

## **BILL ANALYSIS**

C.S.H.B. 3419  
By: Eissler  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The State Board of Education (SBOE) currently adopts two textbook lists, the conforming list and the nonconforming list, and the state directly pays the full price for textbooks on the conforming and nonconforming lists. Under current law, instructional materials are not able to be placed on the state textbook list except during the initial adoption of materials.

This bill changes the term "textbook" to "instructional materials" in the statute. The bill establishes one state-adopted list which is provided to school districts and open-enrollment charter schools. The bill establishes an allotment of \$75, or a greater amount provided by appropriation, for the purchase of state-adopted instructional materials. The allotment will require districts to consider price when selecting instructional materials creating more price competition for instructional materials. The bill maintains SBOE review to ensure that state-adopted instructional materials are free from factual errors and to determine the coverage of the essential knowledge and skills. The bill requires the SBOE to provide for mid-cycle adoptions.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Education in SECTION 15 of the bill, and the State Board of Education in SECTION 15 of this bill.

### **ANALYSIS**

Note: Unless otherwise specified, statutory references in this BILL ANALYSIS are to the Education Code.

This bill amends definitions in Chapter 31 by adding definitions of instructional material and "state-adopted," amending the definition of "publisher," and striking the definitions of "textbook" and "technological equipment." "Instructional material" means a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium. "Publisher" means a person who prepares instructional materials for sale or distribution to educational institutions. The term includes an on-line service or a developer or distributor of electronic instructional materials. "State-adopted" means adopted by the State Board of Education under Section 31.022.

The bill amends various sections of the Education Code by striking references to "textbook(s)" and substituting "instructional material(s)," making certain conforming changes throughout the bill to effectuate this change in terminology, and further providing in certain sections of the Education Code that references to "instructional material(s)" and "publisher" have the meaning assigned by Section 31.002, as amended by this bill. In addition, certain references to "library books" are changed to "library materials."

The bill provides that the state instructional materials fund consists of an amount set aside by the State Board of Education from the available school fund, computed in accordance with certain

specified provisions of the Education Code, all funds accruing from the state's sale of disused instructional materials, and all amounts lawfully paid into the fund from any other source. The bill provides that the State Board of Education shall annually set aside out of the available school fund of the state an amount sufficient for the instructional materials allotment to provide school districts and open-enrollment charter schools with the amount of funding required under Section 31.0213 to purchase and distribute the necessary state-adopted instructional materials for the use of the students of this state for the following school year. The board shall determine the amount of the available school fund to set aside for the state instructional materials fund based on the amount of the allotment under Section 31.0211 and on student enrollment reports submitted under Section 31.103.

The bill provides that, for the student enrollment reported under Section 31.103 in a school year, a school district or open-enrollment charter school is entitled to an annual allotment of \$75 for each student or a greater amount provided by appropriation, to be transferred from the instructional materials fund to the credit of the school district's instructional materials account as provided by Section 31.0213. The bill further provides that, in addition to the above-described allotment, if the commissioner determines that a school district or open-enrollment charter school is experiencing high enrollment growth and that the student enrollment is likely to increase by 10 percent or more in the school year for which the district or school is receiving the allotment as compared to the preceding school year, the district or school is entitled to the above-described allotment for each additional student anticipated to enroll in the district or school. If the anticipated increase in student enrollment does not occur, the amount of funds in the instructional materials account of the school district or open-enrollment charter school shall be reduced by the amount of the additional funds received by the district or school under this provision for students who do not enroll in the district or school. The bill further provides that funds allotted under this section may be used only to purchase state-adopted instructional materials, and that the provisions described in this paragraph apply beginning with the 2009-2010 school year.

The bill provides that the commissioner shall determine the amount of an instructional materials allotment for students attending a juvenile justice alternative education program under Section 37.011, and that such allotment may not exceed \$75 for each student attending a juvenile justice alternative education program. The commissioner shall transfer the instructional materials allotment to the Texas Juvenile Probation Commission for the purchase of instructional materials for students enrolled in a juvenile justice alternative education program, and the Texas Juvenile Probation Commission shall require each juvenile justice alternative education program to comply with all applicable rules adopted by the State Board of Education regarding instructional materials. Funds allotted under the provisions set forth in this paragraph may be used only to purchase state-adopted instructional materials, and the provisions set forth in this paragraph apply beginning with the 2009-2010 school year.

The bill provides that the commissioner shall maintain an instructional materials account for each school district or open-enrollment charter school. Each school year, the commissioner shall deposit in a district's or school's account the amount of the instructional materials allotment under Section 31.0211 for the district or school. The commissioner shall pay the cost of instructional materials requisitioned by a school district or open-enrollment charter school using funds from that district's or school's instructional materials account. Money credited to the instructional materials account of a school district or open-enrollment charter school remains in the account until spent and does not lapse to the state at the end of the fiscal year, and the commissioner is authorized to adopt rules as necessary to implement the provisions set forth in this paragraph.

The bill provides that the State Board of Education is responsible for the following expenses: the purchase of Braille, large type, and audio instructional materials; the cost of maintaining a fire and flood contingency fund to purchase replacements of instructional materials lost due to a fire or flood in a school district or at an open-enrollment charter school; and the cost of shipping instructional materials from the state depository, the depository of a publisher, or the used textbook depository to a school district or open-enrollment charter school.

The bill provides that the State Board of Education shall designate a request for production of instructional materials in a subject area and grade level by the school year in which the

instructional materials are intended to be made available in classrooms and not by the school year in which the board makes the request for production.

The bill provides that the State Board of Education by rule shall allow an instructional material to be submitted, reviewed, and adopted at a time when the subject or grade level is not scheduled for review and adoption in the cycle, at an interval of at least once every two years, or at another time in the discretion of the board to respond to needs that may arise, in conformance with the procedures for adoption of other state-adopted instructional materials. The board shall place each instructional material submitted under this section and adopted on the state-adopted instructional materials list under Section 31.0231. The bill provides that the contract term for an instructional material adopted under the provisions set forth in this paragraph may not extend beyond the contract term of an instructional material adopted for the same subject area and grade level under Section 31.022. The board may not place an instructional material on the state-adopted instructional materials list in the two years before the effective date of a curriculum revision in a subject area and grade level for which the material is submitted. The bill provides that the rules adopted by the board under the provisions set forth in this paragraph must require: the publisher of the instructional material to pay a fee to the board to cover the administrative cost of the midcycle review and adoption of the instructional material; the publisher of the instructional material to enter into a contract with the board concerning the instructional material for a term that ends at the same time as any contract entered into by the board for another instructional material for the same subject and grade level; and a commitment from the publisher to provide the instructional material to school districts midcycle in the manner specified by the publisher, which may include: providing the instructional material midcycle to any district in a regional education service center area identified by the publisher; or providing midcycle a certain maximum number of instructional materials specified by the publisher. Such a fee paid by the publisher of instructional materials may be used only for the administrative costs of the midcycle review and adoption.

The bill provides that, in determining the review and adoption cycle of instructional materials under Section 31.022, the State Board of Education shall consult with the Legislative Budget Board and the governor's office of budget, planning, and policy before approving and publishing any notice or amendment of a cycle, review and consider historic average funding levels for instructional materials purchased in previous biennia, expected average costs of future instructional material purchases, anticipated student enrollment in future years, scheduled revisions to curriculum, and the impact on the state budget of the adoption of instructional materials in all or some grade levels in a subject area, and limit the cycle to subject areas for which instructional materials can be purchased with the funding anticipated to be available for the instructional materials allotment for the school year in which the instructional materials are to be adopted.

The bill provides that, for each subject and grade level, the State Board of Education shall review submitted instructional materials for factual errors. Except as provided below in this paragraph, the board shall adopt all instructional materials that the board determines are free from factual errors and shall place the materials on the state-adopted instructional materials list. For each state-adopted instructional material, the board must determine the coverage of the essential knowledge and skills for the subject area and grade level of the instructional material. The board must identify each of the essential knowledge and skills for the subject and grade level covered by the instructional material, and the percentage of the essential knowledge and skills for the subject and grade level covered by the instructional material. The board may not adopt an instructional material that covers less than 25 percent of the essential knowledge and skills for a subject area and grade level.

The bill provides that, not later than December 1 of the year preceding the school year for which the instructional materials for a particular subject and grade level will be purchased under the cycle adopted by the board under Section 31.022, the board shall provide the list of state-adopted instructional materials to each school district and open-enrollment charter school.

The bill provides that the State Board of Education shall execute a contract for the purchase or licensing of each state-adopted instructional material. Such a contract must require the publisher to provide all of the state-adopted instructional materials required by school districts in this state for the term of the contract, which must coincide with the board's adoption cycle.

The bill provides that the State Board of Education shall adopt instructional materials for use in bilingual education and English as a second language classes.

The bill provides that, from the amount set aside by the State Board of Education under Section 31.021(c) or credited to the district's instructional materials account under Section 31.0213, the school district that a student entitled to free textbooks under the pilot project established by Section 54.2161 attends shall pay the costs of each textbook the student requires for a course described by Section 54.2161(b)(2).

The bill provides that the State Board of Education shall establish and maintain a state depository for instructional materials.

The bill provides that each year, during a period established by the State Board of Education, the board of trustees of each school district and the governing body of each open-enrollment charter school shall notify the State Board of Education of the instructional materials selected by the board of trustees or governing body for the following school year from among the state-adopted instructional materials, that a school district may select to use more than one state-adopted instructional material for each subject, and that the provisions set forth in this paragraph apply beginning with the 2009-2010 school year.

The bill provides that each school district or open-enrollment charter school shall annually certify to the agency that, for each subject in the foundation curriculum and each grade level, the district or school provides each student with one or more instructional materials that in combination are aligned with the essential knowledge and skills adopted by the State Board of Education for that subject and grade level, that a school district shall post on the district's Internet website information regarding the instructional materials used in each subject area and grade level for each school in the district, that a school district shall certify that the state-adopted instructional materials for the foundation curriculum that are provided to each student may be used in class and for home study, that such provision does not require a district to provide two sets of instructional materials for each student, and that the provisions set forth in this paragraph apply beginning with the 2009-2010 school year.

The bill amends Section 31.103 to strike references to " maximum attendance" or "attendance" and substitute "student enrollment," and also strikes a reference to "manufacturer."

The bill provides that the State Board of Education shall develop a depreciation schedule for used instructional materials and develop a depository for the sale of used instructional materials. The board of trustees of a school district or governing body of an open-enrollment charter school may sell instructional materials, other than electronic instructional materials, through the depository to another school district or school at the price determined by applying the depreciation schedule adopted by the board. Following such a sale, the commissioner shall transfer funds in an amount equal to the cost of the instructional materials sold from the instructional materials account of the purchasing district or school to the instructional materials account of the district or school that is selling the instructional materials.

The bill amends Section 31.151 to strike references to manufacturers.

The bill amends Section 32.005, Education Code is amended by adding a definition of "technological equipment," which means hardware, a device, or equipment necessary for instructional use in the classroom, including to gain access to or enhance the use of electronic instructional materials, or professional use by a classroom teacher.

The bill provides that Section 32.161(b), Education Code, is amended to provide that, to the extent possible considering other statutory requirements, the commissioner and agency shall encourage the use of instructional materials allotment funds under Section 31.0211 and technology allotment funds under Section 32.005 in a manner that facilitates the development and use of the portal.

The bill repeals the following sections of the Education Code: Section 31.023; Section 31.024; and Section 31.025.

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The bill provides that, effective September 1, 2009, Section 31.101, Education Code, is repealed.

The bill provides that Section 13.04, Chapter 5, Acts of the 79th Legislature, 3rd Called Session, 2005, is repealed.

The bill provides that the change in law made by this Act regarding the adoption of instructional materials applies only to the adoption of an instructional material that is submitted to the State Board of Education for adoption under Subchapter B, Chapter 31, Education Code, as amended by this Act, on or after September 1, 2007. An instructional material submitted to the State Board of Education before that date is governed by the law in effect when the instructional material was submitted, and the former law is continued in effect for that purpose.

The bill provides that the change in law made by this Act regarding a contract entered into by the State Board of Education for the purchase of instructional materials applies only to a contract for instructional materials entered into by the State Board of Education on or after September 1, 2008. A contract for the purchase of instructional materials entered into before that date is governed by the law in effect when the contract for instructional materials was entered, and the former law is continued in effect for that purpose.

The bill provides that the State Board of Education is responsible for an expense associated with continuing contracts for the purchase of instructional materials entered into by the board before September 1, 2009, including subscription services, enrollment growth, consumable materials purchased annually, and replacement for an instructional material that is in disrepair.

The bill provides that a school district or open-enrollment charter school is responsible for an expense associated with a continuing contract for the purchase of instructional materials entered into by the State Board of Education on or after September 1, 2009, including expenses enumerated in the bill as described in the paragraph immediately above.

#### **EFFECTIVE DATE**

September 1, 2007, except as otherwise provided by the Act. (Please refer to ANALYSIS section. Note that, effective September 1, 2009, Section 31.101, Education Code, is repealed.)

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The original states that the board shall determine the amount of the available school fund to set aside for the state instructional materials fund based on the amount of the allotment under Section 31.0211 and on attendance reports submitted under Section 31.103. The substitute is the same except that it changes attendance reports submitted under Section 31.103 to student enrollment reports submitted under Section 31.103.

The original uses the maximum attendance reported under Section 31.103 as the basis for the entitlement to the annual instructional materials allotment whereas the substitute uses the student enrollment reported under Section 31.103 as the basis. The substitute adds that, in addition to the allotment provided in Section 31.0211(a), if the commissioner determines that a school district or open-enrollment charter school is experiencing high enrollment growth and that the student enrollment is likely to increase by 10 percent or more in the school year for which the district or school is receiving the allotment as compared to the preceding school year, the district or school is entitled to an allotment in the amount provided by Section 31.0211(a) for each additional student anticipated to enroll in the district or school. The substitute states that if the anticipated increase in student enrollment does not occur, the amount of funds in the instructional materials account of the school district or open-enrollment charter school shall be reduced by the amount of the additional funds received by the district or school under Section 31.0211(b) for students who do not enroll in the district or school.

The original provided that, in addition to the allotment provided by Subsection 31.0211(a), a school district that contracts with a juvenile justice alternative education program under Section 37.011 is entitled to an allotment from the instructional materials fund in an amount determined by the commissioner. The district and the program may contract for the program to use the

allotment to purchase approved instructional materials for students enrolled in the program. The commissioner's determination under this subsection is final and may not be appealed. The substitute provides that the commissioner shall determine the amount of an instructional materials allotment for students attending a juvenile justice alternative education program under Section 37.011. The allotment may not exceed \$75 for each student attending a juvenile justice alternative education program. The commissioner shall transfer the instructional materials allotment to the Texas Juvenile Probation Commission for the purchase of instructional materials for students enrolled in a juvenile justice alternative education program. The Texas Juvenile Probation Commission shall require each juvenile justice alternative education program to comply with all applicable rules adopted by the State Board of Education regarding instructional materials.

The substitute adds that the State Board of Education is responsible for the following expenses: the purchase of Braille, large type, and audio instructional materials; the cost of maintaining a fire and flood contingency fund to purchase replacements of instructional materials lost due to a fire or flood in a school district or at an open-enrollment charter school; and the cost of shipping instructional materials from the state depository, the depository of a publisher, or the used textbook depository to a school district or open-enrollment charter school.

The substitute requires the board to designate a request for production of instructional materials in a subject area and grade level by the school year in which the instructional materials are intended to be made available in classrooms and not by the school year in which the board makes the request for production.

The original provides that in organizing the cycle for review and adoption of instructional materials, the board shall review and consider expected average costs of the instructional materials that will be adopted and the amount of the instructional materials allotment to ensure that the amount of the instructional materials that will be adopted over a two-year period may be purchased within the amount of the instructional material allotment for that same period, and that in addition to organizing a review and adoption cycle, the board by rule shall allow an instructional material to be submitted, reviewed, and adopted at a time when the subject or grade level is not scheduled for review and adoption in the cycle, at an interval of at least once every two years, or at another time in the discretion of the board to respond to needs that may arise, in conformance with the procedures for adoption of other state-adopted instructional materials. The board shall place each instructional material submitted under this subsection and adopted on the state-adopted instructional materials list under Section 31.0231.

The substitute provides that the board by rule shall allow an instructional material to be submitted, reviewed, and adopted at a time when the subject or grade level is not scheduled for review and adoption in the cycle, at an interval of at least once every two years, or at another time in the discretion of the board to respond to needs that may arise, in conformance with the procedures for adoption of other state-adopted instructional materials. The board shall place each instructional material submitted under this section and adopted on the state-adopted instructional materials list under Section 31.0231. The contract term for an instructional material adopted under this section may not extend beyond the contract term of an instructional material adopted for the same subject area and grade level under Section 31.022. The board may not place an instructional material on the state-adopted instructional materials list in the two years before the effective date of a curriculum revision in a subject area and grade level for which the material is submitted. The rules adopted by the board under this section must require: the publisher of the instructional material to pay a fee to the board to cover the administrative cost of the midcycle review and adoption of the instructional material; the publisher of the instructional material to enter into a contract with the board concerning the instructional material for a term that ends at the same time as any contract entered into by the board for another instructional material for the same subject and grade level; and a commitment from the publisher to provide the instructional material to school districts midcycle in the manner specified by the publisher, which may include: providing the instructional material midcycle to any district in a regional education service center area identified by the publisher; or providing midcycle a certain maximum number of instructional materials specified by the publisher. The fee paid by the publisher of instructional materials may be used only for the administrative costs of the midcycle review and adoption. The substitute further provides that, in determining the review and adoption cycle of instructional materials under Section 31.022, the State Board of Education

shall consult with the Legislative Budget Board and the governor's office of budget, planning, and policy before approving and publishing any notice or amendment of a cycle; review and consider: historic average funding levels for instructional materials purchased in previous biennia; expected average costs of future instructional material purchases; anticipated student enrollment in future years; scheduled revisions to curriculum; and the impact on the state budget of the adoption of instructional materials in all or some grade levels in a subject area; and limit the cycle to subject areas for which instructional materials can be purchased with the funding anticipated to be available for the instructional materials allotment for the school year in which the instructional materials are to be adopted.

The original provides that for each subject and grade level, the board shall review submitted instructional materials for factual errors. The board shall adopt all instructional materials that the board determines are free from factual errors and shall place the materials on the state-adopted instructional materials list. For each state-adopted instructional material, the board must determine the alignment of the instructional material with the essential knowledge and skills for the subject area and grade level. The board must identify: the elements of the essential knowledge and skills for the subject and grade level covered by the instructional material; and the degree to which the instructional material covers each element of the essential. The substitute provides that for each subject and grade level, the board shall review submitted instructional materials for factual errors. Except as provided below in this paragraph, the board shall adopt all instructional materials that the board determines are free from factual errors and shall place the materials on the state-adopted instructional materials list. For each state-adopted instructional material, the board must determine the coverage of the essential knowledge and skills for the subject area and grade level of the instructional material. The board must identify: each of the essential knowledge and skills for the subject and grade level covered by the instructional material; and the percentage of the essential knowledge and skills for the subject and grade level covered by the instructional material. The board may not adopt an instructional material that covers less than 25 percent of the essential knowledge and skills for a subject area and grade level.

The original provides that the board shall adopt instructional materials for use in bilingual education classes. The substitute provides that the board shall adopt instructional materials for use in bilingual education and English as a second language classes.

The substitute provides that the board shall establish and maintain a state depository for instructional materials. This provision is not included in the original.

The substitute adds an application date to Section 31.1011, as added by the bill. The original does not include an application date.

The substitute adds that a school district shall post on the district's Internet website information regarding the instructional materials used in each subject area and grade level for each school in the district. A school district shall certify that the state-adopted instructional materials for the foundation curriculum that are provided to each student may be used in class and for home study. This provision does not require a district to provide two sets of instructional materials for each student.

The substitute adds an application date to Section 31.1012, as added by the bill. The original does not include an application date.

The substitute amends Section 31.103(a) to provide that, not later than the seventh day after the first school day in April, each principal shall report the student enrollment for the school to the superintendent. Not later than April 25, the superintendent of a school district or the chief operating officer of an open-enrollment charter school shall report the district's or school's student enrollment to the commissioner. The original does not amend Subsection (a).

Both bills amend Section 31.103(b), , but the substitute also changes "maximum attendance" and "attendance" to "student enrollment."

The substitute amends Section 31.1031 to make conforming changes (essentially changing "textbook(s)" to "instructional materials," or in some cases "state-adopted instructional materials." The original repealed, rather than amended, Section 31.1031.

The original provides that the board of trustees of a school district or governing body of an open-enrollment charter school may sell instructional materials, other than electronic instructional materials, to a student or another school at the state contract price. The district or school shall send money from the sale of instructional materials to the commissioner as required by the commissioner. The commissioner shall deposit the money in the state instructional materials fund to the credit of the district's or school's instructional materials account. The substitute provides that the State Board of Education shall develop a depreciation schedule for used instructional materials and develop a depository for the sale of used instructional materials. The board of trustees of a school district or governing body of an open-enrollment charter school may sell instructional materials, other than electronic instructional materials, through the depository to another school district or school at the price determined by applying the depreciation schedule adopted by the board. Following such a sale, the commissioner shall transfer funds in an amount equal to the cost of the instructional materials sold from the instructional materials account of the purchasing district or school to the instructional materials account of the district or school that is selling the instructional materials.

The original repeals Section 31.101 effective as of September 1, 2007, whereas the substitute repeals this section effective September 1, 2009.

The original repeals Section 31.1031, whereas the substitute does not.

The substitute provides that Section 13.04, Chapter 5, Acts of the 79th Legislature, 3rd Called Session, 2005, is repealed, whereas the original does not.

The substitute provides that the change in law made by this Act regarding the adoption of instructional materials applies only to the adoption of an instructional material that is submitted to the State Board of Education for adoption under Subchapter B, Chapter 31, Education Code, as amended by this Act, on or after September 1, 2007. An instructional material submitted to the State Board of Education before that date is governed by the law in effect when the instructional material was submitted, and the former law is continued in effect for that purpose. The change in law made by this Act regarding a contract entered into by the State Board of Education for the purchase of instructional materials applies only to a contract for instructional materials entered into by the State Board of Education on or after September 1, 2008. A contract for the purchase of instructional materials entered into before that date is governed by the law in effect when the contract for instructional materials was entered, and the former law is continued in effect for that purpose. The State Board of Education is responsible for an expense associated with continuing contracts for the purchase of instructional materials entered into by the board before September 1, 2009, including: subscription services; enrollment growth; consumable materials purchased annually; and replacement for an instructional material that is in disrepair. A school district or open-enrollment charter school is responsible for an expense associated with a continuing contract for the purchase of instructional materials entered into by the State Board of Education on or after September 1, 2009, including: subscription services; enrollment growth; consumable materials purchased annually; and replacement for an instructional material that is in disrepair. The substitute further provides that, except as otherwise provided by this Act, this Act takes effect September 1, 2007. The original does not include the provisions set forth in this paragraph, and the effective date of the original bill is September 1, 2007.