

## The House Committee Substitute for SB 18 Creates Tenure in Name Only

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In the United States, over 800 colleges and universities have adopted principles of academic freedom and tenure jointly formulated by AAUP and university administrations. [1] Per AAUP, a “tenured appointment is an indefinite appointment that can be terminated only for cause or under extraordinary circumstances such as financial exigency and program discontinuation.” [2] Tenure is a necessary guarantee of academic freedom, which is freedom from censorship by the institution or the government. Tenure allows professors to have full freedom in helping students develop the critical thinking, knowledge, training, and professional networks needed for successful careers. Tenure protects professors in developing and disseminating new knowledge from all viewpoints, including conservative, moderate, liberal, and apolitical. Tenure-track professors are rigorously evaluated in teaching, research, and service over a six-year probationary period by faculty, administrators, and external experts, and those that do not earn tenure are dismissed from the institution. Once tenured, by State Law, all tenured faculty members undergo a robust review each year, including a rigorous multi-year comprehensive review at least once every six years. And tenure-track and tenured faculty are the engines for universities to advise the doctoral students and land the external research funding to earn Tier 1 and Tier 2 doctoral university status. [3]

The Texas Association of College Teachers (TACT) and the Texas Conference of the American Association of University Professors (AAUP) remain opposed to Texas SB 18 and hope the House will not pass the bill. Even though we welcome the changes in many portions of the committee substitute for SB 18 [4], especially the continuation of the ability to hire tenure-track and tenured faculty members, we believe that this bill guts tenure protections and will cause Texas public colleges and universities that offer tenure to lose competitiveness nationally for top faculty talent. We believe that the bill should not pass, and we give several reasons next.

**1. Tenure in Name Only.** We are concerned that Section 3(c) in the committee substitute for SB 18 limits a faculty member’s property interest in tenure to their “regular annual salary.” In *Board of Regents of State Colleges v. Roth* (1972), the U.S. Supreme Court held that tenured faculty at public colleges and universities have a property interest in their continued public employment—such that they cannot lose tenure or otherwise be removed from their positions without the due process of law required by the Fourteenth Amendment to the U.S. Constitution. But a faculty member’s property interest is defined *by* state law—such that Section 3(c) could be read to **eliminate** a tenured faculty member’s property interest in continued employment. If a tenured faculty member has no property interest in their tenure beyond their “regular annual salary,” then the state could argue that a severance equal to one year’s salary is all that due process requires for the termination of tenured faculty—regardless of the circumstances. Thus, Section 3(c) could be read to give Texas’s public colleges and universities the power to impose all kinds of restrictions on tenured faculty members—up to and including revocation of their tenure—without running afoul of the U.S. Constitution. Under that reading of Section 3(c), the protection provided by the committee substitute for SB18 would be **tenure in name only**; and could have the same consequences as the elimination of tenure itself. *Example:* A professor who receives tenure after the bill is passed (so there’s no retroactivity issue) is fired for publicly criticizing an elected federal official—with the university taking advantage of the vagueness of “moral turpitude” in Section 3(c-1)(2)(A)(iv). To

satisfy the property interest enshrined in Section 3(c), the university pays the professor one year's salary as severance.

**2. Vague language on cause for dismissal.** Lastly, we are concerned that, among the bill's language in Section 3(c-1)(2)(A) directing governing boards' justifications for dismissal of a tenured faculty member are the phrase "...engaged in unprofessional conduct that adversely affects the institution or the faculty member's performance of duties or meeting of responsibilities...." This language is sufficiently vague that it might well invite abuse by individuals with whom the faculty member under consideration has a personal disagreement unrelated to their professional responsibilities. Other vague language in this section includes "moral turpitude" and "unprofessional conduct". Moreover, this provision could be used to terminate faculty members for engaging in protected speech outside of their jobs that could be construed as harming a university's reputation.

**3. Authority to grant tenure is in the hands of those without disciplinary expertise.** One concern in the committee substitute for SB 18 pertains to language that states that only the governing board shall grant tenure. Mention is made of recommendation by the Chief Executive Officer in this process. Long established national standards of higher education call for faculty involvement in the decision to grant an individual tenure because faculty peers in a particular subject area possess the chief competence for judging the work of their colleagues [5]; and more generally, the faculty's judgment is central to educational policy. Over 1300 colleges and universities in the United States, including Texas public university systems, have adopted these shared governance principles [5].

**4. Lack of due process.** We are also concerned that the committee substitute's detailed language makes no mention of faculty involvement in the dismissal hearing of a faculty member. Here, again, national standards jointly crafted by professional associations representing college and university administrators, governing boards, and faculty clearly state that faculty should be involved as their judgment is central to educational policy and faculty possess subject specific expertise necessary to adequately evaluate the work of their colleagues. [5]

We wish to reiterate support for a system of tenure [1] as the surest means of protecting academic freedom so that truth might be pursued in the classroom, in the archives, and in the lab. Adoption of the system of tenure in the mid-twentieth century allowed United States' colleges and universities to supplant Germany's institutions as the epitome of world higher education when the latter allowed sharp infringements upon academic freedom to devastate the learning process.

## References

[1] [1940 Statement of Principles on Academic Freedom & Tenure](#), jointly formulated by American Association of Colleges & Universities representing college and university administrations and the American Association of University Professors representing professors. AAC&U has [more than 800 college and university members](#).

[2] AAUP, "Tenure", <https://www.aaup.org/issues/tenure>

[3] Brian Evans, "[Tenured and Tenure-Track Faculty in the US, Texas A&M & UT Austin](#)", April 3, 2023.

[4] House Higher Education Committee, [Committee Substitute for SB 18](#), May 8, 2023.

[5] [1966 Statement on Government of Colleges and Universities](#), jointly formulated by the American Association of University Professors, American Council on Education, and Association of Governing Boards of Universities & Colleges. The AAUP represents faculty members, ACE represents university administrations, and AGB represents University Systems, Boards of Regents and Boards of Trustees. ACE has more than 1500 [college and university members](#) and AGB has more than 1300 [college, university, and system members](#).