



HOUSE BILL 527: Restore/Preserve Campus Free Speech.

2017-2018 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	June 27, 2017
Introduced by:	Reps. Millis, Jordan	Prepared by:	Brian Gwyn
Analysis of:	PCS to Third Edition H527-CSBE-27		Committee Co-Counsel

OVERVIEW: *The 3rd Edition of House Bill 527 would require the Board of Governors of the University of North Carolina to develop, adopt, and implement various policies related to free expression and to form a committee on free expression, which must make annual reports to the Board of Governors, the General Assembly, and the Governor. Nothing in the bill can be construed to impose liability on members of the Board of Trustees of any institution in the University of North Carolina system and members of the Board of Governors for actions taken pursuant to their official duties, or to impose liability on any institution in the University of North Carolina system for relocating or restricting expressive activity that presents a significant threat to the health and safety of students or the functioning of campus activities. The PCS would remove the limitation on liability that would otherwise allow a constituent institution to relocate or restrict expressive activity if it presents a significant threat to the health and safety of students or the functioning of campus activities, as well as make minor clarifying changes.*

CURRENT LAW: Currently, no statutes address free speech at the constituent institutions of the University of North Carolina. The Board of Governors has adopted a broad policy that "supports and encourages freedom of inquiry for faculty members and students"; protects faculty and students "in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth"; and charges faculty and students with the responsibility of maintaining a respectful community in which academic freedom flourishes. Within that framework, constituent institutions may create their own policies that comply with the First Amendment.

BILL ANALYSIS:

Section 1 of the bill would require the Board of Governors of the University of North Carolina to develop, adopt, and implement various policies related to free expression.

G.S. 116-300 would require adoption of a system-wide policy on free expression that includes at least the following:

- A statement that the primary function of each constituent institution is the discovery of knowledge and that function can only be fulfilled by the fullest degree of intellectual freedom and free expression.
- A statement it is not the proper role of a constituent institution to shield individuals from speech protected by the First Amendment.

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- A prohibition on the constituent institutions taking action that requires students, faculty, or administrators to express a given view of social policy.
- A guarantee that students and faculty have the right to discuss any problem, limited only by narrowly-tailored, content-neutral, time, place, and manner restrictions, as well as the right to engage in spontaneous demonstrative activity that is not illegal or substantially disruptive.
- A statement that access to campus for the purpose of free expression will be consistent with First Amendment jurisprudence
- The right of any invited speaker to be on campus, subject to reasonable time, place, and manner restrictions.
- The implementation of a disciplinary process for individuals accused of interfering with the protected free expression rights of others. All students accused under this process have the right 1) to have notice of the charges against them, 2) to review evidence against them, 3) to confront witnesses against them, 4) to present a defense and call witnesses, 5) to have assistance of counsel, and 6) to receive a decision from an impartial arbiter or panel, which may be appealed.

G.S. 116-301 would direct the Board of Governors to create a Committee on Free Expression, which must report annually to the Board of Governors, the General Assembly, and the governor on the following:

- Any barriers to, or disruptions of, free expression.
- A description of administrative handling of those disruptions or barriers.
- A description of the efforts to maintain institutional neutrality regarding political or social issues.
- Any assessments, criticisms, commendations, or recommendations the committee sees fit to include.

G.S. 116-302 would require policies on free expression to be included in freshman orientation at constituent institutions.

G.S. 116-303 would allow the Board of Governors and constituent institutions to adopt additional policies, including policies restricting expressive activity not protected by the First Amendment.

G.S. 116-304 would exempt from personal liability members of the boards of trustees, chancellors, officers, or other employees of constituent institutions, as well as the President, officers, employees, and members of the Board of Governors of the University of North Carolina for actions taken pursuant to their official duties.

Section 2 of the bill would require the Board of Governors to develop a policy requiring each constituent institution to identify the individual responsible for ensuring compliance with this act. This policy shall require that individual to receive training developed and provided by the University of North Carolina School of Government.

EFFECTIVE DATE: The bill would be effective June 30, 2017. The initial annual report of the Committee on Free Expression would be due by September 1, 2018.

**Jason Moran-Bates of the Legislative Analysis Division substantially contributed to this summary.*