

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/HB 1467, 1st Eng.

INTRODUCER: Appropriations Committee and Representative Garrison and others

SUBJECT: K-12 Education

DATE: February 21, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Palazesi	Phelps	RC	Pre-meeting

I. Summary:

CS/HB 1467 establishes eight year term limits for district school board members. The bill also provides specific requirements for school districts in selecting instructional materials and materials used in school libraries and media centers. Specifically, the bill requires:

- Certain school district instructional material review committee meetings be noticed and open to the public.
- School district personnel who are involved in reviewing and selecting certain instructional materials and library materials to complete training developed by the Department of Education (DOE) on selecting quality, age-appropriate books, prior to making selections.
- School districts to adopt and post procedures for developing library media center collections.
- Each elementary school to post on its website a list of all materials maintained in the school library or required in a classroom booklist.
- Material in a school library or classroom booklist to be selected by a certified educational media specialist.
- School districts to provide access to all materials for public inspection and to publish in a searchable format a list of all materials available to students on the school website.
- School districts to provide a public review process for the adoption of all materials and to select, approve, adopt, or purchase materials as a separate line item on a board meeting agenda and provide reasonable opportunity for public comment.
- School districts to annually submit to the Commissioner of Education a report identifying materials for which the school district received an objection, and the DOE to publish a list of removed or discontinued materials as a result of an objection.
- School principals to oversee compliance with school library media center materials selection procedures.

The bill is effective July 1, 2022.

II. Present Situation:

District School Board Member Term Limits

The Florida Constitution provides that “[i]n each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.”¹ This provision has been interpreted to allow qualifications to be established by statute.² Each district school board must operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within constitutional limits.³ There is currently no limit on the number of terms a school board member may serve.⁴

Florida’s Constitution establishes term limits for the following elected officials:⁵

- Florida Governor;
- Florida representatives;
- Florida senators;
- Florida Lieutenant Governor;
- Florida Cabinet members;
- U.S. representatives from Florida; and
- U.S. senators from Florida.

The Florida Constitution states that none of these officials, except for the office of Governor which is governed by a slightly different provision, may appear on a ballot for reelection if, by the end of the current term of office, the person will have served or, but for resignation, would have served in that office for eight consecutive years.⁶ These term limits became effective in 1992 and were prospective, so that officials reelected to a consecutive term in 1992 could serve another consecutive eight years before reaching the term limit.⁷

Instructional Materials and Library Materials in Florida Public Schools

Instructional Materials Adoption

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials to each student for core courses in mathematics, language arts,

¹ Art. IX, s. 4(a), Fla. Const.

² *Askew v. Thomas*, 293 So. 2d 40, 42 (Fla. 1974) upholding residency requirements for district school board members and holding that section 4(a) of article IX “does NOT address itself to Qualifications of the school district members” and, therefore, statutes imposing qualifications “remain intact and viable, unaffected by this new constitutional provision.” *See also Telli v. Broward County*, 94 So. 3d 504 (Fla. 2012) receding from prior opinions which held that article VI, section 4(b), Florida Constitution, listing the state elected offices with mandatory term limits, prohibited the imposition of term limits on other officials. The court held that “[i]nterpreting Florida’s Constitution to find implied restrictions on powers otherwise authorized is unsound in principle” and that “express restrictions must be found not implied.” *Id.* at 513.

³ Art. IX, s. 4(b), Fla. Const.

⁴ Art. IX, s. 4(a), Fla. Const.

⁵ Art. VI, s. 4(c), Fla. Const.

⁶ Art. VI, s. 4(c), Fla. Const.

⁷ *See* Art. VI, s. 4, Fla. Const. (1992); Billy Buzzett and Steven J. Uhlfelder, *Constitution Revision Commission: A Retrospective and Prospective Sketch*, *The Florida Bar Journal* (April 1997), <https://www.floridabar.org/the-florida-bar-journal/constitution-revision-commission-a-retrospective-and-prospective-sketch> (last visited April 12, 2021).

science, social studies, reading, and literature for kindergarten through grade 12.⁸ “Adequate instructional materials” are defined by law as a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for students.⁹

State Instructional Materials Adoption

The Florida Department of Education (DOE) facilitates the statewide instructional materials adoption process through evaluation of materials submitted by publishers and manufacturers.¹⁰ Expert reviewers chosen by the DOE must objectively evaluate materials based on alignment to Florida’s state-adopted standards, accuracy, and appropriateness for age and grade level.¹¹ Based on reviewer recommendations of materials that are “suitable, usable, and desirable,” the Commissioner of Education (commissioner) then selects and adopts instructional materials for each grade and subject under consideration.¹² The DOE must provide training to instructional materials reviewers on competencies for making valid, culturally sensitive, and objective recommendations regarding the content and rigor of instructional materials prior to the beginning of the review and selection process.¹³

After adoption, the DOE must make the final report of instructional materials available at all times for public inspection. The DOE Office of Instructional Materials announces the adoption by publicly posting the list on its website, as well as emailing district instructional materials contacts with the newly approved materials.¹⁴

School District Instructional Materials Adoption

A district school board or consortium of school districts may implement an instructional materials program that includes the review, recommendation, adoption, and purchase of instructional materials. The district school superintendent must certify to the DOE by March 31 of each year that all instructional materials for core courses used by the district are aligned with applicable state standards.¹⁵ School districts receive an allocation of state funds each year for instructional materials, library books, and reference books.¹⁶ Unless a school district has implemented its own instructional materials review process,¹⁷ at least 50 percent of the allocation

⁸ Section 1006.40(2), F.S.

⁹ Section 1006.28(1), F.S. Digital and instructional materials, including software applications, must be provided by each school board, in consultation with the district school superintendent, to students with disabilities in prekindergarten through grade 12. Section 1003.4203(2), F.S.

¹⁰ Section 1006.34(1), F.S.

¹¹ Section 1006.31, F.S.

¹² Section 1006.34(2)(a), F.S. Generally, the commissioner adopts instructional materials according to a 5-year rotating schedule. The commissioner may approve a shorter schedule if the content area requires more frequent revision. Section 1006.36(1), F.S.

¹³ Section 1006.29(5), F.S.

¹⁴ Florida Department of Education, Instructional Materials, *Archive*, <https://www.fldoe.org/academics/standards/instructional-materials/archive/> (last visited Jan. 18, 2022). The DOE website has all adopted instructional materials lists from 2005 to present.

¹⁵ Section 1006.283(1), F.S.

¹⁶ Specific Appropriation 7 and 90, section 2, ch. 2021-36, L.O.F.

¹⁷ Section s. 1006.283, F.S.

of funds must be used to purchase instructional materials on the state-adopted list.¹⁸ The remaining 50 percent of the annual allocation may be used for the purchase of library and reference books, nonprint materials, and the repair and renovation of materials; however, such materials are not subject to the same school-district adoption procedures as instructional materials.¹⁹ Each district school board is required to maintain a list of all purchased instructional materials, by grade level, on its website.²⁰

District school boards or a consortium of school districts who choose to implement an instructional materials program must adopt rules for the instructional materials program. The school district instructional materials review program must include processes criteria, and requirements for the following:²¹

- Selection of reviewers, one or more of whom must be parents with children in public schools;
- Review of instructional materials;
- Selection of instructional materials, including a thorough review of curriculum content;
- Reviewer recommendations;
- District school board adoption; and
- Purchase of instructional materials.

The process by which instructional materials are adopted by the district school board must include:²²

- A process to allow student editions of recommended instructional materials to be accessed and viewed online by the public at least 20 calendar days before the school board hearing and public meeting as specified in this subparagraph. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption;
- An open, noticed school board hearing to receive public comment on the recommended instructional materials;
- An open, noticed public meeting to approve an annual instructional materials plan to identify any instructional materials that will be purchased through the district school board instructional materials review process pursuant to this section. This public meeting must be held on a different date than the school board hearing; and
- Notice requirements for the school board hearing and the public meeting that must specifically state which instructional materials are being reviewed and the manner in which the instructional materials can be accessed for public review. The hearing must allow the parent of a public school student or a resident of the county to proffer evidence that a recommended instructional material.

School districts are also required to establish the processes by which the district school board must receive public comment on the recommended instructional materials and how parents can

¹⁸ Section 1006.34, F.S. All adopted materials are posted on the DOE Instructional Materials webpage. Florida Department of Education, *Instructional Materials*, <https://www.fldoe.org/academics/standards/instructional-materials/> (last visited January 20, 2022).

¹⁹ Section 1006.40(3)(b), F.S.

²⁰ Section 1006.28(2)(a)(1), F.S.

²¹ Section 1006.283(2)(a)1.-6., F.S.

²² Section 1006.283(2)(b)8. a-d., F.S.

access their children's instructional materials through the district's local instructional improvement system.²³

In September 2021, the Second District Court of Appeal held that when a district school board delegates decision-making authority to an instructional materials review committee, any meeting in which the committee exercises the authority to rank, eliminate, and select materials for final approval by the school board must be noticed and open in accordance with the Sunshine Law.²⁴

Selection Processes of Library Media Materials

In addition to instructional materials, each district school board is responsible for the content of any other materials used in the classroom, made available in a school library, or included on a reading list, whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program, or otherwise purchased or made available.²⁵ The selection of instructional materials, library media, and other reading materials used in the public-school system must include consideration of the age of the students who normally could be expected to have access to the material, the educational purpose to be served by the material, the degree to which the material would be supplemented and explained by classroom programs, and the consideration of the diversity of the students in Florida.²⁶

Best practices for developing a school library collection include research on potential books and basing selections on the goals and objectives of the school and the students' personal interests and learning. Materials should be appropriate for the subject area and age, emotional development, ability level, learning styles, and development of the students for whom the materials are selected.²⁷ Resources such as Association for Library Service to Children, Booklist, School Library Journal, Kirkus, and Young Adult Library Services Association are commonly recommended review sources for school librarians.²⁸

For the 2021-2022 fiscal year, the legislature allocated \$12,733,273 to school districts for the purchase of library media materials.²⁹ The library media categorical funds are intended for a specific purpose – the purchase of library media resources to be checked out by students and teachers through the school library. Specifically, library media materials include those items normally purchased under Instructional Media Resources.³⁰

Librarians/Media Specialists

Librarians/media specialists are defined as staff members responsible for evaluating, selecting, organizing, and managing media and technology resources, equipment, and related systems.

²³ Section 1006.283(2)(b) 9., 11., F.S

²⁴ *Florida Citizens Alliance, Inc. v. School Bd. of Collier Cnty.*, 328 So.3d 22 (Fla. 2d DCA 2021). Florida's Sunshine Law is established in s. 286.011, F.S.

²⁵ Section 1006.28(2)(a)1., F.S.

²⁶ Section 1006.34(2)(b), F.S.

²⁷ American Library Association, Selection Criteria, *School Library Selection Criteria*, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/criteria> (last visited Jan. 17, 2022).

²⁸ *Id.*

²⁹ Specific Appropriation 7 and 90, section 2, ch. 2021-36, L.O.F.

³⁰ Florida Department of Education, Memo to School District Superintendents, *Specific Appropriations 7 and 90 – Library Media Allocation, 2021*, available at <https://info.fldoe.org/docushare/dsweb/Get/Document-9189/dps-2021-92.pdf>.

They are also responsible for working with teachers and students to make resources available in instructional programs, media productions, and location and use of information resources.³¹ Educators in Florida may become certified educational media specialists through the DOE certification process, but Florida schools are not required to employ a certified educational media specialist. In the 2021-22 school year, there were 3,682 certified media specialists working in Florida's school districts with every school district employing at least one certified media specialist.³² Of the 3,682 certified media specialists, 1,779 were employed as a media specialist and 1,903 were employed in another position within the district.³³

To become a certified educational media specialist in grades prekindergarten through 12, an individual must complete one of the following pathways:³⁴

- A bachelor's degree or higher with an undergraduate or graduate major in educational media or library science; or
- A bachelor's degree or higher with thirty semester hours in educational media or library science to include credit in management of library media programs, collection development, library media resources, reference sources and services, organization of collections, and design and production of educational media.

Each school district must provide training to school librarians and media specialists regarding the prohibition against distributing harmful materials to minors, and best practices for providing students access to age-appropriate materials and library resources.³⁵

Objection to Materials

Each district school board is required to establish a process by which a parent or resident of the county may contest the district school board's adoption of a specific material.³⁶ Parents must file a petition, on a form provided by the district school board, within 30 calendar days after the adoption of the material. The school board is required to conduct at least one open public hearing before an unbiased and qualified hearing officer that is not an employee or agent of the school district. Following the hearing, the school board's decision is final and not subject to further petition or review.³⁷

Required Instruction

Florida law requires certain topics to be taught in kindergarten through grade 12 public schools annually to ensure coverage of all State Board of Education adopted standards in reading and language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.³⁸ Instructional personnel must teach these topics efficiently and

³¹ Section 1012.01(2)(c), F.S.

³² Email, Florida Department of Education, Jessica Fowler, Deputy Director of Governmental Relations (Jan. 24, 2022).

³³ *Id.*

³⁴ Rule 6A-4.0251, F.A.C.

³⁵ Section 1006.28(2)(d), F.S.

³⁶ Section 1006.28(2)(a)3., F.S.

³⁷ *Id.*

³⁸ Section 1003.42(1), F.S.

faithfully, utilizing materials that meet the highest standards for professionalism and historical accuracy.³⁹

School districts must submit a report to the commissioner annually describing how instruction was provided during the previous school year, including specific courses in which instruction was delivered, a description of materials and resources utilized to deliver instruction, and the professional qualifications of the person delivering instruction for specified topics.⁴⁰

Required instruction topics are not correlated with the instructional materials adoption process at the DOE; therefore, instructional materials that are purchased by a school district to teach these topics may not go through a public adoption process as with instructional materials for core courses.⁴¹ For example, the most recent state instructional materials adoption that included a call for health and physical education materials was in the 2015-2016 adoption; however, no materials were adopted for health and physical education for kindergarten through grade 8.⁴² The previous year's adoption, in 2014-2015, adopted three instructional materials for health and physical education courses in high school grade levels.⁴³

III. Effect of Proposed Changes:

CS/HB 1467 provides eight year terms limits for school board members, and modifies school district requirements for instructional materials, including instructional materials in school libraries and media centers to provide increased oversight over and public access to all materials used in instruction.

School Board Member Term Limits

The bill establishes term limits of eight years for school board members. The bill provides that a person may not appear on the ballot for reelection to the office of school board member if, by the end of his or her current term of office, the person will have served, or but for resignation would have served, in that office for eight consecutive years. The term limits would begin on or after

³⁹ Section 1003.42(2), F.S. Required instruction includes, for example, the history and content of the Declaration of Independence, the arguments in support of adopting our republican form of government, flag education, the history of the Holocaust, the history of African Americans, and kindness to animals.

⁴⁰ Rule 6A-1.094124, F.A.C. The DOE provides the Required Instruction Portal website for districts to annually submit information on required topics. Florida Department of Education, *Florida Required Instruction Portal*, <https://www.flrequiredinstruction.org/> (last visited Jan. 18, 2022).

⁴¹ Instructional materials adoption at the state level focuses on one or more related subject areas per year, on 5-year rotating basis. Florida Department of Education, Instructional Materials, *FLORIDA INSTRUCTIONAL MATERIALS ADOPTION SCHEDULE FOR ADOPTION YEARS 2020-2021 THROUGH 2023-2024* (2020), available at <https://www.fldoe.org/core/fileparse.php/5574/urlt/AdoptionCycle.pdf>. The DOE posts the instructional materials adoption cycle for 5 years. K-12 Mathematics is the subject area in the 2021-2022 year.

⁴² Florida Department of Education, Instructional Materials, *2015-2016 Florida Department of Education 6-12 Career and Technical Education, K-8 Physical and Health Education, K-12 Visual and Performing Arts, and K-12 World Languages: Chinese, German, Italian and Latin Adopted Instructional Materials* (July 12, 2016), available at <https://www.fldoe.org/core/fileparse.php/5574/urlt/2015-2016AdoptedIMUpdate.pdf>.

⁴³ Florida Department of Education, Instructional Materials, *2014-2015 Florida Department of Education Adopted Instructional Materials* (Jan. 28, 2016), available at <https://www.fldoe.org/core/fileparse.php/5574/urlt/1415AIMDec2015.pdf>. Instructional materials used to teach reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment, must be annually approved by a district school board in an open, noticed public meeting. Section 1003.42(1)(b), F.S.

the November 8, 2022, election, allowing current school board members to serve at least an additional eight years.

Public Participation in the Instructional Materials Review Process

The bill requires that district school boards that hold meetings of committees convened for the purpose of ranking, eliminating, or selecting instructional materials for recommendation to the district school board must be noticed and open to the public, and must include parents of district students. Additionally, the bill requires school districts to publish on their website, in a searchable format prescribed by the Department of Education (DOE), a list of all instructional materials, include those used for specified required instruction.

District school boards must also:

- Provide access to all materials, excluding teacher editions, 20 calendar days before the district school board⁴⁴ takes any official action on such materials. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption;
- Select, approve, adopt or purchase materials as a separate line item on the agenda and must provide a reasonable opportunity for public comment. The materials may not be selected, approved, or adopted as part of a consent agenda; and
- Submit to the Commissioner of Education, beginning June 30, 2023, an annual report that identifies:
 - Each material, not purchased from the state-adopted list, which the school district received an objection for the school year and the specific objections;
 - Each material that was removed or discontinued as a result of an objection; and
 - The grade level and course for which a removed or discontinued material was used, as applicable.

The bill requires the DOE to publish and update a list of materials that were removed or discontinued by district school boards as a result of an objection and disseminate the list to school districts for consideration in their instructional materials selection.

Materials in School District Libraries and Media Centers

The bill requires school librarians, media specialists, and other personnel involved in the selection of school district library materials to complete the training program developed by the DOE, which must also include training on materials for required instruction and materials in school library media centers and reading lists.

The bill also requires that each book made available to students through a school district library media center or included in a recommended or assigned school or grade-level reading list must be selected by a school district employee who holds a valid educational media specialist certificate. All public elementary schools will be required to publish on its website a list of all materials maintained in the school library or required as part of a booklist used in a classroom.

⁴⁴ The process by which instructional materials are adopted by a district school board is established in s. 1006.283(2)(b)8., F.S.

District school boards are required in the bill to adopt and post on the website procedures for developing library media center collections. At a minimum, the procedures must:

- Require book selections to be free of pornography and prohibited materials harmful to minors, suited to student needs, and appropriate for the grade level and age group;
- Require consultation of reputable, professionally recognized sources and school community stakeholders for each selection;
- Provide for library media center collections based on reader interest, support of state academic standards and aligned curriculum, and the academic needs of students and faculty; and
- Provide for the regular removal or discontinuance of books based on, at a minimum, physical condition, rate of recent circulation, alignment to state academic standards and relevancy to curriculum, out-of-date content, and materials that were removed because of an objection by a parent or resident of the county.

The bill provides that school principals are responsible for overseeing compliance with school library media center materials selection procedures.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact to the state is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.35, 1006.28, 1006.29, 1006.40.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.