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68<sup>th</sup> Legislative Assembly  
Senate Education Committee

RE: HB1446

Dear Chair Elkin and Members of the Senate Education Committee,

I am resident of Fargo, North Dakota and testify as a private citizen, not as a member or representative of any group. Having been Faculty President at my institution and the faculty advisory board member on the State Board of Higher Education (SBHE), I am certainly very knowledgeable about the 11 institutions in our State University system.

I am testifying in opposition to HB1446 which would allow University and College Presidents to single handedly fire tenured faculty. I recommend a 'DO NOT PASS' vote on this bill.

The North Dakota constitution very clearly states in Article VIII Education, Section 6, that the State Board of Higher Education (SBHE) is responsible for the control and administration of our state higher education institutions (<https://ndlegis.gov/constit/a08.pdf>). The SBHE, not the North Dakota State Legislature. In this context, I appreciate the change that was made to bill since it was introduced in the House under section 1.1. It is clearly the SBHE that should conduct the pilot study. However, it is also the SBHE that should determine how they want to conduct the study. This should not be dictated by the legislature.

#### Section I

*2a) Comply with policies etc up to the State Board of Higher Education.* This is written into job offer letters and a requirement by the institutions. The point is not needed.

*2b) Teach and advise students equal to the average across the institution.* This is not possible. We do not get to choose which courses we teach and some courses, such as entry level courses are much larger than higher level specialized courses or courses in small programs. Likewise, not every program has the same number of advisees. Or faculty, as a matter of fact. The important point is not that everybody has the same number of students or advisees, but that within the unit every student gets taught and advised. By somebody. In fact, some departments have professional advisors who advise all students. Some departments have lecturers who teach the bulk of the classes. Do you wanna punish tenured faculty for that? Note that faculty appointments are spelled out (in the job offer letter and annually updated job descriptions) in % teaching and % research. Sometimes also % service. Or % outreach. A faculty with a 20% teaching appointment can't be required to have the same teaching load as a faculty with a 90% teaching appointment. Job descriptions are very specific and every individual faculty is hired for a specific purpose. In the college of Agriculture at NDSU, the research portion of the appointment is not even paid by the University, but by the Experiment Station, which is a

different budget and separate bill. In the end, everybody needs to do what is written in their own job description. This section is not implementable. Even if the pilot study is not for the research Universities, there is concern that it will some day be applied to those.

2c) *Measurable and effective activities.* Helping students achieve academic success is not anything a faculty needs to be told. That is why people are in that job. This automatically leads to better retention of faculty. This item is not needed.

3) *Policies.* Obviously, policies will have to be changed.

## **Section II**

### **IF THE PURPOSE OF THIS BILL IS THE STUDY, WHY ARE WE CHANGING THE CENTURY CODE BEFORE WE KNOW THE DATA FROM THE STUDY?**

1) *President reviews faculty.* This now applies to all institutions, even though the data from the study have not been collected yet. Overall, the section is not in agreement with institutional hierarchy. Every faculty, tenured or not, currently gets reviewed by their department Head/Chair. Annually. The report goes to the college. If any problem arises, the case can go up the reporting line. But it will get initiated at department level. Why on earth would the President of a large institution who has millions of other things to do (including frequent trips to Bismarck) even know when a faculty member is no longer up to speed with their job responsibilities. The best thing to do is a discussion between Head or Chair and the respective faculty to figure out the cause for the inactivity. Sometimes, the job description can be rewritten to better match a person's changing abilities and interests, while still fulfilling the needs of the department. After all, job descriptions change frequently anyways. Keep in mind that the tenure process is very meticulous and involves some 15 to 20 people between Department and President level, and takes about ¾ of a year. For details, please, see policy 352 at NDSU as an example (<https://www.ndsu.edu/fileadmin/policy/352.pdf>). Faculty who pass this extensive 6 year long 'test', are among the most highly qualified individuals in the country and the world. Most of these like their career and would not intentionally damage their own career. Most faculty also like their students and would not intentionally harm students either.

2) *Written assessment.* The written assessment is already provided annually by the department Heads or Chairs. For every faculty, tenured, tenure track, or non-tenure track.

3) *Failure to comply.* This whole section sounds like the author assumes there is no process to fire a tenured faculty. Actually, there is. For an example, please, see policy 350.3 at NDSU ([https://www.ndsu.edu/fileadmin/policy/350\\_3.pdf](https://www.ndsu.edu/fileadmin/policy/350_3.pdf)). This faculty termination policy is built upon SBHE policies 605.1, 605.2, 605.3, 605.4, which means the other 10 institutions have similar policies. In summary, tenure just means the faculty cannot be fired WITHOUT CAUSE. Tenured faculty can be fired WITH CAUSE. Or because of an institutional financial exigency, as declared by the SBHE. Tenure is about academic freedom, which is a form of free speech and covered by the first amendment. A tenured faculty cannot be fired because someone (*e.g.* President) does not like their research project. Or their teaching content. That is not a lack of compliance.

- 4) *Delegation to administrator.* Seeing as every faculty is already reviewed annually by their department Head/Chair, one could consider this the delegation. After all, delegation of responsibility is part of why we have a reporting line.
- 5) *Other factors.* I have to admit that this paragraph makes me suspicious. Factors that are not mentioned in the job description? What could those be? The job description should be in alignment with the institutional goals. Of course, if a President closes a program or department, this may mean that faculty will be laid off. This is not firing, though. And it can be done already. So, what is the point here?
- 6) *Review is not viewable and not appealable.* This is getting downright scary here. Why not? To hide something? If the faculty really has not done their job duties, there is no need to deprive them of the opportunity to review and appeal. Unless the reason for the firing is unspeakable, there should not be a need to hide the justification. If the faculty needs to be held accountable, so does the President. And who is the commissioner of higher education? I know of a State Board of Higher Education, which has a Chair. And the North Dakota University System, which has a Chancellor.
- 7) *No retaliation.* Of course not. That is why institutions have retaliation policies. For an example, please see policy 156 at NDSU (<https://www.ndsu.edu/fileadmin/policy/156.pdf>). However, an appeal or a lawsuit is not retaliation. Retaliation is a counterattack with the intent to hurt the other person. An appeal does not hurt anybody. Neither does the lawsuit. Note that the lawsuit would probably not be against the person but the institution anyways.

### **Section 3**

What is the emergency? Does the author of this bill think there are hundreds of faculty that need to be fired? If so, where is the evidence for this? We are happy about every faculty we can keep in town.

My primary concern with all of the above is recruitment and retention of faculty to North Dakota. It is already difficult to recruit people to North Dakota and I am talking about qualified faculty. People with a Ph.D., especially in the STEM sciences, have many opportunities, among them positions in the private sector which pay much better than academia can match. Tenure and the academic freedom that it provides rank high among the reasons why people decide for the academic career. Still, there are plenty Universities and Colleges nationwide and worldwide that recruit faculty. This includes OUR faculty. If tenure in essence gets disabled, there is concern that people won't come here anymore. They will just accept a job in industry for twice the salary. Likewise, faculty already in the system are permanently facing the question whether they want to stay here or move on. Other institutions are poaching, and it is easy to figure out which faculty they will target. It is not the unqualified ones. And research dollars will go with the faculty, at least to other academic institutions in the US. Many faculty have moved on in the past years thanks to budget cuts and political climate. I can see how someone could say, well every faculty less is one person less on our payroll. However, these are not targeted budget cuts of units that no longer meet the institutions goals. These are random losses that can hit any department and potentially cripple a successful and much needed department. To keep our institutions functional, we need faculty to teach our students. And we owe our students that these faculty are the most qualified ones we can get. Tenure is needed for this.

I like to conclude with a short note of thank you everybody on the Senate Education Committee, as well as the author of bill HB1446. Your service to the State is much appreciated.

Sincerely and respectfully

Birgit Pruess