

## SUMMARY OF THE CHALLENGE TO ACADEMIC FREEDOM IN UW SYSTEM

### CURRENT LAW

Under current Section 36 of the Wis. Stat, faculty may be involuntarily separated from their employment: 1) dismissal for cause and with due process, and 2) termination or layoff for a bona fide financial emergency. These standards are acceptable to the AAUP and have been the basis for bona fide tenure in the United States since the latter half of the 20<sup>th</sup> Century.

### PROPOSED CHANGES FROM JOINT FINANCE COMMITTEE IN OMNIBUS BILL

Elimination of "Dismissal for Cause / Due Process" protections are contained in Section 12 of Omnibus Motion #521. This is simply a **shift of location** from State Statute to Regental Policy.

12. *Tenure*: Approve the Governor's recommendation to delete the definition of a "tenure appointment" and language establishing the conditions under which the Board of Regents may grant a tenure appointment to a faculty member. Delete current law specifying that a person who has been granted tenure may be dismissed only for just cause and only after due notice and hearing. In addition, delete the definition of "probationary appointment" and provisions limiting the length of such an appointment to seven years.

Provisions for termination or (possibly indefinite) layoff for bona fide financial emergency in current Wis. Stat Section 36 are repealed under paragraph 1 of Section 39 of Omnibus Motion #521:

39. *Layoff due to budget or program decision*: Modify current law to specify that the Board may, with appropriate notice, terminate any faculty or academic staff appointment when such an action is deemed necessary due to a budget or program decision regarding program discontinuance, curtailment, modification, or redirection, instead of when a financial emergency exists as under current law.

\*\*Notice that this section is not labeled "Tenure" as in Section 12. This allows the Board of Regents to say that "tenure has been moved into Regental policy" in a very technical, but highly misleading sense.

\*\*The language is *passive*. It does not specify *who* is to deem necessary, just "is deemed necessary."

Who can deem it necessary to make such terminations based on arbitrary "budget or program decisions?" The faculty would have the "primary responsibility for "advising" and not for "deciding."

35. *Shared governance, role of faculty*: Modify current law to specify that the faculty of each institution would have the primary responsibility for advising the Chancellor regarding academic and educational activities and faculty personnel matters subject to the responsibilities and powers of the Board, President, and Chancellor. In addition, modify current law to specify that the

In section 38 of Omnibus Motion #521, "subject to" is defined as "subordinate to."

38. *Shared governance, general*: Specify that, with regard to the responsibilities of the faculty, academic staff, and students of each institution, "subject to" means "subordinate to."

## PROBLEMS THIS OMNIBUS BILL CREATES

1. **This language violates AAUP standards** on Termination of Appointments by the Institution for Financial Exigency, Section 4.c(1), which plainly states that the decision “be the primary responsibility of the faculty or of an appropriate faculty body.”

2. **The language for layoffs creates the conditions for employment and frame what a Chancellor may do.** Even if Chancellor Blank writes a new policy that says she will not exercise these rights, her successor can. In fact, if the Board of Regents wishes to eliminate programs and faculty and tells the Chancellor to do so, and she refuses, she can be let go and replaced with a chancellor who will.

\*\* There is clear evidence that the Legislature wishes to intervene in academic programming.

3. **The faculty would be powerless to stop these changes.**

Section 35 removes any requirement of faculty role in the “governance of such institution” or in “institutional policy development.”

structure. Delete current law specifying that the faculty of each institution be vested with responsibility for the immediate governance of such institution and actively participate in institutional policy development.

The faculty may not review Board, President or Chancellor decisions to discontinue, curtail, modify or redirect programs under Paragraph 7 of Section 39:

Provide that a faculty member who has been notified of layoff is entitled to a hearing before the faculty hearing committee as to the appropriateness of the decision to layoff that particular individual. Specify the budget or program decisions made to discontinue, curtail, modify, or redirect a program would not be subject to review in the hearing. Specify that the hearing must be

4. **The only authority to check the Board of Regents is itself under attack**

Under current law, the [Legislative Audit Bureau](#), “a non-partisan legislative service agency created to assist the Legislature in maintaining effective oversight of state operations” has that ability: (LAB) (13/IV/94/1):

This subsection **does not preclude the bureau from reviewing the procedures by which decisions are made and priorities set in the University of Wisconsin System, or the manner in which such decisions and priorities are implemented** within the University of Wisconsin System, insofar as such review is **not inconsistent with s. 36.09.** [[UW Board of Regents](#)] (emphasis added)

With the striking of Section 36 from state statute, the ability of the LAB to check the power of the board is in question.

The continued existence of the LAB is in doubt, see: [“Wisconsin Republicans propose abolishing the Legislative Audit Bureau.”](#) (Cap Times 6/8/15)