

AMENDED IN ASSEMBLY AUGUST 16, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN SENATE JUNE 1, 2010

AMENDED IN SENATE MAY 11, 2010

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE APRIL 7, 2010

**SENATE BILL**

**No. 930**

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**Introduced by Senator Ducheny**  
**(Coauthors: Senators Alquist, Florez, and Romero)**  
(Coauthors: Assembly Members Coto and V. Manuel Pérez)

February 2, 2010

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~~An act to amend Sections 60640 and 60643 of, and to add Section 52052.7 to, the Education Code, relating to pupil assessments. An act to add Section 52052.7 to the Education Code, relating to pupil assessments.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 930, as amended, Ducheny. Pupil assessments.

~~(1) Existing~~

*Existing* law, the Public School Performance Accountability Program, provides a state assessment program for schools, an intervention program for low-performing schools, and a reward system for high-achieving schools, as specified.

This bill would require that any primary language assessment developed by the department and administered to limited-English-proficient students, as ~~defined~~ *identified pursuant to*

*existing law*, on or after July 1, 2013, ~~to be included in the state's assessment system or any successor system and in the state's federal and state accountability system and any successor system. The bill would require the results of the primary language assessment to be used in any successor measure or results reported for the state's assessment systems and in any other successor measure, as specified. This~~ *The* bill would also require the results to be used in any measure, index, or results reported for the state's federal and state accountability system, or any successor system. *These provisions would become operative on July 1, 2013.*

(2) ~~Existing law establishes the Standardized Testing and Reporting Program, known as the STAR Program. Existing law requires each school district, charter school, and county office of education to administer a standards-based achievement test, known as the California Standards Tests, to all pupils in grades 2 to 11, inclusive. Existing law authorizes a school district to administer a 2nd test in the pupil's primary language to pupils with limited English proficiency who receive instruction in their primary language or have been enrolled in a school in the United States for less than 12 months.~~

The bill would require any successor state assessment system adopted on or after July 1, 2013, to include accommodations and modifications for limited-English-proficient pupils that will allow meaningful participation in the assessments and that address the unique linguistic and socio-cultural needs of the limited-English-proficient pupil without altering the test construct. This bill would authorize a 2nd test in the pupil's primary language to be given to pupils with limited English proficiency, as specified. The bill would authorize schools providing dual immersion programs to use specified language tests to assess pupils who are nonlimited-English-proficient status, as defined. This bill would provide that the results of a primary language assessment given to limited English proficient pupils shall also be used for the purposes of the Academic Performance Index, or a measure or index used in any successor state accountability system, beginning in the 2012–13 school year. The bill would require school districts to provide specified accommodations and modifications to pupils who are English learners while taking these tests, thereby imposing a state-mandated local program.

(3) ~~Existing law requires test publishers that wish to be considered for eligibility for the development of the California Standards Tests to adhere to specified requirements, including that the test publisher~~

provide valid and reliable aggregate scores to school districts and county boards of education in specified forms and formats.

~~This bill would additionally require these test publishers to provide valid and reliable aggregate scores to school districts and county boards of education in a format that would show, for pupils who are English learners, their program of instruction, time in the program of instruction, and their English proficiency level as determined by a test or test series, as specified:~~

~~(4) This bill would become operative on July 1, 2011, and would require that it apply to tests administered on or after January 1, 2012, unless otherwise specified.~~

~~(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

*This bill would make various findings and declarations.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~*no*.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) The federal No Child Left Behind Act of 2001 (20 U.S.C.  
4 Sec. 6301 et seq.) requires states to test all pupils in a valid and  
5 reliable manner and requires, to the extent practicable, that pupils  
6 with limited English proficiency be tested in the language and  
7 form most likely to yield accurate data on academic subject areas.

8 (2) Approximately one of every four pupils enrolled in  
9 California’s public schools is identified as a pupil with limited  
10 English proficiency.

11 (3) The current academic assessment system does not allow  
12 pupils with limited English proficiency to show academic ability  
13 in academic subject areas.

14 (4) Exclusive reliance on academic assessments designed for  
15 native English speakers to gauge the academic progress of pupils  
16 with limited English proficiency violates standards for educational

1 testing established by recognized national educational institutions,  
2 including the American Educational Research Association, the  
3 American Psychological Association, and the National Council  
4 on Measurement in Education.

5 (5) Valid and reliable academic assessment data is critical to  
6 the education accountability system.

7 (6) An accountability system that would yield more accurate  
8 data on the academic ability of pupils with limited English  
9 proficiency is needed.

10 (7) Local educational agencies should not experience negative  
11 consequences solely based on the scores of recent immigrant pupils  
12 on tests that do not provide valid and reliable diagnostic  
13 information about what these pupils know and can do in academic  
14 subject areas.

15 (b) It is therefore the intent of the Legislature to bring the system  
16 of assessing the academic progress of pupils with limited English  
17 proficiency into alignment with the requirements of the federal  
18 No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.),  
19 including the requirement that states test all pupils in a valid and  
20 reliable manner and, to the extent practicable, in the language and  
21 form most likely to yield accurate data on academic ability in  
22 academic subject areas. It is also the intent of the Legislature that  
23 California's state assessments be valid and reliable assessments  
24 for pupils who are English learners and for pupils with  
25 developmental disabilities and that the provision of  
26 accommodations enable their participation in these state  
27 assessments pursuant to the core assurances of the American  
28 Recovery and Reinvestment Act of 2009 (Public Law 111-5).

29 SEC. 2. Section 52052.7 is added to the Education Code, to  
30 read:

31 52052.7. (a) Any primary language assessment developed by  
32 the department and administered to pupils identified as limited  
33 English proficient pursuant to Section 60810 ~~and as defined in~~  
34 ~~subdivision (g) of Section 60640~~ on or after July 1, 2013, shall be  
35 included in the state's assessment system or in any successor  
36 system and shall be included in any measure or index that is  
37 developed or used for the purposes of the state's federal and state  
38 accountability system or any successor system. *In addition to being*  
39 *identified as limited English proficient pursuant to Section 60810,*  
40 *limited-English-proficient pupils who either receive instruction in*

1 *their primary language or are literate in their primary language*  
2 *as determined by the results of the first administration of the*  
3 *primary language assessment and have been enrolled in a school*  
4 *in the United States for less than three consecutive years shall be*  
5 *included. Additionally, pupils who are not limited English*  
6 *proficient and who are enrolled in public schools providing dual*  
7 *language immersion programs shall be included.* The results of  
8 the primary language assessment shall be used in any measure or  
9 results reported for the state’s assessment system or any successor  
10 system, and shall be used in any measure, index, or results reported  
11 for the state’s federal and state accountability system or any  
12 successor system.

13 (b) Any successor system to the state’s assessment system  
14 adopted on or after July 1, 2013, shall modify the achievement test  
15 administered pursuant to Section 60642.5 in order to eliminate  
16 linguistic complexity, to the extent practicable. The modifications  
17 shall be based upon research and be designed to maintain the rigor  
18 of the test.

19 (c) Any successor system to the state assessment system adopted  
20 on or after July 1, 2013, shall include accommodations and  
21 modifications for English learners that will allow for meaningful  
22 participation in the assessments and that address the unique  
23 linguistic and sociocultural needs of the English learner without  
24 altering the test construct. The accommodations and modifications  
25 shall include:

26 (1) A word-to-word glossary, without definitions, in English  
27 and in the top-10 *five* languages ~~indicated~~ *as determined* by the  
28 language census submitted to the department by the districts. The  
29 glossary shall include frequently used general academic words as  
30 well as discipline-specific words used in the assessments.

31 (2) The repetition of test directions at the request of a pupil.

32 (3) Translations of the test directions in the top-10 *five* languages  
33 ~~indicated~~ *as determined* by the Language Census submitted to the  
34 department by the districts.

35 (d) The department shall provide to the districts the bilingual  
36 glossaries prepared pursuant to paragraph (1) of subdivision (c)  
37 and the translations of test directions prepared pursuant to  
38 paragraph (3) of subdivision (c).

1 ~~(e) (1) The Superintendent shall establish an advisory committee~~  
2 ~~for the purpose of providing recommendations to the~~  
3 ~~Superintendent and the state board on all of the following:~~

4 *(e) (1) An advisory committee, work group, task force, or*  
5 *technical assistance group required by the Legislature or Governor*  
6 *or established by the Superintendent or state board for the purpose*  
7 *of providing recommendations to the Superintendent and the state*  
8 *board on the future state assessment and accountability systems*  
9 *and federal accountability system also shall determine all of the*  
10 *following:*

11 (A) How to include primary language assessments and their  
12 scores in the state's assessment system and any successor  
13 assessment system and in the state and federal accountability  
14 system and any successor accountability system.

15 (B) How to modify the state's successor assessment system as  
16 specified in subdivision (b).

17 (C) How to include the accommodations and modifications in  
18 the state's successor assessment system as specified in subdivision  
19 (c).

20 *(D) How to provide data on pupils who are English learners,*  
21 *their program of instruction, and their English proficiency level*  
22 *as determined by the California English Language Development*  
23 *Test.*

24 *(E) How to provide disaggregated scores, based on*  
25 *limited-English-proficient status and nonlimited-English-proficient*  
26 *status. For purposes of this section, pupils with*  
27 *"nonlimited-English-proficient status" shall include the total of*  
28 *those pupils who are English-only pupils, fluent-English-proficient*  
29 *pupils, and redesignated fluent-English-proficient pupils.*

30 (2) The majority of the advisory committee shall be comprised  
31 of persons with demonstrated expertise in developing academic  
32 assessments specific to English learners and persons with  
33 demonstrated experience in research and data specific to English  
34 learners.

35 *(f) The primary language assessments developed pursuant to*  
36 *this section shall meet the requirements regarding validity,*  
37 *reliability, and comparability as specified by the National Council*  
38 *on Measurements in Education. The testing contractor chosen for*  
39 *the purpose of developing the primary language assessments shall*

1 *report to the state board as to how these requirements have been*  
2 *met.*

3 *(g) This section shall become operative on July 1, 2013.*

4 ~~SEC. 3. Section 60640 of the Education Code is amended to~~  
5 ~~read:~~

6 ~~60640. (a) There is hereby established the Standardized Testing~~  
7 ~~and Reporting Program, to be known as the STAR Program.~~

8 ~~(b) From the funds available for that purpose, each school~~  
9 ~~district, charter school, and county office of education shall~~  
10 ~~administer to each of its pupils in grades 2 to 11, inclusive, the~~  
11 ~~standards-based achievement test provided for in Section 60642.5.~~  
12 ~~The state board shall establish a testing period to provide that all~~  
13 ~~schools administer these tests to pupils at approximately the same~~  
14 ~~time during the instructional year, except as necessary to ensure~~  
15 ~~test security and to meet the final filing date.~~

16 ~~(c) The publisher and the school district shall provide two~~  
17 ~~makeup days for the testing of previously absent pupils within the~~  
18 ~~testing period established by the state board in subdivision (b).~~

19 ~~(d) The governing board of the school district may administer~~  
20 ~~achievement tests in grades other than those required by~~  
21 ~~subdivision (b) as it deems appropriate.~~

22 ~~(e) Pursuant to Section 1412(a)(17) of Title 20 of the United~~  
23 ~~States Code, individuals with exceptional needs, as defined in~~  
24 ~~Section 56026, shall be included in the testing requirement of~~  
25 ~~subdivision (b) with appropriate accommodations in administration,~~  
26 ~~where necessary, and those individuals with exceptional needs~~  
27 ~~who are unable to participate in the testing, even with~~  
28 ~~accommodations, shall be given an alternate assessment.~~

29 ~~(f) (1) Primary language tests administered pursuant to this~~  
30 ~~subdivision and subdivision (g) shall be subject to the requirements~~  
31 ~~of subdivision (a) of Section 60641. These primary language tests~~  
32 ~~shall produce individual pupil scores that are valid and reliable.~~

33 ~~(2) Notwithstanding any other law, the state board shall~~  
34 ~~designate for use, as part of this program, a single primary language~~  
35 ~~test in each language for which a test is available for grades 2 to~~  
36 ~~11, inclusive, pursuant to the process used for designation of the~~  
37 ~~assessment chosen in the 1997-98 fiscal year, as specified in~~  
38 ~~Section 60643, as applicable.~~

39 ~~(3) The primary language assessments developed pursuant to~~  
40 ~~this subdivision and subdivision (g) shall be developed to satisfy~~

1 all the requirements of the federal No Child Left Behind Act of  
2 2001 (20 U.S.C. Sec. 6301 et seq.) or any successor act, including  
3 the requirements regarding validity, reliability, and comparability.  
4 The testing contractor chosen for the purpose of developing the  
5 primary language assessments shall report to the state board as to  
6 how these requirements have been met. The primary language  
7 assessments developed pursuant to this subdivision and subdivision  
8 (g) are subject to the requirements of subdivision (a) of Section  
9 60641.

10 (4) (A) The department shall use funds made available pursuant  
11 to Title VI of the federal No Child Left Behind Act of 2001 (20  
12 U.S.C. Sec. 6301 et seq.) and appropriated by the annual Budget  
13 Act for the purpose of developing and adopting primary language  
14 assessments that are aligned to the state academic content  
15 standards. Subject to the availability of funds, primary language  
16 assessments shall be developed and adopted for reading/language  
17 arts and mathematics in the dominant primary language of  
18 limited-English-proficient pupils. The dominant primary language  
19 shall be determined by the count in the annual language census of  
20 the primary language of each limited-English-proficient pupil  
21 enrolled in the California public schools.

22 (B) Once a dominant primary language assessment is available  
23 for use for a specific grade level, it shall be administered in place  
24 of the assessment designated pursuant to paragraph (1) for that  
25 grade level.

26 (C) In choosing a contractor to develop a primary language  
27 assessment the state board shall consider the criteria for choosing  
28 a contractor or test publisher as specified by Section 60643, and  
29 as specified by Section 60642.5, as applicable. The contractor shall  
30 have expertise and experience in developing primary language  
31 tests and test items.

32 (D) Subject to the availability of funds, the assessments shall  
33 be developed in grade order starting with the lowest grade subject  
34 to the STAR Program.

35 (E) If the state board contracts for the development of primary  
36 language assessments or test items to augment an existing  
37 assessment, the state shall retain ownership rights to the assessment  
38 and the test items. With the approval of the state board, the  
39 department may license the test for use in other states subject to a  
40 compensation agreement approved by the Department of Finance.

1 ~~(F) On or before January 1, 2006, the department shall submit~~  
2 ~~to the Legislature a report on the development and implementation~~  
3 ~~of the initial primary language assessments and recommendations~~  
4 ~~on the development and implementation of future assessments and~~  
5 ~~funding requirements.~~

6 ~~(g) A pupil identified as limited English proficient pursuant to~~  
7 ~~the administration of the test or test series developed or acquired~~  
8 ~~pursuant to Section 60810 who is enrolled in any of grades 2 to~~  
9 ~~11, inclusive, shall be required to take a test in his or her primary~~  
10 ~~language if a test is available. Limited-English-proficient pupils~~  
11 ~~required to take this test include either:~~

12 ~~(1) Pupils who receive instruction in their primary language.~~

13 ~~(2) Pupils who are literate in their primary language as~~  
14 ~~determined by the results of the first administration of the primary~~  
15 ~~language assessment and have been enrolled in a school in the~~  
16 ~~United States for less than three consecutive years.~~

17 ~~(h) Public schools providing dual immersion programs may use~~  
18 ~~the primary language assessments pursuant to subdivision (g) for~~  
19 ~~the purpose of assessing pupils who are enrolled in dual immersion~~  
20 ~~programs and who are nonlimited-English-proficient status, as~~  
21 ~~defined in paragraph (6) of subdivision (a) of Section 60643. This~~  
22 ~~assessment shall be administered at the school district's expense,~~  
23 ~~and only if the school district enters into an agreement for that~~  
24 ~~purpose with the state's testing contractor.~~

25 ~~(i) The results of a primary language assessment administered~~  
26 ~~to limited-English-proficient pupils pursuant to subdivision (g)~~  
27 ~~shall be used to determine adequate yearly progress pursuant to~~  
28 ~~the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301~~  
29 ~~et seq.), or a measure or index used in any successor federal~~  
30 ~~accountability system, and shall begin in the 2012–13 school year.~~  
31 ~~However, for pupils to whom the high school exit examination~~  
32 ~~adopted pursuant to Section 60850 is administered, the high school~~  
33 ~~exit examination shall be used to determine adequate yearly~~  
34 ~~progress rather than as an achievement test administered pursuant~~  
35 ~~to this section.~~

36 ~~(j) The results of a primary language assessment administered~~  
37 ~~to limited-English-proficient pupils pursuant to subdivision (g)~~  
38 ~~shall also be used for purposes of the Academic Performance Index~~  
39 ~~(API) or a measure or index used in any successor state~~  
40 ~~accountability system, and shall begin in the 2012–13 school year.~~

1     ~~(k) For purposes of subdivisions (i) and (j), only the highest test~~  
2     ~~score results of the primary language standards test or the English~~  
3     ~~standards test shall be included.~~

4     ~~(l) (1) The Superintendent shall apportion funds to school~~  
5     ~~districts to enable school districts to meet the requirements of~~  
6     ~~subdivisions (b), (c), (f), and (g).~~

7     ~~(2) The state board annually shall establish the amount of~~  
8     ~~funding to be apportioned to school districts for each test~~  
9     ~~administered and annually shall establish the amount that each~~  
10    ~~publisher shall be paid for each test administered under the~~  
11    ~~agreements required pursuant to Section 60643. The amounts to~~  
12    ~~be paid to the publishers shall be determined by considering the~~  
13    ~~cost estimates submitted by each publisher each September and~~  
14    ~~the amount included in the annual Budget Act, and by making~~  
15    ~~allowance for the estimated costs to school districts for compliance~~  
16    ~~with the requirements of subdivisions (b), (c), (f), and (g).~~

17    ~~(3) An adjustment to the amount of funding to be apportioned~~  
18    ~~per test shall not be valid without the approval of the Director of~~  
19    ~~Finance. A request for approval of an adjustment to the amount~~  
20    ~~of funding to be apportioned per test shall be submitted in writing~~  
21    ~~to the Director of Finance and the chairpersons of the fiscal~~  
22    ~~committees of both houses of the Legislature with accompanying~~  
23    ~~material justifying the proposed adjustment. The Director of~~  
24    ~~Finance is authorized to approve only those adjustments related~~  
25    ~~to activities required by statute. The Director of Finance shall~~  
26    ~~approve or disapprove the amount within 30 days of receipt of the~~  
27    ~~request and shall notify the chairpersons of the fiscal committees~~  
28    ~~of both houses of the Legislature of the decision.~~

29    ~~(m) For purposes of making the computations required by~~  
30    ~~Section 8 of Article XVI of the California Constitution, the~~  
31    ~~appropriation for the apportionments made pursuant to paragraph~~  
32    ~~(1) of subdivision (l), and the payments made to the publishers~~  
33    ~~under the contracts required pursuant to Section 60643 or~~  
34    ~~subparagraph (C) of paragraph (1) of subdivision (a) of Section~~  
35    ~~60605 between the department and the contractor, are “General~~  
36    ~~Fund revenues appropriated for school districts,” as defined in~~  
37    ~~subdivision (c) of Section 41202, for the applicable fiscal year,~~  
38    ~~and included within the “total allocations to school districts and~~  
39    ~~community college districts from General Fund proceeds of taxes~~

1 appropriated pursuant to Article XIII B,” as defined in subdivision  
2 (e) of Section 41202, for that fiscal year.

3 (n) As a condition for receiving an apportionment pursuant to  
4 subdivision (l), a school district shall report to the Superintendent  
5 all of the following:

6 (1) The number of pupils enrolled in the school district in grades  
7 2 to 11, inclusive.

8 (2) The number of pupils to whom an achievement test was  
9 administered in grades 2 to 11, inclusive, in the school district.

10 (3) The number of pupils in paragraph (1) who were exempted  
11 from the test at the request of their parents or guardians.

12 (4) The number of pupils to whom a primary language  
13 assessment was administered in grades 2 to 11, inclusive, in the  
14 school district.

15 (o) The Superintendent and the state board are authorized and  
16 encouraged to assist postsecondary educational institutions to use  
17 the assessment results of the California Standards Tests, including,  
18 but not limited to, the augmented California Standards Tests, for  
19 academic credit, placement, or admissions processes.

20 (p) The Superintendent, with the approval of the state board,  
21 annually shall release to the public test items from the  
22 standards-based achievement tests pursuant to Section 60642.5  
23 administered in previous years. The minimum number of test items  
24 released per year shall be equal to 25 percent of the total number  
25 of test items on the test administered in the previous year.

26 SEC. 4. Section 60643 of the Education Code is amended to  
27 read:

28 60643. (a) To be eligible for consideration under Section  
29 60642.5 by the state board, test publishers shall agree in writing  
30 each year to meet the following requirements, as applicable, if  
31 selected:

32 (1) Enter into an agreement, pursuant to subdivision (e) or (f),  
33 with the department by October 15 of that year.

34 (2) Align the standards-based achievement test provided for in  
35 Section 60642.5 to the academically rigorous content and  
36 performance standards adopted by the state board.

37 (3) Comply with subdivisions (c) and (d) of Section 60645.

38 (4) Provide valid and reliable individual pupil scores to parents  
39 or guardians, teachers, and school administrators.

1 ~~(5) Provide valid and reliable aggregate scores to school districts~~  
2 ~~and county boards of education in all of the following forms and~~  
3 ~~formats:~~

4 ~~(A) Grade level.~~

5 ~~(B) School level.~~

6 ~~(C) District level.~~

7 ~~(D) Countywide.~~

8 ~~(E) Statewide.~~

9 ~~(F) Comparison of statewide scores relative to other states.~~

10 ~~(G) For pupils who are English learners, their program of~~  
11 ~~instruction, time in the program of instruction, and English~~  
12 ~~proficiency level as determined by the test or test series developed~~  
13 ~~or acquired pursuant to Section 60810.~~

14 ~~(6) Provide — disaggregated — scores, — based — on~~  
15 ~~limited-English-proficient status and nonlimited-English-proficient~~  
16 ~~status. For purposes of this section, pupils with~~  
17 ~~“nonlimited-English-proficient status” shall include the total of~~  
18 ~~those pupils who are English-only pupils, fluent-English-proficient~~  
19 ~~pupils, and redesignated fluent-English-proficient pupils. These~~  
20 ~~scores shall be provided to school districts and county boards of~~  
21 ~~education in the same forms and formats listed in paragraph (5).~~

22 ~~(7) Provide disaggregated scores by pupil gender and ethnicity~~  
23 ~~and provide disaggregated scores based on whether pupils are~~  
24 ~~economically disadvantaged or not. These disaggregated scores~~  
25 ~~shall be in the same forms and formats as listed in paragraph (5).~~  
26 ~~In any one year, the disaggregation shall entail information already~~  
27 ~~being collected by school districts, county offices of education, or~~  
28 ~~charter schools.~~

29 ~~(8) Provide disaggregated scores for pupils who have~~  
30 ~~individualized education programs and have enrolled in special~~  
31 ~~education, to the extent required by federal law. These scores shall~~  
32 ~~be provided in the same forms and formats listed in paragraph (5).~~  
33 ~~This section shall not be construed to exclude the scores of special~~  
34 ~~education pupils from any state or federal accountability system.~~

35 ~~(9) Provide information listed in paragraphs (5), (6), (7), and~~  
36 ~~(8) to the department and the state board in the medium requested~~  
37 ~~by each entity, respectively.~~

38 ~~(b) It is the intent of the Legislature that the publisher work with~~  
39 ~~the Superintendent and the state board in developing a methodology~~  
40 ~~to disaggregate statewide scores as required in paragraphs (6) and~~

1 ~~(7) of subdivision (a), and in determining which variable indicated~~  
2 ~~on the STAR testing document shall serve as a proxy for~~  
3 ~~“economically disadvantaged” status pursuant to paragraph (7) of~~  
4 ~~subdivision (a).~~

5 ~~(e) Access to information about individual pupils or their~~  
6 ~~families shall be granted to the publisher only for purposes of~~  
7 ~~correctly associating test results with the pupils who produced~~  
8 ~~those results or for reporting and disaggregating test results as~~  
9 ~~required by this section. School districts are prohibited from~~  
10 ~~excluding a pupil from the test if a parent or parents decline to~~  
11 ~~disclose income. This chapter does not abridge or deny rights to~~  
12 ~~confidentiality contained in the federal Family Educational Rights~~  
13 ~~and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) or other applicable~~  
14 ~~state and federal law that protect the confidentiality of information~~  
15 ~~collected by educational institutions.~~

16 ~~(d) Notwithstanding any other law, the publisher of the~~  
17 ~~standards-based achievement test provided for in Section 60642.5~~  
18 ~~or any contractor under subdivision (f) shall comply with all of~~  
19 ~~the conditions and requirements enumerated in subdivision (a), as~~  
20 ~~applicable, to the satisfaction of the state board.~~

21 ~~(e) (1) A publisher shall not provide a test described in Section~~  
22 ~~60642.5 or 60650 or in subdivision (f) of Section 60640 for use~~  
23 ~~in California public schools, unless the publisher enters into a~~  
24 ~~written contract with the department as set forth in this subdivision.~~

25 ~~(2) The department shall develop, and the state board shall~~  
26 ~~approve, a contract to be entered into with a publisher pursuant to~~  
27 ~~paragraph (1). The department may develop the contract through~~  
28 ~~negotiations with the publisher.~~

29 ~~(3) For purposes of the contracts authorized pursuant to this~~  
30 ~~subdivision, the department is exempt from the requirements of~~  
31 ~~Part 2 (commencing with Section 10100) of Division 2 of the~~  
32 ~~Public Contract Code and from the requirements of Article 6~~  
33 ~~(commencing with Section 999) of Chapter 6 of Division 4 of the~~  
34 ~~Military and Veterans Code.~~

35 ~~(4) The contracts shall include provisions for progress payments~~  
36 ~~to the publisher for work performed or costs incurred in the~~  
37 ~~performance of the contract. Not less than 10 percent of the amount~~  
38 ~~budgeted for each separate and distinct component task provided~~  
39 ~~for in each contract shall be withheld pending final completion of~~  
40 ~~all component tasks by that publisher. The total amount withheld~~

1 pending final completion shall not exceed 10 percent of the total  
2 contract price.

3 ~~(5) The contracts shall require liquidated damages to be paid~~  
4 ~~by the publisher in the amount of up to 10 percent of the total cost~~  
5 ~~of the contract for any component task that the publisher through~~  
6 ~~its own fault or that of its subcontractors fails to substantially~~  
7 ~~perform by the date specified in the agreement.~~

8 ~~(6) The contracts shall establish the process and criteria by~~  
9 ~~which the successful completion of each component task shall be~~  
10 ~~recommended by the department and approved by the state board.~~

11 ~~(7) The publishers shall submit, as part of the contract~~  
12 ~~negotiation process, a proposed budget and invoice schedule, that~~  
13 ~~includes a detailed listing of the costs for each component task~~  
14 ~~and the expected date of the invoice for each completed component~~  
15 ~~task.~~

16 ~~(8) The contracts shall specify the following component tasks,~~  
17 ~~as applicable, that are separate and distinct:~~

18 ~~(A) Development of new tests or test items as required by~~  
19 ~~paragraph (2) of subdivision (a):~~

20 ~~(B) Test materials production or publication:~~

21 ~~(C) Delivery of test materials to school districts:~~

22 ~~(D) Test processing, scoring, and analyses:~~

23 ~~(E) Reporting of test results to the school districts, including,~~  
24 ~~but not limited to, all reports specified in this section.~~

25 ~~(F) Reporting of test results to the department, including, but~~  
26 ~~not limited to, the electronic files required pursuant to this section.~~

27 ~~(G) All other analyses or reports required by the Superintendent~~  
28 ~~to meet the requirements of state and federal law and set forth in~~  
29 ~~the agreement.~~

30 ~~(9) The contracts shall specify the specific reports and data files,~~  
31 ~~if any, that are to be provided to school districts by the publisher~~  
32 ~~and the number of copies of each report or file to be provided.~~

33 ~~(10) The contracts shall specify the means by which any delivery~~  
34 ~~date for materials to each school district shall be verified by the~~  
35 ~~publisher and the school district.~~

36 ~~(11) School districts may negotiate a separate agreement with~~  
37 ~~the publisher for any additional materials or services not within~~  
38 ~~the contracts specified in this subdivision, including, but not limited~~  
39 ~~to, the administration of the tests to pupils in grade levels other~~

1 than grades 2 to 11, inclusive. Any separate agreement is not within  
2 the scope of the contract specified in this subdivision.

3 (f) ~~The department, with approval of the state board, may enter~~  
4 ~~into a separate contract for the development or administration of~~  
5 ~~a test authorized pursuant to this part, including, but not limited~~  
6 ~~to, item development, coordination of tests, assemblage of tests~~  
7 ~~or test items, scoring, or reporting. The liquidated damages~~  
8 ~~provision set forth in paragraph (5) of subdivision (e) shall apply~~  
9 ~~to a contract entered into pursuant to this subdivision.~~

10 ~~SEC. 5. This act shall become operative on July 1, 2011, and~~  
11 ~~shall apply to tests administered on or after January 1, 2012, unless~~  
12 ~~otherwise specified in this act.~~

13 ~~SEC. 6. If the Commission on State Mandates determines that~~  
14 ~~this act contains costs mandated by the state, reimbursement to~~  
15 ~~local agencies and school districts for those costs shall be made~~  
16 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
17 ~~4 of Title 2 of the Government Code.~~