

BILL ANALYSIS

C.S.H.B. 2100
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised about possible infringement of the constitutionally protected right to free expression experienced while on the campus of a public institution of higher education. C.S.H.B. 2100 seeks to ensure that the right to free expression is protected while on such a campus.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to public institutions of higher education in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 2100 amends the Education Code to require a public institution of higher education to ensure that the common outdoor areas of the institution's campus are deemed traditional public forums and to permit any person lawfully present to engage in expressive activities in those areas freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the institution's functioning. The bill authorizes such an institution by rule to maintain and enforce reasonable restrictions that meet certain specified criteria on the time, place, and manner of expressive activities in those common outdoor areas. The bill establishes that these provisions do not limit the right of expression at other campus locations.

C.S.H.B. 2100 applies the protections provided by the bill equally to all students and to student groups and organizations, regardless of whether the group or organization is recognized by or registered with the applicable institution. The bill requires each institution to adopt a policy detailing students' and employees' rights and responsibilities regarding expressive activities at the institution not later than August 1, 2020, and sets out requirements for the contents of the policy. The bill requires the policy to be approved by a majority vote of the institution's governing board before final adoption and to be posted on the institution's website.

C.S.H.B. 2100 sets out criteria for how an institution may determine whether to approve a speaker to speak on campus or determine the amount of a fee to be charged for use of the institution's facilities for purposes of engaging in expressive activities. The bill requires an institution to make reasonable efforts to ensure the safety of speakers invited to speak on campus by a student enrolled at the institution, a student group or organization at the institution, or an employee of the institution.

C.S.H.B. 2100 provides the manner by which an institution must make the institution's policies

adopted in accordance with the bill's provisions regarding protected expression on campus available to students enrolled at and employees of the institution and provides for injunctive relief and a civil cause of action for a violation of those bill provisions. The bill requires each institution to develop materials, programs, and procedures to ensure that the institution's employees responsible for educating or disciplining students understand the requirements of those provisions and all policies adopted by the institution in accordance with those provisions. The bill adds a temporary provision set to expire September 1, 2021, requiring each institution, not later than December 1, 2020, to prepare, post on the institution's website, and submit to the governor and the members of the legislature a report regarding the institution's implementation of the applicable requirements.

C.S.H.B. 2100 establishes a certain state policy and sets out certain legislative findings.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2100 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute narrows the scope of the bill to apply only to a public institution of higher education and to the students enrolled at and employees of the institution. The substitute does not include provisions applicable to the Texas Facilities Commission or other state agencies and revises certain other provisions to reflect that narrowing of scope.

The substitute revises the required contents of the policy adopted by an institution and includes a provision requiring the policy to be approved by a majority vote of the institution's governing board before final adoption.

The substitute includes provisions:

- setting out criteria for how an institution may determine whether to approve a speaker to speak on campus or determine the amount of a fee to be charged for use of the institution's facilities for purposes of engaging in expressive activities;
- relating to the safety of invited speakers;
- providing for the manner by which each institution must make the institution's policies adopted under the bill's provisions available to students enrolled in and employees of the institution;
- requiring each institution to develop certain materials, programs, and procedures; and
- establishing a certain state policy and setting out legislative findings.

The substitute includes a temporary provision providing a certain reporting requirement.

The substitute does not include:

- the requirement that an expressive activity not be a disruptive activity to be protected by the bill;
- a provision relating to the venue for action for injunctive relief brought under the bill's provisions;
- a waiver of sovereign immunity and governmental immunity; or
- provision for the possible immediate effect of its provisions.