

BILL ANALYSIS

C.S.H.B. 866
By: Huberty
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that Texas has long been a leader in standardized testing and educational accountability. The state has accumulated testing data that demonstrates that a student who performs well on a standardized test one year will likely perform as well in the following year. The new state standardized test, the State of Texas Assessments of Academic Readiness (STAAR), has been administered to students in grade three and will be phased in to students through grade eight. These tests were developed to be more rigorous and better indicators of college and career readiness, but once the testing is completely phased in, students will be taking more than 10 state standardized tests between the grades of three and eight, in addition to the tests developed and administered by their classroom teachers. The parties assert that this amount of testing is excessive. C.S.H.B. 866 seeks to remedy this excessive testing and related costs for students, teachers, parents, and schools by reducing the amount of mandatory testing for students who are high performing.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the State Board of Education in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 866 amends the Education Code to remove the requirement for the administration of statewide standardized tests in mathematics and reading to students in grades four, six, and seven; in writing; in social studies; or in any other subject or grade required by federal law. The bill instead requires a student in grade four or grade six who failed in the preceding year to achieve a satisfactory score on the final administration of any of the statewide standardized tests given to students in grade three or on the final administration of the statewide standardized test in either mathematics or reading given to students in grade five, as applicable, to be tested again in that subject and requires a student in grade seven who failed in the preceding year to achieve a satisfactory score on the final administration of the statewide standardized test in either mathematics or reading given to students in grade six to be tested again in that subject. The bill requires a student taking a mathematics test under these conditions to be tested without the aid of technology.

C.S.H.B. 866 requires the Texas Education Agency (TEA) to determine, based on available information for the applicable test, the minimum satisfactory adjusted scale score for each statewide standardized test initially administered to a student and each statewide standardized test in mathematics or reading administered in grade six for purposes of retesting a student. The bill establishes the method for determining the minimum satisfactory adjusted scale score.

C.S.H.B. 866 authorizes a school district or open-enrollment charter school, for its own use in determining whether students are performing at a satisfactory level, to administer to a student at the appropriate grade level, other than a student required to be tested, a test developed for the purposes of retesting a student in the applicable subject matter in grades four, six, or seven. The

bill requires TEA, at the request of a district or charter school, to provide, allow for the administration of, and score each test so administered in the same manner and at the same cost as for tests that are required to be administered. The bill prohibits the inclusion of the results of such tests as an indicator of student achievement.

C.S.H.B. 866 requires the commissioner of education to seek a waiver from the application of a federal law or regulation if there is a conflict between a Texas law and a federal law or regulation as a result of forgoing the administration of certain tests to students who have recently performed successfully on tests assessing the same subject and requires the commissioner to submit all relevant data in seeking such a waiver.

C.S.H.B. 866 includes statewide standardized tests administered to a student in grades four, six, or seven for the purpose of retesting the student in the applicable subject matter among certain duties of TEA, the commissioner, and the State Board of Education (SBOE) regarding statewide standardized tests. The bill requires the SBOE to adopt rules for the administration of statewide standardized tests in Spanish and in grade four for the purpose of retesting a student in the applicable subject matter to a student of limited English proficiency who is not otherwise exempt from the administration of statewide standardized tests. The bill's provisions apply beginning with the 2013-2014 school year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 866 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 39.023, Education Code, is amended by amending Subsections (a), (a-1), (a-2), (b), (c-1), (c-3), (e), (l), (m), (n), and (p) and adding Subsections (a-3), (a-4), (a-5), (a-6), (a-7), (a-8), and (a-9) to read as follows:

(a) The 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. Except as provided by Subsection (a-2), all students, other than students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:

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

(2) reading, [~~annually~~] in grades three, five, and [~~through~~] eight;

(3) writing, including spelling and

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 39.023, Education Code, is amended by amending Subsections (a), (a-1), (a-2), (b), (c-1), (c-3), (e), (l), (m), (n), and (p) and adding Subsections (a-3), (a-4), (a-5), (a-6), (a-7), (a-8), and (a-9) to read as follows:

(a) The 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. Except as provided by Subsection (a-2), all students, other than students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:

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

(2) reading, [~~annually~~] in grades three, five, and [~~through~~] eight; and

(3) [~~writing, including spelling and~~]

grammar, in grades five and eight [four and seven];

(4) social studies, in grade eight; and
(5) science, in grades five and eight[; and
[(6) any other subject and grade required by federal law].

(a-1) The agency shall develop assessment instruments required under Subsections (a), (a-4), (a-5), and (a-6) [Subsection (a)] in a manner that allows, to the extent practicable:

(1) the score a student receives to provide reliable information relating to a student's satisfactory performance for each performance standard under Section 39.0241; and

(2) an appropriate range of performances to serve as a valid indication of growth in student achievement.

(a-2) A student is not required to be assessed in a subject otherwise assessed at the student's grade level under Subsection (a) if the student:

(1) is enrolled in a course in the subject intended for students above the student's grade level and will be administered an assessment instrument adopted or developed under Subsection (a), (a-4), (a-5), or (a-6) that aligns with the curriculum for the course in which the student is enrolled; or

(2) is enrolled in a course in the subject for which the student will receive high school academic credit and will be administered an end-of-course assessment instrument adopted under Subsection (c) for the course.

(a-3) For each assessment instrument administered under Subsection (a) or (a-5), the agency shall determine, based on available information for that assessment instrument, the minimum satisfactory adjusted scale score. The minimum satisfactory adjusted scale score is the sum of the scale score that indicates satisfactory performance on that assessment instrument, as determined by the commissioner under Section 39.0241(a), plus the minimum number of points that when added to the scale score produces a score that, within a three percent margin of error, is predictive that a student achieving that score would achieve satisfactory performance on an assessment instrument in the same subject administered to the student during the following school year.

(a-4) A student shall be assessed in grade

grammar, in grades four and seven;

~~[(4) social studies, in grade eight;~~
~~[(5)] science, in grades five and eight[; and~~
~~[(6) any other subject and grade required by federal law].~~

(a-1) The agency shall develop assessment instruments required under Subsections (a), (a-4), (a-5), and (a-6) [Subsection (a)] in a manner that allows, to the extent practicable:

(1) the score a student receives to provide reliable information relating to a student's satisfactory performance for each performance standard under Section 39.0241; and

(2) an appropriate range of performances to serve as a valid indication of growth in student achievement.

(a-2) A student is not required to be assessed in a subject otherwise assessed at the student's grade level under Subsection (a) if the student:

(1) is enrolled in a course in the subject intended for students above the student's grade level and will be administered an assessment instrument adopted or developed under Subsection (a), (a-4), (a-5), or (a-6) that aligns with the curriculum for the course in which the student is enrolled; or

(2) is enrolled in a course in the subject for which the student will receive high school academic credit and will be administered an end-of-course assessment instrument adopted under Subsection (c) for the course.

(a-3) For each assessment instrument administered under Subsection (a) or (a-5), the agency shall determine, based on available information for that assessment instrument, the minimum satisfactory adjusted scale score. The minimum satisfactory adjusted scale score is the sum of the scale score that indicates satisfactory performance on that assessment instrument, as determined by the commissioner under Section 39.0241(a), plus the minimum number of points that when added to the scale score produces a score that, within a three percent margin of error, is predictive that a student achieving that score would achieve satisfactory performance on an assessment instrument in the same subject administered to the student during the following school year.

(a-4) A student shall be assessed in grade

four in a subject for which an assessment instrument is administered under Subsection (a) in grade three if, on the final assessment instrument in that subject administered under Subsection (a) to the student in grade three during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3).

(a-5) A student shall be assessed in grade six in a subject for which an assessment instrument is administered under Subsection (a)(1) or (2) in grade five if, on the final assessment instrument in that subject administered under Subsection (a)(1) or (2) to the student in grade five during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3).

(a-6) A student shall be assessed in grade seven in a subject for which an assessment instrument was administered under Subsection (a-5) to the student in grade six if, on the final assessment instrument in that subject administered to the student in grade six during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3).

(a-7) A student assessed in mathematics under Subsection (a-4), (a-5), or (a-6) shall be assessed without the aid of technology.

(a-8) A school district or open-enrollment charter school may, for its own use in determining whether students are performing at a satisfactory level, administer to a student at the appropriate grade level, other than a student required to be assessed, an assessment instrument developed for purposes of Subsection (a-4), (a-5), or (a-6). At the request of a district or open-enrollment charter school, the agency shall provide, allow for the administration of, and score each assessment instrument administered under this subsection in the same manner and at the same cost as for assessment instruments required to be administered under the applicable subsection. The results of an assessment

four in a subject for which an assessment instrument is administered under Subsection (a) in grade three if, on the final assessment instrument in that subject administered under Subsection (a) to the student in grade three during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3).

(a-5) A student shall be assessed in grade six in a subject for which an assessment instrument is administered under Subsection (a) in grade five if, on the final assessment instrument in that subject administered under Subsection (a) to the student in grade five during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3).

(a-6) A student shall be assessed in grade seven in a subject for which an assessment instrument was administered under Subsection (a-5) to the student in grade six if, on the final assessment instrument in that subject administered to the student in grade six during the preceding school year, the student did not achieve a score equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3).

(a-7) A student assessed in mathematics under Subsection (a-4), (a-5), or (a-6) shall be assessed without the aid of technology.

(a-8) A school district or open-enrollment charter school may, for its own use in determining whether students are performing at a satisfactory level, administer to a student at the appropriate grade level, other than a student required to be assessed, an assessment instrument developed for purposes of Subsection (a-4), (a-5), or (a-6). At the request of a district or open-enrollment charter school, the agency shall provide, allow for the administration of, and score each assessment instrument administered under this subsection in the same manner and at the same cost as for assessment instruments required to be administered under the applicable subsection. The results of an assessment

instrument administered under this subsection may not be included as an indicator of student achievement under Section 39.053 or any other provision.

(a-9) If there is a conflict between this section and a federal law or regulation as a result of forgoing under this section certain administration of assessment instruments to students who have recently performed successfully on assessment instruments assessing the same subject, the commissioner shall seek a waiver from the application of the conflicting federal law or regulation. In seeking a waiver, the commissioner shall submit all relevant data, including data relating to:

(1) the likelihood that a student who achieves a score on an assessment instrument equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3), will, in subsequent years, perform satisfactorily on assessment instruments in the same subject;

(2) the costs associated with ongoing assessment of students who have proven likely to perform successfully on subsequent assessment instruments; and

(3) the benefit of redirecting resources from assessment of students who have proven likely to perform successfully on subsequent assessment instruments toward enabling lower performing students to perform successfully on assessment instruments after one school year.

(b) The agency shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to a ~~each~~ student in a special education program under Subchapter A, Chapter 29, for whom an assessment instrument adopted under Subsection (a) or, to the extent applicable, Subsection (a-4), (a-5), or (a-6), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee.

(c-1) To the greatest extent practicable, the [The] agency shall develop any assessment instrument required under this section in a manner that allows for the measurement of annual improvement in student achievement as required by Sections 39.034(c) and (d).

(c-3) In adopting a schedule for the

instrument administered under this subsection may not be included as an indicator of student achievement under Section 39.053 or any other provision.

(a-9) If there is a conflict between this section and a federal law or regulation as a result of forgoing under this section certain administration of assessment instruments to students who have recently performed successfully on assessment instruments assessing the same subject, the commissioner shall seek a waiver from the application of the conflicting federal law or regulation. In seeking a waiver, the commissioner shall submit all relevant data, including data relating to:

(1) the likelihood that a student who achieves a score on an assessment instrument equal to or greater than the minimum satisfactory adjusted scale score for that assessment instrument, as determined under Subsection (a-3), will, in subsequent years, perform satisfactorily on assessment instruments in the same subject;

(2) the costs associated with ongoing assessment of students who have proven likely to perform successfully on subsequent assessment instruments; and

(3) the benefit of redirecting resources from assessment of students who have proven likely to perform successfully on subsequent assessment instruments toward enabling lower performing students to perform successfully on assessment instruments after one school year.

(b) The agency shall develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to a ~~each~~ student in a special education program under Subchapter A, Chapter 29, for whom an assessment instrument adopted under Subsection (a) or, to the extent applicable, Subsection (a-4), (a-5), or (a-6), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee.

(c-1) To the greatest extent practicable, the [The] agency shall develop any assessment instrument required under this section in a manner that allows for the measurement of annual improvement in student achievement as required by Sections 39.034(c) and (d).

(c-3) In adopting a schedule for the

administration of assessment instruments under this section, the State Board of Education shall require:

(1) assessment instruments administered under Subsections (a), (a-4), (a-5), and (a-6) [~~Subsection (a)~~] to be administered on a schedule so that the first assessment instrument is administered at least two weeks later than the date on which the first assessment instrument was administered under Subsection (a) during the 2006-2007 school year; and

(2) the spring administration of end-of-course assessment instruments under Subsection (c) to occur in each school district not earlier than the first full week in May, except that the spring administration of the end-of-course assessment instruments in English I, English II, and English III must be permitted to occur at an earlier date.

(e) Under rules adopted by the State Board of Education, every third year, the agency shall release the questions and answer keys to each assessment instrument administered under Subsection (a), (a-4), (a-5), (a-6), (b), (c), (d), or (l), excluding any assessment instrument administered to a student for the purpose of retaking the assessment instrument, after the last time the instrument is administered for that school year. To ensure a valid bank of questions for use each year, the agency is not required to release a question that is being field-tested and was not used to compute the student's score on the instrument. The agency shall also release, under board rule, each question that is no longer being field-tested and that was not used to compute a student's score.

(l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) and, to the extent applicable, the assessment instruments adopted under Subsection (a-4) in Spanish to students in grades three, four, and [~~through~~] five who are of limited English proficiency, as defined by Section 29.052, whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment instrument under Section 39.027(a)(1) or (2). Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, may be assessed using assessment instruments in

administration of assessment instruments under this section, the State Board of Education shall require:

(1) assessment instruments administered under Subsections (a), (a-4), (a-5), and (a-6) [~~Subsection (a)~~] to be administered on a schedule so that the first assessment instrument is administered at least two weeks later than the date on which the first assessment instrument was administered under Subsection (a) during the 2006-2007 school year; and

(2) the spring administration of end-of-course assessment instruments under Subsection (c) to occur in each school district not earlier than the first full week in May, except that the spring administration of the end-of-course assessment instruments in English I, English II, and English III must be permitted to occur at an earlier date.

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(l) The State Board of Education shall adopt rules for the administration of the assessment instruments adopted under Subsection (a) and, to the extent applicable, the assessment instruments adopted under Subsection (a-4) in Spanish to students in grades three, four, and [~~through~~] five who are of limited English proficiency, as defined by Section 29.052, whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment instrument under Section 39.027(a)(1) or (2). Each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, may be assessed using assessment instruments in

Spanish under this subsection for up to three years or assessment instruments in English under Subsection (a) and, as applicable, Subsection (a-4). The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection.

(m) The commissioner by rule shall develop procedures under which the language proficiency assessment committee established under Section 29.063 shall determine which students are exempt from the administration of the assessment instruments under Section 39.027(a)(1) or (2). The rules adopted under this subsection shall ensure that the language proficiency assessment committee provides that the exempted students are administered the assessment instruments under Subsections (a) and (c) and, to the extent applicable, Subsections (a-4), (a-5), and (a-6) at the earliest practical date.

(n) This subsection applies only to a student who is determined to have dyslexia or a related disorder and who is an individual with a disability under 29 U.S.C. Section 705(20) and its subsequent amendments. The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the assessment instruments adopted under Subsection (a) and, to the extent applicable, the assessment instruments adopted under Subsections (a-4), (a-5), and (a-6), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the committee established by the board of trustees of the district to determine the placement of students with dyslexia or related disorders. The committee shall determine whether any allowable modification is necessary in administering to a student an assessment instrument required under this subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsections (a), (a-4), (a-5), and (a-6), as applicable [~~Subsection (a)~~].

Spanish under this subsection for up to three years or assessment instruments in English under Subsection (a) and, as applicable, Subsection (a-4). The language proficiency assessment committee established under Section 29.063 shall determine which students are administered assessment instruments in Spanish under this subsection.

(m) The commissioner by rule shall develop procedures under which the language proficiency assessment committee established under Section 29.063 shall determine which students are exempt from the administration of the assessment instruments under Section 39.027(a)(1) or (2). The rules adopted under this subsection shall ensure that the language proficiency assessment committee provides that the exempted students are administered the assessment instruments under Subsections (a) and (c) and, to the extent applicable, Subsections (a-4), (a-5), and (a-6) at the earliest practical date.

(n) This subsection applies only to a student who is determined to have dyslexia or a related disorder and who is an individual with a disability under 29 U.S.C. Section 705(20) and its subsequent amendments. The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the assessment instruments adopted under Subsection (a) and, to the extent applicable, the assessment instruments adopted under Subsections (a-4), (a-5), and (a-6), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the committee established by the board of trustees of the district to determine the placement of students with dyslexia or related disorders. The committee shall determine whether any allowable modification is necessary in administering to a student an assessment instrument required under this subsection. The assessment instruments required under this subsection shall be administered on the same schedule as the assessment instruments administered under Subsections (a), (a-4), (a-5), and (a-6), as applicable [~~Subsection (a)~~].

(p) On or before September 1 of each year, the commissioner shall make the following information available on the agency's Internet website for each assessment instrument administered under Subsection (a), ~~(a-4), (a-5), (a-6)~~, (c), or (l):

- (1) the number of questions on the assessment instrument;
- (2) the number of questions that must be answered correctly to achieve satisfactory performance as determined by the commissioner under Section 39.0241(a);
- (3) the number of questions that must be answered correctly to achieve satisfactory performance under the college readiness performance standard as provided by Section 39.0241; and
- (4) the corresponding scale scores.

SECTION 2. This Act applies beginning with the 2013-2014 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

(p) On or before September 1 of each year, the commissioner shall make the following information available on the agency's Internet website for each assessment instrument administered under Subsection (a), ~~(a-4), (a-5), (a-6)~~, (c), or (l):

- (1) the number of questions on the assessment instrument;
- (2) the number of questions that must be answered correctly to achieve satisfactory performance as determined by the commissioner under Section 39.0241(a);
- (3) the number of questions that must be answered correctly to achieve satisfactory performance under the college readiness performance standard as provided by Section 39.0241; and
- (4) the corresponding scale scores.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.