

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**April 13, 2023**

**TO:** Honorable Brandon Creighton, Chair, Senate Committee on Education

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: SB2565** by Creighton (relating to instructional material and technology, the adoption of essential knowledge and skills for certain public school foundation curriculum subjects, and creating allotments for the procurement of certain instructional materials under the Foundation School Program; authorizing a fee.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB2565, Committee Report 1st House, Substituted : a negative impact of (\$731,600,000) through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2024	(\$350,119,000)
2025	(\$381,481,000)
2026	(\$428,120,000)
2027	(\$445,486,000)
2028	(\$439,149,000)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<i>Probable Savings/(Cost) from General Revenue Fund 1</i>	<i>Probable Savings/(Cost) from Tech &amp; Instr Materials Fund 3</i>	<i>Probable Savings/(Cost) from Foundation School Fund 193</i>	<i>Probable Savings/(Cost) from Recapture Payments Atten Crdts 8905</i>
2024	(\$68,170,000)	(\$71,219,000)	(\$210,730,000)	\$41,742,000
2025	(\$72,955,000)	(\$47,317,000)	(\$261,209,000)	\$52,917,000
2026	(\$95,947,000)	(\$55,047,000)	(\$277,126,000)	\$54,339,000
2027	(\$105,781,000)	(\$51,674,000)	(\$288,031,000)	\$59,813,000
2028	(\$109,801,000)	(\$32,119,000)	(\$297,229,000)	\$62,218,000

<i>Fiscal Year</i>	<i>Change in Number of State Employees from FY 2023</i>
2024	64.0
2025	64.0
2026	74.0
2027	74.0
2028	74.0

## **Fiscal Analysis**

The bill would amend procedures and criteria for the review and adoption of instructional materials, granting the State Board of Education (SBOE) the authority to determine the review and revision cycle for instructional materials.

The bill would also require school boards to establish a process for parents to request a review of instructional materials and would authorize parents to require a quality review of instructional materials. The bill would limit the number of reviews for each teacher for a specific subject or grade level to once per school year. If requested by a school district, the bill would require the Texas Education Agency (TEA) to assist in evaluating, adopting, or using instructional materials.

The bill would require the Commissioner to ensure open education resource (OER) instructional materials would be available for use by schools for free use, reuse, modification and sharing; this bill would also prohibit the Commissioner from requiring the use of OER.

The bill would establish an OER advisory board; require OER review by parents and teachers; and require that except for piloting, OER may not be made available until approved by the SBOE. The bill would also require an OER repository to be included in the instructional materials website to provide standards for parental review and allow comments. The bill would create standards for Instructional Materials Parent Portals.

The bill would establish allotments under the Foundation School Program (FSP) for districts that purchase SBOE approved materials that could be placed in a parent portal and to purchase OER if the district were to adopt an OER transition plan.

## **Methodology**

This analysis assumes that implementations of all provisions of the bill would require TEA to staff an additional 64.0 full-time-equivalent (FTE) positions in fiscal years 2024 and 2025 at a cost of \$7.7 million annually, including salaries, benefits, and other operating expenses. The agency assumes an additional 10 education specialist positions would be required that could be absorbed by ESSER funded positions in fiscal years 2024 and 2025. However, once these funds expire, the agency assumes that their capacity to absorb these FTEs would be lost, and that beginning in fiscal year 2026, the agency would require a total of 74.0 FTEs at a total cost of \$8.9 million annually.

The agency assumes that the bill would require the SBOE, in adopting essential knowledge and skills for English language arts, to specify a list of required vocabulary and at least one literary work to be taught in each grade level. The agency assumes that the SBOE would meet with subject matter experts and groups of educators to make recommendations for the required lists. It is anticipated that four groups of 7-9 educators would be necessary to develop the English lists and an additional four groups for the Spanish lists and that the groups would need to meet in person at least three times to develop recommendations. The anticipated cost would be \$150,000 in each fiscal year to contract supports with experts and convene teachers.

The bill would establish new requirements under TEC 31.022 for a SBOE-approved list and would eliminate the current criterium in TEC 31.023(a) that requires instructional materials to contain at least 50 percent of the TEKS in teacher and student versions to be included. The agency assumes costs would be incurred for this section to review instructional materials using the process established by TEA and approved by the SBOE. It is assumed reviews of materials will be conducted for a specific grade band and subject area. Included grade bands are K-2, 3-5, 6-9 and 9-12. Subjects included are Reading Language Arts, Math, Science, Social Studies and Pre-K. Additionally, reviews would be completed for materials in Spanish across all foundational subjects, integrated products and phonics products across the K-5 grade band. This would total 26 distinct types of reviews of products. In fiscal year 2024, it is assumed K-8 RLA, K-3 phonics, and K-5 Science would be reviewed in English and Spanish for a total of \$36,914,513. In fiscal year 2025, it is assumed the review process would expand to all math grades for a total of \$22,539,992. In fiscal year 2026, it is assumed that reviews in previously reviewed areas would continue, and new reviews would be added for Pre-K and secondary RLA for a total of \$22,539,992. In fiscal year 2027, it is assumed reviews would be added for Social Studies

for a total of \$20,896,485, and finally in fiscal year 2028, it assumes Pre-K reviews would be completed for a total of \$10,448,243.

The agency assumes there would be a cost incurred to support districts in evaluating, adopting, or using instructional materials approved by the SBOE upon request from a district. Including grants for districts and costs associated with training programs, the agency assumes a cost of \$5,500,000 in fiscal year 2024, \$6,000,000 in fiscal year 2025, decreasing to \$1,000,000 in fiscal year 2028.

Lastly, the agency assumes there would be costs to the state to pay for the development and execution of a process that supports the Local Review of Classroom Instructional Material. In total, supporting local reviews would cost the agency \$1,950,000 in fiscal year 2024 and then \$12,050,499 each year after that from fiscal years 2025-28.

The bill would permit the Commissioner to purchase a license authorizing the use of any open education resource (OER) instructional materials, acquire ownership in OERs, develop, adopt or use any combination to acquire OER instructional materials. To administer this section, TEA would require funding for the development of Open Education Resource Instructional Material. Acquisition and/or development of these materials, including the necessary licenses as pursuant to the new TEC 31.0711(a), would cost a total of \$35,661,739 over fiscal years 2024-28.

The bill would add new TEC 31.0713, Open Education Resource Advisory Board, to require TEA to establish an open education resource advisory board. The agency assumes that the annual costs to support the committee include lodging, meals and incidentals, mileage/airfare and meeting supplies for a total of \$58,400 per fiscal year.

The bill would amend content requirements for OER materials. Currently, OER materials must be evaluated by teachers or other experts. The bill would add the requirement that OER materials be evaluated by parents of students in the state. This section would also allow the Commissioner to require additional revision of the OER material at any time based on feedback received by the agency from teachers, parent, and other experts. The agency assumes that the costs associated with this section would be \$5,850,000 in fiscal year 2024, \$12,931,000 in fiscal year 2025, increasing to \$15,870,000 in fiscal year 2028.

The bill would require the agency to develop and maintain an instructional material website to assist school districts in locating and selecting instructional materials; it would allow the agency to use funds appropriated to the agency for the purposes of reviewing instructional materials or funds available in the instructional materials and technology fund for the purposes of implementing this section. It would also require the agency to provide assistance in evaluating, adopting, or using instructional materials upon request from a district, and provide grants and develop standards for conducting a review of instructional materials used by a classroom teacher in a foundation curriculum course.

The bill would require the Commissioner to include a repository of OER materials made available under 31.0721(b) on the website and would require the repository to meet the standard for viewing instructional materials in the parent portal. The bill would also require the agency to ensure that a person may order a print copy of any OER material included in the repository that is reducible to print. The agency assumes that the total cost for OER repository would be \$20,715,125 in fiscal years 2024-28. The bill would require the Commissioner to provide for the distribution of OER instructional material.

The bill would add the Education Resource Instructional Material Transition Plan; the Open Education Resource Instructional Material Support Program; and the Teacher Candidate Access and Support Program. These programs would incur costs associated with establishing the requirement for a district to adopt an Open Education Resource instructional material transition plan; developing a program to assist schools and open-enrollment charter schools in adopting and using open education resource materials; and developing and maintain a program to assist educator preparation programs with implementation. The total grant cost for this section would be \$342.5 million for fiscal years 2024-28.

The bill would add a new allotment under the Foundation School Program (FSP), Allotment for State-Approved Instructional Materials, which would provide an allotment to each district of a minimum of \$40 per student, or greater amount provided by appropriation, for each student enrolled in the district for costs incurred by the

district to procure instructional materials that have been approved under previous sections of the bill. The bill would require that the funds allotted under this section to be deposited to the credit of a district's instructional materials and technology account maintained by the Commissioner and would require the agency to adopt a process to allow a district subject to TEC 48.257, Local Revenue Level In Excess of Entitlement, to deposit this allotment into a district's Instructional Materials and Technology fund for the district's use. This analysis assumes that each student enrolled in public schools would generate the maximum allotment under this section.

The bill would add another allotment under the FSP, Allotment for Open Education Resource Instructional Material, which would entitle each district to a maximum of \$20 per student allotment 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. To be eligible for the allotment, a district would have to have complied with Section 31.0751, Open Education Resource Instructional Material Transition Plan.

The agency assumes that the allotment would be restricted to materials approved in the process put forward by this bill. Thus, the agency assumes there would be no costs associated with this allotment in fiscal year 2024. The agency assumes that OER materials would be approved by the SBOE in fiscal year 2025 and that 46 percent of school districts would adopt at least one of the materials making them eligible to leverage the new allotment. The agency assumed the participation would grow to 61 percent of districts in fiscal year 2026, 71 percent in fiscal year 2027, and 81 percent in fiscal year 2028. The agency based their assumptions on current usage data and forecast demand.

This analysis assumes that the cost to the FSP for both allotments would be \$210.7 million in fiscal year 2024, \$261.2 million in fiscal year 2025, increasing to \$297.2 million in fiscal year 2028. The cost to the FSP includes estimated decreases in Recapture Payments - Attendance Credits of \$41.7 million in fiscal year 2024, \$52.9 million in fiscal year 2025, increasing to \$62.2 million in fiscal year 2028 as a result of the increased entitlement. The decrease in recapture is reflected as a savings in the table above because recapture is appropriated as a method of finance for the FSP in the General Appropriations Act. To the extent that districts do not utilize the full amount of the OER allotment, the cost to the state would be less.

## **Technology**

The agency assumes the cost to develop and maintain an instructional material website to assist districts would be \$2,692,303 per year.

The agency assumes provisions of the bill would require upgrades to the existing online requisition and disbursement system for instructional materials (EMAT). This analysis assumes the upfront and maintenance costs would total \$2,000,000 for fiscal years 2024 and for fiscal year 2025. Additionally, the agency estimates the cost to develop and implement the requirements in the TCAPPS application and EMAT module would be \$47,403 fiscal year 2024 and \$142,210 in fiscal year 2025.

The agency assumes 8 FTEs, included in amounts and totals in the above section, would be needed for development, implementation, maintenance, and support.

## **Local Government Impact**

Local Education Agencies (LEA) could incur costs associated with establishing a process by which a parent of a student may request an instructional material review and there may be costs associated with conducting reviews of instructional materials and facilitating parent in-person access to and review of instructional materials. Additionally, LEAs could incur costs associated with developing and adopting an Open Education Resource Instructional Material Transition Plan.

**Source Agencies:** 701 Texas Education Agency

**LBB Staff:** JMc, KSk, ASA, MJe, ENA