

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1838

SPONSOR: Education Committee and Senator Aronberg

SUBJECT: Instructional Materials/K-12

DATE: March 26, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires publishers to provide and price adopted instructional materials on an individual basis in order for school districts to buy individual materials in core subject areas, rather than as a part of an adopted package or bundle.

The bill makes changes to the following deadlines: appointing members of the state instructional materials committees; advertising bids for instructional materials; receiving sealed bids by the Department of Education; and beginning the adoption term for instructional materials.

Also, the bill deletes the existing purchase order schedule. District school boards may issue purchase orders subsequent to February 1st in an aggregate amount that does not exceed 90 percent of the current year's allocation. The bill provides that there is no authority to set any future instructional materials allocation. Districts are responsible for any amount of money that is committed in purchase orders in excess of the district's allocation for the next year.

The bill provides an effective date of July 1, 2003.

This bill substantially amends ss. 1006.29, 1006.33, 1006.34, 1006.36, 1006.37, and 1006.40, F.S.

II. Present Situation:

Instructional materials

The law (s. 1002.20(18), F.S.) provides that each public school student is entitled to sufficient instructional materials in the core courses of mathematics, language arts, social studies, science,

reading, and literature, in accordance with the provisions of ss. 1003.02(1)(d) and 1006.40(2), F.S.

Subpart F of part I of chapter 1006, F.S., provides for the requisition, distribution, accounting, storage, and care of instructional materials for k-12 public education. Current law (s. 1006.29(4), F.S.) defines “instructional materials,” for purposes of state adoption, as items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. However, the term does not include electronic or computer hardware even if such hardware is bundled with software or other electronic media, nor does it include equipment or supplies.

Florida’s instructional materials selection and adoption process

Each year the Commissioner of Education determines the areas in which instructional materials must be submitted for adoption and appoints members of state instructional material committees. All instructional materials submitted for consideration by state instructional materials committees must be evaluated based on their ability to best implement the selection criteria developed by the Commissioner of Education and the curricular objectives in the Sunshine State Standards. State instructional materials committees are responsible for making recommendations, in the form of a report, for instructional materials for each grade and subject field in the curriculum for public elementary, middle, and high schools in which adoptions are to be made. The Commissioner determines the number of titles to be adopted in each area.

The Department of Education must annually publish both an official and a tentative schedule of subject areas for adoption. The terms of adoption of any instructional material must be for a 6-year period; however, the Commissioner may approve terms for less than 6 years for materials in content areas that require more frequent revision.

The Department of Legal Affairs prepares a contract with each successful bidder for execution by the Governor and the Secretary of State. After considering districts’ comments and with the publisher’s agreement, the Commissioner may extend or shorten the contract period for no more than two years. The terms of the contract, however, remain the same as the original contract.

School District responsibilities

District school superintendents, under s. 1003.02(1)(d), F.S., must meet specific instructional materials requirements, including:

- providing adequate instructional materials for all students in accordance with the requirements of chapter 1006, F.S., in the core courses of mathematics, language arts, social studies, science, reading, and literature, except for instruction for which the school advisory council approves the use of a program that does not include a textbook as a major tool of instruction;
- adopting courses of study for use in the schools;
- providing for proper requisitioning, distribution, accounting, storage, care, and use of all needed instructional materials; and

- ensuring that the use of materials is consistent with district goals and objectives, curriculum frameworks approved by the State Board of Education, and required state and district performance standards.

Allocation and disbursement of funds

The law (s. 1011.67, F.S.) allows the Department of Education to allocate and distribute to each district funds to be used for instructional materials for students enrolled in basic and special programs in grades K-12. The department distributes to each district an amount, calculated by formula, which provides for growth of student membership and for maintenance needs. Instructional materials are funded as a categorical item in the General Appropriations Act.

Statutory guidelines, prohibitions, and exceptions for the use of the instructional materials allocation are established in ss. 1006.40 and 1011.62, F.S., including materials on the state adopted list and certain materials not included on the list. The Commissioner of Education, on or before July 1 each year, must certify to each district school superintendent the estimated allocation of state funds for instructional materials, computed pursuant to the provisions of s. 1011.67, F.S., for the ensuing fiscal year.

Each district school board must purchase current instructional materials to provide each student with a textbook or other instructional material as a major tool of instruction in core courses of the appropriate subject areas of mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12. The law (s. 1006.40(2), F.S.) specifies when the purchases must be made. Unless specifically provided for in the General Appropriations Act, the cost of instructional materials purchases required by s. 1006.40(2)(a), F.S., may not exceed the amount of the district's allocation for instructional materials, pursuant to s. 1011.67, F.S., for the previous 2 years. However, this requirement does not apply to contracts in existence before April 1, 2000, or to a purchase related to growth of student membership in the district or for instructional materials maintenance needs.

To expedite the delivery of instructional materials, district school boards may issue purchase orders after February 1st for up to 20 percent of the current year's allocation. After April 1, the district school boards may purchase up to 90 percent of the current year's allocation. These materials must be paid for from the next year's allocation. Chapter 2000-291, L.O.F., revised the dates from March 15th to February 1st and from May 1st to April 1st.

Specific Appropriations 106 of the 2002-2003 General Appropriations Act (GAA) provides \$227,939,157 for instructional materials from the General Revenue fund. These funds must be distributed to school districts, according to the following schedule:

- 50% on or about July 10, 2002;
- 35% on or about October 10, 2002;
- 10% on or about January 10, 2003; and
- the balance (5%) on or about June 10, 2003.

When a school district's total allocation has not been expended or obligated prior to June 30 in any year, the law (s. 1006.40(7), F.S.) requires the school district to carry forward the unobligated amount and add it to the next year's allocation.

Depository and other requirements

Bidders for state-adopted materials contracts (s. 1006.33, F.S.) must state the lowest wholesale price at which the materials will be furnished at the time of adoption, delivered f.o.b. (free on board) to the Florida depository of the publisher, manufacturer, or bidder. Publishers or manufacturers must provide materials at a price, inclusive of all transportation costs to their depositories, that does not exceed the lowest price for adoption or sale to any state or school district in the U.S. Also, publishers and manufacturers must maintain or contract with a depository in the state and maintain an inventory that is sufficient to receive and fill orders. Section 1006.37, F.S., requires district school superintendents to requisition adopted instructional materials from the depository under contract with the publisher, subject to certain conditions.

According to the Department of Education, there are three depositories in Florida. The Florida School Book depository is under contract with publishers or manufacturers. Two depositories (Libreria Impacto and ABC Book Supply, Inc.) are maintained by publishers or manufacturers and currently conduct a limited volume of business with school districts.

Duties of Publishers and Manufacturers

Publishers and manufacturers are subject to treble damages for failure to comply with specific statutory requirements, including:

- becoming associated or connected with any combination in restraint of trade in instructional materials or enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in the state;
- reducing automatically the price of the instructional materials to any district school board to the extent that reductions are made elsewhere in the U.S.; and
- providing any instructional materials free of charge in the state to the same extent as they are provided free of charge to any state or school district in the U.S.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 1006.29, F.S., to change the date of appointment (from April 15th to March 15th) for the members of the state instructional materials committees.

Section 2. The bill amends s. 1006.33, F.S., to change the date (from May 15th to April 15th) on which the Department of Education must advertise bids and the date (from June 15th to May 15th) on which the bids will be received by the department from publishers.

Section 3. The bill amends s. 1006.34, F.S., to change the starting date of the adoption period from April 1st to February 1st.

Section 4. The bill amends s. 1006.36, F.S., to change the date on which the 6-year term of adoption begins from April 1st to February 1st.

Section 5. The bill amends s. 1006.37, F.S., require publishers to provide and price adopted instructional materials on an individual basis in order for school districts to buy individual materials in core subject areas rather than as a part of an adopted package or bundle. The bill provides that there is no authority for setting any future instructional materials allocation.

Districts are responsible for any amount of money that is committed in purchase orders in excess of the district's allocation for the next year.

Section 6. The bill amends s. 1006.40, F.S., to delete the existing purchase order schedule. District school boards may issue purchase orders subsequent to February 1st in an aggregate amount that does not exceed 90 percent of the current year's allocation.

Section 7. The bill provides an effective date of July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Price

Publishers will be required to provide the price of adopted instructional materials on an individual basis. To some extent, this information is provided during the adoption process. For example, the current 6-year contract for reading (grades K-5) contains a detailed list of the major tools of instruction, ancillary materials, and items offered 'free with purchase,' by grade level. The list contains the following information for the major tools of instruction, ancillary materials, and items offered free with purchase: ISBN; author; title; and edition. The contract contains the contract price for each of the major tools of instruction and each of the ancillary materials.

The bid forms contain information that is included in the contract, as well as the current net wholesale price and bid price for each major tool of instruction and each ancillary material. The separate bid form for the items offered for free contains the ISBN but no price. However, some of these ISBNs match the ISBNs on the bid form that specifies the price for the major tools of instruction and ancillary materials.

This provision may affect future contracts for instructional materials. These contracts are between the state and publishers or manufactures, as well as contracts between publishers and their depositories. The Florida School Book depository is the primary depository.

Purchase orders

The bill allows school districts to issue purchase orders for up to 90% of the current year's allocation to expedite the delivery of materials that will be paid from the next year's allocation. According to the Florida School Book Depository, this change will likely pose no inventory problem for the depository for school districts wishing to obtain materials that are already on the adopted list. The provision may, however, pose a practical problem for the 2003-2004 adoption for the depository and the school boards for newly adopted materials that are not yet subject to the contract date of February 1, 2004. The newly adopted materials will not be covered under the contract until that date.

C. Government Sector Impact:

Adoption Term

The bill revises the adoption term for instructional materials. The beginning date for the terms of adoption for instructional materials changes from April 1st to February 1st. In June 2001, the Department of Education issued bid specifications and criteria for the 2003-2004 adoption, including mathematics, K-12. The bid deadline is June 2003 and the 6-year contract is to become effective on April 1, 2004. Under the bill, contracts for these materials would become effective sooner and the required preliminary activities (e.g., training state instructional materials committee members) will need to occur earlier.

Purchase Orders

After February 1st, district school boards will be able to issue purchase orders for up to 90 percent of the current year's allocation. For example, if a district school board's current allocation is \$2 million, it will be able to encumber up to \$1.8 million (the full 90% of a current year allocation of \$2 million) after February 1st. Until February 1, 2004, these encumbered funds would likely be limited to purchases of already adopted materials. District school boards that actually commit funds for up to the maximum threshold established in the bill before they have an indication of their allocation for the next year may have to use an alternative funding source, if their appropriation from the General Revenue fund for the next year is less than anticipated. Under the bill, districts are responsible for any amount of money that is committed in purchase orders in excess of the district's allocation for the next year.

VI. Technical Deficiencies:

The bill requires publishers to provide the price of adopted instructional materials on an individual basis. The new language is drafted to s. 1006.37, F.S., related to the responsibilities for school district superintendents, rather than to the provisions for publishers or manufacturers. The bill does not provide districts with the authority to purchase instructional materials in core subject areas on an individual basis and does not amend the provisions of current law for bid specifications. The bill does not conform the date (April 1) in s. 1006.28(2)(b), F.S., to the new

date established in the bill (February 1). This provision requires school districts to annually notify the Department of Education about the state-adopted materials that they will use.

Related Issues:

Contracts

There are existing multi-year contracts with publishers and manufacturers. The bill does not state that the provisions do not apply to contracts in effect prior to April 1, 2003. State and federal constitutional impairment of contract clauses (Article I, section 10 of the U.S. Constitution and Article I, section 10 of the Florida Constitution) prohibit the passage of laws that impair contractual obligations.

According to the Florida Department of Education, all contracts for public school instructional materials contain a provision that subordinates the contract to the right of the Legislature to alter or repeal any of the statutes related to instructional materials. The provision further states that when the terms of the contract conflict with subsequent legislation on the subject of instructional materials, the terms of the contract are abrogated and of no effect. The contract further notes that if any material change is made to the law which is to either party's disadvantage to continue the current contract, either party may rescind the contract, upon written notice within 90 days after the statute takes effect.

Current OPPAGA review

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is scheduled to release a report this month that examines Florida's system of acquiring and distributing instructional materials, as well as any changes that can be made to Florida's process to reduce costs. Specifically, OPPAGA is examining the following:

- authorizing district-to-district sales of instructional materials;
- authorizing districts to purchase used materials;
- authorizing districts to have the option to buy materials directly from publishers;
- requiring the Department of Education to better monitor publisher distribution of free materials to districts; and
- establishing penalties for publishers who fail to deliver materials in a timely manner.

On March 12, 2003, OPPAGA provided the Commissioner of Education with a report containing preliminary findings and recommendations. OPPAGA requested a written response to the findings from the Commissioner by March 27, 2003.

VII. Amendments:

None.