



North Dakota House of Representatives

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COMMITTEES:

Finance and Taxation
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Chairman Beard and members of the Senate Education committee. For the record, Mike Motschenbacher representing District 47 which consists of most of NW Bismarck. Today I bring before you HB 1437

I'm going to give a much shorter testimony than I did in the house when I introduced the bill. Hopefully that in itself will earn me a vote or two. I'll give a brief description of why I brought the bill and then will go into specifics of what the bill does and also address an amendment I'd like the committee to consider.

HB 1437 addresses tenure at North Dakota colleges. I've spent a good part of the past year researching tenure and why it's so widely implemented. One article that I read explained it best. The article starts out "Of all the things a university professor can achieve in their career, few are as desirable as academic tenure. Academic tenure is a system of strong job protections, that virtually guarantees a university professor will never be fired or let go except in the most extreme of circumstances. A key idea is to allow faculty to speak freely – whether on campus or in public – without fear of reprisal." To me, this explains the problem. Why does any employee at any level in any industry deserve this type of protection?

As you can imagine, I've had an enormous amount of feedback from many in our university system regarding this bill. The original bill would have eliminated tenure at all of the two year institutions. This certainly raised awareness and I received a lot of calls from those within higher ed with concerns. This bill in it's current form is a result of me working with NDUS, SBHE, and others to address the issues they had with the original bill, and I'm assuming that those that testify behind me will agree that this bill is acceptable to them. It simply defines tenure processes and puts a timeline on them to implement these policies which according to everyone I've spoken to is reasonable and acceptable.

So what does this bill do? It simply clarifies the timeline of July 1st, 2026 as to when these policies must be in place by. It clearly defines how they must conduct tenure, post tenure review, and also makes it clear that institutions of higher education can take action even on tenured faculty should they receive sub-par performance

reviews. It ensures that the president of the institution is involved in the procedures and who is chosen to conduct post tenure review and addresses who conducts reviews. It addresses how often post tenure review must take place. It also states that institutions must make it clear of what type of position they are hiring for, whether it's tenure track or non-tenure track.

If you look in your packet, you will see a page describing attempts to address tenure during the last legislative session specifically HB 1003 and HB 1446. You will also find some details regarding the constitutionality of this bill, as I've been made aware that some who speak behind me may question it. The attached sheet gives some clear examples that this bill is indeed constitutional, but I'd like to point out specifically that in the ND Constitution Article VIII section 6, subsection 6b it clearly states " The said state board of higher education shall have full authority to organize or reorganize **within constitutional and statutory limitations**, the work of each institution under its control, and do each and everything necessary and proper for the efficient and economic administration of said state educational institutions" I'm not a lawyer, but this is clear to me that it is completely within our power to create statutory limitations on institutions.

To conclude, I do have another minor amendment that I passed out which is the last page of your packet. This I believe would address one of the issues that still remained after we passed the bill through the house as to who would conduct reviews, and once again, this amendment was brought with input from some within the university system, so I'm confident they will also agree with the amendment and should alleviate their concerns. I have passed out this amendment to others in the room that are in attendance and I'll let them speak to that if they should so choose. Most the changes are just clarification changes. Section c is split into two different sections in that amendment into section c and d. Section d is the part that actually changes slightly from the bill you have in front of you currently, and this was brought forth because of concern that it may have been too restrictive, especially since some post-tenure review committees are comprised of varying numbers of members, so the new subsection d would address that. Just to be clear, this is NOT a LC drafted amendment as we just finalized it Sunday evening. I think it's simple enough and clear enough that this can be done in committee, but if you would like I can certainly take this to LC to be drafted officially. Just one last comment on the amendment. If you look at the testimony online, there is a lot of testimony in opposition to the bill. However, if you look at the dates, almost all that testimony was prior to the house committee adopting the first amendments that I brought to that committee. The remaining testimonies in opposition that were posted the past couple days, I believe this new amendment will alleviate their concerns also so I would ask that you adopt that amendment.

This completes my testimony, and I would happily stand for any questions.

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1437

Introduced by

Representatives Motschenbacher, Hauck, J. Johnson, Klemin, Lefor, Meier, Rohr, Dockter
Senators Larson, Rummel, Dwyer

1 A BILL for an Act to create and enact a new section to chapter 15-10 of the North Dakota
2 Century Code, relating to academic tenure policy at institutions of higher education.

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

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

6 **Academic tenure - Policy - Evaluations.**

7 1. By July 1, 2026, institutions of higher education under the control of the state board of
8 higher education offering faculty academic tenure shall develop and adopt a policy for
9 tenured and tenure-track faculty employed by the institution, which:

10 a. Defines progression and advancement criteria at each stage of tenure
11 progression, including criteria for continued post-tenure review.

12 b. Establishes a procedure for annual evaluation of all nontenure, tenure-track, and
13 tenured faculty by the president of the institution or the designee of the president.

14 c. Establishes a procedure for post-tenure evaluations, which must be informed by
15 the annual evaluations under subdivision b and conducted by a committee
16 appointed by the president of the institution or the designee of the president. The
17 first post-tenure evaluation must be completed within three years. Subsequent
18 evaluations must

19 be completed at minimum every five years.

20 d. The post-tenure review committee must be comprised of the administrative
supervisor of the faculty member being evaluated or

reviewed, at least one ranking administrator, and faculty that number no less than
one-third and no more than one-half of the committee. The composition of the
committee must assure fidelity to performance excellence within the faculty role.

- 1 e. Defines the outcome of an unsatisfactory review of post-tenured faculty, which
2 may be removal from the position. The decision to remove faculty from a position
3 must be made by the employing institution and the state board of higher
4 education.
- 5 f. Is approved by the state board of higher education.
- 6 2. Advertisement of open faculty positions by institutions of higher education under the
7 control of the state board of higher education offering faculty academic tenure must
8 designate the position as nontenure-track or tenure-track. Upon offering a tenure-track
9 position to a candidate, the institution shall provide the candidate the policy required
10 under this section.