



**Sub. H.B. 32\***  
123rd General Assembly  
(As Reported by S. Education)

**Reps. Jolivette, Haines, Harris, Householder, Grendell, Mottley, Olman, Schuler, Stapleton, Terwilleger, Jones, Patton, Winkler, Callender, Padgett, O'Brien, Mead, Vesper, Krebs, Perz, Goodman, Metzger, Jordan, Corbin, Sykes, Willamowski, Thomas, Myers, Amstutz, Coughlin, Barnes**

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**BILL SUMMARY**

- Permits a school district to furnish, in lieu of textbooks, electronic textbooks--such as computer software, CD-ROM, computer courseware, and on-line services--to students attending the public schools in the district, if the software is furnished free of charge.
- Requires a school district that furnishes electronic textbooks to make them reasonably accessible to teachers providing assignments and to students for completion of assignments.
- Requires that electronic textbooks be selected, acquired, and maintained by school districts as are textbooks, except that electronic textbooks may be updated more frequently than once every four years.
- Expands the secular items that school districts may buy with state Auxiliary Services funds and lend to chartered nonpublic school students to include electronic textbooks, consumable textbooks, site-licensed software, digital video on demand ("DVD"), wide area internet access technology, school library materials, resources and services of the Ohio SchoolNet Commission, and other instructional materials.

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\* *This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Makes technical changes in the calculation of school district "gap revenue."
- Requires the emergency loan interest subsidy payments for school districts to be paid for the current fiscal year (beginning with FY 1999), instead of for the preceding calendar year.
- Declares an emergency.

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## CONTENT AND OPERATION

### *Electronic textbooks in public schools*

(secs. 3329.01 and 3329.03 to 3329.10)

#### *Current law*

Under current law, the board of education of a school district must furnish necessary textbooks free of charge to pupils attending the public schools in that district. Textbooks furnished to students remain the property of the district board; they are loaned to the pupils on such terms as the board may determine. Upon the request of a pupil or parent, a board of education must sell to the pupil or parent any textbook adopted for use in the schools of the district. The price may not exceed 110% of the cost paid by the board. (Secs. 3329.06 and 3329.09.)

Also, current law requires a school district to make all necessary arrangements to place books (presumably this includes textbooks) within easy reach of and accessible to all the pupils in the district (sec. 3329.09).

Presently, the law requires a city, exempted village, or local school district board to determine which textbooks, and the number of each textbook, that are to be used in the schools under its control (secs. 3329.07 and 3329.08).<sup>1</sup> But no textbook may be purchased unless the publisher has on file in the office of the state Superintendent of Public Instruction, a statement that the list wholesale price to Ohio school districts does not exceed the lowest list wholesale price available to districts in any other state (sec. 3329.01).<sup>2</sup> Once a textbook is selected by a board

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<sup>1</sup> *A local school district must choose from a list of textbooks adopted by the educational service center where the district is located. City and exempted village districts are not so restricted.*

<sup>2</sup> *A textbook publisher also must file a statement of the wholesale price of a computer diskette that contains the text of the textbook for translation into Braille and that the list*

of education, another textbook cannot be substituted for it for four years, unless four-fifths of the board members approve of the substitution (sec. 3329.08). Finally, a superintendent, supervisor, principal, or teacher employed by any board of education cannot act as a sales agent for a person, firm, or corporation whose textbooks are filed with the state Superintendent (sec. 3329.10).

### **The bill**

Under the bill, a city, exempted village, or local school district board may furnish *electronic* textbooks, in lieu of textbooks, to pupils attending the public schools in the district, provided the electronic textbooks are also furnished free of charge (sec. 3329.06). "Electronic textbook" is defined as computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, on-line service, electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means (sec. 3329.01). A school district that furnishes electronic textbooks to pupils must provide reasonable access to them and other necessary computer equipment to pupils who are required to complete homework assignments, and teachers providing homework assignments, utilizing electronic textbooks furnished by the district (sec. 3329.06).

Electronic textbooks must be selected, acquired, and maintained by the school district in the same manner (described above under "**Current law**") as textbooks. In particular, the requirement to sell textbooks to pupils or their parents at no more than 110% of the cost of the book to the school district also applies to electronic textbooks (sec. 3329.09). The bill stipulates that the word "pupil" for purposes of this pricing requirement includes any school-aged child who resides in the school district (sec. 3329.09).

Unlike current law, however, the bill permits school districts to perform periodic and normal updating of electronic textbooks more often than once every four years. But it appears that if a school board has recently selected and acquired a textbook in a given subject, it must wait four years to select electronic textbooks as a substitute, unless four-fifths of the board members approve of the substitution (sec. 3329.08).

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*wholesale price for any specified number of computer diskettes does not exceed the list wholesale price for the same number of the printed textbook (sec. 3329.01(A) and (B)).*

**Expanded uses of state Auxiliary Services funds for chartered nonpublic school students**

(sec. 3317.06)

**Current law**

Current law requires the Department of Education to annually pay each school district funds that the school district must use to purchase various secular items and services for the benefit of students attending chartered nonpublic schools.<sup>3</sup> Each district must use the money for the following:

- (1) To purchase and lend to chartered nonpublic school students secular textbooks approved by the state Superintendent of Public Instruction for use in the public schools;
- (2) To provide those students with various health, counseling, and remedial services, and instructional equipment to use as part of these services;
- (3) To provide programs for disabled students;
- (4) To purchase mobile units that are used for the provision of the health, counseling, remedial, and disability services;
- (5) To supply the students with standardized tests and scoring services; and
- (6) To purchase and lend to them computer software, prerecorded video materials, and math and science equipment and materials, all of which must be (a) secular, neutral, and nonideological, (b) in general use in the state's public schools, (c) incapable of diversion to religious use, (d) susceptible of loan to individual students, and (e) furnished for the use of individual students.

**The bill**

The bill expands the items that school districts may purchase with state Auxiliary Services funds to lend to students of chartered nonpublic schools.

First, it requires districts to purchase and lend secular electronic textbooks, consumable textbooks (presumably workbooks), and text supplements. As under current law for traditional textbooks, these electronic textbooks, consumable textbooks, and text supplements lent to chartered nonpublic school students must

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<sup>3</sup> *Sec. 3317.024(O), not in the bill. It is section 3317.024(O) that limits the use of Auxiliary Services funds to benefit students of chartered nonpublic schools.*

have been approved by the state Superintendent of Public Instruction for use in the state's public schools. The electronic textbooks to be supplied include all the same items the bill permits districts to provide to public school students in lieu of regular textbooks, plus local and remote computer assisted instruction. (Sec. 3317.06(A).)

Second, it specifies that computer software purchased for loan to chartered nonpublic school students may include site licensing. (Sec. 3317.06(K).) Site licensing allows the software licensee (the school district) to grant multiple users access to it at one site, in this case a nonpublic school.

Third, it adds all of the following to the list of nontextbook items that are to be purchased and lent as long as they are secular, in general use in the public schools, incapable of diversion to religious use, susceptible of loan to individual students, and furnished for use of individual students:

- (1) Digital video on demand ("DVD");
- (2) Wide area connectivity and related technology as it relates to internet access;
- (3) School library materials; and
- (4) Instructional materials, which the bill defines as learning materials that are secular, neutral, and nonideological in character and are of benefit to the instruction of school children, including educational resources and services developed by the Ohio SchoolNet Commission. (Sec. 3317.06(K).)

### **Other provisions in the bill**

#### **Emergency school loans--interest subsidy**

(sec. 3313.484; Section 3)

Current law requires the Department of Education, by the last day of June of each year, to pay a subsidy to every school district that during the preceding calendar year paid and was obligated to pay interest on a state-backed emergency school loan in excess of 2% simple interest.<sup>4</sup> The bill changes the year for calculating the subsidy to the current fiscal year. The subsidy amount remains the difference between the amount of interest the district paid and was obligated to pay

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<sup>4</sup> Sub. H.B. 412 of the 122nd General Assembly prohibited the approval of any state-backed emergency school loans after March 1, 1998 (secs. 3313.483 through 3313.4811, not in the act). This law was among those held unconstitutional in the DeRolph decision.

during the year and the interest that the district would have been obligated to pay if the interest rate on the loan had been 2% per year.

The bill specifically states that the first subsidy under this provision will be paid in June of 1999 for the fiscal year ending June 30, 1999.

**Removal of JVSD taxes in determining a school district's "gap revenue aid"**

(secs. 3317.021 and 3317.0216)

Am. Sub. H.B. 650 provided a state subsidy (called the "gap revenue subsidy") for any school district that does not raise enough local operating revenue to cover the local share of education spending that the state attributes to it in the base cost formula and as its "local share of special education and related services additional weighted costs." In that bill, the calculation of district local operating revenues inadvertently included the share of the district's taxes that actually were levied to support a joint vocational school district (JVSD). The bill requires the Tax Commissioner to report (and the Department of Education to remove from its calculation of the district's "gap revenue subsidy") that portion of the district's taxes attributable to a JVSD.

The bill also requires the Department to include in the calculation of a district's local operating revenue, any school district income taxes actually distributed for the preceding year, rather than the school district income tax liability for that year.

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**COMMENT**

This comment discusses issues that may arise regarding the bill's provision that permits a school district to "lend," among other things, consumable textbooks (such as workbooks) and internet access technology to nonpublic school students. The provision may result in administrative difficulties which, if not resolved, could pose constitutional problems relating to the separation of church and state. The comment neither attempts to resolve the issues nor intends to imply that the issues can be clearly resolved.

**Auxiliary Services Law**

The current Auxiliary Services Law (*not changed by the bill*) requires that educational materials paid for with state funds be:

- for the benefit of the students and not the nonpublic school that the students attend;
- loaned to students and not given to them;
- incapable of diversion to religious use.

### *The bill*

A possible conflict could emerge in attempting to adhere to these statutory requirements while providing some of the items that the bill requires be purchased with state funds for loan to students in chartered nonpublic schools. The following are examples.

- The bill permits the provision of consumable textbooks, such as workbooks. The current law requires that an item must be loaned. It may be difficult to reconcile lending something that is consumable, like a workbook.
- The bill permits the provision of internet access technology. The law requires that an item be for the benefit of students. It may be impossible to assure that access through the internet technology would be only by students and not also by school staff for administrative tasks or professional development.
- An item provided with public funds must be *incapable* of diversion for religious purposes. It may be impossible to purchase internet access technology that would block access to religious content.

In addition to the potential internal conflict that the addition of consumable textbooks and internet access appears to introduce, the administration of the law could pose constitutional problems related to the separation of church and state. The detailed language of the Auxiliary Services Law appears to be the General Assembly's response to U.S. Supreme Court rulings related to the provision of public assistance to nonpublic, particularly religious, schools without unconstitutional entanglements of church and state. Some degree of entanglement, for example, could be necessary if the state has to ensure that the actual distance learning programs or internet sites accessed did *not* have any religious content. It is not possible to say with certainty, however, that the bill would create such problems since federal jurisprudence on assistance to nonpublic schools may be changing. In *Agostini v. Felton* (1997) the U.S. Supreme Court reversed its own earlier decision that federally funded Title I services must be provided off the

premises of religious schools.<sup>5</sup> The 122nd General Assembly responded to that decision by including provisions in Am. Sub. S.B. 55 to allow state-funded secular remedial, diagnostic, and therapeutic services on the premises of religious schools. The General Assembly also permitted the purchase of instructional equipment, including computer hardware, that a student in a chartered religious school may use when being provided those secular services.

While the *Agostini* decision raises speculation that the Court might be willing to loosen its previous restrictions on aid to nonpublic school students, the decision addressed only services, not educational materials. It did not expressly address the 1977 decision of *Wolman v. Walter*, in which the Court invalidated an Ohio statute under which state funds could be used to purchase instructional equipment for religious school students.<sup>6</sup> It is not possible to predict how the court would respond to the bill's provision that enables public funding of consumable goods and internet technology for students in nonpublic schools.

On the other hand, it appears likely that there will always be lingering questions surrounding the constitutionality of using public funds to assist nonpublic schools (as opposed to students). If it is determined that such things as site licensing and internet access benefit the nonpublic schools rather than "individual students," it is uncertain how courts would view the bill if the current Auxiliary Services Law prohibition is found to be the appropriate response to Supreme Court's decisions.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 90
Reported, H. Education	02-17-99	p. 210
Passed House (97-0)	03-10-99	pp. 279-280
Reported, S. Education	---	---

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<sup>5</sup> 521 U.S. 203.

<sup>6</sup> 433 U.S. 229.