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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION INNOVATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3407

RELATING TO: Courses of Study and Instructional Materials

SPONSOR(S): Representative Barriero

COMPANION BILL(S): SB 1142

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) EDUCATION INNOVATION
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 3407 has three major provisions:

- Requires the instruction in public schools to include the study of Hispanic contributions to the United States
- Allows the entire, rather than a set percentage, annual allocation for the purchase of instructional materials to be used for the purchase of materials not on the state-adopted list. (A waiver can be granted for this currently; see present situation section). By removing the cap on the amount of the annual allocation to be used for materials not on the state-adopted list and allowing districts to directly negotiate with textbook companies, HB 3407 could weaken the current instructional materials state-adoption process. Districts could spend all of their allocation on materials not on the state-adopted list.
- Allows the purchase of the materials to be directly negotiated with textbook companies. It is unclear whether the publisher will be willing to negotiate directly with a district since the publisher could then be obligated, because of Florida's "favored nation" clause to offer the same prices and options to other districts and the entire state as well as other states that have "favored nation" clauses.

The provisions of HB 3407 could enable the districts to print on demand from electronic versions if the publisher agreed to allow their materials to be reproduced in this manner. It is undetermined whether this would result in a savings to the district. If they chose and were granted permission to print electronically, a large printing operation would be required, and any savings in transportation or warehousing could be used in printing costs.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Required Instruction

Section 233.061(1), F.S., requires each school district to provide courses in the following subject areas: reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts. Furthermore, 233.061(2), F.S., requires teaching the following:

- Declaration of Independence
- Republican form of government pro-arguments, as in Federalist Papers
- United States Constitution essentials and how it provides government structure
- Flag education, including proper flag display and salute
- Elements of civil government, including primary functions and interrelationships between the Federal Government, the state, and its counties, municipalities, school districts, and special districts
- History of Holocaust and systematic, planned annihilation of European Jews
- History of African Americans, including time before slavery and contributions
- Elementary principles of agriculture
- True effects of alcohol and narcotics upon body and mind
- Kindness to animals
- State history
- Conservation of natural resources
- Comprehensive health education
- Additional materials, courses, subjects, or fields as prescribed by law or rule

The study of Hispanic contributions to the United States is not currently a required subject.

Instructional Materials

“Instructional materials” are defined by s. 233.07(4), F.S., as items that, by design, serve as a major tool for assisting in the instruction of a subject or course. These items may be in bound, unbound, kit, or package form and include hardbacked or softbacked textbooks, consumables, learning laboratories, manipulatives, electronic media, and

computer courseware or software. It does not include electronic or computer hardware even if such hardware is bundled with software or other electronic media.

Section 236.122, F.S., instructs the Legislature to annually allocate, in the General Appropriations Act, an amount to be used for instructional materials for public school students enrolled in basic and special programs in grades K-12. The Department of Education distributes to each district an amount, calculated by formula, which provides for growth of student membership in basic and special programs in the district and for instructional material maintenance needs.

The statutory guidelines for the use of the instructional materials allocation, as defined by s. 233.07(4), F.S., are established in s. 233.34, F.S. The guidelines provide that the allocation is to be used for instructional materials on the state-adopted list and requires that at least 50 percent be used to purchase items which provide instruction to students at the level for which the materials are designed. The statute also provides some exceptions where the allocation may be used for materials not on the state-adopted list:

- 50 percent may be used for instructional materials, including library and reference books and nonprint materials, not on the state-adopted list, and for the repair and renovation of textbooks and library books
- 75 percent of the amount allocated for first grade materials may be used for materials not on the state-adopted list
- 100 percent of the amount allocated for kindergarten materials may be used for materials not on the state-adopted list

The funds which are allowed to purchase materials that are not on the state adopted list may be used for materials that do not fit the definition of instructional materials (found in s. 233.07(4), F.S.) This will include bound, unbound, kit or package form, hardback or softback textbooks, replacements for previously purchased instructional materials, consumables, learning laboratories, manipulatives, electronic media, computer courseware or software. However, this flexibility does not include the purchase of equipment or supplies or electronic or computer hardware even if the hardware is bundled with software. The funds may be used to purchase science laboratory materials and supplies which are not on the state adopted list if school or district is authorized to do so in the General Appropriations Act.

In addition to the above 50, 75, and 100 percent exceptions to the use of the allocation for instructional materials not on the state-adopted list, a district can request a 5-year waiver for 100 percent of the allocation, pursuant to s. 229.592(6), F.S. Fourteen of the districts have requested the waiver under s. 229.592(6), F.S., and the Commissioner has granted all 14 requests. The Commissioner has not turned down any requests for this waiver.

Statewide, approximately 85 percent of the allocation for instructional materials is spent on materials that are not on the state-adopted list.

State-Adopted List Process

Florida's instructional materials adoption process requires that all instructional materials submitted for consideration be evaluated based on their ability to implement the selection criteria developed by the Commissioner of Education, pursuant to s. 229.512, F.S. The criteria for each subject or course shall be made available to publishers of instructional materials at least 24 months prior to the date on which bids are due. The intent stated in s. 229.512(15), F.S., is that publishers have ample time to develop instructional materials designed to meet requirements.

“Favored Nation” Clause

Section 233.25, F.S., contains a “favored nation” clause which requires publishers to provide to the state the lowest prices, any reductions, and any free materials that the publisher offers to any other state or school district. The specific provisions are found in subsections (6), (7), and (8) and requires the publisher to:

- Furnish materials at a price in the state which does not exceed the lowest price at which they offer the instructional materials for adoption or sale to any state or school district in the United States, pursuant to subsection (6).
- Provide any free materials in the state to the same extent as that received by any state or school district in the United States, pursuant to subsection (8).
- Reduce automatically the price of materials to any governing board to the extent than reductions are made elsewhere in the United States, pursuant to subsection (7).

Due to these provisions, if another state or district negotiated a lower price, the publisher would have to provide to the state of Florida the same low price. Additionally, other states which have “favored nation clauses” would also want the same low prices.

Transportation, Depository Costs, Requisition

In addition to offering the state the lowest price available, the publisher is responsible for all transportation costs to their depository, pursuant to s. 233.25(6), F.S. Most of the publishers furnishing materials for the state of Florida school districts have designated the Florida School Book Depository in Jacksonville as their depository; the materials are delivered to this location at the cost of the publisher. The district pays the depository for delivery to the district.

Section 233.22, F.S., requires that materials on the state-adopted list be requisitioned from the depository of the publisher. Currently, superintendents and districts do not negotiate directly with textbook companies. The publisher is bound by the “favored nation” clause to give the state the lowest price possible. Additionally, negotiations at the state level allow the state to take advantage of the economy of scale.

B. EFFECT OF PROPOSED CHANGES:

The provision of HB 3407 results in the following changes in current statutory law:

- Requires the instruction in public schools to include the study of Hispanic contributions to the United States

- Allows the entire, rather than a set percentage, annual allocation for the purchase of instructional materials to be used for the purchase of materials not on the state-adopted list. (A waiver can be granted for this currently; see present situation section).
- Allows the purchase of the materials to be directly negotiated with textbook companies.

By removing the cap on the amount of the annual allocation to be used for materials not on the state-adopted list and allowing districts to directly negotiate with textbook companies, HB 3407 could weaken the current instructional materials state-adoption process. Districts could spend all of their allocation on materials not on the state-adopted list, and they could negotiate with companies without purchasing materials on the list through the depository. This may not necessarily result in a cost savings result in a savings due to the "favored nation" clause. If the books were purchased at a lower price, the publisher would be bound to give the same low price to the entire state, other districts, and to other states with a "favored nation" clause.

The provisions of HB 3407 could enable the districts to print on demand from electronic versions if the publisher agreed to allow their materials to be reproduced in this manner. It is undetermined whether this would result in a savings to the district. If they chose and were granted permission to print electronically, a large printing operation would be required, and any savings in transportation or warehousing could be used in printing costs.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No rulemaking authority is given.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Districts, schools, and teachers will have a new topic, Hispanic contributions to the United States, to add to their curriculum.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 233.061 and 233.34, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1 Amends s. 233.061, F.S., to include the study of Hispanic contributions to the United States in required public school instruction.

Section 2 Amends s. 233.34, F.S., to allow the annual allocation for the purchase of instructional materials not on the state-adopted list as well as those included on the state-adopted list. Allows school districts to negotiate directly with textbook companies. Removes the percentage capped limits on the amount of the annual allocation which can be spent on materials not on the state-adopted list. Allows entire allocation to be used for instructional materials, including library and reference books and nonprint materials, and for the repair and renovation of textbooks and library books.

Section 3 Provides an effective date of July 1 of year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

One of the intended outcomes of HB 3407 is to enable some districts to access books electronically and use the electronic version to print on demand in order to better utilize the funds allocated for instructional materials. The intent is to save on transportation and warehousing costs. If HB 3407 passes, there is no guarantee that printing on demand will be less expensive than the current method of requisitioning and purchasing materials on the state-adopted list. A large printing house would be needed to reproduce entire contents and graphics in textbooks. Any savings which could be realized in the district's cost of transportation from the depository to the district could also be used in the printing process.

It is unclear whether the publisher will be willing to negotiate directly with a district since the publisher could then be obligated, because of Florida's "favored nation" clause to offer the same prices and options to other districts and the entire state as well as other states that have "favored nation" clauses.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

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