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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4139

(By Delegate *Mr. Speaker, Mr. Chambers, & Del. Banks*
[By Request of the Executive])

— ● —

Passed *Feb. 28,* 1992

In Effect *From* Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4139

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed February 28, 1992; in effect from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, seven, eight and nine, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the adoption of textbooks, instructional materials, or learning technologies; permitting the state board of education to determine adoption periods; changing references from "publishers" to "vendors"; permitting magazines, newspapers and periodicals to be purchased for classroom use in certain instances; authorizing distribution of certain sample items; limiting the number of requested sample items; allowing the state board to designate contract time periods; increasing the bond requirement maximum; requiring contracts to also be filed with the board of public works; permitting the state board to determine certain specifications in bids and contracts; authorizing the state board to establish one or more depositories; and allowing school curriculum teams to provide input in the selection process.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, seven, eight and nine, article two-a, chapter eighteen of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. ADOPTION OF TEXTBOOKS, INSTRUCTIONAL MATERIALS AND LEARNING TECHNOLOGIES.

§18-2A-1. Definition; adoption groups; adoption schedule.

1 The definition of "textbooks" includes books; instruc-
2 tional materials, as used therein, means systems of
3 instructional materials, or combinations of books and
4 supplementary materials which convey information to
5 the pupil; learning technologies, including, but not
6 limited to, applications using computer software,
7 computer assisted instruction, interactive videodisc;
8 other computer courseware and magnetic media.
9 Textbooks, instructional materials, learning technolo-
10 gies or any combination thereof adopted on the state
11 multiple list must substantially cover the required
12 content and skills for the subject as approved by the
13 state board of education. Adopted materials must be
14 current and information presented accurately.

15 On or before the first day of July, one thousand nine
16 hundred ninety-two, the state board of education shall
17 classify the elementary and secondary school subjects
18 required to be taught in the schools of our state into
19 adoption groups by related subject fields as nearly as
20 possible. A schedule for the periods of adoption shall be
21 determined by the state board of education: *Provided,*
22 That magazines, newspapers and other periodicals may
23 be purchased by a county board of education for
24 classroom use to supplement those items adopted on the
25 state multiple list without having to comply with the
26 adoption procedures provided in this article: *Provided,*
27 *however,* That magazines, newspapers and periodicals
28 shall be deemed to be textbooks for purposes of special
29 excess levies subject to the provisions of section sixteen,
30 article eight, chapter eleven, of this code when the
31 described purpose under said section is for textbooks.
32 The state adoption cycle shall not exceed six years:
33 *Provided further,* That the county textbook adoption
34 committees may request a waiver of the six year
35 maximum adoption cycle from the state board of

education.

§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

1 Prior to each adoption year, and not later than the
2 first day of August, the state board by written request
3 or otherwise shall ask the various vendors of textbooks,
4 instructional materials, learning technologies or any
5 combination thereof to submit samples and prices on
6 items deemed appropriate by the state board of educa-
7 tion to teach the curriculum in the public elementary
8 and secondary schools of the state for the current
9 adoption period.

10 All bids or proposals shall be under seal, and each
11 bidder shall deposit in the state treasury such sum of
12 money as the state board may designate, such deposit
13 to be not less than one thousand dollars, and not more
14 than three thousand dollars; and such deposit shall be
15 forfeited to the general school fund if such bidder shall
16 fail or refuse to make and execute such contract and
17 bond as are herein required in case of acceptance of all
18 or part of the vendor's bid, and otherwise shall be
19 returned to such bidder after the contract has been
20 made. The state board of education reserves the right
21 to set the sum of money a vendor is required to deposit
22 in the state treasury upon submitting a bid: *Provided,*
23 That the vendor has a previous history of failure or
24 refusal to execute contracts or bonds with the state of
25 West Virginia.

26 All bids shall be opened by the state board in public
27 session. After considering the subject matter, product
28 quality, general suitability, and prices of items
29 submitted, the board shall, prior to the first day of
30 March of each year in which adoptions are made by the
31 state board of education, establish a committee of
32 teachers and other educational specialists and with the
33 aid of said committee, shall on or before the first day
34 of December, prior to county adoptions, select, approve
35 and publish a list of items in each subject and grade in
36 the elementary and secondary subjects required to be

37 taught by said board. The committee of teachers and
38 other educational specialists shall report their recom-
39 mendations to the state board on or before the fifteenth
40 day of November of the year preceding the adoption by
41 the county board.

§18-2A-3. Disposition of and requests for samples.

1 Sample items in excess of the official sample submit-
2 ted to the state board for examination shall remain the
3 property of the vendor submitting them if claimed
4 within thirty days after adoption of the multiple list. If
5 not claimed within that period, the items may be sold
6 by the state board and the money credited to the general
7 school fund or items may be distributed to state
8 operated educational agencies. Sample items submitted
9 to county boards of education remain the property of the
10 vendor submitting them if claimed within thirty days
11 after the county board of education has formally adopted
12 its items. Unclaimed items may be distributed free of
13 charge by the respective board of education to any
14 school, library or individual who may have need for the
15 sample items.

16 Vendors claiming samples within the thirty-day
17 period shall notify the respective board of education at
18 the time samples are submitted for study of their intent
19 to recall the samples. All costs shall be borne by the
20 vendors.

21 No county adoption committee is entitled to request
22 or receive more than eight free samples of any multi-
23 grade program being considered for adoption. Any
24 single grade level subject area items used above grade
25 six shall be limited to five free samples per county
26 selection committee. Any individual requesting samples
27 in excess of these limits shall be billed by the vendor
28 at the lowest wholesale price plus shipping.

§18-2A-4. Execution of contracts; bond.

1 When the selection and approval of the multiple list
2 have been properly made, it shall be the duty of the state
3 board to furnish contracts for the selected items with the
4 vendors within thirty days of the approval and adoption

5 of the multiple list, prepare a list of the adopted items
6 on the multiple list and publish same, and send a copy
7 to each county superintendent and vendors who submit-
8 ted bids for the particular adoption group not later than
9 January fifteenth of the year of the county adoption.
10 Such contracts for adoption shall run for a period of
11 time as designated by the state board of education.

12 Each vendor awarded a contract by the state shall
13 enter into a bond payable to the state of West Virginia
14 in the penal sum of not less than two thousand dollars
15 and not more than ten thousand dollars to be approved
16 by the state board of public works, such bond to be
17 executed as surety by some responsible surety company
18 authorized to carry on its business in West Virginia.
19 Such contract shall be prepared by the attorney general
20 in accordance with the terms and provisions of this
21 article. Such contract shall be executed in triplicate, one
22 copy to be held by the vendor, one by the state board
23 of education and one attached to the bond filed with the
24 board of public works.

25 Bonds required of successful vendors shall provide
26 that:

27 (a) The vendor will furnish any of the items on the
28 multiple list under vendors contract for the period of the
29 adoption, from the date of the bond, to any county school
30 unit, a dealer appointed by the county, or any state
31 board approved depository or depositories as defined in
32 section seven of this article, at the lowest wholesale price
33 contained in the bids or contracts made to any other
34 county school unit, dealer, county, school or depository
35 in any other state, like conditions prevailing. The state
36 board shall determine, from time to time, the terms of
37 the bids and contracts and may require the vendor to
38 bear the costs of shipping, mail or transportation or
39 offer any other financial benefit available in the highest
40 amount paid by a vendor to any other county school unit,
41 dealer, county or depository in any other state: *Provided,*
42 That the state board of education shall decide whether
43 from time to time bids and contracts for textbooks,
44 instructional materials and learning technologies or any
45 combination thereof are to be for the delivery directly

46 to each county school unit, dealer appointed by the
47 county, county or to each depository or depositories, or
48 any combination thereof, under this section.

49 (b) The vendor will automatically reduce such prices
50 in West Virginia when prices are reduced anywhere in
51 the United States, so that no such item or items shall
52 at any time be sold in West Virginia at a higher
53 wholesale price than received for items elsewhere in the
54 United States, like conditions prevailing;

55 (c) All items sold in West Virginia will be identical
56 with the official samples filed with the state board of
57 education as regards quality standards, specifications,
58 subject matter, and other particulars which may affect
59 the value of the items. The state board of education may,
60 however, during the period of the contract approve
61 revised editions of adopted items, which will authorize
62 a vendor to furnish such revisions. All contracts and
63 bonds shall be filed with the board of public works prior
64 to the first day of July.

§18-2A-5. Selection by county boards; school curriculum teams.

1 Vendors, upon requests of county superintendents,
2 shall furnish to county boards of education the requested
3 sample copies of items that were selected and placed on
4 the state multiple list by the state board of education
5 in accordance with the provisions of section three of this
6 article.

7 School curriculum teams shall make their curriculum
8 and instructional needs known to the county superin-
9 tendent and selection committees prior to the consider-
10 ation of any adopted grouping in accordance with the
11 provisions of section three of this article. The county
12 board of education shall, upon recommendation of the
13 county superintendent with the aid of a committee of
14 teachers and not later than the first day of May of the
15 year following that in which the multiple list for the
16 group was made and approved, select from the state
17 multiple list one or more items to deliver instruction for
18 a period as provided for elsewhere in this article.
19 Counties are authorized to include nonvoting advisors

20 from the general public in the adoption process, but
21 shall require advisors to provide their assessment of the
22 items appropriate for the subject before the voting
23 committee commences the selection process.

§18-2A-7. Exchange privilege; use of supplementary items; state-approved depositories authorized.

1 Contractors shall arrange for the exchange of items,
2 allowing pupils or boards of education an exchange
3 price as liberal as granted on the same items to any city,
4 county, or state in the United States, like conditions
5 prevailing. The exchange privilege shall extend through
6 one entire school year. Nothing in this article is to be
7 construed as preventing the use of supplementary books,
8 instructional materials, or learning technologies pro-
9 vided they do not displace the adopted items, nor the use
10 of more advanced items in such schools as may be ready
11 for the same. On or before the first day of July, one
12 thousand nine hundred ninety-four and thereafter, the
13 state board of education is authorized to approve any
14 depository or depositories, either public or private, to
15 serve any county or several counties, whose purpose
16 includes, but is not limited to, offering the savings and
17 services generally associated with local distribution of
18 textbooks, instructional materials, or learning technol-
19 ogies or any combination thereof, to counties and
20 schools.

§18-2A-8. Textbooks, instructional materials, or learning technologies must be approved and listed; when changes may be effected; rules.

1 No textbook, instructional materials, or learning
2 technologies shall be used in any public elementary or
3 secondary school in West Virginia as the primary source
4 to deliver the instructional goals and objectives for state
5 required courses unless it has been approved and listed
6 on the state multiple list by the state board of education,
7 except as otherwise provided for in this section. Any
8 changes of items made by the state board of education
9 shall become effective upon approval. The state board
10 of education may upon request by a county board of

11 education and upon justification of that request, and
12 subsequent to the adoption by a county board of
13 education, approve the adoption of additional items to
14 meet the needs of specific children which were not
15 provided for in the original adoption, or waive the
16 requirement to adopt and utilize items in a particular
17 school as provided for in section six, article five-a of this
18 chapter. Nothing in this section shall apply to the
19 supplementary items that are needed from time to time.

20 The state board of education is authorized to grant
21 permission to county boards of education for the
22 continued use of previously adopted items that are listed
23 on the most recently expired multiple list appropriate
24 for the subject category under consideration. The
25 continued use shall not exceed a period as designated by
26 the state board of education. The state board may make
27 such rules and regulations as it may deem necessary and
28 expedient to carry out the provisions of this article.

**§18-2A-9. Gifts and bribes to influence adoption of books,
instructional materials or learning tech-
nologies a felony; penalty.**

1 Any member of the state board of education, any
2 county superintendent, any member of a county board
3 of education or any other person who shall receive,
4 solicit, or accept any gift, present, or thing of value to
5 influence that individual in the vote for the adoption of
6 books, instructional materials or learning technologies,
7 or any combination thereof, or any person who shall
8 either directly or indirectly give or offer to give any
9 such gift, present, or thing of value to any person to
10 influence that individual in voting for the adoption of
11 books, instructional materials or learning technologies,
12 or any combination thereof shall be guilty of a felony,
13 and, upon conviction thereof, shall be punished by
14 confinement in the penitentiary for not less than one
15 year nor more than three years.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Norman Heek

Chairman Senate Committee

Ermest C. Moore

Chairman House Committee

Originating in the House.

Takes effect from passage.

David E. Holmes

Clerk of the Senate

Donald J. Kopp

Clerk of the House of Delegates

Walter Buntline

President of the Senate

B. J. C. C.

Speaker of the House of Delegates

The within is approved this the *11th*
day of *March*, 1992.

Yaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/5/92

Time 10:06 AM