

HB0138S06 compared with HB0138

~~{deleted text}~~ shows text that was in HB0138 but was deleted in HB0138S06.

inserted text shows text that was not in HB0138 but was inserted into HB0138S06.

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~~{DIGITAL SCHOOL CURRICULUM}~~ Representative Melissa G. Ballard proposes the following substitute bill:

SENSITIVE MATERIAL REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melissa G. Ballard

Senate Sponsor: ~~{_____}~~ Lincoln Fillmore

LONG TITLE

General Description:

This bill ~~{requires certain provisions in a contract between a state and local education agencies and a vendor in a contract for digital instructional material}~~ amends requirements and prohibitions regarding sensitive material within the public school system.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires ~~{provisions in a contract between}~~ a local education agency (LEA) to:
 - complete the LEA's review of instructional material that is alleged to violate state law; and
 - report instructional material that violates state law to the State Board of

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Education (state board) ~~{ or a local education agency (LEA) and a vendor in a contract for digital instructional material that:~~

- ~~—• requires notice of changes to the digital instructional material; and~~
- ~~—• allows the relevant state board or LEA to reject the changes or terminate the contract};~~
- ▶ requires the state board to engage in a review in certain circumstances involving statewide curriculum or program materials;
- ▶ provides for the the termination of contracts with vendors for instructional material if the material includes sensitive material; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

~~{ 53G-10-102, as enacted by Laws of Utah 2018, Chapter 3~~

~~{ 53G-10-103, as enacted by Laws of Utah 2022, Chapter 377~~

~~{ENACTS:~~

~~— 53G-10-104, Utah Code Annotated 1953~~

~~{REPEALS:~~

~~53G-10-101, as enacted by Laws of Utah 2018, Chapter 3~~

Be it enacted by the Legislature of the state of Utah:

Section 1. Section ~~{53G-10-102}~~ 53G-10-103 is amended to read:

~~{ 53G-10-102. Definitions:~~

~~— [Reserved] As used in this chapter:~~

~~— (1) "Instructional material" means the same as that term is defined in Section 53E-4-401.~~

~~— (2) "Public school" means:~~

~~— (a) a district school;~~

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- ~~_____ (b) a charter school; or~~
- ~~_____ (c) the Utah Schools for the Deaf and the Blind.~~
- ~~_____ (3) (a) "School setting" means, for a public school:~~
 - ~~_____ (i) in a classroom;~~
 - ~~_____ (ii) in a school library; or~~
 - ~~_____ (iii) on school property.~~
- ~~_____ (b) "School setting" includes the following activities that an organization or individual conducts outside of a public school, if a public school or an LEA sponsors or requires the activity:~~
 - ~~_____ (i) an assembly;~~
 - ~~_____ (ii) a guest lecture;~~
 - ~~_____ (iii) a live presentation; or~~
 - ~~_____ (iv) an event.~~
- ~~_____ Section 2. Section 53G-10-103 is amended to read:~~

‡ **53G-10-103. Sensitive instructional materials.**

- (1) As used in this section:
 - ‡(a) (i) "Instructional material" means a material, regardless of format, used:‡
 - ‡(A) as or in place of textbooks to deliver curriculum within the state curriculum framework for courses of study by students; or‡
 - ‡(B) to support a student's learning in the school setting.‡
 - ‡(ii) "Instructional material" includes reading materials, handouts, videos, digital materials, websites, online applications, and live presentations.‡
 - ‡(b) "LEA governing board" means:‡
 - ‡(i) for a school district, the local school board;‡
 - ‡(ii) for a charter school, the charter school governing board; or‡
 - ‡(iii) for the Utah Schools for the Deaf and the Blind, the state board.‡
 - ‡(c) ‡(a) "Material" means the same as that term is defined in Section 76-10-1201.
 - ‡(d) ‡(b) "Minor" means any person less than 18 years old.
 - ‡(e) "Public school" means:‡
 - ‡(i) a district school;‡
 - ‡(ii) a charter school; or‡

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~~(iii)~~ the Utah Schools for the Deaf and the Blind.~~(iii)~~

~~(f)~~ (i) "School setting" means, for a public school:~~(f)~~

~~(A)~~ in a classroom;~~(A)~~

~~(B)~~ in a school library; or~~(B)~~

~~(C)~~ on school property.~~(C)~~

~~(ii)~~ "School setting" includes the following activities that an organization or individual or organization outside of a public school conducts, if a public school or an LEA sponsors or requires the activity:~~(ii)~~

~~(A)~~ an assembly;~~(A)~~

~~(B)~~ a guest lecture;~~(B)~~

~~(C)~~ a live presentation; or~~(C)~~

~~(D)~~ an event.~~(D)~~

~~(g)~~ ~~(c)~~ (i) "Sensitive material" means an instructional material that is pornographic or indecent material as that term is defined in Section 76-10-1235.

(ii) "Sensitive material" does not include an instructional material:

(A) that an LEA selects under Section 53G-10-402;

~~(B)~~ (B) for a concurrent enrollment course for which a parent receives advance notice of the material;

~~(C)~~ (C) for medical courses;

~~(D)~~ (D) for family and consumer science courses; or

~~(E)~~ (E) for another course the state board exempts in state board rule.

(h) "Vendor" means an entity with which the state board or an LEA contracts to provide instructional material to students.

(2) (a) Sensitive materials are prohibited in the school setting.

(b) A public school may not:

(i) adopt, use, distribute, provide a student access to, or maintain in the school setting, sensitive materials; or

(ii) permit a speaker or presenter in the school setting to display or distribute sensitive materials.

~~(3) An LEA shall~~ (3) (a) A student, a student's parent, or an LEA employee may notify the relevant LEA regarding any content in instructional material:

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(i) that the individual:

(A) encounters through the LEA's curriculum or otherwise through the LEA; and

(B) alleges to be sensitive material; and

(ii) for which the individual provides documentation or evidence of the alleged sensitive material.

(b) Upon receipt of a notice described in Subsection (1)(a), an LEA shall make a determination of whether the documentation or evidence described in Subsection (3)(a)(ii) demonstrates a possibility that the material includes or constitutes sensitive material and, if the LEA determines that the documentation or evidence demonstrates a possibility of sensitive material:

(i) remove the instructional material from student access until the LEA completes the LEA's sensitive material review process in accordance with the LEA's policies and this section;

(ii) if the material constitutes sensitive material:

(A) eliminate the chapter or section of the instructional material containing the sensitive material from the LEA's curriculum or take other measures to mitigate the accessibility and impact of the sensitive material;

(B) provide notice to any relevant vendor that the material violates state law; and

(C) report to the state board regarding the material; and

(iii) communicate to the individual who made the notice that triggered the LEA's review, either directly or through the relevant principal, the outcome of the LEA's review, including an explanation of the LEA's determination that the material does not constitute sensitive material if the LEA chooses to maintain the availability of the material.

(c) No later than 60 school days after the day on which the state board receives an LEA report described in Subsection (3)(b), if the material that is the subject of the report is part of state curriculum or a program that the state board provides or oversees, the state board shall:

(i) complete a sensitive material review process in accordance with the state board's policies and this section;

(ii) if the material constitutes sensitive material:

(A) eliminate the chapter or section of the instructional material containing the sensitive material from the curriculum or program or take other measures to mitigate the accessibility and impact of the sensitive material;

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(B) provide notice to any relevant vendor that the material violates state law; and
(C) provide notice to LEAs regarding the sensitive material and the state board's actions under this Subsection (3)(d); and

(iii) communicate to the individual who made the notice that triggered the underlying LEA review, either directly or through the relevant LEA, the outcome of the state board's review, including an explanation of the state board's determination that the material does not constitute sensitive material if the state board chooses to maintain the availability of the material.

[(3)] (4) An LEA shall:

(a) first determine whether a challenged instructional material constitutes sensitive material as a description or depiction of illicit sex or immorality that has no serious value for minors as described in Section 76-10-1227;

(b) if the material does not constitute a violation described in Subsection (4)(a), include parents who are reflective of the members of the school's community ~~[when determining]~~ to determine if an instructional material is sensitive material using the standards described in Section 76-10-1201 for material harmful to minors or Section 76-10-1203 for material that is pornographic.

[(4)] (5) The state board shall:

(a) in consultation with the Office of the Attorney General, provide guidance and training to support public schools in identifying instructional materials that meet the definition of sensitive materials under this section; and

(b) report to the Education Interim Committee and the Government Operations Interim Committee, at or before the November 2022 interim meeting, on implementation and compliance with this section, including:

(i) any policy the state board or an LEA adopts to implement or comply with this section;

(ii) any rule the state board makes to implement or comply with this section; and

(iii) any complaints an LEA or the state board receives regarding a violation of this section, including:

(A) action taken in response to a complaint described in this Subsection ~~[(4)(b)(iii)]~~ (5)(b)(iii); and

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(B) if an LEA retains an instructional material for which the LEA or the state board receives a complaint, the LEA's rationale for retaining the instructional material.

~~{Section 3. Section 53G-10-104 is enacted to read:~~

~~53G-10-104. Contract requirements for digital instructional material.~~

~~(1) As used in this section:~~

~~(a) "Digital instructional material" means any instructional material that is digital, including instructional software programs, online or local applications, websites, and other electronic material.~~

~~(b) "Vendor" means an entity with which the~~ (6) The state board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures for the reporting of sensitive material violations under Subsections (3)(b) through (d).

(7) (a) The state board or an LEA ~~{contracts to provide digital}~~ may, without any penalty or any further financial obligation, rescind or otherwise terminate a contract for a vendor to provide instructional material ~~{to students}~~.

~~(2) Neither into which the LEA or the state board ~~{nor an LEA may enter into a contract with a vendor for digital instructional materials unless the contract includes provisions that:~~~~

~~(a) require the vendor to notify the relevant enters on or after July 1, 2023, if:~~

~~(i) the state board or LEA governing board ~~{of any update, modification, or addition to the digital instructional material}~~~~

~~(b) ensure that the relevant state board or LEA governing board has a sufficient period of time to review the new version of the digital determines that the version of the instructional material that is the subject of the notice described in Subsection ~~(2)(a)~~; and~~

~~(c) if the relevant 3(a) is or contains sensitive material; and~~

~~(ii) within 30 school days after the day on which the state board or LEA governing board ~~{determines that the new version of the digital instructional material that is the subject of the notice}~~ provide notice of the determination described in Subsection ~~(2)(a)~~~~

~~contains 7(a)(i), the vendor fails to eliminate the chapter or section of the instructional material containing the sensitive material ~~{, as that term is defined in Section 53G-10-103}~~ allow the LEA to:~~

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~~(i) reject the~~ or otherwise remove access to the sensitive material.

(b) In any contract for a vendor to provide instructional material for which the parties negotiate terms and into which the state board or an LEA enters after July 1, 2023, the state board or relevant LEA shall ensure that the contract contains:

(i) notice provisions regarding the requirements and prohibitions regarding sensitive material in this section; and

(ii) provisions requiring the vendor to notify the contracting LEA or state board of any update, modification, or addition to the ~~digital~~ instructional material the vendor provides that may contain or constitute sensitive material, including links to other material or websites from within the instructional material ~~, requiring~~.

(c) An LEA or the ~~vendor to provide the~~ state board may remove a chapter or section of digital instructional material ~~in the original form for which the parties contracted; or~~

~~(ii) terminate the contract without any penalty related to the termination or any further financial obligation.~~

~~(3) (a) Except as provided in Subsection (3)(b), this section does not apply to contracts in effect on July 1, 2023.~~

~~(b) Neither the state board nor an LEA may modify an existing contract, including a renewal or extension, unless the relevant state board or LEA complies with Subsection (2).~~

~~Section 4~~ that is found, through the processes described in this section, to contain sensitive material from the relevant curriculum.

Section 2. Repealer.

This bill repeals:

Section **53G-10-101, Title.**

Section ~~5~~3. **Effective date.**

This bill takes effect on July 1, 2023.