

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 3906  
By: Huberty; Guillen (Taylor)  
Education  
5/17/2019  
Committee Report (Substituted)

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

H.B. 3906 amends current law relating to the assessment of public school student development, comprehension, and performance, including the administration of assessment instruments for that purpose

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education (commissioner) in SECTION 2 (Section 28.006, Education Code), SECTION 9 (Section 39.023, Education Code), and SECTION 13 (Section 39.02341, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner is modified in SECTION 1 (Section 21.4551, Education Code) of this bill.

Rulemaking authority previously granted to the State Board of Education is transferred to the commissioner in SECTION 8 (Section 39.022, Education Code) and in SECTION 10 (Section 39.023, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 21.4551(c), Education Code, effective September 1, 2021, as follows:

(c) Requires the commissioner of education (commissioner) by rule to require a teacher to attend a reading academy if the teacher provides instruction in reading, mathematics, science, or social studies to students at the sixth, seventh, or eighth grade level at a campus that fails to satisfy any standard under Section 39.054(e) (relating to annual reviews of school districts including an analysis of certain achievement indicators) on the basis of student performance on the language arts assessment, rather than the reading assessment, instrument administered under Section 39.023(a) to students in any grade level at the campus.

SECTION 2. Amends 28.006, Education Code, by amending Subsections (b), (c), (d), and (f) and adding Subsections (b-1), (b-2), (c-2), (c-3), and (l), as follows:

(b) Requires the commissioner, for use in diagnosing the reading development and comprehension of kindergarten students, to adopt a multidimensional assessment tool that includes a reading instrument and tests at least three developmental skills, including literacy, rather than requiring the commissioner, for use in diagnosing the reading development and comprehension of kindergarten students, to include on the commissioner's list at least two multidimensional assessment tools. Authorizes a district-level committee established under Subchapter F (District-Level and Site-Based Decision-Making), Chapter 11, to adopt a list of reading instruments for use in the district in a grade level other than kindergarten in addition to the reading instruments on the commissioner's list, rather than authorizing district-level committee established under Subchapter F, Chapter 11, to adopt a list of reading instruments for use in the district in addition to the reading instruments on the commissioner's list. Deletes existing text requiring a multidimensional assessment tool on the commissioner's list to either include

a reading instrument and test at least three developmental skills, including literacy, or test at least two developmental skills, other than literacy, and be administered in conjunction with a separate reading instrument that is on a list adopted under this subsection.

(b-1) Authorizes the commissioner to approve an alternative reading instrument for use in diagnosing the reading development and comprehension of kindergarten students that complies with the requirements under Subsection (b).

(b-2) Authorizes the Texas Education Agency (TEA) to develop reading instrument for purposes of this section.

(c) Requires each school district to administer, at the first and second grade levels, rather than at the kindergarten and first and second grade levels, a reading instrument on the list adopted by the commissioner or by the district-level committee.

(c-2) Requires each school district to administer at the kindergarten level a reading instrument adopted by the commissioner under Subsection (b) or approved by the commissioner under Subsection (b-1). Requires the district to administer the reading instrument in accordance with the commissioner's recommendations under Subsection (a)(1) (relating to the commissioner developing recommendations for school districts for administering certain reading instruments).

(c-3) Requires the commissioner by rule to determine the performance on the reading instrument adopted under Subsection (b) that indicates kindergarten readiness.

(d) Requires the superintendent of each school district to:

(1) makes no changes to this subdivision;

(2) not later than the 60th day after the date on which a reading instrument was administered report, in writing, to a student's parent or guardian the student's results on the instrument, rather than the reading instrument; and

(3) makes no changes to this subdivision.

(f) Requires TEA to ensure at least one reading instrument for each grade level for which a reading instrument is required to be administered under this section is available to school districts at no cost. Deletes existing text authorizing the section to be implemented only if funds are appropriated for administering the reading instrument and authorizing funds, other than local funds, to be used to pay the cost of administering a reading instrument only if the instrument is on the list adopted by the commissioner.

(l) Authorizes the commissioner to adopt rules as necessary to implement this section. Provides that Section 2001.0045 (Requirement For Rule Increasing Costs to Regulated Persons), Government Code, does not apply to rules adopted under this subsection.

SECTION 3. Amends Section 28.006(c-1), Education Code, effective September 1, 2021, to make a conforming change.

SECTION 4. Amends Sections 28.0211(a) and (c), Education Code, effective September 1, 2021, to make conforming changes.

SECTION 5. Amends Section 29.056(g), Education Code, effective September 1, 2021, to make a conforming change.

SECTION 6. Amends Section 29.1543, Education Code, as follows:

Sec. 29.1543. EARLY EDUCATION REPORTS. Requires a report under this section to contain:

- (1) makes no changes to this subdivision;
- (2) a description of the diagnostic reading instruments administered in accordance with Section 28.006(c) or (c-2), rather than Section 28.006(c);
- (3) makes a conforming change to this subdivision;
- (4) makes a conforming and a nonsubstantive change to this subdivision;
- (5) makes a nonsubstantive change to this subdivision;
- (6) the number and percentage of students who perform satisfactorily on the third grade reading or mathematics assessment instrument administered under Section 39.023, disaggregated by whether the student was eligible for free prekindergarten under Section 29.153 (Free Prekindergarten For Certain Children);
- (7) the number of students described by Subdivision (6) who attended kindergarten in the district, disaggregated by certain metrics;
- (8) the information described by Subdivisions (6) and (7) disaggregated by whether the student is educationally disadvantaged.

SECTION 7. Amends Section 29.1543, Education Code, effective September 1, 2021, as follows:

Sec. 29.1543. EARLY EDUCATION REPORTS. Requires a report under this section to contain:

- (1) makes no changes to this subdivision;
- (2) a description of the diagnostic reading instruments administered in accordance with Section 28.006(c) or (c-2), rather than Section 28.006(c);
- (3) makes a conforming change to this subdivision;
- (4) makes a conforming and a nonsubstantive change to this subdivision;
- (5) makes a nonsubstantive change to this subdivision;
- (6) the number and percentage of students who perform satisfactorily on the third grade language arts or mathematics assessment instrument administered under Section 39.023, disaggregated by whether the student was eligible for free prekindergarten under Section 29.153;
- (7) the number of students described by Subdivision (6) who attended kindergarten in the district, disaggregated by certain metrics;
- (8) the information described by Subdivisions (6) and (7) disaggregated by whether the student is educationally disadvantaged.

SECTION 8. Amends Section 39.022, Education Code, as follows:

Sec. 39.022. ASSESSMENT PROGRAM. Requires the commissioner, after providing for a public hearing in coordination with the State Board of Education (SBOE), by rule to create and implement a statewide assessment program that is based on the essential knowledge and skills adopted by SBOE under Subchapter A (Essential Knowledge and Skills; Curriculum), Chapter 28, rather than a program that is skills-based to ensure school accountability for student achievement that achieves the goals provided under 4.002 (Public Education Academic Goals). Requires the commissioner, rather than SBOE, after adopting rules under this section, to consider the importance of maintaining

stability in the statewide assessment program when adopting any subsequent modification of the rules.

SECTION 9. Amends Section 39.023, Education Code, by amending Subsection (a) and adding Subsection (a-4), effective September 1, 2021, as follows:

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

(1) mathematics, annually in grades three through eight, rather than 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, rather than reading, annually in grades three through eight;

(3) deletes existing Subdivision (3) requiring all students, except as provided by Subsection (a-2), other than students assessed under Subsection (b) or (l) or exempted under Section 39.027, to be assessed in writing, including spelling and grammar, in grades four and seven. Redesignates existing Subdivision (4) as Subdivision (3) and makes no further changes; and

(4) and (5) redesignates existing Subdivisions (5) and (6) as Subdivisions (4) and (5) and makes no further changes.

(a-4) Authorizes the commissioner by rule, for purposes of this Subsection (a)(1), to designate sections of a mathematics assessment instrument for a grade level that:

(1) is authorized to be completed with the aid of technology; and

(2) is required to be completed without the aid of technology.

SECTION 10. Amends Section 39.023, Education Code, 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), as follows:

(a-12) Requires each assessment instrument, rather than an assessment instrument, adopted or developed under Subsection (a) (relating to TEA adopting or developing appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science) to be designed so that:

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

(2) if administered to students in grades six through eight, 85 percent of students will be able to complete all assessment instruments for that grade within an aggregate period equal to the number of assessment instruments for that grade multiplied by 180 minutes, rather than if administered to students in grades six through eight, 85 percent of students will be able to complete the assessment instrument within 180 minutes.

(a-13) Prohibits the amount of time allowed for administration of an assessment instrument adopted or developed under Subsection (a) from exceeding eight hours, and authorizes the administration to occur in multiple parts over more than one day, rather than occur on only one day.

(a-14) Provides that 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) Provides that Subsections (a-12) and (a-13) do not apply to a classroom portfolio method used to assess writing performance.

(b-1) Provides that a classroom portfolio method used to assess writing performance may require a teacher to prepare tasks and materials. Deletes existing text requiring assessment instruments adopted or developed under this subsection to be administered not later than the 2014–2015 school year.

(c) Requires the Algebra I end-of-course assessment instrument to be administered with the aid of technology, but provides that it may include one or more parts that prohibit the use of technology. Requires the English I and English II end-of-course assessment instruments to each assess essential knowledge and skills in both reading and writing, rather than both reading and writing in the same assessment instrument, and to provide a single score. Requires a school district to comply with commissioner rules, rather than State Board of Education rules, regarding administration of the assessment instruments listed in this subsection. Requires the commissioner, rather than SBOE, to administer the assessment instruments. Deletes existing text requiring SBOE to adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3).

(c-3) Requires the commissioner, except as provided by Subsection (c-7), in adopting a schedule for the administration of assessments instruments under this section (Adoption and Administration of Instruments), to ensure that assessment instruments administered under Subsection (a) or (c) are not administered on the first instructional day of a week. Deletes existing text requiring SBOE, in adopting a schedule for the administration of assessment instruments under this section, to require 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 was administered under Subsection (a) during the 2006–2007 school year and 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) Provides that Subsection (c-3) does not apply to a classroom portfolio method used to assess writing performance if student performance under that method is less than 50 percent of a student's overall assessed performance in writing.

(c-8) Prohibits an assessment instrument, beginning with the 2022–2023 school year, from presenting more than 75 percent of the questions in a multiple choice format.

(o) Requires TEA to adopt or develop optional interim assessment instruments for each subject or course for each grade level subject to assessment under this section. Prohibits a school district from being required to administer interim assessment instruments adopted or developed under this subsection. Provides that an interim assessment instrument:

(1) is required to 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) is prohibited from being used for accountability purposes.

SECTION 11. Amends Subchapter B, Chapter 39, Education Code, by adding Section 39.02302, as follows:

Sec. 39.02302. **ADVISORY COMMITTEES FOR ASSESSMENT INSTRUMENTS.** (a) Requires the commissioner to appoint a technical advisory committee to advise the commissioner and TEA regarding the development of valid and reliable assessment instruments for purposes of this chapter (Public School System Accountability). Requires the members of the committee to be experts on educational assessments and psychometrics.

(b) Requires the commissioner to appoint an educator advisory committee to advise the commissioner and TEA regarding the development of academically appropriate assessment instruments for purposes of this chapter. Requires the members of the committee to include experts in curriculum and instruction.

(c) Authorizes TEA to 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) Provides that the selection of or payment to a member of the technical or educator advisory committee is not subject to Chapter 2110 (State Agency Advisory Committees) or 2254 (Professional and Consulting Services), Government Code.

SECTION 12. Amends Section 39.0234, Education Code, as follows:

Sec. 39.0234. **New heading: ELECTRONIC ADMINISTRATION ASSESSMENT INSTRUMENTS.** (a) Requires TEA to ensure that assessment instruments required under Section 39.023 are capable of being administered electronically, rather than by computer.

(b) Requires a school district to administer each assessment instrument required under Section 39.023 electronically unless the district receives a waiver from the commissioner. Provides that 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) Requires a school district, except as provided by Section 39.02341, to comply with Subsection (b) beginning with the 2022–2023 school year. Provides that this subsection expires September 1, 2023.

Deletes existing text prohibiting the commissioner from requiring a school district or open-enrollment charter to administer an assessment instrument by computer.

SECTION 13. Amends Subchapter B, Chapter 39, Education Code, by adding Sections 39.02341, 39.0236, and 39.0237, as follows:

Sec. 39.02341. **TRANSITION TO ELECTRONIC ADMINISTRATION OF ASSESSMENT INSTRUMENTS.** (a) Requires TEA to develop a transition plan to administer all assessment instruments required under Section 39.023 electronically beginning not later than the 2022–2023 school year.

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

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

(d) Requires TEA, not later than December 1, 2020, to 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. Requires the report to include certain information.

(e) Requires TEA, not later than December 1, 2022, to 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) Provides that this section expires September 1, 2023.

Sec. 39.0236. INTEGRATED FORMATIVE ASSESSMENT PILOT PROGRAM. (a) Requires TEA to 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) Authorizes a school district to elect to participate in the pilot program.

(c) Provides that 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) Requires TEA, not later than December 1 of each even-numbered year, to submit to the governor, the lieutenant governor, and the members of the legislature a report on the pilot program that includes certain information.

Sec. 39.0237. CONSIDERATION OF PREKINDERGARTEN ASSESSMENT INSTRUMENTS PROHIBITED. Prohibits performance on an assessment instrument administered to students in prekindergarten from being considered for any purposes in this chapter or Chapter 39A (Accountability Interventions and Sanctions).

SECTION 14. Amends Section 39.0241(a), Education Code, as follows:

(a) Requires the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments, including:

(1) an approaches grade level performance standard in the applicable subject or course that indicates that a student is likely to succeed in the subject for the subsequent grade level or in the subsequent course with targeted intervention;

(2) a meets grade level performance standard in the applicable subject or course that indicates that a student has a high likelihood of success in the subject for the subsequent grade level or in the subsequent course but may still need short-term, targeted intervention; and

(3) a masters grade level performance standard in the applicable subject or course that indicates that a student is expected to succeed in the subject for the subsequent grade level or in the subsequent course with little or no academic intervention.

SECTION 15. Amends Section 39.026, Education Code, to authorize a school district, in addition to the assessment instruments adopted by TEA, rather than adopted by TEA and SBOE, to adopt and administer criterion-referenced or norm-referenced assessment instruments, or both, at any grade level.

SECTION 16. Amends Sections 39.0261(a), (e), and (f), Education Code, as follows:

(a) Provides that, in addition to the assessment instruments otherwise authorized or required by this subchapter (Assessment of Academic Skills):

(1) and (2) makes no changes to these subdivisions; and

(3) high school students in the spring of the 11th grade or during the 12th grade may select and take once, at state cost:

(A) creates this paragraph from existing text and makes a nonsubstantive change; or

(B) the assessment instrument designated by the Texas Higher Education Coordinating Board under Section 51.334 (Assessment Instruments).

(e) Provides that Subsection (a)(3) does not prohibit a high school student from selecting and taking, at the student's own expense, an assessment instrument described by that subdivision, rather than providing that Subsection (a)(3) does not prohibit a high school student in the spring of the 11th grade or during the 12th grade from selecting and taking, at the student's own expense, one of the valid, reliable, and nationally norm-referenced assessment instruments used by colleges and universities as part of their undergraduate admissions processes more than once.

(f) Provides that the provisions of this section regarding assessment instruments administered under Subsection (a)(1) or (2) apply only if the legislature appropriates funds for those purposes, rather than providing that the provisions of this section apply only if the legislature appropriates funds for purposes of this section.

SECTION 17. Amends Subchapter Z, Chapter 39A, Education Code, by adding Section 39A.907, as follows:

Sec. 39A.907. ASSESSMENT INSTRUMENT STUDY. (a) Requires the commissioner to contract for a study to determine whether, for each applicable grade level, each assessment instrument administered under Section 39.023(a) during the 2018–2019 school year or scheduled to be administered during the 2019–2020 school year is written at the appropriate reading level for students in that grade level and includes only passages written at a reading level not higher than the grade level at which the assessment instrument is administered.

(b) Requires the commissioner, in contracting for the study, to use a competitive process to select an independent entity to conduct the study that is not an entity that develops or otherwise reviews assessment instruments under Chapter 39.

(c) Provides that Chapter 2254 (Professional Services), Government Code, does not apply to a contract procured under this section.

(d) Requires the commissioner, not later than December 1, 2019, to submit a report to the governor, the lieutenant governor, the legislature, and the presiding officer of each legislative standing committee with jurisdiction over primary and secondary education that includes the results of the study.

(e) Provides that this section expires September 1, 2021.

SECTION 18. Repealer: Section 21.410 (Master Reading Teacher Grant Program), Education Code.

SECTION 19. Provides that, unless this Act provides for an effective date later than September 1, 2019, this Act applies beginning with the 2019–2020 school year.

SECTION 20. Effective date, except as otherwise provided by this Act: upon passage or September 1, 2019.