

## **BILL ANALYSIS**

C.S.H.B. 6  
By: Eissler  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that, with the state providing instructional materials directly to school districts, there is little incentive for the publishers of instructional materials or school districts to consider cost. These parties further contend that districts lack the flexibility to purchase additional materials or technological equipment to deliver instructional materials.

C.S.H.B. 6 seeks to remedy this situation by, among other provisions, establishing a state instructional materials fund to fund the instructional materials allotment which allows districts to buy products that best meet the needs of their students. The bill also seeks to ensure adherence to the statewide curriculum by requiring districts to purchase instructional materials that cover all elements of the essential knowledge and skills for the foundation curriculum.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the State Board of Education in SECTION 20 and to the commissioner of education in SECTIONS 23 and 36 of this bill.

### **ANALYSIS**

C.S.H.B. 6 amends the Education Code to replace the state textbook fund with the state instructional materials fund. The bill requires the State Board of Education (SBOE) each year to 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 the Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials fund. The bill adds a temporary provision, set to expire September 1, 2014, to require the SBOE, in calculating the amounts to be set aside for the state fiscal biennium beginning September 1, 2011, to consider only the amounts of the annual distribution of the permanent school fund for that biennium, without considering amounts distributed for the state fiscal biennium, beginning September 1, 2009, regardless of the date on which those amounts were approved for distribution. The bill removes a provision providing that a component of the instructional material fund is all funds accruing from the state's sale of disused textbooks. The bill requires money in the state instructional materials fund to be used to fund the instructional materials allotment; to purchase special instructional materials for the education of blind and visually impaired students in public schools; to pay the expenses associated with the instructional materials adoption and review process; to pay the expenses associated with the purchase or licensing of open-source instructional material to the extent authorized by the General Appropriations Act; and to pay the expenses associated with the purchase of instructional material, including freight, shipping, and insurance expenses. The bill makes related conforming and nonsubstantive changes.

C.S.H.B. 6 entitles a school district 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 of education. The bill requires the commissioner to 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. The bill requires the allotment to be transferred to the credit of the district's instructional materials account. The bill entitles a juvenile justice alternative education program to an allotment from the state instructional materials fund, in an amount set by a final and unappealable commissioner determination. The bill authorizes funds allotted to a school district or juvenile justice alternative education program to be used to purchase certain instructional materials and technological equipment and to pay 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 the salary and other expenses of an employee who provides technical support for the use of technological equipment. The bill requires a school district each year to use the district's instructional materials allotment to purchase a sufficient quantity of instructional materials or technological equipment that corresponds to the adoption cycle, 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 foundation curriculum for each grade level, and any other instructional materials or technological equipment as determined by the district. The bill adds a temporary provision, set to expire August 31, 2012, to authorize a school district, for the state fiscal year beginning September 1, 2011, to use an allotment to purchase any combination of instructional materials available for selection under the 2011 proclamation issued by the SBOE or other instructional materials or technological equipment available to the district under a continuing contract in effect on September 1, 2011. The bill authorizes a school district, not later than May 31 of each school year, to request that the commissioner adjust the number of students for which the district is entitled to receive an allotment on the grounds that the number of students attending in the district will change during the school year for which the allotment is provided. The bill also authorizes the commissioner to adjust the number of students for which a district is entitled to receive an allotment, without a district request, 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 bill establishes the commissioner's determination as final and authorizes the commissioner to adopt rules as necessary to implement these provisions.

C.S.H.B. 6 requires the commissioner of education to maintain an instructional materials account for each school district and, each year, to deposit in the account for each district the amount of the district's instructional materials allotment. The bill requires the commissioner to pay the cost of instructional materials requisitioned by a school district using funds from the district's account and authorizes a school district to use funds in the district's account to purchase electronic instructional materials or technological equipment, and requires the district to submit to the commissioner a request for funds for this purpose. The bill requires the commissioner to adopt rules regarding the documentation a school district must submit to receive such funds. The bill establishes that money deposited in a 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 and authorizes any district with unused money in the district's account, at the end of each biennium, to carry forward any remaining balance to the next biennium. The bill authorizes the commissioner to adopt rules as necessary to implement these provisions relating to the instructional materials account.

C.S.H.B. 6 requires each school district annually to certify to the commissioner that the district's instructional materials allotment has been used only for approved expenses. The bill requires the commissioner each year to adjust the allotment of districts experiencing high enrollment growth and to establish a procedure for determining high enrollment growth districts eligible to receive an adjustment and the amount those districts will receive. The bill authorizes the commissioner to adopt rules as necessary to implement the adjustment.

C.S.H.B. 6 establishes that, in statutory provisions relating to public education, a reference to a textbook means instructional material and, in statutory provisions relating to textbooks, replaces references to textbooks and electronic textbooks with references to instructional materials and electronic instructional materials. The bill also removes references to textbooks and electronic

textbooks where references to instructional materials already exist, as applicable. The bill replaces references to library books with references to library materials. The bill prohibits a school district from charging a student for instructional material or technological equipment purchased by the district with the district's instructional materials allotment, except as otherwise provided.

C.S.H.B. 6 authorizes a school district to require the payment of a fee by a student in the district to cover the cost of insuring technological equipment issued to the student and caps the fee at an amount equal to the amount necessary to cover the cost of insurance on lost, damaged, or stolen technological equipment. The bill requires a district charging such a fee to adopt a policy to waive or reduce the fee of a student who is from a low-income family and prohibits a student assessed such a fee from being held financially responsible for any loss of or damage to technological equipment in the student's possession.

C.S.H.B. 6 entitles an open-enrollment charter school to the instructional materials allotment and subjects such a charter school to statutory provisions relating to instructional materials as if the school were a school district. The bill removes a provision requiring the removal of an electronic textbook or instructional material from the commissioner's adopted list to be recommended by a panel of recognized experts in the subject area of the electronic textbook or instructional material and experts in education technology.

C.S.H.B. 6 requires a publisher of instructional materials to provide each school district and charter school with information that fully describes each of the publisher's submitted instructional materials, rather than adopted textbooks, and specifies that a sample copy of submitted instructional material provided by a publisher on request of a school district be provided in digital format.

C.S.H.B. 6 transfers the authority to purchase special instructional materials for the education of blind and visually impaired students in public schools from the SBOE to the commissioner and makes conforming changes. The bill transfers the authority to purchase or otherwise acquire instructional materials for use in bilingual education classes from the SBOE to each school district and specifies that such a purchase be made with the district's instructional materials allotment. The bill requires the commissioner to adopt rules regarding the purchase of such instructional materials.

C.S.H.B. 6 requires the commissioner to maintain an online requisition system for school districts to requisition instructional materials to be purchased with the district's instructional materials allotment. The bill requires a school district or open-enrollment charter school to make a requisition for instructional material using the online requisition program not later than June 1 of each year and requires the publisher or manufacturer of instructional material to fill a requisition approved by the Texas Education Agency. The bill removes provisions related to the previous process of making and filling textbook requisitions under the state textbook fund.

C.S.H.B. 6 clarifies that any electronic instructional material or technological equipment purchased with a school district's instructional materials allotment is the property of the school district and that printed instructional material purchased with the allotment is the property of the state until the date the printed instructional material is discontinued for use in the public schools by the SBOE or the commissioner, after which it becomes district property. The bill authorizes a school district board of trustees or the governing body of an open-enrollment charter school to sell printed instructional materials on this date and also authorizes the board or governing body to sell electronic instructional materials and technological equipment owned by the district or school. The bill requires any funds received by a district or school from such a sale to be used to purchase approved instructional materials and technological equipment. The bill requires a district board of trustees or the governing body of an open-enrollment charter school to determine how the district or school will dispose of discontinued printed instructional materials, electronic instructional materials, and technological equipment. The bill authorizes a district

board or governing body of a charter school to dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by the SBOE if the board or governing body determines that the instructional material is not needed by the district or school and the board or governing body does not reasonably expect that the instructional material will be needed. The bill requires a district or school to notify the commissioner of any instructional material the district or school disposes of under such authorization. The bill makes conforming changes relating to the proceeds from the sale of textbooks and the disposition of those proceeds.

C.S.H.B. 6 removes as an alternative to the requirement that a publisher or manufacturer of instructional materials deliver instructional materials to a district or charter school without a delivery charge to the district, school, or state the requirement that the publisher or manufacturer maintain a depository in Texas or arrange with a depository in Texas to receive and fill orders. The bill makes related conforming changes.

C.S.H.B. 6 combines the conforming and nonconforming lists of instructional materials required to be adopted by the SBOE into a single list that includes each instructional material submitted for each subject and grade level that meets applicable physical specifications adopted by the SBOE and contains material covering at least half of the elements of the essential knowledge and skills of the subject and grade level in the student version of the instructional material, as well as in the teacher version of the instructional material, as determined and adopted by the SBOE. The bill makes conforming changes to reflect this change. The bill requires the SBOE to determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted and provides that the SBOE's determination is final.

C.S.H.B. 6 clarifies that the SBOE, in adopting a review and adoption cycle for instructional materials, is not required to review and adopt instructional materials for all grade levels in a single year but is required to give priority to instructional materials for subjects in the following order: foundation curriculum subjects for which statewide standardized tests are required, including career and technology courses that satisfy foundation curriculum requirements; foundation curriculum subjects for which the essential knowledge and skills have been substantially revised, including career and technology courses that satisfy foundation curriculum requirements; foundation curriculum subjects not otherwise described, including career and technology courses that satisfy foundation curriculum requirements; and enrichment curriculum subjects. The bill changes the maximum portion of the instructional materials for subjects in the foundation curriculum under review by the SBOE from one-sixth of the instructional materials each year to one-fourth of the instructional materials each biennium. The bill lengthens from at least every six years to every eight years the frequency in which SBOE rules must provide for a full and complete investigation of instructional materials for each subject in the foundation curriculum and makes a conforming change. The bill adds a temporary provision, set to expire September 1, 2013, to establish that for purposes of the instructional materials review and adoption cycle the SBOE 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.

C.S.H.B. 6 removes economics with emphasis on the free enterprise system and its benefits as a subject under the enrichment curriculum and includes it as a component of social studies under the foundation curriculum.

C.S.H.B. 6 removes a provision making it a Class B misdemeanor for a person engaged in manufacturing, shipping, selling, or advertising textbooks or otherwise connected with the textbook business to make or authorize a political contribution to or take part in, directly or indirectly, the campaign of any person seeking election to or serving on the SBOE.

C.S.H.B. 6 reenacts 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, relating to the apportionment of the available school fund.

C.S.H.B. 6 makes conforming changes relating to the bill's replacement of references to textbooks with references to instructional materials; to the definitions of "publisher," "technological equipment," and "open-source textbook"; and to the redesignation of the latter definition as "open-source instructional material." The bill redesignates "electronic textbook" as "instructional material," redefines the term as 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, including certain specified media, and removes interactive videodisc from the list of media. The bill specifies that the term "gift, favor, or service," as it relates to a misdemeanor for the acceptance of those items, does not include ancillary materials, rather than instructional materials, or the provision of food or beverages with a value that does not exceed \$50. The bill removes online as a condition in a provision relating to resources available to a student who failed to perform satisfactorily on an assessment. The bill makes other conforming and nonsubstantive changes.

C.S.H.B. 6 establishes that, to the extent of any conflict, the bill's provisions prevail over another act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

C.S.H.B. 6 repeals the following provisions of the Education Code:

- Section 7.108(c)(2), relating to the definition of textbook under statutory provisions prohibiting political contributions or activity of a person interested in selling bonds of any type
- Section 31.002(3), relating to the definition of textbook
- Sections 31.021(b), (e), and (f), relating to the uses of the state textbook fund
- Section 31.022(d), relating to the publication of notice of the textbook review and adoption cycle
- Section 31.0222, relating to considering budgeting issues in adopting the textbook review and adoption cycle
- Section 31.025, relating to a limitation on the cost that may be paid out of the state textbook fund
- Sections 31.035(e) and (g), relating to the selection and purchase of certain supplemental textbooks
- Section 31.072(c), relating to the commissioner's provision of special and bilingual state-developed open-source textbooks
- Sections 31.073(a) and (b), relating to the cost of a state-developed open-source textbook
- Sections 31.101(b), (b-1), (c), and (c-1), relating to the selection and purchase of certain textbooks by school districts
- Section 31.1011, relating to textbook credits
- Sections 31.103(a) and (e), relating to textbook requisitions
- Section 31.1031, relating to certain entitlements given a shortage of requisitioned textbooks
- Subchapter E, Chapter 31, relating to the disposition of textbooks
- Section 32.005, relating to a \$30 technology allotment
- Sections 32.251 through 32.257, relating to the education Internet portal
- Sections 32.259 through 32.263, relating to the education Internet portal

## **EFFECTIVE DATE**

September 1, 2011.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 6 contains a provision not included in the original establishing that, in statutory provisions relating to public education, a reference to a textbook means instructional material. The substitute contains a provision not included in the original removing a statutory provision making it a Class B misdemeanor for a person engaged in manufacturing, shipping, selling, or advertising textbooks or otherwise connected with the textbook business to take certain actions relating to the campaign of any person seeking election to or serving on the State Board of Education (SBOE). The substitute contains a provision not included in the original setting out an exception to the prohibition against charging a student for instructional materials or technological equipment purchased by a school district with the district's instructional materials allotment. The substitute contains a provision not included in the original authorizing funds from the instructional materials allotment to be used to pay the salary and other expenses of an employee who provides technical support for the use of technological equipment.

C.S.H.B. 6 differs from the original by establishing that the SBOE 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, whereas the original requires the SBOE to review and adopt instructional materials for English language arts for that biennium. The substitute contains provisions not included in the original combining the conforming and nonconforming lists of instructional materials required to be adopted by the SBOE into a single list that includes each instructional material submitted for each subject and grade level that meets certain specifications and contains certain material and making related conforming changes. The substitute contains provisions not included in the original requiring the SBOE to determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted and providing that the SBOE's determination is final.

C.S.H.B. 6 contains provisions not included in the original authorizing a school district to require the payment of a fee by a district student to cover the cost of insuring technological equipment issued to the student, capping the fee at a certain amount, requiring a district charging such a fee to adopt a fee waiver or reduction policy for a student who is from a low-income family, prohibiting a student assessed such a fee from being held financially responsible for any loss of or damage to technological equipment in the student's possession, and making a related conforming change.

C.S.H.B. 6 differs from the original by requiring the governing body of an open-enrollment charter school to determine how the school will dispose of discontinued printed instructional materials, electronic instructional materials, and technological equipment, whereas the original required such a determination to be made only by the board of trustees of a school district. The substitute contains provisions not included in the original authorizing a school district or the governing body of an open-enrollment charter school to dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by the SBOE under certain conditions and requiring a district or school to notify the commissioner of education of any instructional material the district or school disposes of under such authorization.

C.S.H.B. 6 contains provisions not included in the original repealing Education Code provisions relating to the definition of textbook under statutory provisions prohibiting political contributions or activity of a person interested in selling bonds of any type and relating to certain entitlements given a shortage of requisitioned textbooks.

C.S.H.B. 6 contains a provision not included in the original establishing that, to the extent of any conflict, the substitute's provisions prevail over another act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

C.S.H.B. 6 differs from the original in nonsubstantive ways.