

STORAGE NAME: h1081.ted

DATE: April 24, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
ANALYSIS**

BILL #: HB 1081

RELATING TO: Internet Filtering Software in Public Libraries

SPONSOR(S): Representative Trovillion and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY (W/D)
 - (2) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
 - (3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill requires a public library that makes available for public use computer on-line service, Internet service, or local bulletin-board service to install and maintain computer software that prohibits access to obscene material. The software must be installed and maintained on at least one-half of the library's computers. If only one computer is made available for public use, that computer must have the software.

This bill contains a finding that the installation and maintenance of computer software that prohibits access to obscene materials fulfills an important state interest.

This bill provides an effective date of October 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

This bill requires libraries to purchase and maintain computer software to block access to obscene materials.

B. PRESENT SITUATION:

There is no statute that requires libraries to install and maintain software that prohibits access to obscene material from library computers. Such software is commonly called blocking or filtering software. Blocking or filtering software works in different ways. One company's software blocks all Internet sites unless the administrator specifically permits access to a specific site. Another company maintains its own lists of sites and blocks certain sites, or categories of sites, selected by the subscriber.

According to the Florida Library Association, libraries have varying policies regarding restrictions on Internet access. Some libraries use filtering software, while others use filtering software on some computers and only allow minors to use the "filtered" computers. Some libraries have policies that prohibit the display of sexually explicit material. Other libraries have no restrictions and, according to the Association, have not had problems with improper Internet use.

C. EFFECT OF PROPOSED CHANGES:

Section 1 of this bill requires public libraries to install and maintain computer software that prohibits access to materials that contain obscene descriptions, photographs, or depictions. Such software must be installed on one-half of the computers that are available for public use. If the library only contains one such computer, the software must be installed and maintained on that computer.

Section 2 of this bill contains a finding that the installation and maintenance by public libraries of computer software that prohibits access to obscene material fulfills an important state interest pursuant to s. 18, Article VII, of the Florida Constitution.

Section 3 of this bill provides an effective date of October 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

This bill requires libraries to purchase the software.

The Department of State estimates first year expenses of \$157,620. This estimate assumes that blocking software priced at \$34.95 will have to be purchased for 2,103 computers and that it will take 2 hours at \$20 per hour of time to install and maintain the software.

The Department estimates an increase of 10% per year in the number of computers that will require the software and estimates a cost of \$5 per computer per year to update the blocking software. Accordingly, the Department estimates a second year cost of \$110,375 and a third year cost of \$121,398.

These costs would be split among the state and local libraries depending on the number of computers in each library system.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill requires libraries, which can be funded by counties, to spend money on blocking and filtering software. However, this bill specifically finds that this requirement is an important state interest. This bill requires all libraries, whether funded by the state or by local governments, to comply with its provisions. Accordingly, this bill applies to all persons similarly situated and is exemption under Article VII, Section 18(a), of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

First Amendment

It can be argued that this bill is a content-based restriction on speech and that it violates the free speech provisions of the First Amendment of the federal constitution and Article I, Section 4 of the Florida Constitution. In Mainstream Loudoun v. Board of Trustees of the Loudoun County Library,¹ the court found a Virginia library policy that required the blocking of sites containing child pornography, obscene material, or material deemed harmful to juveniles violated the First Amendment. In order to enact a content based limitation on speech, the limitation must serve a compelling state interest and be narrowly drawn to achieve that end.² The Loudoun court assumed that minimizing the access to illegal pornography and the prevention of a sexually hostile environment were compelling state interests but found that mandating filtering software was not necessary to further those interests.³ The court found that there was no evidence to support a finding that there was a problem with persons accessing child pornography.⁴ The court found that requiring filtering software was not the least restrictive means of minimizing access to pornography since filter screens would prevent the sexually hostile environment.⁵ Significant to this bill, the court found another means of furthering the interest was installing filtering software on computers used by minors.⁶

¹24 F.Supp.2d 552 (E.D. Virginia 1998).

²Loudoun, 24 F.Supp.2d at 564.

³Loudoun, 24 F.Supp.2d at 565-570.

⁴Id. at 565-566.

⁵Id. at 567.

⁶Id.

Unlike the statute in Loudoun, this bill does not require that material harmful to minors be blocked. It requires the blocking of "obscene" materials. Since obscenity is not protected by the First Amendment,⁷ blocking of obscene material is permitted. While the statute, on its face, only applies to obscene material, it may be problematic as applied in a particular case. It is not clear that software exists that blocks only obscene material and does not also block protected speech.

Unlike the statute in Loudoun, this statute does not require that all computers have filtering software unless the library has only one computer. Therefore, it could be argued that adult access to speech is not inhibited except under that limited circumstance.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 17, 2000, the Committee on Governmental Operations considered HB 1081. The committee adopted a strike all amendment and passed the bill out favorably as amended. The amendment provides that each county and municipal library providing public computer access to the Internet shall adopt a policy concerning the appropriate use of the Internet.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

L. Michael Billmeier, J.D.

Staff Director:

P.K. Jameson, J.D.

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Amy K. Tuck

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AS FURTHER REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS:

Prepared by:

Kurt Hamon

Staff Director:

Eliza Hawkins

⁷see Reno v. ACLU, 521 U.S. 844 (1997).