

## **BILL ANALYSIS**

Senate Research Center

S.B. 17  
By: Creighton et al.  
Subcommittee on Higher Education  
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As Filed

### **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.

As proposed, S.B. 17 amends current law relating to public higher education reform and authorizes administrative penalties.

### **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 Section 51.352, Education Code, by amending Subsection (d) and adding Subsection (g), as follows:

(d) Requires each governing board of an institution of higher education (board), in addition to powers and duties specifically granted by this code or other law, to:

(1)-(3) makes no changes to these subdivisions;

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

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

(6) makes a nonsubstantive change to this subdivision;

(7) approve or deny each course in the core curriculum, as that term is defined by Section 61.821 (Definitions), at each institution under the board's control and management;

(8) approve or deny each posting or other advertisement for a tenured faculty position at each institution under the board's control and management; and

(9) makes a nonsubstantive change to this subdivision.

(g) Prohibits an institution of higher education from spending money appropriated to the institution for a state fiscal year until the board submits to the legislature and the Texas Higher Education Coordinating Board (THECB) a report certifying the board's compliance with Subsections (d)(2) (relating to requiring each board to appoint the

chancellor or other chief executive officer of the system, if the board governs a university system), (3) (relating to requiring each board to 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), (5), (7), and (8) during the preceding state fiscal year.

SECTION 2. Amends Chapter 51, Education Code, by adding Subchapter L, as follows:

**SUBCHAPTER L. PROHIBITIONS REGARDING IDEOLOGICAL OATHS OR STATEMENTS**

Sec. 51.601. **PURPOSE.** Provides that the purpose of this subchapter is to prohibit institutions of higher education from requiring or giving preferential consideration for certain ideological oaths or statements that undermine academic freedom and open inquiry and impede the discovery, preservation, and transmission of knowledge.

Sec. 51.602. **DEFINITIONS.** Defines "coordinating board" and "institution of higher education."

Sec. 51.603. **PROHIBITIONS REGARDING IDEOLOGICAL OATHS OR STATEMENTS.** (a) Prohibits an institution of higher education from:

(1) compelling, requiring, inducing, or soliciting a student enrolled at the institution, an employee or contractor of the institution, or an applicant for admission to or employment or contracting at the institution to:

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

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

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

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

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

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

(b) Prohibits this section from being construed to:

(1) restrict academic research or coursework;

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

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

(A) disclose or discuss the content of the applicant's research or artistic creations;

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

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

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

SECTION 3. Amends Subchapter Z, Chapter 51, Education Code, by adding Sections 51.9317, 51.9318, and 51.9319, as follows:

Sec. 51.9317. DIVERSITY, EQUITY, AND INCLUSION OFFICES AND EMPLOYEES PROHIBITED. (a) Defines "coordinating board," "diversity, equity, and inclusion office," and "institution of higher education."

(b) Prohibits an institution of higher education from establishing or maintaining a diversity, equity, and inclusion office or hiring or assigning an employee of the institution, or contract with a third party, to perform the duties of a diversity, equity, and inclusion office.

(c) Prohibits Subsection (b) from being construed to:

(1) restrict:

(A) academic course instruction;

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

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

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

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

(F) services provided by appropriate professionals at an institution of higher education to veterans of the armed forces of the United States or persons with a physical or cognitive disability; or

(G) an institution of higher education's ability to respond to a request for information from a grantmaking agency or athletic association or to collect data; or

(2) prohibit an institution of higher education from:

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

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

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

(d) Prohibits anything in this section from being construed as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of an institution of higher education.

(e) Authorizes any person to notify the attorney general of a violation or potential violation of this section by an institution of higher education. Authorizes the attorney general to file suit for a writ of mandamus compelling the institution to comply with this section.

(i) Requires an institution of higher education, if the institution determines that an employee of the institution has violated this section, to:

(1) take the following action against the employee:

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

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

(2) report the determination and the action taken by the institution to THECB.

(j) Requires THECB to maintain and provide to each institution of higher education a list of persons against whom action has been taken under Subsection (i).

(k) Prohibits an institution of higher education from hiring an employee who is included on THECB's list maintained under Subsection (j) before:

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

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

(l) Requires THECB, if THECB determines that an institution of higher education has violated this section, to assess an administrative penalty against the institution in an amount equal to the lesser of \$1 million or one percent of the amount of the institution's operating expenses budgeted for the state fiscal year preceding the state fiscal year in which the violation occurred.

(m) Authorizes an administrative penalty collected under Subsection (l) to be appropriated only to an institution of higher education that THECB has not determined to have violated this section during the two state fiscal years preceding the state fiscal year for which the appropriation is made.

**Sec. 51.9318. STATEMENTS REQUIRED TO BE INCLUDED IN MISSION STATEMENT, BYLAWS, FACULTY HANDBOOK, AND STUDENT HANDBOOK.**

(a) Defines "institution of higher education."

(b) Requires each institution of higher education to adopt an institutional mission statement that includes, or incorporate into the institution's institutional mission

statement if the institution has already adopted an institutional mission statement, certain statements in whole and without interruption. Sets forth the language required to be included in the statements.

(c) Requires each institution of higher education to incorporate into the institution's bylaws, faculty handbook, and student handbook the substance of the following reports issued by the University of Chicago: the Report of the Committee on Freedom of Expression and the Kalven Committee Report on the University's Role in Political and Social Action.

Sec. 51.9319. CERTAIN MANDATORY TRAINING PROHIBITED. (a) Defines "coordinating board," "institution of higher education," and "training."

(b) Prohibits an institution of higher education from requiring a student, employee, or applicant for employment at the institution to participate in training on diversity, equity, inclusion, bias, oppression, gender identity, or related concepts as a condition of:

- (1) admission to or enrollment at the institution;
- (2) employment or promotion at the institution;
- (3) participating in any function of the institution; or
- (4) graduating from the institution.

(c) Prohibits this section from being construed to:

- (1) limit the academic freedom of any individual faculty member to direct the instruction of a course taught by the faculty member; or
- (2) prohibit any training:
  - (A) that is developed by an attorney and approved in writing by the institution's general counsel and the Office of the Attorney General as being required to comply with any applicable court order or state or federal law; and
  - (B) for which the materials are made publicly available on the institution of higher education's Internet website.

(d) Authorizes any person to notify the attorney general of a violation or potential violation of this section by an institution of higher education. Authorizes the attorney general to file suit for a writ of mandamus compelling the institution to comply with this section.

(e) Authorizes a student or employee of an institution of higher education who is required to participate in training in violation of this section to bring an action against the institution for injunctive or declaratory relief.

(h) Requires an institution of higher education, if the institution determines that an employee of the institution has violated this section, to:

- (1) take the following action against the employee:
  - (A) for the first violation, place the employee on unpaid leave for the next academic year; or
  - (B) for the second or a subsequent violation, discharge the employee; and

(2) report the determination and the action taken by the institution to THECB.

(i) Requires THECB to maintain and provide to each institution of higher education a list of persons against whom action has been taken under Subsection (h).

(j) Prohibits an institution of higher education from hiring an employee who is included on THECB's list maintained under Subsection (i) before:

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

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

(k) Requires THECB, if THECB determines that an institution of higher education has violated this section, to assess an administrative penalty against the institution in an amount equal to the lesser of \$1 million or one percent of the amount of the institution's operating expenses budgeted for the state fiscal year preceding the state fiscal year in which the violation occurred.

(l) Authorizes an administrative penalty collected under Subsection (k) to be appropriated only to an institution of higher education that THECB has not determined to have violated this section during the two state fiscal years preceding the state fiscal year for which the appropriation is made.

SECTION 4. Amends Section 51.942, Education Code, by adding Subsection (c-1), as follows:

(c-1) Provides that good cause for revoking the tenure of a faculty member, for purposes of Subsection (c)(5) (relating to requiring that the rules adopted by the board include provisions providing that a faculty member be subject to revocation of tenure or other appropriate disciplinary action if incompetency, neglect of duty, or other good cause is determined to be present), includes the faculty member's violation of Section 51.9317 or 51.9319.

SECTION 5. (a) Provides that Section 51.352(d), Education Code, as amended by this Act, applies beginning with the 2023–2024 academic year.

(b) Provides that Section 51.352(g), 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 6. (a) Provides that Subchapter L, Chapter 51, and Sections 51.9317, 51.9318, and 51.9319, Education Code, as added by this Act, except as provided by Subsection (b) of this section, apply beginning with the 2023–2024 academic year.

(b) Makes application of Sections 51.9317(i) and 51.9319(h), Education Code, as added by this Act, prospective.

SECTION 7. Prohibits a public institution of higher education from spending money appropriated by the legislature for the state fiscal biennium beginning September 1, 2025, until the institution's board has filed with THECB and posted on the institution's Internet website a report that states the steps taken by the institution to comply with Section 51.9317, Education Code, as added by this Act, and that certifies the institution's compliance with Section 51.9317, Education Code, as added by this Act.

SECTION 8. Effective date: upon passage or September 1, 2023.