

By: Huberty, Turner of Harris, Cook, Miles

H.B. No. 866

Substitute the following for H.B. No. 866:

By: Ratliff

C.S.H.B. No. 866

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the administration to public school students in certain
3 grades of state-administered assessment instruments.

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

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

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

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

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

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

23 [~~(4) social studies, in grade eight,~~

24 [~~(5)~~] science, in grades five and eight [~~, and~~

1 ~~[(6) any other subject and grade required by federal~~
2 ~~law].~~

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

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

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

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

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

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

23 (a-3) For each assessment instrument administered under
24 Subsection (a) or (a-5), the agency shall determine, based on
25 available information for that assessment instrument, the minimum
26 satisfactory adjusted scale score. The minimum satisfactory
27 adjusted scale score is the sum of the scale score that indicates

1 satisfactory performance on that assessment instrument, as
2 determined by the commissioner under Section 39.0241(a), plus the
3 minimum number of points that when added to the scale score produces
4 a score that, within a three percent margin of error, is predictive
5 that a student achieving that score would achieve satisfactory
6 performance on an assessment instrument in the same subject
7 administered to the student during the following school year.

8 (a-4) A student shall be assessed in grade four in a subject
9 for which an assessment instrument is administered under Subsection
10 (a) in grade three if, on the final assessment instrument in that
11 subject administered under Subsection (a) to the student in grade
12 three during the preceding school year, the student did not achieve
13 a score equal to or greater than the minimum satisfactory adjusted
14 scale score for that assessment instrument, as determined under
15 Subsection (a-3).

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

24 (a-6) A student shall be assessed in grade seven in a
25 subject for which an assessment instrument was administered under
26 Subsection (a-5) to the student in grade six if, on the final
27 assessment instrument in that subject administered to the student

1 in grade six during the preceding school year, the student did not
2 achieve a score equal to or greater than the minimum satisfactory
3 adjusted scale score for that assessment instrument, as determined
4 under Subsection (a-3).

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

8 (a-8) A school district or open-enrollment charter school
9 may, for its own use in determining whether students are performing
10 at a satisfactory level, administer to a student at the appropriate
11 grade level, other than a student required to be assessed, an
12 assessment instrument developed for purposes of Subsection (a-4),
13 (a-5), or (a-6). At the request of a district or open-enrollment
14 charter school, the agency shall provide, allow for the
15 administration of, and score each assessment instrument
16 administered under this subsection in the same manner and at the
17 same cost as for assessment instruments required to be administered
18 under the applicable subsection. The results of an assessment
19 instrument administered under this subsection may not be included
20 as an indicator of student achievement under Section 39.053 or any
21 other provision.

22 (a-9) If there is a conflict between this section and a
23 federal law or regulation as a result of forgoing under this section
24 certain administration of assessment instruments to students who
25 have recently performed successfully on assessment instruments
26 assessing the same subject, the commissioner shall seek a waiver
27 from the application of the conflicting federal law or regulation.

1 In seeking a waiver, the commissioner shall submit all relevant
2 data, including data relating to:

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

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

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

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

26 (c-1) To the greatest extent practicable, the ~~The~~ agency
27 shall develop any assessment instrument required under this section

1 in a manner that allows for the measurement of annual improvement in
2 student achievement as required by Sections 39.034(c) and (d).

3 (c-3) In adopting a schedule for the administration of
4 assessment instruments under this section, the State Board of
5 Education shall require:

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

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

18 (e) Under rules adopted by the State Board of Education,
19 every third year, the agency shall release the questions and answer
20 keys to each assessment instrument administered under Subsection
21 (a), (a-4), (a-5), (a-6), (b), (c), (d), or (l), excluding any
22 assessment instrument administered to a student for the purpose of
23 retaking the assessment instrument, after the last time the
24 instrument is administered for that school year. To ensure a valid
25 bank of questions for use each year, the agency is not required to
26 release a question that is being field-tested and was not used to
27 compute the student's score on the instrument. The agency shall

1 also release, under board rule, each question that is no longer
2 being field-tested and that was not used to compute a student's
3 score.

4 (1) The State Board of Education shall adopt rules for the
5 administration of the assessment instruments adopted under
6 Subsection (a) and, to the extent applicable, the assessment
7 instruments adopted under Subsection (a-4) in Spanish to students
8 in grades three, four, and [~~through~~] five who are of limited English
9 proficiency, as defined by Section 29.052, whose primary language
10 is Spanish, and who are not otherwise exempt from the
11 administration of an assessment instrument under Section
12 39.027(a)(1) or (2). Each student of limited English proficiency
13 whose primary language is Spanish, other than a student to whom
14 Subsection (b) applies, may be assessed using assessment
15 instruments in Spanish under this subsection for up to three years
16 or assessment instruments in English under Subsection (a) and, as
17 applicable, Subsection (a-4). The language proficiency assessment
18 committee established under Section 29.063 shall determine which
19 students are administered assessment instruments in Spanish under
20 this subsection.

21 (m) The commissioner by rule shall develop procedures under
22 which the language proficiency assessment committee established
23 under Section 29.063 shall determine which students are exempt from
24 the administration of the assessment instruments under Section
25 39.027(a)(1) or (2). The rules adopted under this subsection shall
26 ensure that the language proficiency assessment committee provides
27 that the exempted students are administered the assessment

1 instruments under Subsections (a) and (c) and, to the extent
2 applicable, Subsections (a-4), (a-5), and (a-6) at the earliest
3 practical date.

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

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

1 (1) the number of questions on the assessment
2 instrument;

3 (2) the number of questions that must be answered
4 correctly to achieve satisfactory performance as determined by the
5 commissioner under Section 39.0241(a);

6 (3) the number of questions that must be answered
7 correctly to achieve satisfactory performance under the college
8 readiness performance standard as provided by Section 39.0241; and

9 (4) the corresponding scale scores.

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

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