

BILL ANALYSIS

C.S.H.B. 1605
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Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Lack of access to appropriate curricular resources inadequately prepares students, places a greater burden on teachers, and creates barriers for parents to review classroom content. The Texas Teacher Vacancy Task Force recommended funding, professional learning, and support for teachers to access and utilize high-quality instructional material. Governor Abbott, in his 2024-2025 budget, recommended that the 88th Legislature address curriculum challenges with outcomes that enhance student performance, improve quality of classroom instructional materials, help ease teachers' workloads, and ensure curriculum transparency for parents.

C.S.H.B. 1605 seeks to increase access to high-quality instructional material for students, relieve teachers of certain duties relating to material development, and provide transparency for parents by providing for a Texas Education Agency process of instructional material review and subsequent approval by the State Board of Education. The bill also establishes allotments under the foundation school program for certain instructional materials, provides for an instructional materials parent portal, provides for the availability of open education resource instructional materials, and revises the duties of instructional material publishers and manufacturers, among other provisions.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTIONS 6 and 12 of this bill.

ANALYSIS

Revisions and Provisions Generally

C.S.H.B. 1605 amends the Education Code to revise and set out provisions regarding the instructional materials freely available to students attending public schools and approved for use in public school districts, including certain revisions and provisions applicable to the following matters:

- parent access to such materials through an instructional materials parent portal, parent access to teaching materials generally, and parent requests to review such material;
- the process involving the recommendation, review, approval, and maintenance, as applicable, of such materials by the Texas Education Agency (TEA) and the State Board of Education (SBOE) and the use by a classroom teacher and a district of such materials;
- specified allotments for the procurement of certain instructional materials under the foundation school program;

- the purchase of instructional materials and the availability of open education resource instructional materials; and
- certain duties of teachers and of publishers and manufacturers of instructional materials.

Accordingly, C.S.H.B. 1605 makes corresponding and conforming changes to state law governing instructional materials furnished to students, clarifies that the applicable statutes and bill revisions and provisions apply to both instructional materials and technology, and repeals certain statutory provisions to reflect the bill's revisions and provisions. Moreover, the bill does the following:

- clarifies what constitutes open education resource instructional materials;
- specifies that, for purposes of provisions regarding instructional materials generally, a reference to a state-developed open education resource instructional material means an open education resource instructional material, as defined under the bill provision clarifying that definition; and
- revises the general definition of "instructional material" to include the following:
 - material used by a principal or campus instructional leader to support instruction;
 - material used by a student that conveys information to the student or otherwise contributes to the learning process through electronic means, including open education resource instructional materials; and
 - material used by a teacher, including a lesson plan, answer key, grading rubric, or unit plan.

Parent Access and Request for Review

Parent Portal

C.S.H.B. 1605 requires TEA to make instructional materials reviewed by TEA available on a parent portal hosted by an entity that supplies instructional materials and to adopt standards for such entities to make the materials available on a parent portal so that the SBOE, during its review of the materials as specified by the bill and as later described, may designate whether each educational material meets the parent portal standards established by the bill. A parent portal must do the following:

- provide to each parent of a student enrolled in the district or open-enrollment charter school access to the instructional material that is included in the portal and used by the district or school;
- organize the material by unit and in the order in which the material is designed to be used;
- be capable of being searched by key word; and
- for material not available in a digital format, contain sufficient information to allow a parent to locate a physical copy of the material.

The bill expressly prohibits the adopted standards from requiring a classroom teacher to submit instructional materials developed by the teacher for inclusion in a parent portal. The bill provides for the use of certain user access verification procedures and user terms and conditions to comply with an intellectual property license or other restrictions placed on material and authorizes a parent's access to the portal to be temporarily denied if the parent fails or refuses to comply with such a restriction. The bill requires an entity that hosts an instructional materials parent portal to comply with district requests regarding parental access to the portal. The bill specifies that materials that are not available on a parent portal must be available for a parent or guardian to preview during school hours and that materials or curriculum not included on a parent portal or otherwise available on the applicable campus for preview may not be used.

Parent Access to Teaching Materials Generally

C.S.H.B. 1605 revises provisions relating to parental access to teaching materials. The bill requires a district to do the following:

- make teaching materials and tests readily available for review by parents both in person and, if applicable, through a parent portal established under the bill's provisions;
- allow such access beginning not later than 30 days before the school year begins and concluding not earlier than 30 days after the school year ends;
- include, for the entire specified period of access, access to all instructional materials that pertain to each subject area in the grade level in which the student is enrolled, except for tests or exams that have not yet been administered to the student and the student's graded assignments; and
- if the district denies a parent access to an instructional materials parent portal, permit the parent to appeal the denial to the district's board of trustees.

Parent Request for Instructional Material Review

C.S.H.B. 1605 requires each district board of trustees to establish a process by which a student's parent may request an instructional material review for a subject area in the grade level in which the student is enrolled. A board is required to conduct a requested review of a specific subject area or grade level at a specific district campus only once per school year. The bill sets out the following provisions with respect to such a review process:

- the process may not require more than one parent of a student to make the request;
- the process must provide for the district board to determine if the request will be granted, either originally or through an appeal process; and
- the process may permit the requesting parent to review the material directly before the district conducts an instructional material review.

Moreover, if the parents of at least 25 percent of the students enrolled at a campus present to the board of trustees of the district in which the campus is located a petition for the board to conduct an instructional material review, the board must conduct the review, unless the board denies the request by majority vote. Such a review must include a review of instructional materials for each subject area or grade level specified in the petition. The bill authorizes the commissioner of education to adopt rules to implement these provisions relating to a requested instructional material review.

SBOE Instructional Materials Review and Approval; Approved Instructional Materials

C.S.H.B. 1605 changes the process for the state review and approval of instructional materials, revises applicable statutory provisions accordingly, and sets out provisions governing the review and approval process.

Review

C.S.H.B. 1605 removes requirements, including SBOE rulemaking requirements, relating to the adoption by the SBOE of a review and adoption cycle for instructional materials for elementary grade levels, including prekindergarten, and secondary grade levels for each subject in the required state curriculum. Accordingly, the bill removes other corresponding provisions related to the review and adoption cycle, including the following:

- the specification that the SBOE is not required to review and adopt instructional materials for all grade levels in a single year;
- the requirement for the SBOE to give priority to instructional materials in enrichment curriculum subjects and specified foundation curriculum subjects;
- the requirement for the SBOE to organize the cycle for foundation curriculum subjects so that not more than one-fourth of the instructional materials for those subjects are reviewed each biennium;
- the requirement for the SBOE to adopt rules to provide for a full and complete investigation of instructional materials for each foundation curriculum subject every eight years and to adopt rules to provide for such an investigation of instructional

materials for each enrichment curriculum subject on a cycle the SBOE considers appropriate;

- the authorization for the adoption of instructional materials for a foundation curriculum subject to be extended beyond the specified period only if the content of the materials is sufficiently current;
- the requirement for the SBOE to publish notice of the review and adoption cycle for specified instructional materials at least 12 months before the beginning of the school year for which the materials will be adopted under the review and adoption cycle; and
- the requirement for a request for production of instructional materials to allow submission of open education resource instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale.

The bill instead requires the SBOE to review any instructional material recommended to the SBOE by TEA following the TEA instructional material review process prescribed by the commissioner and specified under the bill's provisions described later. The bill authorizes the SBOE to adopt criteria for the instructional material's approval but requires the SBOE, before approving the material, to determine that the material is free from factual error and suitable for the subject and grade level for which the material is designed. The SBOE may require electronic samples of the material, certain physical specifications, and all material submitted as full subject tier one instructional material to cover a minimum percentage, as determined by the SBOE, of the state curriculum standards adopted for the subject and grade level for which the material is designed.

C.S.H.B. 1605 defines "full subject tier one instructional material" as instructional material designed to, if implemented as designed, provide a student with mastery of the state curriculum standards adopted by the SBOE for a certain subject and grade level in the required curriculum for kindergarten through grade 12 or for prekindergarten without the need for supplementation.

Approved Instructional Material

C.S.H.B. 1605 requires the SBOE to indicate whether each reviewed instructional material is capable of being made available through a parent portal established under the bill's provisions. The bill requires each material approved by the SBOE to be added to a list of approved instructional materials and authorizes the SBOE to add a material not approved to a list of rejected instructional materials. The bill authorizes the SBOE to remove instructional material from the list if the state curriculum standards intended to be covered by the material are revised or the material is revised without approval. If the SBOE intends to remove a material from the list, the SBOE must provide to each district, not later than December 1 of the year preceding the school year for which the revision will take effect, the updated list of approved instructional materials for the relevant subject or grade level.

Educator Certification Training Requirements for Use of Approved Materials

C.S.H.B. 1605 includes among the training requirements for educator certification the demonstration of a thorough understanding of and competence in the use of open education resource instructional materials approved and included on the list maintained by the SBOE in each subject area and grade level covered by the person's certificate. The bill requires TEA to develop and maintain a program to assist educator preparation programs with implementing the training requirements.

Immunity from Disciplinary Proceedings for Classroom Teacher

C.S.H.B. 1605 prohibits a classroom teacher employed by a district from being subject to disciplinary proceedings for an allegation that the teacher violated certain instructional requirements or prohibitions, the Establishment Clause of the First Amendment to the U.S. Constitution, or a related state or federal law if the teacher used only instructional material approved and included on the list maintained by the SBOE and adopted by the district and if the

allegation does not dispute that the teacher delivered instruction from such material with fidelity. The bill establishes that the immunity from disciplinary proceedings is in addition to any other immunity provided by law and prohibits the bill's related provisions from being construed to interfere with any other immunity provided by law.

District Purchasing Contracts for Approved Instructional Materials

C.S.H.B. 1605 expressly does not require a district to use a method prescribed under state law governing district purchasing contracts to purchase instructional materials that have been reviewed by TEA and approved and included on the list maintained by the SBOE.

Annual Certification Regarding Approved Instructional Materials

C.S.H.B. 1605, in a transferred, redesignated, and revised statutory provision requiring the annual certification by each district and charter school of the provision of instructional materials, requires a district and charter school to also certify annually to the SBOE and the commissioner the following matters:

- that the district or charter school used money allocated to the district or charter school under the instructional materials and technology allotment only for authorized purposes; and
- that, in the provision of applicable instructional materials, the district or charter school protects students from obscene or harmful content as necessary for compliance with the federal Children's Internet Protection Act.

The bill updates the authorization for a district or charter school, in determining whether each student has instructional materials that cover all elements of the applicable state curriculum standards, to consider certain instructional materials by clarifying that the district or school may consider instructional materials adopted by the SBOE, instructional materials developed, purchased, or otherwise acquired by the district or school, and open education resource instructional materials included in the open education resource instructional materials repository under the bill's provisions.

Instructional Material Review by TEA and Related District Assistance

Annual Review Process

C.S.H.B. 1605 requires the commissioner to establish, with SBOE approval, an annual process for reviewing instructional materials and requires the SBOE to approve the process prior to its implementation. TEA, after completing a review, must provide the results of the review and related recommendations to the SBOE for approval or rejection of instructional materials TEA determines appropriate for inclusion on the list maintained by the SBOE. The bill establishes that a rubric or process relating to the review of instructional material developed or established by TEA, as applicable, is automatically approved by the SBOE unless rejected before the 91st day after the date of submission. The process must, as follows:

- establish a process for TEA to select instructional materials for review that includes the following:
 - evaluating requests for review of materials submitted by a district, a majority of SBOE members, or a publisher of instructional material;
 - reviewing materials purchased or requisitioned under the instructional materials and technology allotment; and
 - reviewing materials using a time frame appropriate for updating the list to the state curriculum standards for a particular subject or grade level;
- describe the types of materials TEA may review, including the following:
 - partial subject tier one instructional material, including those designed for use in the required phonics curriculum for kindergarten through third grade;
 - open education resource instructional material;

- instructional materials developed by a district and submitted to TEA for review; and
- commercially available full subject tier one instructional material;
- establish procedures for TEA to conduct reviews of materials, including the use of an approved rubric and consultation with classroom teachers and other curriculum experts for the appropriate subject and grade level; and
- ensure the procedures for review allow for TEA to review at least 200 individual materials each year.

The bill removes the requirement for the SBOE to determine the percentage of the elements of the state curriculum standards of the subject and grade level covered by each submitted instructional material. The bill defines "partial subject tier one instructional material" as instructional material designed to, if implemented as designed, provide a student with mastery in a portion of the state curriculum standards adopted by the SBOE for a certain subject and grade level in the required curriculum for kindergarten through grade 12 or for prekindergarten without the need for supplementation in those standards.

C.S.H.B. 1605 requires TEA, in conducting such a review, to use a rubric developed by TEA and approved by the SBOE that includes, with respect to the instructional material being reviewed, a determination of the following:

- whether the material is free from factual error and satisfies applicable criteria adopted by the SBOE;
- the quality of the material; and
- the state curriculum standard for the subject and grade level for which the material was developed that are covered by the material.

District Assistance

C.S.H.B. 1605 requires TEA, on request of a district, to provide the district assistance in evaluating, adopting, or using instructional materials, but the bill prohibits TEA from requiring a district to adopt or otherwise use material reviewed by TEA or included on the list of approved materials maintained by the SBOE, except as otherwise provided. The bill requires TEA to develop and maintain a website to assist districts in locating and selecting instructional material, sets out the information required to be provided about the material, and requires the website to include the repository of open education resource instructional materials. The bill requires TEA to use funds appropriated for the purposes of reviewing instructional material or available in the state instructional materials and technology fund for purposes of implementing the bill's provisions relating to the website and instructional material review.

Open Education Resource Instructional Materials Repository

C.S.H.B. 1605 requires the open education resource instructional materials repository to comply with the requirements for viewing materials under an instructional materials parent portal established under the bill's provisions and to allow a person to provide comments on material contained in the repository to assist TEA in improving and updating the material. The bill requires TEA to ensure that a person may order a print copy of any material included in the repository that is reducible to print and removes the authorization for a publisher to submit materials for inclusion in the repository.

Standards for Conducting Review of Instructional Materials

C.S.H.B. 1605 requires TEA to develop standards in consultation with stakeholders, including educators, for conducting a review of instructional materials used by a classroom teacher in a foundation curriculum course to determine the degree to which the material corresponds with the instructional materials adopted by the district or campus and meets grade level rigor of the state foundation curriculum standards. The bill provides the following:

- TEA is required to develop a rubric, approved by the SBOE, for determining if reviewed material complies with grade level rigor requirements;
- TEA, in developing standards for conducting a review of materials, must minimize, to the extent possible, the time a classroom teacher is required to spend complying with such a review;
- TEA may not require a teacher to spend more than 30 minutes on a single such review, unless unavoidable;
- TEA may not authorize the review of materials used by a classroom teacher for a specific subject or grade level at a specific district campus more than once per year;
- TEA must permit a regional education service center or a curriculum review service provider approved by TEA to conduct the review for a district and provide to approved centers and providers training relating to appropriately conducting a review of instructional materials; and
- TEA must award grants to assist districts in conducting reviews under these provisions.

Allotments for Instructional Materials

Allotment for State-Approved Instructional Materials

C.S.H.B. 1605, effective September 1, 2023, establishes an allotment for state-approved instructional materials under the foundation school program, entitling a district to an allotment equal to \$40, or a greater amount provided by appropriation, for each student enrolled in the district to reimburse the district for costs incurred to procure instructional material that has been, as follows:

- reviewed by TEA under the bill's provisions;
- approved and placed on the list maintained by the SBOE under the bill's provisions;
- designated by the SBOE as being included or capable of being included in an instructional materials parent portal established under the bill's provisions; and
- acquired from a publisher or manufacturer or other entity which has never been found to be out of compliance with applicable provisions relating to the duties of publishers and manufacturers of instructional materials.

Allotment for Open Education Resource Instructional Material

C.S.H.B. 1605, effective September 1, 2023, establishes an allotment for open education resource instructional material under the foundation school program, entitling a district an annual allotment not to exceed \$20 for each student to reimburse the district for the costs incurred during the school year in which the allotment is provided for the printing and shipping of open education resource instructional material. The bill requires a district board, in order to qualify for the allotment, to adopt an open education resource instructional material transition plan to assist classroom teachers in the district who will be using an open education resource instructional material in a specific subject or grade level for which the teacher has not previously used such material. The plan must ensure that materials are used in a manner that maintains the instructional flexibility of a classroom teacher to address the needs of each student.

Depositing Funds; Spending Restrictions

C.S.H.B. 1605 provides for the deposit of funds under each allotment established under the bill's provisions to the credit of the district's instructional materials and technology account maintained by the commissioner and also provides the following:

- the commissioner must adopt a process to allow a district that meets the following criteria to deposit property tax revenue generated by local school district effort retained by the district due to the district's entitlement under each of those allotments to the credit of the state instructional materials and technology fund for use by the district:
 - a district with local revenue level in excess of entitlement; or

- a district that does not receive state aid under the foundation school program in an amount sufficient for the full allotment for open education resource instructional material to be deposited to the credit of the district's instructional materials and technology account;
- such deposited funds are subject to all restrictions on spending applicable to funds allocated under the instructional materials and technology allotment; and
- if the commissioner determines that a district that deposits funds in accordance with the adopted process should have received additional state aid that should have been deposited to the credit of the district's instructional materials and technology account, the district is entitled to additional state aid in the amount necessary to compensate the district for the amount of property revenue generated by local school district effort deposited by the district for which the district was entitled to state aid.

Purchase of Instructional Materials; Other Provisions

C.S.H.B. 1605 replaces the requirement for the SBOE to execute a contract for the purchase or licensing of each adopted instructional material with an authorization for the SBOE to do so and revises provisions relating to the purchasing of instructional materials and technology to do the following:

- authorize TEA, from funds appropriated for the purpose, to contract directly for the purchase of instructional materials and technology for use by districts; and
- establish that statutory provisions requiring a state agency to use a contract or contract terms developed or preapproved by the Department of Information Resources do not apply to such a contract but that TEA may participate in programs authorized under those provisions.

In addition, the bill does the following:

- removes the requirement for the commissioner each biennium to assess the technology needs for all districts and provide an estimate of the cost for these resources to the SBOE;
- removes the purchasing of electronic instructional materials or technological equipment as an authorized use of the funds in a district's instructional materials and technology account and removes the requirement for the commissioner to adopt rules to implement provisions relating to such an account;
- requires a district to provide to TEA the title and publication information for any instructional materials requisitioned or purchased by the district with its instructional materials and technology allotment;
- requires TEA to provide for the development and maintenance of an online requisition and disbursement system for each district's instructional materials and technology account; and
- replaces the authorization for the commissioner to allow a district or charter school to place an order for instructional materials before the beginning of a fiscal biennium and to receive those materials before payment with a requirement that the commissioner allow such placement.

Open Education Resource Instructional Materials

Availability

C.S.H.B. 1605 requires the commissioner to ensure that open education resource instructional materials are available for use by districts in accordance with state law, removes the commissioner's general authority to purchase such materials, and authorizes the commissioner, to ensure the availability of the open education resource instructional materials, to do the following:

- purchase a license authorizing the use of open education resource instructional materials;
- purchase or otherwise acquire ownership of open education resource instructional materials;
- develop open education resource instructional materials;

- adopt open education resource instructional materials; or
- use any combination of such methods to acquire the open education resource instructional materials.

The bill authorizes the commissioner to make available more than one such open education resource instructional material for a subject or grade level and requires the commissioner, to the extent practicable, to ensure full subject tier one instructional materials are available as open education resource instructional material for the following subjects and grade levels:

- English language arts and mathematics courses in grades kindergarten through eight;
- prekindergarten, in subject areas related to English language arts and mathematics; and
- all foundation curriculum courses in kindergarten through grade five in a manner that permits the instruction of the content to be provided in an integrated manner and for approximately 240 minutes of instructional time per day, including time needed each day for accelerated instruction.

The bill requires the commissioner to ensure such open education resource instructional materials are available to all students, parents, classroom teachers, and districts free of charge, except for a printing or shipping fee. The bill replaces a requirement for the commissioner to provide a license for open education resource instructional materials that meets specified criteria with an authorization for the commissioner to do so. The bill establishes that a decision made by the commissioner relating to open education resource instructional materials is final and may not be appealed.

Availability Before Review

C.S.H.B. 1605 prohibits open education resource instructional material from being made available to students, teachers, educators, or other education professionals before being reviewed by TEA and approved and included on the list maintained by the SBOE, except that TEA may make the material available to a limited number of classroom teachers for a limited time before the review and approval to assist in developing or testing the quality of the material. A district may only use unreviewed material made available under this provision in a grade level in which the material has not been used previously if the district's board of trustees approves the use of the unreviewed material and the district provides evidence to TEA showing that classroom teachers support the use of the material.

Related Licensing Matters

C.S.H.B. 1605 provides for the inclusion of content not owned by the state in open education resource instructional materials if the content has been made available by the copyright owner or is licensed to the state under another applicable license.

C.S.H.B. 1605 establishes that open education resource instructional material is licensed to the state under an intellectual property license that allows for free use, reuse, modification, or sharing with others if the license is irrevocable and perpetual and, as follows:

- permits the state to sublicense the material;
- authorizes the use of the material by any person in any location permitted by the original license terms;
- authorizes access, use, transmission, adaptation, public display, public performance, public distribution, and copying of the material; and
- authorizes the creation of derivative works, if permitted by the original license terms.

The bill specifies that material licensed to the state under an intellectual property license that is restricted to noncommercial or educational use qualifies as material licensed to the state under a license that allows for free use, reuse, modification, or sharing with others.

Advisory Board and Parent Evaluation

C.S.H.B. 1605 requires TEA to establish an open education resource advisory board to ensure that state-developed open education resource instructional materials made available are of the highest quality and are, as follows:

- aligned with state curriculum standards adopted for the applicable subject and grade level;
- suitable for the age of students at the grade level for which the materials are developed;
- free from bias and factual errors; and
- in compliance with prescribed instructional requirements and prohibitions.

C.S.H.B. 1605 authorizes TEA to form an advisory committee to comply with statutory provisions relating to instructional material and technology and establishes that such a committee is not subject to state law governing advisory committees.

C.S.H.B. 1605 revises content requirements relating to open education resource instructional material to include evaluation of such material by parents of students in Texas before being made available. The bill authorizes the commissioner to require an additional revision of the material based on feedback received by TEA from teachers, parents, and other experts regarding the open education resource instructional material.

Instructional Material Use; District Assistance

C.S.H.B. 1605 prohibits the commissioner from requiring a district or charter school to adopt or use an open education resource instructional material, with certain exceptions, and prohibits a district or charter school from being charged for any cost associated with the selection of such material, except for related printing costs. The bill expressly does not require TEA to comply with applicable Government Code provisions with regard to the printing or reproduction of an available open education resource instructional material. The bill includes among the authorized uses of the state instructional materials and technology fund the printing or other reproduction of open education resource instructional materials.

C.S.H.B. 1605 requires TEA to develop and maintain a program to assist districts and charter schools in adopting and using open education resource instructional material, including by assisting districts and charter schools to maintain the instructional flexibility of classroom teachers to address the needs of each student and schedule instructional periods in a manner that allows classroom teachers sufficient time to effectively prepare and present instructional material within the teacher's normal work day. A district that participates in the program is not required to adopt an open education resource instructional material transition plan.

Administration

C.S.H.B. 1605 specifies that the costs of administering statutory and bill provisions relating to open education resource instructional materials and ensuring the availability of those materials must be paid from funds appropriated for the purpose and the state instructional materials and technology fund, as determined by the commissioner.

Duties of Teachers and Publishers and Manufacturers; Applicable Contracts

C.S.H.B. 1605 specifies that, in adopting instructional materials for a subject in the required curriculum for a particular grade level, a district must ensure sufficient time is provided for teachers to teach and students to learn the applicable state curriculum standards. The bill prohibits a district from penalizing a teacher who does not follow the pacing of recommended or designated instructional materials or scope and sequence for an applicable subject.

C.S.H.B. 1605 provides that a district may permit, but may not require, a classroom teacher for a foundation curriculum course to spend planning and preparation time to which the teacher is entitled creating or selecting instructional materials to cover the applicable state curriculum standards for the course unless the teacher's employment contract explicitly states that the teacher is responsible for duties relating to lesson plan design or instructional material selection. The bill requires a contract between a district and a classroom teacher under which a teacher is assigned responsibility for duties unrelated to providing instruction and that requires the teacher to work a greater number of hours than the number of hours worked by other full-time teachers of the same grade level in the district to explicitly state each of the teacher's duties unrelated to providing instruction. The bill specifies that a unit or weekly lesson plan that is included in instructional material and adopted by the applicable district board of trustees is sufficient to satisfy a teacher's requirement to prepare a unit or weekly lesson plan.

C.S.H.B. 1605 requires the SBOE to adopt standard terms and conditions for use in contracts for the procurement of instructional materials from publishers and manufacturers and requires such a publisher or manufacturer to comply with all such terms and conditions. The bill requires each district to annually report to TEA information regarding the instructional materials used by the district during the previous school year, including the cost of each material, to assist TEA in ensuring the compliance of requisite duties by publishers and manufacturers.

C.S.H.B. 1605 establishes that a contract for the purchase or licensing of each adopted instructional material or a contract subject to state law governing the duties of publishers and manufacturers of instructional materials entered into before the bill's effective date is governed by the law in effect on the date the contract was entered into and provides for the continued effect of the applicable law. The bill establishes that such a contract entered into after the bill's effective date for a program called by the SBOE under Proclamation 2024 is governed by the law in effect on the date the proclamation was issued and provides for the continued effect of the applicable law.

Miscellaneous Provisions

C.S.H.B. 1605 requires the SBOE, in adopting foundation curriculum standards for English language arts, to specify a list of required vocabulary and at least one literary work to be taught in each grade level. The specified vocabulary must support the state curriculum standards adopted for other courses offered under the foundation curriculum. The bill requires the SBOE to initiate the process to incorporate the requirements not later than February 1, 2024, and to request recommendations from TEA regarding the list and specifies that a request for recommendations may be considered an initiation of the process. The bill's provisions relating to the initial list expire on September 1, 2025.

C.S.H.B. 1605 defines "supplemental instructional material," for the purposes of provisions relating to instructional materials, as instructional material designed to assist in the instruction of one or more of the state curriculum standards adopted by the SBOE for a subject in the required curriculum for kindergarten through grade 12 or for prekindergarten.

C.S.H.B. 1605 authorizes the commissioner to adopt rules consistent with the statutory and bill provisions relating to instructional materials and technology as necessary to implement any statutory or bill provision relating to instructional materials and technology. These rules are in addition to the rules the SBOE may adopt under current law for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

Applicability; Repealed Provisions

C.S.H.B. 1605 applies beginning with the 2023-2024 school year.

C.S.H.B. 1605 repeals the following provisions of the Education Code:

- Section 31.0213;
- Sections 31.022(d-1), (e), (f), (g), (h) and (i), relating to certain SBOE requirements regarding instructional materials review and adoption;
- Section 31.0221, relating to a midcycle review and adoption of instructional materials by the SBOE;
- Section 31.0231, relating to the commissioner's list of electronic instructional material and other specified instructional material;
- Section 31.024, relating to the placement of instructional material on the list adopted by the SBOE;
- Section 31.0241, relating to the SBOE adoption of open education resource instructional materials;
- Section 31.0242, relating to the authorization for the SBOE to review open education resource instructional material;
- Section 31.0261, relating to contracts for the printing of open education resource instructional materials;
- Section 31.035, relating to supplemental instructional materials adopted by the SBOE;
- the heading to Subchapter B-2, Chapter 31;
- Section 31.081, relating to the instructional materials web portal for districts and charter schools;
- Section 31.082, relating to a quality analysis of each instructional material submitted by a publisher for inclusion in the web portal;
- Section 31.084, authorizing the commissioner to adopt rules as necessary to implement provisions relating to an instructional materials web portal;
- Section 31.101, relating to the selection and purchase of instructional materials by districts; and
- Section 31.151(e), establishing that an eligible institution that offers open education resource instructional materials is not subject to state law regarding the duties of publishers and manufacturers of instructional materials.

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1605 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Unit or Weekly Lesson Plan

Whereas both the introduced and the substitute change the current requirement for a classroom teacher of a foundation curriculum course to prepare a unit or weekly lesson plan, they differ as follows:

- the introduced provided explicitly that a teacher may only be required to prepare a unit or weekly lesson plan if the teacher's contract requires such preparation as part of the teacher's planning and noninstructional duties in accordance with the bill's provisions regarding such duties; but
- the substitute establishes instead that a unit or weekly lesson plan that is included in instructional material and adopted by the applicable district board under the bill's provisions is sufficient to satisfy a requirement to prepare the unit or lesson plan.

Immunity for Classroom Teacher

The substitute specifies, but the introduced did not, that the immunity provided under both the substitute and the introduced to a classroom teacher using only instructional material on the list of approved instructional material maintained by the SBOE is in addition to any other immunity provided by law. Furthermore, the substitute prohibits these immunity provisions from being construed to interfere with any other immunity provided by law, but the introduced did not include this prohibition.

Parent Request for Instructional Material Review

The substitute and introduced both establish a process by which a student's parent, or a group of parents by petition, may request an instructional material review for a subject area in the grade level in which the student is enrolled and they both require such a review only once per school year, but the substitute includes an additional specification clarifying that a board is required to conduct a requested review of a specific subject area or grade level at a specific district campus only once per school year.

Instructional Materials: Sufficient Time to Teach and Learn State Curriculum

The substitute includes provisions not in the introduced that, as follows:

- specify that, in adopting instructional materials, a district must ensure sufficient time is provided for teachers to teach and students to learn the applicable state curriculum standards; and
- prohibit a district from penalizing a teacher who does not follow the pacing of specified instructional materials or scope and sequence for an applicable subject.

Tier One Instructional Material Definitions

Both the substitute and the introduced define "full subject tier one instructional material" and "partial subject tier one instructional material" but they differ as follows:

- the substitute does not include the specification in the introduced that the applicable material includes lesson plans; and
- the substitute does not provide, as the introduced does, that those materials are materials designed so that, when implemented with fidelity, students will attain mastery of the applicable curriculum but provides that those materials instead are materials designed to, if implemented as designed, provide a student with that mastery.

Authorized Advisory Committee

Whereas the introduced set out a provision merely referencing the establishment of an advisory committee exempt from state law governing advisory committees, the substitute expressly authorizes TEA to form an advisory committee, which would also be exempt from that state law, to comply with state law and the bill's provisions relating to instructional material and technology.

TEA Purchase of Instructional Materials and Technology

The substitute and introduced both grant contracting authority to TEA for it to contract directly for the purchase of instructional materials and technology, both provide for the inapplicability of state law governing state agency purchases of automated information systems to such contracts, and both authorize TEA participation in a program authorized under that state law. However, they differ as follows:

- the substitute clarifies that such a purchase is from funds appropriated for that purpose; and

- while the introduced provides for the inapplicability of that state law generally, the substitute makes specifically inapplicable to such contracts only the provisions of that state law requiring a state agency to use a contract or contract terms developed or preapproved by the Department of Information Resources.

Annual TEA Review Process; Subsequent SBOE Review

The substitute and the introduced both provide for an annual TEA review of instructional materials, the attendant process and approved rubric for that review, and the subsequent SBOE review of submitted recommendations but they differ as follows:

- the substitute, with respect to the process by which TEA selects materials for that review, requires the selection process to include reviewing materials using a time frame appropriate for updating the list of approved materials maintained by the SBOE to address revisions made to the state curriculum by the SBOE for a particular subject or grade level, but the introduced did not contain this provision;
- the substitute includes a provision requiring TEA to provide the results of the review and any related recommendations to the SBOE for approval or rejection of the material, whereas the introduced only required TEA to recommend materials it determined appropriate for inclusion on the SBOE list;
- the substitute, unlike the introduced, authorizes the SBOE to add a material not approved to a list of rejected instructional materials and, correspondingly, provides for an updated list of approved materials to be provided to each district by a specified deadline; and
- while the introduced provided that an item requiring approval by the SBOE under the annual review process is approved unless rejected within 90 days of submission, the substitute clarifies that it is instead the review process established under the bill's provisions or the rubric developed for that process, and not the item itself as specified in the introduced, that is automatically approved by the SBOE if not rejected by the 91st day after the date TEA submits an item to the board.

Local Review of Instructional Material

The substitute and introduced both provide for the local review of classroom instructional material, but they differ as follows:

- the substitute, but not the introduced, specifies that the standards developed by TEA for the review of materials by a district must be developed in consultation with stakeholders, including educators;
- the substitute expressly requires that TEA develop a rubric with respect to the material being reviewed, whereas the introduced did not explicitly require such development;
- the substitute, but not the introduced, prohibits TEA from authorizing the review of materials used by a teacher for a specific subject or grade level at a specific school district campus more than once per school year;
- the substitute specifies that the provision requiring TEA to provide training for appropriately conducting a review applies to a TEA-approved curriculum review service provider, rather than other TEA-approved private education service providers as provided in the introduced; and
- the substitute requires TEA to permit a regional education service center or a TEA-approved curriculum review service provider to conduct the review for a district, whereas the introduced provided no such requirement.

Licensing

The substitute and introduced both provide for the licensing of instructional material to the state under an intellectual property license allowing for free use, reuse, modification, or sharing with others, but they differ as follows:

- the introduced specified that the instructional material may be licensed to the state under such a license that conforms to the requirements for open education resource instructional materials even if it is limited to noncommercial or educational use; but
- the substitute clarifies that provision to directly provide that instructional material licensed under an intellectual property license that is restricted to noncommercial or educational use qualifies as material that allows for free use, reuse, modification or sharing with others.

Pre-Review Use of Certain Open Education Resource Instructional Material

Both the substitute and the introduced provide for the same conditions under which instructional materials that have not been reviewed by the SBOE may be used by a district, but they differ as follows:

- the introduced authorized such use for materials not previously in use by the district at a particular grade level under those shared conditions but made that authorization applicable to materials developed under statutory provisions, as amended by the bill, applicable to all state-developed open education resource instructional materials; but
- the substitute, in authorizing such use in a grade level in which the material has not been used previously, instead makes the authorization applicable only to instructional materials made available, under the bill's provisions, to assist in developing or testing the quality of the material.

Parent Access to Portal

The substitute revises the provisions it shares with the introduced relating to an instructional materials parent portal to expressly prohibit the standards adopted by TEA for the portal from requiring a teacher to submit instructional materials developed by the teacher for inclusion in the portal. The substitute further revises the shared provision to provide, as follows:

- TEA standards with respect to instructional material availability apply to a parent portal hosted by an entity that supplies instructional materials reviewed by TEA; and
- the portal must provide access to each parent of a student enrolled at a charter school.

Allotment for State-Approved Instructional Materials; Allotment for Open Education Resource Instructional Material

The substitute, with respect to the allotment for state-approved instructional materials, revises one of the provisions it shares with the introduced clarifying that the allotment for each student is a reimbursement to the district for costs incurred to procure instructional material. Whereas the introduced made eligible for reimbursement the costs incurred to procure instructional material that has been acquired from a publisher, manufacturer, or other entity which has not been found to be out of compliance with provisions relating to duties of publishers and manufacturers, the substitute instead requires applicable material, in order to be eligible for reimbursement, to be acquired from an entity that has never been found to be out of compliance with those provisions.

Both the substitute and the introduced, with respect to the allotment for state-approved instructional materials and the allotment for open education resource instructional material, require TEA to adopt a process for permitting a district subject to recapture to deposit local property tax revenue retained by the district to the credit of the state instructional materials and technology fund for the district's use, but they differ as follows:

- the substitute extends applicability of that provision to a district that does not receive state aid under the foundation school program in an amount sufficient for the full amount of the applicable allotment to be deposited to the credit of the district's instructional materials technology account; and
- the substitute further provides that, if the commissioner determines that a district that deposits funds in accordance with the adopted process should have received additional

state aid that should have been deposited to the credit of the district's instructional materials and technology account, the district is entitled to additional state aid in the amount necessary to compensate the district for the amount of property revenue generated by local school district effort deposited by the district for which the district was entitled to state aid.

Commissioner Rules

Whereas the introduced authorized the commissioner to adopt rules to implement requirements under statutory or bill provisions relating to instructional materials and technology, the substitute authorizes the commissioner to adopt rules consistent with statutory and bill provisions relating to instructional materials and technology as necessary to implement any statutory or bill provision relating to instructional materials and technology.