

BILL ANALYSIS

S.B. 6
By: Shapiro
Public Education
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties believe that it is essential for school districts to have the flexibility to purchase materials and technology to deliver the curriculum to prepare students for the new assessment system and contend that districts currently lack the flexibility to purchase additional materials or technological equipment to deliver instructional materials. These parties further contend that with the state providing instructional materials directly to school districts, there is little incentive for the publishers of instructional materials or school districts to consider cost.

S.B. 6 seeks to address matters 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

It is the committee's opinion that rulemaking authority is expressly granted to the State Board of Education in SECTIONS 4, 13, 20, 24, 25, and 36 and to the commissioner of education in SECTIONS 23, 27, 35, and 53 of this bill.

ANALYSIS

S.B. 6 amends the Education Code to replace the state textbook fund with the state instructional materials fund. The bill requires the State Board of Education (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 the Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials fund. The bill adds temporary provisions, set to expire September 1, 2013, making the requirement that the SBOE set aside such an amount in the state instructional materials fund applicable beginning with the state fiscal biennium beginning September 1, 2013. The bill requires the SBOE, for each year of the state fiscal biennium beginning September 1, 2011, 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 the Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials fund. The bill requires the SBOE, in calculating the amounts to be set aside 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, without considering amounts distributed for the state fiscal biennium, beginning September 1, 2009, regardless of the date on which those amounts were approved for distribution. The bill removes a provision of law providing that a component of the instructional material fund is all funds accruing from the state's sale of disused textbooks. The bill requires money in the state instructional materials fund to be used to fund the instructional materials allotment; to purchase special instructional materials for the education of blind and visually impaired students in public schools; to pay the expenses associated with the instructional materials adoption and review process; to pay the expenses associated with the purchase or licensing of open-source instructional material, to the extent authorized by the General Appropriations Act; and to 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. The bill makes related conforming and nonsubstantive changes.

S.B. 6 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 of education. The bill 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. The bill requires the allotment to be transferred to the credit of the district's instructional materials account. The bill entitles a juvenile justice alternative education program to an allotment from the state instructional materials fund, in an amount set by a final and unappealable commissioner determination. The bill authorizes funds allotted to a school district or juvenile justice alternative education program to be used to purchase certain instructional materials and technological equipment and to pay 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 the salary and other expenses of an employee who provides technical support for the use of technological equipment. The bill requires a school district each year to use the district's instructional materials allotment to purchase, in the following order: instructional materials necessary to permit the district to certify that the district has instructional materials that cover all elements of the essential knowledge and skills of the required curriculum, other than physical education, for each grade level, and any other instructional materials or technological equipment as determined by the district. The bill adds a temporary provision, set to expire August 31, 2013, to require a school district, for the state fiscal biennium beginning September 1, 2011, to use an allotment to purchase instructional materials that will assist the district in satisfying performance standards under state law as added by Chapter 895 (H.B. 3), Acts of the 81st Legislature, Regular Session, 2009, on criterion-referenced essential knowledge and skills and end-of-course assessment instruments adopted by the Texas Education Agency (TEA). The bill 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 on the grounds that the number of students attending in the district will change during the school year for which the allotment is provided. The bill authorizes the commissioner to adjust the number of students for which a district is entitled to receive an allotment, without a district request, if the commissioner determines a different number of students is a more accurate reflection of students who will be attending school in the district. The bill establishes the commissioner's determination as final and authorizes the commissioner to adopt rules as necessary to implement these provisions.

S.B. 6 requires the commissioner of education to maintain an instructional materials account for each school district and, each year, to deposit in the account for each district the amount of the district's instructional materials allotment. The bill requires the commissioner to pay the cost of instructional materials requisitioned by a school district using funds from the district's account, authorizes a school district to use funds in the district's account to purchase electronic instructional materials or technological equipment, and requires the district to submit to the commissioner a request for funds for this purpose. The bill requires the commissioner to adopt rules regarding the documentation a school district must submit to receive such funds. The bill establishes that money deposited in a 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 and authorizes any 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. The bill requires the commissioner to adopt rules as necessary to implement these provisions relating to the instructional materials account and 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.

S.B. 6 requires each school district annually to certify to the commissioner that the district's

instructional materials allotment has been used only for approved expenses. The bill requires the commissioner each year to adjust the allotment of districts experiencing high enrollment growth and to establish a procedure for determining high enrollment growth districts eligible to receive an adjustment and the amount those districts will receive. The bill authorizes the commissioner to adopt rules as necessary to implement the adjustment.

S.B. 6 establishes that, in statutory provisions relating to public education, a reference to a textbook means instructional material and, in statutory provisions relating to textbooks, replaces references to textbooks and electronic textbooks with references to instructional materials and electronic instructional materials. The bill removes references to textbooks and electronic textbooks in existing references to instructional materials, as applicable. The bill replaces references to library books with references to library materials. The bill prohibits a school district from charging a student for instructional material or technological equipment purchased by the district with the district's instructional materials allotment, except as otherwise provided.

S.B. 6 specifies that the requirement that each school district and open-enrollment charter school annually certify to the SBOE and the commissioner that the district provides each student with instructional materials for each subject in the required curriculum under state law and each grade level that cover all elements of the essential knowledge and skills adopted by the SBOE for that subject and grade level applies to subjects other than physical education. The bill authorizes a school district or open-enrollment charter school, to determine whether each student has instructional materials that cover all elements of the essential knowledge and skills as required by law, to consider the following materials: instructional materials adopted by the SBOE; materials adopted or purchased by the commissioner; open-source instructional materials submitted by eligible institutions and adopted by the SBOE; open-source instructional materials made available by other public schools; and instructional materials developed or purchased by the school district or open-enrollment charter school. The bill entitles an open-enrollment charter school to the instructional materials allotment and subjects such a charter school to statutory provisions relating to instructional materials as if the school were a school district. The bill authorizes the SBOE, if the commissioner places material on the commissioner's adopted list of electronic instructional material and material that conveys certain information to the student and not later than the 90th day after the material is placed on the list, to require the commissioner to remove the material from the list. The bill removes a provision of law requiring the removal of an electronic textbook or instructional material from the commissioner's adopted list to be recommended by a panel of recognized experts in the subject area of the electronic textbook or instructional material and experts in education technology. The bill adds to the conditions that must be met for the SBOE to place open-source instructional material for a secondary-level course submitted for adoption by an eligible institution on the SBOE's instructional material list the condition that SBOE review and comment on the instructional material by not later than the 90th day after the date the material is submitted and before placement of the material on the list.

S.B. 6 requires a publisher of instructional materials to provide each school district and charter school with information that fully describes each of the publisher's submitted instructional materials, rather than adopted textbooks, and specifies that a sample copy of submitted instructional material provided by a publisher on request of a school district be provided electronically.

S.B. 6 transfers the authority to purchase special instructional materials for the education of blind and visually impaired students in public schools from the SBOE to the commissioner and makes conforming changes. The bill transfers the authority to purchase or otherwise acquire instructional materials for use in bilingual education classes from the SBOE to each school district and specifies that such a purchase be made with the district's instructional materials allotment. The bill requires the commissioner to adopt rules regarding the purchase of such instructional materials.

S.B. 6 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. The bill requires the board of trustees of a school district or the governing body of a charter school to distribute printed instructional material, rather than textbooks, to students in the manner that the board or governing body determines is most effective and economical. The bill requires a school district or open-enrollment charter school to make a requisition for instructional material using the online requisition program not later than June 1 of each year and requires the publisher or manufacturer of instructional material to fill a requisition approved by the TEA. The bill removes provisions related to the previous process of making and filling textbook requisitions under the state textbook fund.

S.B. 6 specifies that each instructional material purchased for a school district or an open-enrollment charter school with an instructional materials allotment is the property of the district or school, rather than property of the state. The bill removes requirements for each instructional material to state that the instructional material is the property of or licensed to the state and to be covered by the student under the direction of the teacher. The bill authorizes a school district board of trustees or the 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 the SBOE or the commissioner and authorizes the board or governing body to sell electronic instructional materials and technological equipment owned by the district or school. The bill requires any funds received by a district or school from such a sale to be used to purchase approved instructional materials and technological equipment. The bill requires a district board of trustees 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. The bill authorizes a district board or governing body of a charter school to dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by the SBOE if the board or governing body determines that the instructional material is not needed by the district or school and the board or governing body does not reasonably expect that the instructional material will be needed. The bill requires a district or school to notify the commissioner of any instructional material the district or school disposes of under such authorization. The bill makes conforming changes relating to the sale of textbooks and the proceeds from the sale of textbooks and the disposition of those proceeds.

S.B. 6 removes as an alternative to the requirement that a publisher or manufacturer of instructional materials deliver instructional materials to a district or charter school the requirement that the publisher or manufacturer maintain a depository in Texas or arrange with a depository in Texas to receive and fill orders. The bill removes the condition that the delivery of instructional materials by a publisher or manufacturer be made without a delivery charge to the district, school, or state. The bill specifies that an eligible institution that offers open-source instructional materials is not a publisher or manufacturer for purposes of provisions establishing the duties of publishers and manufacturers of instructional materials. The bill makes related conforming changes.

S.B. 6 combines the conforming and nonconforming lists of instructional materials required to be adopted by the SBOE into a single list that includes each instructional material submitted for each subject and grade level that meets applicable physical specifications adopted by the SBOE and contains material covering at least half of the elements of the essential knowledge and skills of the subject and grade level in the student version of the instructional material, as well as in the teacher version of the instructional material, as determined and adopted by the SBOE. The bill makes conforming changes to reflect this change. The bill requires the SBOE to determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted and provides that the SBOE's determination is final.

S.B. 6 clarifies that the SBOE, in adopting a review and adoption cycle for instructional materials, is not required to review and adopt instructional materials for all grade levels in a

single year but is required to give priority to instructional materials in the following subjects: foundation curriculum subjects for which the essential knowledge and skills have been substantially revised and for which statewide standardized tests are required, including career and technology courses that satisfy foundation curriculum requirements; foundation curriculum subjects for which the essential knowledge and skills have been substantially revised, including career and technology courses that satisfy foundation curriculum requirements; foundation curriculum subjects not otherwise described, including career and technology courses that satisfy foundation curriculum requirements; and enrichment curriculum subjects. The bill changes the maximum portion of the instructional materials for subjects in the foundation curriculum under review by the SBOE from one-sixth of the instructional materials each year to one-fourth of the instructional materials each biennium. The bill lengthens from at least every six years to every eight years the frequency by which SBOE rules must provide for a full and complete investigation of instructional materials for each subject in the foundation curriculum and makes a conforming change. The bill adds a temporary provision, set to expire September 1, 2013, to establish that for purposes of the instructional materials review and adoption cycle the 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. The bill changes from at least 24 months to 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 the deadline by which the SBOE is required to publish notice of the review and adoption cycle for those instructional materials. The bill requires 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. The bill requires the published notice to state that a publisher of adopted instructional materials for a grade level other than prekindergarten is required to submit an electronic sample of the instructional materials as required by state law and is prohibited from submitting a print sample copy.

S.B. 6 removes economics with emphasis on the free enterprise system and its benefits as a subject under the enrichment curriculum and includes it as a component of social studies under the foundation curriculum.

S.B. 6 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, relating to the apportionment of the available school fund.

S.B. 6 makes conforming changes relating to the bill's replacement of references to textbooks with references to instructional materials; to the definitions of "publisher," "technological equipment," and "open-source textbook"; and to the redesignation of the latter definition as "open-source instructional material." The bill redesignates "electronic textbook" as "instructional material," redefines the term as content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student, including a DVD and other specified media, and removes interactive videodisc from the list of media. The bill specifies that the term "gift, favor, or service," as it relates to a misdemeanor for the acceptance of those items, does not include ancillary materials, rather than instructional materials. The bill removes the specification, in a provision of law relating to notification of access to educational resources available to a student who failed to perform satisfactorily on an assessment, that such educational resources are online. The bill makes other conforming and nonsubstantive changes.

S.B. 6 makes conforming changes in provisions of law relating to the commissioner's adopted list of instructional material, contingent on S.B. No. 290, Acts of the 82nd Legislature, Regular Session, 2011, becoming law.

S.B. 6 makes conforming changes in provisions of law relating to information that a publisher is required to provide school districts and open-enrollment charter schools regarding the publisher's

submitted instructional materials and the format of the provided sample material, contingent on S.B. No. 391, Acts of the 82nd Legislature, Regular Session, 2011, becoming law or the immediate effect of this bill. The bill provides that the sections of S.B. No. 391, Acts of the 82nd Legislature, Regular Session, 2011, that amend such provisions of law have no effect if the bill takes effect immediately.

S.B. 6 establishes that if it takes effect immediately certain provisions of H.B. No. 4, Acts of the 82nd Legislature, Regular Session, 2011, relating to the allocation of \$184,000,000 of instructional materials appropriations to the TEA have no effect and that such amount is allocated to fund the instructional materials allotment in accordance with the bill's provisions. The bill establishes that if it takes effect immediately, to the extent of any conflict, it prevails over the provision of H.B. No. 4, Acts of the 82nd Legislature, Regular Session, 2011, regarding the alternative allotment of such amount contingent on the immediate effect of H.B. 6, Acts of the 82nd Legislature, Regular Session, 2011, or a similar act of that legislative session relating to the establishment of an instructional materials allotment.

S.B. 6 repeals the following provisions of the Education Code:

- Section 31.002(3), relating to the definition of "textbook"
- Sections 31.021(b), (e), and (f), relating to the uses of the state textbook fund
- Section 31.0222, relating to considering budgeting issues in adopting the textbook review and adoption cycle
- Section 31.025, relating to a limitation on the cost that may be paid out of the state textbook fund
- Sections 31.035(e) and (g), relating to the selection and purchase of certain supplemental textbooks
- Section 31.072(c), relating to the commissioner's provision of special and bilingual state-developed open-source textbooks
- Sections 31.073(a) and (b), relating to the cost of a state-developed open-source textbook
- Sections 31.101(b), (b-1), (c), and (c-1), relating to the selection and purchase of certain textbooks by school districts
- Section 31.1011, relating to textbook credits
- Sections 31.103(a) and (e), relating to textbook requisitions
- Section 31.1031, relating to certain entitlements if there is a shortage of requisitioned textbooks
- Subchapter E, Chapter 31, relating to the disposition of textbooks
- Section 32.005, relating to a \$30 technology allotment
- Sections 32.251 through 32.257 and Sections 32.259 through 32.263, relating to the education Internet portal

S.B. 6 repeals Sections 2175.128(a-1) and (b-1), Government Code, relating to the requirement for certain surplus or salvage data processing equipment to be made available to the commissioner for use in the computer lending pilot program.

EFFECTIVE DATE

On passage or, if the bill does not receive the necessary vote, the 91st day after the last day of the

legislative session.