

HB 1690-FN - AS INTRODUCED

2024 SESSION

24-2513  
09/05

HOUSE BILL

***1690-FN***

AN ACT                   relative to hiring, promotion, graduation, or admission in higher education.

SPONSORS:           Rep. Corcoran, Hills. 44

COMMITTEE:       Education

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ANALYSIS

This bill prohibits any institution of higher education that discriminates in admission, hiring, promotion, graduation, or admission to any program on the basis of sex, race, sexuality, national origin, ethnicity, or ideology, including but not limited to permitting diversity, equity, and inclusion statements, from accepting funds from the state or any local government or any subdivision thereof. This bill further establishes procedures for enforcement of this prohibition.

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Explanation:       Matter added to current law appears in ***bold italics***.  
                      Matter removed from current law appears ~~[in brackets and struckthrough]~~  
                      Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Four*

AN ACT relative to hiring, promotion, graduation, or admission in higher education.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 State College and University System; Prohibition on Preferential Treatment and  
2 Discrimination. Amend RSA 187-A:16-a, I(a) to read as follows:

3 187-A:16-a Prohibition on Preferential Treatment and Discrimination.

4 I.(a) Within the state college and university system, there shall be no preferential treatment  
5 or discrimination in recruiting, hiring, promotion, or admission based on race, sex, national origin,  
6 religion, or sexual orientation, ***pursuant to RSA 188-J.***

7 2 Community College System of New Hampshire; Prohibition on Preferential Treatment and  
8 Discrimination. Amend RSA 188-F:3-a, I(a) to read as follows:

9 188-F:3-a Prohibition on Preferential Treatment and Discrimination.

10 I.(a) Within the state's community college system, there shall be no preferential treatment  
11 or discrimination in recruiting, hiring, promotion, or admission based on race, sex, national origin,  
12 religion, or sexual orientation, ***pursuant to RSA 188-J.***

13 3 New Chapter; Hiring, Promotion, Graduation, or Admission in Higher Education. Amend  
14 RSA by inserting after chapter 188-I the following new chapter:

15 CHAPTER 188-J

16 HIRING, PROMOTION, GRADUATION, OR ADMISSION IN HIGHER EDUCATION.

17 188-J:1 Prohibition on Preferential Treatment and Discrimination.

18 I. In this chapter, "institution of higher education" means a public, private, non-profit, or  
19 for-profit school chartered, incorporated, or otherwise organized in this state legally authorized to  
20 award a degree at an associate level or above with an established physical presence in this state.

21 II. Any institution of higher education that discriminates in admission, hiring, promotion,  
22 graduation, or admission to any program on basis of sex, race, sexuality, national origin, ethnicity, or  
23 ideology, including but not limited to permitting diversity, equity, and inclusion statements, shall be  
24 prohibited from accepting funds from the state or any local government or any subdivision thereof.

25 III. Notwithstanding paragraph II:

26 (a) Nothing in this section shall be interpreted as prohibiting bona fide qualifications  
27 based on sex which are reasonably necessary to the normal operation of public employment, public  
28 education, or public contracting.

29 (b) Nothing in this section shall be interpreted as prohibiting athletic programs from  
30 designating teams by sex.

31 188-J:2 Enforcement.

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1 I. The attorney general is authorized to enforce the provisions of this chapter.

2 II. Any citizen of the state who is or may be aggrieved or has an interest which is or may be  
3 adversely affected may commence a civil action on his or her own behalf to compel compliance with  
4 this chapter.

5 III. In any action under this section, the attorney general or citizen who brings suit shall  
6 have the burden to make a prima facie showing of a violation of this chapter.

7 IV. If the burden of proof set forth in paragraph III is met, the burden shall shift to the  
8 institution of higher education to prove, by clear and convincing evidence, that the allegation is false.

9 V. If a citizen prevails under this section, the state shall reimburse his or her costs of  
10 litigation, to the extent not awarded by the court.

11 188-J:3 Penalty for Violation.

12 I. Any institution of higher education that is found to have violated this chapter shall be  
13 required to return any monies from the state or any local government or any subdivision thereof  
14 received during that calendar year.

15 II. Any institution of higher education that is found to have violated this chapter shall  
16 further not be eligible to receive any monies from the state or any local government or any  
17 subdivision thereof for the remainder of that calendar year.

18 4 Effective Date. This act shall take effect January 1, 2025.

**HB 1690-FN- FISCAL NOTE**  
**AS INTRODUCED**

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**FISCAL IMPACT:**    ☒ **State**                      ☐ **County**                      ☐ **Local**                      ☐ **None**

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	Indeterminable		
Revenue Fund(s)	USNH and CCSNH Operating Revenue			
Expenditures	\$0	DOJ Personnel Cost - \$93,000 Per Year		
		USNH and CCSNH Costs - Indeterminable		
Funding Source(s)	General Fund USNH and CCSNH Operating Expenses			
Appropriations	\$0	\$0	\$0	\$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

**METHODOLOGY:**

The Department of Justice states this bill prohibits the University System of New Hampshire (USNH) and the Community College System of New Hampshire (CCSNH) from discriminating in recruitment, hiring, promotion, or admission. It further prohibits any higher education institution that receives state funds from engaging in such discrimination, including “permitting diversity, equity, and inclusion statements or collecting or publishing demographic information.” This bill permits the Attorney General to bring lawsuits alleging violations of this proposed law. It also permits private citizens to bring lawsuits alleging violations of this proposed law, and if a private citizen prevails, it then obligates the State to reimburse the private citizen for their costs. The Department states that tens of thousands of students apply annually to institutions of higher education in New Hampshire, including USNH and CCSNH. This in turn opens the door for a large increase in complaints received and screened by the Attorney General’s Office. Accordingly, the Attorney General’s Office would likely need an additional investigative paralegal position (labor grade 22) to assist in screening complaints and pursue actions as well as address claims for costs by private citizens at an estimated cost of approximately \$93,000 annually beginning in FY 2025, assuming a July 1, 2024, start date. It

should be noted that this bill provides neither appropriation nor authorization for new personnel.

The University System of New Hampshire (USNH) states this bill may increase legal expenses, and costs to defend against complaints of violations of this law. The System states that competitive grant funding opportunities may be jeopardized when award determination considers organizational and/or enrollment diversity. As both aspects are situational in nature, it is not possible to estimate a range of fiscal impact to support an indeterminable response.

The Community College System of New Hampshire (CCSNH) states this bill could conceivably result in CCSNH returning to the State the entire amount of funds appropriated to the System in a given calendar year. Should a violation of this chapter be deemed to have occurred, and the full penalties contained therein enforced, CCSNH would be required to repay the amount of State funding it would otherwise receive in that year. Counting all sources and using the current fiscal year operating and capital budget appropriations, the impact could total \$70 million. Such an impact would effectively render the organization unable to operate. The System states this bill could also result in violation of any contracts or contract-like instruments it has entered into that require payment. In addition, CCSNH would be subject to paying costs of litigation, which could be significant because the language authorizes a wide range of possible petitioners to bring suit and creates a heightened evidentiary standard and burden shifting in statute.

**AGENCIES CONTACTED:**

Department of Justice, University System of New Hampshire, and Community College System of New Hampshire