

HB 1605: Study Guide & Note Catcher

A Bill Regarding Instructional Material Quality & Transparency

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Goal: To provide a section-by-section summary of HB 1605, help readers navigate the new law, and implement it in a manner that empowers parents, supports teachers, and improves the quality of instruction for all public school children. To achieve this goal, we offer three points for each affected section of the Texas Education Code (TEC):

1. the [HB 1605 \(as Enrolled\)](#) page number on which the section begins;
2. a summary of the law’s effect; and
3. as applicable, notes regarding the SBOE’s role and our recommendations.

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1	<p>Section 1: TEC 11.164. Restricting Written Information</p> <p>(a) <i>Amended:</i> Under previous law, classroom teachers may be required to prepare written information regarding lesson plans or information to be presented each class. This section is amended to yield to the newly added subsection (a-1).</p> <p>(a-1) <i>Added:</i> If Instructional Material (IM) is adopted by the ISD board, teachers may use that IM to meet the requirement to prepare a written lesson plan or information to be presented each class.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p> <p>Background: As explained by the Teacher Vacancy Task Force’s (TVTF) Final Report, teachers report spending 7-12 hours per week searching for instructional materials (IM) but are offered less than 4 hours per week to plan.¹ Such a situation results in low-quality IM and does not allow for transparency to parents.² To improve</p>

¹ TEA, *Developing a Thriving Teacher Workforce in Texas: Teacher Vacancy Task Force Final Report*. (Feb. 2023) Page 32. <https://tea.texas.gov/sites/default/files/tvtf-final-report.pdf#page=33>

² TEA, *Understanding the Teacher Experience*. (Oct. 13, 2022) Page 33. <https://tea.texas.gov/sites/default/files/covid/tvtf-meeting-2022-10-13-working-group-teacher-experience.pdf#page=33>; Pondiscio, *How we Make Teaching Too Hard for Mere Mortals*. (May 16, 2016) <https://www.educationnext.org/how-we-make-teaching-too-hard-for-mere-mortals/>

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		<p>the situation, the TVTF recommended improving access to <i>high-quality instructional material (HQIM)</i>.</p> <p>Effect: TEC 11.164 allows ISD-adopted IM to satisfy the requirement that teachers prepare certain documents. If the ISD-adopted IM is high-quality, this section can decrease teacher planning and paperwork, improve transparency for parents, and increase student outcomes.</p>
2	<p>Section 2: TEC 21.044. Educator Preparation</p> <p>(a-1) <i>Amended:</i> Under previous law, SBOE rules regarding training for teacher certification must include basic knowledge of (1) disabilities and 504 conditions, (2) instructional planning techniques, and (3) evidence-based inclusive instructional practices. This section is amended to add that teachers must understand and be able to use open education resource (OER) IM that is included in the SBOE’s approved IM list under TEC 31.022. (HB 1605 section 22)</p> <p>(h) <i>Added:</i> Prohibits an educator preparation program (EPP) from including instruction on use of IM that attempts to teach reading via <i>three-cueing</i> as defined by TEC 28.0062(a-1).</p>	<p>SBOE Role: Rulemaking required</p> <hr/> <p>Notes:</p> <p>(a-1) Certified teachers will understand how to use OER IM, with the goal of decreasing their lesson planning workload and improving the quality of their lessons.</p> <p>(h) Further advances Texas literacy instruction toward phonics and away from whole language or balanced literacy techniques. See edit to TEC 28.0062 (HB 1605 section 10) for <i>three-cueing</i> and <i>phonics</i> background.</p>
4	<p>Section 3: TEC 21.4045. Planning and Noninstructional Duties of Teachers</p> <p>(a) <i>Added:</i> ISDs & teachers may form agreements in which a teacher performs a duty regarding initial lesson plan design or IM selection. In general, this may include duties not usually performed during the school day or assigned to other teachers.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

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	<p>(b) <i>Added:</i> Under current law (TEC 21.404), teachers must be given 45 minutes per day and 450 minutes every two weeks for instructional preparation (ex. parent conferences, grading papers, planning). Under added subsection (b), teachers who enter into agreements under subsection (a) may be required to use this time to plan lessons and select IM.</p> <p>(c) <i>Added:</i> A supplemental agreement allowed under subsection (a) must explicitly state each of the teacher's duties unrelated to providing instruction.</p>	
5	<p>Section 4: TEC 22.05125. Immunity from Disciplinary Proceedings for Classroom Teachers</p> <p>(a) <i>Added:</i> Defines “disciplinary proceeding” as in TEC 22.0512—an action brought by an ISD or SBEC.</p> <p>(b) <i>Added:</i> Teachers cannot be subject to a disciplinary proceeding for violating TEC 28.0022, the 1st Amendment, or a related law if they faithfully used only SBOE-approved IM (in TEC 31.022).</p> <p>(c) <i>Added:</i> The immunity in subsection (b) is in addition to any other immunity provided by law.</p>	<p>SBOE Role: This section underscores the importance of SBOE rulemaking.</p> <hr/> <p>Notes:</p> <p>(b) TEC 28.0022 contains the prohibitions against CRT established by the Legislature through SB 3 (2021). This subsection effectively provides safe harbor for violating TEC 28.0022 <i>if</i> the instruction occurs <i>because</i> the SBOE-approved IM that violates TEC 28.0022. In Notes to TEC 31.023(b)-(c) (HB 1605 section 23), we offer recommendations to mitigate this risk.</p>
6	<p>Section 5: TEC 26.006. Access to Teaching Materials</p> <p>(b) <i>Amended:</i> Under previous law, ISDs must make teaching materials and tests available for parent review during reasonable hours. As amended, subsection (b) requires that tests be available for in-person review and IM submitted to TEA-review</p>	<p>SBOE Role: TEC 26.006 relies on TEC 31.154 (HB 1605 section 46), in which SBOE has power to set standards regarding parent portals.</p> <hr/> <p>Notes:</p>

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	<p>(under TEC 31.023) be available for in-person and online review through the parent portal (created by TEC 31.154). In providing IM access, ISDs must (1) allow access 30 days before and after the school year, and (2) include all IM except future tests and graded assignments.</p> <p>(b-1) <i>Added:</i> This is a renumbered subsection allowing ISDs to specify reasonable in-person review hours.</p> <p>(f) <i>Added:</i> ISDs cannot deny parents access to the TEC 31.154 (Section 46) parent portal.</p>	<p>TEC 26.006 takes a step toward empowering parents with transparency into what their children are learning by increasing parents’ access to certain IM (i.e., IM submitted for TEA-review). As mentioned in Notes to TEC 31.154 (HB 1605 section 46), the SBOE’s standards for entities that publish IM via online parent portals should seek strategies to help parents efficiently find the IM they are seeking.</p>
7	<p>Section 6: TEC 26.0061. Right to Request Instructional Material Review</p> <p>(a) <i>Added:</i> ISD boards must establish a process for parents to request an IM review under TEC 31.0252 for a subject or grade in which their child is enrolled.</p> <p>(b) <i>Added:</i> The process in (a) has three criteria, which are that it (1) can’t require that more than one parent make the request, (2) must allow the board to determine whether to grant the request or do so through an appeal process, and (3) may allow parents to review IM before the ISD moves forward with the TEC 31.0252 review.</p> <p>(c) <i>Added:</i> Creates a parent petition process. If 25-49% of parents sign a petition requesting a TEC 31.0252 IM review, the board may decline the review by a majority vote. If $\geq 50\%$ parents sign the petition, the board must order the IM review. The review must include each subject and grade specified in the petition.</p>	<p>SBOE Role: Optional Rulemaking</p> <hr/> <p>Notes:</p> <p>Over the last three years, parents have been frustrated when the quality of instruction did not meet their expectations or the content contradicted their family values. A TEA study confirms the difficulty with quality: among 26 school systems, only 19% of elementary reading lessons are on-grade level.⁴ The effect of below-grade level IM is to hide the fact that a student is falling behind. This section aims to improve the situation by allowing parents to trigger a local review of IM. The review examines whether IM in a subject or grade is of sufficient quality and is aligned with the school system’s IM. Unfortunately, the threshold to trigger a review is very high. We</p>

⁴ TEA, *Understanding the Teacher Experience*. (Oct. 13, 2022) Page 31. <https://tea.texas.gov/sites/default/files/covid/tvtf-meeting-2022-10-13-working-group-teacher-experience.pdf#page=31>

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	<p>(d) <i>Added:</i> A max of one review in a subject or grade is required at each campus each school year.</p> <p>(e) <i>Added:</i> Parent access under this section supplements, not supplants, their other rights to access IM.³</p> <p>(f) <i>Added:</i> SBOE <u>may</u> adopt rules to implement this section.</p>	<p>recommend that SBOE adopt rules to empower parents as much as possible throughout the IM review process. See TEC 31.0252 (HB 1605 section 24) for more details regarding the parent-triggered IM review.</p>
8	<p>Section 7: TEC 28.002. Required Curriculum</p> <p>(c-4) <i>Added:</i> In adopting ELA TEKS, the SBOE will adopt (1) a list of required vocabulary, and (2) at least one literary work to be taught in each grade level. The list of vocabulary must support the TEKS for other subjects.</p> <p>(c-5) <i>Added:</i> SBOE must begin the process of specifying the vocabulary list and literary works by February 1, 2024. SBOE must request a list of recommendations from TEA; that request is considered a sufficient first step.</p>	<p>SBOE Role: Yes</p> <hr/> <p>Notes:</p> <p>One of the best ways to improve reading comprehension is to teach children—as early as possible—the history and science that we often put off until later. TEC 28.00 provides a strong foundation to achieve this goal and we recommend consulting the following sources:</p> <ol style="list-style-type: none"> 1. Lindsay, <i>Our Underachieving Civics Curriculum</i> (Nov. 2017) Pages 6-17. 2. Founders Classical Academy, <i>Curriculum Maps & Syllabi</i>. 3. Founders Classical Academy, <i>Summer Reading Lists</i>. 4. Core Knowledge Foundation, <i>Vocabulary and Latin Phrases integrated into the Core Knowledge Sequence</i>.

³ For example, [TEC 26.006](#) lists certain parent rights to transparency regarding teaching materials.

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9	<p>Section 8: TEC 28.0027. District Curriculum Scope, Sequence, and Instructional Material (title change only)</p> <p><i>Non-material edit.</i></p>	<p>SBOE Role:</p> <hr/> <p>Notes: <i>Non-material edit.</i></p>
9	<p>Section 9: TEC 28.0027. District Curriculum Scope, Sequence, and Instructional Material</p> <p>(a) <i>Amended:</i> Under previous law, ISDs are required to provide sufficient time for teachers to teach and students to learn the ISD’s scope and sequence (S&S) for a required subject, whether a foundational course (ELA, math, science, or social studies) or enrichment course (foreign languages, health, PE, fine arts, etc.) (TEC 28.002(a)). As amended, this time must be provided for the ISD’s S&S <u>or IM</u>.</p> <p>(b) <i>Amended:</i> Under previous law, teachers cannot be penalized for not following their ISD’s S&S if the teacher determines that students need a different amount of time to reach proficiency in TEKS for that subject & grade.⁵ As amended, teachers cannot be penalized for not following <u>the pacing</u> their ISD’s S&S <u>or IM</u>.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p> <p>Protections under previous law were broader. As amended, teachers are protected from penalty for not following their school’s S&S or IM <u>pacing</u>.</p>
9	<p>Section 10: TEC 28.0062. Reading Standards for Kindergarten through Third Grade</p> <p>(a-1) <i>Added:</i> Defines <i>three-cueing</i> as a method of reading instruction in which a student uses context clues and sentence structure to read, rather than sounding out the</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

⁵ However, under 28.0027(c) teachers *may* be penalized if classroom observations reveal instructional deficiencies. HB 1605 did not affect this provision.

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	<p>words or using a <i>phonics-based</i> approach. ISDs and charters are prohibited from using <i>three-cueing</i> in the state-required phonics curriculum (TEC 28.0062(a)(1)).</p>	<p>For context, <i>three-cueing</i> is used in the <i>whole language</i> and <i>balanced literacy</i> approaches to teaching reading. Proponents of these approaches do not rely primarily on the systematic instruction in foundational skills (ex. decoding and language comprehension) that allow a child to read. They are ineffective but have been widespread in K-12 education for at least the last 80 years. In contrast, <i>phonics instruction</i> provides critical foundational skills. In 2019, the Texas Legislature passed HB 3, which included the <u>requirement</u> that all public schools teach reading in grades K-3 by providing a phonics curriculum using direct instruction (TEC 28.0062(a)(1)). In HB 1605, the Legislature further advanced effective reading instruction by taking the subsequent step of <u>prohibiting</u> <i>three-cueing</i>. For background information on this critical topic, see:</p> <ol style="list-style-type: none"> 1. TEA, 2019 Annual Report, page 9. 2. Wexler, <i>The Knowledge Gap</i>, Chapters 4-5. 3. Morath, <i>Commissioner’s Comments at SBOE General Meeting, Jan. 28, 2022.</i> (timestamp: 10:00-21:00).
10	<p>Section 11: TEC Ch. 31. Instructional Materials and Technology (title change only)</p> <p><i>Non-material edit.</i></p>	<p>SBOE Role:</p> <hr/> <p>Notes: <i>Non-material edit.</i></p>
10	<p>Section 12: TEC 31.002. Definitions</p>	<p>SBOE Role:</p> <hr/>

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	<p>(1) <i>Added:</i> Defines <i>full subject tier one IM</i> as IM that provides mastery of the TEKS for a subject or grade level without the need for supplementation.</p> <p>(1-a) <i>Amended:</i> This new subsection amends the current definition of IM. Under previous law, IM consists of the content that conveys a subject’s essential knowledge and skills. As amended, <i>IM</i> includes material used by (A) a teacher (ex. a lesson plan, answer key, grading rubric, or unit plan), (B) a principal or campus instructional leader, and (C) a student (ex. book, workbook, etc.).</p> <p>(1-b) <i>Amended:</i> This new subsection amends the current definition of OER IM to remove the reference to <u>state-developed</u> OER IM.</p> <p>(1-c) <i>Added:</i> Defines <i>partial subject tier one IM</i> as IM that provides mastery of <u>a portion of the TEKS</u> for a subject or grade level without the need for supplementation.</p> <p>(3) <i>Added:</i> Defines <i>supplemental IM</i> as IM that assists in the instruction of one or more TEKS for a subject in the required curriculum.</p>	<p>Notes:</p> <p>These revised definitions are the basis of the extensive edits to TEC Ch. 31. See HB 1605 bill sections 20-39.</p>
12	<p>Section 13: TEC 31.003. Rules</p> <p>(b) <i>Added:</i> Under previous law, SBOE has authority to adopt rules to implement TEC Ch. 31’s requirements regarding IM. As amended, TEA commissioner may also adopt rules as needed to implement a part of TEC Ch. 31 that the commissioner or TEA is responsible for implementing.</p>	<p>SBOE Role: Rulemaking authorized for TEC Ch. 31</p> <hr/> <p>Notes:</p> <p>The rulemaking authority granted in TEC 31.003 is foundational. Note that SBOE has rulemaking authority “for the adoption, distribution, care, use, and disposal” of IM</p>

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		<p>throughout TEC Ch. 31. Within HB 1605, the lion’s share of new rulemaking will pertain to TEC 31.022 and 31.023. In addition, we recommend the following:</p> <ol style="list-style-type: none"> 1. TEC 26.0061: Parents may trigger a local review of IM but the threshold to trigger a review is high. We recommend that SBOE seek ways to remove unnecessary barriers that parents face in trying to evaluate IM quality. 2. TEC 31.072: OER IM cannot be made available until it is evaluated by teachers and parents. We recommend that SBOE seek an innovative process to identify parents who will evaluate OER IM. 3. TEC 31.1011: Ensure that all IM presented to students complies with TEC 31.1011(a)(1)(B), which protects students from obscene and harmful material. For example, these protections should be applied to experimental IM allowed under TEC 31.0721 (HB 1605 section 33).
12	<p>Section 14: TEC 31.006. Advisory Committee</p> <p><i>Added:</i> The SBOE or the TEA may form an <i>advisory committee</i> to implement TEC Ch. 31’s requirements regarding IM.⁶</p>	<p>SBOE Role: Optional advisory committee.</p> <hr/> <p>Notes:</p>

⁶ Texas Govt. Code (TGC) Ch. 2110 does not apply. [TGC 2110](#) imposes requirements on advisory committees, such as limiting the size (24 individuals), composition (industry members & consumers), presiding officer (elected by the committee), and reimbursement (legislative appropriation).

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12	<p>Section 15: TEC Ch. 31: Subchapter A-1. State Funding for Instructional Materials and Technology (title change only)</p> <p><i>Non-material edit.</i></p>	<p>SBOE Role:</p> <hr/> <p>Notes: <i>Non-material edit.</i></p>
12	<p>Section 16: TEC 31.0205. Funding for Open-Enrollment Charter Schools (section number changed)</p> <p><i>Non-material edit.</i></p>	<p>SBOE Role:</p> <hr/> <p>Notes: <i>Non-material edit.</i></p>
13	<p>Section 17: TEC 31.021. State Instructional Materials and Technology Fund</p> <p>(c) <i>Amended:</i> Under previous law, the Instructional Materials and Technology Fund (IMTF) may be used to:</p> <ul style="list-style-type: none"> (1) fund each ISD’s & charter’s Instructional Materials and Technology Allotment (IMTA), (2) purchase special IM for blind and visually impaired students in public school, (3) pay the costs of IM review and adoption, (4) pay the costs of OER IM purchase and licensing, (5) purchase IM, including shipping, (6) fund a technology lending grant (TEC 32.301), (7) provide funding to TSBVI, TSD, and TJJD,⁷ and 	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

⁷ Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and the Texas Juvenile Justice Department.

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	<p>(8) pay for the IM web portal.</p> <p>Three of these (3, 4, and 8) are amended so that the IMTF may be used for (3) TEA’s new IM website created under TEC 31.025 (section 24), and (4) printing or other reproduction of IM. In addition, (8) is deleted, consistent with the shift from a web portal to the new IM website.</p>	
14	<p>Section 17: TEC 31.0212. Instructional Materials and Technology Account</p> <p>(c) <i>Amended:</i> Under previous law, ISDs may use their IMTA to purchase electronic IM or technology. This provision is removed.</p> <p>(d) <i>Amended:</i> Under previous law, TEA rules must require ISDs to provide IM title and publication information. for all IM purchased with an IMTA. The reference to TEA rules is removed; as a result, the same requirement is placed in statute.⁸</p> <p>(e) <i>Added:</i> TEA must provide an online requisition and disbursement system for each ISD’s IMTA.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
15	<p>Section 17: TEC 31.0214. Adjustment for High Enrollment Growth Districts</p> <p>(b) <i>Amended:</i> Subsection that allows TEA rulemaking is removed. This is a non-material edit because TEC 31.003 (HB 1605 section 13) allows TEA to make rules as needed to implement any part of TEC Ch. 31 for which TEA is responsible.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

⁸ In other words, the requirement is moved from administrative law to legislative law. The requirement itself is unchanged.

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13-16	<p>Section 17: TEC 31.0215. Instructional Materials and Technology Allotment Purchases</p> <p>(b) <i>Amended:</i> Under previous law, TEA commissioner may allow ISDs and charter schools to receive IM before paying for them, up to 80% of the ISD’s estimated IMTA. As amended, the commissioner <u>must</u> allow for these advance purchases.</p> <p>(f) <i>Amended:</i> Subsection that allows TEA rulemaking is removed. This is a non-material edit because TEC 31.003 (HB 1605 section 13) allows TEA to make rules as needed to implement any part of TEC Ch. 31 for which TEA is responsible.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
17	<p>Section 18: TEC 31.0211. Instructional Materials and Technology Allotment</p> <p>(c) <i>Amended:</i> Under previous law, an ISD’s IMTA may be used to:⁹</p> <p>(1) purchase:</p> <ul style="list-style-type: none"> (A) IM on TEA’s list (TEC 31.0231), (B) IM, regardless of whether the IM is SBOE-approved (TEC 31.024), (C) consumable IM (ex. workbooks), (D) bilingual class IM, (E) college preparation IM, (F) supplemental IM, 	<p>SBOE Role:</p> <hr/> <p>Notes:</p> <p>(c)</p> <ul style="list-style-type: none"> • The edits in (1)(A), (F), and (H) bring this subsection into alignment with HB 1605’s larger changes to create a process by which TEA reviews and SBOE approves or rejects IM (see TEC 31.022 and 31.023, HB 1605 sections 22-23). • The edit in (1)(E) aligns with the new definition of <i>supplemental IM</i> (TEC 31.002) and the inclusion of supplemental IM in the new process by which

⁹ In 2021, two bills, HBs 1525 and 3261, edited TEC 31.0211(c), leading to non-material conflicts.

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	<p>(G) state-developed OER IM, (H) IM and technology from contracts in effect before 9/1/11, (I) technology supporting materials on TEA’s list or other IM purchased with the IMTA, (J) software allowing for IM inventory and analysis of IM effectiveness, (K) internet connection technology; and</p> <p>(2) pay:</p> <p>(A) for training educators in how to use IM, (B) for training staff in how to administer electronic tests, (C) the salary of IT staff, and (D) for internet access costs.</p> <p>Four of these are amended so that an ISD’s IMTA may be used to:</p> <p>(1) purchase:</p> <p>(A) combines (A) and (B) so that the reference to TEA’s IM list is removed, (E) supplemental IM,¹⁰ (F) OER IM (removes reference to <u>state-developed OER IM</u>), and (H) technology supporting an IM (removes reference to TEA’s IM list).</p>	<p>TEA reviews and SBOE approves or rejects IM. Formerly, the SBOE could adopt supplemental IM under TEC 31.035; this law is repealed (HB 1605 section 51).</p> <p>(d) This untenable requirement is removed.</p> <p>(f) <i>If implemented effectively</i>, the prohibition against using the IMTA for IM that is obscene, harmful, or in violation of TEC 31.1011 will protect children by ensuring that IMTA funds are used for their intended purpose: high-quality instruction. For a detailed discussion of prohibited IM, see TEC 31.1011 (HB 1605 section 40).</p>

¹⁰ *Supplemental IM* is a newly defined term in TEC 31.002.

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	<p>(d) <i>Amended:</i> Under previous law, TEA must annually estimate and report to SBOE the cost of all technology needs for all ISDs. This subsection is removed.</p> <p>(f) <i>Added:</i> Prohibits an IMTA from being used to purchase IM that is obscene, harmful, or violates TEC 31.1011(a)(1)(B).¹¹</p>	
21	<p>Section 19: TEC 31.0216. Agency Purchase of Instructional Materials and Technology</p> <p>(a) <i>Added:</i> TEA may contract directly with a 3rd party to purchase IM and technology for ISDs to use.</p> <p>(b) <i>Added:</i> Contracting provisions from the Department of Information Resources created under TGC Ch. 2157 are not required, but TEA may participate in a program authorized by TGC Ch. 2157.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
21	<p>Section 20: TEC Ch. 31. Subchapter B. State Review and Adoption (title change only)</p> <p><i>Non-material edit.</i></p>	<p>SBOE Role:</p> <hr/> <p>Notes: <i>Non-material edit.</i></p>
21	<p>Section 21: TEC 31.022. State Board of Education Instructional Materials Review and Approval (title change only)</p> <p><i>Non-material edit.</i></p>	<p>SBOE Role:</p> <hr/> <p>Notes: <i>Non-material edit.</i></p>

¹¹ Sentence that allows TEA rulemaking is removed. This is a non-material edit because TEC 31.003 (Section 13) allows TEA to make rules as needed to implement any part of TEC Ch. 31 for which TEA is responsible.

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21	<p>Section 22: TEC 31.022. State Board of Education Instructional Materials Review and Approval</p> <p>(a) <i>Amended:</i> Under previous law, the SBOE adopts an IM review and adoption cycle for all required subjects in grades PK-12. The SBOE is not required to review and adopt IM for all grade levels in a single year. In addition, priority must be given to (A) foundation subjects (ELA, math, science, social studies) for which the TEKS and STAAR have been substantially revised, (B) foundation subjects for which TEKS have been substantially revised, (C) foundation subjects not in (A) or (B), and (D) enrichment subjects (foreign languages, health, PE, fine arts, etc.). This previous law is removed and replaced with the following:</p> <ol style="list-style-type: none"> 1. SBOE will review IM given to it by TEA (via process in TEC 31.023). 2. SBOE may review the IM. SBOE must determine that the IM is: <ol style="list-style-type: none"> a. free from factual error, b. suitable for its intended subject and grade, and c. does not include <i>three-cueing</i>, if it is intended for K-3 reading instruction. 3. SBOE must make a list of approved IM and may make a list of rejected IM. <p>(b) <i>Amended:</i> Under previous law, the SBOE may not review more than one fourth of foundation curriculum IM each biennium. In addition, SBOE was required to make rules to completely review each subject’s IM every 8 years, unless the content is</p>	<p>SBOE Role: This section provides a core function of SBOE under HB 1605.</p> <hr/> <p>Notes:</p>

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	<p>sufficient. This was removed and replaced with the following: the SBOE may adopt criteria for the approval of IM under Subsection (a). In these criteria, the SBOE may:</p> <ol style="list-style-type: none"> 1. define the minimum percentage of the TEKS that any <i>full subject tier one IM</i>¹² must include (for example, 100%); 2. require electronic samples of the IM; 3. require physical specifications; 4. require that the IM not include content that is obscene, harmful, or in violation of TEC 31.1011(a)(1)(B);¹³ and 5. require that the IM be publicly available for review. <p>(c) <i>Amended:</i> Under previous law, the SBOE adopts rules to completely review enrichment curriculum IM. There is no required timeline. This previous law is removed and replaced with the following: SBOE may remove IM from the approved list if the TEKS covered by the IM change or the IM changes without SBOE approval.</p> <p>(c-1) <i>Added:</i> If the SBOE intends to remove an IM from its approved list because the board intends to revise the TEKS, the SBOE must issue a proclamation requesting that the IM be revised. The SBOE must provide ISDs with an updated list of approved IM no later than December 1 of the school year before the TEKS revision will take effect.</p>	

¹² Full subject tier one IM is a new term defined in TEC 31.002.

¹³ For details on TEC 31.1011, see HB 1605 section 40.

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	<p>(d) <i>Amended:</i> Under previous law, the SBOE must publish notice of an IM review and adoption cycle at least one year before the school year for which the IM will be adopted. This previous law is removed and replaced with the following: SBOE must indicate whether approved IM can be made available through the parent portal created in TEC 31.154.</p> <p>Note that the remaining subsections (e)-(i) are repealed in HB 1605 section 51.</p>	
25	<p>Section 23: TEC 31.023. Instructional Material Review</p> <p>(a) <i>Amended:</i> Under previous law, SBOE must adopt a list of IM for each subject and grade. The list included IM that: (1) met SBOE’s physical specifications, and (2) covered at least 50% of the TEKS. This previous law is removed and replaced with the following: the TEA commissioner will establish—with the SBOE’s consultation and approval—a process for the annual review of IM by TEA. This work must:</p> <ul style="list-style-type: none"> (1) establish a process for TEA to select IM for review, that <u>includes</u>:¹⁴ <ul style="list-style-type: none"> (A) how the TEA reviews requests to review IM from (i) ISDs, (ii) an SBOE majority,¹⁵ (iii) an IM publisher; (B) requiring TEA to review IM if requested to do so by a majority vote of the SBOE; 	<p>SBOE Role: This section provides a core function of SBOE under HB 1605.</p> <hr/> <p>Notes:</p> <p>(a) To understand the limits of SBOE’s and TEA’s authority over the IM review process, note that, a requirement using “including” is not limited by the words that follow. As TGC 311.005(13) and 312.011(19) state: “‘Includes’ and ‘including’ are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.” As written, subsection (a) sets several minimum criteria and then entrusts SBOE and TEA with discretion to select remaining relevant criteria.</p>

¹⁴ Note well: in law, a requirement using “including” is not limited by the words that follow. See *Recommendations* for an analysis.

¹⁵ Note that no vote is required under (1)(A). As such, it may be possible for a majority of SBOE members to informally request such a review.

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	<p>(C) reviewing IM acquired with IMTA funds (under TEC 31.0212); and</p> <p>(D) reviewing IM on a timeline that aligns with the SBOE’s work when the SBOE revises TEKS and issues a proclamation that the related IM must be revised (TEC 31.022(c-1);</p> <p>(2) describe the types of IM that TEA may review, <u>including</u>:</p> <p>(A) partial subject tier one IM, including K-3 phonics IM;</p> <p>(B) OER IM;</p> <p>(C) ISD-developed IM sent to TEA for review; and</p> <p>(D) full subject tier one IM that is commercially available;</p> <p>(3) establish procedure for TEA to review IM, <u>including</u>:</p> <p>(A) the use of an SBOE-approved rubric,</p> <p>(B) consultation with classroom teachers and other curriculum experts in the subject and grade; and</p> <p>(4) allow TEA to review at least 200 IM annually.</p> <p>(a-1) <i>Amended</i>: Under previous law, the SBOE determines the percentage of TEKS covered by each IM that the board reviews. This previous law is removed.</p>	<p>(b)-(c) The content of IM review results provided by TEA to SBOE will be of utmost importance to inform the SBOE’s decision. For example, we recommend that TEA’s results shared with the SBOE:</p> <ul style="list-style-type: none"> • include the SBOE-approved rubric created under subsection (b); and • list the TEC 31.1011(A)(1)(B) criteria and the TEC 28.0022 criteria that an IM does or does not contain.¹⁶ <p>The content of the results offered to SBOE under subsection (c) will be determined by the SBOE-approved process defined in subsection (a).</p>

¹⁶ The importance of fully informed approval is underscored by TEC 22.05125 (HB 1605 section 4), which provides safe harbor to teachers who violate TEC 28.0022 if the IM they used is SBOE-approved.

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	<p>(b) <i>Amended:</i> Under previous law, each IM on the SBOE’s list must be (1) free from factual error, (2) suitable for the intended subject and grade, and (3) reviewed by experts in the subject and grade. This previous law is removed and replaced with the following: to review IM, TEA must use a rubric developed with the SBOE’s consultation and approval. The rubric must allow for a determination of several criteria, including:</p> <ul style="list-style-type: none"> (1) whether IM is free from factual error and complies with TEC 31.022; (2) the IM’s quality; (3) the TEKS covered by the IM for the intended subject and grade, including: <ul style="list-style-type: none"> (A) a list of each TEKS covered, (B) for full subject tier one IM, the percent of TEKS covered, and (C) for partial subject tier one IM, the percent of relevant TEKS covered; (4) whether the IM contains obscene or harmful content or is incompatible with TEC 31.1011(a)(1)(B) (see HB 1605 section 40). <p>(c) <i>Added:</i> After TEA reviews the IM, the agency will provide the results and any related recommendations to the SBOE for approval or rejection. As explained in TEC 31.022(a), a list of approved IM is required; a list of rejected IM is optional.</p> <p>(d) <i>Added:</i> TEA must use legislatively appropriated funds to review IM or the IMTF to implement this section.</p>	

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	<p>(e) <i>Added:</i> The IM review process under Subsection (a) and the rubric created under Subsection (b) are automatically approved by the SBOE if the SBOE does not reject them 90 days after TEA submits them to the board.</p>	
<p>29</p>	<p>Section 24: TEC 31.025. Instructional Material Internet Website</p> <p>(a) <i>Added:</i> TEA must maintain an IM website to help ISDs locate and select IM.</p> <p>(b) <i>Added:</i> For each IM on TEA’s IM website, TEA must include: (1) IM’s price, (2) the IM’s tech. requirements, (3) the results of TEA’s IM review (TEC 31.023), (4) whether the IM is SBOE-approved or -rejected (TEC 31.022), and (5) any other information TEA deems relevant to ISDs selecting IM.</p> <p>(c) <i>Added:</i> The TEA’s IM website must include the repository of OER IM (TEC 31.0722, HB 1605 section 34).</p> <p>(d) <i>Added:</i> TEA must use appropriated funds to review IM or the IMTF to implement this section.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p> <p>(b) The TEA’s IM website can include IM that the SBOE had rejected (TEC 31.025(b)(4)). However, TEC 31.0721(b) prohibits OER IM from being made available unless it is SBOE-approved. What distinctions are needed to understand how these two TEC sections interact?</p>
<p>30</p>	<p>Section 24: TEC 31.0251. Instructional Material Support</p> <p>(a) <i>Added:</i> ISDs may ask TEA for help with evaluating, adopting, or using IM. TEA shall provide requested help.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

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	(b) <i>Added:</i> TEA cannot require ISDs to use IM reviewed by TEA (TEC 31.023) or IM approved by SBOE (TEC 31.023), except as otherwise provided. ¹⁷	
30	<p>Section 24: TEC 31.0252. Local Review of Classroom Instructional Material</p> <p>(a) <i>Added:</i> In consultation with stakeholders, TEA must develop standards by which ISDs will review IM used by a foundation curriculum teacher (ELA, math, science, or social studies) to determine whether it (1) is aligned with the ISD’s or campus’ IM, and (2) is on grade level when compared with the TEKS.</p> <p>(b) <i>Added:</i> TEA must develop a rubric to determine whether reviewed IM is on grade level. SBOE must approve the rubric.</p> <p>(c) <i>Added:</i> TEA’s standards for IM review (1) must minimize the time teachers spend on the review, (2) cannot require teachers to spend more than 30 minutes on the review (unless unavoidable), and (3) must allow only one review per subject and grade each school year at each campus.</p> <p>(d) <i>Added:</i> TEA must allow Education Service Centers (ESCs) or TEA-approved reviewers to review the IM. TEA must train these reviewers.</p> <p>(e) <i>Added:</i> TEA must award grants to help ISDs conduct these IM reviews.</p>	<p>SBOE Role: Approval of TEA-created rubric for parent-triggered IM review.</p> <hr/> <p>Notes:</p> <p>Over the last three years, parents have been frustrated when the quality of instruction did not meet their expectations or the content contradicted their family values. To improve this, a parent trigger is created in TEC 26.0061 (HB 1605 section 6) to review IM. In TEC 31.0252, the Legislature entrusts TEA with discretion to define the review process itself and SBOE with discretion over the rubric that will be used to determine if IM is TEKS-aligned.</p> <p>We recommend that the TEA’s standards for the ISD’s review process include communication with the campus parents who triggered the IM review, including communication of the review’s results.</p>

¹⁷ For example of such an exception, see [TEC 39A.059\(1\)](#), regarding the implementation of *targeted improvement plans (TIPs)*, which include implementing research-based best practices for curriculum development and classroom instruction. Because instructional materials are the content that conveys essential knowledge and skills in a school’s curriculum, schools with a TIP may be required to implement IM that is TEA-reviewed or SBOE-approved. The goal is to improve IM quality at failing schools. Under the current accountability pause in which D- and F-rated campuses are not rated, campuses are required to implement a TIP if they received a D or F rating in 2019 and did not receive an A, B, or C in 2022. (TEA, [Information for Local Educational Agencies \(LEAs\) and Campuses Identified to Engage in School Improvement Interventions](#), August 18, 2022; [TEC 39A.060](#))

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31	<p>Section 25: TEC 31.026. Contract; Price</p> <p>(a) <i>Amended:</i> Under previous law, the SBOE must execute a contract for the purchase or licensing of each adopted IM. As amended, the SBOE may execute such a contract, but is not required to do so.</p> <p>(b) <i>Amended:</i> Under previous law, IM publishers were required to provide to the SBOE the number of IMs required by all ISDs, in a way that aligned with the SBOE’s IM adoption cycle. As amended, the reference to the adoption cycle is removed; in effect, IM publishers will provide the SBOE the number of IMs required by all ISDs for the term of the contact.</p> <p>Deletes existing text mandating that a contract require the publisher to provide the number of instructional materials required by school districts in this state for the term of the contract, which must coincide with SBOE's adoption cycle.</p>	<p>SBOE Role: Optional contract execution.</p> <hr/> <p>Notes:</p>
32	<p>Section 26: TEC Ch. 31. Subchapter B-1. Open Education Resource Instructional Materials (title change only)</p> <p><i>Non-material edit.</i></p>	<p>SBOE Role:</p> <hr/> <p>Notes: <i>Non-material edit.</i></p>
32	<p>Section 27: TEC 31.0701. References to State-Developed Open Education Resource Instructional Material</p> <p>This technical edit ensures that any references to the old term <i>state-developed OER</i> are interpreted to refer to TEC 31.002’s updated term: <i>OER IM</i>.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

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32	<p>Section 28: TEC 31.071. Availability of Open Education Resource Instructional Material</p> <p>(a) <i>Amended:</i> Under previous law, TEA commissioner had the option of ensuring that OER was available to ISDs. As amended, the commissioner must ensure that OER IM is available for ISDs to use.</p> <p>(b) <i>Amended:</i> Under previous law, the TEA commissioner was required to purchase OER through a competitive process. As amended, to make OER IM available to ISDs, the commissioner may: (1) purchase an OER license, (2) acquire OER ownership, (3) develop OER, (4) adopt OER, or (5) any combination of (1)-(4).</p> <p>(b-1) <i>Amended:</i> TEA commissioner can make more than one OER per grade and subject available.</p> <p>(b-2) <i>Added:</i> TEA commissioner must ensure that:</p> <ul style="list-style-type: none"> (1) <i>full subject tier one IM</i> is available as OER for (A) K-8 ELA and math, (B) PK ELA and math, and (C) all K-5 foundation curriculum;¹⁸ and (2) OER IMs are available to all Texas students, parents, teachers, and ISDs free of charge, except for a printing & shipping fee. 	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

¹⁸ The K-5 content must be provided in an integrated manner and allow for 240 minutes of instructional time each day.

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	<p>(c) <i>Amended:</i> Except as provided in TEC 31.0711 (HB 1605 section 30), OER must be under an Intellectual Property (IP) license that allows for free use, reuse, modification, or sharing, as defined by TEC 31.07101 (HB 1605 section 29).</p> <p>(d) <i>Amended:</i> Under previous law, TEA commissioner may issue RFPs for <i>state-developed OER</i>; this provision is removed to bring this section into alignment with the new IM review and adoption process in TEC 31.022. TEA must use appropriations and the IMTF to pay for costs for TEC Ch. 31 Subchapter B-1.</p>	
34	<p>Section 29: TEC 31.07101. Free Use, Reuse, Modification, or Sharing License</p> <p>(a) <i>Added:</i> To align with TEC 31.071(c), which requires that OER IM licenses allow for free use, reuse, etc., this section provides the criteria for the license (ex. license must be irrevocable, allow sublicensing, allow public display and distribution).</p> <p>(b) <i>Added:</i> Allows OER IM licenses to be restricted to noncommercial or educational use.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
35	<p>Section 30: TEC 31.0711. Content Not Owned by State</p> <p><i>Added:</i> Under this section OER IM may include content in one of four categories:</p> <ul style="list-style-type: none"> (1) public domain; (2) content available under a limit or exception to copyright law; (3) content under a Creative Commons or similar license; (4) licensed to another state under a license that 	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

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	<ul style="list-style-type: none"> a. gives IM access to students and teachers, b. permits access, use, public display and distribution for noncommercial or educational purposes; and c. is for a term acceptable to the commissioner. 	
36	<p>Section 31: TEC 31.0712. Open Education Resource Advisory Board</p> <p><i>Added:</i> TEA must establish an OER advisory board to ensure that OER IM “made available under this subchapter” are:</p> <ul style="list-style-type: none"> (1) of the highest quality; (2) TEKS-aligned; (3) suitable for students’ intended age and grade level; (4) free from bias and factual error; and (5) in compliance with Section 28.0022 (SB 3, i.e., the anti-CRT law). 	<p>SBOE Role: <i>See Notes.</i></p> <hr/> <p>Notes:</p> <p>The TEA’s advisory board provides guidance regarding OER IM that is made available. And it seems that OER IM can <u>only</u> be made available¹⁹ after it is TEA-reviewed and SBOE-approved (TEC 31.0721, HB 1605 section 33). Clarifying question: is this interpretation correct (that only SBOE-approved OER IM can be made available)?</p>
37	<p>Section 32: TEC 31.072. Content Requirements</p> <p>(a) <i>Amended:</i> Under previous law, OER must be evaluated by teacher or experts before purchase and be SBOE-approved. As amended, OER IM cannot be made available under Subchapter B-1 until it is evaluated by (1) teachers or experts, and (2) parents of Texas students.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p> <p>(a) We recommend that SBOE collaborate with TEA to seek an innovative process to identify parents who can evaluate OER IM.</p>

¹⁹ OER IM would be made available through TEA’s OER IM repository (TEC 31.0722, HB 1605 section 34) which is included on TEA’s IM website (TEC 31.025(c), HB 1605 section 24).

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	<p>(b) <i>Amended:</i> TEA commissioner may, at any time, require revision of OER IM based on feedback from teachers, parents, and other experts. Under previous law, which has been removed from this section, (1) after the SBOE revises curriculum, the commissioner must require related OER to be revised; (2) TEA commissioner may require OER revisions at any time; (3) TEA commissioner is required to use a competitive process to request OER proposals.</p>	
38	<p>Section 33: TEC 31.0721. Review and Release of Open Education Resource Instructional Material</p> <p>(a) <i>Added:</i> OER IM cannot be made available to students, teachers, educators, or other education professionals unless it is TEA-reviewed (TEC 31.023) and SBOE-approved (TEC 31.022). Exception is made for Subsection (b).</p> <p>(b) <i>Added:</i> TEA may make OER IM available to a limited number of classrooms for a limited time to assist in the development or test the quality of the IM. For an ISD to use such OER IM, (1) the ISD board must approve the use, and (2) ISD teachers must approve the use.</p>	<p>SBOE Role: Recommend that SBOE use its rulemaking authority under TEC 31.003 to mitigate risks of this section.</p> <hr/> <p>Notes:</p> <p>(b) First, the flexibility provided by this subsection is good and allows for innovation; however, a risk of this subsection is that the content may not comply with TEC 31.1011, which ensures that IM is TEKS-aligned and does not include obscene or harmful content. We recommend that SBOE use its rulemaking authority under TEC 31.003 to ensure that experimental OER IM do not include content that violates TEC 31.1011(1)(B).</p> <p>Second, TEC 31.0721(b) prohibits OER IM from being made available unless it is SBOE-approved, but the TEA’s IM website can include IM that the SBOE had rejected (TEC 31.025(b)(4)). What distinctions are needed to understand how these two TEC sections interact?</p>

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39	<p>Section 34: TEC 31.0722. Open Education Resource Instructional Materials Repository</p> <p>(a) <i>Amended:</i> Under previous law, the TEA commissioner maintained a web portal that ISDs and charter schools could use to access OER IM at no cost. As amended, the OER IM repository will be a public website, not a portal requiring login.</p> <p>(b) <i>Added:</i> Under TEC 31.025 (HB 1605 Section 24), TEA was required to create an IM website to provide public information regarding IM, including whether each IM is SBOE-approved or rejected. That website was required to include the OER IM repository (TEC 31.025(c)). Under this subsection, the OER IM repository must (1) comply with the parent portal requirements in TEC 31.154 and allow people to comment on OER IM to help TEA improve the IM.</p> <p>(c) <i>Added:</i> TEA must allow people to order print copies of any OER IM included in the repository if it can be printed.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
40	<p>Section 35: TEC 31.073. Selection by School District</p> <p>(a) <i>Added:</i> Except as otherwise allowed by TEC, TEA commissioner cannot require an ISD or charter school to use OER IM.²⁰</p> <p>(c) <i>Amended:</i> ISDs may use OER IM at any time.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

²⁰ See the note to TEC 31.0251 (HB 1605 section 24) for a discussion of the exception.

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	(d) <i>Amended:</i> ISDs and charters cannot be charged for any cost of selecting an OER IM, except for printing.	
40	<p>Section 35: TEC 31.074. Distribution</p> <p>(a) <i>Amended:</i> Non-material edit.</p> <p>(b) <i>Amended:</i> Under previous law, the TEA commissioner may use a competitive process to contract for printing and reproduction of OER IM and cannot require an ISD or charter to contract with a state-approved provider for printing or reproduction. As amended, the competitive process and prohibition on contracting also apply to “storage,” in addition to printing and reproduction.</p> <p>(c) <i>Added:</i> TEA is not required to comply with TGC 2052, which establishes requirements regarding the printing or reproduction of publications.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
41	<p>Section 36: TEC 31.075. State Ownership; Licensing (title change only)</p> <p><i>Non-material edit.</i></p>	<p>SBOE Role:</p> <hr/> <p>Notes: <i>Non-material edit.</i></p>
41	<p>Section 37: TEC 31.075. State Ownership; Licensing</p> <p>(a) <i>Amended:</i> Under previous law, state-developed OER IM is state property. As amended, OER IM is state property, except as provided for elsewhere in TEC Ch. 31 Subchapter B-1.</p> <p>(b) <i>Amended:</i> Under previous law, the commissioner <u>must</u> encourage ISDs and charters to use IM by providing a license allowing for the IM’s free use, reuse,</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p> <p>(a) What is an example within TEC Ch. 31 Subchapter B-1 in which OER IM is not state property?</p>

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	<p>modification, or sharing of IM. As amended, the law provides that the commissioner <u>may</u> encourage the use of state-purchased IM. The criteria of the license are not changed.</p> <p>(d)-(e) <i>Amended:</i> Non-material changes.</p>	
43	<p>Section 38: TEC 31.0751. Open Education Resource Instructional Material Transition Plan</p> <p>(a) <i>Added:</i> ISDs are allowed to receive additional state aid (TEC 48.308) if a local school board adopts a transition plan to help teachers use OER IM.</p> <p>(b) <i>Added:</i> An ISD’s OER transition plan must allow teachers to flexibly meet each child’s needs.</p> <p>(c) <i>Added:</i> An ISD that participates in TEA’s OER IM Support Program does not need to adopt a transition plan.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
43	<p>Section 38: TEC 31.0752. Open Education Resource Instructional Material Support Program</p> <p><i>Added:</i> TEA will establish a program to help ISDs and charters transition to OER IM, including by helping them:</p> <ul style="list-style-type: none"> (1) allow teachers to flexibly meet each child’s needs, and (2) implement schedules that allow teachers the time to prepare and present IM within the teacher’s workday. 	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

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44	<p>Section 38: TEC 31.0753. Teacher Candidate Access and Support Program</p> <p><i>Added:</i> HB 1506 section 2, affecting TEC 21.044(a-1)(4), required that teacher certification include knowledge of OER IM. Under this new section, TEA will establish a program to help EPPs implement the new certification requirement.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
44	<p>Section 39: TEC 31.076. Rules; Finality of Decisions</p> <p>(b) <i>Amended:</i> Under previous law, the commissioner’s decisions regarding state-developed OER IM’s purchase, revision, cost, licensing, or distribution are final. As amended, the finality is broadened: the commissioner’s decisions made under TEC Ch. 31 Subchapter B-1 are final.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
44	<p>Section 40: TEC 31.1011. Certification of Provision of Instructional Materials</p> <p>(a) <i>Amended:</i> Under previous law, ISDs and charters must annually certify to the SBOE and the TEA commissioner that the school system provides IM that covers all SBOE-adopted TEKS. As amended, subdivision (1)(B) requires that the annual certification must also confirm that the ISD’s or charter’s IM protects students from obscene or harmful content, as necessary for compliance with:</p> <ul style="list-style-type: none"> (i) CIPA, (ii) TEC 28.0022, (iii) TPC 43.22, and 	<p>SBOE Role:</p> <hr/> <p>Notes:</p> <p>“Obscene or harmful content” is not defined in TEC Ch. 31. In order to clearly define the term, we recommend that the SBOE use its TEC 31.003 rulemaking authority to incorporate several existing statutory definitions, following the example of HB 900 (2023). For example:</p> <ul style="list-style-type: none"> 1. <i>Obscene</i> is defined in Texas Penal Code (TPC) 43.21 to include material that: <ul style="list-style-type: none"> a. the average person believes appeals to the prurient²¹ interest in sex;

²¹ Merriam Webster defines prurient as “marked by or arousing an immoderate or unwholesome interest or desire.”

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	<p>(iv) any other law or regulation protecting students from obscene or harmful content.</p> <p>Finally, added subdivision (2) requires that the annual certification must also confirm that the ISD or charter used IMTA funds only for purposes allowed under TEC 31.0211.</p> <p>(b) <i>Amended:</i> Under previous law, this subsection lists the IM sources that ISDs and charters may include when determining whether their IM covers all the TEKS:</p> <ul style="list-style-type: none"> (1) SBOE-adopted IM, (2) Commissioner-purchased IM, (3) OER IM submitted by a higher education institution, (4) OER IM available through other public schools, (5) IM developed or purchased by the school, or (6) OER IM and electronic IM in the state repository. <p>As amended, (2)-(4) are removed, (5) is broadened to include any IM acquired by the school, and a non-material edit is made to (6).</p>	<ul style="list-style-type: none"> b. depicts or describes patently offensive representations or descriptions of sexual acts; and c. taken as a whole, lacks serious literary, artistic, political, and scientific value. <p>2. <i>Harmful material</i> is defined in TPC 43.24 and consists of material whose dominant theme:</p> <ul style="list-style-type: none"> a. appeals to the prurient interest of a minor in sex, nudity, or excretion; b. is patently offensive to the whole community’s standards to what is suitable for minors; and c. is utterly without redeeming social value for minors.
46	<p>Section 41: TEC 31.1012. Report to Agency</p> <p><i>Added:</i> ISDs will annually report IM information, including cost, to TEA. TEA will use the information to ensure IM publishers & manufacturers comply with the</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

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	requirements in 31.151 (HB 1605 section 45), which pertain to IM prices, quality, and delivery.	
46	Section 42: TEC 31.102. Title and Custody; School District Purchases (title change only) <i>Non-material edit.</i>	SBOE Role: Notes: <i>Non-material edit.</i>
46	Section 43: TEC 31.102. Title and Custody; School District Purchases (d) <i>Added:</i> ISDs are not required to comply with TEC 44.031 , which governs ISD purchasing requirements, to purchase IM that is TEA-reviewed (TEC 31.023) and SBOE-approved (TEC 31.022).	SBOE Role: Notes:
46	Section 44: TEC 31.103. Instructional Material Requisitions (c) <i>Amended:</i> Under previous law, ISDs and charters may requisition above-grade-level IM from the SBOE’s list (in TEC 31.023). As amended, this subsection removes the requirement to purchase from SBOE’s list.	SBOE Role: Notes:
47	Section 45: TEC 31.151. Duties of Publishers and Manufacturers (a) <i>Amended:</i> Under previous law, IM publishers & manufacturers are required to comply with requirements (1)-(9) pertaining to IM prices, quality, and delivery. As amended, a subdivision (10) adds the requirement that publishers & manufacturers comply with SBOE-adopted standard terms and conditions regarding IM procurement contracts.	SBOE Role: Adopt standard terms & conditions regarding IM procurement contracts. Notes:

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	(a-1) <i>Added:</i> SBOE must adopt standard terms and conditions regarding IM procurement contracts which will apply to IM publishers & manufacturers.	
48	<p>Section 46: TEC 31.154. Instructional Materials Parent Portal</p> <p>(a) <i>Added:</i> The SBOE must adopt standards for entities that supply²² TEA-reviewed IM (TEC 31.023, HB 1605 section 23) to make the IM available on a parent portal hosted by the entity.</p> <p>(b) <i>Added:</i> An IM parent portal must:</p> <ul style="list-style-type: none"> (1) give parents access to all IM (except tests) that is in the portal and used by their ISD or charter school; (2) organize the IM by unit and in the order that students use the IM; (3) allow for key word search; (4) for non-digital IM, provide information that allows parents to find a physical copy. <p>(c) <i>Added:</i> SBOE standards cannot require (1) teachers to submit their original IM for inclusion in the portal, or (2) that the portal include tests.</p> <p>(d) <i>Added:</i> To protect IP licenses on an IM, parents can be required to:</p> <ul style="list-style-type: none"> (1) enter a password, (2) comply with other login requirements, and 	<p>SBOE Role: Adopt standards for suppliers of TEA-reviewed IM.</p> <hr/> <p>Notes:</p> <p>(a) As mentioned above, TEC 26.006 (HB 1605 section 5) takes a step toward empowering parents with transparency into what their children are learning by increasing parents’ access to certain IM (i.e., IM submitted for TEA-review). The SBOE’s subsection (a) standards for entities that publish IM via online parent portals should seek strategies to help parents efficiently find the IM they are seeking.</p>

²² “Supply” is not defined in HB 1605. We recommend that the term be defined in rulemaking to specify which entities are included.

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	<p>(3) accept user terms and conditions.</p> <p>(e) <i>Added:</i> An entity hosting an IM parent portal must comply with ISD requests regarding parental access to the portal in order to comply with this section (TEC 31.154) and parents rights to IM transparency (TEC 26.006).²³</p>	
50	<p>Section 47: TEC 33.004. Parental Involvement</p> <p>(b) <i>Amended:</i> Under previous law, all comprehensive school counseling materials must be available for parents to preview during school hours. If materials are not available for parent preview, schools cannot use them. As amended, the text allows schools the option of making these materials available via the parent portal (TEC 31.154).</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
50	<p>Section 48: TEC 48.277. Formula Transition Grant</p> <p>(b) <i>Amended:</i> Under previous law, this section lists the criteria that the TEA commissioner considers when calculating an ISD’s or charter school’s hold-harmless. In the amended text, new funding provided by HB 1605 for IM (TEC 48.307) and OER IM (TEC 48.308) is excluded.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p> <p>Effect: Excluding the new HB 1605 IM funding from <i>Current Year M&O</i> ensures that the hold-harmless does not decrease.</p> <p>For Background: TEC Ch. 48 governs school finance, and TEC 48.277 is a <i>hold-harmless</i>²⁴ created by House Bill 3 (2019). HB 3 made large changes to public school finance; while most ISD’s and charter’s funding increased, statewide formula changes</p>

²³ For example, TEC 26.006 requires that, in providing IM transparency to parents, ISDs must: (1) allow access 30 days before and after the school year, and (2) include all IM except future tests and graded assignments.

²⁴ Euphemistically called a “formula transition grant” in HB 3.

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		<p>almost always result in several systems enduring decreases. The 48.277 hold-harmless ensures that public schools which would have otherwise endured a funding decrease do not actually endure a funding decrease. The TEC 48.277 hold-harmless provides additional funding using this formula, as long as the entitlement is a positive number: $(\text{Old M\&O})^{25} - (\text{Current Year M\&O}) = \text{Entitlement per ADA}^{26}$</p>
51	<p>Section 49: TEC 48.307. Additional State Aid for State-Approved Instructional Materials</p> <p>(a) <i>Added:</i> ISDs are entitled to \$40 per enrolled student to purchase IM that is (1) TEA-reviewed; (2) SBOE-approved; (3) able to be placed on an IM parent portal, as confirmed by SBOE; and (4) acquired from an entity complying with TEC 31.151.²⁷</p> <p>(b) <i>Added:</i> ISDs are entitled to these funds, even if the ISD does not use the funds in the school year that they were provided.</p> <p>(c) <i>Added:</i> The funds will be deposited to the ISD’s IMTA.²⁸</p> <p>(d) <i>Added:</i> The funds must be spent in compliance with this section and the IMTA requirements in TEC 31.0211 (HB 1605 section 17).</p>	<p>SBOE Role: SBOE-approval of IM is needed before ISDs can use funds to purchase IM.</p> <hr/> <p>Notes:</p>

²⁵ This exaggerates for the sake of clarity. Technically, this variable equals the lesser of two options, as they would be calculated under TEC Ch. 41 and 42, as those chapters existed on January 1, 2019, before HB 3. Option 1: $(1.03) \times (\text{the ISD's or charter's 2019-20 M\&O per ADA})$. Option 2: $(1.28) \times (\text{the statewide average 2019-20 M\&O per ADA})$.

²⁶ Students in Average Daily Attendance

²⁷ TEC 31.151 in HB 1605 section 45 pertains to IM prices, quality, delivery, and SBOE-adopted standard terms and conditions for procurement.

²⁸ Instructional Materials and Technology Account

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51-53	<p>Section 49: TEC 48.308. Additional State Aid for Open Education Resource Instructional Material</p> <p>(a) <i>Added:</i> Subject to the requirement for an ISD to create an OER IM transition plan (TEC 31.0751), ISDs are entitled to \$20 per student to pay OER IM printing and shipping costs.</p> <p>(b) <i>Added:</i> The entitlement per student is capped at the actual cost incurred or the amount the ISD is obligated to pay.</p> <p>(c) <i>Added:</i> The funds will be deposited to the ISD’s IMTA.</p> <p>(d) <i>Added:</i> The funds must be spent in compliance with this section and the IMTA requirements in TEC 31.0211 (HB 1605 section 17).</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
53	<p>Section 50: Texas Govt. Code (TGC) 322.0082. Inclusion of Certain Education Funds Required</p> <p>(a) <i>Added:</i> Under previous law, the Legislative Budget Board (LBB) drafts the general appropriations bill and sends a copy of the estimated appropriations to the Legislature and governor by the 5th day of a regular legislative session. As added, the LBB will include the following in their estimate:</p> <p style="padding-left: 40px;">(1) the amount of funds distributed from the PSF to the ASF that are available to the IMTF,</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

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	<p>(2) the amount in the IMTF rolled over from the previous biennium that is available for ISDs and charters to use.</p> <p>(b) <i>Added:</i> If the IMTF legislative appropriation is less than the amount dedicated to the IMTF by the SBOE, the LBB will explain the difference, including the amount and its uses.</p> <p>(c) <i>Added:</i> The LBB will publish the explanation provided in (b) on the LBB website.</p>	
54-55	<p>Section 51: <i>Repeals TEC sections listed below. A one-line summary is provided; note that many of these sections are replaced with the new TEA-review (TEC 31.023) and SBOE-approval (TEC 31.022) processes.</i></p> <ol style="list-style-type: none"> 1. 31.0213 (re: ISD certification that IMTA is only used for TEC 31.0211); 2. 31.022(d-1), (e), (f), (g), (h), and (i) (re: process by which SBOE reviews IM); 3. 31.0221 (re: midcycle review of IM); 4. 31.0231 (re: TEA’s IM list); 5. 31.024 (re: SBOE IM adoption); 6. 31.0241 (re: OER adoption); 7. 31.0242 (re: SBOE review of OER IM); 8. 31.0261 (re: OER IM printing contracts); 9. 31.035 (re: supplemental IM); 10. the heading to Subchapter B-2, Chapter 31 (re: IM web portal); 11. 31.081 (re: IM web portal); 	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

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	<p>12. 31.082 (re: IM quality review by a 3rd party);</p> <p>13. 31.084 (re: allowing TEA rulemaking for Subch. B-2);</p> <p>14. 31.101 (re: school notification to SBOE of selected IM); and</p> <p>15. 31.151(e) (re: removing colleges from providing OER).</p>	
55	<p>Section 52: Resolving nonsubstantive conflicts in law.</p> <p>In the event of non-substantial conflicts between HB 1605 and other 88th regular session laws, HB 1605 prevails.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>
55	<p>Section 53: How HB 1605 affects existing contracts.</p> <p>(a) Contracts formed under TEC 31.026 (SBOE contracts to purchase or license IM) or TEC 31.151 (IM publisher & manufacturer obligations), <u>before</u> the effective date of this act,²⁹ are governed by the former law.</p> <p>(b) Contracts formed under TEC 31.026 (SBOE contracts to purchase or license IM) or TEC 31.151 (IM publisher & manufacturer obligations), <u>after</u> the effective date of this act for SBOE Proclamation 2024 are governed by the former law.</p> <p>(c) For IM review and contracts resulting from SBOE Proclamation 2024, TEC 31.026, as amended by HB 1605, does not apply. These are governed by the former law.</p>	<p>SBOE Role:</p> <hr/> <p>Notes:</p>

²⁹ HB 1605 was signed by Gov. Abbott on June 12, 2023.

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	(d) TEC 21.4045 ³⁰ does not affect ISD-teacher contracts that were in effect before HB 1605's effective date.	
56	Section 54: School years in which HB 1605 will begin to apply (a) HB 1605 (except for TEC 20.4045) applies starting in the 2023-24 school year. (b) TEC 20.4045 ³¹ applies starting in the 2024-25 school year.	SBOE Role: Notes:
56	Section 55: Effective date: September 1, 2023	SBOE Role: Notes:

³⁰ TEC 21.4045 (HB 1605 section 3) allows teachers to form agreements to perform a duty regarding initial lesson plan design or IM selection.

³¹ See previous note.