

BILL ANALYSIS

S.B. 2972
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Higher Education
Committee Report (Unamended)

BACKGROUND AND PURPOSE

According to news outlets such as CNN, *The New York Times*, and *Michigan Advance*, universities across the nation last year saw disruption on their campuses in which protesters erected encampments in common areas, intimidated others through the use of bullhorns and speakers, and lowered American flags with the intent of raising the flag of another nation. S.B. 2972 seeks to guarantee the rights of students and university employees to engage in expressive activities while setting clear boundaries to prevent disruption and ensure community safety by making certain revisions to state law relating to protected expression on the campuses of public institutions of higher education.

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

S.B. 2972 amends the Education Code to revise the definitions of certain terms for purposes of provisions relating to protected expression on the campuses of public institutions of higher education as follows:

- excludes the following from the term "expressive activities":
 - defamation;
 - unlawful harassment;
 - incitement to imminent unlawful activity;
 - obscenity; and
 - threats to engage in unlawful activity;
- defines "governing board" by reference to that term's definition under the Higher Education Coordinating Act of 1965; and
- revises the definition of "student organization," which currently includes any organization that is composed mostly of students enrolled at a public institution of higher education and that receives a benefit from the institution, by removing the word "mostly."

S.B. 2972, in the provision establishing that it is the policy of the state and the purpose of the aforementioned provisions to protect the guaranteed expressive rights of persons by ensuring that all persons may assemble peaceably on the campuses of public institutions of higher education for expressive activities, changes from all persons to students enrolled at and employees of such an institution to whom the provision applies. The bill removes the

requirement for an institution to ensure that the common outdoor areas of the institution's campus are deemed traditional public forums. The bill revises the requirement for the institution to permit certain people to engage in expressive activities in the common outdoor areas of the institution's campus freely, as long as the expressive activity is not unlawful and does not materially and substantially disrupt the functioning of the institution, as follows:

- changes from any person to students enrolled at and employees of the institution the persons the institution must permit to engage in expressive activities in the common outdoor areas; and
- specifies that those conditions apply to the person's expressive activity, rather than the person's conduct.

S.B. 2972 revises the authorization for a public institution of higher education to adopt a policy imposing restrictions on expressive activities in the common outdoor areas of the institution's campus as follows:

- changes the type of restrictions that may be imposed from restrictions on the time, place, and manner of expressive activities in those areas to restrictions on expressive activities of students enrolled at and employees of the institution in those areas; and
- with respect to the conditions on restrictions imposed under the policy:
 - replaces the condition that the restrictions are reasonable with the condition that the restrictions are reasonable in light of the purpose of the area to which the restrictions apply;
 - removes the condition that the restrictions are narrowly tailored to serve a significant institutional interest;
 - removes the condition that the restrictions provide for ample alternative means of expression;
 - removes the condition that the restrictions employ content-neutral criteria; and
 - changes from members of the university community to students enrolled at and employees of the institution the people the restrictions must allow to assemble or distribute written material without a permit or other permission from the institution.

S.B. 2972 authorizes the governing board of a public institution of higher education to designate the areas on the institution's campus that are public forums, consistent with the First Amendment to the U.S. Constitution and the Texas Constitution

S.B. 2972 revises the requirement for each public institution of higher education to adopt a policy detailing rights and responsibilities regarding expressive activities at the institution as follows:

- removes the specification that the rights and responsibilities the policy details are the rights and responsibilities of students;
- changes from any person to students enrolled at and employees of the institution the people the policy must allow, subject to the reasonable restrictions adopted by the institution, to engage in expressive activities on campus, including by responding to the expressive activities of others;
- requires the policy to prohibit the following:
 - using a device to amplify sound while engaging in expressive activities on campus during class hours;
 - during the last two weeks of a semester or term, engaging in expressive activities:
 - in the common outdoor areas of the institution's campus in a manner that materially and substantially disrupts the functioning of the institution;
 - by inviting speakers to speak on campus;
 - by using a device to amplify sound; or
 - by using drums or other percussive instruments;
 - camping or erecting tents or other living accommodations on campus;
 - wearing a mask, facial covering, disguise, or other means of concealing a person's identity while engaging in expressive activities on campus with the

- intent to obstruct the enforcement of the institution's rules or the law by avoiding identification, to intimidate others, or to interfere with an institution employee's or a peace officer's lawful performance of a duty;
- lowering the institution's U.S. flag or Texas flag with the intent to raise the flag of another nation or a flag representing an organization or group of people; and
- engaging in expressive activities on campus between the hours of 10 p.m. and 8 a.m.;
- with respect to the requirement that the policy establish disciplinary sanctions for students, student organizations, or faculty who unduly interfere with the expressive activities of others on campus:
 - replaces the reference to faculty with a reference to employees; and
 - includes violations of an institution policy or state law among the actions for which disciplinary sanctions must be established; and
- requires the policy to require students enrolled at or employees of the institution to present proof of identity and status at the institution on request by a peace officer on the institution's campus engaging in an official duty.

S.B. 2972 provides that nothing in provisions relating to protected expression on the campuses of public institutions of higher education limits the authority of an institution to adopt rules differentiating between the rights of students and employees to engage in expressive activities on campus and those of persons not affiliated with the institution.

S.B. 2972 applies beginning with the 2025-2026 academic year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.