
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: AB 575
Author: O'Donnell
Version: June 20, 2016
Urgency: No
Consultant: Lynn Lorber
Hearing Date: June 29, 2016
Fiscal: Yes

Subject: Instructional materials: follow up adoptions

NOTE: This bill has been amended to replace its contents and this is the first time the bill is being heard in its current form.

SUMMARY

This bill re-establishes a fee supported process for the follow up adoption of instructional materials.

BACKGROUND

The State Constitution, and related statutes, provide for the State Board of Education to adopt textbooks and other instructional materials for Kindergarten and grades 1-8. (Constitution of California, Article IX, § 7.5)

Existing law requires the State Board of Education to adopt at least five basic instructional materials for all applicable grade levels in specific subject areas. Existing law authorizes instructional materials to be submitted for adoption in any of the specified subject areas every eight years. (Education Code § 60200)

Existing law no longer provides for follow up adoptions of instructional materials. Statutes specifically authorized follow up adoptions from 2004–2011; those provisions were for a limited period of time and have been repealed.

ANALYSIS

This bill re-establishes a fee supported process for the follow up adoption of instructional materials. Specifically, this bill:

- 1) Provides that a follow up adoption is any adoption other than the primary adoption that occurs within the existing eight-year cycle.
- 2) Requires the California Department of Education (CDE), before conducting a follow up adoption in a given subject area, to post an appropriate notice on its Web site and notify all publishers or manufacturers known to produce basic instructional materials in that subject area.
- 3) Requires the notice to specify that each publisher or manufacturer choosing to participate in the follow up adoption be assessed a fee based on the number of

programs the publisher or manufacturer indicates will be submitted for review and the number of grade levels proposed to be covered by each program.

- 4) Requires the fee to offset the cost of conducting the follow up adoption process and reflect the California Department of Education's (CDE's) best estimate of the cost. This bill requires the CDE to take reasonable steps to limit costs of the follow up adoption and to keep the fee modest, recognizing that some of the work necessary for the primary adoption need not be duplicated.
- 5) Requires the CDE, before incurring substantial costs for the follow up adoption, to require that a publisher or manufacturer who wishes to participate in the follow up adoption first declare the intent to submit one or more specific programs for the follow up adoption and specify the specific grade levels to be covered by each program.
- 6) Requires the CDE, after a publisher or manufacturer has declared the intent to submit one or more programs and the grade levels to be covered by each program, to assess a fee.
- 7) Requires the fee to be payable by the publisher or manufacturer even if the publisher or manufacturer subsequently chooses to withdraw a program or reduce the number of grade levels covered.
- 8) Prohibits a submission from being reviewed for purposes of adoption, either in a follow up adoption or in any other primary or follow up adoption conducted thereafter, until the fee assessed has been paid in full.
- 9) States legislative intent that the fee not be so substantial that it prevents small publishers or manufacturers from participating in a follow up adoption.
- 10) Authorizes the State Board of Education, upon the request of a small publisher or manufacturer, to reduce the fee for participation in the follow up adoption.
- 11) Defines "small publisher" and "small manufacturer" as an independently owned or operated publisher or manufacturer who is not dominant in its field of operation, and who, together with its affiliates, has 100 or fewer employees, and has average annual gross receipts of \$10 million or less over the previous three years.
- 12) Requires revenue derived from fees to be budgeted as reimbursements and subject to review through the annual budget process and authorizes the fees to be used to pay costs associated with any adoption and any costs associated with the review of instructional materials.
- 13) Modifies existing provisions regarding the submission of instructional materials from every eight years to at least once but not more than twice every eight years.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Due to the state budget crisis, the Legislature and Governor temporarily suspended all statewide instructional materials adoptions in 2009 and only recently lifted the suspension for the 2015-16 school year. As a result of the suspension, the authority to conduct follow up adoptions was not extended past the sunset date of January 1, 2011. In 2010, the State Board of Education adopted the California Common Core State Standards. However, funding was unavailable to revise the math curriculum framework and conduct an instructional materials adoption. In 2013, legislation authorized a special instructional materials adoption for math within the existing freeze on adoptions. The adoption occurred one year later in January 2014. The funding for this adoption came from the publishers themselves. Similarly, legislation in 2013 provided the same funding authority for the 2015 English Language Arts/English Language Development instructional materials adoption. AB 575 includes this funding model. AB 575 is cost-neutral to the State because the funding for the adoption activities will come from those publishers who voluntarily participate.”
- 2) ***Why the rush?*** This bill was recently gutted and amended. According to the California Department of Education (CDE), it has an urgent need for authority to conduct a follow up instructional materials adoption for mathematics because the adoption of mathematics materials in 2014 occurred on an extremely accelerated timeline that in effect excluded the submission of more programs. In addition, that adoption occurred before publishers knew how the assessments would measure the proficiency of the Standards for Mathematical Practice and the California common core standards. The CDE believes another opportunity to adopt instructional materials for mathematics is appropriate to expand district choice and to provide flexibility for districts that have a local policy requiring the use of State Board of Education (SBE)-adopted instructional materials (rather than district-adopted materials).
- 3) ***Why not limit to mathematics?*** According to the CDE, there is an urgent need to conduct a follow up adoption for mathematics. However, this bill is not limited to mathematics; it allows for follow up adoptions in any subject area. According to the CDE, this bill is not limited to mathematics because “school districts want a dynamic list of available instructional materials for existing subject areas. AB 575 would allow the SBE to conduct a follow up adoption when appropriate. This authority would allow the state to be responsible to the needs of the field quickly – without having to seek legislation for each subject area and conducting the necessary rulemaking process to establish appropriate regulations, all of which would take much more than a year. CDE believes a comprehensive approach would streamline the process and provide the SBE flexibility to determine when a follow up adoption is required. CDE anticipates that English language arts and the Next Generation Science Standards will also require follow up adoptions because of the statewide assessments. CDE will need authority to improve the quality of instructional materials programs after assessment results become available.”

Should the authority to conduct follow up adoptions be limited to the specific subjects in need of a follow up adoption?

- 4) ***Why not include a sunset?*** Prior statutory authority for follow up adoptions existing from 2004–2011; those provisions were for a limited period of time and have been repealed. The two prior measures that authorized follow up adoptions included sunset clauses. This bill does not include a sunset date. California Department of Education (CDE) does not believe that a sunset on this authority is necessary. According to CDE, “AB 575 simply permits the State Board of Education (SBE) to conduct a follow up adoption when appropriate, and not more than once between regular adoptions.”

Should this bill include a sunset date?

- 5) ***Amendment.*** Prior statutes that authorized follow up adoptions included a provision that was inadvertently excluded from this bill. **Staff recommends an amendment** to add the following:

On page 11, after line 22, insert: ***(h) Notwithstanding subdivision (b) of Section 60200, if the department determines that there is little or no interest in participating in a follow up adoption by publishers and manufacturers, it shall recommend to the state board that the follow up adoption not be conducted, and the state board may chose not to conduct the followup adoption.***

- 6) ***Fiscal impact.*** This bill has not been analyzed by a fiscal committee. This bill imposes a fee on publishers to offset the costs to the CDE, and requires revenues derived from fees to be budgeted as reimbursements. According to the Assembly Appropriations Committee’s analysis of prior legislation, likely costs between \$150,000 and \$250,000 to the CDE to conduct a follow up adoption for instructional materials.

SUPPORT

Association of California School Administrators
California School Boards Association
California Teachers Association
State Superintendent of Public Instruction Tom Torlakson

OPPOSITION

None received.

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