

CONFERENCE COMMITTEE REPORT

BILL TEXT

S.B. No. 17

A BILL TO BE ENTITLED

AN ACT

relating to diversity, equity, and inclusion initiatives at public institutions of higher education.

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

SECTION 1. Subchapter G, Chapter 51, Education Code, is amended by adding Section 51.3525 to read as follows:

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

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

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

(3) promoting policies or procedures designed or implemented in reference to race, color, or ethnicity, other than policies or procedures approved in writing by the institution's general counsel and the Texas Higher Education Coordinating Board for the sole purpose of ensuring compliance with any applicable

1 court order or state or federal law; or

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

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

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

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

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

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

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

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

1 (i) includes a training, program, or
2 activity designed or implemented in reference to race, color,
3 ethnicity, gender identity, or sexual orientation; and

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

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

13 (c) Nothing in this section may be construed to limit or
14 prohibit an institution of higher education or an employee of an
15 institution of higher education from, for purposes of applying for
16 a grant or complying with the terms of accreditation by an
17 accrediting agency, submitting to the grantor or accrediting agency
18 a statement that:

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

20 (A) first-generation college students;

21 (B) low-income students; or

22 (C) underserved student populations; or

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

25 (d) Subsection (b)(1) may not be construed to apply to:

26 (1) academic course instruction;

27 (2) scholarly research or a creative work by an

1 institution of higher education's students, faculty, or other
2 research personnel or the dissemination of that research or work;

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

5 (4) guest speakers or performers on short-term
6 engagements;

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

11 (6) data collection; or

12 (7) student recruitment or admissions.

13 (e) An institution of higher education may not spend money
14 appropriated to the institution for a state fiscal year until the
15 governing board of the institution submits to the legislature and
16 the Texas Higher Education Coordinating Board a report certifying
17 the board's compliance with this section during the preceding state
18 fiscal year.

19 (f) In the interim between each regular session of the
20 legislature, the governing board of each institution of higher
21 education, or the board's designee, shall testify before the
22 standing legislative committees with primary jurisdiction over
23 higher education at a public hearing of the committee regarding the
24 board's compliance with this section.

25 (g) The state auditor shall periodically conduct a
26 compliance audit of each institution of higher education to
27 determine whether the institution has spent state money in

1 violation of this section. The state auditor shall adopt a schedule
2 by which the state auditor will conduct compliance audits under
3 this subsection. The schedule must ensure that each institution of
4 higher education is audited at least once every four years.

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

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

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

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

21 (j) The Texas Higher Education Coordinating Board, in
22 coordination with institutions of higher education, shall conduct a
23 biennial study to identify the impact of the implementation of this
24 section on the application rate, acceptance rate, matriculation
25 rate, retention rate, grade point average, and graduation rate of
26 students at institutions of higher education, disaggregated by
27 race, sex, and ethnicity. Not later than December 1 of each

1 even-numbered year, the coordinating board shall submit to the
2 legislature a report on the results of the study and any
3 recommendations for legislative or other action. This subsection
4 expires September 1, 2029.

5 SECTION 2. A public institution of higher education may
6 provide to each employee in good standing at the institution whose
7 position is eliminated as a result of the implementation of Section
8 51.3525, Education Code, as added by this Act, a letter of
9 recommendation for employment for a position at the institution or
10 elsewhere.

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

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

18 SECTION 4. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect January 1, 2024.