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HOUSE BILL 170

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Sheryl Williams Stapleton

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING SECTIONS OF THE PUBLIC SCHOOL CODE TO EXPAND THE DEFINITION OF "INSTRUCTIONAL MATERIAL", REQUIRE TIMELY ALLOCATIONS AND LIMIT APPLICATION OF THE MULTIPLE LIST; ELIMINATING REFERENCES TO PRIVATE SCHOOLS IN PROVISIONS OF THE INSTRUCTIONAL MATERIAL LAW; EXPANDING STUDENT ELIGIBILITY; REPEALING THE READING MATERIALS FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-2-2.1 NMSA 1978 (being Laws 2003, Chapter 104, Section 1, as amended) is amended to read:

"22-2-2.1. ADDITIONAL DEPARTMENT DUTIES--WAIVER OF CERTAIN REQUIREMENTS.--

A. The department shall approve all reasonable requests to waive the following for all public schools that exceed educational standards as determined by the department:

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1 (1) accreditation review requirements as
2 provided in Section 22-2-2 NMSA 1978;

3 (2) the length of the school day requirement
4 as provided in Section 22-2-8.1 NMSA 1978;

5 (3) the individual class load requirement as
6 provided in Section 22-10A-20 NMSA 1978; and

7 (4) the subject area requirement as provided
8 in Section 22-13-1 NMSA 1978 [~~and~~

9 ~~(5) purchase of instructional material from~~
10 ~~the department-approved multiple list requirement as provided~~
11 ~~in Section 22-15-8 NMSA 1978].~~

12 B. Upon receiving a waiver request from a public
13 school that exceeds educational standards and in addition to
14 the requirements set forth in Subsection A of this section, the
15 department may waive:

16 (1) the graduation requirement as provided in
17 Section 22-13-1.1 NMSA 1978;

18 (2) evaluation standards for school personnel;
19 and

20 (3) other requirements of the Public School
21 Code that impede innovation in education if the waiver request
22 is supported by the teachers at the requesting school and the
23 requesting school's local school board.

24 C. Waivers granted pursuant to this section shall
25 begin in the school year following that in which a public

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1 school exceeds educational standards and may remain in effect
2 as long as the school continues to exceed educational
3 standards.

4 D. The department shall only waive requirements
5 that do not conflict with the federal [~~No Child Left Behind Act~~
6 ~~of 2001~~] Every Student Succeeds Act or rules adopted pursuant
7 to that act."

8 SECTION 2. Section 22-15-2 NMSA 1978 (being Laws 1967,
9 Chapter 16, Section 206, as amended) is amended to read:

10 "22-15-2. DEFINITIONS.--As used in the Instructional
11 Material Law:

12 A. "division" or "bureau" means the instructional
13 material bureau of the department;

14 B. "director" or "chief" means the chief of the
15 bureau;

16 C. "instructional material" means school textbooks
17 and other educational media that are used as the basis for
18 instruction, including combinations of textbooks, learning
19 kits, original source material from primary sources,
20 supplementary material, [and] electronic media and content
21 resources, excluding electronic devices and hardware, that
22 support digital learning formats and educational programs;

23 D. "multiple list" means a written list of those
24 instructional materials approved by the department;

25 E. "membership" means the total enrollment of

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1 qualified students on the [~~fortieth day~~] first reporting date
2 of the school year entitled to the free use of instructional
3 material pursuant to the Instructional Material Law;

4 F. "additional [~~pupil~~] student" means a [~~pupil~~]
5 student in a school district's or state institution's [~~or~~
6 ~~private school's~~] current year's certified [~~forty day~~] first
7 reporting date membership above the number certified in the
8 school district's or state institution's [~~or private school's~~]
9 prior year's [~~forty day~~] first reporting date membership;

10 G. "school district" includes [~~state-chartered~~]
11 charter schools; and

12 H. "other classroom materials" means materials
13 other than textbooks that are used to support direct
14 instruction to students."

15 SECTION 3. Section 22-15-3 NMSA 1978 (being Laws 1967,
16 Chapter 16, Section 207, as amended) is amended to read:

17 "22-15-3. BUREAU--CHIEF.--

18 A. The "instructional material bureau" is created
19 within the department [~~of education~~].

20 B. [~~With approval of the state board~~] The [~~state~~
21 ~~superintendent~~] secretary shall appoint a chief of the bureau."

22 SECTION 4. Section 22-15-4 NMSA 1978 (being Laws 1967,
23 Chapter 16, Section 208, as amended) is amended to read:

24 "22-15-4. BUREAU--DUTIES.--Subject to the policies and
25 rules of the department, the bureau shall:

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1 A. administer the provisions of the Instructional
2 Material Law;

3 B. enforce rules for the handling, safekeeping and
4 distribution of instructional material and instructional
5 material funds and for inventory and accounting procedures to
6 be followed by school districts and state institutions [~~and~~
7 ~~private schools~~] pursuant to the Instructional Material Law;

8 C. withdraw or withhold the privilege of
9 participating in the free use of instructional material in case
10 of any violation of or noncompliance with the provisions of the
11 Instructional Material Law or any rules adopted pursuant to
12 that law;

13 D. enforce rules relating to the use and operation
14 of instructional material depositories in the instructional
15 material distribution process; and

16 E. enforce rules that require local school boards
17 to implement a process that ensures that parents and other
18 community members are involved in the instructional material
19 review process."

20 **SECTION 5.** Section 22-15-5 NMSA 1978 (being Laws 1967,
21 Chapter 16, Section 209, as amended) is amended to read:

22 "22-15-5. INSTRUCTIONAL MATERIAL FUND.--

23 A. The state treasurer shall establish a
24 nonreverting fund to be known as the "instructional material
25 fund". The fund consists of appropriations, gifts, grants,

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1 donations and any other money credited to the fund. The fund
2 shall be administered by the department, and money in the fund
3 is appropriated to the department to carry out the provisions
4 of the Instructional Material Law.

5 B. The instructional material fund shall be used
6 for the purpose of paying for the cost of purchasing
7 instructional material pursuant to the Instructional Material
8 Law. Transportation charges for the delivery of instructional
9 material to a school district or a state institution [~~or a~~
10 ~~private school~~] as agent and emergency expenses incurred in
11 providing instructional material to students may be included as
12 a cost of purchasing instructional material. Charges for
13 rebinding of used instructional material [~~that appears on the~~
14 ~~multiple list pursuant to Section 22-15-8 NMSA 1978~~] may also
15 be included as a cost of purchasing instructional material."

16 SECTION 6. Section 22-15-6 NMSA 1978 (being Laws 1967,
17 Chapter 16, Section 210, as amended) is amended to read:

18 "22-15-6. DISBURSEMENTS FROM THE INSTRUCTIONAL MATERIAL
19 FUND.--Disbursements from the instructional material fund shall
20 be by warrant of the department of finance and administration
21 upon vouchers issued by the public education department [~~of~~
22 ~~education~~]."

23 SECTION 7. Section 22-15-7 NMSA 1978 (being Laws 1967,
24 Chapter 16, Section 211, as amended) is amended to read:

25 "22-15-7. STUDENTS ELIGIBLE--DISTRIBUTION.--

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1 A. Any qualified student or person eligible to
2 become a qualified student attending a public school or a state
3 institution [~~or a private school~~] approved by the department in
4 any grade from [~~first~~] kindergarten through the twelfth grade
5 of instruction is entitled to the free use of instructional
6 material. Any student enrolled in an early childhood education
7 program as defined by Section 22-13-3 NMSA 1978 [~~or person~~
8 ~~eligible to become an early childhood education student as~~
9 ~~defined by that section attending a private early childhood~~
10 ~~education program approved by the department~~] is entitled to
11 the free use of instructional material.

12 B. Instructional material shall be distributed to
13 school districts and state institutions [~~and private schools~~]
14 as agents for the benefit of students entitled to the free use
15 of the instructional material.

16 C. Any school district or state institution [~~or~~
17 ~~private school~~] as agent receiving instructional material
18 pursuant to the Instructional Material Law is responsible for
19 distribution of the instructional material for use by eligible
20 students and for the safekeeping of the instructional
21 material."

22 **SECTION 8.** Section 22-15-8 NMSA 1978 (being Laws 1967,
23 Chapter 16, Section 212, as amended) is amended to read:

24 "22-15-8. MULTIPLE LIST--SELECTION--REVIEW PROCESS.--

25 A. The department [~~shall~~] may adopt a multiple list

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1 to be made available to students pursuant to the Instructional
2 Material Law. At least ten percent of instructional material
3 on the multiple list concerning language arts and social
4 studies shall contain material that is relevant to the
5 cultures, languages, history and experiences of multi-ethnic
6 students. The department shall ensure that parents and other
7 community members are involved in the adoption process at the
8 state level.

9 B. Pursuant to the provisions of the Instructional
10 Material Law, each school district or state institution [~~or~~
11 ~~private school~~] as agent may select instructional material for
12 the use of its students from the multiple list adopted by the
13 department. Local school boards shall give written notice to
14 parents and other community members and shall invite parental
15 involvement in the adoption process at the district level.
16 Local school boards shall also give public notice, which notice
17 may include publication in a newspaper of general circulation
18 in the school district.

19 C. The department shall establish by rule an
20 instructional material review process for the adoption of
21 instructional material on the multiple list. The process shall
22 include:

23 (1) a summer review institute at which basal
24 materials in the content area under adoption will be
25 facilitated by content and performance experts in the content

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1 area and reviewed by reviewers;

2 (2) that level two and level three-A teachers
3 are reviewers of record; provided that level one teachers,
4 college students completing teacher preparation programs,
5 parents and community leaders will be recruited and partnered
6 with the reviewers of record;

7 (3) that reviewed materials shall be scored
8 and ranked primarily against how well they align with state
9 academic content and performance standards, but research-based
10 effectiveness may also be considered; and

11 (4) the adoption of supplementary materials
12 that are not reviewed.

13 D. Participants in the summer review institute
14 shall receive a stipend commensurate with the level of
15 responsibility and participation as determined by department
16 rule.

17 E. The department shall charge a processing fee to
18 vendors of instructional materials not to exceed the retail
19 value of the instructional material submitted for adoption."

20 SECTION 9. Section 22-15-9 NMSA 1978 (being Laws 1967,
21 Chapter 16, Section 213, as amended) is amended to read:

22 "22-15-9. DISTRIBUTION OF FUNDS FOR INSTRUCTIONAL
23 MATERIAL.--

24 A. [~~On or before~~] No later than April 1 of each
25 year, the department shall allocate to each school district or

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1 state institution [~~or private school~~] as agent not less than
2 ninety percent of its estimated entitlement as determined from
3 the estimated [~~forty-day~~] first reporting date membership for
4 the next school year. A school district's or state
5 institution's [~~or private school's~~] entitlement is that portion
6 of the total amount of the annual appropriation less a
7 deduction for a reasonable reserve for emergency expenses that
8 its [~~forty-day~~] first reporting date membership bears to the
9 [~~forty-day~~] first reporting date membership of the entire
10 state. For the purpose of this allocation, additional [~~pupils~~]
11 students shall be counted as six [~~pupils~~] students. The
12 allocation for adult basic education shall be based on a full-
13 time equivalency obtained by multiplying the total previous
14 year's enrollment by .25. The department shall transfer the
15 amount of the allocation for adult basic education to the adult
16 basic education fund.

17 B. [~~On or before~~] No later than January 15 of each
18 year, the department shall recompute each entitlement using the
19 [~~forty-day~~] first reporting date membership for that year,
20 except for adult basic education, and shall allocate the
21 balance of the annual appropriation adjusting for any over- or
22 under-estimation made in the first allocation.

23 C. [~~An amount not to exceed fifty percent of the~~
24 ~~allocations attributed to each school district or state~~
25 ~~institution may be used for instructional material not included~~

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1 ~~on the multiple list provided for in Section 22-15-8 NMSA 1978,~~
2 ~~and] Up to twenty-five percent of [this amount] the allocations~~
3 ~~attributed to each school district or state institution~~ may be
4 used for other classroom materials. ~~[The local superintendent~~
5 ~~may apply to the department for a waiver of the use of funds~~
6 ~~allocated for the purchase of instructional material either~~
7 ~~included or not included on the multiple list. If the waiver~~
8 ~~is granted, the school district shall not be required to submit~~
9 ~~a budget adjustment request to the department. Private schools~~
10 ~~may expend up to fifty percent of their instructional material~~
11 ~~funds for items that are not on the multiple list; provided~~
12 ~~that no funds shall be expended for religious, sectarian or~~
13 ~~nonsecular materials; and provided further that all~~
14 ~~instructional material purchases shall be through an in-state~~
15 ~~depository.]~~

16 D. The department shall establish procedures for
17 the distribution of funds directly to school districts and
18 state institutions. Prior to the final distribution of funds
19 to any school district or charter school, the department shall
20 verify that the local school board or governing body has
21 adopted a policy that requires that every student have a
22 textbook for each class that conforms to curriculum
23 requirements and that allows students to take those textbooks
24 home.

25 ~~[E. The department shall provide payment to an~~

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1 ~~in-state depository on behalf of a private school for~~
2 ~~instructional material.~~

3 F.] E. A school district or state institution
4 that has funds remaining for the purchase of instructional
5 material at the end of the fiscal year shall retain those
6 funds for expenditure in subsequent years. [~~Any balancee~~
7 ~~remaining in an instructional material account of a private~~
8 ~~school at the end of the fiscal year shall remain available~~
9 ~~for reimbursement by the department for instructional~~
10 ~~material purchases in subsequent years.]"~~

11 SECTION 10. Section 22-15-10 NMSA 1978 (being Laws
12 1967, Chapter 16, Section 214, as amended) is amended to
13 read:

14 "22-15-10. SALE OR LOSS OR RETURN OF INSTRUCTIONAL
15 MATERIAL.--

16 A. With the approval of the chief, instructional
17 material acquired by a school district or state institution
18 [~~or private school~~] pursuant to the Instructional Material
19 Law may be sold at a price determined by officials of the
20 school district or state institution [~~or private school~~].
21 The selling price shall not exceed the cost of the
22 instructional material to the state.

23 B. A school district or state institution [~~or~~
24 ~~private school~~] may hold the parent or student responsible
25 for the loss, damage or destruction of instructional material

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1 while the instructional material is in the possession of the
2 student. A school district may withhold the grades, diploma
3 and transcripts of the student responsible for damage or loss
4 of instructional material until the parent or student has
5 paid for the damage or loss. When a parent or student is
6 unable to pay for damage or loss, the school district shall
7 work with the parent or student to develop an alternative
8 program in lieu of payment. Where a parent is determined to
9 be indigent according to guidelines established by the
10 department, the school district shall bear the cost.

11 C. A school district or state institution that
12 has funds remaining for the purchase of instructional
13 material at the end of the fiscal year shall retain those
14 funds for expenditure in subsequent years.

15 ~~[D. All money collected by a private school for~~
16 ~~the sale, loss, damage or destruction of instructional~~
17 ~~material received pursuant to the Instructional Material Law~~
18 ~~shall be sent to the department.~~

19 ~~E.]~~ D. Upon order of the chief, a school district
20 or state institution [~~or private school~~] shall transfer to
21 the department or its designee instructional material,
22 purchased with instructional material funds, that is in
23 usable condition and for which there is no use expected by
24 the respective schools."

25 SECTION 11. Section 22-15-11 NMSA 1978 (being Laws

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1 1967, Chapter 16, Section 215, as amended) is amended to
2 read:

3 "22-15-11. RECORD OF INSTRUCTIONAL MATERIAL.--Each
4 school district and state institution [~~or private school~~]
5 shall keep accurate records of all instructional material,
6 including cost records, on forms and by procedures prescribed
7 by the bureau."

8 SECTION 12. Section 22-15-14 NMSA 1978 (being Laws
9 1967, Chapter 16, Section 218, as amended) is amended to
10 read:

11 "22-15-14. REPORTS--BUDGETS.--

12 A. Annually, the department [~~of education~~] shall
13 submit a budget for the ensuing fiscal year to the department
14 of finance and administration showing the expenditures for
15 instructional material to be paid out of the instructional
16 material fund, including reasonable transportation charges
17 and emergency expenses.

18 B. Upon request, the department [~~of education~~]
19 shall make reports to the [~~state board~~] legislature and the
20 governor concerning the administration and execution of the
21 Instructional Material Law."

22 SECTION 13. REPEAL.--Section 22-15-8.2 NMSA 1978 (being
23 Laws 2006, Chapter 58, Section 1) is repealed.

24 SECTION 14. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2019.

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