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S.B. 40
(1_133_1909)
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 40's Bill Analysis](#)

Version: In Senate Education

Primary Sponsor: Sens. Brenner and McColley

Local Impact Statement Procedure Required: No

Edward M. Millane, Senior Budget Analyst

Highlights

- The bill may minimally increase the administrative expenses of state institutions of higher education to adopt a specific policy on harassment that is consistent with the bill's definition of "harassment"; publicize free expression policies; develop and distribute materials, programs, and procedures related to those policies; and to report on any courses of action that were implemented in accordance with the bill's provisions regarding free expression on campus.
- Some institutions of higher education may forego some revenue due to the bill's prohibition on charging security fees to a student or a student group based on the content of their expression, the content of the expression of their invited guest, or the anticipated reaction to an invited guest's expression.

Detailed Analysis

Summary of provisions with potential fiscal effects

The bill prescribes the manner in which state institutions of higher education regulate expression and peaceful assembly on campus. From a fiscal perspective, the bill most notably requires each state institution to adopt a specific policy on harassment that is consistent with the bill's definition of "harassment"; make public the policies, regulations, and expectations of students regarding free expression in its handbook, on its website, and in its student orientation programs; and report on any courses of action that were implemented in accordance with the bill's provisions. It also prohibits a state institution from charging security fees to a student or student group based on the content of their expression, the content of the expression of their invited guest, or the anticipated reaction to an invited guest's expression and waives the state's 11th Amendment immunity from suit in federal court. These provisions are discussed below in more detail. Other provisions of the bill appear to have no direct fiscal effect.

Policy and reporting requirements

The bill may minimally increase the administrative expenses of state institutions of higher education to comply with various policy and reporting requirements. In particular, each state institution must:

- Adopt a policy on harassment that is consistent and strictly adheres to the bill’s definition of “harassment”;
- Make public any policies, regulations, and expectations of students regarding free expression on campus in its handbook, on its website, and in its student orientation programs;
- Develop and distribute materials, programs, and procedures to ensure that all administrators, faculty, and any other employees who are responsible for the discipline or education of students understand the policies and regulations regarding free expression on campus;
- Report to the Governor, the Speaker of the House of Representatives, and the President of the Senate, within 180 days of the bill’s effective date, on the courses of action implemented in accordance with the bill’s provisions concerning free speech and post the report to its website. A state institution that is sued for an alleged violation of free expression rights must submit a supplemental report that includes a copy of the complaint within 30 days of the action.

Prohibition on charging security fees

The bill prohibits state institutions of higher education from charging security fees to a student or a student group based on the content of the student or group’s expression, the content of the expression of their invited guest, or the anticipated reaction to an invited guest’s expression. State institutions may forego some revenue to the extent that they currently charge such fees.

Civil actions for violations of free expression rights

The bill expressly waives the state’s immunity from suit in federal court under the 11th Amendment to the U.S. Constitution and specifies that the state consents to the jurisdiction of the federal courts over its civil liability and the civil liability of a state institution of higher education, for any violation of the bill’s free speech and assembly provisions. The bill also specifies that a member of the campus community may file a civil action against the state, a state institution of higher education, or any other individuals responsible for a violation of the bill’s free expression provisions to seek and obtain appropriate relief, which may include injunctive relief, compensatory damages, reasonable attorney’s fees, and court costs. If a court finds a violation of the bill’s provisions, the plaintiff must be awarded at least \$1,000.

The fiscal effect of these provisions on state institutions is unclear. Generally, under the 11th Amendment, state institutions of higher education are immune from retrospective relief in federal court unless the civil claim is based on violations of the Constitution or statutes of the U.S. Therefore, an individual alleging a campus free speech violation may currently seek various forms of relief, including injunctive relief against a university officer or employee or injunctive or monetary relief against state officials in their individual capacities in federal court.