

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1031	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Education Committee; Porter	117 Y's	0 N's
COMPANION BILLS:	(CS/CS/SB 1388)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 1031 passed the House on May 3, 2013, as CS/CS/SB 1388. Current 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.

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 and purchased within the first two years of an adoption cycle. At least 50 percent of a district's state instructional materials funds must be used to purchase digital instructional materials included on the state-adopted list, by FY 2015-16. The remaining funds may be spent on instructional materials not on the state-adopted list.

The bill provides each school district the option of participating in the state instructional materials adoption process or implementing its own program for the review, approval, adoption, and purchase of instructional materials. Multiple school districts may form a consortium for the purpose of implementing an instructional materials program. School districts implementing such a program are not required to purchase instructional materials off the state-adopted list, requisition instructional materials from the publisher's depository, or follow the same review cycle used for state instructional materials adoption. School districts implementing an instructional materials program may collect fees from publishers who submit instructional materials for review. Such fees may not exceed the actual cost to review a publisher submission up to a maximum of \$3,500.

Among other things, the bill revises the requirement that school districts participating in the state adoption process purchase instructional materials in the first two years of the effective date of the adoption cycle by instead requiring that such purchases be made in the first three years of the adoption cycle.

School districts that implement an instructional materials program must expend up to 50 percent of instructional materials funds on digital or electronic materials by FY 2015-16; however, they are not required to purchase such materials off the state-adopted list. The remaining funds must be spent on instructional materials; however, unlike districts participating in the state adoption process, such districts have full discretion to determine the types of materials purchased.

The bill does not have a fiscal impact on DOE. The fiscal impact on school districts is indeterminate. See Fiscal Analysis & Economic Impact Statement.

The bill was approved by the Governor on June 28, 2013, ch. 2013-237, L.O.F., and became effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

State Instructional Materials Reviewers

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. 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.”⁵ 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 curriculum framework objectives.

¹ Sections 1006.28(1) and 1006.29(2), F.S.

² Section 1006.29(1), F.S.

³ Section 1006.36, 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 upon funding. *Id.*

⁵ Sections 1006.29(1)(b) and 1006.31(2), F.S.

- Degree to which the materials will be supplemented by classroom instruction.
- Degree to which the materials represent the broad racial, ethnic, socioeconomic, and cultural diversity of students.⁶

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.⁷ The law states that it is the duty of each state instructional materials reviewer to:

- Evaluate all instructional materials for alignment to DOE-developed selection criteria and those curricular objectives included within the NGSSS.
- Recommend only instructional materials that accurately portray the ethnic, socioeconomic, cultural, and racial diversity of our society, including men and women in professional, career, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of this state and the United States.
- Recommend only materials that accurately portray, whenever appropriate, humankind's place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances.
- Recommend only instructional materials that he or she deems necessary and proper to encourage thrift, fire prevention, and humane treatment of people and animals.
- Recommend, when appropriate to the comprehension of students, that materials for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States. A reviewer may not recommend any instructional materials for use in the schools which contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, or occupation.
- Recommend only instructional materials he or she deems to be accurate, objective, and current and suited to the needs and comprehension of students at their respective grade levels.

Each reviewer must submit an electronic report to DOE regarding each instructional material reviewed.⁸

Department of Education and Publisher Duties

Before each content area adoption, DOE publishes content specifications for instructional materials recommended for adoption by state instructional materials reviewers. These specifications detail the courses for which materials are sought, plus the standards the materials must meet.⁹ 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 \$2,500.¹⁰ 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.¹¹

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.¹² The law establishes a number of duties, responsibilities, and requirements for instructional materials publishers who submit items for adoption. Among other things, publishers must:

⁶ Section 1006.34(2)(b), F.S.

⁷ Sections 1006.30(1)-(6), F.S.

⁸ Section 1006.31(2)-(3), F.S.

⁹ Section 1006.33(1), F.S.

¹⁰ Sections 1006.33(3) and 1006.34(2), F.S.

¹¹ Section 1006.34(2)(a), F.S.

¹² Section 1006.34(3), F.S.

- 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.¹³

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.¹⁴

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.¹⁵ Superintendents must requisition adopted instructional materials from the publisher's depository within the first two years of the adoption cycle.¹⁶

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.¹⁷

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 for core courses 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.

School districts may spend the remaining fifty percent of the funds on instructional materials that are not found on the state-adopted instructional materials list.¹⁸ Such funds may also be spent on library and reference books, nonprint materials, and for the repair and renovation of textbooks and library books. Use of this funding may exceed the fifty percent cap for kindergarten (100%) and first grade (75%) instructional materials.¹⁹

¹³ Section 1006.38(5), (6), (7), (11), and (12), F.S.

¹⁴ 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.

¹⁵ Section 1006.28(1)(b), F.S.

¹⁶ Sections 1006.37(1) and 1006.38(11), F.S.

¹⁷ Section 1006.28(2)(b), F.S.

¹⁸ Section 1006.40(3) and (4), F.S. Funds for the purchase of instructional materials not on the adopted list must be used to purchase instructional materials or other items having intellectual content which assist 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, electronic content, replacements for items which were part of previously purchased instructional materials, consumables, learning laboratories, manipulatives, electronic media, computer courseware or software, and other commonly accepted instructional tools and library. Section 1006.40(4), F.S.

¹⁹ Section 1006.40(3)(c), F.S.

State board rule requires each school district to adopt purchasing policies. Each school district must request competitive solicitations (bids) from at least three sources for any authorized purchase of commodities or contractual services. The rule expressly exempts district instructional materials purchases from competitive bidding requirements.²⁰

Effect of Proposed Changes

The bill provides each school district the option of participating in the state instructional materials adoption process or implementing its own program for the review, approval, adoption, and purchase of instructional materials. School districts that choose to implement such a program are not required to purchase instructional materials off the state-adopted list, requisition instructional materials from the publisher's depository, or follow the same review cycle used for state instructional materials adoption. Multiple school districts may form a consortium for the purpose of implementing an instructional materials program.

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 school district instructional materials reviewers to comply with statutorily prescribed conflict of interest affidavits and state instructional materials reviewer duties.
- Requiring reviewer and publisher 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.

School 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. Beginning in the 2013-14 school year, the superintendent must annually certify that all instructional materials for core courses used by the school district are aligned with applicable state standards and provide a list of all core materials that will be used or purchased by the district.

School districts implementing an instructional materials program may collect fees from publishers who submit instructional materials for review. Such fees may not exceed the actual cost to review a publisher submission up to a maximum of \$3,500. Fees assessed and collected must be posted on the district website, reported to DOE, and maintained in a separate line item for auditing purposes.

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:

- Adds that publishers must include specific references to statewide standards in the teacher's manual and incorporate such standards into chapter tests and assessments.

²⁰ Rule 6A-1.012(7) and (11), F.A.C. The law provides that school district purchasing policies must meet requirements prescribed in state board rule. The state board may, by rule, provide alternative procedures for school districts for bidding or purchasing in cases in which the character of the item requested renders competitive bidding impracticable. Section 1010.04(1)(a) and (4)(a), F.S.

- 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 make automatic reductions in prices charged Florida school districts when reductions are made in other states.

The bill revises the requirement that school districts participating in the state adoption process purchase instructional materials in the first two years of the effective date of the adoption cycle by instead requiring that such purchases be made in the first three years of the adoption cycle. The requirement that school districts requisition instructional materials from the publisher's depository in the first two years of the effective date of the adoption cycle is similarly revised.

School districts that implement an instructional materials program must expend up to 50 percent of instructional materials funds on digital or electronic materials by FY 2015-16; however, they are not required to purchase instructional materials off the state-adopted list. The remaining funds must be spent on instructional materials; however, unlike districts participating in the state adoption process, such districts have full discretion to determine the types of materials purchased.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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:

School districts implementing an instructional materials program may collect fees from publishers who submit instructional materials for review. Such fees may not exceed the actual cost to review a publisher submission up to a maximum of \$3,500. Fees assessed and collected must be posted on the district website, reported to DOE, and maintained in a separate line item for auditing purposes.