

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 85
Appropriations

(Delegate Rice, *et al.*)

Education, Health, and Environmental Affairs

College Textbook Competition and Affordability Act of 2009

This bill requires 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 standards book numbers (ISBNs) on their web site 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. The bill also establishes various reporting requirements.

The bill takes effect July 1, 2009. The bill does not apply to the overseas programs of the University of Maryland University College (UMUC).

Fiscal Summary

State Effect: Higher education revenues decrease in FY 2010 due to a potential loss of business at campus bookstores. General fund sales tax revenues decrease minimally in FY 2010 due to a potential migration of textbook purchases from campus bookstores to online vendors. General fund expenditures increase by an estimated \$100,000 total in FY 2011 and 2012 for the Maryland Higher Education Commission (MHEC) to hire a consultant to do the required feasibility studies. Higher education administrative expenditures increase in FY 2010 to develop and implement specific practices and processes relating to textbook selection and adoption.

Local Effect: Community college bookstore revenues decrease in FY 2010 due to a potential loss of business at campus bookstores. Expenditures for colleges increase approximately \$120,000 in FY 2010 to enhance web-based databases needed to meet the bill's requirements. College administrative expenditures increase in FY 2010 to develop and implement specific practices and processes relating to textbook selection and adoption.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

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

The bill requires 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 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, 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 web site 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) must 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 must report the results of the study by December 1, 2010.

Public institutions of higher education must report to MHEC by December 1, 2011, on the best-practices policies they develop under the bill to lower the cost of textbooks for their students.

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

Current Law: There are no laws requiring specific notifications about textbooks or limiting textbook options for higher education instructors. In general, the governing boards of institutions of higher education are responsible for setting policies and procedures for the institutions.

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) has provisions that take 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 web sites 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.

Actions in Other States

According to the National Conference of State Legislatures, 5 states enacted 5 laws addressing college textbook costs in 2008, and in 2007 10 states enacted 15 laws and resolutions addressing the issue. Some of the bills require publishers to offer bundled and unbundled versions of textbooks or to provide more information to faculty about the changes made to textbooks from one edition to the next. Other states have required instructors to consider lower-cost options when choosing course materials and have urged colleges and universities to implement options that will reduce costs.

Maryland Legislative Actions

During the 2007 session, the General Assembly considered several bills that would have addressed textbook costs. To gather additional information before making any decisions about a course of action, one of these bills, House Bill 204, was amended to require a legislative study of textbook prices. The bill was signed into law as Chapter 295 of 2007.

In response to Chapter 295, the Department of Legislative Services (DLS) conducted a survey of college bookstore and textbook adoption policies and practices at higher education institutions. DLS also organized a briefing that took place on January 10, 2008, and included testimony from DLS, college students, faculty, on-campus and off-campus bookstores, textbook publishers, and Maryland PIRG. Legislators from the education and budget committees and subcommittees in the Senate and House were invited to attend the briefing and had the opportunity to ask questions of presenters.

Utilizing the information gathered, another bill (SB 657) about textbook affordability was introduced to the General Assembly during the 2008 session. A version of the bill was passed by both chambers; however, they were not able to come to a final agreement.

With respect to some of the requirements of SB 657 of 2008, a representative of Barnes and Noble, which operates the bookstores at several colleges and universities in Maryland under contracts with the institutions, noted that both Virginia and West Virginia universities require textbook ISBNs to be posted online and that this situation has not created any particular problems for campus bookstores. However, when a bundled textbook is assigned by a professor, it has a separate ISBN from the unbundled version of the same text. According to testimony at the briefing, campus bookstores often sell textbooks unbundled even when the course instructors have assigned bundled versions. The textbook alone is likely to be cheaper for students who may not need or want the supplementary materials included in a bundle; however, with only an ISBN for the bundled version, the proper unbundled version of a textbook may be difficult to identify. Concerning the reporting of new content available in newer editions of

textbooks, publishers advised that changes in educational material are described at the beginning of each new textbook edition. Publishers also suggested that the sale of bundled versions of textbooks, which may include sample tests and study guides, is a response to the additional needs of some college students.

Actions at Maryland's Institutions of Higher Education

A textbook affordability summit was held by the public two- and four-year institutions and MICUA on November 24, 2008, to explore ways to reduce costs to students while ensuring the highest quality and most relevant educational information. At the summit, the College of Southern Maryland also reported on the institution's textbook rental pilot program. Other options that may reduce textbook costs such as electronic books, longer edition cycles, and subscription based models were also discussed.

In anticipation of HEOA requirements, USM is finalizing its policy for constituent institutions to post course materials and ISBNs online. Some member constituent institutions including University of Maryland, College Park (UMCP), University of Maryland Baltimore County (UMBC), UMUC, and Towson University report that they currently post ISBNs on their web sites. St. Mary's College and Montgomery College also provide ISBNs on their web sites. Four USM institutions do not post ISBNs currently, although Bowie State University, University of Baltimore, and University of Maryland Eastern Shore plan to post ISBNs online by the fall 2009 semester.

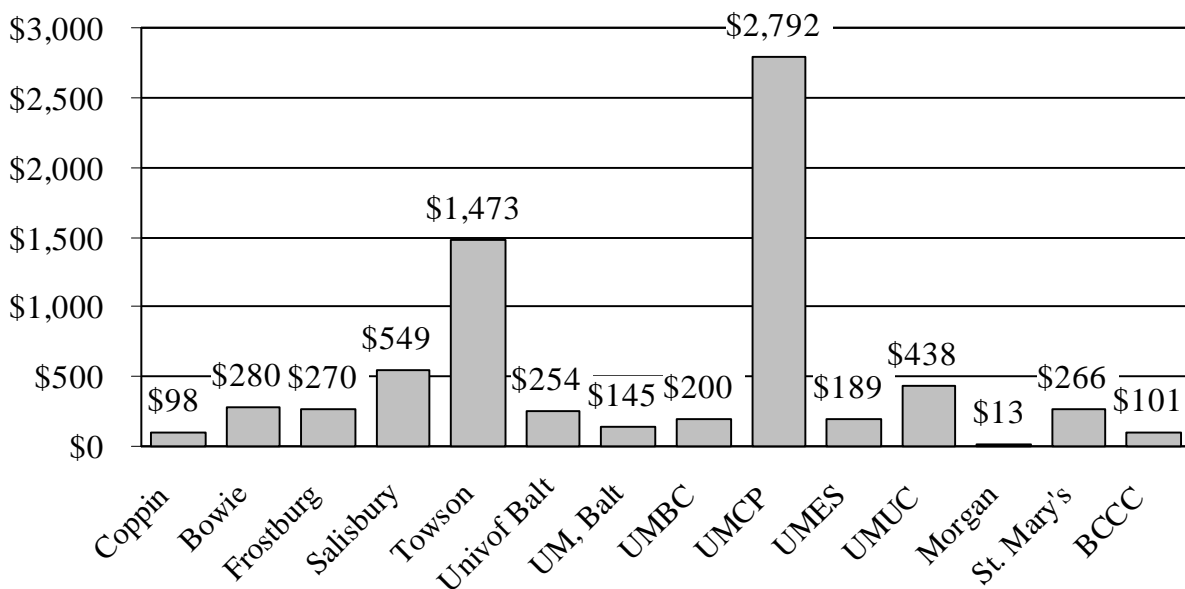
Generally, this bill codifies the HEOA requirement for institutions of higher education to make course material ISBNs available on their Internet course schedules. However, the bill requires institutions to post ISBNs beginning July 1, 2009, while HEOA requires ISBNs be posted beginning July 1, 2010. The bill also requires institutions to post ISBNs no later than the date on which course offerings and schedules are published before the commencement of a semester. MICUA advises this requires institutions to post ISBNs as early as 10 months before a course begins because course schedules are posted in the spring to allow students to register for fall courses. DLS advises that the lead time is probably overstated but still considerable.

State Revenues: The bill's requirement that institutions of higher education post ISBN numbers on their web site beginning July 1, 2009, has the potential to negatively impact two current revenue streams: on-campus bookstore revenues and general fund sales tax revenues. However, the federal HEOA requires institutions to post ISBNs beginning July 1, 2010, so assuming the HEOA is in effect, the bill only impacts one year of revenue.

The first and more significant revenue impact is on the higher education revenues derived from on-campus bookstores during fiscal 2010. Revenues from these sources decrease if posting specific textbook information online erodes the proportion of sales made through the stores. A survey conducted by DLS indicated that fiscal 2007 profits from on-campus bookstores at State institutions of higher education totaled \$7.0 million and ranged from \$13,300 at Morgan State University (MSU) to \$2.8 million at UMCP, as shown in **Exhibit 1**. On average, each public university brings in approximately \$575,000 in auxiliary funds through its campus bookstore.

MSU estimates that as much as 15% of textbook purchases made by its students may migrate to online vendors, reducing bookstore revenues by \$300,000 annually. USM estimates the bill may result in an annual decrease of \$750,000 to \$17 million due to loss of business at campus bookstores. DLS advises that the impact on bookstore revenues projected by USM is overstated, although campus bookstore revenues may decrease if the posting of ISBNs leads to fewer textbook sales at college bookstores. Further, the impact from this bill is only in fiscal 2010 as the HEOA mandate begins in fiscal 2011. *For illustrative purposes*, a 10% decline in bookstore revenues at public four-year institutions results in \$3.9 million based on fiscal 2007 data.

Exhibit 1
Campus Bookstore Profits at State Institutions of Higher Education
(\$ in Thousands)
Fiscal 2007



Source: Department of Legislative Services Textbook Survey

Second, listing ISBNs online may reduce general fund sales tax revenues during fiscal 2010 since more students have the opportunity to find cheaper textbooks through Internet sources that are unlikely to result in sales tax revenue. DLS advises that, although providing students with ISBNs may make online shopping easier, students currently have the option of purchasing textbooks from Internet vendors. Further, requiring campus bookstores and institutions of higher education to disclose ISBNs and other specific textbook information may enhance the ability of off-campus bookstores to stock and compete for the sale of assigned textbooks. If these bookstores are better able to compete with Internet vendors, the sales tax revenue they collect helps to offset any potential loss to online sources. Any impact on general fund revenues, therefore, is expected to be minimal.

State Expenditures: Requiring public institutions of higher education to develop and implement specific practices and processes relating to textbook selection and adoption increases administrative efforts by faculty and bookstores, which may increase costs for the institutions. USM advises that the additional administrative procedures required in the bill necessitate hiring textbook coordinators, provost liaisons, an accounting assistant, a librarian, and significant additional bookstore staff at an estimated \$2.1 million starting in fiscal 2010. Depending on current staffing levels for MSU, St. Mary's, and BCCC, this may also be true for other State institutions. DLS advises that the impact on administrative expenditures projected by USM is overstated and that developing processes and procedures is one-time in nature, with less-costly ongoing expenses. To the extent that bookstore sales and revenues decrease as a result of this bill, bookstore personnel are freed up to support these additional activities.

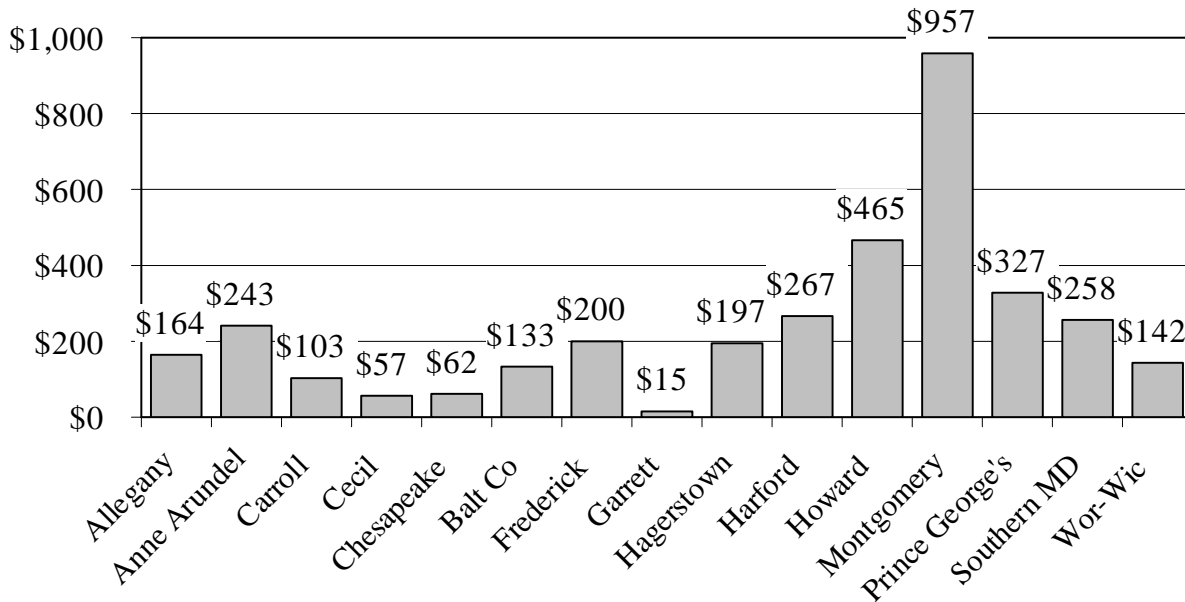
General fund expenditures increase by an estimated \$100,000 in fiscal 2011 and 2012 for MHEC to hire a consultant to conduct the required feasibility studies. The studies will be completed by December 31, 2011, and no further costs will be incurred after that date.

MHEC can collect and compile textbook studies conducted by institutions of higher education with existing personnel and resources.

Local Revenues: Community colleges are subject to the same requirements in the bill as the public four-year institutions and the HEOA requirements that take effect July 1, 2010. A DLS survey concluded that on-campus bookstores at local community colleges generated approximately \$3.6 million in profits in fiscal 2007 (see **Exhibit 2**), an average of \$239,000 per college. The Maryland Association of Community Colleges estimates a reduction of 15% to 25% of current campus bookstore revenue due to fewer sales from posting ISBNs and other textbook information. MACC estimates potential revenue loss ranging from \$250,000 at Montgomery College to \$75,000 at Wor-Wic Community College, for a local statewide revenue loss of \$2.8 million in fiscal 2010. DLS advises

that this estimate is probably overstated, and that the impact due to the bill only applies in fiscal 2010. For illustrative purposes, a 10% decline in bookstore revenues results in \$2.5 million based on fiscal 2007 data.

Exhibit 2
Campus Bookstore Profits at Local Community Colleges
(\$ in Thousands)
Fiscal 2007



Source: Department of Legislative Services Textbook Survey

Local Expenditures: Eight community colleges note that their web-based information technology system needs to be enhanced to post the specific textbook information required by the bill at a one-time cost of approximately \$15,000 per institution. This is a one-time cost of approximately \$120,000 in fiscal 2010.

Similar to State institutions, college expenditures may increase to develop and implement processes and procedures for faculty and bookstores. MACC estimates increased costs of \$20,000 to \$55,000 per college. DLS advises that the impact is probably overstated and is primarily one-time in nature, with less-costly ongoing expenses.

Small Business Effect: Early posting of ISBNs and other textbook information presumably allows more off-campus bookstores, including both small and larger book sellers, to compete more equally for students' business. Although textbook titles and authors are generally published early, the exact textbook assignment may not be readily

available. A textbook's ISBN provides greater specificity about which edition of the textbook is being assigned and whether a bundled or unbundled version of the text has been assigned. If this information enhances the ability of off-campus bookstores to stock the correct textbooks, they benefit from the change.

Several of the bill's requirements, including the posting of ISBNs and other textbook information, also apply to private higher education institutions. The bill potentially reduces revenues for these institutions.

Additional Information

Prior Introductions: SB 657 of 2008 as passed by the Senate is very similar to this bill. The 2008 bill passed both chambers, but differences in the two versions were not resolved.

Cross File: SB 183 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Baltimore City Community College, Maryland Higher Education Commission, Maryland Independent College and University Association, Morgan State University, St. Mary's College, University System of Maryland, Maryland Association of Community Colleges, Department of Legislative Services

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