

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 575a

49th Legislature, 1st Session, 2009

Short Title: Instructional Material Purchases

Sponsor(s): Senator Cynthia Nava

Analyst: Eilani Gerstner

Date: March 9, 2009

AS AMENDED

The Senate Finance Committee amendment:

- replaces language for calculating the allocation for Adult Basic Education (ABE); and
- adds language to require that the Public Education Department (PED) transfer the allocation for ABE to the ABE Fund in current law.

The Senate Education Committee amendment adds the requirement that private schools shall purchase all instructional material through an in-state depository.

Original Bill Summary:

SB 575 amends current law to:

- transfer responsibility for instructional materials for adult basic education (ABE) from the Public Education Department (PED) to the Higher Education Department (HED); and
- allow private schools to expend up to 50 percent of their instructional material funds for items that are not on the multiple list.

Specifically, SB 575 amends Chapter 21, *State and Private Educational Institutions*, to require HED to:

- include the distribution of funding for instructional materials for ABE students in its formula for distribution of money in the ABE Fund; and
- promulgate rules regarding the purchase and provision of instructional materials for the free use of ABE students, which shall include:
 - the responsibilities of ABE education administration units as agents for the benefit of students entitled to the free use of instructional materials; and
 - inventory and accounting procedures to be followed by the ABE administrative units.

Additionally, SB 575 amends the *Instructional Material Law* in the *Public School Code* to:

- remove references to ABE programs and instructional materials;
- provide that the funds private schools may spend on materials not on the multiple lists shall not be spent for religious, sectarian, or non-secular materials;
- require that PED provide payment to an in-state depository rather than a publisher on behalf of private schools for material included on the multiple list; and
- specify that the Instructional Material Fund is a non-reverting fund administered by PED.

SB 575 also corrects references to the former Commission on Higher Education and State Board of Education.

Finally, the effective date of the provisions in SB 575 is July 1, 2010.

Original Fiscal Impact:

SB 575 makes no appropriation.

According to PED's analysis of SB 575, for FY 09, the Legislature appropriated \$434,800 to the Instructional Material Fund for ABE instructional materials; of that amount, the Instructional Material Bureau at PED has allocated 80 percent, or \$347,800, to ABE centers as their initial allocation.

HB 3, *Education Appropriation Act*, as amended by the House Education Committee, includes an appropriation of \$16.75 million to the Instructional Material Fund, made from the federal *Mineral Lands Leasing Act* receipts.

Fiscal Issues:

ABE Instructional Materials

While SB 575 proposes to require that ABE instructional materials to flow through the ABE Fund, the bill does not provide for a transfer of the ABE dollars from the Instructional Material Fund to the ABE Fund.

According to HED's analysis of SB 575, "In order to comply with the provisions under SB 575, HED will be required to seek a provision under the NMSA for the State Treasurer to establish an Instructional Material Fund for Adult Basic Education." However, the provisions of SB 575 indicate that funding for ABE instructional materials will flow through the ABE Fund, which HED administers.

To address this issue, the sponsor may wish to consider an amendment to reinsert the language in the *Instructional Material Law* for determining the allocation for ABE and to require that these funds be transferred to the ABE Fund for instructional materials of ABE students.

Private School Instructional Materials

Statute currently requires a private school to be approved by PED in order to be eligible to receive instructional material dollars.

According to PED's analysis of SB 575, allowing private schools to purchase material off the multiple list "place[s] the Instructional Material Bureau inappropriately in the position of determining what is and what is not 'religious, sectarian or non-secular' instructional material."

PED notes that the provisions in SB 575 will require the Instructional Material Bureau to monitor and enforce this provision on an individual basis for 106 private schools and that the bureau will need to review each item purchased off the multiple list.

To address these issues, the sponsor may wish to consider an amendment to require private schools to purchase their off-list materials from an in-state depository and to require PED to

provide payment to an in-state depository on behalf of private schools for all instructional materials, whether included or not included on the multiple list. Doing so would not only mitigate the administrative burden on PED but also ensure that no material of a religious, sectarian, or non-secular nature would be purchased.

Technical Issues:

While SB 575 removes references to ABE from the *Instructional Material Law*, one reference remains on page 8, line 20.

Background:

Adult Basic Education

A May 2008 staff report to the Legislative Education Study Committee (LESC) indicates that:

- the purpose of the ABE program is to provide opportunities to acquire basic skills, study English as a second language and receive education and support to earn a general educational development for persons 16 years of age or older who have not completed high school or the equivalent; and
- ABE programs in New Mexico have received a total of approximately \$30.8 million in federal and state funds from FY 06 to FY 08:
 - approximately \$10.4 million in federal funding for ABE programs under Title II, *Adult Education and Literacy of the Workforce Investment Act of 1998*;
 - approximately \$2.6 million in matching funds (a 25 percent match from the state is required in receipt of the federal funding); and
 - approximately \$17.9 million in additional appropriations from the Legislature.

Instructional Materials

Currently, according to the *Instructional Material Law*,

- any qualified student enrolled in an early childhood education program or in grades 1 through 12 in a public school, an accredited private school, a state-supported school, or in an ABE program is entitled to the free use of instructional material;
- the Instructional Material Fund provides for the distribution of funds for the purchase of instructional material on a per-pupil basis:
 - on or before April 1 of each year, PED is required to allocate to each school district, state institution, or private school not less than 90 percent of its estimated entitlement for the school year; and
 - on or before January 15 of each year, PED must recompute each entitlement using the 40th-day membership and allocate the balance of the annual appropriation, adjusting for any over- or under-estimation made in the first allocation;
- PED enters into contracts with publishers to provide the material on the state adoption list and the publishers ship the material to in-state depositories for distribution;

- a school district, state institution, or ABE center may expend at least 50 percent of its allocation to purchase instructional material from the state-adopted multiple list; the remaining 50 percent of the allocation may be used to purchase instructional material not included on the state-adopted multiple list;
- ABE programs receive one-quarter of per-pupil funding that public schools receive and are allowed to use 100 percent of their allocation to purchase items not on the state-adopted multiple list; and
- private schools receive the same amount of per-pupil funding as public schools; however, they are required to purchase all instructional material from the state-adopted multiple list.

Related Bills:

SB 234 *Create Computer Hardware Loan Fund*
CS/HB 597 *School Textbooks on Compact Disc*