

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 716

SPONSOR: Education Committee and Senator Fasano

SUBJECT: Instructional Materials/Cost Savings

DATE: March 13, 2003      REVISED: \_\_\_\_\_

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

**I. Summary:**

The bill allows the Florida Department of Education to conduct a pilot program to enable school districts to realize cost savings in purchasing used instructional materials. Three school districts (Hernando County, Pasco County, and Polk County) may participate. Charter schools in the three districts may also participate in the program. Secondhand book dealers or third party book vendors that provide used, adopted instructional materials to a school district are subject to specific disclosure requirements.

The Department of Education may waive the requirements in s. 1006.37, F.S., for the requisition of instructional materials from publisher depositories. The state is not responsible for a financial loss resulting from a school district's use of a waiver. Also, the department must submit a report to the legislative leaders of each chamber, for consideration during the 2004 Legislative Session, on the cost savings to the school districts due to the pilot program. The pilot program is repealed July 1, 2006.

This bill creates an undesignated section of law and provides an effective date of July 1, 2003.

**II. Present Situation:**

**Instructional materials**

The law (s. 1002.20(18), F.S.) provides that each public school student is entitled to sufficient instructional materials in the core courses of mathematics, language arts, social studies, science, reading, and literature, in accordance with the provisions of ss. 1003.02(1)(d) and 1006.40(2), F.S.

Subpart F of part I of chapter 1006, F.S., provides for the requisition, distribution, accounting, storage, and care of instructional materials for k-12 public education. Current law (s. 1006.29(4), F.S.) defines “instructional materials,” for purposes of state adoption, 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. However, the term does not include electronic or computer hardware even if such hardware is bundled with software or other electronic media, nor does it include equipment or supplies.

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

Each year the Commissioner of Education determines the areas in which instructional materials must be submitted for adoption and appoints members of state instructional material committees. All instructional materials submitted for consideration by state instructional materials committees must be evaluated based on their ability to best implement the selection criteria developed by the Commissioner of Education and the curricular objectives in the Sunshine State Standards. State instructional materials committees are responsible for making recommendations, in the form of a report, for instructional materials for each grade and subject field in the curriculum for public elementary, middle, and high schools in which adoptions are to be made. The Commissioner determines the number of titles to be adopted in each area.

The Department of Education must annually publish both an official and a tentative schedule of subject areas for adoption. The terms of adoption of any instructional material must be for a 6-year period; however, the Commissioner may approve terms for less than 6 years for materials in content areas that require more frequent revision.

The Department of Legal Affairs prepares a contract with each successful bidder for execution by the Governor and the Secretary of State. After considering districts’ comments and with the publisher’s agreement, the Commissioner may extend or shorten the contract period for no more than two years. The terms of the contract, however, remain the same as the original contract.

### **School District responsibilities**

District school superintendents, under s. 1003.02(1)(d), F.S., must meet specific instructional materials requirements, including:

- providing adequate instructional materials for all students in accordance with the requirements of chapter 1006, F.S., in the core courses of mathematics, language arts, social studies, science, reading, and literature, except for instruction for which the school advisory council approves the use of a program that does not include a textbook as a major tool of instruction;
- adopting courses of study for use in the schools;
- providing for proper requisitioning, distribution, accounting, storage, care, and use of all needed instructional materials; and
- ensuring that the use of materials is consistent with district goals and objectives, curriculum frameworks approved by the State Board of Education, and required state and district performance standards.

**Allocation of funds**

The law (s. 1011.67, F.S.) allows the Department of Education to allocate and distribute to each district funds to be used for instructional materials for 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 and for maintenance needs. Instructional materials are funded as a categorical item in the General Appropriations Act.

Statutory guidelines, prohibitions, and exceptions for the use of the instructional materials allocation are established in ss. 1006.40 and 1011.62, F.S., including materials on the state adopted list and certain materials not included on the list. When a school district's total allocation has not been expended or obligated prior to June 30 in any year, the law (s. 1006.40(7), F.S.) requires the school district to carry forward the unobligated amount and add it to the next year's allocation.

Each district school board must purchase current instructional materials to provide each student with a textbook or other instructional material as a major tool of instruction in core courses of the appropriate subject areas of mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12. The law (s. 1006.40(2), F.S.) specifies when the purchases must be made. Unless specifically provided for in the General Appropriations Act, the cost of instructional materials purchases required by s. 1006.40(2)(a), F.S., may not exceed the amount of the district's allocation for instructional materials, pursuant to s. 1011.67, F.S., for the previous 2 years. However, this requirement does not apply to contracts in existence before April 1, 2000, or to a purchase related to growth of student membership in the district or for instructional materials maintenance needs.

**Depository and other requirements**

Bidders for state-adopted materials contracts (s. 1006.33, F.S.) must state the lowest wholesale price at which the materials will be furnished at the time of adoption, delivered f.o.b. (free on board) to the Florida depository of the publisher, manufacturer, or bidder. Publishers or manufacturers must provide materials at a price, inclusive of all transportation costs to their depositories, that does not exceed the lowest price for adoption or sale to any state or school district in the U.S. Also, publishers and manufacturers must maintain or contract with a depository in the state and maintain an inventory that is sufficient to receive and fill orders. Section 1006.37, F.S., requires district school superintendents to requisition adopted instructional materials from the depository under contract with the publisher, subject to certain conditions.

According to the Department of Education, there are three depositories in Florida. The Florida School Book depository is under contract with publishers or manufacturers. Two depositories (Libreria Impacto and ABC Book Supply, Inc.) are maintained by publishers or manufacturers and currently conduct a limited volume of business with school districts.

**Disposal of instructional materials**

Section 1006.41(1), F.S., allows for the disposition of instructional materials that have become unserviceable or surplus or that are no longer on state contract. These may be disposed of under district school board rule by various means, including selling the materials to used book dealers,

recycling plants, pulp mills, or other persons, firms, or corporations upon such terms as are most economically advantageous to the district school board.

### **Charter schools**

Section 1002.33, F.S., relates to charter schools. Charter schools are considered public schools operated by the district. According to the Department of Education, charter schools are held to the provisions for state-adopted instructional materials.

### **International Standard Book Number**

The 10 digits of the International Standard Book Number (ISBN) for books, software, mixed media etc., include identifiers for the country, the publisher, and the title. The U.S. ISBN Agency assigns the ISBN publisher prefix to those publishers with a residence or office in the U.S. and that publish their titles within the U.S. These ISBN publisher prefixes are unique to each publisher. The ISBN serves as a unique identifier for various purposes, including: stock control; ordering; accounting; handling or returns; sales data monitoring; and right and royalty management.

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

The bill allows the Florida Department of Education to conduct a pilot program. Three designated school districts (Hernando County, Pasco County, and Polk County) may participate in the pilot program. The purpose of the program is to allow the districts to realize a cost savings in the purchase of used instructional materials, by allowing them to purchase from sources other than depositories. However, the cost savings must be realized without a loss of quality or availability to students. Charter schools in the three districts may participate in the program.

Secondhand book dealers or other third-party book vendors that provide used, adopted instructional materials to a school district are subject to the followings requirements:

- certification that the materials are available;
- certification that the materials are the most currently adopted, Florida-specific instructional materials and that the materials conform to the Sunshine State Standards; and
- provision of the International Standard Book Number of each the used instructional materials.

For purposes of the pilot program, the Department of Education may waive the requirement in s. 1006.37, F.S., relating to the requisition of these materials from the publisher depositories. The bill provides that the state is not responsible for a financial loss resulting from a school district's use of a waiver. Also, the department must submit a report to the legislative leaders of each chamber for consideration during the 2004 Legislative Session. The report must contain the cost savings to the school districts, based on the results of the pilot program.

The bill provides for the repeal of the pilot program on July 1, 2006. The effective date of the bill is July 1, 2003.

**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:****Waivers**

Prior to the 2002 legislative session, the elected Commissioner of Education had the authority to waive, upon a school district's request, certain provisions of the school code, including chapter 233, F.S., for instructional materials.<sup>1</sup> According to the Department of Education, there are 7 existing district wide waivers of the instructional materials requirements in effect for the following school districts: Hillsborough; Columbia; Orange; Palm Beach; Indian River; Baker; and Suwannee. Six school districts applied for and received waivers from the instructional materials requirements (s. 233.34, F.S., now s. 1006.40, F.S) to allow spending flexibility for their state instructional materials allocation. One waiver was granted to waive administrative rules for the use of surplus or obsolete instructional materials.

The Legislature (chapter 2002-387, L.O.F.) removed the authority to waive state law in s. 229.592(9), F.S. (now s. 1008.345, F.S.) and did not delegate it to either the appointed State Board of Education or the appointed Commissioner of Education. Rather, the Commissioner of Education (s. 1001.10, F.S.) may waive State Board of Education rules, except for certain areas, including the allocation and appropriation of state and local funds for public education. The department notified all district school superintendents in November 2002 that no new waivers would be granted and that existing waivers will expire June 30, 2003, regardless of the actual expiration date on the waiver, with the exception of waivers for charter schools, charter school districts, and deregulated schools.

Section 1006.37, F.S., requires district school superintendents to requisition adopted instructional materials from the depository under contract with the publisher, subject to certain conditions.

The bill allows the Department of Education to waive this provision in law. This may be subject to challenge on the basis of an invalid delegation of legislative authority. To address this issue, an amendment could be drafted to allow participating district school superintendents to purchase adopted instructional materials from sources other than a depository under contract with a publisher or manufacturer.

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<sup>1</sup> This provision was in s. 229.592(9), F.S., and is not included in current s. 1008.345, F.S.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill allows the Department of Education to waive the district school superintendent's required use of depositories under contract with publishers or manufacturers. This provision may affect future contracts for instructional materials. These contracts are between the state and publishers or manufactures, as well as contracts between publishers and their depositories. The Florida School Book depository is the primary depository.

Subject to fiscal sanctions for noncompliance, publishers and manufacturers must continue to maintain or contract with a depository and maintain the required inventories in the depository. The fiscal impact is unknown for continuing these requirements during the operation of pilot programs that may not actually use the inventory in their depositories.

Secondhand book dealers or third-party book vendors that provide used, adopted instructional materials to a school district are subject to specific disclosure requirements, including, certification that the materials conform to the Sunshine State Standards. According to the Department of Education, the Sunshine Standards were developed in 1996 and any instructional materials submitted for the 1998-1999 adoption for the core subject areas must correlate to these standards. However, there are certain subject areas (e.g., computer education, business, industrial education, family and consumer sciences) that currently conform to requirements other than the Sunshine State Standards. This may result in the inability of secondhand book dealers or vendors to participate in the pilot program for these subject areas.

**C. Government Sector Impact:**

The state and school districts may benefit if any cost savings are identified as a result of the pilot program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:****Contracts**

There are existing multi-year contracts with publishers and manufacturers. The bill does not state that the provisions do not apply to contracts in effect prior to April 1, 2003. State and federal constitutional impairment of contract clauses (Article I, section 10 of the U.S. Constitution and Article I, section 10 of the Florida Constitution) prohibit the passage of laws that impair contractual obligations.

According to the Florida 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. 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 the current contract, either party may rescind the contract, upon written notice within 90 days after the statute takes effect.

#### **Current OPPAGA review**

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is scheduled to release a report this month that examines Florida's system of acquiring and distributing instructional materials, as well as any changes that can be made to Florida's process to reduce costs. Specifically, OPPAGA is examining the following:

- authorizing district-to-district sales of instructional materials;
- authorizing districts to purchase used materials;
- authorizing districts to have the option to buy materials directly from publishers;
- requiring the Department of Education to better monitor publisher distribution of free materials to districts; and
- establishing penalties for publishers who fail to deliver materials in a timely manner.

On March 12, 2003, OPPAGA provided the Commissioner of Education with a report containing the review's preliminary findings and recommendations. OPPAGA requested a written response to the findings from the Commissioner by March 27, 2003.

#### **VIII. Amendments:**

None.