CHAPTER 15

# Librarian Lobbyist?

## Front Lines of Virginia OER Legislative Advocacy

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## Introduction

Opportunities for librarian legislative involvement are somewhat inevitable. They can propel those on the precipice into policy and political engagement, for personal and professional reasons. In the United States, employees of public institutions and corporations are typically bound by institutional policies regarding speech, policymaking, and communication with government entities on behalf of their respective institutions. This was true then, and now at the state research university where I am employed,[1] the university president is responsible for all university positions in response to federal and state legislation and regulations and for coordination and communication with all government entities regarding official positions on policy issues. This dual identity of government employee and private citizen can create complexity. Lack of librarian experience thinking with a political frame[2] further complicates librarian involvement in situations that call for a political rather than human resources or cultural/symbolic leadership framing of the situation.



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# Background

Open educational resources (OER) have a relatively recent history and have become the subject of proposed legislation. The term "open educational resources" was coined at the 2002 UNESCO Forum on the Impact of Open Courseware for Higher Education in Developing Countries.[3] OER emerged from several parallel developments in the early to mid-1990s, when the Mosaic Netscape web browser demonstrated the potential of the World Wide Web, in 1997 when the California State University created MERLOT (Multimedia Educational Resources for Learning and Online Teaching), and in 1998 when David Wiley proposed "a license for free and open content as an alternative to full copyright."[4] Creative Commons was founded soon after and released its first open licenses in 2002,[5] and the Budapest Open Access Initiative was founded in February 2002, prioritizing free and unrestricted online availability to scholarly literature.[6]

At the most fundamental level, OER are freely available, licensed to be adaptable, and presented in technical formats that allow adaptation. They allow creators to share their work easily and for everyone to find works that are free to use and adapt without paying fees.[7] Other OER definitions from UNESCO and the US Government are consistent with the three-legged stool of being free, openly licensed, and released in technological formats that allow adaptation as easily as possible. A still widely accepted definition of open educational resources (OER) in the US context dates back to 2007:

> Open Educational Resources (OER) are teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use, reuse, modification, and sharing with others. They include full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge.[8]

In 2010, "open" was still in definition as points on a continuum,[9] with practitioners leaning toward ideal practice. In 2013, the definition of OER was relatively clear and unmuddied.[10] There was no question that OER were supposed to be freely and publicly available and that adaptation, remix, and customization, however difficult, were the ideal to strive for. There were, however, divergences in the practice: early initiatives such as the Kaleidoscope Open Course Initiative,[11] University System of Maryland, and Lumen Learning did not prioritize public sharing of openly licensed content or source files. Toll-access, login-required, walled-gardens, and fettering of content were practiced by some but largely frowned upon[12] as much of the movement embraced public online sharing as a central goal of OER. Free online access and sharing appealed especially in librarianship,[13] which champions discovery, retrieval, and access. Granted, there were listserv and social media debates about practices peripheral to the ideal three-legged-stool—whether

the normative Creative Commons license for OER should be CC BY or if a ShareAlike license, which removed choice from an individual adapting a version or a NonCommercial license prohibited primarily commercial use, were acceptable community norms.[14] Various players joined together to announce CC BY as the preferred license.[15] Conscientious objectors explored reasons for legitimate adoption of ShareAlike, NonCommercial, and NoDerivatives licenses. Others railed completely against definitions of OER at all. Adaptation and remix were difficult to operationalize. Even as late as 2016, the process of leveraging open licenses to transform one OER into another was still difficult as evidenced by the myriad of factors to examine, the lack of usable source files, and steps needed to actualize one's vision.[16]

# Muddling the Main Idea

The context changed rather quickly as the concept of "affordability" related to learning resources began to compete by 2015 with the innovative affordances of OER to shape materials for one's purpose, to share, to overcome copyright issues, utilize open practices in teaching, and to bring enormous benefit to others.[17] A move to "what's easy" and institutional-affordability-only was, of course, not unwarranted; complaints about publisher prices were nothing new and had attracted government attention as early as 2004.[18] Reporting requirements regarding textbook price transparency and unbundling course material bundles were included in the 2008 Higher Education Opportunity Act (HEOA)[19] as reviewed in 2013.[20] Reports from non-profit advocacy and state higher education consortia began to be released at this time, including Babson Surveys (now Bayview Analytics), which early tracked academic leader and faculty perceptions of OER in 2012,[21] US PIRG's "Fixing the Broken Textbook Market" in 2014,[22] and student course material costs and impact surveys such as the 2016 Florida Virtual Campus Student Textbook and Course Materials Survey.[23] Alongside these, the Affordable College Act was first introduced in the US Congress in 2015 and passed as the Open Textbook Pilot Grant in 2017.[24]

# Early Experiments by Non-Profit and For-Profit Entities

For-profit and not-for-profit publishers leveraging new affordances of the internet and open licenses have experimented with a variety of sustainability and business models for OER creation and distribution. In 2007, one formerly open publisher moved from making its money by selling print, flashcards, and other add-ons[25] using CC licenses to an all-rights-reserved model in 2012[26] and making attempts to disassociate their brand[27] and authors from their existing publications list. Around the time of their departure from using open licenses in 2012, OpenStax, a nonprofit affiliated with Rice University, published its first

open textbooks under CC BY[28] and introduced yet another business model: foundation funding plus revenues from commercial courseware agreements and its own competitively priced homework software system.[29] Each of these attempts has had an impact on the way individuals and other entities answer the question, "What are open educational resources?"

## *Efforts and Impacts of For-Profit Entities*

Relevant to the bill are the actions of commercial entities toward open educational resources that threaten to undercut commercial entities' historical monopoly over the textbook market. Larger commercial publishers have looked for opportunities to protect their market share in the newly competitive landscape by attempting to control or tone down messaging regarding open educational resources,[30] competing in the landscape by wrapping open educational resources with proprietary content to generate revenues,[31] limiting libraries from purchasing or accessing ebooks,[32] gutting the used-textbook market by moving to digital-only content,[33] suing customers,[34] and lobbying for favorable legislation. These are strategic business efforts to preserve publisher market share and return value to shareholders, but they make it *more difficult* for institutions to ensure that students and faculty can create and access well-fitting course material and tools fairly and equitably, and they don't tend to build goodwill among students, educational institutions,[35] or librarians. At minimum, there is caution by many librarians over value misalignment, and lack of parity in vendor-library relationships, especially when some publisher profit margins are above 40 percent.[36]

Also troubling to many was the move of a prominent, long-term OER advocate away from community-held ideals—that "education is sharing" and iterating toward openness is beneficial—to commercial engagement. These changes seem to have coincided with a greater commitment to the sustainability of commercial ventures over the public good. The change was publicly apparent via a blog post arguing that *retaining* OER is critical while remaining silent regarding free public access as an inherent part of OER.[37] Not defending OER as open-licenses-plus-open-access seems to the author a significant challenge to the shared public-value proposition of OER. As you will see below, the OER definition, OER ideals, and this future need defending.

# Institutional Agency and Its Limits

Libraries and universities have agency to invest in "open" *or* to pay for commercial services. They do a bit of both, hopefully mindful of overarching goals and objectives, but sometimes not. These choices have consequences for our future. *Higher education institutions and individuals within should be aware that the products and projects we choose to pay for are the ones that will grow. How we spend our time and resources and our planning or lack thereof will influence our future.*

In the course materials selection context, institutions of higher education in the US are bound by federal laws, such as the 2008 Higher Education Opportunity Act,[38] which requires cost transparency regarding course materials and unbundling options for texts and software materials. Further political changes at federal and state levels can create mandates, restrictions, requirements, and opportunities and require compliance.

# Librarian Legislative Involvement?

Many libraries are at least partly government-funded, equal access focused, and deal with resource allocation and decision-making, access gatekeeping, and removing access barriers, though academic libraries experience these realities differently than non-academic or public libraries. Contrary to the beliefs of some, librarianship is ideally *not fundamentally* political as it relates to learning, building constructive relationships, service, crafting programs and strong and stable foundations, and creating opportunities for meaningful work for self and others. Librarian goals in doing so must serve the mission of supporting and learning alongside people who want to know "what is" and to identify and build up good things in people and groups rather than appealing to the less generous parts of our natures. Given this reality, political skill is not an area in which librarians score highly.[39] Library leaders can benefit greatly from developing effective influencing skills and strategic alliances.[40] These skills may be developed through political engagement or by applying a political frame such as Boltman and Deal's[41] in a case study exercise. This can better illuminate political frame elements, including conflicting (and sometimes hidden) agendas between individuals and groups, resolving these through coalition building, conflict resolution, and building a power base.

Now that the context is set, the author turns the remainder of this chapter to a case study of 2018 Virginia House Bill 454 (HB454)[42] in which lobbyist interests aimed to muddle the definition of OER. Lessons and suggested actions are included throughout the case study.

# Case Study: HB 454 (2018) Virginia Bill to Encourage OER

Ideally, adherence to and policy around helpful educational practices would arise from within self-governed institutions. However, in 2018, Virginia HB454, a bill titled "Encourage Open Educational Resources"[43] was proposed as an amendment to VA23.1-1308 (Code of Virginia § 23.1-1308).[44] This legislation added Virginia to a growing list of states[45] that have considered and passed legislation related to advancing open educational resources. The author was pulled into political involvement through her commitment to a classic definition of OER—freely and publicly available, released under an open license, and

with the goal of technological openness. The evolution of VA Bill HB454[46] threatened the clear and consistent definition of open educational resources championed by the majority and best practices for public higher education institutions regarding open educational resources. The author saw a future she wanted to preserve from redefinition. She wanted to retain and continue to practice classic-definition OER opportunities with faculty and students at her institution and enable others to do so Virginia-wide. Having published the first open textbook at Virginia Tech in 2016, she was starting to experience some success after years of building understanding and pioneering.[47] Unbeknownst to her, she was about to become a citizen lobbyist and enter state-level advocacy in the Virginia General Assembly, carefully navigating a role as a private citizen, an expert, and an employee at a public university.

## How HB454 (2018) Became Part of Virginia Code

*This portion of the chapter is a record of the sequence of how HB454 (2018) became part of Virginia Code based on the 2018 Session[48] and documentation of the author and others' activities on particular dates during January and February 2018. The author has included annotations in the form of "lessons" she wishes she had known when following bills through a legislative process. These are integrated herein as a guide for those exploring involvement in legislative processes. Readers are encouraged to map each lesson to the following aspects of Boltman and Deal's "Political" frame to conceptualize and navigate political situations.*

## January 7, 2018: First Day of the General Assembly

With 1,609 other bills,[49] Virginia House Bill 454 (HB454), an amendment to VA § 23.1-1308, was introduced in the 2018 Virginia General Assembly Regular Session under the title, "Encourage Open Educational Resources." VA § 23.1-1308 addresses textbook sales and bookstores. The bill was introduced by Eileen Filler-Corn (D) of the 41st district (Fairfax, VA) and proposed to add the following language as Clause E to Virginia Code:

> The governing board of each public institution of higher education shall implement policies, procedures, and guidelines that encourage the adoption and use of low-cost and no-cost open educational resources in courses offered at such institution.[50]

**Lesson 1: Get to know the legislative environment.** All proposed legislation is tracked and viewable before a session is underway. Find out how and when you can see proposed legislation of interest or concern. Look for a legislative calendar and use prior years' bills to identify the process or route that bills take. If relevant, learn to use status tools tracking, such as LegiScan.[51]

## January 9, 2018

The SCHEV[52] senior associate for Academic and Legislative Affairs, liaison to SCHEV's Open Virginia Advisory Committee (OVAC),[53] notified OVAC, a committee on which the author serves, that we might be interested in the newly introduced bill, HB454. The SCHEV senior associate noted that SCHEV did not supply the language.[54] It was not clear what entity developed the specific language.

> **Lesson 2: Understand bill origins and be timely in communicating interest.** While communication should be clearly done as a private citizen rather than a government employee, it is acceptable to request information from a bill's sponsor regarding the origin of a bill's language and to better understand the sponsor's goals. While elected officials are very busy, engagement signals interest and may be a doorway to sharing expertise.

Inclusion of the phrase "no cost OER" and "low cost" as an attribute of OER ran contrary to the most widely accepted definition of open educational resources in the US at the time, which included the phrase "… free use and repurposing by others."[55]

> **Lesson 3: Timing and communication of expertise matters.** In retrospect, the author believes it would have been helpful had she, as an expert, articulated what she thought of the bill much earlier to the bill's sponsors. Shortly after introduction of the bill would have been an ideal time to alert the patron of the non-standard language in the bill.

## January 10, 2018

Representatives from SPARC[56] said, "The language in HB 454 requiring institutional policymaking processes for educational/digital content is similar to publisher-backed language we've seen in other states. Publishers can use these processes to pitch their own agendas to institutions, potentially putting a chilling effect on OER. We've already seen this happen in states that have passed these bills."[57] After relating this information to the SCHEV senior associate, the SCHEV representative indicated that it is "important to get some language in the Code section due to the persistent issue of administration leadership being disengaged with OER adoption and that it is normal practice in Virginia institutions for experts like [OVAC] Advisory Committee members to be asked [after a bill has been passed] by their respective institutions to develop appropriate policy and craft language that would protect the true openness of our respective institutional initiatives."[58] A president's letter about OER to faculty at University of Oklahoma[59] was a valuable support but not something any of the Virginia R1 or four-

year institutions had. The discomfort of faculty regarding the lack of political cover was obvious;[60] faculty were not sure if they would be published or praised by engaging with even exploring open educational resources. While the value proposition of OER seemed to be well-understood at Virginia Community Colleges,[61] it was not clear if, when, or how research and teaching institutions would get on board.

One committee member offered that if SCHEV-OVAC or SCHEV-LAC[62] submitted recommended revisions, the bill's sponsor might be receptive. The senior associate counseled OVAC to *not* request a line amendment questioning the "low cost" language as that might jeopardize the VIVA[63] Budget Amendment (which established VIVA's Open and Affordable program) but that "[the posture] may change if publishers show up…."[64] On her guidance, committee members did not contact the bill's sponsor to express concern about the language.

Most testimony would be heard in Virginia General Assembly Subcommittee sessions, which are not live-streamed.[65] Virginia being a large state and the author living nearly four hours from Richmond where the General Assembly meets, the author did not travel to attend the in-person committee meeting, instead relying on a committee summary after the subcommittee had deliberated. In retrospect, not ensuring in-person representation and advocacy and not attending were mistakes.

**Lesson 4: Start your work and your goals before the session begins.** Start early in understanding the landscape and communicating support, concern, or questions to the bill's sponsor, identification of other stakeholders (in your library administration, state, institution, etc.), especially those who are or can be involved in person, and their concerns and goals, even if opposing. Ideally, a Government Relations office could be a resource, but they have their own goals. If you are affiliated with an academic library, the dean or director of the university library in your capital city may be accustomed to political involvement and may be a contact to establish early on.

Explore unintended consequences. What close scrutiny might your advocacy invite toward other important proposals under consideration? Include budgets and budget amendments in your scope.[66]

Identify your goals regarding the legislation. Also, identify your personal level of commitment—is this so important that you are willing to sacrifice personal time to work on this? Finally, identify institutional policies of your employer before proceeding.

**Lesson 5: Managing yourself, owning your expertise, and working with others.** It can feel, as a constituent, that participation in public elections is one's only role. If you are a citizen, you *can* have more of a role than voting. As a citizen, your efforts to speak and engage can complicate the work of lobbyists, special interests, or university Government Relations officers, giving them cause to appear less than pleased with your attempts to contribute. Do not be afraid of them or internalize anything that makes you feel small, but understand the context: their role is not to champion citizen voices; it is explicitly to protect the interests of the institution. While you must follow your institution's policies[67] and you may share your expertise, your contributions as a citizen may complicate the work of government relations. It is professional as a citizen expert to iteratively build understanding, ask for collaboration, comply with policies to not appear to speak on behalf of your institution, and involve them if requested to provide expert testimony. Colleagues at other institutions might also be at work without your knowledge. Find them and coordinate all together if you can.

## January 19, 2018

Virginia House Education Subcommittee #3 HB454 was referred with 175 other bills to the Committee on Education and assigned to Education Subcommittee #3.

**Lesson 6: Learn who to contact.** If you choose to submit comments, include the bill's sponsors or patrons in any correspondence. Names and contact information for subcommittee members should be available through your state's legislative website.

## February 6, 2018

Virginia House Education Subcommittee #3 recommended reporting (e.g., voted to approve the bill) *with amendments*.[68] While the subcommittee vote was displayed on the Virginia Legislative Information System (LIS),[69] the proposed amendments were not yet visible in LIS. The senior associate reported back, "The publishers sent a lobbyist in at the last minute to add some language."[70] The edited language, approved by the subcommittee struck "policies, procedures," the word "encourage," and added "low-cost commercially published materials" to the amendment to read:

> E. *The governing board of each public institution of higher education shall implement* [ ~~*policies, procedures, and*~~ ] *guidelines* [ ~~*that encourage*~~ *for the adoption and use of low-*

*cost and no-cost open educational resources* [ *and low-cost commercially published materials* ] *in courses offered at such institution.*[71]

**Lesson 7: Have a process that is early and proactive**. Being proactive requires coordination, planning, communication, and agreement with people on the ground who will clearly protect informed interests.

1. Contact the patron of the bill in advance of subcommittee. Relay support and concerns you have regarding potential outcomes. Do this as a private citizen, using your own communication channels, equipment, and time (not those of one's employer). Actively affirm that you are speaking in a personal capacity, not for your institution.
2. Be clear about your goals.
3. Build a network. Work with your dean or director who may work with other deans and Government Relations to craft specific language and address specific concerns.
4. Find out if your educational institutions' Government Relations/ university lobbyists are involved. Actively identify their stance on the bill. Be clear with them regarding your desired outcomes. Note that "blocking and tackling—playing defense" generally describes the goals and tactics of college lobbyists.[72] Government Relations will not know your goals unless you find a way to be heard by them.
5. Find out who else will be there and if they are willing to engage and specifically how. Note that it is very difficult to change a bill that has been approved in subcommittee.

## February 7, 2018

OVAC received notification from the legislative liaison of the significantly watered-down language in the bill. SPARC was right and OVAC members were frustrated. Our interests and concerns were not represented. No one in attendance thought it necessary to push back on the changes proposed by the publisher lobbyist. There was a great deal of concern among members of the committee. VIVA, our state library consortium, had provided informational presentations for legislators. The author assumed that this distinction between open and low-cost commercial had been made, yet no one asked experts—VIVA, OVAC, or other experts. The change was counterproduc-

tive, which was not good for moving toward the ideals of openness or for long-term affordability. Commercial resources were already covered in great detail in existing law, as required by the Higher Education Opportunity Act, which is enshrined in Virginia code. The bill as initially proposed would have specifically and clearly encouraged OER creation.

Having been warned to not "run afoul" of my institution's Government Relations Office, the author immediately contacted Virginia Tech's Government Relations Office: "I wish to comment on a bill that is making its way through the General Assembly. Can you tell me how to do this above board as a Virginia Citizen who is also a Virginia Tech employee?" The four-word reply plus URL came from the Government Relations Office a day later: "Here is our policy—https://www.govrel.president.vt.edu/policies.html."[73] The policy stated that the university president develops all university positions on proposed legislation and that the university's policy "in no way restricts the right of any employee … from communicating their personal opinions with government officials." However, when communicating personal opinions, "it is the affirmative responsibility of all employees not to represent their personal opinions as positions or policies of the University, unless the President has specifically authorized them to do so." It also noted that university employees should not use university letterhead or university email servers to communicate personal opinions unrelated to the university and that "Legislative or Congressional Testimony or other communication on behalf of professional societies or other academic organizations should be coordinated with the Office of Government Relations. In this case 'coordinated' simply means notification in advance."[74]

Not realizing that it was already late in the process, the author made plans to contact via personal email the patron and the committee, which included the representative from her district. Government Relations did not seem interested in taking a further role.

> **Lesson 8: Working with Government Relations.** Strengthen your case by identifying others who can support your position. Government relations staff are your institution's lobbyists. If you are an expert in a relevant area, advocate for yourself and your expertise by informing your Government Relations office proactively; don't wait for them to ask. Clearly identify your expertise, state your agenda and concerns about proposed legislation, and ask about their goals and involvement in subcommittee meetings. Inform and attempt to obtain backing from your library dean. Stay respectful and assure compliance with policies. Clarify official protocols versus preferences of Government Relations staff.

## February 6 and 7, 2018

The author wrote letters from her personal email, from home, outside of working hours. There was no virtual participation option. It was not possible to obtain information and she was geographically distant. She later learned that other librarians were engaging, but she was not part of their network. In the week of February 12, she received a phone call from the bill's sponsor.[75] The sponsor expressed surprise to hear from anyone about the legislation, which in turn surprised the author who had believed it to be normal and encouraged for constituents to contact legislators. It felt like citizen engagement was unexpected, unusual, and maybe unwanted both by Government Relations and legislators. The author was told by SPARC that because the legislation had passed subcommittee, it would be very difficult to change. The author didn't realize that it would have been much better to voice interest and concern far before this point.

**Lesson 9: Understand the political context.** The ideals of democracy and law-making ideally include hearing from citizens.

> For if liberty and equality, as is thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost. – Aristotle

Deliberative processes exist in commissions, committees, and councils, including interim study committees. However, the purpose of the session is to work through the legislation, not to engage with every person who comments on legislation.

The General Assembly does a tremendous amount of work within specific protocols and in about three months. During the 2018 General Session, 1,610 bills were introduced in the House; 496 passed subcommittee, committees, the House, Senate subcommittee and committees, the Senate, and the General Assembly, and were approved by the governor. Another 358 bills of the 996 introduced in the Senate made it through in the opposite direction and were signed into law.[76] Elected officials do not have time or resources to master granular details of proposed legislation and how it will affect constituents for each of the hundreds of bills they review. They do not seem inclined to locate experts unless those experts present themselves, which is how lobbyists present themselves.

> **Lesson 10: Sharing your expertise.** Introduce your expertise that can serve elected officials and their staff. Keep letters to elected officials concise and to the point. Identify yourself, your qualifications, your contact information, and clarify that your views are personal and not representative of your institution. Use your personal email system and time, not that of your employer. Be brief and very specific regarding the language and edits you are requesting. A helpful list of questions is available in the "Writing to your Congressman" section of the short article by Pasmik.[77] If invited to speak as an expert in an official capacity, your institution's policy likely requires you to inform the institution's Government Relations office in advance.

The author contacted her supervisor and dean and had further conversations with SPARC. The author was concerned with the lack of attempt to obtain expert opinion or envision implications on the ground. At this point, this author was the only open education librarian in Virginia, having been involved in OER work for four years. She believed that faculty needed institutional political support to urge the work forward. She also had valuable expertise to share.

## February 7, 2018

The author sent a letter to the House Education Committee with far too much background and a request for changes. To no avail, the legislation was advanced by the committee to the floor of the House.

## February 13, 2018

The bill was passed uncontested by the House and unceremoniously approved as part of an uncontested block vote. The bill would be referred the next day to the Senate Committee of Education and Health for consideration.

Advancement of the gutted bill that removed "policy, procedure" and "encourage OER" and included "low-cost" as a descriptor of OER was problematic. The author realized at some point that the removal of policy/procedure was likely favored by Government Relations, whose goal it may be for the institution to not "get legislated," as some call it. However, having "policy and procedure" requirements would have been helpful to advance OER and, in the compliance culture of the institution, these would not be added unless they were required by an outside entity. More significant was the removal of "encourage [OER]" and addition of "low-cost commercial." The requirement to include "low-cost commercially published materials" was the most significant issue. Neither OVAC nor the author wanted to conflate "low-cost commercial" with OER. OVAC and

the author reasoned that language on commercial resources is already part of Virginia code and covered in detail. Looking ahead, the author saw that she would be required to write guidelines to push her institution in a direction that was counter to best practices and current goals, and other Virginia institutions would be forced into developing a position that she, OVAC peers, and other colleagues saw as contrary to present goals and unhelpful. The author felt, and there was agreement with others, that advocacy for low-cost materials was already part of VA § 23.1-1308, appearing in the lengthy section "D". Some change regarding the language around "low-cost commercial" formed the center of a shared concern.

**HB454 was originally intended to be about something far different than "low-cost commercially-published materials"—it was about materials that are freely available, customizable, and zero-cost-to-readers—a completely different type and purpose of resource.** The author wanted to see the bill returned to its original state. If the bill's language indeed originated from a commercial publisher lobbyist, initially not including "low-cost commercial" and getting this added in during a closed-door subcommittee meeting was a strategic tactic.

She notified several trusted librarian friends in Virginia higher education of the situation who submitted letters.

> **Lesson 11: Evaluate your and others' progress.** The author received messages later and observed that receiving feedback from many experts was an effective way to obtain the attention and action from the patron—multiple people did not want the bill to move forward in its amended state. She also learned that there were others outside of her circle of trusted colleagues and at a higher administrative level who were pushing for slightly different language, and they had more communication with people on the ground.

## February 14, 2018

In a part of the session called "Crossover," the Senate considers bills passed by the House and vice-versa. The bill was referred to the Senate Committee on Education and Health.

## February 21, 2018

The bill was referred to the Senate Higher Education subcommittee. One surprise was that the committee chairman to whom the bill would advance threatened to kill the bill if it made it out of subcommittee without the added phrase "and low-cost commercially published materials."[78] The committee received letters from the author: "Please remove the phrase and don't kill the bill." People in and around OVAC continued to discuss.

There were other bumps in the road: inconsistent messaging, people disconnected from the process posting to public listservs, and one person who testified without clearing it with Government Relations who was made to feel "like a dummy."[79] Contacts at SCHEV and the library membership organization were helpful in explaining things, but the scarcity of coherent information and expectation of minimal citizen engagement by both the Government Relations and legislators surprised the author. While it was likely not the intended message, the author clearly understood that even those with the deepest expertise in the topic in the state are discouraged or at minimum unexpected to get involved where lobbyists and university Government Relations officials work. The public, including experts, is not expected to be aware or participate during subcommittee or committee meetings in the General Assembly—even if that is *the most important* time for the public to be heard.[80]

## February 22, 2018

Through colleagues with better connections, the author heard scant bits of information that led her to believe that her efforts still had been helpful: "Feedback … on the issue[s] made a difference to [the sponsor of the bill]."[81] This gave the author some hope—that her actions did matter and were somewhat effective. Those who wrote letters were well within our rights as private citizens and authorized employees, but it was complicated to include us.

The author learned that the library dean at Virginia Commonwealth University (VCU) attempted to attend subcommittee hearings in Richmond, waiting nearly four hours to submit testimony in person. He left after 5 p.m.[82] after being informed by his Government Relations official that it would likely be rescheduled.[83] The hearing was rescheduled for a later date and the author's advocacy unceremoniously ended when the library dean at VCU informed the author that further grassroots activity is "unhelpful." Several entities later reported that they had begun working directly with the sponsor of the bill on language. They were aware of various political aspects of the situation, which were not obvious to those of us afar. The author heeded the request and that marked the end of the author's engagement regarding the bill.

The author would continue to watch its progress and learn later of the effortful political machinations undertaken by the bill's sponsor within the protocols of how the legislature functions and the roles of Government Relations.

> **Lesson 12: Know when to fold 'em**. The bill sponsor and other citizens working with the sponsor are critical contacts and sources of information and control. When someone else has taken on leadership of an advocacy process and asks you to step back—especially if they are working directly with the bill's sponsor—it is likely wise to follow their direction.

## February 23, 2018

The Office of Government Relations requested a phone call with the author. They sounded unhappy and said that the author had "formed a consortium."[84] The author was very surprised as she believed she had in good faith complied with policy[85] and more. She shared language she had sent from her personal email as an additional courtesy. She represented her viewpoints as personal and never represented herself as speaking on behalf of a professional society or organization. There was no mention in institutional policy or any other documentation that collaborating with others was something of which the author should notify Government Relations. To the author, Government Relations had seemed completely disinterested, so it did not occur to her that Government Relations would want to know her goals or form any sort of a collaborative working relationship.. The author now realizes that her timing and approach may not have been optimal.

Reading between the lines, public comment from citizens can complicate the work of Government Relations. Most legislative professionals seem inclined to a just-let-us-handle-it approach and leave the citizens and experts out of things.[86] This felt stifling as a citizen and expert. The result of this disconnect was that the author apparently blindsided them. While not required to do so, in retrospect, it would have been helpful to go beyond the compliance of "notification" and *insist* that Government Relations take time to understand the opinions of experts and establish some common ground on shared language. Lesson learned. I did not expect this and hope not to repeat this.

## February 27, 2018

The political machinations began. The Senate subcommittee was scheduled to hear HB454 The following reporting requirement was added, presumably to have a procedural way to send it back to a joint conference committee:

> 2. That the governing board of each institution of higher education shall report to the Chairmen of the Senate Committee on Education and Health and the House Committee on Education on the implementation of guidelines required by this act by November 1, 2018.[87]

## March 1, 2018

The Senate Education and Heath committee reported with an intentionally problematic amendment.[88]

## March 5, 2018

The bill was amended and passed by the Senate.[89]

## March 6, 2018

The House voted to reject the Senate's additional phrasing.[90]

## March 7, 2018

The Senate voted to insist on the amendment and required formation of a conference committee.[91]

## March 8, 2018

A Joint Conference Committee of conferees from the House and Senate, including the bill's sponsor, were appointed. The Conference Committee amended the bill recommending rejection of the Senate Amendment and "to resolve the matter under disagreement" and replaced the requirement to include "and low-cost commercially published materials" with "Such guidelines may include provisions for low-cost commercially published materials."

> *The governing board of each public institution of higher education shall implement guidelines for the adoption and use of low-cost and no-cost open educational resources ~~and low-cost commercially published materials~~ in courses offered at such institution. [added] Such guidelines may include provisions for low-cost commercially published materials.*"

The subcommittee did not reinstate any previously removed language regarding "policies, procedures," nor was the word "encourage" reinstated.[92]

## March 9, 2018

The House voted unanimously to adopt the amendments,[93] and the Senate agreed to the Conference report.[94]

## March 20, 2018

The House and Senate passed HB454ER unanimously on March 20, 2018.

## April 4, 2018

The bill was signed into law by the Governor on April 4, 2018, and added language as Part E. to VA § 23.1-1308 (Virginia Bill List 2018).[95]

# Steps Toward Implementation

In November 2018, SCHEV published model guidelines for Virginia institutions' adherence to Part E. of VA § 23.1-1308, titled "Virginia Institutions of Higher Education Guidelines to Move OER Forward."[96] The guidelines, which were approved by SCHEV, were developed by a subset of SCHEV's Open Virginia Advisory Committee including this author and written in an effort to encourage compatible if not collaborative approaches among public higher education institutions in Virginia and to provide recommended language for fundamental elements of institution OER policies. The model guidelines contextualized adoption, adaptation, and creation of open educational resources within state-level strategic goals of "Providing Affordable Access for All" and existing Virginia Code and mentioned peer-reviewed literature documenting financial and academic benefits for students, highlighted collaborative opportunities, and mentioned opportunities for faculty excellence and scholarship.

The guidelines were provided to assist institutions in fulfilling their new obligations within a framework that promotes quality and sustainability. They encouraged policy-making beyond guidelines and public demonstration of support at the institutional level in ways that are aligned with college/university vision and mission and that supported collaboration. Language provided covered the purpose, OER definition, an OER policy statement, mention of existing institutional intellectual property policies, and language for OER procedures and responsibilities, accessibility, fair use, training and professional development, technical formats/archiving/discovery, and quality assurance measures. The model guidelines also included clear definitions of "no-cost OER" and "low-cost OER," clarifying that "OER never has a cost [to readers] unless issued in a medium which is inherently physical and therefore has a cost" and excluded platforms offering openly licensed content with additional legal or technical restrictions from the definition of OER. The guidelines include information regarding six Creative Commons licenses, public domain, and comment on "technical openness." The guidelines proceed to highlight the value of collaboration with stakeholders in crafting institution-level OER policy and describe institutional support costs and benefits, technology support, the potential of lost revenue, and suggest a preference for institutional policies to prefer OER over commercially published materials because of time-limited access, download restrictions, lack of an opt-in option, homework systems, a lack of resale market, vendor lock-in, and issues with institutional data, student privacy, and unauthorized research, data collection, and marketing. The guidelines end by citing six studies that document OER's impact on drop, withdrawal, and success rates.

Prior to passage of HB454, several public higher education institutions in Virginia had approved OER policies. These included "Use of Open Educational Resources,"[97] Reynolds Community College's "Adoption of Course Materials,"[98,99] Northern Virginia Community College's Policy 212, "Guidance to faculty and staff in incorporating Open Educational

Resources (OER) into their courses and in developing open resources and courses," ZOER Course labeling agreement form, OER Checklist, and an additional mention of OER in Academic Policy 213 "Textbooks" (Northern Virginia Community College February 2018).[100] Notably, all of these institutions are two-year community colleges. Since HB454 came into force on July 1, 2018, at least six additional institutions of higher education in Virginia have issued some form of guidelines for OER, though the passage of many were delayed by the COVID-19 pandemic.

Many elements of the new guidelines were carried out in policy. Some institutions opted to integrate OER into existing policy structures. Others like UVA and Virginia Tech opted not to integrate guidelines into the existing "policy" structure, presumably as they are guidelines entirely, not policy, but are publicly displayed as official, authoritative documents.[101] Some other institution's legacy policies continued to define OER as being inclusive of in-copyright links and library materials, adding confusion to state-level collaboration and in conflict with widely recognized definitions of open educational resources,[102] but most did not.

Institutions in compliance with the requirements included University of Virginia (UVA), which through its Office of Provost issued "Guidance for the Adoption of Open Educational Resources.[103] Longwood University issued "University Policy 1015," adding to their faculty Policies and Procedures Manual in March 2019.[104] Old Dominion University incorporated OER into Policy #1419 Course Materials Adoption Policy.[105] Virginia Commonwealth University updated its Textbook Adoption and Sales policy page in March 2020.[106] Virginia Tech's Board of Visitors approved Guidelines for Open Educational Resources (OER) and Open Textbooks in June 2020,[107] and James Madison University updated Policy 2110: Ordering Textbooks in April 2022.[108]

# OER Guidelines Creation at Virginia Tech

At Virginia Tech, the author interviewed a wide range of stakeholders, ideated guidelines in coordination with a working group, and drafted them with Bob Hicok, a member of the Faculty Senate Executive Committee. The guidelines were intended to be a board action, which seemed to cut faculty out of the official process. So, the author looked for an opportunity to present at Faculty Senate[109] about the rationale behind OER and ask Faculty Senators what they wanted. The author argued before Faculty Senate that the mandate to develop OER guidelines is an opportunity to align with our current values, improve the educational experience of *all* students, and support the work of instructors and departments. As we were drafting the Guidelines at Virginia Tech, the author and others hoped that they would include the following:

- nationally and internationally consistent **definition** of open educational resources;
- no mandates—**academic freedom** to review, select, customize, and create open educational resources—or not;
- OER **finding, evaluation, and re-use support** available for faculty and staff;
- OER **implementation and sustainability practices** for faculty and departments;
- resources for **pedagogical transformation** beyond textbook replacement;
- communication of **peer-review** process and/or status for works created/adapted at VT;
- use of **scholarly integrity practices** (including disambiguation and identification of author versus adapter contributions);
- creation of a campus-wide open education **working group**, with student representation;
- terms and practices for paid and unpaid **student collaborators** in OER creation, improvement, design, etc.;
- use of alt text and other **accessibility features** to provide a more inclusive experience;
- acceptable practices for incorporating and marking **third-party content** (fair use, permission, other openly licensed content, etc.) in openly licensed works;
- hosting and metadata standards for efficient retrieval, long-term **access,** and preservation; and
- recommendations for OER **grant-making** units.

These goals are largely reflected in the current Virginia Tech guidelines presented to University Council,[110] passed by Virginia Tech's Board of Visitors in 2020, and presented in this 2020 SCHEV Webinar.[111] The coauthors' guidelines have addressed many areas with well-formed guidelines, including the following:

1. Students: Academic achievement is negatively affected when students cannot afford course materials. However invisible, first-generation, indebted, and/or food-insecure students struggle disproportionately with affording course materials.
2. Academic freedom: Faculty and departments are free to choose what and how to teach. Faculty prefer course materials that fit and that benefit student academic achievements.
3. Engagement and pedagogy: OER enable pedagogical transformation beyond textbook replacement. Students are more engaged when they are creating, doing, sharing, and contributing in meaningful ways—ways that matter in and beyond the classroom.

4. Excellence: Scholarly integrity, accessibility, and ability to evaluate learning resources such as those created, adapted, shared, and used by Virginia Tech are of paramount importance.
5. *Ut Prosim* (that I may serve): Participation in the university's land-grant mission of sharing knowledge requires known support, rewards, and incentives.

Open educational resources and open educational practices align well with the academic integrity, knowledge sharing, and public good missions of research[112] universities and especially at land-grant institutions such as Virginia Tech. They also align well with Virginia Tech's *Ut Prosim* (that I may serve) ethos. OER and open educational practices (OEP) can be described as investment solutions adopted by educational institutions, including K12,[113] to achieve more equitable student access to required learning resources, reduce student costs, customize course materials to better fit learning objectives, allow meaningful contributions to curriculum and other materials by students, and to extend the impact of faculty research and teaching expertise.

# Conclusion

Academic librarians are often well-informed, motivated, and, given their public service orientation, likely have opportunities for political engagement and civic engagement in their capacities as citizens—and sometimes in their professional capacities as employees within public or private higher education institutions. Opportunities for political participation go far beyond voting as demonstrated by a long history of examples: advocacy for library funding[114] and funding for IMLS, advocacy against the US Patriot Act,[115] to more recent examples including ebook pricing[116] and social issues.[117] Sometimes libraries and librarians are on the other side of the political process—being lobbied by citizen participation when citizens engage in "planning and administrative processes of government,"[118] as seen most recently in book censorship challenges and continuing to generate the need for ALA's *Intellectual Freedom Manual*,[119] now in its tenth edition.

Librarians generally do not receive high marks for working within a "political frame" but can develop effective political skills important for librarian leadership in the workplace, including in higher education. Learning to bring a political frame into library work can be helpful in understanding others, building consensus, and getting things done. While most commonly learned on the job through opportunity, reflection, and mentoring, political skills for librarians should also be at least mentioned if not included in LIS education.[120] Roles are available for library employee-citizens experts within the structures of their employers and as private citizens operating outside of their employment. Library employee-experts may look for proactive opportunities for engagement beyond the intensity of a legislative session in government-initiated advisory opportunities, focus groups, deliberative processes, public opinion surveys, standing forums, standing advisory groups, invited expert presentations, town hall meetings, or a myriad of other highly

orchestrated, purposeful events and civil/government co-learning opportunities where their expertise may be gathered.[121]

While not *everything* is political, higher education environments have ample political situations. Political skills are transferable to one's workplace. Some academic librarians face challenges in persuading individuals and groups to change their behavior to respond to the public good—for example, to share their research with a broader non-paying audience. On an administrative leadership level, budgets need negotiation, and goodwill must be built among university stakeholders and competitors, not to mention staff. Establishing budget models favorable to libraries function as an investment that reduces service costs for large numbers of people; on a smaller scale, the investment remains critical to understand and respond to diverse needs and viewpoints.

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