

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1031 Instructional Materials for K-12 Public Education

SPONSOR(S): Porter

TIED BILLS: **IDEN./SIM. BILLS:** SB 1388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	13 Y, 0 N	Beagle	Ahearn
2) Education Appropriations Subcommittee	12 Y, 0 N	Seifert	Heflin
3) Education Committee			

SUMMARY ANALYSIS

The law establishes a statewide process for the adoption of instructional materials. The Commissioner of Education must annually determine the academic areas in which instructional materials must be submitted for adoption. Instructional materials for each subject are adopted in five-year intervals. The commissioner appoints state instructional materials reviewers for content areas up for adoption. They review the instructional materials, evaluate the content for alignment with the Next Generation Sunshine State Standards, and recommend materials for inclusion on the state-adopted list.

The Department of Education (DOE) solicits bids from instructional materials publishers on the recommended list. After considering bids, the commissioner adopts instructional materials and contracts with every publisher with adopted instructional materials. Among other things, publishers must maintain a depository in the state, sufficient inventory to fill orders, and disclose the names of instructional materials authors.

School districts are responsible for the requisition, distribution, accounting, storage, care, and use of all instructional materials. Instructional materials must be requisitioned from the publisher's depository. School districts must use state funds for instructional materials to purchase material within the first two years of an adoption cycle. Fifty percent of the funds must be used to purchase digital instructional materials included on the state-adopted list, by FY 2015-16. The remaining 50 percent must be spent on instructional materials not on the state-adopted list.

The bill eliminates state instructional materials adoption and instead provides for review of instructional materials by either DOE or school boards. School districts are authorized to evaluate instructional materials submitted by publishers or refer submitted materials to DOE for review. The bill establishes standards for district and DOE review of instructional materials and authorizes the collection of fees from publishers who submit materials for review.

DOE must post on its website the list of DOE-approved instructional materials and those approved by other states, as "aligned to applicable standards," e.g., the Common Core State Standards in English Language Arts and Mathematics, which Florida has adopted.

Among other things, the bill eliminates the requirement that districts purchase instructional materials in the first two years of the adoption process. The bill eliminates elements of the adoption process from law, such as commissioner appointment of state instructional materials reviewers and provisions regarding DOE solicitation of bids and publisher contracting, deposits, bonds, depository, inventory, and author disclosure requirements.

The bill likely has a positive fiscal impact on DOE. The fiscal impact on school districts is indeterminate. See Fiscal Analysis & Economic Impact Statement and Drafting Issues or Other Comments.

The bill takes effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Instructional Materials Adoption

Under Florida law, “instructional materials” are items having intellectual content designed to serve as a major tool for instruction of a subject or course. Instructional materials may consist of hard-backed or soft-backed textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software.¹ The law establishes a statewide process for the adoption of instructional materials. The Commissioner of Education must annually determine the academic areas in which instructional materials must be submitted for adoption.²

The law establishes a five-year instructional materials adoption cycle for each content area, unless a content area requires more frequent revision, in which case the commissioner may approve a lesser term. The Department of Education (DOE) annually publishes an official adoption schedule for each of the succeeding two years, and a tentative schedule for years three through six.³

Instructional Materials Adoption Schedule⁴

Adoption Year	Subject Area
2011-12	Social Studies, K-12
2012-13	English Language Arts, K-5
	Mathematics, K-5
2013-14	English Language Arts, 6-12
	Mathematics, 6-12
2014-15	World Languages, K-12
	Career and Technical Education
	Health/Physical Education
	English for Speakers of Other Languages, K-12
2015-16	Science, K-12
2016-17	Social Studies, K-12

The commissioner must appoint three state instructional materials reviewers who are state or national experts in the content areas submitted for adoption. Reviewers evaluate instructional materials for alignment with the applicable Next Generation Sunshine State Standards (NGSSS), and recommend materials for inclusion on a state-adopted list.⁵ The third reviewer is only required when the first two reviewers disagree on placement of an item on the state-adopted materials list, in which case he or she acts as a “tie-breaker.”⁶ In addition to standards alignment, reviewers must also consider the:

- Age of students expected to use the materials.
- Educational purpose of the materials in relation to state and district performance standards and course description objectives.
- Degree to which the materials will be supplemented by classroom instruction.

¹ Section 1006.29(2), F.S.

² Section 1006.29(1)(a), F.S.

³ Section 1006.36(1), F.S.

⁴ Florida Department of Education, *Instructional Materials Adoption Cycle (May 2012)*, available at

http://www.fldoe.org/BII/instruct_mat/pdf/cycle.pdf. Adoption years 2013-14, 2014-15, 2015-16, and 2016-17 are tentatively scheduled contingent on funding. *Id.*

⁵ Section 1006.31(2), F.S.

⁶ Section 1006.29(1)(b), F.S.

- Degree to which the materials represent the broad racial, ethnic, socioeconomic, and cultural diversity of students.⁷

Before each content area adoption, DOE publishes content specifications for instructional materials. These specifications detail the courses for which materials are sought, plus the standards the materials must meet.⁸ DOE must advertise solicitation of bids from publishers with instructional materials on the recommended list. A publisher responding to the bid must submit samples of the instructional materials and bids must be accompanied by a deposit ranging from \$500 to \$2,500.⁹ When all bids have been considered, the commissioner adopts from the recommended list instructional materials for each grade and subject in the public elementary, middle, and high school curriculum designated in the advertisement.¹⁰

Once instructional materials are adopted, DOE must contract with every bidder with adopted instructional materials. A publisher under contract with DOE must give bond in such amount as DOE requires, signifying their intent to fulfill the contract.¹¹ Among other things, instructional materials publishers who submit items for adoption must:

- Maintain or contract with a depository in the state.
- Maintain in the depository for the first two years of the contract an inventory of instructional materials sufficient to receive and fill orders.
- Ensure the availability of an inventory in core academic subjects¹² sufficient to cover any growth in demand.
- Disclose only the names of instructional materials authors.¹³

District School Board Duties

District school boards are responsible for the requisition, distribution, accounting, storage, care, and use of all instructional materials. The district must ensure that instructional materials used in the district are consistent with the district's goals and objectives, as well as the curriculum frameworks adopted by the State Board of Education.¹⁴ Superintendents must requisition adopted instructional materials from the publisher's depository.¹⁵

Among other things, superintendents are required to notify DOE of the state-adopted materials that will be purchased for use in their district. The notification must include the school board's plan for using the instructional materials, to assist DOE in determining whether adequate materials have been requisitioned.¹⁶

Instructional Materials Funding

Funding for instructional materials is provided annually in the General Appropriations Act. School districts are required to:

- Provide each student, in kindergarten through grade 12, current instructional materials in core courses of mathematics, language arts, science, social studies, reading, and literature.
- Purchase instructional materials within the first two years of an adoption cycle.

⁷ Section 1006.34(2)(b), F.S.

⁸ Section 1006.33(1), F.S.

⁹ Sections 1006.33(3) and 1006.34(2), F.S.

¹⁰ Section 1006.34(2), F.S.

¹¹ Section 1006.34(3), F.S.

¹² Core academic subjects include mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12. Section 1006.40(2), F.S.

¹³ Section 1006.38(11)-(14), F.S.

¹⁴ Section 1006.28(1)(b), F.S.

¹⁵ Sections 1006.37(1) and 1006.38(11), F.S.

¹⁶ Section 1006.28(2)(b), F.S.

- Spend at least fifty percent of the funds to purchase digital or electronic instructional materials included on the state-adopted list, by FY 2015-16.
- Spend up to fifty percent of the funds on instructional materials that are not found on the state-adopted instructional materials list. However, funding may exceed the fifty percent cap for kindergarten (100%) and first grade (75%) instructional materials.¹⁷

Effect of Proposed Changes

The bill eliminates state instructional materials adoption and instead provides for review and approval of instructional materials by either DOE or school districts. School districts are authorized to evaluate instructional materials submitted by publishers or refer submitted materials to DOE for review. Districts must establish procedures for evaluating instructional materials submitted by publishers.

If the district chooses to review instructional materials, it must designate district staff who are experts in the content area to conduct reviews. Reviewers must review instructional materials for alignment to the NGSSS, level of instructional support, accuracy, and appropriate sequencing of content and make recommendations to the school board regarding materials that should be considered for use in district schools. Only instructional materials determined to be aligned to the NGSSS may be used.

School districts may collect fees from publishers who submit instructional materials for review; however, fees may not be charged for materials already reviewed by DOE. Districts must certify to DOE that all core instructional materials approved by the district are aligned with the NGSSS and evaluation standards.

The bill establishes requirements for DOE review and approval of instructional materials and authorizes the state board to collect fees from publishers who submit instructional materials for review. DOE must review instructional materials submitted by publishers or referred to it by school districts. The standards for such review are similar to those currently specified for state instructional materials reviewers. The bill prohibits approval of materials containing pornography or content for which sale to minors is prohibited.

DOE must post on its website the list of all school district- and DOE-approved instructional materials and those approved by other states, as “aligned to applicable standards.” Among other things, this will enable districts to capitalize on reviews conducted by other districts and, in the case of materials aligned to the Common Core State Standards in English Language Arts and Mathematics, other states.

The bill eliminates:

- The requirement that purchases be made in the first two years of the adoption process.
- Authorization to exceed the 50 percent cap on purchases of instructional materials not on the state-adopted list for kindergarten and first grade.
- Outdated requirements regarding the 2012-13 mathematics adoption.

The bill removes vestiges of the state adoption process made obsolete by the bill. The bill:

- Eliminates the requirement that superintendents notify DOE regarding state-adopted materials requisitioned by the district.
- Eliminates provisions requiring the commissioner to appoint three reviewers to review instructional materials for adoption.
- Shifts powers relating to instructional materials selection and adoption from the commissioner to the state board.
- Eliminates provisions regarding publisher bids, contracting, deposits, bonds, depository, inventory, and author disclosure requirements.

The bill also repeals statutory provisions:

¹⁷ Section 1006.40(2)-(4), F.S.
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- Authorizing an optional pilot program relating to transition to electronic and digital instructional materials.
- Relating to DOE advertising of requests for publisher bids.
- Requiring school districts to requisition instructional materials from publisher depositories.
- The Textbook Bid Trust Fund for holding publisher bids submitted to DOE.

These provisions are made obsolete by the bill.

Florida courts have held that the Legislature, when delegating authority to executive agencies or other entities, must establish minimal standards and guidelines ascertainable by reference to the legislation.¹⁸The bill authorizes school districts and the state board to collect fees from publishers who submit instructional materials for their review, but does not specify an amount or provide standards for determining the amount of the fee.

B. SECTION DIRECTORY:

Section 1. Amends s. 1006.28, F.S., relating to Duties of district school board, district school superintendent; and school principal regarding K-12 instructional materials; authorizes school boards to review instructional materials for use in by school district; specifies requirements for review of instructional materials, authorizes the collection of fees from publishers; conforms provisions.

Section 2. Repeals s. 1006.282, F.S., relating to Pilot program for the transition to electronic and digital instructional materials; conforms provisions.

Section 3. Amends s. 1006.29, F.S., relating to State instructional materials reviewers; eliminates provisions regarding the appointment of state reviewers; requires DOE to post on its website information regarding approved instructional materials; conforms provisions.

Section 4. Amends s. 1006.30, F.S., relating to Affidavit of state instructional materials reviewers; conforms provisions.

Section 5. Amends s. 1006.31, F.S., relating to Duties of state instructional materials reviewers; specifies standards for DOE instructional materials review; eliminates reporting; conforms provisions.

Section 6. Amends s. 1006.32, F.S., relating to Prohibited acts; conforms provisions.

Section 7. Repeals s. 1006.33, F.S., relating to Bids, proposals, advertisement.

Section 8. Amends s. 1006.34, F.S., relating to Powers and duties of the commissioner and DOE regarding instructional materials adoption; conforms provisions.

Section 9. Amends s. 1006.35, F.S., relating to Accuracy of instructional materials; conforms provisions.

Section 10. Amends s. 1006.36, F.S., relating to Term of adoption for instructional materials; conforms provisions.

Section 11. Repeals s. 1006.37, F.S., relating to Requisition of instructional materials from publisher's depository.

Section 12. Amends s. 1006.38, F.S., relating to Instructional materials publisher duties; eliminates provisions regarding publisher bids, contracts, bonds, and deposits.

Section 13. Amends s. 1006.40, F.S., relating to Use of instructional materials allocation; eliminates requirements regarding school district use of instructional materials funds; conforms provisions.

Section 14. Amends s. 1001.10, F.S., relating to Commissioner of Education; general powers; conforms provisions.

Section 15. Amends s. 1003.55, F.S., relating to Instructional programs for blind or visually impaired students and deaf or hard-of-hearing students; conforms provisions.

Section 16. Amends s. 1003.621, F.S., relating to Academically High Performing School Districts; conforms provisions.

Section 17. Repeals s. 1010.82, F.S., relating to Textbook Bid Trust Fund.

Section 18. Amends s. 1011.62, F.S., relating to Funds for operation of schools; conforms provisions.

Section 19. Provides an effective date of July 1, 2013.

¹⁸ *Askew v. Cross Key Waterways*, 372 So.2d 913, 924 (Fla. 1978); *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes the State Board of Education to charge publishers a fee for reviewing submitted instructional materials.

2. Expenditures:

DOE will likely experience cost savings resulting from the elimination of publisher bid solicitation, advertising, and review requirements associated with the instructional materials adoption process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The fiscal impact of the bill on school districts is indeterminate. To the degree school districts choose to review instructional materials, costs will be incurred related to the hiring of reviewers and establishing the infrastructure necessary to conduct reviews.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill authorizes school districts to charge publishers a fee for reviewing submitted instructional materials. It is not possible to predict the amount of fees districts will collect or the degree to which fees will offset the district's cost to review instructional materials submitted by publishers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 80-83 and 436-439: Florida courts have held that the Legislature, when delegating authority to executive agencies or other entities, must establish minimal standards and guidelines ascertainable by reference to the legislation.¹⁹ The bill authorizes school districts and the state board to collect fees from publishers who submit instructional materials for their review, but does not specify an amount or provide standards for determining the amount of the fee.

¹⁹ *Askew v. Cross Key Waterways*, 372 So.2d 913, 924 (Fla. 1978); *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.