

1-1 By: Creighton, et al. S.B. No. 17  
 1-2 (In the Senate - Filed March 10, 2023; March 13, 2023, read  
 1-3 first time and referred to Subcommittee on Higher Education;  
 1-4 April 12, 2023, reported adversely, with favorable Committee  
 1-5 Substitute from Committee on Education by the following vote:  
 1-6 Yeas 8, Nays 2; April 12, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14			X	
1-15			X	
1-16		X		
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21		X		

1-22 COMMITTEE SUBSTITUTE FOR S.B. No. 17 By: Paxton

1-23 A BILL TO BE ENTITLED  
 1-24 AN ACT

1-25 relating to the powers and duties of the governing boards of public  
 1-26 institutions of higher education.

1-27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-28 SECTION 1. Section 51.352(d), Education Code, is amended to  
 1-29 read as follows:

1-30 (d) In addition to powers and duties specifically granted by  
 1-31 this code or other law, each governing board shall:

1-32 (1) establish, for each institution under its control  
 1-33 and management, goals consistent with the role and mission of the  
 1-34 institution;

1-35 (2) appoint the chancellor or other chief executive  
 1-36 officer of the system, if the board governs a university system;

1-37 (3) appoint the president or other chief executive  
 1-38 officer of each institution under the board's control and  
 1-39 management and evaluate the chief executive officer of each  
 1-40 component institution and assist the officer in the achievement of  
 1-41 performance goals;

1-42 (4) ensure that a majority of the members of a search  
 1-43 committee for the position of president or other chief executive  
 1-44 officer of an institution under the board's control and management  
 1-45 are members of the board;

1-46 (5) set campus admission standards consistent with the  
 1-47 role and mission of the institution and considering the admission  
 1-48 standards of similar institutions nationwide having a similar role  
 1-49 and mission, as determined by the coordinating board; and

1-50 (6) [~~5~~] ensure that its formal position on matters  
 1-51 of importance to the institutions under its governance is made  
 1-52 clear to the coordinating board when such matters are under  
 1-53 consideration by the coordinating board.

1-54 SECTION 2. Subchapter G, Chapter 51, Education Code, is  
 1-55 amended by adding Section 51.3525 to read as follows:

1-56 Sec. 51.3525. RESPONSIBILITY OF GOVERNING BOARDS REGARDING  
 1-57 DIVERSITY, EQUITY, AND INCLUSION INITIATIVES. (a) In this  
 1-58 section, "diversity, equity, and inclusion office" means an office,  
 1-59 division, or other unit of an institution of higher education  
 1-60 established for the purpose of:

2-1 (1) influencing hiring or employment practices at the  
 2-2 institution with respect to race, sex, color, or ethnicity, other  
 2-3 than through the use of color-blind and sex-neutral hiring  
 2-4 processes in accordance with any applicable state and federal  
 2-5 antidiscrimination laws;

2-6 (2) promoting differential treatment of or providing  
 2-7 special benefits to individuals on the basis of race, color, or  
 2-8 ethnicity;

2-9 (3) promoting policies or procedures designed or  
 2-10 implemented in reference to race, color, or ethnicity, other than  
 2-11 policies or procedures approved in writing by the institution's  
 2-12 general counsel and the office of the attorney general for the sole  
 2-13 purpose of ensuring compliance with any applicable court order or  
 2-14 state or federal law; or

2-15 (4) conducting trainings, programs, or activities  
 2-16 designed or implemented in reference to race, color, ethnicity,  
 2-17 gender identity, or sexual orientation, other than trainings,  
 2-18 programs, or activities developed by an attorney and approved in  
 2-19 writing by the institution's general counsel and the office of the  
 2-20 attorney general for the sole purpose of ensuring compliance with  
 2-21 any applicable court order or state or federal law.

2-22 (b) The governing board of an institution of higher  
 2-23 education shall ensure that each academic or administrative unit of  
 2-24 the institution:

2-25 (1) does not, except as required by federal law:

2-26 (A) establish or maintain a diversity, equity,  
 2-27 and inclusion office;

2-28 (B) hire or assign an employee of the institution  
 2-29 or contract with a third party to perform the duties of a diversity,  
 2-30 equity, and inclusion office;

2-31 (C) compel, require, induce, or solicit any  
 2-32 person to provide a diversity, equity, and inclusion statement or  
 2-33 give preferential consideration to any person based on the  
 2-34 provision of a diversity, equity, and inclusion statement;

2-35 (D) give preference on the basis of race, sex,  
 2-36 color, ethnicity, or national origin to an applicant for  
 2-37 employment, an employee, or a participant in any function of the  
 2-38 institution; or

2-39 (E) require any person to participate in  
 2-40 diversity, equity, and inclusion training, which:

2-41 (i) includes a training, program, or  
 2-42 activity designed or implemented in reference to race, color,  
 2-43 ethnicity, gender identity, or sexual orientation; and

2-44 (ii) does not include a training, program,  
 2-45 or activity developed by an attorney and approved in writing by the  
 2-46 institution's general counsel and the office of the attorney  
 2-47 general for the sole purpose of ensuring compliance with any  
 2-48 applicable court order or state or federal law; and

2-49 (2) adopts policies and procedures for disciplining an  
 2-50 employee or contractor of the institution who engages in conduct in  
 2-51 violation of Subdivision (1), including by termination, as  
 2-52 appropriate.

2-53 (c) An institution of higher education may not spend money  
 2-54 appropriated to the institution for a state fiscal year until the  
 2-55 governing board of the institution submits to the legislature and  
 2-56 the Texas Higher Education Coordinating Board a report certifying  
 2-57 the board's compliance with Subsection (b) during the preceding  
 2-58 state fiscal year.

2-59 (c-1) In the interim between each regular session of the  
 2-60 legislature, the governing board of each institution of higher  
 2-61 education, or the board's designee, shall testify before the  
 2-62 standing legislative committees with primary jurisdiction over  
 2-63 higher education at a public hearing of the committee regarding the  
 2-64 board's compliance with Subsection (b). This subsection expires  
 2-65 September 1, 2027.

2-66 (d) The state auditor shall periodically conduct a  
 2-67 compliance audit of each institution of higher education to  
 2-68 determine whether the institution has spent state money in  
 2-69 violation of this section. The state auditor shall adopt a schedule

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

3-4 (e) If the state auditor determines pursuant to a compliance  
3-5 audit conducted under Subsection (d) that an institution of higher  
3-6 education has spent state money in violation of this section, the  
3-7 institution is ineligible to receive state funds for the state  
3-8 fiscal year immediately following the state fiscal year in which  
3-9 the determination is made, other than state funds appropriated to  
3-10 pay debt service on bonds or notes previously authorized for the  
3-11 institution.

3-12 (f) A student or employee of an institution of higher  
3-13 education who is required to participate in training in violation  
3-14 of Subsection (b)(1)(E) may bring an action against the institution  
3-15 for injunctive or declaratory relief.

3-16 SECTION 3. (a) Except as provided by Subsection (b) of this  
3-17 section, this Act applies beginning with the 2023-2024 academic  
3-18 year.

3-19 (b) Section 51.3525(c), Education Code, as added by this  
3-20 Act, applies beginning with money appropriated to a public  
3-21 institution of higher education for the state fiscal year beginning  
3-22 September 1, 2024.

3-23 SECTION 4. This Act takes effect immediately if it receives  
3-24 a vote of two-thirds of all the members elected to each house, as  
3-25 provided by Section 39, Article III, Texas Constitution. If this  
3-26 Act does not receive the vote necessary for immediate effect, this  
3-27 Act takes effect September 1, 2023.

3-28 \* \* \* \* \*