

SUBJECT: Revisions to statutes governing higher education institutions

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Morrison, F. Brown, Giddings, Goolsby, J. Jones, Mercer, Nixon
0 nays
2 absent — Chavez, Smithee

SENATE VOTE: On final passage, May 12 — 31-0

WITNESSES: *(On House companion, HB 2862:)*
For — None
Against — None
On — Clair W. Goldsmith, Kerry Kennedy, University of Texas System

BACKGROUND: The 77th Legislature enacted HB 1545 by Uher, which amended a variety of state regulations to allow public higher education institutions to streamline operations in such areas as purchasing, employment practices, financial management, reporting, strategic planning, and financial matters.

DIGEST: CSSB 1652 would exempt higher education institutions from numerous state regulations.

Financial Matters. The bill would specify that if part of property owned by a higher education institution was used for public purposes and part was not, the part that used for public purposes would be tax exempt.

It would define a major consulting services contract for an institution, other than a public junior college, as one for which it was reasonably foreseeable that the value of the contract would exceed \$25,000, rather than \$15,000, and specify that the chief executive officer, rather than the Governor's Office, could approve such a contract.

The bill would allow institutions to charge a reasonable fee for payment of tuition, fees or other charges using electronic funds transfer or a credit card and service charges if a payment was charged to an account with insufficient funds.

CSSB 1652 would authorize institutions to enter into contracts to secure legal services related to their technology centers for such services as securing copyright protection for computer software, preparing, filing and pursuing trademark applications, and pursuing litigation related to intellectual property. The bill would exempt these legal services contracts from contract requirements, fee payments and contract approval provisions that typically apply to state governmental entities that contract for legal services under a contingency fee.

It would specify that property exempt from ad valorem taxation could not be included in damages awarded as part of a condemnation by an institution.

Institutions would be required to pay up front half of the filing fee and court costs related to collecting or enforcing the repayment of a delinquent student loan. If the borrower prevailed in the lawsuit, the institution would have to pay the remaining half of the filing fee and court costs. If the institution prevailed in the lawsuit, the borrower could be held liable for the payment of these expenses, and the institution would pay the remaining half to the court no later than the seventh day after the borrower had paid the institution.

The bill would prohibit the comptroller from requiring institutions that processed their own payrolls to submit payroll information to the comptroller relating to individual employees if the information was not required to make a distribution of state money.

Human Resources. CSSB 1652 would allow institutions individually or as a group to create and administer deferred compensation plans, or 457 plans, for their employees. The institution would have to designate a plan administrator, who could be an employee, a nonprofit corporation, an individual, a trustee, a private entity, another higher education or an association of institutions. The plan administrator could be removed at any time unless specifically provided otherwise by contract. The institution or group of institutions could direct and supervise the activities of the plan administrator through an oversight committee, whose authority, activities and composition would be determined

by the institution. The plan administrator would have to plan and implement procedures for administering the program as outlined in the bill. These provisions would take effect January 1, 2004.

The bill would allow institutions to hire state employees that had been retired for state service for 30 days, rather than one year, and would standardize provisions regarding eligibility for retirement benefits for employees who are eligible for retirement benefits from another state or federal program.

It would allow institutions to apply across-the-board salary increases adopted by the state as part of pay-for-performance increases provided by the institution.

CSSB 1652 would allow governing boards to establish comprehensive leave policies that applied to employees of any component institution of the system and allow individuals serving postdoctoral fellowships to participate in the uniform retirement program.

Information technology. CSSB 1652 would establish an Information Technology Council for Higher Education consisting of the chief information officer, or equivalent employee, of the state's six university systems, and one institution of higher education, other than a public junior college, not included among these six systems. The Department of Information Resources (DIR) would be required to get input from the council before adopting rules for information technology that would relate to universities and colleges. DIR rules that applied to institutions of higher education and that were in effect on September 1, 2003, would cease to apply to higher education institutions on September 1, 2004, unless readopted on or after September 1, 2003 in a form that expressly applied to institutions of higher education.

Regulatory and administrative matters. The bill would extend workers compensation benefits to out-of-state employees of the University of Texas and the Texas A & M System and authorize the University of Texas Board of Regents to enter into agreements with local, state, or federal agencies or other entities to manage a national laboratory engaged in science and technology development, management and transfer.

CSSB 1652 would allow the Board for Lease of University Lands to hold an

open or closed meeting by telephone conference call. Notice of the meeting would have to specify as the meeting location a suitable conference or meeting room at the University of Texas System office.

The bill would exempt institutions from having to disclose a name or other information that would tend to disclose the identity of a person who made a gift, grant, or donation of money or property to the institution. This provision would not exempt the institution from disclosing other required information, including the amount or value of the gift, grant, or donation.

It would require the governing board of each university system or institution not part of a system to prepare a written plan for increasing the use of historically underutilized businesses in purchasing and public works contracting by the system or institution.

The bill would allow the Texas A & M Board of Regents to lease all lands and mineral interests under its control, and to offer oil and gas leases at public auction, by sealed bid, by negotiated agreement, or through any means the board considered to be in the best interests of the institution.

CSSB 1652 would specify Brazos County as the venue for a lawsuit filed against a member of the Texas A&M Board of Regents, and that the venue for Texas A&M University System components was in the county in which the primary office of the chief executive officer of the system or component was located.

Reporting. CSSB 1652 would allow institutions to satisfy requirements regarding postings of intellectual property with a posting on the institution's website rather than a filing with the Texas Higher Education Coordinating Board. The bill would exempt institutions from filing a non-resident bidders report with the Legislative Budget Board, from statutes governing expenditures for recycled, remanufactured or environmentally sensitive commodities, and from reporting requirements related to the compilation of construction and maintenance information.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 1652 would continue a process initiated last session to help increase efficiency and decrease administrative costs involved in the operation, regulation, and administration of public higher education institutions by amending statutes governing various aspects of operations. These statutory revisions would enable institutions to operate more efficiently and to focus more of their resources on education rather than burdensome administrative practices.

The bill would allow higher education institutions to establish and offer a popular deferred benefit option known as the 457 Plan to their employees, which could provide another employment incentive at a time when state resources for providing incentives are limited.

**OPPONENTS
SAY:**

CSSB 1652 would give higher education institutions too much freedom from state regulation in such areas as information technology, contracting, open meetings, and reporting. These institutions receive funding from the state and should be subject to most of the same regulations as other state agencies. Many of the changes that have been suggested in the name of efficiency would be designed merely to relieve institutions of reporting requirements they perceive as burdensome, yet other state agencies must comply with these same requirements.

NOTES:

The committee substitute added provisions relating to the ability of the Texas A&M Board of Regents to lease mineral rights and venue requirements for lawsuits against various representatives of the Texas A&M University System. The substitute also added the exemption of higher education institutions from regulation by the Department of Information Resources. It removed a provision that would have allowed employees to accumulate compensatory time regardless of where work was performed, and a provision that would have allowed commissioned peace officers to receive hazardous duty pay as well as longevity pay. The committee substitute removed a provision that would have exempted institutions from required use of the Building and Procurement Commission's Uniform General Conditions on construction projects.

HB 2862 by Morrison, the identical companion bill, was left pending in the House Higher Education Committee.