AN ACT

relating to public school accountability and the administration of
certain assessment instruments in public schools; providing a
criminal penalty.

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

SECTION 1. Subsection (b), Section 18.006, Education Code,
is amended to read as follows:

(b) In addition to other factors determined to be
appropriate by the commissioner, the accountability system must
include consideration of:

(1) student performance on the end-of-course
[secondary exit-level] assessment instruments required by Section
39.023(c); and

(2) dropout rates, including dropout rates and diploma
program completion rates for the grade levels served by the diploma
program.

SECTION 2. Subsection (b), Section 21.006, Education Code,
is amended to read as follows:

(b) In addition to the reporting requirement under Section
261.101, Family Code, the superintendent or director of a school
district, regional education service center, or shared services
arrangement shall notify the State Board for Educator Certification
if the superintendent or director has reasonable cause to believe
that:
S.B. No. 1031

(1) an educator employed by or seeking employment by
the district, service center, or shared services arrangement has a
criminal record;

(2) an educator's employment at the district, service
center, or shared services arrangement was terminated based on a
determination that the educator:

(A) abused or otherwise committed an unlawful act
with a student or minor;

(B) possessed, transferred, sold, or distributed
a controlled substance, as defined by Chapter 481, Health and
Safety Code, or by 21 U.S.C. Section 801 et seq., and its subsequent
amendments;

(C) illegally transferred, appropriated, or
expended funds or other property of the district, service center,
or shared services arrangement;

(D) attempted by fraudulent or unauthorized
means to obtain or alter a professional certificate or license for
the purpose of promotion or additional compensation; or

(E) committed a criminal offense or any part of a
criminal offense on school property or at a school-sponsored event;

(3) the educator resigned and reasonable evidence
supports a recommendation by the superintendent or director to
terminate the educator based on a determination that the educator
engaged in misconduct described by Subdivision (2); or

(4) the educator engaged in conduct that violated the
assessment instrument security procedures established under
Section 39.0301.

SECTION 3. Subsection (b), Section 25.005, Education Code, is amended to read as follows:

(b) A reciprocity agreement must:

(1) address procedures for:

(A) transferring student records;

(B) awarding credit for completed course work;

and

(C) permitting a student to satisfy the requirements of Section 39.025 through successful performance on comparable end-of-course or other exit-level assessment instruments administered in another state; and

(2) include appropriate criteria developed by the agency.

SECTION 4. Subsection (b), Section 29.081, Education Code, is amended to read as follows:

(b) Each district shall provide accelerated instruction to a student enrolled in the district who has taken an end-of-course [the secondary exit-level] assessment instrument administered under Section 39.023(c) and has not performed satisfactorily on the assessment instrument [each section] or who is at risk of dropping out of school.

SECTION 5. Subsection (f), Section 29.087, Education Code, as amended by Chapters 283 and 373, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(f) A student participating in a program authorized by this section, other than a student ordered to participate under
Subsection (d)(1), must have taken the appropriate end-of-course assessment instruments specified by Section 39.023(c) [39.023(a) for grade 9] before entering the program and must take each appropriate end-of-course [grade-level] assessment instrument administered during the period in which the student is enrolled in the program. Except for a student ordered to participate under Subsection (d)(1), a student participating in the program may not take the high school equivalency examination unless the student has taken the assessment instruments required by this subsection.

SECTION 6. Subsection (e), Section 30.021, Education Code, is amended to read as follows:

(e) The school shall cooperate with public and private agencies and organizations serving students and other persons with visual impairments in the planning, development, and implementation of effective educational and rehabilitative service delivery systems associated with educating students with visual impairments. To maximize and make efficient use of state facilities, funding, and resources, the services provided in this area may include conducting a cooperative program with other agencies to serve students who have graduated from high school by completing all academic requirements applicable to students in regular education, excluding satisfactory performance under Section 39.025 [on the exit-level assessment instrument], who are younger than 22 years of age on September 1 of the school year and who have identified needs related to vocational training, independent living skills, orientation and mobility, social and leisure skills, compensatory skills, or remedial academic skills.
S.B. No. 1031

SECTION 7. Chapter 39, Education Code, is amended by adding
Subchapter A to read as follows:

SUBCHAPTER A. COMPREHENSIVE REVIEW OF PUBLIC SCHOOL ACCOUNTABILITY

SYSTEM

Sec. 39.001. SELECT COMMITTEE ON PUBLIC SCHOOL ACCOUNTABILITY. (a) The Select Committee on Public School Accountability is established to conduct a comprehensive review of the public school accountability system.

(b) The committee is composed of 15 members appointed as follows:

(1) the presiding officers of the standing committees of each house of the legislature with primary jurisdiction over public education;

(2) one member of the senate, appointed by the lieutenant governor;

(3) one member of the house of representatives, appointed by the speaker of the house of representatives;

(4) the commissioner;

(5) the commissioner of higher education;

(6) one public school teacher, one public school principal, and one public school district superintendent, each currently employed in this state and each appointed jointly by the lieutenant governor and the speaker of the house of representatives;

(7) two persons each of whom is currently employed as an educator in a public school in this state and each appointed jointly by the lieutenant governor and the speaker of the house of
representatives;

(8) one representative from the business community or
the public, appointed by the lieutenant governor;

(9) one representative from the business community or
the public, appointed by the speaker of the house of
representatives; and

(10) two representatives from the business community
and the public, at least one of whom has one or more children who
currently attend public school in this state, appointed by the
governor.

(c) The governor, lieutenant governor, and speaker of the
house of representatives shall make the appointments required by
Subsection (b) in a timely fashion to permit the committee to comply
with Section 39.002(a).

Sec. 39.002. COMMITTEE MEETINGS. (a) Not later than
October 1, 2007, the committee shall hold an organizational
meeting.

(b) The presiding officers described by Section
39.001(b)(1) serve as co-chairs of the committee.

(c) Committee meetings shall be held at the call of the
co-chairs.

Sec. 39.003. COMPENSATION AND REIMBURSEMENT. (a) A member
of the committee is entitled to reimbursement for actual and
necessary expenses incurred in performing committee duties.

(b) A legislative member of the committee is entitled to
reimbursement from the appropriate fund of the house of the
legislature in which the member serves.
(c) A member other than a legislative member is entitled to reimbursement from funds appropriated to the committee.

Sec. 39.004. COMMITTEE STAFF. Staff members of the standing committees described by Section 39.001(b)(1) shall serve as the staff of the committee.

Sec. 39.005. OBJECTIVES OF STUDY. (a) The committee shall conduct a comprehensive review of the public school accountability system. In conducting its review, the committee shall study the mission, organizational structure, design, processes, and practices of similar accountability systems in other states and the requirements established by federal law.

(b) A review under this section must include a thorough study of:

(1) each element of the accountability system prescribed by this chapter, with special emphasis on:

(A) the indicators used to determine accreditation status;

(B) rewards and incentives for campus excellence; and

(C) the responsibilities of the commissioner in assisting and, if necessary, imposing sanctions on districts that do not meet state performance standards;

(2) the extent to which the accountability system is aligned with the requirements prescribed by the No Child Left Behind Act of 2001 (20 U.S.C. Section 6301 et seq.);

(3) the extent to which the accountability system reflects the public education mission, objectives, and goals
provided by Chapter 4;

(4) the extent to which the accountability system meets public expectations;

(5) the extent to which the accountability system fairly and accurately reports the effectiveness of educators, instructional programs, support services, and financial expenditures and the impact of these elements on student achievement;

(6) the methods available to monitor the progress of each public school student, with special emphasis on methods to monitor demonstrable growth in academic achievement;

(7) the performance indicators that would successfully measure the effectiveness of the campus teaching and learning environment, including the effect of student discipline on that environment;

(8) the effectiveness of the accountability system in reporting the performance of open-enrollment charter schools and alternative education programs;

(9) the implementation of statewide assessment instruments, including specifically end-of-course assessment instruments;

(10) the extent to which the accountability system measures the performance of districts and campuses on important indicators and aspects of the educational process, other than student scores on standardized assessment instruments;

(11) the extent to which the accountability system clearly and accurately reports to parents and interested persons
the overall performance of districts and campuses; and

(12) the extent to which the accountability system
considers the different student demographics of districts and
campuses.

(c) The committee shall conduct public hearings throughout
the state and solicit testimony about the accountability system
from parents of public school children and other interested
persons. At least one public hearing must be held at a public
school during a time that public school students are able to attend
the hearing.

(d) The commissioner shall ensure that the committee has
access to any documentation and agency personnel the committee
requests.

(e) The Legislative Budget Board, comptroller, state
auditor, and any other state agency, official, or personnel shall
cooperate with the committee in carrying out its duties under this
subchapter.

(f) The committee may coordinate the study under this
subchapter with any other legislative study, as appropriate.

Sec. 39.006. REPORT. (a) Not later than December 1, 2008,
the committee shall provide a report that:

(1) states the findings of the study conducted under
this subchapter; and

(2) includes any recommendations for statutory
changes.

(b) The report must be approved by a majority of the
committee members. A member who disagrees with any part of the
report may attach a dissenting statement to the report.

Sec. 39.007. EXPIRATION. This subchapter expires January 13, 2009.

SECTION 8. Section 39.023, Education Code, is amended by amending Subsections (a), (c), and (e) and adding Subsections (c-1), (c-2), (c-3), (c-4), (c-5), and (c-6) to read as follows:

(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. All students, except 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 [grades] eight [through 11] with the aid of technology on any assessment instrument [instruments] that includes [include] algebra;

(2) reading, annually in grades three through eight [nine];

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

(4) [English] language arts, in grade [grades] ten [and 11];

(5) [6+] social studies, in grade [grades] eight [and 10];

(5) [6+] science, in grades five and [seven] eight [and 10]; and

(6) [7+] any other subject and grade required by federal law.
(c) The agency shall also adopt end-of-course [secondary exit-level] assessment instruments for secondary-level courses in Algebra I, Algebra II, geometry, biology, chemistry, physics, English I, English II, English III, world geography, world history, and United States history. The Algebra I, Algebra II, and geometry end-of-course assessment instruments must be administered with the aid of technology. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this subsection and shall adopt a policy that requires a student's performance on an end-of-course assessment instrument for a course listed in this subsection in which the student is enrolled to account for 15 percent of the student's final grade for the course. If a student retakes an end-of-course assessment instrument for a course listed in this subsection, as provided by Section 39.025, a school district is not required to use the student's performance on the subsequent administration or administrations of the assessment instrument to determine the student's final grade for the course [designed to be administered to students in grade 11 to assess essential knowledge and skills in mathematics, English language arts, social studies, and science. The mathematics section must include at least Algebra I and geometry with the aid of technology. The English language arts section must include at least English III and must include the assessment of essential knowledge and skills in writing. The social studies section must include early American and United States history. The science section must include at least biology and integrated chemistry and physics. The assessment instruments]
must be designed to assess a student's mastery of minimum skills
necessary for high school graduation and readiness to enroll in an
institution of higher education. 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 or
whether the student should be exempted under Section 39.027(a)(2).

The State Board of Education shall administer the assessment
instruments. The State Board of Education shall adopt a schedule
for the administration of end-of-course [secondary exit-level]
assessment instruments that complies with the requirements of
Subsection (c-3). [Each student who did not perform satisfactorily
on any secondary exit-level assessment instrument when initially
tested shall be given multiple opportunities to retake that
assessment instrument. A student who performs at or above a level
established by the Texas Higher Education Coordinating Board on the
secondary exit-level assessment instruments is exempt from the
requirements of Section 51.306-]

(c-1) The agency shall 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) and (d).

(c-2) The agency may adopt end-of-course assessment
instruments for courses not listed in Subsection (c). A student's
performance on an end-of-course assessment instrument adopted
under this subsection is not subject to the performance
requirements established under Subsection (c) or Section 39.025.

(c-3) In 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 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, English II, and English III must be
permitted to occur at an earlier date.

(c-4) To the extent practicable, the agency shall ensure
that each end-of-course assessment instrument adopted under
Subsection (c) is:

(1) developed in a manner that measures a student's
performance under the college readiness standards established
under Section 28.008; and

(2) validated by national postsecondary education
experts for college readiness content and performance standards.

(c-5) A student's performance on an end-of-course
assessment instrument required under Subsection (c) must be
included in the student's academic achievement record.

(c-6) In adopting an end-of-course assessment instrument
under this section, the agency shall consider the use of an existing
assessment instrument that is currently available. The agency may
use an existing assessment instrument that is currently available
only if the assessment instrument:

(1) is aligned with the essential knowledge and skills
of the subject being assessed; and

(2) allows for the measurement of annual improvement
in student achievement as provided by Subsection (c-1).

(e) Under rules adopted by the State Board of Education,
every third [other] year, the agency shall release the questions
and answer keys to each assessment instrument administered under
Subsection (a), (b), (c), (d), or (1) after the last time the
instrument is administered for that school year. To ensure a valid
bank of questions for use each year, the agency 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. The agency shall
also release, under board rule, each question that is no longer
being field-tested and that was not used to compute a student's
score.

SECTION 9. Subchapter B, Chapter 39, Education Code, is
amended by adding Sections 39.0233 and 39.0234 to read as follows:

Sec. 39.0233. SPECIAL-PURPOSE QUESTIONS INCLUDED IN
END-OF-COURSE ASSESSMENT INSTRUMENTS. (a) The agency, in
coordination with the Texas Higher Education Coordinating Board,
shall adopt a series of questions to be included in an end-of-course
assessment instrument administered under Section 39.023(c) to be
used for purposes of Section 51.3062. The questions adopted under
S.B. No. 1031

this subsection must be developed in a manner consistent with any
college readiness standards adopted under Sections 39.113 and
51.3062.

(b) In addition to the questions adopted under Subsection
(a), the agency shall adopt a series of questions to be included in
an end-of-course assessment instrument administered under Section
39.023(c) to be used for purposes of identifying students who are
likely to succeed in an advanced high school course. A school
district shall notify a student who performs at a high level on the
questions adopted under this subsection and the student's parent or
guardian of the student's performance and potential to succeed in
an advanced high school course. A school district may not require a
student to perform at a particular level on the questions adopted
under this subsection in order to be eligible to enroll in an
advanced high school course.

(c) The State Board of Education shall establish a level of
performance on the questions adopted under this section that
indicates a student's college readiness. A student's performance
on the questions adopted under this section must be evaluated
separately from the student's performance on the remainder of the
assessment instrument. A student's performance on a question
adopted under this section may not be used to determine the
student's performance on the assessment instrument for purposes of
Section 39.023 or 39.025. The commissioner shall adopt rules
concerning the reporting of a student's performance on the
questions adopted under this section.

(d) The questions adopted under this section must be
administered in a separate section of the end-of-course assessment instrument in which the questions are included.

Sec. 39.0234. ADMINISTRATION OF ASSESSMENT INSTRUMENTS BY COMPUTER. (a) The agency shall ensure that assessment instruments required under Section 39.023 are capable of being administered by computer.

(b) Not later than September 1, 2008, each school district shall provide the agency with data regarding the ability of the district to administer to students assessment instruments required under Section 39.023 by computer. The agency shall compile the data provided by school districts under this subsection into a report recommending a plan and timeline for enabling each district in this state to administer the assessment instruments by computer. Not later than December 1, 2008, the agency shall deliver the report to each member of the legislature. This subsection expires June 1, 2009.

SECTION 10. Section 39.025, Education Code, is amended to read as follows:

Sec. 39.025. SECONDARY-LEVEL [EXIT-LEVEL] PERFORMANCE REQUIRED. (a) The commissioner shall adopt rules requiring a student participating in the recommended or advanced high school program to be administered each end-of-course assessment instrument listed in Section 39.023(c) and requiring a student participating in the minimum high school program to be administered an end-of-course assessment instrument listed in Section 39.023(c) only for a course in which the student is enrolled and for which an end-of-course assessment instrument is administered. A student is
required to achieve, in each subject in the foundation curriculum
under Section 28.002(a)(1), a cumulative score that is at least
equal to the product of the number of end-of-course assessment
instruments administered to the student in that subject and 70,
with each end-of-course assessment instrument scored on a scale of
100. A student must achieve a score of at least 60 on an
end-of-course assessment instrument for the score to count towards
the student's cumulative score. For purposes of this subsection, a
student's cumulative score is determined using the student's
highest score on each end-of-course assessment instrument
administered to the student. A student may not receive a high
school diploma until the student has performed satisfactorily on
the end-of-course [secondary exit-level] assessment instruments in
the manner provided under this subsection [for English language
arts, mathematics, social studies, and science administered under
Section 39.023(c)]. This subsection does not require a student to
demonstrate readiness to enroll in an institution of higher
education.

(a-1) The commissioner by rule shall determine a method by
which a student's satisfactory performance on an advanced placement
test, international baccalaureate examination, a Scholastic
Assessment Test (SAT) Subject Test, or another assessment
instrument determined by the commissioner to be at least as
rigorous as an end-of-course assessment instrument adopted under
Section 39.023(c) may be used as a factor in determining whether the
student satisfies the requirements of Subsection (a), including the
cumulative score requirement of that subsection.
S.B. No. 1031

(b) Each time an end-of-course [a secondary exit-level] assessment instrument is administered, a student who failed to achieve a score of at least 60 on the assessment instrument shall retake the assessment instrument. Any other student may retake an end-of-course assessment instrument for any reason. A student is not required to retake a course as a condition of retaking an end-of-course assessment instrument [a student who has not been given a high school diploma because of a failure to perform satisfactorily on the assessment instrument for that subject area may retake the assessment instrument].

(b-1) A school district shall provide each student who fails to achieve a score of at least 70 on an end-of-course assessment instrument with accelerated instruction in the subject assessed by the assessment instrument.

(b-2) If a school district determines that a student, on completion of grade 11, is unlikely to achieve the cumulative score requirements for one or more subjects prescribed by Subsection (a) for receiving a high school diploma, the district shall require the student to enroll in a corresponding content-area college preparatory course for which an end-of-course assessment instrument has been adopted, if available. A student who enrolls in a college preparatory course described by this subsection shall be administered an end-of-course assessment instrument for the course, with the end-of-course assessment instrument scored on a scale of 40. A student may use the student's score on the end-of-course assessment instrument for the college preparatory course towards satisfying the cumulative score requirements.
S.B. No. 1031

prescribed by Subsection (a).

(c) A student who has been denied a high school diploma under this section [Subsections (a) and (b)] and who subsequently performs at the level necessary to comply with the requirements of this section [satisfactorily on each secondary exit-level assessment instrument] shall be issued a high school diploma.

(d) Notwithstanding Subsection (a), the commissioner by rule shall adopt one or more alternative nationally recognized norm referenced assessment instruments under this section to administer to a student to qualify for a high school diploma if the student enrolls after January 1 of the school year in which the student is otherwise eligible to graduate:

(1) for the first time in a public school in this state; or

(2) after an absence of at least four years from any public school in this state.

(e) The commissioner shall establish a required performance level for an assessment instrument adopted under Subsection (d) that is at least as rigorous as the performance level required to be met under Subsection (a) [for the secondary exit-level assessment instrument for the same subject].

(f) The commissioner shall by rule adopt a transition plan to implement the amendments made by S.B. No. 1031, Acts of the 80th Legislature, Regular Session, 2007, to this section and Sections 39.023(a) and (c) and 39.051(b)(5). The rules must provide for the end-of-course assessment instruments adopted under Section 39.023(c) to be administered beginning with students entering the
S.B. No. 1031

ninth grade during the 2011-2012 school year. During the period
under which the transition to end-of-course assessment instruments
is made:

(1) for students entering a grade above the ninth
grade during the 2011-2012 school year, the commissioner shall
retain, administer, and use for campus and district ratings under
Subchapter D the assessment instruments required by Section
39.023(a) or (c), as that section existed before amendment by
S.B. No. 1031, Acts of the 80th Legislature, Regular Session, 2007;
and

(2) the agency may defer releasing assessment
instrument questions and answer keys as required by Section
39.023(e) to the extent necessary to develop additional assessment
instruments.

(g) Rules adopted under Subsection (f) must require that
each student who will be subject to the requirements of Subsection
(a) is entitled to notice of the specific requirements applicable
to the student. Notice under this subsection must be provided not
later than the date the student enters the eighth grade. Subsection
(f) and this subsection expire September 1, 2015.

SECTION 11. Subchapter B, Chapter 39, Education Code, is
amended by adding Sections 39.0261 and 39.0262 to read as follows:

Sec. 39.0261. COLLEGE PREPARATION ASSESSMENTS. (a) In
addition to the assessment instruments otherwise authorized or
required by this subchapter:

(1) each school year and at state cost, a school
district shall administer to students in the spring of the eighth
grade an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument for the purpose of diagnosing the academic strengths and deficiencies of students before entrance into high school;

(2) each school year and at state cost, a school district shall administer to students in the 10th grade an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument for the purpose of measuring a student's progress toward readiness for college and the workplace; 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, one of the valid, reliable, and nationally norm-referenced assessment instruments used by colleges and universities as part of their undergraduate admissions processes.

(b) The agency shall:

(1) select and approve vendors of the specific assessment instruments administered under this section; and

(2) pay all fees associated with the administration of the assessment instrument from funds allotted under the Foundation School Program, and the commissioner shall reduce the total amount of state funds allocated to each district from any source in the same manner described for a reduction in allotments under Section 42.253.

(c) The agency shall ensure that vendors are not paid under Subsection (b) for the administration of an assessment instrument to a student to whom the assessment instrument is not actually
administered. The agency may comply with this subsection by any reasonable means, including by creating a refund system under which a vendor returns any payment made for a student who registered for the administration of an assessment instrument but did not appear for the administration.

(d) A vendor that administers an assessment instrument for a district under this section shall report the results of the assessment instrument to the agency. The agency shall:

(1) include a student's results on the assessment instrument in the electronic student records system established under Section 7.010; and

(2) ensure that a student and the student's parent receive a report of the student's results on the assessment instrument.

(e) 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) The provisions of this section apply only if the legislature appropriates funds for purposes of this section.

Sec. 39.0262. ADMINISTRATION OF DISTRICT-REQUIRED ASSESSMENT INSTRUMENTS IN CERTAIN SUBJECT AREAS. (a) In a subject area for which assessment instruments are administered under Section 39.023, a school district may not administer district-required assessment instruments to any student on more
S.B. No. 1031

than 10 percent of the instructional days in any school year.

(b) The prohibition prescribed by this section does not
apply to the administration of a college preparation assessment
instrument, an advanced placement test, an international
baccalaureate examination, or an assessment instrument
administered under Section 39.023.

SECTION 12. Subchapter B, Chapter 39, Education Code, is
amended by adding Sections 39.0301, 39.0302, 39.0303, and 39.0304
to read as follows:

Sec. 39.0301. SECURITY IN ADMINISTRATION OF ASSESSMENT
INSTRUMENTS. (a) The commissioner:

(1) shall establish procedures for the administration
of assessment instruments adopted or developed under Section
39.023, including procedures designed to ensure the security of the
assessment instruments; and

(2) may establish record retention requirements for
school district records related to the security of assessment
instruments.

(b) The commissioner may develop and implement statistical
methods and standards for identifying potential violations of
procedures established under Subsection (a) to ensure the security
of assessment instruments adopted or developed under Section
39.023. In developing the statistical methods and standards, the
commissioner may include indicators of:

(1) potential violations that are monitored annually;

and

(2) patterns of inappropriate assessment practices
that occur over time.

(c) The commissioner may establish one or more advisory committees to advise the commissioner and agency regarding the monitoring of assessment practices and the use of statistical methods and standards for identifying potential violations of assessment instrument security, including standards to be established by the commissioner for selecting school districts for investigation for a potential assessment security violation under Subsection (e). The commissioner may not appoint an agency employee to an advisory committee established under this subsection.

(d) Any document created for the deliberation of an advisory committee established under Subsection (c) or any recommendation of such a committee is confidential and not subject to disclosure under Chapter 552, Government Code. Except as provided by Subsection (e), the statistical methods and standards adopted under this section and the results of applying those methods and standards are confidential and not subject to disclosure under Chapter 552, Government Code.

(e) The agency may conduct an investigation of a school district for a potential violation of assessment instrument security in accordance with the standards described by Subsection (c). Each school year, after completing all investigations of school districts selected for investigation, the agency shall disclose the identity of each district selected for investigation and the statistical methods and standards used to select the district.
(f) At any time, the commissioner may authorize the audit of a random sample of school districts to determine the compliance of the districts with procedures established under Subsection (a). The identity of each school district selected for audit under this subsection is confidential and not subject to disclosure under Chapter 552, Government Code, except that the agency shall disclose the identity of each district after completion of the audit.

(g) The state auditor may conduct a risk-based audit of a school district at any time to ensure the security of assessment instruments administered under Section 39.023 in the district.

Sec. 39.0302. ISSUANCE OF SUBPOENAS. (a) During an agency investigation or audit of a school district under Section 39.0301(e) or (f), an accreditation investigation under Section 39.075(a)(8), or an investigation by the State Board for Educator Certification of an educator for an alleged violation of an assessment instrument security procedure established under Section 39.0301(a), the commissioner may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is located in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the commissioner, acting through the attorney general, may file suit to enforce the subpoena in a district court in this state. On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.
S.B. No. 1031

(d) All information and materials subpoenaed or compiled in connection with an investigation or audit described by Subsection (a):

(1) are confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to any person other than:

(A) the commissioner or the State Board for Educator Certification, as applicable;

(B) agency employees or agents involved in the investigation, as applicable; and

(C) the office of the attorney general, the state auditor's office, and law enforcement agencies.

Sec. 39.0303. SECURE ASSESSMENT INSTRUMENTS; CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person intentionally discloses the contents of any portion of a secure assessment instrument developed or administered under this subchapter, including the answer to any item in the assessment instrument; and

(2) the disclosure affects or is likely to affect the individual performance of one or more students on the assessment instrument.

(b) An offense under this section is a Class C misdemeanor.

Sec. 39.0304. TRAINING IN ASSESSMENT INSTRUMENT ADMINISTRATION. (a) To ensure that each administration of assessment instruments under Section 39.023 is valid, reliable, and
S.B. No. 1031
in compliance with the requirements of this subchapter, the
commissioner may require training for school district employees
involved in the administration of the assessment instruments.

(b) The training under Subsection (a) may include a
qualifying component to ensure that school district employees
involved in the administration of assessment instruments under
Section 39.023 possess the necessary skills and knowledge required
to administer the assessment instruments.

(c) The commissioner may adopt rules necessary to implement
this section.

SECTION 13. Subsection (d), Section 39.034, Education Code,
is amended to read as follows:

(d) The agency shall determine the necessary annual
improvement required each year for a student to be prepared to
perform satisfactorily on [pass] the end-of-course assessment
instruments [exit-level assessment instrument] required under this
subchapter for graduation. The agency shall report the necessary
annual improvement required to the district. Each year, the report
must state whether the student fell below, met, or exceeded the
necessary target for improvement.

SECTION 14. Subchapter B, Chapter 39, Education Code, is
amended by adding Sections 39.035, 39.0351, and 39.036 to read as
follows:

Sec. 39.035. LIMITATION ON FIELD TESTING OF ASSESSMENT
INSTRUMENTS. (a) Subject to Subsection (b), the agency may
conduct field testing of questions for any assessment instrument
administered under Section 39.023(a), (b), (c), (d), or (l) that is
S.B. No. 1031

separate from the administration of the assessment instrument not
more frequently than every other school year.

(b) Subsection (a) does not limit field testing necessary to
develop new assessment instruments required under state or federal
law.

(c) Before the beginning of each school year, the agency
shall notify each school district regarding the required
participation of the district in field testing activities during
that school year.

Sec. 39.0351. FIELD TESTING STUDY. (a) The agency shall
conduct a study of the sample size and sample procedures used in
field testing of questions for assessment instruments administered
under Section 39.023.

(b) The study required by Subsection (a) must also examine
the feasibility of conducting field testing that is separate from
the administration of an assessment instrument in the fall of the
school year.

(c) Not later than December 1, 2008, the agency shall submit
a report regarding the results of the study to the legislature.

(d) This section expires January 1, 2009.

Sec. 39.036. VERTICAL SCALE FOR CERTAIN ASSESSMENT
INSTRUMENTS. (a) The agency shall develop a vertical scale for
assessing student performance on assessment instruments
administered under Sections 39.023(a)(1) and (2) in a manner that
allows the agency to compare the performance of a student on the
assessment instruments from one grade level to the next.

(b) The commissioner shall adopt rules necessary to
implement this section.

(c) Not later than June 1, 2008, the agency shall develop a vertical scale as required by Subsection (a). The agency shall implement the vertical scale in the administration of assessment instruments under Sections 39.023(a)(1) and (2) beginning with the 2008-2009 school year. This subsection expires September 1, 2009.

SECTION 15. Subsection (b), Section 39.051, Education Code, is amended to read as follows:
(b) Performance on the indicators adopted under this section shall be compared to state-established standards. The degree of change from one school year to the next in performance on each indicator adopted under this section shall also be considered. The indicators must be based on information that is disaggregated by race, ethnicity, gender, and socioeconomic status and must include:
(1) the results of assessment instruments required under Sections 39.023(a), (c), and (1), aggregated by grade level and subject area;
(2) dropout rates, including dropout rates and district completion rates for grade levels 9 through 12, computed in accordance with standards and definitions adopted by the National Center for Education Statistics of the United States Department of Education;
(3) high school graduation rates, computed in accordance with standards and definitions adopted in compliance with the No Child Left Behind Act of 2001 (Pub. L. No. 107-110);
(4) student attendance rates;
S.B. No. 1031

(5) the percentage of graduating students who attain scores on the questions developed for end-of-course [secondary exit-level] assessment instruments under Section 39.0233(a) [required under Subchapter B] that are equivalent to a passing score on the assessment instrument required under Section 51.3062;

(6) the percentage of graduating students who meet the course requirements established for the recommended high school program by State Board of Education rule;

(7) the results of the Scholastic Assessment Test (SAT), the American College Test (ACT), articulated postsecondary degree programs described by Section 61.852, and certified workforce training programs described by Chapter 311, Labor Code;

(8) the percentage of students, aggregated by grade level, provided accelerated instruction under Section 28.0211(c), the results of assessments administered under that section, the percentage of students promoted through the grade placement committee process under Section 28.0211, the subject of the assessment instrument on which each student failed to perform satisfactorily, and the performance of those students in the school year following that promotion on the assessment instruments required under Section 39.023;

(9) for students who have failed to perform satisfactorily on an assessment instrument required under Section 39.023(a) or (c), the numerical progress of those students grouped by percentage on subsequent assessment instruments required under those sections, aggregated by grade level and subject area;

(10) the percentage of students exempted, by exemption
category, from the assessment program generally applicable under
this chapter;
(11) the percentage of students of limited English
proficiency exempted from the administration of an assessment
instrument under Sections 39.027(a)(3) and (4);
(12) the percentage of students in a special education
program under Subchapter A, Chapter 29, assessed through assessment
instruments developed or adopted under Section 39.023(b);
(13) the measure of progress toward preparation for
postsecondary success; and
(14) the measure of progress toward dual language
proficiency under Section 39.034(b), for students of limited
English proficiency, as defined by Section 29.052.

SECTION 16. Subsection (a), Section 39.075, Education Code,
is amended to read as follows:
(a) The commissioner shall authorize special accreditation
investigations to be conducted:
(1) when excessive numbers of absences of students
eligible to be tested on state assessment instruments are
determined;
(2) when excessive numbers of allowable exemptions
from the required state assessment instruments are determined;
(3) in response to complaints submitted to the agency
with respect to alleged violations of civil rights or other
requirements imposed on the state by federal law or court order;
(4) in response to established compliance reviews of
the district's financial accounting practices and state and federal
program requirements;

(5) when extraordinary numbers of student placements in **disciplinary** alternative education programs, other than placements under Sections 37.006 and 37.007, are determined;

(6) in response to an allegation involving a conflict between members of the board of trustees or between the board and the district administration if it appears that the conflict involves a violation of a role or duty of the board members or the administration clearly defined by this code;

(7) when excessive numbers of students in special education programs under Subchapter A, Chapter 29, are assessed through assessment instruments developed or adopted under Section 39.023(b); [\*\*]

(8) in response to an allegation regarding or an analysis using a statistical method result indicating a possible violation of an assessment instrument security procedure established under Section 39.0301, including for the purpose of investigating or auditing a school district under that section; or

(9) as the commissioner otherwise determines necessary.

SECTION 17. Subsection (q), Section 51.3062, Education Code, is amended to read as follows:

(q) A student who has achieved **scores** [a score] set by the board on the questions developed for **end-of-course assessment instruments** [an exit-level assessment instrument required] under Section 39.0233(a) [39.023] is exempt from the requirements of this section. The exemption is effective for the three-year period
S.B. No. 1031

following the date a student takes the last assessment instrument for purposes of this section and achieves the standard set by the board. This subsection does not apply during any period for which the board designates the questions developed for end-of-course assessment instruments [exit-level assessment instrument required] under Section 39.0233(a) [39.023] as the primary assessment instrument under this section, except that the three-year period described by this subsection remains in effect for students who qualify for an exemption under this subsection [section] before that period.

SECTION 18. Subsection (j), Section 39.023, Education Code, is repealed.

SECTION 19. A reference in the Education Code to an end-of-course assessment instrument administered under Subsection (c), Section 39.023, Education Code, includes an exit-level assessment instrument administered under that section as provided by Subsection (f), Section 39.025, Education Code, as added by this Act.

SECTION 20. On the expiration of any contract entered into before September 1, 2007, between the Texas Education Agency and a vendor for the development of assessment instruments required under Section 39.023, Education Code, the Texas Education Agency shall issue a request for proposals for the development of end-of-course assessment instruments required under Subsection (c), Section 39.023, Education Code, as amended by this Act. The Texas Education Agency may allow a vendor with whom the agency has contracted for the development of assessment instruments under Section 39.023,
S.B. No. 1031

Education Code, before September 1, 2007, to begin developing end-of-course assessment instruments required under Subsection (c), Section 39.023, Education Code, as amended by this Act, before the expiration of the contract.

SECTION 21. Not later than September 1, 2011, the legislature shall enact a public school accountability system that is aligned with the provisions of this Act.

SECTION 22. Section 39.035, Education Code, as added by this Act, applies beginning with the 2008-2009 school year.

SECTION 23. (a) Except as otherwise provided by this Act, this Act applies beginning with the 2007-2008 school year.

(b) Beginning with the 2007-2008 school year, the commissioner of education may conduct random audits as authorized under Subsection (f), Section 39.0301, Education Code, as added by this Act. Beginning with the 2008-2009 school year, the commissioner of education may conduct accreditation investigations as authorized under Subdivision (8), Subsection (a), Section 39.075, Education Code, as added by this Act.

(c) During the 2008-2009 school year, the commissioner of education may use the statistical methods and standards established under Subsection (b), Section 39.0301, Education Code, as added by this Act, on a pilot basis to test the accuracy and predictive validity of the methods and standards. Pilot statistical methods and standards developed for use in the 2008-2009 school year are confidential and not subject to disclosure under Chapter 552, Government Code. Without releasing the pilot statistical methods, the commissioner of education shall release the results of any
investigation conducted on the basis of those methods during the
2008-2009 school year on completion of the investigation.
SECTION 24. This Act takes effect September 1, 2007.
S.B. No. 1031

David Dewhurst
President of the Senate

Jim Ceddell
Speaker of the House

I hereby certify that S.B. No. 1031 passed the Senate on April 19, 2007, by the following vote: Yeas 30, Nays 0; May 18, 2007, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2007, House granted request of the Senate; May 26, 2007, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 0.

Prudy Gap
Secretary of the Senate

I hereby certify that S.B. No. 1031 passed the House, with amendments, on May 15, 2007, by the following vote: Yeas 145, Nays 0, one present not voting; May 22, 2007, House granted request of the Senate for appointment of Conference Committee; May 26, 2007, House adopted Conference Committee Report by the following vote: Yeas 141, Nays 0, two present not voting.

Robert Haney
Chief Clerk of the House

Approved:

15 Jun 07
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE
8 P.M. O'CLOCK
JUN 15 2007
Secretary of State