

All Published Pre-filed Amendments for SB 17

Schaefer

Barcode

Amendment

881105

Amendment

881133

**The following amendment was
published on 5/18/23 11:04 AM**



881105

M. S. [Signature]

FLOOR AMENDMENT NO. _____

BY: _____

1 Amend C.S.S.B. 17 (house committee report) by striking all
2 below the enacting clause and substituting the following:

3 SECTION 1. Section 51.352, Education Code, is amended by
4 amending Subsection (d) and adding Subsection (g) to read as
5 follows:

6 (d) In addition to powers and duties specifically granted by
7 this code or other law, each governing board shall:

8 (1) establish, for each institution under its control
9 and management, goals consistent with the role and mission of the
10 institution;

11 (2) appoint the chancellor or other chief executive
12 officer of the system, if the board governs a university system;

13 (3) appoint the president or other chief executive
14 officer of each institution under the board's control and
15 management and evaluate the chief executive officer of each
16 component institution and assist the officer in the achievement of
17 performance goals;

18 (4) restrict the membership of a search committee for
19 the position of president or other chief executive officer of an
20 institution under the board's control and management to members of
21 the governing board;

22 (5) approve or deny the hiring of a person for the
23 position of vice president, provost, associate or assistant
24 provost, dean, or associate or assistant dean or a similar position
25 by each institution under the board's control and management;

26 (6) set campus admission standards consistent with the
27 role and mission of the institution and considering the admission
28 standards of similar institutions nationwide having a similar role
29 and mission, as determined by the coordinating board;

1 institution, or an applicant for admission to or employment or
2 contracting at the institution to:

3 (A) endorse an ideology that promotes the
4 differential treatment of an individual or group of individuals
5 based on race, color, or ethnicity; or

6 (B) provide a statement of the person's:

7 (i) race, color, ethnicity, or national
8 origin, except to record any necessary demographic information;

9 (ii) views on, experience with, or past or
10 planned contributions to efforts involving diversity, equity, and
11 inclusion, marginalized groups, antiracism, social justice,
12 intersectionality, or related concepts; or

13 (iii) views on or experience with race,
14 color, ethnicity, national origin, or other immutable
15 characteristics; or

16 (2) provide preferential consideration to a student
17 enrolled at the institution, an employee or contractor of the
18 institution, or an applicant for admission to or employment or
19 contracting at the institution on the basis of the person's
20 unsolicited statement in support of an ideology described by
21 Subdivision (1)(A).

22 (b) This section may not be construed to:

23 (1) restrict academic research or coursework;

24 (2) prevent a person from providing to an institution
25 of higher education information described by Subsection (a) on the
26 person's own initiative separate from any specific requirement or
27 request from the institution; or

28 (3) prevent an institution of higher education from
29 requiring an applicant for admission to or employment or
30 contracting at the institution to:

31 (A) disclose or discuss the content of the

1 applicant's research or artistic creations;

2 (B) certify compliance with state and federal
3 antidiscrimination law; or

4 (C) discuss pedagogical approaches or experience
5 with students with learning disabilities.

6 (c) Not later than December 1 of each year, each institution
7 of higher education shall submit to the lieutenant governor and the
8 speaker of the house of representatives a report certifying the
9 institution's compliance with this section.

10 SECTION 3. Subchapter Z, Chapter 51, Education Code, is
11 amended by adding Sections 51.9317, 51.9318, and 51.9319 to read as
12 follows:

13 Sec. 51.9317. DIVERSITY, EQUITY, AND INCLUSION OFFICES AND
14 EMPLOYEES PROHIBITED. (a) In this section:

15 (1) "Coordinating board" means the Texas Higher
16 Education Coordinating Board.

17 (2) "Diversity, equity, and inclusion office" means an
18 office, division, or other unit of an institution of higher
19 education established for the purpose of:

20 (A) influencing hiring or employment practices
21 at the institution with respect to race, sex, color, or ethnicity,
22 other than through the use of color-blind and sex-neutral hiring
23 processes in accordance with any applicable state and federal
24 antidiscrimination laws;

25 (B) promoting differential treatment of or
26 providing special benefits to individuals on the basis of race,
27 color, or ethnicity;

28 (C) promoting policies or procedures designed or
29 implemented in reference to race, color, or ethnicity, other than
30 policies or procedures approved in writing by the institution's
31 general counsel and the office of the attorney general for the sole

1 purpose of ensuring compliance with any applicable court order or
2 state or federal law; or

3 (D) conducting trainings, programs, or
4 activities designed or implemented in reference to race, color,
5 ethnicity, gender identity, or sexual orientation, other than
6 trainings, programs, or activities developed by an attorney and
7 approved in writing by the institution's general counsel and the
8 office of the attorney general for the sole purpose of ensuring
9 compliance with any applicable court order or state or federal law.

10 (3) "Institution of higher education" has the meaning
11 assigned by Section 61.003.

12 (b) An institution of higher education may not establish or
13 maintain a diversity, equity, and inclusion office or hire or
14 assign an employee of the institution, or contract with a third
15 party, to perform the duties of a diversity, equity, and inclusion
16 office.

17 (c) Subsection (b) may not be construed to:

18 (1) restrict:

19 (A) academic course instruction;

20 (B) research or creative works by an institution
21 of higher education's students or faculty;

22 (C) the activities of student organizations
23 registered with or recognized by an institution of higher
24 education;

25 (D) the guest speakers or performers who may be
26 invited to speak or perform at an institution of higher education
27 for short-term engagements;

28 (E) health services provided by licensed
29 professionals at an institution of higher education;

30 (F) services provided by appropriate
31 professionals at an institution of higher education to veterans of

1 the armed forces of the United States or persons with a physical or
2 cognitive disability; or

3 (G) an institution of higher education's ability
4 to:

5 (i) respond to a request for information
6 from a grantmaking agency or athletic association; or

7 (ii) collect data; or

8 (2) prohibit an institution of higher education from:

9 (A) establishing or maintaining a legal office or
10 other unit, hiring or assigning an employee who is an attorney, or
11 contracting with a third-party attorney or law firm to ensure the
12 institution's compliance with any applicable court order or state
13 or federal law;

14 (B) establishing or maintaining an academic
15 department that does not establish policy or procedures for other
16 departments; or

17 (C) registering or recognizing student
18 organizations at the institution.

19 (d) Nothing in this section may be construed as prohibiting
20 bona fide qualifications based on sex that are reasonably necessary
21 to the normal operation of an institution of higher education.

22 (e) Any person may notify the attorney general of a
23 violation or potential violation of this section by an institution
24 of higher education. The attorney general may file suit for a writ
25 of mandamus compelling the institution to comply with this section.

26 (f) If an institution of higher education determines that an
27 employee of the institution has violated this section, the
28 institution shall:

29 (1) take the following action against the employee:

30 (A) for the first violation, place the employee
31 on unpaid leave for the next academic year; or

1 (B) for the second or a subsequent violation,
2 discharge the employee; and

3 (2) report the determination and the action taken by
4 the institution to the coordinating board.

5 (g) The coordinating board shall maintain and provide to
6 each institution of higher education a list of persons against whom
7 action has been taken under Subsection (f).

8 (h) An institution of higher education may not hire an
9 employee who is included on the coordinating board's list
10 maintained under Subsection (g) before:

11 (1) if the employee was placed on unpaid leave under
12 Subsection (f)(1)(A), the end of the academic year for which the
13 employee is placed on unpaid leave; or

14 (2) if the employee was discharged under Subsection
15 (f)(1)(B), the fifth anniversary of the date on which the employee
16 was discharged.

17 (i) If the coordinating board determines that an
18 institution of higher education has violated this section, the
19 coordinating board shall assess an administrative penalty against
20 the institution in an amount equal to the lesser of \$1 million or
21 one percent of the amount of the institution's operating expenses
22 budgeted for the state fiscal year preceding the state fiscal year
23 in which the violation occurred.

24 (j) An administrative penalty collected under Subsection
25 (i) may only be appropriated to an institution of higher education
26 that the coordinating board has not determined to have violated
27 this section during the two state fiscal years preceding the state
28 fiscal year for which the appropriation is made.

29 Sec. 51.9318. STATEMENTS REQUIRED TO BE INCLUDED IN MISSION
30 STATEMENT, BYLAWS, FACULTY HANDBOOK, AND STUDENT HANDBOOK. (a) In
31 this section, "institution of higher education" has the meaning

1 assigned by Section 61.003.

2 (b) Each institution of higher education shall adopt an
3 institutional mission statement that includes, or incorporate into
4 the institution's institutional mission statement if the
5 institution has already adopted an institutional mission
6 statement, the following statements in whole and without
7 interruption:

8 (1) "We affirm that (name of institution) will educate
9 students by means of free, open, and rigorous intellectual inquiry
10 to seek the truth.";

11 (2) "We affirm our duty to equip students with the
12 intellectual skills they need to reach their own informed
13 conclusions on matters of social and political importance.";

14 (3) "We affirm the value of viewpoint diversity in
15 campus intellectual life, including in faculty recruitment and
16 hiring.";

17 (4) "We affirm our duty to ensure that no aspects of
18 (name of institution) life, in or outside the classroom, require,
19 favor, disfavor, or prohibit speech or action that supports any
20 political, social, or religious belief.";

21 (5) "We affirm our commitment to create a community
22 dedicated to civil and free inquiry that respects the intellectual
23 freedom of each member, supports individual capacities for growth,
24 and tolerates the differences in opinion that naturally occur in a
25 public university community.";

26 (6) "We affirm the value of institutional neutrality:
27 that institutions of higher education should not take collective
28 positions on political and social controversies of the day."; and

29 (7) "These values take priority over any other value
30 we may also adopt."

31 (c) Each institution of higher education shall incorporate

1 into the institution's bylaws, faculty handbook, and student
2 handbook the substance of the following reports issued by the
3 University of Chicago:

4 (1) the Report of the Committee on Freedom of
5 Expression; and

6 (2) the Kalven Committee Report on the University's
7 Role in Political and Social Action.

8 Sec. 51.9319. CERTAIN MANDATORY TRAINING PROHIBITED. (a)
9 In this section:

10 (1) "Coordinating board" means the Texas Higher
11 Education Coordinating Board.

12 (2) "Institution of higher education" has the meaning
13 assigned by Section 61.003.

14 (3) "Training" includes a training, seminar,
15 discussion group, workshop, or other instructional program,
16 whether provided in person, online, or by any other means, with a
17 purpose of advising, counseling, influencing, or teaching
18 participants. The term does not include:

19 (A) an academic course offered for credit; or

20 (B) an activity of a student organization
21 registered with or recognized by an institution of higher education
22 that affects only the organization's members.

23 (b) An institution of higher education may not require a
24 student, employee, or applicant for employment at the institution
25 to participate in training on diversity, equity, inclusion, bias,
26 oppression, gender identity, or related concepts as a condition of:

27 (1) admission to or enrollment at the institution;

28 (2) employment or promotion at the institution;

29 (3) participating in any function of the institution;

30 or

31 (4) graduating from the institution.

1 (c) This section may not be construed to:

2 (1) limit the academic freedom of any individual
3 faculty member to direct the instruction of a course taught by the
4 faculty member; or

5 (2) prohibit any training:

6 (A) that is:

7 (i) developed by an attorney; and

8 (ii) approved in writing by the
9 institution's general counsel and the office of the attorney
10 general as being required to comply with any applicable court order
11 or state or federal law; and

12 (B) for which the materials are made publicly
13 available on the institution of higher education's Internet
14 website.

15 (d) Any person may notify the attorney general of a
16 violation or potential violation of this section by an institution
17 of higher education. The attorney general may file suit for a writ
18 of mandamus compelling the institution to comply with this section.

19 (e) A student or employee of an institution of higher
20 education who is required to participate in training in violation
21 of this section may bring an action against the institution for
22 injunctive or declaratory relief.

23 (f) If an institution of higher education determines that an
24 employee of the institution has violated this section, the
25 institution shall:

26 (1) take the following action against the employee:

27 (A) for the first violation, place the employee
28 on unpaid leave for the next academic year; or

29 (B) for the second or a subsequent violation,
30 discharge the employee; and

31 (2) report the determination and the action taken by

1 the institution to the coordinating board.

2 (g) The coordinating board shall maintain and provide to
3 each institution of higher education a list of persons against whom
4 action has been taken under Subsection (f).

5 (h) An institution of higher education may not hire an
6 employee who is included on the coordinating board's list
7 maintained under Subsection (g) before:

8 (1) if the employee was placed on unpaid leave under
9 Subsection (f)(1)(A), the end of the academic year for which the
10 employee is placed on unpaid leave; or

11 (2) if the employee was discharged under Subsection
12 (f)(1)(B), the fifth anniversary of the date on which the employee
13 was discharged.

14 (i) If the coordinating board determines that an
15 institution of higher education has violated this section, the
16 coordinating board shall assess an administrative penalty against
17 the institution in an amount equal to the lesser of \$1 million or
18 one percent of the amount of the institution's operating expenses
19 budgeted for the state fiscal year preceding the state fiscal year
20 in which the violation occurred.

21 (j) An administrative penalty collected under Subsection
22 (i) may only be appropriated to an institution of higher education
23 that the coordinating board has not determined to have violated
24 this section during the two state fiscal years preceding the state
25 fiscal year for which the appropriation is made.

26 SECTION 4. Section 51.942, Education Code, is amended by
27 adding Subsection (c-1) to read as follows:

28 (c-1) For purposes of Subsection (c)(5), good cause for
29 revoking the tenure of a faculty member includes the faculty
30 member's violation of Section 51.9317 or 51.9319.

31 SECTION 5. (a) Section 51.352(d), Education Code, as

1 amended by this Act, applies beginning with the 2023-2024 academic
2 year.

3 (b) Section 51.352(g), Education Code, as added by this Act,
4 applies beginning with money appropriated to a public institution
5 of higher education for the state fiscal year beginning September
6 1, 2024.

7 SECTION 6. (a) Except as provided by Subsection (b) of this
8 section, Subchapter L, Chapter 51, and Sections 51.9317, 51.9318,
9 and 51.9319, Education Code, as added by this Act, apply beginning
10 with the 2023-2024 academic year.

11 (b) Sections 51.9317(f) and 51.9319(f), Education Code, as
12 added by this Act, apply only to a person who enters into or renews
13 an employment contract at a public institution of higher education
14 on or after the effective date of this Act.

15 SECTION 7. A public institution of higher education may not
16 spend money appropriated by the legislature for the state fiscal
17 biennium beginning September 1, 2025, until the institution's
18 governing board has filed with the Texas Higher Education
19 Coordinating Board and posted on the institution's Internet website
20 a report that:

21 (1) states the steps taken by the institution to
22 comply with Section 51.9317, Education Code, as added by this Act;
23 and

24 (2) certifies the institution's compliance with
25 Section 51.9317, Education Code, as added by this Act.

26 SECTION 8. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as
28 provided by Section 39, Article III, Texas Constitution. If this
29 Act does not receive the vote necessary for immediate effect, this
30 Act takes effect September 1, 2023.

**The following amendment was
published on 5/18/23 3:02 PM**



M. S. J.

FLOOR AMENDMENT NO. _____

BY: _____

Amend C.S.S.B. 17 (house committee report) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 51.352(d), Education Code, is amended to read as follows:

(d) In addition to powers and duties specifically granted by this code or other law, each governing board shall:

(1) establish, for each institution under its control and management, goals consistent with the role and mission of the institution;

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

(3) appoint the president, or other chief executive officer of each institution under the board's control and management and evaluate the chief executive officer of each component institution and assist the officer in the achievement of performance goals;

(4) ensure that a majority of the members of a search committee for the position of president or other chief executive officer of an institution under the board's control and management are members of the board;

(5) set campus admission standards consistent with the role and mission of the institution and considering the admission standards of similar institutions nationwide having a similar role and mission, as determined by the coordinating board; and

(6) [~~+5~~] ensure that its formal position on matters of

importance to the institutions under its governance is made clear to the coordinating board when such matters are under consideration by the coordinating board.

SECTION 2. Subchapter G, Chapter 51, Education Code, is amended by adding Section 51.3525 to read as follows:

Sec. 51.3525. RESPONSIBILITY OF GOVERNING BOARDS REGARDING DIVERSITY, EQUITY, AND INCLUSION INITIATIVES. (a) In this section, "diversity, equity, and inclusion office" means an office, division, or other unit of an institution of higher education established for the purpose of:

(1) influencing hiring or employment practices at the institution with respect to race, sex, color, or ethnicity, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal antidiscrimination laws;

(2) promoting differential treatment of or providing special benefits to individuals on the basis of race, color, or ethnicity;

(3) promoting policies or procedures designed or implemented in reference to race, color, or ethnicity, other than policies or procedures approved in writing by the institution's general counsel and the office of the attorney general for the sole purpose of ensuring compliance with any applicable court order or state or federal law; or

(4) conducting trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation, other than trainings,

programs, or activities developed by an attorney and approved in writing by the institution's general counsel and the office of the attorney general for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

(b) The governing board of an institution of higher education shall ensure that each unit of the institution:

(1) does not, except as required by federal law:

(A) establish or maintain a diversity, equity, and inclusion office;

(B) hire or assign an employee of the institution or contract with a third party to perform the duties of a diversity, equity, and inclusion office;

(C) compel, require, induce, or solicit any person to provide a diversity, equity, and inclusion statement or give preferential consideration to any person based on the provision of a diversity, equity, and inclusion statement;

(D) give preference on the basis of race, sex, color, ethnicity, or national origin to an applicant for employment, an employee, or a participant in any function of the institution; or

(E) require as a condition of enrolling at the institution or performing any institution function any person to participate in diversity, equity, and inclusion training, which:

(i) includes a training, program, or activity designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation; and

(ii) does not include a training, program, or

activity developed by an attorney and approved in writing by the institution's general counsel and the office of the attorney general for the sole purpose of ensuring compliance with any applicable court order or state or federal law; and

(2) adopts policies and procedures for disciplining an employee or contractor of the institution who engages in conduct in violation of Subdivision (1), including by termination, as appropriate.

(b-1) An accrediting agency may not take or threaten to take adverse action against an institution of higher education based on the institution's compliance with this section. If an accrediting agency takes or threatens to take adverse action against an institution of higher education in violation of this subsection, the attorney general, the institution, or an employee of the institution may bring an action for declaratory or injunctive relief against the agency.

(b-2) Subsection (b) (1) may not be construed to apply to:

(1) academic course instruction;

(2) scholarly research or a creative work by an institution of higher education's students, faculty, or other research personnel or the dissemination of that research or work;

(3) an activity of a student organization registered with or recognized by an institution of higher education;

(4) guest speakers or performers on short-term engagements;

(5) a policy, practice, procedure, program, or activity to enhance student academic achievement or postgraduate outcomes

that is designed and implemented without regard to race, color, ethnicity, or sex;

(6) data collection; or

(7) student admissions.

(c) An institution of higher education may not spend money appropriated to the institution for a state fiscal year until the governing board of the institution submits to the legislature and the Texas Higher Education Coordinating Board a report certifying the board's compliance with Subsection (b) during the preceding state fiscal year.

(c-1) In the interim between each regular session of the legislature, the governing board of each institution of higher education, or the board's designee, shall testify before the standing legislative committees with primary jurisdiction over higher education at a public hearing of the committee regarding the board's compliance with Subsection (b).

(d) The state auditor shall periodically conduct a compliance audit of each institution of higher education to determine whether the institution has spent state money in violation of this section. The state auditor shall adopt a schedule by which the state auditor will conduct compliance audits under this subsection. The schedule must ensure that each institution of higher education is audited at least once every four years.

(e) If the state auditor determines pursuant to a compliance audit conducted under Subsection (d) that an institution of higher education has spent state money in violation of this section, the

institution is ineligible to receive state funds for the state fiscal year immediately following the state fiscal year in which the determination is made, other than state funds appropriated to pay debt service on bonds or notes previously authorized for the institution.

(f) A student or employee of an institution of higher education who is required to participate in training in violation of Subsection (b) (1) (E) may bring an action against the institution for injunctive or declaratory relief.

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act applies beginning with the 2023-2024 academic year.

(b) Section 51.3525(c), Education Code, as added by this Act, applies beginning with money appropriated to a public institution of higher education for the state fiscal year beginning September 1, 2024.

SECTION 4. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.