

Dear Chairman Elkin and members of the Senate Education Committee,

We, the Council of College Faculties (CCF) - which represents faculty from all 11 North Dakota University System (NDUS) campuses, write to you to express our serious concerns about HB 1446 and encourage your committee to recommend a “Do Not Pass” status on this bill.

This legislation is unnecessary and based on misconceptions about the post-tenure review of faculty. Current SBHE [Policy 605.1](#) outlines the purpose of tenure and requires each campus to establish procedures for the *continued* evaluation of faculty after receiving tenure. Tenure is not an entitlement and does not confer unconditional employment. As there are existing policies and procedures in place that cover tenured faculty accountability and termination, including review at multiple administrative levels, this bill is superfluous in that regard. If a campus does not engage in meaningful review of its faculty and/or fails to address poor faculty performance, the institution – not the state legislature – needs to take corrective action. Such negligence puts the campus at risk by violating Higher Learning Commission standards for accreditation (Criterion 3.C.4 & 3.C.5) and it is the responsibility of university administrators to correct. We have included a more thorough explanation of tenure, how it works, and why it is important following this letter below.

While HB 1446 is written as a pilot program, the bill’s authors have made it clear in public statements that they would like to see the bill’s provisions expanded to all NDUS campuses. Some campuses have experienced significant faculty turnover in recent years, and this legislation, which has already resulted in negative national press, would undermine our efforts to recruit and retain the most competitive faculty – particularly at research-intensive institutions. This will negatively impact the quality of teaching and student learning within the entire NDUS and ultimately may lead to declining student enrollment as potential students turn to out of state options for a quality education. Research indicates that student outcomes and retention suffer when faculty turnover is high ([Sage Journals](#), [School of Education](#), [Marco Learning](#)) and thus institutions instead must rely on adjunct and part-time instructors. Combined with more competitive tuition structures in contiguous states like Minnesota, the potential fiscal impact of HB 1446 to NDUS is concerning.

In consultation with legal counsel, we feel it is important to emphasize that HB 1446 is also legally problematic. HB 1446 is in direct violation of the state constitution. Article VIII, Section 6 of the North Dakota State Constitution states the SBHE is “created for the control and administration of (the named colleges and universities)” and “shall have full authority over the institutions under its control.” SBHE Policy 106.6(3) refers to state constitution language creating the SBHE and adds: “The people of North Dakota created the SBHE through the North Dakota Constitution to ensure the institutions and their employees were protected from political interference.” According to the North Dakota State Constitution, only the SBHE has authority to establish terms under which faculty (and other NDUS employees) are hired, employed and dismissed. The Legislative Assembly does not have the power and authority to do so.

Finally, HB 1446 threatens the accreditation status of NDUS campuses and programs. As written, the bill violates Criterion 2.C of Higher Learning Commission Accreditation

Standards which outlines that an institutional governing board must have the autonomy to make decisions in the best interest of institutions in compliance with board policies and that ensure an institution's integrity. Criterion 2.C goes on to mandate that the governing board be free from influence by and operate independently of elected officials. Furthermore, by mandating that faculty “teach and advise a number of students approximately equal to the average campus faculty teaching and advising load,” some programs may risk losing accreditation status if faculty-student ratios exceed stated guidelines. This stipulation fails to recognize that class sizes vary significantly across a campus for a variety of reasons and some classes may be significantly smaller than others for important pedagogical reasons (e.g., labs, higher level intensive courses, and graduate classes).

These, and other concerns, are elaborated on in the following resolution included below, which was discussed and approved by the Council of College Faculties (CCF) on January 31, 2023. Although the bill has since been amended and therefore some of the rationale listed may no longer apply, many serious concerns remain with this bill. This is a bill that would have long-term negative impacts on our university system. We urge your committee to recommend a **do not pass** status for HB 1446.

We would be happy to answer any questions you might have about current post-tenure review processes and the potential impact of this legislation.

Sincerely,

The North Dakota Council of College Faculties

## What is Tenure & Why is it Important?

NDUS Council of College Faculties Executive Committee 2/22/2023

### What do faculty contracts look like?

Faculty contracts vary greatly both across and within institutions. Most institutions of higher education have faculty with a mix of various kinds of contracts. According to Chancellor Hagerott in his [testimony to the House Government and Veterans Affairs](#) on Friday, Feb. 3, tenure status only applies to about 52% of faculty within the NDUS. Most tenured or tenure-eligible faculty are hired under 9-month contracts, and they pick up extra courses, research grants, or service and administrative responsibilities during the summer months, all of which are negotiated under a separate contract. Every spring faculty sign a new 9-month contract for the following academic year which outlines the classes they'll teach, the research they'll do, and any service or administrative responsibilities they'll have. This provides flexibility as needs change.

For faculty in positions where they are given the chance to earn tenure, the first 6 years are considered probationary. During this period "an institution may decline to renew the contract of a probationary faculty member without cause at any time....subject to procedural requirements in SBHE Policies 605.1, 605.2, 605.3, and 605.4" ([SBHE Policy 605.1](#)). If a faculty member can demonstrate they have provided exceptional service to the university during this 6-year probationary period, they may apply for tenure.

### How do faculty earn tenure?

Because the organizational structures and goals of each NDUS campus varies, [SBHE Policy: 605.1](#) allows the campuses, through their faculty governance structures and presidents, to determine the specific procedures for evaluating both probationary and tenured faculty, and the criteria and procedures used to evaluate and recommend faculty for tenure. SBHE policy stipulates that the criteria for tenure "shall include scholarship in teaching, contribution to a discipline or profession through research, other scholarly or professional activities, and service to the institution and society" and requires each campus to establish "tenure plans appropriate to the diverse missions of individual institutions" ([SBHE Policy 605.1](#)).

In general, to be considered for tenure, a faculty member must create a portfolio of all their accomplishments during the probationary period. This portfolio is often extensive and may include summaries of student evaluations for all the courses they have taught, copies of all their publications and professional presentations, evidence of the kinds of service they have performed for the university, community, and state, reflective narratives describing the faculty member's work and goals over the probationary period, and even external peer evaluations of the faculty member's scholarship and/or teaching. Depending on the structure of the institution, this portfolio is then reviewed by a department committee and Chairperson, who makes a recommendation for tenure (or not). That recommendation and any required documentation are then reviewed by the Dean of their school or college, a university committee of faculty, the Provost, the campus President, and then the SBHE. If their application clears all these levels of review, then they are granted tenure.

### Are tenured faculty evaluated following tenure?

Yes. Each year all faculty – including tenured faculty – undergo an evaluation as required by [SBHE Policy 605.1](#) and [604.3](#). The process for conducting these evaluations is set by each institution. In general, an annual evaluation requires faculty members to provide evidence of their accomplishments in research or creative activity, service, and teaching – including student reviews for each class they have taught. This review is conducted using a similar process as described above. Depending on the structure

of the institution, the faculty member's materials are reviewed by a department committee and Chairperson, who submits a report for approval to the Dean and/or Provost. If a faculty member isn't meeting expectations in any of the areas outlined in their contract, the department chair works with the faculty member and appropriate administrator to develop an improvement plan. If things don't get better, the faculty member may be fired with cause. The faculty member can appeal this decision to a committee, who makes a recommendation to the campus President, who makes a final decision. This appeals process is outlined in [SHBE Policy 605.4](#).

### **Why is tenure important?**

Tenure is not an entitlement, but it does play an important role in higher education. First, the tenure process provides some assurance that faculty will have continuous employment so long as they continue to follow institutional policies and the conditions of their contract. This allows faculty to feel secure and gives them some freedom to take risks - like pursuing a new line of research, innovating with their teaching, and speaking up when things may not be right on their campus. According to [SBHE Policy 605.1](#), our institutions of higher education "cannot fulfill [their] purpose of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method." In this way, tenure helps to assure academic freedom, which "is fundamental to the advancement of knowledge and for the protection of the rights of the faculty members and students" ([SBHE Policy 605.1](#), see also [AAUP 1940 Statement of Principles on Academic Freedom and Tenure](#)).

Tenure also makes our campuses more competitive in the national marketplace. Tenured faculty carry a level of prestige that is perceived favorably by external funding agencies, for example. A tenured faculty also provides a level of stability within an institution, which makes them safer investments for grant dollars. Tenure also helps universities with recruitment and retention. Many faculty, due to their credentials and experience, could make significantly more in the private sector. If given a choice between an academic appointment that carries the potential to earn tenure and an appointment that is contingent, most faculty will choose the job that provides an option for tenure. In fact, recognizing the value of tenure for recruitment and retention, the NDUS SBHE has discussed in recent years the importance of including tenure as one of the benefits included in Presidential contracts.

### **What tenure does NOT do**

Tenure does not give faculty permission to be derelict in their duties. Remember that tenure is only earned after a faculty member has demonstrated a record of exceptional performance and shows evidence of continued promise. Indeed, research shows that faculty productivity is either maintained or increases following tenure ([see Scott, Kelsch, & Friesner, 2019](#)). Tenure also does not mean a faculty member cannot be fired. As stated in [SBHE Policy 605.3](#), "a faculty member may be dismissed at any time for adequate cause," including "continued or repeated unsatisfactory performance evaluations and failure to respond in a satisfactory manner to a recommended plan for improvement," or "significant or continued violations of Board policy or institutional policy." Tenured faculty can also be dismissed under extraordinary circumstances such as financial exigency or program discontinuation. The procedures for terminating tenured faculty can be found in [SBHE Policy 605.3](#).

## North Dakota University System Council of College Faculties

### Resolution in Opposition to HB 1446

#### RATIONALE:

**WHEREAS** SBHE [Policy 605.1](#) outlines the purpose of tenure, which is to protect academic freedom, it also requires campuses to establish procedures for the continuing evaluation of faculty following tenure. These criteria include assessing faculty teaching, scholarship or creative activity, and service. How annual evaluations are conducted varies by campus due to variability in organizational missions and structures, but they generally involve review by a committee of faculty and the approval of multiple administrators such as a Department Chair, College Dean, and/or Provost or VP. Existing SBHE policy requires each NDUS institution to establish procedures and criteria for continued evaluation. Additionally, Higher Learning Commission accreditation and evaluation for re-accreditation requires regular evaluation of faculty by each institution as described in [Criterion 3D](#). While tenure provides a sense of financial stability for faculty through continuous employment, it does not prevent faculty from being dismissed with adequate cause or under extraordinary circumstances as described in SBHE [Policy 605.3](#); and

**WHEREAS** section 1.1 of HB 1446 imposes on several NDUS institutions requirements that individual faculty generate more tuition or grant revenue than their salary and benefits, this fails to recognize how universities operate with each unit contributing to and supporting the functioning of the whole. While some courses are large and generate a lot of tuition revenue, many specialized courses and labs are small. The costs of these courses are offset by larger classes. Graduate courses and those with more hands-on and technical training, for example, tend to have smaller class sizes, which are more costly. Faculty salaries also vary a great deal by discipline, which makes the burden of this requirement more difficult to meet in healthcare, business, and technology programs where faculty are paid more because professionals in these fields can make substantially more in private industry; and

**WHEREAS** accreditation standards for some programs, such as nursing, for example, require faculty-student ratios that may be lower than those of other programs, section 1.2b of the bill, which mandates that faculty “teach and advise a number of students approximately equal to the average campus faculty teaching and advising load,” may impact program accreditation from the Higher Learning Commission and/or other accrediting bodies, resulting in the loss of training programs critical to meeting the workforce needs of the state; and

**WHEREAS** dismissal procedures for tenured faculty members are already stipulated in [SBHE Policy 605.3](#), HB 1446 would grant the unilateral review and dismissal of faculty by campus presidents and removes guarantees for reasonable dismissal procedures, including a written assessment of the faculty member’s performance and the right to appeal a decision. Such a policy is not only undemocratic but would likely also result in costly lawsuits. By usurping

current termination processes established through campus structures of shared governance, this policy also creates greater burdens for campus presidents, the SBHE, and the Chancellor; and

**WHEREAS** the NDUS generates [billions of dollars in revenue for the state](#), it is vital that we maintain positive faculty morale in order to recruit and retain a vibrant workforce on our campuses, grow student enrollments, and provide the educational programming needed to meet the state's workforce needs. A tenured faculty is essential to student recruitment efforts, particularly within professional and graduate programs. If passed, HB 1446, which has already generated substantial negative press in the national media (see [Forbes](#), [Inside Higher Ed](#)), will act as a deterrent to new faculty hires, undermine faculty morale across the NDUS, and cause faculty to look for employment at other institutions of higher ed and in other states that recognize the value of tenure and shared governance.

**RESOLUTION:**

**THEREFORE BE IT RESOLVED** that the ND Council of College Faculty (CCF) opposes HB 1446 and asks the various bodies and committees of the ND Legislature to not pass this bill.

**BE IT FURTHER RESOLVED** that the ND CCF stands in solidarity with our colleagues at Dickinson State University and Bismarck State University, who would be most immediately and directly impacted by this legislation.

**BE IT FURTHER RESOLVED** that the ND CCF steadfastly upholds the values of tenure and shared governance as core principles of higher education.

**BE IT FURTHER RESOLVED** that the ND CCF resolutely rejects any attempts to remove tenure or undermine shared governance in the evaluation processes and grievance protections currently in place.

**BE IT FURTHER RESOLVED** that the ND CCF affirms the American Association of University Professors [1940 Statement of Principles on Academic Freedom and Tenure](#) (Rev. 1990), which has been endorsed [by more than 250 scholarly and education groups](#).

Adopted by the ND CCF on January 31, 2023.