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REGULAR SESSION, 2010

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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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.]

SB 631

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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:

That §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, be amended and reenacted, all to read as follows:

ARTICLE 2A. ADOPTION OF INSTRUCTIONAL RESOURCES.

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

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

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

17 (c) On or before July 1 of each year, the state board shall
18 classify the elementary and secondary school subjects
19 required to be taught in the schools of our state into
20 adoption groups by related subject fields as nearly as
21 possible. A schedule for the periods of adoption, not to

22 exceed six years, shall be determined by the state board.
23 However, during the school year beginning on July 1, 2010,
24 the state board shall develop a method by which newly
25 developed and substantially revised instructional materi-
26 als submitted by vendors or available as open resources
27 may be reviewed for compliance with established criteria.
28 When an instructional resource is found to be in compli-
29 ance with established criteria, it may be added to the
30 official multiple list and thereafter be available for
31 adoption by a county board. County board instructional
32 resources adoption committees may request a waiver of
33 the adoption cycles from the state board. Software, print
34 and electronic magazines, print and electronic newspapers
35 and other print and electronic periodicals and other
36 licensed or subscription-based instructional resources may
37 be purchased county board for classroom use to supple-
38 ment those items adopted on the state multiple list with-
39 out having to comply with the adoption procedures
40 provided in this article.

41 (d) Software, print and electronic magazines, print and
42 electronic newspapers and print and electronic periodicals
43 are considered to be instructional resources for purposes
44 of special excess levies subject to the provisions of section
45 sixteen, article eight, chapter eleven of this code when the
46 described purpose under that section is for textbooks or
47 instructional resources.

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

55 (f) The vendor of an adopted electronic resource, after
56 notice of explanation to the state board, may offer an
57 update to the navigational features or management

58 system, or both, related to the learning technology and
59 may update the content of the learning technology as
60 needed to accurately reflect current knowledge or infor-
61 mation without charge. Vendor changes to the electronic
62 resources may not require the purchase of a new operating
63 system during the established contract period. Vendors
64 shall continue to provide support for the version adopted.

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

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

1 (a) Prior to each adoption year, and not later than August
2 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.

12 (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

24 vendor has a previous history of failure or refusal to
25 execute contracts or bonds with the State of West Virginia.
26 The state board may set and collect review fees from
27 publishers and vendors participating in the state instruc-
28 tional resources approval and adoption process.

29 (c) All bids shall be opened by the state board, or its
30 designee, in public session. After considering the subject
31 matter, product quality, general suitability, and prices
32 of items submitted, the state board shall, prior to March 1
33 of each year in which approvals for adoption are made by
34 it, establish a committee of teachers and other educational
35 specialists, including a sufficient number with experience
36 with electronic instructional resources, and with the aid of
37 the committee, shall on or before December 1, prior to
38 county adoptions, select, approve and publish a list of
39 items in each subject and grade in the elementary and
40 secondary subjects required to be taught by the state
41 board. The committee of teachers and other educational
42 specialists shall report their recommendations to the state
43 board on or before November 15, of the year preceding the
44 adoption by the county board. The state board may create
45 a standing committee of teachers and other education
46 specialists, including a sufficient number with experience
47 with electronic instructional resources, for each subject
48 and grade level to review all new or revised instructional
49 resources submitted after the initial approvals for adop-
50 tion.

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

1 (a) Items to be reviewed in excess of the official sample
2 submitted to the state board for examination shall remain
3 the property of the vendor submitting them if claimed
4 within thirty days after state board adoption of the
5 multiple list. If not claimed within that period, the items
6 may be sold by the state board and the money credited to
7 the Department of Education Instructional Resources

8 Fund or items may be distributed to state educational
9 agencies.

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

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

23 (d) No county or regional education service agency
24 adoption committee is entitled to request or receive more
25 than eight free samples of any multigrade program being
26 considered for adoption. Any single grade level subject
27 area items used above grade six shall be limited to five
28 free samples per county selection committee. Any individ-
29 ual requesting samples in excess of these limits shall be
30 billed by the vendor at the lowest wholesale price plus
31 shipping. In the case of electronic instructional resources,
32 it is sufficient for vendors to provide access for the pur-
33 pose of reviewing the resources via a user name and
34 password to a web-based resource or through on-line file
35 transfer or download.

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

1 (a) When the selection and approval of the multiple list
2 have been properly made, it is the duty of the state board
3 to furnish contracts for the selected items with the vendors
4 within thirty days of the approval and adoption of the
5 multiple list, prepare a list of the adopted resources on the

6 multiple list and publish it in electronic format and make
7 the list available through a page on the West Virginia
8 Department of Education web page. The contract for
9 adoption shall run for a period of time as designated by
10 the state board.

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

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

25 (1) The vendor will furnish any of the instructional
26 resources on the multiple list under vendors contract for
27 the period of the adoption, from the date of the bond, to
28 any county school unit, a dealer appointed by the county,
29 or any state board approved depository or depositories as
30 defined in section seven of this article, at the lowest
31 wholesale price contained in the bids or contracts made to
32 any other county school unit, dealer, county, school or
33 depository in any other state, like conditions prevailing.
34 The state board shall determine, from time to time, the
35 terms of the bids and contracts and may require the
36 vendor to bear the costs of shipping, mail or transporta-
37 tion or offer any other financial benefit available in the
38 highest amount paid by a vendor to any other county
39 school unit, dealer, county or depository in any other state:
40 *Provided*, That the state board shall decide whether from

41 time to time bids and contracts for instructional resources
42 are to be for the delivery directly to each county school
43 unit, dealer appointed by the county, county or to each
44 depository or depositories, or any combination thereof,
45 under this section.

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

52 (3) All items sold in West Virginia will be identical with
53 the official samples submitted to the state board as
54 regards quality standards, specifications, subject matter,
55 and other particulars which may affect the value of the
56 items. The state board may, however, during the period of
57 the contract approve revised editions of adopted items,
58 which will authorize a vendor to furnish such revisions.
59 All contracts and bonds shall be filed in accordance with
60 the appropriate state board process prior to July 1.

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

1 (a) Vendors, upon requests of county superintendents,
2 shall furnish to county boards the requested sample copies
3 of resources that were selected and

4 placed on the state multiple list by the state board in
5 accordance with the provisions of section three of this
6 article. In the case of electronic instructional resources, it
7 is sufficient for vendors to provide access for the purpose
8 of reviewing the resources via a web-hosted online format.

9 (b) School curriculum teams shall make their curriculum
10 and instructional needs known to the county superinten-
11 dent and selection committees prior to the consideration

12 of any adopted grouping in accordance with the provisions
13 of section three of this article. The county board shall,
14 upon recommendation of the county superintendent with
15 the aid of a committee of teachers and not later than May
16 1 of the year following that in which the multiple list for
17 the group was made and approved, select from the state
18 multiple list one or more resources to deliver instruction
19 for a period as provided for elsewhere in this article.
20 Counties are authorized to include nonvoting advisors
21 from the general public in the adoption process, but shall
22 require advisors to provide their assessment of the re-
23 sources appropriate for the subject before the voting
24 committee commences the selection process.

25 (c) In order to avoid duplication and to maximize re-
26 sources, with agreement of all county superintendents
27 within a regional education service agency area and
28 subsequent regional education service agency actions, a
29 regional education service agency instructional resources
30 selection team may be established to conduct a review of
31 selected resources placed on the state multiple list by the
32 state board. The membership of the selection team will be
33 established through agreement of the county superinten-
34 dents with representation of all counties, including any
35 nonvoting advisors from the general public. The resource
36 selection team will provide recommendations to each
37 county superintendent for consideration, review and
38 adoption by each county board.

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

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

1 It shall be the duty of the state board to fix prices at
2 which the various instructional resources on the state

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

**§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 price
3 as liberal as granted on the same items to any city, county,
4 or state in the United States, like conditions prevailing.
5 The exchange privilege shall extend through one entire
6 school year. Nothing in this article prevents the use of
7 supplementary instructional resources, print or electronic,
8 provided they do not displace the adopted instructional
9 resources, nor the use of more advanced items in such
10 schools as may be ready for the same. The state Board of
11 Education is authorized to approve any depository or
12 depositories, either public or private, to serve any county
13 or several counties, whose purpose includes, but is not
14 limited to, offering the savings and services generally
15 associated with local distribution of instructional re-
16 sources or electronic instructional resources that are not
17 web-based, or any combination thereof, to counties and
18 schools.

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

1 (a) No instructional resource, print or electronic, may be
2 used in any public elementary or secondary school in West
3 Virginia as the primary source to deliver the instructional
4 goals and objectives for state required courses unless it has

5 been approved and listed on the state multiple list by the
6 state board, except as otherwise provided in this section.
7 Any changes of items made by the state board shall
8 become effective upon approval. The state board may
9 upon request by a county board and upon justification of
10 that request, and subsequent to the adoption by a county
11 board approve the adoption of additional items to meet
12 the needs of specific children which were not provided for
13 in the original adoption, or waive the requirement to adopt
14 and use resources in a particular school as provided for in
15 section six, article five-a of this chapter. Nothing in this
16 section shall apply to the supplementary items that are
17 needed from time to time.

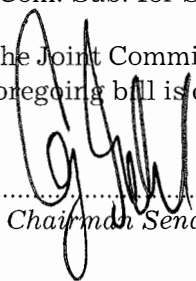
18 (b) The state board may grant permission to county
19 boards for the continued use of previously adopted
20 resources that are listed on the most recently expired
21 multiple list appropriate for the subject category under
22 consideration. The continued use shall not exceed a period
23 as designated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

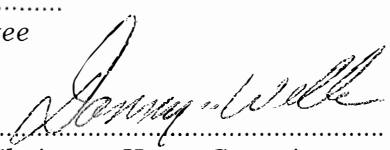
§18-2A-9. Gifts and bribes to influence adoption of instructional resources a felony; penalty.

1 Any member of the state board, any county superinten-
2 dent, any member of a county board or any other person
3 who shall receive, solicit, or accept any gift, present, or
4 thing of value to influence that individual in the vote for
5 the adoption of instructional resources, print or electronic,
6 or any combination thereof, or any person who shall either
7 directly or indirectly give or offer to give any such gift,
8 present, or thing of value to any person to influence that
9 individual in voting for the adoption of instructional
10 resources, print or electronic, or any combination thereof,
11 shall be guilty of a felony and, upon conviction thereof,
12 shall be confined in a correctional facility for not less than
13 one year nor more than three years.

Enr. Com. Sub. for S. B. No. 631] 12


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

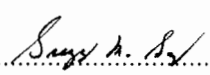

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Chairman Senate Committee


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Chairman House Committee

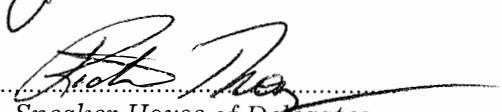
Originated in the Senate.

Takes effect July 1, 2010.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *16th*
Day of *May*, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 12 2010

Time 2:11 pm