

BILL ANALYSIS

S.B. 689
By: Hughes
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The 88th Texas Legislature passed S.B. 17, relating to diversity, equity, and inclusion initiatives at public institutions of higher education. The bill sponsor has informed the committee that although S.B. 17 effectively banned these initiatives within public universities in Texas, the legislation did not prohibit diversity, equity, and inclusion initiatives at other governmental entities. The bill sponsor has also informed the committee that prohibiting diversity, equity, and inclusion initiatives, including hiring or employment practices, within state and local government will ensure that government hiring and employment decisions are made based on merit, not race, sex, color, or ethnicity, which are irrelevant to job performance. S.B. 689 seeks to prohibit certain governmental entities from engaging in certain diversity, equity, and inclusion initiatives.

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

S.B. 689 amends the Government Code to require a governmental entity to ensure that each unit of the entity does not, except as required by federal law, do the following:

- 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;
- establish or maintain a diversity, equity, and inclusion office; or
- hire or assign an employee of the entity or contract with a third party to perform the duties of a diversity, equity, and inclusion office.

The bill defines the following terms for purposes of the bill's provisions:

- "diversity, equity, and inclusion office" as an office, division, or other unit of a governmental entity established for the following purposes:
 - influencing hiring or employment practices or workforce composition at the entity with respect to race, sex, color, or ethnicity, other than through the use of color-blind, race-neutral, and sex-neutral hiring processes in accordance with any applicable state and federal antidiscrimination laws;
 - promoting differential treatment 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 policies or procedures approved in writing by the attorney general and implemented for the sole purpose of ensuring compliance with any applicable federal law;
- 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; or
- promoting, as an official position of the entity, a particular opinion referencing unconscious or implicit bias, cultural appropriation, allyship, transgender ideology, microaggressions, group marginalization, anti-racism, systemic oppression, social justice, intersectionality, neo-pronouns, heteronormativity, disparate impact, gender theory, racial or sexual privilege, or any related formulation of these concepts; and
- "governmental entity" 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;
 - the legislature or a legislative state agency;
 - 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; or
 - a county, a municipality, a special purpose district, or any other political subdivision of this state, other than a school district.

S.B. 689 authorizes a person who has a reasonable belief that a governmental entity is violating the bill's prohibition on certain diversity, equity, and inclusion initiatives to file a complaint with the attorney general. The bill authorizes the attorney general, if the attorney general determines that a governmental entity named in such a complaint is violating the prohibition, to file a petition for a writ of mandamus to compel the governmental entity to comply with the prohibition. The mandamus action must be filed as follows:

- in Travis County, if the governmental entity is one of 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;
 - the legislature or a legislative state 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; or
- in the county in which the governmental entity is located, if the governmental entity is a county, a municipality, a special purpose district, or any other political subdivision of this state, other than a school district.

S.B. 689 amends the Labor Code to do the following with respect to statutory provisions relating to employment discrimination:

- for purposes of the provision establishing that an unlawful employment practice is established when the complainant demonstrates that race, color, sex, national origin, religion, age, or disability was a motivating factor for an employment practice, even if other factors also motivated the practice, remove as an exception that race, color, sex, national origin, religion, age, or disability is combined with objective job-related factors to attain diversity in the employer's work force; and
- revise the requirement for each state agency to develop and implement personnel policies and procedures that comply with statutory provisions governing employment discrimination by removing the inclusion of personnel selection procedures that incorporate a workforce diversity program as part of that requirement.

The bill repeals the following provisions:

- the provision establishing that an employer does not commit an unlawful employment practice by developing and implementing personnel policies that incorporate work force diversity programs; and
- statutory provisions relating to hiring practices with respect to employment discrimination, which do the following:
 - require each applicable state agency, each state fiscal biennium, to analyze its current workforce and compare the number of African Americans, Hispanic Americans, and females employed by the agency in each job category to the available African Americans, Hispanic Americans, and females in the statewide civilian workforce to determine the percentage of exclusion or underutilization by each job category;
 - require each applicable state agency to develop and implement a recruitment plan based on such an analysis and require the Texas Workforce Commission (TWC) to monitor applicable state agencies to determine compliance with the requirement to develop and implement a recruitment plan;
 - provide for the effect of statutory provisions relating to hiring practices with respect to employment discrimination on a remedy, agreement, settlement, or affirmative action plan that has been ordered or approved by a court or that has been adopted in accordance with other law; and
 - require each applicable state agency, not later than November 1 of each calendar year, to report to TWC the total number of African Americans, Hispanic Americans, females, and other persons hired for each job category by the agency during the preceding state fiscal year and require TWC to compile that information and submit a report to the governor and the Legislative Budget Board not later than January 1 of the subsequent calendar year.

S.B. 689 repeals the following provisions of the Labor Code:

- Section 21.121; and
- Subchapter J, Chapter 21.

EFFECTIVE DATE

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