

BILL ANALYSIS

Senate Research Center

S.B. 18
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The U.S. Constitution and the Texas Constitution guarantee the right to free speech and expression. Recently, higher education campuses have become the focus of those concerned with the protection of free speech rights.

S.B. 18 affirms that it is the policy of the State to protect expressive constitutional rights of individuals by recognizing freedom of speech and assembly as central to the mission of public institutions of higher education. S.B. 18 also requires that institutions ensure that common outdoor areas are deemed to be traditional public forums and permit any individual to engage in expressive activities in those areas freely. Additionally, S.B. 18 requires public institutions to adopt a policy detailing students' rights and responsibilities regarding expressive activities. (Original Author's/Sponsor's Statement of Intent)

S.B. 18 amends current law relating to the protection of expressive activities at public institutions of higher education.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that the legislature finds that freedom of expression is of critical importance and requires each public institution of higher education to ensure free, robust, and uninhibited debate and deliberations by students enrolled at the institution, regardless of whether the students are on or off campus and that it is a matter of statewide concern that all public institutions of higher education officially recognize freedom of speech as a fundamental right.

SECTION 2. Amends Subchapter Z, Chapter 51, Education Code, by adding Section 51.9315, as follows:

Sec. 51.9315. PROTECTED EXPRESSION ON CAMPUS. (a) Defines "benefit," "expressive activities," "institution of higher education," and "student organization."

(b) Provides that it is the policy of this state and the purpose of this section to protect the expressive rights of persons guaranteed by the constitutions of the United States and of this state by recognizing freedom of speech and assembly as central to the mission of institutions of higher education and by ensuring that all persons may assemble peaceably on the campuses of institutions of higher education for expressive activities, including to listen to or observe the expressive activities of others.

(c) Requires an institution of higher education to:

(1) ensure that the common outdoor areas of the institution's campus are deemed traditional public forums; and

(2) permit any person to engage in expressive activities in those areas of the institution's campus freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution.

(d) Authorizes an institution of higher education, notwithstanding Subsection (c), to adopt a policy that imposes reasonable restrictions on the time, place, and manner of expressive activities in the common outdoor areas of the institution's campus if those restrictions:

(1) are narrowly tailored to serve a significant institutional interest;

(2) employ clear, published, content-neutral, and viewpoint-neutral criteria;

(3) provide for ample alternative means of expression; and

(4) allow members of the university community to assemble or distribute written material without a permit or other permission from the institution.

(e) Provides that Subsections (c) and (d) do not limit the right of student expression at other campus locations or prohibit faculty members from maintaining order in the classroom.

(f) Requires each institution of higher education to adopt a policy detailing students' rights and responsibilities regarding expressive activities at the institution. Requires the policy to:

(1) allow:

(A) any person to, subject to reasonable restrictions adopted under Subsection (d), engage in expressive activities on campus, including by responding to the expressive activities of others; and

(B) student organizations and faculty to, subject to Subsection (h), invite speakers to speak on campus;

(2) establish disciplinary sanctions for students, student organizations, or faculty who unduly interfere with the expressive activities of others on campus;

(3) include a grievance procedure for addressing complaints of a violation of this section;

(4) be approved by a majority vote of the institution's governing board before final adoption; and

(5) be posted on the institution's Internet website.

(g) Prohibits an institution of higher education from taking action against a student organization or denying the organization any benefit generally available to other student organizations at the institution on the basis of a political, religious, philosophical, ideological, or academic viewpoint expressed by the organization or of any expressive activities of the organization.

(h) Provides that, in determining whether to approve a speaker to speak on campus or in determining the amount of a fee to be charged for use of the institution's facilities for purposes of engaging in expressive activities, an institution of higher education:

(1) is authorized to consider only content-neutral and viewpoint-neutral criteria related to the needs of the event, such as:

(A) the proposed venue and the expected size of the audience;

(B) any anticipated need for campus security;

(C) any necessary accommodations; and

(D) any relevant history of compliance or noncompliance by the requesting student organization or faculty member with the institution's policy adopted under Subsection (f) and any other relevant policies; and

(2) is prohibited from considering any anticipated controversy related to the event.

(i) Requires each institution of higher education to make the institution's policies adopted in accordance with this section available to students enrolled at and employees of the institution by including the policies in the institution's student handbook and personnel handbook, providing a copy of each policy to students during the institution's freshman or transfer student orientation, and posting the policies on the institution's Internet website.

(j) Requires each institution of higher education to develop materials, programs, and procedures to ensure that the institution's employees responsible for educating or disciplining students understand the requirements of this section and all policies adopted by the institution in accordance with this section.

(k) Requires each institution of higher education, not later than December 1, 2020, to prepare, post on the institution's Internet website, and submit to the governor and the members of the legislature a report regarding the institution's implementation of the requirements under this section. Provides that this subsection expires September 1, 2021.

SECTION 3. Requires each public institution of higher education, not later than August 1, 2020, to adopt the policy required under Section 51.9315(f), Education Code, as added by this Act.

SECTION 4. Effective date: September 1, 2019.