

AMENDED IN ASSEMBLY AUGUST 30, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1246

Introduced by Assembly Member Brownley

February 18, 2011

An act to amend ~~Section 60810~~ Sections 60200, 60203, and 60204 of the Education Code, relating to ~~pupil assessment~~ *instructional materials*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1246, as amended, Brownley. ~~Pupil assessment: English language development.~~ *Instructional materials.*

(1) *Existing law requires the State Board of Education to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, as defined, subject to specified provisions. Existing law authorizes instructional materials to be submitted for adoption in certain subject areas according to 6- and 8-year submission cycles.*

This bill would require the Superintendent of Public Instruction, and authorize school districts, to submit instructional materials for review to the state board, which would be required to adopt procedures for the review of those submitted instructional materials. The bill would add additional requirements for the review and adoption of instructional materials, including, but not limited to, changing the submission cycles to 8 years for all subject areas and requiring the State Department of Education to assess a reasonable fee on a publisher or manufacturer if it submits instructional materials for review after the applicable timeframe. The bill also would authorize the Superintendent and school

districts to recommend to the state board instructional materials for its adoption, as specified.

(2) Existing law requires the Curriculum Development and Supplemental Materials Commission to recommend curriculum frameworks for adoption by the state board, develop criteria for evaluating instructional materials, study and evaluate instructional materials submitted for adoption, recommend to the state board instructional materials that it approves for adoption, and review specified educational films or video recordings. Existing law requires the state board to give the commission a public hearing before making any adoption of instructional materials for use in elementary schools.

This bill would delete the requirement that the commission study and evaluate instructional materials, recommend instructional materials, and review specified educational films or video recordings. The bill would require the commission to perform additional prescribed functions. The bill would instead require the state board to hold a public hearing before adopting instructional materials for use in elementary schools.

~~Existing law requires the Superintendent of Public Instruction to review tests that assess the English language development of pupils whose primary language is a language other than English. Existing law requires the tests or series of tests to meet specified requirements, including, but not limited to, a requirement that the test or series of tests be aligned with the standards for English language development adopted by the State Board of Education pursuant to specified law.~~

~~This bill would require that the test or series of tests be aligned with the standards for English language development adopted by the state board pursuant to specified law, and revised thereafter.~~

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 60200 of the Education Code is amended*
- 2 *to read:*
- 3 60200. The state board shall adopt basic instructional materials
- 4 for use in kindergarten and grades 1 to 8, inclusive, for governing
- 5 boards, subject to the following provisions:

1 (a) The state board shall adopt at least five basic instructional
2 materials for all applicable grade levels in each of the following
3 ~~categories~~ *subject areas*:

4 (1) Language arts, including, but not limited to, spelling and
5 reading. ~~However, the~~ *The* state board may not adopt basic
6 instructional materials in this ~~category~~ *subject area* or the ~~category~~
7 *subject area* specified by paragraph (2) in the year succeeding the
8 year in which the state board adopts basic instructional materials
9 in this ~~category~~ *subject area* for the same grade level.

10 (2) Mathematics. ~~However, the~~ *The* state board may not adopt
11 basic instructional materials in this ~~category~~ *subject area* or the
12 ~~category~~ *subject area* specified by paragraph (1) in the year
13 succeeding the year in which the state board adopts basic
14 instructional materials in this ~~category~~ *subject area* for the same
15 grade level.

16 (3) Science.

17 (4) Social science.

18 (5) Bilingual or bicultural subjects.

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

22 (b) The state board shall adopt procedures for the submission
23 of basic instructional materials *and for the review of submitted*
24 *instructional materials by the Superintendent and school districts*
25 in order to comply with each of the following:

26 (1) ~~Instructional materials may be submitted for adoption~~ *The*
27 *Superintendent shall, and school districts may, submit instructional*
28 *materials for review* in any of the subject areas pursuant to
29 paragraphs (1) to ~~(5)~~ (6), inclusive, of subdivision (a) ~~not less than~~
30 ~~two times every six years and in any of the subject areas pursuant~~
31 ~~to paragraph (6) of subdivision (a) not less than two times every~~
32 eight years. The state board shall ensure that curriculum
33 frameworks are reviewed and adopted in each subject area
34 ~~consistent with the six- and eight-year submission cycles~~ and that
35 the criteria for evaluating instructional materials developed
36 pursuant to subdivision (b) of Section 60204 are consistent with
37 subdivision ~~(e)~~ (d). The state board may prescribe reasonable
38 conditions to restrict the resubmission of materials that have been
39 previously rejected if those resubmitted materials have no
40 substantive changes.

1 (2) *If a publisher or manufacturer submits an instructional*
2 *material for review to the Superintendent after the timeframe*
3 *specified by the state board, the department shall assess a fee on*
4 *the submitting publisher or manufacturer in an amount that shall*
5 *not exceed the reasonable costs to the department to conduct a*
6 *review of the instructional material pursuant to this section.*

7 ~~(2) Submitted instructional~~

8 (3) *Instructional materials recommended by the Superintendent*
9 *or a school district for adoption by the state board shall be adopted*
10 *or rejected within six months of the submission date of the*
11 *materials pursuant to paragraph (1) date the materials are*
12 *recommended by the Superintendent or a school district, unless*
13 *the state board determines that a longer period of time, not to*
14 *exceed an additional three months, is necessary due to the estimated*
15 *volume or complexity of the materials for that subject in that year,*
16 *or due to other circumstances beyond the reasonable control of the*
17 *state board.*

18 (4) *Instructional materials submitted by school districts may be*
19 *developed by either a district or by publishers or manufacturers*
20 *of instructional materials. Publishers or manufacturers of*
21 *instructional materials may submit instructional materials to either*
22 *a school district or to the Superintendent.*

23 (5) *The process for review of instructional materials shall*
24 *involve review committees, which shall include, but not be limited*
25 *to, volunteer content experts and instructional material reviewers,*
26 *and shall be composed of a majority of classroom teachers from*
27 *a wide variety of affected grade levels and subject areas.*

28 (6) *The rules and procedures for adoption of instructional*
29 *materials shall be transparent and consistently applicable*
30 *regardless of the format of the instructional materials, which may*
31 *include, but not be limited to, print, digital, and open-source*
32 *instructional materials.*

33 (c) (1) *The Superintendent and school districts may recommend*
34 *to the state board instructional materials for its adoption and use*
35 *in kindergarten and grades 1 to 8, inclusive.*

36 (2) *The Superintendent or a school district may recommend*
37 *only instructional materials that meet the criteria specified in*
38 *paragraphs (1) to (5), inclusive, of subdivision (d) and any other*
39 *criteria that the state board may establish as necessary to*

1 *accomplish the intent of Section 7.5 of Article IX of the California*
2 *Constitution.*

3 *(3) When the Superintendent and school districts recommend*
4 *instructional materials to the state board, they shall include reports*
5 *of findings that include information regarding alignment of*
6 *standards, program organization, pupil assessments, teacher*
7 *support, and support for English learners and pupils with*
8 *disabilities.*

9 *(4) The governing board of a school district choosing to*
10 *recommend instructional materials to the state board shall ensure*
11 *that a majority of a review committee convened by the school*
12 *district for the purpose of selecting the instructional materials is*
13 *composed of classroom teachers who are assigned to teach the*
14 *grade in which the instructional materials are to be used.*

15 *(e)*

16 *(d) In reviewing and adopting or recommending for adoption*
17 *submitted basic instructional materials, the state board shall use*
18 *the following criteria, and ensure that, in its judgment, the*
19 *submitted basic instructional materials meet all of the following*
20 *criteria:*

21 *(1) Are consistent with the criteria and the standards of quality*
22 *prescribed in the state board's adopted curriculum framework. In*
23 *making this determination, the state board shall consider both the*
24 *framework and the submitted instructional materials as a whole.*

25 *(2) Comply with the requirements of Sections 60040, 60041,*
26 *60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the state*
27 *board's guidelines for social content.*

28 *(3) Are factually accurate and incorporate principles of*
29 *instruction reflective of current and confirmed research.*

30 ~~*(4) Adequately cover the subject area for*~~ *Are aligned to the*
31 *content standards adopted by the state board in the subject area*
32 *and the grade level or levels for which they are submitted.*

33 *(5) Do not contain materials, including illustrations, that provide*
34 *unnecessary exposure to a commercial brand name, product, or*
35 *corporate or company logo. Materials, including illustrations, that*
36 *contain a commercial brand name, product, or corporate or*
37 *company logo may not be used unless the state board determines*
38 *that the use of the commercial brand name, product, or corporate*
39 *or company logo is appropriate based on one of the following*
40 *specific findings:*

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

5 (B) If an illustration, the appearance of a commercial brand
6 name, product, or corporate or company logo in an illustration in
7 instructional materials is incidental to the general nature of the
8 illustration.

9 (6) Meet other criteria as are established by the state board as
10 being necessary to accomplish the intent of Section 7.5 of Article
11 IX of the California Constitution and of Section 1 of Chapter 1181
12 of the Statutes of 1989, provided that the criteria are approved by
13 resolution at the time the resolution adopting the framework for
14 the current adoption is approved, or at least 30 months ~~prior to~~
15 *before* the date that the materials are to be approved for adoption.

16 ~~(d)~~

17 (e) If basic instructional materials are rejected, the state board
18 shall provide a specific, written explanation of the reasons why
19 the submitted materials were not adopted, based upon one or more
20 of the criteria established under subdivision ~~(e)~~ (d). In providing
21 this explanation, the state board may use, in whole or in part,
22 materials written by the ~~commission~~ *Superintendent, school*
23 *districts*, or any other advisers to the state board.

24 ~~(e)~~

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

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

29 (2) The state board specifically finds that fewer than five basic
30 instructional materials meet the criteria prescribed by paragraphs
31 (1) to (5), inclusive, of subdivision ~~(e)~~ (d), or the materials fail to
32 meet the state board's adopted curriculum framework. If the state
33 board adopts fewer than five basic instructional materials in any
34 subject for any grade level, the state board shall conduct a review
35 of the degree to which the criteria and procedures used to evaluate
36 the submitted materials for that adoption were consistent with the
37 state board's adopted curriculum framework.

38 ~~(f)~~

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

1 ~~(g)~~

2 ~~(h)~~ If a ~~district board~~ *the governing board of a school district*
3 establishes to the satisfaction of the state board that the
4 state-adopted instructional materials do not promote the maximum
5 efficiency of pupil learning in the *school* district, the state board
6 shall authorize that ~~district~~ *governing board of the school district*
7 to use its instructional materials allowances to purchase materials
8 as specified by the state board, in accordance with standards and
9 procedures established by the state board.

10 ~~(h)~~

11 ~~(i)~~ Consistent with the quality criteria for the state board's
12 adopted curriculum framework, the state board shall prescribe
13 procedures to provide the most open and flexible materials
14 submission system and ensure that the adopted materials in each
15 subject, taken as a whole, provide for the educational needs of the
16 diverse pupil populations in the public schools, provide collections
17 of instructional materials that illustrate diverse points of view,
18 represent cultural pluralism, and provide a broad spectrum of
19 knowledge, information, and technology-based materials to meet
20 the goals of the program and the needs of pupils.

21 ~~(i)~~

22 ~~(j)~~ Upon making an adoption, the state board shall make
23 available to listed publishers and manufacturers and all school
24 interests a listing of instructional materials, including the most
25 current unit cost of those materials as computed pursuant to existing
26 law. Items placed upon lists shall remain thereon, and be available
27 for procurement through the state's systems of financing, from the
28 date of the adoption of the item and until a date established by the
29 state board. The date established by the *state* board for continuing
30 items on that list shall be the date on which the state board adopts
31 instructional materials based upon a new or revised curriculum
32 framework. Lists of adopted *instructional* materials shall be made
33 available by subject and grade level *to school districts and posted*
34 *on the department's Internet Web site, and shall include*
35 *information from the reports of findings pursuant to paragraph*
36 *(3) of subdivision (c)*. The lists shall terminate and shall no longer
37 be effective on the date prescribed by the state board pursuant to
38 this subdivision.

39 ~~(j)~~

1 (k) The state board may approve multiple lists of instructional
 2 materials, without designating a grade or subject, and the state
 3 board may designate more than one grade or subject whenever it
 4 determines that a single subject designation or a single grade
 5 designation would not promote the maximum efficiency of pupil
 6 learning. Any materials so designated may be placed on single
 7 grade or single subject lists, or multigrade or interdisciplinary lists,
 8 or may be placed on separate lists including other materials with
 9 similar grade or subject designations.

10 ~~(k)~~

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

13 ~~(l)~~

14 (m) The lists maintained pursuant to this section shall not be
 15 deemed to control the use period by any school district.

16 ~~(m)~~

17 (n) The state board shall give publishers the opportunity to
 18 modify instructional materials, in a manner provided for in
 19 regulations adopted by the state board, if the state board finds that
 20 the instructional materials do not comply with paragraph (5) of
 21 subdivision ~~(e)~~ (d).

22 ~~(n)~~

23 (o) This section does not prohibit the publisher of instructional
 24 materials from including whatever corporate name or logo on the
 25 instructional materials that is necessary to provide basic
 26 information about the publisher, to protect its copyright, or to
 27 identify third-party sources of content.

28 ~~(o)~~

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

31 ~~(p)~~

32 (q) The Superintendent shall develop, and the state board shall
 33 adopt, guidelines to implement this section.

34 *SEC. 2. Section 60203 of the Education Code is amended to*
 35 *read:*

36 60203. The state board shall ~~give the commission~~ *hold* a public
 37 hearing before ~~making any adoption of~~ *adopting* instructional
 38 materials for use in the elementary schools of the state.

39 *SEC. 3. Section 60204 of the Education Code is amended to*
 40 *read:*

1 60204. The commission *established pursuant to Section 33530*
2 *shall do all of the following:*

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

4 (b) Develop criteria for evaluating instructional materials
5 submitted for adoption so that the materials adopted shall
6 adequately cover the subjects in the indicated grade or grades and
7 comply with the provisions of Article 3 (commencing with Section
8 60040) of Chapter 1. The criteria developed by the commission
9 shall be consistent with the duties of the state board pursuant to
10 Section 60200. The criteria shall be public information and shall
11 be provided in written or printed form to any person requesting
12 ~~such~~ *that* information.

13 ~~(c) Study and evaluate instructional materials submitted for~~
14 ~~adoption.~~

15 ~~(d) Recommend to the state board instructional materials that~~
16 ~~it approves for adoption.~~

17 ~~(e) Review and have the authority to adopt the educational films~~
18 ~~or video recordings produced in accordance with Article 3~~
19 ~~(commencing with Section 52740) of Chapter 11 of Part 28.~~

20 (c) *Review reports of findings made by the Superintendent or*
21 *by school districts pursuant to paragraph (3) of subdivision (c) of*
22 *Section 60200, at the request of the state board, and review*
23 *instructional materials, as necessary.*

24 (d) *Hear appeals at the request of the state board.*

25 (e) *Give independent advice to the state board about whether*
26 *instructional materials meet the evaluation criteria developed*
27 *pursuant to subdivision (b).*

28 (f) Recommend to the state board policies and activities to assist
29 the department and school districts in the use of the curriculum
30 framework and other available model curriculum materials for the
31 purpose of guiding and strengthening the quality of instruction in
32 the public schools.

33 ~~SECTION 1. Section 60810 of the Education Code is amended~~
34 ~~to read:~~

35 ~~60810. (a) (1) The Superintendent shall review existing tests~~
36 ~~that assess the English language development of pupils whose~~
37 ~~primary language is a language other than English. The tests shall~~
38 ~~include, but not be limited to, an assessment of achievement of~~
39 ~~these pupils in English reading, speaking, and written skills. The~~
40 ~~Superintendent shall determine which tests, if any, meet the~~

1 requirements of subdivisions (b) and (c). If any existing test or
2 series of tests meets these criteria, the Superintendent, with
3 approval of the state board, shall report to the Legislature on its
4 findings and recommendations.

5 (2) If no suitable test exists, the Superintendent shall explore
6 the option of a collaborative effort with other states to develop a
7 test or series of tests and share test development costs. If no suitable
8 test exists, the Superintendent, with approval of the state board,
9 may contract to develop a test or series of tests that meets the
10 criteria of subdivisions (b) and (c) or may contract to modify an
11 existing test or series of tests so that it will meet the requirements
12 of subdivisions (b) and (c).

13 (3) The Superintendent and the state board shall release a request
14 for proposals for the development of the test or series of tests
15 required by this subdivision. The state board shall select a
16 contractor or contractors for the development of the test or series
17 of tests required by this subdivision, to be available for
18 administration during the 2000-01 school year.

19 (4) The Superintendent shall apportion funds appropriated to
20 enable school districts to meet the requirements of subdivision (d).
21 The state board shall establish the amount of funding to be
22 apportioned per test administered, based on a review of the cost
23 per test.

24 (5) An adjustment to the amount of funding to be apportioned
25 per test is not valid without the approval of the Director of Finance.
26 A request for approval of an adjustment to the amount of funding
27 to be apportioned per test shall be submitted in writing to the
28 Director of Finance and the chairpersons of the fiscal committees
29 of both houses of the Legislature with accompanying material
30 justifying the proposed adjustment. The Director of Finance is
31 authorized to approve only those adjustments related to activities
32 required by statute. The Director of Finance shall approve or
33 disapprove the amount within 30 days of receipt of the request and
34 shall notify the chairpersons of the fiscal committees of both houses
35 of the Legislature of the decision.

36 (b) (1) The test or series of tests developed or acquired pursuant
37 to subdivision (a) shall have sufficient range to assess pupils in
38 grades 2 to 12, inclusive, in English listening, speaking, reading,
39 and writing skills. Pupils in kindergarten and grade 1 shall be
40 assessed in English listening and speaking, and, once an assessment

1 is developed, early literacy skills. The early literacy assessment
2 shall be administered for a period of three years beginning after
3 the initial administration of the assessment or until July 1, 2012,
4 whichever occurs first. Six months after the results of the last
5 administered assessment are collected, but no later than January
6 1, 2013, the department shall report to the Legislature on the
7 administration of the kindergarten and grade 1 early literacy
8 assessment results, as well as on the administrative process, in
9 order to determine whether reauthorization of the early literacy
10 assessment is appropriate.

11 (2) In the development and administration of the assessment
12 for pupils in kindergarten and grade 1, the department shall
13 minimize any additional assessment time, to the extent possible.
14 To the extent that it is technically possible, items that are used to
15 assess listening and speaking shall be used to measure early literacy
16 skills. The department shall ensure that the test and procedures for
17 its administration are age and developmentally appropriate. Age
18 and developmentally appropriate procedures for administration
19 may include, but are not limited to, one-on-one administration, a
20 small group setting, and orally responding or circling a response
21 to a question.

22 (e) The test or series of tests shall meet all of the following
23 requirements:

24 (1) Provide sufficient information about pupils at each grade
25 level to determine levels of proficiency ranging from no English
26 proficiency to fluent English proficiency with at least two
27 intermediate levels.

28 (2) Have psychometric properties of reliability and validity
29 deemed adequate by technical experts.

30 (3) Be capable of administration to pupils with any primary
31 language other than English.

32 (4) Be capable of administration by classroom teachers.

33 (5) Yield scores that allow comparison of the growth of a pupil
34 over time, can be tied to readiness for various instructional options,
35 and can be aggregated for use in the evaluation of program
36 effectiveness.

37 (6) Not discriminate on the basis of race, ethnicity, or gender.

38 (7) Be aligned with the standards for English language
39 development adopted by the state board pursuant to Section 60811,
40 and revised thereafter.

- 1 ~~(8) Be age and developmentally appropriate for pupils.~~
- 2 ~~(d) The test shall be used for the following purposes:~~
- 3 ~~(1) To identify pupils who are limited English proficient.~~
- 4 ~~(2) To determine the level of English language proficiency of~~
- 5 ~~pupils who are limited English proficient.~~
- 6 ~~(3) To assess the progress of limited English proficient pupils~~
- 7 ~~in acquiring the skills of listening, reading, speaking, and writing~~
- 8 ~~in English.~~