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H.B. No. 2488

A BILL TO BE ENTITLED

AN ACT

relating to open-source textbooks 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) and adding Subdivision (1-a) to read as follows:

(1) "Electronic textbook" means computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, on-line services, an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including an open-source textbook.

(1-a) "Open-source textbook" means an electronic textbook 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 textbook.

SECTION 2. Subchapter B, Chapter 31, Education Code, is amended by adding Section 31.0241 to read as follows:

Sec. 31.0241. ADOPTION OF OPEN-SOURCE TEXTBOOKS. (a) In this section, "eligible institution" means:

(1) a public, private, or independent college or university located in this state that spends at least \$75 million per year on research that may be reported under Section 61.051(h);

1 or

2 (2) a public technical institute, as defined by  
3 Section 61.003.

4 (b) The State Board of Education shall place an open-source  
5 textbook for a secondary-level course submitted for adoption by an  
6 eligible institution on a conforming or nonconforming list if:

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

10 (2) the eligible institution identifies each  
11 contributing author;

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

14 (4) the eligible institution determines that the  
15 textbook qualifies for placement on the conforming or nonconforming  
16 list based on the extent to which the textbook covers the essential  
17 knowledge and skills identified under Section 28.002 for the  
18 subject for which the textbook is written and certifies that:

19 (A) for a textbook for a senior-level course, a  
20 student who successfully completes a course based on the textbook  
21 will be prepared, without remediation, for entry into the eligible  
22 institution's freshman-level course in that subject; or

23 (B) for a textbook for a junior-level and  
24 senior-level course, a student who successfully completes the  
25 junior-level course based on the textbook will be prepared for  
26 entry into the senior-level course.

27 (c) This section does not prohibit an eligible institution

1 from submitting a textbook for placement on a conforming or  
2 nonconforming list through any other adoption process provided by  
3 this chapter.

4 SECTION 3. Section 31.026, Education Code, is amended by  
5 adding Subsection (e) to read as follows:

6 (e) This section does not apply to an open-source textbook.

7 SECTION 4. Subchapter B, Chapter 31, Education Code, is  
8 amended by adding Section 31.0261 to read as follows:

9 Sec. 31.0261. CONTRACTS FOR PRINTING OF OPEN-SOURCE  
10 TEXTBOOKS. The State Board of Education may execute a contract for  
11 the printing of an open-source textbook listed on the conforming or  
12 nonconforming list. The contract must allow a school district to  
13 requisition printed copies of an open-source textbook as provided  
14 by Section 31.103.

15 SECTION 5. Section 31.027, Education Code, is amended by  
16 adding Subsection (d) to read as follows:

17 (d) This section does not apply to an open-source textbook.

18 SECTION 6. Section 31.103, Education Code, is amended by  
19 adding Subsection (d) to read as follows:

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

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

27 (2) printed copies of the portion of the textbook that

1 will be used in the course.

2 SECTION 7. Section 31.104, Education Code, is amended by  
3 amending Subsections (b) and (c) and adding Subsections (g) and (h)  
4 to read as follows:

5 (b) A school district or open-enrollment charter school may  
6 order replacements for textbooks that have been lost or damaged  
7 directly from:

8 (1) the textbook depository; ~~[or]~~

9 (2) the textbook publisher or manufacturer if the  
10 textbook publisher or manufacturer does not have a designated  
11 textbook depository in this state under Section 31.151(a)(6)(B); or

12 (3) any source for a printed copy of an open-source  
13 textbook.

14 (c) Each textbook must state that the textbook is the  
15 property of or is licensed to this state, as appropriate. Each  
16 textbook, other than an electronic textbook or a printed copy of an  
17 open-source textbook, must be covered by the student under the  
18 direction of the teacher. Except as provided by Subsection (g), a  
19 [A] student must return all textbooks to the teacher at the end of  
20 the school year or when the student withdraws from school.

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

26 (h) This section does not apply to an electronic copy of an  
27 open-source textbook.

1           SECTION 8. Section 31.151(a), Education Code, is amended to  
2 read as follows:

3           (a) A publisher or manufacturer of textbooks:

4                 (1) shall furnish any textbook the publisher or  
5 manufacturer offers in this state, at a price that does not exceed  
6 the lowest price at which the publisher offers that textbook for  
7 adoption or sale to any state, public school, or school district in  
8 the United States;

9                 (2) shall automatically reduce the price of a textbook  
10 sold for use in a school district or open-enrollment charter school  
11 to the extent that the price is reduced elsewhere in the United  
12 States;

13                (3) shall provide any textbook or ancillary item free  
14 of charge in this state to the same extent that the publisher or  
15 manufacturer provides the textbook or ancillary item free of charge  
16 to any state, public school, or school district in the United  
17 States;

18                (4) shall guarantee that each copy of a textbook sold  
19 in this state is at least equal in quality to copies of that  
20 textbook sold elsewhere in the United States and is free from  
21 factual error;

22                (5) may not become associated or connected with,  
23 directly or indirectly, any combination in restraint of trade in  
24 textbooks or enter into any understanding or combination to control  
25 prices or restrict competition in the sale of textbooks for use in  
26 this state;

27                (6) shall:

1 (A) maintain a depository in this state or  
2 arrange with a depository in this state to receive and fill orders  
3 for textbooks, other than open-source textbooks, on-line  
4 textbooks, or on-line textbook components, consistent with State  
5 Board of Education rules; or

6 (B) deliver textbooks to a school district or  
7 open-enrollment charter school without a delivery charge to the  
8 school district, open-enrollment charter school, or state, if:

9 (i) the publisher or manufacturer does not  
10 maintain or arrange with a depository in this state under Paragraph  
11 (A) and the publisher's or manufacturer's textbooks and related  
12 products are warehoused or otherwise stored less than 300 miles  
13 from a border of this state; or

14 (ii) the textbooks are open-source  
15 textbooks, on-line textbooks, or on-line textbook components;

16 (7) shall, at the time an order for textbooks is  
17 acknowledged, provide to school districts or open-enrollment  
18 charter schools an accurate shipping date for textbooks that are  
19 back-ordered;

20 (8) shall guarantee delivery of textbooks at least 10  
21 business days before the opening day of school of the year for which  
22 the textbooks are ordered if the textbooks are ordered by a date  
23 specified in the sales contract; and

24 (9) shall submit to the State Board of Education an  
25 affidavit certifying any textbook the publisher or manufacturer  
26 offers in this state to be free of factual errors at the time the  
27 publisher executes the contract required by Section 31.026.

1 SECTION 9. This Act takes effect September 1, 2009.