**HB 516-FN - AS INTRODUCED**

2023 SESSION

23-0724
04/05

HOUSE BILL ***516-FN***

AN ACT relative to freedom of speech and association at public institutions of higher education.

SPONSORS: Rep. Popovici-Muller, Rock. 17; Rep. Hynes, Hills. 2; Rep. Alexander Jr., Hills. 29; Rep. L. Turcotte, Straf. 4; Rep. Lynn, Rock. 17; Rep. Read, Rock. 10; Rep. Soti, Rock. 35; Sen. Murphy, Dist 16

COMMITTEE: Education

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ANALYSIS

This bill establishes procedures governing freedom of speech and association at public institutions of higher education.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-0724
04/05

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT relative to freedom of speech and association at public institutions of higher education.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 New Chapter; Freedom of Speech and Association in Institutions of Higher Education. Amend RSA by inserting after chapter 188-I the following new chapter:

CHAPTER 188-J

FREEDOM OF SPEECH AND ASSOCIATION IN INSTITUTIONS OF HIGHER EDUCATION

188-J:1 Definitions:

I. "Benefit" means the recognition, registration, or use of facilities of the institution of higher education for meetings or speaking purposes; or the use of channels of communication of the same; or funding sources that are otherwise available to other student organizations at the public institution of higher education.

II. "Campus community" includes students, administrators, faculty and staff at the institution of higher education, and their invited guests.

III. "Materially and substantially disrupts" means when a person, with the intent to or with knowledge of doing so, significantly hinders another person's or group's expressive activity which occurs in a campus space reserved for such activity under the exclusive use or control of that particular person or group, prevents the communication of the message, or prevents the transaction of the business of a lawful meeting, gathering or procession by:

(a) Engaging in fighting, violent, or other unlawful behavior; or

(b) Physically blocking or using threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in an expressive activity. Conduct that "materially disrupts" shall not include conduct that is protected under the First Amendment to the United States Constitution or Part I, Article 22 of the New Hampshire constitution. Such protected conduct includes, but is not limited to, lawful protests in the outdoor areas of campus generally accessible to the members of the public, except during times when those areas have been reserved in advance for other events, or minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

IV. "Outdoor areas of campus" means the generally accessible outside areas of campus where members of the campus community are commonly allowed, such as grassy areas, walkways, or other similar common areas and shall not include outdoor areas where access is restricted from a majority of the campus community.

V. "Public institution of higher education" means any public technical institute, public junior college, public senior college or university, law school, medical, or dental school, public state college, or other agency of higher education as defined in state law.

VI. "Harassment" shall mean only that expression that is unwelcome, so severe, pervasive, and subjectively and objectively offensive, that a student is effectively denied equal access to educational opportunities or benefits provided by the public institution of higher education.

VII. "Student" means any person who is enrolled on a full-time or part-time basis in a public institution of higher education.

VIII. "Student organization" means an officially recognized group at a public institution of higher education, or a group seeking official recognition, comprised of admitted students that receive, or are seeking to receive, benefits through the public institution of higher education.

188-J:2 Freedom of Speech and Association at Public Institutions of Higher Education.

I. Expressive activities protected under the provisions of this chapter include, but are not limited to, any lawful verbal, written, audio-visual, or electronic means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speeches and guest speakers, distribution of literature, carrying signs, and circulating petitions.

II. The outdoor areas of campuses of public institutions of higher education in this state shall be deemed public forums for the campus community, and public institutions of higher education shall not create "free speech zones" or other designated areas of campus outside of which expressive activities are prohibited. A public institution of higher education may maintain and enforce reasonable time, place, and manner restrictions applicable to traditional public forums and designated public forums created by a public institution of higher education, provided those restrictions are narrowly tailored in service of a significant institutional interest only when such restrictions employ clear, published, content- and viewpoint-neutral criteria, and provide for ample alternative means of expression. Any such restrictions shall allow for members of the campus community to spontaneously and contemporaneously assemble and distribute literature. Nothing in this section shall be interpreted as limiting the right of student expression elsewhere on campus.

III. Any person who wishes to engage in non-commercial expressive activity on campus shall be permitted to do so freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the public institution of higher education, subject only to the requirements of this chapter.

IV. Nothing in this section shall be interpreted as preventing public institutions of higher education from prohibiting, limiting, or restricting expression that the First Amendment does not protect such as true threats, expression directed to provoke imminent lawless actions and likely to produce it, or prohibiting harassment as defined in RSA 188-J:1, VI.

188-J:3 Freedom of Association and Nondiscrimination Against Students and Student Organizations. No public institution of higher education shall deny a religious, political, or

ideological student organization any benefit or privilege available to any other student organization, or otherwise discriminate against such an organization, based on the expression of the organization, including any requirement that the leaders or members of such organization:

I. Affirm and adhere to the organization's sincerely held beliefs;

II. Comply with the organization's standards of conduct; or

III. Further the organization's mission or purpose, as defined by the student organization

188-J:4 Remedies. Any person or student association aggrieved by a violation of this chapter may bring an action against the public institution of higher education and its employees acting in their official capacities, responsible for the violation and seek appropriate relief, including, but not limited to, injunctive relief, monetary damages, reasonable attorneys' fees, and court costs. Any person or student organization aggrieved by a violation of this chapter may assert such violation as a defense or counter claim in any disciplinary action or in any civil or administrative proceedings brought against such student or student organization. Nothing in this section shall be interpreted to limit any other remedies available to any person or student organization.

188-J:5 Statute of Limitations. Notwithstanding RSA 508, a person shall be required to bring suit for violation of this chapter not later than one year after the day the cause of action accrues. For purposes of calculating the one-year limitation period, each day that the violation persists, and each day that a policy in violation of this chapter remains in effect, shall constitute a new day that the cause of action has accrued.

188-J:6 Immunity. The state hereby waives immunity under the Eleventh Amendment of the United States Constitution and consents to suit in a federal court for lawsuits arising out of this chapter. A public institution of higher education that violates this chapter shall not be immune from suit or liability for the violation.

188-J:7 Severability. If any provision of this chapter or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this chapter and the application of the provision to any other person or circumstance shall not be affected.

2 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-0724
1/5/23

**HB 516-FN- FISCAL NOTE**
**AS INTRODUCED**

AN ACT relative to freedom of speech and association at public institutions of higher education.

**FISCAL IMPACT: [ X ] State [ ] County [ ] Local [ ] None**

| | Estimated Increase / (Decrease) | | | |
|---|---|---|---|---|
| **STATE:** | **FY 2023** | **FY 2024** | **FY 2025** | **FY 2026** |
| **Appropriation** | $0 | $0 | $0 | $0 |
| **Revenue** | $0 | $0 | $0 | $0 |
| **Expenditures** | $0 | Indeterminable | Indeterminable | Indeterminable |
| ***Funding Source:*** | [ ] General [ ] Education [ ] Highway [ X ] Other - University System of NH / Community College System of NH | | | |

**METHODOLOGY:**

This bill, assumed to be effective in FY 2024, establishes procedures governing freedom of speech and association at public institutions of higher education. The University System of New Hampshire (USNH) states its operating expense may increase to defend violation complaints and to ensure campus safety in a climate of spontaneous assembly for expressive activity occurring any time and at any outdoor space on campus.

The Community College System of New Hampshire (CCSNH) states it is not fully clear what an institution's authority or responsibility would be under this bill and therefore cannot estimate this bill's impact on CCSNH expenditures. However, CCSNH has identified the following areas where additional costs could arise:

- Increased institutional costs from potentially having to defend against instances where a person or group feels they have been aggrieved by the institution relative to the requirements in the bill.
- A student or student organization could assert a violation of this section (and seek damages, attorney's fees, and costs) as a defense or counter claim in a disciplinary or administrative proceeding.
- If this bill affects institutions' ability to limit expressive activity outside of regular operating hours, it could increase staffing costs through the need to pay overtime.
- In any instance where an expressive activity or event presents a public safety concern there could be an additional need to draw upon local law enforcement services.

**AGENCIES CONTACTED:**

University System of New Hampshire and Community College System of New Hampshire