

TFA Texas Faculty Association Higher Ed Legislative Report

May 4, 2023

Affiliated with TSTA/NEA

House Action Imminent

Having reached the last month of session, and with a series of legislative deadlines looming, action on SB 16, SB 17, and SB 18 must necessarily take place in the next two weeks. All three bills have been referred to the House Higher Education Committee. All three bills were amended during their journey through the Senate. Following is a brief description of the changes to each bill from the filed versions. Please note the substantial changes to SB 17, the “DEI” bill.

SB 16

SB 16, the “CRT” bill, has the same basic provisions related to prohibitions against compelling or attempting to compel a belief by faculty. The bill continues to be disturbingly vague, per our previous analysis. The bill was amended in the Senate to include a mandatory dismissal provision, as well as a uniform procedure, developed by the Higher Education Coordinating Board, for reviewing complaints and appealing decisions related to complaints. The bill also now requires an annual report to the Legislature and the coordinating board on complaints received. Though somewhat mitigated by the inclusion of an appeals process, the vague prohibitions in the bill coupled with the mandatory dismissal provision continue to be of great concern to our faculty members.

SB 17

SB 17, the “DEI” bill, was significantly amended in the Senate. The bill still requires the elimination of DEI offices, forbids any other offices from performing the functions of a DEI office, and forbids contracting for DEI services. The bill also still included a list of prohibitions related to preferences on the basis of race, color, sex, ethnicity, or national origin, and prohibits institutions from requiring statements related to DEI from prospective students or employees. The bill still contains language exempting academic course instruction, research, student organizations, guest speakers, data collection, and student admissions, as well as a catch-all paragraph related to “policy, practice, procedure, program, or activity” designed to enhance student academic achievement, so long as they are designed without regard to race, color ethnicity, or sex.

The major change in the bill is in the sections related to responsibilities and penalties for engaging in prohibited DEI practices. The engrossed version of SB 17 now focuses on governing boards rather than faculty members as responsible parties. The automatic penalties, list of faculty offenders, and years long expulsion from working in public higher education have been removed. They have been replaced by a relatively non-prescriptive requirement for institutional adoption of policies and procedures for discipline of employees or contractors violating the provision, “including termination as appropriate.”

The main penalties in the bill are now directed at institutional funding. Institutions may not spend appropriated funds until they certify compliance with the statute and must undergo periodic state audits to confirm. If an institution is found to have spent funds on DEI in violation of the statute, the institution loses state funding for the following year.

Further, board members or their designees are statutorily required to testify every interim regarding compliance with the statute. Such a provision, amounting essentially to an ongoing statutory subpoena focused on compliance with a single subsection, is unprecedented.

From one point of view, SB17 is much improved, given the shift of focus to the boards and the removal of the draconian penalty provisions aimed at faculty in the filed bill. However, the original purpose of the bill to eliminate DEI programs without a clear understanding of what they are and what they do at various institutions, coupled with the new financial penalties and personal involvement of board members, would likely create a profound chilling effect on anything remotely construable as DEI, including important programs related to employee safety, student resilience, and accomplishment of the legislature's stated goals of developing a "Talent Strong Texas."

SB 18

SB 18 is very little changed. It still would eliminate tenure prospectively at public institutions of higher education. The only change in the Senate process was to push the effective date from September 1, 2023, to January 1, 2024, to allow professors in the late stages of the tenure process to complete the process. Even this change, however, is confusing, given the fact that the bill text still cites September 1, 2023, as the cutoff date for professors to receive tenure that will not be disallowed. All the issues related to damaging Texas' ability to compete in higher education and damage to research efforts are still very much contained in the engrossed version of SB 18.

Deadlines

The House deadline for consideration of Senate bills on the floor is May 23. The Senate bills listed above must be posted, heard, voted, reported, and placed on the calendar by the Calendars Committee in the next twenty days to make the deadline. We think the House will hear at least two of these bills in committee, and as a practical matter must do so next week to give them a chance to complete the full process by the deadline. As of this writing, the House Higher Education Committee has yet to post its regular Monday agenda. We expect the posting any minute and expect at least one if not more of these bills to appear.

What You Can Do

As we have discussed throughout the session, you can participate in a number of ways, including:

- Contact your legislator on these bills.
- Contact the House Higher Education Committee on these bills. The committee list may be viewed here: <https://house.texas.gov/committees/committee/?committee=C290>.
- Contact the Speaker's Office on these bills. <https://www.house.texas.gov/>.
- Testify in person at the House Higher Education Committee hearing at the Capitol, date to be determined.
- Submit written testimony (3000 characters or fewer) to the House Higher Education Committee official hearing record, date to be determined.

Please remember that all advocacy work must be done on your own time and with your own resources, as a private citizen. Do not use institution resources. We are coming down to the wire this session. If you want to voice your position on these bills, the time is now.