

BILL ANALYSIS

Senate Research Center

S.B. 17
By: Creighton et al.
Education
6/12/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas hosts world class institutions of higher education that are as diverse as the state itself. However, certain Diversity, Equity, and Inclusion (DEI) practices are polarizing and work against the goal of inclusion. S.B. 17 prohibits universities from establishing or maintaining DEI offices, officers, employees, or contractors that perform the duties of a DEI office. It also prohibits requiring certain training and ideological oaths.

(Original Author's/Sponsor's Statement of Intent)

S.B. 17 amends current law relating to diversity, equity, and inclusion initiatives at public institutions of higher education.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter G, Chapter 51, Education Code, by adding Section 51.3525, as follows:

Sec. 51.3525. RESPONSIBILITY OF GOVERNING BOARDS REGARDING DIVERSITY, EQUITY, AND INCLUSION INITIATIVES. (a) Defines "diversity, equity, and inclusion office."

(b) Requires the governing board of an institution of higher education to 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 Texas Higher Education Coordinating Board (THECB) for the sole purpose of ensuring compliance with any applicable court order or state or federal law; and

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

(c) Prohibits anything in this section from being construed to limit or prohibit an institution of higher education or an employee of an institution of higher education from, for purposes of applying for a grant or complying with the terms of accreditation by an accrediting agency, submitting to the grantor or accrediting agency a statement that:

(1) highlights the institution's work in supporting:

(A) first-generation college students;

(B) low-income students; or

(C) underserved student populations; or

(2) certifies compliance with state and federal antidiscrimination laws.

(d) Prohibits Subsection (b)(1) from being 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, sex, color, or ethnicity;

(6) data collection; or

(7) student recruitment or admissions.

(e) Prohibits an institution of higher education from spending money appropriated to the institution for a state fiscal year until the governing board of the institution submits to the legislature and THECB a report certifying THECB's compliance with this section during the preceding state fiscal year.

(f) Requires the governing board of each institution of higher education, or the board's designee, in the interim between each regular session of the legislature, to 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 this section.

(g) Requires the state auditor to 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. Requires the state auditor to adopt a schedule by which the state auditor will conduct compliance audits under this subsection. Requires that the schedule ensure that each institution of higher education is audited at least once every four years.

(h) Provides that an institution of higher education, if the state auditor determines pursuant to a compliance audit conducted under Subsection (g) that the institution has spent state money in violation of this section:

(1) is required to cure the violation not later than the 180th day after the date on which the determination is made; and

(2) if the institution fails to cure the violation during the period described by Subdivision (1), is ineligible to receive formula funding increases, institutional enhancements, or exceptional items during the state fiscal biennium immediately following the state fiscal biennium in which the determination is made.

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

(j) Requires THECB, in coordination with institutions of higher education, to conduct a biennial study to identify the impact of the implementation of this section on the application rate, acceptance rate, matriculation rate, retention rate, grade point average, and graduation rate of students at institutions of higher education, disaggregated by race, sex, and ethnicity. Requires THECB, not later than December 1 of each even-numbered year, to submit to the legislature a report on the results of the study and any recommendations for legislative or other action. Provides that this subsection expires September 1, 2029.

SECTION 2. Authorizes a public institution of higher education to provide to each employee in good standing at the institution whose position is eliminated as a result of the implementation of Section 51.3525, Education Code, as added by this Act, a letter of recommendation for employment for a position at the institution or elsewhere.

SECTION 3. (a) Provides that this Act, except as provided by Subsection (b) of this section, applies beginning with the spring semester of the 2023–2024 academic year.

(b) Provides that Section 51.3525(e), 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. Effective date: upon passage or January 1, 2024.