

By: Creighton, et al.
(Kuempel)

S.B. No. 18

Substitute the following for S.B. No. 18:

By: Kuempel

C.S.S.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to the tenure and employment of faculty members at certain public institutions of higher education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 51.942, Education Code, is amended to read as follows:

Sec. 51.942. [~~PERFORMANCE EVALUATION OF TENURED~~] FACULTY TENURE.

SECTION 2. Section 51.942(a), Education Code, is amended by amending Subdivision (1) and adding Subdivision (4) to read as follows:

(1) "Governing board" and "university system" have the meanings [~~has the meaning~~] assigned by Section 61.003.

(4) "Tenure" means the entitlement of a faculty member of an 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 the institution under Subsection (c-1).

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

(b) 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, may

1 grant tenure.

2 (c) The granting of tenure may not be construed to create a
3 property interest in any attribute of a faculty position beyond a
4 faculty member's regular annual salary.

5 (c-1) Each governing board of an institution of higher
6 education shall adopt policies [~~rules~~] and procedures regarding
7 tenure. The policies and procedures must:

8 (1) address the granting of tenure;

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

12 (A) the faculty member has:

13 (i) exhibited professional incompetence;

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

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

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

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

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

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

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

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

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

11 (3) provide [~~providing~~] for a periodic performance
12 evaluation process for all tenured faculty [~~tenured~~] at the
13 institution.

14 (c-2) The governing board may design its policies [~~rules~~]
15 and procedures to fit the institution's particular educational
16 mission, traditions, resources, and circumstances relevant to the
17 institution's [~~its~~] character, role, and scope, in addition to
18 other relevant factors determined by the governing board in the
19 policies and procedures [~~rules~~] adopted under [~~pursuant to~~] this
20 section. The governing board shall seek advice and comment from the
21 institution's faculty [~~of the institution~~] before adopting any
22 policies and procedures under [~~rules pursuant to~~] this section.
23 The advice and comment from the faculty on the performance
24 evaluation of tenured faculty shall be given the utmost
25 consideration by the governing board.

26 (c-3) [~~(c)~~] In addition to any other provisions adopted by
27 the governing board, the policies and procedures adopted by the

1 governing board under Subsection (c-1) must [~~rules shall~~] include
2 provisions providing that:

3 (1) each tenured faculty member [~~tenured~~] at the
4 institution be subject to a comprehensive performance evaluation
5 process conducted no more often than once every year, but no less
6 often than once every six years, after the date the faculty member
7 was granted tenure or received an academic promotion at the
8 institution;

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

13 (3) the comprehensive performance evaluation process
14 be directed toward the professional development of the faculty
15 member;

16 (4) the comprehensive performance evaluation process
17 incorporate commonly recognized academic due process rights,
18 including notice of the manner and scope of the comprehensive
19 performance evaluation, the opportunity to provide documentation
20 during the comprehensive performance evaluation process, and,
21 before a faculty member may be subject to disciplinary action on the
22 basis of a comprehensive performance [~~an~~] evaluation conducted
23 under [~~pursuant to~~] this subsection [~~section~~], notice of specific
24 charges and an opportunity for hearing on those charges; [~~and~~]

25 (5) a faculty member be subject to revocation of
26 tenure or other appropriate disciplinary action if, during the
27 comprehensive performance evaluation, incompetency, neglect of

1 duty, or other good cause is determined to be present; and

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

7 (c-4) The policies and procedures adopted by the governing
8 board under Subsection (c-1) may include provisions that authorize
9 the summary dismissal of a tenured faculty member based on a finding
10 that the faculty member committed serious misconduct, as defined by
11 the institution's policies, at any time after providing the faculty
12 member with appropriate due process in accordance with this
13 subsection. The policies and procedures for summary dismissal must
14 ensure that the institution provides the faculty member with
15 appropriate due process, including:

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

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

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

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

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

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

6 (B) either:

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

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

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

18 (g) Each governing board shall file a copy of the policies
19 and procedures [~~rules~~] adopted under [~~pursuant to~~] this section,
20 and any amendments to such policies and procedures [~~rules~~], with the
21 coordinating board on or before September 1 of each year.

22 SECTION 4. Section 51.942(d), Education Code, is repealed.

23 SECTION 5. This Act takes effect September 1, 2023.