

## **SENATE BILL No. 202**

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A BILL FOR AN ACT to amend the Indiana Code concerning  
higher education.

### **A CITIZEN'S GUIDE**

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*Written in her personal capacity and not on behalf of any Indiana University.*

Are Indiana's college graduates too liberal? Top Republican politicians think so.

Indiana Senate Bill 202 mandates annual political reviews of every faculty member, teacher, and mentor in public higher education, tying ideological alignment with the state's dominant political party to promotion and pay.

Ten alumni-elected trustees will be eliminated, with replacements selected by the house and senate leaders. The governor continues to appoint the rest.

SB 202 gives trustees broad new powers to punish and dismiss any faculty member, at any time, for any reason, without legal proceedings or determination of guilt. It expressly directs trustees to use these powers to discipline political speech.

Political review of student and employee applicants is also permitted.

1. **Summary**
2. **Revision of Higher Education Diversity Goals**
3. **Definition of "Intellectual Diversity"**
4. **Cancellation of Trustee Elections**
5. **New Powers to Discipline and Dismiss**
6. **Ideological Evaluation of P&T Candidates**
7. **Political Review of Tenured Faculty**
8. **Annual Political Performance Reviews**
9. **Political Evaluation of Students and New Hires**
10. **Discussion Questions for Citizens**
11. **Discussion Questions for Faculty**

## Revision of Higher Education Diversity Goals

From page 15 of Indiana SB 202, passed February 7, 2024.

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|----|--|
| 13 | (1) Review and recommend faculty employment policies concerning <b>cultural and intellectual</b> diversity issues.       |
| 14 |  |
| 15 | (2) Review faculty and administration personnel complaints concerning <b>cultural and intellectual</b> diversity issues. |
| 16 |  |
| 17 | (3) Make recommendations to promote and maintain <b>cultural and intellectual</b> diversity among faculty members.       |
| 18 |  |
| 19 | (4) Make recommendations to promote recruitment and retention of <b>minority underrepresented</b> students.              |
| 20 |  |

### Editor's comments:

1. "Intellectual diversity" is the animating goal of SB 202, appearing 30+ times in the 56-page bill. An appropriate name for the bill would have been "An Act to Promote Intellectual Diversity in Higher Education."
2. "Cultural diversity" is not defined in SB 202 or the Indiana Code, nor is this phrase commonly used on in.gov websites. Would you take it to refer to multiculturalism, or to inclusion of cultural conservatives?
3. When a term in a law is open to conflicting interpretations, it can be (re)defined by later legislation or by government agency [rulemaking](#). Until that time, Senate Bill 202 authorizes university trustees to interpret the term.
4. "Minority" is defined by the Indiana Code to mean Black and Hispanic students.
5. The Indiana Commission on Higher Education uses "underrepresented" more broadly to include minority students, low-income students, first-generation students, rural students, as well as including women in STEM fields.

## Definition of “Intellectual Diversity”

From page 22 of Indiana SB 202, passed February 7, 2024..

23	<b>Sec. 5. "Intellectual diversity" means multiple, divergent, and</b>
24	<b>varied scholarly perspectives on an extensive range of public policy</b>
25	<b>issues.</b>

Editor’s comments:

6. If Ayn Rand and Toni Morrison apply for the same faculty job, which hire would better promote “intellectual diversity?” Does Section 5 provide a definite answer? Or is “intellectual diversity” in the eye of the beholder?
7. If SB 202 becomes a law, the term “intellectual diversity” must be interpreted according to its past usage, not what faculty believe it *should mean* or what legislators *thought* it would mean. The term is not yet used on any in.gov website.
8. For twenty years, [“intellectual diversity” has been the catchphrase of an ideological movement](#) holding that college graduates are too liberal, and therefore conservative political views must be actively promoted on campus. Far-right political activist David Horowitz coined the term and continues to lead from the [David Horowitz Freedom Center](#), which “combats the efforts of the radical left and its Islamist allies to destroy American values.” While the term can certainly be used by people who would reject his extreme [white supremacist views](#), the term implies a negative view of traditional diversity efforts in higher education.
9. Another important figure in the intellectual diversity movement, [Stanley Fish](#), [writes](#): “[I]t is not the abstraction ‘diversity’ people fight for, but a condition of diversity that is more expansive than the present one, and expansive in a particular, favored direction. Raising the banner of diversity usually means let me and my friends in, not let everyone in.”
10. Does this additional information change your answer to question 5?

## Cancellation of Trustee Elections

From page 8 of Indiana SB 202 passed February 7, 2024.

20 [EFFECTIVE JULY 1, 2024]: Sec. 2. The board of trustees is  
21 composed of nine (9) trustees ~~appointed by the governor~~ as follows:  
22 (1) Seven (7) competent individuals, one (1) of whom must be a  
23 student, **appointed by the governor.**  
24 ~~(2) Two (2) competent individuals who are alumni of Indiana~~  
25 ~~State University nominated by the alumni council of Indiana State~~  
26 ~~University.~~  
27 **(2) One (1) member who:**  
28 **(A) is appointed by the president pro tempore of the senate**  
29 **with advice from the minority leader of the senate;**  
30 **(B) is an alumnus of Indiana State University; and**  
31 **(C) is not a member of the general assembly.**  
32 **(3) One (1) member who:**  
33 **(A) is appointed by the speaker of the house of**  
34 **representatives with advice from the minority leader of the**  
35 **house of representatives;**  
36 **(B) is an alumnus of Indiana State University; and**  
37 **(C) is not a member of the general assembly.**

Editor's comments:

1. [Since 1892, Indiana University has 3 trustees chosen by alumni](#) and 6 by the governor. Harvard has had 30 alumni-electees since 1642.
2. Similar language cancels Trustee elections at Ball State as well as at Indiana State, eliminates the alumni screening committee at USI and cuts alumni-elected seats from three to one at both Indiana University and Purdue. Ivy Tech Community College and Vincennes already have no elected trustees.
3. Indiana's Trustees have the final say on every policy, contract, hire, and tenure verdict. They can choose to be hands-off or to micromanage certain aspects. They can be very receptive to political influence or refuse to do so on principle.

## Political Evaluation of P&T Candidates

From page 15 of Indiana SB 202, passed on February 7, 2024

40           **(b) Each board of trustees of an institution shall establish a**  
41           **policy that provides that a faculty member may not be granted**  
42           **tenure or a promotion by the institution if, based on past**  
1           **performance or other determination by the board of trustees, the**  
2           **faculty member is:**  
3                 **(1) unlikely to foster a culture of free inquiry, free expression,**  
4                 **and intellectual diversity within the institution;**  
5                 **(2) unlikely to expose students to scholarly works from a**  
6                 **variety of political or ideological frameworks that may exist**  
7                 **within and are applicable to the faculty member's academic**  
8                 **discipline; or**  
9                 **(3) likely, while performing teaching or mentoring duties**  
10                **within the scope of the faculty member's employment, to**  
11                **subject students to political or ideological views and opinions**  
12                **that are unrelated to the faculty member's academic**  
13                **discipline or assigned course of instruction.**

Editor's comments:

1. "Faculty" includes administrators, teachers, researchers, and clinicians, including those who provide health care services at IU hospitals.
2. The word "or" is used to link criteria (1), (2), and (3). A faculty member who fails any one of them will not be allowed to advance in their academic career.
3. The use of "un/likely" directs trustees to block tenure and promotion based on suspected political views a candidate might express in the future.

## Political Review of Tenured Faculty

From page 21 of Indiana SB 202, passed on February 7, 2024.

14           **Sec. 2. (a) Not later than five (5) years after the date that a**  
15           **faculty member is granted tenure by an institution and not later**  
16           **than every five (5) years thereafter, the board of trustees of an**  
17           **institution shall review and determine whether the faculty member**  
18           **has:**  
19               **(1) helped the institution foster a culture of free inquiry, free**  
20               **expression, and intellectual diversity within the institution;**  
21               **(2) introduced students to scholarly works from a variety of**  
22               **political or ideological frameworks that may exist within the**  
23               **faculty member's academic discipline or within courses the**  
24               **faculty member has taught;**  
25               **(3) while performing teaching or mentoring duties within the**  
26               **scope of the faculty member's employment, refrained from**  
27               **subjecting students to views and opinions concerning matters**  
28               **not related to the faculty member's academic discipline or**  
29               **assigned course of instruction;**  
30               **(4) adequately performed academic duties and obligations;**  
31               **and**  
32               **(5) met any other criteria established by the board of trustees.**

Editor's comments:

1. Mitch Daniels' Liberty Fund recommends scholarly works from a libertarian political or ideological framework for a variety of academic disciplines.
2. Elsewhere, SB 202 says that Trustees may not invoke 2(a)(4) to punish dissent, research, public commentary, criticism of leadership, or political activities.
3. Room is provided to do so under section 2(a)(5), which reserves to the trustees an unlimited power to dismiss tenured faculty on any grounds.
4. SB 202 requires post-tenure political review *at least* every five years, for all faculty. It can occur sooner for candidates who fail their annual political review.

## New Powers to Discipline, Demote, and Dismiss

From page 21 of Indiana SB 202 passed February 7, 2024.

6           **(d) The institution shall adopt a policy that establishes**  
7           **disciplinary actions, including:**  
8           **(1) termination;**  
9           **(2) demotion;**  
10           **(3) salary reduction;**  
11           **(4) other disciplinary action as determined by the institution;**  
12           **or**  
13           **(5) any combination of subdivisions (1) through (4);**  
14           **that the institution will take if the board of trustees determines in**  
15           **a review conducted under subsection (a) that a tenured faculty**  
16           **member has failed to meet one (1) or more of the criteria described**  
17           **in subsection (a)(1) through (a)(5).**  
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Editor's comments:

1. The (a)(1) through (a)(5) criteria are those from the prior page.
2. Wherever the law refers to "the board of trustees," it is also implied: "or their approved delegates." The plan is likely for the trustees to delegate development of these new policies to committees led by the newly appointed trustees.
3. Under current law, Trustees *may* take disciplinary action to punish particularly problematic "conduct, after determination of guilt by legal proceedings." [IN Code § 21-39-2-4 \(2022\)](#). Under SB 202, the university *must* discipline political speech and views, without legal proceedings or determination of guilt.
4. SB 202 makes no reference to "due process."

## Annual Political Performance Reviews

From page 22 of Indiana SB 202, passed on February 7, 2024.

23            **Sec. 3. (a) This section applies to the following:**  
24            **(1) A faculty member.**  
25            **(2) A person with whom the institution contracts to teach or**  
26            **mentor a student of the institution.**  
27            **(b) Before an institution:**  
28            **(1) renews an employment agreement or other contract with;**  
29            **(2) makes a bonus decision regarding; or**  
30            **(3) completes a review or performance assessment of;**  
31            **a faculty member or person described in subsection (a), the**  
32            **institution shall give substantial consideration to the faculty**  
33            **member's or person's performance regarding the criteria**  
34            **described in section 2(a)(1) through 2(a)(5) of this chapter.**

1. The (a)(1) through (a)(5) criteria are those from two pages prior.
2. Generally, contract renewals, bonus decisions, and performance reviews happen at least every year.
3. This applies to everyone who teaches or mentors any student. This would include: tenured faculty, pre-tenure faculty, long-term and short-term contract faculty, adjunct faculty, lecturers, guest lecturers, graduate students, tutors, librarians, and student services professionals.



## Political Evaluation of Employees and Students

From pages 24 and 26 of Indiana SB 202 passed on February 7, 2024.

11           **Chapter 3. Requirements Regarding Students, Employees,**  
12           **Contractors, and Applicants**  
13           **Sec. 1. (a) This section applies to the following:**  
14           **(1) An applicant for admission, enrollment, or employment at**  
15           **an institution.**

24           **Chapter 6. Construction and Enforcement**  
25           **Sec. 1. Nothing in this article may be construed to do the**  
26           **following:**  
27           **(1) Preclude efforts to gauge an applicant's commitment,**  
28           **plans, or past performance in fostering intellectual diversity.**

Editor's comments:

1. This text permits questioning and investigating people's political views when they apply for admission reenrollment, financial aid, or employment.
2. SB 202 places no limits on how this may be done or how it can be used.
3. Indiana law does not protect against discrimination based on political views, party membership, or sexual orientation.
4. How might a university "gauge an applicant's commitment, plans, or past performance in fostering [multiple, divergent, and varied scholarly perspectives on an extensive range of public policy issues]?"

## Discussion Questions for Citizens

1. Do you think that SB 202 is “likely to foster a culture of free inquiry and free expression?” Why or why not?
2. In 1915, the trustees of Wharton Business School dismissed popular professor Scott Nearing because local business leaders objected to his radical views on child labor. At that time, activists were fighting to reduce the workweek limit for children to 52 hours. Nearing believed - scandalously - that all children should be in school. His scholarly research identified that child labor laws would work only alongside school meals, vocational schools, and a minimum wage for adults. What should we learn from this story? Do you know other stories like it?
3. University researchers can be a valuable source of information for voters or policymakers. Indiana’s current Republican governor, Eric Holcomb is credited with a strong response to COVID, relying on advice by the universities’ medical experts. More recently, however, Attorney General Todd Rokita [breached ethics](#) to threaten an IU professor who publicly commented on a policy priority of his. As a citizen, are there any other politically controversial issues where you want your state’s experts to be able to speak freely?
4. Former Governor Mitch Daniels’ own trustees made him leader at Purdue, where he authorized the for-profit [Kaplan University](#), owned by a Republican mega-donor, to use the Purdue brand. Purdue Global Online has an F rating with the BBB and [is now \\$127.8 million in debt](#). Could SB 202 be used to dismiss faculty who criticized the politician’s plan originally or wish to do so now?
5. Some IU-Indianapolis faculty organized a political debate for their law students to celebrate Constitution Day. During the event, campus lawyers sent an email warning about engaging in “activism.” Some students took the email to mean they could lose scholarships for voicing opinions. Will SB 202 fix this?
6. Tenure was invented in Germany and made their universities top in the world; American scholars studied German to keep up with research. In 1933, Hitler complained professors were too liberal, and dismissed 20%. Many of these refugee scholars landed at institutions in America. What should we learn from this story?

## Discussion Questions for Faculty

1. In 2017, the North Carolina legislature enacted [a statute](#) that is philosophically similar to Indiana SB 202 but vastly less radical. The state has experienced [mounting political influence over its public universities](#). In Georgia, where politicians have [“weaponized” post-tenure review](#), 28% were looking for jobs out-of-state; 33% plan to leave academia, and 65% do not recommend their university as a good place to work. What should we learn from these stories?
2. Former Governor Mitch Daniels wrote, [“How the Tenure Trap Paralyzes Higher Education”](#) urging state legislatures to fire tenured professors. Should we be worried that SB 202 is a back door to accomplish that goal?
3. What incentives do the trustees have to develop a policy with safeguards to ensure fairness, prevent discrimination, protect freedom of speech and research, and avoid retaliation? One that leaves them the most room to act? Does the faculty have any negotiating power?
4. What would be most powerful to ensure fairness to current faculty and prevent recruitment and retention problems?
  - a. Maintaining/expanding elected trustees
  - b. Formally eliminating political criteria
  - c. Eliminating campus review of P&T decisions
  - d. Restoring campus anti-discrimination policies
  - e. Publicizing proposed policies for 120 days before a vote
  - f. Disclosing rates of faculty discipline and departure
  - g. Appeal of discipline to the Faculty Council
  - h. Appeal of discipline to a court of law
  - i. New contracts with stronger protections
  - j. Health insurance for departing faculty
  - k. Severance pay equal to three years
  - l. Prohibiting “nondisclosure” requirements
  - m. Joining a union
  - n. A new governor