WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

Com. Sub. for
HOUSE BILL No. 4139

(By Delegate Mr. Speaker, Mr. Chambers, & Dal Bush
[By Request of the Executive]

Passed ........................................ Feb. 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.

The definition of “textbooks” includes books; instructional materials, as used therein, means systems of instructional materials, or combinations of books and supplementary materials which convey information to the pupil; learning technologies, including, but not limited to, applications using computer software, computer assisted instruction, interactive videodisc; other computer courseware and magnetic media. Textbooks, instructional materials, learning technologies or any combination thereof adopted on the state multiple list must substantially cover the required content and skills for the subject as approved by the state board of education. Adopted materials must be current and information presented accurately.

On or before the first day of July, one thousand nine hundred ninety-two, the state board of education shall classify the elementary and secondary school subjects required to be taught in the schools of our state into adoption groups by related subject fields as nearly as possible. A schedule for the periods of adoption shall be determined by the state board of education: Provided, That magazines, newspapers and other periodicals may be purchased by a county board of education for classroom use to supplement those items adopted on the state multiple list without having to comply with the adoption procedures provided in this article: Provided, however, That magazines, newspapers and periodicals shall be deemed to be textbooks for purposes of special excess levies subject to the provisions of section sixteen, article eight, chapter eleven, of this code when the described purpose under said section is for textbooks. The state adoption cycle shall not exceed six years: Provided further, That the county textbook adoption committees may request a waiver of the six year maximum adoption cycle from the state board of
§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

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

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

All bids shall be opened by the state board in public session. After considering the subject matter, product quality, general suitableness, and prices of items submitted, the board shall, prior to the first day of March of each year in which adoptions are made by the state board of education, establish a committee of teachers and other educational specialists and with the aid of said committee, shall on or before the first day of December, prior to county adoptions, select, approve and publish a list of items in each subject and grade in the elementary and secondary subjects required to be
taught by said board. The committee of teachers and other educational specialists shall report their recommendations to the state board on or before the fifteenth day of November of the year preceding the adoption by the county board.

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

Sample items in excess of the official sample submitted to the state board for examination shall remain the property of the vendor submitting them if claimed within thirty days after adoption of the multiple list. If not claimed within that period, the items may be sold by the state board and the money credited to the general school fund or items may be distributed to state operated educational agencies. Sample items submitted to county boards of education remain the property of the vendor submitting them if claimed within thirty days after the county board of education has formally adopted its items. Unclaimed items may be distributed free of charge by the respective board of education to any school, library or individual who may have need for the sample items.

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

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

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

When the selection and approval of the multiple list have been properly made, it shall be the duty of the state board to furnish contracts for the selected items with the vendors within thirty days of the approval and adoption
of the multiple list, prepare a list of the adopted items on the multiple list and publish same, and send a copy to each county superintendent and vendors who submitted bids for the particular adoption group not later than January fifteenth of the year of the county adoption. Such contracts for adoption shall run for a period of time as designated by the state board of education.

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

Bonds required of successful vendors shall provide that:

(a) The vendor will furnish any of the items on the multiple list under vendor's contract for the period of the adoption, from the date of the bond, to any county school unit, a dealer appointed by the county, or any state board approved depository or depositories as defined in section seven of this article, at the lowest wholesale price contained in the bids or contracts made to any other county school unit, dealer, county, school or depository in any other state, like conditions prevailing. The state board shall determine, from time to time, the terms of the bids and contracts and may require the vendor to bear the costs of shipping, mail or transportation or offer any other financial benefit available in the highest amount paid by a vendor to any other county school unit, dealer, county or depository in any other state: Provided, That the state board of education shall decide whether from time to time bids and contracts for textbooks, instructional materials and learning technologies or any combination thereof are to be for the delivery directly
to each county school unit, dealer appointed by the
county, county or to each depository or depositories, or
any combination thereof, under this section.

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

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

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

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

School curriculum teams shall make their curriculum
and instructional needs known to the county superinten-
tent and selection committees prior to the consider-
ation of any adopted grouping in accordance with the
provisions of section three of this article. The county
board of education shall, upon recommendation of the
county superintendent with the aid of a committee of
teachers and not later than the first day of May of the
year following that in which the multiple list for the
group was made and approved, select from the state
multiple list one or more items to deliver instruction for
a period as provided for elsewhere in this article.
Counties are authorized to include nonvoting advisors
from the general public in the adoption process, but
shall require advisors to provide their assessment of the
items appropriate for the subject before the voting
committee commences the selection process.

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

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

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

No textbook, instructional materials, or learning
technologies shall be used in any public elementary or
secondary school in West Virginia as the primary source
to deliver the instructional goals and objectives for state
required courses unless it has been approved and listed
on the state multiple list by the state board of education,
except as otherwise provided for in this section. Any
changes of items made by the state board of education
shall become effective upon approval. The state board
of education may upon request by a county board of
education and upon justification of that request, and
subsequent to the adoption by a county board of
education, approve the adoption of additional items to
meet the needs of specific children which were not
provided for in the original adoption, or waive the
requirement to adopt and utilize items in a particular
school as provided for in section six, article five-a of this
chapter. Nothing in this section shall apply to the
supplementary items that are needed from time to time.

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

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

Any member of the state board of education, any
county superintendent, any member of a county board
of education or any other person who shall receive,
solicit, or accept any gift, present, or thing of value to
influence that individual in the vote for the adoption of
books, instructional materials or learning technologies,
or any combination thereof, or any person who shall
either directly or indirectly give or offer to give any
such gift, present, or thing of value to any person to
influence that individual in voting for the adoption of
books, instructional materials or learning technologies,
or any combination thereof shall be guilty of a felony,
and, upon conviction thereof, shall be punished by
confinement in the penitentiary for not less than one
year nor more than three years.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor
PRESENTED TO THE
GOVERNOR
Date 3/14/92
Time 10:00 AM