

Good morning chair Schauer, vice chair Satrom and members of the House Government and Veterans Affairs committee, for the record, my name is Mike Lefor and I represent District 37-Dickinson in the House. I bring HB 1446 for your consideration. This bill which I call the "tenure with responsibilities act", provides a mechanism for tenured professors to be reviewed by the university president as it pertains to job performance.

In states such as Florida and Texas, they have recently introduced either by statute or policy a post tenure review process similar to what is being proposed here today. As we all know, higher education is becoming a more complex, more competitive market for our young people and adults.

If you look at available data, you will find more students taking classes on-line than ever before. This means students can literally have their pick of hundreds of universities across the country for their courses. I know of an individual in my hometown who is taking courses at a university in another state rather than North Dakota due to a lower cost.

Our taxpayer supported universities are moving forward with strategies to remain competitive in the marketplace and aligning with other groups to provide the best educational opportunities. Two of these universities are changing their business models to provide more of these opportunities right here in North Dakota.

Dickinson State University is changing to a dual mission campus and Bismarck State College is providing more polytechnic courses. They are aligning with the career and tech academies, local high schools, and adding technology to provide more access to classes online. Recognizing these challenges, the "tenure with responsibilities act" provides for a pilot program within these two institutions to mirror some of the policies being enacted in other states.

In the bill you will note this is a four-year pilot program with the following points.

1. Generate more tuition or grant revenue than the combined total of the salary, fringe benefits, compensation, and other expenses of the tenured faculty member. The compensation costs of a tenured faculty member must be adjusted to reflect the faculty members assumption of administrative responsibilities where applicable.
2. Comply with the policies and procedures and directives of the institution, the president and other administrators, the state board of higher education and the North Dakota university system.
3. Effectively teach and advise a number of students approximately equal to the average campus faculty teaching and advising load.
4. On page 2, engage in measurable and effective activities to:
 - a. Help recruit and retain students for the institution.
 - b. Help students achieve academic success.
 - c. Further the best interests of the institution including providing advice and shared governance with campus leaders and exercising mature judgment to avoid inadvertently harming the institution. (I am providing an amendment to put a period after the word "institution" and eliminating the rest of the wording contained in lines six through eight.

- d. Perform all other duties outlined in any applicable contract and position description.

In section two of the bill on page two beginning on line 12, it provides for a faculty review by presidents of these institutions as follows:

1. The president of each institution under the control of the board of higher education may review performance of any or all duties and responsibilities under Section 1 of the act.
2. A review under subsection 1 (In the amendment being provided to the committee, change number two changes the word "may" to "must" to provide for a paper trail.
3. Explains what happens when a president feels the tenured faculty member has failed to comply with a duty or responsibility, the president may not renew the contract of the tenure faculty member unless the president articulates why it is in the best interest of the institution to continue to employ the faculty member.
4. The president may enlist the assistance of an administrator of at the institution to conduct a review but may not delegate responsibility for the review to a faculty member who is not an administrator.
5. When conducting a review, the president may look at other factors including what is in the best interests of the institution or it's students. (For example, a professor teaching a few students and the university needs these courses for a bachelors program, etc. it gives the president some latitude.
6. Under number six (the amendment changes the wording to allow an appeal to the chancellor of the university system.) Additionally, the president is responsible to the chancellor and state board of higher education for the reviews conducted under this section.
7. States the presidents and administrators, shall fulfill theses duties without fear of reprisal or retaliation. (The fourth change in the amendment to be presented provides the state will indemnify the board of higher education for any action brought forward under this section.)

Provide Amendment.

Members of the Government and Veterans Affairs committee, the cost of higher education in our state continues to grow and we are the stewards of the taxpayer elected to represent them when dollars are allocated. We also need to be competitive for the future and the changing ways in which educational opportunities are offered. Other states have enacted policy to provide for similar reviews, why not North Dakota? That completes my testimony and I would be happy to answer any questions.

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1446

Introduced by

Representative Lefor

1 A BILL for an Act to create and enact two new sections to chapter 15-10 of the North Dakota
2 Century Code, relating to a pilot program for tenured faculty review at institutions of higher
3 education; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 15-10 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Faculty tenure duties and responsibilities - Pilot program.**

8 In response to the urgent need to accelerate workforce development, the state board of
9 higher education shall implement a four-year pilot program focused on the two new campus
10 models at Bismarck state college, now a polytechnic college, and Dickinson state university,
11 now a dual-mission university, no later than May 1, 2023, to improve the tenure process. The
12 pilot program may not apply to a research university. A tenured faculty member employed at an
13 institution of higher education under the control of the state board of higher education shall:

- 14 1. Generate more tuition or grant revenue than the combined total of the salary, fringe
15 benefits, compensation, and other expenses of the tenured faculty member plus all
16 other costs of employing the faculty member, including employment taxes. The
17 compensation costs of a tenured faculty member must be adjusted to reflect the
18 faculty member's assumption of administrative responsibilities and related lessening of
19 the faculty member's teaching responsibilities, where applicable.
- 20 2. Comply with the policies, procedures, and directives of the institution, the institution's
21 president and other administrators, the state board of higher education, and the North
22 Dakota university system.
- 23 3. Effectively teach and advise a number of students approximately equal to the average
24 campus faculty teaching and advising load.

- 1 4. Engage in measurable and effective activities to:
- 2 a. Help recruit and retain students for the institution.
- 3 b. Help students achieve academic success.
- 4 c. Further the best interests of the institution including providing advice and shared
- 5 governance to campus leaders, and exercising mature judgment to avoid
- 6 inadvertently harming the institution, especially in avoiding the use of social
- 7 media or third-party internet platforms to disparage campus personnel or the
- 8 institution.
- 9 5. Perform all other duties outlined in any applicable contract and position description.

10 **SECTION 2.** A new section to chapter 15-10 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Faculty tenure review by presidents of institutions of higher education.**

- 13 1. The president of each institution of higher education under the control of the state
- 14 board of higher education may review performance of any or all of the duties and
- 15 responsibilities under section 1 of this Act of any faculty member holding tenure at any
- 16 time the president deems a review is in the institution's best interest.
- 17 2. A review under subsection 1 may must include a written assessment of whether the
- 18 faculty member is complying with the duties and responsibilities reviewed.
- 19 3. If a president determines a tenured faculty member has failed to comply with a duty or
- 20 responsibility of tenure, the president may not renew the contract of the tenured faculty
- 21 member, unless the president specifically articulates why it is in the interest of the
- 22 institution to continue to employ the faculty member despite the faculty member's
- 23 failure to comply with the duties and responsibilities of tenure.
- 24 4. The president of an institution may enlist the assistance of an administrator at the
- 25 institution to conduct a review but may not delegate responsibility for the review to a
- 26 faculty member who is not an administrator.
- 27 5. When conducting a review under this section, the president of an institution may
- 28 assess and review other factors relevant to the faculty member's employment and the
- 29 interests of the institution and the institution's students.
- 30 6. A review under this section is not appealable or reviewable by a faculty member or
- 31 faculty committee. A faculty member whose contract is not renewed or whose

1 employment is terminated or suspended as a result of a review under this section may
2 appeal the review to the North Dakota university system chancellor. The president is
3 subject to review and assessment by the state commissioner of higher education and
4 the state board of higher education for the reviews the president conducts under this
5 section.

- 6 7. The president and any administrators delegated to assist the president shall fulfill
7 these duties without fear of reprisal or retaliation. No complaint, lawsuit, or other
8 allegation is allowed against a president or other administrator for actions taken
9 pursuant to these provisions. The state shall indemnify the members of the board of
10 higher education, the president of an institution of higher education, or an
11 administrator of an institution of higher education for all reasonable costs, including
12 attorney's fees, incurred in defending any actions taken pursuant to these provisions.

13 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

January 30, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1446

Page 2, line 6, remove ". especially in avoiding the use of social"

Page 2, remove line 7

Page 2, line 8, remove "institution"

Page 2, line 17, replace "may" with "must"

Page 2, line 30, remove "appealable or"

Page 2, line 31, after the underscored period insert "A faculty member whose contract is not renewed or whose employment is terminated or suspended as a result of a review under this section may appeal the review to the North Dakota university system chancellor."

Page 3, line 6, after the underscored period insert "The state shall indemnify the members of the board of higher education, the president of an institution of higher education, or an administrator of an institution of higher education for all reasonable costs, including attorney's fees, incurred in defending any actions taken pursuant to these provisions."

Renumber accordingly

