

STORAGE NAME: h0065.sgc.doc
DATE: April 19, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 65
RELATING TO: Obscenity/Computers/Public Libraries
SPONSOR(S): Representative(s) Trovillion & others

TIED BILL(S):

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

- (1) JUVENILE JUSTICE YEAS 5 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 8 NAYS 3
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

HB 65 requires any county or municipal public library that has computer on-line service, Internet service, or local bulletin board service available for public use to install and maintain computer software or equivalent technology on any computer available to minors in order to prohibit access to materials that contain obscene descriptions, photographs, or depictions. If the library has only one computer available for public use, the installation of such software or technology is left to the discretion of the library.

The bill states that the installation and maintenance of this software for the purposes described in the bill fulfills an important state interest. Art. VII, s. 18, Florida Constitution, which addresses the state's ability to require counties or municipalities to expend funds, appears to apply to this bill. However, the bill is anticipated to have an insignificant fiscal impact; therefore, pursuant to Art. VII, s. 18(d), Florida Constitution, the bill appears to be exempt from the requirements of Art. VII.

Recurring costs to local government are approximated at \$121,194 for FY 2001-2002, \$84,907 for FY 2002-2003, and \$93,396 for FY 2003-2004.

The bill provides an effective date of October 1, 2001.

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 checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government

The bill requires county or municipal libraries to install and maintain computer software that prohibits online access to obscene materials by persons under age 18.

Individual Freedom/ Personal Responsibility

The bill prohibits online access to obscene materials by persons under age 18. Opponents may argue that many non-obscene materials may be filtered under the obscenity filtering software preventing legitimate and/or comprehensive research. In addition, by mandating that libraries install filtering software, patrons are not given the responsibility of censoring their own materials. In effect, the libraries, through government, will be determining what information patrons may access and what they may not.

B. PRESENT SITUATION:

Florida Law

Currently Florida law does not address the issue of online access to obscene materials in libraries by minors. There is no state statute mandating that public libraries install and maintain software that prohibits on-line access to obscene material.

Public libraries reported 2,940 public access computers as of September 30, 2000. The Department of State (Department) anticipates an additional 294 will have been added for a total of 3,234 by October 1, 2001 (effective date of Act). The Department estimates that 1,617 (half of all public access PCs) will be covered by the bill and anticipates a 10 percent annual increase in the number of public access PCs covered by the bill.

According to the American Library Association, libraries serving 61 of Florida's 67 counties prohibit display of obscene images or images offensive to others. Libraries serving 32 counties filter some computers; libraries serving 24 counties filter all computers; and libraries serving eight counties filter some computers or those used by minors. All have locally adopted Internet policies.

Federal Law

The Children's Internet Protection Act and Neighborhood Internet Protection Act were passed by Congress as part of H.R. 4577 on December 15, 2000. The bill was signed into law (Public Law 106-554) on December 21, 2000, and becomes effective April 20, 2001. This federal law requires that libraries adopt policies regarding Internet safety for minors. The policies should include the operation of a technology protection measure for on-line access by minors to obscenity and pornography.

According to the American Library Association (ALA), "[t]he libraries and schools facing the greatest number of new requirements under this law are those receiving Universal Service discounts (E-rates) for Internet access, Internet service, or internal connections." The ALA lists the following activities that will have to be performed by county and municipal libraries in order to comply with the federal law and receive E-rates:

1. Adopt Internet safety policies that address
 - a. Access by minors to inappropriate matter on the Internet;
 - b. Safety and security of minors when using e-mail, chat rooms, and other forms of direct electronic communication;
 - c. Unauthorized access, including hacking and other unlawful online activities by minors; and
 - d. Measures designed to restrict minors' access to harmful materials.
2. Provide notice and hold at least one hearing or meeting on the proposed Internet safety policy.
3. Certify that they have adopted and implemented an Internet safety policy that includes operation of a technology protection measure that blocks or filters Internet access to visual depictions that are
 - a. obscene,
 - b. child pornography, or
 - c. harmful to minors, and

that they are enforcing the operation of the technology protection measure during use of their computers. (See <http://www.ala.org/cipa/legislation.html>, "Children's Internet Protection: A Summary," by Legal Counsel for the American Library Association.)

C. EFFECT OF PROPOSED CHANGES:

Under the bill, each county or municipal public library that makes computer on-line service, Internet service, or local bulletin board service available for public use is to install and maintain computer software or equivalent technology, on any computer that is available to persons under age 18, in order to prohibit access to materials that contain obscene descriptions, photographs, or depictions.

The bill states that the installation and maintenance of this software for the purposes described in the bill fulfills an important state interest.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Each county or municipal public library that makes computer on-line service available for public use is to install and maintain computer software or equivalent technology, on any computer that is available to persons under age 18, in order to prohibit access to materials that contain obscene descriptions, photographs, or depictions.

Section 2. In accordance with Art. VII, s. 18, Florida Constitution, this (see above) fulfills an important state interest.

Section 3. The act shall take effect October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

<u>Recurring costs*</u>	<u>FY 2001-2002</u>	<u>FY 2002-2003</u>	<u>FY 2003-2004</u>
Total =	\$121,194	\$84,907	\$93,396

* Figures estimated by Department of State. See Fiscal Comments section below for background and basis for estimates.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Background and Basis for Estimates by the Department of State

Public libraries reported 2,940 public access computers as of September 30, 2000. The Department of State (Department) anticipates an additional 294 PCs will have been added for a total of 3,234 PCs by October 1, 2001 (effective date of Act). The Department estimates that 1,617 (half of all public access PCs) will be covered by the bill and anticipates a 10 percent annual increase in the number of public access PCs covered by the bill.

A popular filtering product, Cyber Patrol, sells for \$34.95 per copy with a \$5 per year license renewal cost. The Department estimates that two hours per PC will be required for loading and maintaining the software each year at a rate of \$20 per hour, for a total of \$40 per PC per year.

Year 1

1,617 PCs x \$34.95 =	\$56,514
1,617 PCs x \$40 per =	<u>\$64,680</u>
Total =	\$121,194

Year 2

162 new PCs x \$34.95 =	\$5,662
162 x \$40 =	\$6,480
1,617 x \$5 =	\$8,085
1,617 x \$40 =	<u>\$64,680</u>
Total =	\$84,907

Year 3

178 new PCs x \$34.95 =	\$6,221
178 x \$40 =	\$7,120
1,779 x \$5 =	\$8,895
1,779 x \$40 =	<u>\$71,160</u>
Total =	\$93,396

Other Fiscal Comments

The proposed House Appropriations Bill for FY 2001-2002 contains substantial funding for library grants.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill requires county or municipal libraries to install and maintain software or other technology to prevent minors from accessing obscene materials, which will require the expenditure of funds by

local governments. Section 2 of the bill provides a legislative finding that enactment of this law fulfills an important state interest.

Art. VII, s. 18(a), Florida Constitution, which addresses the state's ability to require counties or municipalities to expend funds, appears to apply to this bill. However, the bill is anticipated to have an insignificant fiscal impact (less than \$1.6 million)¹; therefore, pursuant to Art. VII, s. 18(d), Florida Constitution, the bill appears to be exempt from the requirements of Art. VII.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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

The bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Art. VII, s. 18, Florida Constitution

See Applicability of the Mandates Provision section above for discussion of Art. VII, s. 18, Florida Constitution, issues.

First Amendment

Opponents may argue 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,² the state 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.³

The Loudoun court proceeded on a premise 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.⁴ The court found that there was no evidence to support a finding that there was a problem with persons accessing child pornography.⁵ 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

¹ "Insignificant" means an amount not greater than the average statewide population for the applicable year times ten cents.

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

³ See Loudoun, 24 F.Supp.2d at 564.

⁴ Loudoun, 24 F.Supp.2d at 565-570.

⁵ Id. at 565-566.

environment.⁶ Significant to this bill, the court found another means of furthering the interest was installing filtering software only on computers used by minors.⁷

Unlike the statute in Loudoun, this bill does not require that material “harmful to minors” be blocked. The bill only requires the blocking of “obscene” materials. Since obscenity is not protected by the First Amendment,⁸ 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, only those computers that are available to minors. Therefore, it could be argued that adult on-line access is not inhibited by the bill, because libraries with multiple computers may make unfiltered access available to adults. The bill does not require anything of libraries with only one computer.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

In a complaint, filed on March 20, 2001, against the Federal Communications Commission, the American Library Association charges that the federal Children’s Internet Protection Act:

imposes unprecedented, sweeping federal speech restrictions on public libraries nationwide. For centuries, public libraries have served as invaluable resources for the communication and receipt of information and the free exchange of ideas . . . Given the dynamic nature of Internet speech and the inherent limitations of available filtering technology, it is both practically and legally impossible to comply with this mandate.

The complaint is pending an answer from the respondent.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Shari Z. Whittier

Staff Director:

Lori Ager

⁶Id. at 567.

⁷Id.

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

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AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

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