

AN ACT

1
2 relating to instructional material and technology, the adoption of
3 essential knowledge and skills for certain public school foundation
4 curriculum subjects, and 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 a provision of this chapter that
10 the commissioner or agency is responsible for implementing.

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

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

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

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

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

26 Sec. 31.0205 [~~31.005~~]. FUNDING FOR OPEN-ENROLLMENT CHARTER
27 SCHOOLS. An open-enrollment charter school is entitled to the

1 instructional materials and technology allotment under this
2 chapter and is subject to this chapter as if the school were a
3 school district.

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

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

11 (1) an amount set aside by the State Board of Education
12 from the available school fund, in accordance with Section
13 43.001(d); and

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

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

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

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

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

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

1 resource instructional material;

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

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

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

10 [~~(8) pay the expenses associated with the~~
11 ~~instructional materials web portal developed under Section~~
12 ~~[31.081](#)].~~

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

16 Sec. 31.0212. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
17 ACCOUNT. (a) The commissioner shall maintain an instructional
18 materials and technology account for each school district. In the
19 first year of each biennium, the commissioner shall deposit in the
20 account for each district the amount of the district's
21 instructional materials and technology allotment under Section
22 [31.0211](#).

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

27 (c) [~~A school district may also use funds in the district's~~

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

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

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

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

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

1 districts eligible to receive an adjustment under this section and
2 the amount of the instructional materials and technology allotment
3 those districts will receive.

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

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

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

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

1 (d) The commissioner shall ensure that publishers of
2 instructional materials are informed of any potential delay in
3 payment and that payment is subject to the availability of
4 appropriated funds. A publisher may decline to accept an order
5 placed under this section.

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

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

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

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

27 (b) A juvenile justice alternative education program under

1 Section 37.011 is entitled to an allotment from the state
2 instructional materials and technology fund in an amount determined
3 by the commissioner. The program shall use the allotment to
4 purchase items listed in Subsection (c) for students enrolled in
5 the program. The commissioner's determination under this
6 subsection is final and may not be appealed.

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

8 (1) purchase:

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

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

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

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

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

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

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

26 (G) ~~[(H)]~~ instructional materials and
27 technological equipment under any continuing contracts of the

1 district in effect on September 1, 2011;

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

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

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

13 (2) pay:

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

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

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

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

27 (d) [~~Each biennium the commissioner shall assess the~~

1 ~~technology needs for all school districts and provide an estimate~~
2 ~~of the cost for these resources to the State Board of Education.~~

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

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

8 (2) consider:

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

10 (B) flexibility for innovation.

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

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

1 ~~adopt rules as necessary to implement this section].~~

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

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

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

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

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

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

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

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

26 (a) The State Board of Education shall [~~adopt a~~] review [~~and~~
27 ~~adoption cycle for~~] instructional materials provided to the board

1 by the agency under Section 31.023. Before approving instructional
2 material, the board may review the material and must determine that
3 the material is free from factual error and suitable for the subject
4 and grade level for which the material is designed, and, if the
5 material is intended to cover the foundational skills reading
6 curriculum in kindergarten through third grade, does not include
7 three-cueing, as defined by Section 28.0062(a-1). The board shall
8 add each material approved under this section to a list of approved
9 instructional materials and may add a material not approved under
10 this section to a list of rejected instructional materials [~~for~~
11 ~~elementary grade levels, including prekindergarten, and secondary~~
12 ~~grade levels, for each subject in the required curriculum under~~
13 ~~Section 28.002. In adopting the cycle, the board:~~

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

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

18 ~~[(A) foundation curriculum subjects for which~~
19 ~~the essential knowledge and skills have been substantially revised~~
20 ~~and for which assessment instruments are required under Subchapter~~
21 ~~B, Chapter 39, including career and technology courses that satisfy~~
22 ~~foundation curriculum requirements as provided by Section~~
23 ~~28.002(n),~~

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

1 ~~[(C) foundation curriculum subjects not~~
2 ~~described by Paragraph (A) or (B), including career and technology~~
3 ~~courses that satisfy foundation curriculum requirements as~~
4 ~~provided by Section 28.002(n); and~~

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

6 (b) ~~[The board shall organize the cycle for subjects in the~~
7 ~~foundation curriculum so that not more than one-fourth of the~~
8 ~~instructional materials for subjects in the foundation curriculum~~
9 ~~are reviewed each biennium.]~~ The State Board of Education may adopt

10 criteria necessary for approval of instructional material under
11 Subsection (a) and may require:

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

17 (2) electronic samples of the material;

18 (3) certain physical specifications;

19 (4) the instructional material to not contain obscene
20 or harmful content and otherwise be compatible with certification
21 requirements under Section 31.1011(a)(1)(B); and

22 (5) the instructional material to be made publicly
23 available for review ~~[board shall adopt rules to provide for a full~~
24 ~~and complete investigation of instructional materials for each~~
25 ~~subject in the foundation curriculum every eight years. The~~

26 ~~adoption of instructional materials for a subject in the foundation~~
27 ~~curriculum may be extended beyond the eight-year period only if the~~

1 ~~content of instructional materials for a subject is sufficiently~~
2 ~~current].~~

3 (c) The State Board of Education may remove instructional
4 material from the list of approved instructional materials under
5 this section if the essential knowledge and skills intended to be
6 covered by the material are revised or the material is revised
7 without the approval of the board [~~board shall adopt rules to~~
8 ~~provide for a full and complete investigation of instructional~~
9 ~~materials for each subject in the enrichment curriculum on a cycle~~
10 ~~the board considers appropriate].~~

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

21 (d) The State Board of Education shall indicate whether each
22 instructional material reviewed under Subsection (a) is capable of
23 being made available through an instructional materials parent
24 portal established under Section 31.154 [~~At least 12 months before~~
25 ~~the beginning of the school year for which instructional materials~~
26 ~~for a particular subject and grade level will be adopted under the~~
27 ~~review and adoption cycle, the board shall publish notice of the~~

1 ~~review and adoption cycle for those instructional materials. A~~
2 ~~request for production must allow submission of open education~~
3 ~~resource instructional materials that are available for use by the~~
4 ~~state without charge on the same basis as instructional materials~~
5 ~~offered for sale].~~

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

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

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

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

17 (i) a school district;

18 (ii) a majority of the members of the State
19 Board of Education; or

20 (iii) a publisher of instructional
21 material, which may only be submitted for material published by the
22 requesting publisher;

23 (B) requiring the agency to review materials if
24 the State Board of Education requests by a majority vote that the
25 material be reviewed by the agency;

26 (C) reviewing instructional materials
27 requisitioned or purchased under Section 31.0212; and

1 (D) reviewing instructional materials using a
2 time frame appropriate for the proclamation requesting the revision
3 of the instructional materials under Section 31.022(c-1) to address
4 revisions made by the State Board of Education to the essential
5 knowledge and skills for a particular subject or grade level;

6 (2) describe the types of instructional materials the
7 agency may review, including:

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

11 (B) open education resource instructional
12 material;

13 (C) instructional materials developed by a
14 school district and submitted to the agency by the district for
15 review; and

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

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

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

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

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

27 ~~[For each subject and grade level, the State Board of Education~~

1 ~~shall adopt a list of instructional materials. The list includes~~
2 ~~each instructional material submitted for the subject and grade~~
3 ~~level that meets applicable physical specifications adopted by the~~
4 ~~State Board of Education and contains material covering at least~~
5 ~~half of the elements of the essential knowledge and skills of the~~
6 ~~subject and grade level in the student version of the instructional~~
7 ~~material, as well as in the teacher version of the instructional~~
8 ~~material, as determined by the State Board of Education under~~
9 ~~Section [28.002](#) and adopted under Section [31.024](#)].~~

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

15 (b) In conducting a review under this section, the agency
16 must use a rubric developed by the agency in consultation with and
17 approved by the State Board of Education that includes, with
18 respect to the instructional material being reviewed, a
19 determination of:

20 (1) whether the material is free from factual error
21 and satisfies the criteria adopted by the board under Section
22 [31.022](#);

23 (2) the quality of the material;

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

27 (A) each essential knowledge and skill covered by

1 the material;

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

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

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

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

14 ~~[(2) suitable for the subject and grade level for~~
15 ~~which the instructional material was submitted; and~~

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

18 (c) After completing a review under this section, the agency
19 shall provide the results of the review and any related
20 recommendations to the State Board of Education for approval or
21 rejection of the instructional material and the inclusion of the
22 instructional material on a list maintained by the State Board of
23 Education under Section [31.022](#).

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

1 (e) A process established under Subsection (a) or a rubric
2 developed under Subsection (b) is automatically approved by the
3 State Board of Education if not rejected by the board before the
4 91st day after the date the agency submits the item to the board.

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

8 Sec. 31.025. INSTRUCTIONAL MATERIAL INTERNET WEBSITE. (a)
9 The agency shall develop and maintain an instructional material
10 Internet website to assist school districts in locating and
11 selecting instructional material.

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

14 (1) the price of the material;

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

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

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

23 (5) any other information the agency determines
24 relevant to a school district's selection of instructional
25 material.

26 (c) The Internet website developed and maintained under
27 this section must include the repository of open education resource

1 instructional material required by Section 31.0722.

2 (d) The agency shall use funds appropriated to the agency
3 for the purposes of reviewing instructional material or available
4 in the state instructional materials and technology fund for
5 purposes of implementing this section.

6 Sec. 31.0251. INSTRUCTIONAL MATERIAL SUPPORT. (a) On
7 request of a school district, the agency shall provide the district
8 assistance in evaluating, adopting, or using instructional
9 materials.

10 (b) Except as otherwise provided, the agency may not require
11 a school district to adopt or otherwise use instructional material
12 reviewed by the agency under Section 31.023 or included on the list
13 of approved instructional materials maintained by the State Board
14 of Education under Section 31.022.

15 Sec. 31.0252. LOCAL REVIEW OF CLASSROOM INSTRUCTIONAL
16 MATERIAL. (a) The agency shall develop standards in consultation
17 with stakeholders, including educators, by which a school district
18 may conduct a review of instructional materials used by a classroom
19 teacher in a foundation curriculum course under Section
20 28.002(a)(1) to determine the degree to which the material:

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

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

26 (b) The agency shall develop a rubric, approved by the State
27 Board of Education, to determine if reviewed instructional material

1 complies with the rigor requirements described by Subsection
2 (a)(2).

3 (c) The agency, in developing standards under Subsection
4 (a):

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

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

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

15 (d) The agency shall permit a regional education service
16 center or a curriculum review service provider approved by the
17 agency to conduct the review for a school district under this
18 section and provide to approved centers and providers training
19 relating to appropriately conducting the review.

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

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

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

27 (b) A contract must require the publisher to provide the

1 number of instructional materials required by school districts in
2 this state for the term of the contract[, ~~which must coincide with~~
3 ~~the board's adoption cycle~~].

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

6 SUBCHAPTER B-1. [~~STATE-DEVELOPED~~] OPEN EDUCATION RESOURCE
7 INSTRUCTIONAL MATERIALS

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

10 Sec. 31.0701. REFERENCES TO STATE-DEVELOPED OPEN EDUCATION
11 RESOURCE INSTRUCTIONAL MATERIAL. In this chapter, a reference to a
12 state-developed open education resource instructional material
13 means an open education resource instructional material, as defined
14 by Section 31.002.

15 SECTION 28. Section 31.071, Education Code, is amended to
16 read as follows:

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

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

25 (1) purchase a license authorizing the use of [~~shall~~
26 ~~purchase any state-developed~~] open education resource
27 instructional materials in a manner that complies with all

1 applicable state laws and rules relating to procurement by a state
2 agency [~~through a competitive process~~];

3 (2) purchase or otherwise acquire ownership of open
4 education resource instructional materials;

5 (3) develop open education resource instructional
6 materials;

7 (4) adopt open education resource instructional
8 materials; or

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

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

16 (b-2) The commissioner shall:

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

20 (A) English language arts and mathematics
21 courses in kindergarten through grade eight;

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

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

27 (i) in an integrated manner; and

1 (ii) for approximately 240 minutes of
2 instructional time per day, including time needed each day for
3 accelerated instruction under Section 28.0211; and

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

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

16 (d) [~~The commissioner may issue a request for proposals for~~
17 ~~state-developed open education resource instructional material.~~

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

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

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

27 SECTION 29. Subchapter B-1, Chapter 31, Education Code, is

1 amended by adding Section 31.07101 to read as follows:

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

6 (1) is irrevocable and perpetual;

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

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

11 (4) authorizes access, use, transmission, adaptation,
12 public display, public performance, public distribution, and
13 copying of the material; and

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

16 (b) Instructional material licensed to this state under an
17 intellectual property license that is restricted to noncommercial
18 or educational use qualifies under this subchapter as instructional
19 material licensed to this state under a license that allows for free
20 use, reuse, modification, or sharing with others.

21 SECTION 30. Section 31.0711, Education Code, is amended to
22 read as follows:

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

27 (1) is in the public domain;

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

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

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

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

14 (B) permits access, use, public display, public
15 performance, public distribution, and copying of the material for
16 noncommercial or educational purposes ~~[the free use and repurposing~~
17 ~~of the material by any person or entity]; and~~

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

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

22 Sec. 31.0712. OPEN EDUCATION RESOURCE ADVISORY BOARD. The
23 agency shall establish an open education resource advisory board to
24 ensure that open education resource instructional materials made
25 available under this subchapter are:

26 (1) of the highest quality;

27 (2) aligned with the essential knowledge and skills

1 adopted by the State Board of Education under Section 28.002 for the
2 applicable subject and grade level;

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

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

6 (5) in compliance with Section 28.0022.

7 SECTION 32. Section 31.072, Education Code, is amended to
8 read as follows:

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

12 [(-)] be evaluated by:

13 (1) teachers or other experts, as determined by the
14 commissioner[, before purchase]; and

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

18 (b) Based on feedback received by the agency from teachers,
19 parents, and other experts regarding open education resource
20 instructional materials made available under this subchapter, the
21 [Following a curriculum revision by the State Board of Education,
22 the commissioner shall require the revision of state-developed open
23 education resource instructional material relating to that
24 curriculum.—The] commissioner may, at any time, require an
25 additional revision of the [state-developed open education
26 resource instructional] material [or contract for ongoing
27 revisions of state-developed open education resource instructional

1 ~~material for a period not to exceed the period under Section 31.022~~
2 ~~for which instructional material for that subject and grade level~~
3 ~~may be adopted. The commissioner shall use a competitive process to~~
4 ~~request proposals to revise state-developed open education~~
5 ~~resource instructional material under this subsection].~~

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

8 Sec. 31.0721. REVIEW AND RELEASE OF OPEN EDUCATION RESOURCE
9 INSTRUCTIONAL MATERIAL. (a) Except as provided by Subsection (b),
10 open education resource instructional material may not be made
11 available under this subchapter to students, teachers, educators,
12 or other education professionals before being 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.

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

25 (1) the board of trustees of the district approves the
26 use of the unreviewed material; and

27 (2) the district provides evidence to the agency

1 showing that classroom teachers support the use of the material.

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

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

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

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

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

21 and

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

26 (c) The agency shall ensure that a person may order a print
27 copy of any open education resource instructional material included

1 in the repository that is reducible to print [~~A publisher may submit~~
2 ~~instructional materials for inclusion in the repository~~].

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

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

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

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

19 Sec. 31.074. DISTRIBUTION. (a) The commissioner shall
20 provide for the distribution of [~~state-developed~~] open education
21 resource instructional materials in a manner consistent with
22 distribution of instructional materials approved [~~adopted~~] under
23 Subchapter B.

24 (b) The commissioner may use a competitive process to
25 contract for printing, [~~or~~] other reproduction, or storage of
26 [~~state-developed~~] open education resource instructional material
27 on behalf of a school district or open-enrollment charter school.

1 The commissioner may not require a school district or
2 open-enrollment charter school to contract with a state-approved
3 provider for the printing, ~~[or]~~ reproduction, or storage of
4 ~~[state-developed]~~ open education resource instructional material.

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

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

11 Sec. 31.075. STATE OWNERSHIP; LICENSING.

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

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

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

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

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

27 (A) except as provided by Subdivision (2)(A),

1 must keep all copyright notices for the material intact;

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

5 (C) must indicate if the user has modified the
6 material;

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

10 (E) to the extent reasonably practicable, must
11 provide in any product or derivative material a uniform resource
12 identifier or hyperlink through which a person may obtain the
13 material free of charge;

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

15 (A) the commissioner may request that a user
16 remove a copyright notice or attribution from the material and that
17 a user must comply with the request to the extent reasonably
18 practicable; and

19 (B) the rights granted under the license to a
20 user are automatically terminated if the user fails to comply with
21 the terms of the license; and

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

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

27 (e) The commissioner shall determine what is considered

1 reasonably practicable for purposes of Subsections (b)(1)(E)
2 [~~(c)(1)(E)~~] and (b)(2)(A) [~~(c)(2)(A)~~].

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

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

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

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

22 Sec. 31.0752. OPEN EDUCATION RESOURCE INSTRUCTIONAL
23 MATERIAL SUPPORT PROGRAM. The agency shall develop and maintain a
24 program to assist school districts and open-enrollment charter
25 schools in adopting and using open education resource instructional
26 material made available under this subchapter, including by
27 assisting districts and schools to:

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

3 (2) schedule instructional periods in a manner that
4 allows classroom teachers sufficient time to effectively prepare
5 and present instructional material within the teacher's normal work
6 day.

7 Sec. 31.0753. TEACHER CANDIDATE ACCESS AND SUPPORT PROGRAM.

8 The agency shall develop and maintain a program to assist educator
9 preparation programs in implementing Section 21.044(a-1)(4).

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

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

16 SECTION 40. Section 31.004, Education Code, is transferred
17 to Subchapter C, Chapter 31, Education Code, redesignated as
18 Section 31.1011, Education Code, and amended to read as follows:

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

23 (1) [~~7~~] for each subject in the required curriculum
24 under Section 28.002, other than physical education, and each grade
25 level, the district or school:

26 (A) provides each student with instructional
27 materials that cover all elements of the essential knowledge and

1 skills adopted by the State Board of Education for that subject and
2 grade level; and

3 (B) in the provision of instructional materials,
4 protects students from obscene or harmful content as necessary for
5 compliance with:

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

8 (ii) Section 28.0022;

9 (iii) Section 43.22, Penal Code; and

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

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

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

19 (1) instructional materials adopted by the State Board
20 of Education;

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

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

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

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

4 (3) ~~[(6)]~~ open education resource instructional
5 materials and other electronic instructional materials included in
6 the repository under Section 31.0722 ~~[31.083]~~.

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

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

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

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

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

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

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

26 (c) In making a requisition under this section, a school
27 district or open-enrollment charter school may requisition

1 instructional materials [~~on the list adopted under Section 31.023~~]
2 for grades above the grade level in which a student is enrolled.

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

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

7 (1) shall furnish any instructional material the
8 publisher or manufacturer offers in this state at a price that does
9 not exceed the lowest price at which the publisher offers that
10 instructional material for adoption or sale to any state, public
11 school, or school district in the United States;

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

16 (3) shall provide any instructional material or
17 ancillary item free of charge in this state to the same extent that
18 the publisher or manufacturer provides the instructional material
19 or ancillary item free of charge to any state, public school, or
20 school district in the United States;

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

25 (5) may not become associated or connected with,
26 directly or indirectly, any combination in restraint of trade in
27 instructional materials or enter into any understanding or

1 combination to control prices or restrict competition in the sale
2 of instructional materials for use in this state;

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

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

9 (8) shall guarantee delivery of instructional
10 materials at least 10 business days before the opening day of school
11 of the year for which the instructional materials are ordered if the
12 instructional materials are ordered by a date specified in the
13 sales contract; ~~and~~

14 (9) shall submit to the State Board of Education an
15 affidavit certifying any instructional material the publisher or
16 manufacturer offers in this state to be free of factual errors at
17 the time the publisher executes the contract required by Section
18 [31.026](#); and

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

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

27 SECTION 46. Subchapter [D](#), Chapter [31](#), Education Code, is

1 amended by adding Section 31.154 to read as follows:

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

7 (b) An instructional materials parent portal must:

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

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

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

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

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

19 (1) a classroom teacher to submit instructional
20 materials developed by the teacher for inclusion in an
21 instructional materials parent portal; or

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

24 (d) To comply with an intellectual property license or other
25 restrictions placed on an instructional material and to maintain
26 security of the information contained in an instructional materials
27 parent portal under this section, a parent may be required, before

1 accessing the portal, to:

2 (1) enter a password;

3 (2) comply with other user access verification
4 procedures; and

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

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

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

15 (b) Each school, before implementing a comprehensive school
16 counseling program under Section 33.005, shall annually conduct a
17 preview of the program for parents and guardians. All materials,
18 including curriculum to be used during the year that is not
19 available digitally through an instructional materials parent
20 portal under Section 31.154, must be available for a parent or
21 guardian to preview during school hours. Materials or curriculum
22 not included in the materials on an instructional materials parent
23 portal or available on the campus for preview may not be used.

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

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

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

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

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

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

9 (A) reimbursement for disaster remediation costs
10 under former Sections 41.0931 and 42.2524;

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

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

15 (D) additional state aid under Section 48.307 or
16 48.308;

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

19 (4) if a school district or open-enrollment charter
20 school receives a waiver relating to eligibility requirements for
21 the national free or reduced-price lunch program under 42 U.S.C.
22 Section 1751 et seq., use the numbers of educationally
23 disadvantaged students on which the district's or school's
24 entitlement to compensatory education funds was based for the
25 school year before the school year in which the district or school
26 received the waiver, adjusted for estimated enrollment growth.

27 SECTION 49. Subchapter G, Chapter 48, Education Code, is

1 amended by adding Sections 48.307 and 48.308 to read as follows:

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

8 (1) reviewed by the agency under Section [31.023](#);

9 (2) placed on the list of approved instructional
10 materials maintained by the State Board of Education under Section
11 [31.022](#);

12 (3) designated by the State Board of Education under
13 Section [31.022](#) as being included or capable of being included in an
14 instructional materials parent portal under Section 31.154; and

15 (4) acquired from a publisher, manufacturer, or other
16 entity that has not been found to violate Section [31.151](#).

17 (b) A school district is entitled to the amount of state aid
18 provided by Subsection (a) each school year, regardless of whether
19 the district uses the amount during the school year for which the
20 amount was provided.

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

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

1 funds provided under this section and Section 31.0211.

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

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

14 (c) Additional state aid provided under this section shall
15 be deposited to the credit of the district's instructional
16 materials and technology account maintained by the commissioner
17 under Section 31.0212 and may be accessed only for the procurement
18 of instructional materials in accordance with this section.

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

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

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

27 (1) the amount set aside under Section 43.001(d),

1 Education Code, by the State Board of Education from the available
2 school fund for the state instructional materials and technology
3 fund established under Section 31.021, Education Code; and

4 (2) the amount that is remaining in the state
5 instructional materials and technology fund from the previous
6 fiscal biennium that is available for use by school districts and
7 open-enrollment charter schools.

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

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

18 SECTION 51. The following provisions of the Education Code
19 are repealed:

- 20 (1) Section 31.0213;
- 21 (2) Sections 31.022(d-1), (e), (f), (g), (h), and (i);
- 22 (3) Section 31.0221;
- 23 (4) Section 31.0231;
- 24 (5) Section 31.024;
- 25 (6) Section 31.0241;
- 26 (7) Section 31.0242;
- 27 (8) Section 31.0261;

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

8 SECTION 52. To the extent of any conflict, this Act prevails
9 over another Act of the 88th Legislature, Regular Session, 2023,
10 relating to nonsubstantive additions to and corrections in enacted
11 codes.

12 SECTION 53. (a) A contract entered into under Section
13 31.026 or 31.151, Education Code, as amended by this Act, 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 (b) A contract entered into under Section 31.026 or 31.151,
18 Education Code, as amended by this Act, after the effective date of
19 this Act for a program called for by the State Board of Education
20 under Proclamation 2024 is governed by the law in effect on the date
21 the proclamation was issued, and the former law is continued in
22 effect for that purpose.

23 (c) Section 31.026, Education Code, as amended by this Act,
24 does not apply to the review of or a contract for the purchase or
25 licensing of instructional materials required by the State Board of
26 Education pursuant to Proclamation 2024. The review of and
27 contracts for the purchase or licensing of instructional materials

1 required by the State Board of Education pursuant to Proclamation
2 2024 are governed by the law as it existed immediately before the
3 effective date of this Act, and the former law is continued in
4 effect for that purpose.

5 (d) Section 21.4045(b), Education Code, as added by this
6 Act, applies only to a contract entered into on or after the
7 effective date of this Act. A contract entered into before the
8 effective date of this Act is governed by the law in effect on the
9 date the contract was entered into, and the former law is continued
10 in effect for that purpose.

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

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

16 SECTION 55. (a) Except as provided by Subsection (b) of
17 this section, this Act takes effect immediately if it receives a
18 vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2023.

22 (b) Sections 48.307 and 48.308, Education Code, as added by
23 this Act, Section 48.277(b), Education Code, as amended by this
24 Act, and Section 322.0082, Government Code, as added by this Act,
25 take effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 1605 was passed by the House on May 3, 2023, by the following vote: Yeas 139, Nays 6, 1 present, not voting; that the House concurred in Senate amendments to H.B. No. 1605 on May 17, 2023, by the following vote: Yeas 105, Nays 39, 1 present, not voting; and that the House adopted H.C.R. No. 121 authorizing certain corrections in H.B. No. 1605 on May 24, 2023, by the following vote: Yeas 144, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1605 was passed by the Senate, with amendments, on May 12, 2023, by the following vote: Yeas 22, Nays 8; and that the Senate adopted H.C.R. No. 121 authorizing certain corrections in H.B. No. 1605 on May 27, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor