

SUBJECT: Revising tenure provisions for higher education institution faculty

COMMITTEE: Higher Education — committee substitute recommended

VOTE: *After recommitted:*
6 ayes — Kuempel, Paul, Burns, Burrows, Clardy, Raney
5 nays — Bucy, Cole, M. González, Howard, Lalani

SENATE VOTE: On final passage (April 20) — 18 - 11

WITNESSES: None (*considered in a formal meeting on May 18*)

DIGEST: CSSB 18 would revise provisions on tenure for higher education institution faculty.

The bill would define “tenure” as the entitlement of a faculty member of a higher education institution to continue in the faculty member’s academic position unless dismissed by the institution for good cause in accordance with certain policies and procedures adopted by the institution.

The bill would authorize only a higher education institution’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 granting of tenure could not be construed to create a property interest in any attribute of a faculty position beyond a faculty member’s regular annual salary.

The bill would require each higher education institution’s governing board to adopt policies, rather than rules, and procedures regarding tenure. These policies and procedures would have to include a periodic performance evaluation process for all tenured faculty at the institution and would be required to 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 there was actual financial exigency or upon the phasing out of the institution’s programs requiring the elimination of the

position. The policies and procedures also would be required to allow for dismissal if the faculty member had:

- 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 affected the institution or the faculty member's performance;
- violated laws, university system policies, or institution policies substantially related to the faculty member's performance;
- 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 affected the institution or the faculty member's performance; or
- falsified the faculty member's academic credentials.

Such policies and procedures would be required to allow for a tenured faculty member's dismissal at any time on a determination that there was other good cause as defined in the institution's policies.

The governing board's policies and procedures would have to include provisions providing that:

- a faculty member would be subject to revocation of tenure or other appropriate disciplinary action if incompetency, neglect of duty, or other good cause was determined during the required comprehensive performance evaluation process; and
- the evaluation process provided for a short-term development plan that included performance benchmarks for returning to satisfactory performance for a faculty member who received an unsatisfactory rating in any area of any evaluation.

The bill would allow such policies and procedures to include provisions

that authorized the summary dismissal of a tenured faculty member based on a finding that the faculty member committed serious misconduct under the institution's policies at any time after providing the faculty member with appropriate due process. Appropriate due process would include:

- providing the faculty member written notice of the allegations against the faculty member with an explanation of the supporting evidence and an opportunity for the faculty member to respond to the allegations in a hearing with a designated administrator before summarily dismissing the faculty member;
- requiring the designated administrator to consider the faculty member's response and make a written determination of whether the institution would proceed with the summary dismissal;
- promptly providing a copy of the designated administrator's written determination to the faculty member, which clearly indicated whether the faculty member would be summarily dismissed and either included the effective date of the dismissal and information regarding the opportunity for a post-dismissal appeal or stated that the faculty member was not to be summarily dismissed; and
- providing the faculty member with the opportunity for a post-dismissal appeal in accordance with the institution's policies and procedures following a designated administrator's written determination to summarily dismiss a faculty member.

Each governing board would be required to file a copy of the policies and procedures adopted under the bill and any amendments with the Texas Higher Education Coordinating Board by September 1 of each year.

The bill would repeal Education Code sec. 51.942(d), which requires a faculty member subject to termination on the basis of a performance evaluation to be given the opportunity for referral of the matter to a nonbinding alternative dispute resolution process.

The bill would take effect September 1, 2023.

**SUPPORTERS
SAY:**

CSSB 18 would help ensure that university faculty who earn tenure uphold their professional and ethical responsibilities and remain accountable to the students and universities that they serve. CSSB 18 would not limit tenure or affect academic freedom but rather would protect tenure by codifying tenure policies and procedures and requiring appropriate due process prior to a faculty member's dismissal. Although faculty involvement in the process of granting tenure is not required under the bill, individual institutions could determine the level of faculty involvement allowed in the process. As evidenced by the success of the Texas A&M system's tenure policies, which are similar to the provisions of the bill, these tenure standards can attract new professors without discouraging high-quality educators from seeking employment in Texas. The bill would not change tenured faculty members having a property interest in their positions requiring due process prior to termination, and the reasons for termination constituting good cause under the bill are similar to policies already established by the American Association of University Professors. As the bill would not violate current legal standards, there is no reason to expect lawsuits to result from the bill's passage.

**CRITICS
SAY:**

CSSB 18 could limit the academic freedom of faculty provided by tenure, which could impede their ability to challenge students and advance scholarship. The discipline and peer review behind current tenure policies help to ensure the sustained high quality of higher education. The bill should require faculty involvement in the awarding of tenure, rather than leaving these decisions to the governing board of an institution. The bill also could hinder universities' capacity to recruit or retain exceptional teaching talent in the state. Such provisions may also encourage institutions to terminate faculty at higher rates as the institutions would no longer incur the financial liabilities resulting from protected property interests for tenured professors.

**OTHER
CRITICS
SAY:**

CSSB 18 could lead to lawsuits against the state, which could cost the state money that would be better used for other purposes.