

BILL ANALYSIS

Senate Research Center

S.B. 1784
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of S.B. 1784 is to promote the use of open source instructional materials by Texas school districts, charter schools, individual educators, and students by allowing broader and more innovative use of such materials. At the same time, the bill provides important protections for the state in the development of such materials.

S.B. 1784 updates statutory language dating to 2009 that governs the authority of the commissioner of education to license open source instructional materials. The current law is found in Chapter 31, Subchapter B-1, Education Code. The specific ownership and licensing provisions are in TEC 31.075.

Current law has not kept pace with the evolution of standards in open source licensing.

S.B. 1784 updates the definition of "open educational resources" to align with the current accepted industry definition. The bill addresses the licensing issue specifically by giving the commissioner of education more flexibility in licensing the materials, removing a requirement for cost recovery in the licensing process. Instead, the financial benefit to the state comes from the sharing, re-use and modification of such materials, encouraging innovation and adoption of these free resources in public schools. The bill also makes a technical change to exempt certain types of content from the current law requirement that the state own or hold a license to use all content within state-developed open-source instructional material. For example, portions of the Declaration of Independence could be included in an open-source history book even though the state cannot own or hold a license for that document.

S.B. 1784 protects the interests of the state by requiring license provisions that, for example, require proper attribution of the material to the state and require a link back to the original content whenever any of the material is reproduced. It gives the commissioner the authority to revoke an open source license. S.B. 1784 allows the commissioner to use current licenses commonly applied to open educational resources.

Supporters may include school districts, charter schools, school boards, advocates for innovation and technology in education, and advocates for improved access to high quality instructional materials.

Opponents are not known. S.B. 810, a bill promoting the use of open source resources in higher education, was not opposed in committee by any group.

As proposed, S.B. 1784 amends current law relating to state-developed open education resources for public schools.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.002, Education Code, by amending Subdivision (1-a) and adding Subdivision (1-b), to define "open education resources," to redefine "open-source instructional material," and delete text providing that the term open source instructional material includes state-developed open-source instructional material purchased under Subchapter B-1.

SECTION 2. Amends Section 31.021(c), Education Code, as follows:

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

(1) to (3) makes no changes to these subdivisions;

(4) pay the expenses associated with the purchase or licensing of open education resources and open-source instructional material;

(5) makes a nonsubstantive change to this subdivision;

(6) deletes existing text relating to funding technology lending grant program established under Section 32.201 and redesignates Subdivision (7) as Subdivision (6).

SECTION 3. Amends Section 31.0211(c), Education Code, to change reference to open-source instructional materials to open education resources.

SECTION 4. Amends Section 31.027(c), Education Code, to make a conforming change.

SECTION 5. Amends the heading to Subchapter B-1, Chapter 31, Education Code, to read as follows:

SUBCHAPTER B-1. STATE-DEVELOPED OPEN EDUCATION RESOURCES

SECTION 6. Amends Section 31.071, Education Code, as follows:

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

(b) Makes conforming changes.

(c) Requires that a state-developed open education resource, rather than a state-developed open-source instructional material, except as provided by Section 31.0711, 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 resource, rather than instructional material, after purchase.

(d) Makes conforming changes.

(e) Makes conforming changes.

SECTION 7. Amends Subchapter B-1, Chapter 31, Education Code, by adding Section 31.0711, as follows:

Sec. 31.0711. CONTENT NOT OWNED BY STATE. (a) Authorizes a state-developed open education resource to include content not owned by the state and for which preexisting rights may exist if the content is in the public domain, may be used under a limitation or exception to copyright law, or is licensed to the state for use in an open education resource.

(b) Requires a license described by Subsection (a)(3), except as provided by Subsection (c), to grant the state unlimited authority to modify, delete, combine,

or add content, and permit the free use and repurposing of the resource by any person.

(c) Authorizes the commissioner to waive a requirement under Subsection (b) if:

(1) it is not reasonably practical to cover a specific element of essential knowledge and skills with content that the state could own or use without waiving a requirement;

(2) the licensed content may be incorporated into a state-developed open education resource without substantially reducing the authority of the state or another person to use or repurpose the resource as a whole, excluding the specific content to which the waiver applies; and has been generally available to the public before consideration was given to including the content in a state-developed open education resource; and

(3) the authority of the state to use the licensed content is not any more restrictive than the authority generally available to the public to use the content.

(d) Requires a state-developed open education resource that includes licensed content for which the commissioner waived a requirement under Subsection (c) to include clear notice of the limitation on a user's authority to use or repurpose the licensed content.

SECTION 8. Amends Section 31.072, Education Code, to make conforming changes.

SECTION 9. Amends Sections 31.073(c) and (d), Education Code, to make conforming changes.

SECTION 10. Amends Section 31.074, Education Code, to make conforming changes.

SECTION 11. Amends Section 31.075, Education Code, as follows:

Sec. 31.075. OWNERSHIP; LICENSING. (a) Provides that a state-developed open education resource, rather than state-developed open-source instructional material, is the property of the state.

(b) Requires the commissioner, to encourage the use of state-developed open education resources by school districts and open-enrollment charter schools, to provide a license for a state-developed open education resource that allows for the free use, reuse, modification, or sharing of the source by any person. Deletes text requiring 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 state developed open-source instructional material.

(c) Provides that a license provided by the commissioner under this section:

(1) unless exempted by the commissioner, shall require that a user who reproduces a state-developed open education resource in any manner, except as provided by Subdivision (2)(A), must keep all copyright notices for the resource intact, attribute the authorship of the resource to the agency or another person specified by the commissioner, must indicate if the user has modified the resource; and may not assert or imply any connecting with or sponsorship or endorsement by the agency or this state, unless authorized by the commissioner; and

(2) must provide that the commissioner may request that a user remove a copyright notice or attribution from the resource and that a user must comply with the request to the extent reasonably practicable; and the

rights granted under the license to a user are automatically terminated if the user fails to comply with the terms of the license. Deletes text authorizing the commissioner to provide a license to use state-developed open-source instructional material to an entity not listed in Subsection (b) and requiring 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 instructional material.

(d) Authorizes the commissioner to specify requirements to reinstate a user's rights under a license that has been terminated and reinstate a user's rights on completion of those requirements.

(e) Authorizes the commissioner to use a license commonly applied to an open education resource in implementing this section.

SECTION 12. Amends Section 31.076(b), Education Code, to make conforming changes.

SECTION 13. Amends Section 31.103(d), Education Code, to require a school district or open-enrollment charter school that selects an open education resource or open-source instructional material to requisition a sufficient number of printed copies for use by students unable to access the instructional material electronically unless the district or school provides to each student electronic access to the instructional material at no cost to the student or printed copies of the portion of the instructional material that will be used in the course.

SECTION 14. Amends Sections 31.104(b), (g), and (h), Education Code, as follows:

(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 an open education resource or open-source instructional material.

(g) Provides that at the end of the school year for which an open education resource or open-source instructional material 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 education resource or open-source instructional material 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 education resource or open-source instructional material.

SECTION 15. Repealer: Section 31.077 (Adoption Schedule), Education Code.

SECTION 16. Effective date: upon passage or September 1, 2017.