AN ACT

relating to the foundation curriculum, the establishment of the instructional materials allotment, and the adoption, review, and purchase of instructional materials and technological equipment for public schools; providing penalties.

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

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

SECTION 3. Subsection (f), Section 7.056, 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 criminal offense;
a requirement imposed by federal law or rule;

imposed by state law or rule relating to:

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

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

(4) textbook selection of instructional materials under Chapter 31.

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

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

SECTION 5. Subsections (a) and (c), Section 7.108, Education Code, are amended to read as follows:

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

(c) In this section:

(1) "Instructional material" has the meaning assigned by Section 31.002.
(2) "Political contribution" has the meaning assigned by Section 251.001, Election Code.

(42) "Textbook" has the meaning assigned by Section 31.002.

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

Sec. 7.112. REPRESENTATION OF TEXTBOOK PUBLISHER OF INSTRUCTIONAL MATERIALS BY FORMER MEMBER OF BOARD.

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

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

(1) confer with a member of the board of trustees of a school district concerning instructional materials published by that textbook publisher; or

(2) appear at a meeting of the board of trustees on behalf of the textbook publisher.

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

(2) "Instructional material" and "publisher" have the meanings assigned by Section 31.002.

SECTION 9. Subsection (b), Section 11.158, Education Code, is amended to read as follows:
(b) The board may not charge fees for:

1. instructional materials [textbooks], workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course except as authorized under this code;
2. field trips required as a part of a basic education program or course;
3. any specific form of dress necessary for any required educational program or diplomas;
4. the payment of instructional costs for necessary school personnel employed in any course or educational program required for graduation;
5. library materials [books] required to be used for any educational course or program, other than fines for lost, damaged, or overdue materials [books];
6. admission to any activity the student is required to attend as a prerequisite to graduation;
7. admission to or examination in any required educational course or program; or
8. lockers.

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

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

1. any report concerning the health, safety, or
welfare of a student;  
(2) a report of a student's grade on an assignment or examination;  
(3) a report of a student's academic progress in a class or course;  
(4) a report of a student's grades at the end of each grade reporting period;  
(5) a textbook report on instructional materials;  
(6) a unit or weekly lesson plan that outlines, in a brief and general manner, the information to be presented during each period at the secondary level or in each subject or topic at the elementary level;  
(7) an attendance report;  
(8) any report required for accreditation review;  
(9) any information required by a school district that relates to a complaint, grievance, or actual or potential litigation and that requires the classroom teacher's involvement; or  
(10) any information specifically required by law, rule, or regulation.

SECTION 11. Subsection (e), Section 19.007, Education Code, is amended to read as follows:
(e) The district may participate in the instructional materials [textbook] program under Chapter 31.

SECTION 12. Subsections (a) and (c), Section 26.006, Education Code, are 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 [textbook], the district or school shall honor the request. A student who takes home instructional materials [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. Subsections (a), (c), (h), and (n), Section 28.002, 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 the free enterprise system and its benefits, and geography; and
an enrichment curriculum that includes:

(A) to the extent possible, languages other than

English;

(B) health, with emphasis on the importance of

proper nutrition and exercise;

(C) physical education;

(D) fine arts;

(E) 

[economics, with emphasis on the free

enterprise system and its benefits;

(F) career and technology education;

(G) technology applications; and

(G) religious literature, including the

Hebrew Scriptures (Old Testament) and New Testament, and its impact

on history and literature.

(c) The State Board of Education, with the direct

participation of educators, parents, business and industry

representatives, and employers shall by rule identify the essential

knowledge and skills of each subject of the required curriculum

that all students should be able to demonstrate and that will be

used in evaluating instructional materials [textbooks] under

Chapter 31 and addressed on the assessment instruments required

under Subchapter B, Chapter 39. As a condition of accreditation,

the board shall require each district to provide instruction in the

essential knowledge and skills at appropriate grade levels.

(h) The State Board of Education and each school district

shall foster the continuation of the tradition of teaching United

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

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

SECTION 14. Subsections (a) and (d), Section 28.0022, Education Code, are amended to read as follows:

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

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

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

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

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

(A) the career and technical education curriculum; and

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

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

(A) increase the academic rigor of the career and technical education curriculum under Section 28.002(a)(2)(E); and

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

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

(b) In this section, "educational program" means a course or series of courses in the required curriculum under Section 28.002, other than a fine arts course under Section 28.002(a)(2)(D) or a career and technology course under Section 28.002(a)(2)(E).

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

(c) A student may not be required to use a specific translation as the sole text of the Hebrew Scriptures or New Testament and may use as the basic instructional material a different translation of the Hebrew Scriptures or New Testament from that chosen by the board of trustees of the student's 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. Subdivisions (1), (1-a), (2), and (4), Section 31.002, 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 [textbook] that is available for downloading from the Internet at
no charge to a student and without requiring the purchase of an
unlock code, membership, or other access or use charge, except for a
charge to order an optional printed copy of all or part of the
instructional material [textbook]. The term includes [a]
state-developed open-source instructional material [textbook]
purchased under Subchapter B-1.

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

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

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

(B) professional use by a classroom teacher.

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

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

Sec. 31.004. CERTIFICATION OF PROVISION OF [TEXTBOOKS,
ELECTRONIC TEXTBOOKS, AND] INSTRUCTIONAL MATERIALS. (a) Each
school district and open-enrollment charter school shall annually
certify to the State Board of Education and the commissioner that,
for each subject in the required curriculum 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:

Sec. 31.021. STATE INSTRUCTIONAL MATERIALS [TEXTBOOK]
FUND.

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

(a) The state instructional materials fund consists of:

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

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

(3) all amounts lawfully paid into the fund from any other source.

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

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

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

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

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

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

(6) fund the technology lending grant program established under Section 32.201; and

(7) provide funding to the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, and the Texas Youth Commission.

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

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

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

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

(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

(B) the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning.

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

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

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

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

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

(e) Not later than May 31 of each school year, a school district may request that the commissioner adjust the number of

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students for which the district is entitled to receive an allotment under Subsection (a) on the grounds that the number of students attending school in the district will increase or decrease during the school year for which the allotment is provided. The commissioner may also adjust the number of students for which a district is entitled to receive an allotment, without a request by the district, if the commissioner determines a different number of students is a more accurate reflection of students who will be attending school in the district. The commissioner's determination under this subsection is final.

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

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

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

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

(d) Money deposited in a school district's instructional materials account during each state fiscal biennium remains in the account and available for use by the district for the entire biennium. At the end of each biennium, a district with unused money in the district's account may carry forward any remaining balance to the next biennium.

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

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

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

(b) The commissioner may adopt rules as necessary to implement this section.
SECTION 24. Section 31.022, Education Code, is amended to read as follows:

Sec. 31.022. INSTRUCTIONAL MATERIALS [TEXTBOOK] REVIEW AND ADOPTION. (a) The State Board of Education shall adopt a review and adoption cycle for instructional materials [textbooks] for elementary grade levels, including prekindergarten, and secondary grade levels, for each subject in the required curriculum under Section 28.002. In adopting the cycle, the board:

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

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

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

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

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

(D) enrichment curriculum subjects.
(b) The board shall organize the cycle for subjects in the
foundation curriculum so that not more than one-fourth [one-sixth]
of the instructional materials [textbooks] for subjects in the
foundation curriculum are reviewed each biennium [year]. The board
shall adopt rules to provide for a full and complete investigation
of instructional materials [textbooks] for each subject in the
foundation curriculum [at least] every eight [six] years. The
adoption of instructional materials [textbooks] for a subject in
the foundation curriculum may be extended beyond the eight-year
[six-year] period only if the content of instructional materials
[textbooks] for a subject is sufficiently current.

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

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

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

(d-1) A notice published under Subsection (d) must state that a publisher of adopted instructional materials for a grade level other than prekindergarten must submit an electronic sample of the instructional materials as required by Sections 31.027(a) and (b) and may not submit a print sample copy.

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

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

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

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

(1) the publisher of the instructional material
(2) the publisher of the instructional material to enter into a contract with the board concerning the instructional material for a term that ends at the same time as any contract entered into by the board for other instructional materials for the same subject and grade level; and

(3) a commitment from the publisher to provide the instructional material to school districts in the manner specified by the publisher, which may include:

(A) providing the instructional material to any district in a regional education service center area identified by the publisher; or

(B) providing a certain maximum number of instructional materials specified by the publisher.

(b) Sections 31.023 and 31.024 apply to instructional material adopted under this section. Section 31.027 does not apply to instructional material adopted under this section.

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

Sec. 31.023. INSTRUCTIONAL MATERIAL LIST. (a) For each subject and grade level, the State Board of Education shall adopt a list of instructional materials. The list includes each instructional
material [textbook] submitted for the subject and grade level that
meets applicable physical specifications adopted by the State Board
of Education and contains material covering at least half of the
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. 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];

and

(2) instructional material that conveys information 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
Accessibility Standard, to the extent practicable as determined by
the commissioner.

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

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

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

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

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

(3) include appropriate training for teachers.

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

(f) After notice to the commissioner explaining in detail the changes, the provider of an electronic textbook or instructional material on the list adopted under Subsection (a) may update the navigational features or management system related to the electronic textbook or instructional material.

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

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

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

(2) require public notice of an opportunity for the submission of an electronic textbook or instructional material.

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

Sec. 31.024. ADOPTION BY STATE BOARD OF EDUCATION. (a) By majority vote, the State Board of Education shall:
place each submitted instructional material on the list adopted under Section 31.023; or
(2) reject instructional material submitted for placement on that list.

(b) Not later than December 1 of the year preceding the school year for which the instructional materials for a particular subject and grade level will be purchased under the cycle adopted by the board under Section 31.022, the board shall provide the list of adopted instructional materials to each school district. Each nonconforming list must include the reasons an adopted textbook is not eligible for the 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. Subsections (b) and (c), Section 31.0241, Education Code, are amended to read as follows:

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

(1) the instructional material is written, compiled, or edited primarily by faculty of the eligible
(2) the eligible institution identifies each contributing author;

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

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

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

(B) for instructional material [a textbook] for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the instructional material [textbook] will be prepared for entry into the senior-level course.

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

SECTION 31. Subchapter B, Chapter 31, Education Code, is amended by adding Section 31.0242 to read as follows:

Sec. 31.0242. REVIEW OF OPEN-SOURCE INSTRUCTIONAL MATERIAL. Not later than the 90th day after the date open-source instructional material is submitted as provided by Section 31.0241, the State Board of Education may review the instructional material. The board shall:

(1) post with the list adopted under Section 31.023 comments made by the board regarding the open-source instructional material placed on the list; and

(2) distribute board comments to school districts.

SECTION 32. Section 31.026, Education Code, is amended to read as follows:

Sec. 31.026. CONTRACT; PRICE. (a) The State Board of Education shall execute a contract:

(1) for the purchase of each adopted textbook other than an electronic textbook; and

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

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

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

(d) [41] This section does not apply to [an] open-source instructional material [textbook].

SECTION 33. Section 31.0261, Education Code, is amended to read as follows:

Sec. 31.0261. CONTRACTS FOR PRINTING OF OPEN-SOURCE INSTRUCTIONAL MATERIALS [TEXTBOOKS]. The State Board of Education may execute a contract for the printing of [an] open-source instructional materials placed [textbook listed] on the [conforming or nonconforming] list adopted under Section 31.023. The contract must allow a school district to requisition printed copies of [an] open-source instructional materials [textbook] as provided by Section 31.103.

SECTION 34. (a) If this Act takes effect immediately, 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) [41] This section does not apply to [an] open-source instructional material [textbook].

(b) If this Act does not take effect immediately, 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].

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

(c) [41] This section does not apply to [an] open-source instructional material [textbook].

If this Act takes effect immediately, Sections 2 and 3, S.B. No. 391, Acts of the 82nd Legislature, Regular Session, 2011, have no effect.

SECTION 35. Section 31.028, Education Code, is amended to read as follows:

Sec. 31.028. SPECIAL INSTRUCTIONAL MATERIALS [TEXTBOOKS].

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

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

(c) The commissioner [board] may also enter into agreements providing for the acceptance, requisition, and distribution of special instructional materials [textbooks] and instructional aids pursuant to 20 U.S.C. Section 101 et seq. for use by students enrolled in:

(1) public schools; or

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

(d) In this section:

(1) "Blind or visually impaired student" includes any student whose visual acuity is impaired to the extent that the student is unable to read the text [print] in [a] regularly adopted instructional material [textbook] used in the student's class.
(2) "Special instructional material [textbook]" means instructional material [a textbook] in Braille, large type or any other medium or any apparatus that conveys information to a student or otherwise contributes to the learning process.

SECTION 36. Section 31.029, Education Code, is amended to read as follows:

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

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

SECTION 37. Section 31.030, Education Code, is amended to read as follows:

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

SECTION 38. The heading to Section 31.035, Education Code, is amended to read as follows:

Sec. 31.035. SUPPLEMENTAL INSTRUCTIONAL MATERIALS [TEXTBOOKS].
SECTION 39. Subsections (a) through (d) and (f), Section 31.035, Education Code, are amended to read as follows:

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

1. contains material covering one or more primary focal points or primary topics of a subject in the required curriculum under Section 28.002, as determined by the State Board of Education;
2. is not designed to serve as the sole instructional 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 40. The heading to Subchapter B-1, Chapter 31, Education Code, is amended to read as follows:
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 in accordance with this subchapter.

(b) The commissioner:

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

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

(c) State-developed open-source instructional material 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 after purchase.

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

(1) in accordance with the instructional material 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 options.
(e) The costs of administering this subchapter and purchasing state-developed open-source instructional materials shall be paid from the state instructional materials fund, as determined by the commissioner.

SECTION 42. Subsections (a) and (b), Section 31.072, Education Code, are amended to read as follows:

(a) State-developed open-source instructional material 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 list adopted under Section 31.023.

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

SECTION 43. The heading to Section 31.073, Education Code,
is amended to read as follows:

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

SECTION 44. Subsections (c) and (d), Section 31.073, Education Code, are amended to read as follows:

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

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

SECTION 45. Section 31.074, Education Code, is amended to read as follows:

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

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

SECTION 46. Section 31.075, Education Code, is amended to read as follows:

Sec. 31.075. OWNERSHIP; LICENSING. (a) State-developed [state-developed] open-source instructionnal material [textbook] is the property of the state.

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

(c) The commissioner may provide a license to use [a] state-developed open-source instructionnal material [textbook] to an entity not listed in Subsection (b). In determining the cost of a license under this subsection, the commissioner shall seek, to the extent feasible, to recover the costs of developing, revising, and distributing state-developed open-source instructionnal materials [textbooks].

SECTION 47. Subsection (b), Section 31.076, Education Code, is amended to read as follows:

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

SECTION 48. Section 31.077, Education Code, is amended to read as follows:

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

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

SECTION 49. The heading to Section 31.101, Education Code, is amended to read as follows:

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

SECTION 50. Section 31.101, Education Code, is amended by 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 51. 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 52. The heading to Section 31.103, Education Code,
is amended to read as follows:

Sec. 31.103. INSTRUCTIONAL MATERIAL [TEXTBOOK]

REQUISITIONS.

SECTION 53. Subsections (b), (c), and (d), Section 31.103, 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 or manufacturer does not have a designated textbook depository in this state under Section 31.151(a)(6)(B), the] publisher or manufacturer shall fill a requisition approved by the agency [at any other time in the case of an emergency]. [As made necessary by available funds, the commissioner shall reduce the additional percentage of attendance for which a district or school may requisition textbooks. The commissioner may, on application of a district or school that is experiencing high enrollment growth, increase the additional percentage of attendance for which the district or school may requisition textbooks.]

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

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

1 electronic access to the instructional material [textbook] at no cost to the student; or
2 printed copies of the portion of the instructional material [textbook] that will be used in the course.

SECTION 54. 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;
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(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 responsible for all instructional materials [each textbook, including an electronic textbook] and [all] technological equipment not returned in an acceptable condition by the student. A student who fails to return in an acceptable condition all instructional materials [textbooks, including electronic textbooks] and technological equipment forfeits the right to free instructional materials [textbooks, including electronic textbooks] and technological equipment until all instructional materials [each textbook, including an electronic textbook] and [all] technological equipment previously issued but not returned in an acceptable condition are [is] paid for by the student, parent, or guardian. As provided by policy of the board of trustees or...
governing body, a school district or open-enrollment charter school may waive or reduce the payment requirement if the student is from a low-income family. The district or school shall allow the student to use instructional materials [textbooks, including electronic textbooks] and technological equipment at school during each school day. If instructional materials [a textbook, including an electronic textbook] or technological equipment is not returned in an acceptable condition or paid for, the district or school may withhold the student's records. A district or school may not, under this subsection, prevent a student from graduating, participating in a graduation ceremony, or receiving a diploma. The commissioner by rule shall adopt criteria for determining whether instructional materials [a textbook, including an electronic textbook] and technological equipment are returned in an acceptable condition.

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

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

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

SECTION 55. 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 that the instructional material is not needed by the district or school and the board of trustees or governing body does not reasonably expect that the instructional material will be needed. A district or school must notify the commissioner of any instructional material the district or school disposes of under this subsection.

SECTION 56. Section 31.106, Education Code, is amended to read as follows:

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

SECTION 57. Section 31.151, Education Code, is amended by
amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) A publisher or manufacturer of instructional materials:

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

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

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

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

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

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

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

(i) the publisher or manufacturer does not maintain or arrange with a depository in this state under Paragraph (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 58. 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[,] OR TECHNOLOGICAL EQUIPMENT.

SECTION 59. Subsections (a), (b), and (d), Section 31.152, 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[,] 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 [textbook, electronic textbook,] instructional material[,] 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 60. The heading to Section 31.153, Education Code, is amended to read as follows:

Sec. 31.153. VIOLATION OF FREE INSTRUCTIONAL MATERIALS LAW.

SECTION 61. Subsection (a), Section 31.153, 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 62. Chapter 32, Education Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. TECHNOLOGY LENDING PROGRAM GRANTS

Sec. 32.201. ESTABLISHMENT OF PROGRAM. (a) The
commissioner may establish a grant program under which grants are
awarded to school districts and open-enrollment charter schools to
implement a technology lending program to loan students equipment
necessary to access and use electronic instructional materials.

(b) A school district or an open-enrollment charter school
may apply to the commissioner to participate in the grant program.
In awarding grants under this subchapter for each school year, the
commissioner shall consider:

(1) the availability of existing equipment to students
in the district or charter school; and

(2) other funding available to the district or charter
school.

(c) The commissioner may determine the terms of a grant
awarded under this section, including limits on the grant amount
and approved uses of grant funds.

(d) The commissioner may recover funds not used in
accordance with the terms of a grant from any state funds otherwise
due to the school district or open-enrollment charter school.

Sec. 32.202. FUNDING. (a) The commissioner may use not
more than $10 million from the state instructional materials fund
under Section 31.021 each state fiscal biennium or a different
amount determined by appropriation to administer a grant program
established under this subchapter.

(b) The cost of administering a grant program under this
subchapter must be paid from funds provided under Subsection (a).

Sec. 32.203. USE OF GRANT FUNDS. (a) A school district or
open-enrollment charter school may use a grant awarded under
Section 32.201 or other local funds to purchase, maintain, and
insure equipment for a technology lending program.

(b) Equipment purchased by a school district or
open-enrollment charter school with a grant awarded under Section
32.201 is the property of the district or charter school.

Sec. 32.204. REVIEW OF PROGRAM. Not later than January 1,
2013, the commissioner shall review the grant program established
under this subchapter and submit to the governor, the lieutenant
governor, the speaker of the house of representatives, and the
presiding officer of each legislative standing committee with
primary jurisdiction over primary and secondary education a written
report regarding the grants awarded under this subchapter.

Sec. 32.205. EXPIRATION. This subchapter expires September
1, 2015.

SECTION 63. Subsection (b), Section 39.303, Education Code,
is amended to read as follows:

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

SECTION 64. Subsection (c), Section 41.124, Education Code,
as effective 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 65. Subsection (b), Section 43.001, 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 66. 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
provided by Section 5(a), Article VII, Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials fund established under Section 31.021.

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

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

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

SECTION 67. The following provisions of the Education Code are repealed:

(1) Subdivision (3), Section 31.002;

(2) Subsections (b), (e), and (f), Section 31.021;

(3) Section 31.0222;
SECTION 68. Subsections (a-1) and (b-1), Section 2175.128, Government Code, are repealed.

SECTION 69. 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 70. (a) If this Act takes effect immediately, Subsection (a), Section 11, H.B. No. 4, Acts of the 82nd Legislature, Regular Session, 2011, has no effect, and the
$184,000,000 described by that subsection is allocated to fund the instructional materials allotment in accordance with the provisions of this Act.

(b) To the extent of any conflict, this Act prevails over the provisions of Subsection (b), Section 11, H.B. No. 4, Acts of the 82nd Legislature, Regular Session, 2011.

(c) If this Act does not take effect immediately, Subsections (a) and (b) of this section have no effect.

SECTION 71. This Act takes effect immediately 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 immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.
President of the Senate       Speaker of the House

I hereby certify that S.B. No. 6 passed the Senate on June 3, 2011, by the following vote: Yeas 31, Nays 0; June 20, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; June 21, 2011, House granted request of the Senate; June 27, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 6 passed the House, with amendments, on June 16, 2011, by the following vote: Yeas 138, Nays 0, one present not voting; June 21, 2011, House granted request of the Senate for appointment of Conference Committee; June 27, 2011, House adopted Conference Committee Report by the following vote: Yeas 142, Nays 1, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor