

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

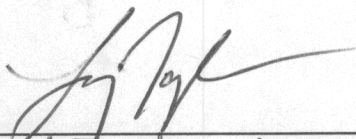
5-27-17
Date

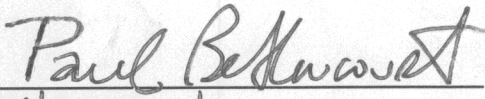
Honorable Dan Patrick
President of the Senate

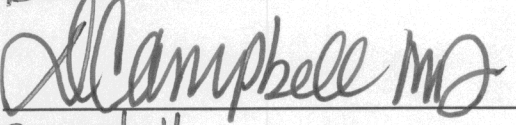
Honorable Joe Straus
Speaker of the House of Representatives

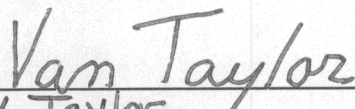
Sirs:

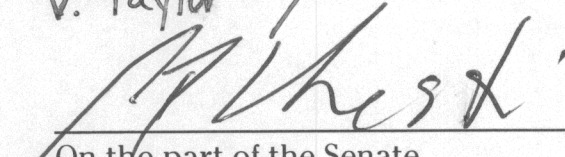
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 1784 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

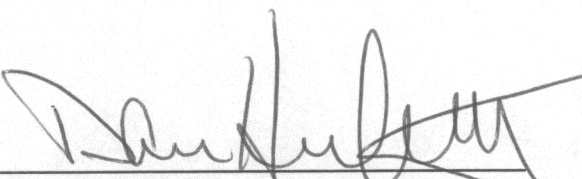

Larry Taylor, chair

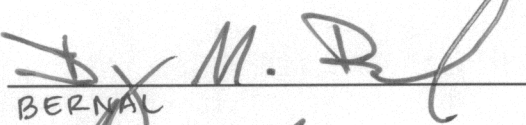

Bettencourt

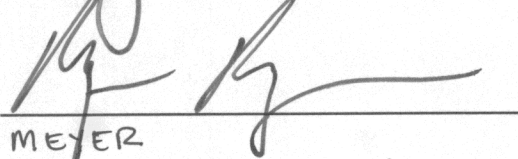

Campbell

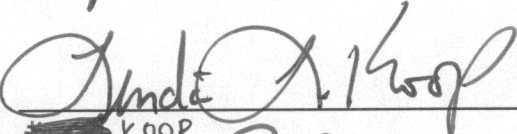

V. Taylor

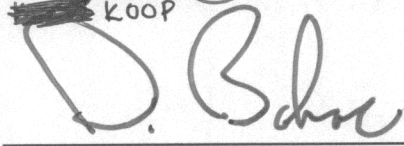

On the part of the Senate
Uresti


DAN HUBERTY, CHAIR


BERNAL


MEYER


KOOP


On the part of the House
BOHAC

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 1784

A BILL TO BE ENTITLED

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

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

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

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

10 (1) is in the public domain;

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

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

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

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

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

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

24 (b) To encourage the use of instructional material
25 purchased by the state under this subchapter by school districts
26 and open-enrollment charter schools, the [The] commissioner shall
27 provide a license for the instructional material that allows for

1 the free use, reuse, modification, or sharing of the material by any
2 person or entity [~~to each public school in the state, including a~~
3 ~~school district, an open-enrollment charter school, and a state or~~
4 ~~local agency educating students in any grade from prekindergarten~~
5 ~~through high school, to use and reproduce state-developed~~
6 ~~open-source instructional material~~].

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

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

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

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

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

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

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

25 (2) must provide that:

26 (A) the commissioner may request that a user
27 remove a copyright notice or attribution from the material and that

1 a user must comply with the request to the extent reasonably
2 practicable; and

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

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

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

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

20 (f) The commissioner may:

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

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

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

27 (h) The attorney general shall represent the agency in an

1 action brought under this section and may recover reasonable
2 expenses incurred in obtaining relief, including court costs,
3 reasonable attorney's fees, investigative costs, witness fees, and
4 deposition costs.

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

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

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

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

17 SECTION 8. This Act takes effect immediately if it receives
18 a 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, 2017.

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No equivalent provision.

SECTION __. Section 26.006, Education Code, is amended.
[FA2]

Same as Senate version.

No equivalent provision.

SECTION __. Section 26.006, Education Code, as amended by this Act, applies beginning with the 2017-2018 school year. [FA2]

Same as Senate version.

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 *permits the* free use, reuse, modification, and sharing *of the resource* 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 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. [FA1(1)-(2)]

SECTION 1. Same as House version.

SECTION 2. Section 31.021(c), Education Code, is amended to read as follows:

(c) Money in the state instructional materials fund shall be used to:

(1) fund the instructional materials allotment, as provided by Section 31.0211;

(2) purchase special instructional materials for the education

No equivalent provision. SECTION 2. [Deleted by FA1(3)]

Same as House version.

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of blind and visually impaired students in public schools;
(3) pay the expenses associated with the instructional materials adoption and review process under this chapter;
(4) pay the expenses associated with the purchase or licensing of open-source instructional material;
(5) pay the expenses associated with the purchase of instructional material, including intrastate freight and shipping and the insurance expenses associated with intrastate freight and shipping; and
(6) ~~[fund the technology lending grant program established under Section 32.201; and~~
[(7)] provide funding to the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, and the Texas Juvenile Justice Department.

SECTION 3. 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 ~~[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 4. 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. (a) A state-developed open-source instructional material 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

SECTION 3. Same as Senate version.

SECTION 4. 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

SECTION 2. Same as Senate version.

SECTION 3. Same as House version.

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law, including a limitation under Section 107, Copyright Act of 1976 (17 U.S.C. Section 107); or

(3) is licensed to the state *for use in an open-source instructional material.*

(b) A license described by Subsection (a)(3) must:

(1) grant the state unlimited authority to modify, delete, combine, or add content; and

(2) permit the free use and repurposing of the material by any person.

SECTION 5. Section 31.075, Education Code, is amended by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f) to read as follows:

(b) To encourage the use of *state-developed open-source instructional materials* by school districts and open-enrollment charter schools, the [The] commissioner shall provide a license for a *state-developed open-source instructional material* that allows for the free use, reuse, modification, or sharing of the material by any person [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) A license provided by the commissioner under this section:

(1) *unless exempted by the commissioner,* shall require that a

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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.* [FA1(4)-(5)]

SECTION 5. 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: [FA1(6);FA1,3rd(1)]

(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]. [FA1(7)-(9)]

(c) *The terms of* a license provided by the commissioner under this section: [FA1(10)]

(1) shall require that a user who reproduces the instructional

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SECTION 4. Substantially the same as House version.

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user who reproduces a *state-developed open-source* 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) must provide *clear and conspicuous notice of how and where* a person may obtain the material free of charge; and

(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

~~[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~~

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material in any manner: [FA1(11)-(12)]

(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; [FA1(13)]

(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~~

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materials].

materials]. [FA1(14)]

(d) The commissioner shall determine what is considered reasonably practicable for purposes of Subsection (c)(2)(A).

(d) The commissioner may exempt a license under this section from including one or more of the requirements under Subsection (c)(1). [FA1(15)]

(e) 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.

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

(e) The commissioner shall determine what is considered reasonably practicable for purposes of Subsections (c)(1)(E) and (c)(2)(A). [FA1(16)-(17)]

(f) The commissioner may: [FA1(18)]

(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. [FA1(19)]

(h) [FA1(20); Deleted by FA1,3rd(2)]

(i) 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. [FA1(20);FA1,3rd(3)]

SECTION 6. Section 31.076(b), Education Code, is amended.

SECTION 6. Same as Senate version.

SECTION 5. Same as Senate version.

SECTION 7. Section 31.077, Education Code, is repealed.

SECTION 7. Same as Senate version.

SECTION 6. Same as Senate version.

No equivalent provision.

SECTION __. The commissioner of education may apply the

SECTION 7. Same as House version.

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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. [FA1(21)]

SECTION 8. Effective date.

SECTION 8. Same as Senate version.

SECTION 8. Same as Senate version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 27, 2017

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**

| |
|--|
| <p>No significant fiscal implication to the State is anticipated.</p> |
|--|

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