

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 1322
Appropriations

(Delegate Grammer, *et al.*)

Higher Education - Freedom of Expression on Campus - Protection (Maryland
Campus Area Free Expression Act)

This bill establishes protections and related restrictions governing freedom of expression at a public institution of higher education. The bill specifies that any outdoor area located on a campus of a public institution of higher education is considered a public forum for members of the campus community; accordingly, it prohibits a public institution from designating “free speech zones” or restricting expressive activity to a particular area of campus. Nevertheless, a public institution may enforce clear, published, and reasonable time, place, and manner restrictions on expressive activity, as specified. Also, using content- and viewpoint-neutral criteria, a public institution may require a permit for exclusive use of campus space and may charge security fees as part of a permit application under specified circumstances. The Attorney General or any aggrieved person may bring an action against a public institution of higher education and certain employees for violations of the bill. If a court finds that a violation occurred, the bill specifies the relief that must be awarded, subject to a cap. The bill establishes a one-year statute of limitations for filing a complaint. **The bill takes effect July 1, 2026.**

Fiscal Summary

State Effect: To the extent that expressive activity increases on campuses of public institutions of higher education, security expenditures may increase; however, limiting expression to members of the campus community may mitigate these costs. Institutions may charge security fees for events that require a permit, which may offset some expenditures. The bill does not materially affect the workload or finances of the Judiciary.

Local Effect: To the extent that expressive activity increases on campuses of local community colleges, security expenditures may increase; however, limiting expression to members of the campus community may mitigate these costs. Institutions may charge security fees for events that require a permit, which may offset some expenditures.

Analysis

Bill Summary:

Public Institutions of Higher Education – Freedom of Expression Guarantees and Related Restrictions

A public institution of higher education may maintain and enforce time, place, and manner restrictions on expressive activity in the publicly accessible outdoor areas of campus and in indoor areas open for expressive activity. However, any such restrictions must (1) be reasonable; (2) further a significant institutional interest; (3) employ clear, published, content-neutral and viewpoint-neutral criteria; (4) provide for ample alternative means of expression; and (5) allow members of the campus community to spontaneously and contemporaneously assemble and distribute literature.

A member of the campus community may *generally* engage in noncommercial expressive activity freely on campus, so long as their conduct does not materially and substantially disrupt the functioning of the institution. However, the bill establishes protections for others as well. Accordingly, it prohibits intentional or knowing conduct by a member of the campus community that materially and substantially disrupts the expressive activity of another individual or group – or prevents the communication of a message or the transaction of a lawful meeting or event – by fighting, violence, seriously disruptive behavior, or physically blocking or significantly hindering access to the activity.

The bill clarifies that protected speech includes lawful protests and counterprotests in outdoor areas of campus generally accessible to members of the public, so long as those areas were not reserved in advance for other events, as well as minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

Permits and Security Fees

A public institution of higher education may require a permit for an individual or group seeking exclusive use of a campus location for expressive activity at a reserved time. Any such permitting process may not be overly burdensome and must rely on published, content-neutral and viewpoint-neutral criteria. An institution may charge security fees associated with events that require a permit; however, the fees may not be based on the content of the expression or the anticipated reaction to the expression. Instead, the need for, and amount of, any security fees must be determined using content- and viewpoint-neutral criteria such as the time and location of the event, anticipated audience

size, and whether alcohol will be served. An institution that charges such fees must publish the criteria used to determine them.

Support for Affected Students

The bill authorizes a public institution of higher education to provide support or resources to students affected by speech that cannot be sanctioned under the First Amendment, Maryland constitutional protections, or the bill. An institution may also take other nonpunitive actions that foster resilience or achieve pedagogical goals.

Enforcement

The Attorney General or a person aggrieved by a violation of the bill may bring an action against a public institution of higher education and any employee acting in an official capacity who is responsible for the violation.

If a court finds that a violation occurred, the court must award the aggrieved individual at least \$500 for the initial violation, plus \$50 for each day, after service of the complaint, that the violation continues. The court may award additional relief as it deems appropriate, including compensatory damages, court costs, and attorney's fees. Total civil penalties in an action may not exceed \$100,000, excluding court costs and attorney's fees.

An action alleging a violation of the bill must be filed within one year after the alleged violation occurs. Each day that the alleged violation persists – as well as each day that a policy in violation of the bill remains in effect – constitutes a new day that the cause of action accrues for purposes of filing.

Current Law: The First Amendment to the U.S. Constitution and the Maryland Declaration of Rights protect the rights of freedom of speech, freedom of the press, freedom of religion, and freedom of association as well as the right to petition the government. The applicability of these rights is often established in court cases. This is particularly true with regard to institutions of higher education, as they have traditionally been treated as special cases.

The U.S. Supreme Court has defined three types of public forums: traditional public forums; designated or limited public forums; and nonpublic forums (*Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37 (1983)). And specifically, in 2005, the Fourth Circuit of the U.S. Court of Appeals held that the University of Maryland, College Park Campus is a limited public forum, a “special type of enclave” that is devoted to higher education (*Am. Civil Liberties Union v. Mote*, 423 F.3d 438 (4th Cir. 2005)). Thus, outsiders may be treated differently than members of the community in regard to free speech. In that case, the plaintiff was an outsider. An outsider was defined

as “persons or groups other than students, faculty, and staff, and not otherwise sponsored by a department or registered student organization.”

Thus, under current law, campuses are permitted to maintain policies that limit nonaffiliated individuals’ or entities’ access to use of campus facilities. For example, outsiders are required to reserve space in advance to engage in public speaking or distribute materials on campus, and priority is given to groups located on campus.

Inflammatory speech is also protected speech. The U.S. Supreme Court held, in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), that the government cannot punish inflammatory speech unless it intentionally and effectively provokes a crowd to immediately carry out violent and unlawful action. Very few cases have reached the U.S. Supreme Court to test these limits, and it remains a very high bar to meet. What many consider “hate speech” is also generally protected.

While expressive activities such as peaceful assemblies, protests, and distribution of literature are generally protected, public institutions may impose reasonable time, place, and manner restrictions consistent with First Amendment standards.

There is no comprehensive State statute governing expressive activity at public institutions of higher education. Instead, institutions establish policies governing expressive activities consistent with constitutional requirements. For example, The University System of Maryland (USM) Board of Regents has adopted systemwide [Freedom of Expression Principles and Guidelines](#) (last updated June 21, 2019) that affirm the importance of protecting free expression on campus while allowing institutions to impose content-neutral time, place, and manner restrictions and to take action against threats, unlawful harassment, or other unlawful conduct. St. Mary’s College of Maryland [permits](#) demonstrations, marches, picketing, leafleting, and other expressive activities but requires that such activities not unreasonably disrupt college operations, interfere with the expressive rights of others, endanger safety, or damage property and remain subject to content-neutral time, place, and manner restrictions.

State/ Local Fiscal Effect: To the extent that expressive activity increases on campuses of public institutions of higher education, security expenditures may increase. Although the bill designates any outdoor area on campus as a public forum, the bill limits that forum to members of the campus community, which may mitigate any increase in expressive activity and related security needs relative to a broader public forum. Indeed, Morgan State University and the University of Maryland, College Park Campus advise that the bill does not have any significant operational impact. Further, institutions may charge content- and viewpoint-neutral security fees for events that require a permit, which may offset some or all costs.

USM advises that, although the bill establishes a liability limit of \$100,000 per action, if multiple individuals or groups file separate actions, there is no *aggregate* limit on potential damages, which may increase expenditures significantly. This estimate assumes that institutions comply with the bill's requirements.

Expenditures may also increase for institutions to review and, as necessary, revise policies, permitting practices, and related procedures; however, these costs are likely minimal and absorbable.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Higher Education Commission; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of Legislative Services

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