

SENATE BILL REPORT

SHB 1089

As Reported by Senate Committee On:
Higher Education & Workforce Development, March 18, 2011

Title: An act relating to instructional materials provided in a specialized format version.

Brief Description: Regarding instructional materials provided in a specialized format.

Sponsors: House Committee on Higher Education (originally sponsored by Representative McCoy).

Brief History: Passed House: 3/02/11, 97-0.

Committee Activity: Higher Education & Workforce Development: 3/15/11, 3/18/11 [DPA].

SENATE COMMITTEE ON HIGHER EDUCATION & WORKFORCE DEVELOPMENT

Majority Report: Do pass as amended.

Signed by Senators Tom, Chair; Shin, Vice Chair; Hill, Ranking Minority Member; Becker, Ericksen, Kastama, Kilmer and White.

Staff: Kimberly Cushing (786-7421)

Background: A publisher of instructional materials must, unless technically unable, provide a public or private institution of higher education acting on behalf of a student any instructional material in an electronic format mutually agreed upon by the publisher and the institution. These must be provided in a timely manner and at no additional cost to the institution. Each institution must establish guidelines for implementation and administration of instructional materials in specialized formats.

A written request from an institution to a publisher for materials in a specialized format must certify that:

- the student has a print access disability preventing the student from utilizing the standard format material;
- the material is for the student's use in connection with a course in which the student is enrolled; and
- the student or the institution has purchased the material in its standard format prior to requesting the specialized format.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Instructional materials mean textbooks and other materials that are deemed required or essential to the success of an enrolled student with a disability in a postsecondary course of study by the instructor of the course in consultation with the appropriate school official. Print access disability means a condition where a person's independent reading of, reading comprehension of, or visual access to materials is limited or reduced due to a disability recognized by state or federal law, and may include, but is not limited to, persons who are blind, have low vision, have reading disorders, or have physical disabilities.

Summary of Bill (Recommended Amendments): An institution that provides a specialized format version of instructional material may not require that the student return the specialized format. However, if the institution has determined that it is not required to allow a student to retain the specialized format under the Americans with Disabilities Act and the institution translated or transcribed the material into the specialized format at its own expense and the cost to reproduce a copy is greater than \$100, the institution may require the student to return the specialized format.

EFFECT OF CHANGES MADE BY HIGHER EDUCATION & WORKFORCE DEVELOPMENT COMMITTEE (Recommended Amendments): A public or private institution of higher education must first determine that it is not required to allow a student to retain the specialized format under the Americans with Disabilities Act before requiring a student to return a specialized format that the institution translated or transcribed at its expense and costs more than \$100 to reproduce.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: PRO: A student with visual disabilities has to buy the print format, the school translates it, and then the student has to return the specialized format. Institutions feel they need to protect the publisher, which prevents students with visual disabilities from building their own reference libraries. Each institution has its own center for alternative media. Many schools require students to sign a contract to return media to the university. Many electronic copies cost the university \$1 and the publishers nothing. Students should get to keep e-text that costs under \$100 that goes with a text book. However, it is a misconception that every publisher provides text on CDs. Some CDs may be on loan. It is legal for the institution to make copies once the publisher gives permission. The \$100 amendment was added because of Braille expenses, which could cost up to \$30,000. Copying reduces costs a lot, but \$100 disallows copying of Braille. Braille books are kept in the system so they can be shared. The CTC system does a good job seeking out Braille books.

OTHER: We are concerned that the bill now seems to direct the colleges to take material back under circumstances when they would be precluded from doing so under the Americans

with Disabilities Act (ADA). If students who use regular print materials get to keep materials so do students with a specialized format. The ADA has an undue burden standard and, in every case, the burden would need to be substantially higher than \$100. We don't want to hold up the bill, but we also don't want to send a confusing message to the institutions.

Persons Testifying: PRO: Representative McCoy, prime sponsor; Sharon Todd, citizen; Scott Copeland, SBCTC; Susan McPhee, Pierce College.

OTHER: Toby Olson, Governor's Commission on Disability.