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2007 HOUSE CONSTITUTIONAL REVISION

HCR 3019

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3019

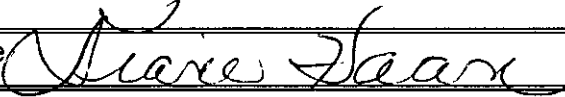
House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 2-21-08

Recorder Job Number: 3616

Committee Clerk Signature



Minutes:

**Chairman Koppelman:** Opened the Hearing on HCR 3019. **Rep Skarphol:**

**Rep Skarphol, District 2:** Introduced the bill ... see attached testimony.

**Rep Dahl:** On page 1, Line 17, can you clarify your vision of how you see the change in the duties of the chancellor and the board?

**Rep Skarphol:** There will be some amendments that will be requested by Rep (*can't understand*) and I'm not necessarily in disagreement with what he wants to do. In answer to your question, I believe the higher education system needs a CEO and I believe that it's the role of the State Board of Higher Education to provide that CEO with their vision of what they believe the ND Higher Education system should do with regard to educating students. He should be the administrator and given the flexibility to make the decisions that he deems appropriate. I believe the board will give him significant guidance, but not to be managing the day to day affairs.

**Rep Dahl:** So under this would the chancellor have the authority to hire and fire?

**Rep Skarphol:** Yes ... the college presidents would be subject to the chancellor's at will service.

**Representative Conrad:** Would the Board of Higher Education have anything to do with deciding on new course offers and (*can't understand*) in the university system or would that be up to the chancellor?

**Rep Skarphol:** I would suspect that the board would still, but the ultimate decision would lie with the chancellor.

**Representative Conrad:** I've always looked at the Board of Higher Ed as a representative of those people that you talk about in your testimony. They're not politicians ... they're a cross section of people across the state.

**Rep Skarphol:** That's true, they are representatives of the people; however, I don't there's an organization in existence that is administered by a board. Any successful organization, that I'm aware of, has any single administrator who's in charge of the day to day operation. I can't conceive of the amount of conflict that there must be within the minds of the folks administering the institutions as to who they really answer to.

**Chairman Koppelman:** North Dakota has always had a tradition of not centering too much authority or power on one person, that's one of the reasons we have a weak governor as opposed to other states. How do you think that squares with that philosophy?

**Rep Skarphol:** I don't necessarily disagree with your assessment of the governor's position; however, I think some of that has to do with the fact that the legislative assembly has not been real generous with giving out more authority & in the case of state government, I think that we as a legislative assembly are the board of directors and we expect our governor to be the CEO of the State of North Dakota. We give him the guidance from the legislative perspective and we determine what the qualities should be and he, hopefully, will enforce them reflective of our wishes.

**Chairman Koppelman:** In the context of education, correct me if I'm wrong, but I think what happens most of the time is, when the board hires not only an administrator but a superintendent from K-12 context, you have a board that hires a superintendent and I think the board also hires principles. We had a situation recently where there was a question about dismissing a teacher and that came to school, that was a board action. Do you think we're digressing in doing this from the way higher ed is normally administered?

**Rep Skarphol:** I'd agree with your assessment of K-12; however, I'd submit to you that that superintendent has a lot of input into finding the proper candidates to fill those positions.

**Rep Glassheim, District 18:** I'm not neutral, but I'm not in total support ... I'm having amendments prepared. My take on this is that when the public voted to retain 11 colleges in the constitution, they voted for a long term structure that had more colleges than we need, but they said we want them. That made it incumbent upon the board and the system to use the colleges as best they could ... not to destroy or close any of them, but to retain them and find their place in the system. The argument for a stronger, centralized operation of the system than we had previously had. For one term, in 1975, I was in the legislature and then we had what was called Christmas Tree and we slowly moved away from that. That was where each campus lobbied and got a certain number of buildings in and then you had enough votes in and you passed it. We've started to move away from that where the board gives a list of priority buildings and that's what we take, although this session we're starting to inch away from that. What I'd hope to accomplish with an amended version of this bill, would be that sense that everybody understand the role of the chancellor. Page 1 frightened me to see that the only purpose of the board was to hire the chancellor ... I'd like to see that amended. It's like an operating Board/CEO thing is what I'm striving for ... to have the board be the policy making branch of higher education and the chancellor being the servant of the board ... hired

and fired ... and then the presidents reporting to the chancellor. If the chancellor does foolish things, the board has to decide whether to keep him or fire him. That restores the sense that this focus and order and one voice ... that one voice has to interpret what the voice is telling him or her, but it is one voice speaking for the university system. I think it's important to have a single focus and send both the board and ourselves and everyone the message, should it pass here and the public, that we're going to have one system and one voice talking for that system.

**Rep Conrad:** Where would the opposition come from if we were to put this on the ballot?

**Rep Glassheim:** I don't know ... possibly some cities with institutions being afraid that it would take away their authority or power. It really isn't a major change since the board has the authority now to do whatever it wants with whatever institutions it has and even with my amendments the board has the authority to tell the chancellor to do what it wants.

**Rep Conrad:** Would it be then that people would not want to (*can't understand*)?

**Rep Glassheim:** Some presidents feel they have a better chance picking off various legislators and getting their way. I was distraught last session when I thought there were (*can't understand*) around the board, the system and the chancellor ... this is my reaction to that.

This amendment is given more moral authority ... that this person has stature and deals with the presidents directly. Sometimes you have to tell presidents that no, you can't have this vote. We want Mayville to prosper in this area, that's what we decided as a whole system. The chancellor needs the authority to tell it unless it's the board's position that anybody can do anything.

**Chairman Koppelman:** There have been some issues in the media in the last several years about a power struggle. I think you were saying that people were ignoring the board, the chancellor and the whole system and doing their own thing and I'm not aware of that happening ... could you give an example?

**Rep Glassheim:** My impression was that different institutions were approached (*can't understand*) the legislators, in the middle of the session, to go beyond or outside the board's recommendations and to challenge them and to threaten them. I didn't care for it when it happened and comments that positions that had been approved by the board and by the council of presidents were then challenged in the middle of the session and immediate action was sought. I was irate about that. I'm seeing a real effort this session ,, there's a good deal of institutions asking for things outside of the board's and the governors recommendation and from one point of view, why not. Again, I'm not sure that's the best way to administer this huge and expensive system. I think a stronger chancellor would be a way to prevent this.

**Chairman Koppelman:** In the past we've had a provision like this come up in the legislative assembly as you suggested and the most recent effort was to take the missions out of the constitution. We had quite an outcry from those communities and rightfully so. The question I have is supposing chancellor (*can't understand*) and 5 years from now the chancellor decides we don't even need four institutions of higher institutions in North Dakota and our proposal in the legislature is (*can't understand*) and that you, the university presidents will keep your mouths shut and that's what we're going to propose to the legislature and if it passes that's what we're going to propose to the people. (*hard to understand much of that scenario*)

**Rep Glassheim:** I know this kind of proposal raises fears of a too powerful of an individual ... I think your scenario is pretty far fetched and it wouldn't pass the people. Some of my colleagues from the University Of North Dakota thought there was at least 5000 too many in the constitution, I stood up on the floor and defended the smaller colleges and we were victorious. I don't think the people of North Dakota will take any colleges out of the constitution ... it's because of that that we need good management and focus.

**Robert Harms:** Appeared in support of HCR 3019. I have a couple of amendments for the committee to consider (SEE ATTACHED WRITTEN TESTIMONY). I'm here on my own behalf as a parent, taxpayer and I have a unique perspective to bring ... as some of you know, I was on the Governor's Council for 11 years ... from that perspective, I wanted to share a couple of notions with you. When we began to appoint members to board (i.e; Board of Higher Ed or other boards), the board member became an advocate for the board as opposed to an advocate for the state's public interest in a broader perspective. One of the first proposed amendments that I have begins to address that ... I'll get into that in a minute. That's an issue that you may want to explore ... I think HCR 3019 is a healthy exercise that is warranted improvements in our education system that are necessary based upon what's happened in the last couple years in concerns of the tuition increases, the taxpayers, increase in the general funds spending and concerns among most legislators that the legislature has provided funding to the higher education system and yet tuition increases go up in double digits. The other perspective I bring to the table is that of a parent ... I have urged against tuition increases to the board member without much success. The first issue I want to share with you is really designed to try to reduce the parochialism that is contained in the constitution right now, the language I quoted at the beginning of the amendments, essentially what it was designed to do is prevent one institution from being over represented in the Board of Higher Education so that NDSU doesn't control the Board of Higher Education and UND. I think what the end result in what it's created is in the (*can't understand*) process there's become an expectation that now it's the NDSU seat is up or the second NDSU is up or the UND seat is now available so instead of reducing the parochialism that it's designed to do, I think it actually creates advocates within the Board of Higher Ed that it was really designed to prevent. The second amendment is designed to create additionally accountability within the Board of Higher Ed and



what I'd propose is eliminating subsection 3 in the section that calls for the process that you can only remove a member of the Board of Education through an impeachment process ,, to my knowledge, we've never impeached a member of the board by our education in recent history. The second amendment is designed to make the board accountable to the governor so the structure is really designed to maximize accountability so you have a structure that makes the Board of Higher Ed more accountable and functional and we know who to go to. Somebody should have ultimate responsibility and control of the Board of Higher Ed and that provision would make that person the Governor of North Dakota. It shouldn't be about the personalities involved or who's in office today or who are the members of the Board of Higher Education today, but rather, do we have the structure correct so if there's a problem within a major part of our government, as you know, they spend 1/3 of higher education or the general fund every 2 years ... do we have a system or structure in place that answers appropriately to the taxpayers.

**Representative Owens:** In Subsection 3 ... to change that to "a member serves at the Governor's pleasure". ... don't you think that would create an even more political situation?

**Harms:** It would put him ultimately in control, but the problem that I see with the Board of Higher Ed right now is that we don't have anyone in control ... it's a board of 7 part time good, honest, hard working North Dakota people who are trying to do their best, but it is a little silly to think that board has the time and incentive to manage an enterprise that large so as a result, we don't get accountability and I think that having the board respond to the governor is appropriate.

**Representative Klemin:** The current provisions with the appointment (*can't understand*) impeachment, as I understand it; whereas, what you're proposing would turn the board into

just another executive branch agency with the members serving at the will of the Governor ...  
do you think that's a better policy?

**Harms:** I do, although I would qualify it from the way you described, and that is that the Governor also has his own political limitations and pressures and he's not likely to remove a member of the Board of Higher Education unless there's good reason. If there's a outcry from the public, because it raises tuition by 30 or 40% over the last 2 or 3 biennium's ... that may give him cause to remove a member or 2, but he has limitations as well.

**Chairman Koppelman:** Wouldn't you see this potentially becoming a purely political appointment and when a new governor comes in from a different political party then the previous one ... that immediately means all the members of the board get fired and new ones get appointed and you serve under good behavior until the next governor, under a different political party is appointed?

**Harms:** That could be a possibility and that's why I'm asking you to explore the idea. I know there's a state statute that takes effect when a new governor takes office and it has that same kind of mechanism in it ... allowing the governor to replace a portion of the board but not an entire board ... that might be a way to limit that from taking place.

**Chairman Koppelman:** I think your objectives here are possibly a sidebar to the objectives of the resolution ... are you in agreement with the rest of the resolution or would you consider presenting this as a separate resolution.

**Harms:** I am in agreement with HCR 3019 ... when I spoke with other representatives about maybe submitting it as a separate one but we thought this would make the most sense to put it one package. I think that restructuring the board & looking at the appointment process is timely ... it makes sense and I think the people of North Dakota would want.

**Bob Wetsch:** (SEE WRITTEN TESTIMONY that was also given to the Appropriations Committee)

**Vice Chairman Kretschmar:** In your opinion, do you think North Dakota has too many institutions of higher education?

**Wetsch:** Yes, but the problem is when you have duplication of effort of these institutions. As Rep Glassheim said, the people have voted saying they want these institutions and it would be difficult to change that but I can't understand why we need to have duplication within the system. The NDSU scenario was absolutely inexcusable in my opinion ... someone needs to stop this from happening ... we're a state of 600,000 people, we can't be everything to everyone.

**Pat Seaworth:** Appeared in opposition on behalf of John Q Paulson, President of the State Board of Education. (SEE ATTACHED WRITTEN TESTIMONY)

**Representative Owens:** I'd be interested in hearing the board's opinion on the proposed amendment.

**Seaworth:** We had no prior knowledge of the amendments Rep Glassheim spoke of.

**Chairman Koppelman:** When Rep Glassheim has his amendments prepared, we'll continue this hearing on Monday @ 3:00PM and we'd allow the board to present testimony if they choose.

**Rep Skarphol:** If the committee is so inclined, we could have an amendment prepared that would give the board the ability to negotiate with a community, within legislative parameters, to close an institution ... something to give the board the ability to negotiate with a community for the closure of a constitutionally established facility.

**Chairman Koppelman:** We could look at that, but with the deadlines, we'd need to have that by this Monday, the 26<sup>th</sup>. If there's no further opposition or neutral testimony, we'll recess the hearing on HCR 3019 until Feb 26<sup>th</sup>.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HCR 3019**

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 2-26-07

Recorder Job Number: 3908

Committee Clerk Signature

*Waine Kamm*

Minutes:

**Chairman Koppelman:** Reopened the hearing on HCR 3019. We did hear part of the hearing earlier but some of the folks that wished to testify weren't able to make that meeting so we have reopened the hearing. We have 2 sets of amendments that have been prepared and we'll find out what the sponsor's wishes are.

**John Q Paulsen, President, State board of Higher Education:** Appeared in opposition to HCR 3019. SEE WRITTEN TESTIMONY

**Representative Schneider:** What is the management structure?

**Paulsen:** It makes clearer then ever before that the chancellor is the CEO of the University system, the presidents report to the chancellor ... they can report they can discuss matters with the presidents, but they must keep the chancellor informed when they have other issues that are of particular concern to their individual institutions so the communication with the legislators needs to be reported to the chancellor ... that's something that was not in place earlier prior to the time we took this study.

**Representative Schneider:** Do you have that in writing any place?

**Paulsen:** Yes we do ... it's being distributed. See ATTACHMENT Roles and Responsibilities Task Force Report.

**Chairman Koppelman:** Could you as a board say we hereby give the chancellor the authority to hire and fire and then withdraw?

**Paulsen:** I'm not your constitutional expert, but my guess is that we could, we however have always felt we need shared authority and shared responsibility. We want our presidents to have the options of talking to legislators or anyone that they wish to, but we want to make sure that we strengthen that position in the new language ... the responsibilities that presidents have to keep the chancellor better informed.

**Chairman Koppelman:** I fully understand your position and I believe you have that authority to make that decision if you chose to ... this on the other hand would not give you that chance.

**Paulsen:** We think we have a good system ... the Governor appoints us but he has to do so with the authority of the Senate to confirm or reject his appointments. We want to have an open organizational structure ... we clearly need very strong presidents and they need to have the opportunity, the authority to do their jobs, but we also need a strong chancellor. We think that some of the misunderstandings in the past could have been avoided, but it's a new day and we're going forward and we believe that the structure we have in place is better than the one that's being proposed in 3019.

**Representative Conrad:** Have you seen Rep Glassheim's amendment?

**Chairman Koppelman:** We are going to take the amendments up, but what is your situation Rep Skarphol?

**Rep Skarphol:** He said they're on a (*can't understand*) bill down there ... I don't know what that means.

**Chairman Koppelman:** Rep Skarphol has to testify ... let's hold our discussion ... we'll be passing those out.

**Representative Conrad:** In the constitution right now we don't have the chancellor and I'm wondering if you see any value in putting the chancellor into the constitution?

**Paulsen:** I think we need a chancellor or a commissioner ... we need someone who is acting as the CEO for the system who manages the staff, who really keeps the system functioning from a system point of view ... so we need the position. I certainly would not be suggesting that we not have a CEO.

**Chairman Koppelman:** Could you give us a quick synopsis of how the system worked before the chancellor and how it's different now?

**Paulsen:** I wasn't on the Board of Higher Education when that change was made and when the position of chancellor was developed ... I can't answer your question.

**Representative Schneider:** On question 3, (on the Roles and Responsibilities Task Force Report) on who the university president works for ... it says they work for both the chancellor and the board, but in question 5 it says the chancellor is the CEO of the University System?

**Paulsen:** The presidents' report to the chancellor and when they report to board members, they report through the chancellor.

**Representative Schneider:** I understand the reporting structure, but at the same time they work for the board as well ... it seems to me that there's inherent conflict there. How does that safeguard some of the problems we've had?

**Paulsen:** I don't know that it absolutely safeguards it, it's still a matter of human beings working with each other ... for me to suggest that will absolutely forestall a possible misunderstanding at some point in the future with regard to the relationship between the chancellor and the president ... I can't do that.

**Representative Schneider:** You say that the chancellor is the CEO, but he really isn't.

**Paulsen:** It's not in the business sense ... I know that in the business world, CEO's have the authority to hire and fire the people that are beneath them in the organizational structure. We don't have that and we think there's a uniqueness academia that suggests the need for the presidents to not be beholden, particularly in a large, diverse system with 11 institutions and 1 person, so the board has reserved for itself the authority to hire and fire presidents and we think that should continue.

**Chairman Koppelman:** Thank you for your testimony and responding to the obvious concerns that have been expressed.

**Rep Skarphol:** SEE ATTACHED AMENDMENT 73059.0102 ....I gave you my amendment and I'm in agreement with what Rep Glassheim is proposing. In addition to his, on Page 2, my amendment changes the configuration of the nominating committee quite substantially ... we're bringing forward names of candidates for the State Board of Higher Education and I would ask that you look at doing something of that nature. I think that we could conceivably get a more diverse group of candidates. (I'd be happy to come back and answer questions, I need to be at another committee)

**Rep Glassheim:** SEE ATTACHED AMENDMENT 73059.0101. My amendment basically is everything that was before stays the way it was before, except for a few housekeeping changes ... my 2 amendments begin on the top of Page 4. It spells out the budget process and that each institution shall send their budget to the chancellor and he/she will make such changes as he/she wishes and present the budget to the board. The board retains authority ... it is the authority over the system ... it does not lose authority ... it sends the budget to the board. After showing this to the board's attorney, I'm told that this is about how they do it now. The second change is at the bottom of 7D ... the president of each institution shall report directly to the chancellor of higher education. I'm told today that this is the informal rule that



the board has adopted. I'm pleased to hear that but I would it in the constitution because boards can change and if this is the structure that we believe is right for the university system which is what this board has apparently come to, then perhaps we should put it in the constitution and say this is what it will be. As it is now, it's a rule that can change as you wish, what my amendment would do is make it permanent and it would say .. this is the wish of the people of North Dakota that this chancellor. whose name will be changed to chancellor, it's now commissioner in the constitution (but we call him chancellor) ... it would say that the chancellor is the CEO. I see this as important because it sends the message to everybody ... this board (future boards) these presidents (future presidents) this chancellor (future chancellors) that this is a unified system. I think this is clear, it rationalizes things, it says what I think we need and it puts it in permanent written statement the best procedure.

**Chairman Koppelman:** Your proposed amendment is basically a "hog house".

**Rep Glasheim:** This is a "hog house" to Rep Skarphol's original bill and his amendment is also a "hog house" to his original bill ... he includes mine but adds, on Page 2, a different panel to select board members. I have no particular opinion on that.

**Chairman Koppelman:** If we adopted your amendment, as opposed to the resolution before us, is different in the respect that the purpose of the board in this resolution is strictly to appoint a chancellor and you've taken that out ... the vacancy ... was that language in the original?

**Rep Glasheim:** In the original the chancellor's power to change courses ... I leave that with the board. In my "hog house" all authority is left with the board except in those 2 places, which is currently how it's done now. The original ... taking of authority away from the board is out in my "hog house".

**Chairman Koppelman:** Your "hog house" is different from the current constitution in how?

**Rep Glassheim:** It would state in writing, that the chancellor reviews the budget, presents it to the board so there's one budget presented to the board and the chancellor is the CEO ... having all presidents report to the chancellor. Those are the only 2 major changes, the rest are language changes.

**Chairman Koppelman :** The hiring and firing authority still remains with the board?

**Rep Glassheim:** Yes

**Chairman Koppelman:** We reopened the hearing to rehash as well as for anyone not able to be here the other day, but Mr Paulsen, may respond to the amendment we just heard.

**Paulsen:** As Rep Glassheim said, the practice is as stated in his amendment, and both of these issues ... the president of each institution reports directly to the chancellor ... the presidents submit their budget to the chancellor who presents them to the legislature. As far as putting this into the constitution, I don't have any problem with that but I don't a particular view (one way or another) about it either.

**Chairman Koppelman:** So you're not opposed to putting it into the constitution ... are you neutral?

**Paulsen:** I'm neutral on it, other then to say that it's well established practice on both these points, the presidents reporting to the chancellor and the presidents submit their budgets to the chancellor who presents them to the legislature.

**Representative Griffin:** Have you had a chance to look at the difference in amendments for the nominating committee?

**Paulsen:** No, but I'll look.

**Chairman Koppelman:** Let's take a moment to look at Rep Skarphol's amendment. As I understand it, it's identical to Rep Glassheim's except the language in the middle of Page 2 is different. That language says ... he read *The nominating committee ...etc ... SEE PAGE 2. I*

assume that nominating committee would nominate the members of the board, as opposed to the Governor doing it.

**Representative Klemin:** The way I understood it is that the nominating would provide a list. What threw me first, was on the 2<sup>nd</sup> paragraph on Page 2, where it's say "The nominating committee shall provide the Governor ... " and it never mentions a nominating committee before. I think that might be clarified with where the word "the" was with an "A".

**Chairman Koppelman:** What it would do is substantially enlarge and change (*can't understand*)

**Representative Klemin:** I thought Rep Glassheim said there was another substantiate difference and I didn't know where that was.

**Chairman Koppelman:** Rep Skarphol, could you explain your amendment?

**Rep Skarphol:** I visited with some of the previous Speakers of the House and asked them about the process for nominating and their assessment was that in 2 years, by the time you got to know about how to fine the resources to bring forward the nominees that they thought would be appropriate, they were done. They were frustrated with the fact that there was a lack of ability to able to bring forward the kind of nominees, in some instances, that they thought would add value to the board. It's extremely difficult to find any entity that doesn't have a vested interest in higher education, so in choosing a list of entities, obviously you're going to miss some and you'll put some in that don't seem to fit; however, I think we need diversity on that board.

**Chairman Koppelman:** The reason for enlarging that list is to give the legislators and the NDEA president ... those are current Chief Justices, etc, those that are currently serving at capacity ... broader?

**Rep Skarphol:** If you read through the list, I don't believe the Chief Justice is any longer on it, nor is DPI or NDEA, but rather a group of various professional type organizations that would conceivably have familiarity with their members and have discussions about whether any of those members would have an interest in serving in that capacity and bringing that name forward ... I don't think it implies any obligations on their part, to bring a name forward, it gives them the opportunity to participate.

**Representative Klemin:** So on the nominating committee ... all those persons that are appointed by these various organizations have a 3 year term, but the ones like the Speaker of the House would not have 3 year terms ... they're on merely by virtue of their position for however long their position lasts ... is that right?

**Rep Skarphol:** That's correct, but it does say at the end of the paragraph, in the new language, the Governor is to ascertain how to make it work ... how to make the time frames work together and how to keep an appropriate configuration of that board, if I'm not mistaken.

**Representative Klemin:** The nominating committee submits names to the Governor who then nominates somebody, confirmed by the Senate ... you have the chancellor and the president of the Board of Higher Education on the nominating committee ... what would be the reason you think they should be on the nominating committee?

**Rep Skarphol:** It was an attempt to get somebody from academia more involved in the nominating committee and I couldn't come up with 2 people I thought would probably be of similar stature within the academic community.

**Rep Meier:** Who wouldn't be on the nominating committee any longer?

**Rep Skarphol:** The ones that would remain on there ... the current 5 ... are the Speaker, the presidents (*can't understand*). The rest of them would be removed .

**Paulsen:** The Board of Higher Education looked at this as a body, I'm just speaking for myself here today. It seems to me, if we're going to have a committee as large as this one is ... longer terms would make some sense. It could be so large to become more politicized than otherwise ... that's just an offhand reaction on my part. I think the present committee is kind of a permanent committee ... my only concern would be that it's so large to be cumbersome.

**Representative Klemin:** A question for Paulsen ... on the nominating committee, it looks like we have 13 members and it doesn't really say but I'd assume it would have to be the nominating committee that would interview candidates for the board and make a recommendation to the Governor, based on those interviews ... is that what you do?

**Paulsen:** I've been through this process once ... I sent an application into the Chief Justice, I was not interviewed by him, my application or reference letters that went along with it ... I was not interviewed by that committee ... I was interviewed by the Governor after my name had been forwarded to him.

**Representative Klemin:** It doesn't say in here what process they follow to make the nomination to the Governor with 3 names.

**Paulsen:** The only thing I can say about the proposed committee is that ... if it's going to consist of the president of the State Board of Education, because he is a *(can't understand)* ... that lets me out.

**Representative Klemin:** My question for Rep Skarphol ... who is in charge of this nominating committee?

**Rep Skarphol:** I didn't address that ... I thought the needed policies were already in place with regard to the management of it ... I'm not familiar with those particular parts of the constitution, but I'm assuming there's already a process in place that could be expanded and utilized by a larger number of people.

**Representative Klemin:** I don't know that the nominating committee is mentioned anywhere else in the constitution ... do you think it might be appropriate to name somebody here (*can't understand*) the president State Board of Higher Education as the chair on the nominating committee?

**Rep Skarphol:** I'm not sure what the current status is of the 5 member committee ... if someone is selected as the chair.

**Representative Klemin:** With 13, you've got a little more (*can't understand*) ... seems like somebody should be in charge of 13.

**Rep Skarphol:** I would have no difficulty with that assessment, be it the chairmen of the state board or a legislator, by virtue of their position.

**Representative Klemin:** If for an example we said in here ... the nominating committee consists of the president of the State Board of Higher Education, who shall serve as the chair, etc.

**Rep Skarphol:** That's fine with me.

**Chairman Koppelman:** I have another question ... we are talking about the constitution here and it seems to me that we always want to put into the constitution things that are general and we have a pretty specific list here ... if something happens, we'll need to amend the constitution ... would it makes sense to you if we were to follow this direction ... to maybe say ... a nominating committee as prescribed in the law ... or something like that? Would that be a better place for that then in the constitution?

**Rep Skarphol:** I don't have an answer other then to say that it might be of value to talk to Mr Buringrud with Legislative Council and get his input as to what would be the appropriate utilization of the designations ... he may give you much better advice then I'm capable of.

**Chairman Koppelman:** If no further questions, we'll close the hearing on HCR 3019.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3019

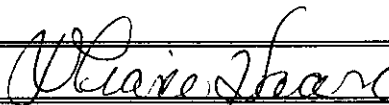
House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 2-27-07

Recorder Job Number: 4043

Committee Clerk Signature



Minutes:

**Chairman Koppelman:** This is the resolution on higher education and the chancellor and we have a couple of amendments that have been presented for consideration.

**Representative Owens:** I'd like to make a motion to amend the resolution as follows:

utilizing the amendment of 0102, Page 2, 2<sup>nd</sup> paragraph ... change the "the" to "a" ... and in the 3<sup>rd</sup> paragraph ... everything following where it says "consisting of" ... start with the president and delete everything down to serves for 2 terms ... have it read "The nominating committee, consisting of members and accordingly terms as prescribed at the legislative assembly".

**Chairman Koppelman:** Members serving terms as prescribed by the legislative assembly. So, essentially, what we're doing here is taking out the structure of the nominating committee from the constitution, but the rest of the amendment would hold.

*Continued discussion on the wording on the proposed amendment*

**Representative Klemin:** A wording change as an alternative ... The members and terms of the nominating committee shall be prescribed by the legislative assembly.

**Chairman Koppelman:** I really appreciate the effort to remove the names from the make up of the committee, not because I oppose the amendment at all, but because I think it would put

something in the constitution that says a member of the X,Y,Z coalition of whatever ... it that goes away ... then we'd have to amend the constitution to clean it up.

**Vice Chairman Kretschmar:** I support the changed amendment about the nominating committee but I would prefer to have Rep Glassheim's amendments.

**Chairman Koppelman:** Unless you can point out a difference, I think in the testimony we received yesterday was that they were identical except for the nominating committee.

**Representative Owens:** *(can't understand)* the goal was to allow the terms of the (?) by the legislative assembly.

**Representative Klemin:** We could take out the paragraph.

**Chairman Koppelman:** The terms that come from the board and the terms you were speaking of *(can't understand)* I think the terms in the rest of the paragraph were the terms of the Board of Higher Education. If there's no further discussion, we'll do a voice vote in favor of the amendment explained by Representative Owens and Representative Klemin.

<b>VOICE VOTE</b>	<b>Yes</b>	<b>9</b>	<b>No</b>	<b>0</b>	<b>Absent</b>	<b>0</b>	<b>Motion Carries</b>
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**Representative Dahl:** I think this a very healthy resolution.

**Chairman Koppelman:** I'll give you my personal thoughts on this ... it was interesting to watch the controversy that this resolution brings up. I was very impressed with Mr Paulson's testimony yesterday as far as the Board of Higher Ed ... it boiled down to "message received". I probably won't favor the resolution because of that but I understand the intent of the sponsors.



**Representative Owens:** I don't disagree about the constitution ... it needs to be as simple as possible. Much of this language about the Board of Higher Education is already in the constitution (*can't understand*) ...

**Representative Conrad:** I'm really pleased it's here ... I think it gives the legislature the opportunity to affirm what the board is doing and to be sure that it never happens again.

**Representative Klemin:** As far as discussion on the constitutional amendment ... I think there are a number of parts of this existing provision here that are being deleted for a good reason. They are archaic ... the nominating committee consists of persons that don't necessarily have that much of a connection to Higher Education. I'm going to **make a motion for a DO PASS AS AMENDED.**

**Representative Dahl:** I'll second it.

**Chairman Koppelman:** Representative Klemin, as you read the amended version, can you give the committee a synopsis of what you feel it does?

**Representative Klemin:** I think it strengthens the (*can't understand*) ... it's done through the Chief Executive Officer who is called the Chancellor and through him, through the presidents of each of the institutions. Those presidents all report through the chain of command to the Chancellor to the Board ... so they're all responsible to the Board. The Chancellor is suppose to be the person in charge, the president of each institution reports directly to the Chancellor so I think it does make things a lot clearer

**Chairman Koppelman:** In Judiciary, we have bills that have dealt with the rights of state employees going to legislature. What about when an agency establishes (*can't understand*) what about when the Department of XYZ says our position on HB (whatever) is thus and so and employee works for that agency is articulating a different message to the legislature ... there was huge support for the employees right to do that ... does this resolution negate that?

**Representative Klemin:** I don't see that, because I think there's a distinction between speaking in a representative capacity as the president of the University of North Dakota versus speaking at *(can't understand)* .

**Chairman Koppelman:** What was brought up as an example, was that there was a *(can't understand)* where there was an incident where a medical school *(can't understand)* a message that would differ from what the Presidents of the University ... *(can't understand)*

**Representative Klemin:** I guess I see the common situation addressing that ... it was some other employee, other than the agency coming in in this position ... for example, it may have a faculty member at the medical school ... I really think that's what the other bill was addressed to. It seems to me that we don't want to hear their disputes. *(can't understand)*

**Chairman Koppelman:** The President of the institution involved told me that the different opinions that were expressed were raised by members of the Legislature, not by an institution involved, so I think there's a whole set of facts that we don't need to get into and probably have no way of knowing. That's the discussion behind this.

**Representative Meier:** I really appreciated what Bob Wetsch had to say ... what that told me is that the citizens are keeping watchful eye on what has happened and I think the resolution just allows the citizens to vote on the situation they were concerned about.

**Chairman Koppelman:** If no further discussion, we'll take roll on a **DO PASS AS AMENDED**

Yes 8 No 1 Absent 0 Motion Carries

Carrier Representative Owens

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3019

Page 1, line 1, after "resolution" replace the remainder of the resolution with "for the amendment of section 6 of article VIII of the Constitution of North Dakota, relating to the state board of higher education; and to provide an effective date.

**STATEMENT OF INTENT**

This measure provides that the state board of higher education shall appoint a chancellor of the North Dakota university system and that the president of each institution shall report directly to the chancellor. The measure provides an effective date of July 1, 2009.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,  
THE SENATE CONCURRING THEREIN:**

That the following proposed amendment to section 6 of article VIII of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2008, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 6 of article VIII of the Constitution of North Dakota is amended and reenacted as follows:

**Section 6.**

1. A board of higher education, to be officially known as the state board of higher education, is hereby created for the control and administration of the following state educational institutions, ~~to wit:~~
  - a. The state university and school of mines, at Grand Forks, with their substations.
  - b. The state agricultural college and experiment station, at Fargo, with their substations.
  - c. The school of science, at Wahpeton.
  - d. The state normal schools and teachers colleges, at Valley City, Mayville, Minot, and Dickinson.
  - e. The school of forestry, at Bottineau.
  - f. And such other state institutions of higher education as may hereafter be established.
2. a. The state board of higher education consists of eight members. The governor shall appoint seven members who are qualified electors and taxpayers of the state, and who have resided in this state for ~~not less than~~ at least five years immediately preceding their appointments. These seven appointments are subject to confirmation by the senate.

The governor shall appoint as the eighth member of the board a full-time resident student in good academic standing at an institution under the ~~jurisdiction control~~ of the state board. Except for the student member, no more than two persons holding a bachelor's degree from a particular institution under the ~~jurisdiction control~~ of the state board of higher education may serve on the board at any one time. Except for the student member, no person employed by any institution under the control of the board shall serve as a member of the board and no employee of any ~~such~~ institution may be eligible for membership on the state board of higher education for a period of two years following the termination of employment.

The governor shall nominate from a list of three names for each position, selected by action of four of the following five persons: the president of the North Dakota education association, the chief justice of the supreme court, the superintendent of public instruction, the president pro tempore of the senate, and the speaker of the house of representatives and, with the consent of a majority of the members-elect of the senate, shall appoint from the list to the state board of higher education seven members. The governor shall ensure that the board membership is maintained in a balanced and representative manner. The term of office ~~of members for a member~~ appointed to fill ~~vacancies~~ a vacancy at the expiration of ~~said terms~~ shall be for a term is four years, and in. In the case of ~~vacancies~~ otherwise arising, ~~appointments shall~~ any other vacancy, the appointment must be made only for the balance of the ~~member's term~~ of the members whose ~~places are~~ place is to be filled. A member may not be appointed to serve for more than two terms. If a member is appointed to fill a vacancy and serves two or more years of that term, the member is deemed to have served one full term.

- b. In the event any nomination made by the governor is not consented to and confirmed by the senate, the governor shall again nominate a candidate selected from a new list. The nomination shall be submitted to the senate for confirmation and the proceedings shall continue until an appointee has been confirmed by the senate or the session of the ~~legislature~~ legislative assembly has adjourned.
- c. If a term expires or a vacancy occurs when the ~~legislature~~ legislative assembly is not in session, the governor may appoint from a list selected, as provided, a member who shall serve until the opening of the next session of the ~~legislature~~ legislative assembly, at which time the appointment must be certified to the senate for confirmation. If the appointee is not confirmed by the thirtieth legislative day of the session, the office ~~shall be~~ is deemed vacant and the governor shall nominate another candidate for the office. The same proceedings ~~shall be followed as are~~ as set forth in this section ~~must be followed~~. If the ~~legislature~~ legislative assembly is in session at any time within six months prior to the date ~~of the expiration of~~ on which the term of any member expires, the governor shall nominate a successor from a list selected as above set forth, within the first thirty days of the session and upon confirmation by the senate the successor shall take office at the expiration of the incumbent's term. No person who has been nominated and whose nomination the senate has failed to confirm is eligible for an interim appointment. On or before July first of each year, ~~beginning in 1995~~, the governor shall appoint a student member from a list of names recommended by the executive board of the North Dakota student association for a term of one year, beginning on July first. A student member may not serve more than two consecutive terms.

3. The members of the state board of higher education may only be removed by impeachment for the offenses and in the manner and according to the procedure provided for the removal of the governor by impeachment proceedings.
4. Each ~~appointive~~ member of the state board of higher education, except the student member, shall receive compensation set by the legislative assembly for the time actually spent devoted to the duties of the member's office. All members shall receive necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of their office.
5. The ~~legislature~~ legislative assembly shall provide adequate funds for the proper carrying out of the functions and duties of the state board of higher education.
6.
  - a. ~~The state board of higher education shall hold its first meeting at the office of the state board of administration at Bismarck, on the 6th day of July, 1930, and shall organize and elect one of its members as president of such board for a term of one year. It shall also at said meeting, or as soon thereafter as may be practicable, elect a competent person as secretary, who shall reside during his term of office in the city of Bismarck, North Dakota. Said secretary shall hold office at the will of the board. As soon as said board is established and organized, it shall assume all the powers and perform all the duties now conferred by law upon the board of administration in connection with the several institutions hereinbefore mentioned, and the said board of administration shall immediately upon the organization of said state board of higher education, surrender and transfer to said state board of higher education all duties, rights, and powers granted to it under the existing laws of this state concerning the institutions hereinbefore mentioned, together with all property, deeds, records, reports, and appurtenances of every kind belonging or appertaining to said institutions.~~
  - b. The ~~said~~ state board of higher education ~~shall have~~ has full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the ~~several~~ institutions. ~~In furtherance of its powers, the~~ The state board of higher education ~~shall have~~ has the power to delegate to its employees details of the administration of the institutions under its control. The ~~said~~ state board of higher education ~~shall have~~ has full authority to organize or reorganize, within constitutional and statutory limitations, the work of each institution under its control, and to do each and everything necessary and proper for the efficient and economic administration of ~~said state educational~~ the institutions.
  - e. ~~Said~~
  - b. The state board of higher education shall prescribe for all of ~~said~~ the institutions standard systems of accounts and records and shall biennially, and within six ~~(6)~~ months immediately preceding the regular session of the ~~legislature~~ legislative assembly, make a report to the governor, covering in detail the operations of the ~~educational~~ institutions ~~under its control~~.
  - d. ~~It shall be the duty of the heads of the several state institutions hereinbefore mentioned, to~~

- c. The chancellor shall obtain from the president of each institution a budget request for biennial appropriations and, after making any revisions deemed necessary by the chancellor, shall submit the budget requests for the biennial appropriations for said institutions to said the state board of higher education; and said. The state board of higher education shall consider said budgets the budget requests and shall revise the same as in its judgment shall be them as necessary for the best interests of the educational system of the state; and thereafter the. The state board of higher education shall prepare and present to the state budget board and to the legislature legislative assembly a single unified budget covering the needs of all the institutions under its control. "Said budget shall be prepared and presented by the board of administration until the state board of higher education organizes as provided in subsection 6a." The appropriations for all of said the institutions shall must be contained in one legislative measure. The budgets and appropriation measures for the agricultural experiment stations and their substations and the extension division of the North Dakota state university of agriculture and applied science may be separate from those of state educational the institutions.
- e- d. The said state board of higher education shall have the has control of the expenditure of the funds belonging to, and allocated to such the institutions and also those appropriated by the legislature, legislative assembly for the institutions of higher education in this state; provided, however, that funds appropriated by the legislature legislative assembly, and specifically designated for any one or more of such the institutions, shall may not be used for any other institution.
7. a. The state board of higher education shall, as soon as practicable, appoint for a term of not to exceed three (3) years, a state commissioner a chancellor of higher education, whose principal office shall be is at the state capitol, in the city of Bismarck. Said commissioner The chancellor of higher education shall be is responsible to the state board of higher education and shall be removable by said may be removed by the board for cause.
- b. The state commissioner chancellor of higher education shall be a graduate of some must have graduated from a reputable college or university; and who must, by training and experience is, be familiar with the problems peculiar to higher education.
- c. Such commissioner The chancellor of higher education shall be is the chief executive officer of said the state board of higher education; and shall perform such all duties as shall be prescribed by the board.
- d. The president of each institution shall report directly to the chancellor of higher education.
8. This constitutional provision shall be self-executing and shall become effective without the necessity of legislative action.

**SECTION 2. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on July 1, 2009."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3019

Page 1, line 1, after "resolution" replace the remainder of the resolution with "for the amendment of section 6 of article VIII of the Constitution of North Dakota, relating to the state board of higher education; and to provide an effective date.

**STATEMENT OF INTENT**

This measure changes the membership of the nominating committee for the state board of higher education, provides that the board shall appoint a chancellor of the North Dakota university system, and provides that the president of each institution shall report directly to the chancellor. The measure provides an effective date of July 1, 2009.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,  
THE SENATE CONCURRING THEREIN:**

That the following proposed amendment to section 6 of article VIII of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2008, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 6 of article VIII of the Constitution of North Dakota is amended and reenacted as follows:

**Section 6.**

1. A board of higher education, to be officially known as the state board of higher education, is hereby created for the control and administration of the following state educational institutions, ~~to-wit:~~
  - a. The state university and school of mines, at Grand Forks, with their substations.
  - b. The state agricultural college and experiment station, at Fargo, with their substations.
  - c. The school of science, at Wahpeton.
  - d. The state normal schools and teachers colleges, at Valley City, Mayville, Minot, and Dickinson.
  - e. The school of forestry, at Bottineau.
  - f. And such other state institutions of higher education as may hereafter be established.
2. a. The state board of higher education consists of eight members. The governor shall appoint seven members who are qualified electors and taxpayers of the state, and who have resided in this state for ~~not less than~~ at least five years immediately preceding their appointments. These seven appointments are subject to confirmation by the senate.

The governor shall appoint as the eighth member of the board a full-time resident student in good academic standing at an institution under the ~~jurisdiction control~~ of the state board. Except for the student member, no more than two persons holding a bachelor's degree from a particular institution under the ~~jurisdiction control~~ of the state board of higher education may serve on the board at any one time. Except for the student member, no person employed by any institution under the control of the board shall serve as a member of the board and no employee of any ~~such~~ institution may be eligible for membership on the state board of higher education for a period of two years following the termination of employment.

The nominating committee shall provide to the governor ~~shall~~ ~~nominate from~~ a list of three names for each position, ~~selected by~~ ~~action of four of the following five persons:~~ the president of the North Dakota education association, the chief justice of the supreme court, the superintendent of public instruction, the president pro tempore of the senate, and the speaker of the house of representatives and, with the consent of a majority of the members-elect of the senate, the governor shall appoint from the list to the state board of higher education seven members.

The nominating committee consists of the president of the state board of higher education, the chancellor of the North Dakota university system, the president pro tempore of the senate, the speaker of the house of representatives, the chief executive officer of a business entity located in this state and appointed by the North Dakota chamber of commerce, an agricultural producer or processor appointed by the North Dakota ag coalition, a medical doctor appointed by the North Dakota medical association, an attorney appointed by the state bar association, a registered nurse appointed by the North Dakota nurses association, an engineer appointed by the North Dakota society of professional engineers, a certified public accountant appointed by the North Dakota society of certified public accountants, an artist or musician appointed by the North Dakota council on the arts, and a contractor appointed by the North Dakota association of builders. The term for each appointed member of the nominating committee is three years. An appointed member may serve for two terms. The governor shall ensure that the board membership is maintained in a balanced and representative manner. The term of office of members for a member appointed to fill ~~vacancies~~ a vacancy at the expiration of said term shall be for a term is four years, and in. In the case of ~~vacancies otherwise arising,~~ appointments shall any other vacancy, the appointment must be made only for the balance of the member's term of the members whose ~~places are~~ place is to be filled. A member may not be appointed to serve for more than two terms. If a member is appointed to fill a vacancy and serves two or more years of that term, the member is deemed to have served one full term.

- b. In the event any nomination made by the governor is not consented to and confirmed by the senate, the governor shall again nominate a candidate selected from a new list. The nomination shall be submitted to the senate for confirmation and the proceedings shall continue until an appointee has been confirmed by the senate or the session of the legislature legislative assembly has adjourned.
- c. If a term expires or a vacancy occurs when the legislature legislative assembly is not in session, the governor may appoint from a list selected, as provided, a member who shall serve until the opening of



the next session of the ~~legislature~~ legislative assembly, at which time the appointment must be certified to the senate for confirmation. If the appointee is not confirmed by the thirtieth legislative day of the session, the office ~~shall be~~ is deemed vacant and the governor shall nominate another candidate for the office. The same proceedings ~~shall be followed as are~~ as set forth in this section must be followed. If the ~~legislature~~ legislative assembly is in session at any time within six months prior to the date ~~of the expiration of~~ on which the term of any member expires, the governor shall nominate a successor from a list selected as above set forth, within the first thirty days of the session and upon confirmation by the senate the successor shall take office at the expiration of the incumbent's term. No person who has been nominated and whose nomination the senate has failed to confirm is eligible for an interim appointment. On or before July first of each year, ~~beginning in 1995~~, the governor shall appoint a student member from a list of names recommended by the executive board of the North Dakota student association for a term of one year, beginning on July first. A student member may not serve more than two consecutive terms.

3. The members of the state board of higher education may only be removed by impeachment for the offenses and in the manner and according to the procedure provided for the removal of the governor by impeachment proceedings.
4. Each ~~appointive~~ member of the state board of higher education, except the student member, shall receive compensation set by the legislative assembly for the time actually spent devoted to the duties of the member's office. All members shall receive necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of their office.
5. The ~~legislature~~ legislative assembly shall provide adequate funds for the proper carrying out of the functions and duties of the state board of higher education.
6.
  - a. ~~The state board of higher education shall hold its first meeting at the office of the state board of administration at Bismarek, on the 6th day of July, 1939, and shall organize and elect one of its members as president of such board for a term of one year. It shall also at said meeting, or as soon thereafter as may be practicable, elect a competent person as secretary, who shall reside during his term of office in the city of Bismarek, North Dakota. Said secretary shall hold office at the will of the board. As soon as said board is established and organized, it shall assume all the powers and perform all the duties now conferred by law upon the board of administration in connection with the several institutions hereinbefore mentioned, and the said board of administration shall immediately upon the organization of said state board of higher education, surrender and transfer to said state board of higher education all duties, rights, and powers granted to it under the existing laws of this state concerning the institutions hereinbefore mentioned, together with all property, deeds, records, reports, and appurtenances of every kind belonging or appertaining to said institutions.~~
  - b. The ~~said~~ state board of higher education ~~shall have~~ has full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the ~~several~~ institutions. ~~In furtherance of its powers, the~~ The state board of higher education ~~shall have~~ has the power to delegate to its employees

details of the administration of the institutions under its control. The ~~said~~ state board of higher education ~~shall have~~ has full authority to organize or reorganize, within constitutional and statutory limitations, the work of each institution under its control, and to do each and everything necessary and proper for the efficient and economic administration of ~~said state educational~~ the institutions.

- e- ~~Said~~
- b. The state board of higher education shall prescribe for all of ~~said~~ the institutions standard systems of accounts and records and shall biennially, and within six (6) months immediately preceding the regular session of the legislature legislative assembly, make a report to the governor, covering in detail the operations of the educational institutions under its control.
- d- ~~It shall be the duty of the heads of the several state institutions hereinbefore mentioned, to~~
- c. The chancellor shall obtain from the president of each institution a budget request for biennial appropriations and, after making any revisions deemed necessary by the chancellor, shall submit the budget requests for the biennial appropriations for ~~said institutions~~ to ~~said~~ the state board of higher education; and ~~said~~. The state board of higher education shall consider ~~said budgets~~ the budget requests and shall revise ~~the same as in its judgment shall be them as necessary~~ for the best interests of the educational system of the state; and thereafter the. The state board of higher education shall prepare and present to the state budget board and to the legislature legislative assembly a single unified budget covering the needs of all the institutions under its control. "Said budget shall be prepared and presented by the board of administration until the state board of higher education organizes as provided in subsection 6a." The appropriations for all of ~~said~~ the institutions shall must be contained in one legislative measure. The budgets and appropriation measures for the agricultural experiment stations and their substations and the extension division of the North Dakota state university of agriculture and applied science may be separate from those of ~~state educational~~ the institutions.
- e- d. ~~The said state board of higher education shall have the~~ has control of the expenditure of the funds belonging to; and allocated to ~~each~~ the institutions and also those appropriated by the legislature legislative assembly for the institutions of higher education in this state; provided, however, that funds appropriated by the legislature legislative assembly, and specifically designated for any one or more of ~~each~~ the institutions, shall may not be used for any other institution.
- 7. a. ~~The state board of higher education shall, as soon as practicable, appoint for a term of not to exceed three (3) years, a state commissioner or a chancellor of higher education, whose principal office shall be is at the state capitol, in the city of Bismarck. Said commissioner The chancellor of higher education shall be is responsible to the state board of higher education and shall be removable by said~~ may be removed by the board for cause.
- b. ~~The state commissioner chancellor of higher education shall be a graduate of some~~ must have graduated from a reputable college or university; and ~~who~~ must, by training and experience ~~is~~, be familiar with the problems peculiar to higher education.

c. ~~Such commissioner~~ The chancellor of higher education shall be is the chief executive officer of ~~said~~ the state board of higher education; and shall perform ~~such~~ all duties ~~as shall be~~ prescribed by the board.

d. The president of each institution shall report directly to the chancellor of higher education.

8. This constitutional provision shall be self-executing and shall become effective without the necessity of legislative action.

**SECTION 2. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on July 1, 2009."

Renumber accordingly

Date: 2-27-07  
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HR 3019

House Constitutional Revision Committee \_\_\_\_\_

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken To Pass As Amended (House)

Motion Made By Klein Seconded By Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman		✓	Representative Conrad	✓	
Vice Chairman Kretschmar	✓		Representative Griffin	✓	
Representative Dahl	✓		Representative Schneider	✓	
Representative Klemin	✓				
Representative Meier	✓				
Representative Owens	✓				

Total (Yes) 8 No 1

Absent 0

Floor Assignment Owens

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

**REPORT OF STANDING COMMITTEE**

**HCR 3019: Constitutional Revision Committee (Rep. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HCR 3019 was placed on the Sixth order on the calendar.

Page 1, line 1, after "resolution" replace the remainder of the resolution with "for the amendment of section 6 of article VIII of the Constitution of North Dakota, relating to the state board of higher education; and to provide an effective date.

**STATEMENT OF INTENT**

This measure provides that the legislative assembly shall establish the membership of the nominating committee for the state board of higher education, provides that the board shall appoint a chancellor of the North Dakota university system, and provides that the president of each institution shall report directly to the chancellor. The measure provides an effective date of July 1, 2009.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,  
THE SENATE CONCURRING THEREIN:**

That the following proposed amendment to section 6 of article VIII of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2008, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 6 of article VIII of the Constitution of North Dakota is amended and reenacted as follows:

**Section 6.**

1. A board of higher education, to be officially known as the state board of higher education, is ~~hereby~~ created for the control and administration of the following state educational institutions, ~~to-wit:~~
  - a. The state university and school of mines, at Grand Forks, with their substations.
  - b. The state agricultural college and experiment station, at Fargo, with their substations.
  - c. The school of science, at Wahpeton.
  - d. The state normal schools and teachers colleges, at Valley City, Mayville, Minot, and Dickinson.
  - e. The school of forestry, at Bottineau.
  - f. And such other state institutions of higher education as may hereafter be established.
2. a. The state board of higher education consists of eight members. The governor shall appoint seven members who are qualified electors and taxpayers of the state, and who have resided in this state for ~~not less than~~ at least five years immediately preceding their appointments. These seven appointments are subject to confirmation by the senate.

The governor shall appoint as the eighth member of the board a full-time resident student in good academic standing at an institution under the jurisdiction control of the state board. Except for the student member, no more than two persons holding a bachelor's degree from a particular institution under the jurisdiction control of the state board of higher education may serve on the board at any one time. Except for the student member, no person employed by any institution under the control of the board shall serve as a member of the board and no employee of any ~~such~~ institution may be eligible for membership on the state board of higher education for a period of two years following the termination of employment.

The legislative assembly shall establish the terms of office and membership of a nominating committee. ~~The nominating committee shall provide to the governor shall nominate from a list of three names for each position, selected by action of four of the following five persons: the president of the North Dakota education association, the chief justice of the supreme court, the superintendent of public instruction, the president pro tempore of the senate, and the speaker of the house of representatives and, with the consent of a majority of the members-elect of the senate, the governor shall appoint from the list to the state board of higher education seven members.~~

The governor shall ensure that the board membership is maintained in a balanced and representative manner. The term of office ~~of members for a member appointed to fill vacancies a vacancy~~ at the expiration of ~~said terms shall be for a term is~~ four years, ~~and in~~. In the case of vacancies otherwise arising, appointments shall any other vacancy, the appointment must be made only for the balance of the ~~member's term of the members whose places are~~ place is to be filled. A member may not be appointed to serve for more than two terms. If a member is appointed to fill a vacancy and serves two or more years of that term, the member is deemed to have served one full term.

- b. In the event any nomination made by the governor is not consented to and confirmed by the senate, the governor shall again nominate a candidate selected from a new list. The nomination shall be submitted to the senate for confirmation and the proceedings shall continue until an appointee has been confirmed by the senate or the session of the ~~legislature~~ legislative assembly has adjourned.
- c. If a term expires or a vacancy occurs when the ~~legislature~~ legislative assembly is not in session, the governor may appoint from a list selected, as provided, a member who shall serve until the opening of the next session of the ~~legislature~~ legislative assembly, at which time the appointment must be certified to the senate for confirmation. If the appointee is not confirmed by the thirtieth legislative day of the session, the office ~~shall be~~ is deemed vacant and the governor shall nominate another candidate for the office. The same proceedings ~~shall be followed as are~~ as set forth in this section must be followed. If the ~~legislature~~ legislative assembly is in session at any time within six months prior to the date ~~of the expiration of on which~~ the term of any member expires, the governor shall nominate a successor from a list selected as above set forth, within the first thirty days of the session and upon confirmation by the senate the successor shall take

office at the expiration of the incumbent's term. No person who has been nominated and whose nomination the senate has failed to confirm is eligible for an interim appointment. On or before July first of each year, ~~beginning in 1995~~, the governor shall appoint a student member from a list of names recommended by the executive board of the North Dakota student association for a term of one year, beginning on July first. A student member may not serve more than two consecutive terms.

3. The members of the state board of higher education may only be removed by impeachment for the offenses and in the manner and according to the procedure provided for the removal of the governor by impeachment proceedings.
4. Each ~~appointive~~ member of the state board of higher education, except the student member, shall receive compensation set by the legislative assembly for the time actually spent devoted to the duties of the member's office. All members shall receive necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of their office.
5. The ~~legislature~~ legislative assembly shall provide adequate funds for the proper carrying out of the functions and duties of the state board of higher education.
6.
  - a. ~~The state board of higher education shall hold its first meeting at the office of the state board of administration at Bismarek, on the 6th day of July, 1939, and shall organize and elect one of its members as president of such board for a term of one year. It shall also at said meeting, or as soon thereafter as may be practicable, elect a competent person as secretary, who shall reside during his term of office in the city of Bismarek, North Dakota. Said secretary shall hold office at the will of the board. As soon as said board is established and organized, it shall assume all the powers and perform all the duties now conferred by law upon the board of administration in connection with the several institutions hereinbefore mentioned, and the said board of administration shall immediately upon the organization of said state board of higher education, surrender and transfer to said state board of higher education all duties, rights, and powers granted to it under the existing laws of this state concerning the institutions hereinbefore mentioned, together with all property, deeds, records, reports, and appurtenances of every kind belonging or appertaining to said institutions.~~
  - b. The ~~said~~ state board of higher education ~~shall have~~ has full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the ~~several~~ institutions. ~~In furtherance of its powers, the~~ The state board of higher education ~~shall have~~ has the power to delegate to its employees details of the administration of the institutions under its control. The ~~said~~ state board of higher education ~~shall have~~ has full authority to organize or reorganize, within constitutional and statutory limitations, the work of each institution under its control, and to do each and everything necessary and proper for the efficient and economic administration of ~~said state educational~~ the institutions.
  - e. ~~Said~~

- b. The state board of higher education shall prescribe for all of said the institutions standard systems of accounts and records and shall biennially, and within six (6) months immediately preceding the regular session of the legislature legislative assembly, make a report to the governor, covering in detail the operations of the educational institutions under its control.
- ~~d. It shall be the duty of the heads of the several state institutions hereinbefore mentioned, to~~
- c. The chancellor shall obtain from the president of each institution a budget request for biennial appropriations and, after making any revisions deemed necessary by the chancellor, shall submit the budget requests for the biennial appropriations for said institutions to said the state board of higher education; and said. The state board of higher education shall consider said budgets the budget requests and shall revise the same as in its judgment shall be them as necessary for the best interests of the educational system of the state; and thereafter the. The state board of higher education shall prepare and present to the state budget board and to the legislature legislative assembly a single unified budget covering the needs of all the institutions under its control. "Said budget shall be prepared and presented by the board of administration until the state board of higher education organizes as provided in subsection 6a." The appropriations for all of said the institutions shall must be contained in one legislative measure. The budgets and appropriation measures for the agricultural experiment stations and their substations and the extension division of the North Dakota state university of agriculture and applied science may be separate from those of state educational the institutions.
- e. ~~d.~~ The said state board of higher education shall have the has control of the expenditure of the funds belonging to, and allocated to such the institutions and also those appropriated by the legislature, legislative assembly for the institutions of higher education in this state; provided, however, that funds appropriated by the legislature legislative assembly, and specifically designated for any one or more of such the institutions, shall may not be used for any other institution.
7. a. ~~The state board of higher education shall, as soon as practicable, appoint for a term of not to exceed three (3) years, a state commissioner a chancellor of higher education, whose principal office shall be is at the state capitol, in the city of Bismarck. Said commissioner The chancellor of higher education shall be is responsible to the state board of higher education and shall be removable by said may be removed by the board for cause.~~
- b. ~~The state commissioner chancellor of higher education shall be a graduate of some must have graduated from a reputable college or university; and who must, by training and experience is, be familiar with the problems peculiar to higher education.~~
- c. ~~Such commissioner The chancellor of higher education shall be is the chief executive officer of said the state board of higher education; and shall perform such all duties as shall be prescribed by the board.~~



d. The president of each institution shall report directly to the chancellor of higher education.

8. This constitutional provision shall be self-executing and shall become effective without the necessity of legislative action.

**SECTION 2. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on July 1, 2009."

Renumber accordingly

2007 TESTIMONY

HCR 3019

Mister Chairman and members of the Constitutional Revisions Committee, for the record, I am Representative Bob Skarphol, District 2, Tioga, ND. I represent all of Divide County, all of Burke County, Williams County ( except for the District 1 portion of the city of Williston), and 12 townships in Mountrail County.

I am here to ask for your favorable consideration of House Concurrent Resolution 3019. The events of this past summer served to display one of the inadequacies of a board governance system. These events proved to be an embarrassment to Higher Education and to government in general. The actions of the State Board of Higher Education were ridiculed by blue collar workers and made light of by a wide cross section of our states population. "They" believe it is time for something to change and for "someone" to be in charge. "They" believe that paying an individual multiple hundreds of thousands of dollars to leave a position is wrong. The conversations I hear are not complimentary to the current system of governance or supportive of the concept of continually expanding the scope of every institution in our state. "They" would like to see our institutions become more focused and actually provide an education that can be utilized in the job openings available in our state.

When the State Board of Higher Education was created during the 1930's, it was intended to remove it from the tentacles of the politics of the executive and legislative branches. And, for a period of time, that change, at least gave the perception of being true. What that change was not able to accomplish, was to remove the politics from the Higher Education system and associated organizations. It did appear to function for a substantial period of time, but as with any re-organization, eventually new coalitions form and a different set of variables begin to exhibit their characteristics.

The ordinary citizen's perception of Higher Education has almost always been of an entity that is aloof and unwilling to admit its difficulties. It is perceived to be elitist, arrogant, and out of control. Tenure is a concept that is incredibly annoying to the average working person who does not have the luxury of such security in their everyday life.

I am today asking you to give the citizens of North Dakota the opportunity to express their opinion about how to best manage the affairs of Higher Education. "They" are the ones who pay the costs of this system, "they" are the ones who send the children to the colleges and universities, and "they" are the ones that elect each of us to control this behemoth that we seem to be unable to oversee.

We have legislatively authorized the Higher Education Roundtable, to give Higher Education flexibility with accountability. Some of us feel that may not have been the right thing to do, as we definitely give the flexibility but do not yet feel we have received the commensurate accountability. I, as a member of House Appropriations, do not feel that we have the accountability and have begun the process of asking to receive more concise information.

I do not believe that the current system can achieve what each of us expects of the North Dakota University System. If we do not want the state to have the current system then it is incumbent upon us to change it. I am not suggesting, at this time, that we move away from the current system. I am suggesting that no system can function without "someone" being responsible for the daily operations and that that individual must have the authority to make decisions without the constant approval of the State Board.

I believe it is time to allow the citizens of North Dakota to voice their opinion about what is in the best interests of North Dakota. The legislative assemblies have made the changes that you may or may not support, but now it is the voters' time to respond. If this amendment to our Constitution is rejected then the legislative assemblies must seek another solution.

I ask for your favorable consideration of HCR 3019 and would be happy to stand for questions. Thank you Mister Chairman and Members of the Committee.

HCR 3019

PROPOSED AMENDMENT:

Article VIII; Section 6 ; Paragraph 2 a

**Delete Page 2 lines 13 through 17:** *Except for the student member, no more than two persons holding a bachelor's degree from a particular institution under the jurisdiction of the state board of higher education may serve on the board at any one time."*

Article VIII; Section 6 ; Paragraph 3

~~The members of the state board of higher education may only be removed by impeachment for the offenses and in the manner and according to the procedure provided for the removal of the governor by impeachment proceedings.~~ Insert: *"A member serves at the Governor's pleasure".*

## **Our View: A Tioga lawmaker's constitutional amendment about the chancellor and N.D. University System goes too far.**

State Rep. Bob Skarphol, R-Tioga, is asking the right question about the chancellor and the North Dakota University System. But if he really wants a workable answer to that question, he should revise his constitutional amendment on the subject.

That's because North Dakotans are very unlikely to accept the reform Skarphol has recommended. If they reject it as expected, then the whole movement to clarify the chancellor's role will be set back and the state and its university system will be stuck with the status quo.

Skarphol is asking the same question Rep. Connie Triplett, D-Grand Forks, pointedly and effectively asked state Board of Higher Education candidates two weeks ago: What exactly are the chancellor's responsibilities?

It's a hugely important question today because the board is about to pay its new chancellor a chief executive's salary for a chief of staff's role.

Former chancellor Robert Potts got that salary, too and tried to earn it: Potts tried to exercise some reasonable authority over system's college presidents. For his trouble, he got snubbed by the board and resigned.

No wonder Skarphol wants to give the chancellor more power. Right now, the chancellor is a "minister without portfolio," an official whose real-world authority extends only to his office staff. If he dares to tell a president what to do certain presidents, at least he risks winding up like Potts: out on his ear.

But Skarphol's proposed amendment is "a bridge too far," as mentioned before in this space. Here's how it begins: "A board of higher education, to be officially known as the state board of higher education, is created for the purpose of appointing a chancellor of the North Dakota University System, who shall control and administer the following state educational institutions. . . ."

Read that again: The board's sole purpose is to appoint a chancellor. That executive then has full authority over the university system including the power to hire and fire the presidents. North Dakota has a "weak governor" system. North Dakota does not let its governor hire the attorney general, tax commissioner, secretary of state and other executive-branch officials. North Dakota does not even let its governor openly threaten to veto legislation, for Pete's sake.

In the unlikely event Skarphol's amendment makes it through the Legislature, what are the chances that North Dakotans will vest in one appointed not elected person all power over our colleges and universities?

✓ What the chancellor's office needs is exactly what Potts was asking for: more authority, not full authority. Potts wanted to broker disagreements between presidents and provide "system" leadership, in which he could, say, direct presidents to cease and desist when their actions conflicted with system goals.

That's a step short of the ability to hire and fire. The chain of command in the military doesn't give individuals that full authority; higher-ed systems generally don't as well.

✓ If it's not too late, Skarphol should throttle back a notch on the chancellor's power under his amendment. Let the board hire and fire; let the chancellor lead and direct, with real but not absolute authority. That's an amendment North Dakotans could support.

Tom Dennis for the *Grand Forks Herald*

# House Constitutional Revision Committee

## Testimony on HCR 3019

John Q. Paulsen, President  
State Board of Higher Education

*February 21, 2007*

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Chairman Koppelman and members of the House Constitutional Revision Committee:

I and other members of the State Board of Higher Education can't be here today because we are in Mayville to select a new Mayville State University president. We did, however, discuss HCR 3019 yesterday in Wahpeton and voted 5-2 to oppose this resolution because it would delegate too much authority to one person, the chancellor. We believe the people of North Dakota are best served by the sharing of these tremendous responsibilities by members of the Board, as is specified in the initiated constitutional measure the people adopted in 1938.

The North Dakota University System has enjoyed tremendous success over the past several years, an accomplishment that can be attributed largely to the phenomenal results of the Roundtable on Higher Education. The Legislative Assembly has been a key player in the roundtable process. It is the Board's sincere hope that we can continue to work together in building upon these incredible successes and in enhancing the social and economic vitality of the state of North Dakota.

As I said, the Board opposes HCR 3019. We respectfully request that the committee reject this proposal and continue to entrust the duties specified in the state constitution to the State Board of Higher Education.

## HOUSE CONSTITUTIONAL REVISION COMMITTEE

### TESTIMONY ON HCR 3019

Chairman Koppelman and members of the House Constitutional Revision Committee, I am John Q. Paulsen, president of the State Board of Higher Education, and I very much appreciate the opportunity you have given us in this additional hearing to speak with you concerning HCR 3019. As I believe you know, we were in Mayville last Wednesday selecting a new president for Mayville State University when the first hearing was held, so thank you for this opportunity to address the committee today.

Our board discussed the resolution at our meeting on February 20 and voted to oppose it for several reasons. First, I want to say that all of us clearly understand the impetus for this proposal may have been, at least partially, the result of irritation or anger that more than a few legislators have with regard to decisions or lack of appropriate action we have taken during the past number of months, particularly with regard to serious personnel matters involving the chancellor and one of our presidents.

I want to tell you that we have had strong, agonizing discussions with regard to the issues involved in those matters. We held retreats with outside consultants, and under the chairmanship of past President Pam Kostelecky, revisions were made to our organizational structure that make clearer and more effective the reporting relationships between our chancellor and the 11 institutional presidents. I want you to know that every president now understands and supports the management structure. For more information about this structure, I have attached a copy of the November 1, 2006, *Roles and Responsibilities Task Force Report*.

Having said that, we clearly want and need a very strong chancellor with all the authority he or she needs to lead our system effectively. At the same time, the fundamental strength of the North Dakota University Systems rests in our 11 institutions, and those institutions need strong, effective, entrepreneurial presidents who can guide them to even greater accomplishments than we have achieved thus far.

We have that system. It is working, and I truly fear that the essence of HCR 3019, which is to give absolute control of the system and its institutions to one person – the chancellor – with the only limitation that the State Board of Higher Education, with no other responsibility than that of hiring or terminating the chancellor, has the strong potential to do great damage to a system that is working and serves more than 42,000 students who every year put their trust and faith in those institutions.

First, I can tell you without any hesitation that every one of our presidents would oppose this proposal and that, furthermore, it would be enormously difficult to recruit new presidents into a system that puts their total destiny into the hands of one person. Our presidents have to make difficult decisions and difficult choices every day, and I don't believe it is unreasonable to say they would not be willing to subject themselves to that kind of total control.



If we look back at the marvelous progress and growth of our institutions since the creation of the roundtable and the wonderful things that are happening, our plea is simple – please leave in place a system that is working and that provides ample, but shared authority for its leadership, and reject this proposal.

We do not believe this resolution is necessary; we believe it is counterproductive. I have lived in North Dakota all my life, and I have been proud of the steadfast support of the North Dakota Legislature for the critical importance of education. Whatever you decide, I know your strong support for education will continue.

Again, I pledge to you that we will work very hard to rebuild your trust in us.

Thank you again for providing this additional opportunity for us to come before you.

# Roles and Responsibilities Task Force Report

November 1, 2006

*(Approved by the SBHE November 9, 2006)*

**Overall Purpose and Charge to the 2006 Roles and Responsibilities Task Force:** Review the major recommendations from the 2002-04 Task Force on Clarifying Roles and Responsibilities to determine which statements and resulting policies still have integrity for the University System and which ones should be revisited and possibly revised.

## I. Roles and Responsibilities Task Force-2006

- Pam Kostecky, Task Force Chairman
- Mr. Richie Smith, Board Member
- Dr. Joseph Chapman, President, NDSU
- Dr. David Fuller, President, MiSU
- Mr. Eddie Dunn, Chancellor, NDUS
- Dr. Mike Hillman, Vice Chancellor, Academic & Student Affairs

## II. Fundamental Questions Regarding Areas of Confusion

The seven key areas of confusion addressed by the 2002-04 Task Force on Clarifying Roles and Responsibilities and reviewed by the 2006 task force were:

1. **What form of governance is intended?** Is it the intent of the SBHE, the chancellor and the cabinet, in concept and in practice, to have the board serve as:
  - a. A commission/coordinating board for 11 separate institutions?
  - b. A governing board of a unified system of higher education?
  - c. Some other form of governance?

**Conclusion:** It is the intent of the SBHE, the chancellor and the cabinet to have the SBHE serve as the governing board of a unified system of higher education.

2. **What is a “unified system of higher education?”**

**Conclusion:** “A Unified system of higher education,” for purposes of the North Dakota University System, is understood to mean:

- a. The system is governed by the SBHE in accordance with the North Dakota Constitution and state statutes and is guided by the Belief Statements and Core Values adopted by the Board (SBHE Policy 100.6);
- b. The system is comprised of distinct, entrepreneurial institutions with unique missions working together to maximize their collective capacities to meet the priority needs of students and the state;
- c. The board operates at the policy level providing strategic direction, leadership and an environment conducive to success for each institution and the system as a whole;

- d. The chancellor is the chief executive officer of the University System and is empowered by the board to provide the leadership necessary and to act on behalf of the board to achieve the vision, mission, and long-range goals for the University System adopted by the board;
- e. Board members, the chancellor, presidents and their representatives or those acting under their direction have the right and the responsibility to express their views when considering an item the board has under discussion. Once the board takes action on an item, the board members, the chancellor, presidents and their representatives or persons acting under their direction, shall support the board's position and not advocate against it.
- f. There is partnering, collaboration, and joint ventures involving the various colleges and universities within the University System aimed at achieving the vision and mission in the NDUS Strategic Plan and the expectations of the Roundtable on Higher Education;
- g. There is a balance between providing the necessary flexibility to the colleges and universities to be entrepreneurial and innovative while having the institutions to also cooperate in meeting statewide needs and opportunities. It is the expectation of the board, and thereby the responsibility of the chancellor, to assure the balance is developed and sustained;
- h. Support services are provided where it is more effective and efficient to perform the services in one location or collaboratively rather than on each of the campuses;
- i. There are incentives, rewards and processes which are consistent with the expectations for campuses colleges and universities to function within, and as part of, a unified system.
- j. It is the responsibility of all board members, and particularly the board president, to assure the integrity of the University System is preserved consistent with the University System's policies and core values.

The detailed authorities and responsibilities of the SBHE, board president, chancellor and institution presidents, for achieving and sustaining the unified system, are outlined in SBHE Policies, 100.6, 310.1, 304.1 and 305.1, respectively.

- 3. For whom do the college and university presidents work?**
- a. The chancellor?
  - b. The board?
  - c. Both the chancellor and board?

**Conclusion:** The presidents work for both the chancellor and the board.

- 4. How do the presidents report? What is the standard or official channel of communication?**
- a. Directly to the chancellor?

- b. Directly to the board presidents?
- c. Directly to individual board members?
- d. Directly to the chancellor and through the chancellor to the board?
- e. Directly to the chancellor and through the chancellor to the board with follow-up discussions as necessary;
- f. Other or modifications of the above?

**Conclusion:** The standard channel of communication with the board is through the chancellor. It is expected that presidents, or their designees, will also have conversations with the board president and/or with all board members to keep the board apprised of major developments. If other substantive conversations occur, the college or university president and/or a board member should brief the chancellor, preferably in advance, or as soon as possible after the event. The standard to be applied in determining the need to inform the chancellor is "professional courtesy and good faith consideration."

**5. Is the chancellor the CEO of the University System? If not, who is?**

**Conclusion:** The chancellor is the CEO of the University System.

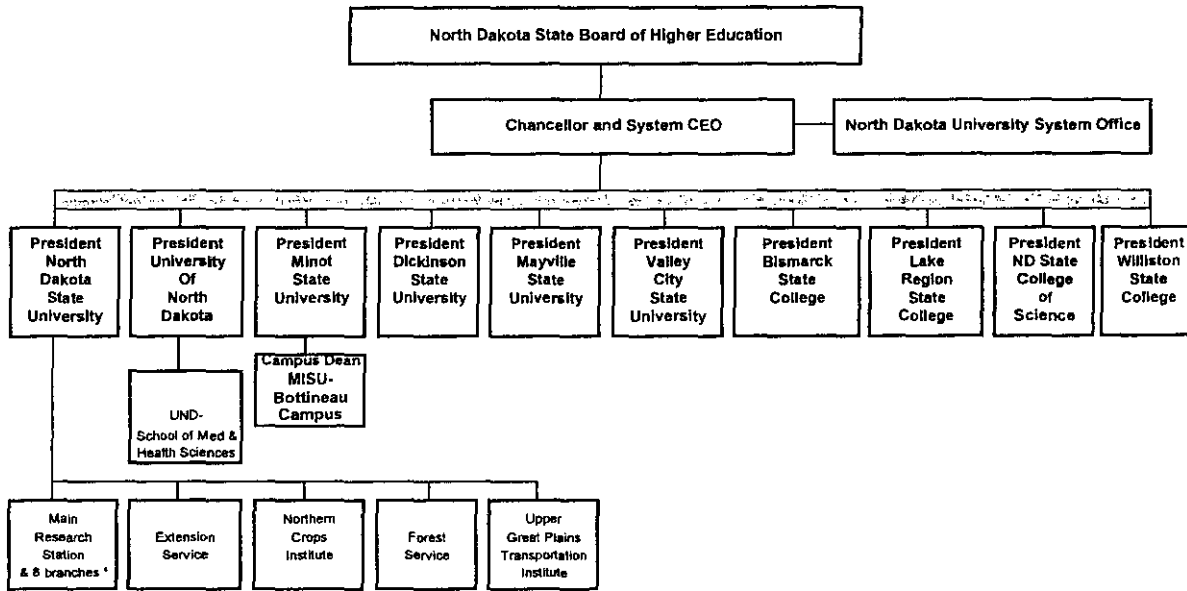
**6. Are the existing policies adequate? Do existing board policies regarding the SBHE, board members, chancellor and institution presidents accurately reflect the intent of the board regarding authority, roles and responsibilities? Are changes in policies or practices needed?**

**Conclusion:** The 2006 task force did not identify needed changes to policies. Instead, the task force concluded: The appropriate structure and mechanisms are in place. There is no need to spend a considerable amount of time and energy making major revisions to the structure of the University System or the mechanisms. The major effort needs to be focused on doing what needs to be done.

**7. Is there an organizational chart for the North Dakota University System? Is there a chart that illustrates the relationships of the various entities of the system?**

**Conclusion:** (See chart, Section-III, on following page)

### III. Organizational Chart of the North Dakota University System



\* Eight branch Research Stations: Agronomy Seed Farm, Carrington, Central Grass, Dickinson, Hettinger, Langdon, North Central, and Williston.

#### **IV. Operational Changes**

The following actions and changes are operational are included in this report to provide a more complete picture of the actions underway to address the issues raised during the Roles and Responsibilities Task Force discussions relating to improving communication while recognizing variations in size, scope and mission of the 11 institutions of higher education in North Dakota:

1. The agenda for board meetings has been changed to allow the institution (at which the meeting is being held) to alert the board of developments or concerns; i.e., to provide a mechanism and a communications channel which allows presidents to keep the entire board apprised of developments, including new directions, plans or emerging issues, important to the institution;
2. In recognition of the variations in size, scope and issues of relevance to the various colleges and universities, the chancellor will meet with the two major research institutions separately, the five community colleges through the College Technical Education Council (CTEC), and with the remaining four-year institutions in whatever format or process these institutions deem to be useful and effective. These meetings or conversations are in addition to the regularly scheduled Chancellor's Cabinet meetings;
3. Any president who would like to brief the board on an item can request to have time on the board agenda to do so; i.e., not wait until the board is scheduled to hold a meeting at the respective institution;
4. In an effort to make board meetings as relevant as possible, time will be set aside to discuss major issues impacting North Dakota and/or the University System. The board has accepted the presidents' offer to help identify the major issues, arrange resource people or presenters and lead the discussion;
5. The chancellor is having individual meetings with the presidents. The two purposes of the meetings are to determine: (1) what the chancellor and the University System can do to assist the respective institutions in being as successful as possible, and (2) what the chancellor and system needs from the president to maximize the success of the University System in serving students and the state;
6. A special effort is underway, based on recommendations solicited from the Chancellor's Cabinet, to make cabinet meetings as meaningful, relevant and productive as possible.

Mr. Chairman and representatives of the Appropriations committee, my name is Bob Wetsch. I live 7 miles south of Mandan. I am here representing myself, as a taxpayer in North Dakota. I'm here to comment on the budget for Higher Ed and to suggest to you that someone needs to do a better job looking out for taxpayers when it comes to Higher Ed spending. I don't know who to talk to about this but it appears this committee is the only one that has any oversight of Higher Ed through their budget.

I want to suggest to you that you freeze the Higher Ed budget for the coming biennium until you get a handle on what is going on in Higher Ed. I know that's a pretty drastic suggestion compared to the proposals to raise their budget by tens of millions of dollars, but the legislature needs to get a handle on what the Higher Ed system is doing. The fiasco with chancellor Potts finally showed to the public how broken the Higher Ed system is. The mismanagement and duplication has got to stop.

As an example, in the last couple of years NDSU has started a College of Education. I don't know how expensive it is to add an additional College with all the infrastructure that comes with it, but I'm sure it's expensive. Especially when you consider that 75 miles up the road, the taxpayers of North Dakota are already paying for the College of Education at UND. Now I don't know how many PhD's in Education we need to generate in the state on an annual basis, but if we needed more it seems logical as a taxpayer that we might have expanded an existing program rather than creating a new one at a new location. Also, and possibly in response, what did UND do? They opened a branch in Fargo. Now if this makes sense to anyone, than maybe we should have more than one medical school because after all we need more doctors in the state. We should also have one or more dental schools and veterinarian schools because we need more dentists and vets in the state. And we certainly should fund another law school because you can never have too many lawyers. You see where I'm going with this, how ridiculous this sounds. Yet this is the direction things are going and what the taxpayer in ND is asked to endure under the current Higher Education system.

Also in the last year or two the taxpayer, because of the management of the Higher Ed Board had to buy out the contract of the aforementioned Chancellor Potts probably because the Board misrepresented the position of Chancellor to him at the time he was hired. In addition in the past year or two, the taxpayers paid the ex-President of BSC a six figure payout for her to get out of her contract, a move she requested before the expiration of her contract. Now I have no problem letting someone out of their contract if it does not create a problem for the institution. But I can't for the life of me understand why we as taxpayers should pay someone the remainder of their contract when they ask to leave early. I asked some people how this could happen and their only response was that there was a precedent for it. If that's the case, you need to stop that now. That should never happen again. Finally, most recently, the taxpayer was asked to continue to pay the salary of the President of the State School of Science when she was removed from the position after a vote of no confidence by the schools faculty. The

Board of Higher Ed decided they should create a position for this individual here at the capital.

I don't know what more the Higher Ed system could possibly do to show that the system is broken. You as the legislature, as the elected representatives of the taxpayers need to get a handle on the system. The Higher Ed Board and the University Administrations are not going to look out for the taxpayer. Maybe in their defense, that's not their job. I'm not a fan of the legislature trying to micro manage things but in this case someone needs to start to assume some control over the Higher Ed system and see that taxpayer dollars are spent wisely.

I mentioned early on that I suggest you freeze the Higher Ed budget for the coming biennium and that I know that might be difficult. But certainly you could and should eliminate anything in this budget which will result in duplication of an existing program. Also any future compensation considerations for the Board of Higher Ed and the University Administrations should be frozen at current levels given the mismanagement of the system. It's no wonder that tuition levels have increased so dramatically the last few years the way the system is being managed.

My fear is that you as legislators will confuse your role as representing the taxpayers with representing the Higher Ed institution where you live. Nearly every city with any population in the state has a Higher Ed institution. So I suppose a good majority of you legislators live where one of the schools is located. That's fine, the people of North Dakota have spoken on the issue of having all the Higher Ed institutions we have. We have affirmed that we want to have the number of schools we have. I'm not so sure we want these institutions to duplicate each other. We affirmed that we wanted the institutions but we leave the financial management of these institutions up to you, our elected representatives. Please look out for us.

That concludes my testimony. If you have any questions I would be happy to answer them.

Bob Wetsch