

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** Education Committee, 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	12 Y, 0 N, As CS	Beagle	Mizereck

### 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 three state instructional materials reviewers for each content area 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 districts. School districts or a consortium of 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. The bill requires DOE to appoint five, rather than three, reviewers to review materials submitted by publishers.

DOE must post on its website the list of DOE-and school district-approved instructional materials and those approved by other states and annually report to the Governor, Legislature, and State Board of Education regarding the impact of the new DOE and school district review processes on instructional materials quality, availability, and cost.

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 provisions regarding DOE solicitation of bids and publisher contracting, deposits, bonds, depository, and depository inventory 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.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1031f.EDC

**DATE:** 4/18/2013

# 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

**Instructional Materials Adoption Schedule<sup>4</sup>**

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.<sup>5</sup> 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.”<sup>6</sup> 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.

<sup>1</sup> Section 1006.29(2), F.S.

<sup>2</sup> Section 1006.29(1)(a), F.S.

<sup>3</sup> Section 1006.36(1), F.S.

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

[http://www.fldoe.org/BII/instruct\\_mat/pdf/cycle.pdf](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.*

<sup>5</sup> Section 1006.31(2), F.S.

<sup>6</sup> Section 1006.29(1)(b), F.S.

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

Each instructional materials reviewer must file an affidavit with DOE affirming his or her intent to faithfully discharge duties and that he or she has no pecuniary interest or relationship with instructional materials publishing companies constituting a conflict of interest.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

Once instructional materials are adopted, DOE must contract with every bidder with adopted instructional materials. Publishers under contract with DOE must give bond in such amount as DOE requires, signifying their intent to fulfill the contract.<sup>12</sup> The law establishes a number of duties, responsibilities, and requirements for instructional materials publishers who submit items for adoption. Among other things, publishers must:

- Furnish instructional materials to Florida school districts at a price not exceeding the lowest price at which they offer such materials to any state or school district in the United States.
- Automatically reduce the price charged to any Florida school district school to the extent that reductions are made elsewhere in the United States.
- Provide any instructional materials free of charge in Florida to the same extent as they are provided free of charge to any state or school district in the United States.
- 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.<sup>13</sup>

Among other things, the law prohibits instructional materials publishers from offering school board officials or state instructional materials reviewers money or other inducements to vote for, recommend, or otherwise influence adoption or purchase of their products. Likewise, school board officials and reviewers may not solicit such rewards. Such violations constitute a second degree misdemeanor.<sup>14</sup>

### **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.<sup>15</sup> Superintendents must requisition adopted instructional materials from the publisher's depository.<sup>16</sup>

<sup>7</sup> Section 1006.34(2)(b), F.S.

<sup>8</sup> Section 1006.30(1)-(6), F.S.

<sup>9</sup> Section 1006.33(1), F.S.

<sup>10</sup> Sections 1006.33(3) and 1006.34(2), F.S.

<sup>11</sup> Section 1006.34(2), F.S.

<sup>12</sup> Section 1006.34(3), F.S.

<sup>13</sup> Section 1006.38(5), (6), (7), (11), and (12), F.S.

<sup>14</sup> Section 1006.32(1), (2), and (4), F.S. A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

<sup>15</sup> Section 1006.28(1)(b), F.S.

<sup>16</sup> Sections 1006.37(1) and 1006.38(11), F.S.

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.<sup>17</sup>

### **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.
- 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.<sup>18</sup>

### **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 may review instructional materials in-house or submit materials to DOE for review. DOE and district instructional materials reviewers must review instructional materials using standards similar to those currently specified for state instructional materials reviewers and for alignment to the NGSSS.

Each school district or a consortium of school districts may implement a program for the review, approval, and purchase of instructional materials. Each school board implementing an instructional materials program must adopt rules:

- Specifying the instructional materials review process, review cycle, and duties and qualifications of instructional materials reviewers.
- Requiring instructional materials reviewers to submit an affidavit affirming the absence of conflicts of interest.
- Requiring compliance with law prohibiting the acceptance or solicitation of money or inducements to influence approval or purchase of instructional materials.
- Specifying a process for certifying the accuracy of instructional materials.
- Requiring publisher compliance with law regarding publisher duties, responsibilities, and requirements.
- Specifying the instructional materials purchase process, including advertising, bidding, and purchasing requirements.

The requirement that school districts requisition instructional materials from publisher depositories is made optional by the bill. The bill eliminates the requirement that superintendents notify DOE regarding state-adopted materials requisitioned by the district. Instead, superintendents must annually certify that all core instructional materials used by the school district are aligned with applicable state standards and provide a list of the state- or district-approved materials that will be used or purchased by the district. The bill adds provisions requiring each principal to verify that all instructional materials are properly accounted for.

Currently, the commissioner must appoint three state instructional materials reviewers who are state or national experts in the content areas submitted for adoption. The bill requires DOE to appoint five reviewers for each submission by a publisher or school district. Two of the reviewers must be

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<sup>17</sup> Section 1006.28(2)(b), F.S.

<sup>18</sup> Section 1006.40(2)-(4), F.S.

professional content experts, two must be active K-12 educators in the applicable content area and grade level, and one must be a lay person. If one of the reviewers is unable to fulfill his or her responsibilities, he or she may be replaced by a DOE content expert. Reviewers must be trained to use DOE's electronic review system and use the system to independently recommend instructional materials to the commissioner for placement on the approved list.

By March 1 annually, DOE must post on its website a comprehensive 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 list must include the purchase price of each product and be updated periodically, with notice of updates sent to school administrators.

Currently, the commissioner may remove instructional materials from the state list that are erroneous or by publisher request.<sup>19</sup> The bill adds authorization to remove materials found not to be aligned with all applicable state standards. School districts may not purchase materials removed from the approved list. The bill requires the commissioner to annually report to the Governor, President of the Senate, Speaker of the House of Representatives, and state board regarding the impact on quality, availability, and cost of instructional materials of DOE and school district instructional materials reviews.

DOE and school districts may set and collect fees from publishers who submit instructional materials for review. The state board must adopt rules specifying the amount that may be collected by DOE. Fees set by the state board must reflect the "actual cost" of reviewing items submitted by publishers, including costs incurred for instructional materials reviewers. DOE must advertise the fee amount and report it to the state board. Fees collected must be maintained in a separate line item for auditing purposes.

Fees collected by school districts may not exceed the amount collected by DOE. Each school board must advertise the fee amount and report the amount to the board. Fees collected must be maintained in a separate line item for auditing purposes. See Fiscal Comments and Drafting Issues or Other Comments.

DOE and school districts may only use revenues generated by fees to support the instructional materials review process, including the payment of stipends for reviewers, reimbursement of travel expenses and per diem incurred by reviewers, and costs relating to employing substitute teachers to fill in for instructional personnel serving as reviewers.

The bill:

- Eliminates requirements regarding publisher bids, contracting, deposits, bonds, maintenance of a depository, and depository inventory.
- Adds that publishers must include specific references to statewide standards covered in teacher manuals, chapter tests, and assessments, but are not required to include such references in student materials.
- Reiterates existing law requiring publishers to furnish instructional materials to Florida school districts at a price not exceeding the lowest price at which they offer such materials to any state or school district in the United States and automatic reductions in prices charged Florida school districts when reductions are made in other states.
- Adds that prices may not exceed the lowest price charged a Florida school district.

In addition, the bill adds a requirement that publishers provide DOE and school districts the cost paid for the product by a school or district anywhere in the United States. The cost paid for that product must remain the same for all future sales and must be posted on all marketing materials.

The bill eliminates:

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<sup>19</sup> Section 1006.35(3), F.S.  
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- The requirement that school districts purchase instructional materials in the first two years of the adoption process.
- The requirement that school districts expend up to 50 percent of instructional materials funds on materials not on the state-adopted list.
- Authorization for districts 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 purchase of materials for the 2012-13 mathematics adoption.

The bill also repeals statutory provisions:

- Authorizing an optional pilot program relating to transition to electronic and digital instructional materials.
- Relating to DOE advertising of requests for publisher bids.

These provisions are made obsolete by the bill.

## 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; requires superintendents to annually certify that the district's instructional materials are aligned to state standards; requires principals to verify that instructional materials are properly accounted for; 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.** Creates s. 1006.283, F.S., relating to District school board instructional materials review process; specifies requirements for instructional materials review; requires rulemaking; authorizes the setting and collecting of fees from publishers; specifies requirements for fees; specifies requirements for publisher pricing.

**Section 4.** Amends s. 1006.29, F.S., relating to State instructional materials reviewers; requires DOE to appoint five instructional materials reviewers for each publisher submission; authorizes DOE to assess and collect fees from publishers; specifies requirements for fees; authorizes payment of stipends to school district reviewers; requires DOE to post on its website information regarding approved instructional materials; conforms provisions.

**Section 5.** Amends s. 1006.30, F.S., relating to Affidavit of state instructional materials reviewers; conforms provisions.

**Section 6.** Amends s. 1006.31, F.S., relating to Duties of state instructional materials reviewers; applies provisions to school district reviewers; specifies standards for evaluating instructional materials; conforms provisions.

**Section 7.** Amends s. 1006.32, F.S., relating to Prohibited acts; conforms provisions.

**Section 8.** Repeals s. 1006.33, F.S., relating to Bids, proposals, and advertisement.

**Section 9.** Amends s. 1006.34, F.S., relating to Powers and duties of the commissioner and DOE regarding instructional materials adoption; shifts powers and duties to the state board; authorizes the state board to set fees for DOE instructional materials review; specifies requirements for fees; eliminates provisions regarding publisher bids, contracts, bonds, and deposits; conforms provisions.

**Section 10.** Amends s. 1006.35, F.S., relating to Accuracy of instructional materials; adds grounds for removal of instructional materials from the approved list; conforms provisions.

**Section 11.** Amends s. 1006.36, F.S., relating to Term of adoption for instructional materials; conforms provisions.

**Section 12.** Amends s. 1006.37, F.S., relating to Requisition of instructional materials from publisher's depository; makes school district requisition of instructional materials from publisher depositories optional; eliminates remaining provisions.

**Section 13.** Amends s. 1006.38, F.S., relating to Instructional materials publisher duties; applies provisions to school district instructional materials review processes; eliminates provisions regarding publisher depositories and inventory; adds pricing requirements; conforms provisions.

**Section 14.** 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 15.** Amends s. 1001.10, F.S., relating to Commissioner of Education; general powers; adds authorization to remove instructional materials from the state-approved list; requires DOE to report to the Governor, Legislature, and state board regarding impacts of DOE and school district review processes on instructional materials quality and cost; conforms provisions.

**Section 16.** 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 17.** Amends s. 1003.621, F.S., relating to Academically High Performing School Districts; conforms provisions.

**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.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill authorizes DOE to charge publishers a fee for reviewing submitted instructional materials. The fee amount must be set by the state board and reflect the actual cost of review.

#### 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. Districts that choose to review instructional materials in-house will incur costs related to the hiring of reviewers and establishing the infrastructure necessary to conduct reviews. See Fiscal Comments.

### 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.

The amount of fees collected by DOE, as set by the state board, must reflect the "actual cost" of the review, including costs incurred for instructional materials reviewer stipends, per diem, and travel reimbursement and substitute teachers who fill in for instructional personnel serving as reviewers. The only limit placed on the amount of fees that school districts may collect is that fees must not exceed the amount collected by DOE. Fee revenue collected by DOE and school districts must only be used to support their respective review processes. This appears to indicate intent that fees not be used to generate revenues that exceed review costs.

Because the cost of the review process will largely be driven by expenditures on reviewers, differences between the bill's requirements for DOE instructional materials reviews and those conducted by school districts could enable districts to charge fees that exceed review costs. For example, the bill requires DOE to appoint five reviewers to review instructional materials submitted by publishers, but is silent on the number of reviewers school districts must appoint. Thus, a school district could lower its costs by

employing fewer reviewers, thereby enabling it to collect fees that exceed its actual costs while still complying with the requirement that its fees not exceed those charged by DOE.

### 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:

The bill provides new rulemaking authority to school boards regarding implementation of an instructional materials program. The rules must:

- Specify the instructional materials review process, review cycle, and duties and qualifications of instructional materials reviewers.
- Require instructional materials reviewers submit an affidavit affirming the absence of conflicts of interest.
- Require compliance with law prohibiting the acceptance or solicitation of money or inducements to influence approval or purchase of instructional materials.
- Specify a process for certifying the accuracy of instructional materials.
- Require publisher compliance with law regarding publisher duties, responsibilities, and requirements.
- Specify the instructional materials purchase process, including advertising, bidding, and purchasing requirements.

In addition, each principal must verify that all instructional materials are properly accounted for as prescribed by school board rule.

The bill provides new rulemaking authority to the state board regarding the setting and collection of fees from instructional materials publishers.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 138, 163, and 214: For purposes of instructional materials, the law defines “core courses” as mathematics, language arts, science, social studies, reading, and literature. The bill requires superintendents to annually certify that “all core instructional materials” used by the school district are aligned with applicable state standards. It is not clear whether the term “core instructional materials” refers to materials for “core courses” or if the term has another meaning.

Line 192: The bill authorizes school boards to set the amount of the fee charged to publishers and requires each board to report the fee amount to itself. This reporting appears to be unnecessary.

Lines 191 and 269: The bill requires DOE and school boards to advertise the fee amount that will be charged to publishers, but does not specify a timeline or medium for the advertisement.

Lines 214-215: This provision states that each superintendent must annually certify to DOE that “the district’s *all core* instructional materials” are aligned to state standards, which appears to be a typographical error.

Lines 951-952: This provision amends s. 1001.10, F.S., to authorize the commissioner to “remove any materials approved by the state or a district.” It is not clear within the context of the statute amended



that “materials” refers to “instructional materials.” It is also not clear what instructional materials are to be removed from, i.e., a list of instructional materials approved by DOE and districts.

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

On April 16, 2013, the Education Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. Among other things, the amendment added provisions:

- Requiring DOE to appoint five reviewers for each publisher submission and specifying requirements for reviewers.
- Requiring the state board to set fees for reviewing instructional materials submitted by publishers which reflect the actual cost of the review.
- Providing that fees collected by school districts may not exceed the amount collected by DOE.
- Authorizing payment of stipends and reimbursement of per diem and travel expenses to DOE and district instructional materials reviewers.
- Requiring publishers to provide DOE and school districts the cost paid for the product by a school or district anywhere in the United States.
- Requiring DOE to annually report to the Governor, Legislature, and state board regarding the impact of DOE and district review processes on instructional materials quality and costs.

The amendment revised provisions:

- Specifying requirements for school district review processes to add authorization for consortia of school districts to conduct reviews; requirements for reviewer affidavits, prohibited acts, publisher compliance with law regarding publisher duties, responsibilities, and requirements; and include advertising, bidding, and purchasing requirements
- Requiring that annual certification to DOE that instructional materials meet state standards be made by school boards to instead be made by superintendents.
- Repealing the statute requiring school districts to requisition instructional materials from publisher depositories to instead make such requisition optional while repealing remaining provisions.

The amendment also removed provisions repealing the Textbook Bid Trust Fund.

This bill analysis is drafted to the committee substitute adopted by the Education Committee.