

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/27/23

Date

Honorable Dan Patrick
President of the Senate

Honorable Dade Phelan
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 17 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

[Signature]
Campbell

[Signature]
Burrows

Flares

[Signature]

[Signature]
On the part of the Senate
Parker

[Signature]
On the part of the House
Shaheen

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

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.

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Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

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

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

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

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

(3) 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;

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

(5) set campus admission standards consistent with the role and mission of the institution and considering the admission standards of similar institutions nationwide having a similar role and mission, as determined by the coordinating board; and

(6) [~~(5)~~] ensure that its formal position on matters of importance to the institutions under its governance is made clear to the coordinating board when such matters are under consideration by the coordinating board.

No equivalent provision.

No equivalent provision.

Same as House version.

SECTION 1. Subtitle A, Title 3, Education Code, is amended by adding Chapter 50 to read as follows:

CHAPTER 50. HIGHER EDUCATION PURPOSE

Sec. 50.001. HIGHER EDUCATION PURPOSE. A public

Same as Senate version.

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SENATE VERSION

HOUSE VERSION (IE)

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institution of higher education must be committed to creating an environment of:

- (1) intellectual inquiry and academic freedom so that all students are equipped for participation in the workforce and the betterment of society; and
- (2) intellectual diversity so that all students are respected and educated regardless of race, sex, or ethnicity or social, political, or religious background or belief.

SECTION 2. 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:

...

(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 *office of the attorney general* for the sole purpose of ensuring compliance with any applicable court order or state or federal law; or

(4) conducting trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation, other than trainings, programs,

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(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:

...

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

(3) 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 institution's general counsel and the *Texas Higher Education Coordinating Board* for the sole purpose of ensuring compliance with any applicable court order or state or federal law; or

(4) conducting trainings, programs, or activities designed or implemented in reference to race, *sex*, color, ethnicity, gender identity, or sexual orientation, other than trainings, programs,

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...

(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 court order or state or federal law; or

(4) conducting trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation, other than trainings, programs,

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or activities developed by an attorney and approved in writing by the institution's general counsel and the *office of the attorney general* for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

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

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

...

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

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

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

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

(b-1) An accrediting agency may not take or threaten to take adverse action against an institution of higher education based on the institution's compliance with this section. If an accrediting agency takes or threatens to take adverse action against an institution of higher education in violation of this

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or activities developed by an attorney and 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 court order or state or federal law. [FA4(1)]

(b) Same as Senate version except as follows:

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

(i) includes a training, program, or activity *that advocates for or gives preferential treatment on the basis of* race, sex, color, ethnicity, gender identity, or sexual orientation; and

(ii) does not include a training, program, or activity developed by an attorney and approved in writing by the institution's general counsel for the purpose of ensuring compliance with any applicable court order or state or federal law *in accordance with institutional policy*; and

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

No equivalent provision.

CONFERENCE

or activities developed by an attorney and 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 court order or state or federal law.

(b) Same as Senate version except as follows:

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

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

(ii) does not include a training, program, or activity developed by an attorney and 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 court order or state or federal law; and

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

Same as House version.

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subsection, the attorney general, the institution, or an employee of the institution may bring an action for declaratory or injunctive relief against the agency.

No equivalent provision.

(b-2) Subsection (b)(1) may not be construed to apply to:
(1) academic course instruction;
(2) scholarly research or a creative work by an institution of higher education's students, faculty, or other research personnel or the dissemination of that research or work;
(3) an activity of a student organization registered with or recognized by an institution of higher education;
(4) guest speakers or performers on short-term engagements;
(5) a **policy, practice, procedure**, program, or activity to enhance student academic achievement or postgraduate outcomes that **is designed and implemented** without regard to race, color, ethnicity or sex;
(6) data collection; or
(7) student admissions.

(c) Nothing in this section may be construed to limit or prohibit an institution of higher education or an employee of an institution of higher education from, for purposes of applying for a grant or complying with the terms of accreditation by an accrediting agency, submitting to the grantor or accrediting agency a statement that:
(1) highlights the institution's work in supporting:
(A) first-generation college students;
(B) low-income students; or
(C) underserved student populations; or
(2) certifies compliance with state and federal antidiscrimination laws. [FA4(3)]

(d) Subsection (b)(1) may not be construed to apply to:
(1) academic course instruction;
(2) scholarly research or a creative work by an institution of higher education's students, faculty, or other research personnel or the dissemination of that research or work;
(3) an activity of a student organization registered with or recognized by an institution of higher education;
(4) guest speakers or performers on short-term engagements;
(5) a program or activity to enhance student academic achievement or postgraduate outcomes that **allows participation** without regard to race, sex, color, or ethnicity;
(6) data collection; or
(7) student **recruitment or** admissions.

(c) Same as House version.

(d) Subsection (b)(1) may not be construed to apply to:
(1) academic course instruction;
(2) scholarly research or a creative work by an institution of higher education's students, faculty, or other research personnel or the dissemination of that research or work;
(3) an activity of a student organization registered with or recognized by an institution of higher education;
(4) guest speakers or performers on short-term engagements;
(5) a **policy, practice, procedure**, program, or activity to enhance student academic achievement or postgraduate outcomes that **is designed and implemented** without regard to race, sex, color, or ethnicity;
(6) data collection; or
(7) student **recruitment or** admissions.

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

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

(e) Same as House version.

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

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

(f) Same as House version.

(d)

(g) Same as Senate version.

(g) Same as Senate version.

(e) If the state auditor determines pursuant to a compliance audit conducted under **Subsection (d)** that an institution of higher education has spent state money in violation of this section, the institution is ineligible to receive **state funds for the state fiscal year** immediately following the state fiscal year in which the determination is made, **other than state funds appropriated to pay debt service on bonds or notes previously authorized for the institution.**

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

(h) Same as House version.

(1) must cure the violation not later than the 180th day after the date on which the determination is made; and
(2) if the institution fails to cure the violation during the period described by Subdivision (1), is ineligible to receive formula funding increases, institutional enhancements, or exceptional items during the state fiscal biennium immediately following the state fiscal **biennium** in which the determination is made.

(f)

(i) Same as Senate version. [FA4(4)]

(i) Same as Senate version.

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No equivalent provision.

() The Texas Higher Education Coordinating Board, in coordination with institutions of higher education, shall conduct **an annual** study to identify the impact of the implementation of this section on the **recruitment rate, acceptance rate, matriculation rate, retention rate, grade point average, and graduation rate of students at institutions of higher education, disaggregated by race, sex, **color**, ethnicity, **gender identity, or sexual orientation**.** Not later than December 1 of each year, the coordinating board shall submit to the legislature a report on the results of the study and any recommendations for legislative or other action. This subsection expires September 1, 2029. [FA23(1)]

(j) The Texas Higher Education Coordinating Board, in coordination with institutions of higher education, shall conduct **a biennial** study to identify the impact of the implementation of this section on the **application rate, acceptance rate, matriculation rate, retention rate, grade point average, and graduation rate of students at institutions of higher education, disaggregated by race, sex, **and** ethnicity.** Not later than December 1 of each **even-numbered** year, the coordinating board shall submit to the legislature a report on the results of the study and any recommendations for legislative or other action. This subsection expires September 1, 2029.

No equivalent provision.

SECTION __. A public institution of higher education **shall make reasonable efforts so that** each employee **of** the institution whose position **would otherwise be** eliminated as result of the implementation of Section 51.3525, Education Code, as added by this Act, **is offered reassignment to** a position **of similar pay** at the institution. [FA23(2)]

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

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

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act applies beginning with **the spring semester of** the 2023-2024 academic year. [FA23(3)]

SECTION 3. (a) Same as House version.

(b) Section 51.3525(c), 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.

(b) Same as Senate version except makes a conforming change.

(b) Same as House version.

SECTION 4. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can

No equivalent provision.

Same as House version.

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be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect *September 1, 2023*.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect *January 1, 2024*. [FA23(4)]

SECTION 4. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 27, 2023

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB17 by Creighton (Relating to diversity, equity, and inclusion initiatives at public institutions of higher education.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

It is assumed that any costs associated with the bill could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 775 Texas Woman's University System, 781 Higher Education Coordinating Board, 783 University of Houston System Administration, 978 San Jacinto College

LBB Staff: JMc, CMA, MOc, GO, SD, LLO

**Certification of Compliance with
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not a sustainable point of order.

I certify that a copy of the conference committee report on SB 17 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before paper copies of the report were submitted to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.



(Signature)

5.27.23

(Date)