student's satisfactory performance on an advanced placement
3 test, international baccalaureate examination, an SAT Subject
4 Test, or another assessment instrument determined by the
5 commissioner to be at least as rigorous as an end-of-course
6 assessment instrument adopted under Section 39.023(c) may be used
7 as a factor in determining whether the student satisfies the
8 requirements of Subsection (a) and Subsection (a-2), (a-3), or
9 (a-4), as applicable to the student~~[, including the cumulative~~
10 ~~score requirement of that subsection]~~. The commissioner by rule
11 may determine a method by which a student's satisfactory
12 performance on a Preliminary Scholastic Assessment Test (PSAT)
13 assessment or a preliminary American College Test (ACT) assessment
14 may be used as a factor in determining whether the student satisfies
15 the requirements of Subsection (a) and Subsection (a-2), (a-3), or
16 (a-4), as applicable to the student.

17 (a-2) To graduate under the recommended high school program
18 ~~[In addition to the cumulative score requirements under Subsection~~
19 ~~(a)],~~ a student must achieve a score that meets or exceeds the score
20 determined by the commissioner under Section 39.0241(a) on
21 end-of-course assessment instruments for the following:

- 22 (1) English III;
23 (2) [and] Algebra II;
24 (3) biology, chemistry, or physics; and
25 (4) world geography, world history, or United States
26 history ~~[end-of-course assessment instruments to graduate under~~
27 ~~the recommended high school program]~~.

1 (a-3) To graduate under the advanced high school program [~~In~~
2 ~~addition to the cumulative score requirements under Subsection~~
3 ~~(a)~~], a student must:

4 (1) achieve a score that meets or exceeds the score
5 determined by the commissioner under Section 39.0241(a-1) on
6 end-of-course assessment instruments for the following:

7 (A) English III; and

8 (B) Algebra II; and

9 (2) achieve a score that meets or exceeds the score
10 determined by the commissioner under Section 39.0241(a) on
11 end-of-course assessment instruments for the following:

12 (A) biology, chemistry, or physics; and

13 (B) world geography, world history, or United
14 States history [~~in order to graduate under the advanced high school~~
15 ~~program~~].

16 (a-4) To graduate under the minimum high school program, a
17 student must achieve a score that meets or exceeds the score
18 determined by the commissioner under Section 39.0241(a) on
19 end-of-course assessment instruments for the following:

20 (1) English III;

21 (2) Algebra I;

22 (3) biology, chemistry, or physics; and

23 (4) world geography, world history, or United States
24 history.

25 (a-5) The admission, review, and dismissal committee of a
26 student in a special education program under Subchapter A, Chapter
27 29, shall determine whether, to receive a high school diploma, the

1 student is required to achieve satisfactory performance on
2 end-of-course assessment instruments.

3 (b) Each time an end-of-course assessment instrument is
4 administered, a student who failed to achieve the [~~a minimum~~] score
5 requirement under this section may [~~Subsection (a) shall~~] retake
6 the assessment instrument. A student who fails to perform
7 satisfactorily on an Algebra II or English III end-of-course
8 assessment instrument under the college readiness performance
9 standard, as provided under Section 39.024(b), may retake the
10 assessment instrument. [~~Any other student may retake an~~
11 ~~end-of-course assessment instrument for any reason.~~] A student is
12 not required to retake a course as a condition of retaking an
13 end-of-course assessment instrument.

14 (b-2) If a school district determines that a student, on
15 completion of grade 11, is unlikely to achieve the [~~cumulative~~]
16 score requirement under this section [~~requirements~~] for one or more
17 end-of-course assessment instruments as necessary [~~subjects~~
18 ~~prescribed by Subsection (a)~~] for receiving a high school diploma,
19 the district shall require the student to enroll in a corresponding
20 content-area college preparatory course for which an end-of-course
21 assessment instrument has been adopted, if available. A student
22 who enrolls in a college preparatory course described by this
23 subsection shall be administered an end-of-course assessment
24 instrument for the course, with the end-of-course assessment
25 instrument scored on a scale as determined by the commissioner [~~not~~
26 ~~to exceed 20 percent of the cumulative score requirements required~~
27 ~~to graduate as determined under Subsection (a)~~]. A student may use

1 the student's score on the end-of-course assessment instrument for
2 the college preparatory course towards satisfying the [~~cumulative~~]
3 score requirement under this section [~~requirements prescribed by~~
4 ~~Subsection (a)~~].

5 (e) The commissioner shall establish a required performance
6 level for an assessment instrument adopted under Subsection (d)
7 that is at least as rigorous as the performance level required to be
8 met under Subsection (a-2), (a-3), or (a-4), as applicable to the
9 student [~~(a)~~].

10 (e-1) Nothing in this section has the effect of prohibiting
11 the administration of an end-of-course assessment instrument
12 listed in Section 39.023(c) to a student enrolled below the high
13 school level who is enrolled in the course for which the assessment
14 instrument is adopted. The commissioner shall adopt rules
15 necessary to ensure that the student's performance on the
16 assessment instrument is considered in the same manner for purposes
17 of this section as the performance of a student enrolled at the high
18 school level.

19 (f) The commissioner shall by rule adopt a transition plan
20 to implement the amendments made by Chapter 1312 (S.B. No. 1031),
21 Acts of the 80th Legislature, Regular Session, 2007, replacing
22 general subject assessment instruments administered at the high
23 school level with end-of-course assessment instruments. The rules
24 must provide for the end-of-course assessment instruments adopted
25 under Section 39.023(c) to be administered beginning with students
26 entering the ninth grade during the 2011-2012 school year. During
27 the period under which the transition to end-of-course assessment

1 instruments is made:

2 (1) for students entering a grade above the ninth
3 grade during the 2011-2012 school year and to the extent necessary
4 for purposes of Subdivisions (5) and (6), the commissioner shall
5 retain, administer, and use for purposes of accreditation and other
6 campus and district accountability measures under this chapter the
7 assessment instruments required by Section 39.023(a) or (c), as
8 that section existed before amendment by Chapter 1312 (S.B. No.
9 1031), Acts of the 80th Legislature, Regular Session, 2007;

10 (2) a student subject to Subdivision (1) may not
11 receive a high school diploma unless the student has performed
12 satisfactorily on each required assessment instrument administered
13 under Section 39.023(c) as that section existed before amendment by
14 Chapter 1312 (S.B. No. 1031), Acts of the 80th Legislature, Regular
15 Session, 2007; [~~and~~]

16 (3) the agency may defer releasing assessment
17 instrument questions and answer keys as required by Section
18 39.023(e) to the extent necessary to develop additional assessment
19 instruments;

20 (4) a student entering ninth grade during the
21 2011-2012 or 2012-2013 school year shall be administered each
22 end-of-course assessment instrument listed in Section 39.023(c)
23 for a course in which the student is enrolled and for which an
24 end-of-course assessment instrument is administered;

25 (5) a student subject to Subdivision (4) may not
26 receive a high school diploma under the recommended high school
27 program unless the student:

1 (A) achieves a score that meets or exceeds the
2 score determined by the commissioner under Section 39.0241(a) on
3 end-of-course assessment instruments for the following:

- 4 (i) English III;
5 (ii) Algebra II;
6 (iii) biology, chemistry, or physics; and
7 (iv) world geography, world history, or
8 United States history; or

9 (B) has performed satisfactorily on each
10 required assessment instrument administered under Section
11 39.023(c), as that section existed before amendment by Chapter 1312
12 (S.B. No. 1031), Acts of the 80th Legislature, Regular Session,
13 2007;

14 (6) a student subject to Subdivision (4) may not
15 receive a high school diploma under the minimum high school program
16 unless the student:

17 (A) achieves a score that meets or exceeds the
18 score determined by the commissioner under Section 39.0241(a) on
19 end-of-course assessment instruments for the following:

- 20 (i) English III;
21 (ii) Algebra I;
22 (iii) biology, chemistry, or physics; and
23 (iv) world geography, world history, or
24 United States history; or

25 (B) has performed satisfactorily on each
26 required assessment instrument administered under Section
27 39.023(c), as that section existed before amendment by Chapter 1312

1 (S.B. No. 1031), Acts of the 80th Legislature, Regular Session,
2 2007; and

3 (7) a student entering ninth grade during the
4 2013-2014 school year or a later school year may not receive a high
5 school diploma unless the student has satisfied the requirements of
6 Subsection (a) and Subsection (a-2), (a-3), or (a-4), as applicable
7 to the student.

8 (g) Rules adopted under Subsection (f) must require that
9 each student who will be subject to the requirements of Subsection
10 (a), (a-2), (a-3), (a-4), or (f)(4) is entitled to notice of the
11 specific requirements applicable to the student. Notice under this
12 subsection must be provided not later than the date the student
13 enters the eighth grade. For a student who entered eighth grade in
14 the 2010-2011 school year, notice under this subsection must also
15 be provided not later than the date the student enters the ninth
16 grade to inform the student of modifications in the requirements
17 applicable to the student. Subsection (f) and this subsection
18 expire September 1, 2017 [~~2015~~].

19 SECTION 6. Section 39.034, Education Code, is amended by
20 adding Subsection (e) to read as follows:

21 (e) The agency may use a projection measure only in
22 determining, for purposes of this section, an expected level of
23 annual improvement in student achievement. The agency may not use a
24 projection measure as a representation, for purposes of this
25 section, of an actual level of annual improvement in student
26 achievement.

27 SECTION 7. Section 39.053, Education Code, is amended by

1 adding Subsection (d-1) to read as follows:

2 (d-1) In aggregating results of assessment instruments
3 across grade levels by subject in accordance with Subsection
4 (c)(1), the performance of a student enrolled below the high school
5 level on an assessment instrument required under Section 39.023(c)
6 is included with results relating to other students enrolled at the
7 same grade level.

8 SECTION 8. Section 39.203, Education Code, is amended by
9 adding Subsection (d) to read as follows:

10 (d) In addition to the distinction designations otherwise
11 described by this section, the commissioner may award a distinction
12 designation to a campus with a significant number of students below
13 grade nine who perform satisfactorily on an end-of-course
14 assessment instrument administered under Section 39.023(c).

15 SECTION 9. (a) A school district policy adopted under
16 Section 39.023(c), Education Code, as amended by this Act, applies
17 beginning with the 2011-2012 school year.

18 (b) Section 39.025(b), Education Code, as amended by this
19 Act, applies beginning with the 2011-2012 school year.

20 SECTION 10. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2011.