STORAGE NAME: h0095a.jj.doc
DATE: January 31, 2002

HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON JUVENILE JUSTICE
ANALYSIS

BILL #: HB 95

RELATING TO: Public Libraries/Computers/Obscenity

SPONSOR(S): Representative(s) Trovillion and others

TIED BILL(S):

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

(1) JUVENILE JUSTICE (SGC) 7 YEAS 0 NAYS
(2) FISCAL POLICY & RESOURCES (FRC)
(3) COUNCIL FOR SMARTER GOVERNMENT
(4)
(5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

HB 95 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.

On December 15, 2000, Congress passed the Children's Internet Protection Act (CIPA), which 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. Subsequently, lawsuits were filed by both the American Library Association (ALA) and the American Civil Liberties Union (ACLU). The cases were combined and the federal trial is set to begin on March 25, 2002. Motions to dismiss were denied in November.

Recurring costs to local government for implementation of HB 95 are approximated, by the Department of State, at $772,081 for FY 2002-2003, $795,244 for FY 2003-2004, and $819,101 for FY 2004-2005. Non-recurring costs for local government are approximated at $160,000 for FY 2002-2003. Select proponents of the bill have proposed reduced amounts for Internet filtering software contracts. See Fiscal Comments section.

The bill provides an effective date of October 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No [x]	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No [x]	N/A []
4.	Personal Responsibility	Yes []	No [x]	N/A []
5.	Family Empowerment	Yes []	No []	N/A [x]

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. Statutes do not mandate that public libraries install and maintain software that prohibits on-line access to obscene material.

The Department of State (Department) estimates that there are 98 library networks, 34 of which are currently utilizing filtering software and 64 that are not currently filtering obscenity or objectionable material on their public access computers. Networks may be shared by multiple libraries, as well as by multiple counties.

According to the Department, 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 (CIPA) 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 became 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.[1]

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.

[1] *See* http://www.ala.org/cipa, "Children's Internet Protection: A Summary," by Legal Counsel for the American Library Association.

*Please see **Constitutional Issues** and **Other Comments** sections for further discussions of issues that may be introduced by opponents of the bill.*

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, 2002.

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:

	FY 2002-2003	**FY 2003-2004**	**FY 2004-2005**
Non recurring costs*	**$160,000**		
Recurring costs*	**$772,081**	**$795,244**	**$819,101**

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

Background and Basis for Estimates by the Department of State

The Department estimates that four hours per week will be required for maintaining the filtering software on each network at a rate of $30 per hour. The estimates for the second and third years are each adjusted for three percent inflation. A non-recurring cost of $160,000 will cover the costs of purchasing and installing the software.

Year 1

Currently filtering

License	Servers	Staff
34 libraries	0	4 hours x 52 weeks x $30
$66,503		$212,160

Not currently filtering

License	Servers	Staff
64 libraries	64 x $2,500	4 hours x 52 weeks x $30
$94,058	$160,000	$399,360

TOTAL NON-RECURRING = $160,000
TOTAL RECURRING = $772,081

Year 2

Currently filtering

License	Servers	Staff
34 libraries	0	4 hours x 52 weeks x $30
$68,498		$218,525

Not currently filtering

License	Servers	Staff
64 libraries	0	4 hours x 52 weeks x $30
$96,880		$411,341

TOTAL NON-RECURRING = $0
TOTAL RECURRING = $795,244

Year 3

Currently filtering

License	Servers	Staff
34 libraries	0	4 hours x 52 weeks x $30
$70,553		$225,081

Not currently filtering

License	Servers	Staff
64 libraries	0	4 hours x 52 weeks x $30
$99,786		$423,681

TOTAL NON-RECURRING = $0
TOTAL RECURRING = $819,101

Subsequent to the department's fiscal analysis, select proponents of the bill provided lower cost listings. However, the department, after reviewing this information, maintains the figures estimated in the initial fiscal analysis listed above.

David Burt, a Public Relations Executive with N2H2, Inc., a popular filtering software company, [2] provided several price listings for filtering software. The costs below are from three leading manufacturers of filtering software,[3] based on an estimate by the department that there are 4,960 public library terminals provided for public use throughout Florida.

Company	**License/Software Price Per Year**[4]
N2H2	$4.50 per work station = $22,320
SurfControl	$34,500 flat price for approx. 5,000 work stations
Websense	$4.50 per work station = $22,320

According to David Burt, 43 percent of the nation's public libraries already filter and he is unaware of any library system that has had to hire additional staff to maintain the filtering process.

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.

[2] David Burt is also a former librarian, and has given testimony regarding library filtering before the COPA Commission, a congressionally appointed panel mandated by the Child Online Protection Act.
[3] N2H2, SurfControl, and Websense provide the majority of filtering software used by schools throughout the country.
[4] Figures do not include hardware (some libraries may already have the necessary hardware) or technical support.

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)[5]; 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

*Please 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,[6] 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.[7]

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.[8] The court found that there was no evidence to support a finding that there was a problem with persons accessing child pornography.[9] 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.[10] Significant to this bill, the court found another means of furthering the interest was installing filtering software only on computers used by minors.[11]

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[5] "Insignificant" means an amount not greater than the average statewide population for the applicable year times ten cents.
[6] 24 F.Supp.2d 552 (E.D. Virginia 1998).
[7] *See* Loudoun, 24 F.Supp.2d at 564.
[8] Loudoun, 24 F.Supp.2d at 565-570.
[9] Id. at 565-566.
[10] Id. at 567.
[11] Id.

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,[12] blocking of obscene material is permitted. The bill does not require anything of libraries with only one computer.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Federal

Lawsuits regarding the federal Children's Internet Protection Act were filed by both the American Library Association (ALA) and the American Civil Liberties Union. The cases were combined and the federal trial is set to begin on March 25, 2002. Motions to dismiss were denied in November.

In the complaint, filed on March 20, 2001, against the Federal Communications Commission, the ALA charged 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.

State

Currently, there are two identical bills filed in the Senate: SB 392, by Senator Wise, and SB 404, by Senator Campbell. Both bills have been referred to Senate Governmental Oversight & Productivity, but are not currently on an agenda for committee hearings. The House bill has been heard in the House for the previous three years.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON JUVENILE JUSTICE:

Prepared by: Staff Director:

Shari Z. Whittier Lori Ager

[12] *See* Reno v. ACLU, 521 U.S. 844 (1997).