

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 Education

BILL: SB 864

INTRODUCER: Senators Hays and Benacquisto

SUBJECT: Instructional Materials for K-12 Public Education

DATE: March 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Favorable
2.			GO	

I. Summary:

SB 864 maximizes local control by eliminating the state-level instructional materials review, selection and adoption process, and identifying parameters for district school boards to satisfy their constitutional duty and responsibility to select and provide adequate instructional materials for K-12 public school students.

The bill imports strengths from the existing state-level review process, and creates additional transparency and accountability provisions for district school board adoption of instructional materials, including the ability for public review and comment.

The bill has an effective date of July 1, 2014.

II. Present Situation:

Local School District Responsibility For Instructional Materials

Decisions regarding instructional materials are the duty of the school district.¹ For example:

- The district school board has the duty to provide adequate instructional materials for all students in accordance with law.²
- The district school superintendent has the duty to recommend plans for improving, providing, distributing, accounting for, and caring for instructional materials.³

¹ Section 1006.28, F.S.

² Section 1006.28(1), F.S.; The term “adequate instructional materials” means “a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for each student in the core courses of mathematics, language arts, social studies, science, reading, and literature.” *Id.*

³ Section 1006.28(2)(a), F.S.

- The school principal has the duty for management and care of instructional materials, including the proper use of instructional materials.⁴

State-Level Instructional Materials Adoption Process

The Legislature has historically tasked the Department of Education with conducting a state-level review,⁵ selection⁶ and adoption⁷ process for certain instructional materials⁸ to provide school districts with a vetted list for selecting instructional materials.

An overview of the state-level instructional materials adoption process is that:

- The Commissioner of Education must annually determine the areas in which instructional materials, and the number of titles in each area, that will be submitted for adoption.⁹
- The Commissioner must appoint experts in the content areas submitted for adoption, and classroom teachers or district-level content supervisors to review the instructional materials and evaluate the content for alignment with the applicable Florida academics standards.¹⁰
- The Department shall advertise that it will accept sealed bids from publishers or manufacturers for the furnishing of instructional materials proposed to be adopted.¹¹
- The State Board of Education must prescribe the procedures by which the Department of Education will evaluate instructional materials submitted by publishers and manufacturers in each adoption.¹²
- The Department of Education will contract with bidders that are awarded the adoption of any instructional materials.¹³

⁴ Section 1006.28(3), F.S.

⁵ Section 1006.29, F.S.

⁶ Section 1006.34, F.S.

⁷ Section 1006.34, F.S.

⁸ Section 1006.29(2), F.S.; The term “instructional materials” means “items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in a bound, unbound, or kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software.” *Id.* “Major tool” is defined by the State Board of Education as material that provides instructional content and student learning activities for each of the: Florida academic standards benchmarks that are in the course descriptions for reading, language arts, literature, math, science, social studies, physical education, health, world languages, visual arts and performing arts; intended outcomes or student performance standards of the Career and Technical Educational Curriculum Frameworks; and course objectives as outlined by the appropriate organizations for Advanced Placement, International Baccalaureate, and Advanced International Certificate of Education. Rule 6A-7.0710(1), F.A.C., incorporating by reference the document titled “Policies and Procedures for the Florida Instructional Materials Adoption 2011,” available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-00244>

⁹ Section 1006.29, F.S. The term of adoption of instructional materials is for a 5-year period. Section 1006.36(1), F.S. The Department of Education must annually publish an official schedule of subject areas to be called for adoption for each of the succeeding 2 years, and a tentative schedule for years 3, 4, and 5. Section 1006.36(2), F.S. The schedule is developed to promote balance among the subject areas so that the required expenditure for new instructional materials is approximately the same each year in order to maintain curricular consistency. Section 1006.36(2), F.S.

¹⁰ Section 1006.29(1)(b), F.S. These reviewers are required to go through training, sign an affidavit, and comply with numerous procedures and evaluation requirements. *See* ss. 1006.29(5); 1006.30; 1006.31; and 1006.32, F.S.

¹¹ Section 1006.33(1)(a), F.S. This procurement process is detailed. *See* ss. 1006.32; 1006.33; and 1006.34, F.S. A refundable cash deposit is required. *See* ss. 1006.34(2)(a); 1006.34(5), F.S.

¹² Section 1006.34(1), F.S.

¹³ Section 1006.34(3), F.S. Any publisher or manufacturer to whom a contract is let must give a bond in the amount as required by the Department. *Id.*

- The Commissioner may conduct an independent investigation to determine the accuracy of state-adopted instructional materials, and may remove instructional materials from the list of state-adopted materials if the content is in error and the publisher refuses to correct the error.¹⁴

Upon request for public inspection, sample copies of all instructional materials that are under Department of Education contract are made available by the publisher to the department and district school superintendent of each district school board that adopts the instructional materials from the state list.¹⁵

Instructional Materials Reviewers

Reviewers must evaluate all materials submitted by publishers in each adoption to consider to what extent the materials:

- Align with the applicable performance standards and developed criteria.¹⁶
- Reflect appropriate diversity and ensure that materials do not reflect unfairly upon race, color, creed, national origin, ancestry, gender, or occupation.¹⁷
- Include the Constitution and the Declaration of Independence in appropriate social studies content areas.¹⁸
- Meet appropriate factors,¹⁹ such as:
 - The age of the 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.
 - The absence of pornography or other material that is otherwise harmful to minors.

Instructional Materials Publishers

Publishers of instructional materials must, in part:

- Submit detailed specifications of the physical characteristics of the instructional materials.²⁰
- Provide evidence that the materials address performance standards.²¹
- Furnish the instructional materials at a price which matches the lowest price offered anywhere else in the United States.²²
- 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.²³

¹⁴ Section 1006.35, F.S.

¹⁵ Section 1006.33(4), F.S.

¹⁶ Section 1006.31(2), F.S.

¹⁷ Section 1006.31(2)(d), F.S.

¹⁸ Section 1006.31(2)(d), F.S.

¹⁹ Section 1006.34(2)(b), F.S.

²⁰ Section 1006.38(3)(a), F.S.

²¹ Section 1006.38(3)(b), F.S.

²² Sections 1006.38(5)-(7), F.S.

²³ Section 1006.38(8), F.S.

- Maintain or contract with a depository in the state and keep an inventory sufficient to fill and receive orders.²⁴

Publishers and manufacturers of instructional materials are required, for core subject areas, to maintain in the depository:

- For the first 3 years of the contract, an inventory of instructional materials sufficient to receive and fill orders.²⁵
- After the 3rd contract year, an inventory sufficient to receive and fill orders for replacements.²⁶
- Ensure the availability of an inventory sufficient to receive and fill orders for growth, including the opening of a new school.²⁷

School District Purchase of Instructional Materials

Each district must purchase current adopted instructional materials to provide each student with a major tool of instruction in core courses of the subject areas of mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12.²⁸ These purchases must be made within three years after the effective date of the adoption cycle.²⁹

By the 2015-2016 fiscal year, each district school board shall use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials included on the state-adopted list,³⁰ that align with state standards except that:

- Up to 50 percent of the annual allocation may be used for the purchase of instructional materials, including library and reference books and non-print materials, not included on the state-adopted list and for the repair and renovation of textbooks and library books.³¹
- District school boards may use 100 percent of that portion of the annual allocation designated for the purchase of instructional materials for kindergarten, and 75 percent of that portion of the annual allocation designated for the purchase of instructional materials for first grade, to purchase instructional materials not on the state-adopted list.³²

The funds in which district school boards may use to purchase materials not in the state-adopted list must be used for the purchase of instructional materials or other items having intellectual content which assist in the instruction of a subject or course.³³ 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

²⁴ Sections. 1006.38(11)-(13), F.S.

²⁵ Section 1006.38(12), F.S.

²⁶ Section 1006.38(13), F.S.

²⁷ *Id.*

²⁸ Sections 1006.37(1); 1006.40(2), F.S.

²⁹ Section 1006.40(2), F.S.

³⁰ Section 1006.40(3)(a), F.S.

³¹ Section 1006.40(3)(b), F.S.

³² Section 1006.40(3)(c), F.S.

³³ Section 1006.40(4), F.S.

courseware or software, and other commonly accepted instructional tools as prescribed by district school board rule.³⁴

School District Transition to Instructional Materials In Electronic Or Digital Format

Beginning in the 2015-2016 school year, all adopted instructional materials for students in kindergarten through grade 12 must be provided in an electronic or digital format.³⁵

The Department is required to publish minimum and recommended technology requirements that include specifications for hardware, software, networking, security, and guidelines on the number of students per device necessary to ensure that all students can access all electronic and digital instructional materials.³⁶

Each school district is required to allow teachers, administrators, students, and parents access to a “local instructional improvement system” that must provide access to electronic and digital instructional materials.³⁷

A district school board may designate pilot program schools to implement the transition to instructional materials that are in an electronic or digital format.³⁸

Optional School District Instructional Materials Review Program

In 2013, the Legislature authorized a school board, or consortium of school districts, to implement their own instructional materials program.³⁹ For a school district that chooses this program, the state-level program is not used.⁴⁰ Rather, the district school board is required to adopt rules that include:

- The review and purchase process.⁴¹

³⁴ *Id.*

³⁵ Section 1006.29(3), F.S.

³⁶ Section 1006.29(4), F.S.

³⁷ Section 1006.281(2), F.S. The term “local instructional improvement system” means “a system that uses electronic and digital tools that provide teachers, administrators, students, and parents with data and resources to systematically manage continuous instructional improvement. The system supports relevant activities such as instructional planning, information gathering and analysis, rapid-time reporting, decisionmaking on appropriate instructional sequence, and evaluating the effectiveness of instruction.” Section 1006.281(1), F.S. By June 30, 2104, the system shall comply with minimum standards published by the Department of Education. Section 1006.281(3), F.S.

³⁸ Section 1006.282, F.S. The term “electronic format” means “text-based or image-based content in a form that is produced on, published by, and readable on computers or other digital devices and is an electronic version of a printed book, whether or not any printed equivalent exists. Section 1006.29(3)(a), F.S. The term “digital format” means “text-based or image-based content in a form that provides the student with various interactive functions that can be searched, tagged, distributed, and used for individualized and group learning, which includes multimedia content such as video clips, animations, and virtual reality, and that has the ability to be accessed at any time and anywhere.” Section 1006.29(3)(b), F.S. The terms “electronic format” and “digital format” do not include electronic or computer hardware, even if such hardware is bundled with software or other electronic media, nor does it include equipment or supplies. Section 1006.29(3), F.S.

³⁹ See CS/CS/SB 1388; s. 1006.283(1), F.S. The district instructional materials program includes the review, approval, adoption, and purchase of instructional materials. *Id.*

⁴⁰ Section 1006.283, F.S.

⁴¹ Section 1006.283(2)(a), F.S.

- Identification of a review cycle for instructional materials.⁴²
- The process by which instructional materials will be purchased, including advertising, bidding, and purchasing requirements.⁴³
- Similar requirements to the state-level process for instructional materials reviewers and publishers.⁴⁴

The school board may assess and collect fees from publishers participating the process.⁴⁵ The fees may not exceed the actual cost of the review process, or \$3,500 per submission, whichever is lower.⁴⁶ The fees are used to cover:

- The actual cost of substitute teachers for each workday that a school district's instructional staff is absent from his assigned duties for the purpose of rendering service as an instructional materials reviewer.⁴⁷
- A stipend, and reimbursement for travel expenses and per diem in accordance with s. 112.061, for each reviewer for service in meetings.⁴⁸

A district school board or a consortium of school districts which implements an instructional materials review program⁴⁹ shall use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards.⁵⁰

In its first year of implementation, no districts or consortiums have availed themselves to this statutorily authorized option for utilizing local control.⁵¹

III. Effect of Proposed Changes:

SB 864 maximizes local control by eliminating the state-level instructional materials review, selection and adoption process, and identifying parameters for district school boards to satisfy their constitutional duty and responsibility to select and provide adequate instructional materials for K-12 public school students.

Local School District Responsibility For Instructional Materials

The bill states that district school boards have the constitutional duty and responsibility to select and provide adequate instructional materials for K-12 public school students.

⁴² Section 1006.283(2)(b), F.S. The review cycle chosen by the school district might be longer or shorter than the current five-year state review cycle. Section 1006.36(1), F.S. For example, s. 1006.283(1), F.S., states that instructional materials used by the district are required to comply with current standards, and State Board of Education rule only requires the standards to be reviewed every twelve years. Rule 6A-1.09401(2), F.A.C. Otherwise, the materials purchased must be "current." See ss. 1006.37(1), 1006.40(2), F.S.

⁴³ Section 1006.283(2)(i), F.S.

⁴⁴ Sections. 1006.283(1)(c)-(e), (g), (h); and (4)-(6) F.S.

⁴⁵ Section 1006.283(3)(a), F.S.

⁴⁶ *Id.*

⁴⁷ Section 1006.283(3)(b), F.S.

⁴⁸ *Id.*

⁴⁹ Section 1006.40(3)(a), F.S. The district or consortium instructional materials review program is contained in s. 1006.283, F.S.

⁵⁰ Section 1006.40(3)(a), F.S. Otherwise, the school district does not have to comply with s. 1006.40, F.S. *Id.*

⁵¹ Email from Florida Department of Education (March 7, 2014) (on file with the Senate Committee on Education).

State-Level Instructional Materials Adoption Process

The bill eliminates the state-level review, selection and adoption process for instructional materials conducted by the Florida Department of Education.

School District Instructional Materials Program

The bill expands the optional district school board instructional materials review program into a program that is to be used for all school districts. In doing so, the bill incorporates several accountability and transparency requirements that previously existed in the state-level process, and includes new responsibilities. For example, the bill requires the district school board to adopt rules that must include the:

- Criteria for the review and recommendation of instructional materials, including a thorough review of curriculum content.
- Establishment and composition of the local instructional materials review committee.
- Identification, by subject area, of a review cycle for instructional materials.
- Process by which instructional materials are adopted by the district school board, including a process for the district school board to determine and certify the accuracy of the district adopted instructional materials. As part of the process, the district school board must:
 - Post recommended instructional materials in a read-only format on the district website for public to review. The public may submit comments electronically for review by the district school board members and superintendent.
 - Conduct an open, noticed public hearing for the district school board to receive public comment and review the recommended instructional materials.
 - Hold an open, noticed public meeting for the district school board to approve an annual instructional materials plan, including the adoption of instructional materials.
 - Notice the public meeting and public hearing, which must specifically state which instructional materials are being reviewed and the manner in which the public can access the instructional materials for review. The public meeting must be held on a different date than the public hearing.
 - Establish a process by which the public can appeal the district school board's adoption of specific instructional materials. The district school board must convene a public hearing and re-evaluate the challenged instructional materials to determine suitability for use in accordance with the specified evaluation criteria.⁵²

The bill retains the ability of public inspection by requiring the school district to make sample copies of all instructional materials that have been adopted by the district school board available upon public request.

The bill gives the district school board the same duties the Commissioner of Education currently has to conduct an independent investigation to determine the accuracy of adopted instructional materials, and may remove instructional materials from the list of adopted materials if the content is in error and the publisher refuses to correct the error.

⁵² Suitability for use includes the accuracy and appropriateness of the materials pursuant to the instructional materials review committee evaluation criteria per s. 1006.31, F.S.

Instructional Materials Reviewers

The bill requires district school boards to establish a local instructional materials review committee to review and recommend instructional materials to the district school board for final adoption. Districts may combine their committees.

Each district review committee consists of the following members:

- Each district school board member appoints one person not employed by the district;
- The superintendent appoints a number of classroom teachers equal to the number of school board members that are representative of the subject areas and grade levels of the instructional materials considered for adoption; and
- The district school board and the superintendent each appoint at least one parent of a student currently enrolled in a district public school.

The bill requires district reviewers to comply with the same duties that currently apply to state-level reviewers, including making an affidavit attesting to their independence from bias and a conflict of interest.

Instructional Materials Publishers

The bill requires instructional materials publishers to comply with the same duties and requirements for the district process that currently apply to the state-level process.

The bill eliminates the requirement that district school superintendents purchase instructional materials exclusively from the publisher's book depository, and authorizes purchases from any vendor selling the instructional materials.⁵³

In conjunction with the deletion of the state-level adoption cycle, the bill requires the publisher to maintain in the depository an inventory of instructional materials sufficient to receive and fill orders for core subject areas.

The bill authorizes school districts to request assistance from the publisher's book depository to recommend instructional materials for the district's instructional material review committee to review in accordance with the requirements and district review process.

School District Purchase of Instructional Materials

The bill retains the requirement for the district school board to purchase current instructional materials to provide each student in kindergarten through grade 12 with a major tool of instruction in core courses. However, since the state-level adoption process (including the adoption cycle) is being eliminated, the bill deletes the requirement that the purchase must be made within 3 years after the effective date of the adoption cycle.

⁵³ Through this elimination, district school boards may not individually retain the economy of scale that might be available via purchases through the Department of Education contracts. However, via the district school board instructional materials program, current law authorizes school districts to leverage their resources and create their own economy of scale by purchasing instructional materials through a consortium of school districts. Section 1006.283(1), F.A. Additionally, the bill authorizes school districts to purchase instructional materials from any vendor – not just the publisher's depository. This flexibility may provide more competition, and thus better deals, for the school district.

The bill retains the requirement that the district school board use at least 50 percent of the annual allocation for the purchase of district-adopted digital (no longer electronic) instructional materials. The bill deletes superfluous provisions relating to purchases of instructional materials not on the state-adopted list and the provisions relating to use of the kindergarten and first grade allocation for instructional materials not on the state-adopted list.

School District Transition to Instructional Materials In A Digital Format

The bill deletes the current requirement that instructional materials be provided in an “electronic format,” but keeps the current requirement that, beginning in the 2015-2016 school year, instructional materials be provided in a “digital format.”⁵⁴

The district school board must adopt rules that identify the process by which the school district will notify parents of their ability to access their children’s instructional materials through the district’s local instructional improvement system. The rules must also identify the process by which the school district will encourage parents to access the system. The notification must be displayed prominently on the district school board’s website and provided annually to all parents of enrolled students in a written format.

The bill has an effective date of July 1, 2014.

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:

None.

⁵⁴ The bill does not substantively change the current definition of “digital format” or the Department’s requirement to publish minimum technology requirements. *See* s. 1006.29(3)(b) and (4), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Instructional materials publishers and manufacturers have raised concerns about potential copyright or contract issues with the requirement that district school boards post instructional materials being considered for adoption in a read-only format on the district's website for public review.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1006.28, 1006.283, 1006.30, 1006.31, 1006.32, 1006.35, 1006.37, 1006.38, 1006.40, 1006.41, 1006.282, and 1010.82.

This bill repeals the following sections of the Florida Statutes: 1006.29, 1006.33, 1006.34, and 1006.36.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.