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Chapter 621: Using Open-Source Textbooks to Lower the Cost of Education

Benjamin Grimes

Code Sections Affected

Education Code § 66409 (new), §§ 67302, 67302.5 (amended).
SB 1052 (Steinberg); 2012 STAT. Ch. 621.

I. INTRODUCTION

A California college student spends an average of \$1,000 per year on textbooks.¹ For some students, like those at California's community colleges, this amount may exceed the price of tuition.² In the past two decades, textbook prices increased at twice the rate of inflation, making it increasingly difficult for students to afford their textbooks.³ As textbook costs continue to rise, college becomes less affordable, and some students "forgo purchasing [textbooks] altogether."⁴

There are numerous reasons why textbooks are so expensive.⁵ Textbook publishers release new editions of a book every three to four years, on average.⁶ Typically, faculty adopt these editions despite the fact that the new editions often contain little, if any, new substantive material, but instead have merely undergone cosmetic changes.⁷ This publication cycle forces old editions into obsolescence, limiting the supply of cheaper, used books for students to buy.⁸ Publishers also increasingly bundle textbooks with expensive supplements and

1. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1052, at 6 (Aug. 28, 2012); *How Much Does College Cost*, CALIFORNIA COLLEGES.EDU, <http://www.californiacolleges.edu/finance/how-much-does-college-cost.asp> (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*) (stating the average cost of textbooks and supplies is \$1,656 annually); *Trends in College Pricing 2011*, COLLEGE BOARD, http://trends.collegeboard.org/college_pricing/report_findings/indicator/883#f9007 (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*) (stating that the average cost of textbooks and supplies at a four-year public university is \$1,168 annually).

2. *How Much Does College Cost*, *supra* note 1. For the 2012–2013 school year, California community college fees and tuition are estimated to be \$1,104. *Id.*

3. CORNELIA M. ASHBY, U.S. GOV'T ACCOUNTABILITY OFF., GAO-05-806, COLLEGE TEXTBOOKS: ENHANCED OFFERINGS APPEAR TO DRIVE RECENT PRICE INCREASES 8 (2005), available at <http://www.gao.gov/assets/250/247332.pdf> (on file with the *McGeorge Law Review*).

4. 2012 Cal. Stat. ch. 621, § 1(a)(2).

5. NATSUOKO HAYASHI NICHOLLS, UNIV. OF MICH., THE INVESTIGATION INTO THE RISING COST OF TEXTBOOKS 7 (2009), available at www.lib.umich.edu/files/SPOTextbookBackground.pdf (on file with the *McGeorge Law Review*).

6. *Id.*

7. *Id.*

8. ASHBY, *supra* note 3, at 18.

pass the cost of production onto the consumer.⁹ While the bundled materials might offer valuable instructional tools, students and faculty often do not use them.¹⁰

In response to constantly increasing prices, the California Legislature passed Chapter 621, which will make low-cost, open-source textbooks available to the students of fifty lower-division courses.¹¹

II. LEGAL BACKGROUND

In recent years, both the United States Congress and the California Legislature enacted legislation aimed at lowering textbook prices.¹²

A. *Federal Efforts: The Higher Education Opportunity Act*

In 2008, Congress passed the Higher Education Opportunity Act (HEOA).¹³ Part of the legislation sought to “ensure that students have access to affordable course materials by decreasing costs to students and enhancing transparency and disclosure with respect to the selection, purchase, sale, and use of course materials.”¹⁴ By including textbook provisions in the HEOA, Congress intended to

encourage all of the involved parties, including faculty, students, administrators, institutions of higher education, bookstores, distributors, and publishers, to work together to identify ways to decrease the cost of college textbooks and supplemental materials for students while supporting the academic freedom of faculty members to select high quality course materials for students.¹⁵

9. *Id.* at 14; NICHOLLS, *supra* note 5, at 8.

10. NICHOLLS, *supra* note 5, at 8.

11. CAL. EDUC. CODE § 66409 (enacted by Chapter 621). Chapter 621 provides select textbooks to students free of charge as a digital edition, or for twenty dollars as a print edition. *Id.*

12. Higher Education Opportunity Act (HEOA), § 133, 20 U.S.C. § 1015b (Supp. IV 2011); EDUC. §§ 66406.7, 66410 (West 2012). In addition to the above acts by the U.S. Congress and California Legislature, both schools and the textbook industry have made efforts to make textbooks more affordable, notably through offering alternative textbook formats and creating textbook rental programs. *See* ADVISORY COMM. ON STUDENT FIN. ASSISTANCE, TURN THE PAGE: MAKING COLLEGE TEXTBOOKS MORE AFFORDABLE 11–25 (2007), available at <http://www2.ed.gov/about/bdscomm/list/acsfa/turnthepage.pdf> (on file with the *McGeorge Law Review*) (providing numerous examples of industry efforts to lower textbook costs).

13. Higher Education Opportunity Act (HEOA), Pub. L. No. 110-315, 122 Stat. 3110 (codified as amended in scattered sections of title 20 of the United States Code). The HEOA reauthorized the Higher Education Act of 1965 (HEA) and made a number of changes to programs authorized under the HEA. *Id.*

14. 20 U.S.C. § 1015b(a).

15. *Id.* § 1015b(a).

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The HEOA places several requirements on publishers and higher-education institutions.¹⁶ Any publisher that provides information about a textbook to a faculty member or other person in charge of textbook adoption must also provide: (1) the price that the publisher would sell the book to a bookstore;¹⁷ (2) the price that the publisher would sell the book to the public;¹⁸ (3) the copyright dates of the three previous editions of the textbook;¹⁹ (4) a description of the differences between an old edition and the current edition;²⁰ (5) any alternative formats in which the book is available;²¹ and (6) if there are alternative formats, the price of those alternatives to both the bookstore and the public.²² Further, the law requires publishers that sell bundled versions of a textbook make the individual components available for purchase as separate items.²³

The HEOA also requires that colleges and universities disclose both the International Standard Book Number (ISBN) for any textbook that is adopted and the retail price of that book on the school's online course schedule.²⁴ Schools must also make available to campus bookstores²⁵ the course schedule for the subsequent academic period,²⁶ the books required for those courses,²⁷ the number of students enrolled in each course,²⁸ and the maximum enrollment for each course.²⁹

By requiring publishers and schools to disclose this information, the HEOA has made it easier for students to comparison shop and to purchase their textbooks ahead of time.³⁰ The Government Accountability Office (GAO) is required to report back to Congress regarding the law and its impacts.³¹

16. *Id.* § 1015b.

17. *Id.* § 1015b(c)(1)(A).

18. *Id.*

19. *Id.* § 1015b(c)(1)(B).

20. *Id.* § 1015b(c)(1)(C).

21. *Id.* § 1015b(c)(1)(D)(i).

22. *Id.* § 1015b(c)(1)(D)(ii).

23. *Id.* § 1015b(c)(2).

24. *Id.* § 1015b(d)(1).

25. *Id.* § 1015b(e). The law does not require schools to provide this information to bookstores unless the bookstore is operated by the campus, is in a contractual relationship with the campus, or is otherwise affiliated with the campus. *Id.* This would mean that competing, off-campus bookstores are not entitled to this information unless they have one of the aforementioned relationships with the school. *Id.*

26. *Id.* § 1015b(e)(1).

27. *Id.* § 1015b(e)(2)(A).

28. *Id.* § 1015b(e)(2)(B).

29. *Id.* § 1015b(e)(2)(C).

30. *Federal Textbook Disclosure Law*, STUDENT PIRGS (last updated Mar. 16, 2012), <http://www.studentpirgs.org/resources/textbook-price-disclosure-law> (on file with the *McGeorge Law Review*).

31. 20 U.S.C. § 1015b(g).

B. State Efforts to Lower Textbook Prices

The California Legislature has passed two notable pieces of legislation in recent years to address the problem of high textbook prices.³² In 2007, it passed the College Textbook Transparency Act (CTTA), adding several provisions to the Education Code affecting textbook publishers, textbook adopters, and college bookstores.³³ Under the CTTA, publishers are required to print a list of substantive changes in any new edition of a textbook published after January 1, 2010.³⁴ Further, publishers must provide to requesting faculty textbook pricing information and copyright dates of any previous editions.³⁵

The CTTA also requires that campus bookstores disclose, either online or in-store, their new and used book pricing policies.³⁶ In addition, the law requires schools to encourage faculty to provide the campus bookstore with their orders far enough in advance for the store to confirm the availability of the required materials.³⁷ The law “encourage[s faculty] to consider cost in the adoption of textbooks.”³⁸

In 2009, the legislature passed Senate Bill 48, adding section 66410 to the California Education Code.³⁹ The law requires publishers who sell their books at University of California (UC), California State University (CSU), or California Community College (CCC) campuses to make the books available in an electronic format whenever practicable.⁴⁰ Publishers have until January 1, 2020 to comply with this law.⁴¹

III. CHAPTER 621

Chapter 621 represents the latest effort of the California Legislature to lower the cost of textbooks, by making select free and low-cost course materials available to students of the UC, CSU, and CCC systems.⁴² The law establishes the California Open Education Resources Council (COERC), a nine-member panel comprised of three representatives from each of the three public higher education systems, to oversee this process.⁴³

32. CAL. EDUC. CODE §§ 66406.7, 66410 (West Supp. 2012).

33. *Id.* § 66406.7.

34. *Id.* § 66406.7(d)(1)(A). This information must either be included inside the book or on its cover. *Id.* § 66406.7(d)(1).

35. *Id.* § 66406.7(e)(1)(B)–(C).

36. *Id.* § 66406.7(f).

37. *Id.* § 66406.7(g).

38. *Id.* § 66406.7(c)(1).

39. 2009 Cal. Stat. ch. 161, at 94–95 (enacting CAL. EDUC. CODE § 66410).

40. EDUC. § 66410(a).

41. *Id.*

42. 2012 Cal. Stat. ch. 621, § 1(a)(3).

43. EDUC. § 66409(a) (enacted by Chapter 621). The Intersegmental Committee of the Academic

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Chapter 621 requires the COERC to determine a list of “fifty strategically selected lower-division courses” between the UC, CSU, and CCC systems “for which high quality, affordable digital open source textbooks” will be created.⁴⁴ Chapter 621 sets forth a number of criteria that COERC will consider in selecting the fifty courses.⁴⁵ These criteria include: enrollment levels in a course,⁴⁶ potential cost savings for students,⁴⁷ the “consistency of content” between different textbooks,⁴⁸ the opportunity for faculty to bring in additional faculty-authored materials,⁴⁹ and the advantages that utilization of digital content will provide to a specific course.⁵⁰

Once the COERC determines which fifty courses will receive open-source textbooks, it begins the process of commissioning materials for these courses.⁵¹ Potential authors may apply for funds to create “digital open source textbooks or other materials” for the fifty courses (open educational resources, or OERs) through a competitive process established by the COERC.⁵² However, the law makes clear that the COERC does not have to commission completely new works.⁵³ Instead, the COERC may develop or acquire preexisting works either by purchasing them from their current owner or by using free materials created in other contexts.⁵⁴ Once COERC creates or acquires an OER, the California Digital Open Source Library (CDOSL) houses the material.⁵⁵ Students enrolled in a qualifying course may obtain an electronic copy of the OER via download from the CDOSL⁵⁶ or purchase a print version for approximately twenty dollars from their campus bookstores.⁵⁷ The law requires the COERC to promote the production, access, and use of these OERs.⁵⁸

Senates of the three public university systems is responsible for administering the COERC. *Id.* Chapter 621 requires that the council be selected within ninety days of the law’s effective date. *Id.* § 66409(b) (enacted by Chapter 621).

44. *Id.* § 66409(c)(1) (enacted by Chapter 621). “Open source textbooks,” a form of Open Educational Resource, are a “teaching and learning material[] that” may be “freely use[d] and reuse[d], without charge.” OER COMMONS, <http://www.oercommons.org/about> (last visited Apr. 22, 2013) (on file with the *McGeorge Law Review*).

45. EDUC. § 66409(c)(1)(B) (enacted by Chapter 621).

46. *Id.* § 66409(c)(1)(B)(i) (enacted by Chapter 621).

47. *Id.* § 66409(c)(1)(B)(ii) (enacted by Chapter 621).

48. *Id.* § 66409(c)(1)(B)(iii) (enacted by Chapter 621).

49. *Id.* § 66409(c)(1)(B)(iv) (enacted by Chapter 621).

50. *Id.* § 66409(c)(1)(B)(v) (enacted by Chapter 621).

51. *Id.* § 66409(c)(2) (enacted by Chapter 621).

52. *Id.* § 66409(d) (enacted by Chapter 621).

53. *Id.*

54. *Id.*

55. *Id.* § 66409(f)(4) (enacted by Chapter 621). The legislature created the CDOSL through the enactment of Senate Bill 1053 (a companion bill to Senate Bill 1052), enacted and chaptered as Chapter 622. *Id.* § 66408 (enacted by 2012 Cal. Stat. ch. 622).

56. *Id.* § 66409(f)(3) (enacted by Chapter 621).

57. 2012 Cal. Stat. ch. 621, § 1(a)(3).

58. EDUC. § 66409(c)(3) (enacted by Chapter 621).

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OERs created through this process must conform to several requirements.⁵⁹ First, Chapter 621 places the OERs under a creative commons attribution license.⁶⁰ This license “allows others to use, distribute, and create derivative works based upon the digital material while still allowing the authors or creators to receive credit for their efforts.”⁶¹ Second, the OERs must be modular, allowing customization.⁶² Third, the textbooks must be encoded in Extensible Markup Language (XML) format or some “other appropriate successor format.”⁶³ This will help to guarantee the books will be compatible with a wide range of platforms, and that they will be accessible by persons with disabilities.⁶⁴ Fourth, the OERs must comply with “Section 508 of the federal Rehabilitation Act of 1973^[65] . . . and the Web Content Accessibility Guidelines adopted by the World Wide Web Consortium for accessibility.”⁶⁶ Chapter 621 requires the COERC to create and administer a “standardized, rigorous review and approval process” to ensure that the OERs “have been tested and validated as having met accessibility requirements for students with disabilities” before the OERs can be approved and distributed for use in the fifty courses.⁶⁷

Chapter 621 places two communication requirements on the COERC.⁶⁸ First, the COERC must regularly solicit and consider feedback from the student associations of the UC, CSU, and CCC systems.⁶⁹ The legislature hopes to ensure that the COERC adequately considers and values students’ perspectives towards OERs.⁷⁰ Second, the law requires the COERC to submit a report to the legislature and governor within six months of the law becoming active and “to submit a final report by January 1, 2016.”⁷¹

59. *Id.* § 66409(f) (enacted by Chapter 621).

60. *Id.* § 66409(f)(1) (enacted by Chapter 621).

61. *Id.*

62. *Id.* § 66409(f)(2) (enacted by Chapter 621).

63. *Id.*

64. *Id.*

65. 29 U.S.C. § 794d (2006).

66. EDUC. § 66409(f)(3) (enacted by Chapter 621); *Web Content Accessibility Guidelines (WCAG) 2.0*, W3C, <http://www.w3.org/TR/WCAG/> (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*).

67. EDUC. § 66409(c)(3) (enacted by Chapter 621). The law also requires that each OER contain documentation describing its accessibility features. *Id.*

68. *Id.* § 66409(c)(4) (enacted by Chapter 621).

69. *Id.*

70. *Id.*

71. *Id.* § 66409(e) (enacted by Chapter 621).

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IV. ANALYSIS

Chapter 621 has the potential to significantly lower the cost of textbooks for students.⁷² The law may benefit both students and faculty, but it will be expensive to implement and may have unintended consequences.⁷³

A. *The Importance of Faculty Adoption Choices*

OERs offer students and faculty advantages that are not available with traditional course materials.⁷⁴ The most obvious benefit for students is the cost savings that OERs can provide.⁷⁵ However, in order for students to realize this savings, faculty must actually adopt these materials in their courses.⁷⁶ Chapter 621 does not require faculty to actually adopt OERs.⁷⁷ While the California Education Code encourages faculty to consider cost in making their adoption decisions,⁷⁸ there is no requirement for faculty to use Chapter 621 commissioned textbooks.⁷⁹ There is a real possibility that OERs will not be widely adopted, preventing students from enjoying the cost savings that they can provide.⁸⁰

However, faculty who do choose to use the OERs will have flexibility in how they use the materials.⁸¹ Because Chapter 621 requires the books to be modular and available in common file formats, faculty can easily mix-and-match sections of different books.⁸² And, as Chapter 621 requires the books to be available under a creative commons license, faculty will be able to modify and enhance the textbooks however they see fit with no concerns of copyright infringement, so long as they attribute the original author's contributions.⁸³ It is conceivable that this flexibility will incentivize some faculty to embrace the use of OERs, resulting in an ultimate cost savings to students.⁸⁴

72. *Id.* § 66409 (enacted by Chapter 621).

73. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1052, at 5 (Aug. 28, 2012) (describing the expected implementation costs and potential for adverse effects to campus bookstores).

74. *Id.* at 4.

75. *See* EDUC. § 66409 (enacted by Chapter 621) (making OERs available to students free of charge).

76. *See id.* (containing no requirement that faculty actually adopt the OERs).

77. *Id.* The companion law to Chapter 621 (Chapter 622) makes it expressly clear that faculty remain free to adopt whatever materials they wish, and have no obligation to adopt OERs commissioned by the COERC. *Id.* § 66408(c) (enacted by 2012 Cal. Stat. ch. 622).

78. *Id.* § 66406.7(c)(1) (West Supp. 2012).

79. *Id.* § 66408 (enacted by 2012 Cal. Stat. ch. 622).

80. *See* ASSEMBLY COMMITTEE ON HIGHER EDUCATION, COMMITTEE ANALYSIS OF SB 1052, at 4 (July 3, 2012) (recognizing faculty may choose to adopt different books for different sections of the same course).

81. EDUC. § 66409(e)(1)–(2) (enacted by Chapter 621).

82. *Id.*

83. *Id.* *See generally* About Creative Commons, CREATIVE COMMONS, <http://creativecommons.org/> about (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*) (providing information about creative commons licensing).

84. EDUC. § 66409(e)(1)–(2) (enacted by Chapter 621).

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The digital format of the textbooks may give some faculty pause.⁸⁵ Many teachers have never used an electronic-format book and may feel uncomfortable fitting such materials into their curriculum.⁸⁶ They may also be concerned that the digital format may provide a barrier to use for their lower-income students, as the use of such materials requires a computer or tablet device.⁸⁷ However, these teachers may opt to use print versions of the OERs, or students may choose to print a copy of the materials themselves.⁸⁸

B. The Unintended Effects of Chapter 621

While Chapter 621 may make some textbooks more affordable for some students,⁸⁹ implementing the law may have unintended negative consequences.⁹⁰ For example, campus bookstores could see a substantial drop in their revenues.⁹¹ While the fact that sales will likely decline may seem obvious, the effects that such a drop would have on campuses are less obvious.⁹² Student associations often operate campus bookstores,⁹³ meaning these associations could suffer a significant drop in revenue, which would negatively impact these organizations' budgets, thus affecting students.⁹⁴ For-profit companies such as Follett Higher Education Group⁹⁵ and Barnes & Noble⁹⁶ contractually operate many of California's campus bookstores. While these companies do keep much of the profit generated in their stores,⁹⁷ they also send money back to the schools in the

85. Mark R. Nelson, *E-Books in Higher Education: Nearing the End of the Era of Hype?*, EDUCAUSE REV., Mar.–Apr. 2008, at 40, 46–51, available at <http://net.educause.edu/ir/library/pdf/ERM0822.pdf> (on file with the *McGeorge Law Review*).

86. *Id.*

87. *Id.*

88. 2012 Cal. Stat. ch. 621, § 1(a)(3).

89. See EDUC. § 66409 (enacted by Chapter 621) (providing free OERs to students of fifty courses, should faculty choose to adopt the open-source material).

90. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1052, at 5 (Aug. 28, 2012) (describing the negative fiscal impacts that Chapter 621 will likely have on campus bookstores).

91. *Id.*

92. See *id.* (alluding to the impact of declining campus bookstore revenues to campus programs); see also *infra* notes 93–101 (detailing the potential effect on student organization funding and potential student job loss).

93. See, e.g., *UCLA Store*, ASSOCIATED STUDENTS, UCLA, <http://www.uclastore.com> (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*) (noting that Associated Students operates the bookstore); *Chico State Wildcat Store*, ASSOCIATED STUDENTS, CSU CHICO, <http://www.aschico.com/bookstore> (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*) (describing another situation where a student organization runs the campus bookstore).

94. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1052, at 5 (Aug. 28, 2012) (alluding to the impact of declining campus bookstore revenues to campus programs).

95. FOLLETT HIGHER EDUC. GRP., <http://www.fhcg.follett.com/> (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*).

96. BARNES & NOBLE COLLEGE, <http://www.bncollege.com/> (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*).

97. ADVISORY COMM. ON STUDENT FIN. ASSISTANCE, *supra* note 12, at 17.

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form of leasing fees, commissions, and even scholarships.⁹⁸ A drop in their sales will likely represent a drop in the revenue they provide to schools.⁹⁹ College bookstores also provide flexible employment to students.¹⁰⁰ Lower revenue as a result of Chapter 621 may result in fewer jobs being offered to a school's students.¹⁰¹

C. Fiscal Impact

Without funding, Chapter 621 cannot be implemented, as the statute requires that funding be secured before it becomes effective.¹⁰² The legislature did not allocate funding to Chapter 621 in the 2012–2013 budget, and private sources have not yet emerged.¹⁰³ However, the legislature did pass a related education finance bill, Chapter 525, shortly before the end of the 2012 legislative session.¹⁰⁴ Chapter 525 allocated \$5 million to the CSU Chancellor from the General Fund for the establishment of the COERC and CDSOL and for the development of OERs.¹⁰⁵ However, Chapter 525 made this funding contingent upon obtaining additional outside funding.¹⁰⁶ Chapter 525 requires that one-hundred percent of the \$5 million be matched by outside sources before the money can be transferred to the CSU.¹⁰⁷ If outside matching funds do not emerge, the CSU will not receive the \$5 million.¹⁰⁸ Instead, the money will remain in the General Fund and subsequently be allocated for other educational programs.¹⁰⁹ If matching

98. See *Bookstore Management*, FOLLETT HIGHER EDUC. GRP., http://www.fheg.follett.com/retail/follett_partner.cfm (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*) (describing the income a campus can expect to receive from Follett); see also *University Students Receive Scholarships for Writing "Greatest Book Never Written,"* SACRAMENTO ST. NEWS (Dec. 6, 2007), <http://www.csus.edu/news/120607book.stm> (on file with the *McGeorge Law Review*) (detailing a textbook scholarship program funded by Follett Higher Education Group at Sacramento State).

99. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1052, at 5 (Aug. 28, 2012) (alluding to the impact of declining campus bookstore revenues on campus programs).

100. *Jobs on Campus*, FOLLETT HIGHER EDUC. GRP., <http://www.bookstorejobs.com/career/tempjobsbystate.cfm?state=CA> (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*) (listing Follett managed stores in California currently seeking applicants).

101. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1052, at 5 (Aug. 28, 2012) (describing the negative fiscal impact that Chapter 621 will likely have on campus bookstores).

102. 2012 Cal. Stat. ch. 621, § 5. The law contains express language requiring funding for the COERC and the development of OERs before the law can take effect. *Id.*

103. ENACTED BUDGET SUMMARY, CAL. STATE BUDGET, FISCAL YEAR 2012–2013, at 23–27, available at <http://www.ebudget.ca.gov/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf> (on file with the *McGeorge Law Review*).

104. 2012 Cal. Stat. ch. 525.

105. CAL. EDUC. CODE § 69999.6(f)(1) (amended by 2012 Cal. Stat. ch. 525).

106. *Id.* § 69999.6(f)(2) (amended by 2012 Cal. Stat. ch. 525).

107. *Id.*

108. *Id.*

109. *Id.*

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funding sources emerge, the funds from Chapter 525 will allow Chapter 621 to take effect.¹¹⁰

Assuming that Chapter 621 does receive funding, there will be “[s]ubstantial one-time costs” associated with establishing the COERC.¹¹¹ The Intersegmental Committee of the Academic Senates, the organization responsible with administering the COERC, may absorb some of these costs.¹¹² In addition, as the COERC commissions OERs, the storage and maintenance of these materials will create additional ongoing costs.¹¹³

The legislature estimates textbooks for the fifty most widely taken courses can be published for \$25 million.¹¹⁴ If the textbooks produced by Chapter 621 are widely adopted, California will likely see a “significant” drop in sales tax revenues from the sale of textbooks.¹¹⁵ Many OERs will generate no sales taxes at all, as the digital materials will be provided to students for no charge.¹¹⁶

V. CONCLUSION

California lawmakers appear concerned that high textbook prices significantly burden students.¹¹⁷ Chapter 621 may represent a sea-change in how schools, faculty, and students think about purchasing and using textbooks.¹¹⁸ However, only time will tell if Chapter 621 can overcome the significant financial obstacles set before it.¹¹⁹ Before Chapter 621 can successfully lower textbook prices, funding must be located or the law will fail before ever taking effect.¹²⁰ Even if Chapter 621 is funded, authors must actually come forth and produce high-quality OERs before any new materials will be available for

110. 2012 Cal. Stat. ch. 621, § 5.

111. SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF SB 1052, at 1 (May 24, 2012). The exact amount of the costs to establish the COERC is unknown. *Id.* However, the Assembly Committee on Appropriations estimates the total annual cost to maintain the COERC at \$450,000. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1052, at 2 (Aug. 7, 2012).

112. SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF SB 1052, at 1 (May 24, 2012).

113. *See* ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1052, at 2 (Aug. 7, 2012) (estimating the first-year costs of managing the OERs at \$200,000, and \$30,000 per year thereafter).

114. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1052, at 5 (Aug. 28, 2012). It is worth noting that in the final version of the bill, the legislature removed a reference to the \$25 million estimated cost. *See* SB 1052, § 1(a)(3), 2012 Leg., 2011–2012 Sess. (Cal. 2012) (as amended Aug. 6, 2012, but not enacted) (estimating that a \$25 million investment in OERs would be sufficient to finance the program). It is possible that the actual costs associated with this program could be more or less expensive than estimated. *See* SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1052, at 2 (Aug. 28, 2012) (noting the deletion of the reference to \$25 million in the final version of the bill).

115. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1052, at 5 (May 29, 2012).

116. 2012 Cal. Stat. ch. 621, § 1(a)(3).

117. *Id.* § 1(a)(1).

118. *See* ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1052, at 5 (July 3, 2012) (highlighting the potential benefits of the legislation and obstacles faced in its implementation).

119. *Id.*

120. 2012 Cal. Stat. ch. 621, § 5.

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adoption.¹²¹ Finally, faculty will have to be open to the idea of using OERs and be willing to change their conceptions of what constitutes a proper course material.¹²² If Chapter 621 can overcome these significant obstacles, students will likely pay significantly less for many of their lower-division course materials, allowing them to graduate with less debt and to allocate their cost savings toward the rest of their education.¹²³

121. CAL. EDUC. CODE § 66409(c)(2) (enacted by Chapter 621).

122. Nelson, *supra* note 85, at 50 (discussing the reluctance of some faculty in adopting e-books).

123. EDUC. § 66409 (enacted by Chapter 621).