

BILL ANALYSIS

C.S.S.B. 18
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Higher Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Academic tenure refers to an educator's continuing employment status within a higher education institution. When a professor has gained tenure, the professor may only be terminated for a good cause or under extreme circumstances, such as program discontinuation or severe financial restraints. Additionally, when tenured faculty do not retire, they potentially block younger faculty and staff from bringing in fresh ideas to keep pace with changing times. C.S.S.B. 18 seeks to restrict the granting of tenure to a public 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, and to provide for the adoption of policies and procedures by each governing board regarding tenure.

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.S.B. 18 amends the Education Code to authorize only a public 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, to grant tenure. The bill prohibits the granting of tenure from being construed as to create a property interest in any attribute of a faculty position beyond a faculty member's regular annual salary and defines "tenure" as the entitlement of a faculty member of a public institution of higher education to continue in the faculty member's academic position unless dismissed by the institution for good cause in accordance with the policies and procedures adopted by that institution regarding tenure. The bill defines "university system" by reference as the association of one or more public senior colleges or universities, medical or dental units, or other agencies of higher education under the policy direction of a single governing board.

C.S.S.B. 18 replaces the requirement for each governing board of a public institution of higher education to adopt rules and procedures simply providing for a periodic performance evaluation process for all faculty tenured at the institution with a requirement for each such governing board to adopt policies and procedures regarding tenure that also provide for a periodic performance evaluation process for all tenured faculty at the institution but that also address the granting of tenure and 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 any of the following are true:

- the faculty member has, as follows:
 - exhibited professional incompetence;
 - continually or repeatedly failed to perform duties or meet professional responsibilities of the faculty member's position;
 - failed to successfully complete any post-tenure review professional development program;
 - engaged in conduct involving moral turpitude that adversely affects the institution or the faculty member's performance of duties or meeting of responsibilities;
 - violated laws or university system or institution policies substantially related to the performance of the faculty member's duties;
 - been convicted of a crime affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration;
 - engaged in unprofessional conduct that adversely affects the institution or the faculty member's performance of duties or meeting of responsibilities; or
 - falsified the faculty member's academic credentials;
- there is actual financial exigency or the phasing out of the institution's programs requiring elimination of the faculty member's position; or
- there is other good cause as defined in the institution's policies.

C.S.S.B. 18, accounting for the replacement of that requirement, also does the following:

- replaces the authorization for each governing board of a public institution of higher education to design its rules and procedures for a periodic performance evaluation process for all tenured faculty 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, with an authorization for the governing board to design its tenure policies and procedures in that manner;
- replaces the requirement for each such governing board to seek advice and comment from the institution's faculty before adopting its rules for a periodic performance evaluation process for all tenured faculty with a requirement for the governing board to seek such advice and comment before the adoption of its tenure policies and procedures; and
- replaces the requirement for each such governing board to file a copy of its rules relating to performance evaluation of tenured faculty and any applicable amendments to those rules with the Texas Higher Education Coordinating Board (THECB) on or before September 1 of each year with a requirement for the governing board to file a copy of its tenure policies and procedures and any amendments to the policies and procedures with the THECB by that same date each year.

C.S.S.B. 18 sets out requirements for the contents of the adopted tenure policies and procedures regarding the comprehensive performance evaluation process of a tenured faculty member that are substantially similar to the requirements for the content of the previously required rules and procedures adopted for a periodic performance evaluation for tenured faculty. However, the bill expands upon those provisions by including a new requirement for the evaluation process for a faculty member who receives an unsatisfactory rating in any area of a conducted periodic or comprehensive performance evaluation to provide for a short-term development plan that includes performance benchmarks for returning to satisfactory performance.

C.S.S.B. 18 authorizes the policies and procedures adopted by the governing board of a public institution of higher education 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. The bill requires the policies and procedures for summary dismissal to ensure that the institution provides the faculty member with appropriate due process, including the following:

- before summarily dismissing the faculty member, providing the faculty member written notice of the allegations against the faculty member together with an explanation of the evidence supporting dismissal and an opportunity for the faculty member to respond to the allegations in a hearing with a designated administrator;
- requiring the designated administrator to consider the faculty member's response to the allegations and make a written determination of whether the institution will proceed with the summary dismissal of the faculty member;
- promptly providing to the faculty member a copy of the designated administrator's written determination that clearly indicates whether the faculty member will be subject to summary dismissal and either 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 states that the faculty member is not subject to summary dismissal, if the designated administrator's decision is against summary dismissal; and
- 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.

C.S.S.B. 18 repeals Section 51.942(d), Education Code, which requires a faculty member subject to termination on the basis of a periodic performance evaluation conducted in accordance with the previously required rules and procedures to be given the opportunity for referral of the matter to a nonbinding alternative dispute resolution process in accordance with the Civil Practice and Remedies Code or another method of alternative dispute resolution mutually agreed to by both parties and requires the governing board of the applicable institution to give specific reasons in writing for any decision to terminate a faculty member on the basis of the evaluation.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 18 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute omits provisions that were present in the engrossed that did the following:

- prohibited a public institution of higher education from granting tenure to an institution employee or any type of permanent employment status;
- excepted from that prohibition a faculty member or other institution employee employed by or under contract for employment with the institution on September 1, 2023, who was awarded tenure or any type of permanent employment status by the institution prior to September 1, 2023, and who remains continuously employed or under contract of employment beginning September 1, 2023; and
- established that the prohibition does not prohibit a board of regents from establishing an alternate system of tiered employment status for faculty members provided that the system clearly defines each position and requires each faculty member to undergo an annual performance evaluation.

Accordingly, the substitute omits the provision from the engrossed that replaced the requirement for a public institution of higher education to provide tenure and tenure-track faculty with any written notification required in the institution's tenure policy of a change in a term of employment according to the institution's policies, but no later than the 30th day prior to the change, with a requirement for the institution to provide tenured faculty with written notification of any change in a term of employment according to the institution's policy and within that same time frame. Moreover, the substitute also omits the provision from the engrossed repealing Section 51.942(f), Education Code, which prohibits a governing board of a public institution of

higher education from awarding tenure to an administrator in any way that varies from the institution's general policy on the award of tenure.

The substitute includes provisions, which were absent from the engrossed, that instead do the following:

- restrict the authority to grant tenure to a public institution of higher education's governing board on the recommendation of the institution's CEO and the university system's chancellor, if applicable;
- define "tenure" and "university system";
- prohibit a grant of tenure from being construed as to create a property interest in any attribute of a faculty position beyond the faculty member's regular annual salary;
- replace the requirement for each governing board of a public institution of higher education to adopt rules and procedures providing for a periodic performance evaluation process for all faculty tenured at the institution with a requirement for each such governing board to adopt policies and procedures regarding tenure;
- establish the required and discretionary contents of those policies and procedures;
- require any adopted policies and procedures for the summary dismissal of a tenured faculty member to provide the faculty member with appropriate due process;
- provide for the filing of a copy of adopted policies and procedures with the THECB; and
- repeal Section 51.942(d), Education Code, relating to an alternative dispute resolution process for a tenured faculty member subject to termination on the basis of an evaluation.

The substitute changes the effective date of the bill from January 1, 2024, as in the engrossed, to September 1, 2023.