

118TH CONGRESS
1ST SESSION

S. 978

To expand the use of open textbooks in order to achieve savings for students and improve textbook price information.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2023

Mr. DURBIN (for himself, Mr. KING, Ms. SMITH, and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To expand the use of open textbooks in order to achieve savings for students and improve textbook price information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Affordable College
5 Textbook Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The high cost of college textbooks continues
9 to be a barrier for many students in achieving high-
10 er education.

1 (2) According to the College Board, during the
2 2022–2023 academic year, the average student
3 budget for college books and supplies at 4-year pub-
4 lic institutions of higher education was \$1,240.

5 (3) The Government Accountability Office
6 found that new textbook prices increased 82 percent
7 between 2002 and 2012 and that although Federal
8 efforts to increase price transparency have provided
9 students and families with more and better informa-
10 tion, more must be done to address rising costs.

11 (4) The growth of the internet has enabled the
12 creation and sharing of digital content, including
13 open educational resources that can be freely used
14 by students, teachers, and members of the public.

15 (5) According to the Student PIRGs, expanded
16 use of open educational resources has the potential
17 to save students more than a billion dollars annually.

18 (6) Federal investment in expanding the use of
19 open educational resources has lowered college text-
20 book costs and reduced financial barriers to higher
21 education, while making efficient use of taxpayer
22 funds.

23 (7) Educational materials, including open edu-
24 cational resources, must be accessible to the widest

1 possible range of individuals, including those with
2 disabilities.

3 **SEC. 3. OPEN TEXTBOOK GRANT PROGRAM.**

4 (a) DEFINITIONS.—In this section:

5 (1) INSTITUTION OF HIGHER EDUCATION.—The
6 term “institution of higher education” has the
7 meaning given the term in section 101 of the Higher
8 Education Act of 1965 (20 U.S.C. 1001).

9 (2) OPEN EDUCATIONAL RESOURCE.—The term
10 “open educational resource” has the meaning given
11 the term in section 133 of the Higher Education Act
12 of 1965 (20 U.S.C. 1015b).

13 (3) OPEN TEXTBOOK.—The term “open text-
14 book” means an open educational resource or set of
15 open educational resources that either is a textbook
16 or can be used in place of a textbook for a postsec-
17 ondary course at an institution of higher education.

18 (4) RELEVANT FACULTY.—The term “relevant
19 faculty” means both tenure track and contingent
20 faculty members who may be involved in the creation
21 or use of open textbooks created as part of an appli-
22 cation under subsection (d).

23 (5) SECRETARY.—The term “Secretary” means
24 the Secretary of Education.

1 (6) SUPPLEMENTAL MATERIAL.—The term
2 “supplemental material” has the meaning given the
3 term in section 133 of the Higher Education Act of
4 1965 (20 U.S.C. 1015b).

5 (b) GRANTS AUTHORIZED.—From the amounts ap-
6 propriated under subsection (k), the Secretary shall make
7 grants, on a competitive basis, to eligible entities to sup-
8 port projects that expand the use of open textbooks in
9 order to achieve savings for students while maintaining or
10 improving instruction and student learning outcomes.

11 (c) ELIGIBLE ENTITY.—In this section, the term “el-
12 igible entity” means an institution of higher education, a
13 consortium of institutions of higher education, or a consor-
14 tium of States on behalf of institutions of higher edu-
15 cation.

16 (d) APPLICATIONS.—

17 (1) IN GENERAL.—Each eligible entity desiring
18 a grant under this section, after consultation with
19 relevant faculty, shall submit an application to the
20 Secretary at such time, in such manner, and accom-
21 panied by such information as the Secretary may
22 reasonably require.

23 (2) CONTENTS.—Each application submitted
24 under paragraph (1) shall include a description of
25 the project to be completed with grant funds and—

1 (A) a plan for promoting and tracking the
2 use of open textbooks in postsecondary courses
3 offered by the eligible entity and across partici-
4 pating members of the consortium, where appli-
5 cable, including an estimate of the projected
6 savings that will be achieved for students;

7 (B) a plan for identifying gaps in the open
8 textbook marketplace in courses that are part
9 of degree-granting programs, which may include
10 a plan for evaluating, before creating new open
11 textbooks, whether existing open textbooks
12 could be used or adapted for the same purpose,
13 and in the case that a gap exists, creating new
14 open textbooks;

15 (C) a plan for quality review and review of
16 accuracy of any open textbooks to be created or
17 adapted through the grant;

18 (D) a plan for assessing the impact of
19 open textbooks on instruction, student learning
20 outcomes, course outcomes, and educational
21 costs at the eligible entity and across partici-
22 pating members of the consortium, where appli-
23 cable;

24 (E) a plan for disseminating information
25 about the results of the project to institutions

1 of higher education outside of the eligible enti-
2 ty, including promoting the adoption of any
3 open textbooks created or adapted through the
4 grant;

5 (F) a statement on consultation with rel-
6 evant faculty, including those engaged in the
7 creation of open textbooks, in the development
8 of the application;

9 (G) a plan for professional development to
10 build the capacity of faculty, instructors, and
11 other staff to adapt and use open textbooks;
12 and

13 (H) a plan for updating the open textbooks
14 beyond the funded period.

15 (e) SPECIAL CONSIDERATION.—In awarding grants
16 under this section, the Secretary shall give special consid-
17 eration to applications that demonstrate the greatest po-
18 tential to—

19 (1) achieve the highest level of savings for stu-
20 dents through sustainable expanded use of open
21 textbooks in postsecondary courses offered by the el-
22 igible entity;

23 (2) expand the use of open textbooks at institu-
24 tions of higher education outside of the eligible enti-
25 ty; and

1 (3) produce—

2 (A) the highest quality open textbooks;

3 (B) open textbooks that can be most easily
4 utilized and adapted by faculty members at in-
5 stitutions of higher education;

6 (C) open textbooks that correspond to the
7 highest enrollment courses at institutions of
8 higher education;

9 (D) open textbooks created or adapted in
10 partnership with entities within institutions of
11 higher education, including campus bookstores,
12 that will assist in marketing and distribution of
13 the open textbook; and

14 (E) open textbooks that are accessible to
15 students with disabilities.

16 (f) USE OF FUNDS.—An eligible entity that receives
17 a grant under this section shall use the grant funds to
18 carry out any of the following activities to expand the use
19 of open textbooks:

20 (1) Professional development for any faculty
21 and staff members at institutions of higher edu-
22 cation, including the search for and review of open
23 textbooks.

24 (2) Creation or adaptation of open textbooks.

1 (3) Development or improvement of supple-
2 mental materials and informational resources that
3 are necessary to support the use of open textbooks,
4 including accessible instructional materials for stu-
5 dents with disabilities.

6 (4) Research evaluating the efficacy of the use
7 of open textbooks for achieving savings for students
8 and the impact on instruction and student learning
9 outcomes.

10 (g) LICENSE.—For each open textbook, supplemental
11 material, or informational resource created or adapted
12 wholly or in part under this section that constitutes a new
13 copyrightable work, the eligible entity receiving the grant
14 shall release such textbook, material, or resource to the
15 public under a non-exclusive, royalty-free, perpetual, and
16 irrevocable license to exercise any of the rights under copy-
17 right conditioned only on the requirement that attribution
18 be given as directed by the copyright owner.

19 (h) ACCESS AND DISTRIBUTION.—The full and com-
20 plete digital content of each open textbook, supplemental
21 material, or informational resource created or adapted
22 wholly or in part under this section shall be made available
23 free of charge to the public—

1 (1) on an easily accessible and interoperable
2 website, which shall be identified to the Secretary by
3 the eligible entity;

4 (2) in a machine readable, digital format that
5 anyone can directly download, edit with attribution,
6 and redistribute;

7 (3) in a format that conforms to accessibility
8 standards under section 508 of the Rehabilitation
9 Act of 1973 (29 U.S.C. 794d), where feasible; and

10 (4) with identifying information, including the
11 title, edition, author, publisher, copyright date, and
12 International Standard Book Number, if available.

13 (i) REPORT.—Upon an eligible entity’s completion of
14 a project supported under this section, the eligible entity
15 shall prepare and submit a report to the Secretary regard-
16 ing—

17 (1) the effectiveness of the project in expanding
18 the use of open textbooks and in achieving savings
19 for students;

20 (2) the impact of the project on expanding the
21 use of open textbooks at institutions of higher edu-
22 cation outside of the eligible entity;

23 (3) open textbooks, supplemental materials, and
24 informational resources created or adapted wholly or
25 in part under the grant, including instructions on

1 where the public can access each educational re-
2 source under the terms of subsection (h);

3 (4) the impact of the project on instruction and
4 student learning outcomes; and

5 (5) all project costs, including the value of any
6 volunteer labor and institutional capital used for the
7 project.

8 (j) ANNUAL REPORT TO CONGRESS.—Not later than
9 2 years after the date of enactment of this Act, and annu-
10 ally thereafter, the Secretary shall prepare and submit a
11 report to the Committee on Health, Education, Labor, and
12 Pensions of the Senate and the Committee on Education
13 and the Workforce of the House of Representatives detail-
14 ing—

15 (1) the open textbooks, supplemental materials,
16 and informational resources created or adapted
17 wholly or in part under this section;

18 (2) the adoption of such open textbooks, includ-
19 ing outside of the eligible entity;

20 (3) the savings generated for students, States,
21 and the Federal Government through projects sup-
22 ported under this section; and

23 (4) the impact of projects supported under this
24 section on instruction and student learning out-
25 comes.

1 (k) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to carry out this section
3 such sums as are necessary.

4 **SEC. 4. TEXTBOOK PRICE INFORMATION.**

5 Section 133 of the Higher Education Act of 1965 (20
6 U.S.C. 1015b) is amended—

7 (1) in subsection (b)—

8 (A) by striking paragraph (6) and insert-
9 ing the following:

10 “(6) OPEN EDUCATIONAL RESOURCE.—The
11 term ‘open educational resource’ means a teaching,
12 learning, or research resource that is offered freely
13 to users in at least one form and that resides in the
14 public domain or has been released under an open
15 copyright license that allows for its free use, reuse,
16 modification, and sharing with attribution.”; and

17 (B) in paragraph (9), by striking “text-
18 book that” and all that follows through the pe-
19 riod at the end and inserting “textbook that
20 may include printed materials, website access,
21 and electronically distributed materials.”;

22 (2) in subsection (c)(1)—

23 (A) in the matter preceding subparagraph
24 (A), by striking “or other person or adopting
25 entity in charge of selecting course materials”

1 and inserting “or other person or entity in
2 charge of selecting or aiding in the discovery
3 and procurement of course materials”;

4 (B) in subparagraph (A), by inserting
5 “such institution of higher education or to”
6 after “would make the college textbook or sup-
7 plemental material available to”; and

8 (C) by adding at the end the following:

9 “(E) Whether the college textbook or sup-
10 plemental material is an open educational re-
11 source.

12 “(F) For a college textbook or supple-
13 mental material delivered primarily in a digital
14 format, a summary of terms and conditions
15 under which a publisher collects and uses stu-
16 dent data through the student’s use of such col-
17 lege textbook or supplemental material, includ-
18 ing whether a student can opt out of such
19 terms and conditions.”;

20 (3) in subsection (d)—

21 (A) in the subsection heading, by striking
22 “ISBN”; and

23 (B) by striking paragraph (1) and insert-
24 ing the following:

1 “(1) verify and disclose, on (or linked from) the
2 institution’s Internet course schedule, for each
3 course listed in such course schedule, and in a man-
4 ner of the institution’s choosing (except that if the
5 institution determines that the disclosure of the in-
6 formation described in this subsection is not prac-
7 ticable or available for a college textbook or supple-
8 mental material, then the institution shall indicate
9 the status of such information in lieu of the informa-
10 tion required under this subsection)—

11 “(A) the International Standard Book
12 Number of required and recommended college
13 textbooks and supplemental materials, except
14 that if the International Standard Book Num-
15 ber is not available for such college textbook or
16 supplemental material, then the institution shall
17 include in the Internet course schedule the au-
18 thor, title, publisher, and copyright date for
19 such college textbook or supplemental material;

20 “(B) the retail price of required and rec-
21 ommended college textbooks and supplemental
22 materials;

23 “(C) any applicable fee information of re-
24 quired and recommended college textbooks and
25 supplemental materials;

1 “(D) whether each required and rec-
2 ommended college textbook and supplemental
3 material is an open educational resource; and

4 “(E) for a college textbook or supplemental
5 material delivered primarily in a digital format,
6 a link to the summary required to be provided
7 by the publisher under subsection (c)(1)(F);
8 and”;

9 (4) by striking subsection (e) and inserting the
10 following:

11 “(e) AVAILABILITY OF INFORMATION FOR COLLEGE
12 BOOKSTORES.—

13 “(1) IN GENERAL.—An institution of higher
14 education receiving Federal financial assistance shall
15 assist a college bookstore that is operated by, or in
16 a contractual relationship or otherwise affiliated
17 with, the institution, in obtaining required and rec-
18 ommended course materials information and such
19 course schedule and enrollment information as is
20 reasonably required to implement this section so
21 that such bookstore may—

22 “(A) verify availability of such materials;

23 “(B) source lower cost options, including
24 presenting lower cost alternatives to faculty for
25 faculty to consider, when practicable; and

1 “(C) maximize the availability of format
2 options for students.

3 “(2) DUE DATES.—In carrying out paragraph
4 (1), an institution of higher education may establish
5 due dates for faculty or departments to notify the
6 campus bookstore of required and recommended
7 course materials.”; and

8 (5) in subsection (f)—

9 (A) by redesignating paragraphs (3) and
10 (4) as paragraphs (4) and (5); and

11 (B) by inserting after paragraph (2) the
12 following:

13 “(3) available open educational resources;”.

14 **SEC. 5. SENSE OF CONGRESS.**

15 It is the sense of Congress that institutions of higher
16 education should encourage the consideration of open text-
17 books by faculty within the generally accepted principles
18 of academic freedom that establishes the right and respon-
19 sibility of faculty members, individually and collectively,
20 to select course materials that are pedagogically most ap-
21 propriate for their classes.

22 **SEC. 6. GAO REPORT.**

23 Not later than 3 years after the date of enactment
24 of this Act, the Comptroller General of the United States
25 shall prepare and submit a report to the Committee on

1 Health, Education, Labor, and Pensions of the Senate and
2 the Committee on Education and the Workforce of the
3 House of Representatives on the cost of textbooks to stu-
4 dents at institutions of higher education. The report shall
5 particularly examine—

6 (1) the implementation of section 133 of the
7 Higher Education Act of 1965 (20 U.S.C. 1015b),
8 as amended by section 4, including—

9 (A) the availability of college textbook and
10 open educational resource information on
11 course schedules;

12 (B) the compliance of publishers with ap-
13 plicable requirements under such section; and

14 (C) the costs and benefits to institutions of
15 higher education and to students;

16 (2) the change in the cost of textbooks;

17 (3) the factors, including open textbooks, that
18 have contributed to the change of the cost of text-
19 books;

20 (4) the extent to which open textbooks are used
21 at institutions of higher education; and

22 (5) how institutions are tracking the impact of
23 open textbooks on instruction and student learning
24 outcomes.

○