

By: Creighton, et al.

S.B. No. 17

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the powers and duties of the governing boards of public
3 institutions of higher education.

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

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

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

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

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

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

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

23 (5) set campus admission standards consistent with the
24 role and mission of the institution and considering the admission

1 standards of similar institutions nationwide having a similar role
2 and mission, as determined by the coordinating board; and

3 (6) [~~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 such matters are under
6 consideration by the coordinating board.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i) includes a training, program, or

1 activity designed or implemented in reference to race, color,
2 ethnicity, gender identity, or sexual orientation; and

3 (ii) does not include a training, program,
4 or activity developed by an attorney and approved in writing by the
5 institution's general counsel and the office of the attorney
6 general for the sole purpose of ensuring compliance with any
7 applicable court order or state or federal law; and

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

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

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

21 (1) academic course instruction;

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

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

27 (4) guest speakers or performers on short-term

1 engagements;

2 (5) a policy, practice, procedure, program, or
3 activity to enhance student academic achievement or postgraduate
4 outcomes that is designed and implemented without regard to race,
5 color, ethnicity or sex;

6 (6) data collection; or

7 (7) student admissions.

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

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

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

27 (e) If the state auditor determines pursuant to a compliance

1 audit conducted under Subsection (d) that an institution of higher
2 education has spent state money in violation of this section, the
3 institution is ineligible to receive state funds for the state
4 fiscal year immediately following the state fiscal year in which
5 the determination is made, other than state funds appropriated to
6 pay debt service on bonds or notes previously authorized for the
7 institution.

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

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

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

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

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

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1 Act takes effect September 1, 2023.