

Testimony in Opposition to HB 1446

January 29, 2023

My name is Daniel Rice and I am a former Dean of the College of Education and Human Development at UND and a Professor Emeritus of Educational Leadership.

I write in strong **opposition to HB 1446** for the following reasons:

1. The bill on its face is clearly **unconstitutional**. The [North Dakota State Constitution states in Article VIII, Section 6.6.b](#), “The state board of higher education shall have **full authority** over the institutions under its control...” (emphasis added). This bill usurps the power and authority granted to the State Board of Higher Education (SBHE) by the citizens of the state in the ND Constitution. The authority to make changes of this magnitude to two institutions does not belong to the Legislative Assembly. If the sponsor of this bill wishes to propose such a “pilot program” he should do so to the SBHE.
2. The sponsor claims that a purpose of the bill is to “improve the tenure process.” It is obvious that the sponsor does not understand either the purpose of academic tenure nor how it functions in practice within U.S. higher education, including within the North Dakota University System (NDUS). The passage of this bill would essentially eliminate tenure at the two institutions. As a brief indication of the misunderstandings embodied in the bill, I offer the following facts about academic tenure within the NDUS.
 - a. The purpose of academic tenure is to protect the academic freedom of faculty to teach and conduct research **for the benefit of society**, not to protect the individual faculty member. (<https://www.aaup.org/issues/tenure>)
 - b. Tenure is granted after a lengthy probationary period of 6-7 years of full-time, satisfactory performance and only if the applicant meets the standards set by the campus and approved by the SBHE.
 - c. Contrary to what some believe, tenure is not a “guarantee” of lifetime employment. Tenured faculty are subject to periodic performance review and may be terminated for “cause” and for other valid reasons as outlined in policy approved by the SBHE.
3. This bill would **eliminate the due process rights** of faculty at the two campuses by permitting random, unannounced performance reviews by the campus president that could be arbitrary and retaliatory. The present SBHE policies provide for periodic, multilayered performance reviews of the performance of tenured faculty after the probationary period. This bill would eliminate that orderly and legally sanctioned policy.
4. The bill would **strip tenured faculty of the right to appeal** administrative decisions and **the right to seek legal redress for wrongful termination**.
5. An assumption of the sponsor seems to be that tenured faculty are somehow preventing these two campuses from achieving the campus mission. The sponsor has an obligation to explain this assumption and provide evidence that it is valid.

6. The sponsor is attempting to impose a business management system on two campuses within the NDUS. The bill would grant campus presidents absolute authority to terminate tenured faculty members at will. Higher education is not a business. The purpose of a business is to make a profit for its owner(s) or shareholders. The purpose of higher education is to teach and discover knowledge for the service of society. The purpose of tenured faculty is not to make a profit for the institution as proposed in this bill. Both types of institutions are necessary for our society but they are different and are not compatible. Business practices are applicable to the administration and management of the financial side of higher education but are separate from the academic processes and purposes of higher education. This bill confuses these two different and distinct purposes.

7. The NDUS already faces serious challenges with recruiting and retaining talented faculty to our state. The passage of this bill will actually increase that problem significantly and add to the workforce shortage in North Dakota.

I strongly urge the Education Committee to **give HB 1446 a Do Not Pass** recommendation. I thank the committee for its service and for its attention to my testimony.

If members of the committee have questions or seek further information, I would be happy to respond.