

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 850

SPONSOR: Senator Cowin

SUBJECT: Instructional Materials

DATE: January 20, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The bill creates new requirements in law for instructional materials in the following subject areas for kindergarten through grade 12: mathematics, language arts, science, social studies, reading, and literature. The bill requires school districts to make purchases in core courses of specific subject areas within a specified time period, with some exceptions. The bill allows school districts to use certain funds to purchase electronic book readers when authorized to do so in the General Appropriations Act. The bill changes the term of adoption from 8 to 6 years and changes the effective dates for authorized purchase orders.

The bill revises the current provisions for the disposal of instructional materials and requires certain funds to be deposited into the district school fund as an addition to the district's appropriation for instructional materials. The bill repeals s. 233.38, F.S., relating to the exchange of textbooks. The bill revises the current requirements for school superintendents to requisition instructional materials. The bill requires district school board policy to include collecting funds from parents for lost, damaged, or destroyed materials, as well as the superintendent's responsibility for keeping adequate records for funds collected from the sale, exchange, loss, or damage of instructional materials.

The bill requires the renegotiation of certain contracts. The bill also revises the current requirements for publishers and manufacturers to retain a sufficient inventory of instructional materials in a depository to receive and fill orders. The bill requires reports to the Legislature from the Department of Education related to contracts for the core subject areas and the collection of funds under s. 233.46(4), F.S. The bill defines the term "adequate instructional materials" in s. 230.23, F.S. The references to the Department of Education are replaced with references to the Commissioner of Education in certain provisions of s. 233.16, F.S. The bill revises current provisions related to weighting of district recommendations in the selection process and requires each district recommendation to be given equal consideration.

The bill removes the provision in s. 233.17, F.S., that requires contracts placing instructional materials on adoption for 4 or more years to have an adjusted price increase. The Commissioner of Education is authorized in s. 233.25, F.S., to accept submissions of bids or proposals that reflect a charge for ancillary materials provided free of charge in other states' contracts if the publisher can reduce the total program cost to Florida school districts. The bill authorizes the Commissioner of Education to take certain actions related to errors and inaccuracies in instructional materials. The bill requires administrative and instructional technology to be included in best financial management practice reviews.

This bill substantially amends s. 230.23, F.S.; s. 230.23025, F.S.; s. 233.07, F.S.; s. 233.09, F.S.; s. 233.16, F.S.; s. 233.17, F.S.; s. 233.22, F.S.; s. 233.25, F.S.; s. 233.34, F.S.; s. 233.37, F.S.; s. 233.43, F.S.; and s. 233.46, F.S. The bill creates s. 233.66, F.S., as well as new language in currently unspecified sections of the statutes, and repeals s. 233.38, F.S.

## II. Present Situation:

### **Senate Interim Project on Public School Instructional Materials, Including Technology**

The Senate Education Committee conducted an interim study (Report # 98-17) to examine why, despite dramatic increases in funding, public school children in Florida do not always have access to the textbooks and other instructional materials essential for a quality education. The interim report noted that many districts cited the need for additional funding or greater latitude for the expenditure of existing funds to purchase software and hardware.

### **Allocation of funds**

For purposes of state adoption, the law (s. 233.07(4), F.S.) defines "instructional materials" as 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, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. The term does not include electronic or computer hardware even if it is bundled with software or other electronic media.

The law (s. 236.122, F.S.) authorizes the Department of Education to allocate and distribute to each district funds to be used for instructional materials for public school students enrolled in basic and special programs in grades K-12. The department distributes to each district an amount, calculated by formula, which provides for growth of student membership in basic and special programs in the district and for instructional material maintenance needs. Instructional materials are funded as a categorical item in the General Appropriations Act.

### **Use of the instructional materials allocation**

Statutory guidelines for the use of the instructional materials allocation are established in s. 233.34, F.S., and s. 236.081(5), F.S. The instructional materials allocation is to be used for the purchase of instructional materials on the state-adopted list and certain materials not included on the state-adopted list. Districts must spend at least fifty percent of their annual instructional materials allocation on state adopted materials to purchase items which will be used to provide instruction at the level or levels for which they were designed. The 1998-1999 Florida Catalog of State-Adopted Instructional Materials contains the following examples of instructional materials:

software packages and site license packages; outline, wall, and desk maps; writing folders and process posters; transparencies; videos; CD-ROM student, classroom, and lab packages; and cassettes.

The law specifies the thresholds for spending on materials not on the state adopted list. Up to fifty percent of the annual allocation may be used to purchase instructional materials (including library and reference books and nonprint materials) not on the state adopted list and for the repair and renovation of textbooks and library books. For kindergarten, all of the allocation may be spent on materials not on the state-adopted list. For grade one, up to 75 percent of the allocation may be spent on materials not on the state-adopted list. The law provides further guidance for funds that may be spent on materials not on the state adopted list. These funds may be used to purchase instructional materials or other items having intellectual content which assist 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, replacements for items which were part of previously purchased instructional materials, consumables, learning laboratories, manipulatives, electronic media, computer courseware or software, and other commonly accepted instructional tools as prescribed by school board policy.

The law prohibits the use of available funds to purchase items not on the state adopted list for hardware, even if the hardware is bundled with software or other electronic media. Further, these funds may not be used to purchase equipment or supplies. There is an exception. When authorized to do so in the General Appropriations Act, a school or school district may use a portion of the funds available to it for the purchase of materials not on the state adopted list to purchase science laboratory materials and supplies.

When a school district's total allocation has not been expended or obligated prior to June 30 in any year, the law (s. 233.34(6), F.S.) requires the school district to carry forward the unobligated amount and add it to the next year's allocation.

### **Florida's instructional materials selection and adoption process**

All instructional materials submitted for consideration must be evaluated based on their ability to best implement the selection criteria developed by the Commissioner of Education and those curricular objectives included within applicable performance standards in s. 229.565, F.S. State instructional materials committees, which are annually appointed by the Commissioner, are responsible for studying and evaluating the instructional materials submitted for adoption and for recommending to the Commissioner, in the form of a report, recommendations for each grade and subject field in the curriculum of public elementary and secondary schools in which adoptions are to be made. Each school year the Commissioner of Education determines the areas in which instructional materials shall be submitted for adoption and appoints state instructional materials committees. School districts have the opportunity to evaluate materials submitted for adoption and to submit their recommendations to the state instructional materials committees. The Commissioner determines the number of titles to be adopted in each area.

### **Terms of adoption for instructional materials**

The term of adoption of any instructional material must be for an 8-year period, except for the core subject areas. The term of adoption for core subject areas (including math, science, social studies, reading, and literature) is limited to a 6-year period. The Commissioner may approve

terms of adoption for less than 8 years for materials in content areas that require more frequent revision.

The department must annually publish an official schedule of subject areas to be adopted for each of the succeeding 2 years, and a tentative schedule for years 3, 4, 5, and 6. The law allows the Commissioner to order the department to add subject areas to the official schedule based on extenuating circumstances. The purpose of the schedule is to promote balance among the subject areas in order for expenditures for new instructional materials to be approximately the same each year for the maintenance of curricular consistency.

### **Contracts**

The Department of Legal Affairs must prepare a contract with each successful bidder. The contract is executed by the Governor and the Secretary of State. After considering the districts' comments and with the publisher's agreement, the department may extend or shorten the contract period for no more than two years. The terms of the amended contract, however, remain the same as in the original contract.

Contracts placing instructional materials on adoption for 4 or more years must contain an escalator clause that provides a publisher or manufacturer with the discretion to increase the contract price within a specified threshold. The publisher can increase the contract price to the publisher's or manufacturer's then-current lowest wholesale price at which the materials are then being offered to any state or school district in the U.S. However, the adjustment cannot exceed the percentage by which the consumer price index (as determined by the U.S. Department of Labor) has increased during the time the contract has been force. The price increase remains in effect for the remaining term of the contract, unless the contract price is increased as allowed.

### **Depository**

The law provides for bids and contracts and delineates the duties and responsibilities for publishers and manufacturers. Proposals or bids for state-adopted instructional materials must (s. 233.14(2), F.S.) state the lowest wholesale price at which the materials will be furnished at the time of the adoption period provided in the contract begins, delivered f.o.b. (free on board) to the Florida depository of the publisher, manufacturer, or bidder. The duties and responsibilities for publishers and manufacturers include providing materials at a price, inclusive of transportation costs to their depositories, that does not exceed the lowest price offered for adoption or sale to any state or school district in the U.S.

Publishers and manufacturers must maintain or contract with a depository in the state. They must also maintain in the depository an inventory that is sufficient to receive and fill orders. The law provides for liability and treble damages for publishers or manufacturers who wilfully fail to comply with the provisions of s. 233.25, F.S. The law (s. 233.22, F.S.) requires school district superintendents to requisition adopted instructional materials from the depository under contract with the publisher.

### **Exchange of textbooks and the disposal of instructional materials**

The law (s. 233.38, F.S.) provides for the exchange of textbooks among several districts of the state for use in the public schools. The stated purpose of this provision is to achieve the economical and expeditious distribution of textbooks. The Department of Education is directed to

arrange for the exchange in accordance with district needs. The superintendents in these districts must, at the department's direction, crate and ship designated books to certain districts. The department determines the districts that receive shipments. The department is also authorized to direct the shipment of surplus books in any district to some central point for holding or distribution as the need arises.

Another provision of law (s. 233.37, F.S.) allows the district school board to dispose of instructional materials of an old adoption when they become unserviceable, based on terms and conditions that result in a fair salvage value. The disposal is permitted by rules of either the Commissioner or a district school board. The school board rules must be approved by the Commissioner. The department must contract with recycling firms for the pickup of obsolete or unusable materials for salvage.

Rule 6A-7.074, F.A.C., implements the provisions of s. 233.37, F.S. Useable surplus and obsolete instructional materials that are no longer on contract to the state must be carried on inventory for at least one year to permit full use of state adopted instructional materials. The rule allows the disposal of surplus materials. However, the disposal is conditioned upon notifying the Deputy Commissioner for Educational Programs, in order to make every effort to provide the available surplus materials to other districts. The Deputy Commissioner must make each district's listing of surpluses available to all the other districts for a period of 30 days. The rule provides for the disposal of material which cannot be used in inter-district exchange programs. All monies received by sale, exchange or other disposition of instructional materials must be deposited in the district school fund and added to the district appropriation for instructional materials.

### **Lost or stolen textbooks**

The powers and duties of school boards are set forth in s. 230.23, F.S., and include providing adequate instructional aids for all children in accordance with the provisions of subsection (7) and chapter 233, F.S. School boards are responsible for the proper requisition, distribution, accounting, storage, care and use of all textbooks and other books furnished by the state.

Current law (s. 233.47, F.S.) provides that all instructional materials purchased under chapter 233, F.S., are the property of the school district. The materials, when distributed to students, are on loan during the course of study and must be returned at the direction of the principal or teacher in charge. Instructional materials for dually enrolled students are the property of the board against which the purchase is charged. The law (s. 233.46(3), F.S.) provides for the principal to sell to parents, upon request, any instructional materials used in the school.

A parent, guardian, or other person in charge of the student to whom materials have been issued are liable for any loss, destruction, or unnecessary damage to these materials. The parent, guardian, or other person in charge is also responsible for the student's failure to return materials when directed to do so and is required to pay for the loss, destruction, or damage.

Principals are responsible for collecting the purchase price from the student or parents for lost, destroyed, or damaged materials. An amount within a specified range (between 50% and 75% of the purchase price of the book) must be collected for materials in school use for more than one year. The amount is based on the physical condition of the book. Funds must be sent to the

superintendent for deposit in the district school board fund and added to the district's appropriation for instructional materials.

Failure to collect the amount due, after reasonable effort by the principal, may result in the student's suspension from participation in extracurricular activities or in the student's satisfaction of the debt through community service at the school, as determined by the principal.

The superintendent's duties and responsibilities for proper accountability of instructional materials must be established by district school board policy. Principals are required to ensure the accountability of all textbooks, as prescribed by local district school board rule. Rule 6A-1.001, F.A.C., requires district school superintendents to keep adequate records and accounts of all financial transactions.

### **Waivers**

While chapter 233, F.S., species the adoption process and provides statutory guidelines for the use of the instructional materials allocation, another provision of law (s. 229.592(9), F.S.) provides exceptions. To facilitate innovative practices and to allow local selection of educational methods, the Commissioner may waive, upon a school board's request, requirements of chapters 230 through 239 of the Florida School Code that relate to instruction and school operations, with the exception of those pertaining to civil rights, and student health, safety, and welfare. In addition, waivers may not be granted for the following:

- allocation and appropriation of state and local funds for public education;
- election, compensation, and organization of school board members and superintendents;
- graduation and state accountability standards;
- financial reporting requirements;
- required reporting of out-of-field teaching assignments;
- public meetings;
- public records; or
- due process hearings governed by chapter 120, F.S.

Waivers approved by the Commissioner are effective for a 5-year period. The law also authorizes the Commissioner to waive State Board of Education rules if the school board has submitted a written request to the Commissioner. The law specifies the contents for written waiver requests. The Commissioner must ensure the protection of students' health, safety, welfare, and civil rights, as well as the protection of the public's interest when considering any waiver. The Commissioner is required to state with particularity the grounds or basis for a denial of a waiver request. The law provides for the Commissioner to report on waivers to the Florida Legislature and the State Board of Education.

Fourteen districts applied for and received waivers from the instructional materials requirements in s. 233.34(2), F.S.: Okaloosa (4 elementary schools), Orange, Charlotte, Indian River, Baker, Leon, Palm Beach, Hendry, Hillsborough, Polk, Osceola, Hardee, Suwannee, and P.K. Yonge (University of Florida demonstration research school). These waivers expire on June 30, 2001. As of January 6, 2000, an additional waiver was granted to Columbia County School District for this purpose.

### **School Improvement Plans and School Advisory Councils**

The law (s. 229.58, F.S.) requires the school board to establish a school advisory council for each school in the district, but gives smaller school districts (those with 10,000 or fewer students) the option of establishing a district advisory council. Each school advisory council must be composed of the school's principal and an appropriately balanced number of teachers, education support employees, students, parents, and other business and community members who are representative of the ethnic, racial, and economic community served by the school. Chapter 99-284, L.O.F., allows school boards to establish a district advisory council to develop and monitor a district school improvement plan for schools in the district that provide educational services to youth in Department of Juvenile Justice programs.

Each school advisory council assists in preparing and evaluating the school's improvement plan and assists in preparing the school's annual budget. Also, each school advisory council must perform those functions prescribed by school board regulation. Section 229.58(2), F.S.) specifies that no school advisory council shall have any of the powers and duties now reserved by law to the school board.

The Legislature annually appropriates funds for school advisory councils to use for school improvement. From the school district's lump sum allocation of lottery funds, the 1999-2000 General Appropriations Act requires school boards to allocate at least \$10 per unweighted FTE student for purposes determined by each school's advisory council or by the school's staff and parents, if there is no school advisory council. A portion of the funds must be used to implement the school improvement plan.

Section 230.23, F.S., requires school improvement plans (beginning in 1999-2000) to address specific issues, including technology and instructional materials. School boards must adopt policies that encourage maximum decision making appropriate to the school site. The policies must include guidelines for schools in the adoption and purchase of district and school site instructional materials and technology. School boards are to adopt waiver process policies to enable all schools to exercise flexibility and notify school advisory councils about the waiver process for school district and state policies.

### **Relevant A+ provisions**

Chapter 99-398, L.O.F., created s. 229.57(7)&(8), F.S., to establish school performance grade category designations (letter grades "A," "B," "C," "D," and "F"), based on specific student assessment information and other appropriate performance data, including school discipline data, beginning in school year 1998-1999. The law (s. 229.57(7), F.S.) provides greater authority over the allocation of the school's total budget generated from the FEF, state categoricals, lottery funds, grants, and local funds as specified in state board rule for schools designated as "A" schools, making excellent progress, or having improved at least two performance grade categories. Also, school boards must adopt policies to assist in giving greater autonomy to these schools.

On December 14, 1999, the State Board of Education adopted revisions to current rule (Rule 6A-1.09981, F.A.C.) to implement the A+ legislation. The new rule, as further amended in the meeting, provides more specific authority over the allocation of the school's total budget. Local school boards are required to adopt policies that provide for this increased authority, including but not limited to, the acquisition of instructional materials, equipment, and technology. The

policies must also provide for approval of a school's written proposal, subject to the school including specific requirements in the proposal. The rule, as amended on December 14, 1999, was published in the *Florida Administrative Weekly* on December 23, 1999.

### **Florida Study Group on Instructional Materials**

The Commissioner of Education appointed a study group this summer to address instructional materials issues and concerns in Florida. According to a report (January 6, 2000), the study group focused on three areas:

- ▶ the instructional materials adoption process in Florida.
- ▶ the adequacy of instructional materials.
- ▶ the role of instructional technology.

The report contains recommendations for each of these areas, as well as a proposed revision of the adoption cycle for adoption years 2000-2001 through 2012-2013. The recommendations included: expanding the membership of the state committees; adjusting the timelines for the adoption process; authorizing the Commissioner to enforce the accuracy of instructional materials; requiring school districts to purchase state-adopted materials within the first two years of the adoption cycle; and establishing new provisions for the disposal of instructional materials.

### **Pilot Projects**

In Texas, the term "textbook" includes an electronic textbook. An electronic textbook is further defined as computer software, interactive videodisc, CD-ROM, magnetic media, computer courseware, on-line services, an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means.

In February 1999, the Texas Education Agency provided a report to the Texas Legislature (*Report on the Computer Network Study Project*<sup>1</sup>) following a study to determine the costs and benefits of using computer networks, including the Internet, in public schools. The report was to include the possibility of delivering, through a computer network, updated supplements to state-adopted textbooks. The report also addressed the feasibility and cost effectiveness of developing electronic textbooks that could be used by students who are blind or have other disabilities. According to the Texas report, a videodisc-based program (*Windows on Science*) became the first state-adopted electronic textbook in the nation in 1991 and subsequent electronic programs were adopted in chemistry, science, world geography, accounting, and economics. The report noted that ideally all electronic instructional materials should be made available to all students, including those with disabilities.

In the fall of 1999, Texas began developing pilot programs, Educational Technology Providing Increased Learning Opportunities for Texas Students (EdTech PILOTS), to use different types of technologies involving hardware and curriculum products from a variety of vendors. The initiative includes electronic books that can be read on portable display devices. Approximately \$2.25 million will be provided for an estimated 25 projects for school years 1999-2000 and 2000-2001. The Texas Education Agency is currently finalizing the pilot sites. A status report on the pilot programs is due December 1, 2000.

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<sup>1</sup> <http://www.tea.state.tx.us/Textbooks/cns.htm> See also *Technology in Public Education in the United States*, Texas Education Agency, February 1, 1999.

According to staff for the Texas Education Agency, these pilot programs are not subject to the provisions of Texas law requiring publishers and manufacturers to furnish materials offered by them at a price in Texas which does not exceed the lowest price at which they offer these materials for adoption or sale in any state, public school, or school district in the United States. In certain states, including Texas and Florida, this provision is often referred to as the “most favored nation” clause.

### **School District Performance Reviews/Best Financial Management Practice Reviews**

The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) administers or conducts two types of reviews of school districts’ management operations: (1) School District Performance Reviews (s. 230.2302, F.S.), and (2) Best Financial Management Practice Reviews (s. 230.23025, F.S.). The Legislature authorized these reviews to assist school districts in identifying ways to save funds, improve management, and increase the efficiency and effectiveness of district operations.

The law requires OPPAGA to contract with private consultants to complete School District Performance Reviews. Each performance review must examine 11 broad school district management and operational areas. OPPAGA works with each participating district to refine the scope of the review to address specific issues. OPPAGA then issues requests for proposals, manages the consultant selection process, and monitors consultants’ performance.

For the Best Financial Management Practice Reviews, OPPAGA and the Office of the Auditor General developed, and the Commissioner of Education adopted, a set of best financial management practices for Florida school districts. The best financial management practices, at a minimum must address four specific areas.

The best financial management practices review compares the district’s management and operations to the state-adopted best practices. Best financial management practice reviews are done only if requested by unanimous vote of a district school board. A district may request a complete review or a review of components of the best financial management practices. The Director for OPPAGA has discretion to contract with private consulting firms to perform part or all of a review of any school district. Each participating school district must pay 50 percent of cost of a full review, unless the entire cost is specifically provided by a legislative appropriation. If a district opts to have one or more components reviewed (rather than a full review), the district pays 75 percent of the review costs. There is an exception in law from the contribution requirements for districts that meet certain conditions. All money contributed to the cost of a complete or component review must be deposited into the Florida School District Review Trust Fund administered by OPPAGA.

### **III. Effect of Proposed Changes:**

**Section 1.** The bill defines “adequate instructional materials” in s. 230.23, F.S., to mean a sufficient number of textbooks or set of materials serving as the basis for instruction in core courses in certain subject areas, unless the school advisory council approves the use of a program that does not include a textbook as a major tool of instruction. The bill replaces the term “instructional aids” with the term “instructional materials” in s. 230.23, F.S.

**Section 2.** The bill amends s. 233.09, F.S., to remove requirements for weighting district recommendations in the selection process for instructional materials. Each district recommendation must be given equal consideration. The bill also expands the notice requirements for instructional materials committee meetings and removes a statutory requirement for including an agenda in the meeting notice. The bill removes the authority of instructional materials committees to independently investigate the compliance of instructional materials with the requirements in this section of law.

**Section 3.** The references to the Department of Education are replaced with references to the Commissioner of Education in certain provisions of s. 233.16, F.S., that relate to the selection and adoption of instructional materials. The bill also removes a condition for rejecting bids.

**Section 4.** The bill removes the provision in s. 233.17, F.S., that requires contracts placing instructional materials on adoption for 4 or more years to have an adjusted price increase. The bill changes the term of adoption from an 8-year to a 6-year period for instructional materials other than the core subject areas.

**Section 5.** The bill amends s. 233.22, F.S., to require a school superintendent to obtain current instructional materials to provide each student with a textbook or other materials as a major tool of instruction in the core courses of designated subject areas. The materials must be obtained within the first 2 years of the adoption cycle, except for materials related to growth and maintenance. The superintendent may requisition instructional materials in the core subject areas that are related to growth of student membership or maintenance needs during the last four years of the original contract period (years 3 through 6).

**Section 6.** The bill amends s. 233.25, F.S., to revise the current requirements for publishers and manufacturers (or their representatives), and a depository. Publishers and manufacturers must maintain or contract with a depository in the state. The bill specifies the obligations that publishers and manufacturers must meet for maintaining instructional materials in the core subject areas specified in s. 234.34(2), F.S. During the first two years of the contract period, an inventory must be maintained in an amount that is sufficient to receive and fill orders. During the last four years of the contract, the publishers and manufacturers must ensure the availability of a sufficient inventory of materials in the core subject areas to receive and fill orders for growth (including the opening of a new school) and maintenance. For all other subject areas, sufficient materials must be maintained in the depository to receive and fill orders.

The bill amends a requirement in s. 233.25, F.S., for a publisher or manufacturer to provide any instructional materials free of charge in Florida to the same extent as is done in any other state or school district in the U.S. The Commissioner of Education is authorized to accept submissions of bids or proposals that reflect a charge for ancillary materials provided free of charge in other states' contracts. The Commissioner may accept these bids or proposals if the publisher can reduce the total program cost to Florida school districts.

**Section 7.** The bill creates new requirements in s. 233.34, F.S., for instructional materials in the core courses of specific subject areas (mathematics, language arts, science, social studies, reading, and literature) for kindergarten through grade 12. Each school district must purchase instructional materials to provide each student with a textbook or other instructional materials as

a major tool of instruction in the core courses for the subject areas of mathematics, language arts, science, social studies, reading, and literature. The purchase must be made within the first two years of the effective date of the adoption cycle. The provisions in current law (s. 233.34 (2) and (3), F.S.) for the flexible use of the instructional materials allocation do not apply to instructional materials in the core courses of these subject areas.

The new requirements for instructional materials in the core courses of the designated subject areas do not apply to contracts in existence prior to April 1, 2000. The requirement to purchase materials within the first two years of the adoption cycle does not apply to purchases for growth or maintenance needs.

When authorized to do so in the General Appropriations Act, any school district that meets the requirement to purchase materials during the first two years of the effective date of the original contract period may use at least five percent of public school technology funds to purchase electronic book readers. District school boards are authorized to issue purchase orders earlier.

**Section 8.** The bill amends s. 233.37, F.S., relating to the disposal of instructional materials, to incorporate many of the provisions in current rule (Rule 6A-7.074, F.A.C.). The bill allows for the school board to prescribe by policy for the disposal of unserviceable or surplus instructional materials and those that are no longer on state contract. The materials may be given or loaned to specific entities, including other public education programs within the district or state, teachers, or students. The materials may also be sold to persons, firms, or corporations, on terms that are most economically advantageous to the district school board. If the materials cannot be disposed of in these ways, the bill allows the school board to prescribe by policy the method for destruction. All monies received from the sale, exchange, or other disposition of instructional materials must be deposited in the district school fund and added to the district appropriation for instructional materials.

**Section 9.** The bill repeals s. 233.38, F.S., related to the exchange of textbooks.

**Section 10.** The bill revises the school superintendent's duties and responsibilities to specifically include keeping adequate accounts and records for all financial transactions for funds collected under s. 233.46(4), F.S. (e.g., funds from the sale, exchange, loss, or damage of instructional materials). Each superintendent is required to annually report on the collection of these funds. The report must be sent to the Department of Education. The department must review the reports and provide recommendations to the Legislature on any needed changes. Superintendents are required to provide notification and implementation plans to the Department of Education (by April 1) on the state adopted instructional materials that will be requisitioned for use in the district.

**Section 11.** The bill amends s. 233.46, F.S., to require district school board policy to include the current provisions in law for the collection of money from a student's parent for lost, destroyed, or damaged instructional materials. The policy must also include the current penalties for the student if the money is not collected. Principals are responsible for providing parents with information about the manner in which instructional materials are used to implement the school's curricular objectives.

**Section 12.** The bill requires the Department of Education to review the contracts used for the core subject areas and prepare a report, including any recommendations, to the Legislature by January 1, 2001.

**Section 13.** The bill requires the Governor and the Secretary of State to renegotiate any contract in existence as of the effective date of the act which provides for instructional materials in the specific core subject area of science for kindergarten and for grades 1 through 12.

**Section 14.** The bill amends s. 230.23025, F.S., to require the inclusion of administrative and instructional technology in the review of best financial management practices.

**Section 15.** The bill amends s. 233.07, F.S., to provide for more than nine members on each state instructional materials committee. The bill also requires balanced geographical representation on the committees.

**Section 16.** The bill provides the Commissioner of Education with the authority to: independently investigate the accuracy of state adopted materials; remove materials from the list if the content is in error and the publisher refuses to correct the error; and to remove materials from the list if there is no material impact on the education goals of the state. Publishers are required to provide corrected materials to districts in a format approved by the Commissioner.

**Section 17.** The bill provides an effective date (upon becoming a law).

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

State and federal constitutional impairment of contract clauses (Article 1, section 10 of the U.S. Constitution and Article 1, section 10 of the Florida Constitution) prohibit the passage of laws that impair contractual obligations.

The bill states that it does not apply to contracts in effect prior to April 1, 2000. The bill does not retroactively apply the new requirements to preexisting contracts. However, the bill requires the renegotiation of contracts that are effective on April 1, 2000, for instructional materials adopted in the area of science for kindergarten and for grades 1-12. It is assumed

that the purpose of the renegotiation is to incorporate the new requirements into new contracts and to provide an opportunity for districts to become eligible for technology purchases as soon as possible. It is not clear whether the required renegotiation of the contract would be considered an impairment of an established contract.

According to the Department of Education, all contracts for public school instructional materials contain a provision that subordinates the contract to the right of the Legislature to alter or repeal any of the statutes related to instructional materials for the public schools. The provision further states that when the terms of the contract conflict with subsequent legislation on the subject of instructional materials, the terms of the contract are abrogated and of no effect. The contract further notes that if any material change is made to the law which is to either party's disadvantage to continue under the current contract, either party may rescind the contract, upon written notice within 90 days after the statute takes effect.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

The inventory requirements in the bill affect future contracts for instructional materials in core subject areas. The contracts involve the state and publishers or manufacturers. The bill also affects future contracts between publishers and the depository. The Florida School Book Depository, Inc., is currently the primary depository.

Publishers and manufacturers must continue to maintain or contract with a depository and maintain in the depository a sufficient inventory for all subject areas other than the core areas. For materials in the core subject areas, they must maintain an inventory of materials in the depository for the first two years of the contract. For the remaining contract period, they must ensure the availability of an inventory to accommodate orders related to growth and replacement. Future contracts involving instructional materials will need to take into account these new inventory requirements.

The fiscal impact of renegotiated contracts between the state and publishers or manufacturers (e.g., contracts in the area of science) and the shortened term of adoptions is unknown. Publishers are subject to the new requirements related to accuracy and corrections. Under the provisions of the bill, the Commissioner may remove instructional materials from the state adopted list if the content is in error and the publisher refuses to make the necessary corrections.

### **C. Government Sector Impact:**

The bill requires school districts to purchase instructional materials for core courses in specified subject areas. To the extent that this requirement conflicts with current purchasing

practices at the district or school level, there will be a fiscal impact on the districts and schools.

There may be a fiscal impact associated with the requirements that superintendents obtain certain instructional materials from the depository. Superintendents must obtain materials in the core courses of specific subject areas from the depository within the first two years of the adoption cycle, unless the materials relate to growth or maintenance needs.

For Fiscal Year 1999-2000, the General Appropriation Act (GAA) provides \$193,691,807 for instructional materials and \$63,400,000 for public school technology. Funds for public school technology must be allocated by prorating the total on each district's share of the state total K-12 FTE. Hardware and software purchases from these funds must be cycled by school districts to provide new equipment to students and programs with the highest need and oldest equipment. The GAA also authorizes the Department of Education to withhold the distribution of public school technology funds from districts which fail to complete a technology survey, by school, approved by the Commissioner of Education.

The bill allows the use of at least 5% of public school technology funds for the purchase of electronic book readers. The fiscal impact associated with these purchases is unknown. There are a variety of electronic reading appliances. The costs for these devices can range from \$199 to \$1600, although some vendors bundle the hardware with other products. There may be additional costs associated with electronic book software and services. Some electronic reading devices are available for leasing.

The bill removes the provision in s. 233.17(2), F.S., that requires contracts placing instructional materials on adoption for 4 or more years to contain an escalator clause. Some publishers contend that this will result in increases in bid prices to incorporate the adjustment to the contract price once guaranteed by the escalator clause. They further contend that the cost to the state for instructional materials will increase. However, the law (s. 233.25(6)&(7), F.S.) imposes certain requirements on publishers and manufacturers. They must furnish materials offered by them at a price in Florida which (including all cost of transportation to their depositories) does not exceed the lowest price at which they offer these materials for adoption or sale in any state or school district in the U.S. Additionally, they are obligated to automatically reduce the price of instructional materials to the extent that reductions are made elsewhere in the U.S.

The impact of the Commissioner of Education's acceptance of bids or proposals that reflect a charge for ancillary materials provided free of charge in other states' contracts is unknown. The actual costs for best financial management practice reviews will vary based on the district size and the scope of the review. Each school district must pay 50 percent of the *total review cost*, unless the review is fully funded by a state appropriation. Each school district must pay 75 percent of the *component review cost*.

There will be some costs if the membership on instructional materials committees are expanded.

**VI. Technical Deficiencies:**

The bill amends s. 230.23(7)(d), F.S., to replace the term “instructional aids” with the term “instructional materials.” There are currently two other references in existing law to the term “instructional aids” (ss. 230.33(9) and 230.23005(3), F.S.). The bill does not make a conforming change to these provisions.

**VII. Related Issues:**

**Waivers**

In 1996, the Legislature (chapter 96-369, L.O.F.) limited the terms of the waivers in s. 229.592(6), F.S., to five years. Prior to this change, more limited waivers were authorized in law and subsequently granted. All current waivers (limited to a five-year period) were granted to allow districts to spend 100% of their state instructional materials allocation for instructional materials not on the state-adopted list for grades 1 through 12. Under one waiver, for example, software and other media-related supplemental materials were purchased. The purchases included site licenses, services delivered via satellite broadcast, CD-ROM based materials, and software for ESOL and bilingual programs. It is unlikely that districts without an existing waiver under s. 229.592(9), F.S., will seek a waiver from the requirements of the bill for the designated subject areas. The bill requires school districts to purchase instructional materials for the core courses in designated subject areas. The flexibility in the use of the allocation does not apply to these purchases.

**Contracts**

The contracts that are addressed in the bill are based on the Department of Education’s projected seven-year instructional materials adoption schedule (dated March 1998) for the adoption years 1999-2000 through 2004-05. The following reflects the schedule for the core subject areas identified in the bill:

**FLORIDA ADOPTION CYCLE FOR ADOPTION YEARS 1998-1999 THROUGH 2004-2005  
FOR CORE SUBJECT AREAS (6-YEAR CONTRACTS)**

ADOPTION YEAR	EFFECTIVE DATE OF CONTRACT FOR ADOPTED MATERIALS	MATH	SOCIAL STUDIES	SCIENCE	READING	LITERATURE	LANGUAGE ARTS
1998-1999	APRIL 1, 1999	9-12	9-12				6-12
1999-2000	APRIL 1, 2000			K-12			
2000-2001	APRIL 1, 2001		K-12				K-12
2001-2002	APRIL 1, 2002				K-12		
2002-2003	APRIL 1, 2003	9-12				6-12	
2003-2004	APRIL 1, 2004	K-8	6-12	6-12			
2004-2005	APRIL 1, 2005	9-12	9-12				6-12

SOURCE: Department of Education, Projected Seven-Year Schedule, March 1998

The Governor’s budget recommendations for FY 2000-2001 contain \$193.7 million for instructional materials and \$93.4 million for public school technology.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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