

## **BILL ANALYSIS**

C.S.H.B. 1737  
By: Alvarado  
Higher Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties suggest that a check on the expansion of public institutions of higher education and university systems would reduce the possibility of education market oversaturation and the inefficient use of public resources and services. C.S.H.B. 1737 seeks to provide for such a check by requiring the Texas Higher Education Coordinating Board to review and approve or disapprove an action taken by the governing board of a public institution of higher education or university system to acquire certain property for academic or research purposes.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1737 amends the Education Code to require the Texas Higher Education Coordinating Board to review and approve or disapprove an action taken by the governing board of a public institution of higher education or university system, through purchase, lease, or otherwise, to acquire improved or unimproved real property for use at a new or existing off-campus academic or research site or to acquire or construct a building or facility for use at such a site. The bill excludes from this requirement and the bill's related provisions buildings and facilities that are located on an off-campus academic or research site but that are to be used exclusively for auxiliary enterprises and that will not require appropriations from the legislature for operation, maintenance, or repair. The bill requires the coordinating board, using the negotiated rulemaking procedures under the Negotiated Rulemaking Act, to do the following:

- develop a procedure for each institution of higher education or university system to use to identify, for purposes of the coordinating board review required by the bill, the scope and character of projects that are proposed for an off-campus academic or research site, including projects relating to a multi-institution teaching center, a medical school, a branch campus, a satellite campus, a health science center, and for any other location that is separate from the main campus of an institution and that is to be used for academic or research purposes; and
- establish criteria for reviewing and for approving or disapproving an action relating to the acquisition of property for such a site by the governing board of an institution or university system that prioritize the academic and research needs of institutions of higher education while preventing unnecessary duplication in program offerings, faculties, and physical plants.

C.S.H.B. 1737 exempts information related to the coordinating board's findings and determinations in a review relating to an institution's or system's acquisition of property for an off-campus academic or research site from required disclosure under state public information law. The bill authorizes the coordinating board to conduct a closed meeting under certain state open meetings law provisions to deliberate the approval or disapproval of any action to which those provisions apply and that is taken by the governing board of an institution of higher education or university system and authorizes the coordinating board, as necessary and appropriate, to hold such a closed meeting as an emergency meeting under state open meetings law. The bill requires the coordinating board to report its findings and determinations in a review required by the bill to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the governing boards of the applicable institutions of higher education or university systems.

C.S.H.B. 1737 establishes that, for purposes of the requirement for specific prior approval by the coordinating board for a new degree or certificate program added at an institution of higher education, a degree or certificate program offered at an off-campus academic or research site is considered a new degree or certificate program if not previously offered at that site.

C.S.H.B. 1737 requires the coordinating board to adopt certain rules relating to the acquisition of property by an institution of higher education or university system for an off-campus academic or research site not later than August 1, 2018. The bill applies only to a proposal for acquisition or construction made on or after the bill's effective date.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1737 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.05715 to read as follows:

Sec. 61.05715. BOARD APPROVAL REQUIRED FOR CERTAIN LAND PURCHASES. (a) Notwithstanding any other provision of this chapter or other law, the governing board of an institution of higher education may purchase land for the use of the institution that is outside of the service region of the institution only if the governing board obtains prior approval for the purchase from the board.

(b) The board by rule shall define the service region for each institution of higher education for purposes of this section so that all the geographic territory of this state is included in at least one service region. In defining the service region for an institution,

##### HOUSE COMMITTEE SUBSTITUTE

No equivalent provision. (*But see SECTION 4 below.*)

the board shall include areas:

(1) that are in geographic proximity to the institution;

(2) in which the institution's students predominantly reside while attending the institution;

(3) in which the faculty and staff of the institution primarily reside;

(4) in which the institution is a primary contributor to serving local educational and workforce demand; and

(5) that otherwise directly benefit by virtue of proximity to the institution.

(c) The board may approve a purchase by a governing board of an institution of higher education of land for the use of the institution that is outside of the service region of the institution only if the board determines that:

(1) the intended use of the land is consistent with the institution's mission and the goals of the state's master plan for the delivery of higher education in this state and does not unnecessarily duplicate other programs and resources; and

(2) the region in which the land is located is not adequately served by other institutions of higher education with respect to the intended use of the land.

(d) The board shall adopt rules for the administration of this section, including rules prescribing the procedure by which the governing board of an institution of higher education may seek approval for a land purchase described by this section.

(e) This section does not apply to the purchase of permanent university fund land assets.

No equivalent provision.

SECTION 1. Section 61.0512(a), Education Code, is amended to read as follows:

(a) A new degree or certificate program may be added at an institution of higher education only with specific prior approval of the board. A degree or certificate program offered at an off-campus academic or research site is considered a new degree or certificate program if not previously offered at the off-campus academic or research site. A new degree or certificate program is considered approved if the board has not completed a review under this section and acted to approve or disapprove the proposed program before the first anniversary of the date on which an

institution of higher education submits a completed application for approval to the board. The board may not summarily disapprove a program without completing the review required by this section. The board shall specify by rule the elements that constitute a completed application and shall make an administrative determination of the completeness of the application not later than the fifth business day after receiving the application. A request for additional information in support of an application that has been determined administratively complete does not toll the period within which the application is considered approved under this section.

No equivalent provision.

SECTION 2. Section 61.0572(d), Education Code, is amended to read as follows:

(d) The board may review purchases of improved real property added to an institution's educational and general buildings and facilities inventory to determine whether the property meets the standards adopted by the board for cost, efficiency, space need, and space use, but subject to Section 61.0584 the purchase of the improved real property is not contingent on board review or approval. Standards must be adopted by the board using the negotiated rulemaking procedures under Chapter 2008, Government Code. If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, the governing board of the applicable institution, and the Legislative Budget Board. This subsection does not impair the board's authority to collect data relating to the improved real property that is added each year to the educational and general buildings and facilities inventory of institutions of higher education.

No equivalent provision.

SECTION 3. Section 61.058(b), Education Code, is amended to read as follows:

(b) The board may review all construction, repair, or rehabilitation of buildings and facilities at institutions of higher education to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, space need, and space use, but subject to Section 61.0584 the construction,

rehabilitation, or repair is not contingent on board review or approval. Standards must be adopted by the board using the negotiated rulemaking procedures under Chapter 2008, Government Code. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, the governing boards of the applicable institutions, and the Legislative Budget Board. This subsection does not impair the board's authority to collect data relating to the construction, repair, or rehabilitation of buildings and facilities occurring each year at institutions of higher education.

No equivalent provision. (*But see SECTION 1 above.*)

SECTION 4. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0584 to read as follows:

Sec. 61.0584. OFF-CAMPUS ACADEMIC OR RESEARCH SITE. (a) This section does not apply to buildings and facilities that are located on an off-campus academic or research site, that are to be used exclusively for auxiliary enterprises, and that will not require appropriations from the legislature for operation, maintenance, or repair.

(b) Based on criteria established under Subsection (d), the board shall review and shall approve or disapprove an action taken by the governing board of an institution of higher education or university system, through purchase, lease, or otherwise, to:

(1) acquire improved or unimproved real property for use at a new or existing off-campus academic or research site; or

(2) acquire or construct a building or facility for use at a site described by Subdivision (1).

(c) The board, using the negotiated rulemaking procedures under Chapter 2008, Government Code, shall develop a procedure for each institution of higher education or university system to use to identify, for purposes of the board review required by this section, the scope and character of projects that are proposed for:

(1) an off-campus academic or research site, including projects relating to:

(A) a multi-institution teaching center (MITC);

(B) a medical school;

(C) a branch campus;

(D) a satellite campus; and  
(E) a health science center; and  
(2) any other location that is separate from the main campus of an institution and that is to be used for academic or research purposes.  
(d) Using the negotiated rulemaking procedures under Chapter 2008, Government Code, the board shall establish criteria for reviewing and for approving or disapproving an action taken by the governing board of an institution of higher education or university system as described by Subsection (b). Criteria adopted under this subsection must prioritize the academic and research needs of institutions of higher education while preventing unnecessary duplication in program offerings, faculties, and physical plants.  
(e) Information related to the board's findings and determinations under this section is not subject to the required disclosure under Chapter 552, Government Code.  
(f) The board may conduct a closed meeting pursuant to Section 551.072, Government Code, to deliberate the approval or disapproval of any action subject to that section and taken by the governing board of an institution of higher education or university system as described by Subsection (b). As necessary and appropriate, the board may hold its closed meeting as an emergency meeting under Section 551.045, Government Code.  
(g) The board shall report its findings and determinations under this section to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the governing boards of the applicable institutions of higher education or university systems.

SECTION 2. The Texas Higher Education Coordinating Board shall adopt rules required by Section 61.05715, Education Code, as added by this Act, as soon as practicable following the effective date of this Act, but not later than December 1, 2017.

SECTION 3. The change in law made by this Act applies only to a contract for the purchase of land entered into on or after

SECTION 5. The Texas Higher Education Coordinating Board shall adopt the rules required by Section 61.0584, Education Code, as added by this Act, as soon as practicable following the effective date of this Act, but not later than August 1, 2018.

SECTION 6. The changes in law made by this Act apply only to a proposal for acquisition or construction made on or after

January 1, 2018. A contract for the purchase of land entered into before that date is governed by the law in effect on the date the contract is entered into, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

the effective date of this Act. A proposal for acquisition or construction made before the effective date of this Act is governed by the law in effect on the date the proposal was made, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2017.