

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE APRIL 7, 2010

SENATE BILL

No. 930

Introduced by Senator Ducheny

(~~Coauthor: Senator Florez~~)

(~~Coauthor: Assembly Member Coto~~)

(*Coauthors: Senators Alquist, Florez, and Romero*)

(*Coauthors: Assembly Members Coto and V. Manuel Perez*)

February 2, 2010

An act to amend Sections 60640 and 60643 of, and 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 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, on or after July 1, 2013, to be included in any successor measure to the state's assessment system and in any successor measure to the state's federal and state accountability system. The bill would require the results of the primary language assessment to be used in any successor measure to the state's assessment systems and in any other successor measure, as specified.

(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. ~~Existing law makes these provisions inoperative on July 1, 2011.~~

~~This bill would extend the operative date of these provisions indefinitely. The~~

The bill would require the State Department of Education, by September 1, 2012, to identify and develop effective accommodations for English learners that will allow meaningful participation in the assessments and that address the unique linguistic and sociocultural needs of the English learner 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 who receive instruction in their primary language or are literate in their primary language and have been enrolled in a school in the United States for less than 3 consecutive years. The bill would authorize schools providing dual immersion programs to use specified language tests to assess pupils who are nonlimited English proficient. This bill would provide that the results of a primary language assessment given to English learners shall also be given for the purposes of the Academic Performance Index beginning in the 2012–13 school year. The Public Schools Accountability Act Advisory Committee would be required to analyze the results of the primary language assessments in calculating the API growth from the previous year, as specified. The bill would require school districts to provide specified accommodations to pupils who are English learners while taking these tests, thereby imposing a state-mandated local program.

(3) Existing law requires test publishers who 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. ~~Existing law makes these provisions inoperative on July 1, 2011.~~

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 the California English Language Development Test. ~~The bill would extend the operative date of these provisions indefinitely.~~

(4) 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.

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

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
- 17 testing established by recognized national educational institutions,
- 18 including the American Educational Research Association, the
- 19 American Psychological Association, and the National Council
- 20 on Measurement in Education.
- 21 (5) Valid and reliable academic assessment data is critical to
- 22 the education accountability system.
- 23 (6) An accountability system that would yield more accurate
- 24 data on the academic ability of pupils with limited English
- 25 proficiency is needed.

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

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

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

52052.7. (a) Any primary language assessment developed by the department and administered to pupils identified as limited English proficient pursuant to Section 60810 and as defined in subdivision (g) of Section 60640 on or after July 1, 2013, shall be included in any successor measure to the state's assessment system and shall be included in any successor measure to the state's federal and state accountability system. The results of the primary language assessment shall be used in any successor measure to the state's assessment systems and shall be used in any successor measure to the state's federal and state accountability system.

(b) *The department, by September 1, 2012, shall modify the achievement test administered pursuant to Section 60642.5 in order to eliminate linguistic complexity, to the extent practicable. The modifications shall be based upon research designed to maintain the rigor of the test.*

(c) *The department, by September 1, 2012, shall identify and develop effective accommodations for English learners that will allow meaningful participation in the assessments and that address the unique linguistic and sociocultural needs of the English learner*

1 without altering the test construct. The accommodations shall
2 include:

3 (1) A word-to-word glossary, without definitions, in English
4 and in the top 10 languages indicated by the language census
5 submitted to the department by the districts. The glossary shall
6 include frequently used general academic words as well as
7 discipline-specific words used in the assessments.

8 (2) The explanation of test questions and repetition of test
9 directions at the request of a pupil.

10 (3) Translations of the test directions in the top 10 languages
11 indicated by the Language Census submitted to the department by
12 the districts.

13 (4) The department shall provide to the districts the bilingual
14 glossaries prepared pursuant to paragraph (1) and the translations
15 of test directions prepared pursuant to paragraph (3).

16 SEC. 3. ~~Section 60640 of the Education Code is amended to~~
17 ~~read:~~

18 ~~60640. (a) There is hereby established the Standardized Testing~~
19 ~~and Reporting Program, to be known as the STAR Program.~~

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

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

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

34 ~~(e) Pursuant to Section 1412(a)(17) of Title 20 of the United~~
35 ~~States Code, individuals with exceptional needs, as defined in~~
36 ~~Section 56026, shall be included in the testing requirement of~~
37 ~~subdivision (b) with appropriate accommodations in administration,~~
38 ~~where necessary, and those individuals with exceptional needs~~
39 ~~who are unable to participate in the testing, even with~~
40 ~~accommodations, shall be given an alternate assessment.~~

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

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

~~(3) The primary language assessments developed pursuant to this subdivision and subdivision (g) shall be developed to satisfy all the requirements of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), including the requirements regarding validity, reliability, and comparability. The testing contractor chosen for the purpose of developing the primary language assessments shall report to the state board as to how these requirements have been met.~~

~~(4) The primary language assessments administered pursuant to this subdivision and subdivision (g) are subject to the requirements of subdivision (a) of Section 60641.~~

~~(5) The department, by September 1, 2012, shall modify the achievement test administered pursuant to Section 60642.5 in order to eliminate linguistic complexity, to the extent practicable. The modifications shall be based upon research designed to maintain the rigor of the test.~~

~~(6) The department, by September 1, 2012, shall identify and develop effective accommodations for English learners that will allow meaningful participation in the assessments and that address the unique linguistic and sociocultural needs of the English learner without altering the test construct. The accommodations shall include:~~

~~(A) A word-to-word glossary, without definitions, in English and in the top 10 languages indicated by the Language Census submitted to the department by the districts. The glossary shall include frequently used general academic words as well as discipline-specific words used in the assessments.~~

~~(B) The explanation of test questions and repetition of test directions at the request of a pupil.~~

1 ~~(C) Translations of the test directions in the top 10 languages~~
2 ~~indicated by the Language Census submitted to the department by~~
3 ~~the districts.~~

4 ~~(D) The department shall provide to the districts the bilingual~~
5 ~~glossaries prepared pursuant to subparagraph (A) and the~~
6 ~~translations of test directions prepared pursuant to subparagraph~~
7 ~~(C).~~

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

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

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

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

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

39 ~~(g) A pupil identified as limited English proficient pursuant to~~
40 ~~the administration of a test made available pursuant to Section~~

1 60810 who is enrolled in any of grades 2 to 11, inclusive, and who
2 either receives instruction in his or her primary language or who
3 is literate in his or her primary language and has been enrolled in
4 a school in the United States for less than three consecutive years
5 shall be required to take a test in his or her primary language if a
6 test is available.

7 (h) Public schools providing dual immersion programs may use
8 the primary language assessments pursuant to this section for the
9 purpose of assessing pupils who are enrolled in dual immersion
10 programs and who are nonlimited English proficient, as described
11 in Section 60643. This assessment shall be administered at the
12 school district's expense, and only if the school district enters into
13 an agreement for that purpose with the state testing contractor.

14 (i) The results of a primary language assessment administered
15 to English learners pursuant to subdivision (g) shall be used to
16 determine adequate yearly progress pursuant to the federal No
17 Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and
18 shall begin in the 2012–13 school year. However, for pupils to
19 whom the high school exit examination is administered, the high
20 school exit examination shall be used to determine adequate yearly
21 progress rather than as an achievement test administered pursuant
22 to this section.

23 (j) The results of a primary language assessment administered
24 to English learners pursuant to subdivision (g) also shall be used
25 for purposes of the Academic Performance Index (API) and shall
26 begin in the 2012–13 school year.

27 (k) For purposes of subdivisions (i) and (j) only the highest test
28 score results of the primary language standards test or the English
29 standards test shall be included.

30 (l) (1) The Superintendent shall apportion funds to school
31 districts to enable school districts to meet the requirements of
32 subdivisions (b), (e), (f), and (g).

33 (2) The state board annually shall establish the amount of
34 funding to be apportioned to school districts for each test
35 administered and annually shall establish the amount that each
36 publisher shall be paid for each test administered under the
37 agreements required pursuant to Section 60643. The amounts to
38 be paid to the publishers shall be determined by considering the
39 cost estimates submitted by each publisher each September and
40 the amount included in the annual Budget Act, and by making

allowance for the estimated costs to school districts for compliance with the requirements of subdivisions (b), (e), (f), and (g).

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

~~(m) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (l), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202, for the applicable fiscal year; and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(A) Grade level.~~

~~(B) School level.~~

~~(C) District level.~~

~~(D) Countywide.~~

~~(E) Statewide.~~

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

~~(G) For pupils who are English learners, their program of instruction, time in the program of instruction, and their English proficiency level as determined by the California English Language Development Test.~~

~~(6) Provide disaggregated scores, based on limited-English-proficient status and nonlimited-English-proficient~~

1 status. For purposes of this section, pupils with
2 “nonlimited-English-proficient status” shall include the total of
3 those pupils who are English-only pupils, fluent-English-proficient
4 pupils, and redesignated fluent-English-proficient pupils. These
5 scores shall be provided to school districts and county boards of
6 education in the same forms and formats listed in paragraph (5).

7 (7) Provide disaggregated scores by pupil gender and ethnicity,
8 and provide disaggregated scores based on whether pupils are
9 economically disadvantaged or not. These disaggregated scores
10 shall be in the same forms and formats as listed in paragraph (5).
11 In any one year, the disaggregation shall entail information already
12 being collected by school districts, county offices of education, or
13 charter schools.

14 (8) Provide disaggregated scores for pupils who have
15 individualized education programs and have enrolled in special
16 education, to the extent required by federal law. These scores shall
17 be provided in the same forms and formats listed in paragraph (5).
18 This section shall not be construed to exclude the scores of special
19 education pupils from any state or federal accountability system.

20 (9) Provide information listed in paragraphs (5), (6), (7), and
21 (8) to the department and the state board in the medium requested
22 by each entity, respectively.

23 (b) It is the intent of the Legislature that the publisher work with
24 the Superintendent and the state board in developing a methodology
25 to disaggregate statewide scores as required in paragraphs (6) and
26 (7) of subdivision (a), and in determining which variable indicated
27 on the STAR testing document shall serve as a proxy for
28 “economically disadvantaged” status pursuant to paragraph (7) of
29 subdivision (a).

30 (c) Access to information about individual pupils or their
31 families shall be granted to the publisher only for purposes of
32 correctly associating test results with the pupils who produced
33 those results or for reporting and disaggregating test results as
34 required by this section. School districts are prohibited from
35 excluding a pupil from the test if a parent or parents decline to
36 disclose income. This chapter does not abridge or deny rights to
37 confidentiality contained in the federal Family Educational Rights
38 and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) or other applicable
39 state and federal law that protect the confidentiality of information
40 collected by educational institutions.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 ~~(E) Reporting of test results to the school districts, including,~~
9 ~~but not limited to, all reports specified in this section:~~

10 ~~(F) Reporting of test results to the department, including, but~~
11 ~~not limited to, the electronic files required pursuant to this section:~~

12 ~~(G) All other analyses or reports required by the Superintendent~~
13 ~~to meet the requirements of state and federal law and set forth in~~
14 ~~the agreement:~~

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

18 ~~(10) The contracts shall specify the means by which any delivery~~
19 ~~date for materials to each school district shall be verified by the~~
20 ~~publisher and the school district:~~

21 ~~(11) School districts may negotiate a separate agreement with~~
22 ~~the publisher for any additional materials or services not within~~
23 ~~the contracts specified in this subdivision, including, but not limited~~
24 ~~to, the administration of the tests to pupils in grade levels other~~
25 ~~than grades 2 to 11, inclusive. Any separate agreement is not within~~
26 ~~the scope of the contract specified in this subdivision:~~

27 ~~(f) The department, with approval of the state board, may enter~~
28 ~~into a separate contract for the development or administration of~~
29 ~~a test authorized pursuant to this part, including, but not limited~~
30 ~~to, item development, coordination of tests, assemblage of tests~~
31 ~~or test items, scoring, or reporting. The liquidated damages~~
32 ~~provision set forth in paragraph (5) of subdivision (e) shall apply~~
33 ~~to a contract entered into pursuant to this subdivision:~~

34 ~~SEC. 3. Section 60640 of the Education Code is amended to~~
35 ~~read:~~

36 ~~60640. (a) There is hereby established the Standardized Testing~~
37 ~~and Reporting Program, to be known as the STAR Program.~~

38 ~~(b) From the funds available for that purpose, each school~~
39 ~~district, charter school, and county office of education shall~~
40 ~~administer to each of its pupils in grades 2 to 11, inclusive, the~~

1 standards-based achievement test provided for in Section 60642.5.
2 The state board shall establish a testing period to provide that all
3 schools administer these tests to pupils at approximately the same
4 time during the instructional year, except as necessary to ensure
5 test security and to meet the final filing date.

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

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

12 (e) Pursuant to Section 1412(a)(17) of Title 20 of the United
13 States Code, individuals with exceptional needs, as defined in
14 Section 56026, shall be included in the testing requirement of
15 subdivision (b) with appropriate accommodations in administration,
16 where necessary, and those individuals with exceptional needs
17 who are unable to participate in the testing, even with
18 accommodations, shall be given an alternate assessment.

19 (f) (1) ~~At the option of the school district, pupils with limited~~
20 ~~English proficiency who are enrolled in any of grades 2 to 11,~~
21 ~~inclusive, may take a second achievement test in their primary~~
22 ~~language.~~ Primary language tests administered pursuant to this
23 subdivision and subdivision (g) shall be subject to the requirements
24 of subdivision (a) of Section 60641. These primary language tests
25 shall produce individual pupil scores that are valid and reliable.

26 (2) Notwithstanding any other law, the state board shall
27 designate for use, as part of this program, a single primary language
28 test in each language for which a test is available for grades 2 to
29 11, inclusive, pursuant to the process used for designation of the
30 assessment chosen in the 1997–98 fiscal year, as specified in
31 Section 60643, as applicable.

32 (3) *The primary language assessments developed pursuant to*
33 *this subdivision and subdivision (g) shall be developed to satisfy*
34 *all the requirements of the federal No Child Left Behind Act of*
35 *2001 (20 U.S.C. Sec. 6301 et seq.), including the requirements*
36 *regarding validity, reliability, and comparability. The testing*
37 *contractor chosen for the purpose of developing the primary*
38 *language assessments shall report to the state board as to how*
39 *these requirements have been met. The primary language*
40 *assessments developed pursuant to this subdivision and subdivision*

1 (g) are subject to the requirements of subdivision (a) of Section
2 60641.

3 (3)

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

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

20 (C) In choosing a contractor to develop a primary language
21 assessment the state board shall consider the criteria for choosing
22 a contractor or test publisher as specified by Section 60643, and
23 as specified by Section 60642.5, as applicable. *The contractor*
24 *shall have expertise and experience in developing primary*
25 *language test items.*

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

29 (E) If the state board contracts for the development of primary
30 language assessments or test items to augment an existing
31 assessment, the state shall retain ownership rights to the assessment
32 and the test items. With the approval of the state board, the
33 department may license the test for use in other states subject to a
34 compensation agreement approved by the Department of Finance.

35 (F) On or before January 1, 2006, the department shall submit
36 to the Legislature a report on the development and implementation
37 of the initial primary language assessments and recommendations
38 on the development and implementation of future assessments and
39 funding requirements.

(g) A pupil identified as limited English proficient pursuant to the administration of a test made available pursuant to Section 60810 who is enrolled in any of grades 2 to 11, inclusive, and who either receives instruction in his or her primary language or *who is literate in his or her primary language and* has been enrolled in a school in the United States for less than ~~12 months~~ *three consecutive years* shall be required to take a test in his or her primary language if a test is available.

(h) *Public schools providing dual immersion programs may use the primary language assessments pursuant to subdivision (g) for the purpose of assessing pupils who are enrolled in dual immersion programs and who are nonlimited English proficient, as described in Section 60643. This assessment shall be administered at the school district's expense, and only if the school district enters into an agreement for that purpose with the state testing contractor.*

(i) *The results of a primary language assessment administered to English learners pursuant to subdivision (g) shall be used to determine adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and shall begin in the 2012–13 school year. However, for pupils to whom the high school exit examination is administered, the high school exit examination shall be used to determine adequate yearly progress rather than as an achievement test administered pursuant to this section.*

(j) *The results of a primary language assessment administered to English learners pursuant to subdivision (g) shall also be used for purposes of the Academic Performance Index (API) and shall begin in the 2012–13 school year. The Public Schools Accountability Act Advisory Committee shall perform an analysis in order to determine how to use the results of the primary language assessment in calculating API score growth from the previous year. In the years after the first year of administration of a test pursuant to this section, growth in API score shall be determined using the year-to-year results of the test administered pursuant to this section.*

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

~~(h)~~

1 (l) (1) The Superintendent shall apportion funds to school
2 districts to enable school districts to meet the requirements of
3 subdivisions (b), (e), (f), and (g).

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

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

26 (i)

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

40 (j)

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

4 (1) The number of pupils enrolled in the school district in grades
5 2 to 11, inclusive.

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

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

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

13 ~~(k)~~

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

19 ~~(t)~~

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.

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

- (A) Grade level.
- (B) School level.
- (C) District level.
- (D) Countywide.
- (E) Statewide.

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

(G) For pupils who are English learners, their program of instruction, time in the program of instruction, and their English proficiency level as determined by the California English Language Development Test.

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

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

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

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

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

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

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

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

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

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

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

(4) The contracts shall include provisions for progress payments to the publisher for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the amount budgeted for each separate and distinct component task provided for in each contract shall be withheld pending final completion of 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. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.