

## **BILL ANALYSIS**

C.S.H.B. 4402  
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Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Despite the intent of public school accountability system to ensure the highest quality public education for students, the system disproportionately weighs standardized testing to the detriment of students, parents, campuses, and districts across the state. Public concern over "high-stakes testing" has grown, and the number of STAAR exams students are required to take over the course of their education exceeds the minimum federal requirements. In the decade since the implementation of the STAAR exams, our accountability system has exacerbated these concerns by calculating the student achievement domain for grades three through eight and the closing the gaps domain based on standardized test performance. The federal Every Student Succeeds Act requires that accountability systems use multiple measures of school success, including academic outcomes, student progress, and school quality, and gives states the flexibility to create their own educational innovations and include new measures of school quality in student success.

C.S.H.B. 4402 seeks to reduce the burden of high-stakes testing on students and parents and enable public school districts and open-enrollment charter schools to focus on other initiatives and programs that emphasize student success in a variety of areas of growth and development. Among other provisions, the bill provides for limitations on the use of certain indicators in determining a campus performance rating and adds several performance indicators to account for certain factors, including student participation in extracurricular and cocurricular activities, the results of parent and student satisfaction surveys, and middle school student success in accelerated mathematics.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 3 of this bill.

### **ANALYSIS**

C.S.H.B. 4402 amends the Education Code to revise certain provisions relating to the administration of statewide standardized tests, performance indicators, and performance ratings and to provide for through-year assessment and create an extracurricular and cocurricular allotment under the foundation school program.

## **Through-Year Assessment Program**

C.S.H.B. 4402 requires the Texas Education Agency (TEA), except as otherwise provided by commissioner of education rule and beginning with the 2027-2028 school year, to adopt or develop a through-year assessment for the following tests:

- statewide standardized tests designed to assess state curriculum standards in mathematics, reading, social studies, science, and any other subject required by law;
- such statewide standardized tests administered in Spanish to certain students in grades three through five; and
- end-of-course tests for secondary-level courses in Algebra I, biology, English I, English II, and U.S. history.

The bill requires such a through-year assessment to consist of the administration of not fewer than three tests over the course of a school year.

C.S.H.B. 4402 requires TEA to develop and implement a plan to transition each applicable test to a through-year test beginning with the 2027-2028 school year. The plan must do the following:

- evaluate the administration of through-year tests in Texas, including an analysis of instructional support improvements provided by districts administering through-year tests; and
- identify the actions necessary to improve the administration of through-year tests, including necessary changes to state law or policy.

TEA may require a district to participate in a pilot program for the administration of through-year tests and to report information to TEA regarding the implementation of through-year tests under the program. The bill eliminates the integrated formative assessment pilot program, established by the 86th Legislature, in which participating school districts administer to students integrated formative tests for subjects or courses for an applicable grade level subject to assessment under a reading instrument or a statewide standardized test.

C.S.H.B. 4402 requires the score on a through-year test administered to a student in grades three through eight to be calculated as a summative score of each test administered during the school year as part of the through-year assessment. The bill requires the commissioner to adopt rules regarding the relative weights that must be given to each individual test administered as part of the through-year assessment.

## **Test Administration**

C.S.H.B. 4402 changes from every third year, as in current law, to every year the frequency with which TEA must release the questions and answer keys to each applicable statewide standardized test or end-of-course test. The bill clarifies the deadline, as provided in current law, by which TEA must notify districts and campuses of the test results to specify that the notification must be made not later than the 21st day after the last date on which the test may be administered. However, TEA may delay the notification if necessary to maintain validity and reliability standards. The bill further specifies that the requirement under current law for TEA to adopt or develop optional interim tests applies for each subject or course for each grade level for which a through-year test is not required.

C.S.H.B. 4402 repeals the provision in current law authorizing the State Board of Education (SBOE) to adopt one appropriate, nationally recognized, norm-referenced test in reading and mathematics to be administered to a selected sample of students in the spring.

C.S.H.B. 4402 requires a district to administer the following tests in paper format to any student whose parent or guardian requests such a format:

- statewide standardized tests designed to assess state curriculum standards in mathematics, reading, social studies, science, and any other subject required by law;

- such statewide standardized tests administered in Spanish to certain students in grades three through five; and
- end-of-course tests for secondary-level courses in Algebra I, biology, English I, English II, and U.S. history.

A request for the administration of an applicable test in paper format to a student must be submitted to the district not later than December 1 of the school year in which the test will be administered. The bill caps the number of students enrolled at a district who may be administered an applicable test in paper format for any single administration at one percent of the number of students enrolled in the district. On receipt of more requests for administration of a test in paper format than the maximum number permitted, the district must accept the requests in the order received until the maximum number is reached.

### **Performance Indicators**

C.S.H.B. 4402 includes, for the purposes of public school system accountability, the following indicators, in the student achievement domain, among the current performance indicators for evaluating the performance of districts and campuses generally:

- an indicator that accounts for extracurricular and cocurricular student success in accordance with the extracurricular and cocurricular student activity indicator under current law and as revised by the bill's provisions;
- an indicator that accounts for student and parent satisfaction, as provided by the bill; and
- an indicator that accounts for middle school student success in accelerated mathematics.

Also with respect to the student achievement domain, the bill removes the requirement for the indicator that accounts for the results of the applicable statewide standardized tests to include results of tests required for graduation retaken by a student.

C.S.H.B. 4402 revises the closing the gaps domain used to evaluate school districts and campuses to remove students formerly receiving special education services, students continuously enrolled, and students who are mobile as factors that must be included in disaggregated data demonstrating the differentials among students from different backgrounds. The bill requires the indicators of achievement to be valid and reliable as determined both by the commissioner and by peer review.

C.S.H.B. 4402 removes the requirement for the commissioner to study the feasibility of incorporating an indicator that accounts for extracurricular and cocurricular student activity, including the authority to establish an advisory committee for such purposes, and repeals the provisions requiring the commissioner to report on the feasibility of incorporating an extracurricular and cocurricular student activity indicator and setting provisions relating to the indicator to expire in September 1, 2023. The substitute requires the commissioner instead to adopt an indicator that accounts for students participating in extracurricular and cocurricular activities. Accordingly, the bill provides for the following:

- a requirement for the commissioner to adopt the indicator, beginning with the 2027-2028 school year, for the purpose of evaluating district and campus performance generally;
- authorization for the commissioner, in adopting the indicator, to require a district or campus to participate in a pilot program implementing the indicator or implement components of and report requested information necessary to develop and implement the indicator; and
- a requirement for the commissioner to establish an advisory committee to assist in developing and incorporating the indicator.

The bill, effective September 1, 2023, entitles a district to an annual extracurricular and cocurricular allotment for each student in average daily attendance equal to the basic allotment, or, if applicable, the sum of the basic allotment and the small and mid-sized district allotment to which the district is entitled, multiplied by .003.

C.S.H.B. 4402 requires the commissioner to adopt, before the beginning of the 2027-2028 school year and for the evaluation of district and campus performance, indicators that account

for student and parent satisfaction as measured by a survey conducted by a district. The bill authorizes the commissioner, in adopting the indicator, to require a district or campus to take one of the following actions:

- participate in a pilot program implementing the indicator; or
- implement components and report requested information relating to student and parent satisfaction necessary to implement the indicator.

The bill requires the commissioner to establish an advisory committee to assist in developing and adopting such an indicator and prohibits a district from conducting a survey of student or parent satisfaction for purposes of measuring student or parent satisfaction unless the SBOE first approves the content of the survey. The bill requires TEA, from funds appropriated, to provide grants to districts and open-enrollment charter schools for planning and implementation of local accountability systems.

### **Performance Ratings**

C.S.H.B. 4402 removes the condition that a student perform satisfactorily on a statewide standardized test for the student's performance to be included in the commissioner's determination of a district's or campus's performance rating. The bill prohibits an indicator of achievement from being included in determining the performance rating of a district or campus unless it has been determined to be valid and reliable by the commissioner and through a peer review process. The bill provides the following with respect to calculating the performance of a campus providing instruction in grades three through eight in the student achievement domain:

- indicators adopted to account for the results of applicable end-of-course tests, statewide standardized tests, and alternative statewide standardized tests may not collectively contribute more than 80 percent of the score assigned to the campus; and
- indicators adopted to account for extracurricular and cocurricular student success, student and parent satisfaction, and middle school student success in accelerated mathematics may not collectively contribute more than 20 percent of the score assigned to the campus.

### **Repealed Provisions; Applicability**

C.S.H.B. 4402 applies beginning with the 2023-2024 school year.

C.S.H.B. 4402 repeals the following provisions of the Education Code:

- Section 39.023(g); and
- Sections 39.0533(d) and (e).

### **EFFECTIVE DATE**

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 4402 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

### **Repealed Provisions**

The substitute does not include the provisions in the introduced that repealed Education Code provisions that provide for the following:

- a charter school's requirement to establish an individual graduation committee;

- a requirement relating to the adoption and administration of certain end-of-course tests for a school year before the 2025-2026 school year and satisfactory performance on those tests;
- the authority of a district or a Windham School District educational program to issue a certificate of coursework completion to certain students;
- a procedure relating to the qualification for a high school diploma for certain students who entered ninth grade before the 2011-2012 school year;
- the commissioner's determination of satisfactory performance on applicable end-of-course tests for purposes of the three-year high school diploma plan;
- a high school diploma to be awarded on the basis of individual graduation committee review and provisions relating to such a committee;
- accelerated instruction for a student who has not performed satisfactorily on an applicable end-of-course test;
- the issuance of a certificate of coursework completion for a student who fails to meet certain secondary-level performance requirements and provisions relating to such a certificate;
- limitation of applicability for University Interscholastic League (UIL) participation for dates on which students are retaking tests;
- certain authorizations relating to the adoption and administration of end-of-course tests and a requirement relating to the U.S. history end-of-course test;
- a required report relating to the integrated formative assessment pilot program;
- provisions relating to required secondary-level performance;
- the determination and report on necessary annual improvement for a student on applicable tests; and
- commissioner rules relating to a student retaking a test for purposes of district performance rating.

### **Testing Requirements**

The substitute does not include the provisions from the introduced that did the following with respect to graduation and testing requirements:

- removed the requirement for a transcript form to clearly identify whether a student received a diploma or certificate of coursework completion;
- provided for a high school diploma for certain students who failed to graduate prior to the 2023-2024 school year;
- removed statewide standardized testing requirements for social studies in grade eight and for end-of-course tests in English II and U.S. history;
- revised testing requirements with respect to UIL area, regional, or state competitions; and
- replaced the SBOE with TEA as the agency responsible for certain requirements relating to the administration of required tests.

The substitute includes provisions that were not in the introduced providing for the administration of certain tests in paper format.

### **Through-Year Assessments**

Whereas the introduced required TEA to adopt or develop optional interim tests for each subject or course for each grade level subject to assessment that has not been implemented as a through-year assessment, the substitute requires TEA to adopt or develop such tests for each subject or course for each grade level to a required test for which a through-year test is not required.

The substitute includes a requirement absent from the introduced for TEA to adopt or develop a through-year assessment for each subject and grade for which a test is required, including a

through-year test in Spanish for administration to emergent bilingual students for each subject and grade level for which a test in Spanish may be administered.

The substitute does not include a specification present in the introduced that the transition plan regarding a through-year test is for the purpose of evaluating a district and campus performance.

The substitute includes provisions that were not in the introduced providing for the calculation of through-year tests and requiring the commissioner to adopt related rules.

## **Performance Indicators**

While the introduced required that the student achievement domain indicators include indicators for evaluating the performance in grade levels as relevant, rather than evaluating the performance of districts and campuses generally as provided in current law, the substitute does not include that requirement and instead retains the requirement in current law for the indicators to include evaluation of the performance of districts and campuses generally.

While both the substitute and the introduced provide for the addition of indicators for evaluating district and campus performance, the substitute does not include the indicator added by the introduced in the student achievement domain for evaluating the performance of districts and campuses that accounts for performance on physical fitness assessments and the introduced did not include the indicator added by the substitute to the student achievement domain for evaluating the performance of districts and campuses an indicator that accounts for middle school student success in accelerated mathematics.

While both the substitute and the introduced provide for the contribution of indicators that account for student performance on required tests, the introduced required the commissioner to ensure that such an indicator collectively contributes no more than 60 percent of the score received by a campus serving grades three through eight under any single domain and no more than 40 percent of the score received by a campus serving grades 9 through 12 under any single domain, whereas the substitute limited the contribution of such an indicator to 80 percent of the score assigned to a campus serving grades three through eight. The substitute, unlike the introduced, also limited the contribution of indicators that account for extracurricular and cocurricular student success, student and parent satisfaction, and middle school student success in accelerated mathematics to 20 percent of the score assigned to such a campus. The introduced provided for the commissioner, in developing an applicable indicator, to account for average wage levels and available work opportunities, whereas the substitute did not.

The substitute and introduced both remove the current requirement for the commissioner to study the feasibility of incorporating an indicator for student participation in extracurricular and cocurricular activities and both provide for the adoption of such an indicator with respect to the 2027-2028 school year. However, the provisions differ as follows:

- the introduced required the commissioner to both require participation in a pilot of the indicator and require a district or campus to implement components and report requested information necessary to develop and implement the indicator; but
- the substitute authorizes the commissioner, in adopting such an indicator, to require a district or campus to either participate in a pilot program implementing an indicator or to implement components of and report requested information necessary to develop and implement such an indicator.

The substitute and introduced both contain a provision requiring the commissioner to adopt a student and parent satisfaction indicator with respect to the 2027-2028 school year, but they differ as follows:

- the introduced required the commissioner to both require participation in a pilot of the indicator and require a district or campus to implement components and report requested information necessary to develop and implement the indicator; but

- the substitute authorizes the commissioner, in adopting such an indicator, to require a district or campus to either participate in a pilot program implementing an indicator or implement components and report requested information relating to student and parent satisfaction necessary to implement such an indicator.

The substitute includes a provision absent from the introduced entitling a district to an extracurricular and cocurricular allotment under the foundation school program and sets that provision to take effect September 1, 2023.

### **Miscellaneous Provisions**

The substitute does not include a severability clause that was present in the introduced.

The substitute includes a provision absent from the introduced making the bill applicable beginning with the 2023-2024 school year.

Whereas the introduced took effect on passage, or, if the bill does not receive the necessary vote, September 1, 2023, the substitute provides that, except as otherwise provided with respect to the September 1, 2023, effective date of the extracurricular and cocurricular allotment provided by the substitute, the bill takes effect on passage, or, if the bill does not receive the necessary vote, September 1, 2023.