

**Assembly Bill No. 252**

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Passed the Assembly September 11, 2007

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*Chief Clerk of the Assembly*

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Passed the Senate September 10, 2007

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2007, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 60640 of the Education Code, relating to pupil testing.

## LEGISLATIVE COUNSEL'S DIGEST

AB 252, Coto. Pupil testing: primary language assessments: dual immersion programs.

(1) The Leroy Greene California Assessment of Academic Achievement Act requires school districts, charter schools, and county offices of education to administer to their pupils in grades 2 to 11, inclusive, certain achievement tests, including a standards-based achievement test pursuant to the Standardized Testing and Reporting (STAR) Program. The act allows, at the option of the local educational agency, a pupil with limited English proficiency enrolled in any of those grades to take a 2nd achievement test in his or her primary language. The State Department of Education is required to use funds made available pursuant to Title VI of the federal No Child Left Behind Act of 2001 to adopt primary language assessments that are aligned to state content standards, including assessments for reading/language arts and mathematics in the dominant primary language of limited-English-proficient pupils, as determined by the count in the annual language census of the primary language of limited-English-proficient pupils in public schools. Local educational agencies are required to administer a dominant primary language assessment that is available for use for a specific grade level in place of primary language achievement tests.

This bill would authorize the department, subject to approval by the State Board of Education, to make a primary language assessment available to public schools for assessing nonlimited-English-proficient pupils enrolled in dual language immersion programs that include the primary language of the assessments at their own expense. School districts choosing to administer an assessment would be required to enter into an agreement with the state testing contractor subject to the approval of the department.

(2) The act further requires the Superintendent of Public Instruction, with the approval of the state board, annually to release to the public a minimum of 25% of test items from the California Standards Tests administered in the previous year.

This bill, instead, would require the Superintendent, with the approval of the state board, to release annually test items from any of the California Standards Tests administered in previous years, with the minimum number of previously unreleased items to be released being equal to 25% of the test items from the test administered in the previous year. The Superintendent would be required to ensure that the content and structure of the current test is reflected, to the extent practicable, in the test items released. The Superintendent also would be required annually, commencing with the 2010–11 school year, to release to the public test items from the standards-based achievement tests in Spanish administered in previous years, with the minimum number of test items released each year being equal to 25% of the test items on the standards-based achievement test in Spanish administered in the previous year.

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

SECTION 1. Section 60640 of the Education Code is amended to read:

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

(b) In each fiscal year, from funds made available for purposes of this section, each school district, charter school, and county office of education shall administer to each of its pupils in grades 3 and 7 the achievement test designated by the state board pursuant to Section 60642 and shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

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

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

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

(f) (1) At the option of the school district, a pupil with limited English proficiency who is enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in his or her primary language. Primary language tests administered pursuant to this subdivision and subdivision (h) 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 Sections 60642 and 60643, as applicable.

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

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

(C) In choosing a contractor to develop a primary language assessment the state board shall consider the criteria for choosing a contractor or test publisher as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.

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

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

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

(g) The department, subject to approval by the state board, may make a primary language assessment developed pursuant to subparagraph (A) of paragraph (3) of subdivision (f) available to public schools for use at their own expense, to assess their nonlimited-English-proficient pupils, as defined in Section 60643, enrolled in a dual language immersion program that includes the primary language of the assessment. A school district that chooses to administer a primary language assessment pursuant to this subdivision shall enter into an agreement for that purpose with the state testing contractor, as described in subparagraph (C) of paragraph (3) of subdivision (f), subject to the approval of the department.

(h) 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 has been enrolled in a school in the United States for less than 12 months shall be required to take a test in his or her primary language if a test is available.

(i) (1) The Superintendent shall apportion funds to school districts to enable school districts to meet the requirements of subdivisions (b), (e), (f), and (h).

(2) The state board annually shall establish the amount of funding to be apportioned to school districts for each test administered and annually shall establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and 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 (h).

(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.

(j) 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 (i), 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.

(k) As a condition to receiving an apportionment pursuant to subdivision (i), 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.

(l) 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.

(m) (1) 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 previously unreleased test items released each year shall be equal to 25 percent of the total number of test items on the test administered in the previous year. The Superintendent shall ensure that the content and structure of the current test is reflected, to the extent practicable, in the items released.

(2) The Superintendent annually shall release to the public, beginning with the 2010–11 school year, test items from the standards-based achievement tests in Spanish administered in previous years pursuant to Section 60640. The minimum number of previously unreleased test items released each year shall be equal to 25 percent of the total number of test items on the test administered in the previous year.

(n) This section shall become inoperative on July, 1, 2011.

Approved \_\_\_\_\_, 2007

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*Governor*