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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

Bill Number	<u>HB226</u>	Sponsor	<u>Lara</u>
Tracking Number	<u>.224039.1</u>	Committee Referrals	<u>HEC/H AFC</u>
Short Title	<u>Instructional Materials & Procurement Code</u>		
Analyst	<u>Estupiñan</u>	Original Date	<u>2/10/2023</u>
		Last Updated	<u>3/17/2023</u>

BILL SUMMARY

Synopsis of Bill

House Bill (HB226) would exclude purchases of instructional materials, digital instructional materials, and designated Public Education Department (PED) approved instructional material depositories from the provisions of the Procurement Code. The bill would also exempt instructional materials from purchasing through the state purchasing agent.

HB226 defines instructional materials as, “school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary materials and electronic media.”

FISCAL IMPACT

The bill does not contain an appropriation.

The Senate Finance Committee amendment to the House Appropriations and Finance Committee Substitute for House Bills 2 and 3 (HB2/HAFCS/aSFC) includes \$55 million in the state equalization guarantee (SEG) for instructional materials.

SUBSTANTIVE ISSUES

By creating an exemption to the Procurement Code for instructional materials, HB226 may reduce administrative requirements for both school districts and the state purchasing office. Although, by removing competitive sourcing for instructional material purchases, HB226 may result in a higher potential for inefficiency and misuse of public funding. This is because vendors would no longer be required to compete in offering discounts to school districts and charter schools and neither would there be central group of professionals ensuring those local entities secure the most competitive deals for instructional materials.

Current Exemptions from the Procurement Code and Central Purchasing. HB226 would not create a separate exemption to the procurement code. Instead, it would amend an existing

exemption for the purchasing of books, periodicals, and training materials to include digital and print instructional materials as well as designated PED-approved instructional material depositories. Section 13-1-98 NMSA 1978 lists thirty-three exemptions from the procurement code. Those current exemptions include, but are not limited to:

- Procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;
- Procurement of tangible personal property or services for the governor's mansion and grounds;
- Printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts; and
- Purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services.

Similarly, HB226 would not create a separate exemption to central purchasing. Instead, it would amend an exemption for purchases from the instructional materials fund to include the purchases of instructional materials, broadly. Section 13-1-99 NMSA 1978 lists fourteen exemptions from central purchasing through the state purchasing agent. Those exemptions include:

- Procurement of professional services;
- Small purchases having a value not exceeding \$1,500;
- Emergency procurement;
- Procurement of highway construction or reconstruction by the Department of Transportation;
- Procurement by the legislative branch of state government;
- Procurement by the boards of regents of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico;
- Procurement by the State Fair Commission of tangible personal property, services and construction under \$20 thousand.

OTHER SIGNIFICANT ISSUES

New Mexico Procurement Code. The provisions of the Procurement Code are included in Sections 13-1-28 to 13-1-117 and Sections 13-1-118 to 13-1-199 NMSA 1978. Statute states the purpose of the procurement code is, “to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.” By requiring competitive sourcing, negotiated contracts, and active monitoring, state and local agencies can secure discounts on goods and services, as well as prevent waste, fraud, and abuse of taxpayer funds.

There are three avenues through which state government and local public bodies can purchase items in a non-competitive manner, which include:

- Direct purchases when the total purchase price for a good or nonprofessional service is relatively small, (\$20 thousand or less),
- If an agency asserts there is only one vendor that could provide the goods or services (sole source), and

- In times of emergency.

There are two avenues through which an agency can rely on an emergency procurement, including when a service, construction, or item is needed immediately to:

- Control a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event; or
- Plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event.

In a 2021 program evaluation report from LFC, it was noted that the number of sole source and emergency procurements logged on the State Purchasing Division’s website had grown, with the combined value of those procurements having increased from \$100.6 million to \$314.9 million. Also noted in the report was a significant increase in emergency procurements during the pandemic, with the number of emergency procurements having been five times higher in FY21 than in FY20. These emergency and sole-source procurements were identified as potentially being a source of lost value for the state due to their non-competitive and occasionally rushed nature.

Instructional Materials Fund. Section 22-1-5 NMSA 1978 established the instructional materials fund as a non-reverting fund for the purpose of paying the cost of purchasing instructional materials, which may include transportation charges for the delivery of materials, emergency expenses incurred in providing those materials to students, and charges for rebinding used instructional materials.

Historically, the Legislature has appropriated directly to that fund but the Legislature has in recent fiscal years opted to flow those funds through the SEG. In doing so, the Legislature has provided considerable flexibility to school districts and charter schools in how they leverage their instructional material funds. This is because Section 22-15-9 NMSA 1978 requires that a school district or charter school allocate a minimum of 50 percent of its distribution from the instructional materials fund on materials included on PED’s multiple list.

PED Multiple List. The instructional material bureau holds a Summer Review Institute each June to review publisher-submitted materials for the current content under adoption. Level II and Level III licensed educators with endorsements and expertise in these content areas from across New Mexico are recruited and selected to review the materials against the state-adopted standards and other high-quality criteria. Content experts assist in the creation of scoring rubrics that the reviewers use to evaluate the materials. After reviewing the materials, review teams write appraisals that are then shared with the public to assist schools and districts in their own instructional materials review and adoption processes.

The Adopted Multiple List of Instructional Materials (Multiple List) is created and shared with the public once the Summer Review Institute is completed and the results and material scores are approved by the PED secretary. It includes all the materials under adoption by the state and includes all the information schools and districts need to inform their purchasing decisions. It also includes the ratings given for each set of core materials by the review teams that reviewed the materials during the Summer Review Institute. The adoption cycle is a six-year cycle, so new instructional materials added to the list subsequent to the Summer Review Institute remain on the list for six years. As new instructional materials enter the educational marketplace, the department

does not need to wait six years to review them; it can review and adopt them as they become available.

SOURCES OF INFORMATION

- LESC Files

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