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**HOUSE BILL 2780**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Young, Bergquist, Stambaugh, Kilduff, Hargrove, Zeiger, and Hickel

AN ACT Relating to making higher education more affordable by providing incentives for the use of open source instructional materials; adding new sections to chapter 28B.10 RCW; adding a new section to chapter 82.04 RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  College students spend thousands of dollars on textbooks and course materials over the course of their academic career. The cost of textbooks and course materials often acts as a barrier for students and becomes a substantial part of student debt. Technology makes it possible for students to access free digital textbooks and materials and the legislature seeks to reduce costs in higher education by encouraging the use of and creation of new electronic textbooks, manuals, and other instructional materials that are free and easily accessible to students. The legislature intends to create incentives to increase the use of open source materials and to attract not only traditional textbook publishers, but entities from a multitude of sectors that have expertise and knowledge, to make their textbooks and materials available to students for free.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.10 RCW to read as follows:

(1) A person that publishes or creates open source instructional materials to be used by students attending private or public institutions of higher education in the state is eligible for a tax credit under section 5 of this act if:

(a) The person provides the open source instructional materials to the private or public institution of higher education at no cost to the institution;

(b) An instructor of the institution officially adopts the open source instructional material as the primary resource for the course;

(c) The open source instructional material is provided to students in the course free of charge; and

(d) The open source instructional material is used in lieu of materials that students would have been required to purchase.

(2) The definitions in this subsection apply to this section and sections 3 and 4 of this act unless the context clearly requires otherwise.

(a) "Open source instructional material or materials" means textbooks, manuals, and other similar educational readings, in digital form, that are required or essential to a course of study offered at a private or public institution of higher education.

(b) "Person" has the definition in RCW 82.04.030.

(3) This section does not authorize any use of instructional materials that would constitute an infringement of copyright laws.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.10 RCW to read as follows:

To implement the tax credit provided in section 5 of this act, private and public institutions of higher education must submit annually, by October 31st, to the department of revenue the following:

(1) The person's name;

(2) Address;

(3) The unified business identifier;

(4) The certified value of the open source instructional material that was provided by the person, based on the formula established in section 4 of this act; and

(5) Any other information the department of revenue requires to implement the tax credit.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.10 RCW to read as follows:

(1)(a) The certified value of the open source instructional material for purposes of the tax credit authorized under section 5 of this act is calculated as follows: The total number of students who registered and paid for any course of study in which open source instructional materials were adopted for the academic year, multiplied by the cost of the instructional materials that the open source instructional materials replaced.

(b) The cost of the instructional materials that are replaced by open source instructional material can be estimated based on the cost of the instructional material that was used by the private or public institution of higher education in the previous academic year for the same course of study.

(c) If the private or public institution of higher education did not offer the course of study in the previous academic year in which the open source instructional material has been adopted, the institution may use the cost of instructional materials used for the same course of study offered in another private or public institution of higher education in the current or previous academic year to estimate the cost of the replaced instructional material.

(2) The certified value of the open source instructional material must be calculated at the end of the academic year and reported to the department of revenue and the person that provided the open source instructional material by October 31st of the subsequent academic year.

(3) The certified value of any open source instructional material must be estimated annually if a private or public institution of higher education continues to use that open source instructional material in lieu of other instructional material, at no cost to students. However, subsequent estimates of the certified value of previously adopted open source instructional materials is intended to be informational for the review required under section 6 of this act, subsequent estimates of previously adopted material does not qualify for the tax credit authorized under section 5 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

(1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under this chapter or chapter 82.16 RCW for a person that provides at no cost, open source instructional material to a private institution of higher education or public institution of higher education as defined in RCW 28B.10.016 that is used in lieu of other instructional materials for any course of study offered at the institution.

(2) The credit is equal to fifty percent of the certified value of the open source instructional material as provided by a private or public institution of higher education. The maximum amount of credit that can be claimed under this section is thirty-five thousand dollars per calendar year. Unused credits may be carried forward for the two consecutive calendar years immediately following the year in which the credit was earned.

(3) Credits are available on a first-in-time basis. The department must keep a running total of all credits allowed under this section and chapter 82.16 RCW during each calendar year. The department may not allow any credits that would cause the total credits allowed under this section to exceed one million five hundred thousand dollars in any calendar year.

(4) No application is necessary for the tax credit. Persons claiming a credit under this section must file electronically with the department. Taxpayers must keep records necessary for the department to determine eligibility under this section including records from a private or public institution of higher education that has adopted the use of open source materials provided at no cost to the institution.

(5) Credits may be earned under this section from January 1, 2018, to December 31, 2028.

(6) Credits earned under this section may not be used after January 1, 2029.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Certified value" means the value of open source instructional material as calculated under section 4 of this act.

(b) "Open source instructional material" has the definition in section 2 of this act.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to reduce educational costs for students of institutions of higher education by providing a tax credit to businesses that offer open source instructional material at no cost to institutions and students, replacing expensive textbooks or other instructional materials.

(4)(a) To measure the effectiveness of the tax preference in section 5 of this act, in achieving the specific public policy objective described in subsection (2) of this section, the joint legislative audit and review committee must, at minimum, evaluate the following:

(i) The number of businesses that benefit from the tax credit, including the total annual revenue impact and the average credit amount claimed;

(ii) The number of private and public institutions of higher education that are using open source instructional materials;

(iii) The number of courses in each private and public institution of higher education using open source instructional material as the main resource for students and the number of students in these courses.

(b) The joint legislative audit and review committee may request private and public institutions of higher education to provide the necessary data needed to complete the evaluation under this subsection.

(c) The joint legislative audit and review committee must complete the evaluation in this subsection by December 31, 2025, and report the findings to the fiscal committees of the legislature during the 2026 legislative session.

NEW SECTION. **Sec.**  This act may be known and cited as the textbook affordability via open sourcing act.

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