

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 827 Instructional Materials
SPONSOR(S): PreK-12 Quality Subcommittee and Donalds
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Quality Subcommittee	12 Y, 1 N, As CS	Brink	DavisGreene
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

State law establishes state and local school district requirements for the adoption and purchase of instructional materials for public schools. Current law provides multiple opportunities for public review and input at the state and local level. The bill expands upon these opportunities by requiring the State Board of Education (SBE) and district school boards to establish procedures by which members of the public can recommend instructional materials for adoption.

The bill transfers the responsibility for adopting state instructional materials from the Commissioner of Education to the SBE. Under the bill, the SBE must adopt instructional materials for a given academic subject at a regularly scheduled state board meeting no later than July 1 of the year before the 5-year adoption cycle is scheduled to begin and allow public comment on instructional materials at any meeting in which an adoption is considered. The bill also specifies that members of the public must be provided access to, and the opportunity to submit comments on, instructional materials recommended for adoption by state instructional materials reviewers and that any submitted comments related to a specific recommended instructional material must be provided to the SBE as part of its consideration.

The bill provides that instructional materials recommended for adoption may be more rigorous than the Next Generation Sunshine State Standards (NGSSS), so long as they are aligned with the NGSSS. The bill also requires the state instructional materials reviewer affidavit to include a statement that, to the best of the reviewer's knowledge, instructional materials he or she recommends for adoption are, at a minimum, aligned to the NGSSS. If the SBE finds that instructional materials fully meet or are more rigorous than the NGSSS, the materials are not subject to preadoption public review procedures by the local school district; however, a district school board may still initiate such procedures if he or she has evidence that the materials are not aligned to the NGSSS or do not meet state adoption criteria or standards.

The bill requires that instructional materials purchased using instructional material allocation funds to include professional development and ancillary materials to support high-quality, accurate instruction.

The bill does not appear to have a fiscal impact.

The bill takes effect on July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

“Instructional materials” are 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 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.¹

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 12.² School districts may purchase instructional materials from a list of state-reviewed and adopted instructional materials or establish their own review and adoption program.³

Each district school board is responsible for the content of all instructional materials and any other materials used in the classroom, made available in a school library, or included on a reading list, whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program, or otherwise purchased or made available to students.⁴

Funding for instructional materials is provided annually by the Legislature in the General Appropriations Act (GAA). The following chart shows GAA funding for instructional materials since FY 2012-13:

Instructional Materials Funding History	
Fiscal Year	Amount
2012-13 ⁵	\$211,665,913
2013-14 ⁶	\$217,277,372
2014-15 ⁷	\$223,382,911
2015-16 ⁸	\$225,830,113
2016-17 ⁹	\$228,792,422
2017-18 ¹⁰	\$230,743,258

¹ See ss. 1006.28(1) and 1006.29(2), F.S.

² See s. 1006.40(2) and (4), 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.

³ See ss. 1006.283 and 1006.40, F.S.

⁴ Section 1006.28(2)(a)1., F.S.

⁵ Specific Appropriations 6, s. 1 and 84, s. 2, ch. 2012-118, L.O.F.

⁶ Specific Appropriations 7, s. 1 and 87, s. 2, ch. 2013-40, L.O.F.

⁷ Specific Appropriations 9, s. 1 and 96, s. 2, ch. 2014-51, L.O.F.

⁸ Specific Appropriations 7, s. 1 and 90, s. 2, ch. 2015-232, L.O.F.

⁹ Specific Appropriations 7, s. 1 and 94, s. 2, ch. 2016-66, L.O.F.

¹⁰ Section 6, ch. 2017-234, L.O.F.

State Adoption Process

Before adopting instructional materials in a certain subject area, the Department of Education (DOE) publishes specifications for the materials. These specifications detail the courses for which instructional materials are sought and the standards the materials must meet.¹¹ Beginning on or before May 15 of the adoption year, DOE advertises 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.¹²

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 as advertised. The commissioner must always reserve the right to reject any and all bids.¹³ State-adopted instructional materials are available for purchase beginning April 1 of the year following adoption and must be requisitioned from the depository of the publisher.¹⁴

The Commissioner of Education adopts instructional materials according to a 5-year rotating schedule. The commissioner may approve a shorter schedule if the content area requires more frequent revision.¹⁵ 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 DOE to add one or more subject areas to the official schedule.¹⁶

The following chart shows the adoption schedule for instructional materials through FY 2019-20:

Instructional Materials Adoption Schedule ¹⁷	
Year	Subject
2016-17	Social Studies (K-12)
2017-18	Science (K-12)
2018-19	Mathematics (K-12)
2019-20	English Language Arts (K-12)

State Instructional Materials 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 up for adoption and evaluate the content for alignment with Next Generation Sunshine State Standards (NGSSS).¹⁸

State instructional material reviewers receive training in competencies related to the evaluation and selection of instructional materials.¹⁹ 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.²⁰

¹¹ Florida Department of Education, *2014 Policies and Procedures for the Florida Instructional Materials Adoption*, at 1, available at <http://www.fldoe.org/core/fileparse.php/5574/urlt/PoliciesandProceduresSpecifications.pdf>.

¹² 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.

¹³ Section 1006.34(2)(a), F.S.

¹⁴ Sections 1006.36(1) and 1006.37(1), F.S.; *see also* s. 1006.28(2)(b), F.S.

¹⁵ Section 1006.36(1), F.S.

¹⁶ Section 1006.36(2), F.S.

¹⁷ Florida Department of Education, *Florida Instructional Materials Adoption Schedule for Adoption Years 2015-16 through 2019-20* (Feb. 3, 2015), available at <http://www.fldoe.org/core/fileparse.php/5574/urlt/AdoptionCycle.pdf>.

¹⁸ Section 1006.29(1)(b), F.S.

¹⁹ Section 1006.29(5), F.S.

²⁰ Section 1006.29(1)(b), F.S.

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 recommendations to the commissioner regarding materials that should be placed on the state-adopted list through an electronic feedback review system.²¹

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.²²

The law specifies standards to which reviewers must adhere when reviewing instructional materials. Reviewers must:

- only recommend instructional materials that are accurate, objective, balanced, noninflammatory, current, free of pornography, 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.²³

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.²⁴ Persons selected as school district reviewers must complete training, developed by DOE, related to the evaluation and selection of instructional materials.²⁵

²¹ *Id.*

²² Section 1006.30, F.S.

²³ Section 1006.31(2), F.S. (2017)

²⁴ Section 1006.29(1)(c), F.S.

²⁵ Section 1006.29(5), F.S.

Before the commissioner includes instructional materials on the state-adopted list, the public is provided electronic access for 14 days to review instructional materials submitted for adoption.²⁶ The DOE makes the instructional materials evaluation instrument, which allows users to complete an online evaluation with comments, available for submissions on reviewed materials during this period.²⁷

Purchasing Instructional Materials on the State-Adopted List

If a district school board adopts instructional materials from the state-adopted list, then within the first three years of the state adoption of that instructional material the school district superintendent must purchase the instructional material.²⁸ The superintendent must keep adequate records and accounts for all financial transactions related to instructional materials.²⁹ The superintendent must notify DOE by April 1 of each year of the state-adopted instructional materials that will be requisitioned. The notification must include a district school board plan for instructional materials use to assist in determining if adequate instructional materials have been requisitioned.³⁰

District Instructional Materials Adoption Programs

The law authorizes a district school board, or consortium of school districts, to implement its own instructional materials program.³¹ A school district or consortium of school districts that implements its own program is not required to purchase instructional materials from the state-adopted list,³² requisition instructional materials from the publisher's depository,³³ or follow the same review cycle used for state instructional materials adoption.³⁴

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 who 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 materials³⁵

The rules must also:³⁶

- 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;

²⁶ See Florida Department of Education, *2014 Policies and Procedures for the Florida Instructional Materials Adoption*, at 4, available at <http://www.fldoe.org/core/fileparse.php/5574/urlt/PoliciesandProceduresSpecifications.pdf>.

²⁷ See *id* at 4.

²⁸ Section 1006.37(1), F.S.

²⁹ Section 1006.28(3)(a), F.S.

³⁰ Section 1006.28(3)(b), F.S.

³¹ See s. 1006.283, F.S.

³² Section 1006.40(7), F.S.

³³ Section 1006.37(3), F.S.

³⁴ 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.

³⁵ Section 1006.283(2)(a), F.S.

³⁶ Section 1006.283(2)(b), F.S.

- 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;³⁷ and
- incorporate the requirements of state law regarding publisher duties, responsibilities, and requirements.³⁸

In addition, 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.³⁹

Notices for public meetings and hearings must specifically identify the instructional materials up for review and adoption and the manner in which the materials can be accessed by the public.⁴⁰

The school 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.⁴¹

Requirements for Instructional Materials Publishers and Manufacturers

Whether operating pursuant to the state’s instructional materials program or a district instructional materials program, publishers and manufacturers of instructional materials must, among other things:

- submit electronic sample copies of the instructional material;
- submit evidence that the provided materials address the required state standards and are accessible through the district’s digital classrooms plan and a variety of electronic, digital, and mobile devices;
- furnish instructional materials at a price not to exceed the lowest price offered in other states;
- automatically reduce the price of instructional materials or provide materials free of charge if provided to other states at a reduced rate or free of charge;
- disclose the authors of the instructional materials; and
- keep the materials revised, free from all errors, and up-to-date.⁴²

³⁷ 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.

³⁸ See *infra* text accompanying notes 51 and 52 for an explanation of the duties, responsibilities, and requirements of publishers and manufacturers with regard to instructional materials; see also s. 1006.38, F.S.

³⁹ Section 1006.283(2)(b)8., F.S.

⁴⁰ Sections 1006.283(2)(b)8. and 1006.40(4)(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.

⁴¹ Sections 1006.283(2)(b)9. and 11. and 1006.40(4)(b), F.S.

⁴² Sections 1006.38 and 1006.283(2)(b)7., F.S. With regard to the state’s instructional materials program, publishers and manufacturers must maintain a depository in Florida for the in-state distribution of instructional materials to school districts from the depository or contract with a depository in the state. Section 1006.38 (11), (12), and (13), F.S.

Additionally, publishers and manufacturers of instructional materials are prohibited from offering any emolument, money, or other valuable thing or any inducement, to any district school board official or instructional materials reviewer to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional materials. Violating this prohibition is a second degree misdemeanor and will result in a ban from practicing business in the state for one calendar year.⁴³

Public Review of Instructional Materials

Prior to the purchase of any instructional material, whether from the state-adopted list or through a district-established instructional materials review process, a district school 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; and
- establish a process for public comment on, and review of, the recommended instructional materials.⁴⁴

The school board hearing must allow the parent of a public school student or a resident of the county to proffer evidence that an instructional material recommended for purchase does not align to the NGSSS, does not meet state adoption criteria, or is not suitable to student needs or appropriate for students in the course or age group for which the instructional material would be used, taking into consideration course expectations based on the district's student progression plan and course descriptions in the course code directory.⁴⁵

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.⁴⁶

Effect of Proposed Changes

The bill revises the state instructional materials adoption process by providing the responsibility for adopting instructional materials to the State Board of Education (SBE) rather than the Commissioner of Education. The SBE must adopt instructional materials at a regularly scheduled meeting no later than July 1 of the year before the 5-year adoption period is scheduled to begin.

The SBE must allow public comment on instructional materials at any meeting in which an adoption is considered. The bill also requires that the public be granted access to, and the opportunity to submit comments on, instructional materials recommended for adoption by state instructional materials

⁴³ Section 1006.32(1) 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.

⁴⁴ Sections 1006.40(4)(b) and 1006.283(2)(b)8., 9., and 11., F.S.

⁴⁵ Sections 1006.40(4)(b) and 1006.283(2)(b)8., 9., and 11., F.S. (2017)

⁴⁶ Section 1006.283(2)(b)11., F.S.

reviewers. Any submitted comment on a specific recommended instructional material must be provided to the SBE as part of its consideration of the instructional material. In addition, any virtual presentation provided by a bidding publisher or manufacturer must be posted on the DOE's website for public access until the evaluation period closes.

The bill specifies that state instructional materials reviewers may recommend for adoption instructional materials with content more rigorous than the NGSSS, so long as the instructional materials, at a minimum, are aligned with the NGSSS. The bill provides that instructional materials that are found by the SBE to fully meet or be more rigorous than the NGSSS are not subject to public review procedures at the school district level; nevertheless, a district school board member may initiate the public review procedures if he or she has evidence that the instructional materials do not meet required criteria and standards for state instructional materials adoption.

The bill requires the state instructional materials reviewer affidavit to include a statement that, to the best of the reviewer's knowledge, any instructional materials recommended for adoption are, at a minimum, aligned to the NGSSS and meet state adoption criteria and standards.

The bill also requires the SBE and each district school board with an instructional materials program to establish a process by which members of the public can recommend instructional materials for consideration by instructional materials reviewers. Recommendations for consideration of instructional materials at the school district level may only come from parents and residents of the district. The DOE or district school board must contact the publisher of any instructional material recommended for consideration and provide the publisher with the opportunity to submit a bid for evaluation in accordance with the applicable procedures.

The bill requires that instructional materials purchased using instructional materials allocation funds must include professional development and ancillary materials to support high-quality, accurate instruction.

B. SECTION DIRECTORY:

Section 1. Amends s. 1006.283, F.S., requiring district school boards to establish in rule a process by which certain persons may recommend instructional materials for consideration by district instructional materials reviewers.

Section 2. Amends s. 1006.30, F.S., requiring a specified affidavit to include a statement that instructional materials recommended for adoption meet certain requirements.

Section 3. Amends s. 1006.31, F.S., requiring district instructional materials to meet or exceed the Next Generation Sunshine State Standards; requiring public access to and opportunity to comment on instructional materials recommended for adoption; requiring certain comments to be provided to the State Board of Education; authorizing members of the public to recommend instructional materials for consideration; requiring the Department of Education to contact certain publishers; conforming a cross-reference.

Section 4. Amends s. 1006.34, F.S., requiring specified virtual presentations to be posted on the Department of Education's website; providing that the state board, rather than the Commissioner of Education, adopt instructional materials by a certain date; requiring public comment at certain state board meetings; exempting instructional materials from certain public review procedures; authorizing district school board members to initiate certain public review procedures before instructional materials are adopted under certain conditions; conforming a provision.

Section 5. Amends s. 1006.40, F.S., requiring instructional materials purchased using a specific allocation include certain professional development and ancillary materials; conforming a provision.

Section 6. Provides an effective date of July 1, 2018.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 10, 2018, The PreK-12 Quality Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments specify that:

- any virtual presentation by a publisher or manufacturer must be posted on the DOE's website for public access until the instructional materials evaluation period closes;
- a district school board member may initiate public review procedures before adoption of an instructional material by the district school board; and
- instructional materials purchased using the instructional materials allocation must include professional development and ancillary materials to support high-quality, accurate instruction.

This analysis is drafted to reflect the bill as amended.