NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

HIGHER EDUCATION COMMITTEE

Friday, March 2, 2012
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Bob Skarphol, Chairman, called the meeting to order at 9:10 a.m.

Members present: Representatives Bob Skarphol, Thomas R. Beadle, Lois Delmore, Mark A. Dosch, Joe Heilman, Dennis Johnson, Nancy Johnson, RaeAnn G. Kelsch, Bob Martinson, David Monson, Clark Williams; Senators Tim Flakoll, Dave Nething, Larry Robinson, Mac Schneider, Ryan M. Taylor

Members absent: Representatives Kathy Hawken, Mark Sanford; Senators Tony Grindberg, Ray Holmberg, Karen K. Krebsbach

Others present: John Bjornson, Jim W. Smith, L. Anita Thomas, Roxanne Woeste; Legislative Council, Bismarck

Representative Al Carlson, Chairman, Legislative Management, and Senator Rich Wardner, Vice Chairman, Legislative Management, were also in attendance.

See Appendix A for additional persons present.

It was moved by Senator Robinson, seconded by Senator Flakoll, and carried on a voice vote that the minutes of the January 18, 2012, meeting be approved as distributed.

UPDATE ON LAWSUIT CHALLENGING LEGISLATIVE AUTHORITY

Chairman Skarphol called on Representative Carlson to provide comments regarding a lawsuit filed by the State Board of Higher Education challenging legislative authority.

Representative Carlson said the State Board of Higher Education has initiated a lawsuit challenging the authority of the Legislative Assembly to enact laws that affect institutions under the control of the board. He said the Legislative Management has retained legal counsel to represent the interests of the legislative branch of government in the lawsuit.

Representative Carlson asked Mr. John Bjornson, Counsel, Legislative Council, to provide background information regarding the lawsuit. Mr. Bjornson said the following actions have led to the lawsuit:

- The Legislative Assembly in March 2011 passed House Bill No. 1263 which enacted North Dakota Century Code Section 15-10-46 and requires the University of North Dakota (UND) athletic teams to be known as the Fighting Sioux.
- The Legislative Assembly in November 2011 passed Senate Bill No. 2370 to repeal Section 15-10-46 regarding the UND athletic team nickname and logo.
- A group of citizens submitted a petition to the Secretary of State on February 7, 2012, to refer Senate Bill No. 2370 which repealed Section 15-10-46.
- On February 17, 2012, the Attorney General filed an action with the Supreme Court on behalf of the State Board of Higher Education to declare Section 15-10-46, as originally passed by the Legislative Assembly in March 2011, as being unconstitutional and to prohibit the Secretary of State from allowing the citizen referral measure to be placed on the June 2012 primary election ballot.

Mr. Bjornson said the petition filed by the Attorney General with the Supreme Court essentially claims the only role of the Legislative Assembly in relation to higher education institutions is to provide appropriations. He said the lawsuit brings into question the authority of the Legislative Assembly to enact policies that affect the institutions of higher education. He said current general laws affecting higher education institutions, such as the prohibition of smoking in public buildings, may be called into question.

In response to a question from Representative Carlson, Mr. Bjornson said the Supreme Court may narrowly review the constitutionality of the UND nickname and logo statute, or it may review the overall role of the Legislative Assembly in enacting policies that affect higher education institutions. He said the court may also decline to hear the lawsuit.

In response to a question from Senator Nething, Mr. Bjornson said Article VI, Section 4, of the Constitution of North Dakota, provides that a legislative enactment is considered constitutional unless four out of the five Supreme Court justices declare it unconstitutional.

In response to a question from Senator Schneider, Mr. Bjornson said the Legislative Assembly enacted Section 54-35-17 in 1995 which allows the legislative branch of government to retain counsel as deemed necessary to protect the official interests of the legislative branch. He said this is the first time he can recall that outside legal counsel has been obtained to represent the interests of the legislative branch of

government when the challenge to the authority of the legislative branch has been initiated by the Attorney General. He said this situation is unique in that the legislative branch is defending the constitutionality of a law it passed and subsequently repealed.

Senator Schneider expressed concern regarding legislative involvement in the lawsuit. He said the Legislative Assembly repealed Section 15-10-46 and is now taking a role in the lawsuit that is contrary to its previous actions.

Representative Carlson said the lawsuit is about more than just the constitutionality of Section 15-10-46. He said the lawsuit brings into question the role of the Legislative Assembly in enacting policy that affects higher education institutions.

In response to a question from Senator Nething, Mr. Bjornson said Section 15-10-46 does not affect the agreement between the state and the National Collegiate Athletic Association (NCAA) regarding the UND nickname and logo. He said the agreement does not prohibit UND from using the Fighting Sioux nickname and logo. He said the agreement provides for sanctions against the university if the nickname and logo are used.

Mr. Pat Seaworth, General Counsel, North Dakota University System, Bismarck, said the State Board of Higher Education filed the lawsuit to ask the Supreme Court to declare Section 15-10-46 unconstitutional. He said the board consulted with the Attorney General and filed the lawsuit as a last resort to discontinue the UND Fighting Sioux nickname and logo. He said UND athletic programs will suffer if the Fighting Sioux nickname and logo continue to be used. He said the board is only concerned with the UND nickname and logo and is not asking the court to rule on any other issue. He said the constitution allows the Legislative Assembly to set tuition and fee levels at institutions.

Representative Carlson said he disagreed that the only issue being addressed in the lawsuit is the UND nickname and logo. He said the lawsuit may affect the ability of the Legislative Assembly to enact laws affecting higher education institutions.

Representative Martinson asked Mr. Seaworth why the lawsuit challenging the constitutionality of Section 15-10-46 was not filed when the section was originally enacted in March 2011. Mr. Seaworth said the State Board of Higher Education wanted to exhaust all options before filing a lawsuit. He said there were other opportunities available at the time, including further discussions with the NCAA.

Representative Kelsch said the state has a proud heritage of allowing its citizens to take action by initiating or referring measures. She expressed concern that the NCAA has the power to convince the State Board of Higher Education to challenge a citizen referral measure.

Mr. Seaworth said the NCAA is a private organization, and members must comply with the rules set by the organization. He said some individual institutions already have policies in place that prohibit scheduling athletic contests with an institution that has a Native American nickname and logo.

Senator Nething said the Legislative Management should be commended for defending the authority of the Legislative Assembly. He said the committee has taken a course of action that is in the best interest of the Legislative Assembly and ultimately the citizens of the state.

Mr. Grant Shaft, President, State Board of Higher Education, Grand Forks, said it is important for all interested parties, including the Legislative Assembly, to be involved in the lawsuit.

In response to a question from Representative Skarphol, Mr. Shaft said the State Board of Higher Education discussion regarding the lawsuit only focused on the UND nickname and logo issue. He said the primary discussion held by the board regarding Section 15-10-46 has been how strictly the statute must be followed, including whether the athletic teams must wear uniforms with the nickname and logo.

In response to a question from Representative Kelsch, Mr. Shaft said the State Board of Higher Education is asking the Supreme Court to only rule on the constitutionality of Section 15-10-46. He said the board is not asking the court to rule on the authority of the Legislative Assembly to enact policies that affect higher education institutions.

Mr. Shane Gerbert and Mr. Logan Fletcher, University of North Dakota Student Government, Grand Forks, provided comments regarding the UND nickname and logo issue. They expressed concern regarding the negative effect the Fighting Sioux nickname and logo will have on the university. They said the future of the university and its students are more important than an athletic nickname and logo.

Mr. Sean M. Johnson, Bismarck, provided comments regarding the UND nickname and logo. He said the Fighting Sioux nickname and logo represents culture and tradition. He said many Native American citizens of the state support the nickname and logo.

EXPANSION OF COMMITTEE DUTIES

Chairman Skarphol called on Representative Carlson regarding additional duties assigned to the Higher Education Committee. Representative Carlson said he has assigned the Higher Education Committee the following additional duties:

1. A study of higher education governance, including the role of the State Board of Higher Education, University System office, and university presidents. As part of the study, the committee must review constitutional and statutory provisions and consider changes to improve the current governance model.
2. As part of the committee's current study of performance/outcome funding methods, examine methods of improving the accountability of the University System, including the identification of appropriate accountability measures.

3. Receive information from the president of Dickinson State University and the University System internal auditor regarding the internal review report of international transfer agreements at Dickinson State University. The information must address potential future issues involving accreditation of the institution, sanctions from federal agencies, and legal ramifications.

A copy of the letter assigning the additional duties is attached as Appendix B.

HIGHER EDUCATION GOVERNANCE

Representative Carlson said changes to the current higher education governance structure may be needed to improve higher education. He distributed a document (Appendix C) with an outline of a constitutional amendment to create a new higher education governance structure in the state.

Representative Carlson asked Ms. L. Anita Thomas, Counsel, Legislative Council, to provide an overview of the proposed higher education governance structure. Ms. Thomas said the proposed governance structure would remove the current State Board of Higher Education and create a department of higher education. She said the proposed governance structure would implement the following:

- A department of higher education to oversee public higher education institutions.
- A director of higher education appointed by the Governor for a term of three years and removable by the Governor for cause. The director must have a doctoral degree and be familiar with higher education delivery and administration.
- An 11-member higher education council to provide advice and guidance to the director of higher education regarding various higher education issues, including academic standards, accountability, budgetary issues, operations matters, and legislative affairs.

Representative Carlson said discussions should focus on the current higher education governance structure and how it can be improved. He said discussion should include whether the proposed director of higher education is an elected or appointed position.

Representative Carlson distributed a document (Appendix D) providing higher education financial information. He said the document provides information regarding general fund appropriations for higher education and estimated biennial costs for executive positions in the University System.

In response to a question from Representative Skarphol, Representative Carlson said he believes campus presidents should have primary control over campus operations and should focus on meeting state workforce needs.

In response to a question from Representative Delmore, Representative Carlson said the current higher education system should be improved to address funding and accountability concerns. He said many citizens feel that changes are needed for higher education governance.

In response to a question from Representative Skarphol, Ms. Thomas said the proposed constitutional amendment includes broad constitutional requirements for a department of higher education. She said the Legislative Assembly would need to enact statutory provisions to address the details of the department.

In response to a question from Senator Taylor, Ms. Thomas said a five-person committee is currently used to select candidates for State Board of Higher Education positions. She said the selection committee consists of the Superintendent of Public Instruction, the Chief Justice of the Supreme Court, the president of the North Dakota Education Association, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. She said the committee selects three candidates to forward to the Governor for consideration.

Mr. Johnson presented a document (Appendix E) summarizing suggested changes to the current higher education governance structure. He expressed concern with the current status of higher education, including enrollment reporting issues, the level of tuition increases, and the amount of tuition waivers granted. He suggested a higher education governance model that includes an elected commissioner of higher education to have broad authority over public higher education institutions.

In response to a question from Representative Dosch, Mr. Johnson said a group of citizens is exploring options for an initiated measure with the proposed higher education governance changes.

In response to a question from Representative Delmore, Mr. Johnson said increasing accountability in higher education will result in greater efficiencies.

Senator Nething said the success of the University System also needs to be recognized. He said many opportunities exist for students to remain in the state following graduation from college.

Mr. Johnson said the accountability of higher education needs to be reviewed, including student completion rates and tuition waivers. He said the number of nonresident students at University System campuses also needs to be reviewed, including the number of nonresident students that remains in the state following graduation.

Representative Kelsch said electing a commissioner of higher education may cause the position to become political. She said an appointed position may be more accountable because the commissioner could be removed from office easier than if it was an elected position.

Ms. Thomas presented a memorandum entitled *State Board of Higher Education - Historical Development*. She said the State Board of Higher Education was created through an initiated measure

in 1938. She said the board currently has eight members and oversees public higher education institutions in the state. She provided an overview of the constitutional and statutory provisions affecting the board.

In response to a question from Representative Skarphol, Ms. Thomas said the Constitution of North Dakota requires the Legislative Assembly to provide adequate funding to the State Board of Higher Education to carry out its duties. She said the term "adequate funding" is not defined.

Mr. Shaft said the University System uses accountability measures to determine the success of the system in meeting the needs of the state. He said State Board of Higher Education members are accountable to the Governor through the appointment process and to the Legislative Assembly through the Senate confirmation process. He said board members are subject to the appointment and confirmation process again if they choose to seek a second term on the board.

Mr. Shaft said the State Board of Higher Education develops policies to address campus issues. He said a campus employee may choose not to comply with a board policy regardless of the type of governance structure that is in place.

In response to a question from Representative Kelsch, Mr. Shaft said it is difficult for a volunteer governing board to manage an organization as large as the University System. He said the State Board of Higher Education is reviewing the role of the chancellor in the current governance structure.

Dr. David Fuller, President, Minot State University, provided comments to the committee regarding a recent audit report of the university that included a finding addressing tuition waivers. He said the audit report recommends that the university develop policies and procedures regarding how tuition waivers are awarded. He said the university will be working to address the finding detailed in the audit report.

The committee recessed for lunch at 12:10 p.m. and reconvened at 12:45 p.m.

INTERNAL REVIEW REPORT OF INTERNATIONAL TRANSFER AGREEMENTS AT DICKINSON STATE UNIVERSITY

Mr. Bill Eggert, Director, Internal Audit and Risk Management, North Dakota University System, Bismarck, presented an overview (Appendix F) of the University System internal review report of international transfer agreements at Dickinson State University. He said the report was conducted to determine if Dickinson State University was in compliance with State Board of Higher Education policy and international agreements. He said the following special international student programs were reviewed:

- Dual-degree joint (DDJ) program - Allows Chinese students to obtain a bachelor's degree from both Dickinson State University and the student's home institution upon completion of the program.
- Top-up program - Chinese students who complete two to three years of study at their home institution may receive a college diploma from their home school and a bachelor's degree from Dickinson State University upon completion of the program.
- Disney program - A two-semester program in partnership with Chinese institutions that requires a student to take 16 credit-hours in Human Resources on the Dickinson State University campus the first semester and complete certain academic requirements while in residence at Walt Disney World during the second semester.

Mr. Eggert presented the following summary of the internal review objectives and results:

Review Objective	Review Results
1. Verify accuracy of student's course of study and credit-hours earned compared to catalog requirements	• DDJ, top-up, and Disney program students were admitted as freshman students instead of transfer students. • Some students did not meet minimum requirements for admission to Dickinson State University. • Official student documents, including transcripts, were not received from Chinese institutions. • Dickinson State University officials accepted nonstandard English proficiency test results for Chinese DDJ program students. • Transfer credits were not entered into the ConnectND system, and officials cannot verify the students completed the required general education courses. • Chinese DDJ and top-up program students did not complete enough credits to earn a degree at Dickinson State University.
2. Verify compliance with international dual-degree agreements	• Dickinson State University has not forwarded all agreements to the University System Office of Articulation and Transfer.

Review Objective	Review Results
	• Dickinson State University's articulation agreements do not follow the institution's catalog for required degree programs. • A majority of Dickinson State University's international agreements are incomplete, inaccurate, or expired. • Students in the top-up program may not have attended an accredited university in China. • Student recruiting agents in China are not performing according to the contracts between the agents and Dickinson State University.

In response to a question from Representative Skarphol, Mr. Eggert said he was instructed by the University System chancellor to begin the review of the special international student programs at Dickinson State University in December 2011.

In response to a question from Representative Skarphol, Mr. Eggert said DDJ programs should have a memorandum of understanding, an implementation plan, and an articulation agreement. He said the memorandum of understanding is a high-level document that states two institutions will work together on a program. He said the implementation plan details logistical and academic information, and the articulation agreement is used to determine what courses are transferable between the institutions and what courses must be completed by the student.

In response to a question from Representative Skarphol, Dr. Michel Hillman, Vice Chancellor for Academic and Student Affairs, North Dakota University System, Bismarck, said State Board of Higher Education admissions policies are the same for all students, including international students. Dr. Hillman said some international students at Dickinson State University were enrolled even though they did not meet admissions standards.

In response to a question from Representative Kelsch, Mr. Eggert said the enrollment and program completion irregularities at Dickinson State University were limited to the special international student programs. He said a review of other student files on campus found no problems.

In response to a question from Representative Monson, Mr. Eggert said other University System institutions have DDJ programs. He said there are no known problems with the DDJ programs at other institutions.

In response to a question from Representative Martinson, Mr. Eggert said course grading for some DDJ program students was lenient. He said all students enrolled in certain courses received a grade of "A."

Representative Heilman suggested the University System develop a program to automatically detect irregularities in course grading.

In response to a question from Representative Monson, Mr. Eggert said irregularities in the Disney program at Dickinson State University were reported by an employee of the institution.

In response to a question from Senator Flakoll, Mr. Eggert said the University System has an anonymous fraud hotline for employees to report suspected fraud.

In response to a question from Representative Kelsch, Chairman Skarphol asked the Legislative Council staff to provide the committee with information regarding Section 15-20.4-15 which relates to false academic degrees.

Dr. D. C. Coston, President, Dickinson State University, provided comments to the committee regarding the internal review report of international agreements at Dickinson State University. He said questions about the international agreements arose after a meeting with the Higher Learning Commission in December 2011. He said officials at Dickinson State University began reviewing the agreements, and assistance was requested from the University System office after irregularities were found.

Dr. Coston said Dickinson State University is taking steps to remedy the problems documented in the internal review report. He said the university is working with students enrolled in the special international student programs to obtain official transcripts from the students' home institutions. He said transcripts will first be reviewed to determine if the transcripts are legitimate and then reviewed when each course is completed by a student at the student's home institution.

In response to a question from Representative Martinson, Dr. Coston said several faculty members expressed concern with the English language proficiency of certain Chinese students. He said action has been taken to ensure that Chinese students on campus meet English language proficiency standards.

Representative Monson said it is difficult to determine the motivation for university officials to fraudulently award degrees to international students.

In response to a comment from Representative Monson regarding the authenticity of international student transcripts, Dr. Coston said Dickinson State University is using the services of a national organization to verify student transcripts received from Chinese institutions.

In response to a question from Senator Flakoll, Dr. Coston said Dickinson State University paid recruiters in China $2,000 to $2,900 for each student they recruited to attend Dickinson State University. He said the parents of Chinese students also paid the recruiters approximately $8,000 to $10,000.

In response to a question from Representative Martinson, Dr. Coston said there is no policy that prohibits the use of recruiters to enroll international students. However, he said, accreditation entities generally discourage the use of recruiters.

In response to a question from Representative Dosch, Dr. Coston said there have been several personnel changes at Dickinson State University in response to the enrollment reporting issues and review of international agreements. He said the previous university president pressured many faculty and staff members into taking certain actions which were against university policy.

In response to a question from Representative Carlson, Dr. Coston said Dickinson State University has paid international recruiters approximately $2.1 million since 2003.

Representative Carlson said the Legislative Assembly needs to know the facts about what happened at Dickinson State University in order to make informed decisions. He said Dickinson State University is a quality institution, and the problems will be corrected.

In response to a question from Senator Robinson, Dr. Coston said the Higher Learning Commission will be conducting an advisory visit to Dickinson State University in April or May 2012. He said the commission will then determine if additional actions need to be taken.

In response to a question from Senator Robinson, Mr. Gordy Smith, Performance Audit Manager, State Auditor's office, said a performance audit is being conducted at Dickinson State University. He said the audit is reviewing various financial and nonfinancial information, including scholarship programs, tuition waivers, and human resources.

Chairman Skarphol said time will be included on the next committee meeting agenda to review the performance audit report of Dickinson State University.

In response to a question from Representative Monson, Dr. Coston said Dickinson State University is reviewing options to recall the degrees that were improperly awarded to students.

Ms. Selma Sticha, Faculty Senate President, Dickinson State University, provided comments to the committee regarding issues at the institution. She said institution officials are working to increase transparency. She said many positive things are happening at the institution, and faculty members want to have an institution that students are proud to attend.

In response to a question from Representative Martinson, Ms. Sticha said some faculty members expressed concern with various issues happening at the institution. However, she said, faculty concerns were ignored by institution administrators.

Representative Martinson said even if Dickinson State University administration ignored reports of fraudulent activities, faculty and staff members could have reported the activities to the University System office or legislators.

Mr. Anthony Willer, Staff Senate President, Dickinson State University, provided comments to the committee regarding issues at the institution. He said staff members at the institution feared retaliation from the previous university administration if they reported the fraudulent activities. He said the staff members at the institution are working with the new university administration to rectify the problems.

Mr. Johnson provided comments to the committee regarding issues with the Dickinson State University special international student programs. He said the programs have raised potential national security concerns and questioned the motive of the institution to enter agreements with Chinese entities.

Mr. Stuart Savelkoul, Executive Director, North Dakota Public Employees Association, provided comments to the committee regarding issues at Dickinson State University. He said several faculty and staff members attempted to report fraudulent activities at the institution but were met with resistance from the previous institution president. He said faculty members considered having a vote of no-confidence in the previous president.

Mr. Shaft suggested committee members review the administrative law judge's recommendation on the termination of Dr. Richard McCallum, former president, Dickinson State University. Chairman Skarphol asked the Legislative Council staff to provide a copy of the recommendation to the committee.

In response to a question from Representative Carlson, Mr. Shaft said the response of the State Board of Higher Education to the issues at Dickinson State University was to terminate the employment of Dr. McCallum. He said the board is also responsible to have policies and procedures in place to prevent similar actions from occurring in the future.

Representative Martinson said a recent report indicated that University System officials asked a local television station news director to preclude its news reporter from investigating issues at Dickinson State University. Mr. Shaft said that report was not true.

Representative Martinson expressed concern that a news reporter knew of the fraudulent activities at Dickinson State University before the State Board of Higher Education did.

Mr. Seaworth said students enrolled in special international student programs at Dickinson State University generally received a partial tuition waiver. He said the amount of tuition paid by the international students was still higher than the tuition paid by resident students. He said the students also paid the university for the fee charged to the university by the recruiting agents in China.

Ms. Janice Hoffarth, Grand Forks, provided comments to the committee. She said federal regulations prohibit faculty and staff members from discussing specific student issues with each other. She said the State Board of Higher Education should be commended for taking immediate action at

Dickinson State University when fraudulent activities were discovered.

UNIVERSITY SYSTEM JOINT INFORMATION TECHNOLOGY BUILDING UPDATE

Mr. William G. Goetz, Chancellor, North Dakota University System, Bismarck, provided an update (Appendix G) on the joint University System/UND information technology building project on UND's campus. He said the proposed project includes the construction of an office building to house information technology staff and the renovation of an existing building for data center equipment. He said the project is estimated to cost $15.5 million with $12.5 million provided from a general fund appropriation and $3 million available from efficiencies and one-time information technology savings.

In response to a question from Representative Heilman, Mr. Randall Thursby, Chief Information Officer, North Dakota University System, Fargo, said funding is available for the project from information technology efficiencies resulting from the coordination of management and consolidation of operations.

In response to a question from Representative Skarphol, Mr. Thursby said the Legislative Assembly appropriates funding for the system information technology services program to the University System office. He said the State Board of Higher Education allocates a portion of the funding to institutions that perform information technology services for the University System.

Chairman Skarphol asked Mr. Thursby to provide information to the committee regarding historical information technology costs of the University System.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Representative Heilman suggested the committee receive information regarding the practices of awarding tuition waivers at each institution. He also suggested the committee receive information regarding how the State Board of Higher Education determines nonresident student tuition rates.

Senator Wardner suggested the committee receive information regarding reciprocal agreements with other states.

Representative Heilman distributed a schedule (Appendix H) detailing various University System enrollment and funding statistics.

Mr. Doug Kostecki, North Dakota Student Association, Fargo, provided comments to the committee regarding the committee's study of higher education governance. He said the State Board of Higher Education currently has a student member to provide input on issues affecting students. He said the ability of students to provide input should be included in committee discussions regarding changes to the current higher education governance structure.

The Legislative Council staff distributed the following memorandums:

- *Higher Education Governance - Comparison of Governance Types*.
- *Higher Education Accountability Measures*.

Representatives of the University System distributed information regarding tuition and fee revenue, enrollment statistics, and the *2011 Accountability Measures Report* (copies on file in the Legislative Council office).

Chairman Skarphol announced the committee is tentatively scheduled to meet on April 17-18, 2012.

No further business appearing, Chairman Skarphol adjourned the meeting at 4:00 p.m.

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Brady A. Larson
Senior Fiscal Analyst

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Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:8