

By: Taylor of Galveston

S.B. No. 1784

A BILL TO BE ENTITLED

AN ACT

relating to state-developed open education resources for public schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 31.002, Education Code, is amended by amending Subdivision (1-a) and adding Subdivision (1-b) to read as follows:

(1-a) "Open education resources" means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits the free use, reuse, modification, and sharing of the resource with others, including full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge. The term includes a state-developed open education resource purchased under Subchapter B-1.

(1-b) "Open-source instructional material" means electronic instructional material that is available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional material. [The term includes state-developed open-source instructional material purchased under Subchapter B-1.]

1 SECTION 2. Section 31.021(c), Education Code, is amended to  
2 read as follows:

3 (c) Money in the state instructional materials fund shall be  
4 used to:

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

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

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

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

15 (5) pay the expenses associated with the purchase of  
16 instructional material, including intrastate freight and shipping  
17 and the insurance expenses associated with intrastate freight and  
18 shipping; and

19 (6) ~~[fund the technology lending grant program~~  
20 ~~established under Section 32.201, and~~

21 ~~[(7)]~~ provide funding to the Texas School for the Blind and  
22 Visually Impaired, the Texas School for the Deaf, and the Texas  
23 Juvenile Justice Department. SECTION 3. Section 31.0211(c),  
24 Education Code, is amended to read as follows:

25 (c) Subject to Subsection (d), funds allotted under this  
26 section may be used to:

27 (1) purchase:

- 1 (A) materials on the list adopted by the  
2 commissioner, as provided by Section 31.0231;
- 3 (B) instructional materials, regardless of  
4 whether the instructional materials are on the list adopted under  
5 Section 31.024;
- 6 (C) consumable instructional materials,  
7 including workbooks;
- 8 (D) instructional materials for use in bilingual  
9 education classes, as provided by Section 31.029;
- 10 (E) instructional materials for use in college  
11 preparatory courses under Section 28.014, as provided by Section  
12 31.031;
- 13 (F) supplemental instructional materials, as  
14 provided by Section 31.035;
- 15 (G) state-developed open education resources  
16 [~~open-source instructional materials~~], as provided by Subchapter  
17 B-1;
- 18 (H) instructional materials and technological  
19 equipment under any continuing contracts of the district in effect  
20 on September 1, 2011; and
- 21 (I) technological equipment necessary to support  
22 the use of materials included on the list adopted by the  
23 commissioner under Section 31.0231 or any instructional materials  
24 purchased with an allotment under this section; and
- 25 (2) pay:
- 26 (A) for training education personnel directly  
27 involved in student learning in the appropriate use of

1 instructional materials and for providing for access to  
2 technological equipment for instructional use; and

3 (B) the salary and other expenses of an employee  
4 who provides technical support for the use of technological  
5 equipment directly involved in student learning.

6 SECTION 4. Section 31.027(c), Education Code, is amended to  
7 read as follows:

8 (c) This section does not apply to open education resources  
9 [~~open-source instructional material~~].

10 SECTION 5. The heading to Subchapter B-1, Chapter 31,  
11 Education Code, is amended to read as follows:

12 SUBCHAPTER B-1. STATE-DEVELOPED OPEN EDUCATION RESOURCES  
13 [~~OPEN-SOURCE INSTRUCTIONAL MATERIALS~~]

14 SECTION 6. Section 31.071, Education Code, is amended to  
15 read as follows:

16 Sec. 31.071. PURCHASE AUTHORITY. (a) The commissioner may  
17 purchase state-developed open education resources [~~open-source~~  
18 ~~instructional materials~~] in accordance with this subchapter.

19 (b) The commissioner:

20 (1) shall purchase any state-developed open education  
21 resources [~~open-source instructional materials~~] through a  
22 competitive process; and

23 (2) may purchase more than one state-developed open  
24 education resource [~~open-source instructional material~~] for a  
25 subject or grade level.

26 (c) Except as provided by Section 31.0711, a  
27 state-developed open education resource [~~State-developed~~

1 ~~open-source instructional material~~] must be irrevocably owned by or  
2 licensed to the state for use in the applicable subject or grade  
3 level. The state must have unlimited authority to modify, delete,  
4 combine, or add content to the resource [~~instructional material~~]  
5 after purchase.

6 (d) The commissioner may issue a request for proposals for  
7 state-developed open education resources [~~open-source~~  
8 ~~instructional material~~]:

9 (1) in accordance with the instructional material  
10 review and adoption cycle under Section 31.022; or

11 (2) at any other time the commissioner determines that  
12 a need exists for additional instructional material options.

13 (e) The costs of administering this subchapter and  
14 purchasing state-developed open education resources [~~open-source~~  
15 ~~instructional materials~~] shall be paid from the state instructional  
16 materials fund, as determined by the commissioner.

17 SECTION 7. Subchapter B-1, Chapter 31, Education Code, is  
18 amended by adding Section 31.0711 to read as follows:

19 Sec. 31.0711. CONTENT NOT OWNED BY STATE. (a) A  
20 state-developed open education resource may include content not  
21 owned by the state and for which preexisting rights may exist if the  
22 content:

23 (1) is in the public domain;

24 (2) may be used under a limitation or exception to  
25 copyright law; or

26 (3) is licensed to the state for use in an open  
27 education resource.

1       (b) Except as provided by Subsection (c), a license  
2 described by Subsection (a)(3) must:

3           (1) grant the state unlimited authority to modify,  
4 delete, combine, or add content; and

5           (2) permit the free use and repurposing of the  
6 resource by any person.

7       (c) The commissioner may waive a requirement under  
8 Subsection (b) if:

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

12           (2) the licensed content:

13                   (A) may be incorporated into a state-developed  
14 open education resource without substantially reducing the  
15 authority of the state or another person to use or repurpose the  
16 resource as a whole, excluding the specific content to which the  
17 waiver applies; and

18                   (B) has been generally available to the public  
19 before consideration was given to including the content in a  
20 state-developed open education resource; and

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

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

1 SECTION 8. Section 31.072, Education Code, is amended to  
2 read as follows:

3 Sec. 31.072. CONTENT REQUIREMENTS. (a) State-developed  
4 open education resources [~~open-source instructional material~~]  
5 must:

6 (1) be evaluated by teachers or other experts, as  
7 determined by the commissioner, before purchase; and

8 (2) meet the requirements for inclusion on the  
9 instructional material list adopted under Section 31.023.

10 (b) Following a curriculum revision by the State Board of  
11 Education, the commissioner shall require the revision of  
12 state-developed open education resources [~~open-source  
13 instructional material~~] relating to that curriculum. The  
14 commissioner may, at any time, require an additional revision of  
15 state-developed open education resources [~~open-source  
16 instructional material~~] or contract for ongoing revisions of  
17 state-developed open education resources [~~open-source  
18 instructional material~~] for a period not to exceed the period under  
19 Section 31.022 for which instructional material for that subject  
20 and grade level may be adopted. The commissioner shall use a  
21 competitive process to request proposals to revise state-developed  
22 open education resources [~~open-source instructional material~~]  
23 under this subsection.

24 SECTION 9. Sections 31.073(c) and (d), Education Code, are  
25 amended to read as follows:

26 (c) Notwithstanding Section 31.022, a school district or  
27 open-enrollment charter school may adopt state-developed open

1 education resources [~~open-source instructional material~~] at any  
2 time, regardless of the instructional material review and adoption  
3 cycle under that section.

4 (d) A school district or open-enrollment charter school may  
5 not be charged for selection of state-developed open education  
6 resources [~~open-source instructional material~~] in addition to  
7 instructional material adopted under Subchapter B.

8 SECTION 10. Section 31.074, Education Code, is amended to  
9 read as follows:

10 Sec. 31.074. DISTRIBUTION. (a) The commissioner shall  
11 provide for the distribution of state-developed open education  
12 resources [~~open-source instructional materials~~] in a manner  
13 consistent with distribution of instructional materials adopted  
14 under Subchapter B.

15 (b) The commissioner may use a competitive process to  
16 contract for printing or other reproduction of state-developed open  
17 education resources [~~open-source instructional material~~] on behalf  
18 of a school district or open-enrollment charter school. The  
19 commissioner may not require a school district or open-enrollment  
20 charter school to contract with a state-approved provider for the  
21 printing or reproduction of state-developed open education  
22 resources [~~open-source instructional material~~].

23 SECTION 11. Section 31.075, Education Code, is amended to  
24 read as follows:

25 Sec. 31.075. OWNERSHIP; LICENSING. (a) A state-developed  
26 open education resource [~~State-developed open-source instructional~~  
27 ~~material~~] is the property of the state.



1           (b) To encourage the use of state-developed open education  
2 resources by school districts and open-enrollment charter schools,  
3 the [The] commissioner shall provide a license for a  
4 state-developed open education resource that allows for the free  
5 use, reuse, modification, or sharing of the resource by any person  
6 ~~[to each public school in the state, including a school district, an~~  
7 ~~open-enrollment charter school, and a state or local agency~~  
8 ~~educating students in any grade from prekindergarten through high~~  
9 ~~school, to use and reproduce state-developed open-source~~  
10 ~~instructional material].~~

11           (c) A license provided by the commissioner under this  
12 section:

13                   (1) unless exempted by the commissioner, shall require  
14 that a user who reproduces a state-developed open education  
15 resource in any manner:

16                           (A) except as provided by Subdivision (2)(A),  
17 must keep all copyright notices for the resource intact;

18                           (B) except as provided by Subdivision (2)(A),  
19 must attribute the authorship of the resource to the agency or  
20 another person specified by the commissioner;

21                           (C) must indicate if the user has modified the  
22 resource; and

23                           (D) may not assert or imply any connection with  
24 or sponsorship or endorsement by the agency or this state, unless  
25 authorized by the commissioner; and

26                   (2) must provide that:

27                           (A) the commissioner may request that a user

1 remove a copyright notice or attribution from the resource and that  
2 a user must comply with the request to the extent reasonably  
3 practicable; and

4 (B) the rights granted under the license to a  
5 user are automatically terminated if the user fails to comply with  
6 the terms of the license [~~The commissioner may provide a license to~~  
7 ~~use state-developed open-source instructional material to an~~  
8 ~~entity not listed in Subsection (b). In determining the cost of a~~  
9 ~~license under this subsection, the commissioner shall seek, to the~~  
10 ~~extent feasible, to recover the costs of developing, revising, and~~  
11 ~~distributing state-developed open-source instructional~~  
12 ~~materials~~].

13 (d) The commissioner may:

14 (1) specify requirements to reinstate a user's rights  
15 under a license that has been terminated; and

16 (2) reinstate a user's rights on completion of those  
17 requirements.

18 (e) The commissioner may use a license commonly applied to  
19 an open education resource in implementing this section.

20 SECTION 12. Section 31.076(b), Education Code, is amended  
21 to read as follows:

22 (b) A decision by the commissioner regarding the purchase,  
23 revision, cost, or distribution of state-developed open education  
24 resources [~~open-source instructional material~~] is final and may not  
25 be appealed.

26 SECTION 13. Section 31.103(d), Education Code, is amended  
27 to read as follows:

1 (d) A school district or open-enrollment charter school  
2 that selects an open education resource or open-source  
3 instructional material shall requisition a sufficient number of  
4 printed copies for use by students unable to access the  
5 instructional material electronically unless the district or  
6 school provides to each student:

7 (1) electronic access to the instructional material at  
8 no cost to the student; or

9 (2) printed copies of the portion of the instructional  
10 material that will be used in the course.

11 SECTION 14. Sections 31.104(b), (g), and (h), Education  
12 Code, are amended to read as follows:

13 (b) A school district or open-enrollment charter school may  
14 order replacements for instructional materials that have been lost  
15 or damaged directly from the publisher of the instructional  
16 materials or any source for a printed copy of an open education  
17 resource or open-source instructional material.

18 (g) At the end of the school year for which an open education  
19 resource or open-source instructional material that a school  
20 district or open-enrollment charter school does not intend to use  
21 for another student is distributed, the printed copy of the open  
22 education resource or open-source instructional material becomes  
23 the property of the student to whom it is distributed.

24 (h) This section does not apply to an electronic copy of an  
25 open education resource or open-source instructional material.

26 SECTION 15. Section 31.077, Education Code, is repealed.

27 SECTION 16. This Act takes effect immediately if it

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1 receives a vote of two-thirds of all the members elected to each  
2 house, as provided by Section 39, Article III, Texas Constitution.  
3 If this Act does not receive the vote necessary for immediate  
4 effect, this Act takes effect September 1, 2017.