



**BALL STATE
UNIVERSITY**

Office of the President

**BOARD OF TRUSTEES
COMMENTS BY GEOFFREY S. MEARNES
March 22, 2024**

Good afternoon.

Mr. Hall, with your permission, I would like to use this report to share some of my perspectives on Senate Bill 202. This bill, commonly referred to as SB 202, was passed by the General Assembly during this legislative session, and it was signed into law by Governor Holcomb on March 13, 2024.

I will discuss some of the key provisions of SB 202—what is in the new law. I will also respond to some of the concerns about SB 202.

I know that this legislation has prompted some concerns among some faculty and some students on our campus—and on other university campuses in Indiana. But some of the criticisms are not well founded, because they are not based on what is actually in SB 202.

I believe that it is important to read and to understand the actual text of this new law.

During my comments, I will also share some initial thoughts about our plan to fully comply with the new law.

At the outset, let me first discuss some important provisions that were initially included as amendments to SB 202, but which were not included in the final legislation.

Specifically, SB 202, as amended, contained several changes as to how trustees would be appointed to the governing boards of the various public institutions in Indiana. For our University, these amendments would have provided that, instead of two trustees selected by our Alumni Association, these two trustees would be selected by the Majority Leader of the Senate and the Speaker of the House.

I appreciate—and respect—that these proposed provisions may have been necessary for some institutions. And I understand that the Senate preferred that these provisions be applied uniformly across all institutions.

But current state law regarding appointments to institutional governing boards varies by institution. And I felt—we felt—that it was imperative to preserve how our two alumni representatives are selected. We have more than 150,000 Ball State graduates who currently live and work in Indiana. So, we want to ensure that our Alumni Association continues to have direct input in the governance of our University.

Moreover, we have a strong partnership between our Board of Trustees and the administration—and the faculty and staff—of our University. We respect the Board’s authority to establish our strategic priorities and the Board’s authority to approve key policies. In turn, you—our trustees—have consistently demonstrated that you respect our experience and our expertise. It is vital that we retain this constructive partnership. That is why I am relieved that the proposed amendments relating to the selection and appointment of our trustees were not included in the final legislation.

Now, let me talk about some of the key provisions that are in the new law.

First, the animating principle of SB 202 is to expand the commitment to cultural diversity to include a commitment to intellectual diversity. This expanded commitment is not foreign to us. In fact, in the strategic plan that this Board approved in December 2018, we defined our enduring value of “inclusiveness” as our commitment “to respect and embrace equity, inclusion, and diversity in people, ideas, and opinions.” Since then, we have developed several important policies and strategies that reflect this inclusive definition.

In 2018, for example, with respect to cultural diversity, our University was the first large, public university to implement a standardized test-optional admissions policy. This policy and other strategies endorsed by this Board have

enabled us to enroll the most diverse student body in our history—and the most diverse student body among the three public research universities in Indiana.

In 2019, this Board approved my request to invest approximately \$5 million to build a new Multicultural Center and to locate this new building in the center of our campus—where it belongs.

This Board has also empowered me to recruit and appoint the most diverse senior leadership team in our University’s 106-year history.

During this same period of time, we have enhanced our University’s commitment to freedom of expression. Specifically, on January 31, 2020, the Board approved my recommendation that we adopt our own version of the University of Chicago principles on freedom of expression.

In the wake of this decision, we reviewed and amended all of our relevant institutional policies to ensure that they aligned with these foundational principles. And I appointed a committee to develop several programs that inform our faculty, staff, and students about our abiding commitment to freedom of expression.

To comply with SB 202, we will need to merge this committee with our standing diversity committee, which was required under pre-existing state law. Under this new combined committee, we will continue to implement policies and programs that promote both cultural diversity and intellectual diversity.

As enacted, SB 202 also requires institutions to adopt several policies relating to freedom of expression.

For example, the new law requires all state institutions to implement policies that protect the rights of our students to express their opinions. We already have some such policies, so we will simply need to make a few modest changes to our existing policies.

The new law also requires all institutions to educate faculty and staff about the rights of our students to express their opinions. We already have such programs, so we will simply need to incorporate a few additional components to comply with SB 202.

The new law requires all institutions to adopt policies to ensure that public statements by university administrators and employees in their official capacities are politically neutral. We already have guidance to that effect. In order to comply with SB 202, we will simply have to convert that guidance into a policy that is approved by this Board.

There are other provisions in SB 202 that will require more attention.

For example, SB 202 requires us to establish a new procedure that allows both students and employees to submit a complaint that an employee has not complied with several provisions in the new law. The new law also requires us to provide some information about these complaints to the Board. And we will now

be required to provide summary information about these complaints to the Commission for Higher Education on an annual basis. We will need to develop these procedures and practices.

Some critics of SB 202 speculate that these new procedures will encourage people to file more complaints and will foster an adversarial culture on our campus. I am skeptical of that concern. I suspect that the new complaint procedure that we are required to create will not be used very often. But time will tell.

SB 202 also requires us to amend our existing tenure and promotion criteria for faculty. Specifically, the Board must adopt a policy that provides that a faculty member cannot be granted tenure or promotion if the Board determines, in effect, that the faculty member has not fostered a culture of free inquiry or has attempted to indoctrinate students.

Some critics have contended that this provision is vague. That criticism is potentially valid. But I am confident that our Board will permit us to develop and recommend policies and practices that ensure the fair and reasonable application of these new provisions.

Another provision of SB 202 that has generated a great deal of concern—and angst—is the requirement that all institutions conduct a comprehensive post-tenure review of tenured faculty members every five years.

But the fundamental concept is not new on our campus. To the contrary, department chairs and academic deans conduct annual reviews of all of our faculty, including tenured professors. The results of these reviews affect, among other things, merit salary decisions.

The new law, though, requires that we conduct a post-tenure review every five years. And this review must be more extensive than our current annual reviews.

I have spoken to several of you—our trustees—about this new mandate. I am encouraged that you expect us—the provost, the deans, the department chairs, and the faculty—to develop a process that is comparable to our current tenure and promotion policies. That is, a post-tenure review process that delegates primary responsibility to faculty, to subject matter experts, and to academic administrators. The new law expressly authorizes you to delegate this responsibility to us.

Moreover, SB 202 actually provides additional statutory protections for tenured professors. Specifically, the law expressly prohibits this Board from considering a tenured professor's dissent or public commentary or a professor's criticism of the institution's leadership.

Now, I would like to respond to one frequent complaint—a criticism that I don't think is well founded. Specifically, some people claim that the new law

precludes the university from admitting an applicant or hiring a person who provides a statement regarding diversity, equity, or inclusion.

But the provision to which these people refer expressly references the subsection that immediately precedes it. That preceding provision prohibits an institution from requiring an applicant for admission or employment to “pledge allegiance to” or “make a statement of support for” either: (a) a discriminatory policy that treats similarly situated people differently based on race, color, sex, sexual orientation, or religion; or (b) a political or ideological movement.

In effect, an institution is only precluded from considering a diversity statement if the institution actually requires one of these two kinds of pledges. We don’t—and we won’t—require such a pledge. So, we can continue to consider diversity statements voluntarily submitted by applicants for admission, employment, and promotion.

This reasonable, logical interpretation of this provision is reinforced by several other provisions in the new law. For example, SB 202 expressly provides that the law may not be construed to “limit or restrict the academic freedom of faculty members or prevent faculty members from teaching, researching, or writing publications about diversity, equity, and inclusion.”

Let me conclude with four final comments.

First, SB 202 becomes effective on July 1, 2024. So, we will have to work promptly to develop the policies and practices that are mandated by the new law—and present them to you for your consideration and approval at the Board meeting on June 14, 2024. With respect to many of the provisions in SB 202, that timeline is not problematic.

But some of the new mandates, particularly post-tenure review, are more substantive—and more consequential. I wish that the General Assembly had appreciated the importance of developing post-tenure review policies in a more deliberate way and with an opportunity to consult with other universities that have effective post-tenure review policies. In my opinion, that would have been preferable.

But the General Assembly has not provided us with this opportunity. So, the provost will promptly convene a working group consisting of academic deans, department chairs, and faculty to develop our proposed post-tenure review policies. And we will present our proposal to you in advance of the Board meeting on June 14.

Second, I haven't attempted to discuss all of the provisions in SB 202. It's a comprehensive new law. Rather, I wanted to use this opportunity to respond to the principal concerns that I have heard.

Third, by doing so, I don't want to dismiss these concerns. Given what has happened in a few other states, I can appreciate why there is some apprehension and anxiety on our campus. But I believe that we should focus on the specific provisions that are in SB 202, and not on what other people have claimed is in this new law—or what might come next in terms of additional legislation.

Fourth, we will comply fully with the letter and the spirit of the law. But as I have shared with you today, and as I have shared with my colleagues in the University Senate, doing so will not require us to retreat from our enduring commitment to “inclusiveness”—our abiding pledge to respect and embrace all people—their diverse perspectives, experiences, opinions, and ideas. We will sustain our commitment to this enduring value—our parallel commitments to both cultural diversity and intellectual diversity, and our commitment to academic freedom. That is who we are. That is what we will be.

Thank you.