

AN ACT

relating to open-source textbooks and other instructional materials 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. The term includes a state-developed open-source textbook purchased under Subchapter B-1.

SECTION 2. Subchapter A, Chapter 31, Education Code, is amended by adding Section 31.004 to read as follows:

Sec. 31.004. CERTIFICATION OF PROVISION OF TEXTBOOKS, ELECTRONIC TEXTBOOKS, AND INSTRUCTIONAL MATERIALS. Each school

1 district and open-enrollment charter school shall annually certify  
2 to the State Board of Education and the commissioner that, for each  
3 subject in the required curriculum and each grade level, the  
4 district provides each student with textbooks, electronic  
5 textbooks, or instructional materials that cover all elements of  
6 the essential knowledge and skills adopted by the State Board of  
7 Education for that subject and grade level.

8 SECTION 3. Subchapter B, Chapter 31, Education Code, is  
9 amended by adding Section 31.0241 to read as follows:

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

12 (1) a public institution of higher education that is  
13 designated as a research university or emerging research university  
14 under the higher education coordinating board's accountability  
15 system, or a private university located in this state that is a  
16 member of the Association of American Universities; or

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

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

22 (1) the textbook is written, compiled, or edited  
23 primarily by faculty of the eligible institution who specialize in  
24 the subject area of the textbook;

25 (2) the eligible institution identifies each  
26 contributing author;

27 (3) the appropriate department of the eligible

1 institution certifies the textbook for accuracy; and

2 (4) the eligible institution determines that the  
3 textbook qualifies for placement on the conforming or nonconforming  
4 list based on the extent to which the textbook covers the essential  
5 knowledge and skills identified under Section 28.002 for the  
6 subject for which the textbook is written and certifies that:

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

11 (B) for a textbook for a junior-level and  
12 senior-level course, a student who successfully completes the  
13 junior-level course based on the textbook will be prepared for  
14 entry into the senior-level course.

15 (c) This section does not prohibit an eligible institution  
16 from submitting a textbook for placement on a conforming or  
17 nonconforming list through any other adoption process provided by  
18 this chapter.

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

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

22 SECTION 5. Subchapter B, Chapter 31, Education Code, is  
23 amended by adding Section 31.0261 to read as follows:

24 Sec. 31.0261. CONTRACTS FOR PRINTING OF OPEN-SOURCE  
25 TEXTBOOKS. The State Board of Education may execute a contract for  
26 the printing of an open-source textbook listed on the conforming or  
27 nonconforming list. The contract must allow a school district to

1 requisition printed copies of an open-source textbook as provided  
2 by Section 31.103.

3 SECTION 6. Section 31.027, Education Code, is amended by  
4 adding Subsection (d) to read as follows:

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

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

8 SUBCHAPTER B-1. STATE-DEVELOPED OPEN-SOURCE TEXTBOOKS

9 Sec. 31.071. PURCHASE AUTHORITY. (a) The commissioner may  
10 purchase state-developed open-source textbooks in accordance with  
11 this subchapter.

12 (b) The commissioner:

13 (1) shall purchase any state-developed open-source  
14 textbooks through a competitive process; and

15 (2) may purchase more than one state-developed  
16 open-source textbook for a subject or grade level.

17 (c) A state-developed open-source textbook must be  
18 irrevocably owned by or licensed to the state for use in the  
19 applicable subject or grade level. The state must have unlimited  
20 authority to modify, delete, combine, or add content to the  
21 textbook after purchase.

22 (d) The commissioner may issue a request for proposals for a  
23 state-developed open-source textbook:

24 (1) in accordance with the textbook review and  
25 adoption cycle under Section 31.022; or

26 (2) at any other time the commissioner determines that  
27 a need exists for additional textbook options.

1       (e) The costs of administering this subchapter and  
2 purchasing state-developed open-source textbooks shall be paid  
3 from the state textbook fund, as determined by the commissioner.

4       Sec. 31.072. CONTENT REQUIREMENTS. (a) A state-developed  
5 open-source textbook 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 a  
9 conforming or nonconforming textbook list under Section 31.023.

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

20       (c) The commissioner shall provide for special and  
21 bilingual state-developed open-source textbooks in the same manner  
22 provided under Sections 31.028 and 31.029.

23       Sec. 31.073. COST. (a) For purposes of this section, the  
24 commissioner shall determine the cost to a school district or  
25 open-enrollment charter school for a state-developed open-source  
26 textbook in an amount sufficient to cover state expenses associated  
27 with the textbook, including expenses incurred by the state in

1 soliciting, evaluating, revising, and purchasing the textbook.

2 (b) If a school district or open-enrollment charter school  
3 selects a state-developed open-source textbook instead of another  
4 textbook adopted under Subchapter B, the difference between the  
5 cost determined by the commissioner under Subsection (a) and the  
6 maximum price for a textbook in the same subject area, as determined  
7 by the State Board of Education under Section 31.025, shall be  
8 allocated as follows:

9 (1) 50 percent of the amount shall be credited to the  
10 state textbook fund under Section 31.021 to be used for purposes of  
11 this subchapter; and

12 (2) 50 percent of the amount shall be credited to the  
13 school district or open-enrollment charter school for use as  
14 provided by Section 31.1011(c).

15 (c) Notwithstanding Section 31.022, a school district or  
16 open-enrollment charter school may adopt a state-developed  
17 open-source textbook at any time, regardless of the textbook review  
18 and adoption cycle under that section.

19 (d) A school district or open-enrollment charter school may  
20 not be charged for selection of a state-developed open-source  
21 textbook in addition to a textbook adopted under Subchapter B.

22 Sec. 31.074. DISTRIBUTION. (a) The commissioner shall  
23 provide for the distribution of state-developed open-source  
24 textbooks in a manner consistent with distribution of textbooks  
25 adopted under Subchapter B.

26 (b) The commissioner may use a competitive process to  
27 contract for printing or other reproduction of a state-developed

1 open-source textbook on behalf of a school district or  
2 open-enrollment charter school. The commissioner may not require a  
3 school district or open-enrollment charter school to contract with  
4 a state-approved provider for the printing or reproduction of a  
5 state-developed open-source textbook.

6 Sec. 31.075. OWNERSHIP; LICENSING. (a) A state-developed  
7 open-source textbook is the property of the state.

8 (b) The commissioner shall provide a license to each public  
9 school in the state, including a school district, an  
10 open-enrollment charter school, and a state or local agency  
11 educating students in any grade from prekindergarten through high  
12 school, to use and reproduce a state-developed open-source  
13 textbook.

14 (c) The commissioner may provide a license to use a  
15 state-developed open-source textbook to an entity not listed in  
16 Subsection (b). In determining the cost of a license under this  
17 subsection, the commissioner shall seek, to the extent feasible, to  
18 recover the costs of developing, revising, and distributing  
19 state-developed open-source textbooks.

20 Sec. 31.076. RULES; FINALITY OF DECISIONS. (a) The  
21 commissioner may adopt rules necessary to implement this  
22 subchapter.

23 (b) A decision by the commissioner regarding the purchase,  
24 revision, cost, or distribution of a state-developed open-source  
25 textbook is final and may not be appealed.

26 Sec. 31.077. ADOPTION SCHEDULE. The commissioner shall  
27 develop a schedule for the adoption of state-developed open-source

1 textbooks under this subchapter. In developing the adoption  
2 schedule under this section, the commissioner shall consider:

- 3 (1) the availability of funds;  
4 (2) the existing textbook adoption cycles under  
5 Subchapter B; and  
6 (3) the availability of textbooks for development or  
7 purchase by the state.

8 SECTION 8. Section 31.103, Education Code, is amended by  
9 adding Subsections (d) and (e) to read as follows:

10 (d) A school district or open-enrollment charter school  
11 that selects an open-source textbook shall requisition a sufficient  
12 number of printed copies for use by students unable to access the  
13 textbook electronically unless the district or school provides to  
14 each student:

- 15 (1) electronic access to the textbook at no cost to the  
16 student; or  
17 (2) printed copies of the portion of the textbook that  
18 will be used in the course.

19 (e) The commissioner may establish a list of equipment or  
20 devices that a school district or open-enrollment charter school  
21 may purchase using textbook credits or textbook credits in  
22 combination with other available funds to provide electronic access  
23 to open-source textbooks under Subsection (d)(1).

24 SECTION 9. Section 31.104, Education Code, is amended by  
25 amending Subsections (b) and (c) and adding Subsections (g) and (h)  
26 to read as follows:

27 (b) A school district or open-enrollment charter school may

1 order replacements for textbooks that have been lost or damaged  
2 directly from:

- 3 (1) the textbook depository; ~~[or]~~  
4 (2) the textbook publisher or manufacturer if the  
5 textbook publisher or manufacturer does not have a designated  
6 textbook depository in this state under Section 31.151(a)(6)(B); or  
7 (3) any source for a printed copy of an open-source  
8 textbook.

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

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

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

23 SECTION 10. Section 31.151(a), Education Code, is amended  
24 to read as follows:

25 (a) A publisher or manufacturer of textbooks:

- 26 (1) shall furnish any textbook the publisher or  
27 manufacturer offers in this state, at a price that does not exceed

1 the lowest price at which the publisher offers that textbook for  
2 adoption or sale to any state, public school, or school district in  
3 the United States;

4 (2) shall automatically reduce the price of a textbook  
5 sold for use in a school district or open-enrollment charter school  
6 to the extent that the price is reduced elsewhere in the United  
7 States;

8 (3) shall provide any textbook or ancillary item free  
9 of charge in this state to the same extent that the publisher or  
10 manufacturer provides the textbook or ancillary item free of charge  
11 to any state, public school, or school district in the United  
12 States;

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

17 (5) may not become associated or connected with,  
18 directly or indirectly, any combination in restraint of trade in  
19 textbooks or enter into any understanding or combination to control  
20 prices or restrict competition in the sale of textbooks for use in  
21 this state;

22 (6) shall:

23 (A) maintain a depository in this state or  
24 arrange with a depository in this state to receive and fill orders  
25 for textbooks, other than open-source textbooks, on-line  
26 textbooks, or on-line textbook components, consistent with State  
27 Board of Education rules; or

1 (B) deliver textbooks to a school district or  
2 open-enrollment charter school without a delivery charge to the  
3 school district, open-enrollment charter school, or state, if:

4 (i) the publisher or manufacturer does not  
5 maintain or arrange with a depository in this state under Paragraph  
6 (A) and the publisher's or manufacturer's textbooks and related  
7 products are warehoused or otherwise stored less than 300 miles  
8 from a border of this state; or

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

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

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

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

23 SECTION 11. To the extent of any conflict, Section 31.004,  
24 Education Code, as added by this Act, prevails over Section 31.004,  
25 Education Code, as added by H.B. No. 4294, Acts of the 81st  
26 Legislature, Regular Session, 2009, regardless of the relative  
27 dates of enactment.

1 SECTION 12. This Act takes effect September 1, 2009.

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 2488 was passed by the House on April 30, 2009, by the following vote: Yeas 132, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2488 on May 29, 2009, by the following vote: Yeas 139, Nays 0, 1 present, not voting.

---

Chief Clerk of the House

I certify that H.B. No. 2488 was passed by the Senate, with amendments, on May 25, 2009, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor