

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 231 w/CS Instructional Materials  
**SPONSOR(S):** Representative Russell  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 716

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) General Education (Sub)	7 Y, 0 N	Rogers	Bohannon
2) Education K-20	25 Y, 0 N w/CS	Rogers	Bohannon
3) Education Appropriations (Sub)	15 Y, 0 N	Gordon	Mizereck
4) Appropriations	40 Y, 0 N	Mizereck	Hansen
5)			

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### SUMMARY ANALYSIS

CS/HB 231 authorizes the Department of Education to conduct a pilot program to enable school districts to purchase instructional materials from sources other than the Florida book depository. Hernando County, Pasco County, and Polk County are required to participate in the pilot. Charter schools within each district may participate.

The committee substitute requires secondhand book dealers or third-party book vendors, when providing used adopted instructional materials to a school district, to provide the International Standard Book Number (ISBN) of the used instructional materials. In addition, the secondhand book dealers or third-party vendors must certify:

- The availability of the used instructional materials.
- The materials are not samples or first printings.
- The materials are the most currently adopted, Florida-specific and conform to the Sunshine State Standards.

CS/HB 231 requires the Council for Education Policy Research and Improvement (CEPRI) to submit a report to the Legislature during the 2004 Legislative Session. The state is not responsible for financial loss caused the school district's deviating from the requirements in Florida Statutes.

The committee substitute creates an undesignated section of law and provides that this section is repealed July 1, 2006.

If the districts realize substantial savings, it naturally follows that additional dollars will be available to expand each district's inventory of instructional materials. The impact on the quality of instructional materials will have a direct correlation to the quality of the procedure used by the district to evaluate and choose materials locally.<sup>1</sup>

However, the impact of the pilot programs in the three districts may have statewide implication. It should be noted that "economies of scale" will be difficult to achieve given the "most favored nations" requirement that binds publisher sales. Basically, publishers are required to sell instructional materials to any district in the state at the lowest cost offered in any other district in Florida or any other state.

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<sup>1</sup> Florida Department of Education, 2003 Legislative Bill Analysis, 2-11-03.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

#### B. EFFECT OF PROPOSED CHANGES:

CS/HB 231 authorizes the Department of Education to conduct pilot programs in Hernando County, Pasco County, and Polk County. The pilot programs will allow school districts to purchase instructional materials, including used books, from sources other than through the Florida book depository.

The committee substitute requires secondhand book dealers or third-party book vendors, when providing used adopted instructional materials to a school district, to provide the International Standard Book Number (ISBN) of the used instructional materials. In addition, the secondhand book dealers or third-party vendors must certify:

- The availability of the used instructional materials.
- The materials are not samples or first printings.
- The materials are the most currently adopted, Florida-specific and conform to the Sunshine State Standards.

CS/HB 231 requires the CEPRI to submit a report to the Legislature during the 2004 Legislative Session. The state is not responsible for financial loss caused the school district's deviating from the requirements in Florida Statutes.

The committee substitute creates an undesignated section of law and provides that this section is repealed July 1, 2006.

#### **Florida's Current Instructional Materials Selection and Adoption Process**

Each year the Commissioner of Education makes decisions regarding the subject areas in which instructional materials must be adopted and the materials that are adopted. The decisions are based on a process with a six-year adoption cycle and the recommendations of state instructional materials committees. The end result each year of the process is a contract between the Department of Education and the publishers whose materials are adopted.

Bidders for state-adopted materials contracts 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. Florida uses a "most-favored-nation" requirement in its instructional materials contracts. This provision requires publishers to provide Florida with the best offers made to any state or school district in the United States. In addition to the initial guarantee of lowest price, the publisher must automatically reduce prices if lower prices are offered elsewhere.

School districts review the state-adopted materials and select those that they wish to use in their local schools. The adopted books are sent by the publishers to the Florida School Book Depository. School districts must purchase state-adopted materials through the publishers' in-state warehouse, the Florida School Book Depository.

The rationale for a state depository is to help ensure that materials are easily accessible. A state depository also is convenient for school districts because they do not have to contact multiple publishers. Since Florida districts buy a large volume of materials each year, the publishers develop their textbooks and other materials specifically to meet the Sunshine State Standards. However, Florida pays twice for shipping costs; once to the depository and again to the school district. School districts can not buy used books, nor can they sell used books to other districts.

Districts currently have the flexibility to use up to 50% of their instructional materials allocations on non-state adopted materials. These can be purchased from any vendor and may or may not be aligned to the Sunshine State Standards.<sup>2</sup>

### **Existing Contracts with Publishers and Manufacturers**

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 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.

## C. SECTION DIRECTORY:

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

See Fiscal Comments.

##### 2. Expenditures:

See Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

See Fiscal Comments.

##### 2. Expenditures:

See Fiscal Comments.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes the Department of Education to waive the district school superintendent's required use of depositories under contract with publishers or manufacturers. This provision may affect future contracts for instructional materials.

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<sup>2</sup> Florida Department of Education, 2003 Legislative Bill Analysis, 2-11-03.

The fiscal impact is unknown for continuing these requirements during the operation of pilot programs that may not actually use the inventory in their depositories.<sup>3</sup>

D. FISCAL COMMENTS:

If the districts realize substantial savings, it naturally follows that additional dollars will be available to expand each district's inventory of instructional materials. The impact on the quality of instructional materials will have a direct correlation to the quality of the procedure used by the district to evaluate and choose materials locally.<sup>4</sup>

The state finances much of the cost of instructional material purchases by districts through categorical funding. In addition, it supports the cost of the present material selection process and negotiates contracts with publishers. There is no appreciable direct cost attributable to the pilot.<sup>5</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

2. Other:

B. RULE-MAKING AUTHORITY:

This bill does not grant additional rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Waiver

Prior to the 2002 Legislative Session, the elected Commissioner of Education had the authority to waive, upon a school district's request, certain provisions of the school code, including chapter 233, F.S., for instructional materials.<sup>6</sup>

In Chapter 2002-387, L.O.F., the Legislature removed the authority to waive state law in s. 229.592(9), F.S., now in s. 1008.345, F.S., and did not delegate it to either the appointed State Board of Education or the appointed Commissioner of Education. 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. The bill allows the Department of Education to waive this provision in law. This may be subject to challenge on the basis of an invalid delegation of legislative authority.

OPPAGA Report on K-12 Textbook Approach

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

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<sup>3</sup> Florida Department of Education, 2003 Legislative Bill Analysis, 2-11-03.

<sup>4</sup> Florida Department of Education, 2003 Legislative Bill Analysis, 2-11-03.

<sup>5</sup> Florida Department of Education, 2003 Legislative Bill Analysis, 2-11-03.

<sup>6</sup> This provision was in s. 229.592(9), F.S., and is not included in current s. 1008.345, F.S.

materials, as well as any changes that can be made to Florida's process to reduce costs. Specifically, OPPAGA is examining the following:

- a. Authorizing district-to-district sales of instructional materials;
- b. Authorizing districts to purchase used materials;
- c. Authorizing districts to have the option to buy materials directly from publishers;
- d. Requiring the Department of Education to better monitor publisher distribution of free materials to districts; and
- e. Establishing penalties for publishers who fail to deliver materials in a timely manner.

The quality of instructional materials purchased by school districts has an impact on the quality of instruction in the classroom. Commensurate with costs savings, the district should assess the impact of the pilot program on student achievement.<sup>7</sup>

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2003, the Committee on General Education heard HB 231 and adopted a strike-all amendment. The strike-all amendment differs from the bill as follows:

- Authorizes the Council for Education Policy Research and Improvement (CEPRI) to conduct the pilot program instead of the Department of Education (DOE).
- Provides that Hernando County, Pasco County, and Polk County may participate in the program instead of requiring Hernando County, Pasco County, and Hillsborough County to participate.
- Removes the DOE waiver provision and inserts "Notwithstanding the provisions of s. 1006.37, F.S."
- Requires CEPRI to submit a report to the Legislature for consideration during the 2004 Legislative Session instead of the DOE.
- Requires second hand book dealers or vendors to: (1) certify the availability of the used instructional materials, (2) provide the International Standard Book Number (ISBN) of each of the used instructional materials, and (3) certify that the materials are not samples or first printings and are the most currently adopted, Florida-specific instructional materials and conform to the Sunshine State Standards.
- Provides that the state is not responsible for financial loss caused by the school district's deviating from the requirements of s. 1006.37, F.S.
- Provides that this section is repealed July 1, 2006.

The bill was favorably reported by a vote of 7 Yeas and 0 Nays.

On April 7, 2003, the Committee on Education K-20 considered HB 231 and adopted the strike-all amendment recommended by the Committee on General Education. In addition, an amendment to the strike-all amendment was adopted that authorized the Department of Education to conduct the pilot program instead of CEPRI. The bill was reported favorably with a committee substitute by a vote of 25 Yeas and 0 Nays.

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<sup>7</sup> Florida Department of Education, 2003 Legislative Bill Analysis, 2-11-03.