

## **BILL ANALYSIS**

Senate Research Center

S.B. 18  
By: Creighton et al.  
Education  
7/20/2023  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

#### Background:

- Academic tenure refers to an educator's employment status within a higher education institution. Tenure provides a lifetime contract between a professor and an institution.
- When a professor has gained tenure, he or she can only be terminated for a justifiable cause or under extreme circumstances, such as program discontinuation or severe financial restraints.
- Section 51.942 of the Texas Education Code instructs the governing boards of postsecondary institutions to adopt policies regarding periodic performance evaluation of all tenured faculty.
- Institutional tenure policies shall also include the following provisions:
  - Each tenured faculty member is subject to a comprehensive performance evaluation at least once every six years.
  - The performance evaluation must be based on professional responsibilities, research, and service. Evaluation must include a peer review of the faculty member.
  - List of due process rights concerning notice, scope of evaluation, opportunity to submit documentation, and an opportunity for a hearing of subject to disciplinary action.
  - Faculty members are subject to repeal of tenure if "incompetency, neglect of duty, or other good cause is determined to be present."
- Concerns have been raised that there are few incentives for professors to work hard once tenure is attained. Also, when tenured faculty do not retire because they have lifetime contracts, they potentially block younger faculty and staff from bringing in fresh ideas to keep pace with changing times.

#### Bill Proposal:

- S.B. 18 will not allow institutions of higher education to grant tenure or any type of permanent employment status starting on September 1, 2023.
  - This provision would not apply to employees who have tenure before September 1, 2023.

S.B. 18 amends current law relating to the tenure and employment of faculty members at certain public institutions of higher education.

## **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to each governing board of an institution of higher education is rescinded in SECTION 3 (Section 51.942, Education Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 51.942, Education Code, to read as follows:

Sec. 51.942. FACULTY TENURE.

SECTION 2. Amends Section 51.942(a), Education Code, by amending Subdivision (1) and adding Subdivision (4), to define "university system" and "tenure."

SECTION 3. Amends Section 51.942, Education Code, by amending Subsections (b), (c), and (g) and adding Subsections (c-1), (c-2), (c-3), and (c-4), as follows:

(b) Provides that only an institution of higher education's governing board, on the recommendation of the institution's chief executive officer and the university system's chancellor, if applicable, is authorized to grant tenure.

(c) Prohibits the granting of tenure from being construed to create a property interest in any attribute of a faculty position beyond a faculty member's continuing employment, including his or her regular annual salary and any privileges incident to his or her status as a tenured professor.

(c-1) Requires each governing board of an institution of higher education to adopt policies, rather than rules, and procedures regarding tenure. Requires that the policies and procedures:

(1) address the granting of tenure;

(2) allow for the dismissal of a tenured faculty member at any time after providing the faculty member with appropriate due process, on a determination that:

(A) the faculty member has:

(i) exhibited professional incompetence;

(ii) continually or repeatedly failed to perform duties or meet professional responsibilities of the faculty member's position;

(iii) failed to successfully complete any post-tenure review professional development program;

(iv) engaged in conduct involving moral turpitude that adversely affects the institution or the faculty member's performance of duties or meeting of responsibilities;

(v) violated laws or university system or institution policies substantially related to the performance of the faculty member's duties;

(vi) been convicted of a crime affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration;

(vii) engaged in unprofessional conduct that adversely affects the institution or the faculty member's performance of duties or meeting of responsibilities; or

(viii) falsified the faculty member's academic credentials;

(B) there is actual financial exigency or the phasing out of the institution's programs requiring elimination of the faculty member's position; or

(C) there is other good cause as defined in the institution's policies; and

(3) provide for a periodic performance evaluation process for all tenured faculty at the institution. Makes nonsubstantive changes.

(c-2) Creates this subsection from existing text. Authorizes the governing board to design its policies and procedures to fit the institution's particular educational mission, traditions, resources, and circumstances relevant to the institution's character, role, and scope, in addition to other relevant factors determined by the governing board in the policies and procedures adopted under this section. Requires the governing board to seek advice and comment from the institution's faculty before adopting any policies and procedures under this section. Requires that the advice and comment from the faculty on the performance evaluation of tenured faculty be given the utmost consideration by the governing board. Makes conforming and nonsubstantive changes.

(c-3) Redesignates existing Subsection (c) as Subsection (c-3). Requires that the policies and procedures adopted by the governing board under Subsection (c-1), in addition to any other provisions adopted by the governing board, include provisions providing that:

(1) makes a conforming change to this subdivision;

(2) the comprehensive performance evaluation be based on the professional responsibilities of the faculty member, in teaching, research, service, patient care, and administration, and include peer review of the faculty member;

(3)-(5) makes conforming and nonsubstantive changes to these subdivisions; and

(6) for a faculty member who receives an unsatisfactory rating in any area of any evaluation conducted under this section, the evaluation process provide for a short-term development plan that includes performance benchmarks for returning to satisfactory performance.

(c-4) Authorizes the policies and procedures adopted by the governing board under Subsection (c-1) to include provisions that authorize the summary dismissal of a tenured faculty member based on a finding that the faculty member committed serious misconduct, as defined by the institution's policies, at any time after providing the faculty member with appropriate due process in accordance with this subsection. Requires that the policies and procedures for summary dismissal ensure that the institution provides the faculty member with appropriate due process, including:

(1) before summarily dismissing the faculty member, providing the faculty member:

(A) written notice of the allegations against the faculty member together with an explanation of the evidence supporting dismissal; and

(B) an opportunity for the faculty member to respond to the allegations in a hearing with a designated administrator;

(2) requiring the designated administrator to consider the faculty member's response under Subdivision (1)(B) and make a written determination of whether the institution will proceed with the summary dismissal of the faculty member;

(3) promptly providing to the faculty member a copy of the designated administrator's written determination under Subdivision (2) that:

(A) clearly indicates whether the faculty member will be subject to summary dismissal; and

(B) either:

(i) includes the effective date of the dismissal and information regarding the faculty member's opportunity for a post-dismissal appeal, if the designated administrator's decision is in favor of summary dismissal; or

(ii) states that the faculty member is not subject to summary dismissal, if the designated administrator's decision is against summary dismissal; and

(4) following a designated administrator's written determination to summarily dismiss a faculty member, providing the faculty member with the opportunity for a post-dismissal appeal in accordance with the institution's policies and procedures.

(g) Makes conforming and nonsubstantive changes to this subsection.

SECTION 4. Repealer: Section 51.942(d) (relating to requiring a faculty member subject to termination on the basis of an evaluation under certain sections to be given the opportunity for referral of the matter to a nonbinding alternative dispute resolution process and requiring that a governing board give specific reasons in writing for a termination decision for a faculty member), Education Code.

SECTION 5. Effective date: September 1, 2023.