



Senate Bill 6

Changes in the Adoption, Purchase and
Distribution of Instructional Materials in Texas

September 8, 2011

**An Analysis of Senate Bill 6:
Big Changes for Textbook Adoptions in Texas
September 1, 2011**

Executive Summary

Textbook adoptions for Texas public schools have often devolved into “culture war” firestorms, in which members of the State Board of Education (SBOE) try to censor and revise content in textbooks and instructional materials to conform to their own personal and political beliefs.

In 1995, for example, the board demanded hundreds of changes to health textbooks, such as the removal of information about contraception and even line drawings of breast self-exams for cancer. One publisher ultimately withdrew its textbook from consideration rather than bow to board members’ political demands. Six years later, in 2001, the board rejected an advanced placement environmental science textbook because some members objected to its discussions of topics such as pollution and climate change. Board members also tried in 2002 and 2003 to bully publishers into revising content in social studies and science textbooks on topics such as civil rights, church-state issues and evolutionary science.

Teachers and education experts have complained that this politicized process muddies facts and scholarship in classrooms and limits options when local school districts make decisions about which state-approved textbooks to order. As this analysis makes clear, however, the Legislature’s passage of Senate Bill 6 (SB 6) earlier this year represents a sea change in Texas’ system for approving textbooks and other instructional materials. It may take time for school districts to take full advantage of the changes in SB 6. But Texas is now moving toward a system in which what children learn in their classrooms will no longer be held hostage to the personal and political agendas of SBOE members.

It may take time for school districts to take full advantage of the changes in SB 6. But Texas is now moving toward a system in which what children learn in their classrooms will no longer be held hostage to the personal and political agendas of SBOE members.

Textbooks Adoption Process before SB 6

For decades Texas has been one of nearly two dozen states with a centralized process for adopting textbooks for public schools. Under this process, local school districts could use state dollars to pay only for textbooks approved by the SBOE (with a few limited exceptions). In states without a centralized adoption process, local school officials have the flexibility to buy whatever instructional materials they think are most appropriate for their students. SB 6 represents a fundamental policy shift toward giving local school districts in Texas that same flexibility.

Textbook Adoptions after SB 6

SB 6 includes a variety of provisions involving the adoption and funding of instructional materials. Regarding funding, the state will now provide an Instructional Materials Allotment (IMA) to each local school district, open-enrollment charter school, and Juvenile Justice Alternative Education Program (JJAEP). Districts will be able to use their IMAs to purchase instructional materials as well as technological equipment, such as laptops and tablets, to deliver instructional content. They will also have the option of using their allotment to pay for training educational personnel in the use of

instructional materials and technology, and for salaries of individuals who provide support for the use of technological equipment involved in student learning. Districts must certify that they are using their IMAs to provide students with instructional materials that cover all of the state's official curriculum standards.

Regarding adoptions, the SBOE will continue to approve the state's curriculum standards (Texas Essential Knowledge and Skills, or TEKS). In addition, the board will retain its authority to review instructional materials proposed by publishers for state approval. The board must approve instructional materials that are free of errors, meet manufacturing specifications and cover at least half of the state's required curriculum standards (and identify what percentage of standards a publisher's product covers).

Now, however, school districts will not be limited to choosing textbooks and instructional materials only from the SBOE-approved list. Under SB 6, school districts may use their IMAs to purchase:

- electronic instructional materials approved by the education commissioner,
- university-developed and state-developed open-source instructional materials,
- any other textbooks and instructional materials, whether or not they are adopted by the state board,
- technological equipment and training, and
- salaries for staff involved in training.

Effect

For reasons outlined in the bill analysis, in the short term we expect most school districts will continue to purchase textbooks and instructional materials from the SBOE's approved list. Over time, however, school districts are likely to explore their options, especially if they continue to see the SBOE's instructional materials approval process driven by politics rather than sound scholarship. For example, school districts could simply choose to create their own instructional materials review processes. They could also pool their resources with other districts to review instructional materials. Education service centers might also provide reviews of instructional materials.

Most publishers will continue seeking the official stamp of approval from the State Board of Education, giving SBOE members some leverage in pushing for changes to content. Over time, however, publishers will likely feel less pressure to comply with political or ideological demands made by board members regarding content. Indeed, should the SBOE attempt to reject instructional materials because of personal or political objections to content, publishers will still be able to sell their products to local school district officials who believe those products are appropriate for their students.

Ultimately, SB 6 will limit the SBOE's ability to censor instructional content that goes into Texas public schools. Moreover, it will expand options for local school districts when purchasing instructional materials. As a consequence, SB 6 could be an important first step toward making the seemingly endless "culture war" battles over instructional materials textbooks in Texas a meaningless political distraction rather than a hindrance to the education of millions of the state's schoolchildren.

Ultimately, SB 6 will limit the SBOE's ability to censor instructional content that goes into Texas public schools.

Changes in the Adoption, Purchase and Distribution of Instructional Materials in Texas

Senate Bill 6. Texas Legislature, 2011. It may take a couple of years, perhaps as long as five years, for public schools and open-enrollment charter schools¹ to fully appreciate the changes that are coming with the passage of Senate Bill 6 (SB 6) in the 2011 Special Session of the Texas Legislature. SB 6 changed the Texas Education Code in a number of significant ways that will provide a great deal of flexibility to school districts with regard to the resources they use for instruction.

Background. Since the implementation of the Texas Essential Knowledge and Skills (TEKS) curriculum standards, starting in 1998, the State Board of Education's (SBOE) review and adoption cycle included single-subject adoptions such as Grades 1-12 social studies and reading and language arts from elementary through high school grades. The SBOE issued invitations to bid instructional materials (proclamations) that included the TEKS to be addressed by publishers and the maximum amount that the state would pay for each product. The SBOE adopted a list of conforming instructional materials and a list of nonconforming instructional materials. The conforming materials covered 100% of the TEKS for the subject and grade level. Nonconforming instructional materials covered at least 50% of the TEKS for the subject and grade level.

School districts selected conforming and nonconforming materials adopted by the State Board of Education (SBOE) in order to take advantage of state funding designated for instructional materials. If school districts chose instructional materials outside of those adopted by the SBOE, they had to purchase them with funds other than state textbook funds. There were a few exceptions to this rule, including a 70% reimbursement for purchasing non-SBOE adopted instructional materials for subjects in the enrichment curriculum. In addition, if a State Board of Education adoption did not result in available textbooks for any subject included in a proclamation, a school district could become eligible for a waiver to the 70% law and receive a reimbursement up to the per-student maximum cost listed in the proclamation.

In previous legislative sessions, the Texas Legislature appropriated specific funds for technology based on \$30 per student using average daily attendance (ADA) in addition to funds specifically designated for instructional materials. School districts could use the separate technology allotment for their technology needs, including software, infrastructure, and technology training and fund. The *Instructional Materials Allotment (IMA)*, created in SB 6, eliminates a separate technology allotment and provides school districts additional options to select state-adopted instructional materials, and non-adopted materials and technology equipment.

The Instructional Materials Allotment (IMA). The commissioner is responsible for creating an administrative financial account for each school district and open-enrollment charter school based on student enrollment data in the Public Education Information Management System (PEIMS). Each school district will know the specific amount of funds in the account and can plan for instructional materials

SB 6 changed the Texas Education Code in a number of significant ways that will provide a great deal of flexibility to school districts with regard to the resources they use for instruction.

¹ Throughout this document, the term "school districts" also includes open-enrollment charter schools and Juvenile Justice Alternative Education Programs (JJAEPs).

and technology needs based on the amount available in the account and the options a district selects. Unexpended balances in the district accounts do not lapse at the end of the fiscal year, and balances carry forward to the next biennium. In this way, school districts may accumulate balances and use the funds for major purchases in the future.

Certification required by school districts. School districts are required to certify that they have instructional materials that cover all the TEKS. **NOTE:** As part of the ordering process, school districts' local boards of trustees have been required to submit certification that they approved their school districts' instructional materials selections.² We anticipate that the Texas Education Agency will maintain this mechanism for the certification required in SB 6. Alternatively, they may use a function in the educational materials ordering system (EMAT) to fulfill this requirement.

Instructional materials used to certify coverage of the TEKS. To certify coverage of the TEKS, as required in SB 6, school districts may now use instructional materials adopted by the State Board of Education (SBOE), commissioner-adopted electronic textbooks and other materials, university-developed open-source instructional materials, and other instructional materials that are developed or purchased by the school district.

How school districts can use the IMA.³ SB 6 authorizes school districts to use the IMA or order or purchase the following:

- materials from the commissioner's list
- instructional materials adopted by the SBOE
- instructional materials not adopted by the SBOE (a major change from the pre-SB 6 law)
- consumable materials such as workbooks
- instructional materials for bilingual education
- SBOE-adopted supplemental instructional materials
- state-developed and university-developed open-source instructional materials
- instructional materials and technological equipment under contract by the school district
- technological equipment to support commissioner's list products or other instructional materials purchased with the IMA.

School districts may also use the IMA to pay for training personnel in the use of instructional materials, to provide for access to technological equipment, and for salaries of staff that provide technical support for using technology for instructing students.

Priorities for "spending" the IMA in fiscal years 2012 and 2013. Although eventually school districts will have a great deal of flexibility with regard to using the IMA, for the biennium that begins on September 1, 2011, school districts must first use their IMA for instructional materials that enable them to certify that they have instructional materials that cover all the TEKS, with the exception of physical education. An additional requirement for the 2012-2013 biennium is that school districts use the IMA for instructional materials that will assist them in satisfying performance standards on the statewide assessment. When a school district satisfies these requirements, it will then have additional flexibility for using the IMA. School districts must certify that they are using the IMA only for the purposes allowed in statute.⁴

Commissioner's Rules. The commissioner will develop rules that govern the IMA and school districts' management of their instructional materials accounts. Commissioner's rules will include the

² See "Local Board of Trustees Certification" at <http://www.tea.state.tx.us/index2.aspx?id=2147499926>.

³ Texas Education Code, Section 31.0211(c), Instructional Materials Allotment.

⁴ Texas Education Code, Section 31.0213. Certification of Use of Instructional Materials Allotment.

requirement that school districts submit title and publication information for any instructional materials they purchase or order with the IMA. Additional commissioner’s rules will enable school districts to request changes to their IMAs based on information provided to the commissioner of education (e.g., fast-growing school districts, school districts with declining enrollments).

Some changes in the SBOE adoption process. SB 6 revised the SBOE adoption process, including formalizing the practice of using instructional materials for eight years or more. Historically, the state replaced print textbooks every six years because of outdated content and wear and tear. Over the past decade, however, as textbook funding grew tighter, the SBOE renewed expired contracts by two to four years or until TEKS were revised and funding became available to purchase new instructional materials for that subject. SB 6 now requires the SBOE to consider new instructional materials every eight years.

- **Proclamations.** The SBOE’s invitations to submit bids for instructional materials, also known as “proclamations,” must now be issued at least twelve months prior to the school year in which the instructional materials are to be adopted. Previously, the SBOE was required to issue the proclamation at least 24 months prior to the school year for which the materials were to be purchased. In addition, the proclamations must allow for submission of open-source instructional materials, available to the state without charge.
- **Samples.** SB 6 requires publishers to submit electronic samples of their instructional materials, with the exception of samples for prekindergarten instructional materials.⁵ This new sampling requirement extends the action of the SBOE regarding ancillaries (free-with-order materials, such as workbooks, provided by publishers) to the samples required for state adoption.⁶
- **List of adopted instructional materials.** The SBOE now adopts one list rather than lists of conforming and nonconforming instructional materials. The instructional materials must cover at least 50% of the TEKS for the subject and grade level, be error-free and meet manufacturing specifications. The SBOE must identify the percentage of TEKS covered by each item on its adoption list.
- **SBOE and the commissioner’s list.** Before the commissioner places materials on the list of commissioner-adopted materials (electronic instructional materials), the SBOE will have an opportunity to comment on the materials. Within 90 days after placement on the commissioner’s list, the SBOE may require the commissioner to remove materials from the list.
- **SBOE and university-developed open-source instructional materials.** The SBOE is required to place open-source instructional materials on the list of adopted instructional materials if they meet requirements specified in statute. The SBOE may comment on the submissions and post their comments on the SBOE’s list of adopted instructional materials, but it may not keep open-source materials off the adoption list. The SBOE will distribute the comments to school districts.

Ownership of the materials and equipment purchased with the IMA. School districts will own instructional materials and equipment purchased with their instructional materials funds. This change authorizes school districts to sell their printed instructional materials and technological equipment when the SBOE or commissioner discontinues their use. The school districts also have the option of disposing of these materials earlier and notifying the commissioner of this decision. The school districts may use the proceeds to purchase additional instructional materials and equipment allowed under the provisions of the Instructional Materials Allotment.⁷

⁵ Texas Education Code, Section 31.022, Instructional Materials Review and Adoption.

⁶ Effective with Proclamation 2011, the SBOE required all ancillary materials (free with order) to be in digital format or web-delivered. See Texas Administrative Code, §66.69, Ancillary Materials and Proclamation 2011, *Question and Answer Document*, page 32.

⁷ Texas Education Code, Section 31.105, Sale or Disposal of Instructional Materials and Technological Equipment.

Responsibilities of publishers. Publishers are no longer required to distribute their printed instructional materials from a distribution center in Texas or within 300 miles of the Texas border. Institutions eligible to submit open-source instructional materials publishers are not publishers, according to amendments to the Texas Education Code, Chapter 31.

Technology Lending Program Grants. This grant program will enable school districts to provide technology equipment necessary to use electronic instructional materials. The commissioner of education may use up to \$10 million dollars per biennium or an amount appropriated by the Texas Legislature for this purpose.

The funding mechanism. The state purchases instructional materials using appropriated funds from the Available School Fund, a fund created in part from interest generated by the Permanent School Fund. The SBOE has historically issued proclamations and adopted instructional materials prior to knowing whether the legislature would appropriate sufficient funds to cover the purchase of instructional materials already produced and adopted. SB 6 added a provision that requires the SBOE to set aside 50%

... while the law maintains that school districts may use their allotments to purchase SBOE-adopted and commissioner-adopted instructional materials for the foundation subjects, school districts may now use state dollars (through their allotments) to purchase materials that have not been adopted by the SBOE.

of the annual distribution from the Permanent School Fund to the Available School Fund to be placed in the state instructional materials fund. Funds from the Available School Fund are subject to appropriation by the Texas Legislature. This provision begins with the biennium starting on September 1, 2013. For the biennium starting September 1, 2011, 40% of the distribution is set aside to include instructional materials purchases.⁸

Summary: Implications for school districts, publishers, technology and hardware providers. SB 6 introduced major changes in the process for purchasing and distributing instructional materials in Texas public schools. School districts will begin to realize these changes after addressing immediate challenges resulting from a reduction in the Foundation School Program. Local boards of trustees approved selections of instructional materials for school year 2011-12 in spring 2011. The Texas Education Agency informed school districts of their IMA in early August. School

districts began placing orders for these materials during the second week of August 2011, very close to the beginning day of school for most school districts. Publishers' shipments began in mid to late August and will continue until well after the beginning of the school year.

The Instructional Materials Allotment does not entirely open the floodgates for school districts with regard to instructional materials. There are several provisions in the new law requiring school districts to set priorities for using their allotment. They must certify that they have materials that cover the TEKS. In fiscal years 2012 and 2013, school districts must use their allotment to acquire instructional materials that support satisfactory performance on the statewide assessment. On the other hand, while the law maintains that school districts may use their allotments to purchase SBOE-adopted and commissioner-adopted instructional materials for the foundation subjects, school districts may now use state dollars (through their allotments) to purchase materials that have not been adopted by the SBOE.

⁸ Texas Education Code, Section 43.001(d), [Permanent School Fund and Available School Fund](#).

The flexibility offered by SB 6 extends to technological equipment. School districts will have the option to use their allotment to purchase technological equipment. School districts may use the allotments to pay salaries of staff involved in supporting technology in the district.

The elimination of the state technology allotment and the creation of the instructional material allotment will provide school districts with opportunities as well as challenges in the coming years. The new environment will intensify the competition between technology hardware providers and publishers of instructional materials as they compete for school districts' business. School leaders will have opportunities to be creative as they consider open-source instructional materials and other products and equipment that will become available. They will continue to face the challenge of purchasing instructional materials, hardware, or using part of their allotment for salaries. These challenges will intensify as educators, parents, and students face the increased pressure of performing well on the state's new assessment instruments.

We will see resistance to some of the provisions, including the provision that allows placement on the SBOE list of adopted instructional materials by meeting 50% of the TEKS. There has already been concern with the provision that allows school districts to use their instructional materials allotments for equipment. There will be continued resistance to the concept of school districts using state-developed open-source instructional materials that have not been reviewed and approved by the SBOE.

When all the dust settles and new rules govern the new processes, however, school districts will recognize their greatly expanded options. School districts will be free to choose which instructional materials best serve their students, even if those materials have not been approved by the SBOE. It will then be up to the SBOE to manage the Permanent School Fund to ensure that it generates the funds to cover the needs of a student population that increases annually. It will also be the Texas Legislature's duty to appropriate funds so that school districts can take advantage of the expanded options they now have because of SB 6.

Table

Some Changes in the Adoption, Purchase, and Distribution of Instructional Materials in Texas⁹

5.002. References.	Changes the term “textbook” to “instructional materials.”
28.002. State Board of Education (SBOE): Curriculum.	Develop Texas Essential Knowledge and Skills (TEKS).
31.003. Rules.	Adopt rules for adoption, purchase, distribution.
31.004. Certification by school district (SD) ¹⁰ : Instructional Materials (IM) and Curriculum.	Certify to SBOE and Commissioner that they are providing IM to cover all the TEKS.
31.004. IMs used to certify that TEKS are covered.	To certify coverage of the TEKS, an SD may use (1) SBOE-adopted IMs, (2) products adopted by the commissioner, (3) university-developed open-source (UDSO), (4) open-source instructional materials made available by other school districts, (5) IMs developed or purchased by the SD.
31.005. Funding for Open-enrollment Charter Schools.	Entitled to all the rights of SDs in SB 6.
31.021. State Instructional Materials Fund (IMF).	Funds IM Allotment (IMA), Braille/Large type products, expenses related to the review and adoption process, purchase and licensing of open-source IM, freight, technology lending grant program, TX School for the Blind and Visually Impaired, TX School for the Deaf, TYC.
31.0211. Instructional Materials Allotment (IMA).	Commissioner determines the amount of funds to be credited to each SD’s IMA. Charter schools and JJAEPs are eligible for the IMA.
31.0211. How the IMA can be used.	SDs may use IMA for SBOE-adopted IMs, state-developed open-source (SDOS), commissioner-adopted IMs, consumable IMs, supplemental IMs, IMs for bilingual education, technology equipment already under contract, technology equipment to support IMs on the commissioner’s list, training personnel involved in technology, salaries of staff that provide technical support for the use of technology.

⁹ The changes listed in this table are not all-inclusive. They represent new requirements or major changes to previous requirements.

¹⁰ “School districts (SD)” also includes open-enrollment charter schools and Juvenile Justice Alternative Education Programs (JJAEP).

Table: SB 6

<p>31.0211. Priorities for the IMA.</p>	<p>Must <u>first</u> order IMs to enable the SD to certify that it has IMs to cover the TEKS. Then, SDs can use the IMA to order any other IMs. NOTE: Section D-1 states that districts <u>must</u> use the allotment to purchase materials that will assist the district in satisfying performance standards on assessment instruments (expires August 31, 2013).</p>
<p>31.0212. IM Account. Options for SDs. Funds in the IM account do not lapse at the end of the fiscal year. Unexpended funds can be carried forward to the next biennium.</p>	<p>SDs can use IMA for instructional materials and purchase electronic IMs or technology equipment. Commissioner’s rules will be developed to include required documentation from the SD. New commissioner’s rules will also require SDs to provide specific information on titles ordered/purchased with the IMA.</p>
<p>31.0213. Certification by school districts.</p>	<p>Must certify annually that the IMA is used only for the purposes outlined in the law.</p>
<p>31.0214. Adjustments to IMA for high enrollment growth school districts.</p>	<p>School districts may request that the commissioner adjust the number of students used to determine the IMA.</p>
<p>31.022. SBOE review and adoption. New rules required to implement changes in the process.</p>	<p>Must develop a cycle for the review and adoption of IMs. Must follow statutory priorities for developing the cycle. Statute now limits the review to ¼ of the IMs in the foundation curriculum per biennium. SBOE can review IMs for enrichment subjects when they feel it is appropriate.</p>
<p>31.022. IM review and adoption.</p>	<p>SB 6 codified the practice of keeping IMs in use for a minimum of eight years with extensions only if content is current.</p>
<p>31.022. Notice of review and adoption cycle</p>	<p>SBOE must issue a notice of the review and adoption cycle at least 12 months prior to the school year for which the IMs will be adopted. The notice must allow submission of open-source IMs available to the state without charge. Only electronic samples will be accepted (exception is prekindergarten).</p>
<p>31.023 and 31.024. IM Lists.</p>	<p>Statute eliminates conforming and nonconforming; requires that half of TEKS be covered; SBOE must publish percentage of TEKS covered.</p>
<p>31.0231. Commissioner’s list.</p>	<p>SBOE must be provided with an opportunity to review the electronic products adopted by the commissioner. Within 90 days, the SBOE may request that a product be removed from the list. Providers of materials on the commissioner’s list may update navigational features and content as</p>

Table: SB 6

	required to keep the product current (approval needed).
31.0241. Open-source (OS) materials submitted by an eligible institution. SBOE’s role.	For university-developed open source, the SBOE <i>must</i> place the OS products on the list of adopted IMs. OS products placed on the list are subject to certification by the institution that they are error-free and that they qualify for placement on the SBOE list by covering at least 50% of the TEKS for the subject and grade level.
31.0242. SBOE Review of OS materials.	SBOE may review OS materials within 90 days of submission. Must post comments made by the SBOE following their review; must distribute the SBOE’s comments to school districts.
31.026 and 31.0261. Contracts for purchasing of adopted IMs; contracts for printing OS materials.	The SBOE must execute contracts for state-adopted IMs. May execute contracts to print OS materials. SDs may order print copies of OS materials as needed.
31.027. Information to SDs.	Sampling and information to SDs required of publishers do not apply to open-source IMs.
31.028. Braille, large type IMs.	The commissioner now has responsibility for providing the Braille and large type IMs to school districts. This was formerly an SBOE function.
31.029. IMs for bilingual education.	The commissioner will adopt rules for the purchase of IMs for bilingual education. This was formerly an SBOE function.
31.035. Supplemental IMs.	The SBOE may adopt supplemental IMs. This is comparable to previous law. SDs must certify that the supplemental IMs, in combination with other IMs, cover the TEKS.
31.071. State-Developed Open-Source (SDOS).	Commissioner can develop requests for proposals (RFP) for SDOS after considering the need and the availability of funding. Commissioner develops an adoption schedule for SDOS. Experts must evaluate SDOS IMs and the materials must meet requirements for inclusion on the SBOE list of adopted instructional materials. Commissioner may issue an RFP for revising SDOS IMs.
31.073. SDOS. Selection by SDs.	SDs and open-enrollment charter schools can adopt SDOS IMs anytime and without regard for the SBOE review and adoption cycle.
31.074. Distribution and Printing SDOS Instructional Materials.	The commissioner may enter a contract for printing SDOS.
31.075. Licensing; ownership of SDOS.	The state owns the SDOS IM. The state will provide a license to SDs to use SDOS. The commissioner may also provide licenses to other entities to use SDOS.

Table: SB 6

31.101. Selection and Purchase of Instructional Materials.	SDs must notify the SBOE of materials they select from the SBOE-adopted list and the commissioner’s list for subjects in the foundation curriculum. They must notify the SBOE of materials they select from the SBOE and commissioner’s list for subjects in the enrichment curriculum. They must advise the SBOE if they order IMs that are not listed. Districts must use non-listed IMs for the same period as listed IMs.
31.101. Subscription-based IMs.	Districts may change products after one year and after TEA approves the change.
31.102. IMs, Title and custody.	IMs now belong to the SDs or charter schools.
31.105. Sale or disposal of IM and technological equipment.	SDs may now sell IMs and technological equipment after the SBOE or commissioner declares them out of use. They may take this action earlier with notice to the commissioner of education. All proceeds from the sale are to be used for IMA-eligible purchases.
31.151. Responsibilities of Publishers.	Publishers are no longer required to use a Texas-based depository. No other major changes. Institutions submitting open-source materials for adoption are not considered publishers.
32.201. Commissioner: State Technology Lending Grant	Can use up to 10 million dollars for the technology lending grant program. This is subject to appropriation.
43.001. SBOE: Funding.	Set aside 50% of the proceeds of the PFS for the IM Fund. For FY 12 and 13, 40%.

The Texas Freedom Network Education Fund supports research and education efforts that promote religious freedom and individual liberties.

