

By: Creighton, et al.

S.B. No. 2565

A BILL TO BE ENTITLED

AN ACT

1
2 relating to instructional material and technology, the adoption of
3 essential knowledge and skills for certain public school foundation
4 curriculum subjects, and creating allotments for the procurement of
5 certain instructional materials under the Foundation School
6 Program; authorizing a fee.

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

8 SECTION 1. Section [11.164](#), Education Code, is amended by
9 amending Subsection (a) and adding Subsection (a-1) to read as
10 follows:

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

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

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

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

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

24 (5) a report on instructional materials;

1 (6) subject to Subsection (a-1), a unit or weekly
2 lesson plan that outlines, in a brief and general manner, the
3 information to be presented during each period at the secondary
4 level or in each subject or topic at the elementary level;

5 (7) an attendance report;

6 (8) any report required for accreditation review;

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

10 or

11 (10) any information specifically required by law,
12 rule, or regulation.

13 (a-1) A unit or weekly lesson plan that is included in
14 instructional material, as defined by Section 31.002, and adopted
15 by the board of trustees of the school district at which a teacher
16 is employed is sufficient to satisfy a requirement to prepare
17 written information described by Subsection (a)(6).

18 SECTION 2. Section 21.044, Education Code, is amended by
19 amending Subsection (a-1) and adding Subsection (h) to read as
20 follows:

21 (a-1) Any training requirements for a certificate specified
22 under Subsection (a) must require that the person demonstrate:

23 (1) basic knowledge of:

24 (A) each disability category under the
25 Individuals with Disabilities Education Act (20 U.S.C. Section 1400
26 et seq.) and how each category can affect student learning and
27 development; and

1 (B) conditions that may be considered a
2 disability under Section 504, Rehabilitation Act of 1973 (29 U.S.C.
3 Section 794), and how a condition covered by that section can affect
4 student learning and development;

5 (2) competence in the use of proactive instructional
6 planning techniques that:

7 (A) provide flexibility in the ways:

8 (i) information is presented;

9 (ii) students respond or demonstrate
10 knowledge and skills; and

11 (iii) students are engaged;

12 (B) reduce barriers in instruction;

13 (C) provide appropriate accommodations,
14 supports, and challenges; and

15 (D) maintain high achievement expectations for
16 all students, including students with disabilities and students of
17 limited English proficiency; ~~and~~

18 (3) competence in the use of evidence-based inclusive
19 instructional practices, including:

20 (A) general and special education collaborative
21 and co-teaching models and approaches;

22 (B) multitiered systems of support, including
23 response to intervention strategies, classroom and school level
24 data-based collaborative structures, and evidence-based strategies
25 for intervention and progress monitoring systems in academic areas;

26 (C) classroom management techniques using
27 evidence-based behavioral intervention strategies and supports;

1 and

2 (D) appropriate adaptation strategies, including
3 accommodations, modifications, and instruction in the use of
4 assistive technology for instruction; and

5 (4) thorough understanding of and competence in the
6 use of open education resource instructional materials included on
7 the list of approved instructional materials maintained by the
8 State Board of Education under Section 31.022 in each subject area
9 and grade level covered by the person's certificate.

10 (h) An educator preparation program may not include
11 instruction on the use of instructional materials that incorporates
12 the method of three-cueing, as defined by Section 28.0062(a-1),
13 into foundational skills reading instruction.

14 SECTION 3. Subchapter I, Chapter 21, Education Code, is
15 amended by adding Section 21.4045 to read as follows:

16 Sec. 21.4045. PLANNING AND NONINSTRUCTIONAL DUTIES OF
17 TEACHERS. (a) A school district may permit, but may not require, a
18 classroom teacher for a foundation curriculum course to spend
19 planning and preparation time to which the teacher is entitled
20 under Section 21.404 creating or selecting instructional materials
21 to initially cover the applicable essential knowledge and skills
22 for the course unless the contract under which the teacher is
23 employed explicitly states that the teacher is responsible for
24 duties relating to initial lesson plan design or instructional
25 material selection.

26 (b) A contract between a school district and a classroom
27 teacher under which a teacher is assigned responsibility for duties

1 unrelated to providing instruction and that requires the teacher to
2 work a greater number of hours than the number of hours worked by
3 other full-time teachers of the same grade level in the district
4 must explicitly state each of the teacher's duties unrelated to
5 providing instruction.

6 SECTION 4. Subchapter B, Chapter 22, Education Code, is
7 amended by adding Section 22.05125 to read as follows:

8 Sec. 22.05125. IMMUNITY FROM DISCIPLINARY PROCEEDINGS FOR
9 CLASSROOM TEACHERS. (a) In this section, "disciplinary
10 proceeding" has the meaning assigned by Section 22.0512.

11 (b) A classroom teacher employed by a school district may
12 not be subject to disciplinary proceedings for an allegation that
13 the teacher violated Section 28.0022, the Establishment Clause of
14 the First Amendment of the United States Constitution, or a related
15 state or federal law if:

16 (1) the teacher used only instructional material
17 included on the list of approved instructional material maintained
18 by the State Board of Education under Section 31.022 and adopted by
19 the district; and

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

23 (c) The immunity provided by Subsection (b) is in addition
24 to any other immunity provided by law. This section may not be
25 construed to interfere with any other immunity provided by law.

26 SECTION 5. Section 26.006, Education Code, is amended by
27 amending Subsection (b) and adding Subsections (b-1) and (f) to

1 read as follows:

2 (b) A school district shall make teaching materials and
3 tests readily available for review by parents both in person and, if
4 applicable and subject to denial under Section 31.154(e), through
5 an instructional materials parent portal established under Section
6 31.154. In providing access to instructional materials to a
7 student's parent under this section, the district shall:

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

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

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

17 (B) the student's graded assignments.

18 (b-1) The district may specify reasonable hours for
19 in-person review.

20 (f) A school district that denies a parent access to an
21 instructional materials parent portal under Section 31.154(e) must
22 permit the parent to appeal the denial to the board of trustees of
23 the school district.

24 SECTION 6. Chapter 26, Education Code, is amended by adding
25 Section 26.0061 to read as follows:

26 Sec. 26.0061. RIGHT TO REQUEST INSTRUCTIONAL MATERIAL
27 REVIEW. (a) The board of trustees of each school district shall

1 establish a process by which a parent of a student, as indicated on
2 the student registration form at the student's campus, may request
3 an instructional material review under Section 31.0252 for a
4 subject area in the grade level in which the student is enrolled.

5 (b) A process established under Subsection (a):

6 (1) may not require more than one parent of a student
7 to make the request;

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

11 (3) may permit the requesting parent to review the
12 instructional material directly before the district conducts an
13 instructional material review under Section 31.0252.

14 (c) If the parents of at least 25 percent of the students
15 enrolled at a campus present to the board of trustees of the school
16 district in which the campus is located a petition for the board to
17 conduct an instructional material review under Section 31.0252, the
18 board shall, subject to Subsection (d), conduct the review, unless
19 the petition is presented by the parents of less than 50 percent of
20 the students enrolled at the campus and, by a majority vote, the
21 board denies the request. A review conducted under this subsection
22 shall include a review of instructional materials for each subject
23 area or grade level specified in the petition.

24 (d) The board of trustees of a school district is not
25 required to conduct a review under this section for a specific
26 subject area or grade level at a specific district campus more than
27 once per school year.

1 (e) Parental access to instructional material provided by
2 an instructional material review conducted under this section is in
3 addition to any other right to access instructional material
4 granted by this title or school district policy.

5 (f) The State Board of Education may adopt rules to
6 implement this section.

7 SECTION 7. Section 28.002, Education Code, is amended by
8 adding Subsections (c-4) and (c-5) to read as follows:

9 (c-4) In adopting essential knowledge and skills for
10 English language arts under Subsection (a)(1)(A), the State Board
11 of Education shall specify a list of required vocabulary and at
12 least one literary work to be taught in each grade level. The
13 vocabulary specified by the board must support the essential
14 knowledge and skills adopted for other courses offered under the
15 foundation curriculum under Subsection (a)(1).

16 (c-5) The State Board of Education shall initiate the
17 process of specifying an initial list of vocabulary and literary
18 works as required by Subsection (c-4) not later than February 1,
19 2024. The State Board of Education shall request from the agency
20 recommendations regarding the list, and that request for
21 recommendations may be considered an initiation of the process.
22 This subsection expires September 1, 2025.

23 SECTION 8. The heading to Section 28.0027, Education Code,
24 is amended to read as follows:

25 Sec. 28.0027. DISTRICT CURRICULUM SCOPE, ~~AND~~ SEQUENCE,
26 AND INSTRUCTIONAL MATERIAL.

27 SECTION 9. Sections 28.0027(a) and (b), Education Code, are

1 amended to read as follows:

2 (a) In adopting a recommended or designated scope and
3 sequence or instructional materials for a subject in the required
4 curriculum under Section 28.002(a) in a particular grade level, a
5 school district shall ensure sufficient time is provided for
6 teachers to teach and students to learn the essential knowledge and
7 skills for that subject and grade level.

8 (b) Except as provided by Subsection (c), a school district
9 may not penalize a teacher who does not follow the pacing of [a]
10 recommended or designated instructional materials or the pacing of
11 the recommended or designated scope and sequence for a subject in
12 the required curriculum under Section 28.002(a) in a particular
13 grade level based on the teacher's determination that the teacher's
14 students need more or less time in a specific area to demonstrate
15 proficiency in the essential knowledge and skills for that subject
16 and grade level.

17 SECTION 10. Section 28.0062, Education Code, is amended by
18 adding Subsection (a-1) to read as follows:

19 (a-1) In this subsection, "three-cueing" means a method of
20 reading instruction for identification of words by which a student
21 is encouraged to draw on context and sentence structure to read
22 words without sounding the words out or using a phonics-based
23 approach. A school district or open-enrollment charter school may
24 not include any instruction that incorporates three-cueing in the
25 phonics curriculum required under Subsection (a)(1).

26 SECTION 11. The heading to Chapter 31, Education Code, is
27 amended to read as follows:

CHAPTER 31. INSTRUCTIONAL MATERIALS AND TECHNOLOGY

SECTION 12. Section 31.002, Education Code, is amended by amending Subdivisions (1) and (1-a) and adding Subdivisions (1-b), (1-c), and (3) to read as follows:

(1) "Full subject tier one instructional material" means instructional material designed to, if implemented as designed, provide a student with mastery of the essential knowledge and skills adopted by the board for a certain subject and grade level in the required curriculum under Section 28.002 or for prekindergarten without the need for supplementation.

(1-a) "Instructional material" means content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes:

(A) material used by a teacher, including a lesson plan, answer key, grading rubric, or unit plan;

(B) material used by a principal or campus instructional leader to support instruction; and

(C) material used by a student, including a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open education resource instructional material.

(1-b) [~~(1-a)~~] "Open education resource instructional material" means teaching, learning, and research resources that

1 reside in the public domain or have been released under an
2 intellectual property license that allows for free use, reuse,
3 modification, and sharing with others, including full courses,
4 course materials, modules, textbooks, streaming videos, tests,
5 software, and any other tools, materials, or techniques used to
6 support access to knowledge. [~~The term includes state-developed
7 open education resource instructional material purchased under
8 Subchapter B-1.~~]

9 (1-c) "Partial subject tier one instructional
10 material" means instructional material designed to, if implemented
11 as designed, provide a student with mastery in a portion of the
12 essential knowledge and skills adopted by the State Board of
13 Education for a certain subject and grade level in the required
14 curriculum under Section 28.002 or for prekindergarten without the
15 need for supplementation in the essential knowledge and skills
16 covered.

17 (3) "Supplemental instructional material" means
18 instructional material designed to assist in the instruction of one
19 or more of the essential knowledge and skills adopted by the State
20 Board of Education for a subject in the required curriculum under
21 Section 28.002 or for prekindergarten.

22 SECTION 13. Section 31.003, Education Code, is amended to
23 read as follows:

24 Sec. 31.003. RULES. (a) The State Board of Education may
25 adopt rules, consistent with this chapter, for the adoption,
26 requisition, distribution, care, use, and disposal of
27 instructional materials.

1 **(b) The commissioner may adopt rules, consistent with this**
2 **chapter, as necessary to implement any provision of this chapter.**

3 SECTION 14. Subchapter **A**, Chapter **31**, Education Code, is
4 amended by adding Section 31.006 to read as follows:

5 **Sec. 31.006. ADVISORY COMMITTEE. The State Board of**
6 **Education or the agency may form an advisory committee to comply**
7 **with the provisions of this chapter. Chapter **2110**, Government**
8 **Code, does not apply to an advisory committee formed under this**
9 **section.**

10 SECTION 15. Chapter **31**, Education Code, is amended by
11 adding Subchapter **A-1**, and a heading is added to that subchapter to
12 read as follows:

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

15 SECTION 16. Section **31.005**, Education Code, is transferred
16 to Subchapter **A-1**, Chapter **31**, Education Code, as added by this Act,
17 and redesignated as Section 31.0205 to read as follows:

18 **Sec. 31.0205** [~~**31.005**~~]. FUNDING FOR OPEN-ENROLLMENT
19 CHARTER SCHOOLS. An open-enrollment charter school is entitled to
20 the instructional materials and technology allotment under this
21 chapter and is subject to this chapter as if the school were a
22 school district.

23 SECTION 17. Sections **31.021**, **31.0212**, **31.0214**, and **31.0215**,
24 Education Code, are transferred to Subchapter **A-1**, Chapter **31**,
25 Education Code, as added by this Act, and amended to read as
26 follows:

27 **Sec. 31.021. STATE INSTRUCTIONAL MATERIALS AND TECHNOLOGY**

1 FUND. (a) The state instructional materials and technology fund
2 consists of:

3 (1) an amount set aside by the State Board of Education
4 from the available school fund, in accordance with Section
5 43.001(d); and

6 (2) all amounts lawfully paid into the fund from any
7 other source.

8 (c) Money in the state instructional materials and
9 technology fund shall be used to:

10 (1) fund the instructional materials and technology
11 allotment, as provided by Section 31.0211;

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

15 (3) pay the expenses associated with the instructional
16 materials adoption and review process and Internet website
17 maintained under this chapter;

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

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

24 (6) fund the technology lending grant program
25 established under Section 32.301; and

26 (7) provide funding to the Texas School for the Blind
27 and Visually Impaired, the Texas School for the Deaf, and the Texas

1 Juvenile Justice Department [~~7~~ and
2 [~~8~~] pay the expenses associated with the
3 instructional materials web portal developed under Section
4 [31.081](#)].

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

8 Sec. 31.0212. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
9 ACCOUNT. (a) The commissioner shall maintain an instructional
10 materials and technology account for each school district. In the
11 first year of each biennium, the commissioner shall deposit in the
12 account for each district the amount of the district's
13 instructional materials and technology allotment under Section
14 [31.0211](#).

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

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

26 [~~(d)~~] Money deposited in a school district's instructional
27 materials and technology account during each state fiscal biennium

1 remains in the account and available for use by the district for the
2 entire biennium. At the end of each biennium, a district with
3 unused money in the district's account may carry forward any
4 remaining balance to the next biennium.

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

11 (e) The agency shall provide for the development and
12 maintenance of an online requisition and disbursement system for
13 each school district's instructional materials and technology
14 account.

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

23 ~~[(b) The commissioner may adopt rules as necessary to~~
24 ~~implement this section.]~~

25 Sec. 31.0215. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
26 ALLOTMENT PURCHASES. (a) The commissioner shall, as early as
27 practicable during each biennium, notify each school district and

1 open-enrollment charter school of the estimated amount to which the
2 district or charter school will be entitled under Section 31.0211
3 during the next fiscal biennium.

4 (b) The commissioner shall [~~may~~] allow a school district or
5 open-enrollment charter school to place an order for instructional
6 materials before the beginning of a fiscal biennium and to receive
7 instructional materials before payment. The commissioner shall
8 limit the cost of an order placed under this section to 80 percent
9 of the estimated amount to which a school district or
10 open-enrollment charter school is estimated to be entitled as
11 provided by Subsection (a) and shall first credit any balance in a
12 district or charter school instructional materials and technology
13 account to pay for an order placed under this section.

14 (c) The commissioner shall make payments for orders placed
15 under this section as funds become available to the instructional
16 materials and technology fund and shall prioritize payment of
17 orders placed under this section over reimbursement of purchases
18 made directly by a school district or open-enrollment charter
19 school.

20 (d) The commissioner shall ensure that publishers of
21 instructional materials are informed of any potential delay in
22 payment and that payment is subject to the availability of
23 appropriated funds. A publisher may decline to accept an order
24 placed under this section.

25 (e) Chapter 2251, Government Code, does not apply to
26 purchases of instructional materials under this section.

27 [~~(f) The commissioner may adopt rules to implement this~~

1 ~~section.]~~

2 SECTION 18. Section 31.0211, Education Code, as amended by
3 Chapters 806 (H.B. 1525) and 1003 (H.B. 3261), Acts of the 87th
4 Legislature, Regular Session, 2021, is transferred to Subchapter
5 A-1, Chapter 31, Education Code, as added by this Act, reenacted,
6 and amended to read as follows:

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

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

26 (c) Funds allotted under this section may be used to:

27 (1) purchase:

- 1 (A) [~~materials on the list adopted by the~~
2 ~~commissioner, as provided by Section 31.0231,~~
3 ~~(B)~~] instructional materials, regardless of
4 whether the instructional materials are on the list of approved
5 instructional materials maintained by the State Board of Education
6 under Section 31.022 [~~adopted under Section 31.024~~];
7 (B) [~~(C)~~] consumable instructional materials,
8 including workbooks;
9 (C) [~~(D)~~] instructional materials for use in
10 bilingual education classes, as provided by Section 31.029;
11 (D) [~~(E)~~] instructional materials for use in
12 college preparatory courses under Section 28.014, as provided by
13 Section 31.031;
14 (E) [~~(F)~~] supplemental instructional materials
15 [~~, as provided by Section 31.035~~];
16 (F) [~~(G) state-developed~~] open education
17 resource instructional materials, as provided by Subchapter B-1;
18 (G) [~~(H)~~] instructional materials and
19 technological equipment under any continuing contracts of the
20 district in effect on September 1, 2011;
21 (H) [~~(I)~~] technological equipment necessary to
22 support the use of [~~materials included on the list adopted by the~~
23 ~~commissioner under Section 31.0231 or~~] any instructional materials
24 purchased with an allotment under this section;
25 (I) [~~(J)~~] inventory software or systems for
26 storing, managing, and accessing instructional materials and
27 analyzing the usage and effectiveness of the instructional

1 materials; and

2 (J) [~~(K)~~] services, equipment, and technology
3 infrastructure necessary to ensure Internet connectivity and
4 adequate bandwidth; and

5 (2) pay:

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

10 (B) for training personnel in the electronic
11 administration of assessment instruments; [~~and~~]

12 (C) the salary and other expenses of an employee
13 who provides technical support for the use of technological
14 equipment directly involved in student learning; and

15 (D) [~~(C)~~] for costs associated with distance
16 learning, including Wi-Fi, Internet access hotspots, wireless
17 network service, broadband service, and other services and
18 technological equipment necessary to facilitate Internet access.

19 (d) [~~Each biennium the commissioner shall assess the~~
20 ~~technology needs for all school districts and provide an estimate~~
21 ~~of the cost for these resources to the State Board of Education.~~

22 [~~(d-1)~~] In purchasing technological equipment, a school
23 district shall:

24 (1) secure technological solutions that meet the
25 varying and unique needs of students and teachers in the district;
26 and

27 (2) consider:

1 (A) the long-term cost of ownership; and

2 (B) flexibility for innovation.

3 (e) Not later than May 31 of each school year, a school
4 district may request that the commissioner adjust the number of
5 students for which the district is entitled to receive an allotment
6 under Subsection (a) on the grounds that the number of students
7 attending school in the district will increase or decrease during
8 the school year for which the allotment is provided. The
9 commissioner may also adjust the number of students for which a
10 district is entitled to receive an allotment, without a request by
11 the district, if the commissioner determines a different number of
12 students is a more accurate reflection of students who will be
13 attending school in the district. The commissioner's determination
14 under this subsection is final.

15 (f) Funds allotted under this section may not be used to
16 purchase instructional material that contains obscene or harmful
17 content or would otherwise cause the school district to which the
18 funds were allotted to be unable to submit the certification
19 required under Section 31.1011(a)(1)(B) [The commissioner may
20 adopt rules as necessary to implement this section].

21 SECTION 19. Subchapter A-1, Chapter 31, Education Code, as
22 added by this Act, is amended by adding Section 31.0216 to read as
23 follows:

24 Sec. 31.0216. AGENCY PURCHASE OF INSTRUCTIONAL MATERIALS
25 AND TECHNOLOGY. (a) From funds appropriated for the purpose, the
26 agency may contract directly, including by extending a contract,
27 for the purchase of instructional materials and technology for use

1 by school districts.

2 (b) The provisions of Chapter 2157, Government Code,
3 requiring a state agency to use a contract or contract terms
4 developed or preapproved by the Department of Information Resources
5 do not apply to a contract entered into under this section, but the
6 agency may participate in a program authorized by that chapter.

7 SECTION 20. The heading to Subchapter B, Chapter 31,
8 Education Code, is amended to read as follows:

9 SUBCHAPTER B. STATE REVIEW AND [~~FUNDING,~~] ADOPTION[~~, AND PURCHASE~~]

10 SECTION 21. The heading to Section 31.022, Education Code,
11 is amended to read as follows:

12 Sec. 31.022. STATE BOARD OF EDUCATION INSTRUCTIONAL
13 MATERIALS REVIEW AND APPROVAL [~~ADOPTION~~].

14 SECTION 22. Section 31.022, Education Code, is amended by
15 amending Subsections (a), (b), (c), and (d) and adding Subsection
16 (c-1) to read as follows:

17 (a) The State Board of Education shall [~~adopt a~~] review [~~and~~
18 ~~adoption cycle for~~] instructional materials provided to the board
19 by the agency under Section 31.023. Before approving instructional
20 material, the board must determine that the material is free from
21 factual error and suitable for the subject and grade level for which
22 the material is designed, and, if the material is intended to cover
23 the foundational skills reading curriculum in kindergarten through
24 third grade, does not include three-cueing, as defined by Section
25 28.0062(a-1). The board shall add each material approved under
26 this section to a list of approved instructional materials and may

1 ~~add a material not approved under this section to a list of rejected~~
2 ~~instructional materials [for elementary grade levels, including~~
3 ~~prekindergarten, and secondary grade levels, for each subject in~~
4 ~~the required curriculum under Section 28.002. In adopting the~~
5 ~~cycle, the board:~~

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

8 ~~[(2) shall give priority to instructional materials in~~
9 ~~the following subjects:~~

10 ~~[(A) foundation curriculum subjects for which~~
11 ~~the essential knowledge and skills have been substantially revised~~
12 ~~and for which assessment instruments are required under Subchapter~~
13 ~~B, Chapter 39, including career and technology courses that satisfy~~
14 ~~foundation curriculum requirements as provided by Section~~
15 ~~28.002(n);~~

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

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

24 ~~[(D) enrichment curriculum subjects].~~

25 (b) ~~[The board shall organize the cycle for subjects in the~~
26 ~~foundation curriculum so that not more than one-fourth of the~~
27 ~~instructional materials for subjects in the foundation curriculum~~

1 ~~are reviewed each biennium.]~~ The State Board of Education may adopt
2 criteria necessary for approval of instructional material under
3 Subsection (a) and may require:

4 (1) all instructional material submitted as full
5 subject tier one instructional material to cover a minimum
6 percentage, as determined by the board, of the essential knowledge
7 and skills adopted for the subject and grade level for which the
8 material is designed;

9 (2) electronic samples of the material;

10 (3) certain physical specifications; and

11 (4) the instructional material to not contain obscene
12 or harmful content and otherwise be compatible with certification
13 requirements under Section 31.1011(a)(1)(B) [~~board shall adopt~~
14 rules to provide for a full and complete investigation of
15 instructional materials for each subject in the foundation
16 curriculum every eight years. The adoption of instructional
17 materials for a subject in the foundation curriculum may be
18 extended beyond the eight-year period only if the content of
19 instructional materials for a subject is sufficiently current].

20 (c) The State Board of Education may remove instructional
21 material from the list of approved instructional materials under
22 this section if the essential knowledge and skills intended to be
23 covered by the material are revised or the material is revised
24 without the approval of the board [~~board shall adopt rules to~~
25 provide for a full and complete investigation of instructional
26 materials for each subject in the enrichment curriculum on a cycle
27 the board considers appropriate].

1 (c-1) If the State Board of Education intends to remove an
2 instructional material from the list of approved instructional
3 materials under Subsection (c) because the board plans to revise
4 the essential knowledge and skills intended to be covered by the
5 material, the board shall issue a proclamation requesting the
6 revision of the applicable instructional materials and shall, not
7 later than December 1 of the year preceding the school year for
8 which the revision will take effect, provide to each school
9 district the updated list of approved instructional materials for
10 the relevant subject or grade level.

11 (d) The State Board of Education shall indicate whether each
12 instructional material reviewed under Subsection (a) is capable of
13 being made available through an instructional materials parent
14 portal established under Section 31.154 ~~[At least 12 months before~~
15 ~~the beginning of the school year for which instructional materials~~
16 ~~for a particular subject and grade level will be adopted under the~~
17 ~~review and adoption cycle, the board shall publish notice of the~~
18 ~~review and adoption cycle for those instructional materials. A~~
19 ~~request for production must allow submission of open education~~
20 ~~resource instructional materials that are available for use by the~~
21 ~~state without charge on the same basis as instructional materials~~
22 ~~offered for sale].~~

23 SECTION 23. Section 31.023, Education Code, is amended to
24 read as follows:

25 Sec. 31.023. INSTRUCTIONAL MATERIAL REVIEW ~~[LIST]~~. (a)
26 The commissioner shall establish, in consultation and with the
27 approval of the State Board of Education, a process for the annual

1 review of instructional materials by the agency. The process
2 established under this subsection must:

3 (1) establish a process for the agency to select
4 instructional materials for review that includes:

5 (A) evaluating requests for review of
6 instructional materials submitted to the agency by:

7 (i) a school district;

8 (ii) a majority of the members of the State
9 Board of Education; or

10 (iii) a publisher of instructional
11 material;

12 (B) reviewing instructional materials
13 requisitioned or purchased under Section 31.0212; and

14 (C) reviewing instructional materials using a
15 time frame appropriate for the proclamation requesting the revision
16 of the instructional materials under Section 31.022(c-1) to address
17 revisions made by the State Board of Education to the essential
18 knowledge and skills for a particular subject or grade level;

19 (2) describe the types of instructional materials the
20 agency may review, including:

21 (A) partial subject tier one instructional
22 material, including those designed for use in the phonics
23 curriculum required under Section 28.0062(a)(1);

24 (B) open education resource instructional
25 material;

26 (C) instructional materials developed by a
27 school district and submitted to the agency by the district for

1 review; and

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

4 (3) establish procedures for the agency to conduct
5 reviews of instructional materials, including:

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

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

11 (4) ensure the procedures for review allow the agency
12 to review at least 200 individual instructional materials each year
13 ~~[For each subject and grade level, the State Board of Education~~
14 ~~shall adopt a list of instructional materials. The list includes~~
15 ~~each instructional material submitted for the subject and grade~~
16 ~~level that meets applicable physical specifications adopted by the~~
17 ~~State Board of Education and contains material covering at least~~
18 ~~half of the elements of the essential knowledge and skills of the~~
19 ~~subject and grade level in the student version of the instructional~~
20 ~~material, as well as in the teacher version of the instructional~~
21 ~~material, as determined by the State Board of Education under~~
22 ~~Section 28.002 and adopted under Section 31.024].~~

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

1 (b) In conducting a review under this section, the agency
2 must use a rubric developed by the agency in consultation with and
3 approved by the State Board of Education that includes, with
4 respect to the instructional material being reviewed, a
5 determination of:

6 (1) whether the material is free from factual error
7 and satisfies the criteria adopted by the board under Section
8 31.022;

9 (2) the quality of the material;

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

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

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

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

22 (4) whether the material contains obscene or harmful
23 content or is otherwise incompatible with certification
24 requirements under Section 31.1011(a)(1)(B) [~~Each instructional~~
25 ~~material on the list must be:~~

26 ~~[(1) free from factual errors,~~

27 ~~[(2) suitable for the subject and grade level for~~

1 ~~which the instructional material was submitted, and~~

2 ~~[(3) reviewed by academic experts in the subject and~~
3 ~~grade level for which the instructional material was submitted].~~

4 (c) After completing a review under this section, the agency
5 shall provide the results of the review and any related
6 recommendations to the State Board of Education for approval or
7 rejection of the instructional material and the inclusion of the
8 instructional material on a list maintained by the State Board of
9 Education under Section 31.022.

10 (d) The agency shall use funds appropriated to the agency
11 for the purposes of reviewing instructional material or available
12 in the state instructional materials and technology fund for
13 purposes of implementing this section.

14 (e) A process established under Subsection (a) or a rubric
15 developed under Subsection (b) is automatically approved by the
16 State Board of Education if not rejected by the board before the
17 91st day after the date the agency submits the item to the board.

18 SECTION 24. Subchapter B, Chapter 31, Education Code, is
19 amended by adding Sections 31.025, 31.0251, and 31.0252 to read as
20 follows:

21 Sec. 31.025. INSTRUCTIONAL MATERIAL INTERNET WEBSITE. (a)
22 The agency shall develop and maintain an instructional material
23 Internet website to assist school districts in locating and
24 selecting instructional material.

25 (b) For each instructional material included, the Internet
26 website developed and maintained under this section shall provide:

27 (1) the price of the material;

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

3 (3) the results of an agency review of the material
4 conducted under Section 31.023;

5 (4) a statement of whether the material is included on
6 the list of approved instructional materials maintained by the
7 State Board of Education under Section 31.022 or has been rejected
8 by the board; and

9 (5) any other information the agency determines
10 relevant to a school district's selection of instructional
11 material.

12 (c) The Internet website developed and maintained under
13 this section must include the repository of open education resource
14 instructional material required by Section 31.0722.

15 (d) The agency shall use funds appropriated to the agency
16 for the purposes of reviewing instructional material or available
17 in the state instructional materials and technology fund for
18 purposes of implementing this section.

19 Sec. 31.0251. INSTRUCTIONAL MATERIAL SUPPORT. (a) On
20 request of a school district, the agency shall provide the district
21 assistance in evaluating, adopting, or using instructional
22 materials.

23 (b) Except as otherwise provided, the agency may not require
24 a school district to adopt or otherwise use instructional material
25 reviewed by the agency under Section 31.023 or included on the list
26 of approved instructional materials maintained by the State Board
27 of Education under Section 31.022.

1 Sec. 31.0252. LOCAL REVIEW OF CLASSROOM INSTRUCTIONAL
2 MATERIAL. (a) The agency shall develop standards in consultation
3 with stakeholders, including educators, by which a school district
4 may conduct a review of instructional materials used by a classroom
5 teacher in a foundation curriculum course under Section
6 28.002(a)(1) to determine the degree to which the material:

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

9 (2) meets the level of rigor of the essential
10 knowledge and skills adopted under Section 28.002 for the grade
11 level in which it is being used.

12 (b) The agency shall develop a rubric, approved by the State
13 Board of Education, to determine if reviewed instructional material
14 complies with the rigor requirements described by Subsection
15 (a)(2).

16 (c) The agency, in developing standards under Subsection
17 (a):

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

21 (2) may not, unless unavoidable, require a teacher to
22 spend more than 30 minutes on a single review conducted under this
23 section; and

24 (3) may not authorize the review of instructional
25 materials used by a classroom teacher for a specific subject or
26 grade level at a specific school district campus more than once per
27 school year.

1 (d) The agency shall permit a regional education service
2 center or a curriculum review service provider approved by the
3 agency to conduct the review for a school district under this
4 section and provide to approved centers and providers training
5 relating to appropriately conducting the review.

6 (e) The agency shall award grants to assist school districts
7 in conducting reviews under this section.

8 SECTION 25. Sections 31.026(a) and (b), Education Code, are
9 amended to read as follows:

10 (a) The State Board of Education may [~~shall~~] execute a
11 contract for the purchase or licensing of each adopted
12 instructional material.

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

17 SECTION 26. The heading to Subchapter B-1, Chapter 31,
18 Education Code, is amended to read as follows:

19 SUBCHAPTER B-1. [~~STATE-DEVELOPED~~] OPEN EDUCATION RESOURCE
20 INSTRUCTIONAL MATERIALS

21 SECTION 27. Subchapter B-1, Chapter 31, Education Code, is
22 amended by adding Section 31.0701 to read as follows:

23 Sec. 31.0701. REFERENCES TO STATE-DEVELOPED OPEN EDUCATION
24 RESOURCE INSTRUCTIONAL MATERIAL. In this chapter, a reference to a
25 state-developed open education resource instructional material
26 means an open education resource instructional material, as defined
27 by Section 31.002.

1 SECTION 28. Section 31.071, Education Code, is amended to
2 read as follows:

3 Sec. 31.071. AVAILABILITY OF OPEN EDUCATION RESOURCE
4 INSTRUCTIONAL MATERIAL [~~PURCHASE AUTHORITY~~]. (a) The commissioner
5 shall ensure that [~~may purchase state-developed~~] open education
6 resource instructional materials are available for use by school
7 districts in accordance with this subchapter.

8 (b) To ensure the availability of open education resource
9 instructional materials under Subsection (a), the [~~The~~]
10 commissioner may:

11 (1) purchase a license authorizing the use of [~~shall~~
12 ~~purchase any state-developed~~] open education resource
13 instructional materials [~~through a competitive process~~];

14 (2) purchase or otherwise acquire ownership of open
15 education resource instructional materials;

16 (3) develop open education resource instructional
17 materials;

18 (4) adopt open education resource instructional
19 materials; or

20 (5) use any combination of the methods described by
21 Subdivisions (1), (2), (3), and (4) to acquire open education
22 resource instructional materials.

23 (b-1) The commissioner [~~and~~
24 [~~(2)~~] may make available [~~purchase~~] more than one
25 [~~state-developed~~] open education resource instructional material
26 for a subject or grade level.

27 (b-2) The commissioner shall:

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

4 (A) English language arts and mathematics
5 courses in kindergarten through grade eight;

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

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

11 (i) in an integrated manner; and

12 (ii) for approximately 240 minutes of
13 instructional time per day, including time needed each day for
14 accelerated instruction under Section 28.0211; and

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

19 (c) Except as provided by Section 31.0711, an [a
20 state-developed] open education resource instructional material
21 must be licensed to this state under an intellectual property
22 license that allows for free use, reuse, modification, or sharing
23 with others as described by Section 31.07101 [irrevocably owned by
24 the state. The state must have unlimited authority to modify,
25 delete, combine, or add content to the instructional material after
26 purchase].

27 (d) [The commissioner may issue a request for proposals for

1 ~~state-developed open education resource instructional material:~~

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

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

6 ~~[(e)]~~ The costs of administering this subchapter and
7 ensuring the availability of [purchasing state-developed] open
8 education resource instructional materials shall be paid from funds
9 appropriated for the purpose and the state instructional materials
10 and technology fund, as determined by the commissioner.

11 SECTION 29. Subchapter B-1, Chapter 31, Education Code, is
12 amended by adding Section 31.07101 to read as follows:

13 Sec. 31.07101. FREE USE, REUSE, MODIFICATION, OR SHARING
14 LICENSE. (a) Instructional material is licensed to this state
15 under an intellectual property license that allows for free use,
16 reuse, modification, or sharing with others if the license:

17 (1) is irrevocable and perpetual;

18 (2) permits the state to sublicense the material;

19 (3) authorizes the use of the material by any person in
20 any location permitted by the terms of the original license, if
21 applicable;

22 (4) authorizes access, use, transmission, adaptation,
23 public display, public performance, public distribution, and
24 copying of the material; and

25 (5) authorizes the creation of derivative works as
26 permitted by the terms of the original license, if applicable.

27 (b) Instructional material licensed to this state under an

1 intellectual property license that is restricted to noncommercial
2 or educational use qualifies under this subchapter as instructional
3 material licensed to this state under a license that allows for free
4 use, reuse, modification, or sharing with others.

5 SECTION 30. Section 31.0711, Education Code, is amended to
6 read as follows:

7 Sec. 31.0711. CONTENT NOT OWNED BY STATE. Open education
8 resource instructional [~~Instructional~~] material made available
9 [~~purchased~~] under this subchapter may include content not owned by
10 the state and for which preexisting rights may exist if the content:

11 (1) is in the public domain;

12 (2) may be used under a limitation or exception to
13 copyright law, including a limitation under Section 107, Copyright
14 Act of 1976 (17 U.S.C. Section 107); [~~or~~]

15 (3) has been made available by the copyright owner
16 under a Creative Commons license or another intellectual property
17 license that allows for free use, reuse, modification, or sharing
18 as described by Section 31.07101; or

19 (4) is licensed to the state under another [~~a~~] license
20 that:

21 (A) grants access to and allows for use of the
22 material by students, teachers, educators, and other education
23 professionals [~~the state unlimited authority to modify, delete,~~
24 ~~combine, or add content~~];

25 (B) permits access, use, public display, public
26 performance, public distribution, and copying of the material for
27 noncommercial or educational purposes [~~the free use and repurposing~~

1 ~~of the material by any person or entity~~]; and

2 (C) is for a term of use acceptable to the
3 commissioner to ensure a useful life of the material.

4 SECTION 31. Subchapter B-1, Chapter 31, Education Code, is
5 amended by adding Section 31.0712 to read as follows:

6 Sec. 31.0712. OPEN EDUCATION RESOURCE ADVISORY BOARD. The
7 agency shall establish an open education resource advisory board to
8 ensure that open education resource instructional materials made
9 available under this subchapter are:

10 (1) of the highest quality;

11 (2) aligned with the essential knowledge and skills
12 adopted by the State Board of Education under Section 28.002 for the
13 applicable subject and grade level;

14 (3) suitable for the age of students at the grade level
15 for which the materials are developed;

16 (4) free from bias and factual error; and

17 (5) in compliance with Section 28.0022.

18 SECTION 32. Section 31.072, Education Code, is amended to
19 read as follows:

20 Sec. 31.072. CONTENT REQUIREMENTS. (a) Before being made
21 available under this subchapter, [State-developed] open education
22 resource instructional material must[+]

23 [~~1~~] be evaluated by:

24 (1) teachers or other experts, as determined by the
25 commissioner[~~, before purchase~~]; and

26 (2) parents of students in this state [meet the
27 requirements for inclusion on the instructional material list

1 ~~adopted under Section 31.023~~].

2 (b) Based on feedback received by the agency from teachers,
3 parents, and other experts regarding open education resource
4 instructional materials made available under this subchapter, the
5 ~~[Following a curriculum revision by the State Board of Education,~~
6 ~~the commissioner shall require the revision of state-developed open~~
7 ~~education resource instructional material relating to that~~
8 ~~curriculum. The]~~ commissioner may, at any time, require an
9 additional revision of the ~~[state-developed open education~~
10 ~~resource instructional]~~ material ~~[or contract for ongoing~~
11 ~~revisions of state-developed open education resource instructional~~
12 ~~material for a period not to exceed the period under Section 31.022~~
13 ~~for which instructional material for that subject and grade level~~
14 ~~may be adopted. The commissioner shall use a competitive process to~~
15 ~~request proposals to revise state-developed open education~~
16 ~~resource instructional material under this subsection].~~

17 SECTION 33. Subchapter B-1, Chapter 31, Education Code, is
18 amended by adding Section 31.0721 to read as follows:

19 Sec. 31.0721. REVIEW AND RELEASE OF OPEN EDUCATION RESOURCE
20 INSTRUCTIONAL MATERIAL. (a) Except as provided by Subsection (b),
21 open education resource instructional material may not be made
22 available under this subchapter to students, teachers, educators,
23 or other education professionals before being reviewed by the
24 agency under Section 31.023 and included on the list of approved
25 instructional materials maintained by the State Board of Education
26 under Section 31.022.

27 (b) The agency may make open education resource

1 instructional material available to a limited number of classroom
2 teachers for a limited time before the material is reviewed by the
3 agency under Section 31.023 and included on the list of approved
4 instructional materials maintained by the State Board of Education
5 under Section 31.022 to assist in developing or testing the quality
6 of the material. A school district may only use unreviewed material
7 made available under this subsection in a grade level in which the
8 material has not been used previously if:

9 (1) the board of trustees of the district approves the
10 use of the unreviewed material; and

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

13 SECTION 34. Section 31.083, Education Code, is transferred
14 to Subchapter B-1, Chapter 31, Education Code, redesignated as
15 Section 31.0722, Education Code, and amended to read as follows:

16 Sec. 31.0722 [~~31.083~~]. OPEN EDUCATION RESOURCE
17 INSTRUCTIONAL MATERIALS REPOSITORY. (a) The commissioner shall
18 include in the Internet website [~~web portal~~] developed under
19 Section 31.025 [~~31.081~~] a repository of open education resource
20 instructional materials, including open education resource
21 instructional materials made available under Section 31.0721(b),
22 and other electronic instructional materials that school districts
23 and open-enrollment charter schools may access at no cost.

24 (b) The repository under Subsection (a) must:

25 (1) comply with the requirements of Section 31.154;
26 and

27 (2) allow a person to provide comments on open

1 education resource instructional material contained in the
2 repository to assist the agency in improving and updating the
3 material.

4 (c) The agency shall ensure that a person may order a print
5 copy of any open education resource instructional material included
6 in the repository that is reducible to print [~~A publisher may submit~~
7 ~~instructional materials for inclusion in the repository~~].

8 SECTION 35. Sections 31.073 and 31.074, Education Code, are
9 amended to read as follows:

10 Sec. 31.073. SELECTION BY SCHOOL DISTRICT. (a) Except as
11 otherwise provided by this code, the commissioner may not require a
12 school district or open-enrollment charter school to adopt or use
13 an open education resource instructional material.

14 (c) A [~~Notwithstanding Section 31.022, a~~] school district
15 or open-enrollment charter school may adopt [~~state-developed~~] open
16 education resource instructional material at any time[~~, regardless~~
17 ~~of the instructional material review and adoption cycle under that~~
18 ~~section~~].

19 (d) A school district or open-enrollment charter school may
20 not be charged for a cost associated with the selection of an
21 [~~state-developed~~] open education resource instructional material,
22 except for the cost of printing copies of the material [~~in addition~~
23 ~~to instructional material adopted under Subchapter B~~].

24 Sec. 31.074. DISTRIBUTION. (a) The commissioner shall
25 provide for the distribution of [~~state-developed~~] open education
26 resource instructional materials in a manner consistent with
27 distribution of instructional materials approved [~~adopted~~] under

1 Subchapter B.

2 (b) The commissioner may use a competitive process to
3 contract for printing, ~~[or]~~ other reproduction, or storage of
4 ~~[state-developed]~~ open education resource instructional material
5 on behalf of a school district or open-enrollment charter school.
6 The commissioner may not require a school district or
7 open-enrollment charter school to contract with a state-approved
8 provider for the printing, ~~[or]~~ reproduction, or storage of
9 ~~[state-developed]~~ open education resource instructional material.

10 (c) The agency is not required to comply with Subchapters C
11 and D, Chapter 2052, Government Code, with regard to the printing or
12 reproduction of an open education resource instructional material
13 made available under this subchapter.

14 SECTION 36. The heading to Section 31.075, Education Code,
15 is amended to read as follows:

16 Sec. 31.075. STATE OWNERSHIP; LICENSING.

17 SECTION 37. Sections 31.075(a), (b), (c), (d), and (e),
18 Education Code, are amended to read as follows:

19 (a) Except as otherwise provided by this subchapter,
20 ~~[State-developed]~~ open education resource instructional material
21 is the property of the state.

22 (b) To encourage the use of instructional material
23 purchased by the state under this subchapter by school districts
24 and open-enrollment charter schools, the commissioner may ~~[shall]~~
25 provide a license for the instructional material that ~~[allows for~~
26 ~~the free use, reuse, modification, or sharing of the material by any~~
27 ~~person or entity.~~

1 ~~[(c) The terms of a license provided by the commissioner~~
2 ~~under this section]:~~

3 (1) requires ~~[shall require]~~ that a user who
4 reproduces the instructional material in any manner:

5 (A) except as provided by Subdivision (2)(A),
6 must keep all copyright notices for the material intact;

7 (B) except as provided by Subdivision (2)(A),
8 must attribute the authorship of the material to the agency or
9 another person specified by the commissioner;

10 (C) must indicate if the user has modified the
11 material;

12 (D) may not assert or imply any connection with
13 or sponsorship or endorsement by the agency or this state, unless
14 authorized by the commissioner; and

15 (E) to the extent reasonably practicable, must
16 provide in any product or derivative material a uniform resource
17 identifier or hyperlink through which a person may obtain the
18 material free of charge;

19 (2) provides ~~[must provide]~~ that:

20 (A) the commissioner may request that a user
21 remove a copyright notice or attribution from the material and that
22 a user must comply with the request to the extent reasonably
23 practicable; and

24 (B) the rights granted under the license to a
25 user are automatically terminated if the user fails to comply with
26 the terms of the license; and

27 (3) includes ~~[may include]~~ any additional terms

1 determined by the commissioner.

2 (d) The commissioner may exempt a license under this section
3 from including one or more of the requirements under Subsection
4 (b)(1) [~~(c)(1)~~].

5 (e) The commissioner shall determine what is considered
6 reasonably practicable for purposes of Subsections (b)(1)(E)
7 [~~(c)(1)(E)~~] and (b)(2)(A) [~~(c)(2)(A)~~].

8 SECTION 38. Subchapter B-1, Chapter 31, Education Code, is
9 amended by adding Sections 31.0751, 31.0752, and 31.0753 to read as
10 follows:

11 Sec. 31.0751. OPEN EDUCATION RESOURCE INSTRUCTIONAL
12 MATERIAL TRANSITION PLAN. (a) Except as provided by Subsection
13 (c), to qualify for additional state aid under Section 48.308 the
14 board of trustees of a school district must adopt an open education
15 resource instructional material transition plan to assist
16 classroom teachers in the district who will be using an open
17 education resource instructional material in a specific subject or
18 grade level for which the teacher has not previously used an open
19 education resource instructional material.

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

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

27 Sec. 31.0752. OPEN EDUCATION RESOURCE INSTRUCTIONAL

1 MATERIAL SUPPORT PROGRAM. The agency shall develop and maintain a
2 program to assist school districts and open-enrollment charter
3 schools in adopting and using open education resource instructional
4 material made available under this subchapter, including by
5 assisting districts and schools to:

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

8 (2) schedule instructional periods in a manner that
9 allows classroom teachers sufficient time to effectively prepare
10 and present instructional material within the teacher's normal work
11 day.

12 Sec. 31.0753. TEACHER CANDIDATE ACCESS AND SUPPORT PROGRAM.
13 The agency shall develop and maintain a program to assist educator
14 preparation programs in implementing Section 21.044(a-1)(4).

15 SECTION 39. Section 31.076(b), Education Code, is amended
16 to read as follows:

17 (b) A decision made by the commissioner under this
18 subchapter [~~regarding the purchase, revision, cost, licensing, or~~
19 ~~distribution of state-developed open education resource~~
20 ~~instructional material~~] is final and may not be appealed.

21 SECTION 40. Section 31.004, Education Code, is transferred
22 to Subchapter C, Chapter 31, Education Code, redesignated as
23 Section 31.1011, Education Code, and amended to read as follows:

24 Sec. 31.1011 [31.004]. CERTIFICATION OF PROVISION OF
25 INSTRUCTIONAL MATERIALS. (a) Each school district and
26 open-enrollment charter school shall annually certify to the State
27 Board of Education and the commissioner that:

1 (1) [~~7~~] for each subject in the required curriculum
2 under Section 28.002, other than physical education, and each grade
3 level, the district or school:

4 (A) provides each student with instructional
5 materials that cover all elements of the essential knowledge and
6 skills adopted by the State Board of Education for that subject and
7 grade level; and

8 (B) in the provision of instructional materials,
9 protects students from obscene or harmful content as necessary for
10 compliance with:

11 (i) the Children's Internet Protection Act
12 (Pub. L. No. 106-554);

13 (ii) Section 28.0022;

14 (iii) Section 43.22, Penal Code; and

15 (iv) any other law or regulation that
16 protects students from obscene or harmful content; and

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

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

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

26 (2) ~~[materials adopted or purchased by the~~
27 ~~commissioner under Section 31.0231 or Subchapter B-1,~~

1 ~~[(3) open education resource instructional materials~~
2 ~~submitted by eligible institutions and adopted by the State Board~~
3 ~~of Education under Section 31.0241;~~

4 ~~[(4) open education resource instructional materials~~
5 ~~made available by other public schools;~~

6 ~~[(5)]~~ instructional materials developed, ~~[or]~~
7 purchased, or otherwise acquired by the school district or
8 open-enrollment charter school; and

9 (3) [(6)] open education resource instructional
10 materials and other electronic instructional materials included in
11 the repository under Section 31.0722 [~~31.083~~].

12 SECTION 41. Subchapter C, Chapter 31, Education Code, is
13 amended by adding Section 31.1012 to read as follows:

14 Sec. 31.1012. REPORT TO AGENCY. Each school district shall
15 annually report to the agency information regarding the
16 instructional materials used by the district during the previous
17 school year, including the cost of each material, to assist the
18 agency in ensuring compliance with Section 31.151(a).

19 SECTION 42. The heading to Section 31.102, Education Code,
20 is amended to read as follows:

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

22 SECTION 43. Section 31.102, Education Code, is amended by
23 adding Subsection (d) to read as follows:

24 (d) A school district is not required to use a method
25 provided by Section 44.031(a) to purchase instructional materials
26 that have been reviewed by the agency under Section 31.023 and
27 included on the list of approved instructional materials maintained

1 by the State Board of Education under Section 31.022.

2 SECTION 44. Section 31.103(c), Education Code, is amended
3 to read as follows:

4 (c) In making a requisition under this section, a school
5 district or open-enrollment charter school may requisition
6 instructional materials [~~on the list adopted under Section 31.023~~]
7 for grades above the grade level in which a student is enrolled.

8 SECTION 45. Section 31.151, Education Code, is amended by
9 amending Subsection (a) and adding Subsection (a-1) to read as
10 follows:

11 (a) A publisher or manufacturer of instructional materials:

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

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

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

26 (4) shall guarantee that each copy of instructional
27 material sold in this state is at least equal in quality to copies

1 of that instructional material sold elsewhere in the United States
2 and is free from factual error;

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

8 (6) shall deliver instructional materials to a
9 school district or open-enrollment charter school;

10 (7) shall, at the time an order for instructional
11 materials is acknowledged, provide to school districts or
12 open-enrollment charter schools an accurate shipping date for
13 instructional materials that are back-ordered;

14 (8) shall guarantee delivery of instructional
15 materials at least 10 business days before the opening day of school
16 of the year for which the instructional materials are ordered if the
17 instructional materials are ordered by a date specified in the
18 sales contract; ~~and~~

19 (9) shall submit to the State Board of Education an
20 affidavit certifying any instructional material the publisher or
21 manufacturer offers in this state to be free of factual errors at
22 the time the publisher executes the contract required by Section
23 [31.026](#); and

24 (10) shall comply with all other standard terms and
25 conditions adopted by the State Board of Education for use in
26 contracts for the procurement of instructional materials under
27 Subsection (a-1).

1 (a-1) The State Board of Education shall adopt standard
2 terms and conditions for use in contracts for the procurement of
3 instructional materials from publishers and manufacturers under
4 this section.

5 SECTION 46. Subchapter D, Chapter 31, Education Code, is
6 amended by adding Section 31.154 to read as follows:

7 Sec. 31.154. INSTRUCTIONAL MATERIALS PARENT PORTAL. (a)
8 The board shall adopt standards for entities that supply
9 instructional materials reviewed by the agency under Section 31.023
10 to make instructional materials supplied by the entity available on
11 a parent portal hosted by the entity.

12 (b) An instructional materials parent portal must:

13 (1) provide to each parent of a student enrolled in a
14 school district or open-enrollment charter school access to
15 instructional material that is included in the portal and used by
16 the district or school;

17 (2) organize instructional material by unit and in the
18 order in which the material is designed to be used;

19 (3) be capable of being searched by key word; and

20 (4) for instructional material not available in a
21 digital format, contain sufficient information to allow a parent to
22 locate a physical copy of the material.

23 (c) Standards adopted under Subsection (a) may not require a
24 classroom teacher to submit instructional materials developed by
25 the teacher for inclusion in an instructional materials parent
26 portal.

27 (d) To comply with an intellectual property license or other

1 restrictions placed on an instructional material and to maintain
2 security of the information contained in an instructional materials
3 parent portal under this section, a parent may be required, before
4 accessing the portal, to:

- 5 (1) enter a password;
6 (2) comply with other user access verification
7 procedures; and
8 (3) accept user terms and conditions, which may not
9 limit or exclude access to instructional material based on the uses
10 of the material that would otherwise be permitted under fair use
11 provisions of copyright law.

12 (e) A parent's access to an instructional materials parent
13 portal under this section may be temporarily denied if the parent
14 fails or refuses to comply with a restriction under Subsection (d).

15 (f) An entity that hosts an instructional materials parent
16 portal must comply with requests regarding parental access to the
17 portal made by a school district in compliance with this section or
18 Section 26.006.

19 SECTION 47. Section 33.004(b), Education Code, is amended
20 to read as follows:

21 (b) Each school, before implementing a comprehensive school
22 counseling program under Section 33.005, shall annually conduct a
23 preview of the program for parents and guardians. All materials,
24 including curriculum to be used during the year that is not
25 available digitally through an instructional materials parent
26 portal under Section 31.154, must be available for a parent or
27 guardian to preview during school hours. Materials or curriculum

1 not included in the materials on an instructional materials parent
2 portal or available on the campus for preview may not be used.

3 SECTION 48. Section 48.277(b), Education Code, is amended
4 to read as follows:

5 (b) For purposes of calculating maintenance and operations
6 revenue under Subsection (a), the commissioner shall:

7 (1) for purposes of Subsections (a)(1) and (2), use
8 the following applicable school year:

9 (A) in a school year ending in an even-numbered
10 year, the 2019-2020 school year; and

11 (B) in a school year ending in an odd-numbered
12 year, the 2019-2020 or 2020-2021 school year, whichever is greater;

13 (2) include all state and local funding, except for
14 any funding resulting from:

15 (A) reimbursement for disaster remediation costs
16 under former Sections 41.0931 and 42.2524;

17 (B) an adjustment for rapid decline in taxable
18 value of property under former Section 42.2521; ~~and~~

19 (C) an adjustment for property value affected by
20 a state of disaster under former Section 42.2523; and

21 (D) additional state aid under Section 48.307 or
22 48.308;

23 (3) adjust the calculation to reflect a reduction in
24 tax effort by a school district; and

25 (4) if a school district or open-enrollment charter
26 school receives a waiver relating to eligibility requirements for
27 the national free or reduced-price lunch program under 42 U.S.C.

1 Section 1751 et seq., use the numbers of educationally
2 disadvantaged students on which the district's or school's
3 entitlement to compensatory education funds was based for the
4 school year before the school year in which the district or school
5 received the waiver, adjusted for estimated enrollment growth.

6 SECTION 49. Subchapter G, Chapter 48, Education Code, is
7 amended by adding Sections 48.307 and 48.308 to read as follows:

8 Sec. 48.307. ADDITIONAL STATE AID FOR STATE-APPROVED
9 INSTRUCTIONAL MATERIALS. (a) For each student enrolled in the
10 district, a school district is entitled to additional state aid for
11 each school year in an amount equal to \$40, or a greater amount
12 provided by appropriation, to procure instruction material that has
13 been:

14 (1) reviewed by the agency under Section 31.023;
15 (2) placed on the list of approved instructional
16 materials maintained by the State Board of Education under Section
17 31.022;

18 (3) designated by the State Board of Education under
19 Section 31.022 as being included or capable of being included in an
20 instructional materials parent portal under Section 31.154; and

21 (4) acquired from a publisher, manufacturer, or other
22 entity that has not been found to violate Section 31.151.

23 (b) A school district is entitled to the amount of state aid
24 provided by Subsection (a) each school year, regardless of whether
25 the district uses the amount during the school year for which the
26 amount was provided.

27 (c) Additional state aid provided under this section shall

1 be deposited to the credit of the district's instructional
2 materials and technology account maintained by the commissioner
3 under Section 31.0212 and may be accessed only for the procurement
4 of instructional materials in accordance with this section.

5 (d) Funds provided to a school district under this section
6 must be spent in compliance with the requirements for the use of
7 funds provided under this section and Section 31.0211.

8 Sec. 48.308. ADDITIONAL STATE AID FOR OPEN EDUCATION
9 RESOURCE INSTRUCTIONAL MATERIAL. (a) Subject to Section 31.0751, a
10 school district is entitled to additional state aid for each school
11 year in an amount not to exceed \$20 for each student for the costs
12 incurred or for which the district is obligated to pay during the
13 school year in which the aid is provided for the printing and
14 shipping of open education resource instructional material made
15 available under Subchapter B-1, Chapter 31.

16 (b) The amount to which a school district is entitled under
17 this section may not exceed actual costs incurred by the district or
18 for which the district is obligated to pay during the school year
19 for which the funds were provided.

20 (c) Additional state aid provided under this section shall
21 be deposited to the credit of the district's instructional
22 materials and technology account maintained by the commissioner
23 under Section 31.0212 and may be accessed only for the procurement
24 of instructional materials in accordance with this section.

25 (d) Funds provided to a school district under this section
26 must be spent in compliance with the requirements for the use of
27 funds provided under this section and Section 31.0211.

1 SECTION 50. The following provisions of the Education Code
2 are repealed:

- 3 (1) Section 31.0213;
- 4 (2) Sections 31.022(d-1), (e), (f), (g), (h), and (i);
- 5 (3) Section 31.0221;
- 6 (4) Section 31.0231;
- 7 (5) Section 31.024;
- 8 (6) Section 31.0241;
- 9 (7) Section 31.0242;
- 10 (8) Section 31.0261;
- 11 (9) Section 31.035;
- 12 (10) the heading to Subchapter B-2, Chapter 31;
- 13 (11) Section 31.081;
- 14 (12) Section 31.082;
- 15 (13) Section 31.084;
- 16 (14) Section 31.101; and
- 17 (15) Section 31.151(e).

18 SECTION 51. To the extent of any conflict, this Act prevails
19 over another Act of the 88th Legislature, Regular Session, 2023,
20 relating to nonsubstantive additions to and corrections in enacted
21 codes.

22 SECTION 52. (a) A contract entered into under Section
23 31.026 or 31.151, Education Code, as amended by this Act, before the
24 effective date of this Act is governed by the law in effect on the
25 date the contract was entered into, and the former law is continued
26 in effect for that purpose.

27 (b) A contract entered into under Section 31.026 or 31.151,

1 Education Code, as amended by this Act, after the effective date of
2 this Act for a program called for by the State Board of Education
3 under Proclamation 2024 is governed by the law in effect on the date
4 the proclamation was issued, and the former law is continued in
5 effect for that purpose.

6 (c) Section 31.026, Education Code, as amended by this Act,
7 does not apply to the review of or a contract for the purchase or
8 licensing of instructional materials required by the State Board of
9 Education pursuant to Proclamation 2024. The review of and
10 contracts for the purchase or licensing of instructional materials
11 required by the State Board of Education pursuant to Proclamation
12 2024 are governed by the law as it existed immediately before the
13 effective date of this Act, and the former law is continued in
14 effect for that purpose.

15 (d) Section 21.4045(b), Education Code, as added by this
16 Act, applies only to a contract entered into on or after the
17 effective date of this Act. A contract entered into before the
18 effective date of this Act is governed by the law in effect on the
19 date the contract was entered into, and the former law is continued
20 in effect for that purpose.

21 SECTION 53. (a) Except as provided by Subsection (b) of
22 this section, this Act applies beginning with the 2023-2024 school
23 year.

24 (b) Section 21.4045, Education Code, as added by this Act,
25 applies beginning with the 2024-2025 school year.

26 SECTION 54. (a) Except as provided by Subsection (b) of
27 this section, this Act takes effect immediately if it receives a

1 vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2023.

5 (b) Sections 48.307 and 48.308, Education Code, as added by
6 this Act, and Section 48.277(b), Education Code, as amended by this
7 Act, take effect September 1, 2023.