Open-Source Textbooks

This Act establishes criteria by which educational institutions throughout the state can use open-source textbooks. The Act defines an “open-source textbook” as “an electronic textbook 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 textbook. The term includes a state-developed open-source textbook.”

Submitted as:
Texas
HB 2488
Status: Enacted into law in 2009.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act shall be cited as “An Act to Permit Certain Educational Institutions to Use Open-Source Textbooks.”

Section 2. [Definitions.] As used in this Act:

1. “Electronic textbook” means computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, on-line services, an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including an open-source textbook.

2. “Open-source textbook” means an electronic textbook 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 textbook. The term includes a state-developed open-source textbook.

Section 3. [Open-Source Textbooks.]

(A) In this section, “eligible institution” means:

1. a public institution of higher education that is designated as a research university or emerging research university under the [higher education coordinating board’s accountability system] established under [insert citation], or a private university located in this state that is a member of the Association of American Universities; or

2. a public technical institute, as defined by [insert citation].

(B) The [state board of education] shall place an open-source textbook for a secondary-level course submitted for adoption by an eligible institution on a conforming or nonconforming list if:

1. the textbook is written, compiled, or edited primarily by faculty of the eligible institution who specialize in the subject area of the textbook;

2. the eligible institution identifies each contributing author;

3. the appropriate department of the eligible institution certifies the textbook for accuracy; and

4. the eligible institution determines that the textbook qualifies for placement on
the conforming or nonconforming list as defined under [insert citation] based on the extent to which the textbook covers the essential knowledge and skills identified under [insert citation] for the subject for which the textbook is written and certifies that:

(a) for a textbook for a senior-level course, a student who successfully completes a course based on the textbook will be prepared, without remediation, for entry into the eligible institution’s freshman-level course in that subject; or

(b) for a textbook for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the textbook will be prepared for entry into the senior-level course.

(C) This section does not prohibit an eligible institution from submitting a textbook for placement on a conforming or nonconforming list through any other adoption process provided by [insert citation].

Section 4. [Contracts for Printing of Open-Source Textbooks.] The [state board of education] may execute a contract to print an open-source textbook listed on the conforming or nonconforming list. The contract must allow a school district to requisition printed copies of an open-source textbook as provided by Section 6 of this Act.

Section 5. [State-Developed Open-Source Textbooks.]

(A) A state-developed open-source textbook is the property of the state.

(B) A state-developed open-source textbook 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 textbook after purchase.

(C) A state-developed open-source textbook must be evaluated by teachers or other experts, as determined by the [commissioner], before purchase; and meet the requirements for inclusion on a conforming or nonconforming textbook list under [insert citation].

(D) The [commissioner] may issue a request for proposals for a state-developed open-source textbook in accordance with the textbook review and adoption cycle under [insert citation] or at any other time the [commissioner] determines a need exists for additional textbook options.

(E) Following a curriculum revision by the [state board of education], the [commissioner] shall require the revision of a state-developed open-source textbook relating to that curriculum. The [commissioner] may, at any time, require an additional revision of a state-developed open-source textbook or contract for ongoing revisions of a textbook for a period not to exceed the period under [insert citation] for which a textbook for that subject and grade level may be adopted. The [commissioner] shall use a competitive process to request proposals to revise a state-developed open-source textbook under this subsection.

(F) The [commissioner] shall provide for special and bilingual state-developed open-source textbooks in the same manner provided under [insert citation].

(G) The [commissioner] shall provide for the distribution of state-developed open-source textbooks in a manner consistent with distribution of textbooks adopted under [insert citation].

(H) The [commissioner] shall purchase any state-developed open-source textbooks through a competitive process and may purchase more than one state-developed open-source textbook for a subject or grade level.

(I) The [commissioner] shall 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 a state-developed open-source textbook.

(J) The [commissioner] shall determine the cost to a school district or open-enrollment
charter school for a state-developed open-source textbook in an amount sufficient to cover state
expenses associated with the textbook, including expenses incurred by the state in soliciting,
evaluating, revising, and purchasing the textbook.

(K) If a school district or open-enrollment charter school selects a state-developed open-
source textbook instead of another textbook adopted under [insert citation], the difference
between the cost of the [state-developed open source textbook] and the maximum price for that
other textbook, as determined by the [state board of education] shall be allocated as follows:

(1) [fifty] percent of the amount shall be credited to the [state textbook fund]
created under [insert citation]; and

(2) [fifty] percent of the amount shall be credited to the school district or open-
enrollment charter school.

(L) A school district or open-enrollment charter school may adopt a state-developed
open-source textbook at any time, regardless of the textbook review and adoption cycle under
[insert citation].

(M) A school district or open-enrollment charter school may not be charged for selection
of a state-developed open-source textbook in addition to a textbook adopted under [insert
citation].

(N) The [commissioner] may provide a license to use a state-developed open-source
textbook to an entity not listed in Section 3 (A) of this Act. 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 textbooks.

(O) The [commissioner] may use a competitive process to contract for printing or other
reproduction of a state-developed open-source textbook on behalf of a school district or open-
enrollment charter school. The [commissioner] may not require a school district or open-
enrollment charter school to contract with a state-approved provider for the printing or
reproduction of a state-developed open-source textbook.

(P) The costs of administering this [Act] and purchasing state-developed open-source
textbooks shall be paid from the [state textbook fund] established under [insert citation], as
determined by the [commissioner].

(Q) The [commissioner] shall develop a schedule for the adoption of state-developed
open-source textbooks under this Act. In developing the adoption schedule under this section, the
[commissioner] shall consider the availability of funds; the existing textbook adoption cycles
under [insert citation]; and the availability of textbooks for development or purchase by the state.

(R) A decision by the [commissioner] regarding the purchase, revision, cost, or
distribution of a state-developed open-source textbook is final and may not be appealed.

Section 6. [Providing Open-Source Textbooks to Students.]

(A) A school district or open-enrollment charter school that selects an open-source
textbook shall requisition a sufficient number of printed copies for use by students unable to
access the textbook electronically unless the district or school provides to each student
electronic access to the textbook at no cost to the student or printed copies of the portion of the
textbook that will be used in the course.

(B) The [commissioner] may establish a list of equipment or devices that a school district
or open-enrollment charter school may purchase using textbook credits or textbook credits in
combination with other available funds to provide electronic access to open-source textbooks.

(C) A school district or open-enrollment charter school may order replacements for
textbooks that have been lost or damaged directly from any source for a printed copy of an open-
source textbook.

(D) At the end of the school year for which an open-source textbook that a school district
or open-enrollment charter school does not intend to use for another student is distributed, the
printed copy of the open-source textbook becomes the property of the student to whom it is
distributed.

(E) A publisher or manufacturer of textbooks shall deliver textbooks to a school district
or open-enrollment charter school without a delivery charge to the school district, open-
enrollment charter school, or state, if the textbooks are open-source textbooks, [on-line
textbooks, or on-line textbook components as defined under insert citation], and shall submit to
the [state board of education] an affidavit certifying any textbook the publisher or manufacturer
offers in this state to be free of factual errors at the time the publisher executes the contract
required by [insert citation].

Section 7. [Certification of Provision of Textbooks, Electronic Textbooks, and
Instructional Materials.] Each school district and open-enrollment charter school shall annually
certify to the [state board of education] and the [commissioner] that, for each subject in the
required curriculum and each grade level, the district provides each student with textbooks,
electronic textbooks, or instructional materials that cover all elements of the essential knowledge
and skills adopted by the [state board of education] for that subject and grade level.

Section 8. [Rules.] The [commissioner] may adopt rules necessary to implement this Act.

Section 9. [Severability.] [Insert severability clause.]

Section 10. [Repealer.] [Insert repealer clause.]

Section 11. [Effective Date.] [Insert effective date.]