

SUBJECT: Providing an alternative to the textbook depository requirement

COMMITTEE: Public Education — committee substitute recommended

VOTE: 8 ayes — Sadler, Dutton, Dunnam, Grusendorf, Hardcastle, Hochberg, Olivo, Smith
0 nays
1 absent — Oliveira

WITNESSES: For — Bob Blevins, Barrett Kendall Publishing; John Boehm, Barrett Kendall Publishing; Frank Wang, Saxon Publishers, Inc.
Against — Jerry Baker, Southwest School Book Depository; Clinton Bittick, Southwest School Book Depository

BACKGROUND: Education Code, sec. 31.151(a)(6) requires all textbook publishers to maintain a textbook depository in the state of Texas or to arrange with a state-approved depository to receive and fill orders, in accordance with State Board of Education (SBOE) rules.
Under Education Code, secs. 31.021 and 31.106, schools, including open enrollment charter schools, receive money for SBOE-approved textbooks from the State Textbook Fund. Schools also may use local money to purchase textbooks, including textbooks not officially adopted by the SBOE.
To seek adoption of a textbook, a publisher must submit to SBOE a “statement of intent to bid instructional materials.” This statement includes which depository the publisher plans to use if the textbook is adopted. Once adopted, the publisher sends textbooks to the depository. Schools order textbooks through the Texas Education Agency (TEA), which forwards the orders to the depository and arranges transportation. The depository ships textbooks in accordance with the orders submitted by TEA, and TEA pays the publishers directly. Depositories charge textbook publishers for their services.

Administrative Code, sec. 66.78, sets forth requirements for establishing a textbook depository. Applicants must provide evidence of financial viability, warehouse specifications, and assurances that a sufficient supply of textbooks is available. They also must submit a list of publishers with whom the proposed depository has contracted. The four larger publishing companies meet the requirements and serve as their own depositories. Smaller publishers and out-of-state publishers must contract with a depository.

DIGEST: CSHB 992 would amend Education Code, sec. 31.151(a)(6) to allow publishers to either maintain a depository in accordance with SBOE rules or deliver textbooks to schools without charging for delivery. The bill also would amend Education Code, secs. 31.103(b) and 31.104(b) to conform to the change in sec. 31.151(a)(6).

The bill would take effect on September 1, 2001.

SUPPORTERS SAY: CSHB 992 would allow a reasonable alternative to the current depository requirement. Under current law, textbook publishers must use a textbook depository physically located in Texas. All four of the larger publishers serve as their own depositories. Smaller publishers and out-of-state publishers—some of which have the resources to serve as a depository but are not physically located in Texas—must use the one existing independent textbook depository, which is located in Dallas. This bill would provide publishers with the option to use an independent depository or to ship textbooks directly to the school district without charging for shipping. Each publisher would be free to choose the most appropriate option for its operation.

The depository requirement has outlived its original purpose. It was put into place to address ordering, availability, freight costs, and efficiency. In the age of Internet and fax ordering, the depository requirement does not simplify the ordering process or ensure timely availability of textbooks. In at least one scenario, books are shipped from a publisher to the Dallas depository, and then to a school district located far from Dallas but within a short drive of the publisher. The depository requirement increases freight costs and prevents textbooks from getting to students in an efficient, timely manner.

The current depository system is a monopoly, with only one existing independent depository in Texas. While one new depository, owned by an Austin publisher, has indicated intent to contract with other publishers, use of this depository could result in similar unnecessary shipping costs, depending on the location of the publisher and school district. Further, the Dallas depository's contract includes a non-negotiable exclusivity clause (i.e., the publisher must agree to distribute its textbooks in Texas exclusively through the Dallas depository), as well as a prepayment requirement, both of which create disincentives and barriers to entry for potential new depositories. There also are significant costs to starting a depository, such as acquiring adequate warehouse space, which present additional barriers and discourage new depositories.

Current law discriminates against smaller publishers and out-of-state publishers, thus discouraging competition. Depository fees are based on a percentage of sales, with some potential to negotiate based on volume. Because state law limits the price Texas will pay for a textbook, publishers subject to the depository requirement are at a disadvantage. These publishers may see less profit per textbook, be unable to bid competitively due to the depository fees, or be forced to take a loss on textbooks sold in Texas. Publishers with low textbook sales volume are at a further disadvantage, as they are unlikely to be able to negotiate lower depository fees. A publisher may ship non-approved textbooks directly to school districts as long as the books are purchased with local money, but once SBOE approves a textbook, the publisher must use a depository. For these reasons, a number of publishers do not submit textbooks for consideration in Texas, resulting in a smaller pool of potential instructional materials for Texas students.

Publishers could provide better service if they were not required to use a depository. Shipping time would decrease without the required routing via Dallas. The state also would save money on shipping costs charged by the depository for shipping textbooks to school districts. Publishers would save money as well, because in most cases shipping costs would be lower than the depository charges publishers currently pay. If a publisher finds it is more cost effective to pay depository charges, that publisher is free to elect to use a depository. It is unlikely that any of the four larger textbook publishers would move their operations out of Texas if this bill becomes law, because

Texas is one of the largest textbook markets in the country, and they have established a significant presence here.

Only 17 other states have a depository requirement. At least four of those—Florida, Louisiana, New Mexico, and North Carolina—are considering abolishing the depository requirement. Some states, such as West Virginia, allow direct shipping arrangements with individual publishers. Most states have never had a textbook depository requirement, and have had no problems associated with lack of a textbook depository.

Allowing an alternative to the depository requirement would not increase order complexity for smaller school districts because State Textbook Fund purchases must be made through TEA. The TEA ordering system is fairly automated and easy to use. TEA staff who deal exclusively with textbooks can disseminate information to both school districts and publishers. School districts have at least one textbook coordinator who also is familiar with the textbook process and can address problems if they arise. In addition, given that most school districts purchase the majority of their textbooks from the four larger textbook publishers, it is unlikely that any school district would be dealing with an unmanageable number of publishers.

The bill would not abolish the depository system. It would allow publishers the option to use a depository or ship for free. Publishers that feel the depository service adds value to their textbook distribution or makes it easier to do business in Texas would be free to continue using a depository service.

OPPONENTS
SAY:

CSHB 992 would undermine the current depository system, which has worked well for school districts, publishers, and the state. The depository requirement provides publishers with many valuable services. The depository consolidates the ordering process, advises publishers on Texas requirements for textbooks and textbook adoption, and provides storage space for textbooks. This saves publishers, the state, and school districts both time and money.

No publisher is compelled to use the Dallas depository. Publishers and independent companies are free to establish their own depositories in Texas, subject to SBOE rules. The depository system is not a monopoly; there

currently are five depositories in the state of Texas. The contract used by the Dallas depository does not create barriers to entry. The length of the exclusivity clause is an item each publisher negotiates when contracting with the depository. Other depositories also would require prepayment. Depositories do not charge for storage; they charge based on a percentage of sales, yet they incur costs all year for facilities, staff, communications, and training. Up until a few years ago, there were multiple independent depositories. The other depositories closed due to mismanagement, internal reasons, or free-market competition.

The depository system benefits smaller publishers and the state. Smaller publishers cannot afford to maintain a presence in Texas and tend to be unfamiliar with the Texas textbook adoption and distribution process. A centralized depository assists publishers with adoption and distribution and keeps publishers informed of changes in the process. A centralized depository also helps smaller publishers to fulfill textbook orders in a timely and efficient manner, avoiding administrative penalties for late and incomplete orders. These benefits encourage smaller publishers to compete in the Texas textbook market, when many do not have the staff required to navigate the Texas adoption and distribution system.

Savings on transportation would be minimal or nonexistent, as they would be offset by increased costs to TEA and the school districts. Under the depository system, TEA arranges for transportation from all of the depositories to a specific district on a specific day. That shipment contains books from all of the publishers. This is convenient for school districts, which can plan ahead to efficiently sort textbooks and distribute them to individual campuses, reducing time spent in textbook transactions. Alternatively, school districts may pick up shipments from the depository without cost. Shipments from the different publishers would not be coordinated or predictable. School districts would need additional personnel to deal with multiple shipments and distributions. This would be especially taxing on districts with limited personnel or resources to sort and transport the books, as well as rural districts that cover a large geographic area. School districts would incur additional costs when orders are late, damaged, or incorrect, as they would have to deal with each publisher individually; under the depository system, school districts make one call to the depository to correct all problems.

Publishers currently absorb the cost of shipping to the depository. This cost is included in the textbook price. Under the depository system, TEA is able to ascertain exact shipping costs. If individual publishers make shipments to individual districts, TEA would have no way to monitor actual shipping costs to determine whether publishers are charging for shipping by raising prices.

TEA also would face added transactional costs in dealing with multiple publishers. These costs include infrastructure changes to accommodate dealing with more than 70 publishers, staff time devoted to assisting publishers as they learn to use the Texas textbook ordering system, and the increased administrative costs of tracking multiple shipping locations. TEA would see increased costs for monitoring and accountability, as it would need a new or expanded system to track missing, late, damaged, incorrect, or impartial shipments and assess the administrative penalties.

Publishers with their own depositories would not save money if the depository requirement is eliminated. Under the free shipping option provided by this bill, publishers with their own depositories still would bear the cost of shipping to the school districts. Publishers could see increased costs as other states demand free shipping. Further, if the depository requirement is eliminated, publishers may close their Texas depositories and move their textbook operations elsewhere. This would hurt TEA and the schools due to employees' lack of expertise in Texas textbook distribution, in addition to taking jobs and revenue from Texas.

Textbook costs would not decrease. Texas' maximum per-book payments are based on the publishers' catalogue prices. Publishers would raise their catalogue prices to account for increased shipping costs. Furthermore, Texas already has a statutory requirement that publishers must sell textbooks to Texas at the best price they offer.

This bill essentially is an unfunded mandate, as school districts and the TEA would see increased costs without additional funding from the state.

Seventeen states currently have textbook depository requirements. Nevada recently instituted the depository requirement due to poor service and publishers' failure to deliver textbooks in a timely manner.

NOTES:

The original version of HB 992 would have amended the Education Code to require use of a textbook depository only if the publisher's home office was located more than 300 miles from the Texas border.

The committee substitute would amend the Education Code to require publishers to use a textbook depository unless they ship the textbooks to schools and do not charge a delivery fee.