



2021 ASSEMBLY BILL 363

May 27, 2021 - Introduced by Representatives HESSELBEIN, EMERSON, STUBBS, SHELTON, HONG, BROSTOFF, HEBL, ANDERSON, NEUBAUER, SUBECK, POPE, SHANKLAND, SPREITZER, BILLINGS, SINICKI, CABRERA and VINING, cosponsored by Senators ROYS, SMITH, ERPENBACH, JOHNSON, LARSON and RINGHAND. Referred to Committee on Colleges and Universities.

1 **AN ACT to amend** 36.17 (1), 36.19, 36.21, 111.81 (7) (ar) and 111.81 (7) (at); and
2 **to create** 36.13 of the statutes; **relating to:** faculty tenure and probationary
3 appointments at University of Wisconsin System institutions and granting
4 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill restores the tenure and probationary appointment provisions for faculty of the University of Wisconsin System that were in effect just prior to enactment of the 2015-17 biennial budget act (2015 Act 55).

Prior to 2015 Act 55, the statutes specifically authorized the Board of Regents of the UW System to grant to a ranked faculty member a tenure appointment for an unlimited period if certain conditions were met, including that the chancellor of the applicable UW institution and, with an exception, the faculty member's academic department both affirmatively recommended the tenure appointment. A tenured faculty member could be dismissed only for just cause. The statutes also specifically authorized the Board of Regents to make faculty probationary appointments for a period preceding a decision on tenure. A faculty member having a probationary appointment could be dismissed prior to the end of the contract term only for just cause.

This bill restores the tenure and probationary appointment provisions for UW System faculty that existed just prior to enactment of 2015 Act 55.

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For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 36.13 of the statutes is created to read:

2 **36.13 Faculty tenure and probationary appointments. (1) DEFINITIONS.**

3 In this section:

4 (a) “Probationary appointment” means an appointment by the board held by
5 a faculty member during the period which may precede a decision on a tenure
6 appointment.

7 (b) “Tenure appointment” means an appointment for an unlimited period
8 granted to a ranked faculty member by the board.

9 **(2) APPOINTMENTS.** (a) Except as provided under par. (b), the board may grant
10 a tenure appointment only upon the affirmative recommendation of the appropriate
11 chancellor and the appropriate academic department or its functional equivalent.
12 Neither the chancellor nor the academic department or its functional equivalent may
13 base a tenure recommendation upon impermissible factors, as defined by the board
14 by rule.

15 (b) The board may grant a tenure appointment without the affirmative
16 recommendation of the appropriate academic department or its functional
17 equivalent if all of the following apply:

18 1. The board has the affirmative recommendation of the appropriate
19 chancellor.

20 2. A faculty committee authorized by the board by rule to review the negative
21 recommendation of the academic department or its functional equivalent finds that

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1 the decision of the academic department or its functional equivalent was based upon
2 impermissible factors, as defined by the board by rule.

3 3. The board has the affirmative recommendation of a committee appointed
4 according to the policies and procedures of the appropriate institution to review the
5 individual's record with reference to criteria for tenure published by the institution
6 under procedures established by the board by rule. No person may be appointed to
7 the committee under this subdivision unless the person is knowledgeable or
8 experienced in the individual's academic field or in a substantially similar academic
9 field. No member of the committee appointed under this subdivision may be a
10 member of the academic department, or its functional equivalent, that made the
11 negative recommendation. The committee appointed under this subdivision may not
12 base its tenure recommendation upon impermissible factors, as defined by the board
13 by rule.

14 (c) A tenure appointment may be granted to any ranked faculty member who
15 holds or will hold a half-time appointment or more. The proportion of time provided
16 for in the appointment may not be diminished nor increased without the mutual
17 consent of the faculty member and the institution subject only to sub. (5) and ss. 36.21
18 and 36.22.

19 (d) A probationary appointment shall not exceed 7 consecutive academic years
20 in a full-time position in an institution. A leave of absence, sabbatical, or a teacher
21 improvement assignment does not constitute a break in continuous service and shall
22 not be included in the 7-year period. The board may promulgate rules specifying
23 additional circumstances that do not constitute a break in continuous service and
24 that shall not be included in the 7-year period.

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1 **(3) RULES.** The board and its several faculties, after consultation with
2 appropriate students, shall promulgate rules for tenure and probationary
3 appointments, for the review of faculty performance, and for the nonretention and
4 dismissal of faculty members. Such rules shall be promulgated under ch. 227.

5 **(4) CONTINUATION OF APPOINTMENT.** (a) Any person who holds a tenure
6 appointment under ch. 36, 1971 stats., and ch. 37, 1971 stats., and related rules on
7 July 9, 1974, shall continue to hold tenure as defined under those chapters and
8 related rules.

9 (b) Any person who holds the equivalent of a probationary appointment under
10 ch. 36, 1971 stats., and ch. 37, 1971 stats., and related rules on July 9, 1974, shall
11 continue to enjoy the contractual rights and guarantees as defined under those
12 chapters and related rules, and may elect to be considered for tenure according to the
13 procedures existing under that appointment or under sub. (2).

14 (c) Any person who is not a ranked faculty member on August 15, 1991, and who
15 is also described under subd. 1. or 2. shall be treated as a faculty member with the
16 rank of associate professor for all purposes:

17 1. Any person who held an unranked faculty tenure appointment or unranked
18 faculty concurrent tenure appointment under ch. 37, 1971 stats., prior to July 10,
19 1974.

20 2. Any person who held an unranked probationary appointment under ch. 37,
21 1971 stats., prior to July 10, 1974, and who subsequently received an unranked
22 faculty tenure appointment or unranked faculty concurrent tenure appointment.

23 **(5) PROCEDURAL GUARANTEES.** Any person having tenure may be dismissed only
24 for just cause and only after due notice and hearing. Any person having a
25 probationary appointment may be dismissed prior to the end of the person's contract

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1 term only for just cause and only after due notice and hearing. The action and
2 decision of the board in such matters shall be final, subject to judicial review under
3 ch. 227. The board and its several faculties shall develop procedures for the notice
4 and hearing that shall be promulgated by rule under ch. 227.

5 (6) LIMITATION. Tenure and probationary appointments are in a particular
6 institution. A tenure appointment is limited to the institution in which the
7 appointment is held.

8 **SECTION 2.** 36.17 (1) of the statutes is amended to read:

9 36.17 (1) An appointment to a position listed in sub. (2) shall be a limited
10 appointment and the appointment shall be at the pleasure of the board. A faculty
11 ~~member who has been granted tenure or a~~ person holding an a tenured or academic
12 staff appointment under s. ss. 36.13 and 36.15 shall not lose that appointment by
13 accepting a limited appointment.

14 **SECTION 3.** 36.19 of the statutes is amended to read:

15 **36.19 Other appointments.** The board may make or authorize fixed term
16 appointments for student assistants and employees in training, such as residents,
17 interns, post-doctoral fellows or trainees or associates. Appointments made under
18 this section shall not be subject to s. ss. 36.13 and 36.15.

19 **SECTION 4.** 36.21 of the statutes is amended to read:

20 **36.21 Termination due to certain budget or program changes.**
21 Notwithstanding s. ss. 36.13 (4) and 36.15, the board may, with appropriate notice,
22 terminate any faculty or academic staff appointment when such an action is deemed
23 necessary due to a budget or program decision requiring program discontinuance,
24 curtailment, modification, or redirection. No person may be employed at the
25 institution within 2 years to perform reasonably comparable duties to those of the

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1 person whose appointment was terminated without first offering such person a
2 reappointment. The board, after consultation with the faculty and chancellor of each
3 institution, shall adopt procedures to be followed in the event of termination of
4 academic staff under this section and the board may adopt procedures, consistent
5 with s. 36.22, to be followed in the event of termination of faculty under this section
6 and s. 36.22.

7 **SECTION 5.** 111.81 (7) (ar) of the statutes is amended to read:

8 111.81 (7) (ar) Any employee who is employed by the University of Wisconsin
9 System, except an employee who is assigned to the University of
10 Wisconsin-Madison, and except faculty, under s. 36.13 and ~~except~~ academic staff
11 under s. 36.15.

12 **SECTION 6.** 111.81 (7) (at) of the statutes is amended to read:

13 111.81 (7) (at) Any employee who is employed by the University of Wisconsin
14 System and assigned to the University of Wisconsin-Madison except faculty under
15 s. 36.13 and ~~except~~ academic staff under s. 36.15.

16 (END)