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**Testimony to the Senate Education Committee
Regarding SB 1031
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We must first compliment Senator Shapiro of this bill on the thoughtful way in which this bill was developed and we greatly appreciate all the opportunities for input that she has afforded us. There is no doubt that most educators feel that end of course exams are a better instructional match than the current, summative TAKS test. Additionally, it makes more sense to test students in close proximity to when they learned the content. That being said, however, one of the main reasons we are testifying ON the bill is that we find it hard to fully support this extensive change to our state testing system without knowing what the accountability piece of this equation will look like. We understand that many feel that the testing system must be designed first before the accountability system to match it can be developed, but we strongly feel it is essential that these pieces be done in tandem. This is because our testing system and our accountability system are inexorably intertwined in this state, and frankly we believe that the recent public outcry against the TAKS test has more to do with the high-stakes consequences of the test than perhaps, the test itself. We note that there have been several bills filed to re-examine our state accountability system, and we would encourage that, rather than putting the new testing system into place for 9th graders in the 2009-2010 school year, legislation directing that the re-examination of, and possible development of a new accountability system be explored in light of the new testing system as proposed by this bill, with the whole package to be presented to the legislature next session.

Our members actually had a chance to review this re-design of the testing system at our recent convention and adopted a position supporting a reasonable and orderly transition from the TAKS test to End of Course exams which minimizes an increase in the number of tests and high-stakes consequences attached to the tests.

Our members have consistently voiced opposition to an increase in testing. This bill appears to add three tests to grades 9-12, which some may argue is not a huge increase in testing. However, without knowing what kind of consequences EOCs will carry for schools and educators, it's hard to know whether we could support three added tests.

There are other reasons to consider moving back the implementation date of this new testing system. First is the fact that HB 1 requires the TEKS to be re-aligned with college readiness standards in four core curriculum areas, with staggered deadlines for each of the subjects ending in Fall 2012. If the new tests are going to be based on the realigned TEKS, then it would seem that they couldn't be developed until the TEKS realignment process was completed.

Potential issues are further compounded by the expected reauthorization of NCLB. We think it would be prudent to wait until then to see if our system meshes with the reauthorized NCLB.

Another reason to consider delaying implementation is that so that all the tests that need to be developed can be developed for 9th graders beginning in 2009-2010, given that some of these kids will have already taken courses subject to EOC testing in middle school, the full panel of EOCs would have to be developed and ready for them by the time they reach 9th grade in 2009-2010. Our understanding is that five additional tests would have to be developed to meet this need.

Speaking of middle-schoolers, we really struggle with the fact that, because of the federal No Child Left Behind Act, middle-schoolers who take end of course exams will still apparently have to take their grade-level TAKS tests. We worry that this will create a disincentive for 7th and 8th graders to take courses subject to EOC testing, given the double whammy of EOCs now counting for graduation, yet still having to take the TAKS test. It has long been state policy to encourage students to take as many high-level courses as early in their school career as possible and it seems that we wouldn't want to work against this goal.

We also worry about field testing, which is already apparently creating a backlash among school districts overburdened with field testing, such that some are even now refusing to participate. Knowing that all of these new tests will need to be field-tested in a short period of time makes the issue even more urgent. Spreading out the field-testing burden could help.

Finally, it must be noted that the bill also addresses other issues besides EOCs, such as rearranging the TAKS tests in the earlier grades. Our 4th grade members have given us feedback that combining the Reading and Writing test at 4th grade does not in effect compensate for adding the Science test to that grade due to the fact that 4th grade is the first year that students are tested for writing, and as a result, it takes an enormous amount of preparation to get them ready for the test, regardless of whether it's combined with Reading. Accordingly they fear that combining the test won't really alleviate the burden of essentially preparing for two tests and that 4th grade already tests in more areas than some other grades (3^d, 6th and 9th, for example). Accordingly, a suggestion was made by one of our members to add a Social Studies test to 6th instead of 5th grade, keep the Science test at 5th grade and keep the other tests intact as is currently.

With regard to the testing security provisions of the bill we have noted a number of issues we have concerns about and our written concerns are attached.

In closing, again, we thank you for the thoughtful way in which this proposal was developed, but we urge you to consider delaying implementation of the new testing system until the accountability system consequences have been determined, the TEKS have been revised and the reauthorized NCLB requirements are determined.

TCTA concerns about testing security provisions contained in SB 1031

Although we believe that, generally speaking, it is a good idea to use statistical information to identify potential testing violations, we are concerned about provisions in the bill that would keep the information that is used to identify those violations confidential. It seems to us that it would be very hard to evaluate whether TEA is being fair and unbiased in its use of authority under this subsection if the public can't see the criteria that it is using to identify violations.

Regarding the subpoenas, we believe that language that "All information and materials subpoenaed or compiled in connection with an investigation or audit described by Subsection (" is "confidential and e not subject to disclosure, discovery, subpoena, or other means of legal compulsion..." is highly problematic because an educator who is the subject of an SBEC investigation for a testing violation is not listed as a person who is entitled to the information. To us, this suggests that a person may be investigated (and ultimately sanctioned for?) conduct, yet not be entitled to the information used to identify or investigate the person in the first place. We have suggested a fix for the language in the attached by proposing that a provision be added to include a person who is the subject of an SBEC investigation is one of the people who is entitled to this information.

Regarding the criminal penalties, we are concerned about the lack of a mens rea. We are also concerned that the language of this statute is broad enough that it could encompass some legitimate test assistance techniques. For example, third grade TAKS test administrators are permitted to review the student's test booklet to see if they have skipped any questions when they bubbled their answers in and can provide them limited guidance if they have. There is also the question of modifications that can be made in a SPED or LEP context. For this reason, we have proposed language that would make the provision apply only to persons who are violating the law or the Commissioner's rules with their conduct. We also added an affirmative defense that the person is not subject to prosecution if they were acting in a good-faith effort to comply with state or federal law or the commissioner's rules at the time the offense occurred.

Sec. 39.0301. SECURITY IN ADMINISTRATION OF ASSESSMENT

INSTRUMENTS. (a) The commissioner:

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

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

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

(1) potential violations that are monitored annually;
and

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

(c) The commissioner may establish one or more advisory committees to advise the commissioner and agency regarding the monitoring of assessment practices and the use of statistical methods and standards for identifying potential violations of assessment instrument security, including standards to be

established by the commissioner for selecting school districts for investigation for a potential assessment security violation under Subsection (e). The commissioner may not appoint an agency employee to an advisory committee established under this subsection.

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

(ed) The agency may conduct an investigation of a school district for a potential violation of assessment instrument security in accordance with the standards described by Subsection (c). Each school year, after completing all investigations of school districts selected for investigation, the agency shall disclose the identity of each district selected for investigation and the statistical methods and standards used to select the district.

(fe) At any time, the commissioner may authorize the audit of a random sample of school districts to determine the compliance of the districts with procedures established under

Subsection (a). The identity of each school district selected for audit under this subsection is confidential and not subject to disclosure under Chapter 552, Government Code, except that the agency shall disclose the identity of each district after completion of the audit.

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

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

(c) If a person fails to comply with a subpoena, the commissioner, acting through the attorney general, may file suit to enforce the subpoena in a district court in this state. On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(d) All information and materials subpoenaed or compiled

in connection with an investigation or audit described by Subsection (a):

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

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

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

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

(C) any person who is being investigated by the State Board for Educator Certification for an alleged violation of an assessment instrument security procedure established under Section 39.0301(a); and

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

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

(1) the person intentionally violates the provisions of this subchapter and rules adopted by the Commissioner or Education and discloses the contents of any portion of a secure assessment instrument developed or administered under this subchapter, including the answer to any item in the assessment

instrument; and

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

(3) It is an affirmative defense to prosecution under this subsection that the person was acting in a good-faith effort to comply with state or federal law or rules developed by the Commissioner of Education at the time the alleged offense occurred.

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