

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 989 Instructional Materials
SPONSOR(S): Education Committee; PreK-12 Quality Subcommittee; Donalds and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1210

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Quality Subcommittee	14 Y, 0 N, As CS	Brink	Duncan
2) PreK-12 Appropriations Subcommittee	12 Y, 2 N	Seifert	Potvin
3) Education Committee	16 Y, 2 N, As CS	Brink	Hassell

SUMMARY ANALYSIS

To be included in Florida's state-adopted instructional materials list, an instructional material must, among other things, be aligned to the Next Generation Sunshine State Standards, accurate, objective, balanced, noninflammatory, current, and suited to student needs and their ability to comprehend the material presented. However, state funds allocated for the purchase of instructional materials may be used to purchase materials that are not included on the state-adopted list or are not otherwise reviewed for appropriate content and alignment to the standards.

The bill provides for greater transparency in the district-level adoption process and more opportunities to review and challenge materials made available to students by:

- allowing parents and residents of the county to provide the district school board evidence that an instructional material for adoption by the district does not meet the state criteria, contains prohibited content, or is otherwise inappropriate or unsuitable;
- defining the terms "resident" and "purchase;"
- allowing county residents to contest the adoption of an instructional material and object to the use of a material made available to students;
- requiring the process for contesting the adoption of an instructional material to provide for an impartial hearing officer and to provide certain procedural protections;
- requiring school districts to discontinue use of a material found to be inappropriate or unsuitable;
- requiring school districts to provide access to library materials upon written request;
- requiring school districts to maintain a current list of purchased instructional materials on their websites;
- requiring that instructional materials purchased using the instructional materials allocation be on the state-adopted list unless purchased through a district instructional materials program;
- requiring that instructional materials purchased through a district instructional materials program meet the criteria for inclusion in the state-adopted list, be aligned to the state academic standards, and be consistent with course expectations and course descriptions;
- eliminating the requirement that 50 percent of the instructional materials allocation be used to purchase electronic or digital materials; and
- clarifying that a school district is responsible for the content of all materials made available to students, including those that may not meet the statutory definition of an instructional material.

The bill also specifies that an instructional material must be free of content that is pornographic or harmful to minors in order to be recommended for inclusion in the state-adopted list and that any material used in a classroom must also be free of such content.

The bill does not have a fiscal impact to the state. The fiscal impact of the bill to school districts is indeterminate.

The bill takes effect July 1, 2017.

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

STORAGE NAME: h0989d.EDC

DATE: 4/10/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials to each student for core courses in mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12.¹

“Instructional materials” are items having intellectual content that serve as a major tool for assisting 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, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software.² Other materials that are not by definition an instructional material, such as novels and periodicals, may be used in a classroom, made available in a school library, or included on a course reading list.

Whether adopted and purchased through a district-implemented instructional materials review program, adopted and purchased from the state-adopted list, or otherwise made available in a classroom, the school district is responsible for the content of all instructional materials used in the classroom.³ Any instructional material containing pornography or is a prohibited material that is harmful to minors⁴ may not be used or made available within any public school.⁵

Prior to the purchase of any instructional material, the board must:

- establish a process to allow student editions of recommended instructional materials to be accessed and viewed online by the public at least 20 calendar days before the required school board hearing and public meeting. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption;
- conduct an open, noticed school board hearing to receive public comment on the recommended instructional materials;
- conduct an open, noticed public meeting to approve an annual instructional materials plan to identify any instructional materials that will be purchased. This public meeting must be held on a different date than the school board hearing;
- provide notice for the school board hearing and the public meeting that specifically states the instructional materials being reviewed and how the instructional materials can be accessed for public review;
- establish a process for public comment on, and review of, the recommended instructional materials.⁶

¹ Section 1006.40(2), F.S. “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.” Section 1006.28(1), F.S. Digital and instructional materials, including software applications, must be provided by each school board, in consultation with the district school superintendent, to students with disabilities in prekindergarten through grade 12. Section 1003.4203(2), F.S.

² Section 1006.29(2), F.S.

³ Section 1006.28(1)(a)1., F.S.

⁴ See s. 847.012, F.S. (establishing a criminal offense for the sale, rent, or distribution of certain materials to minors or posting of such materials at a school).

⁵ Section 1006.34(2)(b), F.S. (flush-left provisions at the end of paragraph (b)).

⁶ Sections 1006.40(5) and 1006.283(2)(b)8., 9., and 11., F.S.

In addition, the school board must establish a process by which the district notifies parents of their ability to access their children’s instructional materials. The notification must be displayed prominently on the school district’s website and provided annually in written format to all parents of enrolled students.⁷

Once instructional materials are adopted and purchased by the district school board pursuant to the state instructional materials program or its own instructional materials program, each district school board must establish a process enabling parents to contest the adoption of a specific instructional material. A parent seeking to challenge an adopted instructional material must file a petition, on a form provided by the school board, within 30 days after the adoption of the material by the school board. The form must be signed by the parent, include the required contact information, and state the objection to the instructional material.⁸ Districts must also establish a process by which parents may challenge their child’s use of an instructional material and which provides for resolution of objections.⁹

Under the law, materials that are not adopted and purchased from the state-adopted list or through a district’s instructional materials program can be made available to students by the school district without undergoing the above notice, review, and comment procedures or the adoption appeal procedures. The law does not expressly require districts to make appeal and objection procedures available to other members of the public, such as residents of the county.

Funding for instructional materials is provided annually by the Legislature in the General Appropriations Act (GAA). The following chart shows a five year history of GAA funding for instructional materials:

Instructional Materials Funding History	
Fiscal Year	Amount
2012-13 ¹⁰	\$211,665,913
2013-14 ¹¹	\$217,277,372
2014-15 ¹²	\$223,382,911
2015-16 ¹³	\$225,830,113
2016-17 ¹⁴	\$228,792,422

Up to 50 percent of the annual allocation provided in the General Appropriations Act for instructional materials may be used by school districts to purchase materials not on the state-adopted list, including library and reference books and nonprint materials, and for the repair and renovation of textbooks and library books. The remainder of the allocation must be used to purchase “digital or electronic instructional materials that align with state standards included on the state-adopted instructional materials list.”¹⁵ Instructional materials funds available after March 1 may be used to purchase hardware for student instruction.¹⁶ In any year in which the total instructional materials allocation for a school district has not been expended or obligated prior to June 30, the district school board must carry forward the unobligated amount and must add that amount to the next year’s allocation.¹⁷

⁷ Section 1006.283(2)(b)11., F.S.

⁸ Section 1006.28(1)(a)3., F.S.

⁹ Section 1006.28(1)(a)2., F.S.

¹⁰ Specific Appropriations 6, s. 1 and 84, s. 2, ch. 2012-118, L.O.F.

¹¹ Specific Appropriations 7, s. 1 and 87, s. 2, ch. 2013-40, L.O.F.

¹² Specific Appropriations 9, s. 1 and 96, s. 2, ch. 2014-51, L.O.F.

¹³ Specific Appropriations 7, s. 1 and 90, s. 2, ch. 2015-232, L.O.F.

¹⁴ Specific Appropriations 7, s. 1 and 94, s. 2, ch. 2016-66, L.O.F.

¹⁵ Sections 1006.28(1)(a)1. and 1006.40(3), F.S. Materials not on the state adopted list include library books, reference books, and non-print materials. Section 1006.40(3)(b)., F.S.

¹⁶ Section 1011.62(6)(b)5., F.S.

¹⁷ Section 1006.40(7), F.S.

Materials purchased by a school district that are not on the state-adopted list or otherwise made available in a classroom might not undergo any adoption review or public review process.¹⁸

State Instructional Materials Adoption

Adoption Process

The Commissioner of Education adopts instructional materials according to a 5-year rotating schedule. However, the commissioner may approve terms of adoption of less than five years for materials in content areas which require more frequent revision.¹⁹ The Department of Education (DOE) annually publishes an official schedule of subject areas calling for adoption for each of the succeeding two years, and a tentative schedule for years three through five. Under extenuating circumstances, the commissioner may direct the DOE to add one or more subject areas to the official schedule.²⁰

Before the adoption of instructional materials in a certain subject area, the DOE publishes specifications for the subjects to be adopted. These specifications detail the courses for which materials are sought and the standards the materials must meet.²¹

Beginning on or before May 15 of the adoption year, the DOE advertises²² a request for sealed bids or proposals from publishers of instructional materials. The advertisement must require each bidder to furnish electronic sample copies of all instructional materials submitted.²³

Once all bids have been considered, the commissioner selects and adopts, from the list reported by the state instructional materials reviewers as “suitable, usable, and desirable” instructional materials for each grade and subject in the curriculum of public elementary, middle, and high schools in which adoptions are made and in the subject areas designated in the advertisement.²⁴

Reviewers

State instructional materials reviewers are state or national content experts appointed by the Commissioner of Education. The reviewers must be appointed by April 15 of each school year to review the instructional materials slated for adoption and evaluate the content for alignment with applicable state standards.²⁵

State instructional material reviewers receive training in competencies related to the evaluation and selection of instructional materials.²⁶ After receiving training, the reviewers must review the materials for the level of instructional support and the accuracy and appropriateness of progression of introduced content. Instructional materials must be made electronically available to the reviewers.²⁷

The initial review of the materials is made by only two of the three reviewers. If the two reviewers reach different results, the third reviewer must break the tie. The reviewers must independently make

¹⁸ *E.g.*, novels that are included in a recommended or required reading list or checked out of the school library by the classroom teacher or a student.

¹⁹ Section 1006.36(1), F.S.

²⁰ Section 1006.36(2), F.S.

²¹ Florida Department of Education, Bureau of Curriculum and Instruction, *Policies and Procedures Specifications for the Florida Instructional Materials Adoption*, at 1 (June 2016), *incorporated by reference into rule 6A-7.0710, F.A.C.*

²² Beginning in FY 2010-11, all advertisements must state that each bidder must furnish electronic sample copies of all instructional materials submitted. Section 1006.33(1)(b), F.S.

²³ Section 1006.33(1)(a) and (b), F.S. A school district may not request samples in addition to the electronic sample copies. Section 1006.33(1)(b), F.S.

²⁴ Section 1006.34(2)(a), F.S.

²⁵ Section 1006.29(1)(b), F.S.

²⁶ Section 1006.29(5), F.S.

²⁷ Section 1006.29(1)(b), F.S.

recommendations to the commissioner regarding materials that should be placed on the state-adopted list through an electronic feedback review system.²⁸

Each state instructional materials reviewer must sign an affidavit stating that he or she:

- will faithfully discharge the duties imposed as a state instructional materials reviewer;
- has no interest in any publishing or manufacturing organization that produces or sells instructional materials;
- is in no way connected with the distribution of the instructional materials;
- does not have any direct or indirect pecuniary interest in the business or profits of any person engaged in manufacturing, publishing, or selling instructional materials designed for use in public schools;
- will not accept any emolument or promise of future reward from anyone intending to bias his or her judgment in the selection of materials to be adopted; and
- understands that it is unlawful to discuss matters relating to instructional materials submitted for adoption with any publisher or manufacturer of instructional materials, except during the period when the publisher or manufacturer is providing a presentation for the reviewer.²⁹

The law specifies standards that reviewers must use when reviewing instructional materials. Reviewers must:

- only recommend instructional materials that are accurate, objective, balanced, noninflammatory, current, and suited to student needs and their ability to comprehend the material;
- include only instructional materials that accurately portray the ethnic, socioeconomic, cultural, religious, physical, and racial diversity of our society;
- include only materials that accurately portray, whenever appropriate, humankind's place in ecological systems;
- include materials that encourage thrift, fire prevention, and humane treatment of people and animals;
- require, 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; and
- only recommend instructional materials that do not reflect unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, religion, disability, socioeconomic status, or occupation.³⁰

Each district school superintendent, at the request of the commissioner, must nominate one classroom teacher or district-level content supervisor to review two or three of the submissions recommended by the state instructional materials reviewers. School districts must ensure that these district reviewers are provided with the support and time necessary to accomplish a thorough review of the instructional materials. District reviewers must independently rate the recommended submissions on the instructional usability of the resources.³¹ Persons selected as school district reviewers must complete training, developed by DOE, related to the evaluation and selection of instructional materials.³²

District Instructional Materials Programs

A district school board, or consortium of school districts, choosing to implement its own instructional materials program is not required to purchase instructional materials from the state-adopted list,³³

²⁸ *Id.*

²⁹ Section 1006.30, F.S.

³⁰ Section 1006.31(2), F.S.

³¹ Section 1006.29(1)(c), F.S.

³² Section 1006.29(5), F.S.

³³ Section 1006.40(8), F.S.

requisition instructional materials from the publisher's depository,³⁴ or follow the same review cycle used for state instructional materials adoption.³⁵

If a district school board chooses to implement its own instructional materials program, the school board must adopt rules implementing the program. The rules must include its processes, criteria, and requirements for:

- selecting instructional materials reviewers, one or more of which must be a parent with children in public schools;
- reviewing and selecting instructional materials, including a thorough review of curriculum content;
- providing for reviewer recommendations;
- adopting instructional materials by the district school board; and
- purchasing instructional materials.³⁶

The rules must also:³⁷

- identify, by subject area, a review cycle for instructional materials;
- specify the qualifications for, selection process for, and the duties of instructional materials reviewers, including compliance with statutorily prescribed conflict of interest affidavits and state instructional materials reviewer duties;
- require that all instructional materials recommended by a reviewer be accompanied by the reviewer's statement that the materials align with the applicable state standards;
- establish a process for certifying the accuracy of instructional materials;
- require reviewer and publisher compliance with the law prohibiting the acceptance or solicitation of money or inducements to influence approval or purchase of instructional materials;³⁸ and
- incorporate the requirements of state law regarding publisher duties, responsibilities, and requirements.³⁹

Further, the rules must provide for:

- conducting an open, noticed school board hearing to receive public comment on the instructional materials recommended for adoption by the district school board;
- conducting an open, noticed meeting, held on a different date, to approve an annual plan for adopting instructional materials; and
- posting student editions of instructional materials recommended for adoption by the district school board on the school district website at least 20 days in advance of public hearings and public meetings.⁴⁰

Notices for public meetings and hearings must specifically identify the materials up for review and adoption and the manner in which the materials can be accessed by the public.⁴¹

³⁴ Section 1006.37(3), F.S.

³⁵ See s. 1006.283(2)(b), F.S. However, the district school superintendent must certify to the Department of Education by March 31 of each year that all instructional materials for core courses used by the district are aligned with applicable state standards. A list of the core instructional materials that will be used or purchased for use by the school district must be included in the certification. Section 1006.283(1), F.S.

³⁶ Section 1006.283(2)(a), F.S.

³⁷ Section 1006.283(2)(b), F.S.

³⁸ Like state instructional materials reviewers, district reviewers must sign an affidavit required under s. 1006.30, F.S., stating, in part, that they will faithfully discharge their duties and not accept payment or benefit from anyone for their recommendations. Section 1006.283(2)(b)3., F.S.

³⁹ See s. 1006.38, F.S.

⁴⁰ Section 1006.283(2)(b)8., F.S.

⁴¹ Sections 1006.283(2)(b)8. and 1006.40(5)(b), F.S. Reasonable safeguards must be established against the unauthorized use, reproduction, and distribution of instructional materials posted online for public review and comment. Section 1006.283(2)(b)8.a., F.S.

The district must establish a process that enables the public to submit comments regarding the recommended instructional materials to the school board for the board members to review. The rules must also specify a process for notifying parents of their ability to access their child's instructional materials. This notification must be displayed on the school district's website and provided annually, in writing, to all parents of enrolled students.⁴²

Requirements related to the adoption and purchase of instructional materials do not apply to charter schools.⁴³

Effect of Proposed Changes

The bill clarifies that a district school board is responsible for any material used in a classroom, made available in a school library, or included on a reading list.

The bill also revises provisions relating to instructional materials content by:

- specifying that instructional materials reviewers must certify that recommended instructional materials are free of pornography and material harmful to minors;
- specifying that any materials purchased using the instructional materials allocation must be:
 - free of pornography and material harmful to minors;
 - suited to student needs and their ability to comprehend the material presented; and
 - appropriate for the grade level and age group for which the materials are used or made available; and
- specifying that instructional materials that are purchased by a school district but are not included on the state-adopted list must meet the criteria for state-adopted materials, be aligned to the state academic standards, and be consistent with course expectations based on the district's student progression plan⁴⁴ and course descriptions adopted in state board rule.

The bill expands requirements related to reviewing instructional materials and other materials used in a classroom or school library by:

- specifying that the school district public hearing for recommended instructional materials must allow the parent of a public school student or a resident of the county to proffer evidence that a recommended instructional material does not meet the criteria for state-adopted materials, taking into consideration course expectations in the district's student progression plan and course descriptions adopted in state board rule;
- requiring school districts, upon written request, to provide access to any instructional material or book specified in the request that is maintained in a district school system library and is available for review; and
- Requiring school districts to maintain a current list of all instructional materials, by grade level, purchased by the district.

The bill defines the term "resident" to mean a person who has maintained residence in the state for the preceding year, purchased a home that he or she occupies as his or her residence, or established a domicile in the state. Thus, to be considered a resident of the county for purposes of the bill, an individual must also satisfy at least one of these criteria. The bill also specifies that the term "purchase" includes "lease," "license," and "acquire" for purposes of instructional materials adoption.

The bill revises provisions relating to a school district's instructional material objection process by:

- expressly allowing a resident of the county to object to the use of an instructional material; and

⁴² Sections 1006.283(2)(b)9. and 11. and 1006.40(5)(b), F.S.

⁴³ See s. 1002.33(16), F.S.

⁴⁴ Each district school board must establish a comprehensive plan for student progression which provides for a student's progression from one grade to another based on the student's mastery of the state academic standards, specifically in English language arts, mathematics, science, and social studies. See s. 1008.25(2), F.S.

- requiring a school district’s objection process to allow a parent or resident of the county to proffer evidence to the district school board that:
 - for an instructional material that was not subject to adoption and public review and comment procedures, it does not meet the criteria for state-adopted materials, contains pornography or content harmful to minors, or is inappropriate for the grade level or age group for which it is used; or
 - any material used in a classroom, made available in a school library, or included on a reading list contains content that is pornographic or harmful to minors, is not suited to student needs and their ability to comprehend the material, or is inappropriate for the grade level and age group for which it is used.
- requiring the school district to discontinue use of a material that is found to contain inappropriate or unsuitable material.

The bill revises provisions relating to a school district’s process for challenging the adoption of an instructional material by:

- allowing a resident of the county to challenge the school district’s adoption of an instructional material;
- requiring the hearing to be held before an unbiased and qualified hearing officer;
- specifying that the officer may not be an employee or agent of the school district;
- expressly exempting the hearing from the Administrative Procedures Act; and
- requiring the hearing to provide sufficient procedural protections to allow each petitioner an adequate and fair opportunity to be heard and present evidence to the hearing officer.

The bill revises provisions relating to the use of instructional materials allocation funds by:

- deleting the requirement that at least 50 percent of the annual allocation amount be used to purchase digital or electronic instructional materials;
- requiring that a district without its own instructional materials program must use the annual allocation only for the purchase of instructional materials on the state-adopted list; however, up to 50 percent of the allocation may be used to purchase:
 - library and reference books and nonprint materials;
 - the purchase of other materials that assist in the instruction of a subject or course, including novels; and
 - the repair and renovation of textbooks and library books and replacements for items which were part of previously purchased instructional materials; and
- clarifying that a district school board is responsible for the content of all materials purchased using the allocation and used in the classroom or otherwise made available to students, including materials that do not meet the definition of an “instructional material.”

The bill expressly prohibits a state instructional materials reviewer from recommending for adoption any instructional material that contains content that is pornographic or harmful to minors.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.20, F.S., conforming a cross-reference.

Section 2. Amends s. 1006.28, F.S., revising provisions relating to a district school board’s responsibilities; requiring a school district to maintain certain information on its website; allowing a resident of a county to challenge the use or adoption of instructional materials; revising requirements for instructional materials objection and appeal processes; requiring a school district to discontinue use of materials in certain circumstances; requiring compliance with certain procedural safeguards for a challenge to the adoption of an instructional material; requiring a school district to provide access to school library materials upon written request.

Section 3. Amends s. 1006.283, F.S., revising requirements for an instructional materials adoption public hearing.

Section 4. Amends s. 1006.31, F.S., revising requirements for recommending an instructional material.

Section 5. Amends s. 1006.40, F.S., revising requirements for use of the instructional materials allocation; making conforming changes.

Section 6. Amends s. 1006.42, F.S., conforming a cross-reference.

Section 7. Provides an effective date.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

District school boards may incur costs associated with the procedures for challenging an instructional material as provided in the bill. However, these costs are indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2017, the House PreK-12 Quality Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as originally filed by:

- eliminating changes to provisions related to the state's academic standards;
- requiring a district school board to provide an unbiased, qualified hearing officer for challenges to the adoption of an instructional material and preserving language stating a that district school board's decision is not subject to further petition or review;
- requiring that county residents have the opportunity to object to the use of a material and challenge the adoption of an instructional material;
- eliminating language granting persons who pay ad valorem or sales tax in the state the ability to object to the use of an instructional material;
- eliminating language requiring the use of an "instructional materials review committee" as part of the instructional materials adoption process;
- deleting superfluous language referring to instructional materials which are leased, licensed, acquired, or used as well as those that are purchased;
- deleting language requiring schools to provide parents and persons who pay ad valorem or sales taxes in the state "full access" to materials in school libraries and instead requiring districts to provide access to library materials upon written request; and
- requiring a school district to maintain a list on its website of instructional materials purchased by the district.

On April 6, 2017, the Education Committee adopted two amendments and reported the bill favorably as a committee substitute for the committee substitute. The amendments revise the bill by:

- defining the term "resident;"
- specifying that the term "purchase" includes "lease," "license," and "acquire;"
- correcting a glitch to allow a school district to contract with a hearing officer for purposes of instructional materials challenges; and
- specifying that the public hearing for instructional materials challenges is not subject to the Administrative Procedure Act; however, the amendment requires that petitioners be provided an adequate and fair opportunity to be heard and present evidence to the hearing officer.

The analysis is drafted to reflect the committee substitute for the committee substitute passed by the Education Committee.