

AMENDED IN ASSEMBLY JUNE 20, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE APRIL 11, 2012

SENATE BILL

No. 1154

**Introduced by Senator Walters
(Coauthors: Senators Alquist and Lowenthal)**

February 21, 2012

An act to add Section 60064 to the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 1154, as amended, Walters. Instructional materials: digital format.

Existing law requires the State Board of Education to adopt at least 5 basic instructional materials in specified subject areas for use in kindergarten and grades 1 to 8, inclusive, for district boards, as defined. Existing law also requires the governing board of each school district maintaining one or more high schools to adopt instructional materials that meet specified criteria for use in the high schools under its control. Existing law prohibits the state board from adopting instructional materials until the 2015–16 school year.

Existing law requires a publisher or manufacturer of instructional materials to provide to the state, at no cost, computer files or other electronic versions of each state-adopted literary title and the right to transcribe, reproduce, modify, and distribute the material in braille, large print if the publisher does not offer a large print edition, recordings, American Sign Language videos for the deaf, or other specialized accessible media exclusively for use by pupils with visual or other disabilities that prevent use of standard instructional materials.

This bill would require a publisher or manufacturer submitting a printed instructional material ~~or supplemental instructional material~~ for adoption by the state board or the governing board of a school district to, among other things, offer the instructional material ~~or supplemental instructional material~~ in both printed and *an equivalent digital format at a lower cost than the cost of the purchased printed format*, and ~~would require a publisher or manufacturer of printed supplemental instructional materials approved by the state board or the governing board of a school district to, among other things, offer the supplemental instructional materials in an equivalent digital format at a lower cost than the cost of the purchased printed format. The bill would, if the publisher or manufacturer cannot obtain copyright due to a 3rd-party contract conflict, authorize an equivalent digital format to be substituted with comparable digital materials, as specified. The bill also would require a publisher or manufacturer to provide offer to a school district;~~ ~~at no cost,~~ an equivalent digital format of ~~a textbook instructional material~~ that was purchased in a printed format, which may be used to create a districtwide online digital database for classroom use ~~if the school district implements a system of online security to ensure the protection of copyright-protected material, as specified.~~ The bill would further require that the instructional material or supplemental instructional material be available in both printed and digital formats for the duration of the adoption. The bill would exempt from these requirements small publishers and small manufacturers of instructional materials, as defined, and would specify that these provisions be implemented in accordance with specified provisions suspending the adoption of instructional materials by the state board.

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

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

- 1 **SECTION 1.** *Section 60064 is added to the Education Code,*
- 2 *to read:*
- 3 60064. (a) *A publisher or manufacturer submitting a printed*
- 4 *instructional material for adoption by the state board or the*
- 5 *governing board of a school district shall offer the instructional*
- 6 *material in an equivalent digital format, at a lower cost than the*
- 7 *cost of the purchased printed format.*

1 (b) A publisher or manufacturer of printed supplemental
2 instructional materials approved by the state board or the
3 governing board of a school district shall offer the printed
4 supplemental instructional materials in an equivalent digital
5 format, at a lower cost than the cost of the purchased printed
6 format.

7 (c) For purposes of this section, if a publisher or manufacturer
8 cannot obtain copyright due to a third-party contract conflict, an
9 equivalent digital format may be substituted with comparable
10 digital material when adopting instructional materials as follows:

11 (1) For kindergarten to grade 8, inclusive, the state board may
12 review and approve substitutions to ensure alignment with the
13 pertinent state subject matter content standards.

14 (2) For grades 9 to 12, inclusive, the governing board of a
15 school district may review and approve substitutions to ensure
16 alignment with the pertinent state subject matter content standards.

17 (d) Instructional material or supplemental instructional
18 materials shall be offered by a publisher or manufacturer as
19 unbundled elements to enable the digital material or printed
20 material to be purchased separately from other components.

21 (e) A publisher or manufacturer that submits printed
22 instructional material for adoption or approval by the state board
23 or the governing board of a school district shall offer the school
24 district an equivalent digital format of the instructional material
25 that was purchased in print format which may be used by the school
26 district to create a districtwide online digital database for
27 classroom use.

28 (1) A school district shall not be prevented from entering into
29 an agreement to create a districtwide online digital database with
30 the publisher of the instructional materials, or a third party
31 approved by the publisher, for classroom or individual pupil use
32 if the school district implements an online security system that is
33 mutually agreed on by the publisher and the school district.

34 (2) A purchase agreement entered into pursuant to paragraph
35 (1) may include, but is not limited to, a description of reasonable
36 security measures that may include, but are not limited to, the use
37 of a login identification and password to protect and control access
38 to online material and a description of any licensing agreements
39 for access to online material, if applicable.

1 (f) *The instructional material or supplemental instructional*
 2 *material shall be available in both printed and digital formats for*
 3 *the duration of the adoption.*

4 (g) (1) *The requirements of this section shall not apply to a*
 5 *small publisher or small manufacturer of instructional materials.*

6 (2) *For purposes of this subdivision, “small publisher” and*
 7 *“small manufacturer” mean an independently owned or operated*
 8 *publisher or manufacturer that, together with its affiliates, has*
 9 *100 or fewer employees and average annual gross receipts of ten*
 10 *million dollars (\$10,000,000) or less over the previous three years.*

11 (h) *This section does not authorize the use of instructional*
 12 *materials that would constitute an infringement of copyright under*
 13 *the federal Copyright Revision Act of 1976, as amended (17 U.S.C.*
 14 *Sec. 101 et seq.).*

15 (i) *This section shall be implemented in accordance with the*
 16 *suspension of the instructional material adoption process pursuant*
 17 *to Section 60200.7.*

18 (j) *This section does not require a publisher or manufacturer*
 19 *that submits an instructional material in digital format only for*
 20 *adoption by the state board or the governing board of a school*
 21 *district to offer or submit an equivalent print version of the*
 22 *instructional material in digital format.*

23 ~~SECTION 1. Section 60064 is added to the Education Code,~~
 24 ~~to read:~~

25 ~~60064. (a) A publisher or manufacturer submitting a printed~~
 26 ~~instructional material or supplemental instructional material for~~
 27 ~~approval or adoption by the state board or the governing board of~~
 28 ~~a school district shall do all of the following:~~

29 ~~(1) Offer the instructional material or supplemental instructional~~
 30 ~~material in both a printed and an equivalent digital format.~~

31 ~~(2) Offer the digital instructional material or supplemental~~
 32 ~~instructional material as unbundled elements, to enable the digital~~
 33 ~~material to be purchased in sections or components.~~

34 ~~(3) Provide to a school district, at no cost, an equivalent digital~~
 35 ~~format of a textbook that was purchased in a printed format, which~~
 36 ~~may be used to create a districtwide online digital database for~~
 37 ~~classroom use if the school district implements a system of online~~
 38 ~~security to ensure the protection of copyright-protected material.~~

1 ~~(b) The instructional material or supplemental instructional~~
2 ~~material shall be available in both printed and digital formats for~~
3 ~~the duration of the adoption.~~

4 ~~(c) (1) The requirements of this section shall not apply to a~~
5 ~~small publisher or small manufacturer of instructional materials.~~

6 ~~(2) For purposes of this subdivision, “small publisher” and~~
7 ~~“small manufacturer” mean an independently owned or operated~~
8 ~~publisher or manufacturer, that, together with its affiliates, has 100~~
9 ~~or fewer employees and average annual gross receipts of ten million~~
10 ~~dollars (\$10,000,000) or less over the previous three years.~~

11 ~~(d) This section does not authorize the use of instructional~~
12 ~~materials that would constitute an infringement of copyright under~~
13 ~~the federal Copyright Revision Act of 1976, as amended (17 U.S.C.~~
14 ~~Sec. 101 et seq.).~~

15 ~~(e) This section shall be implemented in accordance with the~~
16 ~~suspension of the textbook adoption process pursuant to Section~~
17 ~~60200.7.~~