

By: Flynn

H.B. No. 458

A BILL TO BE ENTITLED

AN ACT

relating to the governance of public institutions of higher education in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.352, Education Code, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsections (a-1), (a-2), (a-3), (a-4), and (a-5) to read as follows:

(a) It is the policy of this state that the governing boards of institutions of higher education, being composed of lay members, shall exercise the traditional and time-honored role for such boards as their role has evolved in the United States and shall constitute the keystone of the governance structure. In this regard each governing board shall:

(1) [~~is expected to~~] preserve institutional independence and [~~to~~] defend each institution's [~~its~~] right to manage its own affairs through its chosen administrators and employees;

(2) [~~shall~~] enhance the public image of each institution under its governance;

(3) [~~shall~~] interpret the community to the campus and interpret the campus to the community;

(4) [~~shall~~] nurture each institution under its governance to the end that each institution achieves its full potential within its role and mission; [~~and~~]

1           (5) [~~shall~~] insist on clarity of focus and mission of  
2 each institution under its governance;

3           (6) develop a balanced governing structure designed to  
4 promote institutional integrity, autonomy, and flexibility of  
5 operations while maintaining maximum operating efficiency and  
6 academic excellence; and

7           (7) govern institutions with the spirit of integrity  
8 in all matters, including operating collaboratively with all  
9 parties in an open and honest manner.

10          (a-1) The governing board of an institution of higher  
11 education shall protect each institution under its governance from  
12 undue external influence and ensure that the powers and duties of  
13 the board are not controlled by a minority of its members or by  
14 organizations or interests that are separate from the board in any  
15 manner, including through delegation, tradition, or inaction.

16          (a-2) The members of the governing board of an institution  
17 of higher education must remain free from any contractual,  
18 employment, personal financial, or familial financial interest in  
19 the institution or institutions under its governance. This  
20 subsection does not affect the application of other laws regarding  
21 conflicts of interest to the members.

22          (a-3) Each report, recommendation, or vote of the governing  
23 board of an institution of higher education or of a committee,  
24 subcommittee, task force, or similar entity reporting to the  
25 governing board must be made available to the public on the board's  
26 Internet website not later than the end of the next business day  
27 after the date of the report, recommendation, or vote.

1       (a-4) A member of the governing board of an institution of  
2 higher education is prohibited from voting on a budgetary or  
3 personnel matter related to system administration or institutions  
4 of higher education until the member attends a training program  
5 that provides instruction in ethics, conflict-of-interest law, and  
6 the role of a governing board in a higher education institution or  
7 system and that is conducted by the Texas Higher Education  
8 Coordinating Board, by the system office of a university system, or  
9 by the office of a governing board that does not govern a university  
10 system. A governing board is responsible for maintaining records  
11 of each of its members' attendance of a training program described  
12 by this subsection.

13       (a-5) The governing board of a university system may  
14 terminate the employment of an institution's president or other  
15 chief executive officer only after receiving a recommendation to  
16 that effect under Section 51.353(b)(7), but the board is not  
17 required to act on that recommendation.

18       (b) The governing board of an institution of higher  
19 education shall provide long-term ~~[the]~~ policy direction for each  
20 institution of higher education under its governance ~~[management~~  
21 ~~and control]~~.

22       (d) Notwithstanding ~~[In addition to]~~ powers and duties  
23 specifically granted by this code or other law, each governing  
24 board shall:

25           (1) after coordinating with the president or other  
26 chief executive officer of the institution and, if applicable, the  
27 chancellor or other chief executive officer of the university

1 system and after consulting with the institution's faculty,  
2 establish and publish, for each institution under its governance,  
3 long-term [~~control and management,~~] goals consistent with the role  
4 and mission of the institution;

5 (2) review and, as necessary, revise those goals at  
6 least once during each six-year period;

7 (3) appoint the chancellor or other chief executive  
8 officer of the system, if the board governs a university system;

9 (4) [~~(3)~~] appoint the president or other chief  
10 executive officer of each institution under the board's governance  
11 [~~control and management and evaluate the chief executive officer of~~  
12 ~~each component institution and assist the officer in the~~  
13 ~~achievement of performance goals]~~;

14 (5) to the extent practicable and to ensure maximum  
15 operating efficiency, direct that communications between the  
16 governing board of a university system or individual members of  
17 that board and the employees of an institution under its governance  
18 be conducted through the system;

19 (6) after consulting with the institution's faculty  
20 and administration, [~~(4)~~] set campus admission standards  
21 consistent with the role and mission of the institution and  
22 considering the admission standards of similar institutions  
23 nationwide having a similar role and mission, as determined by the  
24 coordinating board;

25 (7) to the extent practicable, develop and implement  
26 policies and procedures that allow the faculty, staff, and students  
27 at any institution under the board's governance to be engaged in and

1 informed of meetings of the board or of a committee, subcommittee,  
2 task force, or other similar entity reporting to the board; and

3 (8) [~~5~~] ensure that its formal position on matters  
4 of importance to the institutions under its governance is made  
5 clear to the coordinating board when those [~~such~~] matters are under  
6 consideration by the coordinating board.

7 (e) Each member of a governing board has the legal  
8 responsibilities of a fiduciary in the management of funds under  
9 the control of institutions subject to the board's governance  
10 [~~control and management~~].

11 SECTION 2. Section 51.353(b), Education Code, is amended to  
12 read as follows:

13 (b) In addition to other powers and duties provided by this  
14 code or other law, each system administration shall:

15 (1) initiate, monitor, approve, and coordinate  
16 long-range planning for the system consistent with the goals  
17 established under Section 51.352(d)(1);

18 (2) approve short-range institutional plans for  
19 operations and expenditures;

20 (3) provide to component institutions technical  
21 assistance such as legal and financial services;

22 (4) evaluate each component institution and assist the  
23 institution in the achievement of performance goals; [~~and~~]

24 (5) perform such other duties as may be delegated to  
25 the system administration [~~it~~] by the governing board of the [~~its~~]  
26 system;

27 (6) in consultation with the governing board of the

1 system, evaluate the president or other chief executive officer of  
2 each component institution and assist the officer in the  
3 development and achievement of performance goals; and  
4 (7) if necessary based on the president's or officer's  
5 performance, recommend to the governing board the termination of  
6 employment of an institution's president or other chief executive  
7 officer.

8 SECTION 3. Subchapter G, Chapter 51, Education Code, is  
9 amended by adding Section 51.3545 to read as follows:

10 Sec. 51.3545. EFFECT OF SUBCHAPTER; RELATIONSHIP OF BOARD  
11 TO INSTITUTIONS. (a) Sections 51.352, 51.353, and 51.354 control  
12 over any specific provision regarding the powers and duties of a  
13 governing board of an institution of higher education provided by  
14 Subtitle C, D, E, F, or G, and any similar provision to the contrary  
15 in any of those subtitles has no effect.

16 (b) The governing board of an institution of higher  
17 education may not unreasonably or unduly interfere with the  
18 day-to-day operations of the institutions under its governance.

19 SECTION 4. Sections 61.084(a) and (d), Education Code, are  
20 amended to read as follows:

21 (a) The board by rule shall establish a training program for  
22 members of the governing boards of institutions of higher  
23 education. Each member of a governing board of an institution of  
24 higher education shall attend, during the member's first year [~~two~~  
25 ~~years~~] of service as a member of a governing board of an institution  
26 of higher education, a [~~at least one~~] training program under this  
27 section. A member of a governing board who is required to attend a

1 training program under this section may attend additional training  
2 programs under this section.

3 (d) The content of the instruction at the training program  
4 shall focus on the official role and duties of the members of  
5 governing boards and shall provide training in the areas of  
6 budgeting, policy development, ethics, and governance. Topics  
7 covered by the training program must [~~may~~] include:

8 (1) auditing procedures and recent audits of  
9 institutions of higher education;

10 (2) the enabling legislation that creates  
11 institutions of higher education;

12 (3) the role of the governing board at institutions of  
13 higher education and the relationship between the governing board  
14 and an institution's administration, faculty and staff, and  
15 students;

16 (4) the mission statements of institutions of higher  
17 education;

18 (5) disciplinary and investigative authority of the  
19 governing board;

20 (6) the requirements of the open meetings law, Chapter  
21 551, Government Code, and the open records law, Chapter 552,  
22 Government Code;

23 (7) the requirements of conflict of interest laws and  
24 other laws relating to public officials;

25 (8) any applicable ethics policies adopted by  
26 institutions of higher education or the Texas Ethics Commission;

27 (9) the requirements of laws relating to the

1 protection of student information under the Family Educational  
2 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) or any  
3 other federal or state law relating to the privacy of student  
4 information; and

5           (10) [~~9~~] any other topic relating to higher  
6 education the board considers important.

7           SECTION 5. (a) Section 103.03, Education Code, is amended  
8 to read as follows:

9           Sec. 103.03. BOARD MEMBERS: APPOINTMENT, TERMS, OATH.  
10 Members of the board shall be appointed by the governor and  
11 confirmed by the senate. Members hold office for staggered terms of  
12 six years, with the terms of three members expiring on February 1 of  
13 each odd-numbered year. Any vacancy that occurs on the board shall  
14 be filled for the unexpired term by appointment of the governor.  
15 Each member of the board shall take the constitutional oath of  
16 office.

17           (b) The change in law made by this section does not apply to  
18 a member of the board of regents of Midwestern State University who  
19 is serving all or part of a full term of office that begins before  
20 September 1, 2015. To implement the change in law made by this  
21 section to Section 103.03, Education Code, the terms of office of  
22 members of the board that begin in 2016 expire on February 1, 2021,  
23 the terms of office of members of the board that begin in 2018  
24 expire on February 1, 2023, and the terms of office of members of  
25 the board that begin in 2020 expire on February 1, 2025.

26           SECTION 6. (a) Section 105.052, Education Code, is amended  
27 to read as follows:



1           Sec. 105.052. TERM OF OFFICE; REMOVAL; VACANCY. The term of  
2 office of each regent is six years, with the terms of three regents  
3 expiring on February 1 of each odd-numbered year [~~every two years~~].  
4 Members of the board may be removed from office for inefficiency or  
5 malfeasance of office. Any vacancy that occurs on the board shall  
6 be filled by the governor for the unexpired term.

7           (b) The change in law made by this section does not apply to  
8 a member of the board of regents of the University of North Texas  
9 System who is serving all or part of a full term of office that  
10 begins before September 1, 2015. To implement the change in law  
11 made by this section to Section 105.052, Education Code, the terms  
12 of office of members of the board that begin in 2017 expire on  
13 February 1, 2023, the terms of office of members of the board that  
14 begin in 2019 expire on February 1, 2025, and the terms of office of  
15 members of the board that begin in 2021 expire on February 1, 2027.

16           SECTION 7. (a) Section 111.12, Education Code, is amended  
17 to read as follows:

18           Sec. 111.12. APPOINTMENTS TO BOARD; TERMS. Members of the  
19 board are appointed by the governor with the advice and consent of  
20 the senate. The term of office of each regent shall be six years,  
21 with the terms of three regents expiring on February 1 of each  
22 odd-numbered year [~~except that in making the first appointments the~~  
23 ~~governor shall appoint three members for six years, three members~~  
24 ~~for four years, and three members for two years~~]. Any vacancy that  
25 occurs on the board shall be filled for the unexpired term by  
26 appointment of the governor.

27           (b) The change in law made by this section does not apply to

1 a member of the board of regents of the University of Houston System  
2 who is serving all or part of a full term of office that begins  
3 before August 31, 2015. To implement the change in law made by this  
4 section to Section 111.12, Education Code, the terms of office of  
5 members of the board that begin in 2015 expire on February 1, 2021,  
6 the terms of office of members of the board that begin in 2017  
7 expire on February 1, 2023, and the terms of office of members of  
8 the board that begin in 2019 expire on February 1, 2025.

9 SECTION 8. This Act takes effect immediately if it receives  
10 a vote of two-thirds of all the members elected to each house, as  
11 provided by Section 39, Article III, Texas Constitution. If this  
12 Act does not receive the vote necessary for immediate effect, this  
13 Act takes effect August 31, 2015.