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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number HB45/aHFI#1/aHFI#2 **Sponsor** Stapleton
Tracking Number .211817.1 **Committee Referrals** HJC; SEC/SJC/SFC
Short Title Instructional Material Definitions & Funding
Analyst Bedeaux **Original Date** 1/18/19
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BILL SUMMARY

Synopsis of House Floor Amendment #2

House Floor Amendment #2 to House Bill 45 (HB45/aHFI#1/aHFI#2) would allow the Public Education Department (PED) to make instructional materials available to private schools under certain conditions. First, each public school district and state institution must certify to the department that sufficient funds were made available to provide each student with instructional material for every class and each student is able to take that instructional material home. Second, PED would not be able to provide instructional material to private schools that discriminate on the basis of race, religion, color, national origin, ancestry, gender, sexual orientation, gender identity or physical or mental disability. PED would be required to promulgate rules to provide for the distribution of instructional material to private schools.

Synopsis of House Floor Amendment #1

House Floor Amendment #1 to House Bill 45 (HB45/aHFI#1) makes a technical change to the reporting date used to calculate instructional material allocations from the second reporting date to the first reporting date, which reflects current PED practice. The amendment also removes a reference to the federal No Child Left Behind Act and replaces it with a reference to the Every Student Succeeds Act.

Synopsis of Original Bill

HB45 would provide school districts with flexibility to use the entirety of their instructional material allocation on instructional material not on the department-approved multiple list. Additionally, the bill would expand the definition of instructional material to include original source material from primary sources, and electronic media and content that support digital learning formats and educational programs. HB45 would change the reporting date used for instructional material allocations from the first to the second reporting date, which would likely create timing difficulties for the Public Education Department (PED) when calculating final allocations. The bill expands the scope of instructional material allocations to cover kindergarten students but updates language to disallow instructional material allocations for private school

students. HB45 also makes minor technical and grammatical changes throughout the instructional material law.

FISCAL IMPACT

HB45/aHFI#1/aHFI#2 does not contain an appropriation.

PED would still be required to establish a review process for instructional material, but would no longer be required to publish a list of adopted materials. If PED opts to eliminate the adopted multiple list, publishers may have less financial incentive to submit materials for review. Given that the summer review institute is funded by fees publishers submit alongside materials for review, HB45/aHFI#1/aHFI#2 would likely diminish the amount of funds available to compensate summer review participants. However, it is unclear whether the new administration will continue to hold a summer review institute or whether the department will review instructional material with a new process.

Though private school students have not received an instructional material allocation since FY16, allowing allocations to private schools only after public schools are fully funded ensures the 5 to 6 percent of funds previously allocated to private school students will be distributed to public school students. Judge Singleton's order in the consolidated *Martinez* and *Yazzie* lawsuit notes instructional material allocations have been insufficient in recent years, contributing to her ruling that the state has failed to meet its constitutional obligation to provide all students with a sufficient education. HB45/aHFI#1/aHFI#2 would ensure all instructional material funds are distributed to public schools before they are distributed to private schools, demonstrating a commitment to providing public school students with a free and adequate education as required by the constitution.

SUBSTANTIVE ISSUES

HB45/aHFI#1/aHFI#2 would give school districts more flexibility to meet individualized needs of teachers and school districts by allowing the purchase of instructional material not included on PED's adopted multiple list. Under current practice, PED assembles teams of teachers to review instructional material every summer. Materials reviewed are recommended by the teacher teams for adoption as either "core basal" or "supplementary." Currently, 50 percent of a school district's instructional material allocation is reserved for materials adopted as core basal, with the other 50 percent eligible for use on materials not on the adopted list, as long as the materials are not religious, sectarian, or nonsecular. Of the 50 percent discretionary funding, up to 25 percent may be spent on classroom supplies and other materials. School districts may also submit waivers under current law to spend more than 50 percent of their allocation on materials not on the adopted list, though it is unclear how many school districts have requested this flexibility. HB45/aHFI#1/aHFI#2 would eliminate these waivers along with removing the 50 percent requirement.

The prescriptive adopted list and the 50 percent requirement limit school districts' flexibility to meet their students' needs, particularly in a budget deficit. According to a 2014 Legislative Finance Committee report, 92 percent of school districts reported insufficient funding for instructional material, forcing those districts to rely on operational funding to fully cover instructional material costs. During funding shortages, districts report they have saved unused instructional material funds to cover the costs of particularly expensive adoption cycles like English language arts. Broadening the selection of instructional material allows school districts to use instructional material funds to meet the varying experience levels of teachers and varying needs of students.

This change also aligns with Judge Singleton’s decision in the *Martinez* and *Yazzie* lawsuit by allowing school districts to seek culturally appropriate materials that are relevant for their student populations.

However, because teachers and school districts can have difficulty determining materials’ alignment to standards, adopted material lists often contain material better-aligned to content standards than school districts would select on their own. A national meta-analysis by the Brookings Institute titled *The Challenges of Curriculum Materials as a Reform Lever* explains how transparent and rigorous state-adopted material lists can relieve teachers and school districts from the burden of identifying material aligned with content standards. Particularly for less experienced teachers, the use of adopted material can ensure teachers are teaching to the correct standards and reduce the time needed to prepare lessons. The Brookings report recommends states develop an adopted list or use a list developed by a nonprofit (e.g. EdReports), and even incentivize school districts to purchase a portion of their materials from that list; however, HB45/aHFI#1/aHFI#2 would make the adopted list optional for PED.

HB45/aHFI#1/aHFI#2 would also expand the materials eligible for purchase with instructional material allocations to include original source material and electronic content and programs. Original source material includes material from primary sources, like letters, speeches, or documents that give a direct account of an event. Such materials are sometimes preferable to secondary sources, which analyze or evaluate a primary source. Additionally, while the current definition of instructional material allows the purchase of electronic media, HB45/aHFI#1/aHFI#2 would expand the definition to include electronic content and educational programs. Many publishers have begun offering online curricula and programs, which currently are not covered by the definition of instructional material and are not eligible for review and adoption by PED.

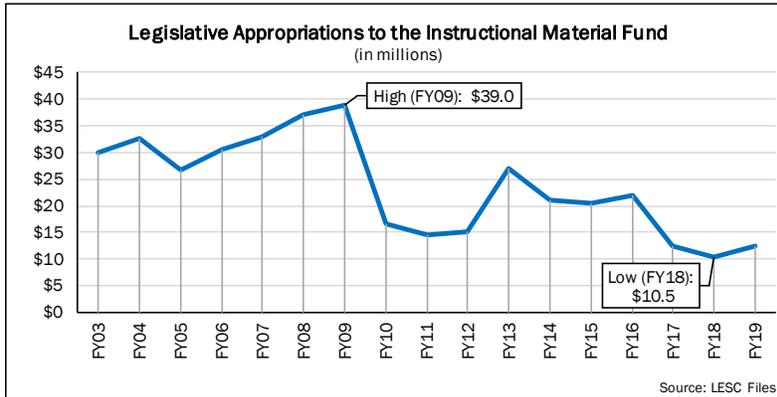
OTHER SIGNIFICANT ISSUES

Private School Allocations. In December 2018, the New Mexico Supreme Court issued a final decision in *Moses v. Ruszkowski* (formerly *Moses v. Skandera*) ruling that instructional material allocations to private schools were not unconstitutional. HB42 from the 2017 session was written based on a prior ruling in the case that ruled allocations to private school students violated the Constitution of the State of New Mexico. However, the U.S. Supreme Court remanded the original decision for reconsideration based on its ruling in a similar case, *Trinity Lutheran Church of Columbia, Inc. v. Comer*. On remand, the New Mexico Supreme Court ruled private school participation in the state’s textbook lending program was not unconstitutional.

As a matter of policy, HB45/aHFI#1/aHFI#2 would allow private schools to receive instructional materials, but the bill would only allow allocations to private schools if sufficient funding is made available to public schools and if those private schools do not engage in discriminatory practices. Subsection D of Section 22-15-9 NMSA 1978 requires that “every student have a textbook for each class that conforms to curriculum requirements and that allows students to take those textbooks home.” However, during the *Martinez* and *Yazzie* consolidated lawsuit, 11 school districts testified instructional material allocations did not allow the district to cover the cost of textbook adoptions. Judge Singleton specifically noted instructional material in her decision, finding that the funds allocated are often not enough to purchase a textbook for each child, and that school districts used operational funding to supplement their instructional material allocations.

Instructional Material Funding. Appropriations to the instructional material fund have decreased significantly since the Great Recession. In FY09, the instructional materials appropriation peaked

at \$39 million; in FY19, the Legislature appropriated \$12.5 million, an amount slightly more than a low of \$10.5 million in FY18. During a special session to address FY17 revenue shortfalls, the Legislature began appropriating instructional material funds from the public school capital outlay fund. Laws 2016 (2nd Special Session), Chapter 2 set aside \$25 million in public school capital outlay fund revenue per year until FY22 to be appropriated for transportation and instructional materials. All of the FY17 and FY18 and a portion of the FY19 instructional materials appropriations were made with public school capital outlay dollars.



Instructional Materials Appropriations by Source
(in millions)

	FY16	FY17	FY18	FY19
General Fund	\$21.9			\$8.0
PSCOF		\$12.5	\$10.5	\$4.5

Source: LESC Files

HB42 from the 2017 Legislature. In 2017, LESC endorsed, PED supported, and the Legislature unanimously passed HB42, Instructional Materials Definition & Fund. HB42 was vetoed by the governor, who noted the bill lowered standards by allowing school districts to purchase material that has not been reviewed, despite the fact that charter schools already have this option under current law. HB146 from the 2015 session, a bill identical to HB42, also passed and was vetoed in 2015. Both of the previous versions of the bill were passed under the New Mexico Supreme Court’s original ruling in the *Moses* lawsuit.

POSSIBLE QUESTIONS

Can the Legislature create balance and nuance in the instructional material law to give new teachers useful resources aligned with state content standards while giving more experienced teachers flexibility to select resources to best meet their students’ needs?

RELATED BILLS

Related to HB170, Expand Instructional Material Definition, which was endorsed by LESC and is nearly identical to HB45/aHFI#1/aHFI#2.

SOURCES OF INFORMATION

- LESC Files

TB/mc/mhg