

# HB 1446: The Tenure with Responsibilities Act

Steve Easton Testimony: February 3, 2023

## Basic Faculty Categories

Adjunct faculty

Non-Tenure Track [NTT]: "special" or "annual" contract faculty

Tenure Track [TT]: "probationary" faculty

Tenured [T] faculty

## Adjunct Faculty

Mostly part-time faculty.

Often teaching only one course, but occasionally more.

These faculty have one-semester contracts.

But they can be, and often are, rehired in later semesters.

Roughly half of the faculty in a given semester at DSU.

Adjunct faculty produce roughly 20% of credits

Usual faculty compensation rate is \$700 per credit

In spring semester of 2022, 3,448 credits generated, with tuition (at \$300 per credit) of about \$1,034,400 and faculty compensation costs of \$149,394, for net gain of about \$885,000

Very low cost per credit produced: \$43.33 in spring semester of 2022 at DSU

No right to appeal non-renewal (i.e., non-offering of a contract after the semester is completed).

### Non-Tenure Track [NTT]: “special” or “annual” contract faculty

Hired on a short-term basis, up to three years.

- At DSU, usually hired for one year (though occasionally 1.5 years)

Often given a new one-year contract after previous one-year contract expires.

- Can have lengthy careers at DSU.

Why not tenure track?

- No tenure track job open
- Possible lack of terminal or other advanced degree when tenure track job opens
- More recently, DSU president's default policy to hire on an annual, not tenure track, basis

No right to appeal non-renewal (i.e., non-offering of a contract after the year is completed).

### SBHE Policy 605.3 Nonrenewal, Termination or Dismissal of Faculty

- A special appointment terminates at the end of the term stated on the contract and may be renewed at the discretion of the institution.

### Tenure Track [TT]: “probationary” faculty

Faculty hired “on the tenure track,” meaning they are expected to gain tenure.

Usually, faculty in the first six to seven years of their tenure track careers.

Usually, these faculty “go up” for tenure in their seventh year.

Non-renewed probationary faculty can request reconsideration of decision to not renew, but cannot appeal non-renewal.

But probationary faculty get short “teach outs” due to notice requirements.

## SBHE Policy 605.3 Nonrenewal, Termination or Dismissal of Faculty

1. A probationary appointment may be terminated, without cause, with notice to the faculty member that the appointment will not be renewed.
  - a. Notice shall be given:
    - i. At least 90 days prior to termination during the first year of probationary employment at the institution.
    - ii. At least 180 days prior to termination during the second year of probationary employment at the institution.
    - iii. At least one year prior to termination after two or more years of probationary employment at the institution.

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## Tenured [T] Faculty

Except for lateral hires, faculty start as tenure track (i.e., probationary) faculty, then are granted tenure (often in their seventh year).

MANY tenured faculty are hardworking and productive.  
 • But not all of them are.

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## Current Tenure System

"De Jure" v. "De Facto"

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### Granting of Tenure (at DSU) (usually in seventh year of service)

Department Committee  
Department Chair  
College Dean  
Promotion and Tenure Committee  
Vice President/Provost  
President  
State Board of Higher Education

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### SBHE Policy 605.1(5) Academic Freedom and Tenure; Academic Appointments

Because of the variety of scope and organizational structure of the institutions under the control of the SBHE, the faculty governance structure at each institution shall recommend procedural regulations to the president to implement SBHE Policies 605.1, 605.2, 605.3 and 605.4, in accordance with SBHE Policy 305.1:

- a. Institution procedural regulations must include:
  - i. Procedures for continuing evaluation of both probationary and tenured faculty members; and
  - ii. Criteria and procedures by which faculty members are evaluated and recommended for tenure.

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### SBHE Policy 605.1(6) Academic Freedom and Tenure; Academic Appointments

b. Tenured appointments recognize a right, subject to SBHE policy, to continuous academic year employment in an academic unit or program area as defined by an institution and stated on the contract.

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## Termination of Employment

### Faculty member resignation:

- Apparently allowed at any time,
- ... with or without a reason
- ... with or without notice

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## SBHE Policy 605.3 Nonrenewal, Termination or Dismissal of Faculty

5. A faculty member may terminate an appointment by giving notice in writing. Faculty are encouraged to give notice well in advance of the date of termination of employment at the end of a contract term.

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## Termination of Employment

### Declaration of institutional budget crisis:

- Theoretically possible,
- ... but practically almost impossible

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### SBHE Policy 605.3(6) Nonrenewal, Termination or Dismissal of Faculty

6. A tenured faculty member terminated pursuant to Board **declared financial exigency** shall be given written notice of termination at least 90 days prior to the date of termination.

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### SBHE Policy 605.3(6) Nonrenewal, Termination or Dismissal of Faculty

b. A position terminated under this section shall not be filled by a replacement within two years, unless the released faculty member has been offered appointment with tenure and a reasonable time within which to accept or decline it.

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### SBHE Policy 605.3 Nonrenewal, Termination or Dismissal of Faculty

7. In accordance with principles of shared governance, the faculty governance structure at each institution shall adopt procedures by which **faculty participation is solicited before notice of termination is given any tenured faculty member** pursuant to section 6 [such as financial exigency].

Faculty participation shall be solicited concerning:

- a. The extent to which there are grounds for termination of tenured appointments;
- b. Judgments determining where within the overall academic program termination of appointments may occur; and
- c. The procedure and criteria for identifying the individuals whose appointments are to be terminated.

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## Higher Learning Commission Policy INST.F.20.010: Special Monitoring

### Circumstances Giving Rise to Special Monitoring

- Situations that may result in special monitoring include, but are not limited to:
- institutional declaration of bankruptcy, financial exigency, or intent to close . . . .

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## Termination of Employment

### Dismissal for cause:

Theoretically possible,  
... but practically very difficult

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## SBHE Policy 605.3 Nonrenewal, Termination or Dismissal of Faculty

9. If the administration determines that the conduct of a faculty member, although not constituting ground for termination or dismissal, provides reasonable cause for imposition of a sanction, the administration shall inform the faculty member in writing of the sanction and the reasons for the sanction.

A sanction means demotion, suspension (but not including suspension pending a dismissal or termination decision), salary reduction or loss of salary, or restriction or loss of privileges imposed as a formal disciplinary measure. . . .

[T]he faculty member may request review upon filing with the institution's president and chair or senior member of the *Standing Committee on Faculty Rights* a request for review and specifications of reasons within twenty calendar days of receipt of notice of imposition of a sanction.

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### SBHE Policy 605.3(8) Nonrenewal, Termination or Dismissal of Faculty: Dismissal for Cause

Point 8. A faculty member may be dismissed at any time for adequate cause.

Adequate cause means:

- (a) demonstrated **incompetence or dishonesty in teaching**, research, or other professional activity related to institutional responsibilities;
- (b) continued or repeated unsatisfactory performance evaluations and failure to respond in a satisfactory manner to a recommended plan for improvement;
- (c) **substantial and manifest neglect of duty**;
- (d) conduct which substantially impairs the individual's fulfillment of his or her institutional responsibilities or the institutional responsibilities of others;
- (e) a physical or mental inability to perform assigned duties, provided that such action is consistent with laws prohibiting discrimination based upon disability; or
- (f) significant or continued violations of Board policy or institutional policy, provided that for violations of institutional policy the institution must notify the faculty member in advance in writing that violation would constitute grounds for dismissal, or the institutional policy must provide specifically for dismissal as a sanction.

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### SBHE Policy 605.3(8) Nonrenewal, Termination or Dismissal of Faculty: Dismissal for Cause

- b. A faculty member may, within twenty calendar days of receipt of notice of intent to forward to the institution president a recommendation to dismiss, request a formal hearing before the **Standing Committee on Faculty Rights**, pursuant to section 605.4.

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### SBHE Policy 605.2 Standing Committee on Faculty Rights

- 1. Each institution shall have a standing committee on faculty rights consisting of **three, five, or seven tenured faculty members** elected for staggered terms by the faculty governance structure.

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## SBHE Policy 605.2 Standing Committee on Faculty Rights

2. Each institution shall adopt procedures concerning mediation implementing SBHE Policy 605.5.

*Institutions shall pay all mediation costs.*

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## 605.4 Hearings and Appeals

2. The committee shall appoint, *at the expense of the institution* according to institution procedures, a hearing officer with authority to conduct pre-hearing meetings, supervise exchange or collection of information, advise the committee, or preside over the hearing. . . .

*The institution shall provide necessary clerical support* for the committee and, upon request, for the hearing officer.

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## 605.4 Hearings and Appeals

7. *A verbatim transcript of the hearing or hearings shall be made at the institution's expense, and shall be accessible to both parties.*

An electronic recording of the hearing or hearings is sufficient to meet the requirements of this paragraph.

*A party shall be provided a copy of the record, or part of the record, upon request, at the institution's expense.*

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### 605.4 Hearings and Appeals

8. The findings of fact, conclusions, and recommendations shall be based solely on the evidence received by the committee.

When brought . . . pursuant to SBHE Policy 605.3(8) or (9), the burden of proof shall rest with the institution and be satisfied only by clear and convincing evidence that grounds for the institution's actions exist when the record is considered as a whole.

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### 605.4 Hearings and Appeals

11. The committee shall provide written findings of fact, conclusions, and recommendations, with supporting reasons, to the institution's president and the faculty member or the faculty member's representative.

If the institution's action was a notice of dismissal and if the committee concludes that adequate cause for dismissal has been established, but that a lesser penalty would be more appropriate, it may so recommend with supporting reasons.

The president shall decide and provide written notice of the decision, including findings of fact and reasons or conclusions based on the hearing record, to the committee and the faculty member within twenty calendar days of receiving the report, unless the president determines that more time is required due to unforeseen circumstances, in which case the president may extend the period by 10 calendar days on notice to the parties and committee.

The faculty member or committee may, within ten calendar days of the decision, submit a written response to the decision, to which the president may, but is not required to, reply.

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## HB 1446: Proposed Duties and Responsibilities of Tenure

HB 1446, Section 1

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

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

In response to the urgent need to accelerate workforce development, the state board of higher education shall implement a four-year pilot program focused on the two new campus models at Bismarck state college, now a polytechnic college, and Dickinson state university, now a dual-mission university, no later than May 1, 2023, to improve the tenure process.

The pilot program may not apply to a research university.

**A tenured faculty member employed at an institution of higher education under the control of the state board of higher education shall:**

**Faculty tenure duties and responsibilities**

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 plus all other costs of employing the faculty member, including employment taxes. The compensation costs of a tenured faculty member must be adjusted to reflect the faculty member's assumption of administrative responsibilities and related lessening of the faculty member's teaching responsibilities, where applicable.

**Revenue v. Expense**



## 2022 Approximate Tuition Revenue and Compensation Expense (1 of 4)

Teaching Compensation cost per credit hr.	NTT=Non-Tenure Track; TT=Tenure Track; T= Tenured	No. of students	Credits produced	Approx. tuition revenue	Approx. teaching compensation	Excess/ (deficiency)
		sp+ fall	sp+fall			
\$76.22	1-NTT	261	952	\$285,600.00	\$72,559.90	\$213,040.10
\$95.94	2-NTT	285	797	\$239,100.00	\$76,460.32	\$162,639.68
\$99.26	3-NTT	116	211	\$68,300.00	\$20,943.07	\$47,356.93
\$99.87	4-TT	195	549	\$164,700.00	\$54,829.61	\$109,870.39
\$100.38	5-NTT	148	384	\$115,200.00	\$38,545.29	\$76,654.71
\$105.20	6-T	192	586	\$175,800.00	\$61,648.27	\$114,151.73
\$134.96	7-NTT	170	383	\$114,900.00	\$51,691.20	\$63,208.80
\$136.51	8-T	250	750	\$225,000.00	\$102,383.51	\$122,616.49
\$145.77	9-NTT	176	528	\$158,400.00	\$76,968.82	\$81,431.18
\$160.91	10-NTT	194	453	\$135,900.00	\$72,890.64	\$63,009.36
\$161.51	11-TT	177	531	\$159,300.00	\$85,764.00	\$73,536.00
\$164.59	12-TT	155	379	\$113,700.00	\$62,380.71	\$51,319.29
\$170.04	13-T	173	541	\$162,300.00	\$91,991.46	\$70,308.54

## 2022 Approximate Tuition Revenue and Compensation Expense (2 of 4)

Teaching Compensation cost per credit hr.	NTT=Non-Tenure Track; TT=Tenure Track; T= Tenured	No. of students	Credits produced	Approx. tuition revenue	Approx. teaching compensation	Excess/ (deficiency)
		sp+ fall	sp+fall			
\$171.65	14-TT	174	518	\$155,400.00	\$88,913.25	\$66,486.75
\$171.66	15-NTT	144	192	\$97,600.00	\$32,959.56	\$24,640.44
\$180.46	16-TT	168	492	\$147,600.00	\$88,787.76	\$58,812.24
\$184.35	17-T	183	549	\$164,700.00	\$101,210.68	\$63,489.32
\$185.55	18-NTT	169	359	\$102,700.00	\$66,610.66	\$41,089.34
\$186.95	19-T	165	574	\$172,200.00	\$107,807.49	\$64,392.51
\$189.22	20-T	204	612	\$183,600.00	\$115,902.68	\$67,697.32
\$194.41	21-T	220	660	\$198,000.00	\$128,308.90	\$69,691.10
\$207.16	22-T	178	534	\$160,200.00	\$110,621.84	\$49,578.16
\$212.57	23-NTT	190	362	\$108,600.00	\$76,950.33	\$31,649.67
\$213.76	24-T	128	445	\$133,500.00	\$95,124.16	\$38,375.84
\$216.57	25-T	49	139	\$41,700.00	\$30,102.76	\$11,597.24
\$223.84	26-T	151	453	\$135,900.00	\$101,397.87	\$34,502.13

## 2022 Approximate Tuition Revenue and Compensation Expense (3 of 4)

Teaching Compensation cost per credit hr.	NTT=Non-Tenure Track; TT=Tenure Track; T= Tenured	No. of students	Credits produced	Approx. tuition revenue	Approx. teaching compensation	Excess/ (deficiency)
		sp+ fall	sp+fall			
\$233.94	27-T	153	390	\$117,000.00	\$91,238.38	\$25,761.62
\$253.64	28-T	126	378	\$113,400.00	\$95,874.15	\$17,525.85
\$267.42	29-T	144	371	\$111,300.00	\$99,212.73	\$12,087.27
\$275.41	30-TT	100	311	\$93,300.00	\$85,651.61	\$7,648.39
\$281.58	31-T	104	334	\$100,200.00	\$94,048.25	\$6,151.75
\$281.91	32-T	117	338	\$101,800.00	\$95,285.44	\$6,514.56
\$283.76	33-T	115	345	\$103,500.00	\$97,897.53	\$5,602.47
\$289.61	34-NTT	12	54	\$16,200.00	\$15,638.87	\$561.13
\$294.60	35-T	107	354	\$106,200.00	\$104,289.98	\$1,910.02
\$309.40	36-T	87	261	\$78,300.00	\$80,754.57	(\$2,454.57)
\$312.16	37-T	103	281	\$86,300.00	\$87,717.86	(\$1,417.86)
\$319.80	38-T	157	307	\$92,100.00	\$98,178.63	(\$6,078.63)
\$325.79	39-T	95	174.5	\$52,350.00	\$56,850.78	(\$4,500.78)



## 2022 Approximate Tuition Revenue and Compensation Expense (A of 4)

Teaching Compensation cost per credit hr.	NTT-Non-Tenure Track; TT-Tenure Track; T-Tenured	No. of students	Credits produced	Approx. tuition revenue	Approx. teaching compensation	Excess/ (deficiency)
		sp+fall	sp+fall			
\$339.65	40-T	118	277	\$83,100.00	\$94,082.78	(\$10,982.78)
\$342.16	41-T	212	363	\$108,900.00	\$124,203.37	(\$15,303.37)
\$344.16	42-T	111	385	\$115,500.00	\$132,501.67	(\$17,001.67)
\$350.91	43-TT	97	240	\$72,000.00	\$84,219.21	(\$12,219.21)
\$358.66	44-T	80	275	\$82,500.00	\$98,631.87	(\$16,131.87)
\$367.88	45-T	86	268	\$80,400.00	\$98,591.79	(\$18,191.79)
\$381.36	46-TT	67	230	\$69,000.00	\$87,713.88	(\$18,713.88)
\$447.57	47-NTT	76	138	\$41,400.00	\$61,764.07	(\$20,364.07)
\$449.81	48-TT	63	209	\$62,000.00	\$94,009.96	(\$31,309.96)
\$479.86	49-T	111	223	\$66,900.00	\$107,009.83	(\$40,109.83)
\$689.50	50-T	43	101	\$30,300.00	\$69,639.75	(\$39,339.75)
\$829.49	51-T	71	79	\$23,700.00	\$65,529.43	(\$41,829.43)
\$1,332.58	52-T	27	92	\$27,600.00	\$122,597.55	(\$94,997.55)

2. Comply with the policies, procedures, and directives of the institution, the institution's president and other administrators, the state board of higher education, and the North Dakota university system.

### Following Policies

### DSU Policy No. 500.002: ATTENDANCE REPORTING

Dickinson State University (DSU) has adopted an official approach to monitoring and reporting student attendance. This approach has been adopted to: support student academic success, and facilitate compliance with Federal Financial Aid guidelines.

The vice president with oversight of student affairs, in discussion with faculty, will determine the method of attendance reporting.

Attendance must be reported at the end of the second week of each semester for first 8 week and 16 week courses, and the end of the 10th week for second 8 week courses.

Additionally, faculty must report the last day of attendance through the final grade roster on Campus Connection at the end of the semester.

Faculty must also confirm that all students attending class are on the official course roster.

DSU faculty members are required to keep course-related attendance records for a minimum of 3 years. The types of records to be kept are up to the discretion of the faculty.

From: Dragseth, Debora  
Sent: Friday, January 28, 2022 11:11 AM  
To: dsufaculty@listserv.nodak.edu; DSUstaff@listserv.nodak.edu  
Subject: January 28, 2022 Provost Briefing

Provost Briefing to Faculty

**\*\*\* Attendance Reporting**

Unfortunately, the faculty reporting of student attendance on Starfish is spotty.

Please make sure that you are attending to this important task.

Why? It is an important piece to the retention puzzle.

If you need assistance, please contact Monica Watson.

Thank you all for your help.

-Debora

From: Dragseth, Debora  
Sent: Friday, February 4, 2022 10:43 AM  
To: dsufaculty@listserv.nodak.edu; DSUstaff@listserv.nodak.edu  
Subject: Provost Briefing February 4, 2022

Provost Briefing to Faculty

**\*\*\* Attendance Reporting**

Unfortunately, the faculty reporting of student attendance on Starfish is spotty.

Please make sure that you are attending to this task.

Why? It is an important piece to the retention puzzle.

Below is a list of faculty and staff who have logged attendance in Starfish at least once this semester (Spring 2022).

Thank you to everyone on the list!

I am sure that any one on this list would be happy to work with a fellow faculty member who needs a 5-10 minute tutorial on how attendance reporting works.

If you need additional assistance, our campus expert is Monica Watson.

- [List of 44 names, including several adjunct (part-time) faculty]

3. Effectively teach and advise a number of students approximately equal to the average campus faculty teaching and advising load.

## Teaching and Advising

4. Engage in measurable and effective activities to:
- a. Help recruit and retain students for the institution.

### Recruiting and Retention

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4. Engage in measurable and effective activities to: . . .
- b. Help students achieve academic success.

### Supporting Student Success

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4. Engage in measurable and effective activities to:
- c. Further the best interests of the institution including providing advice and shared governance to campus leaders, and exercising mature judgment to avoid inadvertently harming the institution.

### Building the Institution

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

### Perform Contract Duties

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Faculty tenure review by presidents of institutions of higher education.

HB 1446, Section 2

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1. The president of each institution of higher education under the control of the state board of higher education may review performance of any or all of the duties and responsibilities under section 1 of this Act of any faculty member holding tenure at any time the president deems a review is in the institution's best interest.

### Optional Presidential Review

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2. A review under subsection 1 must include a written assessment of whether the faculty member is complying with the duties and responsibilities reviewed.

### Written Assessment

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3. If a president determines a tenured faculty member has failed to comply with a duty or responsibility of tenure, the president may not renew the contract of the tenured faculty member, unless the president specifically articulates why it is in the interest of the institution to continue to employ the faculty member despite the faculty member's failure to comply with the duties and responsibilities of tenure.

### Optional Non-Renewal

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4. The president of an institution may enlist the assistance of an administrator at the institution to conduct a review but may not delegate responsibility for the review to a faculty member who is not an administrator.

### Administrator Assistance with Review

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5. When conducting a review under this section, the president of an institution may assess and review other factors relevant to the faculty member's employment and the interests of the institution and the institution's students.

### Optional Review of Other Factors

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6. A review under this section is not reviewable by a faculty member or faculty committee. 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.

### Appeal to Chancellor, Not Faculty

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6. . . . The president is subject to review and assessment by the state commissioner of higher education and the state board of higher education for the reviews the president conducts under this section.

### Review of President

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7. The president and any administrators delegated to assist the president shall fulfill these duties without fear of reprisal or retaliation. No complaint, lawsuit, or other allegation is allowed against a president or other administrator for actions taken pursuant to these provisions.

### Protection Against Retaliation

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7. . . . 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

### Indemnification

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### SBHE Policy 605.1(2) Academic Freedom and Tenure; Academic Appointments

The purpose of tenure is to assure academic freedom.

Academic freedom applies to all scholarly pursuits.

Freedom in scholarship is fundamental to the advancement of knowledge and for the protection of the rights of the faculty members and students.

It carries with it duties and responsibilities correlative with rights.

These duties and rights are set forth in SBHE Policy 401.1, relating to academic freedom, and the 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments, adopted by the American Association of University Professors and the Association of American Colleges.

These policies apply to all institution faculty unless otherwise indicated.

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HB 1446:  
Emergency Clause

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**This Act is declared to be  
an emergency measure.**

**SECTION 3. EMERGENCY.**

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Former Non-Tenured Faculty Member

**"This is not right."**

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