

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 314

Introduced by Assembly Member Brownley

February 17, 2009

An act to amend Sections 60005, 60061, 60200, 60204, 60421, and 60422 of the Education Code, relating to instructional materials. .

LEGISLATIVE COUNSEL'S DIGEST

AB 314, as amended, Brownley. Instructional materials.

(1) Existing law provides that the policies and procedures of the State Board of Education concerning the adoption of instructional materials shall be adopted pursuant to specified provisions of law and include policies that define statutory terms, policies that prescribed the membership of committees used in the development and adoption process, and procedures that regulate public participation, as specified.

This bill would further require procedures to ensure that the state board considers price as one factor in the adoption of instructional materials only after recommendations are submitted to the state board based on content standards alignment, approved evaluation criteria, and quality.

(2) Existing law requires the publisher or manufacturer of instructional materials to furnish those materials at a price that does not exceed the lowest price the publisher offers those materials, to automatically reduce the price of materials to the extent that reductions in price are made elsewhere, and to provide any materials free of charge to the same extent as they are provided elsewhere.

This bill would require publishers or manufacturers of instructional materials to provide any equipment or technology associated with the

use of instructional materials under consideration for purchase free of charge to the same extent as they are provided elsewhere. The bill would also require publishers or manufacturers to furnish instructional materials offered by the publisher in an electronic format at a price that is less than the price charged for the printed version and would require the electronic version of any textbook to contain at least the same content as the printed version.

(1)

(3) Existing law requires the State Board of Education to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive.

This bill would require the state board to hold a publicly noticed informational meeting prior to the meeting at which it is scheduled to adopt instructional materials.

(2)

(4) Existing law provides that upon making an adoption of basic instructional materials, the state board is required to make available to listed publishers and manufacturers and all school interests, a list of those instructional materials by subject and grade level. Items placed upon lists are required to be accessible, as specified, from the date of the adoption of the item until a date established by the state board.

This bill would require the list of materials to be made available to school districts and to be posted on the State Department of Education's Internet Web site by subject and grade level. It would require the list to also include the assessments or reports of findings and recommendations developed by expert reviewers and evaluators of instructional materials involved in the review process that includes alignment of standards, program organization, pupil assessments, teacher support, and support for English language learners. Items placed upon lists would be required to be accessible, as specified, for at least 3 years following the next adoption of new materials based upon a new or revised curriculum framework, whichever is later.

(3)

(5) Existing law requires the Curriculum Development and Supplemental Materials Commission to perform several duties including studying and evaluating instructional materials, adopting educational films or videotapes, and recommending to the state board instructional materials which it approves for adoption.

This bill would delete these duties.

(4)

(6) Existing law establishes the Instructional Materials Funding Realignment Program administered by the Superintendent of Public Instruction under which school districts are apportioned funds to ensure that each pupil is provided with a standards-aligned textbook or basic instructional materials, as adopted by the state board or the local governing board. Existing law requires that pupils be provided with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 24 months after those materials were adopted by the state board. However, the state board is authorized to grant school districts additional time to meet this requirement if specified criteria are met.

This bill would authorize a school district receiving specified funding to submit recommendations of individuals to serve in the review and evaluation of instructional materials submitted for kindergarten and grades 1 to 8, inclusive, who, *as verified by the Superintendent*, meet specified qualifications. This bill would require the Superintendent, through a random lottery, to select and appoint instructional materials reviewers and content review experts from the recommendations made by school districts. The Superintendent would be required to ensure that a majority of selected instructional materials reviewers and content review experts are credentialed classroom instructors. Local governing boards would be required to use the funding provided to ensure that each pupil is provided with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 36 months after those materials were adopted by the state board.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 60005 of the Education Code is amended*
2 *to read:*
3 60005. (a) The Legislature finds and declares that it is in the
4 public interest for the State Board of Education to adopt policies
5 and procedures concerning the development of curriculum
6 frameworks and the adoption of instructional materials only after
7 public notice, comment by the public, and review by the Office of
8 Administrative Law and for these policies and procedures to be
9 published in the California Code of Regulations. Therefore, the

1 Legislature reaffirms that the policies and procedures concerning
2 the development of curriculum frameworks and the adoption of
3 instructional materials shall be adopted pursuant to Chapter 3.5
4 (commencing with Section 11340) of Part 1 of Division 3 of Title
5 2 of the Government Code. These policies and procedures include,
6 but are not limited to, the following:

7 (1) Board policies that define statutory terms.

8 (2) Board policies that prescribe the membership of committees
9 used in the development and adoption process.

10 (3) Procedures that regulate public participation in the
11 development of curriculum frameworks and the adoption of
12 instructional materials.

13 (4) *Procedures to ensure that the state board considers price*
14 *as one factor in the adoption of instructional materials only after*
15 *recommendations are submitted to the state board based on content*
16 *standards alignment, approved evaluation criteria, and quality.*

17 (b) The board shall adopt as regulations the policies and
18 procedures concerning the development of curriculum frameworks
19 and the adoption of instructional materials.

20 (c) (1) The following shall not be subject to Chapter 3.5
21 (commencing with Section 11340) of Part 1 of Division 3 of Title
22 2 of the Government Code:

23 (A) The content of curriculum frameworks.

24 (B) Evaluation criteria and worksheets developed to supplement
25 curriculum frameworks.

26 (2) The board shall adopt the content of curriculum frameworks
27 and evaluation criteria and worksheets developed to supplement
28 curriculum frameworks in accordance with the regulations
29 established pursuant to subdivision (b) of this section.

30 *SEC. 2. Section 60061 of the Education Code is amended to*
31 *read:*

32 60061. (a) A publisher or manufacturer shall do all of the
33 following:

34 (1) Furnish the instructional materials offered by the publisher
35 at a price in this state that, including all costs of transportation to
36 that place, does not exceed the lowest price at which the publisher
37 offers those instructional materials for adoption or sale to any state
38 or school district in the United States.

1 (2) Automatically reduce the price of those instructional
2 materials to any governing board to the extent that reductions are
3 made elsewhere in the United States.

4 (3) Provide any instructional materials *or equipment or*
5 *technology associated with the use of the instructional materials*
6 *under consideration for purchase* free of charge in this state to the
7 same extent as ~~that received by~~ *they are provided to* any state or
8 school district in the United States.

9 (4) Guarantee that all copies of any instructional materials sold
10 in this state are at least equal in quality to the copies of those
11 instructional materials that are sold elsewhere in the United States,
12 and are kept revised, free from all errors, and up to date as may
13 be required by the state board.

14 (5) Not in any way, directly or indirectly, become associated or
15 connected with any combination in restraint of trade in instructional
16 materials, or enter into any understanding, agreement, or
17 combination to control prices or restrict competition in the sale of
18 instructional materials for use in this state.

19 (6) Maintain a representative, office, or depository in the State
20 of California or arrange with an independently owned and operated
21 depository in the State of California to receive and fill orders for
22 instructional materials.

23 (7) Provide to the state, at no cost, computer files or other
24 electronic versions of each state-adopted literary title and the right
25 to transcribe, reproduce, modify, and distribute the material in
26 braille, large print if the publisher does not offer a large print
27 edition, recordings, American Sign Language videos for the deaf,
28 or other specialized accessible media exclusively for use by pupils
29 with visual disabilities or other disabilities that prevent use of
30 standard instructional materials. Computer files or other electronic
31 versions of materials adopted shall be provided within 30 days of
32 request by the state as needed for the purposes described in this
33 subdivision as follows:

34 (A) Computer files or other electronic versions of literary titles
35 shall maintain the structural integrity of the standard instructional
36 materials, be compatible with commonly used braille translation
37 and speech synthesis software, and include corrections and
38 revisions as may be necessary.

39 (B) Computer files or other electronic versions of nonliterary
40 titles, including science and mathematics, shall be provided when

1 technology is available to convert those materials to a format that
2 maintains the structural integrity of the standard instructional
3 materials and is compatible with braille translation and speech
4 synthesis software.

5 (8) *Furnish instructional materials offered by the publisher in*
6 *an electronic format at a price that is less than the price charged*
7 *for the printed version. The electronic version of any textbook shall*
8 *contain at least the same content as the printed version and may*
9 *be copy-protected.*

10 (A) *A small publisher may be exempted from the provisions of*
11 *this paragraph.*

12 (B) *For purposes of this paragraph, “small publisher” means*
13 *an independently owned or operated publisher or manufacturer*
14 *that is not dominant in its field of operation, that, together with*
15 *its affiliates, has 100 or fewer employees, and has average annual*
16 *gross receipts of 10 million dollars (\$10,000,000) or less over the*
17 *previous three years.*

18 (b) Upon the willful failure of the publisher or manufacturer to
19 comply with the requirements of this section, the publisher or
20 manufacturer shall be liable to the governing board in the amount
21 of three times the total sum that the publisher or manufacturer was
22 paid in excess of the price required under paragraphs (1), (2), and
23 (5) of subdivision (a), and in the amount of three times the total
24 value of the instructional materials and services that the governing
25 board is entitled to receive free of charge under subdivision (a).

26 **SECTION 1.**

27 *SEC. 3.* Section 60200 of the Education Code is amended to
28 read:

29 60200. The state board shall adopt basic instructional materials
30 for use in kindergarten and grades 1 to 8, inclusive, for governing
31 boards, subject to the following provisions:

32 (a) The state board shall adopt at least five basic instructional
33 materials for all applicable grade levels in each of the following
34 categories:

35 (1) Language arts, including, but not limited to, spelling and
36 reading. However, the state board shall not adopt basic instructional
37 materials in this category or the category specified by paragraph
38 (2) in the year succeeding the year in which the state board adopts
39 basic instructional materials in this category for the same grade
40 level.

1 (2) Mathematics. However, the state board shall not adopt basic
2 instructional materials in this category or the category specified
3 by paragraph (1) in the year succeeding the year in which the state
4 board adopts basic instructional materials in this category for the
5 same grade level.

6 (3) Science.

7 (4) Social science.

8 (5) Bilingual or bicultural subjects.

9 (6) Any other subject, discipline, or interdisciplinary areas for
10 which the state board determines the adoption of instructional
11 materials to be necessary or desirable.

12 (b) The state board shall hold a publicly noticed informational
13 meeting prior to the meeting at which the state board is scheduled
14 to adopt instructional materials recommended by the instructional
15 materials reviewers and content review experts selected pursuant
16 to subdivision (h) of Section 60421.

17 (c) The state board shall adopt procedures for the submission
18 of basic instructional materials in order to comply with each of
19 the following:

20 (1) Instructional materials may be submitted for adoption in any
21 of the subject areas pursuant to paragraphs (1) to (5), inclusive, of
22 subdivision (a) not less than two times every six years and in any
23 of the subject areas pursuant to paragraph (6) of subdivision (a)
24 not less than two times every eight years. The state board shall
25 ensure that curriculum frameworks are reviewed and adopted in
26 each subject area consistent with the six-year and eight-year
27 submission cycles and that the criteria for evaluating instructional
28 materials developed pursuant to subdivision (b) of Section 60204
29 are consistent with subdivision (d). The state board may prescribe
30 reasonable conditions to restrict the resubmission of materials that
31 previously have been rejected if those resubmitted materials have
32 no substantive changes.

33 (2) Submitted instructional materials shall be adopted or rejected
34 within six months of the submission date of the materials pursuant
35 to paragraph (1), unless the state board determines that a longer
36 period of time, not to exceed an additional three months, is
37 necessary due to the estimated volume or complexity of the
38 materials for that subject in that year, or due to other circumstances
39 beyond the reasonable control of the state board.

1 (d) In reviewing and adopting or recommending for adoption
2 submitted basic instructional materials, the state board shall use
3 the following criteria, and ensure that, in its judgment, the
4 submitted basic instructional materials meet all of the following
5 criteria:

6 (1) Are consistent with the criteria and the standards of quality
7 prescribed in the curriculum framework adopted by the state board.
8 In making this determination, the state board shall consider both
9 the framework and the submitted instructional materials as a whole.

10 (2) Comply with the requirements of Sections 60040, 60041,
11 60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the
12 guidelines of the state board for social content.

13 (3) Are factually accurate and incorporate principles of
14 instruction reflective of current and confirmed research.

15 (4) Adequately cover the subject area for the grade level or
16 levels for which they are submitted.

17 (5) Do not contain materials, including illustrations, that provide
18 unnecessary exposure to a commercial brand name, product, or
19 corporate or company logo. Materials, including illustrations, that
20 contain a commercial brand name, product, or corporate or
21 company logo shall not be used unless the board determines that
22 the use of the commercial brand name, product, or corporate or
23 company logo is appropriate based on one of the following specific
24 findings:

25 (A) If text, the use of the commercial brand name, product, or
26 corporate or company logo in the instructional materials is
27 necessary for an educational purpose, as defined in the guidelines
28 or frameworks adopted by the state board.

29 (B) If an illustration, the appearance of a commercial brand
30 name, product, or corporate or company logo in an illustration in
31 instructional materials is incidental to the general nature of the
32 illustration.

33 (6) Meet other criteria as are established by the state board as
34 being necessary to accomplish the intent of Section 7.5 of Article
35 IX of the California Constitution and of Section 1 of Chapter 1181
36 of the Statutes of 1989, provided that the criteria are approved by
37 resolution at the time the resolution adopting the framework for
38 the current adoption is approved, or at least 30 months prior to the
39 date that the materials are to be approved for adoption.

1 (e) If basic instructional materials are rejected, the state board
2 shall provide a specific, written explanation of the reasons why
3 the submitted materials were not adopted, based upon one or more
4 of the criteria established pursuant to subdivision (d). In providing
5 this explanation, the state board may use, in whole or in part,
6 materials written by instructional material reviewers or content
7 experts.

8 (f) The state board may adopt fewer than five basic instructional
9 materials in each subject area for each grade level if either of the
10 following occurs:

11 (1) Fewer than five basic instructional materials are submitted.

12 (2) The state board specifically finds that fewer than five basic
13 instructional materials meet the criteria prescribed by paragraphs
14 (1) to (5), inclusive, of subdivision (d), or the materials fail to meet
15 the state board's adopted curriculum framework. If the state board
16 adopts fewer than five basic instructional materials in a subject
17 for any grade level, the state board shall conduct a review of the
18 degree to which the criteria and procedures used to evaluate the
19 submitted materials for that adoption were consistent with the
20 curriculum framework adopted by the state board.

21 (g) This section does not limit the authority of the state board
22 to adopt materials that are not basic instructional materials.

23 (h) If a district board establishes to the satisfaction of the state
24 board that the state-adopted instructional materials do not promote
25 the maximum efficiency of pupil learning in the district, the state
26 board shall authorize that district governing board to use its
27 instructional materials allowances to purchase materials as
28 specified by the state board, in accordance with standards and
29 procedures established by the state board.

30 (i) Consistent with the quality criteria for the state board's
31 adopted curriculum framework, the state board shall prescribe
32 procedures to provide the most open and flexible materials
33 submission system and ensure that the adopted materials in each
34 subject, taken as a whole, provide for the educational needs of the
35 diverse pupil populations in the public schools, provide collections
36 of instructional materials that illustrate diverse points of view,
37 represent cultural pluralism, and provide a broad spectrum of
38 knowledge, information, and technology-based materials to meet
39 the goals of the program and the needs of pupils.

1 (j) Upon making an adoption, the state board shall make
2 available to listed publishers and manufacturers and all school
3 interests a listing of instructional materials, including the most
4 current unit cost of those materials as computed pursuant to existing
5 law. Items placed upon lists shall remain on the lists, and be
6 available for procurement through the state's systems of financing,
7 from the date of the adoption of the item until a date established
8 by the state board or three years following the next adoption of
9 new instructional materials based upon a new or revised curriculum
10 framework, whichever is later. Lists of adopted materials shall be
11 made available to school districts and posted on the department's
12 Internet Web site by subject and grade level, and shall include
13 information from the assessments or reports of findings and
14 recommendations developed by the expert reviewers and evaluators
15 of instructional materials involved in the materials review process
16 that includes information regarding alignment of standards,
17 program organization, pupil assessments, teacher support, and
18 support for English language learners.

19 (k) The state board may approve multiple lists of instructional
20 materials, without designating a grade or subject, and the state
21 board may designate more than one grade or subject whenever it
22 determines that a single subject designation or a single grade
23 designation would not promote the maximum efficiency of pupil
24 learning. The materials so designated may be placed on single
25 grade or single subject lists, or multigrade or interdisciplinary lists,
26 or may be placed on separate lists including other materials with
27 similar grade or subject designations.

28 (l) A composite listing in the format of an order form may be
29 used to meet the requirements of this section.

30 (m) The lists maintained pursuant to this section shall not be
31 deemed to control the use period by a school district.

32 (n) The state board shall give publishers the opportunity to
33 modify instructional materials, in a manner provided for in
34 regulations adopted by the state board, if the state board finds that
35 the instructional materials do not comply with paragraph (5) of
36 subdivision (d).

37 (o) This section does not prohibit the publisher of instructional
38 materials from including whatever corporate name or logo on the
39 instructional materials that is necessary to provide basic

1 information about the publisher, to protect its copyright, or to
2 identify third-party sources of content.

3 (p) The state board may adopt regulations that provide for other
4 exceptions to this section, as determined by the state board.

5 (q) The Superintendent shall develop, and the state board shall
6 adopt, regulations to implement this section.

7 ~~SEC. 2.~~

8 *SEC. 4.* Section 60204 of the Education Code is amended to
9 read:

10 60204. The commission shall:

11 (a) Recommend curriculum frameworks to the state board.

12 (b) Develop criteria for evaluating instructional materials
13 submitted for adoption so that the materials adopted shall
14 adequately cover the subjects in the indicated grade or grades and
15 which comply with Article 3 (commencing with Section 60040)
16 of Chapter 1. The criteria developed by the commission shall be
17 consistent with the duties of the state board pursuant to Section
18 60200. The criteria shall be public information and shall be
19 provided in written or printed form to a person requesting that
20 information.

21 (c) Recommend to the state board policies and activities to assist
22 the department and school districts in the use of the curriculum
23 framework and other available model curriculum materials for the
24 purpose of guiding and strengthening the quality of instruction in
25 the public schools.

26 ~~SEC. 3.~~

27 *SEC. 5.* Section 60421 of the Education Code is amended to
28 read:

29 60421. (a) The department shall apportion funds appropriated
30 for purposes of this chapter to school districts on the basis of an
31 equal amount per pupil enrolled in kindergarten and grades 1 to
32 12, inclusive, in the prior year, excluding summer school, adult,
33 and regional occupational center and regional occupational
34 programs enrollment. Enrollment shall be certified by the
35 Superintendent and based on data as reported by the California
36 Basic Education Data System count. A school district in its first
37 year of operation or of expanding grade levels at a schoolsite shall
38 be eligible to receive funding pursuant to this chapter based on
39 enrollment estimates provided to the department by the school
40 district. As a condition of receipt of funding, a school district or

1 charter school in its first year of operation or of expanding grade
2 levels at a schoolsite shall provide enrollment estimates, as
3 approved by the school district governing board and the county
4 office of education in which the school district is located. These
5 estimates and associated funding shall be adjusted for actual
6 enrollment as reported by the subsequent California Basic
7 Education Data System.

8 (b) For purposes of this chapter, the term “school district” means
9 a school district or county office of education, and the term “local
10 governing board” means the governing board of a school district
11 or county board of education.

12 (c) Allowances established pursuant to this chapter shall be
13 apportioned to school districts in September of each fiscal year.

14 (d) Notwithstanding any other law, pursuant to subdivision (h)
15 of Section 60200, the state board may authorize a school district
16 to use a state basic instructional materials allowance to purchase
17 standards-aligned materials as specified within this part.

18 (e) A school district receiving funding pursuant to this chapter
19 may submit recommendations of individuals being considered to
20 serve in the review and evaluation of instructional materials
21 submitted for kindergarten and grades 1 to 8, inclusive, pursuant
22 to subdivision (f) and who meet the qualifications specified in
23 subdivision (g).

24 (f) School districts, in collaboration with teacher organizations,
25 may recommend at least one individual and up to two individuals
26 if enrollment in the district is 10,000 pupils or more, but less than
27 75,000 pupils; up to three individuals if enrollment in the district
28 is 75,000 or more pupils, but less than 500,000 pupils; and up to
29 four individuals if the enrollment in the district is 500,000 pupils
30 or more, as indicated by the most recent counts in the California
31 Basic Education Data System.

32 (g) A school district choosing to submit recommendations of
33 individuals pursuant to subdivision (e) shall ensure that the
34 individuals meet the following criteria:

35 (1) At least one individual shall be a classroom teacher in
36 kindergarten or any of grades 1 to 12, inclusive, and shall have a
37 teaching credential.

38 (2) All individuals shall have experience with and expertise in
39 the content field under consideration.

1 (h) *The Superintendent shall verify that individuals*
2 *recommended by school districts pursuant to subdivision (e) have*
3 *experience with, and expertise in, the content field under*
4 *consideration.*

5 ~~(h)~~

6 (i) The Superintendent, through a random lottery, shall select
7 and appoint instructional materials reviewers and content review
8 experts from the recommendations made by school districts and
9 shall ensure that the reviewers selected to participate reflect the
10 various ethnic groups, types of school district, and regions in
11 California, and have experience in providing instruction to English
12 language learners and pupils with disabilities. If there is
13 underrepresentation of any of the categories listed in this
14 subdivision, the Superintendent shall select additional individuals
15 from the remaining candidates to ensure adequate representation.
16 The Superintendent also shall ensure that a majority of the selected
17 instructional materials reviewers and content review experts are
18 credentialed classroom instructors.

19 ~~SEC. 4.~~

20 *SEC. 6.* Section 60422 of the Education Code is amended to
21 read:

22 60422. (a) A local governing board shall use funding received
23 pursuant to this chapter to ensure that each pupil is provided with
24 a standards-aligned textbook or basic instructional materials, as
25 adopted by the state board subsequent to the adoption of content
26 standards pursuant to Section 60605 for kindergarten and grades
27 1 to 8, inclusive, or as adopted by the local governing board
28 pursuant to Sections 60400 and 60411, for grades 9 to 12, inclusive.
29 Pupils shall be provided with standards-aligned textbooks or basic
30 instructional materials by the beginning of the first school term
31 that commences no later than 36 months after those materials were
32 adopted by the state board.

33 (b) Once a governing board certifies compliance with
34 subdivision (a) with regard to standards-aligned instructional
35 materials in the core curriculum areas of reading/language arts,
36 mathematics, science, and history/social sciences, and if the
37 governing board of a school district has met the eligibility
38 requirements of Section 60119, the remaining funds may only be
39 used consistent with subdivision (a) of Section 60242 and pursuant
40 to Section 60242.5.

1 (c) The state board may grant the school district additional time
2 to meet the purchasing requirements of subdivision (a) if the
3 governing board of the school district demonstrates, to the
4 satisfaction of the state board, that all of the following criteria
5 apply to the district:

6 (1) The school district has implemented a well-designed,
7 standards-aligned basic instructional materials program.

8 (2) The school district, at the time of its request for additional
9 time pursuant to this subdivision, has sufficient textbooks or basic
10 instructional materials for use by each pupil.

11 (3) The school district has adopted a plan for the purchase of
12 standards-aligned instructional materials in accordance with
13 subdivision (a) that indicated an alternative date for compliance
14 that is declared in the request for additional time.

15 (d) The funds provided for the purchase of instructional
16 materials in Schedules 1 and 2 of Item 6110-189-0001 and
17 paragraph 6 of Item 6110-485 of Section 2.00 of the Budget Act
18 of 2002 (Chapter 379 of the Statutes of 2002) shall be used for the
19 purposes of, and allocated consistent with, this chapter.