

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1098 (Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Appropriations

Public Institutions of Higher Education - Sale of Textbooks - Audits

This bill requires a fiscal/compliance audit of a public four-year institution of higher education and the Baltimore City Community College (BCCC), which must be conducted by the Office of Legislative Audits (OLA) at least every three years, to include an evaluation of the institution’s compliance with provisions of current law regarding the sale of textbooks.

The bill takes effect June 1, 2014.

Fiscal Summary

State Effect: Assuming a 30-day start-up delay, general fund expenditures increase by at least \$94,800 in FY 2015 for OLA within the Department of Legislative Services to hire one full-time senior auditor to conduct the required audits. Future year expenditures reflect regular salary increases and inflation. Revenues are not affected.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	94,800	92,900	97,200	101,700	106,400
Net Effect	(\$94,800)	(\$92,900)	(\$97,200)	(\$101,700)	(\$106,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The audits must report on the compliance of a public institution of higher education with current law regarding the sale of textbooks, including (1) the process developed by the public institution of higher education for a faculty member to acknowledge specified information regarding textbook selection and (2) the extent to which the public institution of higher education has provided a bookstore, upon request, with the specified book identifying information and anticipated enrollment for the course within the time period required. The audits must also include information regarding (1) the extent to which faculty members, other entities in charge of selecting course materials, or the administration of a public institution of higher education have received the information required to be disclosed by a publisher and (2) the availability of unbundled textbooks and supplemental items from publishers as required by current law.

Current Law: Chapters 520 and 521 of 2009 required public institutions of higher education to develop and implement specific practices and processes relating to textbook selection and adoption. All institutions of higher education must post specific information including international standard book numbers (ISBNs) on their website within specified timeframes. Requirements for the disclosure of specific information about textbooks are also established for textbook publishers and institutions of higher education. Publishers and campus bookstores are required to provide and sell textbooks and supplemental materials in the same manner as selected and ordered by faculty; however, with the permission of the faculty member, a campus bookstore may sell lower-cost options. Publishers are required to make bundled materials available separately, each separately priced. Chapters 520 and 521 also established various reporting requirements.

Requirements for Institutions, Faculty Members, Textbook Publishers, and Campus Bookstores

Chapters 520 and 521 required each public institution of higher education to develop and implement a campaign to make faculty aware of textbook issues, a procedure by which bookstores and students are made aware of textbook information that must be disclosed, and a best-practices process for faculty in selecting textbooks and course materials.

On the request of a bookstore that sells textbooks and course material and that is licensed by the Comptroller to do business in Maryland (meaning it collects Maryland sales and use tax for tangible personal property or taxable services sold), an institution must provide specific information on the textbooks and course materials that have been selected by faculty members including the title, the author, the publisher, the edition, and the copyright and publication date; the ISBN; and the anticipated enrollments for the class within specified timeframes. A bookstore that requests this information may not

make the information available to students or members of the public until the selection of course materials is finalized by faculty members.

This textbook information must also be posted on the institution's website within specified timeframes and with notification about whether supplemental materials are required or suggested by faculty and notification about whether earlier editions of assigned textbooks will suffice. Institutions must also disclose if particular textbook or supplemental material selections have been finalized by the faculty member and the potential consequences of purchasing material prior to it being finalized. In addition to this disclosure, an institution, campus bookstore, or other bookstore that offers a college textbook or supplemental material for sale prior to the selection being finalized must provide a caveat regarding the potential consequences of purchasing the particular material prior to it being finalized and the return policy as appropriate.

An institution may grant a faculty member or a campus bookstore a time extension to post the selection of textbooks or supplemental materials. If an extension is granted, the institution is required to post a written explanation for the extension, as appropriate. A public institution of higher education may not encourage or promote the creation or sale of college textbooks that consist of purely aesthetic changes such as a commemorative edition.

Each public institution of higher education must also develop a procedure by which, before selecting and publicizing a textbook selection, faculty members must acknowledge the cost of their textbook selection versus other editions or previous publishers. If the faculty member selects a current textbook edition, he or she must acknowledge that use of a current edition is appropriate due to substantial changes in content from previous editions, the difference in price between the editions, that previous editions may be available to students at a lower price as used books, that a publisher does not need to provide an unbundled version of an integrated textbook, and that supplemental material in a bundle is intended for use in the course.

A textbook publisher that provides information to those in charge of making textbook selections must disclose specific information about the textbooks and materials, including pricing data, and must also itemize substantial content revisions made between current and previous textbook editions. Publishers must also disclose other available formats for the textbook and a list of textbooks that are classified as integrated textbooks. Each institution of higher education must develop a process for faculty members to acknowledge having been informed of these disclosures and the impact that the high cost of college textbooks and supplemental materials has on students.

Publishers and campus bookstores are required to provide and sell textbooks and supplemental materials in the same manner as selected by faculty; however, with the

permission of the faculty member, a campus bookstore may sell textbooks and supplemental materials in a different manner than selected to give students lower-cost options. If textbooks or materials are unavailable as ordered, the publisher and the bookstore must work with faculty members to find alternatives and provide them with price information for these alternatives. Publishers selling bundled course materials must make textbooks and supplemental materials available separately.

Reporting Requirements

Under the direction of the Board of Regents, the University System of Maryland (USM) was required to conduct a study of changes that USM and its constituent institutions can make to their business models for textbook assignment and purchasing in order to reduce textbook costs. USM was required to report the results of the study by December 1, 2010.

Public institutions of higher education were required to report to the Maryland Higher Education Commission (MHEC) by December 1, 2011, on the best-practices policies they develop to lower the cost of textbooks for their students.

In consultation with the State's public four-year institutions of higher education, the Maryland Association of Community Colleges (MACC), and the Maryland Independent College and University Association (MICUA), MHEC also conducted a feasibility study regarding the establishment of textbook rental programs and a statewide digital marketplace for textbooks. MHEC was required to report the results of the study by December 31, 2011.

Audits of Units of State Government by the Office of Legislative Audits

At least every three years, OLA must conduct a fiscal/compliance audit of each unit of the State government, except for units in the Legislative Branch. A fiscal/compliance audit conduct by OLA must include the following: (1) examining financial transactions and records and internal controls; (2) evaluating compliance with applicable laws and regulations; (3) examining electronic data processing operations; and (4) evaluating compliance with applicable laws and regulations relating to the acquisition of goods and services from Maryland Correctional Enterprises.

Thus, OLA conducts audits of 14 public institutions of higher education: the 13 public four-year institutions of higher education (11 USM institutions, Morgan State University (MSU), and St. Mary's College of Maryland (SMCM)) and the State-operated community college, BCCC.

Background: With the 2004 release of “Rip-off 101,” the U.S. Public Interest Research Group (PIRG) launched an effort to inform the public about practices by textbook publishers that, according to PIRG, result in higher college textbook prices. A July 2005 report from the U.S. Government Accountability Office (GAO-05-806) found that college textbook prices increased by 186% from 1986 to 2004, more than twice the rate of inflation but less than the 240% increase in tuition over the same period. The report concludes that “many factors affect textbook pricing, [but] the increasing costs associated with developing products designed to accompany textbooks, such as CD-ROMs and other instructional supplements, best explain price increases in recent years.” Different sources have estimated that the increase in costs associated with the “bundling” of textbooks with supplementary materials is 10% to 30%.

Federal Action

Signed into law on August 14, 2008, the Higher Education Opportunity Act of 2008 (HEOA) had provisions that took effect July 1, 2010, which attempt to address concerns about college textbook prices. Under HEOA, publishers are required to provide pricing information to course instructors as they choose textbooks for their students. The legislation also requires institutions of higher education to make ISBNs or other textbook details for both required and supplemental material available on Internet course schedules. Upon request, institutions must provide textbook and enrollment information to their college bookstores. Institutions are also encouraged to provide information on their websites about cost-saving methods such as renting textbooks, purchasing used textbooks, textbook buy-back programs, and alternative content delivery programs. HEOA also established a textbook rental pilot program to study its effectiveness in reducing textbook costs.

Report to Change Practices to Reduce Textbook Costs

The USM report found that, at the time of the report, all USM institutions were in compliance with the legal requirements of early posting of textbook information; however, USM reported that there is a substantial administrative burden to ensure that selection dates in the law are observed. USM reported on strategies to increase the use of used textbooks and reported that virtually all of the USM institutions are engaged in textbook rental programs. USM reports it worked to inform faculty members about the high cost of textbooks as a means of getting them to think more actively about their relationships with publishers and perhaps to consider products that have less planned obsolescence; however, the life of textbooks in some fields is of course shorter than in others.

USM reported that custom course packets are in widespread use across its institutions. The report noted that this can at times be cost effective; however, it is important to make

students and faculty aware of the legal requirements and the costs of obtaining, extracting, and licensing materials for inclusion in course packets. Many institutions go through outside agencies such as Kinko's to prepare and market course packets. Towson University (TU), which has a department that creates custom course packets in house, notes that students are often unaware of the realities of licensing fees, as well as costs of materials and reproduction. The department fielded a recent student complaint about the high cost of a particular packet (\$125); TU was able to provide the student with a review of the cost if the materials extracted had been purchased separately (\$500+) and the student was satisfied. It is clear that further education about content licensing is needed.

The report also examined digital textbooks and the accessibility challenges associated with digital textbooks for blind students.

Best-practices Policies Report

A total of 26 institutions submitted reports to MHEC as required by Chapters 520 and 521 of 2009. This included 11 public four-year colleges and universities and 15 community colleges. All of the responding institutions reported having efforts in place to lower the costs of textbooks for students. Examples of efforts common across most institutions include:

- comprehensive awareness campaigns to inform faculty about the State law, including scheduled meetings with faculty groups, in-person and video presentations, and workshops;
- formation of university committees to explore options and develop procedures for reducing textbook costs;
- textbook rental, e-Book, and buy-back programs;
- increasing the availability of textbooks on reserve in the library;
- implementing textbook discounts and bookstore sale days; and
- making textbook information available online for faculty and students.

Feasibility Study Regarding the Establishment of Textbook Rental Programs

MHEC's study found that, due to the lack of actual implemented digital marketplace (DMP) infrastructures and substantive evidence of successful DMP programs, best practices, or outcomes, a full feasibility study was not practical. Instead, the study reviewed the literature covering the scope, key factors, definitions, models, and best practices of the initiatives identified nationwide. The report also included information available regarding the components of the DMP, descriptions of two innovative state initiatives for implementing an infrastructure, and recommendations for further study.

State Expenditures: General fund expenditures increase by at least \$94,784 in fiscal 2015 to hire one full-time senior auditor at OLA to conduct the required audits. The estimate assumes a 30-day start-up delay following the bill’s June 1, 2014 effective date, one full-time salary, fringe benefits, and ongoing expenses. This estimate is based on the following information and assumptions.

- There are a total of 14 public institutions of higher education in the State that are considered State units: 13 public four-year institutions of higher education in the State (11 USM institutions, MSU, and SMCM) and the State-operated BCCC.
- OLA estimates that, on average, it will take 50 days to audit each institution, for a total of 700 audit days triennially (or 233 audit days yearly). OLA advises that an additional auditor is needed for every 200 audit days to account for training days and vacations. Thus, at least one additional auditor is needed to complete the audits required by the bill. This estimate assumes that the audits are staggered over three years.

	<u>FY 2015</u>	<u>FY 2016</u>
New Regular Position	1	
Salary and Fringe Benefits	\$89,834	\$92,351
Start-up/Operating Expenses	<u>4,950</u>	<u>586</u>
Total State Expenditures	\$94,784	\$92,937

Future year personnel expenditures reflect a full-time salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department Legislative Services – Office of Legislative Audits, Maryland Higher Education Commission, University System of Maryland, Department of Legislative Services

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