

SB 83 Redline Summary

1. **Syllabi (lines 665-67)**. SB 83, with our redline, requires public institutions of higher education to make syllabi “for each undergraduate course it offers for college credit ~~publicly~~ available by doing ~~either of~~ the following...”

- **Student Accessibility (lines 656-64)**. Syllabi access should be restricted to students determining whether to take the class. SB 83 states:

(2) "Syllabus" means a document produced for students by a course instructor that includes all of the following:

- (a) The name of the course instructor;
- (b) A ~~summarycalendar~~ for the course outlining what materials and topics will be covered and when during the course they will be covered;
- (c) A ~~summarylist~~ of any required or recommended readings for the course; ~~and~~
- (d) The course instructor's professional qualifications.

Academic freedom grants faculty flexibility with regard to the contents of the syllabi. Requiring complete lists for the general public (and not just students) may invite political considerations into academic decision making. Moreover, principles of academic freedom provide that faculty have a right to determine what texts and other materials students will read. The faculty member and the institution may also have intellectual property rights related to the syllabus, including what materials are used and when. Allowing students to know generally what is in a course before they enroll, is an important consumer protection. Requiring information to be available to the public to the degree of specificity currently in the bill, does not further advance that purpose, but could expose proprietary information.

- **Limiting student accessibility to the first day of the enrollment period through the last day of the add/drop period (lines 665-88)**. The bill provides two options for making syllabi publicly accessible. We suggest one option that allows for only student access, starting at least one week before the first day of open enrollment and until the last day of the add/drop period. This ensures clarity and uniformity for public institutions of higher education.

We recommend the following changes to lines 665 - 688:

(B) Each state institution of higher education shall make a syllabus for each undergraduate course it offers for college credit ~~publicly~~ available

by doing ~~either of~~ the following:

~~(1) Ensuring that each course instructor posts a syllabus on a publicly accessible web site. Each such web site shall include the following information:~~

~~(a) The course instructor's professional qualifications;~~

~~(b) The course instructor's contact information;~~

~~(c) The course instructor's course schedule;~~

~~(d) The syllabus for each course the instructor is currently teaching, which shall be accessible by link or download through the web site.~~

(2) Posting each course's syllabus on the institution's **Publicly student** accessible web site. Each syllabus shall be all of the following:

(a) Accessible from the main page of the state institution's web site by use of not more than three links;

(b) Searchable by keywords and phrases;

(c) Accessible to **students during the entirety of the open enrollment period and until the final day a student can add or drop a course for the semester or during the academic term in which the course is offered. the public without requiring user registration of any kind.**

(C)(1) Each state institution shall make a syllabus available in accordance with division (B) of this section not later than **one week before** the first day of **enrollment for** classes for the semester or academic term in which the course is offered.

- **Syllabi retention policy (lines 689-95).** SB 83 states: "For any syllabus posted under division (B)(1) of this section that is no longer used, the course instructor shall, upon request, make that syllabus available for not less than two years after that syllabus was posted under that division." It also states: "Any syllabus posted under division (B)(2) of this section shall remain posted on the state institution's website for not less than two years after it was first posted." We suggest removing these retention requirements from the bill because of their potential to create a rigid bureaucracy and to chill academic freedom if faculty feel they will face long-term political scrutiny or hostility over what and how they teach.

2. **Mission Statement Requirements.** In section 3345.0216, SB 83 requires: "Each state institution of higher education, as defined in section 3345.011 of the Revised Code, shall incorporate all of the following statements into the institution's mission statement..."

- **Prohibiting compelled speech (lines 732-34).** The provision with our redline states: “The institution declares that its duty is to ensure that, ~~within or outside the classroom,~~ the institution shall not require ~~students or faculty to express personal agreement with positions they do not hold, favor, disfavor,~~ or prohibit ~~protected~~ speech or lawful assembly.”

It’s unclear what favoring or disfavoring speech means. Moreover, the “require” language should be anchored to requiring “students or faculty to express positions they do not hold.” Adding “protected” is necessary to ensure that the institution may regulate unprotected speech and assembly.

3. **Required Policies.** Section 3345.0217 requires that “the board of trustees of each state institution of higher education shall adopt a policy that requires the institution to do all of the following...”

- **Non-credit earning programs or training courses (lines 766-74).** The language with our redline is as follows:

(B)(1) Prohibit any mandatory ~~non-credit earning~~ programs or ~~non-credit earning~~ training courses regarding diversity, equity, and inclusion, unless the institution receives an exemption under division (C) of this section for a diversity, equity, and inclusion program or training course that is required to do any of the following:

- (a) Comply with state and federal laws or regulations;
- (b) Comply with professional licensure requirements;
- (c) Obtain or retain accreditation;
- (d) Secure or retain grants or cooperative agreements.

Amending to prohibit non-credit earning programs or non-credit earning training courses ensures this provision cannot act as a curricular ban, which would violate the First Amendment and principles of academic freedom. We do not oppose provisions that would regulate or prohibit mandatory non-credit-earning training at institutions of higher education. Restrictions on the content and views expressed during non-credit-earning training don’t infringe on the First Amendment or principles of academic freedom because the content of those trainings constitute the government’s own speech. The government is allowed to regulate its own speech and that of government agencies under its control. Decades of case law stands for the proposition that faculty do not speak for the government.

- **Replacing the term “inculcate” (lines 782-85).** SB 83 states that public institutions of higher education must adopt the following policy:

(4) Affirm and declare that faculty and staff shall allow and encourage students to reach their own conclusions about all ~~controversial~~ beliefs or policies and shall not seek to ~~inculcate~~ ~~compel students to express~~ ~~personal agreement with or opposition to~~ any social, political, or religious point of view.”

Principles of academic freedom protect a faculty member’s right to present material from a certain perspective, including social, political, and religious points of view. Students, however, should not be compelled to express personal agreement with those points of view beyond the context of pedagogical exercises or classroom instruction. Our redline allows for differing perspectives in academia while prohibiting students from being compelled to express personal agreement with or opposition to any social, political, or religious point of view.

- **Prohibition on institutional support or opposition to particular ideas (lines 795-803).** We would swap out subsection 6 replacing it with language that has been enacted in other campus free speech laws — for example, legislation enacted in Alabama. Under our replacement language, public institutions of higher education must adopt the following policy:

(6) ~~Declare that it will strive to remain neutral, as an institution, on the public policy controversies of the day, except as far as administrative decisions on the issues are essential to the day-to-day functioning of the university, and that the institution will not require students, faculty, or staff to publicly express a given view of a public controversy.~~

The Kalven Report, published in 1967 by a committee at the University of Chicago, informs our understanding of a public institution’s role in political and social action. On one hand, the report states that the “instrument of dissent and criticism is the individual faculty member or the individual student. The university is the home and sponsor of critics; it is not itself the critic.” It also recognizes that an institution is corporate in nature and must make decisions in “situations involving university ownership of property, its receipt of funds, its awarding of honors, its membership in other organizations.” Our redline allows an institution to take a position in such circumstances, but also protects students and faculty members’ First Amendment rights.

- **Prohibition on an institution requiring support or opposition to particular ideas (lines 804-14).** Public institutions of higher education must adopt the following policy:

~~Divisions (B) (6) and (B) (7) of this section do not apply to the exercise of professional judgement about whether to endorse the consensus or foundational beliefs of an academic discipline, unless that exercise is misused to take an action prohibited in division (B)(6) of this section.~~

If our change to (B)(6) is made above, the language directly above should be deleted.

- **Prohibiting political litmus tests (lines 815-20).** SB 83 states that public institutions of higher education must adopt the following policy:

(8) Prohibit political and ideological litmus tests in all hiring, promotion, and admissions decisions, including diversity statements and any other requirement that applicants describe their commitment **or opposition** to a specified concept, specified ideology, or any other ideology, principle, concept, or formulation that requires commitment **or opposition** to any controversial belief or policy;

Adding the phrase “or opposition” ensures broader protection by making the paragraph viewpoint neutral. Viewpoint neutrality is necessary to best protect student and faculty rights and to avoid First Amendment challenges to the legislation.

- **Prohibition assessing applicant’s views in hiring, promotions, or admissions process (lines 826-29).** SB 83 states, with our redline, that public institutions of higher education must adopt the following policy:

(10) Affirm and declare that the institution will not use a diversity statement or any other assessment of an applicant’s political or ideological views in any hiring, promotions, or admissions process or decision; **however, nothing in this section shall be construed to limit or restrict the academic freedom of faculty or to prevent faculty members from teaching, researching, or writing publications about diversity, equity, inclusion, patriotism, or other topics, and nothing in this section prohibits an institution from considering, in good faith, a candidate’s scholarship, teaching, or subject-matter expertise in their given academic field.**

Our proposed change, contained in FIRE’s model language, ensures academic freedom protections for faculty members while also allowing institutions to evaluate the quality of an applicant’s scholarship, teaching, or subject-matter expertise in their given academic field as long as the evaluation is made in good faith.

- **Seeking diversity of viewpoints through invited speakers (lines 836-38).** SB 83 states, with our redline, that public institutions of higher education must adopt the following policy: “(12) Affirm and declare that the institution will seek out invited speakers **for events sponsored by the institution** who have diverse ideological or political views.”

Our change ensures that institutions will not construe this requirement to limit, or otherwise prohibit, academic departments and student organizations from inviting speakers or from imposing a requirement that these entities must always invite a speaker that will oppose the views of the speaker they wish to invite. Such requirements would compel speech and violate the First Amendment.

4. Exemption from (B)(1) requirement regarding non-credit earning programs or training courses (lines 848-84). SB 83, with our redline, states:

(C)(1) Prior to the initial offering of a **non-credit earning** diversity, equity, and inclusion program or training course, a state institution of higher education shall request from the chancellor of higher education an exemption for that program or training course from the prohibition prescribed in division (B)(1) of this section. The request shall include all of the following:

- (a) The specific law, licensure requirement, accreditation, grant, or cooperative agreement at issue;
- (b) The specific language in the law, licensure requirement, accreditation, grant, or cooperative agreement that requires the training;
- (c) A detailed description of the **non-credit earning** diversity, equity, and inclusion program or training to be taught, including any materials that will be used;
- (d) The specific population of individuals who will be mandated to take the training;
- (e) The number of times the training is expected to be offered on a six-month basis;
- (f) An estimate of the cost of the program or training; **and**
- (g) ~~In the case of an exemption sought for an accreditation, proof that alternative accreditation has been researched and evaluated. An alternative accreditation is an accreditation that would obtain the same or similar results for the institution while not requiring a diversity, equity, and inclusion program or training.~~ In the case of an exemption sought for an

accreditation, proof that the institution received analysis from its general counsel's office or the attorney general's office regarding the necessity of complying with the accreditation requirement and whether there are grounds to challenge the requirement through available mechanisms including legal challenges.

(2) The chancellor shall approve a request under division(C)(1) of this section if the chancellor determines the request satisfies at least one of the conditions listed in division (B)(1) of this section.

(3) If a state institution of higher education is required to make a change to a non-credit earning diversity, equity, and inclusion program or training course approved by the chancellor under this division due to a change in the information listed in division (C)(1) of this section, the institution shall submit a new request for approval under this division with respect to that program or training.

These proposed changes were made to ensure conformity to the proposed changes in division (B)(1) above.

5. **Caveat for classroom instruction (lines 892-95).** We propose replacing lines 892-895 with the following:

(E) Nothing in this section, and no institution policy, or institution employee, shall limit the expressive rights and academic freedom of an instructor of an institution to do any of the following:

(a) Conduct research, publish, lecture, or teach in the academic setting.

(b) Require students to participate in instructional exercises with legitimate pedagogical purposes that involve exploring or arguing for or against any idea.

(c) Speak publicly as a private citizen on matters of public concern.

Lines 892-985 are helpful, but can be significantly strengthened to head off or answer most arguments that the legislation harms academic freedom. This alternative language was included in a bill passed by the legislature in Wisconsin last year, but the Democratic Governor vetoed the bill.

6. **Sanctions for violating “intellectual diversity” rights of another (lines 901-05).** Our redline to section 3345.0218 is as follows:

(B) Each state institution of higher education shall implement a range of

disciplinary sanctions for any administrator, faculty member, staff, or student who intentionally, materially and substantially disrupts another's exercise of expressive rights, ~~interferes with the intellectual diversity rights~~, as defined in section 3345.0211 and prescribed under section 3345.02127 of the Revised Code, of another.

The term "intellectual diversity" is defined in section 3345.0217 as "multiple, divergent, and varied perspectives on an extensive range of public policy issues." This definition is too vague to provide persons who would be subject to sanctions with an understanding of what is prohibited. For example, are professors subject to sanctions if they decide to include materials with a conservative perspective on the nation's founding, but exclude other perspectives? Do they have to include all perspectives to avoid sanctions? Where does one draw the line? Instead, the law should build on Ohio's existing campus free speech law by requiring institutions to implement a range of sanctions for those who intentionally, materially and substantially disrupt another's exercise of expressive rights.

7. **Student evaluations of faculty members (lines 1041-46; 1089-91).** Section 3345.451 states:

(B) The chancellor of higher education shall develop a minimum set of standard questions for use by state institutions of higher education in student evaluations of faculty members. ~~The questions shall include the following:~~

~~"Does the faculty member create a classroom atmosphere free of political, racial, gender, and religious bias?"~~

In addition, section 3345.452 requires that "(4) Student evaluations conducted pursuant to section 3345.451 of the Revised Code account for at least fifty per cent of the teaching area component of the evaluation."

Students should play a role in evaluations of faculty performance, but we think that the required question would allow evaluation of faculty members based on their perspectives expressed in the course materials and in the classroom. Minority perspectives, including conservative perspectives, in academia could be particularly targeted through this question, especially given that student evaluations account for at least 50% of the "teaching area component of the evaluation." This is of particular concern because faculty with dissenting or unpopular views are increasingly targeted by colleagues, students, and the general public demanding administrative action.

8. **Who defines Academic Freedom. (lines 1128-36).** SB 83 states:

(E) The department chairperson, dean of faculty, or provost of a state institution of higher education may require an immediate and for cause post-tenure review at any time for a faculty member who has a documented and sustained record of significant underperformance outside of the faculty member's annual performance evaluation.

For this purpose, for cause shall not be based on a faculty member's ~~allowable protected expression or exercise~~ of academic freedom ~~as defined by the state institution of higher education or Ohio law~~.

We propose removing this language because academic freedom has been defined in federal court precedent.

9. **Prohibition on training for faculty and staff related to certain concepts (lines 1319-51).** Section 3345.87, with our redline, states:

(C) No state institution of higher education shall provide or require ~~non-credit earning~~ training for any administrator, teacher, staff member, or employee that advocates or promotes any of the following concepts ...

SB 83 further provides:

(D) Each state institution of higher education shall implement a range of disciplinary sanctions for any administrator, teacher, staff member, or employee who authorizes or engages in a ~~non-credit earning~~ training prohibited in division (C) of this section.