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# House Majority Leader's new bill aims to overhaul university tenure process

Critics raise concerns with HB 1446's potential infringement on academic freedom and the legal rights of tenured faculty.



A new emergency bill, House Bill 1446, has been introduced in the North Dakota State legislature which aims to overhaul the tenure process at two centers for higher learning within the state's university system.

Jeremy Turley / Forum News Service

By [James B. Miller, Jr.](#)

January 20, 2023 04:27 PM

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BISMARCK — The North Dakota State legislature is considering a new emergency bill, House Bill 1446, which was introduced on Jan. 18 and aims to overhaul the tenure process at two centers for higher learning within the state's university system.

The bill, introduced by House Majority Leader Representative Mike Lefor, (R-Dickinson), seeks to create a pilot program focused on campus models currently in practice at Bismarck State College and Dickinson State University, with the goal of improving the tenure process across the state system by refocusing on the responsibilities of tenured faculty members.

According to the bill, tenured faculty members would be evaluated based on their ability to generate tuition or grant revenue, adherence to current and future policies and procedures, and effectiveness in teaching and advising students. The bill prohibits tenured faculty members from engaging in activities that do not align with the institution's best interests.

However, the bill has received backlash from the academic community, with some calling it an “anti-whistleblower bill in disguise” and raising concerns over the potential infringement on academic freedom and the legal rights of tenured faculty.

The bill empowers university presidents or their delegated administrators to review the performance of tenured faculty members at any time, and allows them to not renew contracts based on failures to meet expectations outlined by the university, in accordance with the bill.

The bill does not allow for secondary reviews or appeals for non-renewed tenured contracts and expressly prohibits complaints, lawsuits or other allegations to be raised against a president or other administrator for actions taken pursuant to the bill.

[HOUSE BILL 1446 — CLICK TO READ\(https://ndlegis.gov/assembly/68-2023/regular/documents/23-0083-04000.pdf\)](https://ndlegis.gov/assembly/68-2023/regular/documents/23-0083-04000.pdf)

## **SUPPORT FOR HB 1446**

Lefor defended the bill, stating that its primary aim is to ensure accountability and efficiency within the North Dakota University System and that the bill's requirements on tenured professors are what the vast majority are already doing at their universities.

“What I’m naming as the Tenure with Responsibilities Act has 11 main points and if there are tenured professors who are concerned about it, I would ask why,” Lefor said. “We as legislators quiz the university presidents on cost and represent the taxpayers, and we want, just like in the private sector, highly motivated and productive employees. We demand accountability and want the best for our institutions.”

Considerations for the idea of changing the tenure process in the state has been one that Lefor said he and others inside and outside of the university system have discussed for many years. He said that he had originally wanted to implement the changes to be system-wide, but on request from various stakeholders, opted instead for a limited implementation as a trial run.

“Some in higher education asked me to consider a pilot program and so I said alright,” he said. “There shouldn’t be any agency in state government that shouldn’t have accountability for job performance, without including different committees and so forth to determine whether or not they should improve their performance. This isn’t about firing people, it’s about accountability...and that’s reasonable.”

Lefor added, “If that is the major issue, that is something I’m willing to discuss to get everyone on the same page, working hard, developing the university and moving it forward...if there are issues then I’m willing to meet with people and amend the bill.”

Addressing the first amendment concerns raised with the bill's imposed restrictions, Lefor said that he would be open to further discussion and amendments to address any serious concerns, but confirmed that he would make an amendment to remove the portion that addresses

"avoiding the use of social media or third-party internet platforms to disparage campus personnel or the institution."

Dickinson State University President Steve Easton said he personally supports the bill and believes that the bill is necessary to enforce the duties and responsibilities for tenured faculty and university presidents.

Dickinson State University President Steve Easton.  
Dickinson Press file photo

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“Overall, I am supportive of the bill. I believe that it is important to turn tenure from what it has unfortunately become as a practical matter, a lifetime appointment absent outrageous behavior, to a job that, like almost all other jobs, carries with it certain duties and responsibilities that are enforceable by supervisors,” he said. “The bill makes the duties and responsibilities enforceable by permitting the president and the administration of a higher education institution the authority to ensure that tenured faculty are meeting their duties and responsibilities. It also provides, as it should, that a president will be reviewed by the

president's supervisors, the Chancellor and the State Board of Higher Education, for the president's actions under the statute. Thus, it provides accountability both for tenured faculty and for the president.”

While supportive, Easton highlighted some provisions in the bill that he disagreed with, noting that he is a staunch advocate for protecting the free speech rights of faculty.

“First, I would remove the provision referring to ‘especially in avoiding the use of social media or third-party internet platforms to disparage campus personnel or the institution.’ I understand the sentiment behind this provision, because these mediums can be deployed by those seeking to harm the people trying to make a university better. But I believe ‘campus personnel,’ as public employees, including the president, should be subject to legitimate criticism,” he said.

Another contention raised by Easton related to the narrow scope of the bill, noting that it names only two centers for higher learning in the state as part of the pilot program.

“My own preference would be for this statute to apply to the entirety of the North Dakota University System, not just to two campuses. Indeed, when I provided my draft, that was my proposal. But I am not a member of the North Dakota Legislature,” he said. “Rep. Lefor asked for my views, but he is by no means bound by them. I do understand that the bill represents a significant change and that pilot projects are sometimes a way to test a significant change.”

Easton noted that Dickinson State and Bismarck State are the two campuses within the North Dakota University System that have recently been granted the opportunity to change their missions substantially, and that the opportunity to use resources, including faculty positions, efficiently is a major boost to future change and success.

“I understand the pilot project idea at our two campuses, even though my personal preference would have been for a systemwide change,” he said.

In summation of the bill, Easton said he believed that the bill, if passed, would not negatively impact the majority of tenured faculty members and would change the tenure review process by giving the presidents of institutions the ability to enforce the duties and responsibilities of tenured faculty, which is difficult to do under the current system.

“If this bill passes, it will have no practical effect on the many tenured faculty members who do a great job of changing students’ lives through efficient, effective teaching. Those wonderful faculty members, including many at Dickinson State, have nothing to fear from this bill, in my opinion,” he said. “This bill would change the tenure review process, by allowing the president of an institution to require tenured faculty members to meet their duties and responsibilities. As a practical matter, it is almost impossible for that to occur under the current system absent awful conduct, due to the faculty’s control of the process of review and other provisions protecting unproductive faculty members.”

## **OPPOSITION AND RECENT ACADEMIC FREEDOM ISSUES**

The bill has raised some serious concerns among members of the academic and legal community, who are calling the bill an attack on first amendment protected freedoms.

Dr. Eric Grabowsky, an Associate Professor of Communication at Dickinson State University, in speaking with The Dickinson Press said he believes that House Bill 1446 is a very real threat to the freedoms and responsibilities that come with tenured professorship and could be used by centers of higher learning to silence whistleblowers and remove inconvenient checks and balances on the governance of higher education.

“From my point of view as a citizen, I encourage the public not to fall for House Bill 1446. Debates about tenure and the scope of tenure are legitimate. Colleges and universities need to be good stewards of resources,” he said. “People in North Dakota should know that there are sometimes circumstances in which tenured faculty are uniquely situated

to highlight and discuss problems involving academic integrity, overall management, retaliatory behavior or faulty procurement. Over the years, tenured faculty have raised important concerns regarding these types of areas across the North Dakota University System, including at Dickinson State University.”

In 2021, internal documents, email communication and other records obtained through open records raised concerns with Dickinson State University’s procurement of a Wyoming-based company for instructional design.

A subsequent series of complaints forwarded to the Eide Bailly Fraud Hotline, between Feb. 26 and May 4, 2021, prompted an investigation into the allegations of improper procurement by Dickinson State University by the North Dakota University System. Their conclusions found that DSU’s procurement “was in violation of at least seven laws...” and “the allegations regarding improper procurement for Instructional Design were supported by the investigation.”

“With the privileges of tenure, a person who is tenured is involved in the proper stewardship of public resources. The freedom that goes with tenure extends into proactive communication about the quality of the management and direction of a college or university, which can necessarily involve criticism of university administrators. Persons from across the political spectrum should oppose House Bill 1446,” Grabowsky said. “Workforce development and resource allocation are certainly important matters. Scrutinize tenure, for sure. Discuss and debate policies, guided by sound principles. However, we should not let such legitimate areas of focus provide legislative cover for a quick route out the door for tenured faculty who might inconveniently help to provide important checks and balances on the overall governance of higher education.”

Grabowsky added, “Through my conversations about House Bill 1446, I can say that some people are getting the sense that this bill is an anti-whistleblower bill in disguise.”

Over the last two years, several cases of academic freedom violations, including the firing of two faculty members at Collin College in McKinney, TX, for speaking out against their institution's COVID-19 reopening plans have shined new light on how university's handle dissenting voices coming from within. At the University of Mississippi, a well-respected history professor was dismissed for speaking out against powerful donors with “racist beliefs.” Another case at Pacific University in Forest Grove, OR, involved a tenured professor, Richard J. Paxton, who was suspended without proper procedure.

These incidents have been closely monitored by organizations such as the American Association of University Professors, which works to protect the academic freedom rights of educators.

“Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition,” a statement from the AAUP reads. “Tenure is a means to certain ends; specifically freedom of teaching and

research and of extramural activities, and a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.”

According to the AAUP’s Statement of Principles on Academic Freedom and Tenure, “College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations.”

House Bill 1446, according to Lefor, will move to the next phase of the legislative process in a hearing in three weeks at a date and time yet to be determined.

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