AN ACT
relating to open-source instructional material for public schools.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 31.002(1-a), Education Code, is amended
to read as follows:
(1-a) "Open-source instructional material" means
teaching, learning, and research resources that reside in the
public domain or have been released under an intellectual property
license that allows for free use, reuse, modification, and sharing
with others, including full courses, course materials, modules,
textbooks, streaming videos, tests, software, and any other tools,
materials, or techniques used to support access to knowledge.
[electronic instructional material that is available for
downloading from the Internet at no charge to a student and without
requiring the purchase of an unlock code, membership, or other
access or use charge, except for a charge to order an optional
printed copy of all or part of the instructional material.] The
term includes state-developed open-source instructional material
purchased under Subchapter B-1.
SECTION 2. Section 31.071(c), Education Code, is amended to
read as follows:
(c) Except as provided by Section 31.0711, a
state-developed [State-developed] open-source instructional
material must be irrevocably owned by [or licensed to] the state
S.B. No. 1784

[for use in the applicable subject or grade level]. The state must have unlimited authority to modify, delete, combine, or add content to the instructional material after purchase.

SECTION 3. Subchapter B-1, Chapter 31, Education Code, is amended by adding Section 31.0711 to read as follows:

Sec. 31.0711. CONTENT NOT OWNED BY STATE. Instructional material purchased under this subchapter may include content not owned by the state and for which preexisting rights may exist if the content:

(1) is in the public domain;

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

(3) is licensed to the state under a license that:

(A) grants the state unlimited authority to modify, delete, combine, or add content;

(B) permits the free use and repurposing of the material by any person or entity; and

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

SECTION 4. Section 31.075, Education Code, is amended by amending Subsections (b) and (c) and adding Subsections (d), (e), (f), (g), and (h) to read as follows:

(b) To encourage the use of instructional material purchased by the state under this subchapter by school districts and open-enrollment charter schools, the [The] commissioner shall provide a license for the instructional material that allows for
the free use, reuse, modification, or sharing of the material by any
person or entity [to each public school in the state, including a
school district, an open-enrollment charter school, and a state or
local agency educating students in any grade from prekindergarten
through high school, to use and reproduce state-developed
open-source instructional material].

(c) The terms of a license provided by the commissioner
under this section:

(1) shall require that a user who reproduces the
instructional material in any manner:

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

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

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

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

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

(2) must provide that:

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

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

(3) may include any additional terms determined by the commissioner [The commissioner may provide a license to use state-developed open-source instructional material to an entity not listed in Subsection (b). In determining the cost of a license under this subsection, the commissioner shall seek, to the extent feasible, to recover the costs of developing, revising, and distributing state-developed open-source instructional materials].

(d) The commissioner may exempt a license under this section from including one or more of the requirements under Subsection (c)(1).

(e) The commissioner shall determine what is considered reasonably practicable for purposes of Subsections (c)(1)(E) and (c)(2)(A).

(f) The commissioner may:

(1) specify requirements to reinstate a user's rights under a license that has been terminated; and

(2) reinstate a user's rights on completion of those requirements.

(g) The commissioner may use a license commonly applied to an open education resource in implementing this section.

(h) The attorney general shall represent the agency in an
action brought under this section and may recover reasonable expenses incurred in obtaining relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

SECTION 5. Section 31.076(b), Education Code, is amended to read as follows:

(b) A decision by the commissioner regarding the purchase, revision, cost, licensing, or distribution of state-developed open-source instructional material is final and may not be appealed.

SECTION 6. Section 31.077, Education Code, is repealed.

SECTION 7. The commissioner of education may apply the changes in law made by this Act to instructional material purchased by the state under Subchapter B-1, Chapter 31, Education Code, regardless of whether the instructional material was purchased before, on, or after the effective date of this Act.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.
I hereby certify that S.B. No. 1784 passed the Senate on April 26, 2017, by the following vote: Yeas 31, Nays 0; May 26, 2017, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 2017, House granted request of the Senate; May 28, 2017, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 1.

I hereby certify that S.B. No. 1784 passed the House, with amendments, on May 22, 2017, by the following vote: Yeas 146, Nays 0, one present not voting; May 27, 2017, House granted request of the Senate for appointment of Conference Committee; May 28, 2017, House adopted Conference Committee Report by the following vote: Yeas 144, Nays 0, two present not voting.

Approved:

6 - 10 - 2017

Date

FILED IN THE OFFICE OF THE SECRETARY OF STATE
3 PM O'CLOCK

Secretary of State
TO: Honorable Dan Patrick, Lieutenant Governor, Senate
       Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1784 by Taylor, Larry (Relating to open-source instructional material for public
       schools.), Conference Committee Report

No significant fiscal implication to the State is anticipated.

The bill would amend the Education Code to modify the definition of an open-source instructional
material and specify that a state-developed open-source instructional material must be irrevocably
owned by or licensed to the state except as provided under Section 31.0711. The bill would add
Section 31.0711, Education Code to specify that a state-developed open-source instructional
material may include content not owned by the state and would specify certain preexisting rights
for such content. The bill would specify a license to the state must grant the state unlimited
authority to modify, delete, combine, or add content; permit the free use and repurposing of the
resource by any person unless the Commissioner of Education waives the requirement under
certain provisions as specified by the bill; and satisfy other requirements. The bill would take
place immediately if passed within necessary voting margins, or September 1, 2017.

The Texas Education Agency (TEA) indicates it could use existing resources to address costs
associated with provisions of the bill.

Local Government Impact

TEA estimates that school districts, open-enrollment charter schools, and other educational
entities that receive an instructional materials allotment (IMA), in accordance with Section
31.0211, Education Code, may experience cost savings as a result of selecting open educational
resources instead of other instructional materials.

Source Agencies: 701 Texas Education Agency
LBB Staff: UP, AW, THo, AM
No significant fiscal implication to the State is anticipated.

The bill would amend the Education Code to modify the definition of an open-source instructional material and specify that a state-developed open-source instructional material must be irrevocably owned by the state except as provided under Section 31.0711. The bill would add Section 31.0711, Education Code to specify that instructional material purchased under Section 31 may include content not owned by the state and would specify certain licensing requirements for such content. The bill would allow a license to include additional terms as specified by the Commissioner and would allow the Commissioner to waive certain licensing requirements. The bill would require the attorney general to represent the agency in any action brought against the agency related to licensing issues required under the bill.

The bill would require a school district or open-enrollment charter school to provide instructional materials in printed book format to a student who did not have reliable access to technology at home, and document each parental request that was denied, including the reason for the denial, and report the information to the Texas Education Agency (TEA) within 30 days. The bill would require the TEA to submit a report to the Legislature by September 1 of each year that would identify for each district and charter school the number of parental requests that were denied, and the reason for the denial. The bill would take place immediately if passed within necessary voting margins, or September 1, 2017, and would apply beginning in school year 2017-2018.

The Texas Education Agency (TEA) indicates it could use existing resources to address costs associated with provisions of the bill.

Local Government Impact

TEA estimates that school districts, open-enrollment charter schools, and other educational entities that receive an instructional materials allotment (IMA), in accordance with Section 31.0211, Education Code, may experience cost savings as a result of selecting open-source instructional materials instead of other instructional materials.

In addition, districts and charter schools may incur administrative expenses associating with the requirement to provide instructional materials in a printed format under certain circumstances; document denied requests for printed materials; and report to the agency on the collected
information within a specified period. TEA estimates the amount of requests for printed materials would vary significantly among districts depending on the number of requests that are received and the size of the materials being requested.

**Source Agencies:** 701 Texas Education Agency

**LBB Staff:** UP, AW, THo, AM
TO: Honorable Larry Taylor, Chair, Senate Committee on Education

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1784 by Taylor, Larry (Relating to state-developed open-source instructional material for public schools.), Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Education Code to modify the definition of an open-source instructional material and specify that a state-developed open-source instructional material must be irrevocably owned by or licensed to the state except as provided under Section 31.0711. The bill would add Section 31.0711, Education Code to specify that a state-developed open-source instructional material may include content not owned by the state and would specify certain preexisting rights for such content. The bill would specify a license to the state must grant the state unlimited authority to modify, delete, combine, or add content; permit the free use and repurposing of the resource by any person unless the Commissioner of Education waives the requirement under certain provisions as specified by the bill; and satisfy other requirements. The bill would take place immediately if passed within necessary voting margins, or September 1, 2017.

The Texas Education Agency (TEA) indicates it could use existing resources to address costs associated with provisions of the bill.

Local Government Impact

TEA estimates that school districts, open-enrollment charter schools, and other educational entities that receive an instructional materials allotment (IMA), in accordance with Section 31.0211, Education Code, may experience cost savings as a result of selecting open educational resources instead of other instructional materials.

Source Agencies: 701 Texas Education Agency
LBB Staff: UP, THo, AM, AW
TO: Honorable Larry Taylor, Chair, Senate Committee on Education
FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1784 by Taylor, Larry (Relating to state-developed open education resources for public schools.), As Introduced

No significant fiscal implication to the State is anticipated.

The bill would amend the Education Code to allow that funds allotted under the instructional materials allotment be used to purchase state-developed open education resources and remove the provision allowing for the purchase of state-developed open-source instructional materials. The bill would allow the Commissioner to purchase open education resources through a competitive process; allow for the purchase of more than one open education resource; specify that state-developed open education resources must be irrevocably owned by or licensed to the state except as provided under Section 31.0711; allow the Commissioner to issue a request for proposals for open education resources; and specify the costs associated with purchasing state-developed open education resources be paid from the state instructional materials fund.

The bill would add Section 31.0711, Education Code to specify that a state-developed open education resource may include content not owned by the state and would specify certain preexisting rights for such content. The bill would specify that a license to the state must grant the state unlimited authority to modify, delete, combine, or add content; and permit the free use and repurposing of the resource by any person unless the Commissioner of Education waives the requirement under certain provisions as specified by the bill.

The bill would require that school districts and open-enrollment charter schools selecting an open education resource request print sufficient copies of materials for students unable to access electronic materials. The bill would exempt open education resources from certain provisions related to the distribution and handling of instructional materials. The bill would take place immediately if passed within necessary voting margins, or September 1, 2017.

The Texas Education Agency (TEA) indicates it could use existing resources to address costs associated with provisions of the bill.

Local Government Impact

TEA estimates that school districts, open-enrollment charter schools, and other educational entities that receive an instructional materials allotment (IMA), in accordance with Section 31.0211, Education Code, might experience cost savings as a result of selecting open educational resources instead of other instructional materials.
Source Agencies: 701 Texas Education Agency
LBB Staff: UP, THo, AM, AW