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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 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 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.

(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.

(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 *final* 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.

(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:

1 SECTION 1. Section 60061 of the Education Code is amended
2 to read:
3 60061. (a) A publisher or manufacturer shall do all of the
4 following:
5 (1) Furnish the instructional materials offered by the publisher
6 at a price in this state that, including all costs of transportation to
7 that place, does not exceed the lowest price at which the publisher
8 offers those instructional materials for adoption or sale to any state
9 or school district in the United States.
10 (2) Automatically reduce the price of those instructional
11 materials to any governing board to the extent that reductions are
12 made elsewhere in the United States.
13 (3) Provide any instructional materials or equipment or
14 technology associated with the use of the instructional materials
15 under consideration for purchase free of charge in this state to the
16 same extent as they are provided to any state or school district in
17 the United States.
18 (4) Guarantee that all copies of any instructional materials sold
19 in this state are at least equal in quality to the copies of those
20 instructional materials that are sold elsewhere in the United States,

1 and are kept revised, free from all errors, and up to date as may
2 be required by the state board.

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

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

12 (7) Provide to the state, at no cost, computer files or other
13 electronic versions of each state-adopted literary title and the right
14 to transcribe, reproduce, modify, and distribute the material in
15 braille, large print if the publisher does not offer a large print
16 edition, recordings, American Sign Language videos for the deaf,
17 or other specialized accessible media exclusively for use by pupils
18 with visual disabilities or other disabilities that prevent use of
19 standard instructional materials. Computer files or other electronic
20 versions of materials adopted shall be provided within 30 days of
21 request by the state as needed for the purposes described in this
22 subdivision as follows:

23 (A) Computer files or other electronic versions of literary titles
24 shall maintain the structural integrity of the standard instructional
25 materials, be compatible with commonly used braille translation
26 and speech synthesis software, and include corrections and
27 revisions as may be necessary.

28 (B) Computer files or other electronic versions of nonliterary
29 titles, including science and mathematics, shall be provided when
30 technology is available to convert those materials to a format that
31 maintains the structural integrity of the standard instructional
32 materials and is compatible with braille translation and speech
33 synthesis software.

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

39 (A) A small publisher may be exempted from the provisions of
40 this paragraph.

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

7 (b) Upon the willful failure of the publisher or manufacturer to
8 comply with the requirements of this section, the publisher or
9 manufacturer shall be liable to the governing board in the amount
10 of three times the total sum that the publisher or manufacturer was
11 paid in excess of the price required under paragraphs (1), (2), and
12 (5) of subdivision (a), and in the amount of three times the total
13 value of the instructional materials and services that the governing
14 board is entitled to receive free of charge under subdivision (a).

15 SEC. 2. Section 60200 of the Education Code is amended to
16 read:

17 60200. The state board shall adopt basic instructional materials
18 for use in kindergarten and grades 1 to 8, inclusive, for governing
19 boards, subject to the following provisions:

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

23 (1) Language arts, including, but not limited to, spelling and
24 reading. However, the state board shall not adopt basic instructional
25 materials in this category or the category specified by paragraph
26 (2) in the year succeeding the year in which the state board adopts
27 basic instructional materials in this category for the same grade
28 level.

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

34 (3) Science.

35 (4) Social science.

36 (5) Bilingual or bicultural subjects.

37 (6) Any other subject, discipline, or interdisciplinary areas for
38 which the state board determines the adoption of instructional
39 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 are consistent with subdivision (d). The state board may prescribe reasonable conditions to restrict the resubmission of materials that previously have been rejected if those resubmitted materials have no substantive changes.

(2) 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.

(d) 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 curriculum framework adopted by the state board. 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 guidelines of the state board for social content.

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

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

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

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

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

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

28 (e) If basic instructional materials are rejected, the state board
29 shall provide a specific, written explanation of the reasons why
30 the submitted materials were not adopted, based upon one or more
31 of the criteria established pursuant to subdivision (d). In providing
32 this explanation, the state board may use, in whole or in part,
33 materials written by instructional material reviewers or content
34 experts.

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

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

39 (2) The state board specifically finds that fewer than five basic
40 instructional materials meet the criteria prescribed by paragraphs

(1) to (5), inclusive, of subdivision (d), 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 a 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 curriculum framework adopted by the state board.

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

(h) If a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district governing board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and 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 *final* assessments or reports of findings and recommendations developed by the expert reviewers and evaluators

1 of instructional materials involved in the materials review process
2 that includes information regarding alignment of standards,
3 program organization, pupil assessments, teacher support, and
4 support for English language learners.

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

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

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

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

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

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

32 SEC. 3. Section 60421 of the Education Code is amended to
33 read:

34 60421. (a) The department shall apportion funds appropriated
35 for purposes of this chapter to school districts on the basis of an
36 equal amount per pupil enrolled in kindergarten and grades 1 to
37 12, inclusive, in the prior year, excluding summer school, adult,
38 and regional occupational center and regional occupational
39 programs enrollment. Enrollment shall be certified by the
40 Superintendent and based on data as reported by the California

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

13 (b) For purposes of this chapter, the term “school district” means
14 a school district or county office of education, and the term “local
15 governing board” means the governing board of a school district
16 or county board of education.

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

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

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

29 (f) School districts, in collaboration with teacher organizations,
30 may recommend at least one individual and up to two individuals.
31 ~~if enrollment in the district is 10,000 pupils or more, but less than~~
32 ~~75,000 pupils; A district may recommend~~ up to three individuals
33 if enrollment in the district is 75,000 or more pupils, but less than
34 500,000 pupils; and up to four individuals if the enrollment in the
35 district is 500,000 pupils or more, as indicated by the most recent
36 counts in the California Basic Education Data System.

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

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

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

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

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

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

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

36 (b) Once a governing board certifies compliance with
37 subdivision (a) with regard to standards-aligned instructional
38 materials in the core curriculum areas of reading/language arts,
39 mathematics, science, and history/social sciences, and if the
40 governing board of a school district has met the eligibility

1 requirements of Section 60119, the remaining funds may only be
2 used consistent with subdivision (a) of Section 60242 and pursuant
3 to Section 60242.5.

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

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

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

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

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

26 (e) The funds provided for the purchase of instructional materials
27 in Schedules 1 and 2 of Item 6110-189-0001 and paragraph 6 of
28 Item 6110-485 of Section 2.00 of the Budget Act of 2002 (Chapter
29 379 of the Statutes of 2002) shall be used for the purposes of, and
30 allocated consistent with, this chapter.