

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 23, 2019

Date

Honorable Dan Patrick  
President of the Senate

Honorable Dennis Bonnen  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 18 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Joan Huffman  
Sen. Joan Huffman, Chair

Donna Campbell  
Sen. Donna Campbell

Brandon Greighson  
Sen. Brandon Greighson

Jane Nelson  
Sen. Jane Nelson

Judith Zaffirini  
On the part of the Senate  
Sen. Judith Zaffirini

Charlie Geren  
Rep. Charlie Geren, Chair

Barbara Lakin  
Rep. Barbara Lakin

Drew Dinkins  
Rep. Drew Dinkins

Chris Turner  
Rep. Chris Turner

Keith Bell  
On the part of the House  
Rep. Keith Bell

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.



# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

S.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to the protection of expressive activities at public institutions of higher education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) 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

(2) 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. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9315 to read as follows:

Sec. 51.9315. PROTECTED EXPRESSION ON CAMPUS. (a) In this section:

(1) "Benefit" includes:

(A) recognition by or registration with an institution of higher education;

(B) the use of an institution of higher education's facilities for meetings or speaking purposes;

(C) the use of channels of communication controlled by an institution of higher education; and

1                    (D) funding sources made generally available to  
2 student organizations at an institution of higher education.

3                    (2) "Expressive activities" means any speech or  
4 expressive conduct protected by the First Amendment to the United  
5 States Constitution or by Section 8, Article I, Texas Constitution,  
6 and includes assemblies, protests, speeches, the distribution of  
7 written material, the carrying of signs, and the circulation of  
8 petitions. The term does not include commercial speech.

9                    (3) "Institution of higher education" has the meaning  
10 assigned by Section 61.003.

11                   (4) "Student organization" includes any organization  
12 that is composed mostly of students enrolled at an institution of  
13 higher education and that receives a benefit from the institution.

14                   (b) It is the policy of this state and the purpose of this  
15 section to protect the expressive rights of persons guaranteed by  
16 the constitutions of the United States and of this state by:

17                   (1) recognizing freedom of speech and assembly as  
18 central to the mission of institutions of higher education; and

19                   (2) ensuring that all persons may assemble peaceably  
20 on the campuses of institutions of higher education for expressive  
21 activities, including to listen to or observe the expressive  
22 activities of others.

23                   (c) An institution of higher education shall:

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

26                   (2) permit any person to engage in expressive  
27 activities in those areas of the institution's campus freely, as

1 long as the person's conduct:

2 (A) is not unlawful; and

3 (B) does not materially and substantially  
4 disrupt the functioning of the institution.

5 (d) Notwithstanding Subsection (c), an institution of  
6 higher education may adopt a policy that imposes reasonable  
7 restrictions on the time, place, and manner of expressive  
8 activities in the common outdoor areas of the institution's campus  
9 if those restrictions:

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

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

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

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

19 (e) Subsections (c) and (d) do not:

20 (1) limit the right of student expression at other  
21 campus locations; or

22 (2) prohibit faculty members from maintaining order in  
23 the classroom.

24 (f) Each institution of higher education shall adopt a  
25 policy detailing students' rights and responsibilities regarding  
26 expressive activities at the institution. The policy must:

27 (1) allow:

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

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

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

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

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

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

15           (g) An institution of higher education may not take action  
16 against a student organization or deny the organization any benefit  
17 generally available to other student organizations at the  
18 institution on the basis of a political, religious, philosophical,  
19 ideological, or academic viewpoint expressed by the organization or  
20 of any expressive activities of the organization.

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

25           (1) may consider only content-neutral and  
26 viewpoint-neutral criteria related to the needs of the event, such  
27 as:

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

3                   (B) any anticipated need for campus security;

4                   (C) any necessary accommodations; and

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

9                   (2) may not consider any anticipated controversy  
10 related to the event.

11           (i) Each institution of higher education shall make the  
12 institution's policies adopted in accordance with this section  
13 available to students enrolled at and employees of the institution  
14 by:

15                   (1) including the policies in the institution's  
16 student handbook and personnel handbook;

17                   (2) providing a copy of each policy to students during  
18 the institution's freshman or transfer student orientation; and

19                   (3) posting the policies on the institution's Internet  
20 website.

21           (j) Each institution of higher education shall develop  
22 materials, programs, and procedures to ensure that the  
23 institution's employees responsible for educating or disciplining  
24 students understand the requirements of this section and all  
25 policies adopted by the institution in accordance with this  
26 section.

27           (k) Not later than December 1, 2020, each institution of

1 higher education shall prepare, post on the institution's Internet  
2 website, and submit to the governor and the members of the  
3 legislature a report regarding the institution's implementation of  
4 the requirements under this section. This subsection expires  
5 September 1, 2021.

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

9       SECTION 4. This Act takes effect September 1, 2019.



Senate Bill 18  
Conference Committee Report  
Section-by-Section Analysis

SENATE VERSION

*No equivalent provision.*

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9315 to read as follows:  
Sec. 51.9315. PROTECTED EXPRESSION ON CAMPUS.

(a) Defines "benefit," "expressive activities," "institution of higher education," and "student organization."

(b) It is the policy of this state to protect the expressive rights of persons guaranteed by the constitutions of the United States and of this state by:

(1) recognizing freedom of speech and assembly as central to the mission of institutions of higher education; and  
(2) ensuring that all persons may assemble peaceably on the campuses of institutions of higher education for expressive activities, including to listen to the speech of others.

(c) An institution of higher education shall:

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

HOUSE VERSION (IE)

SECTION \_\_. The legislature finds that:

(1) 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

(2) it is a matter of statewide concern that all public institutions of higher education officially recognize freedom of speech as a fundamental right. [FA3(1)]

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9315 to read as follows:  
Sec. 51.9315. PROTECTED EXPRESSION ON CAMPUS.

(a) Same as Senate version.

(b) 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:  
[FA3(2)]

(1) recognizing freedom of speech and assembly as central to the mission of institutions of higher education; and  
(2) 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. [FA3(3)]

(c)-(d) Same as Senate version.

CONFERENCE

SECTION 1. Same as House version.

SECTION 2. Same as Senate version except as follows:

(a) Same as Senate version.

(b) Same as House version.

(c)-(d) Same as Senate version.

Senate Bill 18  
Conference Committee Report  
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SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

(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:

(A) is not unlawful; and

(B) does not materially and substantially disrupt the functioning of the institution.

(d) Notwithstanding Subsection (c), an institution of higher education may 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) Subsections (c) and (d) do not limit the right of student expression at other campus locations.

(f) Each institution of higher education shall adopt a policy detailing students' rights and responsibilities regarding expressive activities at the institution. The policy must:

(1) allow:

(A) any person to, subject to reasonable restrictions adopted under Subsection (d), engage in expressive activities on

( ) Subsections (c) and (d) do not:

(1) limit the right of student expression at other campus locations; or

(2) prohibit faculty members from maintaining order in the classroom. [FA3(4)]

(f) Each institution of higher education shall adopt a policy detailing students' rights and responsibilities regarding expressive activities at the institution. The policy must:

(1) allow:

(A) any person to, subject to reasonable restrictions adopted under Subsection (d), engage in expressive activities on

(e) Same as House version.

(f)-(h) Same as Senate version.

Senate Bill 18  
Conference Committee Report  
Section-by-Section Analysis

SENATE VERSION

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) An institution of higher education may not take action against a student organization or deny 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) 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:

HOUSE VERSION (IE)

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;

( ) prohibit any institution official or employee from disinviting a speaker who has been approved by the institution to speak on campus and has been invited to speak on campus by a student organization or faculty member at the institution; [FA1]

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

( ) require the institution to strive to maintain an official position of neutrality on matters of public concern except as necessary for the institution's operations; [FA2(1)]

(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)-(h) Same as Senate version.

CONFERENCE

(g)-(h) Same as Senate version.

Senate Bill 18  
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Section-by-Section Analysis

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HOUSE VERSION (IE)

CONFERENCE

(1) may 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) may not consider any anticipated controversy related to the event.

*No equivalent provision.*

( ) Each institution of higher education shall adopt procedures for the institution's disciplinary process regarding an alleged violation of the institution's student code of conduct involving expressive activities and provide notice of those procedures to each student enrolled at the institution. At a minimum, the procedures must entitle the student alleged to have violated the institution's student code of conduct to:  
(1) receive written notice of the allegation before the initiation of the disciplinary process;  
(2) review evidence supporting the allegation;  
(3) present a defense, including by calling witnesses for the student and confronting witnesses against the student;  
(4) have the institution's determination of responsibility made by an impartial arbiter or panel;  
(5) appeal a determination finding the student responsible for the violation; and  
(6) if a potential sanction for the violation is suspension for

Same as Senate version.

Senate Bill 18  
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SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

a period of more than 30 days or expulsion from the institution, have assistance of counsel during each stage of the disciplinary process.

( ) On the second or any subsequent determination by an institution of higher education that a student is responsible for violating the institution's student code of conduct by unduly interfering with the expressive activities of others, the institution shall:

(1) suspend the student for at least one semester or term; or  
(2) not later than two weeks after resolving the disciplinary process, provide to the committee on free expression for the institution established under this section an explanation of the reason the institution did not impose a sanction on the student under Subdivision (1). [FA2(2)]

(i) Each institution of higher education shall make the institution's policies adopted in accordance with this section available to students enrolled at and employees of the institution by:

(1) including the policies in the institution's student handbook and personnel handbook;

(2) providing a copy of each policy to students during the institution's freshman or transfer student orientation; and

(3) posting the policies on the institution's Internet website.

(j) Each institution of higher education shall 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.

(i)-(j) Same as Senate version.

(i)-(j) Same as Senate version.

Senate Bill 18  
Conference Committee Report  
Section-by-Section Analysis

SENATE VERSION

*No equivalent provision.*

HOUSE VERSION (IE)

( ) The governing board of each institution of higher education or university system shall create a committee on free expression to address free speech issues at the institution or institutions governed by the board. The committee must consist of at least five members. Not later than September 1 of each year, the committee shall prepare and submit to the governor, the members of the legislature, and the governing board a report on free speech issues that arose at the institution or institutions during the preceding academic year. The report must include, for each institution governed by the board:

(1) a description of any barriers to or disruptions of expressive activities at the institution;

(2) a summary of the institution's handling of free speech issues, including any disciplinary action taken related to the policies adopted under this section and any explanations regarding those actions provided to the committee by the institution as required under this section;

(3) an analysis of any substantial difficulties, controversies, or successes in maintaining the institution's official position of neutrality on matters of public concern; and

(4) any recommendations for legislative or other action.

[FA2(3)]

(k) Same as Senate version.

CONFERENCE

Same as Senate version.

(k) Not later than December 1, 2020, each institution of higher education shall 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. This subsection expires September 1, 2021.

(k) Same as Senate version.

**Senate Bill 18**  
**Conference Committee Report**  
**Section-by-Section Analysis**

**SENATE VERSION**

**SECTION 2.** Not later than August 1, 2020, each public institution of higher education shall adopt the policy required under Section 51.9315(f), Education Code, as added by this Act.

*No equivalent provision.*

**SECTION 3.** This Act takes effect September 1, 2019.

**HOUSE VERSION (IE)**

**SECTION 2.** Same as Senate version.

**SECTION \_\_\_\_.** Not later than September 1, 2019, the governing board of each public institution of higher education or university system shall create the committee on free expression required under Section 51.9315, Education Code, as added by this Act. Each governing board's committee shall prepare and submit its initial report required under that section not later than September 1, 2020.  
[FA2(5)]

**SECTION 3.** Same as Senate version.

**CONFERENCE**

**SECTION 3.** Same as Senate version.

Same as Senate version.

**SECTION 4.** Same as Senate version.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 24, 2019**

**TO:** Honorable Dan Patrick, Lieutenant Governor, Senate  
Honorable Dennis Bonnen, Speaker of the House, House of Representatives

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE:** SB18 by Huffman (Relating to the protection of expressive activities at public institutions of higher education.), **Conference Committee Report**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill relates to the protection of expressive activities at public institutions of higher education. Based on the analysis provided by institutions of higher education, duties and responsibilities associated with implementing the provisions of the bill could be accomplished within existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**        302 Office of the Attorney General, 710 Texas A&M University System  
Administrative and General Offices, 769 University of North Texas System  
Administration, 781 Higher Education Coordinating Board, 783 University  
of Houston System Administration

**LBB Staff:** WP, JGAn, DEH, GO



**Certification of Compliance with  
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under House Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not subject to a point of order under Rule 13.

I certify that a copy of the conference committee report on SB18 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

  
\_\_\_\_\_  
(name)

5/23/19  
\_\_\_\_\_  
(date)

