

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 25, 2019
Date

Honorable Dan Patrick
President of the Senate

Honorable Dennis Bonnen
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3906 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

[Signature]
Sen Taylor
[Signature]
Sen Bellevant
[Signature]
Sen Bettencourt
[Signature]
Sen Campbell
[Signature]
Sen Fallon
[Signature]
Sen Watson
On the part of the Senate

[Signature]
REP. HUBERTY
[Signature]
REP. BERNAL
[Signature]
REP. GONZALEZ
[Signature]
REP. VAUDEAUER
[Signature]
REP. BELL
On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3906

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

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

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

20 (2) minimize the disruption to the educational program.

21 SECTION 2. Effective September 1, 2021, Section 39.023(a),
22 Education Code, is amended to read as follows:

23 (a) The agency shall adopt or develop appropriate criterion-
24 referenced assessment instruments designed to assess essential

1 knowledge and skills in reading~~[, writing]~~, mathematics, social
2 studies, and science. Except as provided by Subsection (a-2), all
3 students, other than students assessed under Subsection (b) or (1)
4 or exempted under Section 39.027, shall be assessed in:

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

9 (2) reading, annually in grades three through eight;

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

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

13 (4) ~~[(5)]~~ science, in grades five and eight; and

14 (5) ~~[(6)]~~ any other subject and grade required by
15 federal law.

16 SECTION 3. Section 39.023, Education Code, is amended by
17 amending Subsections (a), (a-12), (a-13), (b-1), (c), and (c-3)
18 and adding Subsections (a-4), (a-14), (a-15), (a-16), (c-7), (c-
19 8), and (o) to read as follows:

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

26 (1) mathematics, annually in grades three through
27 ~~[seven without the aid of technology and in grade] eight [with the~~

1 ~~aid of technology on any assessment instrument that includes~~
2 ~~algebra];~~

3 (2) reading, annually in grades three through eight;

4 (3) writing, including spelling and grammar, in grades
5 four and seven;

6 (4) social studies, in grade eight;

7 (5) science, in grades five and eight; and

8 (6) any other subject and grade required by federal
9 law.

10 (a-4) For purposes of Subsection (a)(1), the State Board of
11 Education by rule may designate sections of a mathematics
12 assessment instrument for a grade level that:

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

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

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

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

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

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

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

5 (1) complies with federal law; or

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

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

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

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

26 (c) The agency shall also adopt end-of-course assessment
27 instruments for secondary-level courses in Algebra I, biology,

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

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

25 [~~1~~] assessment instruments administered under
26 Subsection (a) or (c) are not [~~to be~~] administered on the first
27 instructional day of a week [~~a schedule so that the first~~

1 ~~assessment instrument is administered at least two weeks later~~
2 ~~than the date on which the first assessment instrument was~~
3 ~~administered under Subsection (a) during the 2006-2007 school~~
4 ~~year; and~~

5 ~~[-(2) the spring administration of end-of-course~~
6 ~~assessment instruments under Subsection (c) to occur in each school~~
7 ~~district not earlier than the first full week in May, except that~~
8 ~~the spring administration of the end-of-course assessment~~
9 ~~instruments in English I and English II must be permitted to occur~~
10 ~~at an earlier date].~~

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

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

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

25 (1) must be:

26 (A) predictive of the assessment instrument for
27 the applicable subject or course for that grade level required

1 under this section; and

2 (B) administered electronically; and

3 (2) may not be used for accountability purposes.

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

6 Sec. 39.02302. ADVISORY COMMITTEES FOR ASSESSMENT

7 INSTRUMENTS. (a) The commissioner shall appoint a technical
8 advisory committee to advise the commissioner and the agency
9 regarding the development of valid and reliable assessment
10 instruments for purposes of this chapter. The members of the
11 committee must be experts on educational assessments and
12 psychometrics.

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

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

22 (d) The selection of or payment to a member of the technical
23 or educator advisory committee is not subject to Chapter 2110 or
24 2254, Government Code.

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

27 Sec. 39.0234. ELECTRONIC ADMINISTRATION OF ASSESSMENT

1 INSTRUMENTS [~~BY COMPUTER~~]. [~~(a)~~] The agency shall ensure that
2 assessment instruments required under Section 39.023 are capable
3 of being administered electronically [~~by computer~~]. [The
4 ~~commissioner may not require a school district or open enrollment~~
5 ~~charter school to administer an assessment instrument by~~
6 ~~computer.~~]

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

10 Sec. 39.02341. TRANSITION TO ELECTRONIC ADMINISTRATION OF
11 ASSESSMENT INSTRUMENTS. (a) The agency, in consultation with the
12 State Board of Education, shall develop a transition plan to
13 administer all assessment instruments required under Section
14 39.023 electronically beginning not later than the 2022-2023
15 school year. The plan must:

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

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

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

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

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

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

7 The report must include:

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

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

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

15 (d) This section expires September 1, 2023.

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

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

23 (c) A school district's participation in the pilot program
24 does not affect the district's obligations regarding the
25 administration of assessment instruments required under Section
26 39.023.

27 (d) Not later than December 1 of each even-numbered year,

1 the agency shall submit to the governor, the lieutenant governor,
2 and the members of the legislature a report on the pilot program
3 that includes:

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

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

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

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

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

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

26 (c) To the extent this section conflicts with Section
27 37.082, this section prevails.

1 SECTION 8. The Texas Education Agency may use not more than
2 \$35 million annually of foundation school program funds
3 appropriated to the agency to implement a provision of this Act.

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

11 SECTION 10. Unless this Act provides for an effective date
12 later than September 1, 2019, this Act applies beginning with the
13 2019-2020 school year.

14 SECTION 11. Except as otherwise provided by this Act:

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

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

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Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (IE)	CONFERENCE
<i>No equivalent provision.</i>	SECTION 1. Effective September 1, 2021, Section 21.4551(c), Education Code, is amended.	Same as House version.
<i>No equivalent provision.</i>	SECTION __. The Texas Education Agency is required to implement a provision of Section 25.904, Education Code, as added by 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 that section using other appropriations available for that purpose. [FA2]	Same as House version.
<i>No equivalent provision.</i>	SECTION 2. Section 28.006, Education Code, is amended.	Same as House version.
<i>No equivalent provision.</i>	SECTION 3. Effective September 1, 2021, Section 28.006(c-1), Education Code, is amended.	Same as House version.
<i>No equivalent provision.</i>	SECTION 4. Effective September 1, 2021, Sections 28.0211(a) and (c), Education Code, are amended.	Same as House version.

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HOUSE VERSION	SENATE VERSION (IE)	CONFERENCE
<i>No equivalent provision.</i>	SECTION 5. Effective September 1, 2021, Section 29.056(g), Education Code, is amended.	Same as House version.
<i>No equivalent provision.</i>	SECTION 6. Section 29.1543, Education Code, is amended.	Same as House version.
<i>No equivalent provision.</i>	SECTION 7. Effective September 1, 2021, Section 29.1543, Education Code, is amended.	Same as House version.
<i>No equivalent provision.</i>	SECTION 8. Section 39.022, Education Code, is amended to read as follows: Sec. 39.022. ASSESSMENT PROGRAM. <i><u>The commissioner, after providing for a public hearing in coordination with the State Board of Education, by rule shall create and implement a statewide assessment program that is based on the essential knowledge and skills adopted by the State Board of Education under Subchapter A, Chapter 28, [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 commissioner [State Board of Education] shall consider the importance of maintaining stability in the statewide assessment program when adopting any subsequent modification of the rules.</u></i>	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 <i>State Board of Education</i> shall consider the importance of maintaining stability in the statewide assessment program when adopting any subsequent modification of the rules. <i><u>(b) It is the policy of this state that the statewide assessment program be designed to:</u></i> <i><u>(1) provide assessment instruments that are as short as practicable; and</u></i> <i><u>(2) minimize the disruption to the educational program.</u></i>
<i>No equivalent provision.</i>	SECTION 9. Effective September 1, 2021, Section 39.023, Education Code, is amended by amending Subsection (a) and adding Subsection (a-4) to read as follows: (a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess	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

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HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

essential knowledge and skills in language arts ~~[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) language arts, including reading and writing, 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.

(a-4) For purposes of Subsection (a)(1), the commissioner 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.*

SECTION 1. Section 39.023, Education Code, is amended by amending Subsections (a-12), (a-13), (b-1), (c), and (c-3) and adding Subsections (a-14) and (c-7) to read as follows:

No equivalent provision.

SECTION 10. Section 39.023, Education Code, is amended by amending Subsections (a-12), (a-13), (b-1), (c), and (c-3) and adding Subsections (a-14), (a-15), (c-7), (c-8), and (o) to read as follows:

Same as House version.

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.

(See SECTION 3, Sec. 39.023(a-4), Education Code, below.)

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

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HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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.

(See SECTION 9, Sec. 39.023(a-4), Education Code, above.)

(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) must be designed so that:

- (1) if administered to students in grades three through five, 85 percent of students will be able to complete all [the] assessment instruments for that grade [instrument] within an aggregate period equal to the number of assessment instruments for that grade multiplied by 120 minutes; and
- (2) if administered to students in grades *six* through eight, 85 percent of students will be able to complete all [the]

(a-12) Substantially the same as House version.

(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 through five, 85 percent of students will be able to complete that part [the assessment instrument] within 60 [120] minutes; and

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assessment instruments for that grade [instrument] within an aggregate period equal to the number of assessment instruments for that grade multiplied by 180 minutes.

(a-13)

No equivalent provision.

(a-14)

No equivalent provision.

(b-1)

(c) The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I,

SENATE VERSION (IE)

(a-13) Same as House version.

(a-14) Subsections (a-12) and (a-13) do not apply to the administration of assessment instruments for a grade level if the time restriction imposed **would result in a determination by the commissioner that an assessment instrument is no longer valid and reliable.**

(a-15) Same as House version.

Same as House version.

(b-1) Same as House version.

(c) The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I,

CONFERENCE

(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) Same as House version.

(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) Same as House version.

(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.

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

(b-1) Same as House version.

(c) The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I,

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HOUSE VERSION

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. 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 [H] adopting a schedule for the administration of assessment instruments under this section, the State Board of Education shall require:

(1) assessment instruments administered under Subsection (a) *to be administered on a schedule so that the first assessment instrument is administered at least two weeks later than the date on which the first assessment instrument*

SENATE VERSION (IE)

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 commissioner [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 commissioner [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).~~] [FA1]

(c-3) Except as provided by Subsection (c-7), in [H] adopting a schedule for the administration of assessment instruments under this section, the commissioner [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~~

CONFERENCE

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) Same as Senate version [except requires the State Board of Education to do the ensuring.

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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)

No equivalent provision.

No equivalent provision.

SENATE VERSION (IE)

~~*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 (e) 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) Same as House version.

(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.

CONFERENCE

(c-7) Same as House version.

(c-8) Same as Senate version.

(o) Same as Senate version.

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No equivalent provision.

SENATE VERSION (IE)

SECTION 11. 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.

No equivalent provision.

SECTION 12. 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].

CONFERENCE

SECTION 4. Same as Senate version.

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].

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(b) A school district shall administer each assessment instrument required under Section 39.023 electronically unless the district receives a waiver from the commissioner. This subsection does not apply to the administration of an assessment instrument to a student who requires accommodations in the administration of the assessment instrument that are not available if administered electronically.

(c) Except as provided by Section 39.02341, a school district must comply with Subsection (b) beginning with the 2022-2023 school year. This subsection expires September 1, 2023.

~~[The commissioner may not require a school district or open-enrollment charter school to administer an assessment instrument by computer.]~~

SECTION 13. 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 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.

No equivalent provision.

~~[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);

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(b) As part of the transition plan, the agency may provide results on an assessment instrument required under Section 39.023 on an accelerated schedule to school districts that administer the assessment instrument electronically. For purposes of this subsection, the commissioner by rule may require the results on an assessment instrument administered electronically to be reported to the district as soon as practicable after administration.

(c) As part of the transition plan, the commissioner may require a school district to comply with Section 39.0234(b) before the 2022-2023 school year.

(d) 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 progress of transitioning to electronic administration of all assessment instruments required under Section 39.023. The report must include:

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

(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;

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

(3) *any recommended adjustments to the* timeline for statewide implementation of electronic administration.

(e) Not later than December 1, 2022, the agency shall submit to the governor, the lieutenant governor, and the members of the legislature a report on the anticipated impact to school districts of the implementation of electronic administration of all assessment instruments required under Section 39.023.

(f) 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) 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

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(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.

(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.

No equivalent provision.

SECTION __. 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. [FA2]

SECTION 7. Same as Senate version.

No equivalent provision.

SECTION 14. Section 39.0241(a), Education Code, is amended.

Same as House version.

No equivalent provision.

SECTION 15. Section 39.026, Education Code, is amended.

Same as House version.

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<i>No equivalent provision.</i>	SECTION 16. Sections 39.0261(a), (e), and (f), Education Code, are amended.	Same as House version.
<i>No equivalent provision.</i>	SECTION 17. Subchapter Z, Chapter 39A, Education Code, is amended.	Same as House version.
<i>No equivalent provision.</i>	SECTION 18. Section 21.410, Education Code, is repealed.	Same as House version.
SECTION 2. As soon as practicable after the effective date of this Act, the commissioner of education shall adopt rules necessary to implement the changes in law made by this Act.	<i>No equivalent provision.</i>	Same as Senate version.
<i>No equivalent provision.</i>	Same as House version.	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.
<i>No equivalent provision.</i>	SECTION __. The Texas Education Agency <i>may use foundation school program funds appropriated to the agency</i> to implement a provision of this Act. [FA3]	SECTION 9. The Texas Education Agency <i>is required</i> to implement a provision of this Act <i>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.</i>
SECTION 3. This Act applies beginning with the 2019-2020 school year.	SECTION 19. <i>Unless this Act provides for an effective date later than September 1, 2019</i> , this Act applies beginning with the 2019-2020 school year.	SECTION 10. Same as Senate version.

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SECTION 4.

This Act takes effect immediately if *it* receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

SENATE VERSION (IE)

SECTION 20. *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.

CONFERENCE

SECTION 11. Same as Senate version.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 25, 2019

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB3906 by Huberty (Relating to the assessment of public school students, including the development and administration of assessment instruments, and technology permitted for use by students.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3906, Conference Committee Report: a negative impact of (\$55,964,195) through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill specifies that the Texas Education Agency is only required to implement a provision of Education Code Section 25.094 if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the agency may, but is not required to, implement a provision of that section using other appropriations available for that purpose.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	(\$24,674,556)
2021	(\$31,289,639)
2022	(\$30,741,839)
2023	(\$28,241,839)
2024	(\$17,741,839)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>Foundation School Fund</i> 193	Change in Number of State Employees from FY 2019
2020	(\$24,674,556)	4.0
2021	(\$31,289,639)	5.0
2022	(\$30,741,839)	5.0
2023	(\$28,241,839)	5.0
2024	(\$17,741,839)	5.0

Fiscal Analysis

The bill would make multiple changes related to student assessments, including the following:

- Setting maximum time limits on assessments in grades three through eight and allowing parts of assessments to be administered over more than one day;
- Requiring the Texas Education Agency (TEA) to develop interim assessments;
- Requiring the transition to electronic assessments.
- Instituting a limit on multiple choice questions.

The bill would prohibit the Texas Education Agency from using more than \$35 million annually of foundation school program funds appropriated to the agency to implement the bill.

Methodology

According to the agency, provisions related allowing tests to be administered over more than one day would cost \$4.0 million in fiscal year 2020 and \$5.0 million in subsequent fiscal years.

According to the agency, the cost of developing and administering interim assessments would total \$10.0 million in fiscal years 2020, 2021, and 2022, with costs declining to \$7.0 million in subsequent fiscal years. The cost of implementing formative assessments would total \$5.7 million in fiscal year 2020, \$10.5 million in fiscal year 2021, \$10.0 million in fiscal year 2022, and \$10.5 million in fiscal year 2023.

According to the agency, the agency would have to begin item development related to the limit on multiple choice items in fiscal year 2020. The agency estimates that it would cost \$3.5 million each to begin developing reading language arts items and science items, \$5 million to begin developing math items, and \$1 million to begin developing social studies items. The total to develop items in fiscal year 2020 would be \$13 million.

The agency estimates a cost of \$250,000 to conduct a feasibility study regarding the impact to school districts of the implementation of electronic administration of all assessment instruments and \$250,000 to provide technology migration support to begin preparation for electronic assessment administration.

According to TEA, the agency would be required to develop additional items to provide districts with multiple opportunities to deliver shorter assessments. Costs associated with these requirements would total \$4.0 million in fiscal year 2020 and \$5.0 million in fiscal year 2021.

The agency would require \$65,700 in fiscal year 2020, \$43,800 in fiscal year 2021, and \$21,900 in fiscal year 2022 to support a new educator advisory committee established by the bill.

According to the agency, the cost of supporting the electronic administration of assessments would be \$500,000 in fiscal year 2020 and \$250,000 in subsequent fiscal years.

The bill requires the agency to submit a report to the Governor and the Legislature related to the readability of state assessments. According to the agency, the cost of contracting for such a study, as required by the bill, would total \$250,000 in fiscal year 2021.

The agency would require 4.0 additional FTEs in fiscal year 2020 and 5.0 FTEs in subsequent fiscal years to implement the bill. The cost of these FTEs would total \$0.9 million in the 2020-2021 biennium.

Local Government Impact

No significant fiscal implication to school districts and charter schools is anticipated.

Source Agencies: 701 Texas Education Agency

LBB Staff: WP, CPa, AM, THo, HL

**Certification of Compliance with
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under House Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not subject to a point of order under Rule 13.

I certify that a copy of the conference committee report on HB 3906 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

Dan Healy
(name)

5/25/19
(date)