

By: Huberty

H.B. No. 741

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(a), Education Code, as effective
6 until on or before September 1, 2015, is amended to read as follows:

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

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

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

19 (3) writing, including spelling and grammar, in grades
20 four and seven;

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

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

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

1 SECTION 2. Section 39.023(a), Education Code, as effective
2 on or before September 1, 2015, is reenacted 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. Except as provided by Subsection
7 (a-2), all students, other than students assessed under Subsection
8 (b) or (1) or exempted under Section 39.027, shall be assessed in:

9 (1) mathematics, in grades three and five without the
10 aid of technology and in grade eight with the aid of technology on
11 any assessment instrument that includes algebra;

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

13 (3) writing, including spelling and grammar, in grades
14 four and seven;

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

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

17 SECTION 3. Section 39.023(a), Education Code, as effective
18 September 1, 2017, is amended to read as follows:

19 (a) The agency shall adopt or develop appropriate
20 criterion-referenced assessment instruments designed to assess
21 essential knowledge and skills in reading, writing, mathematics,
22 social studies, and science. Except as provided by Subsection
23 (a-2), all students, other than students assessed under Subsection
24 (b) or (1) or exempted under Section 39.027, shall be assessed in:

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

1 includes algebra;

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

4 (3) writing, including spelling and grammar, in grades
5 four and seven;

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

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

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

10 SECTION 4. Section 39.023(a-1), Education Code, as
11 effective until on or before September 1, 2015, is amended to read
12 as follows:

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

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

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

21 SECTION 5. Section 39.023(a-1), Education Code, as
22 effective on or before September 1, 2015, is reenacted to read as
23 follows:

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

27 (1) the score a student receives to provide reliable

1 information relating to a student's satisfactory performance for
2 each performance standard under Section 39.0241; and

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

5 SECTION 6. Section 39.023(a-1), Education Code, as
6 effective September 1, 2017, is amended to read as follows:

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

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

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

15 SECTION 7. Section 39.023(a-2), Education Code, as
16 effective until on or before September 1, 2015, is amended to read
17 as follows:

18 (a-2) Except as required by federal law, a student is not
19 required to be assessed in a subject otherwise assessed at the
20 student's grade level under Subsection (a) if the student:

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

26 (2) is enrolled in a course in the subject for which
27 the student will receive high school academic credit and will be

1 administered an end-of-course assessment instrument adopted under
2 Subsection (c) for the course.

3 SECTION 8. Section 39.023(a-2), Education Code, as
4 effective on or before September 1, 2015, is reenacted to read as
5 follows:

6 (a-2) Except as required by federal law, a student is not
7 required to be assessed in a subject otherwise assessed at the
8 student's grade level under Subsection (a) if the student:

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

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

18 SECTION 9. Section 39.023(a-2), Education Code, as
19 effective September 1, 2017, is amended to read as follows:

20 (a-2) Except as required by federal law, a student is not
21 required to be assessed in a subject otherwise assessed at the
22 student's grade level under Subsection (a) if the student:

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

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

5 SECTION 10. Section 39.023(a-3), Education Code, as added
6 by Chapter 861 (H.B. 462), Acts of the 83rd Legislature, Regular
7 Session, 2013, is redesignated as Section 39.023(a-11), Education
8 Code, and amended to read as follows:

9 (a-11) [~~(a-3)~~] The agency may not adopt or develop a
10 criterion-referenced assessment instrument under this section
11 based on common core state standards as defined by Section
12 28.002(b-1). This subsection does not prohibit the use of college
13 advanced placement tests or international baccalaureate
14 examinations as those terms are defined by Section 28.051.

15 SECTION 11. Sections 39.023(a-3), (a-4), (a-5), (a-6),
16 (a-7), (a-8), and (a-9), Education Code, as added by Chapter 1267
17 (H.B. 866), Acts of the 83rd Legislature, Regular Session, 2013, as
18 effective on or before September 1, 2015, are reenacted to read as
19 follows:

20 (a-3) For each assessment instrument administered under
21 Subsection (a) or (a-5), the agency shall determine, based on
22 available information for that assessment instrument, the minimum
23 satisfactory adjusted scale score. The minimum satisfactory
24 adjusted scale score is the sum of the scale score that indicates
25 satisfactory performance on that assessment instrument, as
26 determined by the commissioner under Section 39.0241(a), plus the
27 minimum number of points that when added to the scale score produces

1 a score that, within a three percent margin of error, is predictive
2 that a student achieving that score would achieve satisfactory
3 performance on an assessment instrument in the same subject
4 administered to the student during the following school year.

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

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

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

1 under Subsection (a-3).

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

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

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

27 (1) the likelihood that a student who achieves a score

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

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

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

14 SECTION 12. Section 39.023(a-10), Education Code, as
15 effective on or before September 1, 2015, is reenacted and amended
16 to read as follows:

17 (a-10) This subsection and Subsections (a-3), (a-4), (a-5),
18 (a-6), (a-7), (a-8), and (a-9) expire August 1, 2019 [~~September 1,~~
19 ~~2017~~].

20 SECTION 13. Section 39.023(b), Education Code, as effective
21 until on or before September 1, 2015, is amended to read as follows:

22 (b) The agency shall develop or adopt appropriate
23 criterion-referenced alternative assessment instruments to be
24 administered to a [~~each~~] student in a special education program
25 under Subchapter A, Chapter 29, for whom an assessment instrument
26 adopted under Subsection (a) or, to the extent applicable,
27 Subsection (a-4), (a-5), or (a-6), even with allowable

1 accommodations, would not provide an appropriate measure of student
2 achievement, as determined by the student's admission, review, and
3 dismissal committee, including assessment instruments approved by
4 the commissioner that measure growth. The assessment instruments
5 developed or adopted under this subsection, including the
6 assessment instruments approved by the commissioner, must, to the
7 extent allowed under federal law, provide a district with options
8 for the assessment of students under this subsection. The agency
9 may not adopt a performance standard that indicates that a
10 student's performance on the alternate assessment does not meet
11 standards if the lowest level of the assessment accurately
12 represents the student's developmental level as determined by the
13 student's admission, review, and dismissal committee.

14 SECTION 14. Section [39.023\(b\)](#), Education Code, as effective
15 on or before September 1, 2015, is reenacted to read as follows:

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

1 extent allowed under federal law, provide a district with options
2 for the assessment of students under this subsection. The agency
3 may not adopt a performance standard that indicates that a
4 student's performance on the alternate assessment does not meet
5 standards if the lowest level of the assessment accurately
6 represents the student's developmental level as determined by the
7 student's admission, review, and dismissal committee.

8 SECTION 15. Section 39.023(b), Education Code, as effective
9 September 1, 2017, is amended to read as follows:

10 (b) The agency shall develop or adopt appropriate
11 criterion-referenced alternative assessment instruments to be
12 administered to a ~~each~~ student in a special education program
13 under Subchapter A, Chapter 29, for whom an assessment instrument
14 adopted under Subsection (a) or, to the extent applicable,
15 Subsection (a-4), (a-5), or (a-6), even with allowable
16 accommodations, would not provide an appropriate measure of student
17 achievement, as determined by the student's admission, review, and
18 dismissal committee, including assessment instruments approved by
19 the commissioner that measure growth. The assessment instruments
20 developed or adopted under this subsection, including the
21 assessment instruments approved by the commissioner, must, to the
22 extent allowed under federal law, provide a district with options
23 for the assessment of students under this subsection. The agency
24 may not adopt a performance standard that indicates that a
25 student's performance on the alternate assessment does not meet
26 standards if the lowest level of the assessment accurately
27 represents the student's developmental level as determined by the

1 student's admission, review, and dismissal committee.

2 SECTION 16. Section 39.023(c-1), Education Code, as
3 effective until on or before September 1, 2015, is amended to read
4 as follows:

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

9 SECTION 17. Section 39.023(c-1), Education Code, as
10 effective on or before September 1, 2015, is reenacted to read as
11 follows:

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

16 SECTION 18. Section 39.023(c-1), Education Code, as
17 effective September 1, 2017, is amended to read as follows:

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

22 SECTION 19. Section 39.023(c-3), Education Code, as
23 effective until on or before September 1, 2015, is amended to read
24 as follows:

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

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

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

13 SECTION 20. Section [39.023\(c-3\)](#), Education Code, as
14 effective on or before September 1, 2015, is reenacted to read as
15 follows:

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

19 (1) assessment instruments administered under
20 Subsections (a), (a-4), (a-5), and (a-6) to be administered on a
21 schedule so that the first assessment instrument is administered at
22 least two weeks later than the date on which the first assessment
23 instrument was administered under Subsection (a) during the
24 2006-2007 school year; and

25 (2) the spring administration of end-of-course
26 assessment instruments under Subsection (c) to occur in each school
27 district not earlier than the first full week in May, except that

1 the spring administration of the end-of-course assessment
2 instruments in English I and English II must be permitted to occur
3 at an earlier date.

4 SECTION 21. Section 39.023(c-3), Education Code, as
5 effective September 1, 2017, is amended to read as follows:

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

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

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

21 SECTION 22. Section 39.023(e), Education Code, as effective
22 until on or before September 1, 2015, is amended to read as follows:

23 (e) Under rules adopted by the State Board of Education,
24 every third year, the agency shall release the questions and answer
25 keys to each assessment instrument administered under Subsection
26 (a), (a-4), (a-5), (a-6), (b), (c), (d), or (l), excluding any
27 assessment instrument administered to a student for the purpose of

1 retaking the assessment instrument, after the last time the
2 instrument is administered for that school year. To ensure a valid
3 bank of questions for use each year, the agency is not required to
4 release a question that is being field-tested and was not used to
5 compute the student's score on the instrument. The agency shall
6 also release, under board rule, each question that is no longer
7 being field-tested and that was not used to compute a student's
8 score. During the 2014-2015 and 2015-2016 school years, the agency
9 shall release the questions and answer keys to assessment
10 instruments as described by this subsection each year.

11 SECTION 23. Section 39.023(e), Education Code, as effective
12 on or before September 1, 2015, is reenacted to read as follows:

13 (e) Under rules adopted by the State Board of Education,
14 every third year, the agency shall release the questions and answer
15 keys to each assessment instrument administered under Subsection
16 (a), (a-4), (a-5), (a-6), (b), (c), (d), or (l), excluding any
17 assessment instrument administered to a student for the purpose of
18 retaking the assessment instrument, after the last time the
19 instrument is administered for that school year. To ensure a valid
20 bank of questions for use each year, the agency is not required to
21 release a question that is being field-tested and was not used to
22 compute the student's score on the instrument. The agency shall
23 also release, under board rule, each question that is no longer
24 being field-tested and that was not used to compute a student's
25 score. During the 2014-2015 and 2015-2016 school years, the agency
26 shall release the questions and answer keys to assessment
27 instruments as described by this subsection each year.

1 SECTION 24. Section 39.023(e), Education Code, as effective
2 September 1, 2017, is amended to read as follows:

3 (e) Under rules adopted by the State Board of Education,
4 every third year, the agency shall release the questions and answer
5 keys to each assessment instrument administered under Subsection
6 (a), (a-4), (a-5), (a-6), (b), (c), (d), or (l), excluding any
7 assessment instrument administered to a student for the purpose of
8 retaking the assessment instrument, after the last time the
9 instrument is administered for that school year. To ensure a valid
10 bank of questions for use each year, the agency is not required to
11 release a question that is being field-tested and was not used to
12 compute the student's score on the instrument. The agency shall
13 also release, under board rule, each question that is no longer
14 being field-tested and that was not used to compute a student's
15 score. During the 2014-2015 and 2015-2016 school years, the agency
16 shall release the questions and answer keys to assessment
17 instruments as described by this subsection each year.

18 SECTION 25. Section 39.023(l), Education Code, as effective
19 until on or before September 1, 2015, is amended to read as follows:

20 (l) The State Board of Education shall adopt rules for the
21 administration of the assessment instruments adopted under
22 Subsection (a) and, to the extent applicable, the assessment
23 instruments adopted under Subsection (a-4) in Spanish to students
24 in grades three through five who are of limited English
25 proficiency, as defined by Section 29.052, whose primary language
26 is Spanish, and who are not otherwise exempt from the
27 administration of an assessment instrument under Section

1 39.027(a)(1) or (2). Each student of limited English proficiency
2 whose primary language is Spanish, other than a student to whom
3 Subsection (b) applies, may be assessed using assessment
4 instruments in Spanish under this subsection for up to three years
5 or assessment instruments in English under Subsection (a) and, as
6 applicable, Subsection (a-4). The language proficiency assessment
7 committee established under Section 29.063 shall determine which
8 students are administered assessment instruments in Spanish under
9 this subsection.

10 SECTION 26. Section 39.023(1), Education Code, as effective
11 on or before September 1, 2015, is reenacted to read as follows:

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

1 this subsection.

2 SECTION 27. Section 39.023(1), Education Code, as effective
3 September 1, 2017, is amended to read as follows:

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 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 SECTION 28. Section 39.023(m), Education Code, as effective
22 until on or before September 1, 2015, is amended to read as follows:

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

1 ensure that the language proficiency assessment committee provides
2 that the exempted students are administered the assessment
3 instruments under Subsections (a) and (c) and, to the extent
4 applicable, Subsections (a-4), (a-5), and (a-6) at the earliest
5 practical date.

6 SECTION 29. Section 39.023(m), Education Code, as effective
7 on or before September 1, 2015, is reenacted to read as follows:

8 (m) The commissioner by rule shall develop procedures under
9 which the language proficiency assessment committee established
10 under Section 29.063 shall determine which students are exempt from
11 the administration of the assessment instruments under Section
12 39.027(a)(1) or (2). The rules adopted under this subsection shall
13 ensure that the language proficiency assessment committee provides
14 that the exempted students are administered the assessment
15 instruments under Subsections (a) and (c) and, to the extent
16 applicable, Subsections (a-4), (a-5), and (a-6) at the earliest
17 practical date.

18 SECTION 30. Section 39.023(m), Education Code, as effective
19 September 1, 2017, is amended to read as follows:

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

1 applicable, Subsections (a-4), (a-5), and (a-6) at the earliest
2 practical date.

3 SECTION 31. Section 39.023(n), Education Code, as effective
4 until on or before September 1, 2015, is amended to read as follows:

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

25 SECTION 32. Section 39.023(n), Education Code, as effective
26 on or before September 1, 2015, is reenacted to read as follows:

27 (n) This subsection applies only to a student who is

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

20 SECTION 33. Section [39.023\(n\)](#), Education Code, as effective
21 September 1, 2017, is amended to read as follows:

22 (n) This subsection applies only to a student who is
23 determined to have dyslexia or a related disorder and who is an
24 individual with a disability under 29 U.S.C. Section 705(20) and
25 its subsequent amendments. The agency shall adopt or develop
26 appropriate criterion-referenced assessment instruments designed
27 to assess the ability of and to be administered to each student to

1 whom this subsection applies for whom the assessment instruments
2 adopted under Subsection (a) and, to the extent applicable, the
3 assessment instruments adopted under Subsections (a-4), (a-5), and
4 (a-6), even with allowable modifications, would not provide an
5 appropriate measure of student achievement, as determined by the
6 committee established by the board of trustees of the district to
7 determine the placement of students with dyslexia or related
8 disorders. The committee shall determine whether any allowable
9 modification is necessary in administering to a student an
10 assessment instrument required under this subsection. The
11 assessment instruments required under this subsection shall be
12 administered on the same schedule as the assessment instruments
13 administered under Subsections [~~Subsection~~] (a), (a-4), (a-5), and
14 (a-6), as applicable.

15 SECTION 34. Section 39.023(p), Education Code, as effective
16 until on or before September 1, 2015, is amended to read as follows:

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

21 (1) the number of questions on the assessment
22 instrument;

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

26 (3) the number of questions that must be answered
27 correctly to achieve satisfactory performance under the college

1 readiness performance standard as provided by Section 39.0241; and

2 (4) the corresponding scale scores.

3 SECTION 35. Section 39.023(p), Education Code, as effective
4 on or before September 1, 2015, is reenacted to read as follows:

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

9 (1) the number of questions on the assessment
10 instrument;

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

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

17 (4) the corresponding scale scores.

18 SECTION 36. Section 39.023(p), Education Code, as effective
19 September 1, 2017, is amended to read as follows:

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

24 (1) the number of questions on the assessment
25 instrument;

26 (2) the number of questions that must be answered
27 correctly to achieve satisfactory performance as determined by the

1 commissioner under Section 39.0241(a);

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

5 (4) the corresponding scale scores.

6 SECTION 37. Effective August 1, 2019, Sections 39.023(a),
7 (a-1), (a-2), (b), (c-1), (c-3), (e), (l), (m), (n), and (p),
8 Education Code, are amended 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 through
16 seven without the aid of technology and in grade eight with the aid
17 of technology on any assessment instrument that includes algebra;

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

19 (3) writing, including spelling and grammar, in grades
20 four and seven;

21 (4) social studies, in grade eight;

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

23 (6) any other subject and grade required by federal
24 law.

25 (a-1) The agency shall develop assessment instruments
26 required under Subsection (a) in a manner that allows, to the extent
27 practicable:

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

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

6 (a-2) Except as required by federal law, a student is not
7 required to be assessed in a subject otherwise assessed at the
8 student's grade level under Subsection (a) if the student:

9 (1) is enrolled in a course in the subject intended for
10 students above the student's grade level and will be administered
11 an assessment instrument adopted or developed under Subsection (a)
12 that aligns with the curriculum for the course in which the student
13 is enrolled; or

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

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

1 assessment instruments approved by the commissioner, must, to the
2 extent allowed under federal law, provide a district with options
3 for the assessment of students under this subsection. The agency
4 may not adopt a performance standard that indicates that a
5 student's performance on the alternate assessment does not meet
6 standards if the lowest level of the assessment accurately
7 represents the student's developmental level as determined by the
8 student's admission, review, and dismissal committee.

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-3) In adopting a schedule for the administration of
14 assessment instruments under this section, the State Board of
15 Education shall require:

16 (1) assessment instruments administered under
17 Subsection (a) to be administered on a schedule so that the first
18 assessment instrument is administered at least two weeks later than
19 the date on which the first assessment instrument was administered
20 under Subsection (a) during the 2006-2007 school year; and

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

27 (e) Under rules adopted by the State Board of Education,

1 every third year, the agency shall release the questions and answer
2 keys to each assessment instrument administered under Subsection
3 (a), (b), (c), (d), or (1), excluding any assessment instrument
4 administered to a student for the purpose of retaking the
5 assessment instrument, after the last time the instrument is
6 administered for that school year. To ensure a valid bank of
7 questions for use each year, the agency is not required to release a
8 question that is being field-tested and was not used to compute the
9 student's score on the instrument. The agency shall also release,
10 under board rule, each question that is no longer being
11 field-tested and that was not used to compute a student's score.
12 ~~[During the 2014-2015 and 2015-2016 school years, the agency shall~~
13 ~~release the questions and answer keys to assessment instruments as~~
14 ~~described by this subsection each year.]~~

15 (1) The State Board of Education shall adopt rules for the
16 administration of the assessment instruments adopted under
17 Subsection (a) in Spanish to students in grades three through five
18 who are of limited English proficiency, as defined by Section
19 [29.052](#), whose primary language is Spanish, and who are not
20 otherwise exempt from the administration of an assessment
21 instrument under Section [39.027](#)(a)(1) or (2). Each student of
22 limited English proficiency whose primary language is Spanish,
23 other than a student to whom Subsection (b) applies, may be assessed
24 using assessment instruments in Spanish under this subsection for
25 up to three years or assessment instruments in English under
26 Subsection (a). The language proficiency assessment committee
27 established under Section [29.063](#) shall determine which students are

1 administered assessment instruments in Spanish under this
2 subsection.

3 (m) The commissioner by rule shall develop procedures under
4 which the language proficiency assessment committee established
5 under Section 29.063 shall determine which students are exempt from
6 the administration of the assessment instruments under Section
7 39.027(a)(1) or (2). The rules adopted under this subsection shall
8 ensure that the language proficiency assessment committee provides
9 that the exempted students are administered the assessment
10 instruments under Subsections (a) and (c) at the earliest practical
11 date.

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

1 administered under Subsection (a).

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

6 (1) the number of questions on the assessment
7 instrument;

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

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

14 (4) the corresponding scale scores.

15 SECTION 38. (a) Except as otherwise provided by this Act,
16 this Act takes effect on any date not later than August 1, 2017, on
17 which the commissioner of education:

18 (1) obtains any necessary waiver from the application
19 of federal law or regulation conflicting with Section 39.023,
20 Education Code, as amended by this Act, as required by Section
21 39.023(a-9), Education Code, as reenacted by this Act; or

22 (2) receives written notification from the United
23 States Department of Education that a waiver is not required.

24 (b) This Act applies beginning with the first school year
25 that begins after the date on which this Act takes effect under
26 Subsection (a) of this section.

27 (c) If the commissioner of education obtains any necessary

1 waiver or receives written notification as described by Subsection
2 (a) of this section, the commissioner shall certify that the
3 commissioner has obtained the waiver or received notification that
4 a waiver is not required, as applicable, and shall publish notice of
5 that fact in the Texas Register as soon as practicable after
6 obtaining the waiver or receiving notification.