HOUSE BILL 1305-FN

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


COMMITTEE: Education

ANALYSIS

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

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

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,
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 members of 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, provided that any such activity is compliant with the institution's reasonable time, place and manner restrictions. Nothing in this section shall be interpreted as limiting the right of student expression elsewhere on campus.

III. Subject to reasonable time, place and manner restrictions, any member of the campus community 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 behavior, conduct, or expression that:

(a) Violates any law and could be subject to criminal action.

(b) Is unprotected by the free speech provisions of the United States and New Hampshire constitutions, including but not limited to true threats and expression directed to provoke imminent lawless actions.

(c) Constitutes 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 organization 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. Damages awarded in an action brought under this chapter in 2025 shall not exceed $20,000, provided that the cap shall be annually adjusted thereafter based on the percentage change in the Consumer Price Index for All Urban Consumers, Northeast Region as published by the United States Department of Labor. 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 January 1, 2025.
AN ACT relative to freedom of speech and association at public institutions of higher education.

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

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• Does this bill provide sufficient funding to cover estimated expenditures? [X] See Below
• Does this bill authorize new positions to implement this bill? [X] N/A

METHODOLOGY:

This bill creates a set of policies for expressive activity on public college campuses involving students, administrators, faculty, and staff at the institution of higher education, and their invited guests, and contains new language with respect to membership in student organizations. It also creates a new set of remedies for individuals or organizations who assert themselves to have been aggrieved by violations of the policies.

Community College System of New Hampshire

The Community College System of New Hampshire (CCSNH) states this bill could result in new costs as follows:

- Cost for legal consultation to reconcile existing CCSNH policies about freedom of expression and organizational membership with the new language.
- Cost of preparing for and engaging in litigation brought about by any person or organization that asserts themselves to be aggrieved under the provisions of this bill.
- Potential cost related to monetary damages, attorney fees, and court costs.
- Potential cost to CCSNH for security, maintenance or other operations related to the granting of injunctive relief such that CCSNH must be prepared for and manage activities on campuses to ensure the safety of CCSNH property, employees, as well as those participating or observing.
CCSNH estimates the legal consultation to assess language of this bill against current policies would be a one-time cost in FY 2025 of $4,000. It is unable to provide estimates of the other potential costs associated with this bill.

University System of New Hampshire
The University System of New Hampshire (USNH) states operating expenses may increase to ensure campus safety in a climate of spontaneous assembly for expressive activity occurring any time and at any outdoor space on campus and to cover the costs of defending RSA violation complaints, potential damages, and potential opposing attorney fees. Ultimately, any impact on USNH from this bill is indeterminable.

AGENCIES CONTACTED:
Community College System of New Hampshire and University System of New Hampshire