

BILL ANALYSIS

Senate Research Center

S.B. 810
By: Kolkhorst
Higher Education
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2012, the American Enterprise Institute estimated that college textbook prices increased by 812 percent between 1978 and 2012. In the same period of time, the Consumer Price Index (CPI) rose by 250 percent. CollegeBoard estimates that the average student attending a public four-year in-state on-campus university spent \$1,255 on books and supplies during the 2014-2015 academic year.

According to the National Conference of State Legislatures, over 15 states have enacted laws addressing college textbook costs since 2007. Some states require publishers to offer bundled and unbundled versions of textbooks, or provide more information to faculty about the changes made to textbooks from one edition to the next. Other states have required instructors to consider lower-cost options when choosing course materials, and have urged colleges and universities to implement options that will reduce costs. Georgia addressed rising textbook costs at the University of Georgia system by encouraging the adoption of open educational resources (OER). Recognizing the costs associated with creating a new curriculum based on OER, the system began to give grants to professors who wished to use OER material in their classes. To help facilitate the proliferation of OER-oriented courses, they also established an OER repository for students and professors.

S.B. 810 would require that the Texas Higher Education Coordinating Board (THECB) establish and administer a grant program for professors who wish to use OER material in their classrooms, but cannot afford to change their curriculum. THECB would be required to report to the legislature how many professors applied for the grant, what courses the grant was used for, and the financial savings to students for using OER material. In addition, the bill would require the Texas State Library and Archives Commission (TSLAC) to conduct a study as to the feasibility of hosting an OER repository at TSLAC. (Original Author's / Sponsor's Statement of Intent)

S.B. 810 amends current law relating to the purchase and use of open educational resources.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 39 (Section 61.0668, Education Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of education (commissioner) in SECTION 27 (Sections 31.081 and 31.084, Education Code) of this bill.

Rulemaking authority previously granted to the commissioner is modified in SECTION 8 (Section 31.0212, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.001, Education Code, to change a reference to instructional materials allotment to instructional materials and technology allotment.

SECTION 2. Amends Sections 31.002(1) and (1-a), Education Code, to redefine "instructional material" and define "open education resource instructional material," rather than "open-source instructional material."

SECTION 3. Amends Section 31.004(b), Education Code, as follows:

(b) Authorizes a school district or open-enrollment charter school, to determine whether each student has instructional materials that cover all elements of the required essential knowledge and skills, to consider:

(1) and (2) makes no change to these subdivisions;

(3) open education resource (OER), rather than open-source, instructional materials submitted by eligible institutions and adopted by the State Board of Education (SBOE) under Section 31.0241;

(4) and (5) makes conforming and nonsubstantive changes to these subdivisions; and

(6) OER instructional materials and other electronic instructional materials included in the repository under Section 31.083, which is added by this Act.

SECTION 4. Amends Sections 31.005 and 31.021, Education Code, as follows:

Sec. 31.005. FUNDING FOR OPEN-ENROLLMENT CHARTER SCHOOLS. Changes a reference to instructional materials allotment to instructional materials and technology allotment.

Sec. 31.021. New heading: STATE INSTRUCTIONAL MATERIALS AND TECHNOLOGY FUND. (a) Sets forth the composition of the state instructional materials and technology fund, rather than the state instructional materials fund.

(c) Requires that money in the state instructional materials and technology fund be used to:

(1) makes a conforming change;

(2) and (3) makes no changes to these subdivisions;

(4) changes a reference to open-source instructional material to OER instructional material;

(5) makes no changes to this subdivision;

(6) deletes existing text of Subdivision (6) relating to funding the technology lending grant program. Redesignates existing Subdivision (7) as Subdivision (6); and

(7) pay the expenses associated with the instructional materials web portal developed under Section 31.081, which is added by this Act.

(d) Makes a conforming change.

SECTION 5. Amends the heading to Section 31.0211, Education Code, to read as follows:

Sec. 31.0211. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT.

SECTION 6. Amends Sections 31.0211(a), (b), and (c), Education Code, as follows:

(a) Changes references to state instructional materials fund to the state instructional materials and technology fund and a reference to the districts instructional materials account to the district's instructional materials and technology account.

(b) Makes a conforming change.

(c) Changes a reference to state-developed open-source instructional materials to state-developed OER instructional materials.

SECTION 7. Amends the heading to Section 31.0212, Education Code, to read as follows:

Sec. 31.0212. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ACCOUNT.

SECTION 8. Amends Sections 31.0212(a), (b), (d), and (e), Education Code, as follows:

(a) Requires the commissioner of education (commissioner) to maintain an instructional materials and technology account, rather than an instructional materials account, for each school district. Makes a conforming change.

(b) Makes a conforming change.

(d) Makes a conforming change.

(e) Makes a conforming change.

SECTION 9. Amends Section 31.0213, Education Code, as follows:

Sec. 31.0213. New heading: CERTIFICATION OF USE OF INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT. Changes a reference to the district's instructional materials allotment to the district's instructional materials and technology allotment.

SECTION 10. Amends Section 31.0214(a), Education Code, to make conforming changes.

SECTION 11. Amends the heading to Section 31.0215, Education Code, to read as follows:

Sec. 31.0215. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT PURCHASES.

SECTION 12. Amends Sections 31.0215(b) and (c), Education Code, to change references to the instructional materials account to the instructional materials and technology account and the instructional materials fund to the instructional materials and technology fund.

SECTION 13. Amends Section 31.022, Education Code, by amending Subsection (d) and adding Subsections (g) and (h), as follows:

(d) Changes a reference to open-source instructional materials to OER instructional materials.

(g) Requires SBOE, in reviewing and adopting instructional materials, to consider a school district's need for technology as well as instructional materials and in any biennium authorizes SBOE to limit the adoption of instructional materials to provide sufficient resources to purchase technology resources, including digital curriculum.

(h) Requires SBOE to include information regarding OER instructional materials during the adoption cycle, including any cost savings associated with the adoption of OER instructional materials.

SECTION 14. Amends Section 31.0231(b), Education Code, to change a reference to the district's instructional materials allotment to the district's instructional materials and technology allotment.

SECTION 15. Amends the heading to Section 31.0241, Education Code, to read as follows:

Sec. 31.0241. ADOPTION OF OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIALS.

SECTION 16. Amends Section 31.0241(b), Education Code, to change a reference to open-source instructional material to OER instructional material.

SECTION 17. Amends Section 31.0242, Education Code, as follows:

Sec. 31.0242. New heading: REVIEW OF OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIAL. Changes references to open-source instructional material to OER instructional material.

SECTION 18. Amends Section 31.026(d), Education Code, by changing a reference to open-source instructional material to OER instructional material.

SECTION 19. Amends Section 31.0261, Education Code, as follows:

Sec. 31.0261. New heading: CONTRACTS FOR PRINTING OF OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIALS. Changes references to open-source instructional materials to OER instructional materials.

SECTION 20. Amends Section 31.027(c), Education Code, by changing a reference to open-source instructional material to OER instructional material.

SECTION 21. Amends Section 31.029(a), Education Code, to change a reference to the district's instructional materials allotment to the district's instructional materials and technology allotment.

SECTION 22. Amends Section 31.031(a), Education Code, to change a reference to the district's instructional materials allotment to the district's instructional materials and technology allotment.

SECTION 23. Amends the heading to Subchapter B-1, Chapter 31, Education Code, to read as follows:

SUBCHAPTER B-1. STATE-DEVELOPED OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIALS

SECTION 24. Amends Sections 31.071, 31.072, 31.073, 31.074, and 31.075, Education Code, to change references to open-source instructional material or materials to OER instructional materials and to the state instructional materials fund to the state instructional materials and technology fund.

SECTION 25. Amends Section 31.076(b), Education Code, to change a reference to open-source instructional material to OER instructional material.

SECTION 26. Amends Section 31.077, Education Code, to change a reference to open-source instructional materials to OER instructional materials.

SECTION 27. Amends Chapter 31, Education Code, by adding Subchapter B-2, as follows:

SUBCHAPTER B-2. INSTRUCTIONAL MATERIALS WEB PORTAL

Sec. 31.081. INSTRUCTIONAL MATERIALS WEB PORTAL. (a) Requires the commissioner to develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting instructional materials under Section 31.101 (Selection and Purchase of Instructional Materials by School Districts).

(b) Requires that the web portal include general information such as price, computer system requirements, and any other relevant specification for each instructional material on the instructional materials list, including the list adopted

under Section 31.0231 (Commissioner's List) or submitted by a publisher for inclusion in the web portal.

(c) Requires the commissioner by rule to establish the procedure by which a publisher is authorized to submit instructional materials for inclusion in the web portal.

(d) Requires the commissioner to use a competitive process to contract for the development of the web portal.

(e) Requires the commissioner to use money in the state instructional materials and technology fund to pay any expenses associated with the web portal.

Sec. 31.082. QUALITY OF INSTRUCTIONAL MATERIALS SUBMITTED BY PUBLISHER. (a) Requires 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 web portal developed under Section 31.081. Requires that the analysis meet certain criteria.

(b) Requires the commissioner to include in the web portal developed under Section 31.081 the results of each analysis conducted under Subsection (a).

Sec. 31.083. INSTRUCTIONAL MATERIALS REPOSITORY. (a) Requires the commissioner to include in the web portal developed under Section 31.081 a repository of OER instructional materials and other electronic instructional materials that school districts and open-enrollment charter school are authorized to access at no cost.

(b) Authorizes a publisher to submit instructional materials for inclusion in the repository.

Sec. 31.084. RULES. Authorizes the commissioner to adopt rules as necessary to implement this subchapter.

SECTION 28. Amends Section 31.101, Education Code, by adding Subsection (b) and amending Subsection (f), as follows:

(b) Authorizes a school district or open-enrollment charter school, in selecting instructional material each year, to consider the use of OER instructional materials.

(f) Change a reference to the district's instructional materials allotment to the district's instructional materials and technology allotment.

SECTION 29. Amends Section 31.103(d), Education Code, to change a reference to open-source instructional material to OER instructional material.

SECTION 30. Amends Section 31.104(b), (g), and (h), Education Code, to change references to open-source instructional material to OER instructional material.

SECTION 31. Amends Sections 31.151(d) and (e), Education Code, as follows:

(d) Changes a reference to the state instructional materials fund to the state instructional materials and technology fund.

(e) Changes a reference to open-source instructional materials to OER instructional materials.

SECTION 32. Amends Section 32.001(b), Education Code, to require SBOE to update, rather than update as necessary, a certain plan at least every five years.

SECTION 33. Amends Section 41.124(c), Education Code, to change a reference to the instructional materials allotment to the instructional materials and technology allotment.

SECTION 34. Amends Section 43.001(d), Education Code, to change a reference to the state instructional materials fund to the state instructional materials and technology fund.

SECTION 35. Amends Section 51.451, Education Code, by adding Subdivision (4-a), to define "open educational resource."

SECTION 36. Amends Section 51.452, Education Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires each institution of higher education (IHE) to, with respect to each course, include with the course schedule a list of the required and recommended textbooks that specifies, to the extent practicable, certain information, including whether the textbook is an OER.

(d) Requires an IHE or a college bookstore, if the IHE or college bookstore publishes a textbook list with a course schedule on an Internet website that provides a search function, to ensure that the search function permits a search based on whether a course or section of a course requires or recommends only OERs or provide a searchable list of courses and sections of courses that require or recommend only OERs.

SECTION 37. Amends Section 51.453, Education Code, as follows:

Sec. 51.453. TEXTBOOK ASSISTANCE INFORMATION FOR STUDENTS. Requires an IHE, to the extent practicable, to make reasonable efforts to disseminate to its students information regarding:

(1) and (2) makes no changes to these subdivisions;

(3) makes a nonsubstantive change;

(4) the availability of courses and sections of courses that require or recommend only OERs; and

(5) creates Subdivision (5) from existing text and makes no further changes to this subdivision.

SECTION 38. Amends Section 51.454(a), Education Code, to require a textbook publisher, when a publisher provides information regarding a textbook or supplemental material other than an OER to a faculty member or other person in charge of selecting course materials at an IHE, to also provide to the faculty member or other person certain written information.

SECTION 39. Amends Subchapter C, Chapter 61, Education Code, by adding Section 61.0668, as follows:

Sec. 61.0668. OPEN EDUCATIONAL RESOURCES GRANT PROGRAM. (a) Defines "open educational resource."

(b) Requires the Texas Higher Education Coordinating Board (THECB) to establish and administer a grant program to encourage faculty at IHEs to adopt, modify, redesign, or develop courses that use only OERs.

(c) Authorizes a faculty member of an IHE, under the program, to apply to THECB for a grant to adopt, modify, redesign, or develop one or more courses at the IHE to exclusively use OERs.

(d) Requires THECB, for each course identified in an application for a grant under this section, to select at least three persons qualified to review the

curriculum of the course, as determined by THECB, to evaluate the application with respect to that course. Requires the reviewing persons, if the application is rejected, to provide feedback on the application to the faculty member. Authorizes the feedback to be provided anonymously.

(e) Requires a faculty member who receives a grant under the program to ensure that any OER used in each applicable course is provided to a student enrolled in the course at no cost other than the cost of printing.

(f) Requires a faculty member who receives a grant under the program to submit to THECB for each of the four semesters immediately following the implementation of each applicable course a report that includes certain information.

(g) Authorizes a faculty member who receives a grant under the program to continue to submit a report described by Subsection (f) for a semester that occurs after the faculty member's duty to submit a report under that subsection has expired. Authorizes THECB to consider a faculty member's failure to submit additional reports in evaluating a subsequent grant application submitted by the faculty member.

(h) Provides that a faculty member who is no longer employed by an IHE forfeits any grant awarded under the program.

(i) Prohibits THECB from awarding a grant under the program to a faculty member of a postsecondary educational institution other than an IHE.

(j) Requires THECB, not later than December 1 of each even-numbered year, to submit to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education a report that contains certain information.

(k) Authorizes THECB to solicit and accept gifts, grants, and donations from any public or private source for purposes of the program.

(l) Requires THECB to adopt rules for the administration of the program.

(m) Provides that this section expires September 1, 2021.

(n) Prohibits THECB from using appropriated funds in an amount greater than \$200,000 for purposes of the program in the state fiscal biennium ending August 31, 2019. Authorizes THECB to use any amount of other funds available for those purposes. Provides that this subsection expires December 1, 2019.

SECTION 40. Amends Subchapter C, Chapter 61, Education Code, by adding Section 61.0669, as follows:

Sec. 61.0669. FEASIBILITY STUDY ON STATE REPOSITORY OF OPEN EDUCATIONAL RESOURCES. (a) Defines "open educational resource."

(b) Requires THECB to conduct a study to determine the feasibility of creating a state repository of OERs. Requires that the study make certain considerations.

(c) Requires THECB, in conducting the study, to collaborate with relevant state agencies, textbook publishers, representatives of the OER community, and other stakeholders, including Texas Education Agency and representatives of public IHEs and school districts.

(d) Requires THECB, not later than September 1, 2018, to submit to the governor, lieutenant governor, speaker of the house of representatives, and each standing

legislative committee with primary jurisdiction over higher education a report on the results of the study and any recommendations for legislative or other action. Requires that the report include certain information.

(e) Prohibits THECB from using appropriated funds in an amount greater than \$100,000 for purposes of the study. Authorizes THECB to use any amount of other available funds for purposes of the study and to solicit and accept gifts, grants, and donations for that purpose.

(f) Provides that this section expires on September 1, 2019.

SECTION 41. Amends Section 403.093(d), Government Code, to change references to the instructional materials allotment to instructional materials and technology allotment.

SECTION 42. Requires the commissioner, not later than September 1, 2018, to develop the web portal required under Subchapter B-2, Chapter 31, Education Code, as added by this Act.

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

SECTION 44. (a) Requires THECB, as soon as practicable after the effective date of this Act, to adopt rules for the administration of the OERs grant program under Section 61.0668, Education Code, as added by this Act.

(b) Requires THECB, notwithstanding Section 61.0668(i), Education Code, as added by this Act, to submit its initial report required under that section not later than December 1, 2019.

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

SECTION 46. Effective date: upon passage or September 1, 2017.