

117TH CONGRESS
2D SESSION

S. 3818

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 10 (legislative day, MARCH 7), 2022

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 2021–2022 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 could significantly lower
20 college textbook costs and reduce financial barriers
21 to higher education, while making efficient use of
22 taxpayer 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 group of institutions of higher education, or States on be-
14 half of institutions of higher education.

15 (d) APPLICATIONS.—

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

22 (2) CONTENTS.—Each application submitted
23 under paragraph (1) shall include a description of
24 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, including an esti-
4 mate of the projected savings that will be
5 achieved for students;

6 (B) a plan for evaluating, before creating
7 new open textbooks, whether existing open text-
8 books could be used or adapted for the same
9 purpose;

10 (C) a plan for quality review and review of
11 accuracy of any open textbooks to be created or
12 adapted through the grant;

13 (D) a plan for assessing the impact of
14 open textbooks on instruction and student
15 learning outcomes at the eligible entity;

16 (E) a plan for disseminating information
17 about the results of the project to institutions
18 of higher education outside of the eligible enti-
19 ty, including promoting the adoption of any
20 open textbooks created or adapted through the
21 grant; and

22 (F) a statement on consultation with rel-
23 evant faculty, including those engaged in the
24 creation of open textbooks, in the development
25 of the application.

1 (e) SPECIAL CONSIDERATION.—In awarding grants
2 under this section, the Secretary shall give special consid-
3 eration to applications that demonstrate the greatest po-
4 tential to—

5 (1) achieve the highest level of savings for stu-
6 dents through sustainable expanded use of open
7 textbooks in postsecondary courses offered by the el-
8 igible entity;

9 (2) expand the use of open textbooks at institu-
10 tions of higher education outside of the eligible enti-
11 ty; and

12 (3) produce—

13 (A) the highest quality open textbooks;

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

17 (C) open textbooks that correspond to the
18 highest enrollment courses at institutions of
19 higher education;

20 (D) open textbooks created or adapted in
21 partnership with entities within institutions of
22 higher education, including campus bookstores,
23 that will assist in marketing and distribution of
24 the open textbook; and

1 (E) open textbooks that are accessible to
2 students with disabilities.

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

7 (1) Professional development for any faculty
8 and staff members at institutions of higher edu-
9 cation, including the search for and review of open
10 textbooks.

11 (2) Creation or adaptation of open textbooks.

12 (3) Development or improvement of supple-
13 mental materials and informational resources that
14 are necessary to support the use of open textbooks,
15 including accessible instructional materials for stu-
16 dents with disabilities.

17 (4) Research evaluating the efficacy of the use
18 of open textbooks for achieving savings for students
19 and the impact on instruction and student learning
20 outcomes.

21 (g) LICENSE.—For each open textbook, supplemental
22 material, or informational resource created or adapted
23 wholly or in part under this section that constitutes a new
24 copyrightable work, the eligible entity receiving the grant
25 shall release such textbook, material, or resource to the

1 public under a non-exclusive, royalty-free, perpetual, and
2 irrevocable license to exercise any of the rights under copy-
3 right conditioned only on the requirement that attribution
4 be given as directed by the copyright owner.

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

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

13 (2) in a machine readable, digital format that
14 anyone can directly download, edit with attribution,
15 and redistribute;

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

19 (4) with identifying information, including the
20 title, edition, author, publisher, copyright date, and
21 International Standard Book Number, if available.

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

1 (1) the effectiveness of the project in expanding
2 the use of open textbooks and in achieving savings
3 for students;

4 (2) the impact of the project on expanding the
5 use of open textbooks at institutions of higher edu-
6 cation outside of the eligible entity;

7 (3) open textbooks, supplemental materials, and
8 informational resources created or adapted wholly or
9 in part under the grant, including instructions on
10 where the public can access each educational re-
11 source under the terms of subsection (h);

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

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

17 (j) ANNUAL REPORT TO CONGRESS.—Not later than
18 2 years after the date of enactment of this Act, and annu-
19 ally thereafter, the Secretary shall prepare and submit a
20 report to the Committee on Health, Education, Labor, and
21 Pensions of the Senate and the Committee on Education
22 and Labor of the House of Representatives detailing—

23 (1) the open textbooks, supplemental materials,
24 and informational resources created or adapted
25 wholly or in part under this section;

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

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

6 (4) the impact of projects supported under this
7 section on instruction and student learning out-
8 comes.

9 (k) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated to carry out this section
11 such sums as are necessary.

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

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

15 (1) in subsection (b)—

16 (A) by striking paragraph (6) and insert-
17 ing the following:

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

1 (B) in paragraph (9), by striking “text-
2 book that” and all that follows through the pe-
3 riod at the end and inserting “textbook that
4 may include printed materials, computer disks,
5 website access, and electronically distributed
6 materials.”;

7 (2) in subsection (c)(1)—

8 (A) in the matter preceding subparagraph
9 (A), by striking “or other person or adopting
10 entity in charge of selecting course materials”
11 and inserting “or other person or entity in
12 charge of selecting or aiding in the discovery
13 and procurement of course materials”;

14 (B) in subparagraph (A), by inserting
15 “such institution of higher education or to”
16 after “would make the college textbook or sup-
17 plemental material available to”; and

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

19 “(E) Whether the college textbook or sup-
20 plemental material is an open educational re-
21 source.

22 “(F) For a college textbook or supple-
23 mental material delivered primarily in a digital
24 format, a summary of terms and conditions
25 under which a publisher collects and uses stu-

1 dent data through the student’s use of such col-
2 lege textbook or supplemental material, includ-
3 ing whether a student can opt out of such
4 terms and conditions.”;

5 (3) in subsection (d)—

6 (A) in the subsection heading, by striking
7 “ISBN”; and

8 (B) by striking paragraph (1) and insert-
9 ing the following:

10 “(1) verify and disclose, on (or linked from) the
11 institution’s Internet course schedule, for each
12 course listed in such course schedule, and in a man-
13 ner of the institution’s choosing (except that if the
14 institution determines that the disclosure of the in-
15 formation described in this subsection is not prac-
16 ticable or available for a college textbook or supple-
17 mental material, then the institution shall indicate
18 the status of such information in lieu of the informa-
19 tion required under this subsection)—

20 “(A) the International Standard Book
21 Number of required and recommended college
22 textbooks and supplemental materials, except
23 that if the International Standard Book Num-
24 ber is not available for such college textbook or
25 supplemental material, then the institution shall

1 include in the Internet course schedule the au-
2 thor, title, publisher, and copyright date for
3 such college textbook or supplemental material;

4 “(B) the retail price of required and rec-
5 ommended college textbooks and supplemental
6 materials;

7 “(C) any applicable fee information of re-
8 quired and recommended college textbooks and
9 supplemental materials;

10 “(D) whether each required and rec-
11 ommended college textbook and supplemental
12 material is an open educational resource; and

13 “(E) for a college textbook or supplemental
14 material delivered primarily in a digital format,
15 a link to the summary required to be provided
16 by the publisher under subsection (c)(1)(F);
17 and”;

18 (4) by striking subsection (e) and inserting the
19 following:

20 “(e) AVAILABILITY OF INFORMATION FOR COLLEGE
21 BOOKSTORES.—

22 “(1) IN GENERAL.—An institution of higher
23 education receiving Federal financial assistance shall
24 assist a college bookstore that is operated by, or in
25 a contractual relationship or otherwise affiliated

1 with, the institution, in obtaining required and rec-
 2 ommended course materials information and such
 3 course schedule and enrollment information as is
 4 reasonably required to implement this section so
 5 that such bookstore may—

6 “(A) verify availability of such materials;

7 “(B) source lower cost options, including
 8 presenting lower cost alternatives to faculty for
 9 faculty to consider, when practicable; and

10 “(C) maximize the availability of format
 11 options for students.

12 “(2) DUE DATES.—In carrying out paragraph
 13 (1), an institution of higher education may establish
 14 due dates for faculty or departments to notify the
 15 campus bookstore of required and recommended
 16 course materials.”; and

17 (5) in subsection (f)—

18 (A) by redesignating paragraphs (3) and
 19 (4) as paragraphs (4) and (5); and

20 (B) by inserting after paragraph (2) the
 21 following:

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

23 **SEC. 5. SENSE OF CONGRESS.**

24 It is the sense of Congress that institutions of higher
 25 education should encourage the consideration of open text-

1 books by faculty within the generally accepted principles
2 of academic freedom that establishes the right and respon-
3 sibility of faculty members, individually and collectively,
4 to select course materials that are pedagogically most ap-
5 propriate for their classes.

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

7 Not later than 3 years after the date of enactment
8 of this Act, the Comptroller General of the United States
9 shall prepare and submit a report to the Committee on
10 Health, Education, Labor, and Pensions of the Senate and
11 the Committee on Education and Labor of the House of
12 Representatives on the cost of textbooks to students at
13 institutions of higher education. The report shall particu-
14 larly examine—

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

18 (A) the availability of college textbook and
19 open educational resource information on
20 course schedules;

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

23 (C) the costs and benefits to institutions of
24 higher education and to students;

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

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

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

6 (5) how institutions are tracking the impact of
7 open textbooks on instruction and student learning
8 outcomes.

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