

The House Committee on Higher Education offers the following substitute to HB 995:

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- and 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, denying recognition of, or discriminating against a student organization
11 on the basis of the student organization's actual or anticipated expressive activity; to provide
12 that student organizations may be required to comply with rules and policies applicable to
13 all student organizations provided such rules and policies do not violate the First Amendment
14 to the United States Constitution; to require public institutions of higher education to provide
15 public notice of rules and expectations regarding expressive activity; to require public
16 institutions of higher education to develop materials, programs, and procedures related to
17 expressive activity; to provide for a short title; to provide for definitions; to provide for
18 related matters; to provide for an effective date; to repeal conflicting laws; and for other
19 purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

22 Title 20 of the Official Code of Georgia Annotated, relating to education generally, is
23 amended by repealing Code Section 20-3-48, relating to adoption of free speech and
24 expression regulations and disciplinary sanctions for interfering with rights, and enacting a
25 new Code Section 20-3-48 to read as follows:

H. B. 995 (SUB)

26 "20-3-48.

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

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

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

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

38 (3) 'Materially and substantially disrupts' means conduct, including, but not limited to,
 39 conduct which constitutes protected expressive activity under this part, that either causes
 40 or is reasonably likely to cause a material and substantial disruption, disturbance, or
 41 interference with the operations of the public institution of higher education or with the
 42 expressive rights of other individuals; provided, however, that the mere undifferentiated
 43 fear or apprehension of disturbance shall not be sufficient to deem such conduct a
 44 material and substantial disruption.

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

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

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

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

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

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

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

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

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

87 (g) Nothing in this part shall be interpreted as preventing public institutions of higher
88 education from prohibiting student on student harassment as defined in this part; from
89 complying with federal and state laws prohibiting discrimination and harassment; or from
90 prohibiting, limiting, or restricting expression that is not protected under the Georgia
91 Constitution or the First Amendment of the United States Constitution, including, but not
92 limited to, true threats or expressive activity directed to provoke imminent lawless actions
93 and likely to produce it.

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

98 (i) No public institution of higher education may discriminate against a student
 99 organization, deny a student organization any benefit or privilege available to any other
 100 student organization, or deny a proposed student organization recognition as a student
 101 organization based on actual or anticipated expressive activity of the organization,
 102 including any requirement that the leaders and voting members of such organization:
 103 (A) Agree not to undermine the purpose or mission of such student organization;
 104 (B) Comply with the organization's standards and conduct; and
 105 (C) Affirm and adhere to the organization's sincerely held beliefs;
 106 provided, however, that nothing in this part shall be interpreted as preventing public
 107 institutions of higher education from requiring student organizations to comply with rules
 108 and policies applicable to all student organizations; and provided, further, that such rules
 109 and policies do not violate the First Amendment to the United States Constitution.
 110 (j) Public institutions of higher education shall make public in their handbooks, on their
 111 websites, and through their orientation programs for students the policies, regulations, and
 112 expectations of students regarding free expressive activity on campus consistent with this
 113 part.
 114 (k) Public institutions of higher education shall develop materials, programs, and
 115 procedures to ensure that those persons who have responsibility for discipline or education
 116 of students, such as administrators, campus police officers, residence life officials, and
 117 professors, understand the policies, regulations, and duties of public institutions of higher
 118 education regarding expressive activity on campus consistent with this part."

119 **SECTION 2.**

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

122 "20-3-48.1.

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

- 126 (1) Any barriers to, or disruptions of, free expression within ~~state~~ public institutions of
 127 higher education;
- 128 (2) Administrative response and discipline relating to violation of regulations and
 129 policies established pursuant to Code Section 20-3-48;
- 130 (3) Actions taken by ~~state~~ public institutions of higher ~~learning~~ education, including
 131 difficulties, controversies, or successes, in maintaining a posture of administrative and
 132 institutional neutrality with regard to political or social issues; and

133 (4) Any assessments, criticisms, commendations, or recommendations the board of
 134 regents deems appropriate to further include in the report."

135 **SECTION 3.**

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

138 **SECTION 4.**

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

141 "20-4-11.1.

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

143 (1) 'Benefit' means any of the following conferred upon a student or student organization
 144 by a public institution of higher education: recognition; registration; the use of facilities
 145 of the public institution of higher education for purposes of meetings or other expressive
 146 activity; the use of channels of communication of the public institution of higher
 147 education; or funding sources that are otherwise available to other students or student
 148 organizations at the public institution of higher education.

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

151 (3) 'Materially and substantially disrupts' means conduct, including, but not limited to,
 152 conduct which constitutes protected expressive activity under this Code section, that
 153 either causes or is reasonably likely to cause a material and substantial disruption,
 154 disturbance, or interference with the operations of the public institution of higher
 155 education or with the expressive rights of other individuals; provided, however, that the
 156 mere undifferentiated fear or apprehension of disturbance shall not be sufficient to deem
 157 such conduct a material and substantial disruption.

158 (4) 'Public institution of higher education' or 'institution' means any postsecondary
 159 technical school or other postsecondary branch of the Technical College System of
 160 Georgia.

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

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

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

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

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

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

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

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

200 (g) Nothing in this Code section shall be interpreted as preventing public institutions of
201 higher education from prohibiting student on student harassment as defined in this Code
202 section; from complying with federal and state laws prohibiting discrimination and
203 harassment; or from prohibiting, limiting, or restricting expression that is not protected
204 under the Georgia Constitution or the First Amendment of the United States Constitution.

205 including, but not limited to, true threats or expressive activity directed to provoke
206 imminent lawless actions and likely to produce it.

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

211 (i) No public institution of higher education may discriminate against a student
212 organization, deny a student organization any benefit or privilege available to any other
213 student organization, or deny a proposed student organization recognition as a student
214 organization based on actual or anticipated expressive activity of the organization,
215 including any requirement that the leaders and voting members of such organization:

216 (A) Agree not to undermine the purpose or mission of such student organization;

217 (B) Comply with the organization's standards and conduct; and

218 (C) Affirm and adhere to the organization's sincerely held beliefs;

219 provided, however, that nothing in this part shall be interpreted as preventing public
220 institutions of higher education from requiring student organizations to comply with rules
221 and policies applicable to all student organizations; and provided, further, that such rules
222 and policies do not violate the First Amendment to the United States Constitution.

223 (j) Public institutions of higher education shall make public in their handbooks, on their
224 websites, and through their orientation programs for students the policies, regulations, and
225 expectations of students regarding free expressive activity on campus consistent with this
226 Code section.

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

232 (l) The State Board of the Technical College System of Georgia shall make and publish
233 an annual report and provide a copy to the Governor and each chamber of the General
234 Assembly on July 1 of each year addressing the following from the previous calendar year:

235 (1) Any barriers to, or disruptions of, free expression within public institutions of higher
236 education;

237 (2) Administrative response and discipline relating to violation of regulations and
238 policies established pursuant to Code Section 20-3-48;

239 (3) Actions taken by public institutions of higher education, including difficulties,
240 controversies, or successes, in maintaining a posture of administrative and institutional
241 neutrality with regard to political or social issues; and

242 (4) Any assessments, criticisms, commendations, or recommendations the State Board
243 of the Technical College System of Georgia deems appropriate to further include in the
244 report."

245 **SECTION 5.**

246 This Act shall become effective on July 1, 2020.

247 **SECTION 6.**

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