

By: Hochberg

H.B. No. 2488

Substitute the following for H.B. No. 2488:

By: Weber

C.S.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 and certifies that:

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

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

25 (c) This section does not prohibit an eligible institution
26 from submitting a textbook for placement on a conforming or
27 nonconforming list through any other adoption process provided by

1 this chapter.

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

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

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

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

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

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

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

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

23 (1) electronic access to the textbook at no cost to the
24 student; or

25 (2) printed copies of the portion of the textbook that
26 will be used in the course.

27 SECTION 7. Section 31.104, Education Code, is amended by

1 amending Subsections (b) and (c) and adding Subsections (g) and (h)
2 to read as follows:

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

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

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

10 (3) any source for a printed copy of an open-source
11 textbook.

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

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

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

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

1 (a) A publisher or manufacturer of textbooks:

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

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

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

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

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

25 (6) shall:

26 (A) maintain a depository in this state or
27 arrange with a depository in this state to receive and fill orders

1 for textbooks, other than open-source textbooks, on-line
2 textbooks, or on-line textbook components, consistent with State
3 Board of Education rules; or

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

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

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

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

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

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

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