Senate Research Center   C.S.H.B. 2488
                                            By: Hochberg (Ogden)
                                                                   Education
                                                                      5/20/2009
                                           Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill requires the State Board of Education to adopt open-source textbooks for secondary courses submitted by certain institutions of higher education or public technical institutes in Texas. The institutions that submit open-source textbooks are required to certify that high school students who successfully complete courses based on their materials will be prepared for postsecondary-level course work without remediation.

For students who do not have access to a computer, the bill requires school districts and charter schools to provide printed copies of the textbooks or to provide electronic access to the textbooks at no cost to the students.

C.S.H.B. 2488 amends current law relating to open-source textbooks for public schools.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 6 (Section 31.076, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.002, Education Code, by amending Subdivision (1) and adding Subdivision (1-a), to redefine "electronic textbook" and to define "open-source textbook." Provides that the term includes a state-developed open-source text book purchased under Subchapter B-1.

SECTION 2. Amends Subchapter B, Chapter 31, Education Code, by adding Section 31.0241, as follows:

> Sec. 31.0241. ADOPTION OF OPEN-SOURCE TEXTBOOKS. (a) Defines "eligible institution."

>> (b) Requires the State Board of Education (SBOE) to place an open-source textbook for a secondary-level course submitted for adoption by an eligible institution on a conforming or nonconforming list if:

>>> (1) the textbook is written, compiled, or edited primarily by faculty of the eligible institution who specialize in the subject area of the textbook;

>>> (2) the eligible institution identifies each contributing author;

>>> (3) the appropriate department of the eligible institution certifies the textbook for accuracy; and

>>> (4) the eligible institution determines that the textbook qualifies for placement on the conforming or nonconforming list based on the extent to which the textbook covers the essential knowledge and skills identified under Section 28.002 (Required Curriculum) for the subject for which the textbook is written and certifies that for a textbook for a senior-level course, a student who successfully completes a course based on the textbook will be prepared, without remediation, for entry into the eligible

institution's freshman-level course in that subject; or for a textbook for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the textbook will be prepared for entry into the senior-level course.

(c) Provides that this section does not prohibit an eligible institution from submitting a textbook for placement on a conforming or nonconforming list through any other adoption process provided by this chapter.

SECTION 3. Amends Section 31.026, Education Code, by adding Subsection (e) to provide that this section does not apply to an open-source textbook.

SECTION 4. Amends Subchapter B, Chapter 31, Education Code, by adding Section 31.0261, as follows:

Sec. 31.0261. CONTRACTS FOR PRINTING OF OPEN-SOURCE TEXTBOOKS. Authorizes SBOE to execute a contract for the printing of an open-source textbook listed on the conforming or nonconforming list. Requires that the contract allow a school district to requisition printed copies of an open-source textbook as provided by Section 31.103 (Textbook Requisitions).

SECTION 5. Amends Section 31.027, Education Code, by adding Subsection (d) to provide that this section does not apply to an open-source textbook.

SECTION 6. Amends Chapter 31, Education Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. STATE-DEVELOPED OPEN-SOURCE TEXTBOOKS

Sec. 31.071. PURCHASE AUTHORITY. (a) Authorizes the commissioner of education (commissioner) to purchase state-developed open-source textbooks in accordance with this subchapter.

(b) Requires the commissioner to purchase any state-developed open-source textbooks through a competitive process and authorizes the commissioner to purchase more than one state-developed open-source textbooks for a subject or grade level.

(c) Requires a state-developed open-source textbook to be irrevocably owned by or licensed to the state for use in the applicable subject or grade level. Requires the state to have unlimited authority to modify, delete, combine, or add content to the textbook after purchase.

(d) Authorizes the commissioner to issue a request for proposals for a state-developed open-source textbook in accordance with the textbook review and adoption cycle under Section 31.022 (Textbook Review and Adoption), or at any other time the commissioner determines that a need exists for additional textbook options.

(e) Requires the costs of administering this subchapter and purchasing state-developed open-source textbooks to be paid from the state textbook fund, as determined by the commissioner.

Sec. 31.072. CONTENT REQUIREMENTS. (a) Requires a state-developed open-source textbook to be evaluated by teachers or other experts, as determined by the commissioner, before the purchase, and meet the requirements for inclusion on a conforming and nonconforming textbook list under Section 31.023 (Text Book Lists).

(b) Requires the commissioner, following a curriculum revision by SBOE, to require the revision of a state-developed open-source textbook relating to that curriculum. Authorizes the commissioner, at any time, to require additional revision of a state-developed open-source textbook or contract for ongoing

revisions of a textbook for a period not to exceed the period under Section 31.022 for which a textbook for that subject and grade level may be adopted. Requires the commissioner to use a competitive process to request proposals to revise a state-developed open-source textbook under this subsection.

(c) Requires the commissioner to provide for special and bilingual state-developed open-source textbooks in the same manner provided under Sections 31.028 (Special Textbooks) and 31.029 (Bilingual Textbooks).

Sec. 31.073. COST. (a) Requires the commissioner, for purposes of this section, to determine the cost to a school district or open-enrollment charter school for a state-developed open-source textbook in an amount sufficient to cover state expenses associated with the textbook, including expenses incurred by the state soliciting, evaluating, revising, and purchasing the textbook.

(b) Requires the difference between the cost determined by the commissioner under Subsection (a) and the maximum price for a textbook in the same subject area, as determined by SBOE under Section 31.025 (Limitation of Cost), if a school district or open-enrollment charter school selects a state-developed open-source textbook adopted under Subchapter B (State Funding, Adoption, and Purpose), to be allocated as follows:

(1) 50 percent of the amount is required to be credited to the state textbook fund under Section 31.021 (State Textbook Fund) to be used for purposes of this subchapter; and

(2) 50 percent of the amount is required to be credited to the school district or open-enrollment charter school for use as provided by Section 31.1011(c) (relating to requiring fifty percent of the total textbook credit of a school district or open-enrollment charter school to be credited to the state textbook fund, and 50 percent of the credit to be credited to the district or school to apply toward the requisition of additional textbooks or electronic textbooks that are on a certain conforming or nonconforming list or the components of such textbooks, including certain electronic components, or supplemental textbooks).

(c) Authorizes a school district or open-enrollment charter school to adopt a state-developed open-source textbook at any time, regardless of the textbook review and adoption cycle under Section 31.022, notwithstanding that section.

(d) Prohibits a school district or open-enrollment charter school from being charged for selection of a state-developed open-source textbook in addition to a textbook adopted under Subchapter B (State Funding Adoption and Purchase).

Sec. 31.074. DISTRIBUTION. (a) Requires the commissioner to provide for the distribution of state-developed open-source textbooks in a manner consistent with distribution of textbooks adopted under Subchapter B.

(b) Authorizes the commissioner to use a competitive process to contract for printing or other reproduction of a state-developed open-source textbook on behalf of a school district or open-enrollment charter school. Prohibits the commissioner from requiring a school district or open-enrollment charter school to contract with a state-approved provider for printing or reproduction of a state-developed open-source textbook.

Sec. 31.075. OWNERSHIP; LICENSING. (a) Provides that a state-developed open-source textbook is the property of the state.

(b) Requires the commissioner to provide a license to each public school in the state, including a school district, an open-enrollment charter school, and a state or

local agency educating students in any grade from prekindergarten through high school, to use and reproduce a state-developed open-source textbook.

(c) Authorizes the commissioner to provide a license to use a state-developed open-source textbook to an entity not listed in Subsection (b). Requires the commissioner, in determining the cost of a license under this subsection, to seek, to the extent feasible, to recover the costs of developing, revising, and distributing state-developed open-source textbooks.

Sec. 31.076. RULES; FINALITY OF DECISIONS. (a) Authorizes the commissioner to adopt rules necessary to implement this subchapter.

(b) Provides that a decision by the commissioner regarding the purchase, revision, cost, or distribution of a state-developed open-source textbook is final and is prohibited from being appealed.

Sec. 31.077. ADOPTION SCHEDULE. Requires the commissioner to develop a schedule for the adoption of state-developed open-source textbooks under this subchapter. Requires the commissioner, in developing the adoption schedule under this section, to consider the availability of funds, the existing textbook adoption cycles under Subchapter B, and the availability of textbooks for development or purchase by the state.

SECTION 7. Amends Section 31.103, Education Code, by adding Subsections (d) and (e), as follows:

(d) Requires a school district or open-enrollment charter school that selects an open-source textbook to requisition a sufficient number of printed copies for use by students unable to access the textbook electronically unless the district or school provides to each student:

(1) electronic access to the textbook at no cost to the student; or

(2) printed copies of the portion of the textbook that will be used in the course.

(e) Authorizes the commissioner to establish a list of equipment or devices that a school district or open-enrollment charter school is authorized to purchase using textbook credits or textbook credits in combination with other available funds to provide electronic access to state-developed open-source textbooks under Subsection (d)(1).

SECTION 8. Amends Section 31.104, Education Code, by amending Subsections (b) and (c) and adding Subsections (g) and (h), as follows:

(b) Authorizes a school district or open-enrollment charter school to order replacements for textbooks that have been lost or damaged directly from any source for a printed copy of an open-source textbook. Makes nonsubstantive changes.

(c) Requires each textbook, other than an electronic textbook or a printed copy of an open-source textbook, to be covered by the student under the direction of the teacher. Creates an exception under Subsection (g). Makes a nonsubstantive change.

(g) Provides that at the end of the school year for which an open-source textbook that a school district or open-enrollment charter school does not intend to use for another student is distributed, the printed copy of the open-source textbook becomes the property of the student to whom it is distributed.

(h) Provides that this section does not apply to an electronic copy of an open-source textbook.

SECTION 9. Amends Section 31.151(a), Education Code, to provide that a publisher or manufacturer of textbooks is required to maintain a depository in this state or arrange with a depository in this state to receive and fill orders for textbooks, other than open-source textbooks,

on-line textbooks, or on-line textbook components, consistent with SBOE rules. Makes a conforming and nonsubstantive change.

SECTION 10. Effective date: September 1, 2009.