

Fifty-fifth
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1312

Introduced by

Representatives Martinson, Svedjan, Wentz, Keiser

Senators Robinson, St. Aubyn

1 A BILL for an Act to create and enact three new sections to chapter 15-10 of the North Dakota
2 Century Code, relating to unexpended general fund appropriations, accountability reports, and
3 authorization for board of higher education institutions to borrow from the bank of North Dakota;
4 to amend and reenact sections 15-10-08, 15-10-12, 15-10-14.1, 15-10-17, and 44-04-18.4 of
5 the North Dakota Century Code, relating to compensation of state board of higher education
6 members, acceptance of gifts and bequests and deposit of funds by the state board of higher
7 education, reports required of the board of higher education, higher education system review,
8 and powers and duties of the board of higher education; and to repeal sections 15-10-17.1,
9 15-10-18.1, 15-10-20, 15-10-23, and 15-10-34 of the North Dakota Century Code, relating to
10 the conduct of students and use of facilities of state colleges and universities, waiver of tuition
11 for youth correctional center graduates, tuition at model schools, lease of building sites, and
12 authorization of contingency funds.

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

14 **SECTION 1. AMENDMENT.** Section 15-10-08 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **15-10-08. Compensation of board members - Expenses - Legislative**
17 **appropriations.** Each appointive member of the state board of higher education ~~shall, except~~
18 ~~the student member, is entitled to receive fifty dollars per day compensation per day in the~~
19 ~~same amount provided for members of the legislative council for the time each calendar day~~
20 ~~actually spent devoted to the duties of his office, and, in addition, shall receive his necessary~~
21 ~~expenses in the same manner and amounts as other state officials for attending meetings and~~
22 ~~performing other functions of his office. The legislative assembly shall provide adequate funds~~
23 ~~to carry out the functions and duties of the board. The compensation and expense payments~~
24 ~~provided by this section are retroactive to January 1, 1977.~~

1 **SECTION 2. AMENDMENT.** Section 15-10-12 of the 1995 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **15-10-12. Board may accept gifts and bequests - State treasurer to have custody**
4 **of school funds - Deposit of funds.** The state board of higher education may, ~~subject to the~~
5 ~~limitations of section 15-10-12.1,~~ receive donations, gifts, grants, and bequests offered or
6 tendered to or for the benefit of any institution of higher education under its control or subject to
7 its administration, and all moneys coming into the hands of the board as donations, gifts,
8 grants, and bequests must be used for the specific purpose for which they are donated or
9 given. A special revenue fund, for each institution of higher education under the control of the
10 board or subject to its administration, must be maintained within the state treasury and all
11 institutional income from tuition collections must be placed in the special fund for the use of the
12 institution for which the money was raised. All rent, interest, or income from land, money, or
13 property, donated or granted by the United States and allocated to specific institutions of higher
14 learning under the terms of the Enabling Act and the Constitution of North Dakota and general
15 fund moneys specifically appropriated to an institution must be deposited in ~~the a~~ special
16 revenue fund of each institution in the state treasury and expended in accordance with
17 section 1 of article IX of the Constitution of North Dakota. Moneys in the special revenue fund
18 are subject to legislative appropriations. All other funds, unless restricted by the terms of a
19 grant, donation, or bequest, received by the institutions, including funds allocated by the state
20 board of higher education, revenue from federal, state, and local grants and contracts, indirect
21 cost recoveries, ~~special~~ student fees, room and board fees and other auxiliary enterprise fees,
22 ~~student activity fees,~~ continuing education program fees, internal service fund revenues, and all
23 other revenues must be deposited in the institutions' accounts at the Bank of North Dakota.
24 ~~Biennial estimates of revenue and expenditures of the other funds by source of funds must be~~
25 ~~presented at the same time biennial budget requests for appropriations from the special~~
26 ~~revenue fund and state general fund are prepared and submitted to the office of the budget~~
27 ~~pursuant to section 15-10-15. Payments from each institution's general fund appropriation~~
28 ~~must be made in amounts as may be necessary for the operation and maintenance of each~~
29 ~~institution, except that at the close of the biennium the balance of funds not paid from the~~
30 ~~general fund appropriation must be deposited in the special revenue funds of the institutions.~~
31 ~~All such appropriations~~ Funds deposited in the institutions' accounts at the Bank of North

Dakota, except tuition and general fund moneys appropriated to the board of higher education, are funds belonging to the institutions and are not public funds subject to legislative appropriation. General fund moneys appropriated to the state board of higher education or its institutions are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. ~~Sinking funds for the payment of interest and principal of institutional revenue bonds~~ Proceeds and earnings from the sale of revenue bonds or income and revenues derived from the operation of buildings or improvements financed by revenue bonds or pledged in the manner provided in chapter 15-55 must be deposited pursuant to section 15-55-06.

SECTION 3. AMENDMENT. Section 15-10-14.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-14.1. ~~Biennial report~~ Higher education reports. The state board of higher education ~~may shall~~ submit a biennial report to the governor and to the secretary of state for the educational institutions under its control as provided by law. ~~If submitted, the report must cover enrollments, major functions and programs, and major goals and objectives, and the extent of achievement of those goals and objectives. The report must also include summaries of financial reports, a narrative explaining the significance of that data, and other information the board may choose~~ the reports required pursuant to section 15-10-14.2 and such other reports as may be requested by the legislative assembly or governor.

SECTION 4. AMENDMENT. Section 15-10-17 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-17. Specific powers and duties of board of higher education. The state board of higher education has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter, including:

1. To appoint and remove, fix the terms of office and prescribe the duties of the president or other faculty head, and the professors, instructors, teachers, officers, faculty, and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations therefor, and to fix the terms of office and to prescribe the duties thereof, provided that the. The consideration of the appointment or removal of any such personnel shall employee of the institutions under its control, must be in executive session if upon majority

vote of the board chooses in an open meeting, unless the ~~person or persons~~
~~involved request~~ employee requests that the meeting ~~shall~~ be open to ~~other~~
~~persons or the public.~~ Personnel actions taken during executive session must be
recorded in the official minutes available for public access following the meeting.

2. To ~~have supervision and control of the grounds, buildings, and all other property of~~
~~such institutions, and to authorize such institutions to maintain confidential records~~
~~containing personal information regarding their prospective, current, or former~~
~~students or regarding patients at the medical center rehabilitation hospital at the~~
~~university of North Dakota, with the information in such records subject to release~~
~~by the institution only upon a court order or the express or implied consent of the~~
~~student or patient involved. A prospective, current, or former student shall be~~
~~deemed to have consented to the release of all records to a prospective employer~~
~~upon application for employment to that employer, provided the position is of such~~
~~a nature as to require security clearance. The board may procure all necessary~~
~~apparatus, instruments, and appurtenances for instruction in said schools within~~
~~the limits of legislative appropriations therefor~~ regulate the conduct of students,
staff, faculty, and visitors, and authorize the employment of law enforcement
officers, with concurrent jurisdiction with other law enforcement officers to enforce
laws and regulations at its institutions.

3. To adopt; rules; and regulations ,~~and bylaws~~ for the government of each of ~~such~~
~~the institutions and of all the~~ their departments and branches ~~thereof.~~

4. To determine the ~~moral and educational~~ qualifications of applicants for admission
to the various courses of instruction, to prescribe by rule criteria for the admission
of students, and to ensure that the criteria for admission are applied to all
applicants in a uniform and nondiscriminatory manner, regardless of the school or
educational setting from which an applicant obtained a high school diploma or its
equivalent. No instruction, either sectarian in religion or partisan in politics, shall
ever be allowed in any department of such institutions, and no sectarian or
partisan test shall ever be allowed or exercised in the election of professors,
teachers, or other officers of the institutions, or in the admission of students, or for
any other purpose ~~whatsoever.~~

- 1 5. ~~To prescribe rules and regulations for the management of the libraries, cabinets,~~
2 ~~museums, laboratories, and all other property of the institutions under its control,~~
3 ~~and for the care and preservation thereof, with suitable penalties and forfeitures by~~
4 ~~way of damages for their violation, which may be collected by action in the name of~~
5 ~~the board in any court having jurisdiction.~~
- 6 6. To prescribe the books or works to be used in the several courses of instruction;
7 and to confer such degrees and to grant such certificates or diplomas for the work
8 done as are usual or appropriate in similar institutions.
- 9 7. 6. To confer upon the delegate to institution officers and faculty, ~~through bylaws~~, the
10 power to suspend or expel students for misconduct or for other causes ~~prescribed~~
11 ~~in such bylaws.~~
- 12 8. 7. To ~~act in consultation with the president of each institution to minister to~~ provide for
13 the needs and proper development of each institution in harmony with the best
14 interests of the people of the state, and to improve higher and technical education
15 in the state.
- 16 9. 8. To coordinate and correlate the work in the different institutions to prevent wasteful
17 duplication and to develop cooperation among the institutions ~~in the exchange of~~
18 ~~instructors and students.~~
- 19 10. 9. To fix ~~registration or matriculation~~ tuition and fees ~~and other incidental fees to be~~
20 ~~paid by students in the various institutions under its control or in any department~~
21 ~~thereof when not otherwise provided by law.~~
- 22 11. 41. ~~To fix and charge fees for instruction furnished in the professional schools and~~
23 ~~colleges and for extra studies.~~
- 24 12. 10. To make recommendations in regard to needed legislation for the institutions
25 under its control.
- 26 13. 11. To establish a retirement program as an alternative to chapter 15-39.1 for
27 employees of institutions under its control subject to the following guidelines:
28 a. Benefits under the program shall be provided through annuity contracts
29 purchased by the board but which shall become the property of the
30 participants;

- 1 b. The cost of the annuity contracts shall be defrayed by contributions made
2 pursuant to rules of the state board of higher education;
- 3 c. Eligible employees appointed before July 1, 1973, shall participate in the
4 alternate retirement program only by their individual election. When the
5 electing eligible employee is a member of the teachers' fund for retirement,
6 the employee's assessments and employer's contributions together with
7 interest credited at the current rate for one-year certificates then being paid by
8 the Bank of North Dakota shall be transferred to the employee's account in
9 the alternate program. Such election shall be made prior to July 1, 1980, and
10 shall relinquish all rights the eligible employee or the employee's beneficiary
11 may have to benefits provided in chapters 15-39 and 15-39.2; and
- 12 ~~d. Employees of Bismarck state college and university of North Dakota—Lake~~
13 ~~Region coming under the jurisdiction of the board who are members of the~~
14 ~~teachers' fund for retirement may elect prior to July 1, 1985, to continue~~
15 ~~membership in the teachers' fund for retirement in lieu of the alternate~~
16 ~~retirement program. If an employee does not elect to continue membership in~~
17 ~~the teachers' fund for retirement, membership in that fund will terminate and~~
18 ~~the employee will become a member of the alternate retirement program~~
19 ~~established by the board effective July 1, 1985. An employee of the~~
20 ~~above named colleges who becomes a member of the alternate retirement~~
21 ~~program may elect prior to July 1, 1985, to have the employee's assessments~~
22 ~~and employer's contributions in the teachers' fund for retirement with interest~~
23 ~~transferred by the board of trustees of the teachers' fund for retirement to the~~
24 ~~employee's account in the alternate retirement program. If an employee~~
25 ~~elects to transfer the employee's assessment and employer's contributions~~
26 ~~together with interest to the alternate retirement program, the employee~~
27 ~~relinquishes all rights the employee or the employee's beneficiary may have~~
28 ~~to benefits provided in chapters 15-39, 15-39.1, and 15-39.2; and~~
- 29 e. Employees of institutions under the control of the state board of higher
30 education who are members of the public employees retirement system and
31 who become entitled to participate in the alternate retirement program are

1 entitled to a special annuity purchase in the alternate retirement program in
2 accordance with this subdivision. An eligible employee who consents to have
3 that employee's contribution included is entitled to have that employee's
4 contribution and employer's contribution, with interest, in the public
5 employees retirement system fund, used by the retirement board of the public
6 employees retirement system to purchase for that employee an annuity in the
7 alternate retirement program in lieu of any other rights under the public
8 employees retirement fund. However, before the employer's contribution may
9 be used for an annuity purchase, the employee's combined years of service
10 with the public employees retirement system and the alternate retirement
11 program must equal or exceed the years of service necessary to be eligible
12 for retirement benefits under the public employees retirement system. An
13 employee who transferred from the public employees retirement system prior
14 to March 30, 1987, and who received a refund of that employee's contribution
15 is entitled to have the employer's contribution, with interest, used to purchase
16 an annuity even if that employee did not purchase an annuity in the alternate
17 employee program with the employee's contribution. If an employee makes
18 the election allowed under this subdivision, that employee relinquishes all
19 rights the employee or any of the employee's beneficiaries may have had to
20 benefits provided under chapter 54-52.

21 The board shall provide for the administration of the alternate retirement program
22 and establish rules therefor consistent with the foregoing guidelines. Nothing in
23 this subsection shall be construed in derogation of any existing retirement
24 programs approved by the board.

25 ~~44.~~ 12. To determine policy for purchasing by the institutions of higher education in
26 coordination with the office of management and budget as provided by law.

27 ~~45.~~ 13. To establish by rule an early retirement program for faculty and officers of the
28 board as defined by the board. The limitations on severance pay pursuant to
29 section 54-14-04.3 and on requiring the employee to pay contributions to continue
30 on the state uniform group insurance program upon retirement or upon termination

of employment pursuant to section 54-52.1-03 shall not apply to the early retirement program.

~~46. 14. To adopt rules consistent with state or federal law to protect the confidentiality of proprietary information received from sponsors of research conducted by the institutions as well as information generated by that research. No rule promulgated by the board may in any way limit or otherwise affect the applicability or implementation of any rule or regulation of the state department of health. Each grant or contract involving confidential information must be explained in the institution's report to the board of grants and contracts received and must be reviewed at the board's public meeting~~ student records, medical records, and, consistent with section 44-04-18.4, trade secret, proprietary, commercial, and financial information.

~~47. 15.~~ To authorize and encourage institutions of higher education under its control to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.

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

Unexpended general fund appropriations - Continuing appropriation. General fund moneys that are appropriated to the board of higher education or its institutions and are unexpended at the end of a biennium must be deposited in a special fund in the state treasury administered by the board. The moneys may thereafter be allocated and spent, as directed by the board, for repairs or improvements, equipment, scholarships, grants, tuition waivers, and other purposes not requiring an increase in future general fund appropriations. The moneys may not be used for new buildings or additions, base salary adjustments, or other uses resulting in increased requests for general fund appropriations. If moneys are specifically appropriated for one or more institutions, those moneys may not be used for any other institution. Moneys deposited in the special fund are hereby appropriated for the purposes specified in this section.

1 **SECTION 6.** A new section to chapter 15-10 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Higher education accountability reports.** The board of higher education shall, no
4 later than the end of 1998, develop and submit to the legislative council for review formats for
5 accountability reporting by the board, including content and form of the comprehensive plan
6 and annual progress reports required of the board pursuant to section 15-10-14.2. The reports
7 must be designed to enable the legislative assembly to determine whether the board and its
8 institutions are making satisfactory progress toward its goals and whether funds are allocated
9 and spent in a responsible and prudent manner to achieve those goals. To the extent feasible,
10 information must be based on objective data and reported using standardized formats. The
11 reports must be implemented beginning with the board's 1999 annual progress report and must
12 be revised, subject to legislative council review, as necessary.

13 **SECTION 7.** A new section to chapter 15-10 of the North Dakota Century Code is
14 created and enacted as follows:

15 **Loans from Bank of North Dakota.** Institutions under the board of higher education
16 are authorized to borrow, and the Bank of North Dakota is authorized to loan to those
17 institutions, amounts not to exceed ninety percent of the value of an institution's certificate of
18 deposit held by the Bank. The term of the loan may not exceed the term of the certificate of
19 deposit offered as security for the loan. The loans are subject to such additional terms and
20 conditions as may be established by the Bank.

21 **SECTION 8. AMENDMENT.** Section 44-04-18.4 of the 1995 Supplement to the North
22 Dakota Century Code is amended and reenacted as follows:

23 **44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial**
24 **information.**

- 25 1. Trade secret, proprietary, commercial, and financial information is confidential if it
26 is of a privileged nature and it has not been previously publicly disclosed.
- 27 2. "Trade secret" includes:
 - 28 a. A computer software program and components of a computer software
29 program which are subject to a copyright or a patent, and any formula,
30 pattern, compilation, program, device, method, technique, or process supplied
31 to any state agency, institution, department, or board which is the subject of

1 efforts by the supplying person or organization to maintain its secrecy and
2 that may derive independent economic value, actual or potential, from not
3 being generally known to, and not being readily ascertainable by proper
4 means by, other persons or organizations that might obtain economic value
5 from its disclosure or use; and

6 b. A discovery or innovation which is subject to a patent or a copyright, and any
7 formula, pattern, compilation, program, device, method, technique, or process
8 supplied to or prepared by any state agency, institution, department, or board
9 which is the subject of efforts by the supplying person, business, or industry
10 to maintain its secrecy and that may derive independent economic value,
11 actual or potential, from not being generally known to, and not being readily
12 ascertainable by proper means by, any person who might obtain economic
13 value from its disclosure or use.

14 3. "Proprietary information" includes information received from a sponsor of research
15 conducted by an institution, as well as any discovery or innovation generated by
16 that research, technical, financial, and marketing information and other documents
17 related to the commercialization, and any other discovery or innovation produced
18 at the institution which an employee, institution, or the board intends to
19 commercialize.

20 4. This section does not limit or otherwise affect a record pertaining to any rule of the
21 state department of health or to any record pertaining to the application for a
22 permit or license necessary to do business or to expand business operations
23 within this state, except as otherwise provided by law.

24 ~~5. An institution of higher education shall include justification for maintaining the~~
25 ~~confidentiality of information as to each grant or contract involving confidential~~
26 ~~information in the institution's regular report to the board of higher education of~~
27 ~~grants and contracts received. The justification must contain general information~~
28 ~~required by the board and must include at least the following nonconfidential~~
29 ~~information:~~

30 a. ~~A general description of the nature of the information sought to be protected;~~

- ~~b. A general explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;~~
- ~~c. A general explanation of why the information is not readily ascertainable through proper means by other persons;~~
- ~~d. A general description of the persons or entities that would obtain economic value from disclosure or use of the information, and how they would obtain this value; and~~
- ~~e. A general description of the efforts used to maintain the secrecy of the information.~~

~~The board of higher education shall review the justification at a public meeting of the board and shall decide if the confidential status should be maintained for the project. If the board decides against granting the confidential status, the justification may be resubmitted at the next meeting of the board and the confidential status may be maintained until that time. If the board again decides, upon reconsideration, not to grant confidentiality, the information becomes public.~~

SECTION 9. REPEAL. Sections 15-10-17.1, 15-10-20, 15-10-23, and 15-10-34 of the North Dakota Century Code and section 15-10-18.1 of the 1995 Supplement to the North Dakota Century Code are repealed.