

1-1 By: Hochberg (Senate Sponsor - Ogden) H.B. No. 2488
1-2 (In the Senate - Received from the House May 1, 2009;
1-3 May 6, 2009, read first time and referred to Committee on
1-4 Education; May 21, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 21, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2488 By: Gallegos

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to open-source textbooks for public schools.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 31.002, Education Code, is amended by
1-13 amending Subdivision (1) and adding Subdivision (1-a) to read as
1-14 follows:

1-15 (1) "Electronic textbook" means computer software,
1-16 interactive videodisc, magnetic media, CD-ROM, computer
1-17 courseware, on-line services, an electronic medium, or other means
1-18 of conveying information to the student or otherwise contributing
1-19 to the learning process through electronic means, including an
1-20 open-source textbook.

1-21 (1-a) "Open-source textbook" means an electronic
1-22 textbook that is available for downloading from the Internet at no
1-23 charge to a student and without requiring the purchase of an unlock
1-24 code, membership, or other access or use charge, except for a charge
1-25 to order an optional printed copy of all or part of the textbook.
1-26 The term includes a state-developed open-source textbook purchased
1-27 under Subchapter B-1.

1-28 SECTION 2. Subchapter B, Chapter 31, Education Code, is
1-29 amended by adding Section 31.0241 to read as follows:

1-30 Sec. 31.0241. ADOPTION OF OPEN-SOURCE TEXTBOOKS. (a) In
1-31 this section, "eligible institution" means:

1-32 (1) a public, private, or independent college or
1-33 university located in this state that spends at least \$75 million
1-34 per year on research that may be reported under Section 61.051(h);
1-35 or

1-36 (2) a public technical institute, as defined by
1-37 Section 61.003.

1-38 (b) The State Board of Education shall place an open-source
1-39 textbook for a secondary-level course submitted for adoption by an
1-40 eligible institution on a conforming or nonconforming list if:

1-41 (1) the textbook is written, compiled, or edited
1-42 primarily by faculty of the eligible institution who specialize in
1-43 the subject area of the textbook;

1-44 (2) the eligible institution identifies each
1-45 contributing author;

1-46 (3) the appropriate department of the eligible
1-47 institution certifies the textbook for accuracy; and

1-48 (4) the eligible institution determines that the
1-49 textbook qualifies for placement on the conforming or nonconforming
1-50 list based on the extent to which the textbook covers the essential
1-51 knowledge and skills identified under Section 28.002 for the
1-52 subject for which the textbook is written and certifies that:

1-53 (A) for a textbook for a senior-level course, a
1-54 student who successfully completes a course based on the textbook
1-55 will be prepared, without remediation, for entry into the eligible
1-56 institution's freshman-level course in that subject; or

1-57 (B) for a textbook for a junior-level and
1-58 senior-level course, a student who successfully completes the
1-59 junior-level course based on the textbook will be prepared for
1-60 entry into the senior-level course.

1-61 (c) This section does not prohibit an eligible institution
1-62 from submitting a textbook for placement on a conforming or
1-63 nonconforming list through any other adoption process provided by

2-1 this chapter.

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

2-4 (e) This section does not apply to an open-source textbook.

2-5 SECTION 4. Subchapter B, Chapter 31, Education Code, is
 2-6 amended by adding Section 31.0261 to read as follows:

2-7 Sec. 31.0261. CONTRACTS FOR PRINTING OF OPEN-SOURCE
 2-8 TEXTBOOKS. The State Board of Education may execute a contract for
 2-9 the printing of an open-source textbook listed on the conforming or
 2-10 nonconforming list. The contract must allow a school district to
 2-11 requisition printed copies of an open-source textbook as provided
 2-12 by Section 31.103.

2-13 SECTION 5. Section 31.027, Education Code, is amended by
 2-14 adding Subsection (d) to read as follows:

2-15 (d) This section does not apply to an open-source textbook.

2-16 SECTION 6. Chapter 31, Education Code, is amended by adding
 2-17 Subchapter B-1 to read as follows:

2-18 SUBCHAPTER B-1. STATE-DEVELOPED OPEN-SOURCE TEXTBOOKS

2-19 Sec. 31.071. PURCHASE AUTHORITY. (a) The commissioner may
 2-20 purchase state-developed open-source textbooks in accordance with
 2-21 this subchapter.

2-22 (b) The commissioner:

2-23 (1) shall purchase any state-developed open-source
 2-24 textbooks through a competitive process; and

2-25 (2) may purchase more than one state-developed
 2-26 open-source textbook for a subject or grade level.

2-27 (c) A state-developed open-source textbook must be
 2-28 irrevocably owned by or licensed to the state for use in the
 2-29 applicable subject or grade level. The state must have unlimited
 2-30 authority to modify, delete, combine, or add content to the
 2-31 textbook after purchase.

2-32 (d) The commissioner may issue a request for proposals for a
 2-33 state-developed open-source textbook:

2-34 (1) in accordance with the textbook review and
 2-35 adoption cycle under Section 31.022; or

2-36 (2) at any other time the commissioner determines that
 2-37 a need exists for additional textbook options.

2-38 (e) The costs of administering this subchapter and
 2-39 purchasing state-developed open-source textbooks shall be paid
 2-40 from the state textbook fund, as determined by the commissioner.

2-41 Sec. 31.072. CONTENT REQUIREMENTS. (a) A state-developed
 2-42 open-source textbook must:

2-43 (1) be evaluated by teachers or other experts, as
 2-44 determined by the commissioner, before purchase; and

2-45 (2) meet the requirements for inclusion on a
 2-46 conforming or nonconforming textbook list under Section 31.023.

2-47 (b) Following a curriculum revision by the State Board of
 2-48 Education, the commissioner shall require the revision of a
 2-49 state-developed open-source textbook relating to that curriculum.
 2-50 The commissioner may, at any time, require an additional revision
 2-51 of a state-developed open-source textbook or contract for ongoing
 2-52 revisions of a textbook for a period not to exceed the period under
 2-53 Section 31.022 for which a textbook for that subject and grade level
 2-54 may be adopted. The commissioner shall use a competitive process to
 2-55 request proposals to revise a state-developed open-source textbook
 2-56 under this subsection.

2-57 (c) The commissioner shall provide for special and
 2-58 bilingual state-developed open-source textbooks in the same manner
 2-59 provided under Sections 31.028 and 31.029.

2-60 Sec. 31.073. COST. (a) For purposes of this section, the
 2-61 commissioner shall determine the cost to a school district or
 2-62 open-enrollment charter school for a state-developed open-source
 2-63 textbook in an amount sufficient to cover state expenses associated
 2-64 with the textbook, including expenses incurred by the state in
 2-65 soliciting, evaluating, revising, and purchasing the textbook.

2-66 (b) If a school district or open-enrollment charter school
 2-67 selects a state-developed open-source textbook instead of another
 2-68 textbook adopted under Subchapter B, the difference between the
 2-69 cost determined by the commissioner under Subsection (a) and the

3-1 maximum price for a textbook in the same subject area, as determined
3-2 by the State Board of Education under Section 31.025, shall be
3-3 allocated as follows:

3-4 (1) 50 percent of the amount shall be credited to the
3-5 state textbook fund under Section 31.021 to be used for purposes of
3-6 this subchapter; and

3-7 (2) 50 percent of the amount shall be credited to the
3-8 school district or open-enrollment charter school for use as
3-9 provided by Section 31.1011(c).

3-10 (c) Notwithstanding Section 31.022, a school district or
3-11 open-enrollment charter school may adopt a state-developed
3-12 open-source textbook at any time, regardless of the textbook review
3-13 and adoption cycle under that section.

3-14 (d) A school district or open-enrollment charter school may
3-15 not be charged for selection of a state-developed open-source
3-16 textbook in addition to a textbook adopted under Subchapter B.

3-17 Sec. 31.074. DISTRIBUTION. (a) The commissioner shall
3-18 provide for the distribution of state-developed open-source
3-19 textbooks in a manner consistent with distribution of textbooks
3-20 adopted under Subchapter B.

3-21 (b) The commissioner may use a competitive process to
3-22 contract for printing or other reproduction of a state-developed
3-23 open-source textbook on behalf of a school district or
3-24 open-enrollment charter school. The commissioner may not require a
3-25 school district or open-enrollment charter school to contract with
3-26 a state-approved provider for the printing or reproduction of a
3-27 state-developed open-source textbook.

3-28 Sec. 31.075. OWNERSHIP; LICENSING. (a) A state-developed
3-29 open-source textbook is the property of the state.

3-30 (b) The commissioner shall provide a license to each public
3-31 school in the state, including a school district, an
3-32 open-enrollment charter school, and a state or local agency
3-33 educating students in any grade from prekindergarten through high
3-34 school, to use and reproduce a state-developed open-source
3-35 textbook.

3-36 (c) The commissioner may provide a license to use a
3-37 state-developed open-source textbook to an entity not listed in
3-38 Subsection (b). In determining the cost of a license under this
3-39 subsection, the commissioner shall seek, to the extent feasible, to
3-40 recover the costs of developing, revising, and distributing
3-41 state-developed open-source textbooks.

3-42 Sec. 31.076. RULES; FINALITY OF DECISIONS. (a) The
3-43 commissioner may adopt rules necessary to implement this
3-44 subchapter.

3-45 (b) A decision by the commissioner regarding the purchase,
3-46 revision, cost, or distribution of a state-developed open-source
3-47 textbook is final and may not be appealed.

3-48 Sec. 31.077. ADOPTION SCHEDULE. The commissioner shall
3-49 develop a schedule for the adoption of state-developed open-source
3-50 textbooks under this subchapter. In developing the adoption
3-51 schedule under this section, the commissioner shall consider:

3-52 (1) the availability of funds;

3-53 (2) the existing textbook adoption cycles under
3-54 Subchapter B; and

3-55 (3) the availability of textbooks for development or
3-56 purchase by the state.

3-57 SECTION 7. Section 31.103, Education Code, is amended by
3-58 adding Subsections (d) and (e) to read as follows:

3-59 (d) A school district or open-enrollment charter school
3-60 that selects an open-source textbook shall requisition a sufficient
3-61 number of printed copies for use by students unable to access the
3-62 textbook electronically unless the district or school provides to
3-63 each student:

3-64 (1) electronic access to the textbook at no cost to the
3-65 student; or

3-66 (2) printed copies of the portion of the textbook that
3-67 will be used in the course.

3-68 (e) The commissioner may establish a list of equipment or
3-69 devices that a school district or open-enrollment charter school

4-1 may purchase using textbook credits or textbook credits in
4-2 combination with other available funds to provide electronic access
4-3 to open-source textbooks under Subsection (d)(1).

4-4 SECTION 8. Section 31.104, Education Code, is amended by
4-5 amending Subsections (b) and (c) and adding Subsections (g) and (h)
4-6 to read as follows:

4-7 (b) A school district or open-enrollment charter school may
4-8 order replacements for textbooks that have been lost or damaged
4-9 directly from:

- 4-10 (1) the textbook depository; ~~or~~
- 4-11 (2) the textbook publisher or manufacturer if the
- 4-12 textbook publisher or manufacturer does not have a designated
- 4-13 textbook depository in this state under Section 31.151(a)(6)(B); or
- 4-14 (3) any source for a printed copy of an open-source
- 4-15 textbook.

4-16 (c) Each textbook must state that the textbook is the
4-17 property of or is licensed to this state, as appropriate. Each
4-18 textbook, other than an electronic textbook or a printed copy of an
4-19 open-source textbook, must be covered by the student under the
4-20 direction of the teacher. Except as provided by Subsection (g), a
4-21 [A] student must return all textbooks to the teacher at the end of
4-22 the school year or when the student withdraws from school.

4-23 (g) At the end of the school year for which an open-source
4-24 textbook that a school district or open-enrollment charter school
4-25 does not intend to use for another student is distributed, the
4-26 printed copy of the open-source textbook becomes the property of
4-27 the student to whom it is distributed.

4-28 (h) This section does not apply to an electronic copy of an
4-29 open-source textbook.

4-30 SECTION 9. Section 31.151(a), Education Code, is amended to
4-31 read as follows:

4-32 (a) A publisher or manufacturer of textbooks:

4-33 (1) shall furnish any textbook the publisher or
4-34 manufacturer offers in this state, at a price that does not exceed
4-35 the lowest price at which the publisher offers that textbook for
4-36 adoption or sale to any state, public school, or school district in
4-37 the United States;

4-38 (2) shall automatically reduce the price of a textbook
4-39 sold for use in a school district or open-enrollment charter school
4-40 to the extent that the price is reduced elsewhere in the United
4-41 States;

4-42 (3) shall provide any textbook or ancillary item free
4-43 of charge in this state to the same extent that the publisher or
4-44 manufacturer provides the textbook or ancillary item free of charge
4-45 to any state, public school, or school district in the United
4-46 States;

4-47 (4) shall guarantee that each copy of a textbook sold
4-48 in this state is at least equal in quality to copies of that
4-49 textbook sold elsewhere in the United States and is free from
4-50 factual error;

4-51 (5) may not become associated or connected with,
4-52 directly or indirectly, any combination in restraint of trade in
4-53 textbooks or enter into any understanding or combination to control
4-54 prices or restrict competition in the sale of textbooks for use in
4-55 this state;

4-56 (6) shall:

4-57 (A) maintain a depository in this state or
4-58 arrange with a depository in this state to receive and fill orders
4-59 for textbooks, other than open-source textbooks, on-line
4-60 textbooks, or on-line textbook components, consistent with State
4-61 Board of Education rules; or

4-62 (B) deliver textbooks to a school district or
4-63 open-enrollment charter school without a delivery charge to the
4-64 school district, open-enrollment charter school, or state, if:

4-65 (i) the publisher or manufacturer does not
4-66 maintain or arrange with a depository in this state under Paragraph
4-67 (A) and the publisher's or manufacturer's textbooks and related
4-68 products are warehoused or otherwise stored less than 300 miles
4-69 from a border of this state; or

5-1 (ii) the textbooks are open-source
5-2 textbooks, on-line textbooks, or on-line textbook components;
5-3 (7) shall, at the time an order for textbooks is
5-4 acknowledged, provide to school districts or open-enrollment
5-5 charter schools an accurate shipping date for textbooks that are
5-6 back-ordered;
5-7 (8) shall guarantee delivery of textbooks at least 10
5-8 business days before the opening day of school of the year for which
5-9 the textbooks are ordered if the textbooks are ordered by a date
5-10 specified in the sales contract; and
5-11 (9) shall submit to the State Board of Education an
5-12 affidavit certifying any textbook the publisher or manufacturer
5-13 offers in this state to be free of factual errors at the time the
5-14 publisher executes the contract required by Section 31.026.
5-15 SECTION 10. This Act takes effect September 1, 2009.

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