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| SECTION 1. Section 31.002, Education Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:<br>(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.<br>(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 1. Section 31.002, Education Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:<br>(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.<br>(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. <mark>The term includes a state-developed open-source textbook purchased under Subchapter B-1.</mark> | |
| <mark>No equivalent provision.</mark> | SECTION __. Subchapter A, Chapter 31, Education Code, is amended by adding Section 31.004 to read as follows:<br>Sec. 31.004. CERTIFICATION OF PROVISION OF TEXTBOOKS, ELECTRONIC TEXTBOOKS, AND INSTRUCTIONAL MATERIALS. Each school district and open-enrollment charter school shall annually certify to the State Board of Education and the commissioner that, for each subject in the required curriculum and each grade level, the district provides each student with | |

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| | textbooks, electronic textbooks, or instructional materials that cover all elements of the essential knowledge and skills adopted by the State Board of Education for that subject and grade level. | |
| No equivalent provision. | SECTION __. To the extent of any conflict, Section 31.004, Education Code, as added by this Act, prevails over Section 31.004, Education Code, as added by H.B. No. 4294, Acts of the 81st Legislature, Regular Session, 2009, regardless of the relative dates of enactment. | |
| SECTION 2. Subchapter B, Chapter 31, Education Code, is amended by adding Section 31.0241 to read as follows: | 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: | 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); or | (1) a public institution of higher education that is designated as a research university or emerging research university under the higher education coordinating board's accountability system, or a private university located in this state that is a member of the Association of American Universities; or | |
| (2) a public technical institute, as defined by Section 61.003. | (2) a public technical institute, as defined by Section 61.003. | |
| (b) The State Board of Education shall place an open-source textbook for a secondary-level course submitted for adoption by an eligible institution on a conforming or nonconforming list if: | (b) The State Board of Education shall place an open-source textbook for a secondary-level course submitted for adoption by an eligible institution on a conforming or nonconforming list if: | |

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| (1)  the textbook is written, compiled, or edited primarily by faculty of the eligible institution who specialize in the subject area of the textbook;<br>(2)  the eligible institution identifies each contributing author;<br>(3)  the appropriate department of the eligible institution certifies the textbook for accuracy; and<br>(4)  the eligible institution determines that the textbook qualifies for placement on the conforming or nonconforming list based on the extent to which the textbook covers the essential knowledge and skills identified under Section 28.002 for the subject for which the  textbook is written and certifies that:<br>(A)  for a textbook for a senior-level course, a student who successfully completes a course based on the textbook will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or<br>(B)  for a textbook for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the textbook will be prepared for entry into the senior-level course.<br>(c)  This section does not prohibit an eligible institution from submitting a textbook for placement on a conforming or nonconforming list through any other adoption process provided by this chapter. | (1)  the textbook is written, compiled, or edited primarily by faculty of the eligible institution who specialize in the subject area of the textbook;<br>(2)  the eligible institution identifies each contributing author;<br>(3)  the appropriate department of the eligible institution certifies the textbook for accuracy; and<br>(4)  the eligible institution determines that the textbook qualifies for placement on the conforming or nonconforming list based on the extent to which the textbook covers the essential knowledge and skills identified under Section 28.002 for the subject for which the  textbook is written and certifies that:<br>(A)  for a textbook for a senior-level course, a student who successfully completes a course based on the textbook will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or<br>(B)  for a textbook for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the textbook will be prepared for entry into the senior-level course.<br>(c)  This section does not prohibit an eligible institution from submitting a textbook for placement on a conforming or nonconforming list through any other adoption process provided by this chapter. | |
| SECTION  3.    Section  31.026,  Education  Code,  is amended by adding Subsection (e) to read as follows: | Same as House version. | |

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| (e)   This section does not apply to an open-source textbook. | | |
| SECTION 4.   Subchapter B, Chapter 31, Education Code, is amended by adding Section 31.0261 to read as follows:<br>Sec. 31.0261.   CONTRACTS FOR PRINTING OF OPEN-SOURCE TEXTBOOKS. The State Board of Education may execute a contract for the printing of an open-source textbook listed on the conforming or nonconforming list. The contract must allow a school district to requisition printed copies of an open-source textbook as provided by Section 31.103. | Same as House version. | |
| SECTION 5.   Section 31.027, Education Code, is amended by adding Subsection (d) to read as follows:<br>(d)   This section does not apply to an open-source textbook. | Same as House version. | |
| <mark>No equivalent provision.</mark> | SECTION 6.  Chapter 31, Education Code, is amended by adding Subchapter B-1 to read as follows:<br>SUBCHAPTER B-1.   STATE-DEVELOPED OPEN-SOURCE TEXTBOOKS<br>Sec. 31.071.   PURCHASE AUTHORITY.   (a)   The commissioner may purchase state-developed open-source textbooks in accordance with this subchapter.<br>(b)  The commissioner:<br>(1)   shall purchase any state-developed open-source | |

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| | textbooks through a competitive process; and<br>(2) may purchase more than one state-developed open-source textbook for a subject or grade level.<br>(c) A state-developed open-source textbook must be irrevocably owned by or licensed to the state for use in the applicable subject or grade level. The state must have unlimited authority to modify, delete, combine, or add content to the textbook after purchase.<br>(d) The commissioner may issue a request for proposals for a state-developed open-source textbook:<br>(1) in accordance with the textbook review and adoption cycle under Section 31.022; or<br>(2) at any other time the commissioner determines that a need exists for additional textbook options.<br>(e) The costs of administering this subchapter and purchasing state-developed open-source textbooks shall be paid from the state textbook fund, as determined by the commissioner.<br>Sec. 31.072. CONTENT REQUIREMENTS. (a) A state-developed open-source textbook must:<br>(1) be evaluated by teachers or other experts, as determined by the commissioner, before purchase; and<br>(2) meet the requirements for inclusion on a conforming or nonconforming textbook list under Section 31.023.<br>(b) Following a curriculum revision by the State Board of Education, the commissioner shall require the revision of a state-developed open-source textbook relating to that curriculum. The commissioner may, at any time, require an additional revision of a state-developed open-source | |

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| | textbook or contract for ongoing revisions of a textbook for a period not to exceed the period under Section 31.022 for which a textbook for that subject and grade level may be adopted.  The commissioner shall use a competitive process to request proposals to revise a state-developed open-source textbook under this subsection.<br>(c)  The commissioner shall provide for special and bilingual state-developed open-source textbooks in the same manner provided under Sections 31.028 and 31.029.<br>Sec. 31.073.  COST. (a) For purposes of this section, the commissioner shall determine the cost to a school district or open-enrollment charter school for a state-developed open-source textbook in an amount sufficient to cover state expenses associated with the textbook, including expenses incurred by the state in soliciting, evaluating, revising, and purchasing the textbook.<br>(b)  If a school district or open-enrollment charter school selects a state-developed open-source textbook instead of another textbook adopted under Subchapter B, the difference between the cost determined by the commissioner under Subsection (a) and the maximum price for a textbook in the same subject area, as determined by the State Board of Education under Section 31.025, shall be allocated as follows:<br>(1)  50 percent of the amount shall be credited to the state textbook fund under Section 31.021 to be used for purposes of this subchapter; and<br>(2)  50 percent of the amount shall be credited to the | |

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| | school district or open-enrollment charter school for use as provided by Section 31.1011(c).<br><br>(c)  Notwithstanding Section 31.022, a school district or open-enrollment charter school may adopt a state-developed open-source textbook at any time, regardless of the textbook review and adoption cycle under that section.<br><br>(d)  A school district or open-enrollment charter school may not be charged for selection of a state-developed open-source textbook in addition to a textbook adopted under Subchapter B.<br><br>Sec. 31.074.  DISTRIBUTION. (a) The commissioner shall provide for the distribution of state-developed open-source textbooks in a manner consistent with distribution of textbooks adopted under Subchapter B.<br><br>(b)  The commissioner may use a competitive process to contract for printing or other reproduction of a state-developed open-source textbook on behalf of a school district or open-enrollment charter school. The commissioner may not require a school district or open-enrollment charter school to contract with a state-approved provider for the printing or reproduction of a state-developed open-source textbook.<br><br>Sec. 31.075.  OWNERSHIP; LICENSING. (a)  A state-developed open-source textbook is the property of the state.<br><br>(b)  The commissioner shall provide a license to each public school in the state, including a school district, an open-enrollment charter school, and a state or local | |

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| | agency educating students in any grade from prekindergarten through high school, to use and reproduce a state-developed open-source textbook. (c)  The commissioner may provide a license to use a state-developed open-source textbook to an entity not listed in Subsection (b).  In determining the cost of a license under this subsection, the commissioner shall seek, to the extent feasible, to recover the costs of developing, revising, and distributing state-developed open-source textbooks. Sec. 31.076.  RULES; FINALITY OF DECISIONS. (a) The commissioner may adopt rules necessary to implement this subchapter. (b)  A decision by the commissioner regarding the purchase, revision, cost, or distribution of a state-developed open-source textbook is final and may not be appealed. Sec.  31.077.  ADOPTION  SCHEDULE.  The commissioner shall develop a schedule for the adoption of state-developed open-source textbooks under this subchapter. In developing the adoption schedule under this section, the commissioner shall consider: (1)  the availability of funds; (2)  the existing textbook adoption cycles under Subchapter B; and (3)  the availability of textbooks for development or purchase by the state. | |

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| SECTION 6. Section 31.103, Education Code, is amended by adding Subsection (d) to read as follows:<br><br>(d) A school district or open-enrollment charter school that selects an open-source textbook shall requisition a sufficient number of printed copies for use by students unable to access the textbook electronically unless the district or school provides to each student:<br>(1) electronic access to the textbook at no cost to the student; or<br>(2) printed copies of the portion of the textbook that will be used in the course. | SECTION 7. Section 31.103, Education Code, is amended by adding Subsections (d) and (e) to read as follows:<br>(d) A school district or open-enrollment charter school that selects an open-source textbook shall requisition a sufficient number of printed copies for use by students unable to access the textbook electronically unless the district or school provides to each student:<br>(1) electronic access to the textbook at no cost to the student; or<br>(2) printed copies of the portion of the textbook that will be used in the course.<br>(e) The commissioner may establish a list of equipment or devices that a school district or open-enrollment charter school may purchase using textbook credits or textbook credits in combination with other available funds to provide electronic access to open-source textbooks under Subsection (d)(1). | |
| SECTION 7. Section 31.104, Education Code, is amended by amending Subsections (b) and (c) and adding Subsections (g) and (h) to read as follows:<br>(b) A school district or open-enrollment charter school may order replacements for textbooks that have been lost or damaged directly from:<br>(1) the textbook depository; [or]<br>(2) the textbook publisher or manufacturer if the textbook publisher or manufacturer does not have a designated textbook depository in this state under | SECTION 8. Same as House version. | |

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Section 31.151(a)(6)(B); or
(3)  any source for a printed copy of an open-source textbook.
(c)  Each textbook must state that the textbook is the property of or is licensed to this state, as appropriate. Each textbook, other than an electronic textbook or a printed copy of an open-source textbook, must be covered by the student under the direction of the teacher. Except as provided by Subsection (g), a [A] student must return all textbooks to the teacher at the end of the school year or when the student withdraws from school.
(g)  At the end of the school year for which an open-source textbook that a school district or open-enrollment charter school does not intend to use for another student is distributed, the printed copy of the open-source textbook becomes the property of the student to whom it is distributed.
(h)  This section does not apply to an electronic copy of an open-source textbook.

SECTION 8.  Section 31.151(a), Education Code, is amended to read as follows:
(a)  A publisher or manufacturer of textbooks:
(1)  shall furnish any textbook the publisher or manufacturer offers in this state, at a price that does not exceed the lowest price at which the publisher offers that textbook for adoption or sale to any state, public school, or school district in the United States;
(2)  shall automatically reduce the price of a textbook

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SECTION 9. Same as House version.

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sold for use in a school district or open-enrollment charter school to the extent that the price is reduced elsewhere in the United States;

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

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

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

(6) shall:

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

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

(i)  the publisher or manufacturer does not maintain or arrange with a depository in this state under Paragraph

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(A) and the publisher's or manufacturer's textbooks and related products are warehoused or otherwise stored less than 300 miles from a border of this state; or

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

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

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

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

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

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SECTION 10. Same as House version.