

CHAPTER 2013-237

Committee Substitute for Committee Substitute for Senate Bill No. 1388

An act relating to instructional materials for K-12 public education; amending s. 1006.28, F.S.; revising the duties of a district school board with regard to instructional materials; creating s. 1006.283, F.S.; authorizing a district school board or a consortium of school districts to implement an instructional materials program; requiring the district superintendent to certify to the Department of Education that instructional materials for core courses align with applicable state standards; requiring the district school board to adopt rules; authorizing the district school board to assess and collect fees from a publisher that participates in the instructional materials review process; requiring the fee amount to be posted on the school district's website and reported to the department; providing a limit on fees; providing for a stipend, reimbursement for travel expenses, and per diem for reviewers; requiring instructional materials that are approved by the district instructional materials reviewers to be aligned with applicable state standards; requiring each district school superintendent to annually certify that the instructional materials for core courses used by the district align with applicable state standards; providing pricing requirements for instructional materials; amending s. 1006.31, F.S.; revising the procedure for evaluating instructional materials; amending s. 1006.37, F.S.; revising the time period in which the superintendent must requisition instructional materials; providing that a district school board or a consortium of school districts which implements an instructional materials program is not required to requisition instructional materials from the publisher's depository; amending s. 1006.38, F.S.; providing for applicability; revising duties of publishers and manufacturers; amending s. 1006.40, F.S.; revising the allocation for instructional materials; providing for applicability; amending s. 1001.10, F.S.; revising the duties of the Commissioner of Education with regard to instructional materials; amending s. 1011.62, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 1006.28, Florida Statutes, is amended to read:

1006.28 Duties of district school board, district school superintendent; and school principal regarding K-12 instructional materials.—

(1) **DISTRICT SCHOOL BOARD.**—The district school board has the duty to provide adequate instructional materials for all students in accordance with the requirements of this part. The term “adequate instructional materials” means a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package

form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for each student in the core courses of mathematics, language arts, social studies, science, reading, and literature. The district school board has the following specific duties:

(b) *Instructional materials.*—Provide for proper requisitioning, distribution, accounting, storage, care, and use of all instructional materials and furnish such other instructional materials as may be needed. The district school board shall ensure that instructional materials used in the district are consistent with the district goals and objectives and the course descriptions established in curriculum frameworks adopted by rule of the State Board of Education, as well as with the state and district performance standards provided for in s. 1001.03(1).

Section 2. Section 1006.283, Florida Statutes, is created to read:

1006.283 District school board instructional materials review process.

(1) A school board or consortium of school districts may implement an instructional materials program that includes the review, approval, adoption, and purchase of instructional materials. Beginning in the 2013-2014 school year, the district school superintendent shall certify to the department by March 31 of each year that all instructional materials for core courses used by the district are aligned with applicable state standards. Included in the certification shall be a list of the core instructional materials that will be used or purchased for use by the school district.

(2) The school board shall adopt rules implementing the district's instructional materials program which must include, but need not be limited to:

(a) Its review and purchase process.

(b) Identification of a review cycle for instructional materials.

(c) The duties and qualifications of the instructional materials reviewers.

(d) The requirements for an affidavit made by a district instructional materials reviewer which substantially includes the requirements of s. 1006.30.

(e) Compliance with s. 1006.32, relating to prohibited acts.

(f) A process that certifies the accuracy of instructional materials.

(g) The incorporation of applicable requirements of s. 1006.31, which relates to the duties of instructional materials reviewers.

(h) The incorporation of applicable requirements of s. 1006.38, relating to the duties, responsibilities, and requirements of publishers of instructional materials.

(i) The process by which instructional materials will be purchased, including advertising, bidding, and purchasing requirements.

(3)(a) The school board may assess and collect fees from publishers participating in the instructional materials approval process. The amount assessed and collected must be posted on the school district's website and reported to the department. The fees may not exceed the actual cost of the review process, and the fees may not exceed \$3,500 per submission by a publisher. Any fees collected for this process shall be allocated for the support of the review process and maintained in a separate line item for auditing purposes.

(b) The fees shall be used to cover the actual cost of substitute teachers for each workday that a member of a school district's instructional staff is absent from his or her assigned duties for the purpose of rendering service as an instructional materials reviewer. In addition, each reviewer may be paid a stipend and is entitled to reimbursement for travel expenses and per diem in accordance with s. 112.061 for actual service in meetings.

(4) Instructional materials that have been reviewed by the district instructional materials reviewers and approved must have been determined to align with all applicable state standards pursuant to s. 1003.41 and the requirements in s. 1006.31. The district school superintendent shall annually certify to the department that all instructional materials for core courses used by the district are aligned with all applicable state standards.

(5) A publisher that offers instructional materials to a district school board must provide such materials at a price that, including all costs of electronic transmission, does not exceed the lowest price at which the publisher offers such instructional materials for approval or sale to any state or school district in the United States.

(6) A publisher shall reduce automatically the price of the instructional materials to the district school board to the extent that reductions in price are made elsewhere in the United States.

Section 3. Section 1006.31, Florida Statutes, is amended to read:

1006.31 Duties of the Department of Education and school district each state instructional materials reviewer.—~~The duties of the each state instructional materials reviewer are:~~

(1) PROCEDURES.—To adhere to procedures prescribed by the department ~~or the district~~ for evaluating instructional materials submitted by publishers and manufacturers in each adoption. This section applies to both the state and district approval processes.

(2) EVALUATION OF INSTRUCTIONAL MATERIALS.—To evaluate carefully all instructional materials submitted, in order to ascertain which instructional materials, if any, submitted for consideration implement the selection criteria developed by the department and those curricular objectives included within applicable performance standards provided for in s. 1001.03(1).

(a) When recommending instructional materials for use in the schools, each reviewer shall include only instructional materials that accurately portray the ethnic, socioeconomic, cultural, and racial diversity of our society, including men and women in professional, career, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of this state and the United States.

(b) When recommending instructional materials for use in the schools, each reviewer shall include only materials that accurately portray, whenever appropriate, humankind's place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances.

(c) When recommending instructional materials for use in the schools, each reviewer shall require such materials as he or she deems necessary and proper to encourage thrift, fire prevention, and humane treatment of people and animals.

(d) When recommending instructional materials for use in the schools, each reviewer shall require, when appropriate to the comprehension of students, that materials for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States. A reviewer may not recommend any instructional materials for use in the schools which contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, or occupation.

(e) Any instructional material recommended by each reviewer for use in the schools shall be, to the satisfaction of each reviewer, accurate, objective, and current and suited to the needs and comprehension of students at their respective grade levels. Reviewers shall consider for adoption materials developed for academically talented students such as those enrolled in advanced placement courses.

(3) REPORT OF REVIEWERS.—After a thorough study of all data submitted on each instructional material, to submit an electronic report to the department. The report shall be made public and must include responses to each section of the report format prescribed by the department.

Section 4. Subsection (1) of section 1006.37, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

1006.37 Requisition of instructional materials from publisher's depository.—

(1) The district school superintendent shall requisition adopted instructional materials from the depository of the publisher with whom a contract has been made. However, the superintendent shall requisition current instructional materials to provide each student with a textbook or other materials as a major tool of instruction in core courses of the subject areas specified in s. 1006.40(2). These materials must be requisitioned within the first 3 2 years of the adoption cycle, except for instructional materials related to growth of student membership or instructional materials maintenance needs. The superintendent may requisition instructional materials in the core subject areas specified in s. 1006.40(2) that are related to growth of student membership or instructional materials maintenance needs during the 3rd, 4th, 5th, and 6th years of the original contract period.

(3) A district school board or a consortium of school districts which implements an instructional materials program pursuant to s. 1006.283 is not required to requisition instructional materials from the publisher's depository.

Section 5. Section 1006.38, Florida Statutes, is amended to read:

1006.38 Duties, responsibilities, and requirements of instructional materials publishers and manufacturers.—This section applies to both the state and district approval processes. Publishers and manufacturers of instructional materials, or their representatives, shall:

(1) Comply with all provisions of this part.

(2) Electronically deliver fully developed sample copies of all instructional materials upon which bids are based to the department pursuant to procedures adopted by the State Board of Education.

(3) Submit, at a time designated in s. 1006.33, the following information:

(a) Detailed specifications of the physical characteristics of the instructional materials, including any software or technological tools required for use by the district, school, teachers, or students. The publisher or manufacturer shall comply with these specifications if the instructional materials are adopted and purchased in completed form.

(b) Evidence that the publisher or manufacturer has provided materials that address the performance standards provided for in s. 1001.03(1) and that can be accessed through the district's local instructional improvement system and a variety of electronic, digital, and mobile devices.

(c) Evidence that the instructional materials include specific references to statewide standards in the teacher's manual and incorporate such standards into chapter tests or the assessments.

(4) Make available for purchase by any district school board any diagnostic, criterion-referenced, or other tests that they may develop.

(5) Furnish the instructional materials offered by them at a price in the state which, including all costs of electronic transmission, may not exceed the lowest price at which they offer such instructional materials for adoption or sale to any state or school district in the United States.

(6) Reduce automatically the price of the instructional materials to any district school board to the extent that reductions are made elsewhere in the United States.

(7) Provide any instructional materials free of charge in the state to the same extent as they are provided free of charge to any state or school district in the United States.

(8) Guarantee that all copies of any instructional materials sold in this state will be at least equal in quality to the copies of such instructional materials that are sold elsewhere in the United States and will be kept revised, free from all errors, and up-to-date as may be required by the department.

(9) Agree that any supplementary material developed at the district or state level does not violate the author's or publisher's copyright, provided such material is developed in accordance with the doctrine of fair use.

(10) Not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in instructional materials, nor enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in the state.

(11) Maintain or contract with a depository in the state.

(12) For the core subject areas specified in s. 1006.40(2), maintain in the depository for the first 3 ~~2~~ years of the contract an inventory of instructional materials sufficient to receive and fill orders.

(13) For the core subject areas specified in s. 1006.40(2), ensure the availability of an inventory sufficient to receive and fill orders for instructional materials for growth, including the opening of a new school, and replacement during the 3rd and subsequent years of the original contract period.

(14) Accurately and fully disclose only the names of those persons who actually authored the instructional materials. In addition to the penalties provided in subsection (16), the commissioner may remove from the list of state-adopted instructional materials those instructional materials whose publisher or manufacturer misleads the purchaser by falsely representing genuine authorship.

(15) Grant, without prior written request, for any copyright held by the publisher or its agencies automatic permission to the department or its agencies for the reproduction of instructional materials and supplementary materials in Braille, large print, or other appropriate format for use by visually impaired students or other students with disabilities that would benefit from use of the materials.

(16) Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, be liable to the department in the amount of three times the total sum which the publisher or manufacturer was paid in excess of the price required under subsections (5) and (6) and in the amount of three times the total value of the instructional materials and services which the district school board is entitled to receive free of charge under subsection (7).

Section 6. Subsection (2) and paragraph (a) of subsection (3) of section 1006.40, Florida Statutes, are amended to read:

1006.40 Use of instructional materials allocation; instructional materials, library books, and reference books; repair of books.—

(2) Each district school board must purchase current instructional materials to provide each student with a major tool of instruction in core courses of the subject areas of mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12. Such purchase must be made within the first ~~3~~ 2 years after the effective date of the adoption cycle. For the 2012-2013 mathematics adoption, a district using a comprehensive mathematics instructional materials program adopted in the 2009-2010 adoption shall be deemed in compliance with this subsection if it provides each student with such additional state-adopted materials as may be necessary to align the previously adopted comprehensive program to common core standards and the other criteria of the 2012-2013 mathematics adoption.

(3)(a) By the 2015-2016 fiscal year, each district school board shall use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards included on the state-adopted list, except as otherwise authorized in paragraphs (b) and (c). This section does not apply to a district school board or a consortium of school districts which implements an instructional materials program pursuant to s. 1006.283, except that by the 2015-2016 fiscal year, each district school board shall use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards.

Section 7. Paragraphs (o) and (p) of subsection (6) of section 1001.10, Florida Statutes, are amended to read:

1001.10 Commissioner of Education; general powers and duties.—

(6) Additionally, the commissioner has the following general powers and duties:

(o) To develop criteria for use by department state instructional materials reviewers in evaluating materials submitted for adoption consideration. The criteria shall, as appropriate, be based on instructional expectations reflected in course descriptions ~~curriculum frameworks~~ and student performance standards. The criteria for each subject or course shall be made available to publishers and manufacturers of instructional materials pursuant to the requirements of chapter 1006.

(p) To prescribe procedures for evaluating instructional materials submitted by publishers and manufacturers in each adoption.

Section 8. Paragraph (b) of subsection (6) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(6) CATEGORICAL FUNDS.—

(b) If a district school board finds and declares in a resolution adopted at a regular meeting of the school board that the funds received for any of the following categorical appropriations are urgently needed to maintain school board specified academic classroom instruction, the school board may consider and approve an amendment to the school district operating budget transferring the identified amount of the categorical funds to the appropriate account for expenditure:

1. Funds for student transportation.
2. Funds for safe schools.
3. Funds for supplemental academic instruction if the required additional hour of instruction beyond the normal school day for each day of the entire school year has been provided for the students in each low-performing elementary school in the district pursuant to paragraph (1)(f).
4. Funds for research-based reading instruction if the required additional hour of instruction beyond the normal school day for each day of the entire school year has been provided for the students in each low-performing elementary school in the district pursuant to paragraph (9)(a).
5. Funds for instructional materials if all instructional material purchases necessary to provide updated materials that are aligned with applicable to Next Generation Sunshine state standards and course descriptions ~~benchmarks~~ and that meet statutory requirements of content

and learning have been completed for that fiscal year, but no sooner than March 1. Funds available after March 1 may be used to purchase hardware for student instruction.

Section 9. This act shall take effect July 1, 2013.

Approved by the Governor June 28, 2013.

Filed in Office Secretary of State June 28, 2013.