

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/10/23

SPONSOR Lara

BILL
NUMBER House Bill 226

SHORT TITLE Instructional Materials & Procurement Code

ANALYST Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0 - \$9,643.7	\$0.0 - \$9,643.7	\$0.0 - \$19,287.3	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 76

Sources of Information

LFC Files

Responses Received From
 General Services Department (GSD)

No Response Received
 Public Education Department (PED)

SUMMARY

Synopsis of House Bill 226

House Bill 226 exempts purchases of school instructional materials and other educational media from requirements of the Procurement Code and removes the requirement of procuring instructional materials through the state purchasing agent. This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The bill does not contain an appropriation but exempts instructional materials from requirements of the Procurement Code and purchasing through the state purchasing agent. While it is difficult to determine the estimated additional operating budget impact of removing procurement guardrails, schools may increase instructional material purchases substantially as a result. In FY22, New Mexico public schools budgeted \$188.3 million in operational and restricted instructional

materials funds for general supplies, instructional materials, other textbooks, supply assets less than \$5,000, and software. By the fourth quarter of FY22, schools had spent \$129.8 million of the \$188.3 million budgeted for these purposes.

For FY22, the budgeted amounts for instructional materials, other textbooks, and software was \$70.1 million and actual expenditures totaled \$60.5 million. Assuming provisions of this bill would reduce barriers to procurement and increase actual expenditures of instructional materials, other textbooks, and software to the budgeted amount, the additional budget impact could be up to \$9.6 million.

With a few exceptions, state law (Section 13-1-125 NMSA 1978) allows for agencies to make small purchases of \$60 thousand or less without going through the formal process of gathering competitive sealed bids or proposals. As an example, of the 3,993 instructional material purchases in FY22 by Albuquerque Public Schools, only 43 operational fund transactions exceeded the \$60 thousand threshold. It is unclear if these purchases were procured through a competitive sealed bid or proposal; however, the vast majority of purchases remain below the small purchases threshold, suggesting most instructional material purchases are small or intentionally small. Provisions of this bill may encourage schools to make larger bulk purchases of instructional materials above the \$60 thousand threshold. GSD notes the expansion of the definition of instructional materials to include “other educational media that are used as the basis for instruction” might include procurements well beyond the limit of “small purchases.”

SIGNIFICANT ISSUES

Prior to FY20, school districts, charter schools, and private schools received appropriations through the instructional materials fund (IMF), which required 50 percent of allocations to be purchased from a PED “multiple” adoption list. The multiple list was funded by publishers but reviewed by level 2 and level 3-A teachers and scored for alignment with state academic content and performance standards. Scored and approved materials were then placed on the multiple list. The state review and multiple list process was intended to provide for economies of scale; fees paid by the publishers supported the review process and the state would enter into a six-year agreement that required publishers to provide materials at the same price for all schools and lowest price across states.

A 2014 LFC evaluation found schools typically only used IMF allocations for materials not on the multiple list, resulting in large cash balances. Additionally, findings in the *Martinez-Yazzie* lawsuit pointed to a lack of culturally and linguistically appropriate resources and materials for at-risk students as an overall state deficiency. To address these issues, the state moved all instructional material fund appropriations into the state equalization guarantee (the pool of operational dollars distributed to schools through a formula), providing public schools full flexibility to purchase materials to address student needs.

In 2020, school closures in New Mexico forced most districts and charters to transition to remote learning, increasing purchases of online material and digital devices. Congress appropriated over \$1.5 billion in federal emergency relief (ESSER) funds to New Mexico districts to acquire devices and make purchases for remote learning functions. Supply chain disruptions and mass purchasing across all states for remote learning led to delays in resources for students during the pandemic. Driven by the pandemic, the number of emergency procurements logged by New Mexico state and local governments, public school, and higher education entities was over five times higher in FY21

than in FY20.

Over this period, oversight of instructional material purchases declined. It is unclear whether schools are purchasing high-quality materials to address deficiencies highlighted in the *Martinez-Yazzie* case. PED continues to track whether schools are purchasing from the multiple list, despite it no longer being a requirement for instructional materials purchases. Of the 10 largest school districts, only \$7.8 million, or 29 percent, of the \$27.4 million spent on instructional materials in FY22 were core instructional materials on the state multiple list.

Under the Procurement Code, state agencies, schools, colleges and all other local public bodies subject to the Procurement Code must “promptly” report emergency procurements to the State Purchasing Division so that it can post the procurement to the state purchasing website. State agencies are further required to do the same reporting to the Department of Information Technology and LFC within three days. State agencies, schools, colleges, and all other local public bodies subject to the Procurement Code are under similar reporting requirements for sole source procurements. Current law requires those entities to post proposed sole source contracts on the state purchasing website for at least 30 days before awards and all entities must forward sole source procurement information to the Department of Information Technology and LFC before award of the contract.

Some entities are not reporting their sole source or emergency procurements to any required reporting entity, however. For example, Albuquerque Public Schools lists 81 sole source and emergency procurements worth at least \$21.3 million since 2016 on its own procurement website, including a sole source procurement to Robotics Management Learning Systems, the company associated with a former legislator now charged with millions of dollars’ worth of alleged procurement fraud. However, only one procurement from 2016 is listed on the State Purchasing website. When LFC staff inquired about the school district’s omission, State Purchasing reported it posts all sole source and emergency procurements and, if any local public body, court, or school fails to submit the required information on a sole source or emergency procurement, State Purchasing staff members would not know about it because they are not involved with those procurements. Further, State Purchasing asserted it does not have the authority to audit whether all entities are complying with requirements to report sole source or emergency requirements. However, Section 13-1-95 NMSA 1978 states State Purchasing has both the “authority and responsibility” to require state agencies to furnish reports concerning use, needs, and stocks on hand of items of tangible personal property and the use and needs for services or construction.

ADMINISTRATIVE IMPLICATIONS

Provisions of this bill would reduce administrative requirements to follow the Procurement Code for purchases of instructional materials.

RELATIONSHIP

This bill relates to Senate Bill 76, LFC-endorsed legislation that amends the Procurement Code to tighten or remove several existing exemptions from the Procurement Code. The legislation was the result of two evaluations of the state’s purchasing practices, which recommended removing widely used exemptions that circumvent competitive bidding practices and placing guardrails around the use of sole source contracts and statewide price agreements. As a result, HB226, though

not directly in conflict with SB76, could be seen as in conflict by adding a new, specific exemption to the Procurement Code.

OTHER SUBSTANTIVE ISSUES

LFC's 2016 procurement evaluation recommended the Legislature require all sole source and noncompetitive procurement be posted on a single website for transparency purposes. In 2019, passage of Senate Bill 88 resulted in a requirement that sole source and emergency procurements be posted to State Purchasing's website. Now state agencies, schools, local governments and colleges wishing to make a sole source procurement must

1. Post the prospective procurement to State Purchasing's website for 30 days to allow for any challenges from other vendor, and if unchallenged,
2. Have sole source professional services agreements approved for form and legal sufficiency by GSD.

State Purchasing then records the closed sole source procurement on its website for transparency and recordkeeping purposes. As a result of the Senate Bill 88 changes, more information is available to legislators and the public, but use of noncompetitive procurement methods has not decreased. Since FY17, the use of sole source procurements has risen steadily—growing 167 percent over that time to 472 sole source procurements by all state, local, and other governmental entities in New Mexico in FY21.

SL/mg/hg/al