



H. 3595 & S.2330

An Act addressing challenges facing public libraries and digital resource collections



Overview

Support libraries in providing broad and equitable access to information for all by establishing a commission to recommend actions supporting the sustainability of diverse digital collections.

Since 1790 when Ben Franklin donated a small collection of books to the town of Franklin, libraries, authors, publishers and the general public have benefited from a system where libraries purchase materials at market or discounted prices and allow everyone in their community, regardless of their means, to access that information at no cost.

This legislation aims to restore this successful model by providing a means for librarians, publishers, distributors and legal experts to work together on licensing that is cost effective and sustainable.

Did You Know?

Digital titles are more expensive for libraries

Libraries often pay 5 to 6 times the consumer cost for e-book and digital audiobook licenses that, unlike physical materials, expire over time or after a certain number of checkouts.

Buying titles from small publishers and obscure authors is often impossible

Too much money is spent on repurchasing expired licenses for popular authors from big publishers to expand collections to introduce readers to new and lesser known authors.

Libraries can lose access to out-of-print materials

Patrons often rely on libraries to find copies of titles no longer for sale. When the license for an out-of-print e-resource expires, this type of access disappears.

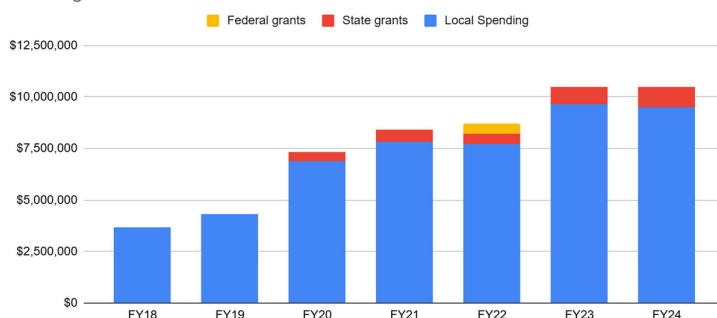
Digital collections are more accessible

E-books and digital audiobooks are a more accessible option for readers with disabilities, but they often wait in long queues to access this material because libraries can't keep up with demand.

Taxpayers are bearing the brunt of supporting these costly collections

Massachusetts libraries spent nearly \$54 million over the last seven years to support the LEA program, a collection of digital books and audiobooks available to everyone in the state. They spent even more funds on additional local collections.

Funding Statewide LEA Collection



What Are Libraries Seeking?

These bills prohibit contracts with libraries that:

- Prevent libraries from disclosing any terms of its license agreements to other libraries, the legislature, the attorney general or the MBLC.
- Require or enable libraries to violate the confidentiality of patron records.

The commission established by these bills will also investigate the feasibility of these other protections sought by libraries:

- Purchase electronic literary material at a price that is not greater than the price charged to the public for the same item.
- Lend electronic materials to borrowers at a loan period determined by the library.
- Loan electronic materials to other libraries when not in use by their own patrons.
- Make non-public preservation copies of electronic literary materials.
- Prohibit restrictions on the number of licenses a library can purchase.
- Prohibit restrictions on the number of times or amount of time an electronic title can be loaned unless the publisher also makes the same title available under a perpetual license.

These protections are already available to libraries when lending physical materials.

Legal Concerns

This legislative session is the third to consider legislation seeking reasonable e-book licensing terms for libraries. The first attempt at legislation used similar language as a Maryland bill that was ultimately struck down by a federal court in Baltimore because the law was preempted by federal copyright law.

Although a second bill removed the problematic language, instead using language grounded in Massachusetts consumer protection law, the bill did not move forward. Establishing a commission that includes experts in copyright and consumer protection law will ensure that recommended actions are legally sound.

The Myth of Friction

Publishers assert short-term licenses are necessary to introduce friction seen in the physical world that require books to be replaced after many uses. But our analysis of local collections tells a different story.

- An analysis measuring the activity of the most popular physical materials in one consortium found that each item had been borrowed 59 to 220 times since 2016. The median number of borrows for those items was 70. This is a stark contrast to the 26 borrows allowed in e-book licenses from one major publisher.
- The same analysis found the age of these items ranged from 1 to 23 years, with the median age being 7 years. The most common time-based e-book license expires after 24 months.
- More than 4,000 titles have expired from the statewide LEA collection with four or fewer borrows. More than 700 were never checked out before expiring.
- Of those low-use expired titles, more than 40% are non-English or bilingual and 45% are titles for children. Those communities no longer have access to information that was barely utilized because publishers determined their withdrawal date, not librarians.

For more information, contact
legislative@masslib.org