

SENATE BILL REPORT

SB 5538

As Reported by Senate Committee On:
Higher Education & Workforce Development, February 19, 2019

Title: An act relating to free speech controls at institutions of higher education.

Brief Description: Concerning free speech at institutions of higher education.

Sponsors: Senators Braun, Fortunato and Wilson, L..

Brief History:

Committee Activity: Higher Education & Workforce Development: 1/29/19, 2/19/19 [DPS-WM, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Establishes an outdoor area of an institution of higher education's campus as a traditional public forum.
- Requires restrictions on freedom of expression and use of public space at an institution of higher education must be reasonable, made clear, and provide for alternative means of expression.

SENATE COMMITTEE ON HIGHER EDUCATION & WORKFORCE DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5538 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Palumbo, Chair; Holy, Ranking Member; Brown and Wellman.

Minority Report: Do not pass.

Signed by Senators Ericksen and Liias.

Minority Report: That it be referred without recommendation.

Signed by Senator Randall, Vice Chair.

Staff: Kellee Gunn (786-7429)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: The First Amendment of the United States Constitution establishes no law shall prohibit or diminish the right to freedom of speech. The Washington State Constitution states every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

Freedom of speech, also known as freedom of expression, applies to public institutions though the level of protection varies depending on content and context. Speech that occurs in traditional public forums, such as public parks and town squares, are given more protection than speech occurring on other types of property. Institutions of higher education qualify as special environments, with their own unique interests. In legal challenges, those interests become a factor in balancing an individual's rights and the institution's interest in effectively educating its students and precluding disruption in the classrooms.

In Washington State, State Board for Community and Technical Colleges regulations require each community college district to adopt rules relating to student rights and responsibilities regarding freedom of expression and freedom of the press. In addition, nearly all of the public baccalaureates have rules regarding freedom of expression. For unionized faculty, collective bargaining agreements with institutions may include provisions regarding an individual faculty's right to pursue scholarly inquiry, to voice and publish conclusions in the instructional setting, and exercise academic responsibility.

Summary of Bill (First Substitute): Restrictions on speech and use of public space at public institutions of higher education must be made clear, published, and provide for alternative means of expression.

Outdoor areas of campus are considered limited public forums for individuals, organizations, and guest speakers and are described as generally accessible areas at institutions of higher education, where members of the campus community are normally allowed and include grassy areas, walkways, or other similar common areas.

Public institutions of higher education may create and enforce restrictions on expressive activities that are reasonable. Restrictions on outdoor areas or on community members to spontaneously assemble are not reasonable. Any restriction on these activities must be well defined and published on the institution's website and in printed materials concerning the institution's policies.

A public institution of higher education's students, faculty, or staff may not cause material and substantial disruption of previously scheduled activities on campus occurring during normal hours of business. "Material and substantial disruption" is defined as any conduct that hinders another person's, or group's, expressive rights except for:

- lawful protests and counter-protests in the outdoor areas of campus; or
- minor, brief, or fleeting nonviolent disruptions that are isolated or brief in duration.

EFFECT OF CHANGES MADE BY HIGHER EDUCATION & WORKFORCE DEVELOPMENT COMMITTEE (First Substitute):

- Removes private institutions.

- Defines outdoor public areas of campus as limited public forums for individuals, organizations, and guest speakers.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We need to have a healthy, civil dialogue at our universities. This bill provides guidance on how we can have reasonable disagreements at our institutions of higher education.

CON: Freedom of expression is an essential element of the higher education experience. Each school has their own mission and incorporates freedom of expression and speech into their policy. We must weigh the costs related to campus safety. Private institutions are open to freedom of expression, while staying true to the mission of those institutions. There are concerns from a legal and constitutional perspective with this bill.

OTHER: There are several concerns about the legal viability of this legislation. Private institutions have maintained that they operate in a different sphere than public. Free speech is a dynamic relationship between a private citizen and government. There is a need for permits for public gatherings in certain areas and other processes required on outside speakers and other events. This could cause security issues. This bill does not differentiate between free speech and academic freedom. Freedom of speech and freedom of assembly are important to the public baccalaureates. These freedoms must be balanced against the entire community as a whole. Please consider a limited public forum standard.

Persons Testifying: PRO: Senator John Braun, Prime Sponsor.

CON: Roy Heynderickx, Saint Martin's University; Terri Standish-Kuon, Independent Colleges of Washington.

OTHER: JoAnn Taricani, UW Faculty Legislative Representative (also testifying for WWU, EWU, WSU); Cody Eccles, Council of Presidents.

Persons Signed In To Testify But Not Testifying: No one.