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## BILL ANALYSIS



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Senate Bill 350 (as introduced 5-2-17)  
Sponsor: Senator Patrick J. Colbeck  
Committee: Judiciary

Date Completed: 5-16-17

**CONTENT**

**The bill would amend the State School Aid Act to do the following:**

- **Require each public university and community college that received an appropriation under the Act to participate in the formation of a Higher Education Committee on Free Expression in the Department of Education.**
- **Prescribe the membership of the Committee.**
- **Require the Committee to issue an annual report on matters related to free speech and expression within the State's public universities and community colleges.**
- **State legislative intent that each public university and community college that received an appropriation under the Act develop and adopt a policy on free expression, which would have to contain various statements listed in the bill; include information related to free speech and expression in freshman orientation programs; and regulate student and expressive activity, if at all, in the manner described by the bill.**

Higher Education Committee on Free Expression

The bill would add Section 210g to provide that, for the purpose of coordinating efforts to promote expressive freedom, each university and each community college that received an appropriation under the Act would have to participate in the formation and direction of a Higher Education Committee on Free Expression. The Committee would consist of 12 members, appointed as follows:

- Five by the boards of trustees of the community colleges.
- Four by the governing boards of the public universities.
- One by the Governor.
- One by the Senate Majority Leader.
- One by the Speaker of the House of Representatives.

The members would have to serve for two years, and then be replaced by 12 new members appointed in the same manner to serve for the next two years, with the representatives from the community colleges and universities appointed on a rotating basis.

By September 1 of each year, the Committee would have to provide a written report explaining all of the following to the public, the board of trustees of each community college district, the governing board of each public university, the Governor, and the Legislature:

- Barriers to or disruptions of free expression within the State's public universities and community colleges.
- The administrative handling and discipline relating to those disruptions and barriers.
- Substantial difficulties, controversies, or successes in maintaining a posture of administrative and institutional neutrality with regard to political or social issues.
- Assessments, criticisms, commendations, or recommendations the Committee saw fit to report.

### Legislative Intent

The bill would add Sections 210f and 275c to state, "It is the intent of the legislature that each community college that receives an appropriation in section 201..." and "each public university that receives an appropriation in section 236 do all of the following:

- (A) Develop and adopt a policy on free expression that contains at least... [the statements set forth in the bill].
- (B) Participate in the formation and direction of the higher education committee on free expression described in section 210g.
- (C) Include in freshmen orientation programs information for students describing the policies and regulations regarding free expression consistent with this section.
- (D) Regulate student speech and expressive activity, if at all, in a manner consistent with this section, and limit restrictions to student speech or expressive activity to reasonable time, place, and manner restrictions consistent with... [several of the required statements] and to speech or activity that is not protected by the First Amendment...".

Speech or activity not protected by the First Amendment would include speech or activity that: a) was prohibited by State or Federal law; b) a court had deemed unprotected defamation; c) constituted peer-on-peer sexual harassment or quid pro quo sexual harassment; d) constituted an unjustifiable invasion of privacy or confidentiality not involving a matter of public concern; e) constituted a true threat; or f) unlawfully disrupted the function of the community college or university.

"Peer-on-peer harassment" would mean conduct of a student targeting another student that is so severe, pervasive, and objectively offensive that it effectively deprives the targeted student of access to the educational opportunities or benefits provided by the community college or university.

"Quid pro quo sexual harassment" would mean words, conduct, or other means of explicitly or implicitly conditioning a student's participation in an educational program or activity or basing an education decision on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature.

"True threats" would be defined as a statement by which the speaker intentionally communicates a serious expression of an intent to commit an act of unlawful violence on a particular individual or group of individuals.

### Free Speech Policy Statements

The statements of legislative intent in the bill would require a university's or community college's policy on free expression to include a statement that the university's or college's "primary function is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate, and that, to fulfill this

function, the university [or community college] will strive to ensure the fullest degree of intellectual freedom and free expression".

The policy would have to include a statement that, "[I]t is not the proper role of the university [or community college] to shield individuals from speech protected by the First Amendment [to the United States Constitution], without exception, even if they find the ideas and opinions expressed unwelcome, disagreeable, or even deeply offensive."

The policy would have to include statements "assuring that students and faculty are free to discuss any problem that presents itself" and "are permitted to assemble and engage in spontaneous expressive activity as long as the activity is not unlawful and does not materially and substantially disrupt the functioning of the university [or community college], as the First Amendment permits and within the limits of reasonable viewpoint- and content-neutral restrictions on time, place, and manner of expression". For these purposes, "[A] viewpoint- and content-neutral restriction of expression is reasonable only if it is consistent with this section, is necessary to achieve a significant institutional interest, is clearly written and published, and provides ample alternative means of expression."

The policy would have to include a statement "assuring any person lawfully present on campus the right to protest or demonstrate there but making clear that protests and demonstration that infringe on the rights of others to engage in or listen to expressive activity are not permitted and are subject to sanction. A statement that complies with this...does not prohibit professors or other instructors from maintaining order in the classroom."

The policy would have to include a statement "assuring that the university's [or community college's] campuses are open to any speaker whom students, student groups, or faculty members have invited..., and that the public areas of campuses are traditional public forums, open on the same terms to any speaker".

The policy would have to include provisions "setting forth a range of disciplinary sanctions for anyone under the jurisdiction of the university [or community college] who interferes with the free expression of others", and a statement "warning that any student who has twice been found responsible for infringing on the expressive rights of others will be suspended for a minimum of 1 year or expelled".

The policy would have to include provisions "assuring that, in a disciplinary case against a student arising out of the student's expressive conduct, the student is entitled to a disciplinary hearing under published procedures, including at least all of the following procedures:

- (A) The right to receive advanced written notice of all charges.
- (B) The right to review the evidence in support of all charges.
- (C) The right to confront witnesses against the student.
- (D) The right to present a defense.
- (E) The right to call witnesses.
- (F) The right to have the case decided by an impartial arbiter or panel.
- (G) The right of appeal.
- (H) The right to active assistance of counsel if suspension for longer than 30 days or expulsion is a potential penalty."

The policy would have to include a statement "assuring that the university [or community college] will strive to remain neutral, as an institution, on the public policy controversies of the day and will not take any action, as an institution, on the public policy controversies of the day that would require students or faculty to publicly express a given view of social policy".

The policy would include a statement "assuring that the policy on free expression adopted... [under the bill] supersedes all prior provisions of university [or community college] policy or regulation to the extent that those prior provisions are inconsistent with the adopted policy on free expression and that the university [or community college] will remove or revise any inconsistent prior provision of policy or regulation to ensure compatibility of its policies and regulations with the policy on free expression...".

Proposed MCL 388.1810f et al.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would have an indeterminate impact on the State and local units of government (community college districts). Unknown costs include the costs of implementing the provisions in the legislative intent language, including developing and adopting policies on free expression, conducting disciplinary hearings, and permitting the assistance of counsel. Costs related to the Higher Education Committee on Free Expression in the Department of Education would depend on the number of times the Committee met and the amount of support provided by the Department.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.