

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1202, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Dahm

Dahm-EB-FS-Req#3522
3/13/2018 12:11 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 1202

By: Dahm of the Senate

and

Dunlap of the House

FLOOR SUBSTITUTE

[higher education - Oklahoma State Regents for
Higher Education - policy - report - publication of
policies - regulations - construction - circumstances
- court - relief, costs, fees and damages upon
certain finding - time limit - codification -
~~effective date -~~
emergency]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 2120 of Title 70, unless there
is created a duplication in numbering, reads as follows:

A. The Oklahoma State Regents for Higher Education shall
develop and adopt a policy on free expression that states at least
the following:

1. The primary function of each institution within The Oklahoma
State System of Higher Education is the discovery, improvement,

1 transmission and dissemination of knowledge by means of research,
2 teaching, discussion and debate. To fulfill this function, the
3 institution shall strive to ensure the fullest degree of
4 intellectual freedom and free expression;

5 2. It is not the proper role of any institution within The
6 Oklahoma State System of Higher Education to shield individuals from
7 speech protected by the First Amendment including, without
8 limitation, ideas and opinions they find unwelcome, disagreeable or
9 deeply offensive;

10 3. Students and faculty have the freedom to discuss any problem
11 that presents itself, as the First Amendment permits and when in the
12 generally accessible public outdoor areas of campus, within the
13 limits of reasonable viewpoint and content-neutral restrictions on
14 time, place and manner of expression that are consistent with this
15 act and that are in furtherance of a significant institutional
16 interest, provided that the restrictions are clear, published and
17 provide ample alternative means of expression. Students and faculty
18 shall be permitted to assemble and engage in spontaneous expressive
19 activity as long as such activity is not unlawful and does not
20 materially and substantially disrupt the functioning of the
21 institution, subject to the requirements of this act;

22 4. Any person lawfully present on an institution's campus may
23 protest or demonstrate on the campus. The statement shall make
24 clear that protests and demonstrations that materially and

1 substantially infringe upon the rights of others to engage in or
2 listen to expressive activity shall not be permitted and shall be
3 subject to sanction. For the purposes of this act, "materially and
4 substantially infringe" means when a person, with the intent to or
5 with knowledge of doing so, significantly hinders another person's
6 or group's expressive activity, prevents the communication of the
7 message or prevents the transaction of the business of a lawful
8 meeting, gathering or procession by engaging in fighting, violent or
9 seriously disruptive behavior or physically blocking or
10 significantly hindering any person from attending, listening to,
11 viewing or otherwise participating in an expressive activity.

12 "Materially and substantially infringe" shall not include conduct
13 that is protected under the First Amendment of the United States
14 Constitution. Protected conduct includes but is not limited to
15 lawful protests and counter-protests in the outdoor areas of campus
16 generally accessible to the members of the public, except during
17 times when those areas have been reserved in advance for other
18 events, or minor, brief or fleeting nonviolent disruptions of events
19 that are isolated and short in duration. Professors and other
20 instructors shall not be prohibited from maintaining order in the
21 classroom;

22 5. An institution's campus is open to any speaker whom
23 students, student groups or members of the faculty have invited;
24

1 6. The public areas on an institution's campus are traditional
2 public forums, open on the same terms to any speaker;

3 7. That the institution shall strive to remain neutral, as an
4 institution, on the public policy controversies of the day and may
5 not take action, as an institution, on the public policy
6 controversies of the day in such a way as to require students or
7 faculty to publicly express a given view of social policy; and

8 8. That this statement supersedes and nullifies any prior
9 provisions in the policies and regulations of the institution that
10 restrict speech on campus and are, therefore, inconsistent with this
11 statement on free expression. The institution shall remove or
12 revise any such provisions in its policies and regulations to ensure
13 compatibility with the provisions of this subsection.

14 B. The State Regents shall submit a report to the Governor, the
15 President Pro Tempore of the Senate and the Speaker of the House of
16 Representatives by September 1 of each year. The report shall also
17 be posted on the website for the State Regents. The report shall
18 include:

19 1. A description of any barriers to or disruptions of free
20 expressions within the institutions;

21 2. A description of the administrative handling and discipline
22 relating to the disruptions or barriers, without revealing those
23 students' personally identifiable information;

1 3. A description of substantial difficulties, controversies or
2 successes in maintaining a posture of administrative and
3 institutional neutrality with regard to political or social issues;
4 and

5 4. Any assessments, criticisms, commendations or
6 recommendations the State Regents see fit to include.

7 C. All institutions within The Oklahoma State System of Higher
8 Education shall make public in their handbooks, on their websites
9 and through their orientation programs for students the policies,
10 regulations and expectations of students regarding free expression
11 on campus consistent with this act.

12 SECTION 2. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 2120.1 of Title 70, unless there
14 is created a duplication in numbering, reads as follows:

15 A. All institutions within The Oklahoma State System of Higher
16 Education shall develop materials, programs and procedures to ensure
17 that those persons who have responsibility for discipline or
18 education of students, such as administrators, campus police
19 officers, residence life officials and professors, understand the
20 policies, regulations and duties of The Oklahoma State System of
21 Higher Education regarding free expression on campus consistent with
22 this act.

23 B. The State Regents and institutions within The Oklahoma State
24 System of Higher Education, subject to the approval of the State

1 Regents, may adopt regulations to further the purposes of the
2 policies adopted pursuant to this act. Nothing in this act shall be
3 construed to prevent institutions from regulating student speech or
4 activity that is prohibited by law. Except as further limited by
5 this act, institutions shall be allowed to restrict student
6 expression only for expressive activity not protected by the First
7 Amendment, including:

- 8 1. Violations of state or federal law;
- 9 2. Expression that a court has deemed unprotected defamation;
- 10 3. Harassment, including:

11 a. "peer-on-peer harassment," which means conduct
12 directed by a student towards another individual
13 student on the basis of the student's membership or
14 perceived membership in a protected class that is so
15 severe, pervasive and objectively offensive that it
16 effectively deprives the victim of access to the
17 educational opportunities or benefits provided by the
18 university,

19 b. "quid pro quo sexual harassment," which means
20 explicitly or implicitly conditioning a student's
21 participation in an education program or activity or
22 basing an educational decision on the student's
23 submission to unwelcome sexual advances, requests for
24

1 sexual favors or other verbal, nonverbal or physical
2 conduct of a sexual nature,

3 c. "true threats," which means statements meant by the
4 speaker to communicate a serious expression of an
5 intent to commit an act of unlawful violence to a
6 particular individual or group of individuals, and

7 d. an action that unlawfully disrupts the function of the
8 institutions.

9 C. An institution within The Oklahoma State System of Higher
10 Education may restrict expressive conduct in the generally
11 accessible public outdoor areas of its campus only if it
12 demonstrates that the restriction:

13 1. Is necessary to achieve a significant governmental interest;

14 2. Is in furtherance of a significant governmental interest;

15 3. Leaves open ample alternative means to engage in the
16 expressive conduct; and

17 4. Provides for spontaneous assembly and distribution of
18 literature.

19 D. 1. The following persons may bring action against the
20 institution of higher education in a court of competent jurisdiction
21 to enjoin any violation of this act or to recover reasonable court
22 costs and reasonable attorney fees:

23 a. the Attorney General of the State of Oklahoma, or
24

b. a person whose expressive rights have been violated
due to a violation of this act.

2. In an action brought pursuant to this subsection, if the
court finds that a violation of this act occurred, the court shall
award the aggrieved person injunctive relief for the violation and
shall award reasonable court costs and reasonable attorney fees.
The court shall also award damages of One Thousand Dollars
(\$1,000.00) or actual damages, whichever is higher.

3. A person shall bring an action for a violation of this act
within one year after the date the cause of action accrues. For the
purpose of calculating the one-year limitation period, each day that
the violation persists or each day that a policy in violation of
this act remains in effect constitutes a new violation of this act
and shall be considered a day that the cause of action has accrued.

~~SECTION 3. This act shall become effective July 1, 2018.~~

~~SECTION 4. It being immediately necessary for the preservation
of the public peace, health or safety, an emergency is hereby
declared to exist, by reason whereof this act shall take effect and
be in full force from and after its passage and approval.~~

56-2-3522

EB

3/13/2018 12:11:09 PM