

2011 SENATE EDUCATION

SB 2323

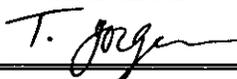
# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee  
Missouri River Room, State Capitol

SB 2323  
February 15, 2011  
14562

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to documentation of construction project costs and progress at institutions of higher education.

## Minutes:

See "attached testimony."

**Chairman Freborg** opened the hearing on SB 2323; no fiscal note attached.

**Senator Christmann, District 33**, introduced the bill; the problem hoping to solve revolves around controversy about building projects: homes (most magnified and obvious), excavating and corner of building falling in, etc. What differentiates these university projects from other projects is the taxpayers want to know what is going on with their tax money. In most cases the legislators are unable to explain anything because they really don't know. Know much more about other state projects; know very quickly if something went wrong, what could have been done to prevent it, what steps will be taken to make sure it doesn't happen again and to remedy the situation. At the universities when something goes wrong, is that question for the university, for the North Dakota University system office, the foundation, for whoever built the building—never one source from which to receive information regarding issues with building projects. They get more expensive and need to be done right, and thinks there should be a one point source of information to how projects are developing or how they turned out. Not calling for intense examination of project by project, and any formal reporting by OMB. Just when things do develop that the legislature wants information about, that they have somewhere to retrieve the information.

**Senator Gary Lee:** What comes through the audit and fiscal review in regards to these projects? **Senator Christmann:** The cases that drew the publicity, audits were ordered that dug into the whole building project start to finish. Got volumes of information about it; don't audit every building project. Basically only if it goes wrong. **Senator Gary Lee:** Most projects are done on bids; there would be an awful lot of information coming to whoever is going to look at this to try to comprehend in a reasonable amount of time. What is your thought about the dollar limits that are set in this bill? Seems like a lot of information you would be getting. **Senator Christmann:** Good point; bounced it around a little—not real firm on it. Do think need to find a line somewhere that distinguishes between small remodeling projects and serious building projects. Open to changes on dollar amount.

**Senator Flakoll:** Is there anything that precludes open records? If someone wants the information, you should be able to get it, right? **Senator Christmann:** Believes that is correct when the university itself does a project; not so sure he can get information from a foundation doing a project. Biggest issue is where you get the info. When doing the audits kind of felt they were bounced around between the system, an individual, university, a foundation, a donor, etc. Never felt he was at the right source. **Senator Flakoll:** This says on all university property, so that would include private organizations/entities that have built on the university land? They would also have to submit information? **Senator Christmann:** Some he is not familiar with, but if they are going on university property and we have some responsibility for them then we should have information on the project. **Senator Flakoll:** The intent isn't to have OMB to review these, are they qualified or are we qualified? How do you anticipate the information will be used? **Senator Christmann:** His thought is not to make a big burden on OMB; thinking more that they compile and store it so when there are issues we have access to it. The only way any of these projects is if they become an issue in the press. Then we start investigating, doing an audit, etc.

**Senator Flakoll:** Would they be able to provide the information in electronic format? Just thinking about storage issue. **Senator Christmann:** Sees nothing wrong with that. **Senator Flakoll:** Progress and activity—normally have weekly project meetings, would the intent be they would forward the report from those weekly project meetings? **Senator Christmann:** Thinks it would. Sounds reasonable. **Senator Flakoll:** To what level of granularity do you want the information to be? Would all contractors and subcontractors come under one invoice, all levels billing the one above them—at what point do you see the information being what you want to see? **Senator Christmann:** Good question; not a good answer for it. Thought is that we pass a lot of laws that require people to do certain things in order to make government more open and efficient; there are many instances that we don't get down to those levels of granularity but the agencies do a good job of setting up rules or using their own good judgment to provide reasonable levels of information. Think the point here is clear; need information beyond this came in way over budget, or didn't get completed on time, or this fell in—whatever the case may be. Have plenty of faith in the system and OMB to use judgment on that.

**Senator Gary Lee:** Trying to figure out what you want here; what are you looking to accomplish. Is it just a retrospective review of a project that was completed so that there is a file on the building that you can go access to say this is the costs associated to that project? **Senator Christmann:** **Senator Flakoll:** No, maybe weekly or monthly updates; looking for something earlier than when it is done. Used Heritage Center expansion for an example. **Chairman Freborg:** He would think there would be more concern on overrun costs from the bids, etc. People price out materials and guarantee jobs. Maybe more interest in overruns as long as they adhere to the bid and don't exceed it; maybe a periodic report on how things are going and if there is a problem or an amended contract. **Senator Christmann:** He is open to suggestions; overruns, mistakes, plans left out is a key element, etc. Maybe see that it is coming instead of after the fact. **Chairman Freborg:** Agree with Senator Lee that storage could be a huge issue and who would provide the invoices? **Senator Christmann:** Would think the responsible party for the project when they purchase or pay for things are getting invoices. Wouldn't be terribly hard to copy OMB on them. **Senator Flakoll:** You weren't implying that if this bill were in place the building wouldn't have fallen down on the side, right? **Senator Christmann:** Don't know what

caused the building to fall down, but don't want to construe that this is after the project is completed and supply the information. Needs to be ongoing throughout the project so we know what is going on.

**Senator Flakoll:** Line 8 – or other types of improvements? New computer systems? Fixed assets? What types of improvements? **Senator Christmann:** Improvements is not a word he chose; that is in the drafting. He is talking about construction projects.

**Senator Luick:** To date is there any type of accountability with those projects; after a bid is awarded and the project is completed here it is? Or any dialog between the legislature and whoever is involved in these contracts and the contractor themselves? How does that currently work? **Senator Christmann:** Outside of when an audit is requested, don't know that we get any type of reports other than seeing the finished product. **Senator Luick:** As a contractor, he has been on projects with weekly meetings to bring the general contractor up to date on everything happening up to that point. Don't see why that isn't happening here; surprised this isn't taking place. **Senator Christmann:** Maybe whoever speaks on the university systems behalf will have that information. Maybe it goes to the Governor's office; not sure.

**Senator Heckaman:** Here in support of this bill; sat in on audit and fiscal review. Things they heard were very alarming to her in the fact that projects were not being tracked in a manner she thought was in a responsible and accountable manner by the university system. Hope things have changed since there, but haven't received any verification that they have so may hear that in testimony today. Look at three things in the bill: verification of what's going in the university system, accountability and transparency. The audit seemed to point that North Dakota University System had no clue who was in charge of some of the building projects, who was responsible when overruns or change orders were being made. Seemed like nobody knew who to call to or who the responsible person was. Thinks the bill may be a safety net for the university system in the fact it would allow another entity to have some verification for the higher ed board; place to find information—hopefully on-line so tax payers can see what is going on. Senator Flakoll asked what types of projects—she would think any type of project. She signed on basically to look at the building situation on campuses.

*No further testimony in favor; Opposition:*

**Bill Goetz, Chancellor, North Dakota University System** testified in opposition to SB 2323 (#1 Testimony) The approach has historical aspects; the inspiration behind the bill is not necessarily one of taking exception to intents. Want to approach it in a positive way; in response to the past, present and future.

Need to look at the point of beginning here; you should expect solid information when capital projects are being brought forward in terms of good sound financial information for those projects. Not negating the campuses in doing the best job possible; but he would be more comfortable making those decisions if there was more expertise on his staff to be able to work with the campuses when projects are initiated. Was proposal in the budget this time to address that, but it did not find its way in terms of a recommendation that the legislature could approve or disapprove of. Accountability is essential; when projects are

underway they do get reports and the budget finance committee receives. If there is any deviation in substance from those projects the budget section of the appropriations committee is informed accordingly.

The issue with the President's house was one of the foundations being involved; that has been changed and they can no longer be responsible for those projects. Williston State College was approved to have renovation/addition to their science building; the costs keep rising and that project has been on hold because costs made it unreasonable to go ahead. It is back in the legislature to deal with that. Williston has no resource in terms of oversight and management so they have sharing agreement with UND to oversee those projects. They are updating construction guidelines; there are a lot of things happening to change policy, oversight, etc.

**Senator Luick:** What is the approximate cost for capital projects during a biennium?

**Chancellor Goetz:** It varies; in major capital projects looking at \$50-60 million.

**Senator Luick:** Currently there is nobody to oversee the expenditures of this other than yourself—or who decides whether a project is viable, or changes need to be made or being constructed properly?

**Chancellor Goetz:** That takes place at the campus level and if there are substantive changes, overruns, not doing a project due to increased cost, initially is at the campus level then reported to the North Dakota University System office, and then to the board. And then the board may have to take action in terms of change in scope, change in authorization; when that happens it becomes a budget section matter in the interim.

**Senator Heckaman:** How many staff do you have in the North Dakota University System office, other than the board members? **Chancellor Goetz:** Twenty-four, including support staff.

**Senator Flakoll:** How do you read the bill in terms of relating to experiment stations? For example, if having a tiling project in Langdon at the experiment station there would this apply or would it apply at the main campus because there is some teaching/instruction going on there? How do you view this? **Chancellor Goetz:** When you look at the language—institutions of higher education, ag and extension are under higher education, so he assumes it would be included.

**Senator Flakoll:** What is your view of the “due diligence”; there are a lot of questions about what happens when something unforeseen happens. (Two examples given) How should North Dakota University System keep people informed of the progress?

**Chancellor Goetz:** In the Menard Hall example, construction did take place; as time went on a wall gave way due to excavation—that is an issue with the contractors and others. Have to say the president and he have kept informed and briefed in that regard. The briefings go on with the budget section of the legislature. Thinks Menard Hall has been reported, but doesn't recall for sure. An example where NDSU would report to the budget section if they haven't already; it was reported in great detail to the appropriations committee. The other example used—have to use common sense in how much is to be reported and how much is not. Are consequences in any construction project; how much detail does the legislature really want to know for every capital construction project, but can

assure them that the campus's keep his office informed and he keeps the board informed as to any issues.

**Senator Heckaman:** On the third bullet point, mentioned the number of documents per size of project. Is it her understanding that no one in your office reviewed any of those documents, or has someone reviewed them? **Chancellor Goetz:** These are the documents that are generated; as periodic reports are made or financial audits take place, these documents are reviewed. In the office they don't review every single document that is generated on a capital construction project. It would be impossible. When the board asked for the audit to be made relative to UND and NDSU; obviously then documents were reviewed. The campus is responsible for reviewing them; policy is in place and needed to be reviewed and updated.

**Senator Marcellais:** Are universities required to follow local building codes? **Chancellor Goetz:** Assuming they do. **Senator Marcellais:** Do they hire building inspectors; does a building inspection take place by someone in your office, a state employee that does the inspecting? **Chancellor Goetz:** Inspections take place; not by someone out of the North Dakota University System office.

**Chairman Freborg:** They have adopted policy now from past problems and new ones on record? **Chancellor Goetz:** Yes **Chairman Freborg:** Have you ever considered hiring someone to look oversee these projects or does the state have anyone in state government that looks at building projects and monitors them? **Chancellor Goetz:** This has been an issue for him personally; some sessions ago they tried to put into place an individual with this type of expertise, at the request of the higher ed system. The legislature put the position into OMB. They have drawn on the some of that resource a couple of times, but not what they should have. Recognized need for this expertise in the North Dakota University System office; someone with architectural, construction background he thinks would be dollars well spent. **Chairman Freborg:** They would probably see a savings in hiring someone; person would more than pay their salary in savings to the state.

**Senator Flakoll:** He'd liken it to a National Guard project; you go through one point person and it moves out from there? **Chancellor Goetz:** Don't have knowledge of that process. He'd have more comfort with a resource to review projects. His staff goes around to campuses and reviews what is being proposed for capital construction. They are not experts which are needed when spending millions of dollars. **Senator Flakoll:** What causes more problems, design and development or construction management? **Chancellor Goetz:** Challenge they have is on the oversight and construction management; get good information regarding the overall purpose of the project, the intent, scope, but from that point on could use a more in depth analysis of the project whereby a neutral recommendation and insight would be worthwhile.

**Senator Luick:** Has concerns about oversight of large dollar projects. **Chancellor Goetz:** No comment; higher ed is targeted in so many cases. They are trying to deal with issues and policy for higher ed.

**Chairman Freborg:** Do architects have any responsibility to the board? **Chancellor Goetz:** Yes, IT facility at UND; board makes recommendation for the amount to be

designated to that facility, the governor and board make recommendations. Went back to the architect and said what can be done to make this work—meet needs, keep dollars down. He met with the architect, along with others, and the end results was that they did that. Very close contact with the architect; got down to a defined minimal object meeting the needs and coming up with a new cost.

**Senator Flakoll:** Do they ever report **anticipated** costs and how much it **did** cost? (Yes) Wish could figure out a system that was closer to breaking ground. The bids can only guarantee some materials for a matter of days, because it changes so fast. How do we do best with increasing costs? **Chancellor Goetz:** Take WSC—concrete two years ago was \$130-150/yard; today it is over \$300. Project at Williston has been set aside and back on the list for consideration.

**Robert Vialle, Executive Commissioner, Government Relations and Inter-Collegiate Affairs, NDSU Student Government** testified in opposition to SB 2323. The students have seen the effects of these projects; they are willing to support and believe accountability is essential. They have some concerns with the bill as written; are there other options more viable? It sounds like any project over \$100,000 on University land would fall under the bill—public and private. We already have auditing process and do have processed in the institutions and the North Dakota University System as well as accountability measures required by the state government in order to ensure that problems are dealt with on the spot. The university systems office puts together an accountability report, as required, and holds some thirty different criteria to it. All has been requested by the state in order to ensure what's happening is being done by the books; no sneakiness to it. If they do intend to put legislation on the books, before adding new legislation should look and properly use what is in place. Are there policies in place that need to be updated to be effect or are being used? Students support accountability but with good use. Before taking this step should review policy and update existing. Mentioned just coming on board when the issue with the NDSU President's house came up.

**Senator Heckaman:** Did you read any of the audits that came from the two homes built by the foundations at UND and NDSU? **Robert Vialle:** Yes, was a student senator; reviewed and looked at them—as with all reports. The state auditor looked at the overall policies and said—these are where the violations took place, these are the policies on the books, these policies work and for your institution there are policies that were not in place and told them into place. Further in the report also looked at how the institutions administrative personnel respond to those comments, do they agree with them, are they willing to cooperate. Would like to believe they would agree there were mistakes and went with every recommendation the state auditor's office placed in the report. Either put them into place or is working to finalize them.

**Senator Laffen, District 43,** also is an architect from Grand Forks. Has worked at 10 of the 11 North Dakota higher ed institutions; currently working at 9 of them. Have worked at 40 colleges total in 11 states with over 600,000 students and over \$1 billion construction at those colleges. Just giving background as he would like to share his knowledge of this subject. His firm did the UND President's house; currently doing Menard Hall at NDSU. One of the projects that is on budget at WSC in Williston, and worked on just about every other project mentioned here. Has a lot of experience in this area; doesn't have any

problem with the idea of accountability to legislative body. Doesn't think the way this is written is going to accomplish that. For every project they do, there is about a one foot file in his office for every million dollars of value. A project like Menard Hall has \$10 million in construction literally has a file about the length of this table. He also has 5-6 sub-consultants that work for him—mechanical engineer, electrical engineer, structural engineer, civil engineer; sometimes a fire protection, sometimes food service, sometimes interiors, sometimes FF&E furnishing. Each one of them has another file half that length for that one project. As this bill is written it says anything that deals with cost or budget—literally every one of those pieces of paper deals with cost or schedule for the project. If we want more accountability, need to figure out how to do that because how this is written is going to overwhelm us with information. Has a file room the size of this room and a full-time staff that just files. He is probably only getting 10% of the data to store. Need to tighten up what we want in this process.

At some level each university has their own facilities department and they track all of this stuff. All the way from who has UND has a crack staff that tracks all this stuff to WSC who has no one because they haven't done any work since the college was built in 1966. They don't have any stuff, so we were handling their projects as a consultant to them. They have contracted with UND to provide representation. Out of all those projects listed, his firm has never been over budget, which includes Menard Hall which came in dead on budget. Had an unforeseen thing happen with the corner of the building falling down. There are insurances and processes to deal with these unforeseen problems. Not quite sure what the bill is trying to solve—but he knows the volume that goes through this and there is occasionally a problem. Doesn't feel any of the paperwork that would be received would have made a difference in the problems that have occurred lately. Enormous process with a lot of people involved.

**Senator Gary Lee:** Is there a place an individual citizen or legislator can go *currently* to see what is going on in projects? How it is unfolding, if it is on-track or not, where the money is being spent. **Senator Laffen:** Yes, every one of those projects has, though not consistent, different architects and facilities managers will use different methods. But that data is there. Thinks a good discussion would be how to make some consistency that could be reported back to legislature, Chancellor's office, etc. There is no consistency as the Chancellor suggested. Some universities don't have the staff for that so it is done by the architect managing an individual project. All of the data is there—

**Senator Gary Lee:** As a legislator, is there a need for this kind information to be provided to us and if so, how might that be accomplished? **Senator Laffen:** Opinion is there is a need for a report to the Chancellor's office in a consistent fashion so we could ask them that if needed. Volume of work is incredible; \$60-90 million a year—that is a lot of paper and work. Would be good to have in a consistent fashion somehow. Process or form that tracks or updates every month that each facility coordinator could submit on-line or a red flag.

**Senator Luick:** Your firm probably is working very diligently and maybe at a better scale than a lot of them. The other universities that are using other firms may not be providing that type of a cost analysis and due diligence like your firm does. Do you think that an individual in the Chancellor's office that has the credentials to do what your firm is doing to

isolate these issues and as a sounding board for construction projects would be a benefit to the state? **Senator Laffen:** Yes, thinks it would be. Most of the data we collect is done by all architectural firms; think some are better at staying on budget than others, but the data is all there. Procedures are pretty consistent for doing projects. Do think a staff person at the higher ed board might be of some value to add some consistency in the process; are going to be overwhelmed with the work load if we start getting too micromanaging of the facilities roles within each school; a lot of work there. Somebody that just added some protocol and oversight to all eleven institutions might be of some value. **Senator Luick:** Concerned with the micromanaging part of it; if there was a need for such a person what credentials would be needed—engineering, architecture, etc. **Senator Laffen:** Would suggest someone with a facilities management or construction management or architecture degree would be good for that position.

**Senator Heckaman:** In your very broad and complete answer to Senator Lee's question as to where the data can be found—where can I find this data? **Senator Laffen:** You could find this data by going to the facility coordinator at any one university for that project. You could get anything you'd want to know on schedule, budget, cost, overruns, change orders—just have to know what to ask for. **Senator Heckaman:** Is that information posted as the project proceeds or not until completed? **Senator Laffen:** That information is mostly in digital form and carbon copied into files every day. Not on-line anywhere; dilemma again is what to ask for. That is where this "consistent process or coordinator" could be helpful.

No further testimony; hearing closed.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee  
Missouri River Room, State Capitol

Committee Work on SB 2323  
February 21, 2011  
14764

Conference Committee

Committee Clerk Signature



## Minutes:

See attached amendments

**Senator Heckaman** presented amendment 11.0215.01001 for SB 2323 (#1 attachment) and a sample of how those amendments would work (#2 attachment). Senator Laffen helped her and Senator Christmann draft the sample variance report and amendments. Note: page 1, line 9 amending to \$250,000 instead of \$100,000. Not a lot of projects that a university can do that would go over \$100,000. Tried to align with what higher ed has to report to the budget section. Document asking for on page 1, line 2 would be called a variance report; Senator Laffen worked that up for them and seems to be a very appropriate report.

**Senator Laffen:** Reviewed the "project variance report" with the committee. The original bill requests too much information and would overwhelm someone trying to keep it all straight. What you want to know is if the projects under legislative approval are staying in line with budget, if they are on schedule, etc. This would be a monthly report from each institution to OMB—see attachment #2. Each one might have 5-7 projects going at any one time, so every month there could be 60+ projects on the sheet.

**Senator Heckaman:** Is this data easy to submit? **Senator Laffen:** Each institution has a facilities coordinator or hires someone that would have this data readily available. It would take about 1 hr. a month for them to complete.

**Senator Flakoll:** How will it work if payment for a project is a combination "in kind" and dollars paid; like you pay for this many bricks and we'll donate that many? **Senator Laffen:** He hasn't seen that in his experience with these projects; don't think it happens very often. Does believe that every project has to have legislative authority for a number—even if all donated monies because the state ends up owning the building. This form doesn't take into account where the money comes from. **Senator Flakoll:** Say a contractor has a change order and someone says we'll pick up the tab. Where does that show up? Does it have to be counted as anything encumbered or not? **Senator Laffen:** Those do occasionally happen; don't show up since it isn't contractual amount.

**Senator Heckaman:** In the amendment that might be stated—the last line "a list of public and non-public entities that have a contractual reflected financial obligation. Added to put in the fact that maybe there would be some outside entity contributing. Not sure if that is a place it would be reflected. Wanted a place in there for those "odds & ends" that don't collect any place else on this form. **Senator Laffen:** The way he would handle this (just

guessing); think they would still write a contract (e.g. ½ million dollars of brick donated) for the general contractors installing the brick less the ½ million—state that in the contract. In the contract but not in the number.

**Senator Flakoll:** How will it affect other projects, like purchasing a computer lab, etc. would they have to report that? **Senator Laffen:** He's not exactly sure what is in the original bill. Would think you'd want this for just construction projects. **Senator Flakoll:** New and remodel projects, correct? **Senator Laffen:** Would propose it be new and remodel; remodel is a bigger issue. **Senator Flakoll:** What about outside entities leasing university land and building projects; no state dollars involved? **Senator Laffen:** There is the potential some little leases could be messy in this process. Most institutions he works with don't do a lot of leases, and the two he can think of just a lease of the land and someone else built there is. No legislative authority so excluded from this. Barnes & Nobel at UND, for example, the University built that project and leases it out to B&N so they had a legislative authority. The money came from revenue bonds.

**Senator Flakoll:** How would, say, the Engelstad Arena on built on UND property; leased the land from them and built the facility work? **Senator Laffen:** Believe that would be exempt for the same reason as others; simply have the ground leased with rented land there is no legislative authority for the project. **Senator Flakoll:** There is a building on NDSU campus where the land is not owned by the state; may have been state dollars involved, but it was built by the Foundation with a lease back option/turn back mechanism. That would be subject to it? **Senator Laffen:** Any project built, private money or whatever, first has to have a legislative authority. That is the number they would have to stay under. Both UND & NDSU presidents' houses had a legislative authority even though the money was completely donated. Still had a budget to stay within.

**Senator Flakoll:** What about wind towers built on experiment station/state land? Would that require reporting to the higher ed office? **Senator Laffen:** Not if they leased the land and paid the construction costs and owned it themselves. If the wind tower were built by the state on state property, and leased it back, then it would have to be reported.

**Senator Heckaman:** Should we add to line 3--when legislative authority is required? Would that clear up your questions, Senator Flakoll? Basically, on page 1, line 12 the subcategories are the categories on this reporting form. **Senator Flakoll:** That might help; has concerns about page 1, line 8, other types of improvements also—adding a computer lab, etc. **Senator Heckaman:** Think talking about renovation and capital construction projects; not computers, scoreboards, etc. Should we delete from line 8 "other types of improvements" to take care of that?

**Senator Luick:** Can see the benefit of doing something like this, but his concern is if the files are filed with the state office, is there someone in the higher ed office that can interpret the data? **Senator Heckaman:** That is the reason for the simplified version. It won't take very long for someone to see something is wrong; over budget, off schedule, work order changes, etc. These are the things lacking in the audit information; no one seemed to know what was going on in the presidents' houses, and nobody seemed to take responsibility for what was going on. Something simple that should be a red flag to

someone. Didn't have that before—somebody to follow through on what was happening. OMB can make a spread sheet to follow this sample format.

**Senator Gary Lee:** To answer Senator Luick's concern; this form deals with information after legislative authority has been given, and progress on that authority. Chancellor Goetz was concerned about having someone to look at projects *before* the project is given approval, to make a good decision on whether the project should be included in the priority list of some kind. This is after the fact reporting and isn't what he was addressing in his issue of wanting someone on his staff that could look at a project being requested. Thinks this is a good approach outlined here.

**Senator Flakoll:** Would like to see some things cleared/cleaned up in the amendment and bill. Also if projects are occurring in another area that they not be charged out or merged with other approved projects. Need to be making sure what constitutes a project; can kind of patchwork some things together and say they are separate projects when not, and sometimes the system has put things together that really should be separate. From his standpoint, if other things are occurring in the same area that they are not charged to another project.

**Senator Heckaman:** Anytime we start something like this, going to probably see exceptions. Might happen and that is our opportunity to maybe discuss this as the bill goes across to the House and maybe fix those things or next session see what updates might be needed. This bill is a start; as time goes on we can keep working things out. Tried to cover everything but know there will be exceptions.

**Senator Flakoll:** Curious how that would be reported; glad the spreadsheet was provided. Need information but not so cumbersome that they can't figure it out and work their way through it.

**Senator Heckaman:** Starting point, simplified version, but addresses what the state audit reported to Audit and Fiscal Review to help the university system track these, it would help the higher ed board track these, maybe legislative management, etc. Try to prevent what happened before. Will work in an amendment with intern to fix the things previously discussed.

**Senator Heckaman:** Move the "Heckaman amendments" Do Pass to SB 2323; second by **Senator Marcellais**. Motion carried 7-0-0 (Vote 1-A)

**Senator Heckaman:** Move the amendments 11.0215001001 Do Pass to SB 2323; second by **Senator Marcellais**. Motion carried 7-0-0 (Vote 1-B)

**Senator Heckaman:** Move Do Pass as amended to SB 2323; second by **Senator Marcellais**. Motion carried 7-0-0 (Vote 1-C) Senator Heckaman will carry to the floor.

Proposed Amendments to SB233 (Heckaman)

Page 1, line 3, remove "period" insert "When legislative authority is required."

Page 1, line 8, remove ", " after renovation insert "or", remove "or other type of improvement"

#3 attachment

Date: 2-21-11  
 Roll Call Vote # 1-A

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2323

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number Heckaman amendments #3

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen. Heckaman Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg	X		Senator Joan Heckaman	X	
Vice Chair Donald Schaible	X		Senator Richard Marcellais	X	
Senator Tim Flakoll	X				
Senator Gary A. Lee	X				
Senator Larry Luick	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
add to line 3 - "when legislative authority is required"  
delete from line 8 - delete "other type of improvement"

PROPOSED AMENDMENTS TO SENATE BILL NO. 2323

Page 1, line 2, replace "documentation of" with "variance reports for"

Page 1, line 2, replace "project costs and progress" with "projects"

Page 1, line 7, replace "**Projects**" with "**Construction projects**"

Page 1, line 7, replace "**Cost and progress documentation**" with "**Variance reports**"

Page 1, after line 7, insert "1."

Page 1, line 9, replace "one" with two"

Page 1, line 9, after "hundred" insert "fifty"

Page 1, line 10, after "provide" insert "monthly project variance reports"

Page 1, line 11, remove "copies of all invoices and any other"

Page 1, replace line 12 with ". Each report must include:

- a. The name or a description of the project;
  - b. The expenditure authorized by the legislative assembly;
  - c. The amount of the original contract;
  - d. The amount of any change orders;
  - e. The amount of any potential or anticipated change orders;
  - f. The sum of subdivisions c through e and the amount by which that sum varies from the expenditure authorized by the legislative assembly;
  - g. The total expended for the project to date; and
  - h. The schedule variance by number of days.
2. The state board of higher education also shall provide to the director of the office of management and budget, at the same time as the project variance report required by subsection 1:
- a. A brief description of each change order included in subdivision d of subsection 1; and
  - b. A list of each public and nonpublic entity that has a contractually reflected financial obligation with respect to the project."

Renumber accordingly

(# 1 attachment)





**REPORT OF STANDING COMMITTEE**

**SB 2323: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2323 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "documentation of" with "variance reports for certain"

Page 1, line 2, replace "project costs and progress" with "projects"

Page 1, line 7, replace "**Projects**" with "**Construction projects**"

Page 1, line 7, replace "**Cost and progress documentation**" with "**Variance reports**"

Page 1, after line 7, insert:

"1."

Page 1, line 8, after the second underscored comma insert "or"

Page 1, line 8, remove "or other type of improvement"

Page 1, line 9, replace "one" with "two"

Page 1, line 9, after "hundred" insert "fifty"

Page 1, line 10, after "provide" insert "monthly project variance reports"

Page 1, line 11, remove "copies of all invoices and any other"

Page 1, line 12, remove "documentation pertaining to the cost and progress of the activity"

Page 1, line 12, after the underscored period insert "Each report must include:

- a. The name or a description of the project;
  - b. The expenditure authorized by the legislative assembly;
  - c. The amount of the original contract;
  - d. The amount of any change orders;
  - e. The amount of any potential or anticipated change orders;
  - f. The sum of subdivisions c through e and the amount by which that sum varies from the expenditure authorized by the legislative assembly;
  - g. The total expended for the project to date; and
  - h. The schedule variance by number of days.
2. The state board of higher education also shall provide to the director of the office of management and budget, at the same time as the project variance report required by subsection 1:
- a. A brief description of each change order included in subdivision d of subsection 1; and
  - b. A list of each public and nonpublic entity that has a contractually reflected financial obligation with respect to the project."

Renumber accordingly

2011 HOUSE EDUCATION

SB 2323

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee  
Pioneer Room, State Capitol

SB 2323  
03/09/11  
15158

Conference Committee

Committee Clerk Signature



## MINUTES:

**Chairman RaeAnn Kelsch:** We will open the hearing on SB 2323.

**Sen. Randy Christmann:** Sponsor. During the past biennium there were a few issues with construction projects on a few of the campuses. As we looked at some of those during the interim it occurred to me that we as legislators really only hear about those things when they go bad. On the ones that do go bad, we only know about it when it once it is in the press. If we had some of this information into facilities management and if we had concerns about a project we could follow up we would know where to go from there. It would be handy information for us and the public to see how a project is going. I came up with a bill and the first draft probably wasn't the best in hindsight so we did some fixing up on the legislation and some other legislators who work in this type of field came up with this type of plan. I don't think it imposes a lot of extra burden on the universities and most of this is information that they already have.

**Chairman RaeAnn Kelsch:** Are you comfortable with the way the bill was amended? Does it get done what you intended it to get done?

**Sen. Randy Christmann:** I think it does. I have some big philosophical concerns with our overall relationship with the university system but that is certainly an issue for another day. I think this is a pretty good bill and I am comfortable with it.

**Chairman RaeAnn Kelsch:** You and I both serve on the legislative audit and fiscal review committee. Why send the reports to OMB? What are they going to do with the reports? Why not have it sent to a committee in particular the legislative audit and fiscal review committee. While it is not an audit it could be sent so the review could be done either by legislative council or our council staff. They could maybe provide a summary for us or have those documents available. You as the chairman can call a meeting anytime. Would that be a consideration? I'm not sure that OMB is the right place of if they really care if they receive that information.

**Sen. Randy Christmann:** You make a good point. You are probably right that we should be looking at in some other meeting. Whatever OMB has is going to be public record anyway. I suppose it will be a matter of asking them for it whenever we want information on it. The reason I think it should go to OMB initially is because they have the architect. They

have the facilities manager that has the expertise when it comes to buildings and building projects. I think those people would be the ones who would be more likely better than us to recognize that something is going awry.

**Rep. Karen Rohr:** I have two questions. One was related to Chairman RaeAnn Kelsch's question. If it goes to OMB because they have they architect and facilities management program, the cue would be that the variance is off or looks suspicious. Who would they be accountable to? If the fiscal committee made the decision to authorize the expenditure and if there is a variance to that and it is identified, who will hold them accountable?

**Sen. Randy Christmann:** I think your committee is onto a good thing here that we would want to follow up on it in some committee. I think that if the facilities management people saw something that looked suspicious that they would bring it up.

**Rep. Karen Rohr:** I'm looking at lines 16 and 17 where it talks about change orders. There was a lot of public discussion on the problem in the change orders. There was the issue that the change orders where there but nobody looked at the cost of them or evaluated if they were necessary. Who does it get reported to and then who evaluates that? I'm wondering if the language is strong enough regarding change orders.

**Sen. Randy Christmann:** That is what I would have thought. As I said my first draft of the bill wasn't that workable. Apparently on the large projects you might bid and spend up to 10 million dollars and you are never going to get that down to the last dollar. As they are going fees may come in at a little less expected cost so then you might then upgrade on something you were being a little more conservative on such as a 20 year carpeting being upgraded to a 40 year carpeting. You know some of those things are really kind of reasonable. I think a lot of these are rational, sound decisions and if reported they would probably make sense.

**Rep. Joe Heilman:** Could you explain to me your interpretation on page 2, lines 3 and 4 on section B?

**Sen. Randy Christmann:** My interpretation of it is when we go into a project and some foundation or some donor is involved in it, I think we ought to know about that. If it is not reported and we are building a million dollar building and someone else is contributing 19 million, I think we should know about that. We should know we are now on the hook to maintain a 20 million dollar building and not a 1 million dollar building.

**Rep. John Wall:** There is no financial note on this. Will that be absorbed by OMB?

**Sen. Randy Christmann:** That is my belief and it will be very minimal. I think most of this will be electronic. We had a sample graph and it was a couple lines. I don't envision anything that would take another employee or anything like that.

**Chairman RaeAnn Kelsch:** Further questions? Seeing none thank you.

**Sen. Joan Heckaman:** I think one of the most important things to remember is that this addresses accountability and transparency. The first thing we did was amend the dollar

amount. The original bill had 100,000 dollars. When we got to discussing this we decided that there were minor changes that campuses could do that would amount to probably over 100,000 dollars. I think keeping this in line for what the universities have to report and so on is why we changed that to 250,000 dollars. Sen. Christmann talked about the spreadsheet and it is a simple one-line and it is just the use of a spreadsheet. It says the project name, what the legislature gave authority for, and the rest comes from either the contractor or the construction manager. We were told it would be easy information to gather on a monthly basis at least and sometimes even more frequently that. The question about change orders is important in this. I think that is what caused the audit fiscal review to have red lights and the auditor to have red flags all over the place. I would like to maybe suggest that you amend the bill to add that the information is also sent to the North Dakota University System and the Audit Fiscal Review Committee. Those two additions to OMB would really be the three that really need to look at this information. I wouldn't object to that. I also want to mention that things can come up unexpectedly that can add additional costs to the original costs. I think that is all I want to address. I think this is important.

**Chairman RaeAnn Kelsch:** Questions? Seeing none thank you.

**Sen. Lonnie Laffen:** When the bill was first written it was a little broad. It asked to collect a lot of data and I think it was more than I think anyone would have been able to manage. I worked with the bill sponsors to get that down so the data that would identify where we are having problems could be identified ahead of time. The idea is to keep this a small database that is ongoing. It keeps track of the contract and has a column that says where we are in relation to the overall appropriation. It is simple enough to be the vehicle to identify the red flag ahead of time. I don't think it would be laborious to any of us that work in this field. It is information that we have readily available to us.

**Rep. David Rust:** Wouldn't you think that maybe most places kind of keep something like that as a project progresses anyway?

**Sen. Lonnie Laffen:** This is all information we have every day on every project. I think the purpose of this is really to take the clutter of information on all our projects and get down to something so simple that every month somebody with very little time or effort could check and make sure we are staying on track.

**Rep. David Rust:** I guess that was kind of my point. Would you see this as being cumbersome and additional work that an institution would have to do?

**Sen. Lonnie Laffen:** I would hope they would do this but the institutions could likely throw this right back to us as architects and say give us this information every month and it wouldn't take us but 10 minutes to fill that out.

**Rep. Joe Heilman:** I was curious in your experience how often would you say a project goes over budget?

**Sen. Lonnie Laffen:** I think you would be surprised that there really aren't that many instances. It doesn't happen very often. Say you have a project that has a 20 million dollar appropriation. We design to an 18 million dollar number. There are other costs that

universities have such as furnishings and things like that so that usually takes about 1 million of that but we save 1 million. Sometimes we have some of that left over and what we do with that leftover is design some alternates and when we are getting to the end of the project we buy a couple more things for the project and generally end up on that number every time.

**Chairman RaeAnn Kelsch:** Further questions? Further support? Opposition?

**William Goetz – Chancellor, NDUS:** (Testimony attachment 1).

**Vice Chair Lisa Meier:** In the last biennium what was the total appropriation for the projects that were started in higher education?

**William Goetz – Chancellor, NDUS:** I think it was around 40 million. And that would be general fund. We have multiple projects that are built around other sources and funds.

**Vice Chair Lisa Meier:** Out of those projects how many were over the budget that was planned and in what dollar amount total? Do you recall that?

**William Goetz – Chancellor, NDUS:** I don't know that off hand. We monitor other projects. For example a project at Dickinson was a 60 million dollar project and I received reports on almost a quarterly basis on the states. The one that sticks out is the Williston project.

**Chairman RaeAnn Kelsch:** The Williston project is just due to the fact that there aren't people willing to build and the people that are building are gouging for all practical purposes.

**William Goetz – Chancellor, NDUS:** I will put it in reference that labor costs have gone up.

**Chairman RaeAnn Kelsch:** There is a high demand up there and so they are getting the money for whatever they decide to charge.

**Rep. Bob Hunsakor:** As I read your hand out here it seems you have a pretty good handle on funding, yet when we get back to the NDSU President's house something happened.

**William Goetz – Chancellor, NDUS:** This was a project being built by the foundation and not by the University. The dollars being spent were from the foundation and not the university. Awareness was made and when it was it was dealt with and dealt with responsibility.

**Rep. Joe Heilman:** I guess the question I have is when we are dealing with private funds from donors. I would assume that some would wish to remain anonymous. How do you see that it would be impacted? Could that impact the amount of fund raising that could be done?

**William Goetz – Chancellor, NDUS:** I think what you are talking about is certainly a very valid concern. We are very much aware when we allocate or determine source of funding. Be it general fund in addition to federal funds in addition to foundation funds, there isn't an issue there. To be honest if you are dealing with this piece of legislation those things do come into consideration and concern. We obviously want to be accountable and transparent but it goes back to my original comment to what extent and for what reason and that is the bottom line you will have to deliberate.

**Chairman RaeAnn Kelsch:** I think that when it says each public and nonpublic entity that if I choose to give 2.5 million dollars to the University of North Dakota Foundation and designate that I want it to be used for such purpose but I want to remain anonymous, then the entity that is using that money is the foundation. There is a difference and that is why it says entity and not individual. So it would not be identifying individuals.

**William Goetz – Chancellor, NDUS:** In that case yes.

**Rep. Karen Rohr:** Previous to the current policies had you already been receiving any variance reporting?

**William Goetz – Chancellor, NDUS:** That is routine.

**Rep. Karen Rohr:** Did you get a variance report from the NDSU project then?

**William Goetz – Chancellor, NDUS:** No because the foundation is a private entity and they had control of it.

**Chairman RaeAnn Kelsch:** Clearly the bill has legs and we always hate to be reactive when we draft legislation into effect. I think with what happened regarding the NDSU President's home it became a concern with the constituents and thus you see this bill that is before you today. In conversations I had with the senate education committee they felt like more work did need be done on the bill and then we would probably we cast with that responsibility. Are you willing to work with this committee to perhaps make some changes or are you completely opposed to the idea and don't want anything to do with it?

**William Goetz – Chancellor, NDUS:** In regards to any legislation that comes before this body the University System will always cooperate. We want to work to the end that works best for all. Now if public policy is driven by a case or event and if that is foremost of importance and if that is how we engage in public policy in terms of a reaction then that is everyone's own prerogative. The bottom line is we will always work with legislators in regard to what is best.

**Chairman RaeAnn Kelsch:** Further questions? Further testimony in opposition?

**Alice Brekke – VP of Finance and Operations, UND:** Although I have worked in the university for more than thirty years, I have officially been in my current since May 2009. The issues and concerns surrounding capital projects landed on my desk very early in my tenure as VP. In that context I have initiated a regular rhythm of conversations to emphasize for the university of North Dakota how we accomplish our goals and execute

these projects. That is just as important for what we achieve. Review and initial discussions regarding capital projects revealed many questions and varying interpretations of existing policy definitions and so forth. Both the North Dakota University System level work group and a UND work group convened and the initial revisions were made and the work has continued. I'd like to comment on the work specific to UND. This particular group has focused first on definitions and whether we have standard definitions that are commonly understood and consistently applied. Secondly are there mechanisms to be sure that we can do a reality check on a project by project basis and test the question of are we moving down the right path and are there things that need to be resolved? We have looked at improvement of communications, identification of key decisions points, and discussion of approval levels within the institution as well as how those approvals flow into the necessary approvals required. That could be board approval or legislative approval. The overall goal has been to improve transparency, accountability, and the overall effectiveness of each project in each initiative. The conversations have also had the side benefit of increasing awareness and that is a good thing. The internal UND committee has become our go-to group and has expanded a bit to what we originally put in place. We started with facility people, capital project and planning, and our accounting area was involved. We have expanded it to include purchasing, information technology and telecommunications. We have gained a much greater understanding of the breadth and reach of each of these projects particularly as it relates to renovations. Our focus has been and will continue to be improving the depths of planning at the front end together with policy and process improvements. Monitoring is an integral part of this at the campus level and we are certainly committed to full compliance and reporting in whatever form that takes. As we have looked at SB 2323 there have been some questions that have surfaced and a few were raised by individuals testifying in favor of the bill.

**Chairman RaeAnn Kelsch:** Questions for Alice?

**Rep. Lyle Hanson:** I imagine you have an architect on all these projects. Are you in contact with those architects that give you some of this information or not?

**Alice Brekke – VP of Finance and Operations, UND:** We are and we have an in-house architect. We also are required to engage an architect on these various projects. There is regular information that is provided.

**Chairman RaeAnn Kelsch:** Is it NDSU and UND that are the only campuses that are here to testify against this? Is that do to the fact that you feel it is kind of targeted at you?

**Alice Brekke – VP of Finance and Operations, UND:** I believe the board took the position in opposition.

**Rep. Brenda Heller:** In your testimony you revealed that you are very organized when projects go forth, you track them, and you have meetings and know exactly what is going on. So how difficult would it be to do what this bill would require?

**Alice Brekke – VP of Finance and Operations, UND:** From my perspective I am not sure that is a terribly difficult thing to do. What it does is it takes what we do at the campus level and just raises it a couple levels from an information flow standpoint.

**Rep. Brenda Heller:** Why wouldn't you want to share how organized you are and how well you keep track of projects?

**Alice Brekke – VP of Finance and Operations, UND:** I personally would want to share that information.

**Rep. Karen Karls:** Could we get a copy of your remarks?

**Alice Brekke – VP of Finance and Operations, UND:** I will get them to you. A comment on there was a question about being organized and sharing information. Certainly we are willing and able to do that but in order to do that we want to be sure we are responding and accurately connecting to what is being asked for. I think some of the clarifications are going to important because I think there are some areas that are a little bit fuzzy.

**Chairman RaeAnn Kelsch:** Further opposition?

**Mike Ellingson – Director, NDSU Facilities Management:** I'm here to ask for some clarification on items and through the testimony and dialogue this morning some of my questions have been answered. We do have some questions on line item 14 subsection 1-B where it says expenditures authorized by the legislative assembly. When I see that and then go up into the main paragraph and see the 250 thousand dollars that is a link to a state board approval process I was hoping to have some clarification that way. The second question for clarification is the understanding of line item 21 subsection 1-H which is scheduled variance by numbers and dates. I need some clarification on what that means for us. The third is we heard some talk and on the second page, line item 3 under subsection B where it says a list of each public and non-public entities. I think it would be good to include some language about foundation or donors so that it helps us clarify what that means.

**Chairman RaeAnn Kelsch:** Questions? Further opposition? We will close the hearing on SB 2323.

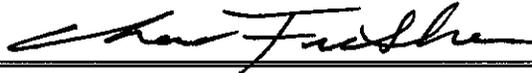
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee  
Pioneer Room, State Capitol

SB 2323  
03/29/11  
16133

Conference Committee

Committee Clerk Signature



## MINUTES:

**Chairman RaeAnn Kelsch:** We will open on SB 2323. I want to get your thoughts on this so we can figure out what direction we want to head and how much we should put into the bill. Here are the clarifications that were asked for on the bill itself. On line 14, subsection B, with the expenditure authorized by the legislative assembly, the clarification is if this is just legislative or if it is 250,000 dollar projects which are linked to the State Board of Higher Education projects. I am guessing that it is the expenditures authorized by the legislative assembly because it says that and I took it at face value. On line 21, 1H, what is meant by the scheduled variance by number of days? My interpretation of that is having a project scheduled for to be done at a certain point and then having it go over that time period. For example if you say your house is going to be built and done by May 17, and you can't move in until May 28, that would be a variance in my mind of 11 days. That is how I would interpret that but it maybe isn't that clear. Both of these are coming from NDSU and UND who said they were willing to provide this and were willing to work with us. They just want to make sure that they understand what these mean. They would also like further clarification on line 3 of page 2.

**Rep. Phillip Mueller:** I want to go back to a comment I think I heard you mention about this only involving state monies. If so we will need to know what that means because if you make reference to line 3, we are talking about public and nonpublic entities that are involved in financial obligation. It would seem to me that we are talking about all the monies that have been approved by the legislature for campus facilities.

**Chairman RaeAnn Kelsch:** I am not exactly sure on this one. I understand if you want to know that the foundation maybe gave money but the way that this is written is if I give money to the UND foundation and I want to remain anonymous but I want it to go for the renovation for the school of business and I tie that to the school of business expansion, by law it says you have to list that. I think that is where the question came up. I think I understand what the intent was when the senate put that in but I am not sure it was stated correctly. Those were 3 of the areas. The group at UND focused on the definitions and then they looked at the mechanisms to make sure that they have a consistent application within the existing framework. They have done some things for transparency, accountability, and overall effectiveness and they have used some real life projects to test the practical application of their definition. All of them said if we are going to put it into law I think we

need a little more clarification and then it really sounded like they were fine with the rest of the bill.

**Rep. Joe Heilman:** I have a comment on subsection B on page 2, line 3. I remember asking the bill sponsor what the intent was and from what I understood from his response was if John Doe contributed X amount of dollars to some building project the public has a right to know about that. If there is some interest behind the scenes in getting something done they want to know about that. I have a problem with that because if you are dealing with foundations some people want to remain anonymous and they give sizable amounts of dollars. If Joe Heilman gives 100 dollars to some building fund I think this list could be an amazingly large list.

**Chairman RaeAnn Kelsch:** I think we need further clarification on that.

**Rep. Corey Mock:** I have a question on bricks and mortar projects that are funded either with public funds or joint public foundation funds. Are maintenance costs the burden of the state and the institution even if the project itself was originally funded with foundation dollars? In which case how would that play into this bill?

**Chairman RaeAnn Kelsch:** Some of it depends. There are some foundations that have set it up so that it is a continuance for the upkeep and maintenance and some will build the building for you and turn around and sell it for a dollar or whatever and then it becomes your responsibility for the maintenance. I think it goes both ways. The issue I have is in many cases the legislature has said we will appropriate a certain amount of money but your community has to have a match. So I'm not sure how that works with this. There are a few questions that I still have in my mind about how that works and how you get those listings. I am a cosponsor on the bill and I serve on legislative audit and fiscal review with Sen. Christmann and we had some issues after those audits came out and we had talked about putting a bill like this in. I think the senate made some good improvements on it but I think that perhaps we could clarify a couple of those. Sen. Christmann admitted that the amendments were done on the senate side and he couldn't clarify some of the statements either.

**Rep. Corey Mock:** On lines 8 and 9 on page 1, it says 250,000 dollars or more is obligated to adhere to these reporting standards. Would that be 250,000 dollars total or would the intent be to be 250,000 dollars of the state funds for projects?

**Chairman RaeAnn Kelsch:** That was one of the clarifications they were asking for. Is it expenditures by the legislature that would be legislatively appropriated or is it expenditures that the state board approves which can be foundations? We don't have legislative authority over foundations.

**Rep. David Rust:** I think you have to be careful about gifts. You can be given something only to find out that it was the gift that keeps costing you. As I look at the list it has name or construction project, authorized expenditure, and amount of original contract which are all easily obtainable information. I am having a problem with item E. I am thinking about projects where you say the amount of any potential or anticipated change orders. What does that mean? Who knows that? I think E is probably something that should be thrown

out. I think the scheduled variance by number of days is another one. What do you do there? Do you pull a number out of the sky? There were some things that I thought should be done in 5 months time and it may have taken 10 months.

**Rep. Mark Sanford:** If it is monthly report, the amount of potential or anticipated change orders would be anything you are contemplating at that point in time. You could say this is where we expect to be or what you know at that time. My point is if you are going to track on a monthly basis on when you plan on being done it is important to know that information.

**Rep. Corey Mock:** I think that is good point. It is a monthly report and on line 17, letter E, if you are building a building and you anticipate the price of something going up that is where you would report that. I think it is an appropriate item to have if and only if it is a monthly report.

**Rep. David Rust:** The other thing I am wondering about in this is what the hidden agenda in this bill is? First off you have a project a project that is underway on a campus and under the control of the State Board of Higher Education and you want information provided to the office of management. What that means is somebody doesn't trust what the State Board of Higher Education is doing. That is plain and simple where it is. So we want to either know about it in advance so we can create controversy in the local newspaper or to exert pressure onto the State Board of Higher Education as to what they are doing. That is the purpose of this bill. I'm wondering if you want transparency I think those kinds of things about what it is costing are thing that should be given. You maybe give those at the time that they are done or when the contract is signed. You basically have E in there because you want to debate that issue someplace in the public as opposed to going to the State Board of Higher Education.

**Chairman RaeAnn Kelsch:** Since I am a cosponsor on the bill I will address the bill. You are correct that it is information that legislators would like to know. I think what the bill has done and the results of the audit were, is now at least two campuses have changed their policies so now we will have more transparency and they have put into place better policies regarding approval, overages, and all those issues. Those campuses have addressed this issue. Is it necessary at this point? Perhaps it is not and perhaps there is too much in this legislation for monthly reports. The other concern I have about the way the senate amended it is with the reports to the director of OMB. With my conversations with OMN they said they didn't want this information because it is not something that they know what to do with. If you look at the number of projects that the campuses have through the biennium, we will consistently and continually receive reports and what do they do with that? What is their role in this? Maybe there is too much information requested in here and maybe it could be cleaned up a bit. I do believe that there were those of us that, while we had heard the rumors, were caught totally off guard as to how blatantly a campus in particular ignored state law.

**Rep. Karen Rohr:** I like the bill because I think it addresses more than transparency. I think it addresses accountability as well for the taxpayers. If you recall there was an outcry from the public regarding the issues with UND and NDSU. I think if we have to tweak this bill to make it more appropriate I think we should. I think the public expects it. I think with the

variables that are listed here, I recall 1 or 2 people that actually had the report and said these are things that they are already collecting.

**Chairman RaeAnn Kelsch:** But they do have the question about what is meant by scheduled variance by number of days. They are doing all of this but both UND and NDSU did ask about what is meant by that. Those three clarifications that I asked for were ones that they are doing all this and are willing to comply with this. 1 is the clarification of the 250,000 dollar projects the other is what does scheduled variance by number of days mean and then page 2 with the public and nonpublic. Those were the 3 clarifications they asked for. The University System is opposed to the bill.

**Rep. Karen Rohr:** I think we need to remember the public.

**Chairman RaeAnn Kelsch:** I am still not sure that it should go to OMB. I think if it is something that we are truly interested in then maybe it should go to legislative audit and fiscal review committee, legislative council, or someplace else. Because I am not sure on this I am going to assign a subcommittee with Rep. John Wall, Rep. David Rust, and Rep. Lyle Hanson on it. Rep. Karen Rohr is right. I think there needs to be the accountability. They're willing to do it and I did find it interesting that University System office came in and opposed and those campuses did not oppose it. My biggest issues are clarification and if it is necessary to go to OMB.

**Rep. David Rust:** You are on audit and fiscal review so is that some of the information that the body should get because I would think audit and fiscal review would kind of be a watchdog agency.

**Chairman RaeAnn Kelsch:** We review the audits and both performance and fiscal audits so we do have both of those responsibilities. Potentially maybe that is good and I think when I talked to OMB they didn't think it made sense for it to go to them.

**Rep. Karen Rohr:** In GVA I was in a subcommittee and we had a construction issue. OMB was involved at that time so you'd think they would know what statute would actually be involved. You'd think there is already something in place where we have accountability.

**Chairman RaeAnn Kelsch:** There is accountability in the auditing practices. This is just who those monthly reports should go to.

**Rep. John Wall:** Because I don't know legislative audit and fiscal review, do you have a staff?

**Chairman RaeAnn Kelsch:** Yes. We will do more work on this in subcommittee. We will close on SB 2323.

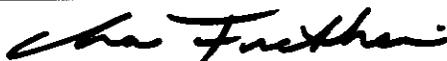
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee  
Pioneer Room, State Capitol

SB 2323  
April 4, 2011  
16306

Conference Committee

Committee Clerk Signature



## MINUTES:

**Chairman RaeAnn Kelsch:** We will look at SB 2323 and I understand that there are amendments.

**Rep. John Wall:** I have an amendment and I will explain what we were charged with. On the first page, line 14, when we had testimony we were asked for clarification on line 14. We talked to an architect and the architect that this is clearly understood by anyone in the construction business so we didn't do anything with that particular one. On page 1, line 21, we were asked to clarify that and the first proposed amendment you have replaces "schedule variance by number of days" with "scheduled date of completion as noted in the original contract and the latest available schedule date of completion." On page 2, one of the bigger questions was who gets these reports, what happens to them, and so on. One page 1 it says that the university will get the construction reports on a monthly basis and we added a number 3 and it says the office of management and budget shall review the information received under this section and provide reports to the budget section of the legislative management upon request. In committee we discussed different entities that probably should receive this report. Legislative audit and fiscal review was one place that was suggested that this report be sent to, but in talking to various people our subcommittee found that perhaps the best place for the reporting to go would be to the budget section of legislative management upon request. One are I would like to discuss on page 2 is line 3 where it says a list of each public and nonpublic entity that has a contractually reflected financial obligation with respect to the project. We grappled with this, we had some good input, some people felt that any donors should be listed, and we were playing around with numbers if they donated 5,000, 10,000, or whatever. Taking to Anita Thomas, she felt that this was something that was understood in law now that we needn't got there. She also felt that it reflected the need for them to put down if they had an electrical contract or if their obligations of plumbing contract and so on. It went into other things besides simply donors so we left this part alone. Those are the amendments and at this time I would move the proposed amendments to engrossed SB 2323.

**Rep. Lyle Hanson:** Second.

**Chairman RaeAnn Kelsch:** Committee discussion?

**Rep. Joe Heilman:** I'm still confused on the listing of the nonpublic entities. Did you say that if I gave 10,000 dollars to the foundation, and then the foundation turns that around into the building fund, does my name go on the state list?

**Rep. John Wall:** It would be my understanding that it does. We did talk about anonymous gifts and what to do with them. Anita Thomas said she didn't think it was necessary to put that into this bill.

**Rep. Phillip Mueller:** Can you enlighten us on what we have been told is in law? I have some of the same concerns that Rep. Joe Heilman just referenced. Can they be anonymous? What if they don't to be listed at all? I know we have dealt with those issues but I think we could maybe use a little more background as to why legislative council feels we do not have to deal with lines 3 and 4 on page 2.

**Rep. John Wall:** I think you pose very good questions. Anita Thomas said she was going to be here and she did say this was elsewhere in code but I think we need to get that defined.

**Rep. Joe Heilman:** If I give to a development foundation with this law would they have to disclose who donated into the pool of funds for that specific purpose because the development foundation is its own entity. I don't know if they just say we got two million dollars from the development foundation or if they have to list who gave all the dollars. That is something I would like to know if anyone can comment.

**Rep. John Wall:** I don't have the answer. That was a question that I posed to Anita, especially with donations and giving anonymous donations, and she felt this was not the place for it.

**Rep. Karen Rohr:** The change that was made on line 21, how is that different from schedule variance by number of days? If you are taking the date of completion as in the original contract, where are they going to find the latest available scheduled date of completion? Would it be on the variance report?

**Rep. John Wall:** I think that would be the variance. It is either later or they will be ahead of time.

**Rep. Karen Rohr:** It would still be the variance by number of days. Why do we need the clarification if it is saying the same thing?

**Rep. John Wall:** I agree it is saying the same thing. We added some words because the question of clarification was that they weren't clear on what it was asking for originally. I think now with data completion it is either going to be longer or they are ahead of schedule.

**Chairman RaeAnn Kelsch:** That question was asked by both UND and NDSU. They said they were willing to provide this but they weren't exactly certain what we meant by that and they wanted a further clarification. Perhaps it says the same thing but I think there is a little bit more of a clarification there so that when they submit the information they will have that.

**Rep. Corey Mock:** I served on the interim IT committee and we had several larger IT projects where they provided new variance reports on the projected completion of a project and in several instances they were new reports that were different from the original. What I do like about this proposed language is you do get to see the changes from the original contract and if there has been 2 or 3 different variance reports filed you can see how that has changed over time compared to the original contract.

**Rep. David Rust:** I see it as a little bit of a clarification also. It is nice to have the date definitive. It nails it down.

**Chairman RaeAnn Kelsch:** We are discussing the amendments to SB 2323, the document is 02001, and the question has come up on the bill itself about the language on page 2, lines 3 and 4 where it says a list of each public and nonpublic entity that has a contractually reflected financial obligation with respect to the project. There is some discomfort with that language as to what it actually means. The question has come up a couple times that if I am a donor to the development foundation and I give money specifically for buildings, does my name now appear on this list as someone that has given contributions to the fund or if I give five million dollars for a building is my name now on this list? What is it that lines 3 and 4 are actually saying?

**Anita Thomas – Legislative Council:** Lines 3 and 4 are trying to get at contractual obligations. If I have a trust fund and I don't feel I need it and I want to give five million dollars for whatever purpose and I ask nothing in return, that is not a contractually reflected financial obligation. If however I ask if you need a parking lot and say I will build a parking lot but I want something in return and there is paperwork signing that, then that would be a contractually reflected obligation. Similarly if there is a bid out and I agree to do the plumbing work on a building, I get something in return for that. I know at one point there was some concern about whether or not the five dollar pledge is in fact a contract and it truly is not.

**Chairman RaeAnn Kelsch:** It would protect individuals that contribute to a fund. So if someone gave five million to a university for a building with the understanding that the building would be named after them, would that be a contract?

**Anita Thomas – Legislative Council:** It depends on the exact circumstance. If the donor they would give five million dollars and then the university would have to provide the building with their name on the side and that was contractually reflected, then yes. If it is just a mere understanding and a good will gesture, then no. We are truly trying to get at some level of ownership or contractual responsibility so the money isn't just a free will offering. It is in return for a benefit for the donor.

**Chairman RaeAnn Kelsch:** So it is strictly contract related?

**Anita Thomas – Legislative Council:** Yes.

**Rep. Phillip Mueller:** We focused on donations and giving. So if I were the electrical company that was going to do the wiring and I am going to give you a break on that

because you are the university of whatever, are those kinds of things referenced in lines 3 and 4 on page 2?

**Anita Thomas – Legislative Council:** I would look at that as a contractual reflected financial obligation. The chances are pretty good that the electric company will have paper work saying these are the expectations of me and these are the dollars that will be coming my way upon completion of the project. Yes.

**Rep. Mark Sanford:** If a facility would be built almost exclusively by a foundation but was going to be donated or gifted to a university, then that would be reflected there? In other words they would be the revenue source so there would be some kind of contract that would reflect that they are building this building and foundation aid is responsible for paying the bills.

**Anita Thomas – Legislative Council:** A lot would depend on who owns the building at the time that it was initiated. From your example it sounds to me like the foundation was constructing the building at a later date and would pass it on to the university. What we are talking about here are university projects and not acquisitions that are going to take place after the fact.

**Rep. Corey Mock:** In subsection 1, the way this reads do you interpret that to be a total 250,000 dollars regardless of how much of it is public and private funds? Is it possible that a project that is only funded by 100,000 dollars of public funds but is valued at more than 250,000 dollars would be subject to the same criteria?

**Anita Thomas – Legislative Council:** I would have to think about that. It seems to me that we are still talking about projects that are under the control of the board. At the very best I would suggest that it could use some clarification. I would not feel comfortable saying it is only projects that are university ownership although it seems that would be the only logical interpretation. The reason I say that is if there was another ownership or another form of direction involved it wouldn't be up to the board then to provide the paperwork. The board wouldn't have the paperwork because it would not be the owner.

**Rep. Mark Sanford:** Would the language in here cover the two university president houses?

**Anita Thomas – Legislative Council:** Outside of being peripherally familiar with the details of that I would not be comfortable making a comment about all that happened in those two circumstances.

**Chairman RaeAnn Kelsch:** I think the threshold probably would apply to those houses.

**Rep. Phillip Mueller:** As I look at lines 3 and 4 we really aren't talking about those groups or individuals that may want to give a gift to the building of a facility on any campus. It doesn't have in contract some kind of an arrangement. It doesn't really speak to anonymous gifts that wouldn't expect anything in return. Are those kinds of issues covered elsewhere in code and we don't need to talk about that anonymity? This doesn't talk about that at all.

**Anita Thomas – Legislative Council:** That is correct. There are sections in code that already deal with gifts, grants, and donations and the threshold approval amounts for those situations.

**Chairman RaeAnn Kelsch:** Committee members we have the amendment before us. We will take a voice vote on the amendment.

*Voice vote:* motion carries.

**Rep. David Rust:** Would it be better on line 8 if we said something to the effect of whenever any new construction, renovation, or repair involving the expenditure of public dollars of more than 250,000 dollars? Would that help? At this rate does it mean that the project is 250,000 dollars and we don't care if it is 50 dollars from the state and the remaining from elsewhere? Would it be better to have that in or not?

**Chairman RaeAnn Kelsch:** That was one of the clarifications that were being asked for as well. Does this apply to legislative appropriations or what does this apply to.

**Anita Thomas – Legislative Council:** It would seem to me if you put that type of language in there I think that you would be restricting the focus of the bill. As it stands right now it says 250,000 dollars and it doesn't really matter what the source of the combined funding is. If you have a project that is a little more than a shed, the idea is to have the paperwork following so that not only the board is responsible for looking at but ultimately OMB is as well.

**Vice Chair Lisa Meier:** The way it stands right now it could be assumed that it could be private funds too up to 250,000 dollars. Is that right?

**Anita Thomas – Legislative Council:** Yes I think so.

**Rep. Mark Sanford:** If there is a project that is done on a campus, regardless of revenue source, is it under the control of the state board?

**Anita Thomas – Legislative Council:** The reference of under the control of the state board refers to an institution and not the project. If it is a project that is taking place within the boundaries of state property, then it would come under the control of the board.

**Rep. Mark Sanford:** Going back the presidents' houses, technically the state board was in control of that. It was on campus. I don't know if they had this 250,000 dollars at that point in time but they would in this circumstance.

**Anita Thomas – Legislative Council:** I'm only peripherally familiar with the details of that so I would prefer not to comment on those two specific instances.

**Chairman RaeAnn Kelsch:** Those were foundation moneys. There were some state dollars appropriated but there were foundation moneys that were involved as well.

**Rep. Mark Sanford:** I think the appearance here is that the foundations did it and it had little or no oversight. My question is if it is going to be done on a campus would the board be charged?

**Anita Thomas – Legislative Council:** If another institution was going to build an accommodation that was worth more than 250,000 dollars, then that would come under this particular bill should it pass.

**Rep. Phillip Mueller:** I think we shouldn't be too concerned because if all 250,000 dollars came from some individual that there shouldn't be any concern on the part of the board and the state. I would suggest that it is not quite right in that somebody along the way is going to maintain that. I think the bill as it is outlined here is probably what we are after and I would support it.

**Rep. David Rust:** I am totally satisfied that what is here is better than what my question was.

**Rep. Karen Rohr:** There must have been some state funds involved otherwise the media wouldn't have got a hold of the information on the two houses.

**Chairman RaeAnn Kelsch:** The overruns had to come to the state for an emergency appropriation. I am appreciated Rep. David Rust's question and I think we have good clarification on that. We have an amended SB 2323 before us. What are the wishes of the committee?

**Rep. David Rust:** I move a do pass as amended.

**Vice Chair Lisa Meier:** Second.

**Chairman RaeAnn Kelsch:** Any questions? We will take the roll on a do pass as amended on SB 2323. Motion carries. We will close on SB 2323.

**15 YEAS 0 NAYS 0 ABSENT  
CARRIER: Rep. John Wall**

**DO PASS as Amended**

Date: April 4, 2011  
Roll Call Vote #: VOICE VOTE

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2323

House EDUCATION Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt  
Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Rep. Wall Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch			Rep. Hanson		
Vice Chairman Meier			Rep. Hunskor		
Rep. Heilman			Rep. Mock		
Rep. Heller			Rep. Mueller		
Rep. Johnson					
Rep. Karls					
Rep. Rohr					
Rep. Rust					
Rep. Sanford					
Rep. Schatz					
Rep. Wall					

Total (Yes) 15 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

*Voice vote -  
motion carries*

VR  
4/4/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2323

Page 1, line 21, replace "schedule variance by number of days" with "scheduled date of completion as noted in the original contract and the latest available scheduled date of completion"

Page 2, after line 4, insert:

"3. The office of management and budget shall review the information received under this section and provide reports to the budget section of the legislative management upon request."

Renumber accordingly

Date: April 4, 2011  
 Roll Call Vote #: ROLL CALL

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2323

House EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0215.02001 title 03000

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt  
 Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Rep. Rust Seconded By Rep. Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓		Rep. Hanson	✓	
Vice Chairman Meier	✓		Rep. Hunsakor	✓	
Rep. Heilman	✓		Rep. Mock	✓	
Rep. Heller	✓		Rep. Mueller	✓	
Rep. Johnson	✓				
Rep. Karls	✓				
Rep. Rohr	✓				
Rep. Rust	✓				
Rep. Sanford	✓				
Rep. Schatz	✓				
Rep. Wall	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Representative Wall

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

**REPORT OF STANDING COMMITTEE**

**SB 2323, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2323 was placed on the Sixth order on the calendar.**

Page 1, line 21, replace "schedule variance by number of days" with "scheduled date of completion as noted in the original contract and the latest available scheduled date of completion"

Page 2, after line 4, insert:

"3. The office of management and budget shall review the information received under this section and provide reports to the budget section of the legislative management upon request."

Renumber accordingly

2011 TESTIMONY

SB 2323

**North Dakota University System**  
**SB 2323 – Senate Education Committee**  
**Tuesday, February 15, 2011**  
**William Goetz, Chancellor**

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Good morning Chairman Freborg and members of the Senate Education Committee. For the record, my name is William Goetz, Chancellor, North Dakota University System.

SB 2323:

- Requires NDUS campuses to submit to OMB “copies of all invoices and any other documentation pertaining to the cost and progress of the activity” for capital projects more than \$100,000
- Systemwide, it is estimated that the NDUS annually has about 75-80 projects in excess of \$100,000.
- Projects of about \$250,000 can have anywhere from 25-50 pieces of documentation per project. Large major renovation or new construction capital projects can have anywhere from 100-500 pieces of documentation. For example, a recent DSU \$16 million project had over 500 documents/invoices.
- Documents associated with a construction project can include some or all of the following: architect/engineer reports, bond finance documents, bid documents (several for each separate mechanical, electrical, general), contracts, change orders, meeting notes, contractor progress reports, soil testing reports, easements, inspections, etc.
- There are currently several state statutes which specifically address bid requirements, and other legislative requirements for project approvals.
- The SBHE also has several policies and procedures in place requiring approvals and disclosure. These policies were updated as recently as October 2009, following the State Auditor’s Performance Audit. A more comprehensive review has been completed since that time, and more comprehensive policy changes are expected to be in place before June 30, 2011.
- Additionally, some of the campuses are engaged in extensive review and modification of their capital project process and monitoring procedures.
- In addition to the requirement that campuses seek SBHE approval (and any necessary legislative approvals) on projects costing in excess of \$250,000 before they proceed with the project, they must also disclose to the SBHE Budget, Audit and Finance Committee, on a semi-annual basis, any project variances as follows: 1.) if actual expenditures are anticipated to exceed, or do in fact exceed, the dollar spending authorized; 2.) if the funding sources vary from those originally approved; 3.) if project represents a significant change in scope (size, configuration, use) from that originally approved.
- The requirements of this legislation will create additional administrative burden of copying, tracking and submitting all project documentation, for which the campuses do not have additional staff to address. Furthermore, if the project is delayed due to this requirement, it could have a serious impact on the campuses ability to complete projects on a timely and cost effective basis, as project delays translate into real dollar costs. Many times, campuses have a very short window of time to complete projects to minimize disruption, while students and faculty are off campus during the summer months.

*#1 Testimony*

# PROJECT VARIANCE REPORT

TO BE SUBMITTED MONTHLY TO THE OFFICE OF MANAGEMENT & BUDGET

INSTITUTION: University of North Dakota

Project Name	\$ Legislative Authority	\$ Original Encumbrance (contract/s)	\$ Additional* Encumbrance (+/- change orders)	\$ Potential Additional* Encumbrance (+/- change orders)	Encumbrance Variation	\$ Total Expended To Date	Schedule Variance (days +/-)
University Pl. Residence Hall	\$20,000,000	\$18,750,000	\$899,000	\$12,500	- \$338,500	1,250,987	-11 days
Law School Remodeling	\$500,000	\$368,000	\$4,500	\$1,500	- \$126,000	\$278,000	-2 days

\* List each change in contract on separate form with brief explanation

(# 2 attachment)

# TESTIMONY ATTACHMENT 1

## North Dakota University System

### SB 2323 – House Education Committee

Wednesday, March 9, 2011

William Goetz, Chancellor

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Good morning Madam Chair Kelsch and members of the House Education Committee. For the record, my name is William Goetz, Chancellor, North Dakota University System.

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SB 2323:

- Requires NDUS campuses to submit to OMB "monthly variance reports for capital projects more than \$250,000.
- Systemwide, it is estimated that the NDUS annually has about 50 projects in excess of \$250,000.
- There are currently several state statutes which specifically address bid requirements, and other legislative requirements for project approvals.
- The SBHE also has several policies and procedures in place requiring approvals and disclosure. These policies were updated as recently as October 2009, following the State Auditor's Performance Audit. A more comprehensive review has been completed since that time, and more comprehensive policy changes are expected to be in place before June 30, 2011.
- Additionally, some of the campuses are engaged in extensive review and modification of their capital project process and monitoring procedures. For example, NDSU is developing a sophisticated IT capital project tracking system.
- In addition to the requirement that campuses seek SBHE approval (and any necessary legislative approvals) on projects costing in excess of \$250,000 before they proceed with the project, they must also disclose to the SBHE Budget, Audit and Finance Committee, on a semi-annual basis, any project variances as follows: 1.) if actual expenditures are anticipated to exceed, or do in fact exceed, the dollar spending authorized; 2.) if the funding sources vary from those originally approved; 3.) if project represents a significant change in scope (size, configuration, use) from that originally approved.
- The requirements of this legislation will create additional administrative work, without a clear sense of what added value is provided by sending reports to OMB. While we agree that project monitoring is vitally essential, this responsibility and accountability is best left at the campus level or with those that are responsible for the project management.
- It should be noted that the reporting requirement intends to track expenditures against the project amount authorized by the legislature. The legislature does not appropriate an amount for each and every project. For example, each campus is provided an amount for extraordinary repairs appropriation which is used for multiple regular repair and maintenance projects, as determined by each campus, some of which would be in excess of \$250,000. In 09-11, UND, for example, received over \$5.0 million for extraordinary repairs. In addition, the legislature has at times provided a pool of funds to each campus to address deferred maintenance, leaving the discretion to each institution to determine which projects and at what amount to complete. Some of these projects would be in excess of \$250,000; however, the legislature did not allocate a set amount for specific projects. Therefore, tracking against a legislatively authorized amount

would not be viable. If the intent is to only track those projects for which a specific legislative authorization is required, the bill should be amended to add clarification.

- Should the reporting requirements be mandated, further clarification and definitions would be needed to ensure consistent reporting across campuses. For example, item c requires “the amount of the original contract”. There are some project expenses that are not under contract, such as permits, equipment, supplies, etc., but the cost of which needs to be covered within the resources allocated for the project. Another would be schedule variance by number of days.

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The recent Minard Hall collapse at NDSU would create reporting challenges.