

BILL ANALYSIS

C.S.H.B. 4552
By: Gerdes
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill author has informed the committee that the 88th Legislature, in an effort to ensure the presence of a meritocracy in the state's highest levels of education, passed S.B. 17 in 2023, which prohibited the use of admission and hiring practices with regards to race, sex, and orientation, and that this bill effectively banned diversity, equity, and inclusion (DEI) within Texas' public universities. The bill author has further informed the committee that, while public universities are now being brought back in line with the merit-based system they were intended to have, the rest of the government is still being held hostage by DEI and that ending all DEI hiring practices within government will ensure that jobs involving governance and education are about merit and not about race, sex, or other characteristics irrelevant to job performance. C.S.H.B. 4552 seeks to address these issues and prevent further waste of tax dollars through internal implementation or contracting to force employees into discriminatory trainings or making discriminatory statements. The bill establishes the Texas Antidiscrimination Act, sets out relevant legislative findings, prohibits discrimination by a governmental entity on the basis of an immutable characteristic, and prohibits contracts by a governmental entity with companies that engage in discriminatory activity.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4552 amends the Government Code to set out provisions relating to a prohibition on discriminatory activities by governmental entities and vendors of governmental entities, providing for declaratory and injunctive relief and the withholding of certain funds from political subdivisions.

Legislative Findings

C.S.H.B. 4552 sets out the following legislative findings:

- Section 3, Article I, Texas Constitution, provides that "[a]ll freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public service";
- Section 3a, Article I, Texas Constitution, provides that "[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin";

- Section 3a, Article I, Texas Constitution, was designed expressly to provide protection which supplements the federal guarantees of equal treatment;
- Section 3a, Article I, Texas Constitution, is more extensive and provides more specific protection than other equal protection and due process guarantees included in either the U.S. Constitution or the Texas Constitution;
- the discriminatory activities described in the bill are antithetical to Sections 3 and 3a, Article I, Texas Constitution, and lack a rational relationship to a legitimate governmental purpose such that the activities violate those provisions; and
- Texans deserve a government committed to serving every person with equal dignity and respect and to expending precious taxpayer resources only for the purpose of making Texas great for all Texans.

The bill establishes that its purpose is to prevent unlawful discrimination that is antithetical to Sections 3 and 3a, Article I, Texas Constitution. The bill prohibits its provisions from being construed to create a right or benefit, substantive or procedural, enforceable at law or in equity by any party against a governmental entity, as defined by the bill, except those specifically provided by the bill's provisions.

Prohibition on Discrimination by Governmental Entity on the Basis of Immutable Characteristic

Definitions

C.S.H.B. 4552 defines the following terms for purposes of the bill's provisions regarding the prohibition on discrimination by governmental entity on the basis of an immutable characteristic:

- "discriminatory activity" as the following:
 - influencing hiring or employment practices with respect to race, sex, color, or ethnicity, other than through the use of a color-blind and sex-neutral hiring process in accordance with any applicable state and federal antidiscrimination laws;
 - promoting differential treatment of or providing special benefits to individuals on the basis of race, sex, color, or ethnicity;
 - promoting policies or procedures designed or implemented in reference to race, sex, color, or ethnicity, other than a policy or procedure as follows:
 - approved in writing by either the general counsel of the governmental entity promoting the policy or procedure or, if the governmental entity promoting the policy or procedure does not employ a general counsel, an attorney contracted by the entity to provide general legal services or the attorney general; and
 - implemented for the sole purpose of ensuring compliance with any applicable court order or state or federal law;
 - conducting trainings, programs, or activities designed or implemented in reference to race, sex, color, ethnicity, other than trainings, programs, or activities that are as follows:
 - developed by an attorney;
 - approved in writing by either the general counsel of the governmental entity conducting the training, program, or activity or, if the governmental entity conducting the training, program, or activity does not employ a general counsel, an attorney contracted by the entity to provide general legal services or the attorney general; and
 - implemented for the sole purpose of ensuring compliance with any applicable court order or state or federal law; and
 - promoting, as an official position of a governmental entity, a particular opinion referencing unconscious or implicit bias, cultural appropriation, allyship, transgender ideology, microaggressions, group marginalization, anti-racism, systemic oppression, intersectionality, neo-pronouns, heteronormativity,

disparate impact, gender theory, racial or sexual privilege, or any related formulation of these concepts;

- "discriminatory office" as an office, division, or other unit of a governmental entity established for the purpose of engaging in a discriminatory activity;
- "governmental entity" as a state agency or political subdivision;
- "political subdivision" as a county, municipality, special purpose district, or any other political subdivision of the state, including a political subdivision described by the Professional Services Procurement Act with respect to consulting services and including an open-enrollment charter school; and
- "state agency" as the following:
 - a department, commission, board, office, or other agency that is in the executive branch of state government and that was created by the constitution or a statute, other than a public institution of higher education as defined by reference to the Higher Education Coordinating Act of 1965;
 - the legislature or a legislative agency; or
 - the supreme court, the court of criminal appeals, a court of appeals, a district court, or the Texas Judicial Council or another agency in the judicial branch of state government.

Discrimination Prohibited

Discrimination by Governmental Entity Prohibited

C.S.H.B. 4552 prohibits a governmental entity, notwithstanding any other law and except as provided by these provisions and a later described provision, from doing the following:

- engaging in a discriminatory activity;
- establishing or maintaining a discriminatory office;
- hiring or assigning an employee of the entity or contracting with a third party to perform the duties of a discriminatory office;
- compelling, requiring, inducing, or soliciting any person to provide a discriminatory statement, or give preference to an employee, applicant for employment, or other participant in any function of the entity on the basis of the provision of a discriminatory statement;
- giving preference to an employee, applicant for employment, or other participant in any function of the entity on the basis of race, sex, color, ethnicity, or national origin;
- promoting or adopting any theory justifying differential treatment of individuals on the basis of race, sex, color, ethnicity, or national origin;
- considering the race, sex, color, ethnicity, or national origin of an individual in an employment, contracting, funding, or policy determination;
- requiring an employee to participate in a discriminatory activity or a discriminatory training, including a training, program, or other activity designed or implemented in reference to race, sex, color, ethnicity, or national origin;
- spending money on a discriminatory activity, including acquiring services, supplies, information technology, or other goods for the purpose of carrying out a discriminatory activity;
- awarding a contract or providing preferential or discriminatory treatment to a person submitting a bid for a contract on the basis of race, sex, color, ethnicity, or national origin; or
- entering into or renewing a contract with a vendor in violation of the bill's provisions.

The bill makes these provisions inapplicable to a training, program, or activity relating to sexual harassment or developed for the purpose of ensuring compliance with applicable federal law. The bill requires each governmental entity to adopt policies and procedures for appropriately disciplining, including by termination, an employee of the entity who engages in conduct prohibited as previously described under these bill provisions or in conduct prohibited by the

bill's provisions, as later described, prohibiting a governmental entity from entering contracts with companies that engage in discriminatory activity.

Limitation of Prohibition on Certain Governmental Activities Relating to Public Education

C.S.H.B. 4552 sets out the following provisions that are applicable to a public school district, an open-enrollment charter school, the State Board of Education, and the Texas Education Agency. The bill provides for the following regarding the previously described bill provisions regarding prohibited discrimination by a governmental entity:

- prohibits those previously described provisions from being construed to do the following:
 - limit or prohibit a public school district or charter school from, in accordance with state curriculum standards adopted under applicable Education Code provisions, acknowledging or teaching the significance of a state or federal holiday or a commemorative month and the manner in which the holiday or commemorative month fits into the themes of the history of Texas or the United States;
 - affect a student's rights under the First Amendment to the United States Constitution or Section 8, Article I, Texas Constitution; or
 - limit or prohibit a district or charter school from analyzing a school-based cause of, and taking steps to eliminate an unlawful discriminatory practice necessary to address, achievement gaps and differentials described by Education Code provisions relating to achievement performance indicators for purposes of public school system accountability; and
- makes those previously described provisions inapplicable to the following:
 - classroom instruction that is consistent with state curriculum standards adopted under applicable Education Code provisions;
 - the collection, monitoring, or reporting of data; or
 - a policy, practice, procedure, program, or activity intended to enhance student academic achievement or postgraduate outcomes that is designed and implemented without regard to race, sex, color, or ethnicity.

Enforcement With Respect to Political Subdivision

Complaint; Designation as Noncompliant Political Subdivision

C.S.H.B. 4552 authorizes a person who resides in an area served by a political subdivision and who has a reasonable belief that the political subdivision is violating the bill's provisions regarding its prohibition on discrimination by a governmental entity on the basis of an immutable characteristic, including by not complying with the provisions of a corrective action plan included in a response submitted to the attorney general under the bill's provisions, as later described, to file a complaint with the attorney general. The bill, as follows:

- requires the attorney general, if the attorney general determines that the political subdivision named in a complaint is violating the bill's provisions regarding its prohibition on discrimination by a governmental entity on the basis of an immutable characteristic to designate the political subdivision as a noncompliant political subdivision and provide written notice of the designation to the political subdivision and the comptroller of public accounts; and
- requires the notice provided to the political subdivision to explain the attorney general's reasoning for the determination relating to the designation and to provide that the attorney general must terminate the designation in accordance with the bill's provisions if the political subdivision submits a response in the manner provided by the bill.

The bill authorizes a political subdivision to submit a response to the attorney general not later than the 14th day after receiving the notice. The bill requires the attorney general to terminate the designation of the political subdivision as a noncompliant political subdivision and provide

notice of the termination to the political subdivision and the comptroller if the attorney general determines that the response, as follows:

- demonstrates that the political subdivision is not violating the bill's provisions regarding its prohibition on discrimination by a governmental entity on the basis of an immutable characteristic; or
- includes a corrective action plan appropriate to cure the violation identified in the notice provided by the attorney general to the political subdivision.

Withholding of Certain Funds Otherwise Due to Noncompliant Political Subdivision

C.S.H.B. 4552 requires the comptroller, with respect to a municipality or a county that is designated as a noncompliant political subdivision by the attorney general under the bill's provisions and on receipt of the notice from the attorney general prescribed under the bill's provisions, to do the following:

- withhold payment of any money owed to the municipality under the Tax Code provisions governing the mixed beverage tax clearance fund or under the Municipal Sales and Use Tax Act provision governing the distribution of trust funds; and
- withhold payment of any money owed to the county under Tax Code provisions governing the mixed beverage tax clearance fund or under the County Sales and Use Tax Act provision governing the distribution of trust funds.

The bill requires the comptroller to place an amount so withheld that is not otherwise placed in a suspense account in a trust fund outside the state treasury and prohibits that money from being used for any purpose other than a purpose authorized by law for that money. The bill requires the comptroller, on receipt of a notice under the bill's provisions that the attorney general has terminated the designation of a municipality or county as a noncompliant political subdivision, to take the following actions:

- immediately send to the municipality or county the balance of or amount of, as applicable, the money withheld from the municipality or county under the bill's provisions, as applicable; and
- resume distribution of that money to the municipality or county, as applicable, in the ordinary course of business.

C.S.H.B. 4552 establishes that these bill provisions relating to the withholding of certain funds otherwise due to a noncompliant political subdivision do not affect the validity of a bond, other obligation, or contractual obligation for which revenue was pledged or committed before the bill's effective date and that bonds, other obligations, or contractual obligations for which revenue was pledged or committed before that date are governed by the law in effect when the revenue was pledged or committed, and that law is continued in effect for the purposes of the validity of those bonds, obligations, and contractual obligations.

Civil Action

C.S.H.B. 4552 authorizes the attorney general to seek declaratory and injunctive relief, including by filing a petition for a writ of mandamus, to compel a political subdivision to comply with the bill's provisions relating to the prohibition on discrimination by a governmental entity on the basis of an immutable characteristic if the political subdivision, as follows:

- is designated by the attorney general as a noncompliant political subdivision under the bill's provisions; or
- has not satisfied the terms of a corrective action plan included in a response submitted to the attorney general under the bill's provisions.

The bill requires such an action to be filed in the county in which the political subdivision is located and grants the court of appeals for the Fifteenth Court of Appeals District exclusive intermediate appellate jurisdiction over such an action.

Compliance by State Agency; Reports

Reporting by State Agency

C.S.H.B. 4552 requires each state agency to annually report on the agency's compliance with the bill's provisions relating to the prohibition on discrimination by a governmental entity on the basis of an immutable characteristic in the following manner:

- not later than November 1 of each year, submit to the legislature a report containing an assessment of the agency's compliance with the bill's provisions relating to the prohibition on discrimination by a governmental entity on the basis of immutable characteristic during the preceding state fiscal year; and
- appoint an internal auditor for the specific purpose of conducting the assessment included in the report.

The bill requires a state agency to which the Texas Internal Auditing Act applies to include in the agency's internal auditing annual report an assessment of the agency's compliance with the bill's provisions relating to the prohibition on discrimination by a governmental entity on the basis of an immutable characteristic. The bill requires a report under these provisions of a state agency's failure to comply with the bill's provisions relating to the prohibition on discrimination by a governmental entity on the basis of an immutable characteristic to include a summary of instances of noncompliance and actions taken or planned to be taken to remedy the noncompliance.

C.S.H.B. 4552 requires each state agency not subject to the Texas Internal Auditing Act to appoint an internal auditor not later than January 1, 2026, and requires each state agency to conduct the initial assessment and report on the agency's compliance with the bill's provisions relating to the prohibition on discrimination by a governmental entity on the basis of an immutable characteristic not later than November 1, 2026.

Prohibition on Contracts With Companies That Engage in Discriminatory Activity

Provision Required in Contract

C.S.H.B. 4552 prohibits a governmental entity, as defined by the bill's provisions relating to the prohibition on discrimination by a governmental entity on the basis of an immutable characteristic, from entering into a contract with a vendor for goods and services unless the contract meets the following criteria:

- contains a written verification from the vendor that the vendor does not, and will not during the term of the contract, engage in activity that, were the vendor a governmental entity, would violate the bill's provisions prohibiting discrimination by a governmental entity on the basis of an immutable characteristic; and
- provides that the governmental entity may terminate the contract without penalty or further obligation to the vendor on a showing by the entity that the vendor violated that verification.

Prohibition on Additional Contracts

C.S.H.B. 4552 prohibits a governmental entity from entering into another contract with a vendor after terminating a contract with that vendor under the previously described bill provision. However, a governmental entity may enter into a contract with such a vendor only after taking the following actions:

- submitting information to the attorney general showing that the vendor has cured the violation that was the subject of the contract termination; and
- receiving authorization from the attorney general to enter into a subsequent contract.

The provisions of C.S.H.B. 4552 prohibiting contracts with companies that engage in discriminatory activity apply only to a contract for which the request for bids or proposals or

other applicable expression of interest is made public on or after the bill's effective date. A contract for which the request for bids or proposals or other applicable expression of interest is made public before that date is governed by the law in effect on the date the request or other expression of interest is made public, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4552 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute replaces references in the introduced to "discriminatory initiatives" with references to "discriminatory activity," redesignates the definition for "discriminatory office" in the introduced to the term "discriminatory activity," and revises the definition of "discriminatory activity" as follows:

- removes provisions in the introduced referring to an office, division, or other unit of a governmental entity established for the purposes described by the bill;
- with respect to the purpose in the introduced of influencing hiring or employment practices or workforce composition at the entity with respect to certain characteristics, removes the specification of workforce composition at a governmental entity;
- replaces the purpose of promoting policies or procedures designed or implemented in reference to race, sex, color, or ethnicity, other than policies or procedures approved in writing by the attorney general and implemented for the sole purpose of ensuring compliance with any applicable federal law enacted before September 1, 2025, as in the introduced, with a purpose of promoting policies or procedures designed or implemented in reference to race, sex, color, or ethnicity, other than a policy or procedure approved in writing by the general counsel of the governmental entity promoting the policy or procedure or, if the governmental entity promoting the policy or procedure does not employ a general counsel, an attorney contracted by the entity to provide general legal services or the attorney general, and implemented for the sole purpose of ensuring compliance with any applicable court order or state or federal law;
- with respect to the purpose of conducting trainings, programs, or activities designed or implemented in reference to race, sex, color, ethnicity, gender identity, or sexual orientation, other than trainings, programs, or activities developed by an attorney, approved in writing by the attorney general, and conducted for the sole purpose of ensuring compliance with any applicable court order or state or federal law enacted before September 1, 2025, as in the introduced, does the following:
 - removes references to gender identity and sexual orientation;
 - replaces the specification that such trainings, programs, or activities be approved in writing by the attorney general with a specification that such trainings, programs, or activities be approved in writing by the following:
 - the general counsel of the governmental entity conducting the training, program, or activity; or
 - if the governmental entity conducting the training, program, or activity does not employ a general counsel, an attorney contracted by the entity to provide general legal services or the attorney general; and
 - replaces the specification that such trainings, programs, or activities be conducted for the sole purpose of ensuring compliance with any applicable court order or state or federal law enacted before September 1, 2025, with a specification that such trainings, programs, or activities be implemented for the sole purpose of ensuring compliance with any applicable court order or state or federal law; and

- removes social justice from the topics for which promoting a particular opinion as an official position of a governmental entity constitutes discriminatory activity.

The substitute instead defines "discriminatory office" as an office, division, or other unit of a governmental entity established for the purpose of engaging in a discriminatory activity, which was not present in the introduced.

The introduced set out provisions regarding the responsibility of a governmental entity regarding discriminatory initiatives and required the entity itself to ensure that each unit of the entity does not establish or maintain a discriminatory office, among other actions the entity is required to ensure does not occur. However, the substitute sets out provisions that expressly prohibit a governmental entity from engaging in a discriminatory activity and establishing or maintaining a discriminatory office, among other expressly prohibited actions. Accordingly, the substitute revises the applicable conduct as follows:

- includes engaging in discriminatory activity, which the introduced does not;
- replaces the requirement in the introduced that a governmental entity ensure that each unit of the entity does not give preferential consideration to any person based on the provision of a discriminatory statement with a prohibition against a governmental entity giving preference to an employee, applicant for employment, or other participant in any function of an entity on the basis of the provision of a discriminatory statement;
- includes an express prohibition on promoting or adopting any theory justifying differential treatment of individuals on the basis of race, sex, color, ethnicity, or national origin, whereas the introduced did not;
- includes an express prohibition on considering the race, sex, color, ethnicity, or national origin of an individual in an employment, contracting, funding, or policy determination, whereas the introduced did not;
- replaces the requirement in the introduced that a governmental entity ensure that each unit of the entity does not require as a condition of employment any person to participate in discriminatory training, which includes a training, program, or activity designed or implemented in reference to race, sex color, ethnicity, gender identity, or sexual orientation with an express prohibition against a governmental entity requiring an employee to participate in a discriminatory activity or a discriminatory training, including a training, program, or other activity designed or implemented in reference to race, sex, color, ethnicity, or national origin;
- includes an express prohibition against spending money on a discriminatory activity, including acquiring services, supplies, information technology, or other goods for the purpose of carrying out a discriminatory activity, whereas the introduced did not;
- includes awarding a contract or providing preferential or discriminatory treatment to a person submitting a bid for a contract on the basis of race, sex, color, ethnicity, or national origin as prohibited conduct, whereas the introduced did not; and
- includes entering into or renewing a contract with a vendor in violation of the substitute's provisions, whereas the introduced did not.

The substitute omits provisions in the introduced prohibiting the introduced version's provisions from being construed to apply to the following:

- academic course instruction;
- scholarly research or a creative work by a school district's or charter school's students or faculty;
- an activity of a student organization registered with or recognized by a district or charter school;
- guest speakers or performers on short-term engagements;
- a program or activity to enhance student academic achievement or postgraduate outcomes that allows participation without regard to race, sex, color, or ethnicity; or
- data collection.

The substitute includes the following provisions not present in the introduced:

- provisions prohibiting the substitute's provisions from being construed to limit or prohibit a district or charter school from acknowledging or teaching the significance of a state or federal holiday or a commemorative month, affecting a student's rights under the First Amendment of the U.S. Constitution or Section 8, Article I, Texas Constitution, or limiting or prohibiting a district or charter school from analyzing and taking steps to eliminate a school-based cause of an unlawful discriminatory practice necessary to address certain achievement gaps and differentials; and
- provisions making the substitute's provisions inapplicable to classroom instruction consistent with state curriculum standards, the collection, monitoring, or reporting of data, or a policy, practice, procedure, program, or activity intended to enhance student academic achievement or postgraduate outcomes that is designed and implemented without regard to race, sex, color, or ethnicity.

Whereas the introduced provided for a person who has a reasonable belief that a governmental entity is violating the bill's provisions to file a complaint with the attorney general and procedures for the attorney general to file a petition for a writ of mandamus to compel the entity to comply with the bill's provisions, the substitute provides for a person who resides in an area served by a political subdivision and who has a reasonable belief that the political subdivision is violating the bill's provisions, including by not complying with the provisions of a corrective action plan included in a response submitted to the attorney general under applicable bill provisions, to file a complaint with the attorney general. The substitute expands provisions providing for such a complaint by including the following, which is absent from the introduced:

- a requirement for the attorney general, if the attorney general determines that the political subdivision named in a complaint is violating the bill's provisions, to designate the political subdivision as a noncompliant political subdivision and to provide written notice of this designation to the political subdivision and the comptroller;
- procedures for the attorney general to terminate such a designation upon receiving a response from the political subdivision that meets the substitute's requirements;
- a requirement for the comptroller to withhold payment of any money to a municipality or county under Tax Code provisions relating to the mixed beverage tax clearance fund and distribution of trust funds, as applicable, that is designated as a noncompliant political subdivision by the attorney general and to return those funds upon termination of the designation, including a corresponding procedural provision;
- an authorization for the attorney general to seek declaratory and injunctive relief, including by filing a petition for a writ of mandamus to compel a political subdivision to comply with the bill's provisions if the political subdivision is designated as a noncompliant political subdivision and has not satisfied the terms of a corrective action plan included in a response submitted to the attorney general under the substitute's provisions; and
- a requirement for each state agency to annually report the agency's compliance with the bill and to provide for the manner in which that report is to be conducted and submitted, including a corresponding procedural provision.

Whereas the introduced prohibited a governmental entity from awarding a contract or providing preferential or discriminatory treatment to a person submitting a bid for a contract on the basis of race, color, ethnicity, sex, gender identity, or sexual orientation, the substitute prohibits a governmental entity from entering into a contract with a vendor for goods and services unless the contract meets certain criteria specified by the substitute, provides for the manner in which a vendor may remedy a terminated contract due to a violation of the bill's provisions, and includes a corresponding procedural provision absent from the introduced.