

<b>LFC Requester:</b>	<b>Sunny Liu</b>
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**AGENCY BILL ANALYSIS  
2017 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto: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: **Date** 02/08/17  
**Original**        **Amendment**        **Bill No:** HB42hjc  
**Correction**        **Substitute**   

**Sponsor:** Rep. Sheryl Williams Stapleton    **Agency Code:** 924  
**Short Title:** INSTRUCTIONAL MATERIAL DEFINITIONS & FUND    **Person Writing:** Matt Pahl  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	See fiscal analysis below		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis ( ) Indicate Expenditure Decreases)

## **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

**HB 42-924hjc amends the language on page 9, line 11 by changing the word “may” back to the current word in statute “shall”. It also amends the language on page 15, line 4, by changing the word “or” to “and”.**

HB42 eliminates the fifty percent limit that districts and state supported schools may spend for instructional material that are not on the multiple list and replaces it with one hundred percent discretionary spending for instructional materials that are not reviewed for alignment with state standards and benchmarks. It also proposes to change the definition of “instructional material” and replaces “forty-day” reporting to “second reporting date.” The bill would no longer require PED to adopt an approved multiple list of instructional materials that are scored and ranked.

#### **FISCAL IMPLICATIONS**

Processing fees submitted by the publishers for inclusion on the multiple list entirely fund the review process of core/basal instructional materials. By removing the fifty percent limit, this bill would eliminate the production of the list by removing the incentive for publishers to be listed on the multiple list and would eliminate the source of funding that allows for the review and ranking of the basal materials. The statutory review process currently requires vendors to 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 in that the processing fees paid by the publishers support the review and ranking; the state enters into six year agreements that guarantee the districts the lowest price; 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 review and adoption process would be extremely costly for individual districts to undertake without a funding source.

#### **SIGNIFICANT ISSUES**

**HB 42-924hjc amends the language on page 9, line 11 by changing the word “may” to the current word in statute “shall”. Currently in statute, the word “shall” is used to require participants in the summer review institute to receive a stipend. This requirement is currently in statute and is the practice of PED. It also amends the language on page 15, line 4, by changing the word “or” to “and”. By amending the bill to “and”, it would require PED to report to both the legislature and the governor concerning the administration and execution of the Instructional Material Law. This amendment includes both branches of government receiving the report rather than one or the other.**

HB42 allows districts to spend one hundred percent of instructional material allocations on instructional materials not aligned to state standards, significantly hampering student learning. This 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.

HB42 allows districts and state institutions to spend all allocated instructional material funds on material not adopted on the multiple list. 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.

HB42 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 guarantee best pricing and terms for all districts and charter schools for the six year period which lock in the prices, 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 not based on the amount purchased but, rather, by the amount of teachers utilizing the materials. The agreements also require the publishers to make the core/basal adopted instructional materials available at the five New Mexico Regional Review Centers for teachers, administrators, and college of education students to review for their local adoption. 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.

HB42 will provide limited or no curriculum options 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.

HB42 amends the wording in Section 2.C., page 3, lines 16-19. 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.

HB42 amends the wording in Section 9.B., page 10, line 16. 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**

HB42 severely impacts the review process that results in a list of instructional materials that are scored and ranked for alignment with state academic content and performance standards. Independent 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 are reviewed using Bloom’s Taxonomy and must score at 90% or higher. 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 negatively impact student achievement and the ability of districts and charter schools that rely on the multiple list to identify high quality instructional materials.

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 4<sup>th</sup> and 5<sup>th</sup> 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 increase 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, 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 and charters will be guaranteed to have a list of instructional materials that align with

state standards, are ranked, and prices are 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.

## **AMENDMENTS**

None.