

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1388

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Committee on Education; and Senator Montford

SUBJECT: Instructional Materials for K-12 Public Education

DATE: April 25, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Fav/CS
2.	Armstrong	Elwell	AED	Fav/CS
3.	Elwell	Hansen	AP	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 1388 increases flexibility for a school district while requiring instructional materials to align with state standards. The bill authorizes a school district to review, approve and purchase instructional materials, while retaining a DOE statewide instructional materials review process.

The local and state instructional materials review processes will have a cost; however, the cost may be mitigated or offset with a fee assessed to publishers. The fees are to be used to cover the cost of substitute teachers who replace teachers selected to review materials, and travel and per diem costs. Reviewers may be paid a stipend. There is no requirement for a state appropriation.

The bill takes effect July 1, 2013.

The bill substantially amends the following sections of the Florida Statutes: 1001.10, 1003.55, 1003.621, 1006.28, 1006.29, 1006.30, 1006.31, 1006.32, 1006.34, 1006.35, 1006.36, 1006.37, 1006.38, 1006.40, and 1011.62, Florida Statutes, and repeals sections 1006.282, and 1006.33.

The bill creates section 1006.283, Florida Statutes.

II. Present Situation:

School Districts

A school district must provide adequate instructional materials for its students, ensure the materials are consistent with the district's educational goals, and ensure the materials meet the objectives and the curriculum frameworks adopted by the State Board of Education (SBE).¹

The district is required to purchase current instructional materials in the core areas to provide students with current tools of instruction.² This purchase must be made within the first two years of the effective date of the adoption cycle.³ Up to fifty percent of the allocation may be used to purchase non-adopted materials.⁴

Superintendents must, at the Department of Education's (DOE) request, provide an experienced classroom teacher or district-level content supervisor with expertise in the content area to review submissions recommended for adoption by the state instructional materials reviewers.⁵

The Commissioner of Education

The Commissioner of Education (Commissioner) establishes the number of items to be adopted by the state.⁶ The Commissioner appoints three state instructional materials reviewers to review instructional materials and evaluate the content for alignment with the applicable standards.⁷ An evaluation by the third reviewer will only be required for situations in which the first two reviewers disagree as to whether materials should be placed on the state-adopted materials list.⁸

The Commissioner has the authority to select and adopt instructional materials for each grade and subject area and to contract with publishers for the instructional materials adopted.⁹ The term of the adoption is five years.¹⁰

State Instructional Materials Reviewers and Content

Reviewers must evaluate all materials submitted by publishers in each adoption to determine if the material aligns with the applicable state standards, developed criteria, and any applicable performance standards.¹¹

¹ ss. 1006.28(1) and 1001.03(1), F.S.

² s. 1006.40(2), F.S.

³ *Id.*

⁴ s. 1006.40(3)(b), F.S.

⁵ s. 1006.29(1), F.S.

⁶ s. 1006.35(3), F.S.

⁷ s. 1006.29(1)(b), F.S.

⁸ s. 1006.29(3), F.S.

⁹ s. 1006.34(2), F.S.

¹⁰ s. 1006.36(1), F.S.

¹¹ s. 1006.31(2)(e), F.S.

In addition to the standards, materials should also reflect appropriate diversity, include the Constitution and the Declaration of Independence in the social studies content area, and ensure that materials do not reflect unfairly upon people because of their race, color, creed, national origin, ancestry, gender, or occupation.¹² Reviewers must report to the DOE the materials being recommended that meet the guidelines for adoption.¹³

Publishers

Publishers of instructional materials must, in part:

- Submit detailed specifications of the physical characteristics of the instructional materials;
- Provide evidence that the materials address the performance standards;
- Furnish the instructional materials at a price which matches the lowest price offered anywhere else in the United States;
- Guarantee that any instructional materials sold in Florida will be equal in quality to the instructional materials sold elsewhere in the United States and will be kept up-to-date; and
- Maintain or contract with a depository in the state and keep an inventory.¹⁴

III. Effect of Proposed Changes:

The bill increases flexibility for a school district while requiring instructional materials to align with state standards. The bill authorizes a school district to review, approve and purchase instructional materials, while retaining a DOE statewide instructional materials review process.

District School Board Instructional Materials Program

The bill creates the district school board instructional materials program. The program allows a district school board, or consortium of school districts, to implement an instructional materials program that includes the review, approval, and purchasing of instructional materials. The school district would be able to set and collect fees, not to exceed the amount established in State Board of Education (SBE) rule, from publishers that participate in the instructional materials approval process. The fees would be allocated for the support of the review process, and maintained in a separate line item for auditing purposes. The amount assessed and collected would be posted on the school district's website and reported to the DOE. The school district cannot collect fees for materials that DOE approves and places on its website. The school district would adopt rules to implement the program.

If a school district elected to participate in the program, the school district would notify DOE and provide an annual report to the legislature, and the superintendent would annually certify to the DOE by March 31 that all instructional materials for core courses are aligned with applicable state standards, and include a list of all school district approved core instructional materials that would be used or purchased. Each principal would be required to verify that all instructional materials are fully and properly accounted for as prescribed by school district rule.

¹² s. 1006.31(2)(d), F.S.

¹³ s. 1006.31(3), F.S.

¹⁴ s. 1006.38, F.S.

School District Instructional Materials Allocation

School districts would be required to provide current instructional materials to each student with a major tool or assistance in core courses. The bill deletes the requirement for such materials to be purchased within the first 2 years after the effective date of an adoption cycle. By the 2015-2016 school year, school districts could use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards. Remaining funds would be used for the purchase of instructional materials or other items including library and reference books and non-print materials, having intellectual content which assist in the instruction of a subject or course.

State Instructional Review

The bill retains the ability for DOE to have a state instructional material review process, and would increase the number of state instructional material reviewers appointed by the Commissioner, from 3 to up to 5. The 5 members would include: 2 professional content experts; 2 K-12 educators that are active teachers or supervisors and represent the major fields and levels in which instructional materials are used; and 1 layperson. A DOE content expert may be an alternate reviewer. Publishers would have the opportunity to provide a live, virtual, or in-person presentation to the reviewers.

The DOE would adopt a rule to assess and collect fees to support the review process. The fees would be deposited in the DOE Operating Trust Fund. A district school board would be reimbursed for the cost of a substitute teacher for each workday an employee is acting as a state reviewer. Additionally, each reviewer would receive a travel and per diem stipend in accordance with section 112.061, F.S.

The definition of “instructional materials” would be expanded from materials that serve as a “major tool for assisting” to a “major tool or for assisting” in the instruction of a subject or course.

State List of Approved Instructional Materials

By March 1 of each year, the DOE would publish on its website a list of all instructional materials that are approved by the DOE or that are approved by another state, if such materials align with applicable state standards. The list would be maintained and updated, and include sufficient instructional materials or major tools to cover all of the core content areas. The purchase price would be posted. District approved materials would also be posted on the website.

The Commissioner would be able to remove approved instructional materials from the list if a manufacturer refused to correct errors, at the publisher’s request, if there is no material impact on the state’s education goals, or if the materials do not align with all applicable state standards. If the Commissioner removes materials from the list, a district may not purchase the materials for use in core content areas.

District and State Instructional Materials Reviewer Duties

Instructional material reviewers for both the district and state processes would use certain standards to determine the propriety of materials, such as:

- The age of student who normally could be expected to have access to the material.
- The educational purpose served by the material.
- The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.
- The degree to which the material represents the broad racial, ethnic, socioeconomic, and cultural diversity of students in the state.
- Any instructional material that contains pornography or that is otherwise harmful to minors, may not be used or made available within any public school.

Instructional Material Publishers

The bill authorizes, but no longer requires, school districts to purchase instructional materials from a publisher's book depository. A publisher would provide materials to the school district with most-favored-nations pricing, with automatic reductions, based on materials sold to any other state or school district in the state or nation. The costs for a product would not increase, and would be posted on all marketing materials.

The bill requires publisher duties and responsibilities to apply to both the school district and DOE approval processes. Beginning in 2013-2014, publishers would no longer be required to provide evidence that the instructional materials include specific reference to statewide standards at the point of student use. Publishers would still be required to provide the evidence in the teachers' manual and incorporate the standards into chapter tests and assessments.

The bill deletes the prohibition on a school district or publisher from participating in a pilot program of materials being considered during the 18-month period before the official adoption of the materials by the commissioner.

Commissioner's Report to the Legislature

The bill requires the Commissioner to annually submit by January 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and the State Board of Education, an annual report regarding district and state instructional material reviews, the impact on the quality and availability of instructional materials, and the cost-effectiveness of the state and district review processes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes school districts to set and collect fees from publishers that participate in the instructional materials approval process. The school district fees may not exceed those set by SBE rule, and the school district may not charge a fee for materials already on the state list.

C. Government Sector Impact:

The bill authorizes school districts to charge publishers that participate in the instructional materials process a fee. The fee revenues are to be used to support the review process, and may offset the costs. The school district fees may not exceed those set by SBE rule, and the school district may not charge a fee for materials already on the state list.

The bill authorizes, but does not require, the DOE to assess a fee of the publishers who participate in the review process. The fee is limited to actual costs for the review, taking into consideration the cost of reviewers, the content area and complexity of the instructional materials to be reviewed, and other relevant factors. Fee revenues are to be used to cover the cost of the review process, including meeting, travel, per diem, and costs for hiring substitute teachers who replace teachers who are selected to be reviewers. Reviewers are entitled to reimbursement for travel and per diem and may be paid a stipend. An estimate of this cost is as much as \$750,000 annually based on a \$500 stipend for each of the five reviewers for roughly 300 content area submissions that are provided for review. However, the bill is permissive regarding the stipend and, if provided, would be supported by fee revenue.

This bill does not required a state appropriation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 23, 2013:

CS/CS/SB 1388 differs from CS/SB 1388 in that it:

- Requires school board fees assessed and collected from publishers to be posted on the school district's website and reported to the department. The previous version of the bill required the fees to be advertised and reported to the district school board.
- Prevents said fees from exceeding an amount set by state board rule. The previous version of the bill capped fees at the amount charged during the state review process.
- Allows publishers to present materials during a live virtual or in-person presentation to the department. The previous version of the bill allowed a live, virtual, or in-person presentation to the department.
- Provides that fees for state review may not exceed the actual costs for the review, taking into consideration the cost of reviewers, the content area and complexity of the instructional materials to be reviewed, and other relevant factors. The previous version of the bill capped costs at actual costs necessary to support the cost of reviewing instructional materials, including, but not limited to, the costs associated with reviewers.
- Provides that beginning in 2013-2014 adoption year, the statewide standards may not be included at the point of student use. The previous version of the bill stated "shall" not be included.

CS by Education on April 1, 2013:

CS/SB 1388 differs from SB 1388 in that it:

- Requires a district school board to adopt rules implementing an instructional materials review program, as opposed to identifying specific requirements in law.
- Reinstates statewide adoption of instructional materials by DOE, as opposed to a process by which a school district or publisher may refer review of instructional materials to the DOE.
- Changes the definition of "instructional materials" to include materials that serve as a "tool" that assists, as opposed to simply assisting in the instruction of a subject or course.
- Deletes the prohibition of a school district assessing a fee to review materials that were previously evaluated by the state, but caps the fees a district may collect to be no more than assessed by the state.
- Removes proposed amendments to ss. 1001.10, 1003.55, 1003.621, 1006.28, 1006.30, 1006.31, 1006.32, 1006.34, 1006.35, 1006.36, 1006.38, and 1011.62, F.S.
- Deletes the proposed repeal of ss. 1006.282, 1006.33, 1006.37, and 1010.82, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
