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FISCAL IMPACT REPORT

SPONSOR Stapleton ORIGINAL DATE 1/25/17
LAST UPDATED 2/07/17 HB 42/aHJC

SHORT TITLE Instructional Material Definitions & Fund SB _____

ANALYST Liu

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	See Fiscal Implications		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Public School Facilities Authority (PSFA)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 42 requires participants in the summer review institute to receive a stipend and mandates PED make reports, upon request, to the Legislature and governor as opposed to one or the other.

Synopsis of Original Bill

House Bill 42 amends the Instructional Materials Law to expand the definition of instructional materials that school districts and charter schools can purchase. The new instructional material definition includes original source material from primary sources and electronic content resources that support digital learning. The bill removes the waiver granted to instructional materials purchased from the multiple list and makes adoption of the multiple list optional, but still allows school districts or state institutions to use up to 25 percent of their instructional material allocations for other classroom materials. Lastly, the bill eliminates language referencing private schools, updates statutory terms, repeals the reading materials fund, and shifts PED reporting requirements to include the Legislature or governor.

FISCAL IMPLICATIONS

The bill does not have any direct fiscal implications; however, eliminating prescriptive requirements currently in law will reduce PED workload and allow school districts and charter schools to purchase instructional materials from much broader sources.

Processing fees submitted by publishers for inclusion on the multiple list entirely fund the review process of core/basal instructional materials. PED notes the bill removes the incentive for publishers to be listed on the multiple list and may eliminate the source of funding that allows for the review and ranking of the material to ensure instructional items are aligned with state standards. The statutory review process currently requires vendors to submit a processing fee and level two and level three-A teachers to review and score materials for alignment with state academic content and performance standards. The HJC amendment will require PED to provide stipends to these teachers if the department adopts a multiple list.

According to PED, the state review and adoption process provides for economies of scale because processing fees paid by the publishers support the review and ranking, the state enters into six year agreements that guarantee districts the lowest price, and publishers must offer the same price for materials or professional development to all districts. A review and adoption process by individual districts would be less cost-effective for most districts, given disparities in individual administrative capacities.

SIGNIFICANT ISSUES

The current definition of instructional materials in the Instructional Materials Act is as follows:

“Instructional material means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary material and electronic media.”

Current law requires public school districts, charter schools, and private schools to use 50 percent of their instructional materials allocation to purchase instructional material included on the “multiple list,” which is a written list of instructional materials approved by PED. Generally, each summer PED holds a summer institute, in which textbook vendors pay the department to have their materials reviewed. PED effectively provides stipends to educators to review these materials to ensure they meet current state content standards prior to adopting any materials to place on the multiple list.

Under current law, school districts and charter schools are able to use the remaining 50 percent to purchase instructional material that is not included on the multiple list, including the ability to use up to 25 percent of this amount to purchase other classroom materials that are not included in the definition of “instructional materials.” Private schools are able to use the remaining 50 percent for items that are not on the multiple list so long as funds are not spent for religious, sectarian or nonsecular materials and purchases must be made through an in-state depository.

The bill changes the definition to include the following:

“Instructional materials means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits,

original source material from primary sources, supplementary material, electronic media and resources that support digital learning formats and educational programs;”

Changes proposed in the bill would allow school districts and charter schools to use their entire instructional material allocation to purchase anything included in the definition of instructional material, whether adopted and placed on the multiple list or not. Up to 25 percent of the instructional material allocation could still be used for other classroom materials. All references to private schools are removed.

PED’s analysis notes the bill will allow school districts and charter schools to spend instructional material allocations on materials not aligned to state content standards, potentially hampering student learning. However, given the high stakes for teachers and administrators currently associated with student test scores on standards-based assessment that measure a students’ knowledge of state content standards, incentives still exist to ensure materials purchased with the instructional materials allocation are aligned to state standards.

PED indicates many small- to medium-sized school districts may lack the administrative capacity to review and select instructional materials that are aligned with state standards. Additionally, these districts lack the same purchasing and negotiating power, which PED notes may result in higher instructional material prices. The current review process is funded by text book publishers that pay PED a fee to have their materials reviewed. PED in turn contracts with level two and level three-A teachers to review materials for alignment with state content standards every summer. PED notes this process could be terminated if vendors no longer pay the state to have their materials reviewed and placed on a list that entities are required to purchase from. However, changes in the bill still require the department to conduct the summer instructional materials review and it is unclear at this time if elimination of the requirement for school districts and charter schools to spend 50 percent of their allocation on materials reviewed and adopted through this review process will result in vendors not seeking to be placed on the multiple list. Given concerns that some school districts lack administrative capacity to ensure instructional materials are aligned to state content standards – a majority of New Mexico school districts have fewer than 1,000 students – it is likely there may still be significant interest in purchasing peer-reviewed materials off the multiple list.

PERFORMANCE IMPLICATIONS

According to PED, the bill will impact the instructional material review process, which provides a list of instructional materials aligned with state standards. PED notes the current review process:

- helps educators by providing lists of vetted materials for specific subject areas;
- secures economical pricing through the Favored Nation Clause, which guarantees the lowest price as contracted by any state;
- provides accurate information about the alignment of content to core standards and objectives;
- provides tools and resources that can be used at the community or state level; and
- provides recommendations to help educators select the very best materials for instruction (State Instructional Materials Review Association January, 2015).

ADMINISTRATIVE IMPLICATIONS

School districts and charter schools may have some administrative burden if they are required to review instructional materials for conformity with state standards.

TECHNICAL ISSUES

The bill removes all references to private schools in light of the November 12, 2015, New Mexico Supreme Court decision for *Moses v. Skandera*, which ruled that lending textbooks to private schools students violated a provision of the state constitution. The state high court argued the constitution prohibits state mineral funds from being used “for the support of any sectarian, denomination or private school, college or university,” and that “private schools benefit because they do not have to buy instructional materials with money they obtain by tuition or donations and they can divert such money to other uses in their schools.”

The bill updates references of the fortieth day membership to “second reporting date” and changes most references of the state board of education to indicate PED. Reporting requirements for PED under Section 22-15-14 NMSA 1978 are changed to the “legislature or the governor” instead of the state board. The HJC amendment changes this section to “legislature and the governor.”

The bill also repeals Section 22-15-8.2 NMSA 1978, eliminating the reading materials fund, which was established to assist school districts that wanted to change their reading programs from the current adoption.

OTHER SUBSTANTIVE ISSUES

Research indicates instructional materials, both printed and media, have effects on student learning; however, little research exists on the effectiveness of most instructional materials, and very little systematic information has been collected on which materials are being used in schools.

PSFA notes during the 2016 2nd Special Session, the Legislature passed Senate Bill 4, which reserves \$25 million from the public school capital outlay fund for appropriation by the Legislature to the instructional material fund or transportation distribution for public schools.

SL/al/jle