

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1716

SPONSOR: Governmental Oversight and Productivity Committee and Senator Campbell

SUBJECT: Internet Filtering Technology in Public Libraries

DATE: April 19, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute 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 software or equivalent technology on any computer made available to minors which prohibits access to obscene material. If only one computer is made available for public use, the bill provides that it is within the discretion of the library to determine whether to install the software or technology.

Furthermore, the bill provides a legislative finding that prohibiting a minor's access to computer obscenity fulfills an important state interest.

This bill creates a new section of the Florida Statutes.

II. Present Situation:

There is no statute currently which 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 that site. Another company maintains its own lists of sites and blocks those sites, or categories of sites, selected by the subscriber. Other filtering software works by filtering certain words and/or graphic depictions.

According to the Florida Library Association, libraries have varying policies regarding restrictions on Internet access. Some libraries use filtering software. Others use filtering software on some of the computers and only allow minors to use "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.

III. Effect of Proposed Changes:

Section 1. This section 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 software or equivalent technology on any computer made available to minors which prohibits access to obscene material. If only one computer is made available for public use, the bill provides that it is within the discretion of the library to determine whether to install the software or technology.

Furthermore, the bill provides a legislative finding that prohibiting a minor's access to computer obscenity fulfills an important state interest.

Section 2. This section provides an effective date of October 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires all public libraries, both state and county, to purchase software which prohibits access to obscene material on the Internet. The bill does not fund this requirement.

Pursuant to Art. VII, s. 18(a) of the Florida Constitution, the general rule is that the Legislature cannot pass a law requiring a county or municipality to spend funds unless an appropriation of sufficient funding is provided. One exception to this rule, however, is that such a law may be passed when the Legislature determines that the law fulfills an important state interest, and the expenditure required by the law applies to all persons similarly situated, including state and local governments.

The bill should satisfy this exception. The bill applies to all similarly situated persons because it requires all libraries, both state and local, to comply with its provisions. Moreover, the bill states that the Legislature has determined that prohibiting minors from accessing obscenity on a computer fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

First Amendment

It can be argued that the 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 Art. I, s. 4 of the Florida Constitution. In *Mainstream Loudoun v. Board of Trustees of the Loudoun County*

Library, 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.¹ 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 the least restrictive means to further those interests.³ According to the Court, adults were thus unnecessarily blocked from constitutionally protected materials.⁴

The *Loudoun* opinion does suggest several less restrictive measures to accomplish the library's goal of protecting children from obscene material on the Internet; however, the opinion does not find that these measures are constitutional.⁵ In other words, it cannot be unequivocally stated that these measures could not be successfully challenged on First Amendment grounds. The measures include: (1) establishing a use policy; (2) setting time limits on usage; (3) educating patrons; (4) turning filters off for adult use or using filters only on some machines; (5) relocating terminals; (6) enforcing criminal laws; and (7) using privacy screens.⁶

The statute created by the bill differs from the statute successfully challenged in *Loudoun* in two ways, and as a result it can be argued that the bill does not unconstitutionally impinge on First Amendment protections. First, the bill only requires the filtering of computers which can be accessed by minors. As such, it can be argued that adult access to speech is not inhibited by the bill, as pursuant to the bill, it is within the library's discretion to provide unfiltered computer access to adults.

Second, the bill does not require that all material harmful to minors be blocked. It requires only the blocking of "obscene" materials.⁷ Since obscenity is not protected by the First Amendment, blocking obscene material is permitted.⁸ While the statute on its face only applies to obscene material, it could be problematic, however, as applied. Given current technology, it is not clear

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

²*Loudoun*, 24 F.Supp.2d at 564.

³*Id.* at 565-570.

⁴*Id.* at 570.

⁵*Id.* at 567.

⁶*Id.* at 566.

⁷In *Miller v. California*, 413 U.S. 15, 24 (1973), the U.S. Supreme Court provided the following method of proving "obscenity": (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest ...; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

⁸See *Reno v. ACLU*, 521 U.S. 844 (1997).

that software exists which blocks only obscene material, while not also blocking protected speech.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Access to the Internet by children using public library computers will be limited.

C. Government Sector Impact:

As of September 30, 1999, there were 2,705 public access computers in Florida public libraries under the state's Division of Library and Information Services within the Department of State (DOS). It is anticipated that this number will increase to 4,205 computers by the bill's October 1, 2000 effective date.

The DOS estimates that it will cost \$34.95 per computer to purchase the filtering software, and \$40 per machine for the labor to install the software. Accordingly for the first year, the non-recurring cost of the bill will be approximately \$157,620 (2,103 computers x \$74.95 in labor and software costs).

Recurring costs for year two will consist of \$5 per year for renewal of the software; thus, there will be \$10,515 in renewal expenses. Moreover, the DOS estimates that the number of computers in public libraries will be increased by 10 percent each year. Thus, the second year non-recurring cost will be approximately \$15,890 (211 new computers x \$74.95 in labor and software costs). The total of recurring and non-recurring costs would be \$26,405 for year two.

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

Additional costs will also be generated by the bill if the term "public library" is interpreted to embrace all libraries which are publicly funded and/or open to the public, rather than only those libraries under the jurisdiction of the Division of Library and Information Services. *See* "Related Issues," *infra*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define the term "public library," and as a result, the term could be construed as including not only state and county libraries, but also any other library which is public funded and/or

open to the public. For example, university and community college libraries, and public high, middle, and grammar school libraries could potentially be included within the meaning of the term. If the bill's intent is to only apply to libraries under the jurisdiction of the DOS, then it may be appropriate to amend the bill such that it expressly defines the term "public library." However, in the event the definition is limited, an unfunded mandate issue may arise. *See* "Municipality/County Mandates Restrictions," *supra*.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
