

TFA Texas Faculty Association Higher Ed Legislative Report

March 16, 2023

Affiliated with TSTA/NEA

TAKE ACTION NOW!

We have just become aware that Rider 186 prohibiting diversity, equity, and inclusion, “practices or similar programs” in higher education and state agencies was adopted today by the House Appropriations Subcommittee for Article III (p. 245 in attached rider packet). The full [House Appropriations Committee is scheduled to meet TODAY, 3/16, at 8am](#) to approve the full budget.

The rider language reads:

Section XX. Prohibition on Diversity, Equity, and Inclusion Practices. It is the intent of the Legislature that no funds appropriated by this Act may be expended for diversity, equity, & inclusion practices or similar programs, including personnel, training or activities, on state supported college campuses, state supported university campuses or those who receive state funding.

Here’s how you can stop this bad rider from getting out of committee:

1. [Call or email members of the House Appropriations Committee](#) and ask them to oppose Rider 186 by Rep. Isaac.
 - * Be sure to call Chair Greg Bonnen, Vice Chair Mary Gonzalez, and Subcommittee Chairs Jacey Jetton, Armando Walle, Gary Van Deaver, Cecil Bell, and Jacey Jetton.
2. Ask members of the House Appropriations Committee to request a vote on Rider 186.
3. You can also [submit an electronic comment](https://comments.house.texas.gov/home?c=c030) <<https://comments.house.texas.gov/home?c=c030>> to the committee before they end the hearing. Comment would be concerning Article III, Rider 186.

Please feel free to distribute this call to action to your members and other coalitions you are a part of. Let us know if you have any questions, and please feel free to send any updates our way.

Senate Priority Legislation, Serious Issues

Lieutenant Governor Patrick’s priority bills on higher education were filed on the last afternoon of the bill filing period, just a few hours before the deadline. As expected from Governor Patrick’s public comments over the past year and discussions in the Capitol, the bills as a group constitute a serious threat to academic freedom, higher education governance, and Texas’ competitiveness both in higher education and the broader economy. Following is a brief overview of the bills. For reference purposes, the bills may be viewed at the following links:

SB 16: <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB000161.pdf#navpanes=0>

SB 17: <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB000171.pdf#navpanes=0>

SB 18: <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB000181.pdf#navpanes=0>

SB 16, RELATING TO THE PURPOSE OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION AND A PROHIBITION ON COMPELLING STUDENTS ENROLLED AT THOSE INSTITUTIONS TO ADOPT CERTAIN BELIEFS.

On its face, this bill comports with our strong values of equality and open intellectual inquiry. We should carefully examine, however, section 2 of the bill, which states that faculty “may not compel or attempt to compel a student enrolled at the institution to adopt a belief that any race, sex, or ethnicity or any social, political, or religious belief is inherently superior any other race, sex, ethnicity, or belief.” The question may be whether factual instruction or critical discussion could be interpreted as an attempt to compel a belief. As an example, would factual instruction in biology that included evolution constitute a compulsion to adopt belief antithetical to creationism? Or would a factual review of court cases related to accusations of election fraud in a government class, and discussion of the political relevance of the accusations and results on election processes, be seen as an attempt to undermine a political belief? These are familiar potential issues, but are given the urgency of statute in this bill.

SB 17, RELATING TO HIGHER EDUCATION REFORM, AUTHORIZING PENALTIES.

This bill contains several sections. Section 1 addresses issues including boards of regents being required to take direct control of detailed management functions, including curriculum approval, and exclusion of non-regents in search committees for college presidents. Section 2 prohibits requiring students to take oaths or providing statements related to differential treatment related to race, color, or ethnicity.

Section 3 forbids the establishment of offices of diversity, equity or inclusion, or performance of such duties (very broadly defined) by other offices or contractors. The section requires mandatory suspension and termination of violators of the section, requires the reporting of such actions to the Higher Education Coordinating Board, and requires the HECB to maintain a list of offenders. Those on the list may not be employed by a public institution of higher education for 1 year after a single offense, or for 5 years after multiple offenses. The section provides for administrative penalties for institutions who fail (presumably) to enforce the section of the lesser of \$1 million or 1% of the institution’s operating expenses.

The section continues, requiring that all institutions adopt as part of their mission statement a statement in whole provided in the bill which speaks to intellectual freedom and institutional neutrality, and name these statutorily drafted values as taking “priority” over any other value adopted by the institution. The section further requires, by law, the adoption of the Report of the Committee on Freedom of Expression and the Kalven Committee Report on the University’s Role in Political and Social Action.

Section 3 continues with a prohibition against required DEI training unless required by a court order, state law, or federal law, and only then after development by an attorney and approval by the state Attorney General and the institution’s general counsel. The section allows any person to notify the Attorney General of a potential violation, and allows any student or employee to bring an action against an institution for declaratory or injunctive relief.

Section 4 of the bill establishes that violations of the new law in section 3 are good cause to revoke tenure. Sections 5 and 6 are enacting language for the statute.

SB 18, RELATING TO TENURE AND EMPLOYMENT STATUS AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN THIS STATE.

This bill revokes tenure for staff at public institutions of higher education hired after September 1, 2023. The bill allows alternate systems of “tiered employment,” but requires annual performance evaluations.

What you can do

Read these bills in detail.

In writing, describe how these bills would affect your institutions, your effectiveness as researchers, and your effectiveness as educators.

Send letters immediately to your state representative, state senator, and state leadership detailing your position on these bills as professionals and citizens of Texas.

Consider appearing in person to testify on this legislation when it is heard in committee.

Alert your colleagues to these bills and their imminent hearings.

These bills, now filed and referred to committee, could be posted for hearing any time between now and the end of the legislative session. They will likely be heard in the Senate sooner than later. Stay up to date through your association on developments in the coming days and weeks.