

**2015 HOUSE EDUCATION**

**HB 1404**

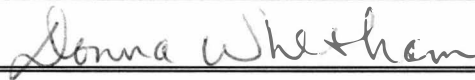
# 2015 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Pioneer Room, State Capitol

HB 1404  
1/27/2015  
22671

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to the selection process applicable to institution presidents and the commissioner of higher education.

Attachment # 1-2

## Minutes:

**Chairman Nathe:** opened the hearing on HB 1404.

**Representative Rich S. Becker:** Introduced HB 1404. My bill relates to the presidents of the institutions higher education and the chancellor's office. The reason for the bill is to have more than one applicant that would be referred for a position. If the research committee has done their job they should submit more than one. Explained the bill. (1:00-6:40) (See Attachment #1)

**Rep Rohr:** How would we enforce this?

**Representative Becker:** It would be a policy, it shouldn't need enforcement.

**Rep. Kelsh:** If no one applies and they are not qualified, why would you have to have more than one?

**Representative Becker:** In my reading the state newspapers over the years there is usually many applicants for these positions. I don't think there was ever a situation wherer there was only one person forwarded.

**Rep. Kelsh:** Was that the case with President Shirley, was there more applicants?

**Representative Becker:** I don't know that. I was told that was the only candidate they wanted to put forward.

**Rep. Zubke:** I am not much on government micro-managing out in society. I can see situations where they may only get one candidate. Don't you feel this is an over reach for the government?

**Representative Becker:** In the general sense that is supportable. What I am saying is it will just help enforce the best governing of the system. I have a hard time believing they cannot find 2-4 applicants for positions of president or chancellor.

**Rep. Hunskor:** Part of the issue seems to be that the board did not follow current law or policy. Dr. Shirley may have been the man they wanted for the position. Maybe we shouldn't have this law so they wouldn't be breaking a law if the right man came along for a job.

**Representative Becker:** I still believe it would be in our best interest to have more than one option.

**Rep Ben Koppelman:** If they do have the policy in place, couldn't they be somewhat guilted into following it if it was put out in the press?

**Representative Becker:** I just think this another reason there is a lack of trust for the board of Higher Ed. I will repeat I think having it in the Century code and having the University system adopt it and I assume it would be in their best interest to follow this policy.

**Chairman Nathe:** Any others in support of HB 1404? None. Any opposition to 1404?

**Larry Skogen:** Interim Chancellor, in opposition to HB 1404. (16:44)- (22:50) (See Attachment #2).

**Rep Rohr:** What is the effective date? This only went into effect September 25, 2013. Is that correct?

**Larry Skogen:** This is a revision. There has been more policy before that and I don't know what those dates are.

**Rep. Rohr:** So the language that talks about the 2-4 applicants is that new?

**Larry Skogen:** I am not sure, I would have to look at the old policy.

**Chairman Nathe:** Any other opposition? None. Closed the hearing on HB 1404.

**Vice Chairman Schatz:** Moved Do Not Pass on HB 1404.

**Rep. Mock:** seconded.

**Rep. Rohr:** I think it is a great decision to not pass because I don't know how it would be enforced.

House Education Committee

HB 1404

1/27/2015

Page 3

**Chairman Nathe:** Yes, and like Chancellor Skogen says, it mimics everything they are doing right now.

**A Roll Call Vote was taken. Yes: 13 No: 0 Absent: 0. Motion carried.**

**Vice Chairman Schatz: Will carry the bill.**

Date: 1-27-15  
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1404**

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep Schatz Seconded By Rep Mock

| Representatives      | Yes | No | Representatives | Yes | No |
|----------------------|-----|----|-----------------|-----|----|
| Chairman Nathe       | ✓   |    | Rep. Hunskor    | ✓   |    |
| Vice Chairman Schatz | ✓   |    | Rep. Kelsh      | ✓   |    |
| Rep. Dennis Johnson  | ✓   |    | Rep. Mock       | ✓   |    |
| Rep. B. Koppelman    | ✓   |    |                 |     |    |
| Rep. Looyen          | ✓   |    |                 |     |    |
| Rep. Meier           | ✓   |    |                 |     |    |
| Rep. Olson           | ✓   |    |                 |     |    |
| Rep. Rohr            | ✓   |    |                 |     |    |
| Rep. Schreiber Beck  | ✓   |    |                 |     |    |
| Rep. Zubke           | ✓   |    |                 |     |    |
|                      |     |    |                 |     |    |
|                      |     |    |                 |     |    |
|                      |     |    |                 |     |    |

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep Schatz

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

**REPORT OF STANDING COMMITTEE**

**HB 1404: Education Committee (Rep. Nathe, Chairman) recommends DO NOT PASS**  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1404 was placed on the  
Eleventh order on the calendar.

**2015 TESTIMONY**

**HB 1404**



#1  
HB1404  
1-27-15

## Policies and Procedures

### SBHE Policies

[<< return](#)

**SUBJECT:** 600s: Personnel

**EFFECTIVE:** September 25, 2013

**Section:** 601.1 Presidential Searches

1. The Board is responsible for appointment of institution presidents within the NDUS. Selection of a president is final only upon Board action.
2. The chancellor is responsible for overseeing the presidential search process in accordance with this policy and corresponding NDUS procedures.
3. Upon indication the position of an institution president will be vacant, the chancellor shall appoint a search committee to conduct a search for a new president. The Board may also retain the services of a consultant to assist the search committee in its work.

The chancellor also shall recommend to the Board an interim president to fill the vacancy until the search process is complete. The Board may appoint the recommended individual, ask for additional recommendations, or appoint someone directly. The Board shall set the terms and conditions of the interim president's contract.

4. Upon completion of its work, the search committee shall meet with the chancellor to obtain the chancellor's input on the candidates. The search committee shall then recommend between two and four candidates to the Board for further consideration. The Board may choose to interview any number of those candidates or reject the committee's recommendations. If the Board rejects all the recommendations, it may choose to interview other candidates or charge the committee with resuming the search process.
5. After the Board interviews candidates, it may choose to appoint one of them to the position of institution president or charge the committee with resuming the search process. Upon appointment of a new president, the Board shall approve the terms of the new president's contract.
6. The institution shall pay all costs of a search, including search committee, Board and NDUS office costs.

**Reference:** NDUS Procedure - [601.1](#)

### History:



## HB 1404

House Education

January 27, 2015

Larry C. Skogen, Interim Chancellor

701.328.2974 | larry.skogen@ndus.edu

Chairman Nathe and members of the committee, I am Larry Skogen, Interim Chancellor, North Dakota University System. I am here to urge the committee to recommend a “do not pass” on House Bill 1404.

My first objection to this bill is that it virtually replicates what is already in SBHE Policy 601.1 Presidential Searches and NDUS Procedure 601.1, both of which are attached to my handout. I am told by some of the sponsors of this bill that the real point of it is captured on lines 21 through 23 of the bill that state, “The board may not select an individual to serve as the president of an institution unless the search committee has presented the board with no fewer than two nor more than four candidates.”

You will note please paragraph 4 in Board policy 601.1 that “the search committee shall then recommended between two and four candidates to the Board for further consideration.” And in paragraph 11 of NDUS procedure 601.1 it states, “The search committee will select between two and four candidates to recommend to the Board for further consideration.”

So if the purpose of the bill is to require the Board to interview two to four candidates, then that proviso already exists in policy and procedure. However, it doesn’t always work.

In two searches that I’m familiar with, the Board only interviewed one candidate in each case, and that individual was subsequently hired by the Board. In the first case, the search committee properly vetted through all the candidates and determined that only one candidate fit the needs of that institution. In the other case that comes immediately to mind, the committee submitted two candidates for the Board’s consideration. Prior to the Board meeting, however, one of the candidates withdrew his candidacy.

Once the Board was down to one candidate—either by the action of the search committee or by the action of one of the candidates—the Board had options.

Referring you again to paragraph 4 of Board policy 601.1, it says, “The Board may choose to interview any number of those candidates or reject the committee’s recommendations. If the Board rejects all the recommendations, it may choose to interview other candidates or charge the committee with resuming the search process.”

So in both those cases the Board could have rejected the one candidate and directed the resumption of the search process. Searches are expensive undertakings costing in the neighborhood of \$80,000 to \$120,000. While a second search after a failed search may not cost that full amount, it will be expensive nevertheless. The Board is cognizant of its fiduciary responsibilities and in both of these cases elected to interview and subsequently hire those sole candidates.

Mandating in law that two to four candidates must be interviewed may add expense to a process in which even a sole candidate has been well vetted, with no guarantee that the second time around will result in the two to four candidates.

So I oppose this bill from a purely practical aspect in that getting two qualified candidates to be interviewed by the Board may sound a lot easier than it actually is.

On another level, we oppose this bill because we believe it infringes on the constitutional authority of the Board. Article VIII, Section 6, of the ND Constitution, subsection 6(b) states that the “state board of higher education shall have full authority over the institutions under its control.” Furthermore, the Constitution requires that the board shall “do each and everything necessary and proper for the efficient and economic administration of said state educational institutions.” We believe that the full authority given to the board and “each and everything necessary and proper” includes establishing policies and procedures to govern the selection of its campus and system leaders.

Accordingly, I urge a “do not pass” on this bill, which is unnecessary and is an infringement on the Board’s constitutional authority.



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## Policies and Procedures

### SBHE Policies

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4. Upon completion of its work, the search committee shall meet with the chancellor to obtain the chancellor's input on the candidates. The search committee shall then recommend between two and four candidates to the Board for further consideration. The Board may choose to interview any number of those candidates or reject the committee's recommendations. If the Board rejects all the recommendations, it may choose to interview other candidates or charge the committee with resuming the search process.
5. After the Board interviews candidates, it may choose to appoint one of them to the position of institution president or charge the committee with resuming the search process. Upon appointment of a new president, the Board shall approve the terms of the new president's contract.
6. The institution shall pay all costs of a search, including search committee, Board and NDUS office costs.

**Reference:** NDUS Procedure - [601.1](#)**History:**

SBHE Minutes, February 18-19, 1982, page 5003.

3

- Amendment SBHE Minutes, May 24-25, 1990, page 6003.
- Amendment SBHE Minutes, May 21, 1998, page 6889.
- Amendment SBHE Minutes, November 18-19, 1999.
- Amendment SBHE Minutes, September 27-28, 2001.
- Amendment SBHE Minutes, December 18, 2002.
- Amendment SBHE Minutes, August 3, 2007.
- Amendment SBHE Minutes, November 6, 2008.
- Amendment SBHE Minutes, September 5, 2012.
- Amendment SBHE Minutes, September 25, 2013.

[ [Back to website](#) ]

4



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## Policies and Procedures

### NDUS Procedures

[<< return](#)**SUBJECT:** 600s: Personnel**EFFECTIVE:** September 25, 2013**Section:** 601.1 Presidential Searches

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#### Purpose

This procedure implements SBHE Policy 601.1 and establishes a common procedural framework for the search and selection of a president for an NDUS institution. Variations from this procedure may be appropriate to serve the needs of a particular institution or its constituents. Such variations are permitted upon the written approval of the chancellor.

#### Responsibilities for Selection and Appointment of a President

The Board is responsible for appointing NDUS institution presidents and, when necessary, interim presidents. The chancellor, search committee and search consultant (if one is engaged) are responsible for ensuring well-qualified candidates are presented to the Board for consideration. NDUS office personnel are responsible for assisting the Board, chancellor and search committee as necessary.

At all times, the Board, NDUS personnel, search committee members and the search consultant will comply with all applicable laws, including those regarding equal employment opportunity, and Board policies.

Costs of the search, including costs of the search committee, search consultant, Board and NDUS office, will be paid or reimbursed by the institutions for which the search is conducted.

#### Procedures for Selecting President

1. Upon indication the position of an institution president will be vacant, the chancellor will appoint a search committee to conduct a search for a new president. Additionally, the Board will select one Board member to serve on the search committee. The committee members appointed by the Chancellor will include:
  - a. A senior system representative, as an ex officio, non-voting member;
  - b. Two faculty members to be selected from a list of at least six nominees provided by the Faculty Senate or equivalent faculty legislative body;
  - c. Two staff representatives, including one administrative/professional staff member and one technical/paraprofessional, office support, crafts/trades, services staff member, selected from a slate of at least three nominations for each group recommended by the Staff Senate;
  - d. One undergraduate student and, for institutions with graduate or

professional programs, one graduate or professional student selected from a slate of at least three nominations from each group provided by the recognized institution student government organization(s);

- e. One academic dean or vice president;
  - f. One alumni representative or foundation member who has demonstrated deep commitment to the institution; and
  - g. One representative of the institution's external constituency with a demonstrated deep interest in and support of the institution, its programs, and its role in community activities.
2. The Board may hire a search consultant to assist the search committee in its work.
  3. If an interim president will be necessary, the chancellor will recommend an individual to the Board to fill that position. The Board may appoint the recommended individual, ask the chancellor for additional recommendations or directly appoint another individual.
  4. The Board's legal counsel will prepare a draft employment contract for the incoming president and, if necessary, the interim president. The salary, benefits and other provisions will be subject to negotiation with the selected candidate, however.
  5. The chancellor, search committee and search consultant (if one is engaged) will work together to prepare a position profile identifying the characteristics and experience required for the institution president. The profile will establish minimum qualifications that the successful candidate for the position must meet. It also will be consistent with the responsibilities of institution presidents set forth in Board policy, as well as any other relevant expectations and needs of the institution, community or stakeholders. In developing the position profile, the chancellor and search committee will seek counsel from a wide variety of sources, including, but not limited to institution personnel and the community.
  6. The search consultant or NDUS office personnel will widely distribute the position profile to begin advertising the position vacancy and developing potential candidate interest in the position.
  7. The search consultant or NDUS office personnel will develop an advertisement based on the position profile and will place the advertisement in relevant media sources.
  8. The search committee will take additional steps as necessary to develop a broad and diverse pool of applicants and nominees.
  9. The search committee will review and evaluate all nominations and applications for the position of president and take such other steps, including interviews, as they deem appropriate in order to narrow the pool of candidates to a number upon which the search committee members agree. The search committee's evaluation of candidates will be based on the position profile and any other relevant, objective criteria the committee members agree to use.
  10. The search committee will meet with the chancellor to obtain his or her input on the candidates.
  11. The search committee will select between two and four candidates to recommend to the Board for further consideration. In selecting these candidates, the search committee will thoroughly consider the chancellor's input, understanding that the president will work closely with the chancellor to carry out the Board's strategic plan and directives.
  12. After the search committee provides its recommendation, the Board may choose to interview all, some or none of the recommended candidates. If the Board chooses to interview none of the candidates, it may direct the search committee to initiate a new search. Alternatively, the Board may select any other individuals it wishes to

interview.

13. Once the interview candidates are selected, the Board will conduct interviews.
14. After the Board interviews are complete, the Board may convene an executive session to consider the interviewed candidates. If a candidate wishes to have the Board discuss him or her in an open meeting, however, the Board must do so. The legal basis for the executive session is 15-10-17.1(a), which permits executive sessions for "the consideration of the appointment or removal" of an institution president unless the individual involved objects.
15. The Board will take final action and vote to appoint the new president. If the Board does not wish to appoint any of the interview candidates, however, it may direct the search committee to initiate a new search.

**Reference:** SBHE Policy - [601.1](#)

**History:**

Chancellor's Cabinet Meeting, September 12, 2012

Chancellor's Cabinet Meeting, September 25, 2013

[ [Back to website](#) ]