

The House Committee on Higher Education offers the following substitute to SB 318:

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 20 of the Official Code of Georgia Annotated, relating to education
 2 generally, so as to provide for public forums at public institutions of higher education within
 3 the University System of Georgia and the Technical College System of Georgia for the
 4 campus community; to prevent the creation of "free speech zones" at such public institutions
 5 of higher education; to allow for reasonable, content-neutral, viewpoint-neutral, and
 6 narrowly-tailored time, place, and manner restrictions on expressive activity at public
 7 institutions of higher education; to authorize public institutions of higher education to
 8 prohibit material and substantial disruption of protected expressive activity at public
 9 institutions of higher education; to prohibit public institutions of higher education from
 10 denying benefits to or recognition of a student organization on the basis of the student
 11 organization's actual or anticipated expressive activity; to prohibit public institutions of
 12 higher education from denying benefits to or recognition of a student organization based on
 13 any requirement that the leaders or members of the organization affirm or adhere to the
 14 organization's beliefs, standards of conduct, mission, or purpose; to provide that student
 15 organizations may be required to comply with rules and policies applicable to all student
 16 organizations provided that such rules and policies do not violate the Constitutions of
 17 Georgia and the United States; to require public institutions of higher education to provide
 18 public notice of rules and expectations regarding expressive activity; to require public
 19 institutions of higher education to develop materials, programs, and procedures related to
 20 expressive activity; to provide for a short title; to provide for definitions; to provide for
 21 related matters; to repeal conflicting laws; and for other purposes.

22 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

23 **SECTION 1.**

24 Title 20 of the Official Code of Georgia Annotated, relating to education generally, is
 25 amended by repealing Code Section 20-3-48, relating to adoption of free speech and

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26 expression regulations and disciplinary sanctions for interfering with rights, and enacting a
 27 new Code Section 20-3-48 to read as follows:

28 "20-3-48.

29 (a) This part shall be known and may be cited as the 'Forming Open and Robust University
 30 Minds (FORUM) Act.'

31 (b) As used in this part, the term:

32 (1) 'Benefit' means any of the following conferred upon a student or student organization
 33 by a public institution of higher education: recognition; registration; the use of facilities
 34 of the public institution of higher education for purposes of meetings or other expressive
 35 activity; the use of channels of communication of the public institution of higher
 36 education; or funding sources that are otherwise available to other students or student
 37 organizations at the public institution of higher education.

38 (2) 'Campus community' means students, administrators, faculty, and staff at the public
 39 institution of higher education and their invited guests.

40 (3) 'Material and substantial disruption' means intentional conduct, including, but not
 41 limited to, protected expressive activity, that either causes or is reasonably likely to cause
 42 a significant interference with the expressive rights of another person or with the
 43 operations of the public institution of higher education. The following conduct may be
 44 deemed a material and substantial disruption: any unlawful behavior; the actual or
 45 threatened use of physical violence against another; the actual or attempted use of
 46 physical blocking intended to prevent or hinder another person from attending, observing,
 47 hearing, or otherwise participating in protected expressive activity; or the actual or
 48 attempted use of loud or sustained noise or vocalizations intended to prevent or hinder
 49 another person from attending, observing, hearing, or otherwise participating in protected
 50 expressive activity. An isolated, insignificant, nonviolent, nonthreatening, and brief or
 51 fleeting interference shall not be deemed a material and substantial disruption. The mere
 52 undifferentiated fear or apprehension of interference shall not be sufficient to deem such
 53 conduct a material and substantial disruption.

54 (4) 'Public institution of higher education' or 'institution' means any college or university
 55 under the management and control of the Board of Regents of the University System of
 56 Georgia.

57 (5) 'Student' means any person who is enrolled on a full-time or part-time basis in a
 58 public institution of higher education.

59 (6) 'Student on student harassment' means unwelcome conduct or expressive activity
 60 directed at a student that is so severe, pervasive, and objectively offensive that a student
 61 is effectively denied equal access to educational opportunities or benefits provided by the

62 public institution of higher education. This term shall not apply to or govern any
63 employment policy of a public institution of higher education relating to harassment.

64 (7) 'Student organization' means any association, club, fraternity, society, sorority, or
65 organized group of students, whether academic, athletic, political, social, or otherwise,
66 that is officially recognized by a public institution of higher education.

67 (8) 'Unrestricted outdoor area of campus' means any outdoor area of campus that is
68 generally accessible to members of the campus community, including, but not limited to,
69 grassy areas, walkways, or other common areas, and does not include outdoor areas when
70 and where access to members of the campus community is lawfully restricted.

71 (c) Unrestricted outdoor areas of campuses of public institutions of higher education in this
72 state shall be deemed public forums for the campus community, and public institutions of
73 higher education shall not create 'free speech zones' or other designated areas of campus
74 outside of which expressive activities are prohibited for the campus community.

75 (d) Public institutions of higher education may maintain and enforce reasonable time,
76 place, and manner restrictions for the campus community narrowly tailored in service of
77 a significant institutional interest only when such restrictions employ clear, published,
78 content-neutral and viewpoint-neutral criteria, and provide for ample alternative means of
79 expression. Any such restrictions shall allow for members of the campus community to
80 spontaneously and contemporaneously assemble and distribute literature. Nothing in this
81 Code section shall be interpreted as limiting the right of student expression elsewhere on
82 campus.

83 (e) Protected expressive activity under this part consists of speech and other conduct
84 protected by the First Amendment to the United States Constitution, including, but not
85 limited to, lawful verbal, written, audio-visual, or electronic expression by which
86 individuals may communicate ideas to one another, including all forms of peaceful
87 assembly, distributing literature, carrying signs, circulating petitions, demonstrations,
88 protests, and speeches including those by guest speakers.

89 (f) Any person who wishes to engage in noncommercial expressive activity in an
90 unrestricted outdoor area of campus shall be permitted to do so freely, as long as the
91 person's conduct is not unlawful and does not materially and substantially disrupt the
92 functioning of the public institution of higher education, subject to restrictions lawfully
93 imposed under subsections (c) and (d) of this Code section. Nothing in this Code section
94 shall be construed to make the unrestricted areas of campus into a designated public forum
95 for persons who are not members of the campus community.

96 (g) Nothing in this part shall be interpreted as preventing public institutions of higher
97 education from prohibiting student on student harassment as defined in this part; from
98 complying with federal and state laws prohibiting discrimination and harassment; or from

99 prohibiting, limiting, or restricting expression that is not protected under the Georgia
 100 Constitution or the First Amendment of the United States Constitution, including, but not
 101 limited to, true threats or expressive activity directed to provoke imminent lawless actions
 102 and likely to produce it.

103 (h) Nothing in this part shall enable individuals to engage in conduct that materially and
 104 substantially disrupts another's expressive activity that is occurring in an unrestricted
 105 outdoor area of campus or a campus space reserved for that activity under the exclusive use
 106 or control of a particular group.

107 (i) A public institution of higher education shall not deny a student organization any
 108 benefit or privilege available to any other student organization, nor may it deny official
 109 recognition to a prospective student organization seeking official recognition, based on the
 110 actual or anticipated expressive activity of the organization or based on any requirement
 111 that the leaders or members of the organization affirm and adhere to the organization's
 112 beliefs, standards of conduct, mission, or purpose; provided, however, that nothing in this
 113 part shall be interpreted as preventing public institutions of higher education from requiring
 114 student organizations to comply with rules and policies applicable to all student
 115 organizations; provided, further, that such rules and policies do not violate the
 116 Constitutions of Georgia and the United States.

117 (j) Public institutions of higher education shall make public in their handbooks, on their
 118 websites, and through their orientation programs for students the policies, regulations, and
 119 expectations of students regarding free expressive activity on campus consistent with this
 120 part.

121 (k) Public institutions of higher education shall develop materials, programs, and
 122 procedures to ensure that those persons who have responsibility for discipline or education
 123 of students, such as administrators, campus police officers, residence life officials, and
 124 professors, understand the policies, regulations, and duties of public institutions of higher
 125 education regarding expressive activity on campus consistent with this part."

126 **SECTION 2.**

127 Said title is further amended by revising Code Section 20-3-48.1, relating to annual report
 128 by board of regents, as follows:

129 "20-3-48.1.

130 The board of regents shall make and publish an annual report and provide a copy to the
 131 Governor and each chamber of the General Assembly on July 1 of each year addressing the
 132 following from the previous calendar year:

133 (1) Any barriers to, or disruptions of, free expression within state public institutions of
 134 higher education;

- 135 (2) Administrative response and discipline relating to violation of regulations and
 136 policies established pursuant to Code Section 20-3-48;
- 137 (3) Actions taken by state public institutions of higher learning education, including
 138 difficulties, controversies, or successes, in maintaining a posture of administrative and
 139 institutional neutrality with regard to political or social issues; and
- 140 (4) Any assessments, criticisms, commendations, or recommendations the board of
 141 regents deems appropriate to further include in the report."

142 **SECTION 3.**

143 Said title is further amended by repealing and reserving Code Section 20-3-48.2, relating to
 144 reasonable time, place, and manner restrictions on speech.

145 **SECTION 4.**

146 Said title is further amended in Article 2 of Chapter 4, relating to technical and adult
 147 education, by adding a Code section to read as follows:

148 "20-4-11.1.

149 (a) As used in this Code section, the term:

150 (1) 'Benefit' means any of the following conferred upon a student or student organization
 151 by a public institution of higher education: recognition; registration; the use of facilities
 152 of the public institution of higher education for purposes of meetings or other expressive
 153 activity; the use of channels of communication of the public institution of higher
 154 education; or funding sources that are otherwise available to other students or student
 155 organizations at the public institution of higher education.

156 (2) 'Campus community' means students, administrators, faculty, and staff at the public
 157 institution of higher education and their invited guests.

158 (3) 'Material and substantial disruption' means intentional conduct, including, but not
 159 limited to, protected expressive activity, that either causes or is reasonably likely to cause
 160 a significant interference with the expressive rights of another person or with the
 161 operations of the public institution of higher education. The following conduct may be
 162 deemed a material and substantial disruption: any unlawful behavior; the actual or
 163 threatened use of physical violence against another; the actual or attempted use of
 164 physical blocking intended to prevent or hinder another person from attending, observing,
 165 hearing, or otherwise participating in protected expressive activity; or the actual or
 166 attempted use of loud or sustained noise or vocalizations intended to prevent or hinder
 167 another person from attending, observing, hearing, or otherwise participating in protected
 168 expressive activity. An isolated, insignificant, nonviolent, nonthreatening, and brief or
 169 fleeting interference shall not be deemed a material and substantial disruption. The mere

170 undifferentiated fear or apprehension of interference shall not be sufficient to deem such
171 conduct a material and substantial disruption.

172 (4) 'Public institution of higher education' or 'institution' means any postsecondary
173 technical school or other postsecondary branch of the Technical College System of
174 Georgia.

175 (5) 'Student' means any person who is enrolled on a full-time or part-time basis in a
176 public institution of higher education.

177 (6) 'Student on student harassment' means unwelcome conduct or expressive activity
178 directed at a student that is so severe, pervasive, and objectively offensive that a student
179 is effectively denied equal access to educational opportunities or benefits provided by the
180 public institution of higher education. This term shall not apply to or govern any
181 employment policy of a public institution of higher education relating to harassment.

182 (7) 'Student organization' means any association, club, fraternity, society, sorority, or
183 organized group of students, whether academic, athletic, political, social, or otherwise,
184 that is officially recognized by a public institution of higher education.

185 (8) 'Unrestricted outdoor area of campus' means any outdoor area of campus that is
186 generally accessible to members of the campus community, including, but not limited to,
187 grassy areas, walkways, or other common areas, and does not include outdoor areas when
188 and where access to members of the campus community is lawfully restricted.

189 (b) Unrestricted outdoor areas of campuses of public institutions of higher education in
190 this state shall be deemed public forums for the campus community, and public institutions
191 of higher education shall not create 'free speech zones' or other designated areas of campus
192 outside of which expressive activities are prohibited for the campus community.

193 (c) Public institutions of higher education may maintain and enforce reasonable time,
194 place, and manner restrictions for the campus community narrowly tailored in service of
195 a significant institutional interest only when such restrictions employ clear, published,
196 content-neutral and viewpoint-neutral criteria, and provide for ample alternative means of
197 expression. Any such restrictions shall allow for members of the campus community to
198 spontaneously and contemporaneously assemble and distribute literature. Nothing in this
199 Code section shall be interpreted as limiting the right of student expression elsewhere on
200 campus.

201 (d) Protected expressive activity under this Code section consists of speech and other
202 conduct protected by the First Amendment to the United States Constitution, including, but
203 not limited to, lawful verbal, written, audio-visual, or electronic expression by which
204 individuals may communicate ideas to one another, including all forms of peaceful
205 assembly, distributing literature, carrying signs, circulating petitions, demonstrations,
206 protests, and speeches including those by guest speakers.

207 (e) Any person who wishes to engage in noncommercial expressive activity in an
208 unrestricted outdoor area of campus shall be permitted to do so freely, as long as the
209 person's conduct is not unlawful and does not materially and substantially disrupt the
210 functioning of the public institution of higher education, subject to restrictions lawfully
211 imposed under subsections (c) and (d) of this Code section. Nothing in this Code section
212 shall be construed to make the unrestricted areas of campus into a designated public forum
213 for persons who are not members of the campus community.

214 (f) Nothing in this Code section shall be interpreted as preventing public institutions of
215 higher education from prohibiting student on student harassment as defined in this Code
216 section; from complying with federal and state laws prohibiting discrimination and
217 harassment; or from prohibiting, limiting, or restricting expression that is not protected
218 under the Georgia Constitution or the First Amendment of the United States Constitution,
219 including, but not limited to, true threats or expressive activity directed to provoke
220 imminent lawless actions and likely to produce it.

221 (g) Nothing in this Code section shall enable individuals to engage in conduct that
222 materially and substantially disrupts another's expressive activity that is occurring in an
223 unrestricted outdoor area of campus or a campus space reserved for that activity under the
224 exclusive use or control of a particular group.

225 (h) A public institution of higher education shall not deny a student organization any
226 benefit or privilege available to any other student organization, nor may it deny official
227 recognition to a prospective student organization seeking official recognition, based on the
228 actual or anticipated expressive activity of the organization or based on any requirement
229 that the leaders or members of the organization affirm and adhere to the organization's
230 beliefs, standards of conduct, mission, or purpose; provided, however, that nothing in this
231 part shall be interpreted as preventing public institutions of higher education from requiring
232 student organizations to comply with rules and policies applicable to all student
233 organizations; provided, further, that such rules and policies do not violate the
234 Constitutions of Georgia and the United States.

235 (i) Public institutions of higher education shall make public in their handbooks, on their
236 websites, and through their orientation programs for students the policies, regulations, and
237 expectations of students regarding free expressive activity on campus consistent with this
238 Code section.

239 (j) Public institutions of higher education shall develop materials, programs, and
240 procedures to ensure that those persons who have responsibility for discipline or education
241 of students, such as administrators, campus police officers, residence life officials, and
242 professors, understand the policies, regulations, and duties of public institutions of higher
243 education regarding expressive activity on campus consistent with this Code section.

244 (k) The State Board of the Technical College System of Georgia shall make and publish
245 an annual report and provide a copy to the Governor and each chamber of the General
246 Assembly on July 1 of each year addressing the following from the previous calendar year:
247 (1) Any barriers to, or disruptions of, free expression within public institutions of higher
248 education;
249 (2) Administrative response and discipline relating to violation of regulations and
250 policies established pursuant to Code Section 20-3-48;
251 (3) Actions taken by public institutions of higher education, including difficulties,
252 controversies, or successes, in maintaining a posture of administrative and institutional
253 neutrality with regard to political or social issues; and
254 (4) Any assessments, criticisms, commendations, or recommendations the State Board
255 of the Technical College System of Georgia deems appropriate to further include in the
256 report."

257

SECTION 5.

258 All laws and parts of laws in conflict with this Act are repealed.