

BILL ANALYSIS

Senate Research Center
82S10019 CAE-D

S.B. 6
By: Shapiro
Education
6/1/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 6 establishes an instructional materials fund for Texas students that requires the State Board of Education to set aside 50 percent of the distribution from the Permanent School Fund to the Available School Fund into a state instructional materials fund. The instructional materials fund is to be used to fund the instructional materials allotment (IMA); purchase materials for blind and visually impaired students; pay for the adoption and review process; purchase or license open-source materials; and fund certain other expenditures such as freight, shipping, and insurance related to delivery.

The instructional materials allotment will provide maximum flexibility for school districts to best meet the individual instructional needs of students. The IMA may be used to purchase printed instructional materials, electronic instructional materials, technological equipment, or training on the appropriate use of instructional materials and technological equipment. Additionally, unexpended balances in a district's IMA account will carry forward from biennium to biennium.

S.B. 6 requires districts to purchase instructional materials so that the districts can certify that they cover all elements of the Texas Essential Knowledge and Skills for the required curriculum, excluding physical education. It also directs the State Board of Education to organize the adoption cycles so that only one foundation subject is reviewed each biennium.

Lastly, S.B. 6 changes all references from "textbooks" to "instructional materials" in the Texas Education Code and defines what "instructional materials" entails. Instructional materials include a book, supplementary materials, workbook, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or electronic medium.

As proposed, S.B. 6 amends current law relating to the foundation curriculum, the establishment of the instructional materials allotment, and the adoption, review, and purchase of instructional materials and technological equipment for public schools.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the State Board of Education (SBOE) is modified in SECTION 13 (Section 28.002, Education Code), SECTION 20 (Section 31.003, Education Code), SECTION 24 (Section 31.022, Education Code), SECTION 25 (Section 31.0221, Education Code), and SECTION 36 (Section 31.030, Education Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of education (commissioner) in SECTION 23 (Sections 31.0211, 31.0212, and 31.0214, Education Code) and SECTION 35 (Section 31.029, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner is modified in SECTION 27 (Section 31.0231, Education Code) and SECTION 53 (Section 31.104, Education Code) of this bill.

Rulemaking authority previously granted to SBOE is rescinded in SECTION 65 (Section 31.201, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 5, Education Code, by adding Section 5.002, as follows:

Sec. 5.002. REFERENCES TO TEXTBOOK. Provides that in this title, a reference to a textbook means instructional material, as defined by Section 31.002 (Definitions).

SECTION 2. Amends Section 7.055(b)(28), Education Code, to require the commissioner of education (commissioner) to perform duties relating to the funding, adoption, and purchase of instructional materials, rather than textbooks, under Chapter 31.

SECTION 3. Amends Section 7.056(f), Education Code, to authorize a school district or campus that is required to develop and implement a student achievement improvement plan under Section 39.102 (Interventions and Sanctions for Districts) or 39.103 (Interventions and Sanctions for Campuses) to receive an exemption or waiver under this section from any law or rule other than certain items, including selection of instructional materials, rather than textbook selection, under Chapter 31.

SECTION 4. Amends Section 7.102(c)(23), Education Code, to make a conforming change.

SECTION 5. Amends Sections 7.108(a) and (c), Education Code, as follows:

(a) Makes conforming changes.

(c) Defines "instructional material." Deletes existing definition of "textbook." Makes a nonsubstantive change.

SECTION 6. Amends the heading to Section 7.112, Education Code, to read as follows:

Sec. 7.112. REPRESENTATION OF PUBLISHER OF INSTRUCTIONAL MATERIALS BY FORMER MEMBER OF BOARD.

SECTION 7. Amends Section 7.112(a), Education Code, as follows:

(a) Prohibits a former member of the State Board of Education (SBOE) who is employed by or otherwise receives compensation from a publisher of instructional materials, rather than a textbook publisher, before the second anniversary of the date on which the person last served as a member of SBOE, from performing certain actions. Makes conforming changes.

SECTION 8. Amends Section 7.112(c)(2), Education Code, to define "instructional materials" and to delete the existing definition of "textbook."

SECTION 9. Amends Section 11.158(b), Education Code, to prohibit the board of trustees of a school district from charging fees for certain items, including instructional materials, rather than textbooks; workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course except as authorized under this code; and library materials, rather than library books, required to be used for any educational course or program, other than fines for lost, damaged, or overdue materials, rather than overdue books.

SECTION 10. Amends Section 11.164(a), Education Code, to prohibit a classroom teacher from being required to prepare any written information other than certain reports and information, including a report on instructional materials, rather than a textbook report.

SECTION 11. Amends Section 19.007(e), Education Code, to make a conforming change.

SECTION 12. Amends Sections 26.006(a) and (c), Education Code, as follows:

(a) Makes a conforming change.

(c) Makes conforming changes. Defines "instructional material." Deletes existing definition of "textbook."

SECTION 13. Amends Sections 28.002(a), (c), (h), and (n), Education Code, as follows:

(a) Requires each school district that offers kindergarten through grade 12 to offer, as a required curriculum, certain subject areas, including economics, with emphasis on the free enterprise system and its benefits, as a part of the foundation curriculum, rather than as a part of the enrichment curriculum. Makes nonsubstantive changes.

(c) and (h) Makes a conforming change.

(n) Authorizes SBOE by rule to develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technology education (CTE) curriculum under Subsection (a)(2)(E) (relating to career and technology education), rather than Subsection (a)(2)(F).

SECTION 14. Amends Sections 28.0022(a) and (d), Education Code, to make conforming changes.

SECTION 15. Amends Section 28.003(b), Education Code, to redefine "educational program."

SECTION 16. Amends Section 28.011(c), Education Code, to make a conforming change.

SECTION 17. Amends the heading to Chapter 31, Education Code, to read as follows:

CHAPTER 31. INSTRUCTIONAL MATERIALS

SECTION 18. Amends Section 31.001, Education Code, as follows:

Sec. 31.001. New heading: FREE INSTRUCTIONAL MATERIALS. Requires that instructional materials, rather than textbooks, selected for use in the public schools be furnished without cost to the students attending those schools. Prohibits a school district, except as provided by Section 31.104(d), from charging a student for instructional material or technological equipment purchased by the district with the district's instructional materials allotment.

SECTION 19. Amends Sections 31.002(1), (1-a), (2), and (4), Education Code, as follows:

(1) Deletes existing definition of "electronic textbook." Defines "instructional material."

(1-a) Deletes existing definition of "open-source textbook." Defines "open source instructional material."

(2) Redefines "publisher."

(4) Redefines "technological equipment."

SECTION 20. Amends Subchapter A, Chapter 31, Education Code, by amending Sections 31.003 and 31.004 and adding Section 31.005, as follows:

Sec. 31.003. RULES. Authorizes SBOE to adopt rules, consistent with this chapter, for the adoption, requisition, distribution, care, use, and disposal of instructional materials, rather than textbooks.

Sec. 31.004. New heading: CERTIFICATION OF PROVISION OF INSTRUCTIONAL MATERIALS. (a) Creates this subsection from existing text. Requires each school district and open-enrollment charter school to annually certify to SBOE and the commissioner that, for each subject in the required curriculum under Section 28.002 (Required Curriculum), other than physical education, and each grade level, the district

provides each student with instructional materials that cover all elements of the essential knowledge and skills (TEKS) adopted by SBOE for that subject and grade level. Makes a conforming change.

(b) Authorizes a school district or open-enrollment charter school to consider certain materials to determine whether each student has instructional materials that cover all elements of the TEKS as required by Subsection (a).

Sec. 31.005. FUNDING FOR OPEN-ENROLLMENT CHARTER SCHOOLS. Provides that an open-enrollment charter school is entitled to the instructional materials allotment under this chapter and is subject to this chapter as if the school were a school district.

SECTION 21. Amends the heading to Section 31.021, Education Code, to read as follows:

Sec. 31.021. STATE INSTRUCTIONAL MATERIALS FUND.

SECTION 22. Amends Section 31.021, Education Code, by amending Subsections (a) and (d) and adding Subsection (c), as follows:

(a) Provides that the state instructional materials fund, rather than the state textbook fund, consists of:

(1) an amount set aside by SBOE from the available school fund, in accordance with Section 43.001(d); and

(2) all amounts lawfully paid into the fund from any other source. Deletes existing text providing that all funds accruing from the state's sale of disused textbooks are a part of the state textbook fund. Makes a nonsubstantive change.

(c) Requires that money in the state instructional materials fund be used to:

(1) fund the instructional materials allotment, as provided by Section 31.0211;

(2) purchase special instructional materials for the education of blind and visually impaired students in public schools;

(3) pay the expenses associated with the instructional materials adoption and review process under this chapter;

(4) pay the expenses associated with the purchase or licensing of open-source instructional material, to the extent authorized by the General Appropriations Act; and

(5) pay the expenses associated with the purchase of instructional material, including intrastate freight and shipping and the insurance expenses associated with intrastate freight and shipping.

(d) Makes a conforming change.

SECTION 23. Amends Subchapter B, Chapter 31, Education Code, by adding Sections 31.0211, 31.0212, 31.0213, and 31.0214, as follows:

Sec. 31.0211. INSTRUCTIONAL MATERIALS ALLOTMENT. (a) Entitles a school district to an annual allotment from the state instructional materials fund for each student enrolled in the district on a date during the preceding school year specified by the commissioner. Requires the commissioner to determine the amount of the allotment per student each year on the basis of the amount of money available in the state instructional materials fund to fund the allotment. Requires that an allotment under this section be

transferred from the state instructional materials fund to the credit of the district's instructional materials account as provided by Section 31.0212.

(b) Entitles a juvenile justice alternative education program under Section 37.011 (Juvenile Justice Alternate Education Program) to an allotment from the state instructional materials fund in an amount determined by the commissioner. Requires the program to use the allotment to purchase items listed in Subsection (c) for students enrolled in the program. Provides that the commissioner's determination under this subsection is final and may not be appealed.

(c) Authorizes that funds allotted under this section, subject to Subsection (d), be used to:

(1) purchase:

(A) materials on the list adopted by the commissioner, as provided by Section 31.0231;

(B) instructional materials, regardless of whether the instructional materials are on the list adopted under Section 31.024;

(C) consumable instructional materials, including workbooks;

(D) instructional materials for use in bilingual education classes, as provided by Section 31.029;

(E) supplemental instructional materials, as provided by Section 31.035;

(F) state-developed open-source instructional materials, as provided by Subchapter B-1;

(G) instructional materials and technological equipment under any continuing contracts of the district in effect on September 1, 2011; and

(H) technological equipment necessary to support the use of materials included on the list adopted by the commissioner under Section 31.0231 or any instructional materials purchased with an allotment under this section; and

(2) pay:

(A) for training educational personnel directly involved in student learning in the appropriate use of instructional materials and for providing for access to technological equipment for instructional use; and

(B) the salary and other expenses of an employee who provides technical support for the use of technological equipment.

(d) Requires a school district, each year, to use the district's allotment under this section to purchase, in the following order:

(1) instructional materials necessary to permit the district to certify that the district has instructional materials that cover all elements of the TEKS of the required curriculum, other than physical education, for each grade level as required by Section 28.002; and

(2) any other instructional materials or technological equipment as determined by the district.

(d-1) Requires a school district, notwithstanding Subsection (d), for the state fiscal biennium beginning September 1, 2011, to use an allotment received under this section to purchase instructional materials that will assist the district in satisfying performance standards under Section 39.0241 (Performance Standards), as added by Chapter 895 (H.B. 3), Acts of the 81st Legislature, Regular Session, 2009, on assessment instruments adopted under Sections 39.023(a) (relating to requiring the Texas Education Agency (TEA) to adopt and develop certain appropriate criterion-referenced assessment instruments designed to assess TEKS in reading, writing, mathematics, social studies, unless certain students are exempted) and (c) (relating to requiring TEA to adopt end-of-course assessment instruments for certain secondary-level courses and requiring that the assessments adhere to certain requirements).

(d-2) Provides that Subsection (d-1) and this subsection expire on August 31, 2013.

(e) Authorizes a school district, not later than May 31 of each school year, to request that the commissioner adjust the number of students for which the district is entitled to receive an allotment under Subsection (a) on the grounds that the number of students attending school in the district will increase or decrease during the school year for which the allotment is provided. Authorizes the commissioner to also adjust the number of students for which a district is entitled to receive an allotment, without a request by the district, if the commissioner determines a different number of students is a more accurate reflection of students who will be attending school in the district. Provides that the commissioner's determination under this subsection is final.

(f) Authorizes the commissioner to adopt rules as necessary to implement this section.

Sec. 31.0212. INSTRUCTIONAL MATERIALS ACCOUNT. (a) Requires the commissioner to maintain an instructional materials account for each school district. Requires the commissioner, each school year, to deposit in the account for each district the amount of the district's instructional materials allotment under Section 31.0211.

(b) Requires the commissioner to pay the cost of instructional materials requisitioned by a school district under Section 31.103 using funds from the district's instructional materials account.

(c) Authorizes a school district to also use funds in the district's account to purchase electronic instructional materials or technological equipment. Requires the district to submit to the commissioner a request for funds for this purpose from the district's account. Requires the commissioner to adopt rules regarding the documentation a school district must submit to receive funds under this subsection.

(d) Provides that money deposited in a school district's instructional materials account during each state fiscal biennium remains in the account and available for use by the district for the entire biennium. Authorizes a district with unused money in the district's account, at the end of each biennium, to carry forward any remaining balance to the next biennium.

(e) Requires the commissioner to adopt rules as necessary to implement this section. Requires the rules to include a requirement that a school district provide the title and publication information for any instructional materials requisitioned or purchased by the district with the district's instructional materials allotment.

Sec. 31.0213. CERTIFICATION OF USE OF INSTRUCTIONAL MATERIALS ALLOTMENT. Requires each school district to annually certify to the commissioner that the district's instructional materials allotment has been used only for expenses allowed by Section 31.0211.

Sec. 31.0214. ADJUSTMENT FOR HIGH ENROLLMENT GROWTH DISTRICTS. (a) Requires the commissioner, each year, to adjust the instructional materials allotment of school districts experiencing high enrollment growth. Requires the commissioner to establish a procedure for determining high enrollment growth districts eligible to receive an adjustment under this section and the amount of the instructional materials allotment those districts will receive.

(b) Authorizes the commissioner to adopt rules as necessary to implement this section.

SECTION 24. Amends Section 31.022, Education Code, as follows:

Sec. 31.022. New heading: INSTRUCTIONAL MATERIALS REVIEW AND ADOPTION. (a) Requires SBOE to adopt a review and adoption cycle for instructional materials, rather than textbooks, for elementary grade levels, including prekindergarten, and secondary grade levels, for each subject in the required curriculum under Section 28.002. Provides that, in adopting the cycle, SBOE:

(1) is not required to review and adopt instructional materials for all grade levels in a single year; and

(2) is required to give priority to instructional materials in the following subjects:

(A) foundation curriculum subjects for which the TEKS have been substantially revised and for which assessment instruments are required under Subchapter B (Assessment of Academic Skills), Chapter 39 (Public School System Accountability), including CTE courses that satisfy foundation curriculum requirements as provided by Section 28.002(n) (relating to developing and implementing a plan designed to incorporate foundation curriculum requirements into the CTE curriculum);

(B) foundation curriculum subjects for which the TEKS have been substantially revised, including CTE courses that satisfy foundation curriculum requirements as provided by Section 28.002(n);

(C) foundation curriculum subjects not described by Paragraph (A) or (B), including CTE courses that satisfy foundation curriculum requirements as provided by Section 28.002(n); and

(D) enrichment curriculum subjects.

(b) Requires SBOE to organize the cycle for subjects in the foundation curriculum so that not more than one-fourth of the instructional materials for subjects in the foundation curriculum are reviewed each biennium, rather than not more than one-sixth of the textbooks for subjects in the foundation curriculum are reviewed each year. Requires SBOE to adopt rules to provide for a full and complete investigation of instructional materials for each subject in the foundation curriculum every eight years, rather than provide for a full and complete investigation of textbooks for each subject in the foundation curriculum at least every six years. Authorizes the adoption of instructional materials, rather than textbooks, for a subject in the foundation curriculum to be extended beyond the

eight-year period, rather than six-year period, only if the content of instructional materials for a subject is sufficiently current.

(b-1) Provides that for purposes of the cycle described by Subsection (b), SBOE is considered to have adopted instructional materials for English language arts, English as a second language, and prekindergarten, as included in Proclamation 2011, for the biennium beginning September 1, 2011. Provides that this subsection expires September 1, 2013.

(c) Requires SBOE to adopt rules to provide for a full and complete investigation of instructional materials, rather than textbooks, for each subject in the enrichment curriculum on a cycle SBOE considers appropriate.

(d) Requires SBOE, at least 12 months before the beginning of the school year for which instructional materials for a particular subject and grade level will be adopted under the review and adoption cycle to publish notice of the review and adoption cycle for those instructional materials. Requires that a request for production to allow submission of open-source instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale. Deletes existing text requiring SBOE, at least 24 months before the beginning of the school year for which textbooks for a particular subject and grade level will be purchased under the review and adoption cycle adopted by SBOE, to publish notice of the review and adoption cycle for those textbooks.

(d-1) Requires that a notice published under Subsection (d) state that a publisher of adopted instructional materials for a grade level other than prekindergarten to submit an electronic sample of the instructional materials as required by Sections 31.027(a) (relating to information to be provided by a publisher to each school district and open-enrollment charter school) and (b) (relating to a publisher providing electronic sample copies of submitted instructional material to be maintained at each regional education service center) and prohibits submitting a print sample copy.

(e)-(f) Makes conforming changes.

SECTION 25. Amends Section 31.0221, Education Code, as follows:

Sec. 31.0221. New heading: MIDCYCLE REVIEW AND ADOPTION OF INSTRUCTIONAL MATERIALS. (a) Requires SBOE to adopt rules for the midcycle review and adoption of instructional material, rather than a textbook, for a subject for which instructional materials, rather than textbooks, are not currently under review by SBOE under Section 31.022. Requires that the rules require:

(1) the publisher of the instructional material, rather than the textbook, to pay a fee to SBOE to cover the cost of the midcycle review and adoption of the instructional material;

(2) the publisher of the instructional material, rather than the textbook, to enter into a contract with SBOE concerning the instructional material for a term that ends at the same time as any contract entered into by SBOE for other instructional materials, rather than another textbook, for the same subject and grade level; and

(3) a commitment from the publisher to provide the instructional material, rather than the textbook, to school districts in the manner specified by the publisher, which may include:

(A) providing the instructional material to any district in a regional education service center area identified by the publisher; or

(B) providing a certain maximum number of instructional materials specified by the publisher.

(b) Makes conforming changes.

SECTION 26. Amends Section 31.023, Education Code, as follows:

Sec. 31.023. New heading: INSTRUCTIONAL MATERIAL LIST. (a) Requires that, for each subject and grade level, SBOE adopt a list of instructional materials, rather than two lists of textbooks. Provides that the list, rather than the conforming list, includes each instructional material, rather than textbook, submitted for the subject and grade level that meets applicable physical specifications adopted by SBOE and contains material covering at least half of the elements, rather than each element, of the TEKS of the subject and grade level in the student version of the instructional material, rather than textbook, as well as in the teacher version of the instructional material, rather than textbook, as determined by SBOE under Section 28.002 (Required Curriculum) and adopted under Section 31.024 (Adoption by State Board of Education. Deletes existing text providing that the nonconforming list includes each textbook submitted for the subject and grade level that meets certain applicable physical specifications and that contains certain material. Makes conforming changes.

(a-1) Requires SBOE to determine the percentage of the elements of the TEKS of the subject and grade level covered by each instructional material submitted. Provides that SBOE's determination under this subsection is final.

(b) Makes conforming changes.

SECTION 27. Amends Section 31.0231, Education Code, as follows:

Sec. 31.0231. New heading: COMMISSIONER'S LIST. (a) Requires the commissioner to adopt a list of:

(1) electronic instructional material, rather than textbooks; and

(2) science material, rather than instructional material, that conveys information to the student or otherwise contributes to the learning process, including tools, models, and investigative materials designed for use as part of the foundation curriculum for science in kindergarten through grade five.

(b) Replaces references to "an electronic textbook or instructional material" to "material." Authorizes a school district to select material on the list adopted under Subsection (a) to be funded by the district's instructional materials allotment under Section 31.0211, rather than funded by the state textbook fund under Section 31.021.

(c) Authorizes SBOE, if the commissioner places material on the list adopted under Subsection (a), to require the commissioner to remove the material from the list, not later than the 90th day after the date the material is placed on the list. Makes conforming changes.

(d) Makes conforming changes.

(e) Makes conforming changes. Deletes existing text requiring that the removal, before the commissioner removes an electronic textbook or instructional material from the updated list, be recommended by a panel of recognized experts in the subject area of the electronic textbook or instructional material and experts in education technology.

(f)-(g) Makes conforming changes.

(h) Requires the commissioner to adopt rules as necessary to implement this section. Requires that the rules:

(1) be consistent with Section 31.151 (Duties of Publishers and Manufacturers) regarding the duties of publishers and manufacturers, as appropriate, and the imposition of a reasonable administrative penalty; and

(2) require public notice of an opportunity for the submission of material, rather than an electronic textbook or instructional material.

SECTION 28. Amends Section 31.024, Education Code, as follows:

Sec. 31.024. **ADOPTION BY STATE BOARD OF EDUCATION.** (a) Requires SBOE, by majority vote, to place each submitted instructional material on the list adopted under Section 31.023, or reject instructional material submitted for placement on that list. Makes conforming changes.

(b) Deletes existing text requiring each nonconforming list to include the reasons an adopted textbook is not eligible for the conforming list. Makes conforming changes.

SECTION 29. Amends the heading to Section 31.0241, Education Code, to read as follows:

Sec. 31.0241. **ADOPTION OF OPEN-SOURCE INSTRUCTIONAL MATERIALS.**

SECTION 30. Amends Sections 31.0241(b) and (c), Education Code, as follows:

(b). Requires SBOE to place open-source instructional material, rather than an open-source textbook, for a secondary-level course submitted for adoption by an eligible institution on the list adopted under Section 31.023, rather than on a conforming or nonconforming list, if by not later than the 90th day after the date the instructional material is submitted and before placement of the instructional material on the list, SBOE reviews and comments on the instructional material. Makes conforming changes.

(c) Makes conforming changes.

SECTION 31. Amends Section 31.026, Education Code, as follows:

Sec. 31.026. **CONTRACT; PRICE.** (a) Requires SBOE to execute a contract for the purchase or licensing of each adopted instructional material, rather than for the purchase of each adopted textbook other than an electronic textbook, and for the purchase or licensing of each adopted electronic textbook.

(b)-(c) Makes a conforming change.

(d) Redesignates existing Subsection (e) as Subsection (d). Makes a conforming change.

SECTION 32. Amends Section 31.0261, Education Code, as follows:

Sec. 31.0261. New heading: **CONTRACTS FOR PRINTING OF OPEN-SOURCE INSTRUCTIONAL MATERIALS.** Makes conforming and nonsubstantive changes.

SECTION 33. Amends Section 31.027, Education Code, as follows:

Sec. 31.027. New heading: **INFORMATION TO SCHOOL DISTRICTS; ELECTRONIC SAMPLE.**

(a) Requires a publisher to provide each school district and open-enrollment charter school within information that fully describes each of the publisher's submitted instructional materials, rather than adopted textbooks. Requires a publisher, on request of a school district, to provide an electronic sample of submitted instructional material, rather than a sample copy of an adopted textbook.

(b) Requires a publisher to provide an electronic copy of each submitted instructional material, rather than at least two sample copies of each adopted textbook, to be maintained at each regional education service center.

(c) Redesignates existing Subsection (d) as Subsection (c). Makes conforming and nonsubstantive changes.

SECTION 34. Amends Section 31.028, Education Code, as follows:

Sec. 31.028. New heading: SPECIAL INSTRUCTIONAL MATERIALS. (a) Authorizes the commissioner, rather than SBOE, to purchase special instructional materials, rather than special textbooks, for the education of blind and visually impaired students in public schools. Requires the commissioner, rather than SBOE, to provide a teacher's edition in Braille or large type, as requested by the teacher, for each instructional material, rather than textbook, the teacher uses in the instruction of students. Makes a conforming change.

(b) Requires the publisher of adopted instructional material to provide TEA with computerized instructional material files for the production of Braille instructional materials or other versions of instructional materials to be used by students with disabilities, on request of the commissioner, rather than SBOE. Requires a publisher to arrange computerized instructional material files in one of several optional formats specified by the commissioner, rather than SBOE. Makes conforming changes.

(c) Authorizes the commissioner, rather than SBOE, to also enter into agreements providing for the acceptance, requisition, and distribution of special instructional materials, rather than textbooks, and instructional aids pursuant to 20 U.S.C. Section 101 et seq. for use by students enrolled in certain schools.

(d) Redefines "blind or visually impaired student." Defines "special instructional material." Deletes existing definition of "special textbook."

SECTION 35. Amends Section 31.029, Education Code, as follows:

Sec. 31.029. New heading: BILINGUAL INSTRUCTIONAL MATERIALS. (a) Creates this subsection from existing text. Requires a school district, rather than SBOE, to purchase with the district's instructional material allotment or otherwise acquire instructional materials, rather than textbooks, for use in bilingual education classes.

(b) Requires the commissioner to adopt rules regarding the purchase of instructional materials under this section.

SECTION 36. Amends Section 31.030, Education Code, as follows:

Sec. 31.030. New heading: USED INSTRUCTIONAL MATERIALS. Requires SBOE to adopt rules to ensure that used instructional materials, rather than textbooks, sold to school districts and open-enrollment charter schools are not sample copies that contain factual errors. Authorizes the rules to provide for the imposition of an administrative penalty in accordance with Section 31.151 against a seller of used instructional materials, rather than textbooks, who knowingly violates this section.

SECTION 37. Amends the heading to Section 31.035, Education Code, to read as follows:

Sec. 31.035. SUPPLEMENTAL INSTRUCTIONAL MATERIALS.

SECTION 38. Amends Sections 31.035(a), (b), (c), (d), and (f), Education Code, as follows:

(a) Replaces references to supplemental textbooks with supplemental instructional materials. Makes conforming changes.

(b)-(c) Makes a conforming change.

(d) Deletes existing text authorizing a school district or open-enrollment charter school to requisition a supplemental textbook adopted under this section only if the district or school uses textbook credits received under Section 31.1011 (Textbook Credits) to purchase the supplemental textbook or instead of requisitioning instructional material on the conforming list under Section 31.023 for a course in the foundation curriculum under Section 28.002. Makes conforming and nonsubstantive changes.

(f) Requires a school district or open-enrollment charter school that requisitions supplemental instructional materials, rather than textbooks under Subsection (d)(2), to certify to the agency that the supplemental instructional materials, in combination with any other instructional materials or supplemental instructional materials used by the district or school, cover the TEKS identified under Section 28.002 by SBOE for the subject and grade level for which the district or school is requisitioning the supplemental instructional materials. Makes conforming changes.

SECTION 39. Amends the heading to Subchapter B-1, Chapter 31, Education Code, to read as follows:

SUBCHAPTER B-1. STATE-DEVELOPED OPEN-SOURCE INSTRUCTIONAL MATERIALS

SECTION 40. Amends Section 31.071, Education Code, as follows:

Sec. 31.071. PURCHASE AUTHORITY. (a) Makes a conforming change.

(b) Makes conforming changes.

(c) Replaces a reference to a state-developed open-source textbook with state-developed open-source instructional material. Makes a conforming change.

(d) Makes conforming and nonsubstantive changes.

(e) Requires that the costs of administering this subchapter and purchasing state-developed open-source instructional materials be paid from the state instructional materials fund, as determined by the commissioner and subject to Section 31.021. Makes conforming changes.

SECTION 41. Amends Sections 31.072(a) and (b), Education Code, as follows:

(a) Makes conforming changes.

(b) Authorizes the commissioner, at any time, to require an additional revision of state-developed open-source instructional material or contract for ongoing revisions of state-developed instructional material, rather than a textbook, for a period not to exceed the period under Section 31.022 for which instructional material for that subject and grade level may be adopted. Makes conforming and nonsubstantive changes.

SECTION 42. Amends the heading to Section 31.073, Education Code, to read as follows:

Sec. 31.073. SELECTION BY SCHOOL DISTRICT.

SECTION 43. Amends Sections 31.073(c) and (d), Education Code, to make conforming and nonsubstantive changes.

SECTION 44. Amends Section 31.074, Education Code, to make conforming and nonsubstantive changes.

SECTION 45. Amends Section 31.075, Education Code, to make conforming and nonsubstantive changes.

SECTION 46. Amends Section 31.076(b), Education Code, to make a conforming and nonsubstantive change.

SECTION 47. Amends Section 31.077, Education Code, to make conforming changes.

SECTION 48. Amends the heading to Section 31.101, Education Code, to read as follows:

Sec. 31.101. SELECTION AND PURCHASE OF INSTRUCTIONAL MATERIALS BY SCHOOL DISTRICTS.

SECTION 49. Amends Section 31.101, Education Code, by amending Subsections (a), (d), and (e) and adding Subsection (f), as follows:

(a) Requires the board of trustees of each school district and the governing body of each open-enrollment charter school, each year, during a period established by SBOE to, for a subject in the foundation curriculum, notify SBOE of the instructional materials selected by the board of trustees or governing body for the following school year from the instructional materials list, rather than from among the textbooks on the appropriate conforming or nonconforming list, including the list adopted under Section 31.0231. Makes conforming changes.

(d) Makes conforming changes.

(e) Authorizes a school district or open-enrollment charter school that selects subscription-based instructional material, rather than a subscription-based electronic textbook or instructional material, on the list adopted under Section 31.023, rather than the conforming list under Section 31.023, or electronic instructional material on the list adopted by the commissioner under Section 31.0231 to cancel the subscription and subscribe to new instructional material on the list adopted under Section 31.023, rather than a new electronic textbook or instructional material on the conforming list under Section 31.023, or electronic instructional material on the list adopted by the commissioner under Section 31.0231 before the end of the state contract period under Section 31.026 if:

(1) the district or school has used the instructional material, rather than the electronic textbook or instructional material, for at least one school year; and

(2) TEA approves the change based on a written request to TEA by the district or school that specifies the reasons for changing the instructional material, rather than the electronic textbook or instructional material, used by the district or school.

(f) Requires the commissioner to maintain an online requisition system for school districts to requisition instructional materials to be purchased with the district's instructional materials allotment.

SECTION 50. Amends Section 31.102, Education Code, as follows:

Sec. 31.102. TITLE AND CUSTODY. (a) Provides that each instructional material, rather than each textbook, purchased as provided by this chapter for a school district or an open-enrollment charter school is the property of the district or school, rather than this state.

(b) Provides that Subsection (a) applies to electronic instructional material, rather than an electronic textbook, only to the extent of any applicable licensing agreement.

(c) Requires the board of trustees of a school district or the governing body of an open-enrollment charter school to distribute printed instructional material to students in the manner that the board or governing body determines is most effective and economical. Deletes existing text providing that the board of trustees of a school district or the governing body of an open-enrollment charter school is the legal custodian of printed instructional materials purchased as provided by this chapter for the district or school. Makes conforming changes.

SECTION 51. Amends the heading to Section 31.103, Education Code, to read as follows:

Sec. 31.103. INSTRUCTIONAL MATERIAL REQUISITIONS.

SECTION 52. Amends Sections 31.103(b), (c), and (d), Education Code, as follows:

(b) Deletes existing text requiring that a requisition for textbooks for the following school year be based on the maximum attendance reports under Subsection (a), plus an additional 10 percent, except as otherwise provided. Requires a school district or open-enrollment charter school to make a requisition for instructional material using the online requisition program maintained by the commissioner not later than June 1 of each year, rather than a requisition for a textbook on the conforming or nonconforming list through the commissioner to the state depository designated by the publisher or as provided by SBOE rule, as applicable, not later than June 1 of each year. Requires the publisher or manufacturer to fill a requisition approved by TEA, rather than requires the designated state depository or, if the publisher or manufacturer does not have a designated textbook depository in this state under Section 31.151(a)(6)(B) (relating to requiring to deliver textbooks to a school district or open-enrollment charter school without a delivery charge to the school district, open-enrollment charter school, or state, under certain circumstances), the publisher or manufacturer to fill a requisition approved by TEA at any other time in the case of an emergency. Deletes existing text requiring the commissioner, as made necessary by available funds, to reduce the additional percentage of attendance for which a district or school may requisition textbooks. Deletes existing text authorizing the commissioner, on application of a district or school that is experiencing high enrollment growth, to increase the additional percentage of attendance for which the district or school may requisition textbooks.

(c) Authorizes a school district or open-enrollment charter school, in making a requisition under this section, to requisition instructional materials on the list adopted under Section 31.023 for grades above the grade level in which a student is enrolled. Deletes existing text authorizing a school district or open-enrollment charter school, in making a requisition under this section, to requisition textbooks on the conforming or nonconforming list for grades above the grade level in which a student is enrolled, except that the total quantity of textbooks requisitioned under this section may not exceed the limit prescribed by Subsection (b).

(d) Makes conforming and nonsubstantive changes.

SECTION 53. Amends Section 31.104, Education Code, as follows:

Sec. 31.104. DISTRIBUTION AND HANDLING. (a) Makes a conforming change.

(b) Authorizes a school district or open-enrollment charter school to order replacements for instructional materials that have been lost or damaged directly from the publisher of the instructional materials or any source for a printed copy of open-source instructional material. Deletes existing text authorizing a school district or open-enrollment charter school to order replacements for textbooks that have been lost or damaged directly from the textbook depository, the textbook publisher or manufacturer if the textbook publisher or manufacturer does not have a designated textbook depository in this state under Section 31.151(a)(6)(B), or any source for a printed copy of an open-source textbook. Makes conforming changes.

(c) Requires a student, except as provided by Subsection (g), to return all instructional materials to the teacher at the end of the school year or when the student withdraws from school. Deletes existing text requiring each textbook to state that the textbook is the property of or is licensed to this state, as appropriate, and that each textbook, other than an electronic textbook or a printed copy of an open-source textbook, is required to be covered by the student under the direction of the teacher. Makes a conforming change.

(d) Replaces references to textbooks, including electronic textbooks, with instructional materials. Provides that each student, or the student's parent or guardian, is responsible for all instructional materials, rather than each textbook, including an electronic textbook, and technological equipment not returned in an acceptable condition by the student. Provides that a student who fails to return in an acceptable condition all instructional materials and technological equipment forfeits the right to free instructional materials and technological equipment until all instructional materials and technological equipment previously issued but not returned in an acceptable condition are paid for by the student, parent, or guardian. Authorizes a school district or open-enrollment charter school, as provided by policy of the board of trustees or governing body, to waive or reduce the payment requirement if the student is from a low-income family. Requires the district or school to allow the student to use instructional materials and technological equipment at school during each school day. Authorizes the district or school, if instructional materials or technological equipment is not returned in an acceptable condition or paid for, to withhold the student's records. Prohibits a district or school from, under this subsection, preventing a student from graduating, participating in a graduation ceremony, or receiving a diploma. Requires the commissioner by rule to adopt criteria for determining whether instructional materials and technological equipment are returned in an acceptable condition.

(e)-(h) Makes conforming and nonsubstantive changes.

SECTION 54. Amends Section 31.105, Education Code, as follows:

Sec. 31.105. New heading: SALE OR DISPOSAL OF INSTRUCTIONAL MATERIALS AND TECHNOLOGICAL EQUIPMENT. (a) Creates this subsection from existing text. Authorizes the board of trustees of a school district or governing body of an open-enrollment charter school to sell printed instructional materials on the date the instructional material is discontinued for use in the public schools by SBOE or the commissioner. Authorizes the board of trustees or governing body to also sell electronic instructional materials and technological equipment owned by the district or school. Requires that any funds received by a district or school from a sale authorized by this subsection be used to purchase instructional materials and technological equipment allowed under Section 31.0211. Deletes existing text authorizing the board of trustees of a school district or governing body of an open-enrollment charter school to sell textbooks, other than electronic textbooks, to a student or another school at the state contract price. Deletes existing text requiring the district to send money from the sale of textbooks to the commissioner as required by the commissioner. Deletes existing text requiring the commissioner to deposit the money in the state textbook fund.

(b) Requires the board of trustees of a school district or the governing body of an open-enrollment charter school to determine how the district or school will dispose of discontinued printed instructional materials, electronic instructional materials, and technological equipment.

(c) Authorizes the board of trustees of a school district or the governing body of an open-enrollment charter school to dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by SBOE if the board of trustees or governing body determines that the instructional material is not needed by the district or school and the board of trustees or governing body does not reasonably expect that the instructional material will be needed. Requires a district or school to notify the commissioner of any instructional material the district or school disposes of under this subsection.

SECTION 55. Amends Section 31.106, Education Code, to make conforming changes.

SECTION 56. Amends Sections 31.151 by amending Subsections (a) and (d), and adding Subsection (e), Education Code, as follows:

(a) Deletes existing text requiring a publisher or manufacturer of textbooks 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. Deletes existing text requiring a publisher or manufacturer of textbooks to deliver textbooks to a school district or open-enrollment charter school without a delivery charge to the school district, open-enrollment charter school, or state, if the publisher or manufacturer does not maintain or arrange with a depository in this state under Paragraph (A) (relating to maintaining a depository in this state) and the publisher's or manufacturer's textbooks and related products are warehoused or otherwise stored less than 300 miles from a border of this state, or the textbooks are open-source textbooks, on-line textbooks, or on-line textbook components. Makes conforming and nonsubstantive changes.

(d) Makes a conforming change.

(e) Provides that an eligible institution, as defined by Section 31.0241(a) (defining "eligible institution"), that offers open-source instructional materials under Section 31.0241 is not a publisher or manufacturer for purposes of this section.

SECTION 57. Amends the heading to Section 31.152, Education Code, to read as follows:

Sec. 31.152. ACCEPTING REBATE ON INSTRUCTIONAL MATERIALS OR TECHNOLOGICAL EQUIPMENT.

SECTION 58. Amends Sections 31.152(a), (b), and (d), Education Code, as follows:

(a) Provides that a school trustee, administrator, or teacher commits an offense if that person receives any commission or rebate on any instructional materials or technological equipment, rather than on any textbooks, electronic textbooks, instructional materials, or technological equipment, used in the schools with which the person is associated as a trustee, administrator, or teacher.

(b) Provides that a school trustee, administrator, or teacher commits an offense if the person accepts a gift, favor, or service that:

(1) is given to the person or the person's school;

(2) might reasonably tend to influence a trustee, administrator, or teacher in the selection of instructional material or technological equipment, rather than in the

selection of any textbooks, electronic textbooks, instructional materials, or technological equipment; and

(3) could not be lawfully purchased with state instructional materials funds, rather than could not be lawfully purchased with funds from the state textbook fund.

(d) Provides that, in this section, "gift, favor, or service" does not include:

(1) staff development, in-service, or teacher training;

(2) ancillary materials, rather than instructional materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

SECTION 59. Amends the heading to Section 31.153, Education Code, to read as follows:

Sec. 31.153. VIOLATION OF FREE INSTRUCTIONAL MATERIALS LAW.

SECTION 60. Amends Section 31.153(a), Education Code, to make a conforming change.

SECTION 61. Amends Section 39.303(b), Education Code, to require a school district, for a student who failed to perform satisfactorily as determined under either performance standard under Section 39.0241 (Performance Standards) on an assessment instrument administered under Section 39.023(a) (relating to adopting or developing appropriate criterion-referenced assessment instruments), (c) (relating to requiring adopting end-of-course assessment instruments for certain secondary-level courses), or (l) (relating to requiring adopting rules for the administration of the assessment adopted instruments in Spanish to certain students), to include in the notice specific information relating to access to educational resources, rather than online educational resources, at the appropriate assessment instrument content level, including assessment instrument questions and answers released under Section 39.023(e) (relating to releasing the questions and answer keys to administered assessment instruments), rather than educational resources described by Section 32.252(b)(2) (relating to a portal being used to improve student academic performance by providing access to certain materials) and assessment instrument questions and answers released under Section 39.023(e).

SECTION 62. Amends Section 41.124(c), Education Code, to prohibit a school district that receives tuition for a student from a school district with a wealth per student that exceeds the equalized wealth level from claiming attendance for that student for purposes of Chapters 42 and 46 and the instructional materials allotment under Section 31.0211, rather than the technology allotment under Section 31.021(b)(2) (relating to determining the amount of the available school fund to set aside for the state textbook fund based on the commissioner's estimate).

SECTION 63. Reenacts Section 43.001(b), Education Code, as amended by Chapters 201 (H.B. 3459) and 328 (S.B. 206), Acts of the 78th Legislature, Regular Session, 2003. Makes no further changes.

SECTION 64. Amends Section 43.001, Education Code, by adding Subsections (d), (e), (f), and (g), as follows:

(d) Requires SBOE, each year, to set aside an amount equal to 50 percent of the annual distribution for that year from the permanent school fund to the available school fund as provided by Section 5(a) (relating to the constituents of the permanent school fund), Article VII (Education), Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials fund established under Section 31.021.

(e) Provides that Subsection (d) applies beginning with the state fiscal biennium beginning September 1, 2013. Requires SBOE, for the state fiscal biennium beginning September 1, 2011, each year to set aside an amount equal to 40 percent of the annual distribution for that year from the permanent school fund to the available school fund as

provided by Section 5(a), Article VII, Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials fund established under Section 31.021.

(f) Requires SBOE, in calculating the amounts to be set aside as provided by Subsection (e) for the state fiscal biennium beginning September 1, 2011, to consider only the amounts of the annual distribution of the permanent school fund for that biennium. Prohibits SBOE from considering amounts distributed for the state fiscal biennium beginning September 1, 2009, regardless of the date on which those amounts were approved for distribution.

(g) Provides that Subsections (e) and (f) and this subsection expire September 1, 2013.

SECTION 65. Repealers: (1) Section 31.002(3) (defining "textbook"), Education Code;

(2) Sections 31.021(b) (relating to SBOE annually setting aside out of the available school fund of the state an amount to purchase and distribute the necessary textbooks), (e) (relating to all necessary expenses incurred being paid from the state textbook fund on approved invoices), and (f) (relating to authorizing the purchase of necessary technological equipment), Education Code;

(3) Section 31.0222 (Budget-Balanced Cycle), Education Code;

(4) Section 31.025 (Limitation on Cost), Education Code;

(5) Sections 31.035(e) (relating to entitling a district or school to receive certain credit) and (g) (relating to certain sections not applying to supplemental textbooks requisitioned under this section), Education Code;

(6) Section 31.072(c) (relating to requiring the commissioner to provide for special and bilingual state-developed open-source textbooks in a certain manner), Education Code;

(7) Sections 31.073(a) (relating to the commissioner determining the cost to a school district or open-enrollment charter school for a state-developed open-source textbook in a certain amount) and (b) (relating to allocating the difference between the cost determined under Subsection (a) and the maximum price for a textbook in the same subject area), Education Code;

(8) Sections 31.101(b) (relating to requiring the state to pay to the district or school an amount under certain conditions), (b-1) (relating to requiring the state to pay the district or school an amount equal to the certain costs), (c) (relating to a school district or open-enrollment charter school that selects a textbook that is not on the conforming or nonconforming list or that selects a certain electronic textbook or instructional material), and (c-1) (relating to requiring a school district or open-enrollment charter school to purchase a certain adopted classroom set of textbooks), Education Code;

(9) Section 31.1011 (Textbook Credits), Education Code;

(10) Sections 31.103(a) (relating to reporting the maximum attendance for the school to the superintendent) and (e) (relating to establishing a list of equipment or devices that a school district or open-enrollment charter school may purchase using textbook credits or textbook credits in combination with other available funds), Education Code;

(11) Section 31.1031 (Shortage of Requisitioned Textbooks);

(12) Subchapter E (Disposition of Textbooks), Chapter 31 (Textbooks), Education Code;

(13) Section 32.005 (Technology Allotment), Education Code;

(14) Sections 32.251 (Definition), 32.252 (Education Internet Portal; General Purposes), 32.253 (Administration), 32.254 (On-Line Courses), 32.255 (On-Line Course Scholarships), 32.256 (On-Line Textbooks), and 32.257 (School District Administrative Software and Electronic Tools), Education Code; and

(15) Sections 32.259 (Fees), 32.260 (Vendor Participation), 32.261 (Funding), 32.262 (Statewide Licensing and Contracting), and 32.263 (Outreach and Training), Education Code.

SECTION 66. Repealers: Sections 2175.128(a-1) (relating to making certain surplus or salvage data processing equipment available to the computer lending pilot program) and (b-1) (relating to disposition of the surplus or salvage data processing equipment of a state eleemosynary institution or an institution or agency of higher education), Government Code.

SECTION 67. Makes application of this Act prospective.

SECTION 68. Effective date: upon passage or the 91st day after the last day of the legislative session.