



OER STATE LEGISLATIVE GUIDE

JANUARY 2018

College textbook costs have increased at four times the rate of inflation in the past ten years, burdening students and families who are already struggling to afford a college degree. This guide is meant to provide policymakers and staff with a cross-sectional, annotated set of legislative texts that help expand the use of OER (open educational resources), a powerful alternative to the broken textbook market.



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INTRODUCTION

Every year, students spend more than \$14 billion on college textbooks.¹ The College Board recommends that first-year students budget \$1200 per year for books and supplies,² and the Bureau of Labor Statistics reveals that textbook costs have increased at 4 times the rate of inflation in the past decade.³ In response, large portions of the student population are forced to skip buying or renting their books, ultimately risking their grades and lowering the quality of their education.

One thing is clear: the current textbook market is failing to meet the needs of our education system. A growing alternative is open educational resources (OER), which are learning materials published under a license that gives users permission to share, adapt, and retain them – at no cost to the user.

Openly licensed materials, unlike traditional books, leverage modern technology to reduce costs and deliver knowledge in a more accessible way. As a result, open licensed works have far fewer barriers between them and the end user - which alleviates the negative consequences of the traditional textbook market, improves access and performance as a result, and opens the doors to far greater innovation and development.

Many organizations, institutions, and foundations are working towards increasing adoption of OER, but state-level policy is an important step towards lowering the cost of textbooks and making higher education affordable and accessible to everyone. More than a dozen states have passed OER-supportive legislation already, and the number continues to grow. This guide includes seven examples of state legislation supporting OER, each representing a different perspective and legislative language. The bills are annotated to highlight strengths, areas for improvement, and unique tactics.

Additional Notes:

- This guide presents a non-partisan analysis of specific clauses and wordings – inclusion of bills in this guide should not be interpreted as endorsements or opposition.
- Some of the included bills address issues outside of the scope of OER, so some less-relevant sections have been removed for brevity's sake.
- These bills should not be construed as a representative sample – rather, they were selected to demonstrate some variances and commonalities among OER legislation.
- Not all the included examples are enacted legislation. Some are still active but have not been voted on, others have expired. The status of each bill is listed at the beginning of each section.

Formatting:

- Sections presented in **bold** represent new language that either replaces or adds to existing statute.
- Sections in [brackets] represent deletions or language removed from existing statute.
- If a bill has neither of these formats, the bill is entirely new language.
- Notes encompassed in << arrows >> represent sections removed by the editors.

¹ Ioanna Opidee, “College textbook forecast: Radical change ahead,” University Business, July 2014. <https://www.universitybusiness.com/article/college-textbook-forecast-radical-change-ahead>

² Average Estimated Undergraduate Budgets, 2017-18,” the College Board, <https://trends.collegeboard.org/college-pricing/figures-tables/average-estimated-undergraduate-budgets-2017-18>

³ Consumer Price Index. Bureau of Labor Statistics. <http://www.bls.gov/cpi/>

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STATE OF COLORADO

S.B. No. 258

Year: 2017

Committee: House Committee on Appropriation

Status: Enacted

AN ACT

Concerning the use of Open Educational Resources in Public Institutions of Higher Education, and in Connection Therewith, Making an Appropriation

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 23-1-134 as follows:

23-1-134. Department directive - open educational resource initiatives - council created report - definitions – legislative declaration - repeal.

(1) The general assembly finds that the costs of textbooks and instructional materials have risen to exorbitant levels, increasing the costs for a first-year student enrolled in a community college by as much as twenty-two percent above the student's tuition and fees. Because of the high price of textbooks, some students, especially low-income students, do not buy the textbooks required for a course, resulting in significant negative educational impacts, including in some cases failing the course. Students may also choose to withdraw from a course because of the high cost of the textbooks that the course requires. Several institutions of higher education across the country have begun participating in open educational resources consortia that make textbooks, syllabi, course activities, and readings available to students online for no cost, resulting in significant student savings. It is appropriate to consider initiatives to increase the use of open educational resources in public institutions of higher education to provide cost savings and other educational benefits for students enrolled in public institutions of higher education, including those students who are concurrently enrolled in high school and postsecondary courses.

(2) As used in this section, unless the context otherwise requires:

(a) "Council" means the open educational resources council created in subsection (3) of this section.

(b) "Open educational resources" means high-quality teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits free use or repurposing by others and may include other

A strong preamble is helpful in establishing a clear intent for the legislation. Key facts may include how much the cost of textbooks has increased, how these costs impact disadvantaged students, or how much money students could save with OER.

This is a solid definition of OER, but adding “under a *worldwide, royalty-free, non-exclusive, perpetual, and irrevocable* IP license” could strengthen it.

resources that are legally available and available to students for free or very low cost. Open educational resources may include full courses, course materials, modules, textbooks, faculty-created content, streaming videos, tests, software, and other tools, materials, or techniques used to support access to knowledge.

(c) "Public institution of higher education" means the state institutions of higher education, as defined in section 23-18-102 (10) (a), the local district colleges, and the area technical colleges.

It is also worth noting that the second clause (starting with "and may include") does permit materials that may not actually be considered open.

(3) (a) There is created in the department of higher education the open educational resources council, which is comprised of the following members:

(i) Ten persons from public institutions of higher education appointed by the executive director as follows:

- (a) Four faculty members;
- (b) Three library professionals;
- (c) One instructional design expert;
- (d) One informational technology expert; and
- (e) One administrator;

(ii) The executive director of the department of higher education or his or her designee;

(iii) The commissioner of education appointed pursuant to Section 1 (2) of Article ix of the state constitution, or his or her designee; and

(iv) The person executing the duties of the state librarian, if different from the commissioner of education as provided in section 24-90-104, or his or her designee.

Given that faculty are the gatekeepers – they ultimately decide which books to use in the classroom – and librarians/support staff are often the most experienced with course content development, both groups are essential to include in a council.

(b) The executive director shall appoint the members of the council by July 1, 2017. In appointing the members of the council, the executive director shall ensure that the council includes at least three representatives from two-year public institutions of higher education and at least three representatives from four-year public institutions of higher education, including research universities. to the extent practicable, the executive director shall appoint persons from areas throughout the state who are representative of the demographics of the state.

(c) The executive director shall convene the first meeting of the council no later than July 15, 2017. At the first meeting, the council members shall select a member to serve as chair of the council and a member to serve as vice-chair of the council. The council shall meet as often as necessary at the call of the chair to complete its duties.

(d) The members of the council serve without compensation but may be reimbursed for reasonable and necessary expenses incurred in serving on the council, as determined by the department.

(4) The council shall:

(a) Work with the entity with which the department contracts as provided in subsection (6) of this section to review and evaluate the extent to which each public institution of higher education is using open educational resources and options for and obstacles to increasing the use of open educational resources in public institutions of higher education. The council shall ensure that the evaluation is completed no later than October 20, 2017.

(b) Solicit input concerning the use of open educational resources from, at a minimum, school districts, charter schools, any public institutions of higher education that do not have a representative on the council, students enrolled in public institutions of higher education, representatives of campus bookstores, and representatives of companies that publish textbooks for postsecondary courses;

(c) Based on the results of the evaluation, recommend initiatives for increasing the use of open educational resources that are likely to result in cost savings and other educational benefits for students enrolled in public institutions of higher education, including students who are concurrently enrolled in high school and postsecondary courses as provided in Article 35 of Title 22. The council shall examine a range of initiatives and consider the effectiveness of initiatives implemented in other states. the recommended initiatives may include but are not limited to:

(i) Identifying open educational resource materials that are associated with the core general education courses identified pursuant to section 23-1-125 (3) and the core competencies identified for career and technical education credentials and determining the best mechanism to assist faculty and students in identifying, accessing, and using these materials. In considering these issues, the council may include recommendations concerning methods for ensuring that identified materials are of high quality, are legally available for use, and remain current.

(ii) Developing recommendations for a grant program to promote adoption and use of open educational resources on a regional or statewide basis. The grant program may provide funding for, but need not be limited to, the following:

(a) Staff development and training and technology support;

(b) Faculty incentives tied to implementation and use of open educational resources;

(c) Efforts to create and brand entire courses or sections of courses as free-material, open-educational-resource courses; and

(d) Incentives and support for libraries at public institutions of higher education or libraries in concurrent enrollment sites to improve the existing infrastructure in libraries for storing, accessing, and sharing learning materials among students, faculty, and institutions; and

(iii) Identifying strategies to leverage the open educational resource work and knowledge at one public institution of higher education

Often, the biggest barriers for faculty to adopt OER are time and resources. Making funding available at the state level helps jumpstart the process, and signals to institutions that OER are a legitimate alternative to the traditional publishing system.

One notable difference is that this bill does not, in itself, establish a grant program, but rather suggests it as an option for the council to pursue.

into a knowledge base for other institutions, which may include active sharing of materials, methods, and technology platforms; marketing of the open educational resources; professional development for faculty and training for students in the use of open educational resources; and conferences promoting the creation and use of open educational resources.

(5) In recommending initiatives, the council shall include methods for evaluating the success of each recommended initiative, including procedures for evaluating cost savings to students based on the use of open educational resource materials in courses and sections. The evaluation may include other components such as assessing the effectiveness of program processes and materials and assessing faculty and student awareness of the initiative.

(6) By August 1, 2017, the department, in accordance with the applicable provisions of the "procurement code", Articles 101 to 112 of Title 24, shall contract with an entity to review and evaluate the extent to which each public institution of higher education is using open educational resources and options for and obstacles to increasing the use of open educational resources in public institutions of higher education. The entity shall complete the review and submit a report to the council and the department by October 20, 2017.

(7) The council shall prepare a report that includes the report prepared pursuant to subsection (6) of this section and the council's recommended initiatives for supporting and expanding the use of open educational resources in Colorado. The council shall submit the report by November 20, 2017, to the joint budget committee of the general assembly and the education committees of the senate and the house of representatives, or any successor committees.

(8) This section is repealed, effective July 1, 2018.

SECTION 2. Appropriation. For the 2017-18 state fiscal year, \$25,000 is appropriated to the department of higher education. This appropriation is from the general fund. To implement this act, the department may use this appropriation for the open educational resources council and to contract with an entity to study the use of open educational resources at public institutions of higher education.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Strong deadlines and reporting requirements ensure that the state's money is being well spent, while demonstrating sizeable results from projects of this sort can help build support for the program in the long-term.

This bill does formally appropriate the funding, which stands out among these examples. At the same time, \$25,000 is a relatively small statewide pot of money to work with. Institutions often grant faculty between \$500-\$1,500 to cover the work of transitioning to OER, and between \$2,000-\$10,000 to create new OER.



STATE OF CONNECTICUT

H.B. No. 7235

Year: 2017

Committee: Higher Education and Employment Advancement

Status: Tabled for the Calendar, File No. 363

AN ACT

concerning the recommendations of the Open Educational Resources Task Force

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2017*)

(a) For the purposes of this section:

(1) "Open educational resource" means a college level resource made available on an Internet web site to be used by students, faculty and members of the public on an unlimited basis at a minimal cost, including full courses, course materials, modules, textbooks, streaming videos, tests, software and other similar teaching, learning and research resources that reside in the public domain or have been released under a creative commons attribution license that permits the free use and repurposing of such resources;

(2) "Creative commons attribution license" means a copyright crediting the author of a digital work product that allows for the free use and distribution of such work product and permits other persons to create derivative material by altering the content of the original work product; and

(3) "High-impact course" means a course of instruction for which open educational resources would make a significant positive impact on the students taking the course due to the number of students taking the course and the marketing value of the printed textbook or other educational resources required for such course.

(b) The Office of Higher Education shall establish the Connecticut Open Educational Resource Coordinating Council. The council shall be appointed by the executive director of the Office of Higher Education and be composed of the following members:

This broadens the definition of OER to construe some low-cost online materials as "open" when they are in fact, not openly licensed. While low-cost materials are often appropriate and helpful to students, strongly prioritizing open materials will have the maximum public benefit.

Targeting "high enrollment" or "high-impact" courses is one way to make sure the most students benefit the soonest, though investment in OER for higher-level courses will be important in the future.

- (1) A state-wide coordinator that shall collaborate with the institutions of higher education to promote open educational resources and administer grants;
- (2) one faculty member, one administrator and one staff member of The University of Connecticut;
- (3) one faculty member, one administrator and one staff member of the regional community-technical college system;
- (4) one faculty member, one administrator and one staff member of Charter Oak State College;
- (5) one faculty member, one administrator and one staff member of the Connecticut State University System; and
- (6) one faculty member, one administrator and one staff member of an independent institution of higher education. The administrative staff of the joint standing committee of the General Assembly having cognizance of matters relating to higher education and employment advancement shall serve as administrative staff of the council.

Having a primary person responsible, or in this instance, a statewide coordinator, is often crucial to moving the project forward and hitting goals and deadlines. This council, however, does not include and librarians or students, both groups of stakeholders that are valuable in the conversation.

(c) The Connecticut Open Educational Resource Coordinating Council shall perform the following functions:

In contrast to Colorado, the establishment of this grant program is a “shall perform”, rather than “may”.

- (1) Identify high-impact courses for which open educational resources will be developed, converted or adopted;
- (2) Establish a program of competitive grants for faculty members of in-state institutions of higher education for the development, conversion or adoption of open educational resources for high-impact courses with funds identified by the committee and within available appropriations;
- (3) Accept, review and approve Creative Commons attribution license applications for the development of open educational resources, the conversion of printed resources to open educational resources and the adoption of open educational resources from other states by faculty members of in-state institutions of higher education;
- (4) Administer a standardized review and approval process for the development, conversion or adoption of open educational resources;
- (5) Establish a state-sponsored digital clearinghouse that shall function as a publically accessible database for the collection, storage and purchase of open educational resources; and
- (6) Promote strategies for the production, use and access of open educational resources.

Also included in this section is the creation of a state repository – an accessible online location where the public can access the materials related to these grants.

Notable in section 5 is the language “purchase of open educational resources.” By definition, openly licensed educational materials do not need to be purchased – this language is a result of the distorted Section 1 definition.

(d) The council shall meet quarterly, or as often as deemed necessary by a majority of the council.

(e) Not later than January 1, 2018, and annually thereafter, the council shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to higher education and employment advancement regarding its recommendations for any amendments to the general statutes necessary to develop open educational resources.

Note that this bill does not authorize or appropriate funding for the initiative, though that may be included in other legislation.



NORTH DAKOTA
H.B. No. 1261
Year: 2015
Committee: Education Committee
Status: Failed to pass

A BILL

for an Act to create a higher education open educational resources incentive grant program; to provide for a legislative management report; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STATE BOARD OF HIGHER EDUCATION - OPEN EDUCATIONAL RESOURCES GRANTS. Pursuant to section 54-44.1-11, the sum of \$5,000,000 appropriated from the general fund in the performance funding pool line item of subdivision 1 of section 1 of 7 chapter 34 of the 2013 Session Laws may be continued into the biennium beginning July 18, 2015, and ending June 30, 2017. The state board of higher education may use up to \$1,000,000 of unexpended appropriation authority from this line item for the purpose of creating a grant program to increase the use of open educational resources.

1. The board may award grants to academic faculty and instructional staff at institutions under the control of the board for salary performance bonuses or equipment and resources for the development and implementation of open educational resources. Total grant funds awarded to an individual under this section may not exceed \$20,000.

2. The board shall establish an advisory committee to develop criteria upon which all requests for grants will be reviewed. The advisory committee must include at least one faculty member and one student member. The advisory committee shall review all grant requests and recommend to the board the approval of grants.

3. The North Dakota university system office shall provide staff services as necessary to implement and administer the grant program.

While this authorizes funds to create an OER grant program, there are two important language notes: “may use” and “of unexpended appropriation authority,” which leave significant room for interpretation down the line.

Faculty and student buy-in are essential for successful OER programs, and including them in advisory committees of this nature is an important step.

SECTION 2. LEGISLATIVE MANAGEMENT REPORT. During the 2015-16 interim, the state board of higher education shall provide a report to the legislative management regarding the status of the open educational resources grant program created in section 1 of this Act. The report must include information regarding the number of grants awarded and a summary of the projects that received grant funding.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

This bill does not include definitions, which can be essential when addressing open education – primarily because the terminology is not widely understood yet.



STATE OF CALIFORNIA
S.B. No. 1359
Year: 2016
Committee: Education
Status: Enacted, Chapter 343

AN ACT

to add Section 66406.9 to the Education Code, relating to public postsecondary education.

<< The preamble of this legislation has been omitted >>

The people of the State of California do enact as follows:

SECTION 1. Section 66406.9 is added to the Education Code, to read: 66406.9.

(a) Each campus of the California Community Colleges and the California State University shall, and each campus of the University of California is requested to, do both of the following:

(1) (A) Clearly highlight, by means that may include a symbol or logo in a conspicuous place on the online campus course schedule, the courses that exclusively use digital course materials that are free of charge to students and may have a low-cost option for print versions.

(B) The course materials described in subparagraph (A) may include open educational resources, institutionally licensed campus library materials that all students enrolled in the course have access to use, and other properly licensed and adopted materials. Each campus of the California State University, each participating campus of the University of California, and each community college district shall ensure that these materials comply with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and the federal Copyright Act of 1976 (Public Law 94-553).

(2) Clearly communicate to students that the course materials used for the courses identified pursuant to paragraph (1) are free of charge and therefore not required to be purchased.

(b) For purposes of this section, the following terms have the following meanings:

(1) “Course schedule” is a collection of available classes, course

Empowering student consumers to ‘vote with their feet’ and choose courses using open materials is an effective way to encourage change in the market for states unable or unwilling to invest in a grant program or other financial commitment.

This legislation makes no commitment on behalf of the state, instead mandating that the state’s public institutions clearly designate courses in said manner.

sections, or both, published electronically, before the start of an academic term.

(2) “Open educational resources” are high-quality teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license, such as a Creative Commons license, that permits their free use and repurposing by others, and may include other resources that are legally available and free of cost to students. “Open educational resources” include, but are not limited to, full courses, course materials, modules, textbooks, faculty-created content, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge.

A similar definition to the other examples included here.

(c) This section shall become operative on January 1, 2018.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



TEXAS
S.B. No. 810
Year: 2017
Committee: Higher Education
Status: Effective immediately

AN ACT
relating to the purchase and use of open educational resources.

Be it Enacted by the Legislature of the State of Texas:

SECTION 1. Section 31.001, Education Code, is amended to read as follows:
Sec. 31.001. FREE INSTRUCTIONAL MATERIALS. Instructional materials selected for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by Section 31.104(d), a school district may not charge a student for instructional material or technological equipment purchased by the district with the district's instructional materials **and technology** allotment.

SECTION 2. Sections 31.002(1) and (1-a), Education Code, are amended to read as follows:

(1) "Instructional material" means content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including **open education resource** [open-source] instructional material.

(1-a) "**Open education resource** [Open-source] instructional material" means **teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that allows for free use, reuse, modification, and sharing with others, including full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge** [electronic instructional material that is available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional material]. The term includes state-developed **open education**

This contains a relatively strong definition of open educational resources and open licensing, compared to other examples in this guide. One particularly unique aspect of this bill is that it also includes a provision around freedom to access the materials, which is actually a separate issue from licensing.

resource [open-source] instructional material purchased under Subchapter B-1.

<< Sections 3-12 have been omitted as they contain only minor language modifications to existing statute. >>

SECTION 13. Section 31.022, Education Code, is amended by amending Subsection (d) and adding Subsections (g) and (h) to read as follows:

(d) At least 12 months before the beginning of the school year for which instructional materials for a particular subject and grade level will be adopted under the review and adoption cycle, the board shall publish notice of the review and adoption cycle for those instructional materials. A request for production must allow submission of **open education resource** [open-source] instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale.

(g) In reviewing and adopting instructional materials, the board shall consider a school district's need for technology as well as instructional materials and in any biennium may limit the adoption of instructional materials to provide sufficient resources to purchase technology resources, including digital curriculum.

(h) The board shall include information regarding open education resource instructional materials during the adoption cycle, including any cost savings associated with the adoption of open education resource instructional materials.

<< Sections 14-34 have been omitted as they contain only minor language modifications to prior legislation, or pertain specifically to K-12 education. >>

SECTION 35. Section 51.451, Education Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Open educational resource" means a teaching, learning, or research resource that is in the public domain or has been released under an intellectual property license that permits the free use, adaptation, and redistribution of the resource by any person. The term may include full course curricula, course materials, modules, textbooks, media, assessments, software, and any other tools, materials, or techniques, whether digital or otherwise, used to support access to knowledge.

SECTION 36. Section 51.452, Education Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Each institution of higher education shall:

- (1) for each semester or academic term, compile a course schedule indicating each course offered by the institution for the semester or term to postsecondary students;
- (2) with respect to each course, include with the schedule a list of the required and recommended textbooks that specifies, to the extent practicable, the following information for each textbook:
 - (A) the retail price;
 - (B) the author;
 - (C) the publisher;

This bill fully integrates OER into existing state educational policy. As a result, a significant portion of this bill consists of adding the phrase "open educational resources" to current code. For brevity, those sections have been omitted from this document.

Price disclosure is a crucial part of building accountability in the textbook market. Other disclosures, like the number of recent editions or the availability of alternative formats, help both educators and students make informed decisions.

- (D) the most recent copyright date; [and]
- (E) the International Standard Book Number assigned, if any;
and

(F) whether the textbook is an open educational resource;

(3) except as provided by Subsection (b), at the time required by Subsection (c)(2):

(A) publish the textbook list with the course schedule on the institution's Internet website and with any course schedule the institution provides in hard copy format to the students of the institution; and

(B) make that information available to college bookstores and other bookstores that generally serve the students of the institution; and

(4) except as provided by Subsection (b), as soon as practicable after the information becomes available disseminate as required by Subdivision (3) specific information regarding any revisions to the institution's course schedule and textbook list.

(d) If an institution of higher education or a college bookstore publishes a textbook list with a course schedule on an Internet website that provides a search function, the institution or bookstore must:

(1) ensure that the search function permits a search based on whether a course or section of a course requires or recommends only open educational resources; or

(2) provide a searchable list of courses and sections of courses that require or recommend only open educational resources.

Similar to a provision enacted in California, this small clause creates a unique course designation that allows students to select course sections that use free and/or open materials.

SECTION 37. Section 51.453, Education Code, is amended to read as follows:
Sec. 51.453. TEXTBOOK ASSISTANCE INFORMATION FOR STUDENTS.

To the extent practicable, an institution of higher education shall make reasonable efforts to disseminate to its students information regarding:

(1) available institutional programs for renting textbooks or for purchasing used textbooks;

(2) available institutional guaranteed textbook buyback programs;

(3) available institutional programs for alternative delivery of textbook content;
[and]

(4) the availability of courses and sections of courses that require or recommend only open educational resources; and

(5) other available institutional textbook cost-savings strategies.

SECTION 38. Section 51.454(a), Education Code, is amended to read as follows:

(a) When a textbook publisher provides information regarding a textbook or supplemental material **other than an open educational resource** to a faculty member or other person in charge of selecting course materials at an institution of higher education, the publisher shall also provide to the faculty member or other person written information that includes:

(1) the price at which the publisher would make the textbook or supplemental material available to a college bookstore or other bookstore that generally serves the students of the institution and, if

- applicable, to the public;
- (2) the copyright dates of the current and three preceding editions of the textbook;
- (3) a description of any substantial content revisions made between the current edition of the textbook or supplemental material and the most recent preceding edition of the textbook or material, including the addition of new chapters, new material covering additional time periods, new themes, or new subject matter;
- (4) information as to whether the textbook or supplemental material is available in other formats, such as a paperback or unbound version; and
- (5) the price at which the publisher would make the textbook or supplemental material in any alternative format available to a bookstore described by Subdivision (1) and, if applicable, to the public.

SECTION 39. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0668 to read as follows:

Sec. 61.0668. OPEN EDUCATIONAL RESOURCES GRANT PROGRAM.

- (a) In this section, "open educational resource" has the meaning assigned by Section 51.451.**
- (b) The board shall establish and administer a grant program to encourage faculty at institutions of higher education to adopt, modify, redesign, or develop courses that use only open educational resources.**
- (c) Under the program, a faculty member of an institution of higher education may apply to the board for a grant to adopt, modify, redesign, or develop one or more courses at the institution to exclusively use open educational resources.**
- (d) For each course identified in an application for a grant under this section, the board shall select at least three persons qualified to review the curriculum of the course, as determined by the board, to evaluate the application with respect to that course. If the application is rejected, the reviewing persons must provide feedback on the application to the faculty member. The feedback may be provided anonymously.**
- (e) A faculty member who receives a grant under the program shall ensure that any open educational resource used in each applicable course is provided to a student enrolled in the course at no cost other than the cost of printing.**
- (f) A faculty member who receives a grant under the program must submit to the board for each of the four semesters immediately following the implementation of each applicable course a report that includes:**
 - (1) the number of students who have completed the course;**
 - (2) an estimate of the amount of money saved by a student due to the use of open educational resources in the course;**
 - (3) a description of the open educational resources used in the course;**
 - (4) the number of other faculty members, if any, who adopted the curriculum of the course; and**
 - (5) any other information required by the board.**
- (g) A faculty member who receives a grant under the program may continue to submit a report described by Subsection (f) for a semester that**

Unlike some other states, this grant program would apportion funds directly to faculty themselves, rather than institutions that would successively grant to faculty or librarians to do OER work.

Gathering data as described in section F is important for improving awareness about, and building support for, OER – as well as ensuring the program achieves the goals it was created to.

occurs after the faculty member's duty to submit a report under that subsection has expired. The board may consider a faculty member's failure to submit additional reports under this subsection in evaluating a subsequent grant application submitted by the faculty member.

(h) A faculty member who is no longer employed by an institution of higher education forfeits any grant awarded under the program.

(i) The board may not award a grant under the program to a faculty member of a postsecondary educational institution other than an institution of higher education.

(j) Not later than December 1 of each even-numbered year, the board shall submit to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education a report on:

- (1) the total number of grants distributed under the program;
- (2) the number of students who completed a course adopted, modified, redesigned, or developed under the program;
- (3) an estimate of the total amount of money saved by students due to the use of open educational resources in courses adopted, modified, redesigned, or developed under the program;
- (4) a list of any subject areas that would benefit from the adoption, modification, or development of open educational resources; and
- (5) recommendations on future steps for adopting, modifying, or developing open educational resources.

(k) The board may solicit and accept gifts, grants, and donations from any public or private source for purposes of the program.

(l) The board shall adopt rules for the administration of the program.

(m) This section expires September 1, 2021.

(n) The board may not use appropriated funds in an amount greater than \$200,000 for purposes of the program in the state fiscal biennium ending August 31, 2019. The board may use any amount of other funds available for those purposes. This subsection expires December 1, 2019.

SECTION 40. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0669 to read as follows:

Sec. 61.0669. FEASIBILITY STUDY ON STATE REPOSITORY OF OPEN EDUCATIONAL RESOURCES.

(a) In this section, "open educational resource" has the meaning assigned by Section 51.451.

(b) The board shall conduct a study to determine the feasibility of creating a state repository of open educational resources. The study must consider:

- (1) methods for facilitating public access to open educational resources;
- (2) the resources needed to create the repository; and
- (3) any potential challenges in creating the repository.

(c) In conducting the study, the board shall collaborate with relevant state agencies, textbook publishers, representatives of the open educational resource community, and other stakeholders, including the Texas Education Agency and representatives of public institutions of higher education and school districts.

This legislation authorizes a sizeable cap on funding for the program.

Making OER easily accessible to educators and students is an essential piece of driving adoption. There are some existing repositories of OER, but a number of states are also playing a role in centralizing those materials. By initiating a statewide feasibility study, Texas is considering the same.

(d) Not later than September 1, 2018, the board shall submit to the governor, lieutenant governor, speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over higher education a report on the results of the study and any recommendations for legislative or other action. The report must include information on:

- (1) methods by which open educational resources would be gathered and curated;**
- (2) measures to ensure public access to the repository;**
- (3) methods of encouraging the use of the repository;**
- (4) management of intellectual property rights; and**
- (5) any other measures necessary to ensure the repository's success.**

(e) The board may not use appropriated funds in an amount greater than \$100,000 for purposes of the study. The board may use any amount of other available funds for purposes of the study and may solicit and accept gifts, grants, and donations for that purpose.

(f) This section expires September 1, 2019.

<< Sections 41-46 have been omitted as they contain primarily authorizing and enactment language. >>

It is noteworthy here that the bill also authorizes a substantial sum to run the feasibility study – on top of what is authorized for faculty grants.



OREGON

H.B. No. 2871

Year: 2015

Committee: Higher Education, Innovation, and Workforce Development

Status: Enacted, Chapter 727

AN ACT

Relating to higher education; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1.

(1) As used in sections 1 to 4 of this 2015 Act, “open educational resources” means teaching, learning and research resources that:

- (a) Reside in the public domain or that have been released under an intellectual property license that permits their free use and repurposing by others; and
- (b) Conform to the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and to any additional accessibility standards established by the Higher Education Coordinating Commission by rule.

(2) The Open Educational Resources Grant Program is established within the Higher Education Coordinating Commission and in collaboration with public universities listed in ORS 352.002 and community colleges. The purpose of the program is to encourage the use of low or no-cost open educational resources in Oregon’s post-secondary institutions of education.

(3) Subject to the availability of funds, the commission shall award grants on a competitive basis to public universities listed in ORS 352.002, community colleges or consortia of public universities and community colleges.

(4) In awarding grants under subsection (3) of this section, the commission shall give priority to applications that propose to:

- a) Adapt or otherwise make use of existing open educational resources;
 - b) Leverage grants awarded under this section with matching private funds or other resources;
 - c) Utilize students in the design or production of open educational resource materials;
 - d) Involve coordinated activities between two or more public universities and community colleges;
 - e) Focus on high-enrollment courses;
 - f) Address a need not currently met by existing available resources;
- and

This is a fine definition of open educational resources, though it would be strengthened with the language provided on page 20.

This grant program is similar to those described in Colorado and North Dakota’s legislation in that it grants to institutions to use for professional development or coordination in addition to re-grants to faculty.

- g) Assist in convening faculty from public universities and community colleges to promote the use of open educational resources within post-secondary education.

SECTION 2. The Higher Education Coordinating Commission shall employ an open educational resource specialist who shall be responsible for collaborating with the state’s public universities listed in ORS 352.002 and community colleges to foster the use of open educational resources in a manner that increases the access, affordability and success of Oregon students at post-secondary institutions of education. While working in an inclusive and collaborative manner, the specialist shall:

- (1) Help identify available open educational resources;
- (2) Assist public university and community college personnel in methods of:
 - (a) Properly attributing, combining, revising and redistributing open educational re-sources; and
 - (b) Creating openly licensed content and sharing one’s work; and
- (3) Assist faculty members at public universities and community colleges as they seek to use open educational resources in their courses.

This legislation establishes a position with clear responsibility for moving the project forward.

SECTION 3.

(1) In addition to and not in lieu of any other appropriation, there is appropriated to the Higher Education Coordinating Commission, for the biennium beginning July 1, 2015, out of the General Fund, the amount of \$700,000 for the purposes of implementing sections 1 and 2 of this 2015 Act.

(2) All resources created or revised with moneys appropriated under this section must be openly licensed and shared with the public through an existing or new open educational resources repository.

This is a sizeable investment in OER – not just authorized spending but a full appropriation of \$700,000 for the project.

SECTION 4. Each public university listed in ORS 352.002 and community college shall prominently designate courses whose course materials exclusively consist of open or free textbooks or other low-cost or no-cost course materials. The course designation required by this section must appear in the published course descriptions that are on the Internet or are otherwise provided to students at the time of course registration, including on the campus bookstore course materials list that is provided for the course.

Similar to the clause in Texas’ legislation, this established a requirement for schools to inform students when there are courses using low- or no-cost materials.

SECTION 5.

(1) By June 30, 2017, the Higher Education Coordinating Commission, in coordination with public universities listed in ORS 352.002 and community colleges, shall identify open educational resources that can be adopted as the primary instructional material for at least 15 courses that are:

- (a) High-enrollment;
- (b) Within general education disciplines; and
- (c) Capable of being transferred among community colleges and between community colleges and public universities listed in ORS 352.002.

This is a step further than some of the other examples, in that it sets a goal for a specific number of courses that will be targeted by the program.

(2) Open educational resources identified under subsection (1) of this section must have undergone a peer-review process and be made available to all post-secondary institutions of education operating in Oregon.

(3) As used in this section, “open educational resources” has the meaning given that term in section 1 of this 2015 Act.

SECTION 6. Section 5 of this 2015 Act is repealed on January 2, 2018.

SECTION 7. Not later than December 1, 2015, the Higher Education Coordinating Commission shall submit a report on the status of implementing sections 1 to 5 of this 2015 Act to the interim legislative committees on higher education. This report must also detail any barriers identified by the commission relating to the future development or use of open educational resources, as defined in section 1 of this 2015 Act.

SECTION 8. Section 7 of this 2015 Act is repealed on July 1, 2016.

SECTION 9. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.



STATE OF NEW YORK

A.B. No. 08296

Year: 2017

Committee: Higher Education

Status: Referred to Committee on Higher Education

AN ACT

to amend the education law, in relation to enacting the college textbook affordability act; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

ARTICLE 15-D

COLLEGE TEXTBOOK AFFORDABILITY ACT

731. New York state open education resources council.

732. New York state open source digital library.

733. Open educational resources adoption incentive program.

734. Open educational resources adoption incentive program campus plan.

<< Section § 730. Legislative intent has been omitted for brevity. >>

§ 731. New York state open education resources council.

1. The New York state open education resources council is hereby established in the state university of New York. The council shall be composed of faculty leaders from state university of New York institutions and community colleges.

2. The council shall have nine members: five members shall be faculty of the state university of New York, selected by the University Faculty Senate, and four members shall be community college faculty, selected by the Faculty Council of Community Colleges. Appointments to the council shall be made no later than ninety days after the effective date of this article.

3. The council shall be responsible for accomplishing all of the following:
(a) (i) development of a list of fifty strategically selected courses for which high-quality, affordable, digital open source textbooks and related materials shall be developed or acquired pursuant to this section. (ii) in developing the course list pursuant to this paragraph, the council shall consider the extent to which the selected courses:

While this council appropriately includes representation from both 4-year universities and community colleges, it does not include students, librarians, or other support staff.

This is similar to the Washington Open Courseware initiative (not included in this Companion) that prioritized development of materials for 50 courses with the highest potential impact and highest student savings.

- (A) are among the most highly enrolled courses within state university of New York institutions and at community colleges;**
- (B) are likely to generate significant savings in textbook costs for students;**
- (C) demonstrate relative consistency in content across existing textbook products;**
- (D) provide opportunities for faculty to augment the open textbook with free faculty-authored materials or other free open education materials from existing digital libraries and collections;**
- (E) are conducive to discipline-based pedagogies that can be enhanced with digital resources and interactivity to support improved student learning success.**

- (b) creation and administration of a standardized, rigorous review and approval process for open source textbooks and related materials developed or acquired pursuant to this section. This process shall ensure that all open source textbooks and related materials developed or acquired pursuant to this section have been tested and validated as having met accessibility requirements for students with disabilities before approval and release. The textbooks and other materials shall include documentation for students with disabilities that describes available accessibility features.**
- (c) promotion of strategies for production, access, and use of open source materials.**
- (d) regularly soliciting and considering, from student associations advice and guidance on open source education textbooks and related materials.**

4. The council shall establish a competitive request for proposal process in which faculty members, publishers, and other interested parties may apply for funds to produce the fifty high-quality, affordable, digital open source textbooks and related materials pursuant to this section. Nothing in this subdivision shall be construed to limit or restrict the council from developing or acquiring, either for a charge or for free, existing high-quality digital open source textbooks and related materials that otherwise meet the specifications of this section.

5. The council shall submit a report to the legislature and the governor on the progress of the implementation of this section no later than six months after the effective date of this article, and submit a final report by January first, two thousand twenty.

6. The textbooks and other materials produced pursuant to this section shall comply with all of the following requirements:

(a) the textbooks and other materials are placed under a creative commons attribution license that allows others to use, distribute, and create derivative works based upon the digital material while still allowing the authors or creators to receive credit for their efforts.

(b) the textbooks and other materials are modular in order to allow easy customization, and are encoded in an extensible markup language (XML)

This language establishes a broader field for their OER creation grants – including publishers and other non-institutional partners.

The Creative Commons Attribution license is widely considered one of the “most open” licenses, allowing for the greatest permissions to reuse, remix, and distribute the work.

format, or other appropriate successor format, and are designed and delivered to achieve interoperability enabling the materials to be made available reliably and successfully on the widest possible range of platforms, such as the internet, tablets, smartphones, print, or other platforms.

(c) the textbooks and other materials conform to the most current, ratified standards under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794d), as amended, and the Web Content Accessibility Guidelines adopted by the World Wide Web Consortium for accessibility. The textbooks and other materials shall be furnished to colleges and universities for distribution to students with print disabilities.

(d) the textbooks and other materials are submitted to, and housed within, the New York state open source digital library.

§ 732. New York state open source digital library.

1. The New York state open source digital library is hereby established, and shall be administered by the state university of New York, in coordination with the state's community colleges, for the purpose of housing open source materials while providing an internet web-based way for students, faculty, and staff to easily find, adopt, utilize, or modify course materials for little or no cost.

2. All material in the New York state open source digital library shall bear a creative commons attribution license that allows others to use, distribute, and create derivative works based upon the digital material while still allowing the authors or creators of the material to receive credit for their efforts.

3. Nothing in this section shall be construed to mandate faculty use of any particular textbook or related materials.

§ 733. Open educational resources adoption incentive program.

1. The state university of New York shall hereby establish an open educational resources adoption incentive program. With moneys appropriated therefor, the program shall further the following purposes:
(a) faculty professional development, which shall include learning about the New York state open source digital library established pursuant to section seven hundred thirty-two of this article. Faculty who participate in this professional development shall be reimbursed in accordance with their campus' approved plan established pursuant to section seven hundred thirty-four of this article.

(b) professional development for staff whose work supports providing students with open educational resources.

(c) open educational resource curation activities. All new open educational resources developed and available that are adopted as course material pursuant to this program shall be added to the New York state open source digital library.

(incl. previous page)
This is rather unique, but important language – it includes a requirement that materials be created in an editable format. While open licensing is a foundation, many of the benefits cannot be exercised without having documents in an editable format.

Like a number of other examples included in this guide, this bill establishes a repository to ensure that materials created be the program are perpetually free and accessible to the public.

The grant program described in this bill is far more extensive than in other examples, and has significantly more delineation around process and protocol.

Professional development opportunities are often crucial to the success of an OER program.

(d) curriculum modification and requisite release time for faculty in accordance with a campus' approved plan pursuant to section seven hundred thirty-four of this article related to the adoption of open educational resources as course materials.

(e) technology support for faculty, students, and staff whose work furthers the goals specified in a campus' approved plan pursuant to section seven hundred thirty-four of this article.

2. Moneys appropriated for the program shall not be used for direct compensation for faculty members who adopt open educational resources, except as provided to compensate for professional development pursuant to paragraph (a) of subdivision one of this section, or for purchasing new equipment.

3. For the purposes of this article, "open educational resources" means high-quality teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license, such as a creative commons license, that permits their free use and repurposing by others, and may include other resources that are legally available and free of cost to students. "Open educational resources" include, but are not limited to, full courses, course materials, modules, textbooks, faculty-created content, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge.

This definition is comparable to other examples included in this guide.

§ 734. Open educational resources adoption incentive program campus plan.

1. In order to participate in the open educational resources adoption incentive program, the local faculty senate of a campus of the state university of New York or of a community college shall:

- (a) adopt a local campus resolution to increase student access to high-quality open educational resources and reduce the cost of textbooks and supplies for students in course sections for which open educational resources are to be adopted to accomplish cost savings for students; and**
- (b) approve a plan, in collaboration with students and campus administration, that describes evidence of the faculty's commitment and readiness to effectively use grant funds to support faculty adoption of open educational resources.**

Unlike the grants available to those interested in *creating* OER material, the OER *adoption* program is much more restrictive around who can participate.

Institutions must make a sizeable, long-term commitment to implementing OER on their campus in order to be eligible for grant funding.

2. (a) The plan approved pursuant to subdivision one of this section may detail technological or staff support to increase the adoption of open educational resources. The plan shall describe how the faculty will learn about the New York state open source digital library and other existing open educational resources.

(b) The plan shall include the number of academic departments expected to be involved in the plan's implementation, the number of course sections in which open educational resources will be adopted, the percentage of cost savings for students anticipated on account of the adoption of open

educational resources for each of these course sections, the ways existing faculty development programs will be enhanced by the plan's implementation, and the mechanisms that will be used to distribute adopted open educational resources to students.

(c) At their discretion, faculty may choose, for courses that are to adopt open educational resources under the plan, appropriate resources for any of the fifty strategically selected courses identified by the New York state open education resources council pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred thirty-one of this article. Other open educational resources may also be used.

(d) The plan shall describe how the campus will provide access to open educational resource materials for students, including how the campus will make hard copies of these materials available for students who lack access to these materials off campus and make it possible for students with such access to print hard copies.

(e) The plan shall identify the amount of the grant requested. The amount of the grant requested shall be equal to, or less than, the number of course sections in which both open educational resources will be adopted and cost savings for the course section will be greater than thirty percent, multiplied by one thousand dollars. The amount requested shall not be greater than fifty thousand dollars. A plan shall commit to achieving greater than thirty percent cost savings in at least ten course sections.

(f) The plan shall include the percentage of cost savings for each course section calculated as follows: the percentage of cost savings shall be the estimated decrease in the costs of books and supplies for a course section in the current term resulting from the adoption of open educational resources for that course section, divided by the costs of books and supplies for that course section in the immediately preceding academic term.

3. The New York state open education resources council may provide expertise on available open educational resources and best practices for the adoption of open educational resources for existing courses to assist in the development of the plan.

4. (a) The local faculty senate of a campus of the state university of New York or the community colleges may submit the resolution and the plan developed pursuant to this section to the New York state open education resources council as its application for an initial grant no later than June thirtieth, two thousand eighteen.

(b) (i) The New York state open education resources council shall make an initial grant to a campus within sixty days of the council's receipt of the campus' application if the campus has satisfied the requirements of this section. The New York state open education resources council may award up to fifty initial grants. (ii) If the total amount requested in applications received pursuant to subparagraph (i) of this paragraph is equal to or less than two million dollars, the New York state open education resources council shall make grants for each approved application equal to the amount requested in the application. If the total amount requested in applications received pursuant to subparagraph (i) of this paragraph

The following sections provide an in-depth process for how this grant program will be conducted.

exceeds two million dollars, the New York state open education resources council shall make grants for the full amount requested in approved applications on a competitive basis based on the strength of the evidence provided of faculty commitment to the adoption of open educational resources.

(c) Each application approved by the New York state open education resources council shall be submitted by the council to the chancellor of the state university of New York no later than thirty days after the council approves the application. The chancellor shall award grants to recipients in accordance with this section.

(d) Administrative support may be provided to the council by the New York state open source digital library to help the council carry out its duties in accordance with this part.

5. (a) No later than June thirtieth, two thousand nineteen, a campus may apply for a bonus grant equal to the amount of its initial grant. The application shall include evidence that the campus has met or exceeded total cost savings of greater than thirty percent for the required number of course sections specified in the approved plan for the campus' initial grant in the two thousand eighteen--two thousand nineteen academic year.

(b) A campus may also compute the total cost savings for each course section and include that figure in its application for a bonus grant pursuant to this subdivision.

(c) The total cost savings for each course section shall be the number of students enrolled in a course section multiplied by the per-student decrease in the costs of books and supplies for the course section in the term resulting from the adoption of open educational resources.

(d) Bonus grants shall be used to further the goals of the campus' approved plan for its initial grant.

(e) If the total amount requested in applications for bonus grants exceeds the total amount of funds available, the New York state open education resources council shall award grants on a competitive basis to approved applications for the full amount of the initial grant based on the overall percentage savings achieved by the initial plan in the courses covered by the plan.

<< Section 6 regards a report to the legislature has been omitted for brevity. >>

§ 3. Notwithstanding any other provision of law, rule or regulation to the contrary, funds obtained as the result of any settlement with the office of the attorney general shall be used to provide assistance to the state university of New York for the purposes of carrying out the provisions of this act. Such monies shall be disbursed to the state university of New York to be used for any services or expenses in carrying out the provisions of this act; provided that no more than \$5,000,000 shall be made available from settlement revenue. As used in this section, the term "settlement revenue" shall mean the sum of all revenue received as a result of litigation with the office of the attorney general.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law and shall expire and be deemed repealed July 1, 2022.

This bill establishes a cap on OER adoption grants at \$2,000,000, and sets an overall cap at \$5,000,000 for expenses listed in herein.