

1999 HOUSE APPROPRIATIONS

HB 1165

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1165

House Appropriations Committee
Education and Environment Division

Conference Committee

Hearing Date January 21, 1999

Tape Number	Side A	Side B	Meter #
1	x		0-29.3
Committee Clerk Signature <i>Casey Davis</i>			

Minutes:

CHAIRWOMAN WENTZ called the hearing for HB 1165 to order with all members present. HB 1165 is a bill for an act to amend and reenact sections 15-10-12 of the North Dakota Century Code, relating to deposit with the state treasurer of public funds received by board of higher education institutions; and to provide a continuing appropriation.

1A: 0.7 LAURA GLATT, Vice Chancellor for Administrative Affairs for the North Dakota University System, testified on behalf of NDUS in favor of the bill. (See attached testimony.)

1A: 6.3 CHAIRWOMAN WENTZ for an explanation of the case Billey -vs- North Dakota Stockmen's Association and the ruling affects the NDUS. Ms. Glatt said that the case concerned fees that are collected as brand filing fees. The ND Supreme Court ruled that all funds other than private gifts have to be deposited with the State Treasury. This ruling affected NDUS.

1A: 16.6 REP. AARSVOLD asked if additional insurance would be necessary with the advent of the NDUS request to keep funds locally. Ms. Glatt said no. She reexplained the term "locally" saying that money would not actually leave the Bank of ND, but could be held in separate accounts for each college.

1A: 22.3 REP. CARLSON said that in reviewing a budget, the committee would look for accountability and efficiency, and asked what efficiencies would be gained if the bill were passed. Ms. Glatt said that much time and manual labor would be saved. When tuition increases and there is additional income, colleges must go to the emergency commission in order to spend the money. Administratively there are many complexities due to timing and the sequence of events.

1A: 25.8 REP. LLOYD asked what the impact would be on auditors, in terms of dissecting solid funds to track revenue. Ms. Glatt said that auditors often find inconsistencies among campuses,

Page 2

House Appropriations, EE Div

January 21, 1999, HB 1165

and spend much time considering individual expenses. If the bill were passed, it would eliminate some of the auditors' work by setting up two funds, including one for general funds specified by the legislature, and the other for everything else. All funds would still be individually reported, but would not have to be dissected by the auditors.

29.3 CHAIRWOMAN WENTZ adjourned the hearing on HB 1165.

General Discussion

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Date February 11, 1999			
Tape Number	Side A	B Side	Meter #
1	x	-	23.2-30.0
Committee Clerk Signature <i>Paulette Cussias</i>			

Minutes:

A Bill for an Act to amend and reenact section 12-10-12 of the North Dakota Century Code, relating to deposit with the state treasurer of public funds received by board of higher education institutions; and to provide a continuing appropriation.

23.2 Chairman Dalrymple opened committee work HB 1165.

24.2 Chairman Dalrymple explains amendment 98141.0101.

27.3 Rep. Byerly moves to pass the amendment, 2nd by Rep. Monson. The motion carries.

28.9 Rep. Carlson moves for a do pass on HB 1165, 2nd by Rep Boehm. The vote was 20 yes, 0 no, 0 absent. Rep. Boehm will carry the bill to the house floor.

FISCAL NOTE

(Return original and 10 copies)

Resolution No.: HB 1165 Amendment to: _____

Requested by Legislative Council Date of Request: 1-4-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative:

None anticipated. Although the mechanics of the process needed to deposit all funds listed with the State Treasurer have not been defined yet. Further implementation discussions may identify costs not obvious at the present time.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						

3. What, if any, is the effect of this measure on the budget for your agency or department:

a. For rest of 1997-99 biennium: None
(Indicate the portion of this amount included in the 1999-2001 executive budget:)

b. For the 1999-2001 biennium: None
(Indicate the portion of this amount included in the 1999-2001 executive budget:)

c. For the 2001-03 biennium: None

4. County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

Signed: *Laura Glatt*

Typed Name: Laura Glatt

Department: North Dakota University System

Phone Number: 328-4116

Date Prepared: 1-4-99

Date: 2/11/99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1165

House Appropriations Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number . 0101

Action Taken Do Pass

Motion Made By Byerly Seconded By Monson

Representatives	Yes	No	Representatives	Yes	No
Chairman Dalrymple			Nichols		
Vice-Chairman Byerly			Poolman		
Aarsvold			Svedjan		
Bernstein			Timm		
Boehm			Tollefson		
Carlson			Wentz		
Carlisle					
Delzer					
Gulleson					
Hoffner					
Huether					
Kerzman					
Lloyd					
Monson					

Total (Yes) 18 No 1

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/11/99
 Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1165

House Appropriations Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Carlson Seconded By Boehm

Representatives	Yes	No	Representatives	Yes	No
Chairman Dalrymple	X		Nichols	X	
Vice-Chairman Byerly	X		Poolman	X	
Aarsvold	X		Svedjan	X	
Bernstein	X		Timm	X	
Boehm	X		Tollefson	X	
Carlson	X		Wentz	X	
Carlisle	X				
Delzer	X				
Gulleson	X				
Hoffner	X				
Huether	X				
Kerzman	X				
Lloyd	X				
Monson	X				

Total (Yes) 20 No 0

Absent 0

Floor Assignment Boehm

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1165: Appropriations Committee (Rep. Dalrymple, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (20 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1165 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "public"

Page 1, line 3, remove "; and to provide a continuing appropriation"

Page 1, line 9, remove "1."

Page 1, line 15, remove "2."

Page 1, line 17, remove the overstrike over "~~and all institutional income from tuition collections must be placed in the~~"

Page 1, line 18, remove the overstrike over "~~special fund for the use of the institution for which the money was raised~~"

Page 1, line 23, remove the overstrike over "~~Moneys in the special revenue~~"

Page 1, line 24, remove the overstrike over "~~fund are subject to legislative appropriations.~~" and remove "public"

Page 2, line 2, remove "tuition."

Page 2, line 5, remove "public"

Page 2, remove line 8

Page 2, line 9, remove "appropriated, subject to board of higher education approval." and remove "fund"

Page 2, line 10, remove the overstrike over "~~of revenue and expenditures of the other funds by source of funds~~"

Page 2, line 12, remove the overstrike over "~~special revenue fund and~~"

Page 2, line 14, remove "3."

Page 2, line 21, remove "4."

Renumber accordingly

1999 SENATE APPROPRIATIONS

HB 1165

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1165

Senate Appropriations Committee

Conference Committee

Hearing Date March 9, 1999

Tape Number	Side A	Side B	Meter #
2		X	100-1887
3/30/99 1	X		4485-4745
Committee Clerk Signature <i>Kathryn C. Kottelrock</i>			

Minutes:

SENATOR NETHING: Opened the hearing on HB1165; A BILL FOR AN ACT TO AMEND AND REENACT SECTION 15-10-12 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO DEPOSIT WITH THE STATE TREASURER OF FUNDS RECEIVED BY BOARD OF HIGHER EDUCATION INSTITUTIONS.

LARRY ISSAK: Chancellor of North Dakota State University System (tape 2, side A, meter 111-186). To us this is an important bill. It goes to the issue of future flexibility that we've talked about many times with this committee and you've been very supportive. The bill is something the Board has as a priority and felt that it should be introduced. The Governor had included language in HB1003 to essentially do what the statutory revisions in this bill would provide as introduced. We would like it amended back to what it was introduced, along those lines and Laura will explain it to you.

LAURA GLATT: Vice Chancellor for Administrative Affairs for the North Dakota University System (testimony attached, tape 2, side A, meter 205-650).

SENATOR SOLBERG: Did the House discuss why they were changing it?

LAURA GLATT: No, I'm not aware of their discussion.

SENATOR ANDRIST: Would this mean, if you have a request to remodel or add an addition to a building that you could spend it without an appropriation?

LAURA GLATT: With regard to construction issues, there are other statutes. In fact there is a bill before you this session that places even tighter control on the Boards authority to engage in construction or renovation of facilities with either state appropriated or donated funds. Those

statutes generally require us either to come back to the Legislature or the Budget section to get approval before we can spend those funds. Those statutes are unique to the construction issues on facilities.

SENATOR ANDRIST: Would they cover major repair then as well?

LAURA GLATT: In HB1398, the bill generally states; if the Legislature has specifically identified as part of the appropriation, a project, whether it be new construction or renovation or major repair, and have identified a specific project with a specific appropriation amount, the Board cannot exceed that amount without coming back to the Budget section in the Legislature. In those cases where the Legislature has set a project with an amount, we can't deviate from that without further approval. Each institution as you know, has an ordinary capital improvement line item as part of their appropriation. That money is used for ordinary repairs, patching the roof, replacing and etc., you don't specifically identify projects that we have to do from the line item. You give us an amount and you say you decide where your highest priority in terms of repairs are, in ordinary repair. The campuses make that decision. Certainly that's unique and different then the prior example.

SENATOR ANDRIST: If you collect \$20,000 in tuition money and the needs you kind of had in mind changes, can you use that to fix the roof?

LAURA GLATT: With regards to tuition income, if we collect more tuition income than what the Legislature has appropriated as part of our estimated income line item, we can spend up to 3% of the excess under the current biennial appropriation. Anything beyond that, we have to come back to the Emergency Commission in the budget section. That would change under the amendment we're offering here. There is two pieces; one deals with the Billey court case and making sure that all of our moneys run through the State Treasurers office. The other is we're suggesting that tuition income be taken out of the estimated line item in the appropriation and either be generally appropriated or specifically appropriated along with all of our other funds. If you recall, the bill you have before you know, has an estimated income line item and a local fund appropriation. Both of those are revenues, they aren't State General Fund resources. What we're suggesting, rather than appropriating the income and revenue in two different line items, you take the estimated income out of the bill and you merge it altogether in that local fund appropriation. That is one way to do it. The other way would be not to appropriate any of those funds and just provide the broad appropriation language that your have in the past.

SENATOR SOLBERG: If this is due to the fact of the Billey suit and you said tuition is not General Fund money, and you're saying that should not have to be that. According to that lawsuit, there was no General Funds money whatsoever in that lawsuit. It was strictly an enabling Legislating on a few for service type situations and this would be the same?

LAURA GLATT: There is two issues we are dealing with. The first is to comply with the Billey court case. We have to deposit all of our revenue, regardless of the source, with the State Treasurer. We don't have a problem with that. It does create some real processing problems we need to deal with but, we can certainly comply with that and make it happen. That's the bill you

have before you, the Engrossed Bill, and we're supportive of that. The other issue is the amendment we're seeking and that really has nothing to do with the Billey court case. It's really another issue we're pursuing and really the bottom line of the issue is that we're asking you to no longer specifically appropriate tuition income as part of the estimated income line item. Either appropriate all income together in one lump sum or to not appropriate any of the income. Right now we end up with income appropriated several different ways and it gets extremely difficult from a pragmatic standpoint, either from accounting or budgeting or auditing, trying to track all those sources of appropriation.

SENATOR NETHING: What does this do with the appropriation of local funds?

LAURA GLATT: What we told the House, we prefer to have it all one way or the other. Either appropriate all of the income and if you do so, appropriate it all together in one line item or don't appropriate any of it. From an administrative standpoint, that makes it easiest for everybody. Were close to the extent that, HB1003 before you now, does appropriate all of our local funds not just some of them but, we still have the situation where the tuition income is still appropriated separate from the local fund. We'd like you to merge those two and appropriate all the income, whether it's tuition, grants, contracts or student fees, appropriate that all in one line item. The least confusing way to do this is, appropriate it after the General Fund line item. That's what HB1165 does with our amendment. We would see this as beginning and taking effect in the 2001/2003 biennium.

SENATOR ST. AUBYN: In the original bill, does this appropriate all those dollars or doesn't?

LAURA GLATT: In the original bill it would have treated tuition income like all of our other funds. Our preference would be in the way the bill was written, not to specifically appropriate any of them. The House was certainly headed in a different direction and that was to appropriate more and not less funds. We said we can live with it either way. Our preference is not to specifically appropriate any of the income, including tuition. If you choose to appropriate the income, then we would ask you to merge those line items.

SENATOR ST. AUBYN: Related to that, if all funds are appropriated, I'm assuming there is going to be an inflation in the numbers to cover, for example, research grants that you've applied for. You have no idea what's going to come in or what people are going to submit for research in the next grants in the next two years. Does that mean you're going to put a much larger amount just to accommodate all that?

LAURA GLATT: When the House Appropriations asked us to go back and provide them with an estimate of all of our local funds including the grants and contract, which in the current biennium are not specifically appropriated. We asked the campuses to prepare an estimate and they had the same response, we don't even know what our researchers are going to apply for over the next two year period. Our response was, you have to take your best stab. Whether or not, as you suggested they over inflated that number or not, I don't know. It's such a guess at this point, that in the end, it could look over inflated. It's merely because we're trying to make our best estimate of the kinds of dollars we'll applying for. The other large piece of that is, we don't

know what the Federal Government's going to do to their budget in the two years. If they cut a major research program substantially that has a large impact on us or conversely if they add more money that we don't anticipate now. It is a fairly rough guess for us.

LARRY ISSAK: Thank you Laura. What this bill does, it would treat tuition income the same way you treat room and board, student activity fees, grants and contracts and all of those other incomes. Up to this time, you've always treated tuition income differently, you've appropriated by line item, salaries, operating and equipment. It's part of those line items and you've said all that other income, you spend it, or you've ask us for a guestimate of what all that other income is. We'd like to move tuition into the same category they way you handle it, the way we handle it and the way we handle room and board and etc. The difference to you is, in upcoming sessions, you wouldn't see a schedule that would say what the tuition rates are going to be. In effect, the Board of Higher Education would be determining tuition rates, you wouldn't be appropriating the income that we had to achieve with certain rates. We would be setting that either based upon the Legislative appropriation, inflation and other factors. The second thing is, all funds are accounted for, they are all part of the audit reports. HB1165 even says that we have to give you a reporting of all these other funds to the Appropriations Committees. We're still trying to be accountable, but we're trying to streamline some of the management of these dollars.

SENATOR NETHING: This bill will be assigned to subcommittee; Senator St. Aubyn, Senator Bowman, Senator Solberg, Senator Krauter, Senator Tomac.

SENATOR NETHING: Closed the hearing on HB1165.

=====
3/30/99 Tape 1, Side A, Meter 4485-4775

SENATOR NETHING: Reopened the hearing on HB1165.

SENATOR ST. AUBYN: Explained the bill.

SENATOR NETHING: Called for the motion on HB1165.

SENATOR ST. AUBYN: Motioned a Do Pass on HB1165.

SENATOR BOWMAN: Seconded the motion.

ROLL CALL: 13 YEAS; 0 NAYS;; 0 ABSENT & NOT VOTING.

The motion of Do Pass carried on HB1165.

CARRIER: SENATOR KRAUTER

SENATOR NETHING: Closed the hearing on HB1165.

Date: 3-30-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Engrossed HB1165

Senate APPROPRIATIONS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken NO PASS

Motion Made By Senator St. Aubyn Seconded By Senator BOWMAN

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas	✓				
Senator Tallackson					
Senator Tomac	✓				
Senator Robinson	✓				
Senator Krauter	✓				
Senator St. Aubyn	✓				
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Senator KRAUTER

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 30, 1999 10:48 a.m.

Module No: SR-57-5964
Carrier: Krauter
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1165, as engrossed: Appropriations Committee (Sen. Nething, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1165 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1165

NORTH DAKOTA UNIVERSITY SYSTEM
HB1165

Chair and Members of the Committee:

I am Laura Glatt, Vice Chancellor for Administrative Affairs for the NDUS. I am here today in support of HB1165. The bill makes the changes required to ensure that NDCC section 15-10-12 is consistent with the state constitution. It also would allow for the implementation of the recommendations of the Bush panel and workforce training task force.

In a recent case entitled *Billey v. North Dakota Stockmen's Association*, the ND supreme court reiterated that pursuant to article X, section 12 of the state constitution, all public funds must be deposited with the state treasurer. At line 24 at the bottom of page 1, and lines 5, 6, and 7 on page 2, language is added to clearly state that all public funds received by board of higher education institutions must be deposited with the state treasurer. New language is added providing that the state treasurer shall then transfer the funds to local institution accounts at the Bank of North Dakota so that the campuses have ready access to these funds to carry on with day to day operations and meet continuing obligations as they do today.

These funds to be deposited with the state treasurer include room and board fees, other student fees, grants and contracts revenue, auxiliary enterprise income and other funds. Tuition income would be included with collections of other student fees and deposited with the State Treasurer and transferred to institution local accounts under the proposed amendments. The proposed handling of the tuition income is a change from current practice. Currently, tuition income is collected and remitted through the State Treasurer's Office, but it is drawn down by the institution's through transactions processed through the state-wide accounting system. Tuition income is not transferred to the institution's accounts at the Bank of North Dakota along with the other student fees, grant and contract revenue and other revenues. This change is intended to provide institutions with necessary flexibility to respond to workforce training and other changing needs. Permitting institutions to retain tuition income with other student fees is consistent with the practice in 32 other states. This is also consistent with the Bush panel recommendations which state "Allow institutions to keep funds acquired from non-state sources and not subject these funds to the appropriation approval process; they should be given every incentive to broaden their revenue base (tuition and fees, federal funds and all non-state revenues)." The Workforce Training Taskforce also recommended in their report that ND needs to explore ways of creating a culture which will foster and support entrepreneurial institutions. The current model provides a disincentive for innovative approaches to offering programs since tuition collections are treated as an offset to general fund appropriations.

Additionally, an audit report that will be issued later this month raises the issue of the complexity and time consuming process for both the campuses and the State Auditor's Office in tracking, reporting and auditing the several categories of funds that currently exist for appropriation purposes. The three categories include: (1.) tuition income, land interest and other minor miscellaneous income which is specifically appropriated as part of the appropriation; (2.) income including indirect cost recovery, certain student fees, continuing education fees, certain interest income (sometimes referred to as local funds). These funds were specifically

appropriated in 1997 for the first time. The 1999-01 executive budget does not include a specific appropriation of these funds; (3.) grants and contracts, housing and food service revenues, bookstore, athletic revenues, bequests, certain student fees and interest income. These funds have never been specifically appropriated, but rather are appropriated by the general appropriation authority as follows: " Any funds received by the board of higher education and the entities of the North Dakota university system pursuant to federal acts, private grants, and other sources not deposited in the operating funds in the state treasury are hereby appropriated for the period July 1, 1999, and ending June 30, 2001." (HB1003 1999)

It is the tracking and reporting associated with these three categories of funds that is complex and time-consuming since the separation and reporting of these various revenues is a manual process requiring extensive review and categorization. However, these funds would continue to be reported as part of the financial statements for the NDUS, which are audited by the State Auditor's Office.

The rapid increase in distance education, workforce training and continuing education offerings also complicates the administrative complexity of accounting and budgeting for these funds separately. For example, a student could be taking a traditional on-campus course, and simultaneously taking a course at a distance, and a course offered through the continuing education division. As a result, the student could be assessed three different tuition rates and the revenues from these courses would need to be reported and tracked in two, if not three, different ways. It will be necessary for the Board to review these issues and have the flexibility to adjust rates, if necessary, to address issues of cost of delivery and fairness to students. Campuses also need to have the flexibility to set revenues and profits as necessary to be able to quickly respond to students and business and industry needs.

At lines 8 and 9 on page 2, a new sentence containing continuing appropriation language is added. This is required to permit institutions the ability to continue to use room and board and other student fees, auxiliary enterprise revenue, grants and contracts income, etc., to meet continuing obligations. This language is consistent with continuing appropriation language approved by the ND supreme court in the 1988 case entitled *Gange v. Clerk of Burleigh County District Court*. In that case, the court held that a continuing appropriation statute does not violate constitutional language requiring that the legislature appropriate all public funds. The court noted that a continuing appropriation is a valid appropriation made by the legislature, and that the appropriation does not unconstitutionally bind future legislatures because the appropriation continues only if future legislatures choose not to repeal or modify it. Currently, this continuing appropriation language is included in the biennial appropriation bills for the University System and agricultural entities of the System.

We ask your favorable support of HB1165. Thank you.

NORTH DAKOTA UNIVERSITY SYSTEM Engrossed HB1165 Testimony

Chair and Members of the Committee:

I am Laura Glatt, Vice Chancellor for Administrative Affairs for the NDUS. I am here today in support of HB1165. The bill makes the changes required to ensure that NDCC section 15-10-12 is consistent with the state constitution..

In a recent case entitled *Billey v. North Dakota Stockmen's Association*, the ND supreme court reiterated that pursuant to article X, section 12 of the state constitution, all public funds must be deposited with the state treasurer. Engrossed HB1165 adds language to clearly state that all public funds received by board of higher education institutions must be deposited with the state treasurer. New language is added providing that the state treasurer shall then transfer the funds to local institution accounts at the Bank of North Dakota so that the campuses have ready access to these funds to carry on with day to day operations and meet continuing obligations as they do today.

We would ask that the current bill be amended to restore it back to the original version as introduced by the State Board of Higher Education. I have attached a set of amendments that include the necessary changes.

The amendments would allow the NDUS to include tuition income with collections of other student fees and income, including room and board fees, grants and contract revenues and other funds. These funds would all be deposited with the State Treasurer and transferred to institution local accounts at the Bank of ND under the proposed amendments. The proposed handling of the tuition income is a change from current practice. Currently, tuition income is collected and remitted through the State Treasurer's Office, but it is drawn down by the institutions through transactions processed under the state-wide accounting system. Tuition income is not transferred to the institution's accounts at the Bank of North Dakota along with the other student fees, grant and contract revenue and other revenues. This change is intended to provide institutions with necessary flexibility to respond to workforce training and other changing needs. Permitting institutions to retain tuition income with other student fees is consistent with the practice in 32 other states. This is also consistent with the Bush panel recommendations which state "Allow institutions to keep funds acquired from non-state sources and not subject these funds to the appropriation approval process; they should be given every incentive to broaden their revenue base (tuition and fees, federal funds and all non-state revenues)." The Workforce Training Taskforce also recommended in their report that ND needs to explore ways of creating a culture which will foster and support entrepreneurial institutions. The current model provides a disincentive for innovative approaches to offering programs since tuition collections are treated as an offset to general fund appropriations.

Additionally, an audit report recently released raises the issue of the complexity and time consuming process for both the campuses and the State Auditor's Office in tracking, reporting and auditing the several categories of funds that currently exist for appropriation purposes. It would be our desire that the legislature specifically appropriate all general fund resources and

more generally appropriate all income and other revenues. This can be done one of two ways. Appropriate all income, including tuition, in a lump sum after the general fund appropriation in the appropriation bill or by using general appropriation language as has been done in recent years as follows: " Any funds received by the board of higher education and the entities of the North Dakota university system pursuant to federal acts, private grants, and other sources not deposited in the operating funds in the state treasury are hereby appropriated for the period July 1, 1999, and ending June 30, 2001." (HB1003 1999)

The rapid increase in distance education, workforce training and continuing education offerings also complicates the administrative complexity of accounting and budgeting for these funds separately. For example, a student could be taking a traditional on-campus course, and simultaneously taking a course at a distance, and a course offered through the continuing education division. As a result, the student could be assessed three different tuition rates and the revenues from these courses may be budgeted and reported in two different ways. It will be necessary for the Board to review these issues and have the flexibility to adjust rates, if necessary, to address issues of cost of delivery and fairness to students. Campuses also need to have the flexibility to set revenues and profits as necessary to be able to quickly respond to students and business and industry needs.

The amendment contains continuing appropriation language for those funds in the institutions account at the Bank of North Dakota. This is required to give the institutions the ability to continue to use room and board and other student fees, auxiliary enterprise revenue, grants and contracts income, etc., to meet continuing obligations if these source of funds are not specifically appropriated in the NDUS appropriation bill. Engrossed HB1003 currently includes the specific appropriation of all non-state general fund sources for the NDUS. This continuing appropriation language is consistent with continuing appropriation language approved by the ND supreme court in the 1988 case entitled Gange v. Clerk of Burleigh County District Court. In that case, the court held that a continuing appropriation statute does not violate constitutional language requiring that the legislature appropriate all public funds. The court noted that a continuing appropriation is a valid appropriation made by the legislature, and that the appropriation does not unconstitutionally bind future legislatures because the appropriation continues only if future legislatures choose not to repeal or modify it.

We ask your favorable support of Engrossed HB1165 with the suggested amendments. Thank you.

North Dakota University System
Proposed Amendments to Engrossed HB1165

Page 1, line 14, remove “and all”

Page 1, remove line 15

Page 1, line 16, remove “institution for which the money was raised”

Page 1, line 20, remove “Moneys in the special revenue fund”

Page 1, line 21, remove “are subject to legislative appropriations.”

Page 1, line 21, after “other” insert “public”

Page 1, line 23, after “recoveries,” insert “tuition,”

Page 2, line 1, after “other” insert “public”

Page 2, line 3, after the period insert “The funds in the institution accounts at the Bank of North Dakota are hereby appropriated, subject to the board of higher education approval.”

Page 2, line 3, after “Biennial” insert “fund” and remove the second “of”

Page 2, line 4, remove “revenue and expenditures of the other funds by source of funds”

Page 2, line 5, remove “special revenue fund and state”

Renumber accordingly