

**SENATE BILL NO. 2343**

Introduced by

Senators Lee, J. Roers, Schaible

Representatives Sanford, Stemen, Swiontek

1 A BILL for an Act to create and enact a new section to chapter ~~44-04~~15-10 of the North Dakota  
2 Century Code, relating to ~~records of a public entity governing body~~the state board of higher  
3 education and the required report by the state commissioner of higher education; and to amend  
4 and reenact ~~sections~~section 15-10-17 and ~~44-04-17.1~~ of the North Dakota Century Code,  
5 relating to ~~defining a public entity governing body and~~ state board of higher education policy.

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

7 **SECTION 1. AMENDMENT.** Section 15-10-17 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **15-10-17. Specific powers and duties of the state board of higher education.**

10 The state board of higher education has all the powers and shall perform all the duties  
11 necessary to the control and management of the institutions described in this chapter. The state  
12 board of higher education shall establish a policy ensuring transparent communication between  
13 members of the board on all topics relating to the specific powers and duties under section 6 of  
14 article VIII of the Constitution of North Dakota and this section. Each member must have equal  
15 access to all current and historic information relating to the specific powers and duties under  
16 section 6 of article VIII of the Constitution of North Dakota and this section. In addition to the  
17 powers and duties specified in section 6 of article VIII of the Constitution of North Dakota, the  
18 board may:

- 19 1. a. Appoint and remove the president or other faculty head, and the professors,  
20 instructors, teachers, officers, and other employees of the several institutions  
21 under the board's control, fix the salaries for those positions within the limits of  
22 legislative appropriations; and fix the terms of office and prescribe the duties of  
23 the positions.

- 1           b. Appoint and remove the commissioner of higher education, fix the  
2           commissioner's salary within the limits of legislative appropriations, and prescribe  
3           the commissioner's duties.
- 4           c. Appoint and remove all university system office personnel, fix their salaries within  
5           the limits of legislative appropriations, fix their terms of office, and prescribe their  
6           duties.
- 7           d. The board may hold an executive session to consider the appointment or  
8           removal of the commissioner of higher education, or a president or other faculty  
9           head, professor, instructor, teacher, officer, or other employee of an institution  
10          under the board's control unless the individual involved requests the meeting be  
11          open to other individuals or the public.
- 12         2. Authorize the employment of law enforcement officers having jurisdiction on property  
13          owned or leased by the state board of higher education to enforce laws and  
14          regulations at its institutions, or as otherwise provided in this subsection.
- 15           a. A law enforcement officer employed by North Dakota state university has  
16           jurisdiction on all property owned or leased by the state board of higher education  
17           and property on and within the boundaries of the intersection of nineteenth  
18           avenue north and Dakota drive south to eighth avenue north, eighth avenue north  
19           east to tenth street north, tenth street north north to nineteenth avenue north,  
20           nineteenth avenue north west to Dakota drive.
- 21           b. A law enforcement officer employed by the university of North Dakota has  
22           jurisdiction on all property owned or leased by the state board of higher education  
23           and property on and within the boundaries of the intersection of demers avenue  
24           and north fifty-fifth street, north fifty-fifth street north to university avenue,  
25           university avenue east to north forty-second street, north forty-second street  
26           north to gateway drive, gateway drive east to north columbia road, north  
27           columbia road south to tenth avenue north, tenth avenue north east to north  
28           twenty-fifth street, north twenty-fifth street south to sixth avenue north, sixth  
29           avenue north east to north twentieth street, north twentieth street south to fifth  
30           avenue north, fifth avenue north west to north twenty-third street, north  
31           twenty-third street south to university avenue, university avenue east to north

1                   twenty-first street, north twenty-first street south to dyke avenue, dyke avenue  
2                   east to north washington street, north washington street south to demers avenue,  
3                   and demers avenue west to north fifty-fifth street. Jurisdiction under this  
4                   subdivision includes Grand Forks international airport.

5                   c. A law enforcement officer employed by the North Dakota state college of science  
6                   has jurisdiction on all property owned or leased by the state board of higher  
7                   education and property on and within the boundaries of the intersection of  
8                   seventh avenue north and eleventh street north, eleventh street north to sixteenth  
9                   avenue north, sixteenth avenue north west to fourth street north, and fourth street  
10                  north south to seventh avenue north.

11                  d. A law enforcement officer employed by Bismarck state college has jurisdiction on  
12                  all property owned or leased by the state board of higher education and property  
13                  on and within the boundaries of the area delineated by the intersections of  
14                  schafer street and canary avenue, canary avenue and edwards avenue, edwards  
15                  avenue and schaffer street, edwards avenue and ward road, ward road and  
16                  college drive, and college drive and schaffer street.

17                  e. A law enforcement officer employed by an institution under the control of the state  
18                  board of higher education who is in "fresh pursuit" may continue beyond the  
19                  jurisdictional boundaries of each institution to make an arrest, in compliance with  
20                  a warrant or without a warrant under the conditions of section 29-06-15, if  
21                  obtaining the aid of peace officers having jurisdiction beyond that limit would  
22                  cause a delay permitting escape. As used in this subdivision, "fresh pursuit" has  
23                  the same meaning as in section 29-06-07.

24                  f. The state board of higher education may enter a joint powers agreement with a  
25                  political subdivision to enable law enforcement from the political subdivision and  
26                  law enforcement from the institution to provide secondary response to each other  
27                  outside the jurisdictional boundaries provided in this subsection.

28                  g. Notwithstanding any other provision of law or joint powers agreement, any  
29                  misdemeanor or felony violation of law occurring in or on property owned or  
30                  leased by the state board of higher education or within the extraterritorial  
31                  jurisdiction must be filed in district court unless the primary law enforcement

1 officer involved is not employed by the state board of higher education. An  
2 infraction or noncriminal offense occurring in or on property owned or leased by  
3 the state board of higher education or within the extraterritorial jurisdiction may  
4 be filed in municipal court.

5 3. Set tuition and fees.

6 4. a. Establish a retirement program as an alternative to chapter 15-39.1 for university  
7 system employees subject to the following guidelines:

8 (1) Benefits under the program must be provided through annuity contracts  
9 purchased by the board but which become the property of the participants;

10 (2) The cost of the annuity contracts must be defrayed by contributions made  
11 pursuant to rules of the state board of higher education;

12 (3) Eligible employees appointed before July 1, 1973, shall participate in the  
13 alternate retirement program only by their individual election. When the  
14 electing eligible employee is a member of the teachers' fund for retirement,  
15 the employee's assessments and employer's contributions together with  
16 interest credited at the current rate for one-year certificates then being paid  
17 by the Bank of North Dakota must be transferred to the employee's account  
18 in the alternate program. The election must be made before July 1, 1980,  
19 and shall relinquish all rights the eligible employee or the employee's  
20 beneficiary may have to benefits provided in chapters 15-39 and 15-39.2;  
21 and

22 (4) Employees of the university system who are members of the public  
23 employees retirement system under chapter 54-52 or 54-52.6 and who  
24 become entitled to participate in the alternate retirement program are  
25 entitled to a special annuity purchase in the alternate retirement program in  
26 accordance with this subdivision. An eligible employee who consents to  
27 have that employee's contribution included is entitled to have that  
28 employee's contribution and employer's contribution, with interest, in the  
29 public employees retirement system fund, used by the retirement board of  
30 the public employees retirement system to purchase for that employee an  
31 annuity in the alternate retirement program in lieu of any other rights under

1                   the public employees retirement fund. However, before the employer's  
2                   contribution may be used for an annuity purchase, the employee's  
3                   combined years of service with the public employees retirement system and  
4                   the alternate retirement program must equal or exceed the years of service  
5                   necessary to be eligible for retirement benefits under the public employees  
6                   retirement system. An employee who transferred from the public employees  
7                   retirement system before March 30, 1987, and who received a refund of that  
8                   employee's contribution is entitled to have the employer's contribution, with  
9                   interest, used to purchase an annuity even if that employee did not  
10                  purchase an annuity in the alternate employee program with the employee's  
11                  contribution. If an employee makes the election allowed under this  
12                  subdivision, that employee relinquishes all rights the employee or any of the  
13                  employee's beneficiaries may have had to benefits provided under chapters  
14                  54-52 and 54-52.6.

15                  b.    Provide for the administration of the alternate retirement program and establish  
16                  rules for the program consistent with this subsection. This subsection does not  
17                  derogate any existing retirement programs approved by the board.

18                  5.    Determine policy for purchasing by the university system in coordination with the office  
19                  of management and budget as provided by law.

20                  6.    Establish by rule an early retirement program for faculty and officers of the board as  
21                  defined by the board. The limitations on severance pay pursuant to section 54-14-04.3  
22                  and on requiring the employee to pay contributions to continue on the state uniform  
23                  group insurance program upon retirement or upon termination of employment  
24                  pursuant to section 54-52.1-03 do not apply to the early retirement program.

25                  7.    Adopt rules to protect the confidentiality of student records, medical records, and,  
26                  consistent with section 44-04-18.4, trade secret, proprietary, commercial, and financial  
27                  information.

28                  8.    Authorize and encourage university system entities to enter into partnerships, limited  
29                  liability companies, joint ventures, or other contractual arrangements with private  
30                  business and industry for the purpose of business or industrial development or  
31                  fostering basic and applied research or technology transfer.

1           9.    Adopt rules promoting research, encouraging development of intellectual property and  
2           other inventions and discoveries by university system employees, and protecting and  
3           marketing the inventions and discoveries. The rules must govern ownership or transfer  
4           of ownership rights and distribution of income that may be derived from an invention or  
5           discovery resulting from research or employment in the university system. The rules  
6           may provide for transfer of ownership rights or distribution of income to a private,  
7           nonprofit entity created for the support of the university system or one of its  
8           institutions.

9    ~~— **SECTION 2. AMENDMENT.** Section 44-04-17.1 of the North Dakota Century Code is~~  
10 ~~amended and reenacted as follows:~~

11 ~~— **44-04-17.1. Definitions.**~~

12 ~~— As used in this section through section 44-04-32:~~

13 ~~— 1. "Closed meeting" means all or part of an exempt meeting that a public entity in its~~  
14 ~~discretion has not opened to the public, although any person necessary to carry out or~~  
15 ~~further the purposes of a closed meeting may be admitted.~~

16 ~~— 2. "Closed record" means all or part of an exempt record that a public entity in its~~  
17 ~~discretion has not opened to the public.~~

18 ~~— 3. "Confidential meeting" or "confidential record" means all or part of a record or meeting~~  
19 ~~that is either expressly declared confidential or is prohibited from being open to the~~  
20 ~~public.~~

21 ~~— 4. "Executive session" means all or part of a meeting that is closed or confidential.~~

22 ~~— 5. "Exempt meeting" or "exempt record" means all or part of a record or meeting that is~~  
23 ~~neither required by law to be open to the public, nor is confidential, but may be open in~~  
24 ~~the discretion of the public entity.~~

25 ~~— 6. "Governing body" means the multimember body responsible for making a collective~~  
26 ~~decision on behalf of a public entity. "Governing body" also includes any group of~~  
27 ~~persons, regardless of membership, acting collectively pursuant to authority delegated~~  
28 ~~to that group by the governing body.~~

29 ~~— 7. "Information technology resources" includes data processing hardware and software~~  
30 ~~or technology support services necessary to facilitate a response to a request for~~  
31 ~~electronic records.~~

1 ~~8. "Law" includes federal statutes, applicable federal regulations, and state statutes.~~

2 ~~9. a. "Meeting" means a formal or informal gathering or a work session, whether in-~~  
3 ~~person or through any electronic means, of:~~

4 ~~(1) A quorum of the members of the governing body of a public entity regarding~~  
5 ~~public business; or~~

6 ~~(2) Less than a quorum of the members of the governing body of a public entity~~  
7 ~~regarding public business, if the members attending one or more of the~~  
8 ~~smaller gatherings collectively constitute a quorum and if the members hold~~  
9 ~~the gathering for the purpose of avoiding the requirements of section-~~  
10 ~~44-04-19.~~

11 ~~b. "Meeting" does not include:~~

12 ~~(1) A chance or social gathering at which public business is not considered;~~

13 ~~(2) Emergency operations during a disaster or emergency declared under~~  
14 ~~section 37-17.1-10 or an equivalent ordinance if a quorum of the members-~~  
15 ~~of the governing body are present but are not discussing public business as~~  
16 ~~the full governing body or as a task force or working group;~~

17 ~~(3) The attendance of members of a governing body at meetings of any~~  
18 ~~national, regional, or state association to which the public entity, the~~  
19 ~~governing body, or individual members belong;~~

20 ~~(4) Training seminars at which no other public business is considered or~~  
21 ~~discussed; and~~

22 ~~(5) Administration of examinations by a regulatory board when no other public~~  
23 ~~business is considered or discussed.~~

24 ~~c. Notwithstanding subdivisions a and b, as applied to the legislative assembly,~~  
25 ~~"meeting" means any gathering subject to section 14 of article IV of the~~  
26 ~~Constitution of North Dakota.~~

27 ~~10. "Organization or agency supported in whole or in part by public funds" means an~~  
28 ~~organization or agency in any form which has received public funds exceeding the fair~~  
29 ~~market value of any goods or services given in exchange for the public funds, whether~~  
30 ~~through grants, membership dues, fees, or any other payment. An exchange must be~~  
31 ~~conclusively presumed to be for fair market value, and does not constitute support by~~

1           ~~public funds, when an organization or agency receives a benefit under any authorized~~  
2           ~~economic development program.~~

3     ~~11. "Political subdivision" includes any county or city, regardless of the adoption of any~~  
4           ~~home rule charter, and any airport authority, township, school district, park district,~~  
5           ~~rural fire protection district, water resource district, solid waste management authority,~~  
6           ~~rural ambulance service district, irrigation district, hospital district, soil conservation~~  
7           ~~district, recreation service district, railroad authority, or district health unit.~~

8     ~~12. "Public business" means all matters that relate or may foreseeably relate in any way~~  
9           ~~to:~~

10     ~~a. The performance of the public entity's governmental functions, including any~~  
11           ~~matter over which the public entity has supervision, control, jurisdiction, or~~  
12           ~~advisory power; or~~

13     ~~b. The public entity's use of public funds.~~

14     ~~13. "Public entity" means all:~~

15     ~~a. Public or governmental bodies, boards, bureaus, commissions, or agencies of~~  
16           ~~the state, including any entity created or recognized by the Constitution of North~~  
17           ~~Dakota, state statute, or executive order of the governor or any task force or~~  
18           ~~working group created by the individual in charge of a state agency or institution,~~  
19           ~~to exercise public authority or perform a governmental function;~~

20     ~~b. Public or governmental bodies, boards, bureaus, commissions, or agencies of~~  
21           ~~any political subdivision of the state and any entity created or recognized by the~~  
22           ~~Constitution of North Dakota, state statute, executive order of the governor,~~  
23           ~~resolution, ordinance, rule, bylaw, or executive order of the chief executive~~  
24           ~~authority of a political subdivision of the state to exercise public authority or~~  
25           ~~perform a governmental function; and~~

26     ~~c. Organizations or agencies supported in whole or in part by public funds, or~~  
27           ~~expending public funds.~~

28     ~~14. "Public entity governing body" means a body of members, including a board, which is~~  
29           ~~granted the administration and control of a public entity, including a state institution of~~  
30           ~~higher education.~~



1 ~~15.~~ "Public funds" means cash and other assets with more than minimal value received  
2 from the state or any political subdivision of the state.

3 ~~15.16.~~ "Quorum" means one-half or more of the members of the governing body, or any  
4 smaller number if sufficient for a governing body to transact business on behalf of the  
5 public entity.

6 ~~16.17.~~ "Record" means recorded information of any kind, regardless of the physical form or  
7 characteristic by which the information is stored, recorded, or reproduced, which is in  
8 the possession or custody of a public entity or its agent and which has been received  
9 or prepared for use in connection with public business or contains information relating  
10 to public business. "Record" does not include unrecorded thought processes or mental  
11 impressions, but does include preliminary drafts and working papers. "Record" also  
12 does not include records in the possession of a court of this state.

13 ~~17.18.~~ "Task force or working group" means a group of individuals who have been formally  
14 appointed and delegated to meet as a group to assist, advise, or act on behalf of the  
15 individual in charge of a state agency or institution when a majority of the members of  
16 the group are not employees of the agency or institution.

17 ~~SECTION 3. A new section to chapter 44-04 of the North Dakota Century Code is created  
18 and enacted as follows:~~

19 ~~**Records of a public entity governing body.**~~

20 ~~A public entity or its governing body may not deny a member of the governing body access  
21 to a closed record, exempt record, confidential record, or other record, including a meeting  
22 record, whether written or recorded, which was created by or for the current or a prior governing  
23 body in the course of conducting the business of the public entity.~~

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

26 **State commissioner of higher education - Board member information access - Report**  
27 **to interim higher education committee.**

28 The state commissioner of higher education shall provide a report to the interim higher  
29 education committee on state board of higher education policies regarding communications  
30 between board members and board member access to current and historic board information.