

By: Huberty

H.B. No. 2983

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

(4) social studies, in grade eight; and

(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) The agency may not adopt or develop a criterion-  
24 referenced assessment instrument under this section based on common  
25 core state standards as defined by Section [28.002\(b-1\)](#). This  
26 subsection does not prohibit the use of college advanced placement  
27 tests or international baccalaureate examinations as those terms

1 are defined by Section 28.051.

2 (a-4) For each assessment instrument administered under  
3 Subsection (a) or (a-5), the agency shall determine, based on  
4 available information for that assessment instrument, the minimum  
5 satisfactory adjusted scale score. The minimum satisfactory  
6 adjusted scale score is the sum of the scale score that indicates  
7 satisfactory performance on that assessment instrument, as  
8 determined by the commissioner under Section 39.0241(a), plus the  
9 minimum number of points that when added to the scale score produces  
10 a score that, within a three percent margin of error, is predictive  
11 that a student achieving that score would achieve satisfactory  
12 performance on an assessment instrument in the same subject  
13 administered to the student during the following school year.

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

22 (a-6) A student shall be assessed in grade six in a subject  
23 for which an assessment instrument is administered under Subsection  
24 (a)(1) or (2) in grade five if, on the final assessment instrument  
25 in that subject administered under Subsection (a)(1) or (2) to the  
26 student in grade five during the preceding school year, the student  
27 did not achieve a score equal to or greater than the minimum

1 satisfactory adjusted scale score for that assessment instrument,  
2 as determined under Subsection (a-3).

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

11 (a-8) A student assessed in mathematics under Subsection  
12 (a-4), (a-5), or (a-6) shall be assessed without the aid of  
13 technology.

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

1       (a-10) If there is a conflict between this section and a  
2 federal law or regulation as a result of forgoing under this section  
3 certain administration of assessment instruments to students who  
4 have recently performed successfully on assessment instruments  
5 assessing the same subject, the commissioner shall seek a waiver  
6 from the application of the conflicting federal law or regulation.  
7 In seeking a waiver, the commissioner shall submit all relevant  
8 data, including data relating to:

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

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

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

23       (a-11) Before an assessment instrument adopted or developed  
24 under Subsection (a) may be administered under that subsection, the  
25 assessment instrument must, on the basis of empirical evidence, be  
26 determined to be valid and reliable by an entity that is independent  
27 of the agency and of any other entity that developed the assessment

1 instrument.

2 (a-12) An assessment instrument adopted or developed under  
3 Subsection (a) must be designed so that:

4 (1) if administered to students in grades three  
5 through five, 85 percent of students will be able to complete the  
6 assessment instrument within 120 minutes; and

7 (2) if administered to students in grades six through  
8 eight, 85 percent of students will be able to complete the  
9 assessment instrument within 180 minutes.

10 (a-13) The amount of time allowed for administration of an  
11 assessment instrument adopted or developed under Subsection (a) may  
12 not exceed eight hours, and the administration may occur on only one  
13 day.

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

1 may not adopt a performance standard that indicates that a  
2 student's performance on the alternate assessment does not meet  
3 standards if the lowest level of the assessment accurately  
4 represents the student's developmental level as determined by the  
5 student's admission, review, and dismissal committee.

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

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

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

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

25 (e) Under rules adopted by the State Board of Education,  
26 every third year, the agency shall release the questions and answer  
27 keys to each assessment instrument administered under Subsection

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

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

1 students are administered assessment instruments in Spanish under  
2 this 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) and, to the extent  
11 applicable, Subsections (a-4), (a-5), and (a-6) at the earliest  
12 practical date.

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

1 assessment instrument required under this subsection. The  
2 assessment instruments required under this subsection shall be  
3 administered on the same schedule as the assessment instruments  
4 administered under Subsections (a), (a-4), (a-5), and (a-6), as  
5 applicable [~~Subsection (a)~~].

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

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

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

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

18 (4) the corresponding scale scores.

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

21 (1) obtains any necessary waiver from the application  
22 of federal law or regulation conflicting with Section [39.023](#),  
23 Education Code, as amended by this Act, as required by Section  
24 [39.023\(a-9\)](#), Education Code, as added by this Act; or

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

27 (b) This Act applies beginning with the first school year

1 that begins after the date on which this Act takes effect under  
2 Subsection (a) of this section.

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