H.B. No. 3906

AN ACT

relating to the assessment of public school students, including the development and administration of assessment instruments, and technology permitted for use by students.

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

SECTION 1.  Section 39.022, Education Code, is amended to read as follows:

Sec. 39.022.  ASSESSMENT PROGRAM. (a) The State Board of Education by rule shall create and implement a statewide assessment program that is knowledge- and skills-based to ensure school accountability for student achievement that achieves the goals provided under Section 4.002. After adopting rules under this section, the State Board of Education shall consider the importance of maintaining stability in the statewide assessment program when adopting any subsequent modification of the rules.

(b)  It is the policy of this state that the statewide assessment program be designed to:

(1)  provide assessment instruments that are as short as practicable; and

(2)  minimize the disruption to the educational program.

SECTION 2.  Effective September 1, 2021, Section 39.023(a), Education Code, is amended 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 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 through eight;

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

[~~(4)~~]  social studies, in grade eight;

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

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

SECTION 3.  Section 39.023, Education Code, is amended by amending Subsections (a), (a-12), (a-13), (b-1), (c), and (c-3) and adding Subsections (a-4), (a-14), (a-15), (a-16), (c-7), (c-8), and (o) 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 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 through eight;

(3)  writing, including spelling and 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-4)  For purposes of Subsection (a)(1), the State Board of Education by rule may designate sections of a mathematics assessment instrument for a grade level that:

(1)  may be completed with the aid of technology; and

(2)  must be completed without the aid of technology.

(a-12)  An assessment instrument adopted or developed under Subsection (a) may not have more than three parts. A part of an assessment instrument must be designed so that:

(1)  if administered to students in grades three and four [~~through five~~], 85 percent of students will be able to complete that part [~~the assessment instrument~~] within 60 [~~120~~] minutes; and

(2)  if administered to students in grades five [~~six~~] through eight, 85 percent of students will be able to complete that part [~~the assessment instrument~~] within 75 [~~180~~] minutes.

(a-13)  The amount of time allowed for administration of an assessment instrument adopted or developed under Subsection (a) may not exceed eight hours, and the administration may occur in multiple parts over more than [~~on only~~] one day.

(a-14)  Subsections (a-12) and (a-13) do not apply to the administration of assessment instruments for a grade level if, as a result of the time restriction imposed, the assessment instrument no longer:

(1)  complies with federal law; or

(2)  is valid and reliable, based on findings and recommendations made by the advisory committees established under Section 39.02302.

(a-15)  Subsections (a-12) and (a-13) do not apply to a classroom portfolio method used to assess writing performance.

(a-16)  An assessment instrument under this section may not be administered to a kindergarten student except for the purpose of determining whether the student is entitled to the benefit of the Foundation School Program as provided under this code.

(b-1)  The agency, in conjunction with appropriate interested persons, shall redevelop assessment instruments adopted or developed under Subsection (b) for administration to significantly cognitively disabled students in a manner consistent with federal law. An assessment instrument under this subsection may not require a teacher to prepare tasks or materials for a student who will be administered such an assessment instrument. A classroom portfolio method used to assess writing performance may require a teacher to prepare tasks and materials [~~Assessment instruments adopted or developed under this subsection shall be administered not later than the 2014-2015 school year~~].

(c)  The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history. The Algebra I end-of-course assessment instrument must be administered with the aid of technology, but may include one or more parts that prohibit the use of technology. The English I and English II end-of-course assessment instruments must each assess essential knowledge and skills in both reading and writing [~~in the same assessment instrument~~] and must provide a single score. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this subsection. If a student is in a special education program under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection. The State Board of Education shall administer the assessment instruments. An end-of-course assessment instrument may be administered in multiple parts over more than one day. The State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3).

(c-3)  Except as provided by Subsection (c-7), in [~~In~~] adopting a schedule for the administration of assessment instruments under this section, the State Board of Education shall ensure that [~~require:~~

[~~(1)~~]  assessment instruments administered under Subsection (a) or (c) are not [~~to be~~] administered on the first instructional day of a week [~~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 and English II must be permitted to occur at an earlier date~~].

(c-7)  Subsection (c-3) does not apply to a classroom portfolio method used to assess writing performance if student performance under that method is less than 50 percent of a student's overall assessed performance in writing.

(c-8)  Beginning with the 2022-2023 school year, an assessment instrument developed under Subsection (a) or (c) may not present more than 75 percent of the questions in a multiple choice format.

(o)  The agency shall adopt or develop optional interim assessment instruments for each subject or course for each grade level subject to assessment under this section. A school district may not be required to administer interim assessment instruments adopted or developed under this subsection. An interim assessment instrument:

(1)  must be:

(A)  predictive of the assessment instrument for the applicable subject or course for that grade level required under this section; and

(B)  administered electronically; and

(2)  may not be used for accountability purposes.

SECTION 4.  Subchapter B, Chapter 39, Education Code, is amended by adding Section 39.02302 to read as follows:

Sec. 39.02302.  ADVISORY COMMITTEES FOR ASSESSMENT INSTRUMENTS. (a) The commissioner shall appoint a technical advisory committee to advise the commissioner and the agency regarding the development of valid and reliable assessment instruments for purposes of this chapter. The members of the committee must be experts on educational assessments and psychometrics.

(b)  The commissioner shall appoint an educator advisory committee to advise the commissioner and the agency regarding the development of academically appropriate assessment instruments for purposes of this chapter. The members of the committee must include experts in curriculum and instruction.

(c)  The agency may compensate a member of the technical or educator advisory committee or reimburse the member for expenses incurred in the performance of duties related to the member's service on the committee.

(d)  The selection of or payment to a member of the technical or educator advisory committee is not subject to Chapter 2110 or 2254, Government Code.

SECTION 5.  Section 39.0234, Education Code, is amended to read as follows:

Sec. 39.0234.  ELECTRONIC ADMINISTRATION OF ASSESSMENT INSTRUMENTS [~~BY COMPUTER~~]. [~~(a)~~] The agency shall ensure that assessment instruments required under Section 39.023 are capable of being administered electronically [~~by computer~~]. [~~The commissioner may not require a school district or open-enrollment charter school to administer an assessment instrument by computer.~~]

SECTION 6.  Subchapter B, Chapter 39, Education Code, is amended by adding Sections 39.02341, 39.0236, and 39.0237 to read as follows:

Sec. 39.02341.  TRANSITION TO ELECTRONIC ADMINISTRATION OF ASSESSMENT INSTRUMENTS. (a) The agency, in consultation with the State Board of Education, shall develop a transition plan to administer all assessment instruments required under Section 39.023 electronically beginning not later than the 2022-2023 school year. The plan must:

(1)  evaluate the availability of Internet access for each school district in this state;

(2)  identify changes to state law or policy necessary to improve the availability of Internet access described by Subdivision (1);

(3)  evaluate the state's experience with administering online assessment instruments, including the occurrence or effects of power outages or other types of disruptions of Internet service, and actions taken by the state to mitigate the occurrence and effect of those disruptions; and

(4)  identify and evaluate actions taken by the state to improve the administration of online assessment instruments.

(b)  The agency shall implement the transition plan beginning on September 1, 2021. In order to ensure legislative approval of the transition plan, this subsection expires August 31, 2021.

(c)  Not later than December 1, 2020, the agency shall submit to the governor, the lieutenant governor, and the members of the legislature a report on the plan developed under Subsection (a). The report must include:

(1)  information from school districts assessing the needs of those districts in transitioning to electronic administration;

(2)  any recommended changes to state law to assist in the transition; and

(3)  a recommended timeline for statewide implementation of electronic administration.

(d)  This section expires September 1, 2023.

Sec. 39.0236.  INTEGRATED FORMATIVE ASSESSMENT PILOT PROGRAM. (a) The agency shall establish a pilot program in which participating school districts administer to students integrated formative assessment instruments for subjects or courses for a grade level subject to assessment under Section 28.006 or 39.023.

(b)  A school district may elect to participate in the pilot program.

(c)  A school district's participation in the pilot program does not affect the district's obligations regarding the administration of assessment instruments required under Section 39.023.

(d)  Not later than December 1 of each even-numbered year, the agency shall submit to the governor, the lieutenant governor, and the members of the legislature a report on the pilot program that includes:

(1)  an analysis of whether the administration of integrated formative assessment instruments under the pilot program provided any improvement in instructional support during the preceding two school years; and

(2)  a determination of the feasibility of replacing the assessment instruments required under Section 39.023 with integrated formative assessment instruments.

Sec. 39.0237.  CONSIDERATION OF PREKINDERGARTEN ASSESSMENT INSTRUMENTS PROHIBITED. Performance on an assessment instrument administered to students in prekindergarten may not be considered for any purpose under this chapter or Chapter 39A.

SECTION 7.  Subchapter Z, Chapter 25, Education Code, is amended by adding Section 25.904 to read as follows:

Sec. 25.904.  USE OF CALCULATOR APPLICATION IN PLACE OF GRAPHING CALCULATOR. (a)  A school district shall permit a student enrolled in a course that requires the student to use a graphing calculator to use a calculator application on a computing device, including a personal, laptop, or tablet computer, that provides the same functionality, unless the district makes available to the student a graphing calculator at no cost to the student.

(b)  A school district may adopt policies related to student use of a computing device under this section.

(c)  To the extent this section conflicts with Section 37.082, this section prevails.

SECTION 8.  The Texas Education Agency may use not more than $35 million annually of foundation school program funds appropriated to the agency to implement a provision of this Act.

SECTION 9.  The Texas Education Agency is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Texas Education Agency may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 10.  Unless this Act provides for an effective date later than September 1, 2019, this Act applies beginning with the 2019-2020 school year.

SECTION 11.  Except as otherwise provided by this Act:

(1)  this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2)  if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

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  President of the Senate Speaker of the House

I certify that H.B. No. 3906 was passed by the House on May 9, 2019, by the following vote:  Yeas 139, Nays 1, 3 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3906 on May 24, 2019, and requested the appointment of a conference committee to consider the differences between the two houses; that the House adopted the conference committee report on H.B. No. 3906 on May 26, 2019, by the following vote:  Yeas 146, Nays 0, 1 present, not voting; and that the House adopted H.C.R. No. 191 authorizing certain corrections in H.B. No. 3906 on May 26, 2019, by the following vote: Yeas 146, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3906 was passed by the Senate, with amendments, on May 22, 2019, by the following vote:  Yeas 29, Nays 2; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; that the Senate adopted the conference committee report on H.B. No. 3906 on May 26, 2019, by the following vote:  Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 191 authorizing certain corrections in H.B. No. 3906 on May 27, 2019, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

                 Date

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               Governor