

Chapter 581

S.B. No. 810

AN ACT

relating to the purchase and use of open educational resources.

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

SECTION 1. Section 31.001, Education Code, is amended to read as follows:

Sec. 31.001. FREE INSTRUCTIONAL MATERIALS. Instructional materials selected for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by Section 31.104(d), a school district may not charge a student for instructional material or technological equipment purchased by the district with the district's instructional materials and technology allotment.

SECTION 2. Sections 31.002(1) and (1-a), Education Code, are amended to read as follows:

(1) "Instructional material" means content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open education resource [~~open-source~~]

1 instructional material.

2 (1-a) "Open education resource [~~Open-source~~]
3 instructional material" means teaching, learning, and research
4 resources that reside in the public domain or have been released
5 under an intellectual property license that allows for free use,
6 reuse, modification, and sharing with others, including full
7 courses, course materials, modules, textbooks, streaming videos,
8 tests, software, and any other tools, materials, or techniques used
9 to support access to knowledge [~~electronic instructional material~~
10 ~~that is available for downloading from the Internet at no charge to~~
11 ~~a student and without requiring the purchase of an unlock code,~~
12 ~~membership, or other access or use charge, except for a charge to~~
13 ~~order an optional printed copy of all or part of the instructional~~
14 ~~material~~]. The term includes state-developed open education
15 resource [~~open-source~~] instructional material purchased under
16 Subchapter B-1.

17 SECTION 3. Section 31.004(b), Education Code, is amended to
18 read as follows:

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

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

25 (2) materials adopted or purchased by the commissioner
26 under Section 31.0231 or Subchapter B-1;

27 (3) open education resource [~~open-source~~]

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1 instructional materials submitted by eligible institutions and
2 adopted by the State Board of Education under Section 31.0241;

3 (4) open education resource [~~open-source~~]
4 instructional materials made available by other public schools;
5 [~~and~~]

6 (5) instructional materials developed or purchased by
7 the school district or open-enrollment charter school; and

8 (6) open education resource instructional materials
9 and other electronic instructional materials included in the
10 repository under Section 31.083.

11 SECTION 4. Sections 31.005 and 31.021, Education Code, are
12 amended to read as follows:

13 Sec. 31.005. FUNDING FOR OPEN-ENROLLMENT CHARTER SCHOOLS.
14 An open-enrollment charter school is entitled to the instructional
15 materials and technology allotment under this chapter and is
16 subject to this chapter as if the school were a school district.

17 Sec. 31.021. STATE INSTRUCTIONAL MATERIALS AND TECHNOLOGY
18 FUND. (a) The state instructional materials and technology fund
19 consists of:

20 (1) an amount set aside by the State Board of Education
21 from the available school fund, in accordance with Section
22 43.001(d); and

23 (2) all amounts lawfully paid into the fund from any
24 other source.

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

27 (1) fund the instructional materials and technology

1 allotment, as provided by Section 31.0211;

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

5 (3) pay the expenses associated with the instructional
6 materials adoption and review process under this chapter;

7 (4) pay the expenses associated with the purchase or
8 licensing of open education resource [~~open-source~~] instructional
9 material;

10 (5) pay the expenses associated with the purchase of
11 instructional material, including intrastate freight and shipping
12 and the insurance expenses associated with intrastate freight and
13 shipping;

14 (6) [~~fund the technology lending grant program~~
15 ~~established under Section 32.201, and~~

16 [(7)] provide funding to the Texas School for the
17 Blind and Visually Impaired, the Texas School for the Deaf, and the
18 Texas Juvenile Justice Department; and

19 (7) pay the expenses associated with the instructional
20 materials web portal developed under Section 31.081.

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

24 SECTION 5. The heading to Section 31.0211, Education Code,
25 is amended to read as follows:

26 Sec. 31.0211. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
27 ALLOTMENT.

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1 SECTION 6. Sections 31.0211(a), (b), and (c), Education
2 Code, are amended to read as follows:

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

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

21 (c) Subject to Subsection (d), funds allotted under this
22 section may be used to:

- 23 (1) purchase:
 - 24 (A) materials on the list adopted by the
 - 25 commissioner, as provided by Section 31.0231;
 - 26 (B) instructional materials, regardless of
 - 27 whether the instructional materials are on the list adopted under

1 Section 31.024;

2 (C) consumable instructional materials,
3 including workbooks;

4 (D) instructional materials for use in bilingual
5 education classes, as provided by Section 31.029;

6 (E) instructional materials for use in college
7 preparatory courses under Section 28.014, as provided by Section
8 31.031;

9 (F) supplemental instructional materials, as
10 provided by Section 31.035;

11 (G) state-developed open education resource
12 [~~open-source~~] instructional materials, as provided by Subchapter
13 B-1;

14 (H) instructional materials and technological
15 equipment under any continuing contracts of the district in effect
16 on September 1, 2011; and

17 (I) technological equipment necessary to support
18 the use of materials included on the list adopted by the
19 commissioner under Section 31.0231 or any instructional materials
20 purchased with an allotment under this section; and

21 (2) pay:

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

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

1 equipment directly involved in student learning.

2 SECTION 7. The heading to Section 31.0212, Education Code,
3 is amended to read as follows:

4 Sec. 31.0212. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
5 ACCOUNT.

6 SECTION 8. Sections 31.0212(a), (b), (d), and (e),
7 Education Code, are amended to read as follows:

8 (a) The commissioner shall maintain an instructional
9 materials and technology account for each school district. In the
10 first year of each biennium, the commissioner shall deposit in the
11 account for each district the amount of the district's
12 instructional materials and technology allotment under Section
13 31.0211.

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

18 (d) Money deposited in a school district's instructional
19 materials and technology account during each state fiscal biennium
20 remains in the account and available for use by the district for the
21 entire biennium. At the end of each biennium, a district with
22 unused money in the district's account may carry forward any
23 remaining balance to the next biennium.

24 (e) The commissioner shall adopt rules as necessary to
25 implement this section. The rules must include a requirement that a
26 school district provide the title and publication information for
27 any instructional materials requisitioned or purchased by the

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1 district with the district's instructional materials and
2 technology allotment.

3 SECTION 9. Section 31.0213, Education Code, is amended to
4 read as follows:

5 Sec. 31.0213. CERTIFICATION OF USE OF INSTRUCTIONAL
6 MATERIALS AND TECHNOLOGY ALLOTMENT. Each school district shall
7 annually certify to the commissioner that the district's
8 instructional materials and technology allotment has been used only
9 for expenses allowed by Section 31.0211.

10 SECTION 10. Section 31.0214(a), Education Code, is amended
11 to read as follows:

12 (a) Each year the commissioner shall adjust the
13 instructional materials and technology allotment of school
14 districts experiencing high enrollment growth. The commissioner
15 shall establish a procedure for determining high enrollment growth
16 districts eligible to receive an adjustment under this section and
17 the amount of the instructional materials and technology allotment
18 those districts will receive.

19 SECTION 11. The heading to Section 31.0215, Education Code,
20 is amended to read as follows:

21 Sec. 31.0215. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
22 ~~[MATERIAL]~~ ALLOTMENT PURCHASES.

23 SECTION 12. Sections 31.0215(b) and (c), Education Code,
24 are amended to read as follows:

25 (b) The commissioner may allow a school district or
26 open-enrollment charter school to place an order for instructional
27 materials before the beginning of a fiscal biennium and to receive

1 instructional materials before payment. The commissioner shall
2 limit the cost of an order placed under this section to 80 percent
3 of the estimated amount to which a school district or
4 open-enrollment charter school is estimated to be entitled as
5 provided by Subsection (a) and shall first credit any balance in a
6 district or charter school instructional materials and technology
7 account to pay for an order placed under this section.

8 (c) The commissioner shall make payments for orders placed
9 under this section as funds become available to the instructional
10 materials and technology fund and shall prioritize payment of
11 orders placed under this section over reimbursement of purchases
12 made directly by a school district or open-enrollment charter
13 school.

14 SECTION 13. Section 31.022, Education Code, is amended by
15 amending Subsection (d) and adding Subsections (g) and (h) to read
16 as follows:

17 (d) At least 12 months before the beginning of the school
18 year for which instructional materials for a particular subject and
19 grade level will be adopted under the review and adoption cycle, the
20 board shall publish notice of the review and adoption cycle for
21 those instructional materials. A request for production must allow
22 submission of open education resource [~~open-source~~] instructional
23 materials that are available for use by the state without charge on
24 the same basis as instructional materials offered for sale.

25 (g) In reviewing and adopting instructional materials, the
26 board shall consider a school district's need for technology as
27 well as instructional materials and in any biennium may limit the

1 adoption of instructional materials to provide sufficient
2 resources to purchase technology resources, including digital
3 curriculum.

4 (h) The board shall include information regarding open
5 education resource instructional materials during the adoption
6 cycle, including any cost savings associated with the adoption of
7 open education resource instructional materials.

8 SECTION 14. Section 31.0231(b), Education Code, is amended
9 to read as follows:

10 (b) A school district may select material on the list
11 adopted under Subsection (a) to be funded by the district's
12 instructional materials and technology allotment under Section
13 31.0211.

14 SECTION 15. The heading to Section 31.0241, Education Code,
15 is amended to read as follows:

16 Sec. 31.0241. ADOPTION OF OPEN EDUCATION RESOURCE
17 [OPEN-SOURCE] INSTRUCTIONAL MATERIALS.

18 SECTION 16. Section 31.0241(b), Education Code, is amended
19 to read as follows:

20 (b) The State Board of Education shall place open education
21 resource [~~open-source~~] instructional material for a
22 secondary-level course submitted for adoption by an eligible
23 institution on the list adopted under Section 31.023 if:

24 (1) the instructional material is written, compiled,
25 or edited primarily by faculty of the eligible institution who
26 specialize in the subject area of the instructional material;

27 (2) the eligible institution identifies each

1 contributing author;

2 (3) the appropriate department of the eligible
3 institution certifies the instructional material for accuracy; and

4 (4) the eligible institution determines that the
5 instructional material qualifies for placement on the list based on
6 the extent to which the instructional material covers the essential
7 knowledge and skills identified under Section 28.002 for the
8 subject for which the instructional material is written and
9 certifies that:

10 (A) for instructional material for a
11 senior-level course, a student who successfully completes a course
12 based on the instructional material will be prepared, without
13 remediation, for entry into the eligible institution's
14 freshman-level course in that subject; or

15 (B) for instructional material for a
16 junior-level and senior-level course, a student who successfully
17 completes the junior-level course based on the instructional
18 material will be prepared for entry into the senior-level course.

19 SECTION 17. Section 31.0242, Education Code, is amended to
20 read as follows:

21 Sec. 31.0242. REVIEW OF OPEN EDUCATION RESOURCE
22 [~~OPEN-SOURCE~~] INSTRUCTIONAL MATERIAL. Not later than the 90th day
23 after the date open education resource [~~open-source~~] instructional
24 material is submitted as provided by Section 31.0241, the State
25 Board of Education may review the instructional material. The
26 board shall:

27 (1) post with the list adopted under Section 31.023

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1 comments made by the board regarding the open education resource
2 [~~open-source~~] instructional material placed on the list; and

3 (2) distribute board comments to school districts.

4 SECTION 18. Section 31.026(d), Education Code, is amended
5 to read as follows:

6 (d) This section does not apply to open education resource
7 [~~open-source~~] instructional material.

8 SECTION 19. Section 31.0261, Education Code, is amended to
9 read as follows:

10 Sec. 31.0261. CONTRACTS FOR PRINTING OF OPEN EDUCATION
11 RESOURCE [~~OPEN-SOURCE~~] INSTRUCTIONAL MATERIALS. The State Board of
12 Education may execute a contract for the printing of open education
13 resource [~~open-source~~] instructional materials placed on the list
14 adopted under Section 31.023. The contract must allow a school
15 district to requisition printed copies of open education resource
16 [~~open-source~~] instructional materials as provided by Section
17 31.103.

18 SECTION 20. Section 31.027(c), Education Code, is amended
19 to read as follows:

20 (c) This section does not apply to open education resource
21 [~~open-source~~] instructional material.

22 SECTION 21. Section 31.029(a), Education Code, is amended
23 to read as follows:

24 (a) A school district shall purchase with the district's
25 instructional materials and technology allotment or otherwise
26 acquire instructional materials for use in bilingual education
27 classes.

1 SECTION 22. Section 31.031(a), Education Code, is amended
2 to read as follows:

3 (a) A school district may purchase with the district's
4 instructional materials and technology allotment or otherwise
5 acquire instructional materials for use in college preparatory
6 courses under Section 28.014.

7 SECTION 23. The heading to Subchapter B-1, Chapter 31,
8 Education Code, is amended to read as follows:

9 SUBCHAPTER B-1. STATE-DEVELOPED OPEN EDUCATION RESOURCE

10 [~~OPEN-SOURCE~~] INSTRUCTIONAL MATERIALS

11 SECTION 24. Sections 31.071, 31.072, 31.073, 31.074, and
12 31.075, Education Code, are amended to read as follows:

13 Sec. 31.071. PURCHASE AUTHORITY. (a) The commissioner may
14 purchase state-developed open education resource [~~open-source~~]
15 instructional materials in accordance with this subchapter.

16 (b) The commissioner:

17 (1) shall purchase any state-developed open education
18 resource [~~open-source~~] instructional materials through a
19 competitive process; and

20 (2) may purchase more than one state-developed open
21 education resource [~~open-source~~] instructional material for a
22 subject or grade level.

23 (c) State-developed open education resource [~~open-source~~]
24 instructional material must be irrevocably owned by or licensed to
25 the state for use in the applicable subject or grade level. The
26 state must have unlimited authority to modify, delete, combine, or
27 add content to the instructional material after purchase.

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

4 (1) in accordance with the instructional material
5 review and adoption cycle under Section 31.022; or

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

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

12 Sec. 31.072. CONTENT REQUIREMENTS. (a) State-developed
13 open education resource [~~open-source~~] instructional material must:

14 (1) be evaluated by teachers or other experts, as
15 determined by the commissioner, before purchase; and

16 (2) meet the requirements for inclusion on the
17 instructional material list adopted under Section 31.023.

18 (b) Following a curriculum revision by the State Board of
19 Education, the commissioner shall require the revision of
20 state-developed open education resource [~~open-source~~]
21 instructional material relating to that curriculum. The
22 commissioner may, at any time, require an additional revision of
23 state-developed open education resource [~~open-source~~]
24 instructional material or contract for ongoing revisions of
25 state-developed open education resource [~~open-source~~]
26 instructional material for a period not to exceed the period under
27 Section 31.022 for which instructional material for that subject

1 and grade level may be adopted. The commissioner shall use a
2 competitive process to request proposals to revise state-developed
3 open education resource [~~open-source~~] instructional material under
4 this subsection.

5 Sec. 31.073. SELECTION BY SCHOOL DISTRICT.

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

11 (d) A school district or open-enrollment charter school may
12 not be charged for selection of state-developed open education
13 resource [~~open-source~~] instructional material in addition to
14 instructional material adopted under Subchapter B.

15 Sec. 31.074. DISTRIBUTION. (a) The commissioner shall
16 provide for the distribution of state-developed open education
17 resource [~~open-source~~] instructional materials in a manner
18 consistent with distribution of instructional materials adopted
19 under Subchapter B.

20 (b) The commissioner may use a competitive process to
21 contract for printing or other reproduction of state-developed open
22 education resource [~~open-source~~] instructional material on behalf
23 of a school district or open-enrollment charter school. The
24 commissioner may not require a school district or open-enrollment
25 charter school to contract with a state-approved provider for the
26 printing or reproduction of state-developed open education
27 resource [~~open-source~~] instructional material.

1 Sec. 31.075. OWNERSHIP; LICENSING. (a) State-developed
2 open education resource [~~open-source~~] instructional material is
3 the property of the state.

4 (b) The commissioner shall provide a license to each public
5 school in the state, including a school district, an
6 open-enrollment charter school, and a state or local agency
7 educating students in any grade from prekindergarten through high
8 school, to use and reproduce state-developed open education
9 resource [~~open-source~~] instructional material.

10 (c) The commissioner may provide a license to use
11 state-developed open education resource [~~open-source~~]
12 instructional material to an entity not listed in Subsection (b).
13 In determining the cost of a license under this subsection, the
14 commissioner shall seek, to the extent feasible, to recover the
15 costs of developing, revising, and distributing state-developed
16 open education resource [~~open-source~~] instructional materials.

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

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

23 SECTION 26. Section 31.077, Education Code, is amended to
24 read as follows:

25 Sec. 31.077. ADOPTION SCHEDULE. The commissioner shall
26 develop a schedule for the adoption of state-developed open
27 education resource [~~open-source~~] instructional materials under

1 this subchapter. In developing the adoption schedule under this
2 section, the commissioner shall consider:

- 3 (1) the availability of funds;
- 4 (2) the existing instructional material adoption
5 cycles under Subchapter B; and
- 6 (3) the availability of instructional materials for
7 development or purchase by the state.

8 SECTION 27. Chapter 31, Education Code, is amended by
9 adding Subchapter B-2 to read as follows:

10 SUBCHAPTER B-2. INSTRUCTIONAL MATERIALS WEB PORTAL

11 Sec. 31.081. INSTRUCTIONAL MATERIALS WEB PORTAL. (a) The
12 commissioner shall develop and maintain a web portal to assist
13 school districts and open-enrollment charter schools in selecting
14 instructional materials under Section 31.101.

15 (b) The web portal must include general information such as
16 price, computer system requirements, and any other relevant
17 specifications for each instructional material:

18 (1) on the instructional materials list, including the
19 list adopted under Section 31.0231; or

20 (2) submitted by a publisher for inclusion in the web
21 portal.

22 (c) The commissioner by rule shall establish the procedure
23 by which a publisher may submit instructional materials for
24 inclusion in the web portal.

25 (d) The commissioner shall use a competitive process to
26 contract for the development of the web portal.

27 (e) The commissioner shall use money in the state

1 instructional materials and technology fund to pay any expenses
2 associated with the web portal.

3 Sec. 31.082. QUALITY OF INSTRUCTIONAL MATERIALS SUBMITTED
4 BY PUBLISHER. (a) The commissioner shall contract with a private
5 entity to conduct an independent analysis of each instructional
6 material submitted by a publisher for inclusion in the web portal
7 developed under Section 31.081. The analysis must:

8 (1) evaluate the quality of the material; and
9 (2) determine the extent to which the material covers
10 the essential knowledge and skills identified under Section 28.002
11 for the subject and grade level for which the material is intended
12 to be used, including an identification of:

13 (A) each of the essential knowledge and skills
14 for the subject and grade level or levels covered by the material;
15 and

16 (B) the percentage of the essential knowledge and
17 skills for the subject and grade level or levels covered by the
18 material.

19 (b) The commissioner shall include in the web portal
20 developed under Section 31.081 the results of each analysis
21 conducted under Subsection (a).

22 Sec. 31.083. INSTRUCTIONAL MATERIALS REPOSITORY. (a) The
23 commissioner shall include in the web portal developed under
24 Section 31.081 a repository of open education resource
25 instructional materials and other electronic instructional
26 materials that school districts and open-enrollment charter
27 schools may access at no cost.

1 (b) A publisher may submit instructional materials for
2 inclusion in the repository.

3 Sec. 31.084. RULES. The commissioner may adopt rules as
4 necessary to implement this subchapter.

5 SECTION 28. Section 31.101, Education Code, is amended by
6 adding Subsection (b) and amending Subsection (f) to read as
7 follows:

8 (b) In selecting instructional material each year, a school
9 district or open-enrollment charter school may consider the use of
10 open education resource instructional materials.

11 (f) The commissioner shall maintain an online requisition
12 system for school districts to requisition instructional materials
13 to be purchased with the district's instructional materials and
14 technology allotment.

15 SECTION 29. Section 31.103(d), Education Code, is amended
16 to read as follows:

17 (d) A school district or open-enrollment charter school
18 that selects open education resource [~~open-source~~] instructional
19 material shall requisition a sufficient number of printed copies
20 for use by students unable to access the instructional material
21 electronically unless the district or school provides to each
22 student:

23 (1) electronic access to the instructional material at
24 no cost to the student; or

25 (2) printed copies of the portion of the instructional
26 material that will be used in the course.

27 SECTION 30. Sections 31.104(b), (g), and (h), Education

1 Code, are amended to read as follows:

2 (b) A school district or open-enrollment charter school may
3 order replacements for instructional materials that have been lost
4 or damaged directly from the publisher of the instructional
5 materials or any source for a printed copy of open education
6 resource [~~open-source~~] instructional material.

7 (g) At the end of the school year for which open education
8 resource [~~open-source~~] instructional material that a school
9 district or open-enrollment charter school does not intend to use
10 for another student is distributed, the printed copy of the open
11 education resource [~~open-source~~] instructional material becomes
12 the property of the student to whom it is distributed.

13 (h) This section does not apply to an electronic copy of
14 open education resource [~~open-source~~] instructional material.

15 SECTION 31. Sections 31.151(d) and (e), Education Code, are
16 amended to read as follows:

17 (d) A penalty collected under this section shall be
18 deposited to the credit of the state instructional materials and
19 technology fund.

20 (e) An eligible institution, as defined by Section
21 31.0241(a), that offers open education resource [~~open-source~~]
22 instructional materials under Section 31.0241 is not a publisher or
23 manufacturer for purposes of this section.

24 SECTION 32. Section 32.001(b), Education Code, is amended
25 to read as follows:

26 (b) The State Board of Education shall update [~~as necessary~~]
27 the plan developed under Subsection (a) at least every five years.

1 SECTION 33. Section 41.124(c), Education Code, is amended
2 to read as follows:

3 (c) A school district that receives tuition for a student
4 from a school district with a wealth per student that exceeds the
5 equalized wealth level may not claim attendance for that student
6 for purposes of Chapters 42 and 46 and the instructional materials
7 and technology allotment under Section 31.0211.

8 SECTION 34. Section 43.001(d), Education Code, is amended
9 to read as follows:

10 (d) Each biennium the State Board of Education shall set
11 aside an amount equal to 50 percent of the distribution for that
12 biennium from the permanent school fund to the available school
13 fund as provided by Section 5(a), Article VII, Texas Constitution,
14 to be placed, subject to the General Appropriations Act, in the
15 state instructional materials and technology fund established
16 under Section 31.021.

17 SECTION 35. Section 51.451, Education Code, is amended by
18 adding Subdivision (4-a) to read as follows:

19 (4-a) "Open educational resource" means a teaching,
20 learning, or research resource that is in the public domain or has
21 been released under an intellectual property license that permits
22 the free use, adaptation, and redistribution of the resource by any
23 person. The term may include full course curricula, course
24 materials, modules, textbooks, media, assessments, software, and
25 any other tools, materials, or techniques, whether digital or
26 otherwise, used to support access to knowledge.

27 SECTION 36. Section 51.452, Education Code, is amended by

1 amending Subsection (a) and adding Subsection (d) to read as
2 follows:

3 (a) Each institution of higher education shall:

4 (1) for each semester or academic term, compile a
5 course schedule indicating each course offered by the institution
6 for the semester or term to postsecondary students;

7 (2) with respect to each course, include with the
8 schedule a list of the required and recommended textbooks that
9 specifies, to the extent practicable, the following information for
10 each textbook:

11 (A) the retail price;

12 (B) the author;

13 (C) the publisher;

14 (D) the most recent copyright date; ~~and~~

15 (E) the International Standard Book Number
16 assigned, if any; and

17 (F) whether the textbook is an open educational
18 resource;

19 (3) except as provided by Subsection (b), at the time
20 required by Subsection (c)(2):

21 (A) publish the textbook list with the course
22 schedule on the institution's Internet website and with any course
23 schedule the institution provides in hard copy format to the
24 students of the institution; and

25 (B) make that information available to college
26 bookstores and other bookstores that generally serve the students
27 of the institution; and

1 (4) except as provided by Subsection (b), as soon as
2 practicable after the information becomes available disseminate as
3 required by Subdivision (3) specific information regarding any
4 revisions to the institution's course schedule and textbook list.

5 (d) If an institution of higher education or a college
6 bookstore publishes a textbook list with a course schedule on an
7 Internet website that provides a search function, the institution
8 or bookstore must:

9 (1) ensure that the search function permits a search
10 based on whether a course or section of a course requires or
11 recommends only open educational resources; or

12 (2) provide a searchable list of courses and sections
13 of courses that require or recommend only open educational
14 resources.

15 SECTION 37. Section 51.453, Education Code, is amended to
16 read as follows:

17 Sec. 51.453. TEXTBOOK ASSISTANCE INFORMATION FOR STUDENTS.
18 To the extent practicable, an institution of higher education shall
19 make reasonable efforts to disseminate to its students information
20 regarding:

21 (1) available institutional programs for renting
22 textbooks or for purchasing used textbooks;

23 (2) available institutional guaranteed textbook
24 buyback programs;

25 (3) available institutional programs for alternative
26 delivery of textbook content; [~~and~~]

27 (4) the availability of courses and sections of

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1 courses that require or recommend only open educational resources;
2 and
3 (5) other available institutional textbook
4 cost-savings strategies.

5 SECTION 38. Section 51.454(a), Education Code, is amended
6 to read as follows:

7 (a) When a textbook publisher provides information
8 regarding a textbook or supplemental material other than an open
9 educational resource to a faculty member or other person in charge
10 of selecting course materials at an institution of higher
11 education, the publisher shall also provide to the faculty member
12 or other person written information that includes:

13 (1) the price at which the publisher would make the
14 textbook or supplemental material available to a college bookstore
15 or other bookstore that generally serves the students of the
16 institution and, if applicable, to the public;

17 (2) the copyright dates of the current and three
18 preceding editions of the textbook;

19 (3) a description of any substantial content revisions
20 made between the current edition of the textbook or supplemental
21 material and the most recent preceding edition of the textbook or
22 material, including the addition of new chapters, new material
23 covering additional time periods, new themes, or new subject
24 matter;

25 (4) information as to whether the textbook or
26 supplemental material is available in other formats, such as a
27 paperback or unbound version; and

1 (5) the price at which the publisher would make the
2 textbook or supplemental material in any alternative format
3 available to a bookstore described by Subdivision (1) and, if
4 applicable, to the public.

5 SECTION 39. Subchapter C, Chapter 61, Education Code, is
6 amended by adding Section 61.0668 to read as follows:

7 Sec. 61.0668. OPEN EDUCATIONAL RESOURCES GRANT PROGRAM.

8 (a) In this section, "open educational resource" has the meaning
9 assigned by Section 51.451.

10 (b) The board shall establish and administer a grant program
11 to encourage faculty at institutions of higher education to adopt,
12 modify, redesign, or develop courses that use only open educational
13 resources.

14 (c) Under the program, a faculty member of an institution of
15 higher education may apply to the board for a grant to adopt,
16 modify, redesign, or develop one or more courses at the institution
17 to exclusively use open educational resources.

18 (d) For each course identified in an application for a grant
19 under this section, the board shall select at least three persons
20 qualified to review the curriculum of the course, as determined by
21 the board, to evaluate the application with respect to that course.
22 If the application is rejected, the reviewing persons must provide
23 feedback on the application to the faculty member. The feedback may
24 be provided anonymously.

25 (e) A faculty member who receives a grant under the program
26 shall ensure that any open educational resource used in each
27 applicable course is provided to a student enrolled in the course at

1 no cost other than the cost of printing.

2 (f) A faculty member who receives a grant under the program
3 must submit to the board for each of the four semesters immediately
4 following the implementation of each applicable course a report
5 that includes:

6 (1) the number of students who have completed the
7 course;

8 (2) an estimate of the amount of money saved by a
9 student due to the use of open educational resources in the course;

10 (3) a description of the open educational resources
11 used in the course;

12 (4) the number of other faculty members, if any, who
13 adopted the curriculum of the course; and

14 (5) any other information required by the board.

15 (g) A faculty member who receives a grant under the program
16 may continue to submit a report described by Subsection (f) for a
17 semester that occurs after the faculty member's duty to submit a
18 report under that subsection has expired. The board may consider a
19 faculty member's failure to submit additional reports under this
20 subsection in evaluating a subsequent grant application submitted
21 by the faculty member.

22 (h) A faculty member who is no longer employed by an
23 institution of higher education forfeits any grant awarded under
24 the program.

25 (i) The board may not award a grant under the program to a
26 faculty member of a postsecondary educational institution other
27 than an institution of higher education.

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1 (j) Not later than December 1 of each even-numbered year,
2 the board shall submit to the governor, lieutenant governor,
3 speaker of the house of representatives, and each standing
4 legislative committee with primary jurisdiction over higher
5 education a report on:

6 (1) the total number of grants distributed under the
7 program;

8 (2) the number of students who completed a course
9 adopted, modified, redesigned, or developed under the program;

10 (3) an estimate of the total amount of money saved by
11 students due to the use of open educational resources in courses
12 adopted, modified, redesigned, or developed under the program;

13 (4) a list of any subject areas that would benefit from
14 the adoption, modification, or development of open educational
15 resources; and

16 (5) recommendations on future steps for adopting,
17 modifying, or developing open educational resources.

18 (k) The board may solicit and accept gifts, grants, and
19 donations from any public or private source for purposes of the
20 program.

21 (l) The board shall adopt rules for the administration of
22 the program.

23 (m) This section expires September 1, 2021.

24 (n) The board may not use appropriated funds in an amount
25 greater than \$200,000 for purposes of the program in the state
26 fiscal biennium ending August 31, 2019. The board may use any
27 amount of other funds available for those purposes. This

1 subsection expires December 1, 2019.

2 SECTION 40. Subchapter C, Chapter 61, Education Code, is
3 amended by adding Section 61.0669 to read as follows:

4 Sec. 61.0669. FEASIBILITY STUDY ON STATE REPOSITORY OF OPEN
5 EDUCATIONAL RESOURCES. (a) In this section, "open educational
6 resource" has the meaning assigned by Section 51.451.

7 (b) The board shall conduct a study to determine the
8 feasibility of creating a state repository of open educational
9 resources. The study must consider:

10 (1) methods for facilitating public access to open
11 educational resources;

12 (2) the resources needed to create the repository; and

13 (3) any potential challenges in creating the
14 repository.

15 (c) In conducting the study, the board shall collaborate
16 with relevant state agencies, textbook publishers, representatives
17 of the open educational resource community, and other stakeholders,
18 including the Texas Education Agency and representatives of public
19 institutions of higher education and school districts.

20 (d) Not later than September 1, 2018, the board shall submit
21 to the governor, lieutenant governor, speaker of the house of
22 representatives, and each standing legislative committee with
23 primary jurisdiction over higher education a report on the results
24 of the study and any recommendations for legislative or other
25 action. The report must include information on:

26 (1) methods by which open educational resources would
27 be gathered and curated;

1 (2) measures to ensure public access to the
2 repository;

3 (3) methods of encouraging the use of the repository;

4 (4) management of intellectual property rights; and

5 (5) any other measures necessary to ensure the
6 repository's success.

7 (e) The board may not use appropriated funds in an amount
8 greater than \$100,000 for purposes of the study. The board may use
9 any amount of other available funds for purposes of the study and
10 may solicit and accept gifts, grants, and donations for that
11 purpose.

12 (f) This section expires September 1, 2019.

13 SECTION 41. Section 403.093(d), Government Code, is amended
14 to read as follows:

15 (d) The comptroller shall transfer from the general revenue
16 fund to the foundation school fund an amount of money necessary to
17 fund the foundation school program as provided by Chapter 42,
18 Education Code. The comptroller shall make the transfers in
19 installments as necessary to comply with Section 42.259, Education
20 Code, and permit the Texas Education Agency, to the extent
21 authorized by the General Appropriations Act, to make temporary
22 transfers from the foundation school fund for payment of the
23 instructional materials and technology allotment under Section
24 31.0211, Education Code. Unless an earlier date is necessary for
25 purposes of temporary transfers for payment of the instructional
26 materials and technology allotment, an installment must be made not
27 earlier than two days before the date an installment to school

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1 districts is required by Section 42.259, Education Code, and must
2 not exceed the amount necessary for that payment and any temporary
3 transfers for payment of the instructional materials and technology
4 allotment.

5 SECTION 42. Not later than September 1, 2018, the
6 commissioner of education shall develop the web portal required
7 under Subchapter B-2, Chapter 31, Education Code, as added by this
8 Act.

9 SECTION 43. Sections 51.451, 51.452, 51.453, and 51.454,
10 Education Code, as amended by this Act, apply beginning with the
11 2018 spring semester.

12 SECTION 44. (a) As soon as practicable after the effective
13 date of this Act, the Texas Higher Education Coordinating Board
14 shall adopt rules for the administration of the open educational
15 resources grant program under Section 61.0668, Education Code, as
16 added by this Act.

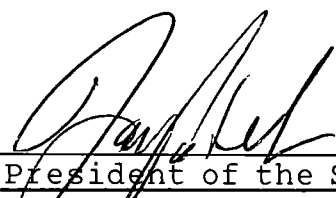
17 (b) Notwithstanding Section 61.0668(j), Education Code, as
18 added by this Act, the Texas Higher Education Coordinating Board
19 shall submit its initial report required under that section not
20 later than December 1, 2019.

21 SECTION 45. In the event that S.B. 1784, 85th Legislature,
22 Regular Session, 2017, is enacted and becomes law, any provisions
23 repealed or language struck by that Act shall also be considered
24 repealed or struck, as applicable, by this Act.

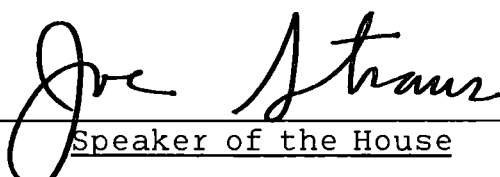
25 SECTION 46. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

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1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2017. _____



President of the Senate



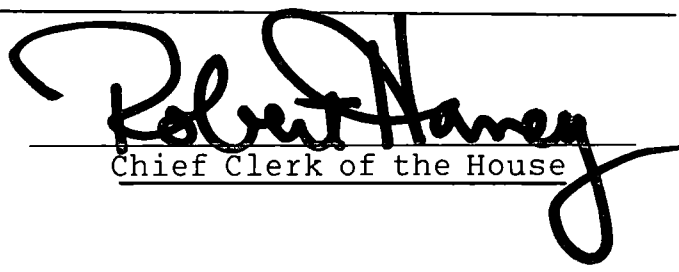
Speaker of the House

I hereby certify that S.B. No. 810 passed the Senate on April 25, 2017, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 27, 2017, by the following vote: Yeas 31, Nays 0. _____



Secretary of the Senate

I hereby certify that S.B. No. 810 passed the House, with amendments, on May 24, 2017, by the following vote: Yeas 133, Nays 13, one present not voting. _____



Chief Clerk of the House

Approved:


6-9-2017

Date



Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
7:00 PM O'CLOCK

JUN 09 2017


Secretary of State

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 24, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB810 by Kolkhorst (Relating to the use of open educational resources.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB810, As Passed 2nd House: a negative impact of (\$300,000) through the biennium ending August 31, 2019.

In addition, administrative activities associated with development of a web portal would be a cost to be paid from existing instructional materials funding which would result in a decrease of instructional materials allotment funding to schools of \$2.5 million in the 2018-19 biennium, which decreases the biennial allotment by an estimated 32 cents per student.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$200,000)
2019	(\$100,000)
2020	(\$1,076,735)
2021	(\$1,575,485)
2022	(\$2,074,235)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund
	1
2018	(\$200,000)
2019	(\$100,000)
2020	(\$1,076,735)
2021	(\$1,575,485)
2022	(\$2,074,235)

Fiscal Year	Change in Number of State Employees from FY 2017
2018	1.0
2019	1.0
2020	1.0
2021	1.0
2022	1.0

Fiscal Analysis

The bill would require the Higher Education Coordinating Board (Board) to establish and administer a grant program to encourage faculty at institutions of higher education to adopt and develop courses that use only open educational resources. Under the program, a faculty member of an institution of higher education could apply to the Board for a grant to adopt, modify or redesign a course at the institution to exclusively use open educational resources. Under provisions of the bill, the Board may not award a grant under the program to a faculty member of a postsecondary educational institution other than an institution of higher education. The Board would submit a report regarding the program to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education by December 1 of each even-numbered year.

Under provisions of the bill, the Board may not use appropriated funds in an amount greater than \$200,000 for purposes of the program in the state fiscal biennium ending August 31, 2019. The Board may use any amount of other funds available for those purposes. This section would expire December 1, 2019.

The bill would require the Board, in collaboration with the Texas Education Agency, public institutions of higher education and school districts and textbook publishers, and representatives of the open educational resource community, to conduct a study to determine the feasibility of creating a state repository of open educational resources. The study would have to include: 1) methods for facilitating public access to open educational resources, 2) the resources needed to create the repository, and 3) any potential challenges in creating the repository. The Board would submit the report regarding the results of the study to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education by September 1, 2018. Provisions of the bill regarding the feasibility study would expire September 1, 2019.

Under provisions of the bill, the Board may not use appropriated funds in an amount greater than \$100,000 for purposes of the study. The Board may use any amount of other available funds for purposes of the study and may solicit gifts, grants and donations for that purpose.

The bill would amend the Education Code to define an open education resource; replace open source instructional materials with open education resource instructional materials, rename the instructional materials fund the instructional materials and technology fund; and rename the instructional materials allotment the instructional materials and technology allotment. The bill would allow money in the state instructional materials and technology fund to pay the expenses associated with the instructional materials web portal developed under Section 31.081. The bill would allow school districts and open-enrollment charter schools to consider the use of open education resource instructional materials in selecting materials each year.

The bill would require the State Board of Education (SBOE) to consider a school district's need for

technology as well as instructional materials in reviewing and adopting instructional materials, and would allow the SBOE to limit the adoption of instructional materials to provide sufficient resources to purchase technology resources. The bill would require the SBOE to include information regarding open education resource instructional materials during the adoption cycle. The bill would require the SBOE to update the long-range plan for technology at least every five years.

The bill would require the Commissioner of Education to develop a web portal with information about all state-adopted instructional materials and other materials submitted for review by September 1, 2018 and to maintain the portal once developed. The bill would require the Commissioner use money in the state instructional materials fund, Fund 3, to pay any expense associated with the web portal and would make the web portal an allowable expense under the state instructional materials fund. The bill would require the web portal to contain certain information for each instructional material included in the portal; require the Commissioner to use a competitive process to contract for the development of the web portal; and require the Commissioner to contract with a private entity to conduct an independent analysis of each instructional material submitted by a publisher for inclusion in the portal and would require the analysis to include certain elements.

The bill would require the Commissioner to include a repository of open education resources and other electronic instructional materials that school districts and open-enrollment charter schools may access at no cost in the web portal. The bill would allow a school district or open-enrollment charter school to consider open educational resources and other electronic instructional materials included in the repository in determining whether each student has instructional materials that cover all elements of the Texas Essential Knowledge and Skills as required by 31.004(a), Education Code.

The bill would take effect immediately if passed with necessary voting margins, or September 1, 2017.

Methodology

Under provisions of the bill the Higher Education Coordinating Board (Board) may not use appropriated funds in an amount greater than \$200,000 for purposes of the program in the state fiscal biennium ending August 31, 2019. In addition the Board may not use appropriated funds in an amount greater than \$100,000 for purposes of the study. As a result the costs associated with the new program and the study are limited to \$300,000 for the 2018-19 biennium as reflected in the table above. These funding limitations expire in fiscal year 2019.

Beginning in fiscal year 2020, it is assumed that grant awards would increase. Based on information provided by the Board regarding similar open educational resources programs in other states, it is assumed that the award amount under the new program would be \$2,500 per fiscal year. It is also assumed that six faculty at each participating public higher education institution would receive an award. Beginning in fiscal year 2020, it is estimated that 50 percent of the 133 eligible public institutions would participate in the program and the faculty at these institutions would receive grants totaling \$997,500. In fiscal year 2021, it is assumed that participation in the program would increase to 75 percent and the cost of the program would increase to \$1,496,250. By fiscal year 2022, it is assumed that 100 percent of eligible institutions would participate in the program at a total cost of \$1,995,000.

Administrative costs for the Board associated with the new program are estimated to be \$60,980 for salaries, wages and benefits for 1 FTE, and \$18,255 in other costs beginning in fiscal year

2018.

The Texas Education Agency (TEA) estimates that the bill would result in total costs of \$1.85 million in fiscal year 2018 with continuing costs of \$450,000 in subsequent years related to development of the web portal. These amounts would be paid from existing instructional materials funding.

Local Government Impact

TEA estimates that using funding from the state instructional materials fund for development and management of the web portal and associated review would result in a decrease in the biennial instructional materials allotment that each school district and charter school receives of approximately 32 cents per student. However, districts and schools could experience savings as a result of selecting open education resources from the web portal in lieu of other instructional materials.

Source Agencies: 306 Library & Archives Commission, 701 Texas Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 781 Higher Education Coordinating Board, 783 University of Houston System Administration

LBB Staff: UP, GO, THo, DEH, AW, GGo

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 16, 2017

TO: Honorable J. M. Lozano, Chair, House Committee on Higher Education

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB810 by Kolkhorst (Relating to the use of open educational resources.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for SB810, As Engrossed: a negative impact of (\$300,000) through the biennium ending August 31, 2019. The agency is not required to implement the legislation in the absence of an appropriation.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$200,000)
2019	(\$100,000)
2020	(\$1,076,735)
2021	(\$1,575,485)
2022	(\$2,074,235)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i>
2018	(\$200,000)
2019	(\$100,000)
2020	(\$1,076,735)
2021	(\$1,575,485)
2022	(\$2,074,235)

Fiscal Year	Change in Number of State Employees from FY 2017
2018	1.0
2019	1.0
2020	1.0
2021	1.0
2022	1.0

Fiscal Analysis

The bill would require the Higher Education Coordinating Board (Board) to establish and administer a grant program to encourage faculty at institutions of higher education to adopt and develop courses that use only open educational resources. Under the program, a faculty member of an institution of higher education could apply to the Board for a grant to adopt, modify or redesign a course at the institution to exclusively use open educational resources. Under provisions of the bill, the Board may not award a grant under the program to a faculty member of a postsecondary educational institution other than an institution of higher education. The Board would submit a report regarding the program to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education by December 1 of each even-numbered year.

Under provisions of the bill, the Board may not use appropriated funds in an amount greater than \$200,000 for purposes of the program in the state fiscal biennium ending August 31, 2019. The Board may use any amount of other funds available for those purposes. This section would expire December 1, 2019.

The bill would require the Board, in collaboration with the Texas Education Agency, public institutions of higher education and school districts, to conduct a study to determine the feasibility of creating a state repository of open educational resources. The study would have to include: 1) methods for facilitating public access to open educational resources, 2) the resources needed to create the repository, and 3) any potential challenges in creating the repository. The Board would submit the report regarding the results of the study to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education by September 1, 2018. Provisions of the bill regarding the feasibility study would expire September 1, 2019.

Under provisions of the bill, the Board may not use appropriated funds in an amount greater than \$100,000 for purposes of the study. The Board may use any amount of other available funds for purposes of the study and may solicit gifts, grants and donations for that purpose.

Under provisions of the bill, the Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

Methodology

Under provisions of the bill the Higher Education Coordinating Board (Board) may not use appropriated funds in an amount greater than \$200,000 for purposes of the program in the state fiscal biennium ending August 31, 2019. In addition the Board may not use appropriated funds in an amount greater than \$100,000 for purposes of the study. As a result the costs associated with the new program and the study are limited to \$300,000 for the 2018-19 biennium as reflected in

the table above. These funding limitations expire in fiscal year 2019.

Beginning in fiscal year 2020, it is assumed that grant awards would increase. Based on information provided by the Board regarding similar open educational resources programs in other states, it is assumed that the award amount under the new program would be \$2,500 per fiscal year. It is also assumed that six faculty at each participating public higher education institution would receive an award. Beginning in fiscal year 2020, it is estimated that 50 percent of the 133 eligible public institutions would participate in the program and the faculty at these institutions would receive grants totaling \$997,500. In fiscal year 2021, it is assumed that participation in the program would increase to 75 percent and the cost of the program would increase to \$1,496,250. By fiscal year 2022, it is assumed that 100 percent of eligible institutions would participate in the program at a total cost of \$1,995,000.

Administrative costs for the Board associated with the new program are estimated to be \$60,980 for salaries, wages and benefits for 1 FTE, and \$18,255 in other costs beginning in fiscal year 2018.

Under provisions of the bill, the Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 306 Library & Archives Commission, 701 Texas Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 781 Higher Education Coordinating Board, 783 University of Houston System Administration

LBB Staff: UP, GO, THo, DEH, AW, GGo

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 17, 2017

TO: Honorable Kel Seliger, Chair, Senate Committee on Higher Education

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB810 by Kolkhorst (Relating to the use of open educational resources.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB810, Committee Report 1st House, Substituted: a negative impact of (\$300,000) through the biennium ending August 31, 2019. The agency is not required to implement the legislation in the absence of an appropriation.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$200,000)
2019	(\$100,000)
2020	(\$1,076,735)
2021	(\$1,575,485)
2022	(\$2,074,235)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund
	1
2018	(\$200,000)
2019	(\$100,000)
2020	(\$1,076,735)
2021	(\$1,575,485)
2022	(\$2,074,235)

Fiscal Year	Change in Number of State Employees from FY 2017
2018	1.0
2019	1.0
2020	1.0
2021	1.0
2022	1.0

Fiscal Analysis

The bill would require the Higher Education Coordinating Board (Board) to establish and administer a grant program to encourage faculty at institutions of higher education to adopt and develop courses that use only open educational resources. Under the program, a faculty member of an institution of higher education could apply to the Board for a grant to adopt, modify or redesign a course at the institution to exclusively use open educational resources. Under provisions of the bill, the Board may not award a grant under the program to a faculty member of a postsecondary educational institution other than an institution of higher education. The Board would submit a report regarding the program to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education by December 1 of each even-numbered year.

Under provisions of the bill, the Board may not use appropriated funds in an amount greater than \$200,000 for purposes of the program in the state fiscal biennium ending August 31, 2019. The Board may use any amount of other funds available for those purposes. This section would expire December 1, 2019.

The bill would require the State Library and Archives Commission (Commission) to conduct a study to determine the feasibility of creating a state repository of open educational resources. The study would have to include: 1) methods for facilitating public access to open educational resources, 2) the resources needed to create the repository, and 3) any potential challenges in creating the repository. The Commission would submit the report regarding the results of the study to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education by September 1, 2018. Provisions of the bill regarding the feasibility study would expire September 1, 2019.

Under provisions of the bill, the Commission may not use appropriated funds in an amount greater than \$100,000 for purposes of the study. The commission may use any amount of other available funds for purposes of the study and may solicit gifts, grants and donations for that purpose.

Under provisions of the bill, the Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

Methodology

Under provisions of the bill the Board may not use appropriated funds in an amount greater than \$200,000 for purposes of the program in the state fiscal biennium ending August 31, 2019 and the Commission may not use appropriated funds in an amount greater than \$100,000 for purposes of the study. As a result the costs associated with the new program and the study are limited to \$300,000 for the 2018-19 biennium as reflected in the table above. These funding limitations expire in fiscal year 2019.

Beginning in fiscal year 2020, it is assumed that grant awards would increase. Based on information provided by the Higher Education Coordinating Board regarding similar open educational resources programs in other states, it is assumed that the award amount under the new program would be \$2,500 per fiscal year. It is also assumed that six faculty at each participating public higher education institution would receive an award. Beginning in fiscal year 2020, it is estimated that 50 percent of the 133 eligible public institutions would participate in the program and the faculty at these institutions would receive grants totaling \$997,500. In fiscal year 2021, it is assumed that participation in the program would increase to 75 percent and the cost of the program would increase to \$1,496,250. By fiscal year 2022, it is assumed that 100 percent of eligible institutions would participate in the program at a total cost of \$1,995,000.

Administrative costs for the Higher Education Coordinating Board associated with the new program are estimated to be \$60,980 for salaries, wages and benefits for 1 FTE, and \$18,255 in other costs beginning in fiscal year 2018.

Under provisions of the bill, the Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 306 Library & Archives Commission, 701 Texas Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 781 Higher Education Coordinating Board, 783 University of Houston System Administration

LBB Staff: UP, GO, THo, DEH, AW, GGo

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 28, 2017

TO: Honorable Kel Seliger, Chair, Senate Committee on Higher Education

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB810 by Kolthorst (Relating to the use of open educational resources.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB810, As Introduced: a negative impact of (\$3,639,660) through the biennium ending August 31, 2019.

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

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$1,591,705)
2019	(\$2,047,955)
2020	(\$2,704,205)
2021	(\$2,704,205)
2022	(\$2,704,205)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund
2018	(\$1,591,705)
2019	(\$2,047,955)
2020	(\$2,704,205)
2021	(\$2,704,205)
2022	(\$2,704,205)

Fiscal Year	Change in Number of State Employees from FY 2017
2018	1.0
2019	1.0
2020	1.0
2021	1.0
2022	1.0

Fiscal Analysis

The bill would require the Higher Education Coordinating Board (Board) to establish and administer a grant program to encourage faculty at institutions of higher education to adopt and develop courses that use only open educational resources. Under the program, a faculty member of an institution of higher education could apply to the Board for a grant to redesign a course at the institution to exclusively use open educational resources. The bill does not specify the grant award amount for the new program. The Board would submit a report regarding the program to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education by December 1 of each even-numbered year. Provisions of the bill regarding the open educational resources program would expire September 1, 2021.

The bill would require the State Library and Archives Commission (Commission) to conduct a study to determine the feasibility of creating a state repository of open educational resources. The study would have to include: 1) methods for facilitating public access to open educational resources, 2) the resources needed to create the repository, and 3) any potential challenges in creating the repository. The Commission would submit the report regarding the results of the study to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education by September 1, 2018. Provisions of the bill regarding the feasibility study would expire September 1, 2019.

Methodology

Based on information provided by the Higher Education Coordinating Board regarding similar open educational resources programs in other states, it is assumed that the award amount under the new program would be \$2,500 per fiscal year. It is also assumed that six faculty at each participating public and private institution would receive an award. Beginning in fiscal year 2018, it is estimated that 50 percent of the 175 eligible public and private institutions would participate in the program and the faculty at these institutions would receive grants totaling \$1,312,500. In fiscal year 2019, it is assumed that participation in the program would increase to 75 percent and the cost of the program would increase to \$1,968,750. By fiscal year 2020, and continuing to fiscal year 2022, it is assumed that 100 percent of eligible institutions would participate in the program at a total cost of \$2,625,000 per year.

The Board has indicated administrative costs associated with the new program would be \$60,980 for salaries, wages and benefits for 1 FTE, and \$18,255 in other costs for the program beginning in fiscal year 2018.

The State Library and Archives Commission has indicated that one time costs of \$200,000 in fiscal year 2018 would be required to complete the feasibility study. The agency would contract with a vendor to complete the study.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 306 Library & Archives Commission, 701 Texas Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 781 Higher Education Coordinating Board, 783 University of Houston System Administration

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