

SENATE AMENDMENTS

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By: Buckley, Dutton, Bonnen,
King of Hemphill, Bell of Kaufman,
et al.

H.B. No. 1605

A BILL TO BE ENTITLED

1 AN ACT

2 relating to instructional material and technology, the adoption of
3 essential knowledge and skills for certain public school foundation
4 curriculum subjects, and the extension of additional state aid to
5 school districts for the provision of certain instructional
6 materials; 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;

25 (6) subject to Subsection (a-1), a unit or weekly

1 lesson plan that outlines, in a brief and general manner, the
2 information to be presented during each period at the secondary
3 level or in each subject or topic at the elementary level;

4 (7) an attendance report;

5 (8) any report required for accreditation review;

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

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

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

17 SECTION 2. Section 21.044(a-1), Education Code, is amended
18 to read as follows:

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

21 (1) basic knowledge of:

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

26 (B) conditions that may be considered a
27 disability under Section 504, Rehabilitation Act of 1973 (29 U.S.C.

1 Section 794), and how a condition covered by that section can affect
2 student learning and development;

3 (2) competence in the use of proactive instructional
4 planning techniques that:

5 (A) provide flexibility in the ways:

6 (i) information is presented;

7 (ii) students respond or demonstrate
8 knowledge and skills; and

9 (iii) students are engaged;

10 (B) reduce barriers in instruction;

11 (C) provide appropriate accommodations,
12 supports, and challenges; and

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

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

18 (A) general and special education collaborative
19 and co-teaching models and approaches;

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

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

27 (D) appropriate adaptation strategies, including

1 accommodations, modifications, and instruction in the use of
2 assistive technology for instruction; and

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

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

10 Sec. 21.4045. PLANNING AND NONINSTRUCTIONAL DUTIES OF
11 TEACHERS. (a) A school district may enter into a supplemental
12 agreement with a classroom teacher under which the teacher agrees
13 to perform a duty relating to initial lesson plan design or
14 instructional material selection that is not a duty generally:

15 (1) anticipated to be performed during the
16 instructional day; and

17 (2) assigned to all classroom teachers of the same
18 subject and grade level under those teachers' employment contracts.

19 (b) A school district may permit, but may not require, a
20 classroom teacher for a foundation curriculum course to spend
21 planning and preparation time to which the teacher is entitled
22 under Section 21.404 creating or selecting instructional materials
23 to initially cover the applicable essential knowledge and skills
24 for the course unless the teacher has entered into a supplemental
25 agreement described by Subsection (a).

26 (c) A supplemental agreement between a school district and a
27 classroom teacher described by Subsection (a) under which a teacher

1 is assigned responsibility for a greater number of duties unrelated
2 to providing instruction than other full-time teachers of the same
3 grade level in the district must explicitly state each of the
4 teacher's duties unrelated to providing instruction.

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

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

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

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

19 (2) the teacher reasonably believed the instruction
20 delivered by the teacher conformed with the instructional material
21 used.

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

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

1 (b) A school district shall make tests readily available for
2 review by parents in person and teaching materials [~~and tests~~]
3 readily available for review by parents both in person and, if
4 applicable, through an instructional materials parent portal
5 established under Section 31.154. In providing access to
6 instructional materials to a student's parent under this section,
7 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 may not deny a parent access to an
21 instructional materials parent portal hosted under Section 31.154.

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

24 Sec. 26.0061. RIGHT TO REQUEST INSTRUCTIONAL MATERIAL
25 REVIEW. (a) The board of trustees of each school district shall
26 establish a process by which a parent of a student, as indicated on
27 the student registration form at the student's campus, may request

1 an instructional material review under Section 31.0252 for a
2 subject area in the grade level in which the student is enrolled.

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

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

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

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

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

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

26 (e) Parental access to instructional material provided by
27 an instructional material review conducted under this section is in

1 addition to any other right to access instructional material
2 granted by this title or school district policy.

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

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

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

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

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

23 Sec. 28.0027. DISTRICT CURRICULUM SCOPE, ~~AND~~ SEQUENCE,
24 AND INSTRUCTIONAL MATERIAL.

25 SECTION 9. Sections 28.0027(a) and (b), Education Code, are
26 amended to read as follows:

27 (a) In adopting a recommended or designated scope and

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

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

15 SECTION 10. The heading to Chapter 31, Education Code, is
16 amended to read as follows:

17 CHAPTER 31. INSTRUCTIONAL MATERIALS AND TECHNOLOGY

18 SECTION 11. Section 31.002, Education Code, is amended by
19 amending Subdivisions (1) and (1-a) and adding Subdivisions (1-b),
20 (1-c), and (3) to read as follows:

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

27 (1-a) "Instructional material" means content that

1 conveys the essential knowledge and skills of a subject in the
2 public school curriculum through a medium or a combination of media
3 for conveying information to a student. The term includes:

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

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

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

15 (1-b) [(1-a)] "Open education resource instructional
16 material" means teaching, learning, and research resources that
17 reside in the public domain or have been released under an
18 intellectual property license that allows for free use, reuse,
19 modification, and sharing with others, including full courses,
20 course materials, modules, textbooks, streaming videos, tests,
21 software, and any other tools, materials, or techniques used to
22 support access to knowledge. [~~The term includes state-developed~~
23 ~~open education resource instructional material purchased under~~
24 ~~Subchapter B-1.~~]

25 (1-c) "Partial subject tier one instructional
26 material" means instructional material designed to, if implemented
27 as designed, provide a student with mastery in a portion of the

1 essential knowledge and skills adopted by the State Board of
2 Education for a certain subject and grade level in the required
3 curriculum under Section 28.002 or for prekindergarten without the
4 need for supplementation in the essential knowledge and skills
5 covered.

6 (3) "Supplemental instructional material" means
7 instructional material designed to assist in the instruction of one
8 or more of the essential knowledge and skills adopted by the State
9 Board of Education for a subject in the required curriculum under
10 Section 28.002 or for prekindergarten.

11 SECTION 12. Section 31.003, Education Code, is amended to
12 read as follows:

13 Sec. 31.003. RULES. (a) The State Board of Education may
14 adopt rules, consistent with this chapter, for the adoption,
15 requisition, distribution, care, use, and disposal of
16 instructional materials.

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

19 SECTION 13. Subchapter A, Chapter 31, Education Code, is
20 amended by adding Section 31.006 to read as follows:

21 Sec. 31.006. ADVISORY COMMITTEE. The State Board of
22 Education or the agency may form an advisory committee to comply
23 with the provisions of this chapter.

24 SECTION 14. Chapter 31, Education Code, is amended by
25 adding Subchapter A-1, and a heading is added to that subchapter to
26 read as follows:

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

1 schools;

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

5 (4) pay the expenses associated with the purchase,
6 ~~[or]~~ licensing, printing, or other reproduction of open education
7 resource instructional material;

8 (5) pay the expenses associated with the purchase of
9 instructional material, including freight and shipping and the
10 insurance expenses associated with freight and shipping;

11 (6) fund the technology lending grant program
12 established under Section 32.301; and

13 (7) provide funding to the Texas School for the Blind
14 and Visually Impaired, the Texas School for the Deaf, and the Texas
15 Juvenile Justice Department ~~[, and~~

16 ~~[(8) pay the expenses associated with the~~
17 ~~instructional materials web portal developed under Section~~
18 ~~31.081].~~

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

22 Sec. 31.0212. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
23 ACCOUNT. (a) The commissioner shall maintain an instructional
24 materials and technology account for each school district. In the
25 first year of each biennium, the commissioner shall deposit in the
26 account for each district the amount of the district's
27 instructional materials and technology allotment under Section

1 31.0211.

2 (b) The commissioner shall pay the cost of instructional
3 materials requisitioned by a school district under Section 31.103
4 using funds from the district's instructional materials and
5 technology account.

6 ~~(c) [A school district may also use funds in the district's
7 account to purchase electronic instructional materials or
8 technological equipment. The district shall submit to the
9 commissioner a request for funds for this purpose from the
10 district's account. The commissioner shall adopt rules regarding
11 the documentation a school district must submit to receive funds
12 under this subsection.~~

13 ~~[(d)]~~ Money deposited in a school district's instructional
14 materials and technology account during each state fiscal biennium
15 remains in the account and available for use by the district for the
16 entire biennium. At the end of each biennium, a district with
17 unused money in the district's account may carry forward any
18 remaining balance to the next biennium.

19 (d) A ~~[(e)]~~ ~~The commissioner shall adopt rules as necessary~~
20 ~~to implement this section. The rules must include a requirement~~
21 ~~that a]~~ school district shall provide to the agency the title and
22 publication information for any instructional materials
23 requisitioned or purchased by the district with the district's
24 instructional materials and technology allotment.

25 (e) The agency shall provide for the development and
26 maintenance of an online requisition and disbursement system for
27 each school district's instructional materials and technology

1 account.

2 Sec. 31.0214. ADJUSTMENT FOR HIGH ENROLLMENT GROWTH
3 DISTRICTS. [~~(a)~~] Each year the commissioner shall adjust the
4 instructional materials and technology allotment of school
5 districts experiencing high enrollment growth. The commissioner
6 shall establish a procedure for determining high enrollment growth
7 districts eligible to receive an adjustment under this section and
8 the amount of the instructional materials and technology allotment
9 those districts will receive.

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

12 Sec. 31.0215. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
13 ALLOTMENT PURCHASES. (a) The commissioner shall, as early as
14 practicable during each biennium, notify each school district and
15 open-enrollment charter school of the estimated amount to which the
16 district or charter school will be entitled under Section 31.0211
17 during the next fiscal biennium.

18 (b) The commissioner shall [~~may~~] allow a school district or
19 open-enrollment charter school to place an order for instructional
20 materials before the beginning of a fiscal biennium and to receive
21 instructional materials before payment. The commissioner shall
22 limit the cost of an order placed under this section to 80 percent
23 of the estimated amount to which a school district or
24 open-enrollment charter school is estimated to be entitled as
25 provided by Subsection (a) and shall first credit any balance in a
26 district or charter school instructional materials and technology
27 account to pay for an order placed under this section.

1 (c) The commissioner shall make payments for orders placed
2 under this section as funds become available to the instructional
3 materials and technology fund and shall prioritize payment of
4 orders placed under this section over reimbursement of purchases
5 made directly by a school district or open-enrollment charter
6 school.

7 (d) The commissioner shall ensure that publishers of
8 instructional materials are informed of any potential delay in
9 payment and that payment is subject to the availability of
10 appropriated funds. A publisher may decline to accept an order
11 placed under this section.

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

14 ~~[(f) The commissioner may adopt rules to implement this~~
15 ~~section.]~~

16 SECTION 17. Section 31.0211, Education Code, as amended by
17 Chapters 806 (H.B. 1525) and 1003 (H.B. 3261), Acts of the 87th
18 Legislature, Regular Session, 2021, is transferred to Subchapter
19 A-1, Chapter 31, Education Code, as added by this Act, reenacted,
20 and amended to read as follows:

21 Sec. 31.0211. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
22 ALLOTMENT. (a) A school district is entitled to an allotment each
23 biennium from the state instructional materials and technology fund
24 for each student enrolled in the district on a date during the last
25 year of the preceding biennium specified by the commissioner. The
26 commissioner shall determine the amount of the allotment per
27 student each biennium on the basis of the amount of money available

1 in the state instructional materials and technology fund to fund
2 the allotment. An allotment under this section shall be
3 transferred from the state instructional materials and technology
4 fund to the credit of the district's instructional materials and
5 technology account as provided by Section 31.0212.

6 (b) A juvenile justice alternative education program under
7 Section 37.011 is entitled to an allotment from the state
8 instructional materials and technology fund in an amount determined
9 by the commissioner. The program shall use the allotment to
10 purchase items listed in Subsection (c) for students enrolled in
11 the program. The commissioner's determination under this
12 subsection is final and may not be appealed.

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

14 (1) purchase:

15 (A) ~~[materials on the list adopted by the~~
16 ~~commissioner, as provided by Section 31.0231,~~

17 ~~[(B)]~~ instructional materials, regardless of
18 whether the instructional materials are on the list of approved
19 instructional materials maintained by the State Board of Education
20 under Section 31.022 ~~[adopted under Section 31.024];~~

21 (B) ~~[(C)]~~ consumable instructional materials,
22 including workbooks;

23 (C) ~~[(D)]~~ instructional materials for use in
24 bilingual education classes, as provided by Section 31.029;

25 (D) ~~[(E)]~~ instructional materials for use in
26 college preparatory courses under Section 28.014, as provided by
27 Section 31.031;

1 (E) [~~(F)~~] supplemental instructional materials
2 [~~, as provided by Section 31.035~~];

3 (F) [~~(C) state-developed~~] open education
4 resource instructional materials, as provided by Subchapter B-1;

5 (G) [~~(H)~~] instructional materials and
6 technological equipment under any continuing contracts of the
7 district in effect on September 1, 2011;

8 (H) [~~(I)~~] technological equipment necessary to
9 support the use of [~~materials included on the list adopted by the~~
10 ~~commissioner under Section 31.0231 or~~] any instructional materials
11 purchased with an allotment under this section;

12 (I) [~~(J)~~] inventory software or systems for
13 storing, managing, and accessing instructional materials and
14 analyzing the usage and effectiveness of the instructional
15 materials; and

16 (J) [~~(K)~~] services, equipment, and technology
17 infrastructure necessary to ensure Internet connectivity and
18 adequate bandwidth; and

19 (2) pay:

20 (A) for training educational personnel directly
21 involved in student learning in the appropriate use of
22 instructional materials and for providing for access to
23 technological equipment for instructional use;

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

26 (C) the salary and other expenses of an employee
27 who provides technical support for the use of technological

1 equipment directly involved in student learning; and

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

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

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

11 (1) secure technological solutions that meet the
12 varying and unique needs of students and teachers in the district;
13 and

14 (2) consider:

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

16 (B) flexibility for innovation.

17 (e) Not later than May 31 of each school year, a school
18 district may request that the commissioner adjust the number of
19 students for which the district is entitled to receive an allotment
20 under Subsection (a) on the grounds that the number of students
21 attending school in the district will increase or decrease during
22 the school year for which the allotment is provided. The
23 commissioner may also adjust the number of students for which a
24 district is entitled to receive an allotment, without a request by
25 the district, if the commissioner determines a different number of
26 students is a more accurate reflection of students who will be
27 attending school in the district. The commissioner's determination

1 under this subsection is final.

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

8 SECTION 18. The heading to Subchapter B, Chapter 31,
9 Education Code, is amended to read as follows:

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

12 SECTION 19. The heading to Section 31.022, Education Code,
13 is amended to read as follows:

14 Sec. 31.022. STATE BOARD OF EDUCATION INSTRUCTIONAL
15 MATERIALS REVIEW AND APPROVAL [ADOPTION].

16 SECTION 20. Section 31.022, Education Code, is amended by
17 amending Subsections (a), (b), (c), and (d) and adding Subsection
18 (c-1) to read as follows:

19 (a) The State Board of Education shall [~~adopt a~~] review [~~and~~
20 ~~adoption cycle for~~] instructional materials provided to the board
21 by the agency under Section 31.023. Before approving instructional
22 material, the board must determine that the material is free from
23 factual error and suitable for the subject and grade level for which
24 the material is designed. The board shall add each material
25 approved under this section to a list of approved instructional
26 materials and may add a material not approved under this section to
27 a list of rejected instructional materials [for elementary grade

1 ~~levels, including prekindergarten, and secondary grade levels, for~~
2 ~~each subject in the required curriculum under Section 28.002. In~~
3 ~~adopting the cycle, the board:~~

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

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

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

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

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

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

23 (b) ~~[The board shall organize the cycle for subjects in the~~
24 ~~foundation curriculum so that not more than one-fourth of the~~
25 ~~instructional materials for subjects in the foundation curriculum~~
26 ~~are reviewed each biennium.]~~ The State Board of Education may adopt
27 criteria necessary for approval of instructional material under

1 Subsection (a) and may require:

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

7 (2) electronic samples of the material;

8 (3) certain physical specifications; and

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

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

26 (c-1) If the State Board of Education intends to remove an
27 instructional material from the list of approved instructional

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

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

21 SECTION 21. Section 31.023, Education Code, is amended to
22 read as follows:

23 Sec. 31.023. INSTRUCTIONAL MATERIAL REVIEW ~~[LIST]~~. (a)
24 The commissioner shall establish, in consultation with and with the
25 approval of the State Board of Education, a process for the annual
26 review of instructional materials by the agency. The process
27 established under this subsection must:

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

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

5 (i) a school district;

6 (ii) a majority of the members of the State
7 Board of Education; or

8 (iii) a publisher of instructional
9 material, which may only be submitted for material published by the
10 requesting publisher;

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

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

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

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

23 (B) open education resource instructional
24 material;

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

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

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

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

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

10 (4) ensure the procedures for review allow the agency
11 to review at least 200 individual instructional materials each year

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

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

27 (b) In conducting a review under this section, the agency

1 must use a rubric developed by the agency in consultation with and
2 approved by the State Board of Education that includes, with
3 respect to the instructional material being reviewed, a
4 determination of:

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

8 (2) the quality of the material;

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

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

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

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

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

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

26 ~~[(2) suitable for the subject and grade level for~~
27 ~~which the instructional material was submitted, and~~

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

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

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

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

17 SECTION 22. Subchapter B, Chapter 31, Education Code, is
18 amended by adding Sections 31.025, 31.0251, and 31.0252 to read as
19 follows:

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

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

26 (1) the price of the material;

27 (2) the technological requirements needed to use the

1 material;

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

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

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

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

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

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

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

27 Sec. 31.0252. LOCAL REVIEW OF CLASSROOM INSTRUCTIONAL

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

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

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

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

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

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

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

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

27 (d) The agency shall permit a regional education service

1 center or a curriculum review service provider approved by the
2 agency to conduct the review for a school district under this
3 section and provide to approved centers and providers training
4 relating to appropriately conducting the review.

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

7 SECTION 23. Sections 31.026(a) and (b), Education Code, are
8 amended to read as follows:

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

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

16 SECTION 24. The heading to Subchapter B-1, Chapter 31,
17 Education Code, is amended to read as follows:

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

20 SECTION 25. Subchapter B-1, Chapter 31, Education Code, is
21 amended by adding Section 31.0701 to read as follows:

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

27 SECTION 26. Section 31.071, Education Code, is amended to

1 read as follows:

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

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

10 (1) purchase a license authorizing the use of [~~shall~~
11 ~~purchase any state-developed~~] open education resource
12 instructional materials in a manner that complies with all
13 applicable state laws and rules relating to procurement by a state
14 agency [~~through a competitive process~~];

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

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

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

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

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

1 (b-2) The commissioner shall:

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

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

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

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

12 (i) in an integrated manner; and

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

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

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

1 (d) ~~[The commissioner may issue a request for proposals for~~
2 ~~state-developed open education resource instructional material:~~

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

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

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

12 SECTION 27. Subchapter B-1, Chapter 31, Education Code, is
13 amended by adding Section 31.07101 to read as follows:

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

18 (1) is irrevocable and perpetual;

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

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

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

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

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

6 SECTION 28. Section 31.0711, Education Code, is amended to
7 read as follows:

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

12 (1) is in the public domain;

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

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

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

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

26 (B) permits access, use, public display, public
27 performance, public distribution, and copying of the material for

1 noncommercial or educational purposes [~~the free use and repurposing~~
2 ~~of the material by any person or entity~~]; and

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

5 SECTION 29. Subchapter B-1, Chapter 31, Education Code, is
6 amended by adding Section 31.0712 to read as follows:

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

11 (1) of the highest quality;

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

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

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

18 (5) in compliance with Section 28.0022.

19 SECTION 30. Section 31.072, Education Code, is amended to
20 read as follows:

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

24 [(-)] be evaluated by:

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

27 (2) parents of students in this state [~~meet the~~

1 ~~requirements for inclusion on the instructional material list~~
2 ~~adopted under Section 31.023].~~

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

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

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

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

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

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

14 SECTION 32. Section 31.083, Education Code, is transferred
15 to Subchapter B-1, Chapter 31, Education Code, redesignated as
16 Section 31.0722, Education Code, and amended to read as follows:

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

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

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

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

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

9 SECTION 33. Sections 31.073 and 31.074, Education Code, are
10 amended to read as follows:

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

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

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

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

1 distribution of instructional materials approved [~~adopted~~] under
2 Subchapter B.

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

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

15 SECTION 34. The heading to Section 31.075, Education Code,
16 is amended to read as follows:

17 Sec. 31.075. STATE OWNERSHIP; LICENSING.

18 SECTION 35. Sections 31.075(a), (b), (c), (d), and (e),
19 Education Code, are amended to read as follows:

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

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

1 ~~person or entity.~~

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

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

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

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

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

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

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

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

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

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

1 (3) includes [~~may include~~] any additional terms
2 determined by the commissioner.

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

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

9 SECTION 36. Subchapter B-1, Chapter 31, Education Code, is
10 amended by adding Sections 31.0751, 31.0752, and 31.0753 to read as
11 follows:

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

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

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

1 Sec. 31.0752. OPEN EDUCATION RESOURCE INSTRUCTIONAL
2 MATERIAL SUPPORT PROGRAM. The agency shall develop and maintain a
3 program to assist school districts and open-enrollment charter
4 schools in adopting and using open education resource instructional
5 material made available under this subchapter, including by
6 assisting districts and schools to:

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

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

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

16 SECTION 37. Section 31.076(b), Education Code, is amended
17 to read as follows:

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

22 SECTION 38. Section 31.004, Education Code, is transferred
23 to Subchapter C, Chapter 31, Education Code, redesignated as
24 Section 31.1011, Education Code, and amended to read as follows:

25 Sec. 31.1011 [~~31.004~~]. CERTIFICATION OF PROVISION OF
26 INSTRUCTIONAL MATERIALS. (a) Each school district and
27 open-enrollment charter school shall annually certify to the State

1 Board of Education and the commissioner that:

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

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

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

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

14 (ii) Section 28.0022;

15 (iii) Section 43.22, Penal Code; and

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

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

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

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

27 (2) ~~materials adopted or purchased by the~~

1 ~~commissioner under Section 31.0231 or Subchapter B-1;~~

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

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

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

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

13 SECTION 39. Subchapter C, Chapter 31, Education Code, is
14 amended by adding Section 31.1012 to read as follows:

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

20 SECTION 40. The heading to Section 31.102, Education Code,
21 is amended to read as follows:

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

23 SECTION 41. Section 31.102, Education Code, is amended by
24 adding Subsection (d) to read as follows:

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

1 included on the list of approved instructional materials maintained
2 by the State Board of Education under Section 31.022.

3 SECTION 42. Section 31.103(c), Education Code, is amended
4 to read as follows:

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

9 SECTION 43. Section 31.151, Education Code, is amended by
10 amending Subsection (a) and adding Subsection (a-1) to read as
11 follows:

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

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

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

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

27 (4) shall guarantee that each copy of instructional

1 material sold in this state is at least equal in quality to copies
2 of that instructional material sold elsewhere in the United States
3 and is free from factual error;

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

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

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

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

20 (9) shall submit to the State Board of Education an
21 affidavit certifying any instructional material the publisher or
22 manufacturer offers in this state to be free of factual errors at
23 the time the publisher executes the contract required by Section
24 31.026; and

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

1 Subsection (a-1).

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

6 SECTION 44. Subchapter D, Chapter 31, Education Code, is
7 amended by adding Section 31.154 to read as follows:

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

13 (b) An instructional materials parent portal must:

14 (1) provide to each parent of a student enrolled in a
15 school district or open-enrollment charter school access to
16 instructional materials, other than tests or exams, that are
17 included in the portal and used by the district or school;

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

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

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

24 (c) Standards adopted under Subsection (a) may not require:

25 (1) a classroom teacher to submit instructional
26 materials developed by the teacher for inclusion in an
27 instructional materials parent portal; or

1 (2) an entity hosting an instructional materials
2 parent portal to include tests or exams in the portal.

3 (d) To comply with an intellectual property license or other
4 restrictions placed on an instructional material and to maintain
5 security of the information contained in an instructional materials
6 parent portal under this section, a parent may be required, before
7 accessing the portal, to:

8 (1) enter a password;

9 (2) comply with other user access verification
10 procedures; and

11 (3) accept user terms and conditions, which may not
12 limit or exclude access to instructional material based on the uses
13 of the material that would otherwise be permitted under fair use
14 provisions of copyright law.

15 (e) 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 45. 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 46. 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 47. 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 instructional material that
13 has 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,
10 a school district is entitled to additional state aid for each
11 school year in an amount not to exceed \$20 for each student for the
12 costs incurred or for which the district is obligated to pay during
13 the 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 48. Chapter 322, Government Code, is amended by
2 adding Section 322.0082 to read as follows:

3 Sec. 322.0082. INCLUSION OF CERTAIN EDUCATION FUNDS
4 REQUIRED. (a) The director shall include in the budget of
5 estimated appropriations prepared under Section 322.008(c):

6 (1) the amount set aside under Section 43.001(d),
7 Education Code, by the State Board of Education from the available
8 school fund for the state instructional materials and technology
9 fund established under Section 31.021, Education Code; and

10 (2) the amount that is remaining in the state
11 instructional materials and technology fund from the previous
12 fiscal biennium that is available for use by school districts and
13 open-enrollment charter schools.

14 (b) If the amount estimated to be appropriated for purposes
15 of the state instructional materials and technology fund for a
16 fiscal biennium is less than the amount set aside by the State Board
17 of Education under Section 43.001(d), Education Code, the director
18 shall provide with the budget an explanation of the difference,
19 including the amount of the difference and to what the additional
20 funds have been appropriated.

21 (c) An explanation provided under Subsection (b) shall be
22 included with the documents provided on the board's Internet
23 website under Section 322.0081.

24 SECTION 49. The following provisions of the Education Code
25 are repealed:

26 (1) Section 31.0213;

27 (2) Sections 31.022(d-1), (e), (f), (g), (h), and (i);

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

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

18 SECTION 51. (a) A contract entered into under Section
19 31.026 or 31.151, Education Code, as amended by this Act, before the
20 effective date of this Act is governed by the law in effect on the
21 date the contract was entered into, and the former law is continued
22 in effect for that purpose.

23 (b) A contract entered into under Section 31.026 or 31.151,
24 Education Code, as amended by this Act, after the effective date of
25 this Act for a program called for by the State Board of Education
26 under Proclamation 2024 is governed by the law in effect on the date
27 the proclamation was issued, and the former law is continued in

1 effect for that purpose.

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

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

17 SECTION 52. (a) Except as provided by Subsection (b) of
18 this section, this Act applies beginning with the 2023-2024 school
19 year.

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

22 SECTION 53. (a) Except as provided by Subsection (b) of
23 this section, this Act takes effect immediately if it receives a
24 vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2023.

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

4 SECTION 54. Notwithstanding any other provision of this
5 Act, Section 322.0082, Government Code, as added by this Act, takes
6 effect September 1, 2025.

ADOPTED

MAY 12 2023

Lately Law
Secretary of the Senate

By: *Brandon Coyle*

H.B. No. 1605

Substitute the following for ___B. No. _____:

By: *Phil King*

C.S. ___B. No. _____

A BILL TO BE ENTITLED

1

AN ACT

2 relating to instructional material and technology, the adoption of
3 essential knowledge and skills for certain public school foundation
4 curriculum subjects, and the extension of additional state aid to
5 school districts for the provision of certain instructional
6 materials; 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 incorporate
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 enter into a supplemental
18 agreement with a classroom teacher under which the teacher agrees
19 to perform a duty relating to initial lesson plan design or
20 instructional material selection that is not a duty generally:

21 (1) anticipated to be performed during the
22 instructional day; and

23 (2) assigned to all classroom teachers of the same
24 subject and grade level under those teachers' employment contracts.

25 (b) A school district may not require a classroom teacher
26 for a foundation curriculum course to spend planning and
27 preparation time to which the teacher is entitled under Section

1 21.404 creating or selecting instructional materials to initially
2 cover the applicable essential knowledge and skills for the course
3 unless the teacher has entered into a supplemental agreement
4 described by Subsection (a). This subsection may not be construed
5 to prohibit a classroom teacher from choosing to spend the
6 teacher's planning and preparation time creating or selecting
7 instructional materials.

8 (c) A supplemental agreement between a school district and a
9 classroom teacher described by Subsection (a) under which a teacher
10 is assigned responsibility for a greater number of duties unrelated
11 to providing instruction than other full-time teachers of the same
12 grade level in the district must explicitly state each of the
13 teacher's duties unrelated to providing instruction.

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

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

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

24 (1) the teacher used only instructional material
25 included on the list of approved instructional material maintained
26 by the State Board of Education under Section 31.022 and adopted by
27 the district; and

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

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

7 SECTION 5. Section 26.006, Education Code, is amended by
8 amending Subsection (b) and adding Subsections (b-1) and (f) to
9 read as follows:

10 (b) A school district shall make tests readily available for
11 review by parents in person and teaching materials [~~and tests~~]
12 readily available for review by parents both in person and, if
13 applicable, through an instructional materials parent portal
14 established under Section 31.154. In providing access to
15 instructional materials to a student's parent under this section,
16 the district shall:

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

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

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

26 (B) the student's graded assignments.

27 (b-1) The district may specify reasonable hours for

1 in-person review.

2 (f) A school district may not deny a parent access to an
3 instructional materials parent portal hosted under Section 31.154.

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

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

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

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

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

18 (3) may permit the requesting parent to review the
19 instructional material directly before the district conducts an
20 instructional material review under Section 31.0252.

21 (c) If the parents of at least 25 percent of the students
22 enrolled at a campus present to the board of trustees of the school
23 district in which the campus is located a petition for the board to
24 conduct an instructional material review under Section 31.0252, the
25 board shall, subject to Subsection (d), conduct the review, unless
26 the petition is presented by the parents of less than 50 percent of
27 the students enrolled at the campus and, by a majority vote, the

1 board denies the request. A review conducted under this subsection
2 shall include a review of instructional materials for each subject
3 area or grade level specified in the petition.

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

8 (e) Parental access to instructional material provided by
9 an instructional material review conducted under this section is in
10 addition to any other right to access instructional material
11 granted by this title or school district policy.

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

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

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

23 (c-5) The State Board of Education shall initiate the
24 process of specifying an initial list of vocabulary and literary
25 works as required by Subsection (c-4) not later than February 1,
26 2024. The State Board of Education shall request from the agency
27 recommendations regarding the list, and that request for

1 recommendations may be considered an initiation of the process.
2 This subsection expires September 1, 2025.

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

5 Sec. 28.0027. DISTRICT CURRICULUM SCOPE, ~~[AND]~~ SEQUENCE,
6 AND INSTRUCTIONAL MATERIAL.

7 SECTION 9. Sections 28.0027(a) and (b), Education Code, are
8 amended to read as follows:

9 (a) In adopting a recommended or designated scope and
10 sequence or instructional materials for a subject in the required
11 curriculum under Section 28.002(a) in a particular grade level, a
12 school district shall ensure sufficient time is provided for
13 teachers to teach and students to learn the essential knowledge and
14 skills for that subject and grade level.

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

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

26 (a-1) In this subsection, "three-cueing" means a method of
27 reading instruction for identification of words by which a student

1 is encouraged to draw on context and sentence structure to read
2 words without sounding the words out or using a phonics-based
3 approach. A school district or open-enrollment charter school may
4 not include any instruction that incorporates three-cueing in the
5 phonics curriculum required under Subsection (a)(1).

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

8 CHAPTER 31. INSTRUCTIONAL MATERIALS AND TECHNOLOGY

9 SECTION 12. Section 31.002, Education Code, is amended by
10 amending Subdivisions (1) and (1-a) and adding Subdivisions (1-b),
11 (1-c), and (3) to read as follows:

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

18 (1-a) "Instructional material" means content that
19 conveys the essential knowledge and skills of a subject in the
20 public school curriculum through a medium or a combination of media
21 for conveying information to a student. The term includes:

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

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

26 (C) material used by a student, including a book,
27 supplementary materials, a combination of a book, workbook, and

1 supplementary materials, computer software, magnetic media, DVD,
2 CD-ROM, computer courseware, on-line services, or an electronic
3 medium, or other means of conveying information to the student or
4 otherwise contributing to the learning process through electronic
5 means, including open education resource instructional material.

6 (1-b) [~~(1-a)~~] "Open education resource instructional
7 material" means teaching, learning, and research resources that
8 reside in the public domain or have been released under an
9 intellectual property license that allows for free use, reuse,
10 modification, and sharing with others, including full courses,
11 course materials, modules, textbooks, streaming videos, tests,
12 software, and any other tools, materials, or techniques used to
13 support access to knowledge. [~~The term includes state-developed~~
14 ~~open education resource instructional material purchased under~~
15 ~~Subchapter B-1.~~]

16 (1-c) "Partial subject tier one instructional
17 material" means instructional material designed to, if implemented
18 as designed, provide a student with mastery in a portion of the
19 essential knowledge and skills adopted by the State Board of
20 Education for a certain subject and grade level in the required
21 curriculum under Section 28.002 or for prekindergarten without the
22 need for supplementation in the essential knowledge and skills
23 covered.

24 (3) "Supplemental instructional material" means
25 instructional material designed to assist in the instruction of one
26 or more of the essential knowledge and skills adopted by the State
27 Board of Education for a subject in the required curriculum under

1 Section 28.002 or for prekindergarten.

2 SECTION 13. Section 31.003, Education Code, is amended to
3 read as follows:

4 Sec. 31.003. RULES. (a) The State Board of Education may
5 adopt rules, consistent with this chapter, for the adoption,
6 requisition, distribution, care, use, and disposal of
7 instructional materials.

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

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

12 Sec. 31.006. ADVISORY COMMITTEE. The State Board of
13 Education or the agency may form an advisory committee to comply
14 with the provisions of this chapter. Chapter 2110, Government
15 Code, does not apply to an advisory committee formed under this
16 section.

17 SECTION 15. Chapter 31, Education Code, is amended by
18 adding Subchapter A-1, and a heading is added to that subchapter to
19 read as follows:

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

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

25 Sec. 31.0205 [~~31.005~~]. FUNDING FOR OPEN-ENROLLMENT CHARTER
26 SCHOOLS. An open-enrollment charter school is entitled to the
27 instructional materials and technology allotment under this

1 chapter and is subject to this chapter as if the school were a
2 school district.

3 SECTION 17. Sections 31.021, 31.0212, 31.0214, and 31.0215,
4 Education Code, are transferred to Subchapter A-1, Chapter 31,
5 Education Code, as added by this Act, and amended to read as
6 follows:

7 Sec. 31.021. STATE INSTRUCTIONAL MATERIALS AND TECHNOLOGY
8 FUND. (a) The state instructional materials and technology fund
9 consists of:

10 (1) an amount set aside by the State Board of Education
11 from the available school fund, in accordance with Section
12 43.001(d); and

13 (2) all amounts lawfully paid into the fund from any
14 other source.

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

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

19 (2) purchase special instructional materials for the
20 education of blind and visually impaired students in public
21 schools;

22 (3) pay the expenses associated with the instructional
23 materials adoption and review process and Internet website
24 maintained under this chapter;

25 (4) pay the expenses associated with the purchase,
26 [~~or~~] licensing, printing, or other reproduction of open education
27 resource instructional material;

1 (5) pay the expenses associated with the purchase of
2 instructional material, including freight and shipping and the
3 insurance expenses associated with freight and shipping;

4 (6) fund the technology lending grant program
5 established under Section 32.301; and

6 (7) provide funding to the Texas School for the Blind
7 and Visually Impaired, the Texas School for the Deaf, and the Texas
8 Juvenile Justice Department[, ~~and~~

9 [~~(8) pay the expenses associated with the~~
10 ~~instructional materials web portal developed under Section~~
11 ~~31.081]~~.

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

15 Sec. 31.0212. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
16 ACCOUNT. (a) The commissioner shall maintain an instructional
17 materials and technology account for each school district. In the
18 first year of each biennium, the commissioner shall deposit in the
19 account for each district the amount of the district's
20 instructional materials and technology allotment under Section
21 31.0211.

22 (b) The commissioner shall pay the cost of instructional
23 materials requisitioned by a school district under Section 31.103
24 using funds from the district's instructional materials and
25 technology account.

26 (c) [~~A school district may also use funds in the district's~~
27 ~~account to purchase electronic instructional materials or~~

1 ~~technological equipment. The district shall submit to the~~
2 ~~commissioner a request for funds for this purpose from the~~
3 ~~district's account. The commissioner shall adopt rules regarding~~
4 ~~the documentation a school district must submit to receive funds~~
5 ~~under this subsection.~~

6 [~~(d)~~] Money deposited in a school district's instructional
7 materials and technology account during each state fiscal biennium
8 remains in the account and available for use by the district for the
9 entire biennium. At the end of each biennium, a district with
10 unused money in the district's account may carry forward any
11 remaining balance to the next biennium.

12 (d) A [~~(e)~~] ~~The commissioner shall adopt rules as necessary~~
13 ~~to implement this section. The rules must include a requirement~~
14 ~~that a]~~ school district shall provide to the agency the title and
15 publication information for any instructional materials
16 requisitioned or purchased by the district with the district's
17 instructional materials and technology allotment.

18 (e) The agency shall provide for the development and
19 maintenance of an online requisition and disbursement system for
20 each school district's instructional materials and technology
21 account.

22 Sec. 31.0214. ADJUSTMENT FOR HIGH ENROLLMENT GROWTH
23 DISTRICTS. [~~(a)~~] Each year the commissioner shall adjust the
24 instructional materials and technology allotment of school
25 districts experiencing high enrollment growth. The commissioner
26 shall establish a procedure for determining high enrollment growth
27 districts eligible to receive an adjustment under this section and

1 the amount of the instructional materials and technology allotment
2 those districts will receive.

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

5 Sec. 31.0215. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
6 ALLOTMENT PURCHASES. (a) The commissioner shall, as early as
7 practicable during each biennium, notify each school district and
8 open-enrollment charter school of the estimated amount to which the
9 district or charter school will be entitled under Section 31.0211
10 during the next fiscal biennium.

11 (b) The commissioner shall ~~may~~ allow a school district or
12 open-enrollment charter school to place an order for instructional
13 materials before the beginning of a fiscal biennium and to receive
14 instructional materials before payment. The commissioner shall
15 limit the cost of an order placed under this section to 80 percent
16 of the estimated amount to which a school district or
17 open-enrollment charter school is estimated to be entitled as
18 provided by Subsection (a) and shall first credit any balance in a
19 district or charter school instructional materials and technology
20 account to pay for an order placed under this section.

21 (c) The commissioner shall make payments for orders placed
22 under this section as funds become available to the instructional
23 materials and technology fund and shall prioritize payment of
24 orders placed under this section over reimbursement of purchases
25 made directly by a school district or open-enrollment charter
26 school.

27 (d) The commissioner shall ensure that publishers of

1 instructional materials are informed of any potential delay in
2 payment and that payment is subject to the availability of
3 appropriated funds. A publisher may decline to accept an order
4 placed under this section.

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

7 ~~[(f) The commissioner may adopt rules to implement this~~
8 ~~section.]~~

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

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

26 (b) A juvenile justice alternative education program under
27 Section 37.011 is entitled to an allotment from the state

1 instructional materials and technology fund in an amount determined
2 by the commissioner. The program shall use the allotment to
3 purchase items listed in Subsection (c) for students enrolled in
4 the program. The commissioner's determination under this
5 subsection is final and may not be appealed.

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

7 (1) purchase:

8 (A) ~~[materials on the list adopted by the~~
9 ~~commissioner, as provided by Section 31.0231;~~

10 ~~[(B)]~~ instructional materials, regardless of
11 whether the instructional materials are on the list of approved
12 instructional materials maintained by the State Board of Education
13 under Section 31.022 ~~[adopted under Section 31.024];~~

14 (B) ~~[(C)]~~ consumable instructional materials,
15 including workbooks;

16 (C) ~~[(D)]~~ instructional materials for use in
17 bilingual education classes, as provided by Section 31.029;

18 (D) ~~[(E)]~~ instructional materials for use in
19 college preparatory courses under Section 28.014, as provided by
20 Section 31.031;

21 (E) ~~[(F)]~~ supplemental instructional materials
22 ~~[, as provided by Section 31.035];~~

23 (F) ~~[(G) state-developed]~~ open education
24 resource instructional materials, as provided by Subchapter B-1;

25 (G) ~~[(H)]~~ instructional materials and
26 technological equipment under any continuing contracts of the
27 district in effect on September 1, 2011;

1 (H) [~~(I)~~] technological equipment necessary to
2 support the use of [~~materials included on the list adopted by the~~
3 ~~commissioner under Section 31.0231 or~~] any instructional materials
4 purchased with an allotment under this section;

5 (I) [~~(J)~~] inventory software or systems for
6 storing, managing, and accessing instructional materials and
7 analyzing the usage and effectiveness of the instructional
8 materials; and

9 (J) [~~(K)~~] services, equipment, and technology
10 infrastructure necessary to ensure Internet connectivity and
11 adequate bandwidth; and

12 (2) pay:

13 (A) for training educational personnel directly
14 involved in student learning in the appropriate use of
15 instructional materials and for providing for access to
16 technological equipment for instructional use;

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

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

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

26 (d) [~~Each biennium the commissioner shall assess the~~
27 ~~technology needs for all school districts and provide an estimate~~

1 ~~of the cost for these resources to the State Board of Education.~~

2 [~~d-1~~] In purchasing technological equipment, a school
3 district shall:

4 (1) secure technological solutions that meet the
5 varying and unique needs of students and teachers in the district;
6 and

7 (2) consider:

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

9 (B) flexibility for innovation.

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

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

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

4 Sec. 31.0216. AGENCY PURCHASE OF INSTRUCTIONAL MATERIALS
5 AND TECHNOLOGY. (a) From funds appropriated for the purpose, the
6 agency may contract directly, including by extending a contract,
7 for the purchase of instructional materials and technology for use
8 by school districts.

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

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

16 SUBCHAPTER B. STATE REVIEW AND ~~[FUNDING]~~ ADOPTION ~~[AND~~
17 ~~PURCHASE]~~

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

20 Sec. 31.022. STATE BOARD OF EDUCATION INSTRUCTIONAL
21 MATERIALS REVIEW AND APPROVAL [ADOPTION].

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

25 (a) The State Board of Education shall ~~[adopt a]~~ review ~~[and~~
26 ~~adoption cycle for]~~ instructional materials provided to the board
27 by the agency under Section 31.023. Before approving instructional

1 material, the board must determine that the material is free from
2 factual error and suitable for the subject and grade level for which
3 the material is designed, and, if the material is intended to cover
4 the foundational skills reading curriculum in kindergarten through
5 third grade, does not include three-cueing, as defined by Section
6 28.0062(a-1). The board shall add each material approved under
7 this section to a list of approved instructional materials and may
8 add a material not approved under this section to a list of rejected
9 instructional materials [~~for elementary grade levels, including~~
10 ~~prekindergarten, and secondary grade levels, for each subject in~~
11 ~~the required curriculum under Section 28.002. In adopting the~~
12 ~~cycle, the board:~~

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

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

17 ~~[(A) foundation curriculum subjects for which~~
18 ~~the essential knowledge and skills have been substantially revised~~
19 ~~and for which assessment instruments are required under Subchapter~~
20 ~~B, Chapter 39, including career and technology courses that satisfy~~
21 ~~foundation curriculum requirements as provided by Section~~
22 ~~28.002(n);~~

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

27 ~~[(C) foundation curriculum subjects not~~

1 ~~described by Paragraph (A) or (B), including career and technology~~
2 ~~courses that satisfy foundation curriculum requirements as~~
3 ~~provided by Section 28.002(n); and~~

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

5 (b) ~~[The board shall organize the cycle for subjects in the~~
6 ~~foundation curriculum so that not more than one-fourth of the~~
7 ~~instructional materials for subjects in the foundation curriculum~~
8 ~~are reviewed each biennium.]~~ The State Board of Education may adopt
9 criteria necessary for approval of instructional material under
10 Subsection (a) and may require:

11 (1) all instructional material submitted as full
12 subject tier one instructional material to cover a minimum
13 percentage, as determined by the board, of the essential knowledge
14 and skills adopted for the subject and grade level for which the
15 material is designed;

16 (2) electronic samples of the material;

17 (3) certain physical specifications; and

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

27 (c) The State Board of Education may remove instructional

1 material from the list of approved instructional materials under
2 this section if the essential knowledge and skills intended to be
3 covered by the material are revised or the material is revised
4 without the approval of the board [~~board shall adopt rules to~~
5 ~~provide for a full and complete investigation of instructional~~
6 ~~materials for each subject in the enrichment curriculum on a cycle~~
7 ~~the board considers appropriate~~].

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

18 (d) The State Board of Education shall indicate whether each
19 instructional material reviewed under Subsection (a) is capable of
20 being made available through an instructional materials parent
21 portal established under Section 31.154 [~~At least 12 months before~~
22 ~~the beginning of the school year for which instructional materials~~
23 ~~for a particular subject and grade level will be adopted under the~~
24 ~~review and adoption cycle, the board shall publish notice of the~~
25 ~~review and adoption cycle for those instructional materials. A~~
26 ~~request for production must allow submission of open education~~
27 ~~resource instructional materials that are available for use by the~~

1 ~~state without charge on the same basis as instructional materials~~
2 ~~offered for sale].~~

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

5 Sec. 31.023. INSTRUCTIONAL MATERIAL REVIEW [~~LIST~~]. (a)
6 The commissioner shall establish, in consultation with and with the
7 approval of the State Board of Education, a process for the annual
8 review of instructional materials by the agency. The process
9 established under this subsection must:

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

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

14 (i) a school district;

15 (ii) a majority of the members of the State
16 Board of Education; or

17 (iii) a publisher of instructional
18 material, which may only be submitted for material published by the
19 requesting publisher;

20 (B) reviewing instructional materials
21 requisitioned or purchased under Section 31.0212; and

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

27 (2) describe the types of instructional materials the

1 agency may review, including:

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

5 (B) open education resource instructional
6 material;

7 (C) instructional materials developed by a
8 school district and submitted to the agency by the district for
9 review; and

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

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

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

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

19 (4) ensure the procedures for review allow the agency
20 to review at least 200 individual instructional materials each year

21 ~~[For each subject and grade level, the State Board of Education~~
22 ~~shall adopt a list of instructional materials. The list includes~~
23 ~~each instructional material submitted for the subject and grade~~
24 ~~level that meets applicable physical specifications adopted by the~~
25 ~~State Board of Education and contains material covering at least~~
26 ~~half of the elements of the essential knowledge and skills of the~~
27 ~~subject and grade level in the student version of the instructional~~

1 ~~material, as well as in the teacher version of the instructional~~
2 ~~material, as determined by the State Board of Education under~~
3 ~~Section 28.002 and adopted under Section 31.024].~~

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

9 (b) In conducting a review under this section, the agency
10 must use a rubric developed by the agency in consultation with and
11 approved by the State Board of Education that includes, with
12 respect to the instructional material being reviewed, a
13 determination of:

14 (1) whether the material is free from factual error
15 and satisfies the criteria adopted by the board under Section
16 31.022;

17 (2) the quality of the material;

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

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

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

26 (C) for a partial subject tier one instructional
27 material, the percentage of the essential knowledge and skills for

1 the relevant portion of the subject and grade level covered by the
2 material; and

3 (4) whether the material contains obscene or harmful
4 content or is otherwise incompatible with certification
5 requirements under Section 31.1011(a)(1)(B) [Each instructional
6 material on the list must be:

7 [(1) free from factual errors;

8 [(2) suitable for the subject and grade level for
9 which the instructional material was submitted; and

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

12 (c) After completing a review under this section, the agency
13 shall provide the results of the review and any related
14 recommendations to the State Board of Education for approval or
15 rejection of the instructional material and the inclusion of the
16 instructional material on a list maintained by the State Board of
17 Education under Section 31.022.

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

22 (e) A process established under Subsection (a) or a rubric
23 developed under Subsection (b) is automatically approved by the
24 State Board of Education if not rejected by the board before the
25 91st day after the date the agency submits the item to the board.

26 SECTION 24. Subchapter B, Chapter 31, Education Code, is
27 amended by adding Sections 31.025, 31.0251, and 31.0252 to read as

1 follows:

2 Sec. 31.025. INSTRUCTIONAL MATERIAL INTERNET WEBSITE. (a)

3 The agency shall develop and maintain an instructional material
4 Internet website to assist school districts in locating and
5 selecting instructional material.

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

8 (1) the price of the material;

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

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

13 (4) a statement of whether the material is included on
14 the list of approved instructional materials maintained by the
15 State Board of Education under Section 31.022 or has been rejected
16 by the board; and

17 (5) any other information the agency determines
18 relevant to a school district's selection of instructional
19 material.

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

23 (d) The agency shall use funds appropriated to the agency
24 for the purposes of reviewing instructional material or available
25 in the state instructional materials and technology fund for
26 purposes of implementing this section.

27 Sec. 31.0251. INSTRUCTIONAL MATERIAL SUPPORT. (a) On

1 request of a school district, the agency shall provide the district
2 assistance in evaluating, adopting, or using instructional
3 materials.

4 (b) Except as otherwise provided, the agency may not require
5 a school district to adopt or otherwise use instructional material
6 reviewed by the agency under Section 31.023 or included on the list
7 of approved instructional materials maintained by the State Board
8 of Education under Section 31.022.

9 Sec. 31.0252. LOCAL REVIEW OF CLASSROOM INSTRUCTIONAL
10 MATERIAL. (a) The agency shall develop standards in consultation
11 with stakeholders, including educators, by which a school district
12 may conduct a review of instructional materials used by a classroom
13 teacher in a foundation curriculum course under Section
14 28.002(a)(1) to determine the degree to which the material:

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

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

20 (b) The agency shall develop a rubric, approved by the State
21 Board of Education, to determine if reviewed instructional material
22 complies with the rigor requirements described by Subsection
23 (a)(2).

24 (c) The agency, in developing standards under Subsection
25 (a):

26 (1) shall minimize, to the extent possible, the time a
27 classroom teacher is required to spend complying with a review

1 conducted under this section;

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

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

9 (d) The agency shall permit a regional education service
10 center or a curriculum review service provider approved by the
11 agency to conduct the review for a school district under this
12 section and provide to approved centers and providers training
13 relating to appropriately conducting the review.

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

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

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

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

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

27 SUBCHAPTER B-1. [~~STATE-DEVELOPED~~] OPEN EDUCATION RESOURCE

1 INSTRUCTIONAL MATERIALS

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

4 Sec. 31.0701. REFERENCES TO STATE-DEVELOPED OPEN EDUCATION
5 RESOURCE INSTRUCTIONAL MATERIAL. In this chapter, a reference to a
6 state-developed open education resource instructional material
7 means an open education resource instructional material, as defined
8 by Section 31.002.

9 SECTION 28. Section 31.071, Education Code, is amended to
10 read as follows:

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

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

19 (1) purchase a license authorizing the use of [~~shall~~
20 ~~purchase any state-developed~~] open education resource
21 instructional materials in a manner that complies with all
22 applicable state laws and rules relating to procurement by a state
23 agency [~~through a competitive process~~];

24 (2) purchase or otherwise acquire ownership of open
25 education resource instructional materials;

26 (3) develop open education resource instructional
27 materials;

1 (4) adopt open education resource instructional
2 materials; or

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

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

10 (b-2) The commissioner shall:

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

14 (A) English language arts and mathematics
15 courses in kindergarten through grade eight;

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

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

21 (i) in an integrated manner; and

22 (ii) for approximately 240 minutes of
23 instructional time per day, including time needed each day for
24 accelerated instruction under Section 28.0211; and

25 (2) ensure open education resource instructional
26 materials are available to all students, parents, classroom
27 teachers, and school districts in this state free of charge, except

1 for a fee for the printing or shipping of the material.

2 (c) Except as provided by Section 31.0711, an [~~a~~
3 ~~state-developed~~] open education resource instructional material
4 must be licensed to this state under an intellectual property
5 license that allows for free use, reuse, modification, or sharing
6 with others as described by Section 31.07101 [~~irrevocably owned by~~
7 ~~the state. The state must have unlimited authority to modify,~~
8 ~~delete, combine, or add content to the instructional material after~~
9 ~~purchase~~].

10 (d) [~~The commissioner may issue a request for proposals for~~
11 ~~state-developed open education resource instructional material:~~

12 [~~(1) in accordance with the instructional material~~
13 ~~review and adoption cycle under Section 31.022, or~~

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

16 [~~e~~] The costs of administering this subchapter and
17 ensuring the availability of [~~purchasing state-developed~~] open
18 education resource instructional materials shall be paid from funds
19 appropriated for the purpose and the state instructional materials
20 and technology fund, as determined by the commissioner.

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

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

27 (1) is irrevocable and perpetual;

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

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

5 (4) authorizes access, use, transmission, adaptation,
6 public display, public performance, public distribution, and
7 copying of the material; and

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

10 (b) Instructional material licensed to this state under an
11 intellectual property license that is restricted to noncommercial
12 or educational use qualifies under this subchapter as instructional
13 material licensed to this state under a license that allows for free
14 use, reuse, modification, or sharing with others.

15 SECTION 30. Section 31.0711, Education Code, is amended to
16 read as follows:

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

21 (1) is in the public domain;

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

25 (3) has been made available by the copyright owner
26 under a Creative Commons license or another intellectual property
27 license that allows for free use, reuse, modification, or sharing

1 as described by Section 31.07101; or

2 (4) is licensed to the state under another [a] license
3 that:

4 (A) grants access to and allows for use of the
5 material by students, teachers, educators, and other education
6 professionals [the state unlimited authority to modify, delete,
7 combine, or add content];

8 (B) permits access, use, public display, public
9 performance, public distribution, and copying of the material for
10 noncommercial or educational purposes [the free use and repurposing
11 of the material by any person or entity]; and

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

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

16 Sec. 31.0712. OPEN EDUCATION RESOURCE ADVISORY BOARD. The
17 agency shall establish an open education resource advisory board to
18 ensure that open education resource instructional materials made
19 available under this subchapter are:

20 (1) of the highest quality;

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

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

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

27 (5) in compliance with Section 28.0022.

1 SECTION 32. Section 31.072, Education Code, is amended to
2 read as follows:

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

6 ~~(1)~~ be evaluated by:

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

9 (2) parents of students in this state [meet the
10 requirements for inclusion on the instructional material list
11 adopted under Section 31.023].

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

27 SECTION 33. Subchapter B-1, Chapter 31, Education Code, is

1 amended by adding Section 31.0721 to read as follows:

2 Sec. 31.0721. REVIEW AND RELEASE OF OPEN EDUCATION RESOURCE
3 INSTRUCTIONAL MATERIAL. (a) Except as provided by Subsection (b),
4 open education resource instructional material may not be made
5 available under this subchapter to students, teachers, educators,
6 or other education professionals before being reviewed by the
7 agency under Section 31.023 and included on the list of approved
8 instructional materials maintained by the State Board of Education
9 under Section 31.022.

10 (b) The agency may make open education resource
11 instructional material available to a limited number of classroom
12 teachers for a limited time before the material is reviewed by the
13 agency under Section 31.023 and included on the list of approved
14 instructional materials maintained by the State Board of Education
15 under Section 31.022 to assist in developing or testing the quality
16 of the material. A school district may only use unreviewed material
17 made available under this subsection in a grade level in which the
18 material has not been used previously if:

19 (1) the board of trustees of the district approves the
20 use of the unreviewed material; and

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

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

26 Sec. 31.0722 [~~31.083~~]. OPEN EDUCATION RESOURCE
27 INSTRUCTIONAL MATERIALS REPOSITORY. (a) The commissioner shall

1 include in the Internet website [~~web portal~~] developed under
2 Section 31.025 [~~31.081~~] a repository of open education resource
3 instructional materials, including open education resource
4 instructional materials made available under Section 31.0721(b),
5 and other electronic instructional materials that school districts
6 and open-enrollment charter schools may access at no cost.

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

8 (1) comply with the requirements of Section 31.154;

9 and

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

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

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

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

24 (c) A [~~Notwithstanding Section 31.022, a~~] school district
25 or open-enrollment charter school may adopt [~~state-developed~~] open
26 education resource instructional material at any time [~~, regardless~~
27 ~~of the instructional material review and adoption cycle under that~~

1 ~~section~~].

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

7 Sec. 31.074. DISTRIBUTION. (a) The commissioner shall
8 provide for the distribution of ~~[state-developed]~~ open education
9 resource instructional materials in a manner consistent with
10 distribution of instructional materials approved ~~[adopted]~~ under
11 Subchapter B.

12 (b) The commissioner may use a competitive process to
13 contract for printing, ~~[or]~~ other reproduction, or storage of
14 ~~[state-developed]~~ open education resource instructional material
15 on behalf of a school district or open-enrollment charter school.
16 The commissioner may not require a school district or
17 open-enrollment charter school to contract with a state-approved
18 provider for the printing, ~~[or]~~ reproduction, or storage of
19 ~~[state-developed]~~ open education resource instructional material.

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

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

26 Sec. 31.075. STATE OWNERSHIP; LICENSING.

27 SECTION 37. Sections 31.075(a), (b), (c), (d), and (e),

1 Education Code, are amended to read as follows:

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

5 (b) To encourage the use of instructional material
6 purchased by the state under this subchapter by school districts
7 and open-enrollment charter schools, the commissioner may ~~[shall]~~
8 provide a license for the instructional material that ~~[allows for~~
9 ~~the free use, reuse, modification, or sharing of the material by any~~
10 ~~person or entity.~~

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

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

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

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

20 (C) must indicate if the user has modified the
21 material;

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

25 (E) to the extent reasonably practicable, must
26 provide in any product or derivative material a uniform resource
27 identifier or hyperlink through which a person may obtain the

1 material free of charge;

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

3 (A) the commissioner may request that a user
4 remove a copyright notice or attribution from the material and that
5 a user must comply with the request to the extent reasonably
6 practicable; and

7 (B) the rights granted under the license to a
8 user are automatically terminated if the user fails to comply with
9 the terms of the license; and

10 (3) includes [~~may include~~] any additional terms
11 determined by the commissioner.

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

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

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

21 Sec. 31.0751. OPEN EDUCATION RESOURCE INSTRUCTIONAL
22 MATERIAL TRANSITION PLAN. (a) Except as provided by Subsection
23 (c), to qualify for additional state aid under Section 48.308 the
24 board of trustees of a school district must adopt an open education
25 resource instructional material transition plan to assist
26 classroom teachers in the district who will be using an open
27 education resource instructional material in a specific subject or

1 grade level for which the teacher has not previously used an open
2 education resource instructional material.

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

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

10 Sec. 31.0752. OPEN EDUCATION RESOURCE INSTRUCTIONAL
11 MATERIAL SUPPORT PROGRAM. The agency shall develop and maintain a
12 program to assist school districts and open-enrollment charter
13 schools in adopting and using open education resource instructional
14 material made available under this subchapter, including by
15 assisting districts and schools to:

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

18 (2) schedule instructional periods in a manner that
19 allows classroom teachers sufficient time to effectively prepare
20 and present instructional material within the teacher's normal work
21 day.

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

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

27 (b) A decision made by the commissioner under this

1 subchapter [~~regarding the purchase, revision, cost, licensing, or~~
2 ~~distribution of state-developed open education resource~~
3 ~~instructional material~~] is final and may not be appealed.

4 SECTION 40. Section 31.004, Education Code, is transferred
5 to Subchapter C, Chapter 31, Education Code, redesignated as
6 Section 31.1011, Education Code, and amended to read as follows:

7 Sec. 31.1011 [~~31.004~~]. CERTIFICATION OF PROVISION OF
8 INSTRUCTIONAL MATERIALS. (a) Each school district and
9 open-enrollment charter school shall annually certify to the State
10 Board of Education and the commissioner that:

11 (1) [~~7~~] for each subject in the required curriculum
12 under Section 28.002, other than physical education, and each grade
13 level, the district or school:

14 (A) provides each student with instructional
15 materials that cover all elements of the essential knowledge and
16 skills adopted by the State Board of Education for that subject and
17 grade level; and

18 (B) in the provision of instructional materials,
19 protects students from obscene or harmful content as necessary for
20 compliance with:

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

23 (ii) Section 28.0022;

24 (iii) Section 43.22, Penal Code; and

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

27 (2) the district or school used money allocated to the

1 district or school under the instructional materials and technology
2 allotment only for purposes allowed under Section 31.0211.

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

7 (1) instructional materials adopted by the State Board
8 of Education;

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

11 ~~[(3) open education resource instructional materials~~
12 ~~submitted by eligible institutions and adopted by the State Board~~
13 ~~of Education under Section 31.0241,~~

14 ~~[(4) open education resource instructional materials~~
15 ~~made available by other public schools,~~

16 [(5)] instructional materials developed, [or]
17 purchased, or otherwise acquired by the school district or
18 open-enrollment charter school; and

19 (3) [(6)] open education resource instructional
20 materials and other electronic instructional materials included in
21 the repository under Section 31.0722 [~~31.083~~].

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

24 Sec. 31.1012. REPORT TO AGENCY. Each school district shall
25 annually report to the agency information regarding the
26 instructional materials used by the district during the previous
27 school year, including the cost of each material, to assist the

1 agency in ensuring compliance with Section 31.151(a).

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

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

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

7 (d) A school district is not required to use a method
8 provided by Section 44.031(a) to purchase instructional materials
9 that have been reviewed by the agency under Section 31.023 and
10 included on the list of approved instructional materials maintained
11 by the State Board of Education under Section 31.022.

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

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

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

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

22 (1) shall furnish any instructional material the
23 publisher or manufacturer offers in this state at a price that does
24 not exceed the lowest price at which the publisher offers that
25 instructional material for adoption or sale to any state, public
26 school, or school district in the United States;

27 (2) shall automatically reduce the price of

1 instructional material sold for use in a school district or
2 open-enrollment charter school to the extent that the price is
3 reduced elsewhere in the United States;

4 (3) shall provide any instructional material or
5 ancillary item free of charge in this state to the same extent that
6 the publisher or manufacturer provides the instructional material
7 or ancillary item free of charge to any state, public school, or
8 school district in the United States;

9 (4) shall guarantee that each copy of instructional
10 material sold in this state is at least equal in quality to copies
11 of that instructional material sold elsewhere in the United States
12 and is free from factual error;

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

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

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

24 (8) shall guarantee delivery of instructional
25 materials at least 10 business days before the opening day of school
26 of the year for which the instructional materials are ordered if the
27 instructional materials are ordered by a date specified in the

1 sales contract; ~~and~~

2 (9) shall submit to the State Board of Education an
3 affidavit certifying any instructional material the publisher or
4 manufacturer offers in this state to be free of factual errors at
5 the time the publisher executes the contract required by Section
6 31.026; and

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

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

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

17 Sec. 31.154. INSTRUCTIONAL MATERIALS PARENT PORTAL. (a)
18 The State Board of Education shall adopt standards for entities
19 that supply instructional materials reviewed by the agency under
20 Section 31.023 to make instructional materials supplied by the
21 entity available on a parent portal hosted by the entity.

22 (b) An instructional materials parent portal must:

23 (1) provide to each parent of a student enrolled in a
24 school district or open-enrollment charter school access to
25 instructional materials, other than tests or exams, that are
26 included in the portal and used by the district or school;

27 (2) organize instructional material by unit and in the

1 order in which the material is designed to be used;

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

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

6 (c) Standards adopted under Subsection (a) may not require:

7 (1) a classroom teacher to submit instructional
8 materials developed by the teacher for inclusion in an
9 instructional materials parent portal; or

10 (2) an entity hosting an instructional materials
11 parent portal to include tests or exams in the portal.

12 (d) To comply with an intellectual property license or other
13 restrictions placed on an instructional material and to maintain
14 security of the information contained in an instructional materials
15 parent portal under this section, a parent may be required, before
16 accessing the portal, to:

17 (1) enter a password;

18 (2) comply with other user access verification
19 procedures; and

20 (3) accept user terms and conditions, which may not
21 limit or exclude access to instructional material based on the uses
22 of the material that would otherwise be permitted under fair use
23 provisions of copyright law.

24 (e) An entity that hosts an instructional materials parent
25 portal must comply with requests regarding parental access to the
26 portal made by a school district in compliance with this section or
27 Section 26.006.

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

3 (b) Each school, before implementing a comprehensive school
4 counseling program under Section 33.005, shall annually conduct a
5 preview of the program for parents and guardians. All materials,
6 including curriculum to be used during the year that is not
7 available digitally through an instructional materials parent
8 portal under Section 31.154, must be available for a parent or
9 guardian to preview during school hours. Materials or curriculum
10 not included in the materials on an instructional materials parent
11 portal or available on the campus for preview may not be used.

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

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

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

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

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

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

24 (A) reimbursement for disaster remediation costs
25 under former Sections 41.0931 and 42.2524;

26 (B) an adjustment for rapid decline in taxable
27 value of property under former Section 42.2521; [~~and~~]

1 (C) an adjustment for property value affected by
2 a state of disaster under former Section 42.2523; and
3 (D) additional state aid under Section 48.307 or
4 48.308;

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

7 (4) if a school district or open-enrollment charter
8 school receives a waiver relating to eligibility requirements for
9 the national free or reduced-price lunch program under 42 U.S.C.
10 Section 1751 et seq., use the numbers of educationally
11 disadvantaged students on which the district's or school's
12 entitlement to compensatory education funds was based for the
13 school year before the school year in which the district or school
14 received the waiver, adjusted for estimated enrollment growth.

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

17 Sec. 48.307. ADDITIONAL STATE AID FOR STATE-APPROVED
18 INSTRUCTIONAL MATERIALS. (a) For each student enrolled in the
19 district, a school district is entitled to additional state aid for
20 each school year in an amount equal to \$40, or a greater amount
21 provided by appropriation, to procure instructional material that
22 has been:

23 (1) reviewed by the agency under Section 31.023;
24 (2) placed on the list of approved instructional
25 materials maintained by the State Board of Education under Section
26 31.022;

27 (3) designated by the State Board of Education under

1 Section 31.022 as being included or capable of being included in an
2 instructional materials parent portal under Section 31.154; and
3 (4) acquired from a publisher, manufacturer, or other
4 entity that has not been found to violate Section 31.151.

5 (b) A school district is entitled to the amount of state aid
6 provided by Subsection (a) each school year, regardless of whether
7 the district uses the amount during the school year for which the
8 amount was provided.

9 (c) Additional state aid provided under this section shall
10 be deposited to the credit of the district's instructional
11 materials and technology account maintained by the commissioner
12 under Section 31.0212 and may be accessed only for the procurement
13 of instructional materials in accordance with this section.

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

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

25 (b) The amount to which a school district is entitled under
26 this section may not exceed actual costs incurred by the district or
27 for which the district is obligated to pay during the school year

1 for which the funds were provided.

2 (c) Additional state aid provided under this section shall
3 be deposited to the credit of the district's instructional
4 materials and technology account maintained by the commissioner
5 under Section 31.0212 and may be accessed only for the procurement
6 of instructional materials in accordance with this section.

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

10 SECTION 50. Chapter 322, Government Code, is amended by
11 adding Section 322.0082 to read as follows:

12 Sec. 322.0082. INCLUSION OF CERTAIN EDUCATION FUNDS
13 REQUIRED. (a) The director shall include in the budget of
14 estimated appropriations prepared under Section 322.008(c):

15 (1) the amount set aside under Section 43.001(d),
16 Education Code, by the State Board of Education from the available
17 school fund for the state instructional materials and technology
18 fund established under Section 31.021, Education Code; and

19 (2) the amount that is remaining in the state
20 instructional materials and technology fund from the previous
21 fiscal biennium that is available for use by school districts and
22 open-enrollment charter schools.

23 (b) If the amount estimated to be appropriated for purposes
24 of the state instructional materials and technology fund for a
25 fiscal biennium is less than the amount set aside by the State Board
26 of Education under Section 43.001(d), Education Code, the director
27 shall provide with the budget an explanation of the difference,

1 including the amount of the difference and to what the additional
2 funds have been appropriated.

3 (c) An explanation provided under Subsection (b) shall be
4 included with the documents provided on the board's Internet
5 website under Section 322.0081.

6 SECTION 51. The following provisions of the Education Code
7 are repealed:

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

23 SECTION 52. To the extent of any conflict, this Act prevails
24 over another Act of the 88th Legislature, Regular Session, 2023,
25 relating to nonsubstantive additions to and corrections in enacted
26 codes.

27 SECTION 53. (a) A contract entered into under Section

1 31.026 or 31.151, Education Code, as amended by this Act, before the
2 effective date of this Act is governed by the law in effect on the
3 date the contract was entered into, and the former law is continued
4 in effect for that purpose.

5 (b) A contract entered into under Section 31.026 or 31.151,
6 Education Code, as amended by this Act, after the effective date of
7 this Act for a program called for by the State Board of Education
8 under Proclamation 2024 is governed by the law in effect on the date
9 the proclamation was issued, and the former law is continued in
10 effect for that purpose.

11 (c) Section 31.026, Education Code, as amended by this Act,
12 does not apply to the review of or a contract for the purchase or
13 licensing of instructional materials required by the State Board of
14 Education pursuant to Proclamation 2024. The review of and
15 contracts for the purchase or licensing of instructional materials
16 required by the State Board of Education pursuant to Proclamation
17 2024 are governed by the law as it existed immediately before the
18 effective date of this Act, and the former law is continued in
19 effect for that purpose.

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

26 SECTION 54. (a) Except as provided by Subsection (b) of
27 this section, this Act applies beginning with the 2023-2024 school

1 year.

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

4 SECTION 55. (a) Except as provided by Subsections (b) and
5 (c) of this section, this Act takes effect immediately if it
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for immediate
9 effect, this Act takes effect September 1, 2023.

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

13 (c) Section 322.0082, Government Code, as added by this Act,
14 takes effect September 1, 2025.

ADOPTED

MAY 12 2023

Latey Saw
Secretary of the Senate

Bryan Ceyntor

FLOOR AMENDMENT NO. 1

BY: _____

1 Amend C.S.H.B. 1605 (senate committee printing) in SECTION 55
2 of the bill, providing effective dates, as follows:

3 (1) In Subsection (a) of the SECTION (page 22, line 69, and
4 page 23, line 1), strike "Subsections (b) and (c)" and substitute
5 "Subsection (b)".

6 (2) In Subsection (b) of the SECTION (page 23, line 7),
7 strike "and".

8 (3) In Subsection (b) of the SECTION (page 23, line 8),
9 between "Act," and "take", insert "and Section 322.0082, Government
10 Code, as added by this Act,".

11 (4) Strike Subsection (c) of the SECTION (page 23, lines 9
12 and 10).

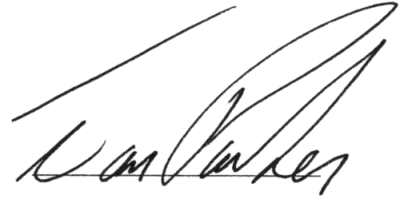
ADOPTED

✓✓
MAY 12 2023

Haley Law
Secretary of the Senate

FLOOR AMENDMENT NO. 3

BY:




1 Amend C.S.H.B. 1605 (senate committee report) in SECTION 13
2 of the bill, amending Section 31.003, Education Code (page 5, line
3 59), by striking "any provision of this chapter" and substituting
4 "a provision of this chapter that the commissioner or agency is
5 responsible for implementing".

ADOPTED

VV
MAY 12 2023

FLOOR AMENDMENT NO. 4

BY: 


Secretary of the Senate

1 Amend C.S.H.B. 1605 (senate committee report) as follows:

2 (1) In SECTION 22 of the bill, in amended Section 31.022(a),
3 Education Code (page 9, line 45), between "board" and "must",
4 insert "may review the material and".

5 (2) In SECTION 23 of the bill, in amended Section
6 31.023(a)(1), Education Code (page 11, between lines 6 and 7),
7 insert the following appropriately lettered paragraph and reletter
8 subsequent paragraphs of the subdivision accordingly:

9 () requiring the agency to review materials if the
10 State Board of Education requests by a majority vote that the
11 material be reviewed by the agency;

12 (3) In SECTION 23 of the bill, in amended Section
13 31.023(b)(3), Education Code (page 10, line 19), strike "and".

14 (4) In SECTION 23 of the bill, in amended Section
15 31.023(b)(4), Education Code (page 10, line 22), between
16 "31.1011(a)(1)(B)" and the open bracket, insert the following:
17 ; and

18 (5) the instructional material to be made publicly
19 available for review

ADOPTED

^{VV}
MAY 12 2023

Lately Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 5

BY: 

1 Amend C.S.H.B. 1605 (senate committee report), immediately
2 following added Section 31.0271(b)(2), Education Code (page 16,
3 between lines 15 and 16), by inserting the following subsection:

4 (c) Except as provided by Subsection (b), open education
5 resource instructional materials made available under this section
6 may not remain available once amended or modified unless the
7 material as amended or modified is reviewed under Section 31.023
8 and included on the list of approved instructional materials
9 maintained by the State Board of Education under Section 31.022.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 15, 2023

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1605 by Buckley (Relating to instructional material and technology, the adoption of essential knowledge and skills for certain public school foundation curriculum subjects, and the extension of additional state aid to school districts for the provision of certain instructional materials; authorizing a fee.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1605, As Passed 2nd House : 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>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
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>	Probable Savings/(Cost) from General Revenue Fund 1	Probable Savings/(Cost) from Tech & Instr Materials Fund 3	Probable Savings/(Cost) from Foundation School Fund 193	<i>Change in Number of State Employees from FY 2023</i>
2024	(\$68,170,000)	(\$71,219,000)	(\$210,730,000)	64.0
2025	(\$72,955,000)	(\$47,317,000)	(\$261,209,000)	64.0
2026	(\$95,947,000)	(\$55,047,000)	(\$277,126,000)	74.0
2027	(\$105,781,000)	(\$51,674,000)	(\$288,031,000)	74.0
2028	(\$109,801,000)	(\$32,119,000)	(\$297,229,000)	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 additional state aid 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.

The bill would require the Legislative Budget Board (LBB) to include in the budget of estimated appropriations the amount set aside from the available school fund for the instructional materials and technology fund and the amount remaining in the state instructional materials and technology fund. An explanation of any difference between appropriated amounts and amounts set aside shall be reported on the board's website.

Methodology

This analysis assumes that implementation 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 additional state aid under the Foundation School Program (FSP), Additional State Aid for State-Approved Instructional Materials, which would provide additional state aid to each district of a minimum of \$40, or a greater amount provided by appropriation, for each student enrolled in the district for costs incurred by the district to procure instructional materials that would 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. This analysis assumes that each student enrolled in public schools would generate the maximum additional state aid under

this section.

The bill would add additional state aid under the FSP, Additional State Aid for Open Education Resource Instructional Material, which would entitle each district to a maximum of \$20 per student for the costs incurred during that year associated with printing and shipping open education resource instructional material made available under Subchapter B-1, Chapter 31. To be eligible for the aid, a district would have to have complied with Section 31.0751, Open Education Resource Instructional Material Transition Plan.

The agency assumes that the additional state aid 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 provision 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 aid. 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 additional state aid provisions 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. To the extent that districts do not utilize the full amount of the additional state aid for OER instructional materials, the cost to the state would be less.

The LBB assumes that any administrative costs to the board associated with the bill could be absorbed using existing resources.

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, CMA, ASA, MJe, KSk, ENA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 10, 2023

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

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1605 by Buckley (relating to instructional material and technology, the adoption of essential knowledge and skills for certain public school foundation curriculum subjects, and the extension of additional state aid to school districts for the provision of certain instructional materials; authorizing a fee.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1605, Committee Report 2nd 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>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
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>	Probable Savings/(Cost) from General Revenue Fund 1	Probable Savings/(Cost) from Tech & Instr Materials Fund 3	Probable Savings/(Cost) from Foundation School Fund 193	Change in Number of State Employees from FY 2023
2024	(\$68,170,000)	(\$71,219,000)	(\$210,730,000)	64.0
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2028	(\$109,801,000)	(\$32,119,000)	(\$297,229,000)	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 additional state aid 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.

The bill would require the Legislative Budget Board (LBB) to include in the budget of estimated appropriations the amount set aside from the available school fund for the instructional materials and technology fund and the amount remaining in the state instructional materials and technology fund. An explanation of any difference between appropriated amounts and amounts set aside shall be reported on the board's website.

Methodology

This analysis assumes that implementation 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 criterion 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 additional state aid under the Foundation School Program (FSP), Additional State Aid for State-Approved Instructional Materials, which would provide additional state aid to each district of a minimum of \$40, or a greater amount provided by appropriation, for each student enrolled in the district for costs incurred by the district to procure instructional materials that would 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. This analysis assumes that each student enrolled in public schools would generate the maximum additional state aid under

this section.

The bill would add additional state aid under the FSP, Additional State Aid for Open Education Resource Instructional Material, which would entitle each district to a maximum of \$20 per student for the costs incurred during that year associated with printing and shipping open education resource instructional material made available under Subchapter B-1, Chapter 31. To be eligible for the aid, a district would have to have complied with Section 31.0751, Open Education Resource Instructional Material Transition Plan.

The agency assumes that the additional state aid 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 provision 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 aid. 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 additional state aid provisions 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. To the extent that districts do not utilize the full amount of the additional state aid for OER instructional materials, the cost to the state would be less.

The LBB assumes that any administrative costs to the board associated with the bill could be absorbed using existing resources.

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

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 10, 2023

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

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1605 by Buckley (Relating to instructional material and technology, the adoption of essential knowledge and skills for certain public school foundation curriculum subjects, and the extension of additional state aid to school districts for the provision of certain instructional materials; authorizing a fee.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1605, As Engrossed : 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>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
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>	Probable Savings/(Cost) from General Revenue Fund 1	Probable Savings/(Cost) from Tech & Instr Materials Fund 3	Probable Savings/(Cost) from Foundation School Fund 193	Change in Number of State Employees from FY 2023
2024	(\$68,170,000)	(\$71,219,000)	(\$210,730,000)	64.0
2025	(\$72,955,000)	(\$47,317,000)	(\$261,209,000)	64.0
2026	(\$95,947,000)	(\$55,047,000)	(\$277,126,000)	74.0
2027	(\$105,781,000)	(\$51,674,000)	(\$288,031,000)	74.0
2028	(\$109,801,000)	(\$32,119,000)	(\$297,229,000)	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 additional state aid 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.

The bill would require the Legislative Budget Board (LBB) to include in the budget of estimated appropriations the amount set aside from the available school fund for the instructional materials and technology fund and the amount remaining in the state instructional materials and technology fund. An explanation of any difference between appropriated amounts and amounts set aside shall be reported on the board's website.

Methodology

This analysis assumes that implementation 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 additional state aid under the Foundation School Program (FSP), Additional State Aid for State-Approved Instructional Materials, which would provide additional state aid to each district of a minimum of \$40, or a greater amount provided by appropriation, for each student enrolled in the district for costs incurred by the district to procure instructional materials that would 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. This analysis assumes that each student enrolled in public schools would generate the maximum allotment under this section.

The bill would add additional state aid under the FSP, Additional State Aid for Open Education Resource Instructional Material, which would entitle each district to a maximum of \$20 per student for the costs incurred during that year associated with printing and shipping open education resource instructional material made available under Subchapter B-1, Chapter 31. 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 additional state aid 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 provision 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 aid. 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 additional state aid provisions 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. To the extent that districts do not utilize the full amount of the additional state aid for OER instructional materials, the cost to the state would be less.

The LBB assumes that any administrative costs to the board associated with the bill could be absorbed using existing resources.

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

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 13, 2023

TO: Honorable Brad Buckley, Chair, House Committee on Public Education

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1605 by Buckley (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 HB1605, 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>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
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>	Probable Savings/(Cost) from General Revenue Fund 1	Probable Savings/(Cost) from Tech & Instr Materials Fund 3	Probable Savings/(Cost) from Foundation School Fund 193	Probable Savings/(Cost) from Recapture Payments Atten Crdts 8905
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>	Change in Number of State Employees from FY 2023
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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

March 21, 2023

TO: Honorable Brad Buckley, Chair, House Committee on Public Education

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1605 by Buckley (Relating to instructional material and technology, the adoption and revision of essential knowledge and skills of the public school foundation curriculum, and creating allotments for the procurement of certain instructional materials under the Foundation School Program; authorizing a fee.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1605, As Introduced : a negative impact of (\$843,366,801) 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>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2024	(\$404,541,344)
2025	(\$438,825,457)
2026	(\$468,432,283)
2027	(\$475,223,473)
2028	(\$457,900,462)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Savings/(Cost) -from General Revenue Fund 1	Probable Savings/(Cost) from Tech & Instr Materials Fund 3	Probable Savings/(Cost) from Foundation School Fund 193	Probable Savings/(Cost) from Recapture Payments Atten Crdis 8905
2024	(\$67,934,234)	(\$71,080,213)	(\$265,526,897)	\$62,588,134
2025	(\$72,533,357)	(\$47,103,971)	(\$319,188,129)	\$64,400,407
2026	(\$95,096,640)	(\$54,218,053)	(\$319,117,590)	\$62,378,769
2027	(\$104,932,930)	(\$50,847,741)	(\$319,442,802)	\$66,214,180
2028	(\$108,955,992)	(\$31,294,990)	(\$317,649,480)	\$66,390,067

<i>Fiscal Year</i>	Change in Number of State Employees from FY 2023
2024	58.0
2025	58.0
2026	58.0
2027	58.0
2028	58.0

Fiscal Analysis

The bill would prohibit a school district from requiring a classroom teacher to write lesson plans unless the teacher's contract explicitly includes that duty.

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. 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

TEA anticipates administrative costs associated with implementation of the bill.

Section 7: 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 agency also anticipates needing one Education Specialist V to oversee this work.

Section 16: The bill would make amendments to TEC, Chapter 31 related to instructional materials. The agency assumes this section would require upgrades to the existing online requisition and disbursement system for instructional materials (EMAT). Additionally, EMAT upgrades would be necessary for the implementation of new allotments outlined in Section 48 of this bill. This analysis assumes the upfront and maintenance costs would total \$4,000,000 for fiscal years 2024-28. To support this work, this analysis assumes the agency would require Database Administrator IV, one Systems Analyst III, and three Systems Analyst IVs.

Section 23: 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 will 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 FY24, 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 FY25, it is assumed the review process would expand to all math grades for a total of \$22,539,992. In FY26, 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 FY27, it is assumed reviews would be added for Social Studies for a total of \$20,896,485, and finally in FY28, it assumes Pre-K reviews would be completed for a total of \$10,448,243. To support the work under this section, this analysis assumes that the agency would require one Director I, three Education Specialist IVs, two Data Analyst IVs, and one Contract Specialist V.

Section 24: 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 agency assumes the cost would be \$2,692,303 per year to develop and maintain the platform and one Web Administration III FTE would be required to support this work.

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. Additionally, this analysis assumes one Education Specialist IV, two Education Specialist Vs, and one Grant Specialist V would be required.

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. To support this work, the agency assumes 3 FTEs would be required: one Director I, one Education Specialist IV, and one Education Specialist V.

Section 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. To support this work, this analysis assumes the agency would need one Director II, three Director Is, and eight Education Specialist Vs.

Section 31: This section 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. To support this work, the agency assumes one Director I would be required.

Section 32: This section 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. Additionally, the agency assumes a Director II and two Education Specialist Vs would be required.

Section 34: This section 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. This

analysis assumes that one Education Specialist V, two Programmer IVs, and one Data Analyst IV would be required to support this work.

Section 35: This section would require the Commissioner to provide for the distribution of OER instructional material. This analysis assumes the agency would require one Project Management Specialist III oversee and manage the order processing, printing, and fulfillment of these materials.

Section 38: 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. Including grants to districts and administrative costs associated with this section, the total cost for this section would be \$351.9 million for fiscal years 2024-28.

Section 48: FSP costs.

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.

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.

This analysis assumes that each student enrolled in public schools would generate the maximum allotment under both allotments, or a total of \$60. To the extent that districts do not utilize the full amount of the OER allotment, the cost to the state would be less.

The total state cost to the Foundation School Fund No. 193 is estimated to be \$241.5 million in fiscal year 2024, \$292.4 million in fiscal year 2025, decreasing to \$289.0 million in fiscal year 2028. The cost to the FSP includes estimated decreases in Recapture Payments - Attendance Credits of \$62.6 million in fiscal year 2024, \$64.4 million in fiscal year 2025, increasing to \$66.4 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.

Technology

The estimated 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.

Local Government Impact

Local Education Agencies (LEA) could incur costs associated with re-writing teacher contracts or renegotiating teacher contracts, buying full-subject materials that include lesson plans, or hiring curriculum writers if the resources don't already exist. LEAs could incur costs for the development of, and managing access to, an Instructional Materials Parent Portal for viewing teaching materials and tests. LEAs would also be required to establish 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 as well as providing teachers in foundation curriculum courses with full subject tier one instructional materials if they do not already do so.

Source Agencies: 701 Texas Education Agency

LBB Staff: JMc, KSk, ASA, MJe