

By: Eissler

H.B. No. 6

A BILL TO BE ENTITLED

AN ACT

relating to the foundation curriculum, the establishment of the instructional materials allotment, the adoption, review, and purchase of instructional materials and technological equipment for public schools, and the administration of state assessment instruments to public school students.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 5, Education Code, is amended by adding Section 5.002 to read as follows:

Sec. 5.002. REFERENCES TO TEXTBOOK. In this title, a reference to a textbook means instructional material, as defined by Section 31.002.

SECTION 2. Section 7.055(b)(28), Education Code, is amended to read as follows:

(28) The commissioner shall perform duties relating to the funding, adoption, and purchase of instructional materials ~~[textbooks]~~ under Chapter 31.

SECTION 3. Section 7.056(f), Education Code, is amended to read as follows:

(f) A school district or campus that is required to develop and implement a student achievement improvement plan under Section 39.102 or 39.103 may receive an exemption or waiver under this section from any law or rule other than:

(1) a prohibition on conduct that constitutes a

1 criminal offense;

2 (2) a requirement imposed by federal law or rule;

3 (3) a requirement, restriction, or prohibition
4 imposed by state law or rule relating to:

5 (A) public school accountability as provided by
6 Subchapters B, C, D, E, and J, Chapter 39; or

7 (B) educator rights and benefits under
8 Subchapters A, C, D, E, F, G, and I, Chapter 21, or under Subchapter
9 A, Chapter 22; or

10 (4) ~~[textbook]~~ selection of instructional materials
11 under Chapter 31.

12 SECTION 4. Section 7.102(c)(23), Education Code, is amended
13 to read as follows:

14 (23) The board shall adopt and purchase or license
15 instructional materials ~~[textbooks]~~ as provided by Chapter 31 and
16 adopt rules required by that chapter.

17 SECTION 5. Sections 7.108(a) and (c), Education Code, are
18 amended to read as follows:

19 (a) A person interested in selling bonds of any type or a
20 person engaged in manufacturing, shipping, selling, or advertising
21 instructional materials ~~[textbooks or otherwise connected with the
22 textbook business]~~ commits an offense if the person makes or
23 authorizes a political contribution to or takes part in, directly
24 or indirectly, the campaign of any person seeking election to or
25 serving on the board.

26 (c) In this section:

27 (1) "Instructional material" has the meaning assigned

1 by Section 31.002.

2 (2) "Political contribution" has the meaning assigned
3 by Section 251.001, Election Code.

4 ~~[(2) "Textbook" has the meaning assigned by Section~~
5 ~~31.002.]~~

6 SECTION 6. The heading to Section 7.112, Education Code, is
7 amended to read as follows:

8 Sec. 7.112. REPRESENTATION OF [~~TEXTBOOK~~] PUBLISHER OF
9 INSTRUCTIONAL MATERIALS BY FORMER MEMBER OF BOARD.

10 SECTION 7. Section 7.112(a), Education Code, is amended to
11 read as follows:

12 (a) A former member of the State Board of Education who is
13 employed by or otherwise receives compensation from a [~~textbook~~]
14 publisher of instructional materials may not, before the second
15 anniversary of the date on which the person last served as a member
16 of the State Board of Education:

17 (1) confer with a member of the board of trustees of a
18 school district concerning instructional materials [~~a textbook~~]
19 published by that [~~textbook~~] publisher; or

20 (2) appear at a meeting of the board of trustees on
21 behalf of the [~~textbook~~] publisher.

22 SECTION 8. Section 7.112(c)(2), Education Code, is amended
23 to read as follows:

24 (2) "Instructional material" and "publisher"
25 [~~"Publisher" and "textbook"~~] have the meanings assigned by Section
26 31.002.

27 SECTION 9. Section 11.158(b), Education Code, is amended to

1 read as follows:

2 (b) The board may not charge fees for:

3 (1) instructional materials [~~textbooks~~], workbooks,
4 laboratory supplies, or other supplies necessary for participation
5 in any instructional course except as authorized under this code;

6 (2) field trips required as a part of a basic education
7 program or course;

8 (3) any specific form of dress necessary for any
9 required educational program or diplomas;

10 (4) the payment of instructional costs for necessary
11 school personnel employed in any course or educational program
12 required for graduation;

13 (5) library materials [~~books~~] required to be used for
14 any educational course or program, other than fines for lost,
15 damaged, or overdue materials [~~books~~];

16 (6) admission to any activity the student is required
17 to attend as a prerequisite to graduation;

18 (7) admission to or examination in any required
19 educational course or program; or

20 (8) lockers.

21 SECTION 10. Section 11.164(a), Education Code, is amended
22 to read as follows:

23 (a) The board of trustees of each school district shall
24 limit redundant requests for information and the number and length
25 of written reports that a classroom teacher is required to prepare.
26 A classroom teacher may not be required to prepare any written
27 information other than:

1 (1) any report concerning the health, safety, or
2 welfare of a student;

3 (2) a report of a student's grade on an assignment or
4 examination;

5 (3) a report of a student's academic progress in a
6 class or course;

7 (4) a report of a student's grades at the end of each
8 grade reporting period;

9 (5) a [~~textbook~~] report on instructional materials;

10 (6) a unit or weekly lesson plan that outlines, in a
11 brief and general manner, the information to be presented during
12 each period at the secondary level or in each subject or topic at
13 the elementary level;

14 (7) an attendance report;

15 (8) any report required for accreditation review;

16 (9) any information required by a school district that
17 relates to a complaint, grievance, or actual or potential
18 litigation and that requires the classroom teacher's involvement;
19 or

20 (10) any information specifically required by law,
21 rule, or regulation.

22 SECTION 11. Section 19.007(e), Education Code, is amended
23 to read as follows:

24 (e) The district may participate in the instructional
25 materials [~~textbook~~] program under Chapter 31.

26 SECTION 12. Sections 26.006(a) and (c), Education Code, are
27 amended to read as follows:

(a) A parent is entitled to:

(1) review all teaching materials, instructional materials [~~textbooks~~], and other teaching aids used in the classroom of the parent's child; and

(2) review each test administered to the parent's child after the test is administered.

(c) A student's parent is entitled to request that the school district or open-enrollment charter school the student attends allow the student to take home any instructional materials [~~textbook~~] used by the student. Subject to the availability of the instructional materials [~~a textbook~~], the district or school shall honor the request. A student who takes home instructional materials [~~a textbook~~] must return the instructional materials [~~textbook~~] to school at the beginning of the next school day if requested to do so by the student's teacher. In this subsection, "instructional material" [~~"textbook"~~] has the meaning assigned by Section 31.002.

SECTION 13. Sections 28.002(a), (c), (h), and (n), Education Code, are amended to read as follows:

(a) Each school district that offers kindergarten through grade 12 shall offer, as a required curriculum:

(1) a foundation curriculum that includes:

(A) English language arts;

(B) mathematics;

(C) science; and

(D) social studies, consisting of Texas, United States, and world history, government, economics, with emphasis on

1 the free enterprise system and its benefits, and geography; and

2 (2) an enrichment curriculum that includes:

3 (A) to the extent possible, languages other than
4 English;

5 (B) health, with emphasis on the importance of
6 proper nutrition and exercise;

7 (C) physical education;

8 (D) fine arts;

9 (E) ~~[economics, with emphasis on the free
10 enterprise system and its benefits;~~

11 ~~[(F)]~~ career and technology education;

12 (F) ~~[(G)]~~ technology applications; and

13 (G) ~~[(H)]~~ religious literature, including the
14 Hebrew Scriptures (Old Testament) and New Testament, and its impact
15 on history and literature.

16 (c) The State Board of Education, with the direct
17 participation of educators, parents, business and industry
18 representatives, and employers shall by rule identify the essential
19 knowledge and skills of each subject of the required curriculum
20 that all students should be able to demonstrate and that will be
21 used in evaluating instructional materials ~~[textbooks]~~ under
22 Chapter 31 and addressed on the assessment instruments required
23 under Subchapter B, Chapter 39. As a condition of accreditation,
24 the board shall require each district to provide instruction in the
25 essential knowledge and skills at appropriate grade levels.

26 (h) The State Board of Education and each school district
27 shall foster the continuation of the tradition of teaching United

1 States and Texas history and the free enterprise system in regular
2 subject matter and in reading courses and in the adoption of
3 instructional materials [~~textbooks~~]. A primary purpose of the
4 public school curriculum is to prepare thoughtful, active citizens
5 who understand the importance of patriotism and can function
6 productively in a free enterprise society with appreciation for the
7 basic democratic values of our state and national heritage.

8 (n) The State Board of Education may by rule develop and
9 implement a plan designed to incorporate foundation curriculum
10 requirements into the career and technology education curriculum
11 under Subsection (a)(2)(E) [~~(a)(2)(F)~~].

12 SECTION 14. Sections 28.0022(a) and (d), Education Code,
13 are amended to read as follows:

14 (a) Not later than November 1, 2007, the agency shall
15 establish a panel under this section to:

16 (1) review and recommend revisions to the career and
17 technical education curriculum under Section 28.002(a)(2)(E)
18 [~~28.002(a)(2)(F)~~]; and

19 (2) review and recommend revisions for the program in
20 which high schools and articulated postsecondary institutions
21 allow high school students to take advanced technical credit
22 courses.

23 (d) Not later than November 1, 2008, the panel shall:

24 (1) complete the review as required by this section
25 of:

26 (A) the career and technical education
27 curriculum; and

1 (B) the program under which high schools and
2 articulated postsecondary institutions allow high school students
3 to take advanced technical credit courses; and

4 (2) make recommendations to the State Board of
5 Education as necessary to:

6 (A) increase the academic rigor of the career and
7 technical education curriculum under Section 28.002(a)(2)(E)
8 [~~28.002(a)(2)(F)~~]; and

9 (B) improve and increase participation in the
10 program under which high schools and articulated postsecondary
11 institutions allow high school students to take advanced technical
12 credit courses.

13 SECTION 15. Section 28.003(b), Education Code, is amended
14 to read as follows:

15 (b) In this section, "educational program" means a course or
16 series of courses in the required curriculum under Section 28.002,
17 other than a fine arts course under Section 28.002(a)(2)(D) or a
18 career and technology course under Section 28.002(a)(2)(E)
19 [~~28.002(a)(2)(F)~~].

20 SECTION 16. Section 28.011(c), Education Code, is amended
21 to read as follows:

22 (c) A student may not be required to use a specific
23 translation as the sole text of the Hebrew Scriptures or New
24 Testament and may use as the basic instructional material
25 [~~textbook~~] a different translation of the Hebrew Scriptures or New
26 Testament from that chosen by the board of trustees of the student's
27 school district or the student's teacher.

SECTION 17. The heading to Chapter 31, Education Code, is amended to read as follows:

CHAPTER 31. INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]

SECTION 18. Section 31.001, Education Code, is amended to read as follows:

Sec. 31.001. FREE INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]. Instructional materials [~~Textbooks~~] selected for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by Section 31.104(d), a school district may not charge a student for instructional material or technological equipment purchased by the district with the district's instructional materials allotment.

SECTION 19. Sections 31.002(1), (1-a), (2), and (4), Education Code, are amended to read as follows:

(1) "Instructional material" [~~"Electronic textbook"~~] means content that conveys the essential knowledge and skills of a subject in the public school curriculum through 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, workbook, and supplementary materials, computer software, [interactive videodisc,] magnetic media, DVD, CD-ROM, computer courseware, on-line services, or 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 instructional material [~~textbook~~].

(1-a) "Open-source instructional material" [~~textbook~~] means [an] electronic instructional material

1 ~~[textbook]~~ that is available for downloading from the Internet at
2 no charge to a student and without requiring the purchase of an
3 unlock code, membership, or other access or use charge, except for a
4 charge to order an optional printed copy of all or part of the
5 instructional material ~~[textbook]~~. The term includes ~~[a]~~
6 state-developed open-source instructional material ~~[textbook]~~
7 purchased under Subchapter B-1.

8 (2) "Publisher" includes an on-line service or a
9 developer or distributor of ~~[an]~~ electronic instructional
10 materials ~~[textbook]~~.

11 (4) "Technological equipment" means hardware, a
12 device, or equipment necessary for:

13 (A) instructional use in the classroom,
14 including to gain access to or enhance the use of ~~[an]~~ electronic
15 instructional materials ~~[textbook]~~; or

16 (B) professional use by a classroom teacher.

17 SECTION 20. Subchapter A, Chapter 31, Education Code, is
18 amended by amending Sections 31.003 and 31.004 and adding Section
19 31.005 to read as follows:

20 Sec. 31.003. RULES. The State Board of Education may adopt
21 rules, consistent with this chapter, for the adoption, requisition,
22 distribution, care, use, and disposal of instructional materials
23 ~~[textbooks]~~.

24 Sec. 31.004. CERTIFICATION OF PROVISION OF ~~[TEXTBOOKS,~~
25 ~~ELECTRONIC TEXTBOOKS, AND]~~ INSTRUCTIONAL MATERIALS. (a) Each
26 school district and open-enrollment charter school shall annually
27 certify to the State Board of Education and the commissioner that,

for each subject in the required curriculum under Section 28.002,
other than physical education, and each grade level, the district
provides each student with [~~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.

(b) To determine whether each student has instructional
materials that cover all elements of the essential knowledge and
skills as required by Subsection (a), a school district or
open-enrollment charter school may consider:

(1) instructional materials adopted by the State Board
of Education;

(2) materials adopted or purchased by the commissioner
under Section 31.0231 or Subchapter B-1;

(3) open-source instructional materials submitted by
eligible institutions and adopted by the State Board of Education
under Section 31.0241;

(4) open-source instructional materials made
available by other public schools; and

(5) instructional materials developed or purchased by
the school district or open-enrollment charter school.

Sec. 31.005. FUNDING FOR OPEN-ENROLLMENT CHARTER SCHOOLS.
An open-enrollment charter school is entitled to the instructional
materials allotment under this chapter and is subject to this
chapter as if the school were a school district.

SECTION 21. The heading to Section 31.021, Education Code,
is amended to read as follows:

1 Sec. 31.021. STATE INSTRUCTIONAL MATERIALS [~~TEXTBOOK~~]
2 FUND.

3 SECTION 22. Section 31.021, Education Code, is amended by
4 amending Subsections (a) and (d) and adding Subsection (c) to read
5 as follows:

6 (a) The state instructional materials [~~textbook~~] fund
7 consists of:

8 (1) an amount set aside by the State Board of Education
9 from the available school fund, in accordance with Section
10 43.001(d); and

11 (2) [~~all funds accruing from the state's sale of~~
12 ~~disused textbooks; and~~

13 [~~(3)~~] all amounts lawfully paid into the fund from any
14 other source.

15 (c) Money in the state instructional materials fund shall be
16 used to:

17 (1) fund the instructional materials allotment, as
18 provided by Section 31.0211;

19 (2) purchase special instructional materials for the
20 education of blind and visually impaired students in public
21 schools;

22 (3) pay the expenses associated with the instructional
23 materials adoption and review process under this chapter;

24 (4) pay the expenses associated with the purchase or
25 licensing of open-source instructional material; and

26 (5) pay the expenses associated with the purchase of
27 instructional material, including intrastate freight and shipping

1 and the insurance expenses associated with intrastate freight and
2 shipping.

3 (d) Money transferred to the state instructional materials
4 [~~textbook~~] fund remains in the fund until spent and does not lapse
5 to the state at the end of the fiscal year.

6 SECTION 23. Subchapter B, Chapter 31, Education Code, is
7 amended by adding Sections 31.0211, 31.0212, 31.0213, and 31.0214
8 to read as follows:

9 Sec. 31.0211. INSTRUCTIONAL MATERIALS ALLOTMENT. (a) A
10 school district is entitled to an annual allotment from the state
11 instructional materials fund for each student enrolled in the
12 district on a date during the preceding school year specified by the
13 commissioner. The commissioner shall determine the amount of the
14 allotment per student each year on the basis of the amount of money
15 available in the state instructional materials fund to fund the
16 allotment. An allotment under this section shall be transferred
17 from the state instructional materials fund to the credit of the
18 district's instructional materials account as provided by Section
19 31.0212.

20 (b) A juvenile justice alternative education program under
21 Section 37.011 is entitled to an allotment from the state
22 instructional materials fund in an amount determined by the
23 commissioner. The program shall use the allotment to purchase
24 items listed in Subsection (c) for students enrolled in the
25 program. The commissioner's determination under this subsection is
26 final and may not be appealed.

27 (c) Subject to Subsection (d), funds allotted under this

section may be used to:

(1) purchase:

(A) materials on the list adopted by the commissioner, as provided by Section 31.0231;

(B) instructional materials, regardless of whether the instructional materials are on the list adopted under Section 31.024;

(C) consumable instructional materials, including workbooks;

(D) instructional materials for use in bilingual education classes, as provided by Section 31.029;

(E) supplemental instructional materials, as provided by Section 31.035;

(F) state-developed open-source instructional materials, as provided by Subchapter B-1;

(G) instructional materials and technological equipment under any continuing contracts of the district in effect on September 1, 2011; and

(H) technological equipment necessary to support the use of materials included on the list adopted by the commissioner under Section 31.0231 or any instructional materials purchased with an allotment under this section; and

(2) pay:

(A) for training educational personnel directly involved in student learning in the appropriate use of instructional materials and for providing for access to technological equipment for instructional use; and

1 (B) the salary and other expenses of an employee
2 who provides technical support for the use of technological
3 equipment.

4 (d) Each year a school district shall use the district's
5 allotment under this section to purchase, in the following order:

6 (1) instructional materials necessary to permit the
7 district to certify that the district has instructional materials
8 that cover all elements of the essential knowledge and skills of the
9 required curriculum, other than physical education, for each grade
10 level as required by Section 28.002; and

11 (2) any other instructional materials or
12 technological equipment as determined by the district.

13 (d-1) Notwithstanding Subsection (d), for the state fiscal
14 biennium beginning September 1, 2011, a school district shall use
15 an allotment received under this section to purchase instructional
16 materials that will assist the district in satisfying performance
17 standards under Section 39.0241, as added by Chapter 895 (H.B. 3),
18 Acts of the 81st Legislature, Regular Session, 2009, on assessment
19 instruments adopted under Sections 39.023(a) and (c).

20 (d-2) Subsection (d-1) and this subsection expire August
21 31, 2013.

22 (e) Not later than May 31 of each school year, a school
23 district may request that the commissioner adjust the number of
24 students for which the district is entitled to receive an allotment
25 under Subsection (a) on the grounds that the number of students
26 attending school in the district will increase or decrease during
27 the school year for which the allotment is provided. The

1 commissioner may also adjust the number of students for which a
2 district is entitled to receive an allotment, without a request by
3 the district, if the commissioner determines a different number of
4 students is a more accurate reflection of students who will be
5 attending school in the district. The commissioner's determination
6 under this subsection is final.

7 (f) The commissioner may adopt rules as necessary to
8 implement this section.

9 Sec. 31.0212. INSTRUCTIONAL MATERIALS ACCOUNT. (a) The
10 commissioner shall maintain an instructional materials account for
11 each school district. Each school year, the commissioner shall
12 deposit in the account for each district the amount of the
13 district's instructional materials allotment under Section
14 31.0211.

15 (b) The commissioner shall pay the cost of instructional
16 materials requisitioned by a school district under Section 31.103
17 using funds from the district's instructional materials account.

18 (c) A school district may also use funds in the district's
19 account to purchase electronic instructional materials or
20 technological equipment. The district shall submit to the
21 commissioner a request for funds for this purpose from the
22 district's account. The commissioner shall adopt rules regarding
23 the documentation a school district must submit to receive funds
24 under this subsection.

25 (d) Money deposited in a school district's instructional
26 materials account during each state fiscal biennium remains in the
27 account and available for use by the district for the entire

1 biennium. At the end of each biennium, a district with unused money
2 in the district's account may carry forward any remaining balance
3 to the next biennium.

4 (e) The commissioner shall adopt rules as necessary to
5 implement this section. The rules must include a requirement that a
6 school district provide the title and publication information for
7 any instructional materials requisitioned or purchased by the
8 district with the district's instructional materials allotment.

9 Sec. 31.0213. CERTIFICATION OF USE OF INSTRUCTIONAL
10 MATERIALS ALLOTMENT. Each school district shall annually certify
11 to the commissioner that the district's instructional materials
12 allotment has been used only for expenses allowed by Section
13 31.0211.

14 Sec. 31.0214. ADJUSTMENT FOR HIGH ENROLLMENT GROWTH
15 DISTRICTS. (a) Each year the commissioner shall adjust the
16 instructional materials allotment of school districts experiencing
17 high enrollment growth. The commissioner shall establish a
18 procedure for determining high enrollment growth districts
19 eligible to receive an adjustment under this section and the amount
20 of the instructional materials allotment those districts will
21 receive.

22 (b) The commissioner may adopt rules as necessary to
23 implement this section.

24 SECTION 24. Section 31.022, Education Code, is amended to
25 read as follows:

26 Sec. 31.022. INSTRUCTIONAL MATERIALS [~~TEXTBOOK~~] REVIEW AND
27 ADOPTION. (a) The State Board of Education shall adopt a review

1 and adoption cycle for instructional materials [~~textbooks~~] for
2 elementary grade levels, including prekindergarten, and secondary
3 grade levels, for each subject in the required curriculum under
4 Section 28.002. In adopting the cycle, the board:

5 (1) is not required to review and adopt instructional
6 materials for all grade levels in a single year; and

7 (2) shall give priority to instructional materials in
8 the following subjects:

9 (A) foundation curriculum subjects for which the
10 essential knowledge and skills have been substantially revised and
11 for which assessment instruments are required under Subchapter B,
12 Chapter 39, including career and technology courses that satisfy
13 foundation curriculum requirements as provided by Section
14 28.002(n);

15 (B) foundation curriculum subjects for which the
16 essential knowledge and skills have been substantially revised,
17 including career and technology courses that satisfy foundation
18 curriculum requirements as provided by Section 28.002(n);

19 (C) foundation curriculum subjects not described
20 by Paragraph (A) or (B), including career and technology courses
21 that satisfy foundation curriculum requirements as provided by
22 Section 28.002(n); and

23 (D) enrichment curriculum subjects.

24 (b) The board shall organize the cycle for subjects in the
25 foundation curriculum so that not more than one-fourth [~~one-sixth~~]
26 of the instructional materials [~~textbooks~~] for subjects in the
27 foundation curriculum are reviewed each biennium [~~year~~]. The board

1 shall adopt rules to provide for a full and complete investigation
2 of instructional materials [~~textbooks~~] for each subject in the
3 foundation curriculum [~~at least~~] every eight [~~six~~] years. The
4 adoption of instructional materials [~~textbooks~~] for a subject in
5 the foundation curriculum may be extended beyond the eight-year
6 [~~six-year~~] period only if the content of instructional materials
7 [~~textbooks~~] for a subject is sufficiently current.

8 (b-1) For purposes of the cycle described by Subsection (b),
9 the State Board of Education is considered to have adopted
10 instructional materials for English language arts, English as a
11 second language, and prekindergarten, as included in Proclamation
12 2011, for the biennium beginning September 1, 2011. This
13 subsection expires September 1, 2013.

14 (c) The board shall adopt rules to provide for a full and
15 complete investigation of instructional materials [~~textbooks~~] for
16 each subject in the enrichment curriculum on a cycle the board
17 considers appropriate.

18 (d) At least 12 [~~24~~] months before the beginning of the
19 school year for which instructional materials [~~textbooks~~] for a
20 particular subject and grade level will be adopted [~~purchased~~]
21 under the review and adoption cycle [~~adopted by the board~~], the
22 board shall publish notice of the review and adoption cycle for
23 those instructional materials [~~textbooks~~]. A request for
24 production must allow submission of open-source instructional
25 materials that are available for use by the state without charge on
26 the same basis as instructional materials offered for sale.

27 (d-1) A notice published under Subsection (d) must state

1 that a publisher of adopted instructional materials for a grade
2 level other than prekindergarten must submit an electronic sample
3 of the instructional materials as required by Sections 31.027(a)
4 and (b) and may not submit a print sample copy.

5 (e) The board shall designate a request for production of
6 instructional materials [~~textbooks~~] in a subject area and grade
7 level by the school year in which the instructional materials
8 [~~textbooks~~] are intended to be made available in classrooms and not
9 by the school year in which the board makes the request for
10 production.

11 (f) The board shall amend any request for production issued
12 for the purchase of instructional materials [~~textbooks~~] to conform
13 to the instructional materials [~~textbook~~] funding levels provided
14 by the General Appropriations Act for the year of implementation.

15 SECTION 25. Section 31.0221, Education Code, is amended to
16 read as follows:

17 Sec. 31.0221. MIDCYCLE REVIEW AND ADOPTION OF INSTRUCTIONAL
18 MATERIALS [~~TEXTBOOKS~~]. (a) The State Board of Education shall
19 adopt rules for the midcycle review and adoption of instructional
20 material [~~a textbook~~] for a subject for which instructional
21 materials [~~textbooks~~] are not currently under review by the board
22 under Section 31.022. The rules must require:

23 (1) the publisher of the instructional material
24 [~~textbook~~] to pay a fee to the board to cover the cost of the
25 midcycle review and adoption of the instructional material
26 [~~textbook~~];

27 (2) the publisher of the instructional material

1 ~~[textbook]~~ to enter into a contract with the board concerning the
2 instructional material ~~[textbook]~~ for a term that ends at the same
3 time as any contract entered into by the board for other
4 instructional materials ~~[another textbook]~~ for the same subject and
5 grade level; and

6 (3) a commitment from the publisher to provide the
7 instructional material ~~[textbook]~~ to school districts in the manner
8 specified by the publisher, which may include:

9 (A) providing the instructional material
10 ~~[textbook]~~ to any district in a regional education service center
11 area identified by the publisher; or

12 (B) providing a certain maximum number of
13 instructional materials ~~[textbooks]~~ specified by the publisher.

14 (b) Sections 31.023 and 31.024 apply to instructional
15 material ~~[a textbook]~~ adopted under this section. Section 31.027
16 does not apply to instructional material ~~[a textbook]~~ adopted under
17 this section.

18 SECTION 26. Section 31.023, Education Code, is amended to
19 read as follows:

20 Sec. 31.023. INSTRUCTIONAL MATERIAL LIST ~~[TEXTBOOK LISTS]~~.

21 (a) For each subject and grade level, the State Board of Education
22 shall adopt a list ~~[two lists]~~ of instructional materials
23 ~~[textbooks]~~. The ~~[conforming]~~ list includes each instructional
24 material ~~[textbook]~~ submitted for the subject and grade level that
25 meets applicable physical specifications adopted by the State Board
26 of Education and contains material covering at least half of the
27 elements ~~[each element]~~ of the essential knowledge and skills of

the subject and grade level in the student version of the instructional material [~~textbook~~], as well as in the teacher version of the instructional material [~~textbook~~], as determined by the State Board of Education under Section 28.002 and adopted under Section 31.024[~~. The nonconforming list includes each textbook submitted for the subject and grade level that:~~

[~~(1) meets applicable physical specifications adopted by the State Board of Education;~~

[~~(2) contains material covering at least half, but not all, of the elements of the essential knowledge and skills of the subject and grade level in the student version of the textbook, as well as in the teacher version of the textbook; and~~

[~~(3) is adopted under Section 31.024].~~

(a-1) The State Board of Education shall determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted. The board's determination under this subsection is final.

(b) Each instructional material [~~textbook~~] on the [~~a conforming or nonconforming~~] list must be free from factual errors.

SECTION 27. (a) If S.B. 290, Acts of the 82nd Legislature, Regular Session, 2011, does not become law, Section 31.0231, Education Code, is amended to read as follows:

Sec. 31.0231. COMMISSIONER'S [~~ELECTRONIC TEXTBOOK AND INSTRUCTIONAL MATERIAL~~] LIST. (a) The commissioner shall adopt a list of:

(1) electronic instructional material [~~textbooks~~];

1 and

2 (2) science [~~instructional~~] material that conveys
3 information to the student or otherwise contributes to the learning
4 process, including tools, models, and investigative materials
5 designed for use as part of the foundation curriculum for science in
6 kindergarten through grade five.

7 (b) A school district may select [~~an electronic textbook or~~
8 ~~instructional~~] material on the list adopted under Subsection (a) to
9 be funded by the district's instructional materials allotment
10 [~~state textbook fund~~] under Section 31.0211 [~~31.021~~].

11 (c) Before the commissioner places [~~an electronic textbook~~
12 ~~or instructional~~] material on the list adopted under Subsection
13 (a), the State Board of Education must be given an opportunity to
14 comment on the [~~electronic textbook or instructional~~] material. If
15 the commissioner places material on the list adopted under
16 Subsection (a), the State Board of Education may, not later than the
17 90th day after the date the material is placed on the list, require
18 the commissioner to remove the material from the list. Material [~~An~~
19 ~~electronic textbook or instructional material~~] placed on the list
20 adopted under Subsection (a):

21 (1) must be reviewed and recommended to the
22 commissioner by a panel of recognized experts in the subject area of
23 the [~~electronic textbook or instructional~~] material and experts in
24 education technology;

25 (2) must satisfy criteria adopted for the purpose by
26 commissioner rule; and

27 (3) must meet the National Instructional Materials

1 Accessibility Standard, to the extent practicable as determined by
2 the commissioner.

3 (d) The criteria adopted under Subsection (c)(2) must:

4 (1) include evidence of alignment with current
5 research in the subject for which the [~~electronic textbook or~~
6 ~~instructional~~] material is intended to be used;

7 (2) include coverage of the essential knowledge and
8 skills identified under Section 28.002 for the subject for which
9 the [~~electronic textbook or instructional~~] material is intended to
10 be used and identify:

11 (A) each of the essential knowledge and skills
12 for the subject and grade level or levels covered by the [~~electronic~~
13 ~~textbook or instructional~~] material; and

14 (B) the percentage of the essential knowledge and
15 skills for the subject and grade level or levels covered by the
16 [~~electronic textbook or instructional~~] material; and

17 (3) include appropriate training for teachers.

18 (e) The commissioner shall update, as necessary, the list
19 adopted under Subsection (a). Before the commissioner places [~~an~~
20 ~~electronic textbook or instructional~~] material on the updated list,
21 the requirements of Subsection (c) must be met. [~~Before the~~
22 ~~commissioner removes an electronic textbook or instructional~~
23 ~~material from the updated list, the removal must be recommended by a~~
24 ~~panel of recognized experts in the subject area of the electronic~~
25 ~~textbook or instructional material and experts in education~~
26 ~~technology.~~]

27 (f) After notice to the commissioner explaining in detail

1 the changes, the provider of [~~an electronic textbook or~~
2 ~~instructional~~] material on the list adopted under Subsection (a)
3 may update the navigational features or management system related
4 to the [~~electronic textbook or instructional~~] material.

5 (g) After notice to the commissioner and a review by the
6 commissioner, the provider of [~~an electronic textbook or~~
7 ~~instructional~~] material on the list adopted under Subsection (a)
8 may update the content of the [~~electronic textbook or~~
9 ~~instructional~~] material if needed to accurately reflect current
10 knowledge or information.

11 (h) The commissioner shall adopt rules as necessary to
12 implement this section. The rules must:

13 (1) be consistent with Section 31.151 regarding the
14 duties of publishers and manufacturers, as appropriate, and the
15 imposition of a reasonable administrative penalty; and

16 (2) require public notice of an opportunity for the
17 submission of [~~an electronic textbook or instructional~~] material.

18 (b) If S.B. 290, Acts of the 82nd Legislature, Regular
19 Session, 2011, becomes law, Section 31.0231, Education Code, as
20 effective in June, 2011, is amended to read as follows:

21 Sec. 31.0231. COMMISSIONER'S [~~ELECTRONIC TEXTBOOK AND~~
22 ~~INSTRUCTIONAL MATERIAL~~] LIST. (a) The commissioner shall adopt a
23 list of:

24 (1) electronic instructional material [~~textbooks~~];
25 and

26 (2) [~~instructional~~] material that conveys information
27 to the student or otherwise contributes to the learning process,

including tools, models, and investigative materials designed for use as part of the foundation curriculum for:

(A) science in kindergarten through grade five; and

(B) personal financial literacy in kindergarten through grade eight.

(b) A school district may select ~~[an electronic textbook or instructional]~~ material on the list adopted under Subsection (a) to be funded by the district's instructional materials allotment ~~[state textbook fund]~~ under Section 31.0211 ~~[31.021]~~.

(c) Before the commissioner places ~~[an electronic textbook or instructional]~~ material on the list adopted under Subsection (a), the State Board of Education must be given an opportunity to comment on the ~~[electronic textbook or instructional]~~ material. If the commissioner places material on the list adopted under Subsection (a), the State Board of Education may, not later than the 90th day after the date the material is placed on the list, require the commissioner to remove the material from the list. Material ~~[An electronic textbook or instructional material]~~ placed on the list adopted under Subsection (a):

(1) must be reviewed and recommended to the commissioner by a panel of recognized experts in the subject area of the ~~[electronic textbook or instructional]~~ material and experts in education technology;

(2) must satisfy criteria adopted for the purpose by commissioner rule; and

(3) must meet the National Instructional Materials

1 Accessibility Standard, to the extent practicable as determined by
2 the commissioner.

3 (d) The criteria adopted under Subsection (c)(2) must:

4 (1) include evidence of alignment with current
5 research in the subject for which the ~~[electronic textbook or~~
6 ~~instructional]~~ material is intended to be used;

7 (2) include coverage of the essential knowledge and
8 skills identified under Section 28.002 for the subject for which
9 the ~~[electronic textbook or instructional]~~ material is intended to
10 be used and identify:

11 (A) each of the essential knowledge and skills
12 for the subject and grade level or levels covered by the ~~[electronic~~
13 ~~textbook or instructional]~~ material; and

14 (B) the percentage of the essential knowledge and
15 skills for the subject and grade level or levels covered by the
16 ~~[electronic textbook or instructional]~~ material; and

17 (3) include appropriate training for teachers.

18 (e) The commissioner shall update, as necessary, the list
19 adopted under Subsection (a). Before the commissioner places ~~[an~~
20 ~~electronic textbook or instructional]~~ material on the updated list,
21 the requirements of Subsection (c) must be met. ~~[Before the~~
22 ~~commissioner removes an electronic textbook or instructional~~
23 ~~material from the updated list, the removal must be recommended by a~~
24 ~~panel of recognized experts in the subject area of the electronic~~
25 ~~textbook or instructional material and experts in education~~
26 ~~technology.]~~

27 (f) After notice to the commissioner explaining in detail

1 the changes, the provider of [~~an electronic textbook or~~
2 ~~instructional~~] material on the list adopted under Subsection (a)
3 may update the navigational features or management system related
4 to the [~~electronic textbook or instructional~~] material.

5 (g) After notice to the commissioner and a review by the
6 commissioner, the provider of [~~an electronic textbook or~~
7 ~~instructional~~] material on the list adopted under Subsection (a)
8 may update the content of the [~~electronic textbook or~~
9 ~~instructional~~] material if needed to accurately reflect current
10 knowledge or information.

11 (h) The commissioner shall adopt rules as necessary to
12 implement this section. The rules must:

13 (1) be consistent with Section 31.151 regarding the
14 duties of publishers and manufacturers, as appropriate, and the
15 imposition of a reasonable administrative penalty; and

16 (2) require public notice of an opportunity for the
17 submission of [~~an electronic textbook or instructional~~] material.

18 SECTION 28. Section 31.024, Education Code, is amended to
19 read as follows:

20 Sec. 31.024. ADOPTION BY STATE BOARD OF EDUCATION. (a) By
21 majority vote, the State Board of Education shall:

22 (1) place each submitted instructional material on the
23 [~~textbook on a conforming or nonconforming~~] list adopted under
24 Section 31.023; or

25 (2) reject instructional material [~~a textbook~~]
26 submitted for placement on that [~~a conforming or nonconforming~~]
27 list.

(b) Not later than December 1 of the year preceding the school year for which the instructional materials [~~textbooks~~] 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 [~~lists~~] of adopted instructional materials [~~textbooks~~] to each school district. [~~Each nonconforming list must include the reasons an adopted textbook is not eligible for the conforming list.~~]

SECTION 29. The heading to Section 31.0241, Education Code, is amended to read as follows:

Sec. 31.0241. ADOPTION OF OPEN-SOURCE INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~].

SECTION 30. Sections 31.0241(b) and (c), Education Code, are amended to read as follows:

(b) The State Board of Education shall place [~~an~~] open-source instructional material [~~textbook~~] for a secondary-level course submitted for adoption by an eligible institution on the [~~a conforming or nonconforming~~] list adopted under Section 31.023 if:

(1) the instructional material [~~textbook~~] is written, compiled, or edited primarily by faculty of the eligible institution who specialize in the subject area of the instructional material [~~textbook~~];

(2) the eligible institution identifies each contributing author;

(3) the appropriate department of the eligible institution certifies the instructional material [~~textbook~~] for

1 accuracy; ~~and~~

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

9 (A) for instructional material ~~[a textbook]~~ for a
10 senior-level course, a student who successfully completes a course
11 based on the instructional material ~~[textbook]~~ will be prepared,
12 without remediation, for entry into the eligible institution's
13 freshman-level course in that subject; or

14 (B) for instructional material ~~[a textbook]~~ for a
15 junior-level and senior-level course, a student who successfully
16 completes the junior-level course based on the instructional
17 material ~~[textbook]~~ will be prepared for entry into the
18 senior-level course; and

19 (5) by not later than the 90th day after the date the
20 instructional material is submitted and before placement of the
21 instructional material on the list, the board reviews and comments
22 on the instructional material.

23 (c) This section does not prohibit an eligible institution
24 from submitting instructional material ~~[a textbook]~~ for placement
25 on the ~~[a conforming or nonconforming]~~ list adopted under Section
26 31.023 through any other adoption process provided by this chapter.

27 SECTION 31. Section 31.026, Education Code, is amended to

1 read as follows:

2 Sec. 31.026. CONTRACT; PRICE. (a) The State Board of
3 Education shall execute a contract[+]

4 [~~(1)~~] for the purchase [~~of each adopted textbook other~~
5 ~~than an electronic textbook, and~~

6 [~~(2) for the purchase~~] or licensing of each adopted
7 instructional material [~~electronic textbook~~].

8 (b) A contract must require the publisher to provide the
9 number of instructional materials [~~textbooks~~] required by school
10 districts in this state for the term of the contract, which must
11 coincide with the board's adoption cycle.

12 (c) As applicable, a contract must provide for the purchase
13 or licensing of instructional material [~~a textbook~~] at a specific
14 price, which may not exceed the lowest price paid by any other state
15 or any school or school district. The price must be fixed for the
16 term of the contract.

17 (d) [~~(e)~~] This section does not apply to [~~an~~] open-source
18 instructional material [~~textbook~~].

19 SECTION 32. Section 31.0261, Education Code, is amended to
20 read as follows:

21 Sec. 31.0261. CONTRACTS FOR PRINTING OF OPEN-SOURCE
22 INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]. The State Board of Education
23 may execute a contract for the printing of [~~an~~] open-source
24 instructional materials placed [~~textbook listed~~] on the
25 [~~conforming or nonconforming~~] list adopted under Section 31.023.
26 The contract must allow a school district to requisition printed
27 copies of [~~an~~] open-source instructional materials [~~textbook~~] as

provided by Section 31.103.

SECTION 33. (a) If S.B. 391, Acts of the 82nd Legislature, Regular Session, 2011, does not become law, Section 31.027, Education Code, is amended to read as follows:

Sec. 31.027. INFORMATION TO SCHOOL DISTRICTS; ELECTRONIC SAMPLE [COPIES]. (a) A publisher shall provide each school district and open-enrollment charter school with information that fully describes each of the publisher's submitted instructional materials ~~[adopted textbooks]~~. On request of a school district, a publisher shall provide an electronic ~~[a]~~ sample ~~[copy]~~ of submitted instructional material ~~[an adopted textbook]~~.

(b) A publisher shall provide an electronic ~~[at least two]~~ sample ~~[copies]~~ of each submitted instructional material ~~[adopted textbook]~~ to be maintained at each regional education service center.

(c) ~~[(d)]~~ This section does not apply to ~~[an]~~ open-source instructional material ~~[textbook]~~.

(b) If S.B. 391, Acts of the 82nd Legislature, Regular Session, 2011, becomes law, Section 31.027, Education Code, as effective September 1, 2011, is amended to read as follows:

Sec. 31.027. INFORMATION TO SCHOOL DISTRICTS; ELECTRONIC SAMPLE. (a) A publisher shall provide each school district and open-enrollment charter school with information that fully describes each of the publisher's submitted instructional materials ~~[adopted textbooks]~~. On request of a school district, a publisher shall provide an electronic sample of submitted instructional material ~~[an adopted textbook]~~.

1 (b) A publisher shall provide an electronic sample of each
2 submitted instructional material [~~adopted textbook~~] to be
3 maintained at each regional education service center.

4 (c) [~~(d)~~] This section does not apply to [~~an~~] open-source
5 instructional material [~~textbook~~].

6 SECTION 34. Section 31.028, Education Code, is amended to
7 read as follows:

8 Sec. 31.028. SPECIAL INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~].

9 (a) The commissioner [~~State Board of Education~~] may purchase
10 special instructional materials [~~textbooks~~] for the education of
11 blind and visually impaired students in public schools. In
12 addition, for a teacher who is blind or visually impaired, the
13 commissioner [~~board~~] shall provide a teacher's edition in Braille
14 or large type, as requested by the teacher, for each instructional
15 material [~~textbook~~] the teacher uses in the instruction of
16 students. The teacher edition must be available at the same time
17 the student instructional materials [~~textbooks~~] become available.

18 (b) The publisher of [~~an~~] adopted instructional material
19 [~~textbook~~] shall provide the agency with computerized
20 instructional material [~~textbook~~] files for the production of
21 Braille instructional materials [~~textbooks~~] or other versions of
22 instructional materials [~~textbooks~~] to be used by students with
23 disabilities, on request of the commissioner [~~State Board of~~
24 ~~Education~~]. A publisher shall arrange computerized instructional
25 material [~~textbook~~] files in one of several optional formats
26 specified by the commissioner [~~State Board of Education~~].

27 (c) The commissioner [~~board~~] may also enter into agreements

1 providing for the acceptance, requisition, and distribution of
2 special instructional materials [~~textbooks~~] and instructional aids
3 pursuant to 20 U.S.C. Section 101 et seq. for use by students
4 enrolled in:

5 (1) public schools; or

6 (2) private nonprofit schools, if state funds, other
7 than for administrative costs, are not involved.

8 (d) In this section:

9 (1) "Blind or visually impaired student" includes any
10 student whose visual acuity is impaired to the extent that the
11 student is unable to read the text [~~print~~] in [~~a~~] regularly adopted
12 instructional material [~~textbook~~] used in the student's class.

13 (2) "Special instructional material [~~textbook~~]" means
14 instructional material [~~a textbook~~] in Braille, large type or any
15 other medium or any apparatus that conveys information to a student
16 or otherwise contributes to the learning process.

17 SECTION 35. Section 31.029, Education Code, is amended to
18 read as follows:

19 Sec. 31.029. BILINGUAL INSTRUCTIONAL MATERIALS
20 [~~TEXTBOOKS~~]. (a) A school district [~~The board~~] shall purchase with
21 the district's instructional materials allotment or otherwise
22 acquire instructional materials [~~textbooks~~] for use in bilingual
23 education classes.

24 (b) The commissioner shall adopt rules regarding the
25 purchase of instructional materials under this section.

26 SECTION 36. Section 31.030, Education Code, is amended to
27 read as follows:

1 Sec. 31.030. USED INSTRUCTIONAL MATERIALS [~~TEXTBOOKS~~]. The
2 State Board of Education shall adopt rules to ensure that used
3 instructional materials [~~textbooks~~] sold to school districts and
4 open-enrollment charter schools are not sample copies that contain
5 factual errors. The rules may provide for the imposition of an
6 administrative penalty in accordance with Section 31.151 against a
7 seller of used instructional materials [~~textbooks~~] who knowingly
8 violates this section.

9 SECTION 37. The heading to Section 31.035, Education Code,
10 is amended to read as follows:

11 Sec. 31.035. SUPPLEMENTAL INSTRUCTIONAL MATERIALS
12 [~~TEXTBOOKS~~].

13 SECTION 38. Sections 31.035(a), (b), (c), (d), and (f),
14 Education Code, are amended to read as follows:

15 (a) Notwithstanding any other provision of this subchapter,
16 the State Board of Education may adopt supplemental instructional
17 materials [~~textbooks~~] that are not on the [~~conforming or~~
18 ~~nonconforming~~] list adopted under Section 31.023. The State Board
19 of Education may adopt [~~a~~] supplemental instructional material
20 [~~textbook~~] under this section only if the instructional material
21 [~~textbook~~]:

22 (1) contains material covering one or more primary
23 focal points or primary topics of a subject in the required
24 curriculum under Section 28.002, as determined by the State Board
25 of Education;

26 (2) is not designed to serve as the sole instructional
27 material [~~textbook~~] for a full course;

(3) meets applicable physical specifications adopted by the State Board of Education; and

(4) is free from factual errors.

(b) The State Board of Education shall identify the essential knowledge and skills identified under Section 28.002 that are covered by ~~[a]~~ supplemental instructional material ~~[textbook]~~ adopted by the board under this section.

(c) Supplemental instructional material ~~[A supplemental textbook]~~ is subject to the review and adoption cycle provisions, including the midcycle review and adoption cycle provisions, of this subchapter.

(d) A school district or open-enrollment charter school may requisition ~~[a]~~ supplemental instructional material ~~[textbook]~~ adopted under this section only if the district or school ~~[+~~

~~[(1) uses textbook credits received under Section 31.1011 to purchase the supplemental textbook; or~~

~~[(2) instead of requisitioning a textbook on the conforming list under Section 31.023 for a course in the foundation curriculum under Section 28.002,~~ requisitions the supplemental instructional material ~~[textbook]~~ along with other supplemental instructional materials ~~[textbooks]~~ or instructional materials ~~[textbooks]~~ on the ~~[nonconforming]~~ list adopted under Section 31.023 that in combination cover each element of the essential knowledge and skills for the course for which the district or school is requisitioning the supplemental instructional materials ~~[textbooks]~~.

(f) A school district or open-enrollment charter school

that requisitions supplemental instructional materials [~~textbooks~~
~~under Subsection (d)(2)]~~ shall certify to the agency that the
supplemental instructional materials [~~textbooks~~], in combination
with any other instructional materials [~~textbooks~~] or supplemental
instructional materials [~~textbooks~~] used by the district or school,
cover the essential knowledge and skills identified under Section
28.002 by the State Board of Education for the subject and grade
level for which the district or school is requisitioning the
supplemental instructional materials [~~textbooks~~].

SECTION 39. The heading to Subchapter B-1, Chapter 31,
Education Code, is amended to read as follows:

SUBCHAPTER B-1. STATE-DEVELOPED OPEN-SOURCE INSTRUCTIONAL
MATERIALS [~~TEXTBOOKS~~]

SECTION 40. Section 31.071, Education Code, is amended to
read as follows:

Sec. 31.071. PURCHASE AUTHORITY. (a) The commissioner may
purchase state-developed open-source instructional materials
[~~textbooks~~] in accordance with this subchapter.

(b) The commissioner:

(1) shall purchase any state-developed open-source
instructional materials [~~textbooks~~] through a competitive process;
and

(2) may purchase more than one state-developed
open-source instructional material [~~textbook~~] for a subject or
grade level.

(c) State-developed [~~A state-developed~~] open-source
instructional material [~~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 instructional material ~~[textbook]~~ after purchase.

(d) The commissioner may issue a request for proposals for ~~[a]~~ state-developed open-source instructional material ~~[textbook]~~:

(1) in accordance with the instructional material ~~[textbook]~~ review and adoption cycle under Section 31.022; or

(2) at any other time the commissioner determines that a need exists for additional instructional material ~~[textbook]~~ options.

(e) The costs of administering this subchapter and purchasing state-developed open-source instructional materials ~~[textbooks]~~ shall be paid from the state instructional materials ~~[textbook]~~ fund, as determined by the commissioner and subject to Section 31.021.

SECTION 41. Sections 31.072(a) and (b), Education Code, are amended to read as follows:

(a) State-developed ~~[A—state-developed]~~ open-source instructional material ~~[textbook]~~ must:

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

(2) meet the requirements for inclusion on the instructional material ~~[a conforming or nonconforming textbook]~~ list adopted under Section 31.023.

(b) Following a curriculum revision by the State Board of Education, the commissioner shall require the revision of ~~[a]~~

1 state-developed open-source instructional material [~~textbook~~]
2 relating to that curriculum. The commissioner may, at any time,
3 require an additional revision of [a] state-developed open-source
4 instructional material [~~textbook~~] or contract for ongoing
5 revisions of state-developed open-source instructional material [a
6 ~~textbook~~] for a period not to exceed the period under Section 31.022
7 for which instructional material [a ~~textbook~~] for that subject and
8 grade level may be adopted. The commissioner shall use a
9 competitive process to request proposals to revise [a]
10 state-developed open-source instructional material [~~textbook~~]
11 under this subsection.

12 SECTION 42. The heading to Section 31.073, Education Code,
13 is amended to read as follows:

14 Sec. 31.073. SELECTION BY SCHOOL DISTRICT [~~COST~~].

15 SECTION 43. Sections 31.073(c) and (d), Education Code, are
16 amended to read as follows:

17 (c) Notwithstanding Section 31.022, a school district or
18 open-enrollment charter school may adopt [a] state-developed
19 open-source instructional material [~~textbook~~] at any time,
20 regardless of the instructional material [~~textbook~~] review and
21 adoption cycle under that section.

22 (d) A school district or open-enrollment charter school may
23 not be charged for selection of [a] state-developed open-source
24 instructional material [~~textbook~~] in addition to instructional
25 material [a ~~textbook~~] adopted under Subchapter B.

26 SECTION 44. Section 31.074, Education Code, is amended to
27 read as follows:

1 Sec. 31.074. DISTRIBUTION. (a) The commissioner shall
2 provide for the distribution of state-developed open-source
3 instructional materials [~~textbooks~~] in a manner consistent with
4 distribution of instructional materials [~~textbooks~~] adopted under
5 Subchapter B.

6 (b) The commissioner may use a competitive process to
7 contract for printing or other reproduction of [~~a~~] state-developed
8 open-source instructional material [~~textbook~~] on behalf of a school
9 district or open-enrollment charter school. The commissioner may
10 not require a school district or open-enrollment charter school to
11 contract with a state-approved provider for the printing or
12 reproduction of [~~a~~] state-developed open-source instructional
13 material [~~textbook~~].

14 SECTION 45. Section 31.075, Education Code, is amended to
15 read as follows:

16 Sec. 31.075. OWNERSHIP; LICENSING. (a) State-developed [~~A~~
17 ~~state-developed~~] open-source instructional material [~~textbook~~] is
18 the property of the state.

19 (b) The commissioner shall provide a license to each public
20 school in the state, including a school district, an
21 open-enrollment charter school, and a state or local agency
22 educating students in any grade from prekindergarten through high
23 school, to use and reproduce [~~a~~] state-developed open-source
24 instructional material [~~textbook~~].

25 (c) The commissioner may provide a license to use [~~a~~]
26 state-developed open-source instructional material [~~textbook~~] to
27 an entity not listed in Subsection (b). In determining the cost of

1 a license under this subsection, the commissioner shall seek, to
2 the extent feasible, to recover the costs of developing, revising,
3 and distributing state-developed open-source instructional
4 materials [~~textbooks~~].

5 SECTION 46. Section 31.076(b), Education Code, is amended
6 to read as follows:

7 (b) A decision by the commissioner regarding the purchase,
8 revision, cost, or distribution of [~~a~~] state-developed open-source
9 instructional material [~~textbook~~] is final and may not be appealed.

10 SECTION 47. Section 31.077, Education Code, is amended to
11 read as follows:

12 Sec. 31.077. ADOPTION SCHEDULE. The commissioner shall
13 develop a schedule for the adoption of state-developed open-source
14 instructional materials [~~textbooks~~] under this subchapter. In
15 developing the adoption schedule under this section, the
16 commissioner shall consider:

- 17 (1) the availability of funds;
18 (2) the existing instructional material [~~textbook~~]
19 adoption cycles under Subchapter B; and
20 (3) the availability of instructional materials
21 [~~textbooks~~] for development or purchase by the state.

22 SECTION 48. The heading to Section 31.101, Education Code,
23 is amended to read as follows:

24 Sec. 31.101. SELECTION AND PURCHASE OF INSTRUCTIONAL
25 MATERIALS [~~TEXTBOOKS~~] BY SCHOOL DISTRICTS.

26 SECTION 49. Section 31.101, Education Code, is amended by
27 amending Subsections (a), (d), and (e) and adding Subsection (f) to

read as follows:

(a) 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:

(1) for a subject in the foundation curriculum, notify the State Board of Education of the instructional materials ~~[textbooks]~~ selected by the board of trustees or governing body for the following school year from ~~[among]~~ the instructional materials ~~[textbooks on the appropriate conforming or nonconforming]~~ list, including the list adopted under Section 31.0231; or

(2) for a subject in the enrichment curriculum:

(A) notify the State Board of Education of each instructional material ~~[textbook]~~ selected by the board of trustees or governing body for the following school year from ~~[among]~~ the instructional materials ~~[textbooks on the appropriate conforming or nonconforming]~~ list, including the list adopted under Section 31.0231; or

(B) notify the State Board of Education that the board of trustees or governing body has selected instructional material ~~[a textbook]~~ that is not on the ~~[conforming or nonconforming]~~ list.

(d) For instructional material ~~[a textbook]~~ that is not on the ~~[conforming or nonconforming]~~ list, a school district or open-enrollment charter school must use the instructional material ~~[textbook]~~ for the period of the review and adoption cycle the State Board of Education has established for the subject and grade level

for which the instructional material [~~textbook~~] is used.

(e) A school district or open-enrollment charter school that selects [~~a~~] subscription-based [~~electronic textbook or~~] instructional material on the [~~conforming~~] list adopted under Section 31.023 or electronic instructional material on the list adopted by the commissioner under Section 31.0231 may cancel the subscription and subscribe to [~~a~~] new [~~electronic textbook or~~] instructional material on the [~~conforming~~] list adopted under Section 31.023 or electronic instructional material on the list adopted by the commissioner under Section 31.0231 before the end of the state contract period under Section 31.026 if:

(1) the district or school has used the [~~electronic textbook or~~] instructional material for at least one school year; and

(2) the agency approves the change based on a written request to the agency by the district or school that specifies the reasons for changing the [~~electronic textbook or~~] instructional material used by the district or school.

(f) The commissioner shall maintain an online requisition system for school districts to requisition instructional materials to be purchased with the district's instructional materials allotment.

SECTION 50. Section 31.102, Education Code, is amended to read as follows:

Sec. 31.102. TITLE AND CUSTODY. (a) Each instructional material [~~textbook~~] purchased as provided by this chapter for a school district or an open-enrollment charter school is the

property of the district or school ~~[this state]~~.

(b) Subsection (a) applies to ~~[an]~~ electronic instructional material ~~[textbook]~~ only to the extent of any applicable licensing agreement.

(c) The board of trustees of a school district or the governing body of an open-enrollment charter school ~~[is the legal custodian of textbooks purchased as provided by this chapter for the district or school. The board of trustees]~~ shall distribute printed instructional material ~~[textbooks]~~ to students in the manner that the board or governing body determines is most effective and economical.

SECTION 51. The heading to Section 31.103, Education Code, is amended to read as follows:

Sec. 31.103. INSTRUCTIONAL MATERIAL ~~[TEXTBOOK]~~
REQUISITIONS.

SECTION 52. Sections 31.103(b), (c), and (d), Education Code, are amended to read as follows:

(b) ~~[A requisition for textbooks for the following school year shall be based on the maximum attendance reports under Subsection (a), plus an additional 10 percent, except as otherwise provided.]~~ A school district or open-enrollment charter school shall make a requisition for instructional material using the online requisition program maintained by ~~[a textbook on the conforming or nonconforming list through]~~ the commissioner ~~[to the state depository designated by the publisher or as provided by State Board of Education rule, as applicable,]~~ not later than June 1 of each year. The ~~[designated state depository or, if the publisher~~

1 ~~or manufacturer does not have a designated textbook depository in~~
 2 ~~this state under Section 31.151(a)(6)(B), the]~~ publisher or
 3 manufacturer shall fill a requisition approved by the agency [~~at~~
 4 ~~any other time in the case of an emergency]~~. [~~As made necessary by~~
 5 ~~available funds, the commissioner shall reduce the additional~~
 6 ~~percentage of attendance for which a district or school may~~
 7 ~~requisition textbooks. The commissioner may, on application of a~~
 8 ~~district or school that is experiencing high enrollment growth,~~
 9 ~~increase the additional percentage of attendance for which the~~
 10 ~~district or school may requisition textbooks.]~~

11 (c) In making a requisition under this section, a school
 12 district or open-enrollment charter school may requisition
 13 instructional materials [~~textbooks~~] on the [~~conforming or~~
 14 ~~nonconforming~~] list adopted under Section 31.023 for grades above
 15 the grade level in which a student is enrolled[, ~~except that the~~
 16 ~~total quantity of textbooks requisitioned under this section may~~
 17 ~~not exceed the limit prescribed by Subsection (b)]~~.

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

24 (1) electronic access to the instructional material
 25 [~~textbook~~] at no cost to the student; or

26 (2) printed copies of the portion of the instructional
 27 material [~~textbook~~] that will be used in the course.

SECTION 53. Section 31.104, Education Code, is amended to read as follows:

Sec. 31.104. DISTRIBUTION AND HANDLING. (a) The board of trustees of a school district or the governing body of an open-enrollment charter school may delegate to an employee the authority to requisition, distribute, and manage the inventory of instructional materials [~~textbooks~~] in a manner consistent with this chapter and rules adopted under this chapter.

(b) A school district or open-enrollment charter school may order replacements for instructional materials [~~textbooks~~] that have been lost or damaged directly from[+]

~~[(1) the textbook depository;~~

~~[(2)] the [~~textbook~~] publisher of the instructional materials or [manufacturer if the textbook publisher or manufacturer does not have a designated textbook depository in this state under Section 31.151(a)(6)(B); or~~

~~[(3)] any source for a printed copy of [an] open-source instructional material~~ [~~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 student must return all instructional materials [~~textbooks~~] to the teacher at the end of the school year or when the student withdraws from school.

(d) Each student, or the student's parent or guardian, is

1 responsible for all instructional materials [~~each textbook,~~
2 ~~including an electronic textbook,~~] and [~~all~~] technological
3 equipment not returned in an acceptable condition by the student. A
4 student who fails to return in an acceptable condition all
5 instructional materials [~~textbooks, including electronic~~
6 ~~textbooks,~~] and technological equipment forfeits the right to free
7 instructional materials [~~textbooks, including electronic~~
8 ~~textbooks,~~] and technological equipment until all instructional
9 materials [~~each textbook, including an electronic textbook,~~] and
10 [~~all~~] technological equipment previously issued but not returned in
11 an acceptable condition are [~~is~~] paid for by the student, parent, or
12 guardian. As provided by policy of the board of trustees or
13 governing body, a school district or open-enrollment charter school
14 may waive or reduce the payment requirement if the student is from a
15 low-income family. The district or school shall allow the student
16 to use instructional materials [~~textbooks, including electronic~~
17 ~~textbooks,~~] and technological equipment at school during each
18 school day. If instructional materials [~~a textbook, including an~~
19 ~~electronic textbook,~~] or technological equipment is not returned in
20 an acceptable condition or paid for, the district or school may
21 withhold the student's records. A district or school may not,
22 under this subsection, prevent a student from graduating,
23 participating in a graduation ceremony, or receiving a diploma.
24 The commissioner by rule shall adopt criteria for determining
25 whether instructional materials [~~a textbook, including an~~
26 ~~electronic textbook,~~] and technological equipment are returned in
27 an acceptable condition.

1 (e) The board of trustees of a school district may not
2 require an employee of the district who acts in good faith to pay
3 for instructional materials [~~a textbook, electronic textbook,~~] or
4 technological equipment that is damaged, stolen, misplaced, or not
5 returned. A school district employee may not waive this provision
6 by contract or any other means, except that a district may enter
7 into a written agreement with a school employee whereby the
8 employee assumes financial responsibility for electronic
9 instructional material [~~textbook~~] or technological equipment usage
10 off school property or outside of a school-sponsored event in
11 consideration for the ability of the school employee to use the
12 electronic instructional material [~~textbook~~] or technological
13 equipment for personal business. Such a written agreement shall be
14 separate from the employee's contract of employment, if applicable,
15 and shall clearly inform the employee of the amount of the financial
16 responsibility and advise the employee to consider obtaining
17 appropriate insurance. An employee may not be required to agree to
18 such an agreement as a condition of employment.

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

25 (h) This section does not apply to an electronic copy of
26 [~~an~~] open-source instructional material [~~textbook~~].

27 SECTION 54. Section 31.105, Education Code, is amended to

read as follows:

Sec. 31.105. SALE OR DISPOSAL OF INSTRUCTIONAL MATERIALS AND TECHNOLOGICAL EQUIPMENT [~~TEXTBOOKS~~]. (a) The board of trustees of a school district or governing body of an open-enrollment charter school may sell printed instructional materials on the date the instructional material is discontinued for use in the public schools by the State Board of Education or the commissioner. The board of trustees or governing body may also sell electronic instructional materials and technological equipment owned by the district or school. Any funds received by a district or school from a sale authorized by this subsection must be used to purchase instructional materials and technological equipment allowed under Section 31.0211 [~~textbooks, other than electronic textbooks, to a student or another school at the state contract price. The district shall send money from the sale of textbooks to the commissioner as required by the commissioner. The commissioner shall deposit the money in the state textbook fund~~].

(b) The board of trustees of a school district or governing body of an open-enrollment charter school shall determine how the district or school will dispose of discontinued printed instructional materials, electronic instructional materials, and technological equipment.

(c) The board of trustees of a school district or governing body of an open-enrollment charter school may dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by the State Board of Education if the board of trustees or governing body determines

1 that the instructional material is not needed by the district or
2 school and the board of trustees or governing body does not
3 reasonably expect that the instructional material will be needed.
4 A district or school must notify the commissioner of any
5 instructional material the district or school disposes of under
6 this subsection.

7 SECTION 55. Section 31.106, Education Code, is amended to
8 read as follows:

9 Sec. 31.106. USE OF LOCAL FUNDS. In addition to any
10 instructional material [~~textbook~~] selected under this chapter, a
11 school district or open-enrollment charter school may use local
12 funds to purchase any instructional materials [~~textbooks~~].

13 SECTION 56. Section 31.151, Education Code, is amended by
14 amending Subsections (a) and (d) and adding Subsection (e) to read
15 as follows:

16 (a) A publisher or manufacturer of instructional materials
17 [~~textbooks~~]:

18 (1) shall furnish any instructional material
19 [~~textbook~~] the publisher or manufacturer offers in this state[7] at
20 a price that does not exceed the lowest price at which the publisher
21 offers that instructional material [~~textbook~~] for adoption or sale
22 to any state, public school, or school district in the United
23 States;

24 (2) shall automatically reduce the price of
25 instructional material [~~a textbook~~] sold for use in a school
26 district or open-enrollment charter school to the extent that the
27 price is reduced elsewhere in the United States;

1 (3) shall provide any instructional material
2 ~~[textbook]~~ or ancillary item free of charge in this state to the
3 same extent that the publisher or manufacturer provides the
4 instructional material ~~[textbook]~~ or ancillary item free of charge
5 to any state, public school, or school district in the United
6 States;

7 (4) shall guarantee that each copy of instructional
8 material ~~[a textbook]~~ sold in this state is at least equal in
9 quality to copies of that instructional material ~~[textbook]~~ sold
10 elsewhere in the United States and is free from factual error;

11 (5) may not become associated or connected with,
12 directly or indirectly, any combination in restraint of trade in
13 instructional materials ~~[textbooks]~~ or enter into any
14 understanding or combination to control prices or restrict
15 competition in the sale of instructional materials ~~[textbooks]~~ for
16 use in this state;

17 (6) shall~~+~~
18 ~~[(A) maintain a depository in this state or~~
19 ~~arrange with a depository in this state to receive and fill orders~~
20 ~~for textbooks, other than open-source textbooks, on-line~~
21 ~~textbooks, or on-line textbook components, consistent with State~~
22 ~~Board of Education rules, or~~

23 ~~[(B)]~~ deliver instructional materials
24 ~~[textbooks]~~ to a school district or open-enrollment charter school
25 ~~[without a delivery charge to the school district, open-enrollment~~
26 ~~charter school, or state, if:~~

27 ~~[(i) the publisher or manufacturer does not~~

~~maintain or arrange with a depository in this state under Paragraph (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 instructional materials ~~[textbooks]~~ is acknowledged, provide to school districts or open-enrollment charter schools an accurate shipping date for instructional materials ~~[textbooks]~~ that are back-ordered;

(8) shall guarantee delivery of instructional materials ~~[textbooks]~~ at least 10 business days before the opening day of school of the year for which the instructional materials ~~[textbooks]~~ are ordered if the instructional materials ~~[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 instructional material ~~[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.

(d) A penalty collected under this section shall be deposited to the credit of the state instructional materials ~~[textbook]~~ fund.

(e) An eligible institution, as defined by Section 31.0241(a), that offers open-source instructional materials under Section 31.0241 is not a publisher or manufacturer for purposes of this section.

SECTION 57. The heading to Section 31.152, Education Code, is amended to read as follows:

Sec. 31.152. ACCEPTING REBATE ON [~~TEXTBOOKS, ELECTRONIC TEXTBOOKS,~~] INSTRUCTIONAL MATERIALS[~~7~~] OR TECHNOLOGICAL EQUIPMENT.

SECTION 58. Sections 31.152(a), (b), and (d), Education Code, are amended to read as follows:

(a) A school trustee, administrator, or teacher commits an offense if that person receives any commission or rebate on any [~~textbooks, electronic textbooks,~~] instructional materials[~~7~~] or technological equipment used in the schools with which the person is associated as a trustee, administrator, or teacher.

(b) A school trustee, administrator, or teacher commits an offense if the person accepts a gift, favor, or service that:

(1) is given to the person or the person's school;

(2) might reasonably tend to influence a trustee, administrator, or teacher in the selection of [~~a textbook, electronic textbook,~~] instructional material[~~7~~] or technological equipment; and

(3) could not be lawfully purchased with state instructional materials funds [~~from the state textbook fund~~].

(d) In this section, "gift, favor, or service" does not include:

(1) staff development, in-service, or teacher training; or

(2) ancillary [~~instructional~~] materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

SECTION 59. The heading to Section 31.153, Education Code, is amended to read as follows:

Sec. 31.153. VIOLATION OF FREE INSTRUCTIONAL MATERIALS [~~TEXTBOOK~~] LAW.

SECTION 60. Section 31.153(a), Education Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly violates any law providing for the purchase or distribution of free instructional materials [~~textbooks~~] for the public schools.

SECTION 61. Section 39.023(c), Education Code, is amended to read as follows:

(c) The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I, Algebra II, geometry, biology, chemistry, physics, English I, English II, English III, world geography, world history, and United States history. The Algebra I, Algebra II, and geometry end-of-course assessment instruments must be administered with the aid of technology. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this subsection. A district [and] shall adopt a policy addressing whether [that requires] a student's performance on an end-of-course assessment instrument for a course listed in this subsection in which the student is enrolled will be used by the district in determining [to account for 15 percent of] the student's final grade for the course and, if so, the manner in which the student's performance on an end-of-course assessment instrument will be used in determining the student's final grade

1 for the course. If a student retakes an end-of-course assessment
 2 instrument for a course listed in this subsection, as provided by
 3 Section 39.025, a ~~[school]~~ district shall act in accordance with
 4 district policy concerning whether ~~[is not required]~~ to use and, if
 5 so, the manner in which to use the student's performance on the
 6 subsequent administration or administrations of the assessment
 7 instrument in determining ~~[to determine]~~ the student's final grade
 8 for the course. If a student is in a special education program
 9 under Subchapter A, Chapter 29, the student's admission, review,
 10 and dismissal committee shall determine whether any allowable
 11 modification is necessary in administering to the student an
 12 assessment instrument required under this subsection. The State
 13 Board of Education shall administer the assessment instruments.
 14 The State Board of Education shall adopt a schedule for the
 15 administration of end-of-course assessment instruments that
 16 complies with the requirements of Subsection (c-3).

17 SECTION 62. Subchapter B, Chapter 39, Education Code, is
 18 amended by adding Section 39.0236 to read as follows:

19 Sec. 39.0236. REDUCED ASSESSMENT REQUIREMENTS PILOT
 20 PROGRAM. (a) In this section, "pilot program" means the reduced
 21 assessment requirements pilot program established under this
 22 section.

23 (b) The commissioner by rule shall establish a pilot program
 24 in which certain students in grades three through eight at a
 25 participating campus have reduced assessment requirements, as
 26 provided by this section.

27 (c) A campus may apply to the commissioner to participate in

1 the pilot program.

2 (d) The commissioner shall select at least 20 campuses to
3 participate in the pilot program. In selecting campuses for
4 participation in the pilot program, the commissioner shall ensure
5 that, to the greatest extent practicable, the diverse demographic,
6 geographic, socioeconomic, and academic characteristics found in
7 this state are represented and that elementary and middle or junior
8 high schools are represented.

9 (e) Notwithstanding Section 39.023, a student attending a
10 campus participating in the pilot program, other than a student
11 administered assessment instruments under Section 39.023(b) or (l)
12 or granted an exemption from administration of an assessment
13 instrument under Section 39.027, shall be assessed using assessment
14 instruments adopted or developed under Section 39.023(a) in:

15 (1) mathematics:

16 (A) in grades three and five without the aid of
17 technology; and

18 (B) in grade eight with the aid of technology on
19 any assessment instrument that includes algebra;

20 (2) reading, in grades three, five, and eight;

21 (3) writing, including spelling and grammar, in grades
22 four and seven;

23 (4) social studies, in grade eight; and

24 (5) science, in grades five and eight.

25 (f) A student shall be assessed in grade four in mathematics
26 or reading using an assessment instrument administered under
27 Subsection (e) in grade three if, on the final assessment

instrument in that subject administered to the student in grade three during the preceding school year, the student did not achieve a score determined through the analysis of previous years' testing data to predict with a high level of statistical confidence that a student will pass the following year.

(g) A student shall be assessed in grade six in mathematics or reading using an assessment instrument administered under Subsection (e) in grade five if, on the final assessment instrument in that subject administered to the student in grade five during the preceding school year, the student did not achieve a score determined through the analysis of previous years' testing data to predict with a high level of statistical confidence that a student will pass the following year.

(h) A student shall be assessed in grade seven in mathematics or reading using an assessment instrument administered under Subsection (g) in grade six if, on the final assessment instrument in that subject administered to the student in grade six during the preceding school year, the student did not achieve a score determined through the analysis of previous years' testing data to predict with a high level of statistical confidence that a student will pass the following year.

(i) A participating campus may, for its own use in determining whether students are performing at a satisfactory level, administer to a student at the appropriate grade level, other than a student required to be assessed under this section, an assessment instrument. At the request of a participating campus, the agency shall provide, allow for the administration of, and

1 score each assessment instrument administered under this
2 subsection in the same manner and at the same cost as for assessment
3 instruments required to be administered under the applicable
4 subsection. The results of an assessment instrument administered
5 under this subsection may not be included as an indicator of student
6 achievement under Section 39.054 or any other provision.

7 (j) If there is a conflict between this section and federal
8 law as a result of forgoing under this section certain
9 administration of assessment instruments to students who have
10 recently performed successfully on assessment instruments
11 assessing the same subject, the commissioner shall seek a waiver
12 from the application of conflicting federal law for a campus
13 participating in the pilot program.

14 (k) The commissioner shall adopt rules as necessary to
15 administer this section.

16 (l) The commissioner shall conduct a study to determine
17 whether the pilot program has been successful. The study must
18 compare the achievements in mathematics and reading of students at
19 participating and nonparticipating campuses in similar geographic
20 areas that have students of similar demographic, socioeconomic, and
21 academic characteristics. The study must evaluate the differences
22 between mathematics and reading performance of students at campuses
23 participating in the pilot program and those in matched
24 nonparticipating campuses. Not later than September 1, 2014, the
25 commissioner shall submit the results of the study to the
26 legislature.

27 (m) The commissioner by rule shall establish the pilot

1 program for the 2012-2013 and 2013-2014 school years.

2 (n) This section expires December 31, 2014.

3 SECTION 63. Section 39.025, Education Code, is amended by
4 amending Subsections (a), (a-1), (a-2), (a-3), (b), (b-2), (e),
5 (f), and (g) and adding Subsections (a-4) and (a-5) to read as
6 follows:

7 (a) The commissioner shall adopt rules requiring a student
8 participating in the recommended or advanced high school program to
9 be administered each end-of-course assessment instrument listed in
10 Section 39.023(c) and requiring a student participating in the
11 minimum high school program to be administered an end-of-course
12 assessment instrument listed in Section 39.023(c) only for a course
13 in which the student is enrolled and for which an end-of-course
14 assessment instrument is administered. ~~[A student is required to~~
15 ~~achieve, in each subject in the foundation curriculum under Section~~
16 ~~28.002(a)(1), a cumulative score that is at least equal to the~~
17 ~~product of the number of end-of-course assessment instruments~~
18 ~~administered to the student in that subject and a scale score that~~
19 ~~indicates satisfactory performance, as determined by the~~
20 ~~commissioner under Section 39.0241(a). A student must achieve a~~
21 ~~minimum score as determined by the commissioner to be within a~~
22 ~~reasonable range of the scale score under Section 39.0241(a) on an~~
23 ~~end-of-course assessment instrument for the score to count towards~~
24 ~~the student's cumulative score. For purposes of this subsection, a~~
25 ~~student's cumulative score is determined using the student's~~
26 ~~highest score on each end-of-course assessment instrument~~
27 ~~administered to the student. A student may not receive a high~~

~~school diploma until the student has performed satisfactorily on the end-of-course assessment instruments in the manner provided under this subsection. This subsection does not require a student to demonstrate readiness to enroll in an institution of higher education.]~~

(a-1) The commissioner by rule shall determine a method by which a student's satisfactory performance on an advanced placement test, international baccalaureate examination, an SAT Subject Test, or another assessment instrument determined by the commissioner to be at least as rigorous as an end-of-course assessment instrument adopted under Section 39.023(c) may be used as a factor in determining whether the student satisfies the requirements of Subsection (a) and Subsection (a-2), (a-3), or (a-4), as applicable to the student~~[, including the cumulative score requirement of that subsection]~~. The commissioner by rule may determine a method by which a student's satisfactory performance on a Preliminary Scholastic Assessment Test (PSAT) assessment or a preliminary American College Test (ACT) assessment may be used as a factor in determining whether the student satisfies the requirements of Subsection (a) and Subsection (a-2), (a-3), or (a-4), as applicable to the student.

(a-2) To graduate under the recommended high school program ~~[In addition to the cumulative score requirements under Subsection (a)]~~, a student must achieve a score that meets or exceeds the score determined by the commissioner under Section 39.0241(a) on end-of-course assessment instruments for the following:

- (1) English III;

1 (2) [and] Algebra II;

2 (3) biology, chemistry, or physics; and

3 (4) world geography, world history, or United States
4 history [~~end-of-course assessment instruments to graduate under~~
5 ~~the recommended high school program~~].

6 (a-3) To graduate under the advanced high school program [~~In~~
7 ~~addition to the cumulative score requirements under Subsection~~
8 ~~(a)~~], a student must:

9 (1) achieve a score that meets or exceeds the score
10 determined by the commissioner under Section 39.0241(a-1) on
11 end-of-course assessment instruments for the following:

12 (A) English III; and

13 (B) Algebra II; and

14 (2) achieve a score that meets or exceeds the score
15 determined by the commissioner under Section 39.0241(a) on
16 end-of-course assessment instruments for the following:

17 (A) biology, chemistry, or physics; and

18 (B) world geography, world history, or United
19 States history [~~in order to graduate under the advanced high school~~
20 ~~program~~].

21 (a-4) To graduate under the minimum high school program, a
22 student must achieve a score that meets or exceeds the score
23 determined by the commissioner under Section 39.0241(a) on
24 end-of-course assessment instruments for the following:

25 (1) English III;

26 (2) Algebra I;

27 (3) biology, chemistry, or physics; and

1 (4) world geography, world history, or United States
2 history.

3 (a-5) The admission, review, and dismissal committee of a
4 student in a special education program under Subchapter A, Chapter
5 29, shall determine whether, to receive a high school diploma, the
6 student is required to achieve satisfactory performance on
7 end-of-course assessment instruments.

8 (b) Each time an end-of-course assessment instrument is
9 administered, a student who failed to achieve the ~~[a minimum]~~ score
10 requirement under this section may ~~[Subsection (a) shall]~~ retake
11 the assessment instrument. A student who fails to perform
12 satisfactorily on an Algebra II or English III end-of-course
13 assessment instrument under the college readiness performance
14 standard, as provided under Section 39.024(b), may retake the
15 assessment instrument. ~~[Any other student may retake an~~
16 ~~end-of-course assessment instrument for any reason.]~~ A student is
17 not required to retake a course as a condition of retaking an
18 end-of-course assessment instrument.

19 (b-2) If a school district determines that a student, on
20 completion of grade 11, is unlikely to achieve the ~~[cumulative]~~
21 score requirement under this section ~~[requirements]~~ for one or more
22 end-of-course assessment instruments as necessary ~~[subjects~~
23 ~~prescribed by Subsection (a)]~~ for receiving a high school diploma,
24 the district shall require the student to enroll in a corresponding
25 content-area college preparatory course for which an end-of-course
26 assessment instrument has been adopted, if available. A student
27 who enrolls in a college preparatory course described by this

1 subsection shall be administered an end-of-course assessment
2 instrument for the course, with the end-of-course assessment
3 instrument scored on a scale as determined by the commissioner [~~not~~
4 ~~to exceed 20 percent of the cumulative score requirements required~~
5 ~~to graduate as determined under Subsection (a)]~~. A student may use
6 the student's score on the end-of-course assessment instrument for
7 the college preparatory course towards satisfying the [~~cumulative~~
8 score requirement under this section ~~requirements prescribed by~~
9 ~~Subsection (a)]~~.

10 (e) The commissioner shall establish a required performance
11 level for an assessment instrument adopted under Subsection (d)
12 that is at least as rigorous as the performance level required to be
13 met under Subsection (a-2), (a-3), or (a-4), as applicable to the
14 student [~~(a)~~].

15 (f) The commissioner shall by rule adopt a transition plan
16 to implement the amendments made by Chapter 1312 (S.B. No. 1031),
17 Acts of the 80th Legislature, Regular Session, 2007, replacing
18 general subject assessment instruments administered at the high
19 school level with end-of-course assessment instruments. The rules
20 must provide for the end-of-course assessment instruments adopted
21 under Section 39.023(c) to be administered beginning with students
22 entering the ninth grade during the 2011-2012 school year. During
23 the period under which the transition to end-of-course assessment
24 instruments is made:

25 (1) for students entering a grade above the ninth
26 grade during the 2011-2012 school year and to the extent necessary
27 for purposes of Subdivisions (5) and (6), the commissioner shall

1 retain, administer, and use for purposes of accreditation and other
2 campus and district accountability measures under this chapter the
3 assessment instruments required by Section 39.023(a) or (c), as
4 that section existed before amendment by Chapter 1312 (S.B. No.
5 1031), Acts of the 80th Legislature, Regular Session, 2007;

6 (2) a student subject to Subdivision (1) may not
7 receive a high school diploma unless the student has performed
8 satisfactorily on each required assessment instrument administered
9 under Section 39.023(c) as that section existed before amendment by
10 Chapter 1312 (S.B. No. 1031), Acts of the 80th Legislature, Regular
11 Session, 2007; ~~and~~

12 (3) the agency may defer releasing assessment
13 instrument questions and answer keys as required by Section
14 39.023(e) to the extent necessary to develop additional assessment
15 instruments;

16 (4) a student entering ninth grade during the
17 2011-2012 or 2012-2013 school year shall be administered each
18 end-of-course assessment instrument listed in Section 39.023(c)
19 for a course in which the student is enrolled and for which an
20 end-of-course assessment instrument is administered;

21 (5) a student subject to Subdivision (4) may not
22 receive a high school diploma under the recommended high school
23 program unless the student:

24 (A) achieves a score that meets or exceeds the
25 score determined by the commissioner under Section 39.0241(a) on
26 end-of-course assessment instruments for the following:

27 (i) English III;

1 (ii) Algebra II;
2 (iii) biology, chemistry, or physics; and
3 (iv) world geography, world history, or
4 United States history; or

5 (B) has performed satisfactorily on each
6 required assessment instrument administered under Section
7 39.023(c), as that section existed before amendment by Chapter 1312
8 (S.B. No. 1031), Acts of the 80th Legislature, Regular Session,
9 2007;

10 (6) a student subject to Subdivision (4) may not
11 receive a high school diploma under the minimum high school program
12 unless the student:

13 (A) achieves a score that meets or exceeds the
14 score determined by the commissioner under Section 39.0241(a) on
15 end-of-course assessment instruments for the following:

16 (i) English III;
17 (ii) Algebra I;
18 (iii) biology, chemistry, or physics; and
19 (iv) world geography, world history, or
20 United States history; or

21 (B) has performed satisfactorily on each
22 required assessment instrument administered under Section
23 39.023(c), as that section existed before amendment by Chapter 1312
24 (S.B. No. 1031), Acts of the 80th Legislature, Regular Session,
25 2007; and

26 (7) a student entering ninth grade during the
27 2013-2014 school year or a later school year may not receive a high

1 school diploma unless the student has satisfied the requirements of
2 Subsection (a) and Subsection (a-2), (a-3), or (a-4), as applicable
3 to the student.

4 (g) Rules adopted under Subsection (f) must require that
5 each student who will be subject to the requirements of Subsection
6 (a), (a-2), (a-3), (a-4), or (f)(4) is entitled to notice of the
7 specific requirements applicable to the student. Notice under this
8 subsection must be provided not later than the date the student
9 enters the eighth grade. For a student who entered eighth grade in
10 the 2010-2011 school year, notice under this subsection must also
11 be provided not later than the date the student enters the ninth
12 grade to inform the student of modifications in the requirements
13 applicable to the student. Subsection (f) and this subsection
14 expire September 1, 2017 ~~[2015]~~.

15 SECTION 64. Section 39.303(b), Education Code, is amended
16 to read as follows:

17 (b) For a student who failed to perform satisfactorily as
18 determined under either performance standard under Section 39.0241
19 on an assessment instrument administered under Section 39.023(a),
20 (c), or (l), the school district shall include in the notice
21 specific information relating to access to ~~[online]~~ educational
22 resources at the appropriate assessment instrument content level,
23 including ~~[educational resources described by Section 32.252(b)(2)~~
24 ~~and]~~ assessment instrument questions and answers released under
25 Section 39.023(e).

26 SECTION 65. Section 41.124(c), Education Code, as effective
27 September 1, 2011, is amended to read as follows:

(c) A school district that receives tuition for a student from a school district with a wealth per student that exceeds the equalized wealth level may not claim attendance for that student for purposes of Chapters 42 and 46 and the instructional materials ~~[technology]~~ allotment under Section 31.0211 ~~[32.005]~~.

SECTION 66. Section 43.001(b), Education Code, as amended by Chapters 201 (H.B. 3459) and 328 (S.B. 206), Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(b) The available school fund, which shall be apportioned annually to each county according to its scholastic population, consists of:

(1) the distributions to the fund from the permanent school fund as provided by Section 5(a), Article VII, Texas Constitution;

(2) one-fourth of all revenue derived from all state occupation taxes, exclusive of delinquencies and cost of collection;

(3) one-fourth of revenue derived from state gasoline and special fuels excise taxes as provided by law; and

(4) all other appropriations to the available school fund made by the legislature for public school purposes.

SECTION 67. Section 43.001, Education Code, is amended by adding Subsections (d) through (g) to read as follows:

(d) Each year the State Board of Education shall set aside an amount equal to 50 percent of the annual distribution for that year from the permanent school fund to the available school fund as

1 provided by Section 5(a), Article VII, Texas Constitution, to be
2 placed, subject to the General Appropriations Act, in the state
3 instructional materials fund established under Section 31.021.

4 (e) Subsection (d) applies beginning with the state fiscal
5 biennium beginning September 1, 2013. For the state fiscal
6 biennium beginning September 1, 2011, each year the State Board of
7 Education shall set aside an amount equal to 40 percent of the
8 annual distribution for that year from the permanent school fund to
9 the available school fund as provided by Section 5(a), Article VII,
10 Texas Constitution, to be placed, subject to the General
11 Appropriations Act, in the state instructional materials fund
12 established under Section 31.021.

13 (f) In calculating the amounts to be set aside as provided
14 by Subsection (e) for the state fiscal biennium beginning September
15 1, 2011, the State Board of Education shall consider only the
16 amounts of the annual distribution of the permanent school fund for
17 that biennium. The board shall not consider amounts distributed
18 for the state fiscal biennium beginning September 1, 2009,
19 regardless of the date on which those amounts were approved for
20 distribution.

21 (g) Subsections (e) and (f) and this subsection expire
22 September 1, 2013.

23 SECTION 68. The following provisions of the Education Code
24 are repealed:

- 25 (1) Section 31.002(3);
26 (2) Sections 31.021(b), (e), and (f);
27 (3) Section 31.0222;

- (4) Section 31.025;
- (5) Sections 31.035(e) and (g);
- (6) Section 31.072(c);
- (7) Sections 31.073(a) and (b);
- (8) Sections 31.101(b), (b-1), (c), and (c-1);
- (9) Section 31.1011;
- (10) Sections 31.103(a) and (e);
- (11) Section 31.1031;
- (12) Subchapter E, Chapter 31;
- (13) Section 32.005;
- (14) Sections 32.251 through 32.257; and
- (15) Sections 32.259 through 32.263.

SECTION 69. Sections 2175.128(a-1) and (b-1), Government Code, are repealed.

SECTION 70. The change in law made by this Act to Section 7.108, Education Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 71. This Act takes effect September 1, 2011, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this Act takes effect on the 91st day after the last day of the

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1 legislative session.