

STUDY OF THE RESEARCH ENTERPRISE AND COMMERCIALIZATION BUILDING ON THE CAMPUS OF THE UNIVERSITY OF NORTH DAKOTA - BACKGROUND MEMORANDUM

STUDY DIRECTIVE

Pursuant to the directive ([Appendix A](#)) of the Chairman of the Legislative Management, the Government Finance Committee has been assigned a study of State Board of Higher Education activities relating to any agreement or financing associated with the purchase of the Research Enterprise and Commercialization (REAC) building from the University of North Dakota (UND) Research Foundation. As part of the study, the committee is to review the following:

- Proposed use or obligation of state or other funding for which the state was not legally obligated to pay;
- The manner in which the negotiations to purchase the building complied with legislative intent and how the interests of taxpayers were weighed against the interest of the creditors; and
- The effect of the provisions of the State Board of Higher Education's ground lease with the foundation on the disposition of the building if the building was not purchased by the State Board of Higher Education.

The study directive also provides the committee may suggest a performance audit be conducted on the actions relating to the REAC building if the committee feels sufficient information has not been made available for the study.

BACKGROUND

In November 2006, UND entered a ground lease with the UND Research Foundation to lease approximately 45,000 square feet of state-owned land to the foundation for the construction of the REAC building. North Dakota Century Code Section 54-01-27 allows state agencies or institutions to enter agreements to lease real property owned by the state to private entities. The UND Research Foundation, which is registered with the Secretary of State as a private nonprofit entity, obtained financing for the building, and construction began in 2008 and was completed in 2009. Attached as [Appendix B](#) is a campus map of UND detailing the location of the building.

LEGISLATIVE ACTIONS RELATING SPECIFICALLY TO THE BUILDING

In March 2006, the Budget Section approved a Centers of Excellence Commission recommendation to award \$3.5 million to UND for the Center for Life Sciences and Advanced Technology project. The project application indicated the funding would be used for the construction of a facility to support the mission of the center with space for offices, laboratories, and pilot manufacturing sites. The funding was used for the construction of the REAC building.

The 2013 Legislative Assembly through Section 23 of Senate Bill No. 2003 authorized the State Board of Higher Education to enter agreements to purchase the REAC building from the UND Research Foundation and enter agreements to finance the purchase. The section further requires the State Board of Higher Education to provide a report to the Budget Section regarding the purchase of the building. A copy of Section 23 of Senate Bill No. 2003 is attached as [Appendix C](#).

PROPOSED STUDY PLAN

The following is a proposed study plan for the committee's consideration:

1. Receive and review information regarding the history of the REAC building; financing and funds used to construct the building; an overview of the facility, including space leased to other entities; and limitations on the use of the facility.
2. Receive and review information regarding the legal obligations of the state to repay any of the original loans used to construct the building.
3. Receive and review information regarding the original ground lease entered by UND and the UND Research Foundation and what would happen if the ground lease was terminated.
4. Receive and review information regarding the status of the purchase of the building, including the manner in which purchase negotiations have or will be handled and how the negotiations complied with legislative intent regarding the purchase of the building.
5. Receive testimony from interested persons regarding the study.
6. If determined to be necessary, recommend to the Chairman of the Legislative Management that a performance audit be conducted on actions relating to the REAC building.
7. Develop other committee recommendations and any bill drafts necessary to implement the recommendations.
8. Prepare a final report for submission to the Legislative Management.

**SENATORS**

Ray Holmberg
Dwight Cook
Joan Heckaman
Dave Oehlke
Larry J. Robinson
Mac Schneider
Ronald Sorvaag
Rich Wardner

North Dakota Legislative Management

Ray Holmberg
Chairman

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January 17, 2014

Honorable Jeff Delzer
State Representative
2919 Fifth Street NW
Underwood, ND 58576-9603

Dear Representative Delzer:

This letter is sent to you in your capacity as Chairman of the Legislative Management's interim Government Finance Committee. I am expanding the committee's responsibilities to include a review of the State Board of Higher Education's activities relating to any agreement or financing associated with the purchase of the Research Enterprise and Commercialization building from the University of North Dakota (UND) Research Foundation on the campus of UND.

Please identify as part of your review, any proposed use or obligation of state or other funding for purposes for which the state was not legally obligated to pay, the manner in which the negotiations complied with legislative intent and how the interests of taxpayers were weighed against the interest of the creditors, and the effect of the provisions of the State Board of Higher Education's ground lease with the foundation on the disposition of the building if the State Board of Higher Education had not purchased the building.

I trust your committee can handle this increased responsibility and report its findings to the Legislative Management in November 2014. If you find after your committee's review that additional information is necessary, please consider suggesting that a performance audit be conducted on the events surrounding this matter.

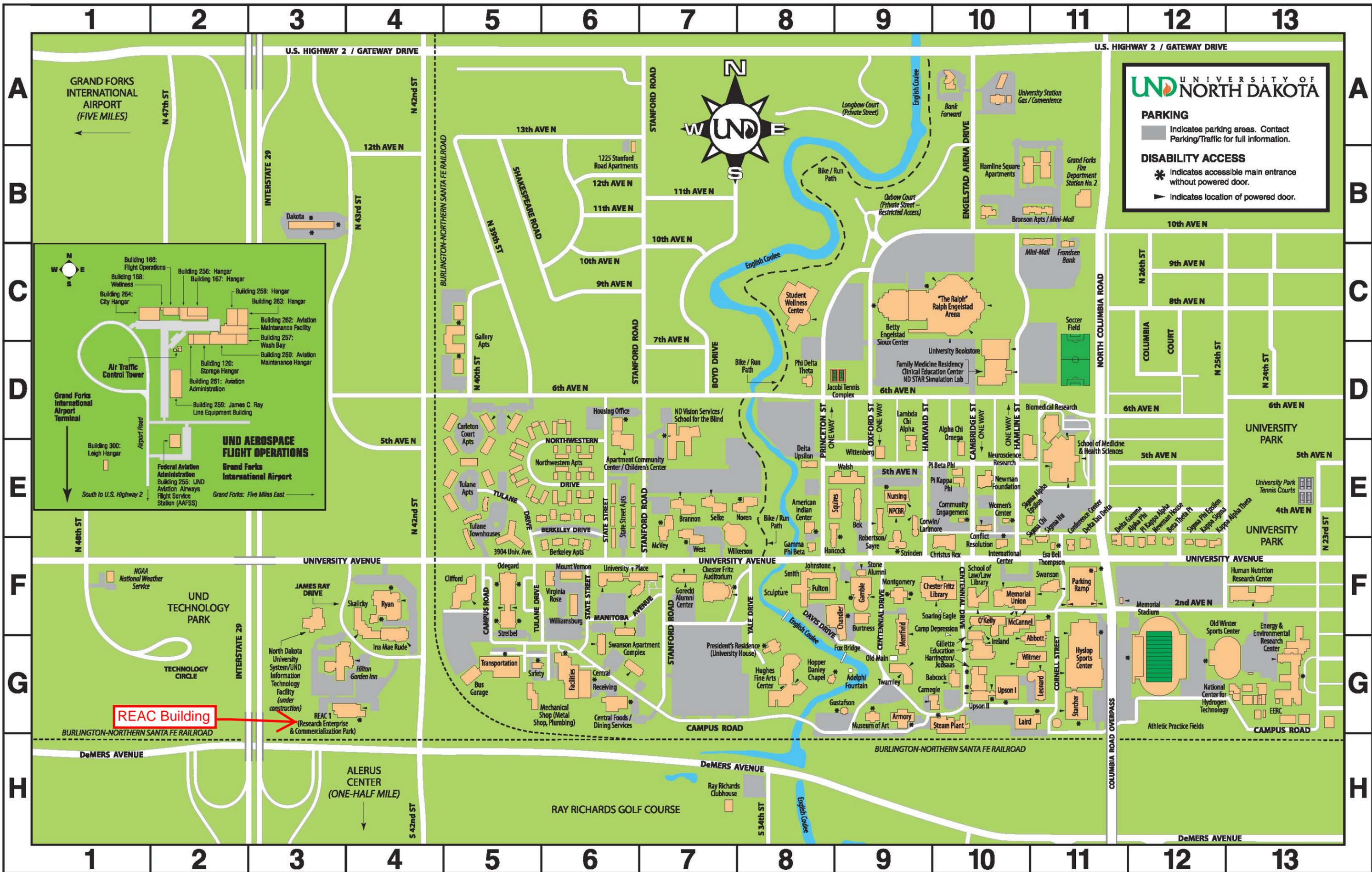
Please do not hesitate to contact me if you have any questions concerning this additional committee responsibility.

Sincerely,

Senator Ray Holmberg
Chairman

RH/CH

cc: Members of the Government Finance Committee
Members of the Legislative Management
Representative Chet Pollert, Chairman, Budget Section
Kirsten Diederich, President, State Board of Higher Education



UNIVERSITY OF NORTH DAKOTA

- PARKING**
- Indicates parking areas. Contact Parking/Traffic for full information.
- DISABILITY ACCESS**
- * Indicates accessible main entrance without powered door.
 - ▶ Indicates location of powered door.

REAC Building

REAC 1
(Research Enterprise & Commercialization Park)

SECTION 23. UNIVERSITY OF NORTH DAKOTA - RESEARCH ENTERPRISE AND COMMERCIALIZATION BUILDING PURCHASE - BUDGET SECTION REPORT. During the period beginning with the effective date of this Act and ending June 30, 2015, the state board of higher education may enter a purchase and financing agreement or agreements with a private entity and do all things necessary and proper to authorize the purchase of the research enterprise and commercialization building on the campus of the university of North Dakota using donations, gifts, or other funds. The state board of higher education shall provide a report to the budget section if the research enterprise and commercialization building is purchased as provided under this section.