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HOUSE BILL 45

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

INTRODUCED BY

Sheryl Williams Stapleton

AN ACT

RELATING TO PUBLIC EDUCATION; EXPANDING THE DEFINITION OF
"INSTRUCTIONAL MATERIAL"; REQUIRING TIMELY ALLOCATION OF
INSTRUCTIONAL MATERIAL FUNDING; MAKING THE MULTIPLE LIST
DISCRETIONARY; CHANGING THE DATE FOR DETERMINING MEMBERSHIP
ENTITLED TO INSTRUCTIONAL MATERIALS; 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 or rules adopted pursuant to that act."

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

9 "22-15-2. DEFINITIONS.--As used in the Instructional
10 Material Law:

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

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

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

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

24 E. "membership" means the total enrollment of
25 qualified students on the [~~fortieth day~~] second reporting date

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1 of the school year entitled to the free use of instructional
2 material pursuant to the Instructional Material Law;

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

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

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

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

16 "22-15-3. BUREAU--CHIEF.--

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

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

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

23 "22-15-4. BUREAU--DUTIES.--Subject to the policies and
24 rules of the department, the bureau shall:

25 A. administer the provisions of the Instructional

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1 Material Law;

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

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

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

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

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

21 "22-15-5. INSTRUCTIONAL MATERIAL FUND.--

22 A. The state treasurer shall establish a
23 nonreverting fund to be known as the "instructional material
24 fund". The fund consists of appropriations, gifts, grants,
25 donations and any other money credited to the fund. The fund

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

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

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

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

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

24 "22-15-7. STUDENTS ELIGIBLE--DISTRIBUTION.--

25 A. [~~Any~~] A qualified student or person eligible to

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

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

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

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

23 "22-15-8. MULTIPLE LIST--SELECTION--REVIEW PROCESS.--

24 A. The department [~~shall~~] may adopt a multiple list
25 to be made available to students pursuant to the Instructional

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

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

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

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

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

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

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

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

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

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

21 "22-15-9. DISTRIBUTION OF FUNDS FOR INSTRUCTIONAL
22 MATERIAL.--

23 A. [~~On or before~~] No later than April 1 of each
24 year, the department shall allocate to each school district or
25 state institution [~~or private school as agent~~] not less than

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

16 B. [~~On or before~~] No later than January 15 of each
17 year, the department shall recompute each entitlement using the
18 [~~forty-day~~] second reporting date membership for that year,
19 except for adult basic education, and shall allocate the
20 balance of the annual appropriation adjusting for any [~~over-~~]
21 overestimation or [~~under-estimation~~] underestimation made in
22 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 that
4 has funds remaining for the purchase of instructional material
5 at the end of the fiscal year shall retain those funds for
6 expenditure in subsequent years. [~~Any balance remaining in an~~
7 ~~instructional material account of a private school at the end~~
8 ~~of the fiscal year shall remain available for reimbursement by~~
9 ~~the department for instructional material purchases in~~
10 ~~subsequent years.]"~~

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

13 "22-15-10. SALE OR LOSS OR RETURN OF INSTRUCTIONAL
14 MATERIAL.--

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

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

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

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

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

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

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

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

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

7 "22-15-14. REPORTS--BUDGETS.--

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

14 B. Upon request, the department [~~of education~~]
15 shall make reports to the [~~state board~~] legislature and the
16 governor concerning the administration and execution of the
17 Instructional Material Law."

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

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