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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>HB42/aHJC</u>	Sponsor	<u>Stapleton</u>
Tracking Number	<u>.205073.5</u>	Committee Referrals	<u>HEC/HJC</u>
Short Title	<u>Instructional Material Definitions & Fund</u>		
Analyst	<u>Terrazas</u>	Original Date	<u>1/26/17</u>
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FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

BILL SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB42 requires that participants in the instructional material summer review institute receive a stipend. It further requires the Public Education Department (PED) to make reports to both the legislature *and* the governor.

Synopsis of Original Bill

House Bill 42 (HB42) amends the Instructional Material Law to expand the definition of “instructional material” to include “original source material from primary sources” and “content resources, excluding electronic devices and hardware that support digital learning formats and educational programs.” The bill provides schools more flexibility in spending instructional material funds by eliminating the requirement that schools must use 50 percent of their annual instructional material allocations on materials from the multiple list. The bill changes the use of membership data from the second reporting date, or December 1, instead of the first reporting date, or second Wednesday in October, for the purpose of making annual allocations.

The bill also removes all reference to private schools and private school students due to the New Mexico Supreme Court decision in *Moses v. Skandera* 367 P.3d 838, holding that annual appropriations to the Instructional Material Fund cannot be used to provide instructional material to private school students.

FISCAL IMPACT

House Bill 42, as amended by House Judiciary Committee (HB42/aHJC), does not contain an appropriation.

HB42/aHJC may have a modest fiscal impact on school districts, charter schools, and PED by eliminating the administrative oversight required by prescriptive purchasing requirements. PED

previously noted in an analysis of a similar bill, House Bill 146 (HB146) from the 2015 legislative session, that making the multiple list optional could remove the incentive for publishers to be listed and may eliminate the source of funding that allows for the review of the material to ensure instructional items are aligned with the state standards. The statutory review process currently requires vendors to submit a processing fee for materials to be reviewed and scored for alignment with state academic content and performance standards by level 2 or level 3-A teachers. If the bill is enacted, it is unclear if vendors would still request and fund a review of their materials. Further, according to PED, the state enters into six year agreements with publishers that guarantee the best pricing and terms for all school districts and charter schools and, if a publisher offers a large district free materials or professional development, it must offer the same to all other districts.

In the past three years, the state allocated private schools a little over \$1 million each year for instructional material, equaling about 5 percent of the total appropriation. However, private schools may not have been allocated what they were appropriated for in FY16 due to a mid-year decision by the New Mexico Supreme Court that annual appropriations to the Instructional Material Fund cannot be used to provide instructional material to private school students.

Section 22-24-4 NMSA 1978 reserves \$25 million from the Public School Capital Outlay Fund (PSCOF) for potential appropriation by the Legislature to the instructional material fund or to the transportation distribution of the public school fund from FY18 through FY22. Both the Legislative Finance Committee (LFC) and executive recommendations include use of PSCOF revenue for instructional materials in FY18.

SUBSTANTIVE ISSUES

Having a prescribed list from which to choose instructional material restricts the purchasing flexibility school districts need, particularly when there is a budget deficit. In a 2014 LFC report on PED's oversight and spending of instructional materials in public schools, 92 percent of school districts reported insufficient funding for instructional materials, forcing school districts to rely on other funding sources, including general operating funds, to purchase instructional materials. Although LFC found 95 percent of school districts carried over instructional materials funds from FY11 to FY13, school districts reported they were saving the unused resources to save up for high-cost adoption cycles, such as language arts, or they reported delaying the purchase of instructional materials until there were sufficient resources to make a complete adoption. Broadening the selection of instructional material allows school districts to provide teachers and students the resources they need to meet state standards.

On December 17, 2015, the New Mexico Supreme Court issued a decision in *Moses v. Skandera* 367 P.3d 838, stating that the Instructional Material Law violates Article XII, Section 3 of the New Mexico Constitution, and therefore annual appropriations to the Instructional Material Fund cannot be used to provide instructional material to private school students. The plaintiffs-petitioners asserted that the Instructional Material Law violates their constitutional rights because it supports and aids “the religious dictates of others with whom they disagree”; appropriates or donates public funds to private parties; and supports ‘sectarian, denominational or private schools.’” The New Mexico Association of Nonpublic Schools filed a new case with the U.S. Supreme Court. However, the Court decided to hold the petition until it makes a decision on a similar case, *Trinity Lutheran Church v. Pauley*, No. 15-577, as it may “undermine” the New Mexico Supreme Court’s decision.

Because of the New Mexico Supreme Court decision, PED sent a memorandum to private school principals informing them that payments for instructional materials for use by private school students would not be processed effective November 2015. Language in the General Appropriation Act prohibited the FY17 allocation from being distributed to private school students. Also, PED recently updated regulations governing instructional materials and removed reference to private school students, consistent with the Supreme Court's decision.

Executive Agency Concerns. Similar to this bill, HB146 of the 2015 legislative session would have provided schools with more flexibility in spending instructional material allocations by allowing schools to choose instructional material not included in the multiple list. Giving school districts this kind of flexibility became a reason for veto of HB146. In her executive message, the Governor stated that HB146 would result in school districts purchasing instructional materials that do not meet appropriate standards and could result in high costs to school districts to evaluate instructional materials.

According to PED, student achievement could be negatively impacted if schools do not utilize high quality instructional materials that meet state academic content and performance standards. PED cites research indicating that the choice of instructional materials can have an impact as large as or larger than the impact of teacher quality. However, because teacher and school evaluations rely heavily on students' standards-based assessment scores, school districts and charter schools have a sound reason to ensure they purchase instructional materials aligned to state standards.

ADMINISTRATIVE IMPLICATIONS

School districts and charter schools may have additional administrative costs if the multiple list becomes optional. It is unclear if schools would need to follow PED's instructional material review process or establish their own. Medium to small-sized school districts and charter schools may lack the necessary administrative capacity and could incur the costs of reviewing instructional materials to ensure they are aligned with state academic content and performance standards. In its analysis of HB42, PED states that making the multiple list optional would negatively impact medium to small-sized school districts due to their lack of purchasing and negotiating power with publishers.

If PED does not create a multiple list, the department may need to promulgate code for school districts to establish their own instructional material review process.

Upon request, PED is required to make reports to the legislature and the governor concerning the administration and execution of the Instructional Material Law.

TECHNICAL ISSUES

According to PED, it is unrealistic to expect the final allocation to be recomputed "no later than January 15" using data from the second reporting date, which is December 1, because it takes several weeks, not counting the holidays, before the data is certified and made available to input into allocation tables. It is possible the raw data may not be available until the third week of December.

The Legislature may wish to eliminate the change to the second reporting date, making allocation decisions based on the first reporting date data.

OTHER SIGNIFICANT ISSUES

The Public School Facilities Authority reported private schools would still receive instructional material allocations if this bill is not enacted. However, due to the New Mexico Supreme court ruling on *Moses v. Skandera* 367 P.3d 838, that would not be the case.

POSSIBLE QUESTIONS

Whose responsibility should it be to review instructional materials? Should the responsibility fall on PED or public schools?

SOURCES OF INFORMATION

- LESC Files

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