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AMENDED IN ASSEMBLY MAY 6, 2009

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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, 60061, 60200,~~ 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)~~

~~(1) 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.

~~(3)~~

(2) 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.

~~(4)~~

(3) 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.

~~(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.~~

(6)

(4) 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. Local governing boards also would be authorized to use the funding to purchase state adopted textbooks or basic instructional materials in an electronic format, if they can ensure that each pupil will be provided with a copy of the instructional materials to use at school and at home, as specified.

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

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

SECTION 1. ~~Section 60005 of the Education Code is amended to read:~~

60005. (a) ~~The Legislature finds and declares that it is in the public interest for the State Board of Education to adopt policies and procedures concerning the development of curriculum frameworks and the adoption of instructional materials only after public notice, comment by the public, and review by the Office of Administrative Law and for these policies and procedures to be published in the California Code of Regulations. Therefore, the Legislature reaffirms that the policies and procedures concerning the development of curriculum frameworks and the adoption of instructional materials shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. These policies and procedures include, but are not limited to, the following:~~

(1) ~~Board policies that define statutory terms.~~

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

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

(4) ~~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.~~

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

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

(A) ~~The content of curriculum frameworks.~~

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

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

~~SEC. 2.~~

SECTION 1. Section 60061 of the Education Code is amended to read:

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

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

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

(3) Provide any instructional materials or equipment or technology associated with the use of the instructional materials under consideration for purchase free of charge in this state to the same extent as they are provided to any state or school district in the United States.

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

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

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

(7) 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 disabilities or other disabilities that prevent use of standard instructional materials. Computer files or other electronic

1 versions of materials adopted shall be provided within 30 days of
2 request by the state as needed for the purposes described in this
3 subdivision as follows:

4 (A) Computer files or other electronic versions of literary titles
5 shall maintain the structural integrity of the standard instructional
6 materials, be compatible with commonly used braille translation
7 and speech synthesis software, and include corrections and
8 revisions as may be necessary.

9 (B) Computer files or other electronic versions of nonliterary
10 titles, including science and mathematics, shall be provided when
11 technology is available to convert those materials to a format that
12 maintains the structural integrity of the standard instructional
13 materials and is compatible with braille translation and speech
14 synthesis software.

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

20 (A) A small publisher may be exempted from the provisions of
21 this paragraph.

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

28 (b) Upon the willful failure of the publisher or manufacturer to
29 comply with the requirements of this section, the publisher or
30 manufacturer shall be liable to the governing board in the amount
31 of three times the total sum that the publisher or manufacturer was
32 paid in excess of the price required under paragraphs (1), (2), and
33 (5) of subdivision (a), and in the amount of three times the total
34 value of the instructional materials and services that the governing
35 board is entitled to receive free of charge under subdivision (a).

36 ~~SEC. 3.~~

37 *SEC. 2.* Section 60200 of the Education Code is amended to
38 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 categories:

(1) Language arts, including, but not limited to, spelling and reading. However, the state board shall not adopt basic instructional materials in this category or the category specified by paragraph

(2) in the year succeeding the year in which the state board adopts basic instructional materials in this category for the same grade level.

(2) Mathematics. However, the state board shall not adopt basic instructional materials in this category or the category specified by paragraph (1) in the year succeeding the year in which the state board adopts basic instructional materials in this category 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 hold a publicly noticed informational meeting prior to the meeting at which the state board is scheduled to adopt instructional materials recommended by the instructional materials reviewers and content review experts selected pursuant to subdivision (h) of Section 60421.

(c) 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 (5), inclusive, of subdivision (a) not less than two times every six years and in any of the subject areas pursuant to paragraph (6) of subdivision (a) not less than two times every eight years. The state board shall ensure that curriculum frameworks are reviewed and adopted in each subject area consistent with the six-year and eight-year submission cycles and that the criteria for evaluating instructional materials developed pursuant to subdivision (b) of Section 60204

1 are consistent with subdivision (d). The state board may prescribe
2 reasonable conditions to restrict the resubmission of materials that
3 previously have been rejected if those resubmitted materials have
4 no substantive changes.

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

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

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

21 (2) Comply with the requirements of Sections 60040, 60041,
22 60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the
23 guidelines of the state board for social content.

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

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

28 (5) Do not contain materials, including illustrations, that provide
29 unnecessary exposure to a commercial brand name, product, or
30 corporate or company logo. Materials, including illustrations, that
31 contain a commercial brand name, product, or corporate or
32 company logo shall not be used unless the board determines that
33 the use of the commercial brand name, product, or corporate or
34 company logo is appropriate based on one of the following specific
35 findings:

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

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

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

12 (e) If basic instructional materials are rejected, the state board
13 shall provide a specific, written explanation of the reasons why
14 the submitted materials were not adopted, based upon one or more
15 of the criteria established pursuant to subdivision (d). In providing
16 this explanation, the state board may use, in whole or in part,
17 materials written by instructional material reviewers or content
18 experts.

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

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

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

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

34 (h) If a district board establishes to the satisfaction of the state
35 board that the state-adopted instructional materials do not promote
36 the maximum efficiency of pupil learning in the district, the state
37 board shall authorize that district governing board to use its
38 instructional materials allowances to purchase materials as
39 specified by the state board, in accordance with standards and
40 procedures established by the state board.

(i) 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.

(j) 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 on the lists, and be available for procurement through the state's systems of financing, from the date of the adoption of the item until a date established by the state board or three years following the next adoption of new instructional materials based upon a new or revised curriculum framework, whichever is later. Lists of adopted materials shall be made available to school districts and posted on the department's Internet Web site by subject and grade level, and shall include information from the assessments or reports of findings and recommendations developed by the expert reviewers and evaluators of instructional materials involved in the materials review process that includes information regarding alignment of standards, program organization, pupil assessments, teacher support, and support for English language learners.

(k) 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. The 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.

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

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

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

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

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

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

17 ~~SEC. 4. Section 60204 of the Education Code is amended to~~
18 ~~read:~~

19 ~~60204. The commission shall:~~

20 ~~(a) Recommend curriculum frameworks to the state board.~~

21 ~~(b) Develop criteria for evaluating instructional materials~~
22 ~~submitted for adoption so that the materials adopted shall~~
23 ~~adequately cover the subjects in the indicated grade or grades and~~
24 ~~which comply with Article 3 (commencing with Section 60040)~~
25 ~~of Chapter 1. The criteria developed by the commission shall be~~
26 ~~consistent with the duties of the state board pursuant to Section~~
27 ~~60200. The criteria shall be public information and shall be~~
28 ~~provided in written or printed form to a person requesting that~~
29 ~~information.~~

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

35 ~~SEC. 5.~~

36 ~~SEC. 3. Section 60421 of the Education Code is amended to~~
37 ~~read:~~

38 ~~60421. (a) The department shall apportion funds appropriated~~
39 ~~for purposes of this chapter to school districts on the basis of an~~
40 ~~equal amount per pupil enrolled in kindergarten and grades 1 to~~

1 12, inclusive, in the prior year, excluding summer school, adult,
2 and regional occupational center and regional occupational
3 programs enrollment. Enrollment shall be certified by the
4 Superintendent and based on data as reported by the California
5 Basic Education Data System count. A school district in its first
6 year of operation or of expanding grade levels at a schoolsite shall
7 be eligible to receive funding pursuant to this chapter based on
8 enrollment estimates provided to the department by the school
9 district. As a condition of receipt of funding, a school district or
10 charter school in its first year of operation or of expanding grade
11 levels at a schoolsite shall provide enrollment estimates, as
12 approved by the school district governing board and the county
13 office of education in which the school district is located. These
14 estimates and associated funding shall be adjusted for actual
15 enrollment as reported by the subsequent California Basic
16 Education Data System.

17 (b) For purposes of this chapter, the term “school district” means
18 a school district or county office of education, and the term “local
19 governing board” means the governing board of a school district
20 or county board of education.

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

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

27 (e) A school district receiving funding pursuant to this chapter
28 may submit recommendations of individuals being considered to
29 serve in the review and evaluation of instructional materials
30 submitted for kindergarten and grades 1 to 8, inclusive, pursuant
31 to subdivision (f) and who meet the qualifications specified in
32 subdivision (g).

33 (f) School districts, in collaboration with teacher organizations,
34 may recommend at least one individual and up to two individuals
35 if enrollment in the district is 10,000 pupils or more, but less than
36 75,000 pupils; up to three individuals if enrollment in the district
37 is 75,000 or more pupils, but less than 500,000 pupils; and up to
38 four individuals if the enrollment in the district is 500,000 pupils
39 or more, as indicated by the most recent counts in the California
40 Basic Education Data System.

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

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

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

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

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

~~SEC. 6:~~

SEC. 4. Section 60422 of the Education Code is amended to read:

60422. (a) A local governing board shall use funding received pursuant to this chapter to ensure that each pupil is provided with a standards-aligned textbook or basic instructional materials, as adopted by the state board subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, or as adopted by the local governing board pursuant to Sections 60400 and 60411, for grades 9 to 12, inclusive. Pupils shall be 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.

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

(c) Notwithstanding any other law, a local governing board may use funding received pursuant to this chapter to purchase state adopted textbooks or basic instructional materials in an electronic format, if it can ensure that each pupil will be provided with a copy of the instructional materials to use at school and at home. However, providing access to the materials at school and at home does not require the local educational agency to purchase two sets of materials.

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

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

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

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

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