

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment** _____ **Date** 01/16/19
Correction _____ **Substitute** _____ **Bill No:** HB45

Sponsor: Rep. Sheryl Williams Stapleton **Agency Code:** 924
Short Title: INSTRUCTIONAL MATERIAL DEFINITIONS & FUNDING **Person Writing:** Daniel Manzano
Phone: 505-670-3820 **Email:** Daniel.Manzano@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
	See fiscal analysis below		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB45 eliminates the fifty percent limit districts and state supported schools may spend for instructional material not on the multiple list and replaces it with one hundred percent discretionary spending for instructional materials which may or may not be aligned with state academic standards, research-based effectiveness, cultural relevance, and other criteria. The bill would no longer require PED to adopt an approved multiple list of instructional materials that are scored and ranked. It also removes private school students from being entitled to the free use of instructional materials, terminates allocating instructional material funding to private schools, and prevents PED from paying the in-state depository on behalf of private schools for instructional materials. HB45 also proposes to change the definition of “instructional material” and replaces “forty-day” reporting to “second reporting date.”

FISCAL IMPLICATIONS

Processing fees submitted by the publishers for inclusion on the adopted multiple list entirely fund the review process of core/basal instructional materials. By removing the fifty percent spending limit, this bill would drastically reduce or eliminate entirely the production of the list by removing the incentive for publishers to be included on the multiple list, thus eliminating the source of funding that allows for the review and ranking of the basal materials. The statutory instructional material review process currently requires that vendors submit a processing fee; that material will be reviewed by level two and level three-A teachers; and that the materials are reviewed and scored for alignment with state academic content and performance standards. The state review and adoption process provides for economies of scale given that the processing fees paid by the publishers support the review and ranking; the state enters into six year agreements with publishers that locks in and guarantees the districts the lowest price in the United States; and if a publisher offers a large district free materials or professional development it must offer the same to all other districts. This type of thorough and rigorous instructional material review process would be extremely costly for individual districts to undertake without a funding source.

SIGNIFICANT ISSUES

HB45 allows districts to spend one hundred percent of instructional material allocations on instructional materials which are not included on the state adopted multiple list and which may not be aligned with New Mexico academic standards, research-based effectiveness, cultural relevance, and other high-quality indicators. School districts would no longer be required to

purchase or even reference the list of adopted materials. As a result, publishers will not need to submit materials to be included on the multiple list, and materials will not be reviewed for alignment to state standards. This creates less access to high-quality instructional materials for teachers and significantly hampers student learning. This reduction of access to high-quality instructional materials creates an equity issue for students. In *Yazzie v. The State of New Mexico*, the Court ordered the State to “take immediate steps to ensure that New Mexico schools have the resources necessary to give at-risk students the opportunity to obtain a uniform and sufficient education that prepares them for college and career.” In addition the Court declared PED “has failed to meet its supervisory and audit functions to assure that the money that is provided has been spent so as to most efficiently achieve the needs of providing at-risk students with the programs and services needed for them to obtain an adequate education.” The New Mexico Indian Education Act (“NMIEA”) 22-23A-2(A) requires “culturally relevant instructional materials for American Indian students enrolled in public schools.” As part of the PED review of instructional materials, teachers review the materials for cultural relevance. Removing the fifty percent limit for which districts can expend instructional material funding for materials not included on the adopted multiple list makes it less likely districts will provide schools and at-risk students with high-quality culturally relevant instructional materials, making them less prepared for college and career and not fulfilling the requirements of the Court in the *Yazzie* case or the NMIEA. In looking at annual reports submitted by school districts for SY17/18, the percent of expenditures for non-adopted materials compared to their allocations was 31%. In addition, the Instructional Material Bureau received two waivers (which were approved) for SY16/17, zero waivers for SY17/18, and zero waivers for SY18/19 from school districts requesting to exceed the fifty percent limit for purchasing non-adopted instructional materials. Recent revisions to instructional material rule 6.75.2.9 states “off-cycle reviews and adoptions of new instructional material may occur at any time the department deems necessary, based on educational need.” If districts want to purchase instructional material that are not included on the adopted multiple list or as new instructional materials are introduced, PED has a means to review and adopt them so that districts do not exceed the fifty percent for purchasing non-adopted materials.

HB45 impacts all school districts, but particularly medium to small-sized districts and charter schools, who lack administrative capacity to thoroughly review materials and depend on the multiple list and rankings for guidance in selecting instructional material that align with the state standards.

HB45 will cause prices for instructional materials to increase because it eliminates the state’s ability to enter into agreements with publishers whose instructional materials aligned to the state standards. Such agreements lock the prices, guaranteeing best pricing and terms for all districts and charter schools for a six year period, saving the districts from annual price increases. The agreements require the publishers to provide their materials through the book depository in Albuquerque, saving them from enormous shipping and freight costs. These agreements make free materials available by publishers to all districts and charter schools based not on the amount purchased but, rather, on the amount of teachers utilizing the materials. The agreements also require the publishers to make the core/basal adopted instructional materials available at the six New Mexico Regional Review Centers for teachers, administrators, and college of education students to review for their local adoption process. Not having these core/basal materials available at the Regional Review Centers will restrict access to aligned instructional materials for districts, charter schools, and state supported schools.

HB45 will provide limited or no curriculum options, particularly to medium and small districts. If the state does not adopt a multiple list or if there is no incentive for publishers to submit their materials for adoption on the multiple list, they will focus their time and resources in the larger districts and the medium to small districts may be disregarded and neglected. Not requiring a multiple list and agreements with publishers further negatively impacts small to medium sized districts due to their lack of purchasing and negotiating power with publishers.

HB45 removes all language referencing “private schools.” This includes removing private school students from being entitled to the free use of instructional materials, ceasing from allocating instructional material funds to private schools, and preventing PED from paying the in-state depository on behalf of private schools for instructional materials. This bill would make PED and the state non-compliant with the New Mexico Supreme Court ruling in *Moses v. Ruszkowski* which concluded the textbook loan program established by the Instructional Material Law (IML) does not violate the New Mexico Constitution and “we reinstate the provisions of the IML that allow private school students to participate in the textbook loan program.”

HB45 amends the wording in Section 2.C., page 3, lines 18-21. The bill adds “...original source material from primary sources...” and “...content resources, excluding electronic devices and hardware, that support digital learning formats and educational programs” to the definition of instructional material. The impact of adding this language is that these original source materials may not be reviewed for alignment with New Mexico State Standards, nor would they be reviewed for content. If the materials are not reviewed for alignment, students will not be guaranteed instruction that aligns with state standards. Open educational resource materials that may or may not be aligned to state standards could be accessed without restriction because open source is cost free. In addition, the use of “original source material” could be in violation with copyright law or other laws if the material is not in the public domain. The current statutory definition of instructional material includes “educational media” which broadly encompasses text, graphics, audio and visual content delivered through various means or technologies including “digital learning formats.” The approved multiple list currently includes many digital options. In order to expand digital formats to be included on the multiple list, creators and publishers of this digital content need to be encouraged by districts, administrators, and teachers to participate in the adoption process so that all districts, charters, and state supported schools may benefit. Current statute and rule allows for publishers to submit instructional material for adoption at any time and thus, as new cutting edge material is developed, it can be submitted for adoption to the multiple list through the “other adoptions” process defined in NMAC.

HB45 amends the wording in Section 2.E, page 3, line 25. The bill removes “forty-day” and replaces it with “second reporting date.” The second reporting date is “December 1 or the first working day in December.” Furthermore, districts and charters are given ten working days in which to submit their data per statute. Thus the raw data may not be available until the third week of December. Generally, it takes several weeks before the data is certified and available to input into allocation tables and that does not account for the holidays. It is unrealistic to expect the final allocation to be recomputed “no later than January 15” using the second reporting date.

PERFORMANCE IMPLICATIONS

HB45 severely impacts the review process that results in a list of instructional materials that are scored and ranked for alignment with state academic standards, cultural relevance, research-based effectiveness, and other criteria. This independent, objective, rigorous review of the

materials allows all school districts to have a clear picture of the quality of educational materials offered to districts and charters. The adopted core/basal instructional materials must score at 90% or higher for alignment with the standards and criteria. In fact, by changing the word “shall” to “may”, the bill no longer requires a multiple list of instructional materials be provided to districts and charter schools that are approved by PED. This would severely negatively impact student achievement and the ability of districts and charter schools who rely on the multiple list to identify high quality instructional materials.

In his recent research paper, “The Challenges of Curriculum Materials as a Reform Lever” (2018), Morgan Polikoff wrote, “There appears to be little reason for states not to put out lists of quality materials. These lists can drive adoption decisions and can simplify the task of adopting for schools and districts. In states where such a move would be politically feasible, they should consider incentivizing or mandating districts purchase off the state-approved list.”

Research done by David Steiner published in “Curriculum Research: What We Know and Where We Need to Go” (2017) demonstrates the implications of a state mandating curriculum: “The cumulative impact of a high-quality curriculum is significant. Most research studies focus on the impact of a curriculum over one or two years. But over time, even a small annual effect size of +0.10, beginning in first grade, could become an effect size of +0.60 by the end of fifth grade—approximately the equivalent of a student scoring in the 74th percentile versus the 50th percentile. A case in point is longitudinal research that tracks the performance of students receiving instruction from the UCSMP curricula. Students who were taught using this curriculum for four consecutive years (grades 7–10) outpaced comparison students by a margin of 38 percentile points—an effect size of roughly +1.16, which amounts to a stunning four additional years of learning (Hill et al., 2008). But although the cumulative impact on student learning over several years is perhaps the greatest determinant of a curriculum’s impact, most studies review academic progress over merely one academic year—very rarely over longer periods. We can see the difficulty. It may take years for instructors to master the shift from one curricular approach to another; the shift to a Common Core–based curriculum provides an obvious example. In the long run, however, the consistent use of the new curriculum over multiple years of a student’s education could have a major cumulative impact. The policy implications of a state or district mandating curriculum, and therefore reaping the benefits of multi-year use of a curriculum, are significant and deserve attention.”

Also, research by Thomas J. Kane in the article “Never Judge a Book by its Cover-Use Student Achievement Instead” (2016) showed the effects of selecting high quality instructional materials on student achievement. “The textbook effects were substantial, especially in math. In 4th and 5th grade math classrooms, we estimated that a standard deviation in textbook effectiveness was equivalent to .10 standard deviations in achievement at the student level. That means that if all schools could be persuaded to switch to one of the top quartile textbooks, student achievement would rise overall by roughly .127 student-level standard deviations or an average of 3.6 percentile points. Although it might sound small, such a boost in the average teacher’s effectiveness would be larger than the improvement the typical teacher experiences in their first three years on the job, as they are just learning to teach.”

According to the research by Chingos and Whitehurst in “Choosing Blindly: Instructional Materials, Teacher Effectiveness, and the Common Core (2012), “There is strong evidence that the choice of instructional materials has large effects on student learning—effects that rival in size those that are associated with differences in teacher effectiveness. For example, in a large-scale randomized comparative trial of the effectiveness of four leading elementary school

mathematics curricula (consisting of a textbook, ancillary materials, and teacher professional development), second-grade students taught using Saxon Math scored on average 0.17 standard deviations higher in mathematics than students taught using Scott Foresman-Addison Wesley Mathematics. By way of comparison, a review of 10 studies of teacher effectiveness found that a student taught by an above-average teacher—one at the 75th percentile—will learn more than the student of an average teacher by 0.08-0.11 standard deviations. A study of the impact of Teach for America (TFA) teachers on elementary school students’ achievement found that students randomly assigned to TFA teachers experienced 0.15 of a standard deviation improvement in math compared to non-TFA teachers. The TFA effect on reading scores of 0.03 standard deviations was not statistically significant from zero. The evidence suggests that choice of instructional materials can have an impact as large as or larger than the impact of teacher quality.”

The review process results in an adopted list of core/basal instructional material that is included on the multiple list and guaranteed under contract with the state. This adopted material is scored and ranked for alignment with state academic content and performance standards and other relevant criteria. Providing an adopted multiple list creates economies of scale and is critical for medium to small sized districts and charter schools who do not have equitable access to publishers, lack capacity to conduct thorough reviews, and lack leverage for obtaining competitive pricing, free materials, and professional development. The contracts between PED and the publishers require them to provide a set of all adopted core/basal materials for each of the five Regional Review Centers which allow teachers, administrators, and college of education students to access these materials for their local adoptions, curriculum, and lesson plans. It also requires all instructional materials on the multiple list to be provided through the book depository in Albuquerque, which reduces shipping and freight costs.

The following are additional reasons for maintaining the current review process:

- It helps educators by providing lists of vetted and ranked materials for specific subject areas.
- It secures economical pricing through the Favored Nation Clause, which guarantees the lowest price as contracted by any state.
- It provides accurate information about the alignment of content to core standards and objectives.
- It provides tools and resources that can be used by the local community, local educational agency, or state level.
- It provides recommendations to help educators select the very best materials for instruction. (State Instructional Materials Review Association January, 2015)

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Districts, charters, state-supported, and private schools will be guaranteed to have a list of instructional materials that are aligned with state standards, research-based, and culturally relevant, with prices guaranteed for six years. Districts and state supported schools will be limited to spending fifty percent of their allocations for instructional materials not included on the state approved multiple list. Students will have greater access to instructional materials that are aligned with state educational standards which will support student achievement. Private school students will be able to participate in the free use of instructional materials; their schools will receive instructional material allocations; and the state will be compliant with the New Mexico Supreme Court order in *Moses v. Ruskowski*.

AMENDMENTS