

Assembly Bill No. 575

Passed the Assembly August 31, 2016

Chief Clerk of the Assembly

Passed the Senate August 18, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 60200 of, and to add and repeal Section 60227 of, the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 575, O'Donnell. Instructional materials: followup adoptions.

Existing law requires the State Board of Education to adopt instructional materials for kindergarten and grades 1 to 8, inclusive, and to adopt procedures for the submission of instructional materials, and provides that instructional materials may be submitted for adoption in specified subject areas every 8 years.

This bill would instead provide that instructional materials may be submitted for adoption at least once but no more than twice every 8 years. The bill, until January 1, 2024, would require the State Department of Education, before conducting a followup adoption, as defined, in a given subject area to post a notice on the department's Internet Web site and notify all publishers or manufacturers known to produce basic instructional materials in that subject area that each publisher and manufacturer choosing to participate in the followup adoption shall be assessed a fee, as specified.

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

SECTION 1. Section 60200 of the Education Code is amended to read:

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

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

(1) Language arts, including, but not limited to, spelling, reading, and English language development. The state board may not adopt basic instructional materials in this subject area or the subject area specified by paragraph (2) in the year succeeding the year in which

the state board adopts basic instructional materials in this subject area for the same grade level.

(2) Mathematics. The state board may not adopt basic instructional materials in this subject area or the subject area specified by paragraph (1) in the year succeeding the year in which the state board adopts basic instructional materials in this subject area for the same grade level.

(3) Science.

(4) Social science.

(5) Bilingual or bicultural subjects.

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

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

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to paragraphs (1) to (6), inclusive, of subdivision (a) at least once but not more than twice every eight years. The state board shall ensure that curriculum frameworks are reviewed and adopted in each subject area and that the criteria for evaluating instructional materials developed pursuant to subdivision (b) of Section 60204 are consistent with subdivision (c). The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

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

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

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

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

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

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

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

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

(4) Are aligned to the content standards adopted by the state board in the subject area and the grade level or levels for which they are submitted.

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

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

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

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

(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based on one or more of the criteria established under subdivision (c). In providing this explanation, the state board may use, in whole or in part, materials written by the Superintendent or any other advisers to the state board.

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

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

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

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

(g) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view,

represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(h) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, from the date of the adoption of the item and until a date established by the state board. The date established by the state board for continuing items on that list shall be the date on which the state board adopts instructional materials based on a new or revised curriculum framework. Lists of adopted instructional materials shall be made available by subject and grade level to school districts and posted on the department's Internet Web site, and shall include information from the reports of findings from the review committees pursuant to paragraph (4) of subdivision (b). The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

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

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

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

(l) The state board shall give publishers the opportunity to modify instructional materials, in a manner provided for in regulations adopted by the state board, if the state board finds that the instructional materials do not comply with paragraph (5) of subdivision (c).

(m) This section does not prohibit the publisher of instructional materials from including whatever corporate name or logo on the

instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third-party sources of content.

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

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

SEC. 2. Section 60227 is added to the Education Code, to read:

60227. (a) For purposes of this section, a followup adoption is any adoption other than the primary adoption that occurs within the eight-year cycle established pursuant to subdivision (b) of Section 60200.

(b) Before conducting a followup adoption in a given subject area, the department shall post an appropriate notice on the department's Internet Web site pursuant to subdivision (c) and notify all publishers or manufacturers known to produce basic instructional materials in that subject area.

(c) The notice shall specify that each publisher or manufacturer choosing to participate in the followup adoption shall be assessed a fee based on the number of programs the publisher or manufacturer indicates will be submitted for review and the number of grade levels proposed to be covered by each program.

(d) The fee shall offset the cost of conducting the followup adoption process and shall reflect the department's best estimate of the cost. The department shall take reasonable steps to limit costs of the followup adoption and to keep the fee modest, recognizing that some of the work necessary for the primary adoption need not be duplicated.

(e) The department, before incurring substantial costs for the followup adoption, shall require that a publisher or manufacturer who wishes to participate in the followup adoption first declare the intent to submit one or more specific programs for the followup adoption and specify the specific grade levels to be covered by each program. After a publisher or manufacturer has declared the intent to submit one or more programs and the grade levels to be covered by each program, the department shall assess a fee. The fee shall be payable by the publisher or manufacturer even if the publisher or manufacturer subsequently chooses to withdraw a program or reduce the number of grade levels covered. A submission by a publisher or manufacturer shall not be reviewed

for purposes of adoption, either in a followup adoption or in any other primary or followup adoption conducted thereafter, until the fee assessed has been paid in full.

(f) (1) It is the intent of the Legislature that the fee not be so substantial that it prevents small publishers or manufacturers from participating in a followup adoption.

(2) Upon the request of a small publisher or manufacturer, the state board may reduce the fee for participation in the followup adoption.

(3) For purposes of this section, “small publisher” and “small manufacturer” mean an independently owned or operated publisher or manufacturer who is not dominant in its field of operation, and who, together with its affiliates, has 100 or fewer employees, and has average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years.

(g) Revenue derived from fees charged pursuant to subdivision (e) shall be budgeted as reimbursements and subject to review through the annual budget process and may be used to pay costs associated with any adoption and any costs associated with the review of instructional materials.

(h) If the department determines that there is little or no interest by publishers and manufacturers in participating in a followup adoption, the department shall recommend to the state board that the followup adoption not be conducted and the state board may choose not to conduct the followup adoption.

(i) General fund revenue shall not be used for the cost of conducting a followup adoption pursuant to this section.

(j) This section shall remain in effect only until January 1, 2024, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2024, deletes or extends that date.

Approved _____, 2016

Governor