

By: Huberty

H.B. No. 1740

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(a), Education Code, effective until September 1, 2021, 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), (b-1), or (1) or exempted under Section 39.027, shall be assessed in:

(1) mathematics, [~~annually~~] in grades three and five [~~through eight~~];

(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~~

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

SECTION 2. Section 39.023(a), Education Code, effective

1 September 1, 2021, is amended to read as follows:

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

8 (1) mathematics, [~~annually~~] in grades three and five
9 [~~through eight~~];

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

12 (3) social studies, in grade eight; and

13 (4) science, in grades five and eight [~~, and~~

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

16 SECTION 3. Section 39.023, Education Code, is amended by
17 amending Subsections (a-1), (a-2), (a-12), (a-13), (b), (c-1),
18 (c-3), (c-8), (e), (l), (m), (n), and (p) and adding Subsections
19 (a-5), (a-6), (a-7), (a-8), (a-9), (a-10), and (a-17) to read as
20 follows:

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

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

27 (2) an appropriate range of performances to serve as a

1 valid indication of growth in student achievement.

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

6 (1) is enrolled in a course in the subject intended for
7 students above the student's grade level and will be administered
8 an assessment instrument adopted or developed under Subsection (a),
9 (a-6), (a-7), or (a-8) that aligns with the curriculum for the
10 course in which the student is enrolled; or

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

15 (a-5) For each assessment instrument administered under
16 Subsection (a) or (a-7), the agency shall determine, based on
17 available information for that assessment instrument, the minimum
18 satisfactory adjusted scale score. The minimum satisfactory
19 adjusted scale score is the sum of the scale score that indicates
20 satisfactory performance on that assessment instrument, as
21 determined by the commissioner under Section 39.0241(a), plus the
22 minimum number of points that when added to the scale score produces
23 a score that, within a three percent margin of error, is predictive
24 that a student achieving that score would achieve satisfactory
25 performance on an assessment instrument in the same subject
26 administered to the student during the following school year.

27 (a-6) A student shall be assessed in grade four in a subject

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

8 (a-7) A student shall be assessed in grade six in a subject
9 for which an assessment instrument is administered under Subsection
10 (a)(1) or (2) in grade five if, on the final assessment instrument
11 in that subject administered under Subsection (a)(1) or (2) to the
12 student in grade five during the preceding school year, the student
13 did not achieve a score equal to or greater than the minimum
14 satisfactory adjusted scale score for that assessment instrument,
15 as determined under Subsection (a-5).

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

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

27 (a-10) A school district or open-enrollment charter school

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

14 (a-12) An assessment instrument adopted or developed under
15 Subsection (a), (a-6), (a-7), or (a-8) may not have more than three
16 parts. A part of an assessment instrument must be designed so
17 that:

18 (1) if administered to students in grades three and
19 four, 85 percent of students will be able to complete that part
20 within 60 minutes; and

21 (2) if administered to students in grades five through
22 eight, 85 percent of students will be able to complete that part
23 within 75 minutes.

24 (a-13) The amount of time allowed for administration of an
25 assessment instrument adopted or developed under Subsection (a),
26 (a-6), (a-7), or (a-8) may not exceed eight hours, and the
27 administration may occur in multiple parts over more than one day.

1 (a-17) 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-5), 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 (b) The agency shall develop or adopt appropriate
24 criterion-referenced alternative assessment instruments to be
25 administered to a [each] student in a special education program
26 under Subchapter A, Chapter 29, for whom an assessment instrument
27 adopted under Subsection (a) or, to the extent applicable,

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

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

19 (c-3) Except as provided by Subsection (c-7), in adopting a
20 schedule for the administration of assessment instruments under
21 this section, the State Board of Education shall ensure
22 that assessment instruments administered under Subsection (a),
23 (a-6), (a-7), (a-8), or (c) are not administered on the first
24 instructional day of a week.

25 (c-8) Beginning with the 2022-2023 school year, an
26 assessment instrument developed under Subsection (a), (a-6),
27 (a-7), (a-8), or (c) may not present more than 75 percent of the

1 questions in a multiple choice format.

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

17 (l) The State Board of Education shall adopt rules for the
18 administration of the assessment instruments adopted under
19 Subsection (a) and, to the extent applicable, the assessment
20 instruments adopted under Subsection (a-6) in Spanish to students
21 in grades three, four, and [~~through~~] five who are of limited English
22 proficiency, as defined by Section 29.052, whose primary language
23 is Spanish, and who are not otherwise exempt from the
24 administration of an assessment instrument under Section
25 39.027(a)(1) or (2). Each student of limited English proficiency
26 whose primary language is Spanish, other than a student to whom
27 Subsection (b) applies, may be assessed using assessment

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

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

17 (n) This subsection applies only to a student who is
18 determined to have dyslexia or a related disorder and who is an
19 individual with a disability under 29 U.S.C. Section 705(20) and
20 its subsequent amendments. The agency shall adopt or develop
21 appropriate criterion-referenced assessment instruments designed
22 to assess the ability of and to be administered to each student to
23 whom this subsection applies for whom the assessment instruments
24 adopted under Subsection (a) and, to the extent applicable, the
25 assessment instruments adopted under Subsections (a-6), (a-7), and
26 (a-8), even with allowable modifications, would not provide an
27 appropriate measure of student achievement, as determined by the

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

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

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

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

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

22 (4) the corresponding scale scores.

23 SECTION 4. (a) This Act takes effect on any date not later
24 than September 1, 2023, on which the commissioner of education:

25 (1) obtains any necessary waiver from the application
26 of federal law or regulation conflicting with Section [39.023](#),
27 Education Code, as amended by this Act, as required by Section

1 39.023(a-17), Education Code, as added by this Act; or

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

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

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