

BILL ANALYSIS

C.S.H.B. 2244
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Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised about censorship of student publications by school administrators, and there have been calls for clarification on the types of speech that are protected with regard to such publications. C.S.H.B. 2244 seeks to address these concerns by requiring public school districts to adopt policies establishing rules regarding students' right to exercise freedom of speech and freedom of the press in producing student media publications.

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

ANALYSIS

C.S.H.B. 2244 amends the Education Code to entitle a student to exercise freedom of speech and freedom of the press in producing any student media publication regardless of whether the publication is produced using a public school district's money, equipment, or facilities or produced in conjunction with any class in which the student is enrolled. The bill prohibits a student from being disciplined for acting in accordance with that entitlement. The bill prohibits that entitlement from being construed to prohibit a student media publication advisor from teaching professional standards of English and journalism to students. The bill prohibits a student media publication advisor from being subjected to disciplinary action or any other form of punishment or retaliation for acting to protect or refusing to infringe on a student's rights as provided by the bill.

C.S.H.B. 2244 defines "student media publication" as any material that is primarily prepared, written, published, or broadcast by students enrolled at a district campus who are under the direction of a student media publication advisor if the material is distributed or generally made available to students enrolled at the campus and excludes material for distribution only in the classroom in which the material is produced. The bill defines "protected speech" as speech protected by the First Amendment to the U.S. Constitution or by the Texas Constitution and excludes from that definition speech that:

- is obscene, defamatory, libelous, or slanderous;
- constitutes a clear, unwarranted invasion of privacy;
- violates a federal or state law to the extent that law conforms to the U.S. Constitution or the Texas Constitution;

- advertises or promotes the purchase of a product or service that is unlawful for purchase by minors;
- is intended to incite the imminent commission of a crime or violation of school policy and is likely to produce that result; or
- substantially disrupts a school's operation.

C.S.H.B. 2244 prohibits the content of a student media publication from being construed as the policy or position of the campus at which the publication is produced or the district in which the campus is located. The bill exempts a district, a student media publication advisor of a district campus, or any employee of the district from liability in any civil or criminal action for the content of a student media publication produced by students enrolled at a district campus unless the district, advisor, or employee acted with wilful or wanton misconduct in permitting the publication to be produced. The bill requires the board of trustees of a district to adopt a written policy establishing rules regarding students' right to exercise freedom of speech and freedom of the press in producing any student media publication. The bill authorizes the policy to include the following:

- reasonable restrictions on the time, place, and manner of student expression in a student media publication, if those restrictions:
 - are necessary to further a compelling district interest and are the least restrictive means of furthering that interest;
 - employ clear, published, content-neutral, and viewpoint-neutral criteria; and
 - leave open ample alternative means of expression; and
- limitations on speech that is not protected speech, including speech the board of trustees defines as profane, harassing, threatening, or intimidating.

C.S.H.B. 2244 requires a school administrator to interpret the free speech policy in accordance with the law and determine whether a student media publication includes speech that is not protected. The bill authorizes a student, individually or through the student's parent or person standing in parental relation to the student, whose freedom of speech, freedom of the press, or expressive rights have been violated or a student media publication advisor to bring an action for injunctive relief to compel the district to comply with the bill's provisions. The bill authorizes a person whose freedom of speech, freedom of the press, or expressive rights are affected by a free speech policy adopted by a district to file suit against the district for declaratory judgment in addition to the injunctive relief authorized by the bill. The bill explicitly subjects an open-enrollment charter school to a prohibition, restriction, or requirement relating to speech protections for student media publications under the bill's provisions. The bill applies beginning with the 2019-2020 school year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2244 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 includes additional exceptions to the definition of "protected speech" and includes definitions of "student media publication" and "student media publication advisor."

The substitute changes the policy required to be adopted by a district board from a policy regarding students' right to exercise freedom of the press at school to a policy regarding students'

right to exercise freedom of speech and freedom of the press in producing any student media publication.

The substitute revises and reorganizes certain bill provisions establishing the required contents of the district policy by including them as separate bill provisions that explicitly:

- entitle a student to exercise freedom of speech and freedom of the press in producing student media, including by determining the content within certain limitations;
- provide that the entitlement applies regardless of whether a publication is produced using district money, equipment, or facilities; and
- prohibit disciplinary action against a student exercising the applicable rights or a student media publication advisor acting to protect or refusing to infringe on a student's rights under the bill's provisions.

The substitute includes provisions that:

- prohibit a student's entitlement to certain freedoms from being construed to prohibit a student media publication advisor from teaching certain standards;
- prohibit the content of a student media publication from being construed as the policy or position of the campus or district;
- exempt a district, a student media publication advisor, or a district employee, as applicable, from certain liability for the content of a student media publication;
- set out certain authorized contents of the policy a district is required to adopt;
- set out duties of a school administrator with regard to student media publications;
- provide for an action for injunctive relief by a student or student media publication advisor for a violation of rights protected by the bill; and
- provide for a suit against the district for a declaratory judgment.

The substitute does not include provisions that:

- explicitly require the district policy to prohibit a district or any district employee from censoring protected speech;
- provide for a pre-publication review of a student publication by a district employee and require the inclusion of certain limitations relating to such a review in the district policy; and
- require the commissioner of education to adopt rules as necessary to implement the bill's provisions relating to student publications.