

## **BILL ANALYSIS**

Senate Research Center

H.B. 866  
By: Huberty et al. (Seliger)  
Education  
5/11/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties contend that Texas has long been a leader in standardized testing and educational accountability. The state has accumulated testing data that demonstrates that a student who performs well on a standardized test one year will likely perform as well in the following year. The new state standardized test, the State of Texas Assessments of Academic Readiness (STAAR), has been administered to students in grade three and will be phased in to students through grade eight. These tests were developed to be more rigorous and better indicators of college and career readiness, but once the testing is completely phased in, students will be taking more than 10 state standardized tests between the grades of three and eight, in addition to the tests developed and administered by their classroom teachers. The parties assert that this amount of testing is excessive. H.B. 866 seeks to remedy this excessive testing and related costs for students, teachers, parents, and schools by reducing the amount of mandatory testing for students who are high performing.

H.B. 866 amends current law relating to the administration to public school students in certain grades of state-administered assessment instruments.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the State Board of Education is modified in SECTION 1 (Section 39.023, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner of education is modified in SECTION 1 (Section 39.023, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

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

(a) Requires all students, other than students assessed under Subsection (b) or (l) or exempted under Section 39.027 (Exemption), except as provided by Subsection (a-2), to be assessed in:

- (1) mathematics, in grades three and five, rather than 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, in grades three, five, and eight, rather than annually in grades three through eight;
- (3) social studies, in grade eight; and
- (4) science, in grades five and eight.

Deletes existing text requiring all students, other than students assessed under Subsection (b) or (l) or exempted under Section 39.027, except as provided by

Subsection (a-2), to be assessed in writing, including spelling and grammar, in grades four and seven, and any other subject and grade required by federal law. Makes nonsubstantive changes.

(a-1) Requires the Texas Education Agency (TEA) to develop assessment instruments required under Subsections (a), (a-4), (a-5), and (a-6), rather than under Subsection (a), in a manner that allows, to the extent practicable:

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

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

(a-2) Provides that a student is not required to be assessed in a subject otherwise assessed at the student's grade level under Subsection (a) if the student:

(1) is enrolled in a course in the subject intended for students above the student's grade level and will be administered an assessment instrument adopted or developed under Subsection (a), (a-4), (a-5), or (a-6) that aligns with the curriculum for the course in which the student is enrolled; or

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

(a-3) Requires TEA, for each assessment instrument administered under Subsection (a) or (a-5), to determine, based on available information for that assessment instrument, the minimum satisfactory adjusted scale score. Provides that the minimum satisfactory adjusted scale score is the sum of the scale score that indicates satisfactory performance on that assessment instrument, as determined by the commissioner of education (commissioner) under Section 39.0241(a) (relating to requiring the commissioner to develop levels of satisfactory performance for assessment instruments), plus the minimum number of points that when added to the scale score produces a score that, within a three percent margin of error, is predictive that a student achieving that score would achieve satisfactory performance on an assessment instrument in the same subject administered to the student during the following school year.

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

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

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

(a-7) Requires a student assessed in mathematics under Subsection (a-4), (a-5), or (a-6) to be assessed without the aid of technology.

(a-8) Authorizes a school district or open-enrollment charter school to, for its own use in determining whether students are performing at a satisfactory level, administer to a student at the appropriate grade level, other than a student required to be assessed, an assessment instrument developed for purposes of Subsection (a-4), (a-5), or (a-6). Requires TEA, at the request of a district or open-enrollment charter school, to provide, allow for the administration of, and score each assessment instrument administered under this subsection in the same manner and at the same cost as for assessment instruments required to be administered under the applicable subsection. Prohibits the results of an assessment instrument administered under this subsection from being included as an indicator of student achievement under Section 39.053 (Performance Indicators; Student Achievement) or any other provision.

(a-9) Requires the commissioner, if there is a conflict between this section (Adoption and Administration of Instruments) and a federal law or regulation as a result of forgoing under this section certain administration of assessment instruments to students who have recently performed successfully on assessment instruments assessing the same subject, to seek a waiver from the application of the conflicting federal law or regulation. Requires the commissioner, in seeking a waiver, to submit all relevant data, including data relating to:

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

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

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

(b) Requires TEA to develop or adopt appropriate criterion-referenced alternative assessment instruments to be administered to a student, rather than to each student, in a special education program under Subchapter A (Special Education Program), Chapter 29 (Educational Programs), for whom an assessment instrument adopted under Subsection (a) or, to the extent applicable, Subsection (a-4), (a-5), or (a-6), even with allowable accommodations, would not provide an appropriate measure of student achievement, as determined by the student's admission, review, and dismissal committee.

(c-1) Requires TEA, to the greatest extent practicable, to develop any assessment instrument required under this section in a manner that allows for the measurement of annual improvement in student achievement as required by Sections 39.034(c) (relating to requiring TEA to determine and report a student's expected annual improvement on an assessment instrument) and (d) (relating to requiring TEA to determine the necessary annual improvement required each year for a student to be considered to be prepared to perform satisfactorily on certain assessment instruments).

(c-3) Requires the State Board of Education (SBOE), in adopting a schedule for the administration of assessment instruments under this section, to require certain assessment instruments, including assessment instruments administered under Subsections (a), (a-4), (a-5), and (a-6), rather than 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 was administered under Subsection (a) during the 2006-2007 school year.

(e) Requires TEA, under rules adopted by SBOE, every third year, to release the questions and answer keys to each assessment instrument administered under Subsection (a), (a-4), (a-5), (a-6), (b), (c), (d), or (l), excluding any assessment instrument administered to a student for the purpose of retaking the assessment instrument, after the last time the instrument is administered for that school year. Provides that TEA, to ensure a valid bank of questions for use each year, is not required to release a question that is being field-tested and was not used to compute the student's score on the instrument.

(l) Requires SBOE to adopt rules for the administration of the assessment instruments adopted under Subsection (a) and, to the extent applicable, the assessment instruments adopted under Subsection (a-4) in Spanish to students in grades three, four, and five who are of limited English proficiency, as defined by Section 29.052 (Definitions), whose primary language is Spanish, and who are not otherwise exempt from the administration of an assessment instrument under Section 39.027(a)(1) or (2) (relating to authorizing a student to be administered an accommodated or alternative assessment instrument or to be granted an exemption from or a postponement of the administration of an assessment instrument under certain circumstances). Authorizes each student of limited English proficiency whose primary language is Spanish, other than a student to whom Subsection (b) applies, to be assessed using assessment instruments in Spanish under this subsection for up to three years or assessment instruments in English under Subsection (a) and, as applicable, Subsection (a-4).

(m) Requires the commissioner by rule to develop procedures under which the language proficiency assessment committee established under Section 29.063 (Language Proficiency Assessment Committees) is required to determine which students are exempt from the administration of the assessment instruments under Section 39.027(a)(1) or (2). Requires that the rules adopted under this subsection ensure that the language proficiency assessment committee provides that the exempted students are administered the assessment instruments under Subsections (a) and (c) and, to the extent applicable, Subsections (a-4), (a-5), and (a-6) at the earliest practical date.

(n) Provides that this subsection applies only to a student who is determined to have dyslexia or a related disorder and who is an individual with a disability under 29 U.S.C. Section 705(20) and its subsequent amendments. Requires TEA to adopt or develop appropriate criterion-referenced assessment instruments designed to assess the ability of and to be administered to each student to whom this subsection applies for whom the assessment instruments adopted under Subsection (a) and, to the extent applicable, the assessment instruments adopted under Subsections (a-4), (a-5), and (a-6), even with allowable modifications, would not provide an appropriate measure of student achievement, as determined by the committee established by the board of trustees of the district to determine the placement of students with dyslexia or related disorders. Requires the committee to determine whether any allowable modification is necessary in administering to a student an assessment instrument required under this subsection. Requires that the assessment instruments required under this subsection be administered on the same schedule as the assessment instruments administered under Subsections (a), (a-4), (a-5), and (a-6), as applicable, rather than under Subsection (a).

(p) Requires the commissioner, on or before September 1 of each year, to make certain information available on TEA's Internet website for each assessment instrument administered under Subsection (a), (a-4), (a-5), (a-6), (c), or (l).

SECTION 2. (a) Effective date: on any date not later than September 1, 2015, on which the commissioner of education obtains any necessary waiver from the application of federal law or regulation conflicting with Section 39.023, Education Code, as amended by this Act, as required by Section 39.023(a-9), Education Code, as added by this Act; or receives written notification from the United States Department of Education that a waiver is not required.

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

(c) Requires the commissioner, if the commissioner obtains any necessary waiver or receives written notification as described by Subsection (a) of this section, to certify that the commissioner has obtained the waiver or received notification that a waiver is not required, as applicable, and to publish notice of that fact in the Texas Register as soon as practicable after obtaining the waiver or receiving notification.