

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 415 Public Libraries/Computers/Obscenity
SPONSOR(S): Baxley
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1250

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary</u>	<u>17 Y, 2 N</u>	<u>Billmeier</u>	<u>Havlicak</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 415 requires each county or municipal public library that makes computer Internet, on-line, or local bulletin board service available for public use to install and maintain computer software or equivalent technology which prohibits access by persons under 18 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 shall be within the discretion of the library.

The Department of State estimates this bill to have an annual fiscal impact of \$250,000 on counties and municipalities.

This bill's requirement that libraries install filtering software raises the same First Amendment concerns raised before the United States Supreme Court in a recent case. The constitutional issue is discussed in section III of this analysis.

This bill takes effect October 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0415a.ju.doc
DATE: March 12, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|-------|-------|--------|
| 1. Reduce government? | Yes[] | No[x] | N/A[] |
| 2. Lower taxes? | Yes[] | No[] | N/A[x] |
| 3. Expand individual freedom? | Yes[] | No[] | N/A[x] |
| 4. Increase personal responsibility? | Yes[] | No[] | N/A[x] |
| 5. Empower families? | Yes[] | No[] | N/A[x] |

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

This bill requires county and municipal libraries to take an action, installing internet filtering software, that is discretionary under current law.

B. EFFECT OF PROPOSED CHANGES:

HB 415 requires each county or municipal public library that makes 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 that is made available to persons under 18 years of age. This software must prohibit access to materials that contain obscene descriptions, photographs, or depictions. This bill permits a library, if it has only one computer available for public use, to determine whether the software should be installed.

Filtering software is software that blocks access to certain websites. “Filtering programs function in a fairly simple way. When an Internet user requests access to a certain Web site or page, either by entering a domain name or IP address into a Web browser, or by clicking on a link, the filtering software checks that domain name or IP address against a previously compiled ‘control list’ that may contain up to hundreds of thousands of URLs.”^{1,2} The “control list” comes from a list created by the software companies.³

Under current state law, libraries are not required to have filtering software on computers available to the public. According to a survey prepared for the American Library Association, 94.7% of libraries have a formal policy to “regulate public use of the Internet” on library computers.⁴ The policies address such issues as content offensive to others, content inappropriate for children, or illegal content, such as gambling or obscenity.⁵ The survey reported that 16.8% of the libraries use internet filters.⁶ In Florida, libraries in all 67 counties have public access internet policies.⁷ Libraries in 28 counties have filters on all computers, libraries in 34 counties do not use filters at all, and the other libraries use some combination (e.g. offering a choice of filtered versus unfiltered access or using filters on computers accessible to children).⁸

¹ American Library Association v. United States, 201 F. Supp. 2d 401, 428 (E.D. Pennsylvania 2002)

² “URL” is an abbreviation for “uniform resource locator”, another term for a website address. “IP address” means “internet protocol address”. It is “a unique string of numbers that identifies a computer on the Internet.” <http://www.cnet.com/Resources/Info/Glossary/Terms/ipaddress.html>

³ American Library Association, 201 F. Supp. 2d at 429-30.

⁴ “Survey of Internet Access Management in Public Libraries” by The Liberty Research Center, Graduate School of Library and Information Science, University of Illinois, June, 2000. The survey can be found at : <http://www.lis.uiuc.edu/gslis/research/internet.pdf> (last visited March 9, 2003).

⁵ Id.

⁶ Id.

⁷ Survey by Department of State, revised March 7, 2003.

⁸ Id.

C. SECTION DIRECTORY:

Section 1. Creates a new section of law relating to internet filtering software on public library computers.

Section 2. Provides that the bill fulfills an important state interest pursuant to Art. VII, s. 18, Fla. Const.

Section 3. Provides an effective date of October 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The Department of State estimates a \$250,000 cost to county and municipalities for each of the next three fiscal years.⁹

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In a bill analysis, the Department of State submitted the following comments:

Accurately estimating the fiscal impact of this legislation on local governments is impossible because of the variety of ways libraries can comply, libraries' different sizes, and differences in how technology is managed from library to library. There are many ways that libraries could meet the requirement that they maintain software or technology to prevent persons under 18 from accessing potentially obscene content. Among the alternatives are:

1. Filter all computers, including those used by adults.
2. Filter only those used by minors.
3. Prohibit minors from using computers.
4. For libraries with only one public-access computer, choose whether to provide filtered or unfiltered access as permitted by the bill.

There are a variety of products that libraries could choose from.

1. Some may have access to free products offered through their Internet service provider.

⁹ Department of State bill analysis of SB 1250 (identical bill) dated February 20, 2003.

2. Smaller libraries may choose "client" software products mounted on each individual computer which are less expensive when licensing for small numbers of computers.
3. Larger libraries are more likely to use "server" based products that may provide more accurate filtering and the benefits of volume pricing.

Other factors that libraries would consider include:

1. The total number of computers
2. The number of branches
3. The physical location of computers in their facilities
4. Their broader service goals

For the purposes of this analysis, it is estimated that there are approximately 139 library administrative units that would be affected and that of these approximately 75 currently filter some or all public access computers and approximately 64 do not. Using the costs for the "server" based filter product chosen most frequently by Florida public libraries (WebSense), it is estimated that libraries currently pay approximately \$250,000 annually in subscription charges and that were the remaining libraries to choose the same product, the subscription cost to local libraries would be another \$250,000 annually. The cost for libraries not already licensing filtering products is the amount indicated as the Impact on Local Governments (above).

These estimates do not include costs for servers required for the product used for the estimate or staff time (FTE) required to install and maintain the products. A library choosing to provide separate computers for adults and minors would also incur staff costs to prevent minors from using unfiltered computers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Art. VII, s. 18(a), Fla. Const., provides that no county or municipality can be required to take an action requiring the expenditure of funds unless certain conditions are met. It can be argued that this bill requires counties and municipalities to spend funds to purchase filtering software. However, some filtering software is available for free so it can be argued that the mandate does not apply.¹⁰ It can also be argued that the bill has an "insignificant fiscal impact" pursuant to Art. VII, s. 18(d), Fla. Const., so this bill would be exempt from the "mandates" provision.¹¹

In addition, this bill contains a finding that the installation of filtering software fulfills an important state interest. Pursuant to Art. VII, s. 18(a), Fla. Const., if a bill contains such a finding and passes by a 2/3 vote of each house, the county or municipality is bound by the mandate.

2. Other:

It can be argued that this bill raises First Amendment concerns. In American Library Association v. United States,¹² the United States District Court held that portions of the "Children's Internet Protection Act" to be facially invalid under the First Amendment.¹³ The Act requires libraries

¹⁰ See www.we-blocker.com

¹¹ Current policy of the House and Senate appropriations staffs is that a bill has an insignificant fiscal impact if it requires an annual expenditure of less than \$0.10 per person in the state, or \$1.7 million. This bill's estimated fiscal impact is \$250,000 per year for each of the first three years.

¹² 201 F. Supp. 2d 401 (E.D. Pennsylvania 2002).

¹³ American Library Association, 201 F. Supp. 2d at 411.

that receive certain government funding to have “technology protection” measures in place to restrict a minor’s access to “obscene” material.¹⁴ The court found that the government’s restriction on the content of materials accessed on library computers is subject to “strict scrutiny” so that any use of filtering software must be narrowly tailored to serve a compelling governmental interest.¹⁵ The court acknowledged that preventing minors from accessing obscene materials is a compelling interest but found the mandated use of filtering software was not the least restrictive alternative to achieve that interest.¹⁶ The court made extensive findings of fact demonstrating that filters block a great deal of constitutionally protected material.¹⁷ The court concluded that filtering software will “block access to substantial amounts of constitutionally protected speech whose suppression serves no legitimate governmental interest, we are persuaded that a public library’s use of software filters is not narrowly tailored to further any of these interests.”¹⁸ The court found there were other, less intrusive means which the library could use to achieve the same goal.

The United States sought and obtained review of the district court’s decision in the United States Supreme Court. The court heard oral argument on March 5, 2003.¹⁹ The United States argued that the district court erred in applying a strict scrutiny analysis²⁰ and argued that the decision to use a filter to block access to web sites is no different than a library’s decision whether to place certain books in its collection.²¹ The United States argued that the use of filters is a reasonable way to filter materials, such as pornography, which libraries traditionally do not include in their collections.²²

This bill raises the same constitutional issues addressed by the American Library Association court. This bill blocks access only to obscene material. Since obscene material can be banned outright, blocking access to obscene material does not raise constitutional concerns.²³ However, the court in that case based much of its holding on the fallibility of Internet filtering software because that software blocks a great deal of constitutionally protected material. As filtering software changes, the technological issues that were raised in that case could change if this bill is enacted and litigated.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 12, 2003, the Committee on Judiciary reported the bill favorably. The Committee did not adopt any amendments to the bill.

¹⁴ American Library Association, 201 F. Supp. 2d at 407.

¹⁵ American Library Association, 201 F. Supp. 2d at 409-10.

¹⁶ American Library Association, 201 F. Supp. 2d at 410.

¹⁷ American Library Association, 201 F. Supp. 2d at 428-50.

¹⁸ American Library Association, 201 F. Supp. 2d at 410.

¹⁹ The court does not have a deadline for releasing decisions. In recent years, the court has released all decisions prior to the end of the term. The court’s term ends in late June or early July of each year.

²⁰ See United States v. American Library Association, No. 02-361, Brief for the United States, pp. 27-30. The complete brief may be accessed at <http://www.usdoj.gov/osg/briefs/2002/3mer/2mer/2002-0361.mer.aa.pdf> (last accessed March 9, 2003).

²¹ See United States v. American Library Association, No. 02-361, Brief for the United States, pp. 17-27.

²² See United States v. American Library Association, No. 02-361, Brief for the United States, pp. 33-40.

²³ See Reno v. ACLU, 521 U.S. 844 (1997).