

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2105**

As Agreed to April 3, 2024

Brief*

HB 2105 would prohibit postsecondary institutions from taking certain actions concerning diversity, equity, or inclusion (DEI).

Definitions

The bill would define “postsecondary educational institution” to mean any public university, municipal university, community college, and technical college, including any entity resulting from the consolidation or affiliation of any two or more of such postsecondary educational institutions.

Pledge or Statements

The bill would prohibit postsecondary educational institutions from requiring an application for admission, hiring, or promoting a faculty member to make a statement of personal support or opposition to any political ideology or movement, including a statement regarding DEI.

The bill would also prohibit postsecondary educational institutions from denying or accepting admission or educational aid to a student; hiring an applicant for employment; or hiring, reappointing, or promoting faculty on the basis of viewpoints expressed in a pledge or statement, including a pledge regarding DEI.

Exclusions

The bill would not prohibit any student or faculty member from:

- Complying with federal or state law pertaining to anti-discrimination law or from taking action against any student, faculty, or employee for violations of the law;

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- Being construed to limit or restrict the academic freedom of faculty or to prevent faculty members from teaching, research, or writing publications about DEI or other topics; or
- Prohibiting the institution from considering, in good faith, a faculty member's scholarship, teaching, or subject matter expertise in the faculty member's academic field.

Training Materials

The bill would require each postsecondary educational institution to share publicly on such institution's website all training materials used for students and faculty on matters of non-discrimination, DEI, race, ethnicity, sex, or bias and such institution's policies and guidance on such matters.

Investigation of Complaints

The bill would require the State Board of Regents (Board) to investigate a complaint on behalf of any person who believes their rights were violated. The Board would be required to complete an investigation to determine whether a violation has occurred within 45 days of receipt of the complaint. If the Board determines that the postsecondary educational institution is in violation, the institution must remedy the violation within 90 days, and if the institution should fail to remedy the violation within 90 days, the Board would be required to report the incident to the Attorney General, who may file action in district court against the institution.

The bill would require that if the Board determines that the institution was not in violation of the bill, the person who believes their rights were violated may file a complaint with the Attorney General, who would be required to investigate the complaint within 45 days of receipt. If the Attorney General indicates there has been a violation, the institution would have 90 days to remedy the violation. If the institution fails to remedy the violation within 90 days, the Attorney General may file an action in district court against the institution.

The bill would also require that any action pertaining to the violation of the bill be filed in the district court of the postsecondary education institution's primary campus location. The bill would allow the district court of any county to have jurisdiction to enforce any findings or violations. The district court would be allowed to take actions such as:

- Requiring the institution to comply;
- Imposing a civil penalty of \$10,000 per violation; and
- Requiring the institution to pay for expenditures incurred by the Attorney General for enforcing the violation.

The bill would require that any civil penalties assessed by the district court be remitted to the State Treasurer and the funds received be credited to the State Scholarship Program account.

The bill would require, by January 12, 2026, and on the first day of each regular session thereafter, the Board to submit a report to the Legislature on the:

- Number of complaints filed with the Board;
- Outcomes of the Board's investigations;
- Number of complaints filed with the Attorney General;
- Outcomes of the Attorney General's investigations;
- Number of cases filed in district court;
- Outcomes of cases filed;
- Number and dollar amounts of the civil penalties;
- Costs by the Attorney General, and
- Other information deemed important by the Board.

The bill would require that within 10 days after a determination has been made by the Board on whether a violation has occurred, that the findings and outcomes of the Board be posted on its website.

The bill would require that if the postsecondary educational institution or any affiliated participants are found in violation of the bill, such institution may take disciplinary action against responsible parties.

Conference Committee Action

The Conference Committee agreed to remove the contents of HB 2105, as amended by the Senate Committee on Financial Institutions and Insurance, and insert the provisions of Sub. for HB 2460, as amended by the House Committee on Higher Education.

Background

The Conference Committee removed the contents of HB 2105, as amended by the Senate Committee on Financial Institutions and Insurance, which would have created the Kansas Earned Wage Access Services Act, and added the contents of Sub. for HB 2460 regarding DEI, the background of which follows. [Note: The contents of HB 2105, as amended by the Senate Committee on Financial Institutions and Insurance, were inserted into HB 2560 by a different Conference Committee.]

Sub. for HB 2460 (DEI)

Sub. for HB 2460 was introduced by the House Committee on Appropriations at the request of Representative Howe.

House Committee on Higher Education Budget

In the House Committee hearing, **proponent** testimony was provided by Representative Howe, a student from the University of Kansas, and a representative of the Foundation for Individual Rights and Expression.

Representative Howe stated he has visited with the higher education learning community to learn more about DEI, and included examples of DEI requirements on job applications at the University of Kansas. He stated the universities and the Board have not demonstrated any formal actions to address DEI.

The student from the University of Kansas stated that DEI plays a large role in campus culture at the university and that in order to enroll in classes, students must take DEI training. The student stated that she believes a professor should be hired based on merit and not DEI criterion.

The representative from the Foundation for Individual Rights and Expression stated that DEI strays from a discrimination-free environment that helps students succeed. The representative stated that based on results from a national survey, conservative faculty agree that requiring DEI statements is a political litmus test.

Opponent testimony was provided by a representative from the Health Forward Foundation, who stated that removing DEI requirements would have a foundational impact on students and faculty. The representative spoke about the potential damage this could do to the economy and stated that it is important to consider the effects the bill would have on workforce retention in the health care field. Written-only opponent testimony was provided by a representative of American Civil Liberties Union of Kansas.

Neutral testimony was provided by a representative from the Board, who spoke about the diverse background of all the university presidents and stated concerns on how the bill would effect open admissions and the diverse population of high school students in Kansas. The representative shared concerns about litigation against community colleges and the possibility of other incurred costs.

On March 7, 2024, the House Committee amended the bill to:

- Remove the term “patriotism”;
- Include language pertaining to hiring an applicant for employment;
- Change the penalty to be not more than \$10,000 per each violation and require that the funds for the penalties be deposited in the State Scholarship Program account;
- Include language detailing the time-line for investigation of complaints;
- Require the Board to submit a report to the Legislature on incidents pertaining to DEI; and
- Require the Board report on any finding of a violation and post the outcomes of the investigation on the Board’s website.

[Note: The Conference Committee retained these amendments.]

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2460, as introduced, if the court were to find a violation of these provisions occurred, the institution could receive disciplinary action from the State Treasurer with an administrative penalty of \$100,000 for each violation.

The Board indicates that enactment of the bill would increase expenditures for state universities to publish additional items on each institution's website; however, these activities could be absorbed within current resources.

Emporia State University indicates that it would incur a one-time cost of \$5,000 for 200 hours of staff time to convert all materials.

Fort Hays State University indicates that enactment of the bill would increase expenditure costs associated with publishing information on its website; however, these costs would be negligible. Fort Hays indicates an increase in costs associated with legal liabilities, litigation, and other legal proceedings but is unable to estimate these costs.

The Office of the Attorney General indicates that the bill could be challenged in state or federal court, which could span over the course of several fiscal years.

The Office of Judicial Administration (OJA) indicates an increase of expenditures for the Judicial Branch for additional time spent by personnel in processing, researching, and hearing cases due to increase in number of civil suits filed. The OJA indicates the bill would increase the collection of dockets in cases filed under provisions of the bill; however, a fiscal effect cannot be estimated.

Any fiscal effect associated with enactment of HB 2460 is not reflected in the *FY 2024 Governor's Budget Report*.

Diversity; equity; inclusion; higher education; State Board of Regents

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