

Committee Substitutes for SB 17 and SB 18 for Hearing on May 8, 2023

There are amended versions of anti-DEI SB 17 and anti-tenure SB 18 to be presented at tomorrow's hearing of these bills by the House Higher Education Committee by Chair Kuempel. Introducing committee substitutes at the start of a hearing is a common practice. The *Texas Tribune* released the [amended version of SB 18](#) along with a [news article about it](#).

The committee substitute of SB 18 no longer eliminates tenure for new or tenure-track faculty. On its face, this seems like a win; however, *it is imperative that no version of SB 18 is passed out of committee*. The reason for this is legislative procedure. If this bill gets out of committee, then it is capable of being amended for the worse on the House floor. Even if the better version is passed out of the House, it will need to be reconciled by a House and Senate committee for approval in both bodies. This could be disastrous as negotiations could result in the original version of the bill. Thus, we are suggesting the following lines of argument in your testimony for tomorrow:

- Reiterating the value of robust tenure protections to ensure that faculty have academic freedom as well as the time to complete long-term projects that may require several years before results are published. The current version does not mention academic freedom at all.
- Reiterating the importance of tenure for protecting classroom instruction.
- Noting that the current version of the bill, which mirrors Texas A&M's [tenure policy](#) and [post-tenure review policy](#) and includes many provisions already in place in the UT System such as post-tenure review, is a solution searching for a problem.
- Indicating how the bill may change for the worse if passed out of committee as a result of the committee reconciliation process.
- Sec. 3c's provision only includes a "faculty member's regular annual salary" in their "property interest" means that if a faculty member is found to be performing in an unsatisfactory way, they cannot expect due process to protect any other aspect of their job. We continue to seek legal advice on this matter.
- The definition of "professional incompetence" in sec. 3c2Ai is unclear, and it is also unclear who will determine such incompetence.
- Sec. 3c2Avii is especially worrisome as it allows for dismissal of a tenured faculty who has "engaged in unprofessional conduct that adversely affects the institution..." This is likely a sanitized way to target "activist" faculty who engage in protected speech outside of the university who are deemed to do reputational harm to the university. This also could be used against faculty who challenge their institution's policies or procedures.

The committee substitute for SB 17 is also substantially better than the version that passed the Senate. However, for reasons stated above about SB 18, this bill must also not be passed out of committee. We are suggesting some of the following lines of argument for your testimony tomorrow:

- DEI does not divide campus communities; it helps to facilitate inclusive and supportive learning environments for all
- “Diversity statements” are not loyalty oaths or political litmus tests. They are documents that allow a job candidate to discuss the ways that they create inclusive labs, classrooms, research teams, and learning spaces for diverse students and colleagues
- The new version repeatedly uses the language of “preferential treatment.” Without DEI, preferential treatment will be given to those from majority backgrounds because efforts to recruit a diverse pool of job applicants will likely not be allowed under SB 17. Finding a diverse pool of job applicants is already a challenge given Texas politics, and we’ve already seen recruitment and retention issues this academic year due to the chilling effect proposed laws have had on recruiting prospective candidates.
- The carve outs in this version for federal research grants will create an unnecessary burden and bureaucracy at each institution, and if DEI is otherwise illegal at an institution, there is a high likelihood that grants will not be awarded to researchers at institutions wherein the long-term commitment to the DEI component cannot be implemented.
- To receive federal funding as an Hispanic Serving Institution, a designation that several Texas universities hold, the institution has to show that the institution has implemented an appropriate strategy for “servingness” in relation to Hispanic students. Under SB 17, programming that is specifically targeted toward Hispanic students would be illegal, and so Texas institutions would lose this designation and access to millions of dollars in federal grants.

Best,

Karma Chavez and Brian Evans

Speaking for ourselves as private individuals
Not representing any group, institution, or organization

We’re part of a collaborative effort between the Texas American Association of University Professors, Texas American Federation of Teachers, Texas Faculty Association, Texas Association of College Teachers, Texas Faculty Coalition, NAACP Legal Defense Fund, Black Brown Dialogues on Policy, and many others.