



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number:	H. 3467	Introduced on January 10, 2023
Author:	Taylor	
Subject:	Forming Open and Robust University Minds (FORUM) Act	
Requestor:	House Education and Public Works	
RFA Analyst(s):	Tipton	
Impact Date:	April 21, 2023	

Fiscal Impact Summary

This bill establishes the “Forming Open and Robust University Minds (FORUM) Act” to provide guidance and restrictions on the regulation of noncommercial expression of students by public Institutions of Higher Learning (IHL) in the state. The bill further states that a person or student organization aggrieved by a violation of the chapter may bring an action against a state IHL and seek appropriate relief. Under the bill, the State waives its immunity under the Eleventh Amendment to the U.S. Constitution and provides that a public IHL in violation of the bill is not immune from suit or liability in federal court.

The Revenue and Fiscal Affairs Office (RFA) surveyed all public IHLs and received responses from Coastal Carolina University (CCU), Lander University (Lander), the Medical University of South Carolina (MUSC), the Citadel, the University of South Carolina (USC), and Francis Marion University (FMU). Lander and MUSC indicate that the requirements of the bill will be managed within the current budgets of the institutions and will have no impact. The bill would increase expenses for CCU and FMU for additional staff required to comply with the bill. CCU reports that a portion of an additional FTE would be required to comply with the reporting requirements of the bill at an annual cost of \$17,320, which would be managed under the institution’s current budget. FMU indicates that \$45,000, allocated to the Dean of Students, the University Police, General Counsel, and University Communications, would be required to comply with the provisions of the bill. FMU indicates that this would require an additional recurring General Fund appropriation.

Additionally, this bill will have an undetermined impact on legal expenses and professional insurance premiums for state IHLs. The Citadel and USC indicate that this bill may have a significant impact on insurance coverage for tort claims, related to the waiver of immunity against action in federal court. The Citadel indicates that significant legal fees and damages may arise as a result of action brought under the bill, which could increase premium costs for coverage from the Insurance Reserve Fund. However, the number of violative actions under the bill and thus claims against the institutions is currently unknown.

This bill will have an undetermined impact on expenditures for the State Board for Technical and Comprehensive Education (Tech Board) and the Technical College System for additional staff time and resources needed to comply with the bill’s reporting requirement and to develop

appropriate policies and procedures. However, the expenses are dependent upon the current practice of each technical college and is currently unknown.

This bill will have no impact on the Commission on Higher Education (CHE) as the bill does not materially affect the agency.

This bill will have no impact on Judicial, as any increase in the caseload for the court of common pleas will be managed within existing appropriations. Judicial anticipates that most of the suits brought under the provisions of the bill would originate in or be moved to federal court.

This bill may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, the Revenue and Fiscal Affairs Office (RFA) anticipates this bill may result in an undetermined increase in General Fund revenue, Other Funds revenue, and local revenue due to the increase in fines and fees collections in court.

Explanation of Fiscal Impact

Introduced on January 10, 2023

State Expenditure

This bill establishes the FORUM Act to provide guidance and restrictions on the regulation of noncommercial expression of students by public IHLs in the state, including state technical colleges. Under this bill, students or organizations may engage in noncommercial expressive activity on the outdoor areas of campus without material or substantial disruption, as defined by the bill. IHLs may not deny a religious, political, or ideological student organization a benefit or privilege available to other organizations based on the organization's expression that meets criteria set by the bill. The bill requires state public IHLs to develop policies, regulations, and expectations of students regarding free expression on campus and make this information available through student handbooks, its website, and student orientation programs. Under the bill, public IHLs in the state are further required to submit a report to CHE to be published on the institution's website detailing the course of action implemented to comply with the requirements of the chapter. Under the bill, if an IHL is sued for an alleged violation of First Amendment rights, the institution must submit a report to the Governor and General Assembly within thirty days.

The bill further states that a person or student organization aggrieved by a violation of this chapter may bring an action against the violating IHL and seek appropriate relief, including, but not limited to, injunctive relief, monetary damages, reasonable attorneys' fees, and court costs. The bill requires a court that has found an action to be violative of the chapter to award at least \$5,000 to the plaintiff. The bill requires any action taken to be brought no later than one year after the day the cause of action accrues, as defined further in the bill.

Additionally, this bill requires the State to waive its immunity under the Eleventh Amendment to the U.S. Constitution and consent to jurisdiction in federal court for lawsuits arising from the provisions of the chapter and states that a public IHL in violation is not immune from such suit

or liability. The provisions of the bill are severable in the event that any portion is found unconstitutional and the bill takes effect upon approval by the Governor.

Public Institutions of Higher Learning. This bill establishes the FORUM Act to provide guidance and restrictions on the regulation of noncommercial expression of students by public IHLs in the state. RFA surveyed all public institutions and received responses from CCU, Lander, MUSC, the Citadel, USC, and FMU. Lander and MUSC indicate that the requirements of the bill will be managed within the current budgets of the institutions and will have no impact. CCU and FMU indicate that the requirements of the bill would require additional personnel or staff time. CCU reports that a portion of an additional FTE would be required to comply with the bill's reporting requirements at an annual cost of \$17,320. The institution indicates that this expense would be managed under the current budget and would not require additional appropriations or funding authorization. FMU reports that the bill would require additional staff time to revise and publish the related policies and procedures as required, review and document reports of incidents related to the legislation, submit the required annual report, and prepare and conduct training sessions for students, faculty, and staff. FMU indicates that \$45,000, allocated to the Dean of Students, the University Police, General Counsel, and University Communications, would be required to fulfill these requirements. The institution indicates that this expense would require an additional recurring General Fund appropriation.

Additionally, the Citadel and USC indicate that this bill may have a significant impact on insurance coverage for tort claims, related to the waiver of immunity against action in federal court as allowed by the bill. The Citadel indicates that significant legal fees and damages may arise as a result of action brought under the provisions of the bill, which could increase premium costs for coverage from the Insurance Reserve Fund. However, as the number of violative actions and thus claims against the institutions is currently unknown, this bill's impact on legal expenses, and professional insurance premiums for state IHLs is currently undetermined.

State Board for Technical and Comprehensive Education. This bill establishes the FORUM Act to provide guidance and restrictions on the regulation of noncommercial expression of students by public IHLs in the state, including technical colleges. The Tech Board indicates that the annual reporting requirement and development of policies and procedures may increase expenses for some technical colleges, depending on the school's current practice. However, as the amount of staff time and other resources needed to comply with these requirements is currently unknown, this bill will have an undetermined impact on the Tech Board and the Technical College System.

Commission on Higher Education. This bill establishes the FORUM Act to provide guidance and restrictions on the regulation of noncommercial expression of students by public IHLs in the state. This bill does not materially affect CHE and will therefore have no impact on the agency.

Judicial. This bill establishes a new cause of action and waives the State's immunity to claims against public IHLs in federal court. Judicial anticipates that most of the suits brought under the provisions of the bill would originate in or be moved to federal court. However, it is possible that the court of common pleas may experience an increase in caseload, which Judicial indicates

will be managed within existing appropriations. Therefore, this bill will have no impact on Judicial.

State Revenue

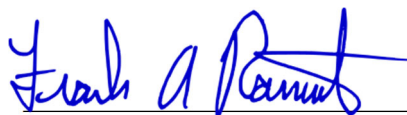
This bill may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined increase in General Fund revenue and Other Funds revenue due to the increase in fines and fees collections in court.

Local Expenditure

N/A

Local Revenue

This bill may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined increase in local revenue due to the increase in fines and fees collections in court.



Frank A. Rainwater, Executive Director