HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 233 Postsecondary Education
SPONSOR(S): Post-Secondary Education & Lifelong Learning Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Post-Secondary Education & Lifelong Learning Subcommittee		Wolff	Kiner

SUMMARY ANALYSIS

Intellectual freedom and viewpoint diversity are essential to the education of Florida's college and university students. Research shows that without support for the principles of intellectual freedom and viewpoint diversity students at colleges and universities may self-censor or feel unable to express their opinions to faculty or their classmates.

To assess the status of intellectual freedom and viewpoint diversity, the bill requires the State Board of Education (SBE) and Board of Governors of the State University System (BOG) to select or create a survey to be administered by all Florida College System (FCS) institutions and state universities annually. Beginning September 1, 2022, the results of this survey are to be compiled by the SBE and the BOG, respectively, and published each September. Additionally, to encourage intellectual freedom and viewpoint diversity, the bill prohibits the SBE, the BOG, FCS institutions, and state universities from shielding students, faculty, or staff from protected free speech.

The bill authorizes the recording, for specified purposes, of video and audio in classrooms at Florida's public institutions of higher education, while clarifying that the nonconsensual recording of video and audio in classrooms is permissible. Furthermore, faculty research, lectures, writings, and commentary, whether published or unpublished, are protected expressive rights. Any person injured by the unauthorized publishing of video and audio can seek civil remedy including injunctive relief and damages.

Providing further protections for students, the bill requires that state university student government associations provide elected or appointed officers a direct appeal, with no conditions precedent, to a senior university administrator of any discipline, suspension, or removal from office. Furthermore, all FCS institutions and state universities are required to adopt student codes of conduct that meet a set of minimum due process protections including, but not limited to, a presumption of innocence for accused students, a burden of proof that must be carried by the institution, and a right to an impartial hearing officer.

The fiscal impact of the bill is indeterminate.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Operation of State Universities and Florida College System Institutions

The Board of Governors of the State University System (BOG) is required to operate, regulate, control, and be fully responsible for the management of the state university system.[1] The State Board of Education (SBE) is responsible for supervising the state college system.[2] Each state university is administered by, and each Florida College System (FCS) institution is governed by, distinct local boards of trustees.[3]

Constitutional Guarantees of Free Speech and Expression

Speech and religious expression by students and teachers or professors is protected by the First Amendment of the United States Constitution and Article I of the State Constitution.[4] The government or a public actor may nevertheless regulate an individual's freedom of speech or expression within constitutional limits.[5] The ability to regulate expression on government-owned property is determined, in part, by the characterization of the type of public forum created on government property.[6]

There are three types of public forums: traditional public forums, limited public forums, and closed public forums.[7]

Traditional Public Forum

A "traditional" or "open public forum" is a place with a longstanding tradition of freedom of expression, such as a public park, sidewalk, or street corner.[8] In an open public forum, the government may only impose content-neutral restrictions on the time, place, and manner of expression.[9]

Limited Public Forum

A limited public forum is a venue opened only for certain groups or topics.[10] A public actor may regulate the subject area content or categories of organizations allowed in limited public forums but may not restrict expression based on a favorable or unfavorable viewpoint of a speaker or organization.[11]

Closed Public Forum

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[1] Art. IX, s. 7(d), Fla. Const.
[2] Art. IX, s. 8(b), Fla. Const.
[3] Art. IX, ss. 7(c) and 8(c), Fla. Const.
[4] U.S. Const., Amend. 1; and Art. I, s. 4, Fla. Const.
[5] *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992).
[6] *Id*. at 678-79.
[7] *Id*.
[8] *Perry Educ. Ass'n. v. Perry Local Educators Ass'n*, 460 U.S. 37, 45-46 (1992).
[9] *Id*.
[10] *Id*.
[11] *Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009).

A "closed public forum" is a place that is not traditionally open to public expression, such as the teacher's school mailroom or a military base. Restrictions on speech in a closed public forum may only be reasonable and may not be designed to silence an unfavorable viewpoint.[12]

Free Speech on Public University and College Campuses

The United States Supreme Court has recognized that "the college classroom with its surrounding environs is peculiarly the 'marketplace of ideas.'"[13] Further, "'[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools[,]' . . . and we break no new constitutional ground in reaffirming this Nation's dedication to safeguarding academic freedom."[14]

Notably, there is a distinction between the public expression of adults, which includes most college students, and the public expression of minors, which includes most high school students; college students have wider latitude in expressing themselves in public places than minors have in public schools.[15]

The United States Supreme Court has characterized public universities and college campuses generally as limited public fora for purposes of regulating speech. Once the forum is created and opened, the university or college is forbidden from exercising any type of viewpoint-based discrimination.[16] In addition, outdoor areas of campus at public institutions of higher education in Florida have been specifically designated by law as traditional public forums.[17]

Expressive activities protected on campuses of public institutions of higher education include, but are not limited to, any lawful oral or written communication of ideas, including all forms of peaceful assembly, protests, and speeches; distributing literature; carrying signs; circulating petitions; and the recording and publication, including the Internet publication, of video or audio recorded in outdoor areas of campus. Protected expressive activities do not include commercial speech.[18] The law provides for a cause of action against a public institution that violates an individual's protected expressive rights.[19]

Intellectual Freedom and Viewpoint Diversity in Higher Education

All state universities and FCS institutions in Florida are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (Commission).[20] The Commission requires member institutions to preserve intellectual and academic freedom[21] and asserts that "[t]he essential role of institutions of higher education is the pursuit and dissemination of knowledge. Academic freedom respects the dignity and rights of others while fostering intellectual freedom of faculty to teach, research, and publish. Responsible academic freedom enriches the contributions of higher education to society."[22]

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[12] *Perry*, 460 U.S. 37.
[13] *Healy v. James*, 408 U.S. 169, 180, 187 (1972).
[14] *Id*. at 180-81 (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).
[15] *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682-83 (1986).
[16] *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).
[17] Section 1004.097(3)(c), F.S.
[18] Section 1004.097(3)(a), F.S. Commercial speech is expression related solely to the economic interests of the speaker and its audience. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 561 (1980).
[19] Section 1004.097(4), F.S.
[20] Commission on Colleges of the Southern Association of Colleges and Schools, *Accredited and Candidate List* (May 2020), *available at* https://sacscoc.org/app/uploads/2019/11/Institutionswebmemlist.pdf (last visited Jan. 15, 2021).
[21] Southern Association of Colleges and Schools, *The Principles of Accreditation: Foundations for Quality Enhancement* (Dec. 2017), at principles 6.1 and 6.4, *available at* https://sacscoc.org/app/uploads/2019/08/2018PrinciplesOfAcreditation.pdf (last visited Feb. 9, 2021).
[22] Southern Association of Colleges and Schools, *Resource Manual for the Principles of Accreditation: Foundations for Quality Enhancement* (2018), at 53, *available at* https://www.usf.edu/system/documents/system-consolidation/referential_guiding_documents/sacscoc-resource-manual-section-06-faculty.pdf (last visited Feb. 9, 2021).

In January 2015, the Committee on Freedom of Expression at the University of Chicago produced a free speech policy statement (referred to as the "Chicago Statement") that affirmed the centrality of unfettered debate to the university's mission.[23] The statement provided in part:

> [I]t is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The Chicago Statement continues a tradition of institutions and organizations affirming the importance of the free expression and sharing of ideas on college and university campuses.[24]

The 2017 National Survey of Student Engagement revealed that most students surveyed (64 percent) felt that postsecondary coursework generally respected the expression of diverse ideas, and that the postsecondary institution generally demonstrated a commitment to diversity (71 percent).[25] This was reflected when specific forms of diversity were considered, such as gender, religious affiliation, or disability status. When political affiliation was considered, only half of students surveyed felt their postsecondary institution was generally supportive of different political ideas.[26]

The Campus Free Expression Act became Florida law in 2018. [27] Under the law, outdoor areas of campus are considered traditional public forums for individuals, organizations, and guest speakers. A public institution of higher education may create and enforce restrictions that are reasonable and content-neutral on time, place, and manner of expression and that are narrowly tailored to a significant institutional interest. Restrictions must be clear and published and must provide for ample alternative means of expression.[28] A public institution of higher education may not otherwise designate any area of campus as a free-speech zone or create policies restricting expressive activities to a particular outdoor area of campus.[29] A person whose expressive rights are violated may bring an action against a public institution of higher education in a court of competent jurisdiction to obtain declaratory and injunctive relief, reasonable court costs, and attorney fees.[30]

In April of 2019, the president of the state university system, all twelve state university presidents, and the chair of the FCS Council of Presidents signed resolutions affirming their commitment to providing for free expression on campus.[31] FCS Institutions and state universities further acknowledge their

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[23] University of Chicago, *Report of the Committee on Free Expression* (2015), *available at* https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf (last visited Jan. 13, 2021).

[24] *See* American Council on Education, *Statement on Academic Rights and Responsibilities* (June 23, 2005), *available at* https://www.acenet.edu/Documents/Statement-on-Academic-Rights-and-Responsibilities-2005.pdf (last visited Feb. 8, 2021); American Association of University Professors, *1940 Statement of Principles on Academic Freedom and Tenure* (1940), *available at* https://www.aaup.org/file/1940%20Statement.pdf (last visited Feb. 8, 2021).

[25] National Survey of Student Engagement, *2017 Topical Module: Inclusiveness and Engagement with Cultural Diversity*, *available at* https://scholarworks.iu.edu/dspace/bitstream/handle/2022/23392/NSSE_2017_Annual_Results.pdf?sequence=1&isAllowed=y (last visited Jan. 15, 2021).

[26] *Id*.

[27] Section 6, ch. 2018-4, L.O.F.

[28] Section 1004.097(3)(c), F.S.

[29] Section 1004.097(3)(d), F.S.

[30] Section 1004.097(4), F.S.

[31] William Mattox, The James Madison Institute, *Combatting 'Idea Suppression' How Florida Universities Can Continue their Rise to National Prominence* (2020), https://www.jamesmadison.org/wp-content/uploads/2020/10/PolicyBrief_CampusSpeech_Oct2020_v02.pdf (last visited Jan. 14, 2021) [hereinafter *Combating Idea Suppression*]; Executive Office of the Governor, *Governor Ron DeSantis Calls on State Colleges and Universities to Adopt Free Speech Resolution* (Apr. 15, 2019), *available at* https://www.flgov.com/2019/04/15/governor-ron-desantis-calls-on-state-colleges-and-universities-to-adopt-free-speech-resolution/.

responsibility to foster and protect faculty rights to intellectual freedom in their collective bargaining agreements with faculty unions.[32]

In 2020, according to the Foundation for Individual Rights in Education (FIRE) only three out of the eleven state universities in Florida that FIRE evaluated had policies that did not inhibit free expression.[33] A national survey revealed, in part, that:

- 22 percent of students would have felt very uncomfortable publicly disagreeing with a professor about a controversial topic;
- 29 percent of students felt that the college administration did not make it clear that free speech was protected on campus;
- 60 percent of students had felt they could not express their opinion on a subject because of how students, a professor, or the administration would respond; and
- 60 percent of students could recall at least one time during their college experience when they did not share their perspective for fear of how others would respond. Students who identified as Conservative were more likely to report a prior self-censorship incident (72 percent for Conservative students, 55 percent for Liberal students). [34]

In March 2020, the University of North Carolina at Chapel Hill (UNC) published the results of research into free expression on UNC's campus.[35] The conclusions of the research were based on a voluntary survey of all UNC undergraduates and in-depth focus group interviews with members of three politically active student organizations.[36] The UNC research found that students across political perspectives, worried about how students and faculty will respond to their political views, engaged in self-censorship.[37]

In November 2020, the South Dakota Board of Regents submitted its annual report on "intellectual diversity and the free exchange of ideas" as required by state law enacted in 2019.[38] The survey conducted by all of the universities under the Board of Regents reflected that 67.1 percent of respondents did not feel silenced at all from sharing their views.[39] However, a quarter of respondents reported not feeling comfortable expressing their political views with faculty.[40]

Nonconsensual Interception of Communications

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[32] *See, e.g., Tallahassee Community College and United Faculty of Florida 2020-2021* (Oct. 15, 2020), *available at* https://blogs.tcc.fl.edu/labor-negotiations/wp-content/uploads/sites/13/2020/10/TCC-UFF_2020-21_FINAL.pdf (last visited Feb. 8, 2021); *Collective Bargaining Agreement: The Florida State University Board of Governors and the United Faculty of Florida General Faculty Bargaining Unit 2019-2022* (Oct. 30, 2020), *available at* https://hr.fsu.edu/sites/g/files/upcbnu2186/files/PDF/Publications/UFF_CBA_Updated_2021.pdf (last visited on Feb. 8, 2021).

[33] *Combating Idea Suppression*, *supra* note 31. The three Florida universities with policies that were not found to inhibit free speech include the University of Florida, Florida State University, and the University of North Florida. Florida has twelve public universities but FIRE has never rated Florida Polytechnic University.

[34] College Pulse, et al., *College Free Speech Rankings: What's the Climate for Free Speech on America's College Campuses?* (2020), at 2 and 53-59, *available at* https://reports.collegepulse.com/college-free-speech-rankings, (enter name and e-mail in designated fields to download report) (last visited Jan. 20, 2021).

[35] Larson, McNeilly and Ryan, *Free Expression and Constructive Dialogue at the University of North Carolina at Chapel Hill* (Mar. 2. 2020), *available at* https://fecdsurveyreport.web.unc.edu/wp-content/uploads/sites/22160/2020/02/UNC-Free-Expression-Report.pdf (last visited Feb. 7, 2021).

[36] *Id.* at 1.

[37] *Id.* at 23.

[38] S.D. CODIFIED LAWS § 13-53-53 (2019); South Dakota Board of Regents, *Annual Report on Intellectual Diversity and Free Exchange of Ideas* (Nov. 30, 2020), *available at* https://www.sdbor.edu/administrative-offices/infogovtrelations/Documents/2020_IntellectualDiversityReport.pdf#search=intellectual%20diversity%20survey%20results (last visited on Feb. 8, 2021). [hereinafter *Intellectual Diversity Report*]

[39] *Intellectual Diversity Report*, *supra* note 38, at 1.

[40] *Intellectual Diversity Report*, *supra* note 38, at 1.

Federal law authorizes private individuals to record wire, oral, or electronic communications if one of the parties consents.[41] Thirty-eight states have laws following the federal one-party consent regime. Eleven states, including Florida, require the consent of all recorded parties.[42]

Chapter 934, F.S., governs the security of various types of communications in the state, limits the ability to intercept, monitor, and record such communications, and provides criminal penalties[43] and civil remedies.[44] Section 934.03, F.S., makes it a third degree felony[45] to intentionally "intercept" an "oral communication."[46] For example, the court upheld a university's discipline of a student for illicitly recording a meeting with university staff in violation of s. 934.03, F.S., and the student code of conduct.[47]

Family Educational Rights and Privacy Act (FERPA)[48]

With limited exceptions, the Family Educational Rights and Privacy Act (FERPA) prohibits the distribution of federal funds to an educational agency that has a policy or practice of disclosing the education records of a student without parental or student consent. Sections 1002.22 and 1002.225, F.S., incorporate the FERPA into Florida law as it applies to public postsecondary educational institutions. The FERPA only applies to records created for an educational purpose and maintained by an educational agency.[49]

Student Governments at State Universities

Current law creates a student government on the main campus of every state university.[50] A state university student government is required to be comprised of at least a student body president, a student legislature and a student judiciary.[51] Each student government is required to adopt internal procedures that provide for the operation and administration of the student government as well as the fulfillment of all statutory duties including, but not limited to, establishing procedures for the suspension, removal, and discipline of officers of the student government.[52] The statutory requirements for university student governments are mirrored in the BOG regulations.[53]

Student government organizations are creatures of state statute and a part of the university at which they are established.[54] Actions taken by student government entities are subject to the approval of the university.[55] When a student government acts, it acts under the color of state law and such actions are considered state action.[56]

Student Codes of Conduct at State Universities and FCS Institutions

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[41] 18 U.S.C. s. 2511; Rauvin Johl, *Reassessing Wiretap and Eavesdropping Statutes: Making One-Party Consent the Default*, 12 HARV. L. & POL'Y REV. 177, 179 (2018).
[42] *Id*.
[43] Sections 934.04, 934.21, 934.215, 934.31, and 934.43, F.S.
[44] Section 934.05, F.S.
[45] A third degree felony is punishable by up to 5 years in state prison and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.
[46] Section 934.02(3), F.S., defines "intercept" as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device. Section 934.02(2), F.S., defines "oral communication" as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.
[47] *Garrett v. Univ. of S. Fla. Bd. of Tr.*, 448 F. Supp. 3d 1286 (M.D. Fla. 2020).
[48] 20 U.S.C. s. 1232g.
[49] *Id*.
[50] Section 1004.26(1), F.S.
[51] Section 1004.26(2), F.S.
[52] Sections 1004.26(3) and (4)(a), F.S.
[53] Florida Board of Governors Regulation 6.014.
[54] Section 1004.26(1), F.S.
[55] *See, e.g.*, Florida Board of Governors Regulation 6.014(5); Florida State University Board of Trustees Regulation FSU-3.001(3).
[56] *See Ala. Student Party v. Student Gov't Ass'n of the Univ. of Ala.*, 867 F.2d 1344, 1345 (11th Cir. 1989).

State universities and FCS institutions are permitted to establish codes of conduct for their students and student organizations.[57] Sanctions under such codes of conduct may only be imposed for violations of rules or regulations adopted by the institution, rules or regulations adopted by FCS or BOG, county or municipal ordinances, or laws.[58] FCS institutions and state universities are also permitted to adopt rules or regulations governing student academic honesty.[59] FCS Institutions and state universities are required to establish rules or regulations governing the discipline of students for intentional actions that impact the orderly operation of the institution.[60]

The BOG requires that each state university establish a process for the prompt, fair, and equitable discipline of the institution's students.[61] The BOG regulation sets the minimum requirements for the institutions disciplinary system.[62]

Effect of Proposed Changes

The bill adds requirements designed to protect the expression of diverse viewpoints at Florida College System (FCS) institutions and state universities and strengthens the due process protections for both their students and faculty.

Free Speech on Public University and College Campuses

The bill specifies that the State Board of Education (SBE), the Board of Governors (BOG), Florida College System (FCS) institutions, and state universities may not shield students, faculty, or staff at FCS institutions or state universities, as applicable, from free speech protected under the First Amendment to the United States Constitution and Art. I of the State Constitution. The bill defines "shield" to mean to limit students' access to or observation of ideas and opinions they may find uncomfortable, unwelcome, disagreeable, or offensive.

Intellectual Freedom and Viewpoint Diversity Assessment

The bill requires that the SBE and the BOG select or create a survey to assess intellectual freedom and viewpoint diversity at Florida's state universities and FCS institutions. The surveys must be objective, nonpartisan, and statistically valid. The surveys must be designed to capture the extent to which competing ideas and perspectives are presented on campus as well as the extent to which those surveyed feel free to express their beliefs and viewpoints on campus and in the classroom. All FCS institutions and state universities must conduct the survey annually. The SBE and the BOG must compile and annually publish the survey results beginning September 1, 2022.

Student and Faculty Right to Free Speech Activities

The bill authorizes the recording, for specified purposes, of video and audio in classrooms and clarifies that the nonconsensual recording of video and audio recorded in classrooms, subject to the privacy protections provided in the Family Educational Rights and Privacy Act (FERPA)[63], is permissible. The bill makes it clear that the recording, for specified purposes, of video and audio in classrooms would not be a felony under Florida law, even if all the parties to the recording did not consent to be recorded. A recording made in a classroom may only be used for the following purposes:

- personal educational use;
- in connection with a complaint to the college or university where the recording was made; or
- as evidence in, or in preparation for, a criminal or civil proceeding.

[57] Sections 1006.60(1) and (2), F.S.
[58] Section 1006.60(3), F.S.
[59] Section 1006.60(4), F.S.
[60] Section 1006.60(4), F.S.
[61] Florida Board of Governors Regulation 6.0105.
[62] Florida Board of Governors Regulation 6.0105(1) and (4).
[63] 20 U.S.C. s. 1232g.

The bill further requires that a recording made in a classroom may only be published with the lecturer's consent.

The bill additionally includes faculty research, lectures, writing, and commentary, regardless of their publication status, as protected expressive activities.

The bill expands the cause of action for violations of protected expressive rights at public institutions of higher education. The bill requires that a judgement against a public institution of higher education for the violation of expressive rights be paid from only nonstate funds.

The bill creates a cause of action against an individual that publishes video and audio recorded in a classroom in violation of the bill's authorized purposes. An individual injured by the publication of such a recording is able to seek declaratory or injunctive relief and is permitted to receive damages, court costs, and reasonable attorney fees, not to exceed $200,000.

Due Process Protections for Student Government officers

The bill expands the due process protections for student government officers. The bill requires that every student government body include a provision in their adopted procedures permitting an officer that is disciplined, suspended, or removed from office to appeal directly to the vice president of student affairs or other designated senior university administrator. The bill prohibits the student government or university from imposing any conditions precedent on such an appeal.

Due Process Protections for Students and Student Organizations

The bill additionally expands due process protections for all students and student organizations at FCS institutions and state universities by mandating that all such institutions adopt a student code of conduct that provides the following minimum protections:

- timely written notice of disciplinary proceeding, at least 7 business days prior to the proceeding, that includes the allegations, a specific citation to the code of conduct provision alleged violated, a description of the process to be used for the disciplinary proceeding, student's or student organization's rights in the proceeding, and the date, time, and location of the disciplinary proceeding;
- the student or student organization must be provided a list of witnesses that provided information to the institution or will provide information at the proceeding as well as all known inculpatory and exculpatory information at least 5 business days prior to the proceeding;
- a presumption of innocence of the accused student or student organization until the institution carries its burden of proof, which shall be at least a preponderance of the evidence;
- the right to an impartial hearing officer;
- the right to not self-incriminate and to remain silent and that such silence cannot be used against the accused student or student organization;
- the right to present relevant evidence and question witnesses;
- the right to an advocate or advisor provided by the institution to assist the student or student organization in understanding their rights;
- the right, at their own expense, to hire an advisor, advocate, or legal representative to be present and who can fully participate in the disciplinary proceeding;
- the right to appeal any initial determination to an appropriate senior administrator of the institution;
- a requirement that an accurate and complete recording be made of the disciplinary proceeding and any appeal and that such recording be made available to the student or student organization upon request; and
- a time limit for the charging of students under the code, including any exceptions to such time limit.

The bill takes effect July 1, 2021.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.03, F.S.; defining the terms “Shield” and “Intellectual freedom and viewpoint diversity”; requiring the selection or creation of an appropriate assessment of intellectual freedom and viewpoint diversity.

Section 2. Amends s. 1001.706, F.S.; defining the terms “Shield” and “Intellectual freedom and viewpoint diversity;” requiring the selection or creation of an appropriate assessment of intellectual freedom and viewpoint diversity.

Section 3. Amends s. 1004.097; defining the term “Shield”; providing that certain faculty communications are protected expressive activity; authorizing students at public postsecondary institutions to record certain video and audio in classrooms; providing limitation; prohibiting specified entities from shielding students, faculty, or staff from certain speech; prohibiting the publication of certain video or audio recordings; providing exceptions; revising available remedies for certain causes of action to include damages; providing that such damages and specified costs and fees must be paid from nonstate funds; providing a cause of action against a person who publishes certain video or audio recordings; providing a limitation on attorney fees.

Section 4. Amends s. 1004.26, F.S.; requiring university student governments to adopt certain internal procedures; providing requirements for such procedures.

Section 5. Amends s. 1006.60, F.S.; providing that specified entities require certain institutions to adopt codes of conduct; providing requirements for such codes of conduct; providing that such codes of conduct include certain due process rights.

Section 6. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The fiscal impact of the bill is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

It is unknown whether the SBE and/or the BOG will elect to select an existing survey for the assessment of intellectual freedom and viewpoint diversity or develop their own survey instrument.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.