

The Texas Education Agency (TEA) proposes new §101.6003, concerning local assessments. The proposed new section would clarify statutory provisions in Texas Education Code (TEC), Chapter 39, regarding administration of district-required assessment instruments.

**BACKGROUND INFORMATION AND JUSTIFICATION:** TEC, §39.0262 and §39.0263, institute prohibitions on district-required testing when those tests were designed specifically around preparation for a state assessment. These prohibitions address the concern that instructional time should not be spent practicing how to take a test rather than learning the knowledge and skills necessary to master a subject. The statutory language, however, could be construed as prohibiting diagnostics designed to improve mastery and inform instructional practice. The proposed new rule would exercise the commissioner's rulemaking authority to provide clarity to school districts that assessments focused on student subject mastery and student learning do not fall within the definition of assessments designed to prepare students for a state-administered assessment.

**FISCAL IMPACT:** Jeff Cottrill, deputy commissioner for academics standards and engagement, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Cottrill has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law and providing school districts and open-enrollment charter schools with clarification on which assessment instruments are subject to the statutory limitations on district-required assessments. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins April 19, 2019, and ends May 20, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 19, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Educ](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Educ)

ation\_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §39.001, which authorizes the commissioner to adopt rules regarding assessments; TEC, §39.0262, which prohibits districts from requiring locally required assessments for more than ten percent of the instructional days if the local assessment was designed to prepare students for state-administered assessment instruments; and TEC, §39.0263, which prohibits districts from administering more than two benchmark assessments if the benchmark assessment was designed to prepare students for state-administered assessment instruments.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§39.001, 39.0262, and 39.0263.

<rule>

**§101.6003. Local Assessments.**

(a) For purposes of Texas Education Code, §39.0262 and §39.0263, an assessment instrument designed to prepare students for state-administered assessment instruments is an assessment that:

- (1) evaluates students' potential performance relative to the state's blueprint in whole for a state-administered assessment; or
- (2) is primarily focused on test-taking techniques.

(b) Subsection (a) of this section does not include an assessment designed to evaluate:

- (1) students' mastery of parts of the Texas Essential Knowledge and Skills; or
- (2) the efficacy of instructional practice.