WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 631
(SENATORS PLYMALE,
WELLS AND BROWNING, original sponsors)
[Passed March 8, 2010; to take effect July 1, 2010.]
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AN ACT to amend and reenact §18-2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-6, §18-2A-7, §18-2A-8 and §18-2A-9 of the Code of West Virginia, 1931, as amended, all relating generally to instructional resources; process for approval and adoption of instructional resources in public schools; replacing the terms “textbooks”, “instructional materials” and “learning technologies” with “instructional resources” and modifying affected code provisions accordingly; modifying limit on adoption cycles; providing for listing of instructional resources on the state multiple list; requiring a method for review and adding new and substantially revised resources to the multiple list; providing for county waivers of adoption cycles; providing method for counties to select new or different resource before end of a contract period; providing a method for vendor update of resources; revising the bidding, selection and approval process; permitting the multiple list to be published in an
electronic format; requiring contracts to be filed pursuant to the state board process; providing for review of electronic instructional resources; providing for regional education service agency level selection teams; and ensuring equity of access to electronic instructional resources for all students.

Be it enacted by the Legislature of West Virginia:


ARTICLE 2A. ADOPTION OF INSTRUCTIONAL RESOURCES.

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

1 (a) “Instructional Resources” include print materials, electronic resources and systems, or combinations of such instructional resources which convey information to the pupil.

(b) Instructional resources approved for adoption and listed on the state multiple list shall substantially cover the required content and skills for the subject as approved by the state board. The instructional resources shall be current and the information shall be presented accurately. The instructional resources may consist of a single resource, print or electronic, or a compilation of resources, print or electronic, that together cover the required criteria established for approval as a primary instructional resource. The resources may be updated or otherwise changed and improved on an ongoing basis to ensure that they are current and accurate.

(c) On or before July 1 of each year, the state board 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, not to
exceed six years, shall be determined by the state board. However, during the school year beginning on July 1, 2010, the state board shall develop a method by which newly developed and substantially revised instructional materials submitted by vendors or available as open resources may be reviewed for compliance with established criteria. When an instructional resource is found to be in compliance with established criteria, it may be added to the official multiple list and thereafter be available for adoption by a county board. County board instructional resources adoption committees may request a waiver of the adoption cycles from the state board. Software, print and electronic magazines, print and electronic newspapers and other print and electronic periodicals and other licensed or subscription-based instructional resources may be purchased county board 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.

(d) Software, print and electronic magazines, print and electronic newspapers and print and electronic periodicals are considered to be instructional resources 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 that section is for textbooks or instructional resources.

(e) A county board that selects an electronic instructional resource may, subject to the approval by the state board of its request to do so, choose not to renew that option before the end of the established contract period and select a new or different instructional resource from the official multiple listing before the end of the established contract period.

(f) The vendor of an adopted electronic resource, after notice of explanation to the state board, may offer an update to the navigational features or management
system, or both, related to the learning technology and
can update the content of the learning technology as
needed to accurately reflect current knowledge or infor-
mation without charge. Vendor changes to the electronic
resources may not require the purchase of a new operating
system during the established contract period. Vendors
shall continue to provide support for the version adopted.

(g) The state board shall adopt guidelines and procedures
for updates and changes to electronic instructional
resources submitted by vendors.

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

(a) Prior to each adoption year, and not later than August
1, the state board by written request or otherwise shall ask
3 the various vendors of instructional resources, print or
4 electronic, or any combination thereof, to submit samples
5 and prices on items considered appropriate by the state
6 board to teach the curriculum in the public elementary
7 and secondary schools of the state for the current adoption
8 period. The state board also shall accept for consideration
9 newly developed and substantially revised instructional
10 resources for content areas not in the current adoption
11 cycle.

(b) All bids or proposals shall be under seal, and each
13 bidder shall deposit in the State Treasury such sum of
14 money as the state board may designate, such deposit to be
15 not less than $1,000, and not more than $3,000 and such
16 deposit shall be forfeited to the general school fund if such
17 bidder shall fail or refuse to make and execute such
18 contract and bond as are herein required in case of
19 acceptance of all or part of the vendor’s bid, and otherwise
20 shall be returned to such bidder after the contract has
21 been made. The state board reserves the right to set the
22 sum of money a vendor is required to deposit in the State
23 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. The state board may set and collect review fees from publishers and vendors participating in the state instructional resources approval and adoption process.

(c) All bids shall be opened by the state board, or its designee, in public session. After considering the subject matter, product quality, general suitableness, and prices of items submitted, the state board shall, prior to March 1 of each year in which approvals for adoption are made by it, establish a committee of teachers and other educational specialists, including a sufficient number with experience with electronic instructional resources, and with the aid of the committee, shall on or before December 1, 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 the state board. The committee of teachers and other educational specialists shall report their recommendations to the state board on or before November 15, of the year preceding the adoption by the county board. The state board may create a standing committee of teachers and other education specialists, including a sufficient number with experience with electronic instructional resources, for each subject and grade level to review all new or revised instructional resources submitted after the initial approvals for adoption.

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

(a) Items to be reviewed 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 state board 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 Department of Education Instructional Resources
Fund or items may be distributed to state educational agencies.

(b) Sample items submitted to county boards or regional education service agency selection teams remain the property of the vendor submitting them if claimed within thirty days after instructional materials have been formally adopted. Unclaimed items may be distributed free of charge by the respective county board or regional educational service agency to any school, library or individual who may have need for the sample items.

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

(d) No county or regional education service agency adoption committee is entitled to request or receive more than eight free samples of any multigrade 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. In the case of electronic instructional resources, it is sufficient for vendors to provide access for the purpose of reviewing the resources via a user name and password to a web-based resource or through on-line file transfer or download.

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

(a) When the selection and approval of the multiple list have been properly made, it is 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 resources on the
multiple list and publish it in electronic format and make
the list available through a page on the West Virginia
Department of Education web page. The contract for
adoption shall run for a period of time as designated by
the state board.

(b) Each vendor awarded a contract by the West Virginia
Department of Education shall enter into a bond payable
to the State of West Virginia in the penal sum of not less
than $2,000 and not more than $10,000 to be approved by
the state board of public works. The bond shall be exe-
cuted as surety by a responsible surety company autho-
rized to carry on its business in West Virginia. The
contract shall be prepared by the Attorney General in
accordance with the terms and provisions of this article.
The contract shall be executed in triplicate, one copy to be
held by the vendor, one by the state board and one at-
tached to the bond filed with the board of public works.

(c) Bonds required of successful vendors shall provide
that:

(1) The vendor will furnish any of the instructional
resources on the multiple list under vendors 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 transporta-
tion 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 shall decide whether from
time to time bids and contracts for instructional resources 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.

(2) The vendor will automatically reduce the 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.

(3) All items sold in West Virginia will be identical with the official samples submitted to the state board as regards quality standards, specifications, subject matter, and other particulars which may affect the value of the items. The state board 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 in accordance with the appropriate state board process prior to July 1.

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

(a) Vendors, upon requests of county superintendents, shall furnish to county boards the requested sample copies of resources that were selected and placed on the state multiple list by the state board in accordance with the provisions of section three of this article. In the case of electronic instructional resources, it is sufficient for vendors to provide access for the purpose of reviewing the resources via a web-hosted online format.

(b) School curriculum teams shall make their curriculum and instructional needs known to the county superintendent and selection committees prior to the consideration
of any adopted grouping in accordance with the provisions of section three of this article. The county board shall, upon recommendation of the county superintendent with the aid of a committee of teachers and not later than May 1 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 resources 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 resources appropriate for the subject before the voting committee commences the selection process.

(c) In order to avoid duplication and to maximize resources, with agreement of all county superintendents within a regional education service agency area and subsequent regional education service agency actions, a regional education service agency instructional resources selection team may be established to conduct a review of selected resources placed on the state multiple list by the state board. The membership of the selection team will be established through agreement of the county superintendents with representation of all counties, including any nonvoting advisors from the general public. The resource selection team will provide recommendations to each county superintendent for consideration, review and adoption by each county board.

(d) County boards adopting electronic instructional resources shall ensure equity of access for all students at school and shall have a plan to provide equity of access at home if necessary through alternate avenues including, but not limited to, print, software, and hardware support.

§18-2A-6. Retail prices; limitation on profit; violation; penalty.

It shall be the duty of the state board to fix prices at which the various instructional resources on the state
multiple list shall be sold to patrons, the excess of which
above contract price shall represent the profit to the
retailer; but in no case shall such profit exceed twenty
percent of the contract price. The state board shall notify
each county superintendent of the instructional resources
on the state multiple list and the prices at which they are
to be sold, and any person selling such resources at a
higher price than that fixed by the state board shall be
guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than $10 nor more than $50.

§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 prevents the use of
supplementary instructional resources, print or electronic,
provided they do not displace the adopted instructional
resources, nor the use of more advanced items in such
schools as may be ready for the same. 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 instructional re-
sources or electronic instructional resources that are not
web-based, or any combination thereof, to counties and
schools.

§18-2A-8. Instructional resources must be approved and listed;
when changes may be effected; rules.

(a) No instructional resource, print or electronic, may 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, except as otherwise provided in this section. Any changes of items made by the state board shall become effective upon approval. The state board may upon request by a county board and upon justification of that request, and subsequent to the adoption by a county board 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 use resources 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.

(b) The state board may grant permission to county boards for the continued use of previously adopted resources 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. The state board may make such rules 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 instructional resources a felony; penalty.

Any member of the state board, any county superintendent, any member of a county board 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 instructional resources, print or electronic, 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 instructional resources, print or electronic, or any combination thereof, shall be guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility 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

Originated in the Senate.

Takes effect July 1, 2010.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill approved this the 16th Day of , 2010.

Governor