

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

348B0336

SENATE ENGROSSED NO. **HB 1087** - 3/7/2019

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Peterson (Sue), Haugaard, and Qualm and Senators Stalzer, Greenfield (Brock), Langer, and Maher

1 FOR AN ACT ENTITLED, An Act to promote free speech and intellectual diversity at certain
2 institutions of higher education.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 13-53 be amended by adding a NEW SECTION to read:

5 As used in this Act:

6 (1) "Expressive activity," protected under the provisions of this Act includes any lawful
7 noncommercial verbal or written means by which one person communicates ideas to
8 another, and includes peaceful assembly, protests, speeches, distribution of literature,
9 the carrying of signs, and the circulation of petitions; and

10 (2) "Intellectual diversity," denotes a learning environment that exposes students to and
11 encourages exploration of a variety of ideological and political perspectives.

12 Section 2. That chapter 13-53 be amended by adding a NEW SECTION to read:

13 The Board of Regents shall require each institution under its control to maintain a
14 commitment to the principles of free expression and encourage the timely and rational



1 discussion of topics in an environment that is intellectually and ideologically diverse. Neither
2 the Board of Regents nor any institution under its control may attempt to shield individuals from
3 constitutionally protected speech, including ideas and opinions they find offensive, unwise,
4 immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.

5 Section 3. That chapter 13-53 be amended by adding a NEW SECTION to read:

6 Any outdoor area within the boundaries of a public institution of higher education
7 constitutes a designated public forum for the benefit of students, faculty, administrators, other
8 employees, and their invited guests, to engage in expressive activity, unless access to the area
9 is otherwise properly restricted.

10 A public institution of higher education may maintain and enforce lawful reasonable time,
11 place, and manner restrictions regarding the use of the outdoor areas described in this section,
12 if such restrictions are clear, narrowly tailored in the service of a significant institutional
13 interest, published, content- and viewpoint- neutral, and provide alternate means of engaging
14 in the expressive activity. Any such restrictions shall allow students, faculty, administrators, and
15 other employees to spontaneously and contemporaneously assemble, as long as their conduct
16 is not unlawful and does not materially and substantially disrupt the functioning of the
17 institution. Nothing in this section shall be interpreted as limiting the right of students, faculty,
18 administrators, and other employees to engage in protected expressive activity elsewhere within
19 the boundaries of the institution. An institution may not designate any area within its boundaries
20 as a free speech zone or otherwise restrict expressive activities to particular areas within its
21 boundaries in a manner that is inconsistent with this section.

22 Section 4. That chapter 13-53 be amended by adding a NEW SECTION to read:

23 A public institution of higher education, its faculty, administrators, and other employees,
24 may not discriminate against any student or student organization based on the content or

1 viewpoint of their expressive activity. Funds allocated to student organizations shall be
2 distributed in a nondiscriminatory manner in accordance with applicable state and federal
3 authority. Access to, and use of, facilities at a public institution of higher education shall be
4 equally available to all student organizations, regardless of the ideological, political, or religious
5 beliefs of the organization.

6 An institution may not prohibit an ideological, political, or religious student organization
7 from requiring that its leaders or members of the organization affirm and adhere to the
8 organization's sincerely held beliefs, comply with the organization's standards of conduct, or
9 further the organization's mission or purpose, as defined by the organization.

10 Section 5. That chapter 13-53 be amended by adding a NEW SECTION to read:

11 On or before December first of each year, the Board of Regents shall prepare and submit to
12 the Governor and each member of the legislature a report that:

- 13 (1) Sets forth all actions taken by each institution to promote and ensure intellectual
14 diversity and the free exchange of ideas; and
15 (2) Describes any events or occurrences that impeded intellectual diversity and the free
16 exchange of ideas.