

BILL ANALYSIS

Senate Research Center

S.B. 2565
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas children are falling behind in the classroom. Current curriculum standards require instructional materials to meet only 50 percent of the Texas Essential Knowledge and Skills (TEKS), which fails to provide our classroom teachers with the right guidance to keep students learning on grade-level and meeting Texas' standards for success. Classroom teachers, already overloaded with non-instructional duties, are forced to take time away from teaching to work on lesson plans. Curriculum and other learning materials are often inaccessible to parents, limiting their ability to ensure their children are safe from exposure to harmful materials. However, there is a solution.

S.B. 2565 provides school districts more and better instructional material resources. First, school districts maintain the authority to use whatever materials they choose. Second, the Texas Education Agency (TEA) will provide the State Board of Education (SBOE)-adopted K-8th grade open educational resources to all districts, which they can choose to use (or not). These materials are on-grade level and are designed to support students in mastery of the TEKS. Third, a revised instructional materials review process will help provide greater transparency regarding the quality of instructional materials to districts looking for new resources. Fourth, the bill provides for additional supports for teachers and teachers-in-training that are using the state's open educational resources to maximize these materials' efficacy. Fifth, a parent portal for SBOE-approved materials and options for instructional materials reviews give parents ways to engage with the materials that their students are using to learn.

As proposed, S.B. 2565 amends current law relating to instructional material and technology, the adoption and revision of essential knowledge and skills of the public school foundation curriculum, and creating allotments for the procurement of certain instructional materials under the Foundation School Program and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 6 (Section 26.0061, Education Code) and SECTION 12 (Section 31.003, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner of education is rescinded in SECTION 16 (Section 31.0212, Education Code) and SECTION 49 (Sections 31.0211, 31.0215, and 31.084, Education Code) of this bill.

Rulemaking authority previously granted to the State Board of Education is rescinded in SECTION 21 (Section 31.022, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.164, Education Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

- (a) Prohibits a classroom teacher from being required to prepare any written information other than certain documents, including a unit or weekly lesson plan that outlines, subject

to Subsection (a-1), 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.

(a-1) Authorizes a classroom teacher of a foundation curriculum course to be required to prepare written information described by Subsection (a)(6) only if the teacher's contract requires the teacher to prepare the information as part of the teacher's planning and noninstructional duties in accordance with Section 21.4045.

SECTION 2. Amends Section 21.044(a-1), Education Code, as follows:

(a-1) Requires that any training requirements for a certificate specified under Subsection (a) (relating to requiring the State Board of Education (SBOE) to propose certain rules relating to educator requirements) that the person demonstrate certain skills, including thorough understanding of and competence in the use of open education resource instructional materials approved and included on the list maintained by SBOE under Section 31.022 (Instructional Materials Review and Adoption) in each subject area and grade level covered by the person's certificate.

SECTION 3. Amends Subchapter I, Chapter 21, Education Code, by adding Section 21.4045, as follows:

Sec. 21.4045. PLANNING AND NONINSTRUCTIONAL DUTIES OF TEACHERS. (a) Authorizes a school district, with respect to planning and preparation time to which the teacher is entitled under Section 21.404 (Planning and Preparation Time), to authorize but not require a classroom teacher for a foundation curriculum course to spend time creating or selecting instructional materials for initial coverage of the applicable essential knowledge and skills for the course unless the contract under which the teacher is employed explicitly states that the teacher is responsible for duties relating to lesson plan design or instructional material selection.

(b) Requires that a contract between a school 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 explicitly state each of the teacher's duties unrelated to providing instruction.

SECTION 4. Amends Subchapter B, Chapter 22, Education Code, by adding Section 22.05125, as follows:

Sec. 22.05125. IMMUNITY FROM DISCIPLINARY PROCEEDINGS FOR CLASSROOM TEACHERS. (a) Defines "disciplinary proceeding."

(b) Prohibits a classroom teacher employed by a school district from being subject to disciplinary proceedings for an allegation that the teacher violated Section 28.0022 (Certain Instructional Requirements and Prohibitions), the Establishment Clause of the First Amendment of the United States Constitution, or a related state or federal law if:

(1) the teacher used only instructional material approved and included on the list maintained by SBOE under Section 31.022 and adopted by the district; and

(2) the allegation does not dispute that the teacher delivered instruction from instructional material described by Subdivision (1) with fidelity.

SECTION 5. Amends Section 26.006, Education Code, by amending Subsection (b) and adding Subsections (b-1), (f), and (g), as follows:

(b) Requires a school district to make teaching materials and tests readily available for review by parents both in person and, if applicable, through an instructional materials parent portal established under Section 31.154. Requires the district, in providing access to instructional materials to a student's parent under Section 26.006 (Access to Teaching Materials), to:

(1) allow access beginning not later than 30 days before the school year begins and concluding not earlier than 30 days after the school year ends; and

(2) include, for the entire period specified in Subdivision (1), access to all instructional materials that pertain to each subject area in the grade level in which the student is enrolled, except for:

(A) tests or exams that have not yet been administered to the student; and

(B) the student's graded assignments.

(b-1) Authorizes the district to specify reasonable hours for in-person review.

(f) Authorizes a parent's access to an instructional materials parent portal under Section 31.154 to be denied if the parent fails or refuses to comply with a restriction under Section 31.154(c).

(g) Requires a school district to permit a parent denied access under Subsection (f) to appeal the denial to the board of trustees of the school district.

SECTION 6. Amends Chapter 26, Education Code, by adding Section 26.0061, as follows:

Sec. 26.0061. RIGHT TO REQUEST INSTRUCTIONAL MATERIAL REVIEW. (a) Requires the board of trustees of each school district to establish a process by which a parent of a student, as indicated on the student registration form at the student's campus, is authorized to request an instructional material review under Section 31.0252 for a subject area in the grade level in which the student is enrolled.

(b) Provides that a process established under Subsection (a):

(1) is prohibited from requiring more than one parent of a student to make the request;

(2) is required to provide for the board of trustees of the school district to determine if the request will be granted, either originally or through an appeal process; and

(3) is authorized to permit the requesting parent to review the instructional material directly before the district conducts an instructional material review under Section 31.0252.

(c) Requires board of trustees of a school district, if the parents of at least 25 percent of the students enrolled at a campus present to the board of trustees of the school district in which the campus is located a petition for the board to conduct an instructional material review under Section 31.0252, to conduct the review, unless, by a majority vote, the board denies the request. Requires that a review conducted under this subsection include a review of instructional materials for each subject area or grade level specified in the petition.

(d) Requires a school district to conduct a review under this section of a grade or subject at a particular campus only once per school year.

(e) Authorizes the commissioner of education (commissioner) to adopt rules to implement this section.

SECTION 7. Amends Section 28.002, Education Code, by adding Subsection (c-4) and (c-5), as follows:

(c-4) Requires SBOE, in adopting essential knowledge and skills for English language arts under Subsection (a)(1)(A) (relating to requiring each school district that offers kindergarten through grade 12 to offer a foundation curriculum that includes English language arts), to specify a list of required vocabulary and at least one literary work to be taught in each grade level. Requires that the vocabulary specified by SBOE support the essential knowledge and skills adopted for other courses offered under the foundation curriculum under Subsection (a)(1) (relating to requiring each school district that offers kindergarten through grade 12 to offer a foundation curriculum that includes certain subjects).

(c-5) Requires SBOE to initiate the process to incorporate the requirements under Subsection (c-4) no later than February 2024. Requires SBOE to request preliminary recommendations from the Texas Education Agency (TEA). Provides that a request for preliminary recommendations from TEA satisfies the requirements under this subsection to initiate the process. Provides that this subsection expires September 1, 2025.

SECTION 8. Amends the heading to Section 28.007, Education Code, to read as follows:

Sec. 28.0027. DISTRICT CURRICULUM SCOPE AND SEQUENCE AND INSTRUCTIONAL MATERIALS.

SECTION 9. Amends Section 28.007, Education Code, by adding Subsection (d), as follows:

(d) Requires a school district to supply a classroom teacher teaching a foundation curriculum course with full subject tier one instructional materials unless the contract under which the teacher is employed explicitly states that the teacher is responsible for duties relating to lesson plan design or instructional material selection.

SECTION 10. Amends the heading to Chapter 31, Education Code, to read as follows:

CHAPTER 31. INSTRUCTIONAL MATERIALS AND TECHNOLOGY

SECTION 11. Amends Section 31.002, Education Code, by amending Subdivisions (1) and (1-a) and adding Subdivisions (3), (5), and (6), to redefine "instructional material" and "open education resource instructional material" and define "full subject tier one instructional material," "partial subject tier one instructional material," and "supplemental instructional material."

SECTION 12. Amends Section 31.003, Education Code, as follows:

Sec. 31.003. RULES. (a) Creates this subsection from existing text.

(b) Authorizes the commissioner to adopt rules, consistent with Chapter 31 (Instructional Materials), to implement requirements under this chapter.

SECTION 13. Amends Subchapter A, Chapter 31, Education Code, by adding Subsection 31.006, as follows:

Sec. 31.006. ADVISORY COMMITTEE. Provides that an advisory committee established under this chapter is not subject to Chapter 2110 (State Agency Advisory Committees), Government Code.

SECTION 14. Amends Chapter 31, Education Code, by adding Subchapter A-1 and adding a heading to read as follows:

SUBCHAPTER A-1. STATE FUNDING FOR INSTRUCTIONAL MATERIALS AND TECHNOLOGY

SECTION 15. Transfers Section 31.005, Education Code, to Subchapter A-1, Chapter 31, Education Code, as added by this Act, and redesignates it as Section 31.0205, as follows:

Sec. 31.0205. FUNDING FOR OPEN-ENROLLMENT CHARTER SCHOOLS.

SECTION 16. Transfers Sections 31.021, 31.0212, 31.0214, and 31.0215, Education Code, to Subchapter A-1, Chapter 31, Education Code, as added by this Act, and amends them, as follows:

Sec. 31.021. STATE INSTRUCTIONAL MATERIALS AND TECHNOLOGY FUND.

(a) Makes no changes to this subsection.

(c) Requires that money in the state instructional materials and technology fund be used to:

(1)-(2) makes no changes to these subdivisions;

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

(4) pay the expenses associated with the purchase, licensing, printing, or other reproduction of open education resource instructional material;

(5) makes no changes to this subdivision; and

(6)-(7) makes nonsubstantive changes to these subdivisions.

Deletes existing text requiring that money in the state instructional materials and technology fund be used to pay the expenses associated with the instructional materials web portal developed under Section 31.081 (Instructional Materials Web Portal).

(d) Makes no changes to this subsection.

Sec. 31.0212. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ACCOUNT.

(a)-(b) Makes no changes to these subsections.

(c) Deletes existing text authorizing a school district to use funds in the district's account to purchase electronic instructional materials or technological equipment. Deletes existing text requiring the district to submit to the commissioner a request for funds for this purpose from the district's account. Deletes existing text requiring the commissioner to adopt rules regarding the documentation a school district is required to submit to receive funds under this subsection. Redesignates Subsection (d) as Subsection (c).

(d) Requires a school district to provide the title and publication information for any instructional materials requisitioned or purchased by the district with the district's instructional materials and technology allotment to TEA. Deletes existing text requiring the commissioner to adopt rules as necessary to implement this section. Deletes existing text requiring that the rules 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 and technology allotment.

(e) Requires TEA to provide for the development and maintenance of an online requisition and disbursement system for each school district's instructional materials and technology account.

Sec. 31.0214. ADJUSTMENT FOR HIGH ENROLLMENT GROWTH DISTRICTS.
Makes a nonsubstantive change to this section.

Sec. 31.0215. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT PURCHASES. (a) Makes no changes to this subsection.

(b) Requires, rather than authorizes, the commissioner to allow a school district or open-enrollment charter school to place an order for instructional materials before the beginning of a fiscal biennium and to receive instructional materials before payment.

(c)-(e) Makes no changes to these subsections.

SECTION 17. Reenacts Section 31.0211, Education Code, as amended by Chapters 806 (H.B. 1525) and 1003 (H.B. 3261), Acts of the 87th Legislature, Regular Session, 2021, transfers it to Subchapter A-1, Chapter 31, Education Code, as added by this Act, and amends it, as follows:

Sec. 31.0211. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT.
(a)-(b) Makes no changes to these subsections.

(c) Authorizes funds allotted under this section to be used to:

(1) purchase:

(A) instructional materials, regardless of whether the instructional materials are on the list maintained by SBOE under Section 31.022;

(B)-(D) makes nonsubstantive changes to these paragraphs;

(E) supplemental instructional materials;

(F) open education resource instructional materials, as provided by Subchapter B-1;

(G) makes a nonsubstantive change to this paragraph;

(H) technological equipment necessary to support the use of any instructional materials purchased with an allotment under this section; and

(I)-(J) makes nonsubstantive changes to these paragraphs; and

(2) makes nonsubstantive changes to this subdivision;

Deletes existing text authorizing funds allotted under this section to be used to purchase materials on the list adopted by the commissioner, as provided by Section 31.0231 (Commissioner's List), instructional materials, regardless of whether the instructional materials are on the list adopted under Section 31.024 (Adoption by State Board of Education), supplemental instructional materials, as provided by Section 31.035, state-developed open education resource instructional materials, as provided by Subchapter B-1, and technological equipment necessary to support the use of materials included on the list adopted by the commissioner under Section 31.0231.

(d) Deletes existing text requiring the commissioner each biennium to assess the technology needs for all school districts and provide an estimate of the cost for these resources to SBOE. Redesignates existing Subsection (d-1) as Subsection (d).

(e) Makes no changes to this subsection.

SECTION 18. Amends Subchapter A-1, Chapter 31, Education Code, as added by this Act, by adding Section 31.0216, as follows:

Sec. 31.0216. AGENCY PURCHASE OF INSTRUCTIONAL MATERIALS AND TECHNOLOGY. (a) Authorizes TEA to contract directly, including by extending a contract, for the purchase of instructional materials and technology for use by school districts.

(b) Provides that the requirements of Chapter 2157 (Purchasing: Purchase of Automated Information Systems), Government Code, do not apply to a contract entered into under this section. Authorizes TEA to participate in programs authorized by Chapter 2157, Government Code.

SECTION 19. Amends the heading to Subchapter B, Chapter 31, Education Code, to read as follows:

SUBCHAPTER B. STATE REVIEW AND ADOPTION

SECTION 20. Amends the heading to Section 31.022, Education Code, to read as follows:

Sec. 31.022. STATE BOARD OF EDUCATION INSTRUCTIONAL MATERIALS REVIEW AND ADOPTION.

SECTION 21. Amends Section 31.022, Education Code, by amending Subsections (a), (b), (c), and (d), as follows:

(a) Requires SBOE to review instructional material recommended to SBOE by TEA under Section 31.023 for approval or rejection. Requires SBOE, before approving instructional 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. Requires that each material approved by SBOE be added to a list of approved instructional materials. Deletes existing text requiring SBOE to adopt a review and adoption cycle for instructional materials for elementary grade levels, including prekindergarten, and secondary grade levels, for each subject in the required curriculum under Section 28.002 (Required Curriculum). Deletes existing text providing that SBOE, in adopting the cycle:

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

(2) is required to 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 (Assessment of Academic Skills), Chapter 39, including career and technology courses that satisfy foundation curriculum requirements as provided by Section 28.002(n) (relating to authorizing SBOE by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technology education curriculum);

(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) Authorizes SBOE to adopt criteria for approval of instructional material under Subsection (a) and to require:

- (1) all instructional material submitted as full subject tier one instructional material to cover a minimum percentage, as determined by SBOE, of the essential knowledge and skills adopted for the subject and grade level for which the material is designed;
- (2) electronic samples of the material; and
- (3) certain physical specifications.

Deletes existing text requiring SBOE to organize the cycle for subjects in the foundation curriculum so that not more than one-fourth of the instructional materials for subjects in the foundation curriculum are reviewed each biennium. Deletes existing text requiring SBOE to adopt rules to provide for a full and complete investigation of instructional materials for each subject in the foundation curriculum every eight years. Deletes existing text authorizing the adoption of instructional materials for a subject in the foundation curriculum to be extended beyond the eight-year period only if the content of instructional materials for a subject is sufficiently current.

(c) Authorizes SBOE to remove instructional material from the list maintained under this section if the essential knowledge and skills intended to be covered by the material are revised or the material is revised without approval. Deletes existing text requiring SBOE to rules to provide for a full and complete investigation of instructional materials for each subject in the enrichment curriculum on a cycle the board considers appropriate.

(d) Requires SBOE, for material reviewed under Subsection (a), to designate whether each instructional material meets the standards established under Section 31.154. Deletes existing text requiring SBOE, at least 12 months before the beginning of the school year for which instructional materials for a particular subject and grade level will be adopted under the review and adoption cycle, to publish notice of the review and adoption cycle for those instructional materials. Deletes existing text requiring that a request for production 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.

SECTION 22. Amends the heading to Section 31.023, Education Code, to read as follows;

Sec. 31.023. INSTRUCTIONAL MATERIAL REVIEW.

SECTION 23. Amends Section 31.023, Education Code, as follows:

(a) Requires the commissioner to establish an annual process for reviewing instructional materials. Requires SBOE to approve the process prior to implementation of the process. Requires that the process adopted under this subsection:

(1) establish a process for TEA to select instructional materials for review that includes:

(A) evaluating requests for review of instructional materials submitted to TEA by:

(i) a school district;

(ii) a majority of the members of SBOE; or

(iii) a publisher of instructional material; and

(B) reviewing instructional materials requisitioned or disbursed under Section 31.0212 (Instructional Materials and Technology Account);

(2) describe the types of instructional materials TEA is authorized to review, including:

(A) partial subject tier one instructional material, including those designed for use in the phonics curriculum required under Section 28.0062(a)(1) (relating to requiring each school district and open-enrollment charter school to provide for the use of a phonics curriculum that uses systematic direct instruction in kindergarten through third grade);

(B) open education resource instructional material;

(C) instructional materials developed by a school district and submitted to TEA by the district for review; and

(D) commercially available full subject tier one instructional material;

(3) establish procedures for TEA to conduct reviews of instructional materials, including:

(A) the use of a rubric approved under Subsection (b); and

(B) consultation with classroom teachers and other curriculum experts for the appropriate subject and grade level; and

(4) ensure the procedures for review allow for TEA to review at least 200 individual instructional materials each year.

Deletes existing text requiring SBOE, for each subject and grade level, to adopt a list of instructional materials. Deletes existing text providing that the list includes each instructional material submitted for the subject and grade level that meets applicable physical specifications adopted by 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 by SBOE under Section 28.002 and adopted under Section 31.024.

(b) Requires TEA, in conducting a review under this section, to use a rubric developed by TEA and approved by SBOE that includes, with respect to the instructional material being reviewed, a determination of:

(1) whether the material is free from factual error and satisfies suitability standards as defined by criteria of SBOE under Section 31.022;

(2) the quality of the material; and

(3) the essential knowledge and skills for the subject and grade level for which the material was developed that are covered by the material, including identification of:

(A) each essential knowledge and skill covered by the material;

(B) for a full subject tier one instructional material, the percentage of the essential knowledge and skills adopted for the subject and grade level covered by the material; and

(C) for a partial subject tier one instructional material, the percentage of the essential knowledge and skills for the relevant portion of the subject and grade level covered by the material.

Deletes existing text requiring that each instructional material on the list be free from factual errors, suitable for the subject and grade level for which the instructional material was submitted, and reviewed by academic experts in the subject and grade level for which the instructional material was submitted.

(c) Requires TEA, after completing a review under this section, to recommend to SBOE instructional materials TEA determines appropriate for inclusion on the list maintained by SBOE under Section 31.022.

(d) Requires TEA to use funds appropriated to TEA for the purposes of reviewing instructional material or available in the state instructional materials and technology fund for purposes of implementing this section.

(e) Provides that items requiring approval by SBOE under this section are approved unless rejected by SBOE within 90 days of submission to SBOE.

SECTION 24. Amends Subchapter B, Chapter 31, Education Code, by adding Sections 31.025, 31.0251, and 31.0252, as follows:

Sec. 31.025. WEBSITE FOR REVIEWED INSTRUCTIONAL MATERIAL. (a) Requires TEA to develop and maintain an instructional material website to assist school districts in locating and selecting instructional material.

(b) Requires that the website developed and maintained under this section, for each instructional material included, provide:

(1) the price of the material;

(2) the technological requirements needed to use the material;

(3) the results of a TEA review of the material conducted under Section 31.023;

(4) a statement of whether the material is approved by and included on the list of instructional materials maintained by SBOE under Section 31.022 or rejected by SBOE; and

(5) any other information TEA determines relevant to a school district's selection of instructional material.

(c) Requires that the website developed and maintained under this section include the repository of open education resources under Section 31.0722.

(d) Requires TEA to use funds appropriated to TEA for the purposes of reviewing instructional material or available in the state instructional materials and technology fund for purposes of implementing this section.

Sec. 31.0251. INSTRUCTIONAL MATERIAL SUPPORT. (a) Requires TEA, on request of a school district, to provide the district assistance in evaluating, adopting, or using instructional materials.

(b) Prohibits TEA, except as otherwise provided, from requiring a school district to adopt or otherwise use instructional material reviewed by TEA under Section 31.023 or included on the list maintained by SBOE under Section 31.022.

Sec. 31.0252. LOCAL REVIEW OF CLASSROOM INSTRUCTIONAL MATERIAL.

(a) Requires TEA to provide grants and develop standards for conducting a review of instructional materials used by a classroom teacher in a foundation curriculum course under Section 28.002(a)(1) to determine the degree to which the material:

(1) corresponds with the instructional materials adopted by the school district or campus; and

(2) meets grade level rigor of the knowledge and skills of the foundation curriculum under Section 28.002.

(b) Requires that a rubric developed by TEA to implement reviews under Subsection (a)(2) be approved by SBOE.

(c) Provides that TEA, in developing standards under Subsection (a):

(1) is required to minimize, to the extent possible, the time a classroom teacher is required to spend complying with a review conducted under this section; and

(2) is prohibited from, unless unavoidable, requiring a teacher to spend more than 30 minutes on a single review conducted under this section.

(d) Requires TEA to provide to regional education service centers and other private educational service providers approved by TEA training relating to appropriately conducting a review under this section.

SECTION 25. Amends Section 31.026, Education Code, by amending Subsections (a) and (b), as follows:

(a) Requires, rather than authorizes, SBOE to execute a contract for the purchase or licensing of each adopted instructional material.

(b) Deletes existing text requiring that a contract require the publisher to provide the number of instructional materials required by school districts in this state for the term of the contract, which is required to coincide with SBOE's adoption cycle.

SECTION 26. Amends the heading to Subchapter B-1, Chapter 31, Education Code, to read as follows:

SUBCHAPTER B-1. OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIALS

SECTION 27. Amends Subchapter B-1, Chapter 31, Education Code, by adding Section 31.0701, as follows:

Sec. 31.0701. REFERENCES TO STATE-DEVELOPED OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIAL. Provides that a reference to a state-developed open education resource instructional material in this chapter means an open education resource instructional material, as defined by Section 31.002.

SECTION 28. Amends Section 31.071, Education Code, as follows:

Sec. 31.071. New heading: AVAILABILITY OF OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIAL. (a) Requires the commissioner to ensure that open education resource instructional materials are available for use by school districts in accordance with this subchapter. Deletes existing text authorizing the commissioner to purchase state-developed open education resource instructional materials in accordance with this subchapter.

(b) Authorizes the commissioner, to ensure the availability of open education resource instructional materials under Subsection (a), to:

- (1) purchase a license authorizing the use of open education resource instructional materials;
- (2) acquire ownership in open education resource instructional materials;
- (3) develop open education resource instructional materials;
- (4) adopt open education resource instructional materials; or
- (5) use any combination of the methods described by Subdivisions (1), (2), (3), and (4) to acquire open education resource instructional materials.

Deletes existing text providing that the commissioner is required to purchase any state-developed open education resource instructional materials through a competitive process and is authorized to purchase more than one state-developed open education resource instructional material for a subject or grade level

(b-1) Authorizes the commissioner to make available more than one open education resource instructional material for a subject or grade level.

(b-2) Requires the commissioner to:

(1) to the extent practicable, ensure full subject tier one instructional materials are available as open education resource instructional material for:

(A) English language arts and mathematics courses in grades kindergarten through eight;

(B) prekindergarten, in subject areas related to English language arts and mathematics; and

(C) all foundation curriculum courses in kindergarten through grade five in a manner that permits the instruction of the content to be provided:

(i) in an integrated manner; and

(ii) for approximately 240 minutes of instructional time per day, including time needed each day for accelerated instruction under Section 28.0211 (Accelerated Learning Committee; Accelerated Instruction; Modified Teacher Assignment); and

(2) ensure open education resource instructional materials are available to all students, parents, classroom teachers, and school districts in this state free of charge, except for a fee for the printing or shipping of the material.

(c) Requires that an open education resource instructional material, except as provided by Section 31.0712, be licensed to this state under an intellectual property license that allows for free use, reuse, modification, or sharing with others as described by Section 31.0711. Deletes existing text requiring that a state-developed open education resource instructional material be irrevocably owned by the state. Deletes existing text requiring the state to have unlimited authority to modify, delete, combine, or add content to the instructional material after purchase.

(d) Requires that the costs of administering this subchapter and ensuring the availability of open education resource instructional materials be paid from funds appropriated for the purpose and the state instructional materials and technology fund, as determined by the commissioner. Deletes existing text authorizing the commissioner to issue a request for proposals for state developed open education resource instructional material in accordance with the instructional material review and adoption cycle under Section 31.022 or at any other time the commissioner determines that a need exists for additional instructional material options. Makes a conforming change.

SECTION 29. Amends Subchapter B-1, Chapter 31, Education Code, by adding Section 31.0712, as follows:

Sec. 31.0711. FREE USE, REUSE, MODIFICATION, OR SHARING LICENSE. (a) Provides that instructional material is licensed to this state under an intellectual property license that allows for free use, reuse, modification, or sharing with others if the license:

- (1) is irrevocable and perpetual;
- (2) permits the state to sublicense the material;
- (3) authorizes the use of the material by any person in any location permitted by the original license terms;
- (4) authorizes access, use, transmission, adaptation, public display, public performance, public distribution, and copying of the material; and
- (5) authorizes the creation of derivative works, if permitted by the original license terms.

(b) Authorizes instructional material to be licensed to this state under an intellectual property license that allows for free use, reuse, modification, or sharing with others and conforms to the requirements for open education resource instructional materials even it is limited to noncommercial or educational use.

SECTION 30. Amends Section 31.0712, Education Code, as follows:

Sec. 31.0712. CONTENT NOT OWNED BY STATE. Redesignates existing Section 31.0711 as Section 31.0712. Authorizes open education resource instructional material made available under this subchapter, rather than instructional materials purchased under this subchapter, to include content not owned by the state and for which preexisting rights may exist if the content:

- (1) makes no change to this subdivision;
- (2) makes a nonsubstantive change to this subdivision;
- (3) has been made available by the copyright owner under a Creative Commons license or another intellectual property license that allows for free use, reuse, modification, or sharing as described by Section 31.0711; or
- (4) is licensed to the state under another license, rather than a license, that:
 - (A) grants access to and allows for use of the material by students, teachers, educators, and other education professionals, rather than grants the state unlimited authority to modify, delete, combine, or add content;
 - (B) permits access, use, public display, public performance, public distribution, and copying of the material for noncommercial or educational

purposes, rather than permits the free use and repurposing of the material by any person or entity; and

(C) makes no changes to this paragraph.

SECTION 31. Amends Subchapter B-1, Chapter 31, Education Code, by adding Section 31.0713, as follows:

Sec. 31.0713. OPEN EDUCATION RESOURCE ADVISORY BOARD. Requires TEA to establish an open education resource advisory board to ensure that open education resource instructional materials made available under this subchapter are:

- (1) of the highest quality;
- (2) aligned with the essential knowledge and skills adopted by SBOE under Section 28.002 for the applicable subject and grade level;
- (3) suitable for the age of students at the grade level for which the materials are developed;
- (4) free from bias and factual errors; and
- (5) in compliance with Section 28.0022.

SECTION 32. Amends Section 31.072, Education Code, as follows:

Sec. 31.072. CONTENT REQUIREMENTS. (a) Requires that an open education resource instructional material, before being made available under this subchapter, be evaluated by teachers or other experts, as determined by the commissioner, and parents of students in this state. Deletes existing text requiring that state-developed resource instructional material be evaluated by teachers or other experts, as determined by the commissioner, before purchase, and meet the requirements for inclusion on the instructional material list adopted under Section 31.023.

(b) Authorizes the commissioner, based on feedback received by TEA from teachers, parents, and other experts regarding open education resource instructional materials made available under this subchapter, at any time, to require an additional revision of the material. Deletes existing text requiring the commissioner, following a curriculum revision by SBOE, to require the revision of state-developed open education resource instructional material relating to that curriculum. Deletes existing text authorizing the commissioner, at any time, to require an additional revision of state-developed open education resource instructional material or contract for ongoing revisions of state-developed open education resource instructional material for a period not to exceed the period under Section 31.022 for which instructional material for that subject and grade level is authorized to be adopted. Deletes existing text requiring the commissioner to use a competitive process to request proposals to revise state-developed open education resource instructional material under this subsection.

SECTION 33. Amends Subchapter B-1, Chapter 31, Education Code, by adding Section 31.0721, as follows:

Sec. 31.0721. REVIEW AND RELEASE OF OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIAL. (a) Prohibits open education resource instructional material, except as provided by Subsection (b), from being made available under this chapter to students, teachers, educators, or other education professionals before being reviewed by TEA under Section 31.023 and approved and included on the list maintained by SBOE under Section 31.022.

(b) Authorizes TEA to make open education resource instructional material available to a limited number of classroom teachers for a limited time before the material is reviewed by TEA under Section 31.023 and approved and included on the list maintained by SBOE under Section 31.022 to assist in developing or testing the quality of the material. Authorizes a school district, for materials that have not yet been reviewed by SBOE, to use materials developed under this subchapter not previously in use by the school district at particular grade level only if:

(1) the board of trustees of a school district has approved the use of materials being developed under this subchapter; and

(2) the district provides evidence to TEA showing that classroom teachers support the use of the material.

SECTION 34. Transfers Section 31.083, Education Code, to Subchapter B-1, Chapter 31, Education Code, redesignates it as Section 31.0722, and amends it, as follows:

Sec. 31.0722. New heading: OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIALS REPOSITORY. (a) Requires the commissioner to include in the website developed under Section 31.025, rather than the webportal developed under Section 31.081, a repository of open education resource instructional materials, including open education resource instructional materials made available under Section 31.0721(b), and other electronic instructional materials that school districts and open-enrollment charter schools are authorized to access at no cost.

(b) Requires that the repository under Subsection (a):

(1) meet the standards under Section 31.154 for viewing instructional materials; and

(2) allow a person to provide comments on open education resource instructional material contained in the repository to assist TEA in improving and updating the material.

Deletes existing text authorizing a publisher to submit instructional materials for inclusion in the repository.

(c) Requires TEA to ensure that a person is authorized to order a print copy of any open education resource instructional material included in the repository that is reducible to print.

SECTION 35. Amends Sections 31.073 and 31.074, Education Code, as follows:

Sec. 31.073. SELECTION BY SCHOOL DISTRICT. (a) Prohibits the commissioner, except as otherwise provided by this code, from requiring a school district or open-enrollment charter school to adopt or use an open education resource instructional material.

(c) Authorizes a school district or open-enrollment charter school to adopt open education resource instructional material at any time. Deletes existing text authorizing a school district or open-enrollment charter school, notwithstanding Section 31.022, to adopt state-developed open education resource instructional material at any time, regardless of the instructional material review and adoption cycle under that section.

(d) Prohibits a school district or open-enrollment charter school from being charged for a cost associated with the selection of an open education resource instructional material, except for the cost of printing copies of the material. Deletes existing text prohibiting a school district or open-enrollment charter

school from being charged for selection of state-developed open education resource instructional material in addition to instructional material adopted under Subchapter B (State Funding, Adoption, and Purchase).

Sec. 31.074. DISTRIBUTION. (a) Makes a conforming change to this subsection.

(b) Authorizes the commissioner to use a competitive process to contract for printing, other reproduction, or storage of open education resource instructional material on behalf of a school district or open-enrollment charter school. Prohibits the commissioner from requiring a school district or open-enrollment charter school to contract with a state-approved provider for the printing, reproduction, or storage of open education resource instructional material. Makes nonsubstantive and conforming changes.

(c) Provides that TEA is not required to comply with Subchapters C (Distribution of Publications) and D (State Agency Reports and Publications), Chapter 2052, Government Code, with regard to the printing or reproduction of an open education resource instructional material made available under this subchapter.

SECTION 36. Amends the heading to Section 31.075, Education Code, to read as follows:

Sec. 31.075. STATE OWNERSHIP; LICENSING.

SECTION 37. Amends Sections 31.075(a), (b), (c), (d), and (e), Education Code, as follows:

(a) Creates an exception under this subchapter. Makes a conforming change.

(b) Authorizes the commissioner, to encourage the use of instructional material purchased by the state under this subchapter by school districts and open-enrollment charter schools, to provide a license for the instructional material that:

(1) requires that a user who reproduces the instructional material in any manner meet certain requirements;

(2) provides that certain criteria are met; and

(3) includes any additional terms determined by the commissioner.

Deletes existing text requiring the commissioner, to encourage the use of instructional material purchased by the state under this subchapter by school districts and open-enrollment charter schools, to provide a license for the instructional material that allows for the free use, reuse, modification, or sharing of the material by any person or entity. Deletes existing text providing that the terms of a license provided by the commissioner under Section 31.075 (Ownership; Licensing) is required to require that a user who reproduces the instructional material in any manner meet certain requirements, is required to provide that certain criteria are met, and is authorized to include any additional terms determined by the commissioner.

(d)-(e) Makes conforming changes to these subsections.

SECTION 38. Amends Subchapter B-1, Chapter 31, Education Code, by adding Sections 31.0751, 31.0752, and 31.0753, as follows:

Sec. 31.0751. OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIAL TRANSITION PLAN. (a) Requires a school district, in order to be eligible for the allotment under Section 48.158, except as provided by Subsection (c), 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 an open education resource instructional material.

(b) Requires that a plan adopted under this section ensure that open education resource instructional materials are used in a manner that maintains the instructional flexibility of a classroom teacher to address the needs of each student.

(c) Provides that a school district that participates in the program developed and maintained by TEA under Section 31.0752 is not required to adopt a transition plan under this section.

Sec. 31.0752. OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIAL SUPPORT PROGRAM. Requires TEA to develop and maintain a program to assist school districts and open-enrollment charter schools in adopting and using open education resource instructional material made available under this subchapter, including by assisting districts and schools to:

(1) maintain the instructional flexibility of classroom teachers to address the needs of each student; and

(2) 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 as provided by the teacher's contract for employment.

Sec. 31.0753. TEACHER CANDIDATE ACCESS AND SUPPORT PROGRAM. Requires TEA to develop and maintain a program to assist educator preparation programs with implementing Section 21.044(a-1)(4).

SECTION 39. Amends Section 31.076(b), Education Code, as follows:

(b) Provides that a decision made by the commissioner under this subchapter, rather than a decision by the commissioner regarding the purchase, revision, cost, licensing, or distribution of state-developed open education resource instructional material, is final and is prohibited from being appealed.

SECTION 40. Transfers Section 31.004, Education Code, to Subchapter C, Chapter 31, Education Code, redesignates it as Section 31.1011, and amends it as follows:

Sec. 31.1011. CERTIFICATION OF PROVISION OF INSTRUCTIONAL MATERIALS. (a) Requires each school district and open-enrollment charter school to annually certify to SBOE and the commissioner that:

(1) for each subject in the required curriculum under Section 28.002, other than physical education, and each grade level, the district:

(A) creates this paragraph from existing text; and

(B) in the provision of instructional materials, protects students from obscene or harmful content as necessary for compliance with the Children's Internet Protection Act (Pub. L. No. 106-554); and

(2) the district used money allocated to the district or school under the instructional materials and technology allotment only for purposes allowed under Section 31.0211.

(b) Deletes existing text authorizing a school district or open-enrollment charter school, to determine whether each student has instructional materials that cover all elements of the essential knowledge and skills as required by Subsection (a), to consider materials adopted or purchased by the commissioner under Section 31.0231 or Subchapter B-1, open education resource instructional materials submitted by eligible institutions and adopted by SBOE under Section 31.0241

(Adoption of Open Education Resource Instructional Materials), and open education resource instructional materials made available by other public schools. Makes nonsubstantive and conforming changes.

SECTION 41. Amends Subchapter C, Chapter 31, Education Code, by adding Section 31.1012, as follows:

Sec. 31.1012. REPORT TO AGENCY. Requires each school 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 compliance with Section 31.151(a).

SECTION 42. Amends the heading to Section 31.102, Education Code, to read as follows:

Sec. 31.102. TITLE AND CUSTODY; SCHOOL DISTRICT PURCHASES.

SECTION 43. Amends Section 31.102, Education Code, by adding Subsection (d), as follows:

(d) Provides that a school district is not required to use a method provided by Section 44.031(a) (relating to requiring certain purchases to be made by a certain method that provides the best value for the district) to purchase instructional materials that have been reviewed by TEA under Section 31.023 and approved and included on the list maintained by SBOE under Section 31.022.

SECTION 44. Amends Section 31.103(c), Education Code, as follows:

(c) Authorizes a school district or open-enrollment charter school, in making a requisition under Section 31.103 (Instructional Material Requisitions), to requisition instructional materials on the list adopted under Section 31.022, rather than Section 31.023, for grades above the grade level in which a student is enrolled.

SECTION 45. Amends Section 31.151, Education Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that a publisher or manufacturer of instructional materials:

(1)-(7) makes no changes to these subdivisions;

(8)-(9) makes conforming changes to these subdivisions; and

(10) is required to comply with all other standard terms and conditions adopted by SBOE for use in contracts for the procurement of instructional materials under Subsection (a-1).

(a-1) Requires SBOE to adopt standard terms and conditions for use in contracts for the procurement of instructional materials from publishers and manufacturers under Section 31.151 (Duties of Publishers and Manufacturers).

SECTION 46. Amends Subchapter D, Chapter 31, Education Code, by adding Section 31.154, as follows:

Sec. 31.154. INSTRUCTIONAL MATERIALS PARENT PORTAL. (a) Requires TEA to adopt standards for entities that supply instructional materials that are reviewed under this chapter for the maintenance of instructional materials on a parent portal to satisfy the requirement under Section 31.022(d).

(b) Requires TEA under Subsection (a) to require the instructional materials parent portal to:

- (1) provide to each parent of a student enrolled in the district access to the instructional material;
- (2) organize the instructional material chronologically by the order in which the material is designed to be used;
- (3) be capable of being searched by key word and indexed by unit; and
- (4) for instructional material not available in a digital format, contain sufficient information to allow a parent to locate a physical copy of the material.

(c) Authorizes standards, to comply with an intellectual property license or other restrictions placed on an instructional material and to maintain security of the information contained in an instructional materials parent portal under this section, to require parents, before accessing the portal, to:

- (1) enter a password;
- (2) comply with other user access verification procedures; and
- (3) accept user terms and conditions, including a condition that the instructional material cannot be shared.

(d) Authorizes a parent's access to an instructional materials parent portal under this section to be temporarily denied if the parent fails or refuses to comply with a restriction under Subsection (c). Requires the entity to work in conjunction with the school district regarding permanent denial in accordance with Section 26.006(f) and (g).

SECTION 47. Amends Section 33.004(b), Education Code, as follows:

(b) Requires that all materials, including curriculum to be used during the year that is not available digitally through an instructional materials parent portal under Section 31.154, be available for a parent or guardian to preview during school hours. Prohibits materials or curriculum not included in the materials on the instructional materials parent portal or available on the campus for preview from being used.

SECTION 48. Subchapter D, Chapter 48, Education Code, is amended by adding Sections 48.157 and 48.158, as follows:

Sec. 48.157. ALLOTMENT FOR STATE-APPROVED INSTRUCTIONAL MATERIALS. (a) Provides that a school district is entitled to an allotment equal to \$40, or a greater amount provided by appropriation, for each student enrolled in the district for costs incurred by the district to procure instructional material that has been:

- (1) reviewed by TEA under Section 31.023;
- (2) approved and placed on the list maintained by SBOE under Section 31.022;
- (c) determined by SBOE under Section 31.022 to be designated as a material included or capable of being included in an instructional materials parent portal under Section 31.154; and
- (4) acquired from a publisher or manufacturer or other entity which has not been found to be out of compliance with Section 31.151.

(b) Requires that funds allotted under this section be deposited to the credit of the district's instructional materials and technology account maintained by the commissioner under Section 31.0212.

(c) Requires TEA to adopt a process to allow a district subject to Section 48.257 (Local Revenue Level in Excess of Entitlement) to deposit the funding the district receives under this allotment in the state instructional materials and technology fund under Section 31.0212 for use by the school district. Provides that funding under this section retained by a school district subject to Section 48.257 is subject to all spending restrictions that apply to the instructional materials and technology allotment under Chapter 31.

Sec. 48.158. ALLOTMENT FOR OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIAL. (a) Provides that a school district, for each school year, is entitled to an allotment per student for the costs incurred during that year associated with printing and shipping open education resource instructional material made available under Subchapter B-1, Chapter 31, that is prohibited from exceeding \$20 per student.

(b) Provides that a school district is not eligible for an allotment under this section unless the district has complied with Section 31.0751.

(c) Requires that funds allotted under this section be deposited to the credit of the district's instructional materials and technology account maintained by the commissioner under Section 31.0212.

(d) Requires TEA to adopt a process to allow a district subject to Section 48.257 to deposit the funding the district retains under this allotment in the state instructional materials and technology fund under Section 31.0212 for use by the school district. Provides that funding under this section received by a school district subject to Section 48.257 is subject to all spending restrictions that apply to the instructional materials allotment under Chapter 31.

SECTION 49. Repealers: Sections 31.0211(f) (relating to authorizing the commissioner to adopt rules as necessary) and 31.0213 (Certification of Use of Instructional Materials and Technology), Education Code.

Repealers: Sections 31.0214(b) (relating to authorizing the commissioner to adopt rules as necessary) and 31.0215(f) (relating to authorizing the commissioner to adopt rules as necessary), Education Code.

Repealers: Sections 31.022(d-1) (relating to requiring that a notice state that a publisher of adopted instructional materials for a grade level other than prekindergarten is required to submit an electronic sample of the instructional materials) and (e) (relating to requiring SBOE to designate a request for production of instructional materials in a subject area and grade level by the school year in which the instructional materials are intended to be made available in classrooms), Education Code.

Repealers: Sections 31.022(f) (relating to requiring SBOE to amend any request for production issued for the purchase of instructional materials to conform to the instructional materials funding levels provided by the General Appropriations Act for the year of implementation) and (g) (relating to requiring SBOE to consider the cost of all district technology requirements, as estimated by the commissioner in determining the disbursement of money to the available school fund), Education Code.

Repealers: Sections 31.022(h) (relating to requiring SBOE to include information regarding open education resource instructional materials during the adoption cycle) and (i) (relating to prohibiting the total projected cost of instructional materials under requests for production issued by SBOE from exceeding 75 percent of the total amount used to fund the instructional materials and technology allotment for that biennium), Education Code.

Repealers: Sections 31.0221 (Midcycle Review and Adoption of Instructional Materials) and 31.023(a-1) (relating to requiring 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), Education Code.

Repealers: Sections 31.0231 (Commissioner's List) and 31.024 (Adoption by State Board of Education), Education Code.

Repealers: Sections 31.0241 (Adoption of Open Education Resource Instructional Materials) and 31.0242 (Review of Open Education Resource Instructional Material), Education Code.

Repealers: Sections 31.0261 (Contracts for Printing of Open Education Resource Instructional Materials) and 31.035 (Supplemental Instructional Materials), Education Code.

Repealer: The heading to Subchapter B-2 (Instructional Materials Web Portal), Chapter 31, Education Code.

Repealers: Sections 31.081 (Instructional Materials and Web Portal) and 31.082 (Quality of Instructional Materials Submitted by Publisher), Education Code.

Repealers: Sections 31.084 (Rules) and 31.101 (Selection and Purchase of Instructional Materials by School Districts), Education Code.

Repealers: Section 31.151(e) (relating to providing that an eligible institution that offers open education resource instructional materials is not a publisher or manufacturer), Education Code.

SECTION 50. Provides that this Act, to the extent of any conflict, prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 51. Makes application of Sections 31.026 or 31.151, Education Code, as amended by this Act, prospective.

SECTION 52. Provides that this Act applies beginning with the 2023–2024 school year.

SECTION 53. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2023.

(b) Effective date, Sections 48.157 and 48.158, Education Code, as added by this Act: September 1, 2023.