

## **BILL ANALYSIS**

Senate Research Center

S.B. 1784  
By: Taylor, Larry  
Education  
7/12/2017  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of S.B. 1784 is to promote the use of open-source instructional materials by Texas school districts, charter schools, individual educators, and students by allowing broader and more innovative use of such materials. At the same time, the bill provides important protections for the state in the development of such materials.

S.B. 1784 updates statutory language dating to 2009 that governs the authority of the commissioner of education (commissioner) to license open-source instructional materials. The current law is found in Subchapter B-1, Chapter 31, Education Code. The specific ownership and licensing provisions are in TEC 31.075.

Current law has not kept pace with the evolution of standards in open source licensing.

S.B. 1784 updates the definition of "open educational resources" to align with the current accepted industry definition. The bill addresses the licensing issue specifically by giving the commissioner more flexibility in licensing the materials, removing a requirement for cost recovery in the licensing process. Instead, the financial benefit to the state comes from the sharing, re-use and modification of such materials, encouraging innovation and adoption of these free resources in public schools. The bill also makes a technical change to exempt certain types of content from the current law requirement that the state own or hold a license to use all content within state-developed open-source instructional material. For example, portions of the Declaration of Independence could be included in an open-source history book even though the state cannot own or hold a license for that document.

S.B. 1784 protects the interests of the state by requiring license provisions that, for example, require proper attribution of the material to the state and require a link back to the original content whenever any of the material is reproduced. It gives the commissioner the authority to revoke an open-source license. S.B. 1784 allows the commissioner to use current licenses commonly applied to open educational resources.

Supporters may include school districts, charter schools, school boards, advocates for innovation and technology in education, and advocates for improved access to high quality instructional materials.

Opponents are not known. S.B. 810, a bill promoting the use of open-source resources in higher education, was not opposed in committee by any group. (Original Author's / Sponsor's Statement of Intent)

S.B. 1784 amends current law relating to open-source instructional material for public schools.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 31.002(1-a), Education Code, to redefine “open-source instructional material.”

SECTION 2. Amends Section 31.071(c), Education Code, to require that open-source instructional material, except as provided by Section 31.0711, which is added by this Act, be irrevocably owned by the state, rather than require that state-developed open-source instructional material be irrevocably owned by or licensed to the state for use in the applicable subject or grade level.

SECTION 3. Amends Subchapter B-1, Chapter 31, Education Code, by adding Section 31.0711, as follows:

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

(1) is in the public domain;

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

(3) is licensed to the state under a license that grants the state unlimited authority to modify, delete, combine, or add content, permits the free use and repurposing of the material by any person or entity, and is for a term of use acceptable to the commissioner of education (commissioner) to ensure a useful life of the material.

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

(b) Requires the commissioner, to encourage the use of instructional material purchased by the state under this subchapter (State-Developed Open Source Instructional Materials) by school districts and open-enrollment charter schools, to 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. Deletes existing text requiring the commissioner to provide a license 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) Provides that the terms of a license provided by the commissioner under this section (Ownership; Licensing):

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

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

(B) except as provided by Subdivision (2)(A), is required to attribute the authorship of the material to the Texas Education Agency (TEA) or another person specified by the commissioner;

(C) is required to indicate if the user has modified the material;

(D) is prohibited from asserting or implying any connection with or sponsorship or endorsement by TEA or this state, unless authorized by the commissioner; and

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

(2) are required to provide that the commissioner is authorized to request that a user remove a copyright notice or attribution from the material and that a user is required to comply with the request to the extent reasonably practicable; and 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) is authorized to include any additional terms determined by the commissioner. Deletes existing text authorizing the commissioner to provide a license to use state-developed open-source instructional material to an entity not listed in Subsection (b) and requiring the commissioner, in determining the cost of a license under this subsection to seek, to the extent feasible, to recover the costs of developing, revising, and distributing state-developed open-source instructional materials.

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

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

(f) Authorizes the commissioner to specify requirements to reinstate a user's rights under a license that has been terminated and reinstate a user's rights on completion of those requirements.

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

(h) Requires the Texas attorney general (attorney general) to represent TEA in an action brought under this section and authorizes the attorney general to recover reasonable expenses incurred in obtaining relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

SECTION 5. Amends Section 31.076(b), Education Code, to provide that the commissioner's decision regarding the purchase, revision, cost, licensing, or distribution of state-developed open-source instructional material is final and is prohibited from being appealed.

SECTION 6. Repealer: Section 31.077 (Adoption Schedule), Education Code.

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

SECTION 8. Effective date: upon passage or September 1, 2017.