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HOUSE BILL 42

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

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.

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:

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

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

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

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

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

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

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

16 (2) evaluation standards for school personnel;
17 and

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

22 C. Waivers granted pursuant to this section shall
23 begin in the school year following that in which a public
24 school exceeds educational standards and may remain in effect
25 as long as the school continues to exceed educational

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1 standards.

2 D. The department shall only waive requirements
3 that do not conflict with the federal No Child Left Behind Act
4 of 2001 or rules adopted pursuant to that act."

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

7 "22-15-2. DEFINITIONS.--As used in the Instructional
8 Material Law:

9 A. "division" or "bureau" means the instructional
10 material bureau of the department;

11 B. "director" or "chief" means the chief of the
12 bureau;

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

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

22 E. "membership" means the total enrollment of
23 qualified students on the [~~fortieth day~~] second reporting date
24 of the school year entitled to the free use of instructional
25 material pursuant to the Instructional Material Law;

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

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

9 H. "other classroom materials" means materials
10 other than textbooks that are used to support direct
11 instruction to students."

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

14 "22-15-3. BUREAU--CHIEF.--

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

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

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

21 "22-15-4. BUREAU--DUTIES.--Subject to the policies and
22 rules of the department, the bureau shall:

23 A. administer the provisions of the Instructional
24 Material Law;

25 B. enforce rules for the handling, safekeeping and

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1 distribution of instructional material and instructional
2 material funds and for inventory and accounting procedures to
3 be followed by school districts and state institutions [~~and~~
4 ~~private schools~~] pursuant to the Instructional Material Law;

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

10 D. enforce rules relating to the use and operation
11 of instructional material depositories in the instructional
12 material distribution process; and

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

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

19 "22-15-5. INSTRUCTIONAL MATERIAL FUND.--

20 A. The state treasurer shall establish a
21 nonreverting fund to be known as the "instructional material
22 fund". The fund consists of appropriations, gifts, grants,
23 donations and any other money credited to the fund. The fund
24 shall be administered by the department, and money in the fund
25 is appropriated to the department to carry out the provisions

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1 of the Instructional Material Law.

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

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

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

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

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

23 A. Any qualified student or person eligible to
24 become a qualified student attending a public school or a state
25 institution [~~or a private school~~] approved by the department in

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

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

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

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

21 "22-15-8. MULTIPLE LIST--SELECTION--REVIEW PROCESS.--

22 A. The department [~~shall~~] may adopt a multiple list
23 to be made available to students pursuant to the Instructional
24 Material Law. At least ten percent of instructional material
25 on the multiple list concerning language arts and social

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1 studies shall contain material that is relevant to the
2 cultures, languages, history and experiences of multi-ethnic
3 students. The department shall ensure that parents and other
4 community members are involved in the adoption process at the
5 state level.

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

16 C. The department shall establish by rule an
17 instructional material review process for the adoption of
18 instructional material on the multiple list. The process shall
19 include:

20 (1) a summer review institute at which basal
21 materials in the content area under adoption will be
22 facilitated by content and performance experts in the content
23 area and reviewed by reviewers;

24 (2) that level two and level three-A teachers
25 are reviewers of record; provided that level one teachers,

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1 college students completing teacher preparation programs,
2 parents and community leaders will be recruited and partnered
3 with the reviewers of record;

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

8 (4) the adoption of supplementary materials
9 that are not reviewed.

10 D. Participants in the summer review institute
11 [~~shall~~] may receive a stipend commensurate with the level of
12 responsibility and participation as determined by department
13 rule.

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

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

19 "22-15-9. DISTRIBUTION OF FUNDS FOR INSTRUCTIONAL
20 MATERIAL.--

21 A. [~~On or before~~] No later than April 1 of each
22 year, the department shall allocate to each school district or
23 state institution [~~or private school~~] as agent not less than
24 ninety percent of its estimated entitlement as determined from
25 the estimated [~~forty-day~~] second reporting date membership for

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1 the next school year. A school district's or state
2 institution's [~~or private school's~~] entitlement is that portion
3 of the total amount of the annual appropriation less a
4 deduction for a reasonable reserve for emergency expenses that
5 its [~~forty-day~~] second reporting date membership bears to the
6 [~~forty-day~~] second reporting date membership of the entire
7 state. For the purpose of this allocation, additional [~~pupils~~]
8 students shall be counted as six [~~pupils~~] students. The
9 allocation for adult basic education shall be based on a full-
10 time equivalency obtained by multiplying the total previous
11 year's enrollment by .25. The department shall transfer the
12 amount of the allocation for adult basic education to the adult
13 basic education fund.

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

20 C. [~~An amount not to exceed fifty percent of the~~
21 ~~allocations attributed to each school district or state~~
22 ~~institution may be used for instructional material not included~~
23 ~~on the multiple list provided for in Section 22-15-8 NMSA 1978,~~
24 ~~and~~] Up to twenty-five percent of [~~this amount~~] the allocations
25 attributed to each school district or state institution may be

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

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

22 [~~E. The department shall provide payment to an~~
23 ~~in-state depository on behalf of a private school for~~
24 ~~instructional material.~~

25 ~~F.] E. A school district or state institution~~

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1 that has funds remaining for the purchase of instructional
2 material at the end of the fiscal year shall retain those
3 funds for expenditure in subsequent years. [~~Any balance~~
4 ~~remaining in an instructional material account of a private~~
5 ~~school at the end of the fiscal year shall remain available~~
6 ~~for reimbursement by the department for instructional~~
7 ~~material purchases in subsequent years.]"~~

8 SECTION 10. Section 22-15-10 NMSA 1978 (being Laws
9 1967, Chapter 16, Section 214, as amended) is amended to
10 read:

11 "22-15-10. SALE OR LOSS OR RETURN OF INSTRUCTIONAL
12 MATERIAL.--

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

20 B. A school district or state institution [~~or~~
21 ~~private school~~] may hold the parent or student responsible
22 for the loss, damage or destruction of instructional material
23 while the instructional material is in the possession of the
24 student. A school district may withhold the grades, diploma
25 and transcripts of the student responsible for damage or loss

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1 of instructional material until the parent or student has
2 paid for the damage or loss. When a parent or student is
3 unable to pay for damage or loss, the school district shall
4 work with the parent or student to develop an alternative
5 program in lieu of payment. Where a parent is determined to
6 be indigent according to guidelines established by the
7 department, the school district shall bear the cost.

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

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

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

22 SECTION 11. Section 22-15-11 NMSA 1978 (being Laws
23 1967, Chapter 16, Section 215, as amended) is amended to
24 read:

25 "22-15-11. RECORD OF INSTRUCTIONAL MATERIAL.--Each
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1 school district and state institution [~~or private school~~]
2 shall keep accurate records of all instructional material,
3 including cost records, on forms and by procedures prescribed
4 by the bureau."

5 SECTION 12. Section 22-15-12 NMSA 1978 (being Laws
6 1967, Chapter 16, Section 216, as amended) is amended to
7 read:

8 "22-15-12. ANNUAL REPORT.--Annually, at a time
9 specified by the department, each local school board of a
10 school district and each governing authority of a state
11 institution [~~or private school~~] acquiring instructional
12 material pursuant to the Instructional Material Law shall
13 file a report with the department that includes an itemized
14 list of instructional material purchased by the eligible
15 entity, by vendor; the total cost of the instructional
16 material; the average per-student cost; and the year-end cash
17 balance."

18 SECTION 13. Section 22-15-14 NMSA 1978 (being Laws
19 1967, Chapter 16, Section 218, as amended) is amended to
20 read:

21 "22-15-14. REPORTS--BUDGETS.--

22 A. Annually, the department [~~of education~~] shall
23 submit a budget for the ensuing fiscal year to the department
24 of finance and administration showing the expenditures for
25 instructional material to be paid out of the instructional

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1 material fund, including reasonable transportation charges
2 and emergency expenses.

3 B. Upon request, the department [~~of education~~]
4 shall make reports to the [~~state board~~] legislature or the
5 governor concerning the administration and execution of the
6 Instructional Material Law."

7 SECTION 14. REPEAL.--Section 22-15-8.2 NMSA 1978 (being
8 Laws 2006, Chapter 58, Section 1) is repealed.

9 SECTION 15. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2017.