

By: Huberty

H.B. No. 2983

Substitute the following for H.B. No. 2983:

By: Meyer

C.S.H.B. No. 2983

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-4), (a-5), (a-6),  
8 (a-7), (a-8), (a-9), and (a-10) 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), (b-1), or (l) or exempted under Section 39.027, shall be  
15 assessed in:

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

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

22 (3) writing, including spelling and grammar, in grades  
23 five and eight [~~four and seven~~];

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

1 (5) science, in grades five and eight [~~and~~  
2 [~~(6) any other subject and grade required by federal~~  
3 ~~law~~].

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

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

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

12 (a-2) Except as required by a provision of federal law that  
13 has not been waived, a student is not required to be assessed in a  
14 subject otherwise assessed at the student's grade level under  
15 Subsection (a) if the student:

16 (1) is enrolled in a course in the subject intended for  
17 students above the student's grade level and will be administered  
18 an assessment instrument adopted or developed under Subsection (a),  
19 (a-5), (a-6), or (a-7) that aligns with the curriculum for the  
20 course in which the student is enrolled; or

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

25 (a-4) For each assessment instrument administered under  
26 Subsection (a) or (a-6), the agency shall determine, based on  
27 available information for that assessment instrument, the minimum

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

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

18 (a-6) A student shall be assessed in grade six in a subject  
19 for which an assessment instrument is administered under Subsection  
20 (a)(1) or (2) in grade five if, on the final assessment instrument  
21 in that subject administered under Subsection (a)(1) or (2) to the  
22 student in grade five during the preceding school year, the student  
23 did not achieve a score equal to or greater than the minimum  
24 satisfactory adjusted scale score for that assessment instrument,  
25 as determined under Subsection (a-4).

26 (a-7) A student shall be assessed in grade seven in a  
27 subject for which an assessment instrument was administered under

1 Subsection (a-6) to the student in grade six if, on the final  
2 assessment instrument in that subject administered to the student  
3 in grade six during the preceding school year, the student did not  
4 achieve a score equal to or greater than the minimum satisfactory  
5 adjusted scale score for that assessment instrument, as determined  
6 under Subsection (a-4).

7 (a-8) A student assessed in mathematics under Subsection  
8 (a-5), (a-6), or (a-7) shall be assessed without the aid of  
9 technology.

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

24 (a-10) If there is a conflict between this section and a  
25 federal law or regulation as a result of forgoing under this section  
26 certain administration of assessment instruments to students who  
27 have recently performed successfully on assessment instruments

1 assessing the same subject, the commissioner shall seek a waiver  
2 from the application of the conflicting federal law or regulation.  
3 In seeking a waiver, the commissioner shall submit all relevant  
4 data, including data relating to:

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

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

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

19 (b) The agency shall develop or adopt appropriate  
20 criterion-referenced alternative assessment instruments to be  
21 administered to a a ~~each~~ student in a special education program  
22 under Subchapter A, Chapter 29, for whom an assessment instrument  
23 adopted under Subsection (a) or, to the extent applicable,  
24 Subsection (a-5), (a-6), or (a-7), even with allowable  
25 accommodations, would not provide an appropriate measure of student  
26 achievement, as determined by the student's admission, review, and  
27 dismissal committee, including assessment instruments approved by

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

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

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

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

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

1 instruments in English I and English II must be permitted to occur  
2 at an earlier date.

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-5), (a-6), (a-7), (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~~  
16 ~~agency shall release the questions and answer keys to assessment~~  
17 ~~instruments as described by this subsection each year.~~]

18 (l) The State Board of Education shall adopt rules for the  
19 administration of the assessment instruments adopted under  
20 Subsection (a) and, to the extent applicable, the assessment  
21 instruments adopted under Subsection (a-5) in Spanish to students  
22 in grades three, four, and [~~through~~] five who are of limited English  
23 proficiency, as defined by Section 29.052, whose primary language  
24 is Spanish, and who are not otherwise exempt from the  
25 administration of an assessment instrument under Section  
26 39.027(a)(1) or (2). Each student of limited English proficiency  
27 whose primary language is Spanish, other than a student to whom

1 Subsection (b) applies, may be assessed using assessment  
2 instruments in Spanish under this subsection for up to three years  
3 or assessment instruments in English under Subsection (a) and, as  
4 applicable, Subsection (a-5). The language proficiency assessment  
5 committee established under Section 29.063 shall determine which  
6 students are administered assessment instruments in Spanish under  
7 this subsection.

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-5), (a-6), and (a-7) at the earliest  
17 practical date.

18 (n) This subsection applies only to a student who is  
19 determined to have dyslexia or a related disorder and who is an  
20 individual with a disability under 29 U.S.C. Section 705(20) and  
21 its subsequent amendments. The agency shall adopt or develop  
22 appropriate criterion-referenced assessment instruments designed  
23 to assess the ability of and to be administered to each student to  
24 whom this subsection applies for whom the assessment instruments  
25 adopted under Subsection (a) and, to the extent applicable, the  
26 assessment instruments adopted under Subsections (a-5), (a-6), and  
27 (a-7), even with allowable modifications, would not provide an



1 appropriate measure of student achievement, as determined by the  
2 committee established by the board of trustees of the district to  
3 determine the placement of students with dyslexia or related  
4 disorders. The committee shall determine whether any allowable  
5 modification is necessary in administering to a student an  
6 assessment instrument required under this subsection. The  
7 assessment instruments required under this subsection shall be  
8 administered on the same schedule as the assessment instruments  
9 administered under Subsections (a), (a-5), (a-6), and (a-7), as  
10 applicable [~~Subsection (a)~~].

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

15 (1) the number of questions on the assessment  
16 instrument;

17 (2) the number of questions that must be answered  
18 correctly to achieve satisfactory performance as determined by the  
19 commissioner under Section [39.0241\(a\)](#);

20 (3) the number of questions that must be answered  
21 correctly to achieve satisfactory performance under the college  
22 readiness performance standard as provided by Section [39.0241](#); and

23 (4) the corresponding scale scores.

24 SECTION 2. (a) This Act takes effect on any date not later  
25 than September 1, 2021, on which the commissioner of education:

26 (1) obtains any necessary waiver from the application  
27 of federal law or regulation conflicting with Section [39.023](#),

1 Education Code, as amended by this Act, as required by Section  
2 39.023(a-10), Education Code, as added by this Act; or

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

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

8 (c) If the commissioner of education obtains any necessary  
9 waiver or receives written notification as described by Subsection  
10 (a) of this section, the commissioner shall certify that the  
11 commissioner has obtained the waiver or received notification that  
12 a waiver is not required, as applicable, and shall publish notice of  
13 that fact in the Texas Register as soon as practicable after  
14 obtaining the waiver or receiving notification.