

2011 HOUSE EDUCATION

HB 1129

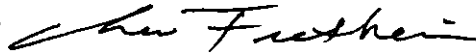
2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee
Pioneer Room, State Capitol

HB 1129
01/12/11
12804

☐ Conference Committee

Committee Clerk Signature



MINUTES:

Chairman RaeAnn Kelsch: We will open the hearing on HB 1129.

Wayne Kutzer – Director, Department of Career and Technical Education: Testimony. Attachment.

Chairman RaeAnn Kelsch: Questions? So on the fiscal note, the ½ FTE professional staff and the ½ FTE support staff, you would have ½ FTE and higher education would have ½ FTE?

Wayne Kutzer – Director, Department of Career and Technical Education: They would both be in the university system. We would continue with what we have.

Chairman RaeAnn Kelsch: Then you wouldn't need anything else?

Wayne Kutzer – Director, Department of Career and Technical Education: Correct.

Chairman RaeAnn Kelsch: Questions? Anyone else that wants to appear in support? Opposition? We will close the hearing on HB 1129.

2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee
Pioneer Room, State Capitol

HB 1129
02/07/11
14087

☐ Conference Committee

Committee Clerk Signature



MINUTES:

Chairman RaeAnn Kelsch: We will open the hearing on HB 1128 and HB 1129. Let us take up HB 1129.

Rep. David Rust: I move the amendment.

Rep. Dennis Johnson: Second.

Chairman RaeAnn Kelsch: Discussion? We will take a voice vote.

Voice vote: Motion carries

Chairman RaeAnn Kelsch: We have amended HB 1129 before us. What are the wishes of the committee?

Rep. Phillip Mueller: Move a do pass as amended and rerefer to appropriations.

Rep. Mark Sanford: Second.

Chairman RaeAnn Kelsch: Discussion?

Rep. Karen Rohr: What is the appropriation for?

Chairman RaeAnn Kelsch: That will be determined in appropriations.

Rep. Mark Sanford: I would add that on the other committee I am on, we are trying to get fewer commissions but this does make sense to me.

Chairman RaeAnn Kelsch: That is absolutely correct.

Rep. Mike Schatz: I see the prime sponsor is education at the request of the State Board of Career and Technical Education. This is not done by the interim committee. The State Board of Career and Technical Education have the authority?

Chairman RaeAnn Kelsch: This is an agency bill and they sponsor it to the committee.

Rep. Mike Schatz: This gets our name put on it?

Chairman RaeAnn Kelsch: Yes.

Rep. Mike Schatz: If we voted no on the last one it makes it look like it's our bill.

Chairman RaeAnn Kelsch: No. It used to be that bills just came in saying they were state agency bills. We changed that so they had to have the committee on there. Sometimes with agency bills it's not something they are able to get in so then they will come and ask members to put their names on them.

Rep. John Wall: As a point of clarification I believe if the federal law goes into effect, all the colleges and universities, public as well as private, will have to get authorized to operate in every state.

Chairman RaeAnn Kelsch: And it may. If this doesn't work we will have to deal with it at that point.

Rep. David Rust: Wouldn't you think this would be handled by something like WICHE?

Chairman RaeAnn Kelsch: Unfortunately each state has to have their own body that does the approval process. It can't be done by a compact or regional. It has to be done by each state because you have to meet each state laws and regulations.

Rep. Karen Rohr: So we are splitting it so does that mean the guy that runs the career and technical education board will have more time on this hands?

Chairman RaeAnn Kelsch: I doubt that.

Rep. Lyle Hanson: This wouldn't affect the school in Fargo that offers online classes would it?

Chairman RaeAnn Kelsch: No it doesn't affect that. Further questions? We will take the roll. Motion carries. We will close on HB 1128 and 1129.

**15 YEAS 0 NAYS 0 ABSENT
Rerefer to Appropriations
RaeAnn Kelsch**

**DO PASS as Amended
CARRIER: Chairman**

FISCAL NOTE

Requested by Legislative Council

02/22/2011

Amendment to: Reengrossed
HB 1129

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$192,700		\$192,700	
Appropriations			\$192,700		\$192,700	

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Transfers responsibility to the NDUS to authorize private postsecondary degree granting institutions to operate in North Dakota. This will require new staffing and operating.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 (page 3) under power and duties of the board - this will require financial resources to hire staff to perform duties.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

0.5 FTE professional staff person and 0.5 FTE support staff person and related operating, including rental space, and equipment for 21 months of the 11-13 biennium for the NDUS. This will not be a shared position between NDUS and CTE. Each agency will be responsible for administering its own private postsecondary process. CTE will not be requesting additional funds or FTE's to carry out its responsibilities in HB1129.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

\$192,700 is the appropriation amount requested to be placed in the ND University System budget. This amount is not in the executive budget and it would be a continuing appropriation.

Name:	Wayne Kutzer	Agency:	Career & Technical Education
Phone Number:	3282259	Date Prepared:	02/22/2011

FISCAL NOTE
Requested by Legislative Council
02/22/2011

Amendment to: HB 1129

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$192,700		\$192,700	
Appropriations			\$192,700		\$192,700	

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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Transfers responsibility to the NDUS to authorize private postsecondary degree granting institutions to operate in North Dakota. This will require new staffing and operating.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 (page 3) under power and duties of the board - this will require financial resources to hire staff to perform duties.

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C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

\$192,700 is the appropriation amount requested to be placed in the ND University System budget. This amount is not in the executive budget and it would be a continuing appropriation.



Name:	Wayne Kutzer	Agency:	Career & Technical Education
Phone Number:	3282259	Date Prepared:	02/22/2011

FISCAL NOTE

Requested by Legislative Council
12/27/2010

Bill/Resolution No.: HB 1129

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$192,700		\$192,700	
Appropriations			\$192,700		\$192,700	

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Transfers responsibility to the NDUS to authorize private postsecondary degree granting institutions to operate in North Dakota. This will require new staffing and operating.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 (page 3) under power and duties of the board - this will require financial resources to hire staff to perform duties.

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B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

0.5 FTE professional staff person and 0.5 FTE support staff person and related operating, including rental space, and equipment for 21 months of the 11-13 biennium. The full amount for health insurance and rent for both of these positions, if, in the event these positions were shared with CTE we need not double up on those two costs

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

\$192,700 is the appropriation amount requested to be placed in the ND University System budget. This amount is not in the executive budget and it would be a continuing appropriation.

Name:	Wayne Kutzer	Agency:	270 CTE
Phone Number:	3282259	Date Prepared:	01/07/2011

FISCAL NOTE

Requested by Legislative Council
12/27/2010

Bill/Resolution No.: HB 1129

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$20,000		\$20,000
Expenditures			\$192,700		\$192,700	
Appropriations			\$172,700	\$20,000	\$172,700	\$20,000

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Transfers responsibility to the NDUS to authorize private postsecondary degree granting institutions to operate in North Dakota. This will require new staffing and operating.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 (page 3) under power and duties of the board - this will require financial resources to hire staff to perform duties.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Fees are received through the authorization process. This amount is dependant on the number of institutional authorizations. Current fees are - An initial authorization for institution \$2000, for a Career school \$1000, annual renewals are \$750 and \$500 respectively.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

0.5 FTE professional staff person and 0.5 FTE support staff person and related operating, including rental space, and equipment for 21 months of the 11-13 biennium. The full amount for health insurance and rent for both of these positions, if, in the event these positions were shared with CTE we need not double up on those two costs

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\$192,700 is the appropriation amount requested to be placed in the ND University System budget. This amount is not

in the executive budget and it would be a continuing appropriation.

Name:	Wayne Kutzer	Agency:	270 CTE
Phone Number:	3282259	Date Prepared:	01/07/2011

February 7, 2011

YK
2/8/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1129

Page 3, after line 8, insert:

- "8. Private four-year institutions chartered or incorporated and operating in the state before July 1, 1977, so long as the institutions retain accreditation by national or regional accrediting agencies recognized by the United States department of education."

Renumber accordingly

Date: 02-07-11
Roll Call Vote #: VOICE VOTE

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1129

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. RUST Seconded By REP. D. JOHNSON

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) _____ No _____

Absent _____

Floor Assignment _____

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

VOICE VOTE ON AMENDMENT
MOTION CARRIES

Date: 02-07-11
Roll Call Vote #: _____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1129

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. MUELLER Seconded By REP. SANFORD

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

Total (Yes) 15 No 0

Absent 0

Floor Assignment CHAIRMAN R. KELSCH

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

REPORT OF STANDING COMMITTEE

HB 1129: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1129 was placed on the Sixth order on the calendar.

Page 3, after line 8, insert:

"8. Private four-year institutions chartered or incorporated and operating in the state before July 1, 1977, so long as the institutions retain accreditation by national or regional accrediting agencies recognized by the United States department of education."

Renumber accordingly

2011 HOUSE APPROPRIATIONS

HB 1129

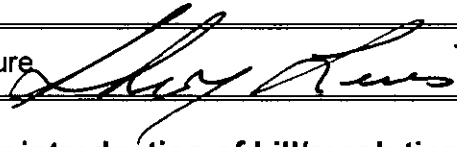
2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1129
February 16, 2011
Recorder Job# 14638

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to relating to authority of the state board of higher education to provide authorizations to operate private postsecondary educational institutions offering instruction at the associate in arts level or higher and to false academic degrees and accreditation mills; relating to authority of the state board for career and technical education to provide authorizations to operate private postsecondary career schools offering instruction at the level of no higher than the associate of applied science level; relating to false academic degrees and accreditation mills; and to provide a penalty.

Minutes:

Representative RaeAnn Kelsch: Recording glitch, only while she was introducing herself. She then introduced the bill.

Chairman Delzer: Currently how many of these do we have that they're doing? Do you know?

Representative Kelsch: No, Mr. Kutzer didn't tell us how many there were. I don't have that with me, I forgot to bring his testimony down. It's not as though they're doing a huge amount. But if you can name a couple of them; you've got Phoenix, Kappla, Kaplan, there's a number of them and I don't know how many are currently doing business in the state. I can't remember that number off the top of my head.

Chairman Delzer: The one's you're talking about; the privates are Jamestown, Mary. What about Rasmussen, where do they fall in?

Representative Kelsch: Rasmussen is already approved; they are already approved to do business here. They would also fall in here and they're not in here either. None of those are included in here.

Representative Monson: When CTE has been doing all of them, when they do this, they collect a fee from the school, so that should be a special fund coming to them. I don't understand why NDUS would think they need to hire a whole FTE here; 2 half times. I gathered that from you; you don't understand why they need that either. CTE's been doing this and using special funds evidently and not taking any general funds to this, correct?

Representative Kelsch: That would be correct. That was the reason why in HB1128 we said you don't need a special committee; that appropriation was for 2 full time FTE's and then setting up this committee. We said that's not acceptable; that's not necessary. We said this one was more palatable because of the fact that CTE's already doing it and yes it's going to be new for the university system. But, perhaps it should have been the university system doing it all along. In my mind, there's no need for any money or anything; and the bill doesn't refer to any FTE's or anything else. It's only the Fiscal Note that states that they need that money and need the half body for CTE and half body for the university systems.

Chairman Delzer: I have a question for Legislative Council. There are a number of bills where the language has been added that it's expected that the agencies do this within their existing budget. Does that remove a Fiscal Note?

Roxanne Woeste, North Dakota Legislative Council: I do not believe so. If the language is added saying that the agency shall find a way to fund whatever the fiscal impact within their current appropriation; that wouldn't remove the Fiscal Note because the Fiscal Note is required to say how much would you need to implement this bill. It would not remove the need for a Fiscal Note. Technically, the agency still needs to report on how the implementation of any changes.

Chairman Delzer: It does give legislative intent from the first house to the second house that it is supposed to be done within that agency's budget.

Roxanne Woeste: Correct.

Representative Kelsch: We talked about putting that amendment on hoping that the Fiscal Note would go away. We were told the same thing; you can put it on so you're intent is there. Also, we were told that because we've stated that there would be no new FTE's for these positions and had it on the record that also was legislative intent.

Chairman Delzer: It certainly is, but it's a lot harder for that intent to get to the second house than by putting the amendment on.

Representative Kelsch: The committee felt as though it was fine; they can do it and set it up that way. We believe it takes care of CTE's being uncomfortable with approving master's and doctorate type degree programs and puts it into the hands of the North Dakota university system. It probably makes sense to continue to have CTE doing it up to the associate's degree; being they're doing it that way.

Representative Dahl: So CTE is still retaining a portion of the accreditation process. Is that right?

Representative Kelsch: Correct.

Representative Dahl: You indicated there are special fees that these institutions pay. Do those still go to CTE or do those fees now go to the university system?

Representative Kelsch: As they go through that approval process, if you're approving up to an associate's degree; it would go to cover the costs for CTE. If you're approving for baccalaureate, masters, doctorate, and then those fees would go to higher education or to the university system. I believe that those fees, while they're not huge, would be enough to defray the cost for collecting, mailing, etc. So it seems it would be enough money to cover that. CTE's complaint was they were saying it is enough to cover expenses; but, it's not necessarily enough to cover the time for that individual that's doing it. That's why it was set up this way; it was enough to cover their expenses, not necessarily to fund the position.

Chairman Delzer: Is there a number of these that are going to end up applying to both?

Representative Kelsch: No. There is a registry online that tells you who you need to apply to so it will say up to the associate's degree it needs to be Career Technical Education. Does it make it more cumbersome? Yes, it probably does. Could they potentially call the wrong person for approval? Yes, but, they will also know that no you don't contact us; this is who you contact. That's why CTE wanted the committee; so that it made it cleaner and easier for people.

Chairman Delzer: There isn't a case where like University of Phoenix does both the associate degree and the master's?

Representative Kelsch: Yes, they potentially can. University of Phoenix potentially can; but, there are some that only have up to an associate's degree. The University of Phoenix, it's my understanding, goes all the way up to a doctorate. They would only need one approval and that would be through the university system. But, they're already approved, so, it's just the renewal.

Chairman Delzer: Further questions?

Representative Skarphol: Are there currently online, out of state entities, doing business in North Dakota, that are not accredited? Is this a consumer protection type act to ensure that those institutions are accredited; is that where we're about here?

Representative Kelsch: That's part of it. North Dakota passed a law in 2001 or 2003 regarding degree mills and saying that they're illegal in the state of North Dakota. You can only be accredited in North Dakota to offer a degree in North Dakota. You have to be accredited and approved in order to offer degrees in the state of North Dakota. The federal government became involved after we were the first state to pass that. Over the years, what they have done is they have said if you're going to operate in the state you have to abide by their state laws. You have to be approved by their state laws and North Dakota can say no we're not going to approve you; so you can't operate in the state.

Representative Skarphol: Just recently I read something about some young people who had graduated from some institution in Minnesota with unaccredited degrees and were unable to find employment. Is that what we're trying to do here?

Representative Kelsch: Yes.

Representative Monson: I would find it almost impossible for CTE or NDUS to track down...someplace could be working out of Somalia and our students from North Dakota could sign up and take some credits from there. Would that university in Somalia have to apply and get accredited here to be legal or how does that work?

Representative Kelsch: Reiterated the information about 2001 or 2003 law.

Representative Monson: I understand and agree with all that. If somebody in Fargo goes online and signs up, is that the trigger that tells the University of Somalia that they have to come to North Dakota and apply for that accreditation? Who's ever going to find out, until they get a degree and try to pass it off somewhere? How do you shut this down?

Representative Kelsch: We've already shut it down, after we passed the law, the federal government stepped in. The safeguards are already built in so that you can no longer go on and get a degree from Somalia.

Representative Kaldor: Does the university system or CTE go to some centralized clearinghouse or accrediting agencies; then they check out these schools? Do they have to do a more thorough investigation of the school itself?

Representative Kelsch: It is my understanding they do work with a clearinghouse so that they do know who is approved and who is not approved. They have the ability to look at complaints, if someone believes it's not legal or not right, they have that ability.

Chairman Delzer: I think we're quite a bit into the policy here.

Representative Dahl: I understand this would impact the Fiscal Note. But it seems a little convoluted to bifurcate the process and keep part in CTE and put part in NDUS. I think you've articulated why we're doing that; but, was there any discussion about streamlining the whole thing and putting it in the university system? If there was, do we know what the cost would be to do that?

Representative Kelsch: No, we did not ever talk about putting it strictly in North Dakota University system. When the 2 bills came in, the university system and CTE came in all on board with having this separate body that was going to be the approval. Then said, this would be our second choice. We took the second choice.

Vice Chairman Kempenich: Should we make a motion to pass this and have the agency eat the Fiscal Note?

Chairman Delzer: We'll come back to this; let's make sure we get through all of them that Representative Kelsch has to present to us today.

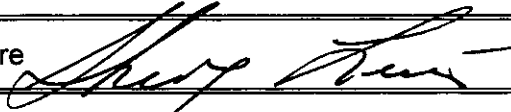
2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1129
February 17, 2011
Recorder Job# 14677

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to relating to authority of the state board of higher education to provide authorizations to operate private postsecondary educational institutions offering instruction at the associate in arts level or higher and to false academic degrees and accreditation mills; relating to authority of the state board for career and technical education to provide authorizations to operate private postsecondary career schools offering instruction at the level of no higher than the associate of applied science level; relating to false academic degrees and accreditation mills; and to provide a penalty.

Minutes:

Chairman Delzer: Recapped the bill.

Chairman Delzer: We should probably put legislative intent language in there that this be done within the budget. It doesn't remove the Fiscal Note at all when we had the discussion, but, let the other side know that the intent of this side was to have it done within the budget. Is there any consideration for such an amendment?

Representative Klein made a motion to move the amendment.

Chairman Delzer: Becky do you have knowledge of the language we're looking for?

Representative Dahl seconded the motion.

Motion to amend, adopted by voice vote.

Chairman Delzer: Amended for legislative intent that it be done within the budget.

Representative Monson made a motion for a "do not pass" on the bill as amended.

Representative Skarphol seconded the motion.

Chairman Delzer: We have the motion. Representative Monson can I ask why you made that particular motion?

Representative Monson: I think CTE has been doing this within their budget forever; and it doesn't seem like there's been a problem. I can understand why perhaps why they want to get rid of it; but, I can also see a problem where higher education would have very little impetus or reason to ever approve any of these. I think it's working fine, we're not spending any money and I don't think it's needed. I think we're just causing problems.

Representative Dahl: There are some penalties towards the back of the bill, on page 7; if we don't pass this bill, are removing penalties for violating the process as it stands with CTE?

Chairman Delzer: I would guess this is copying the same stuff for the university system that was there for CTE; so that they would have the same language. I can't say that for sure. I don't know that we ever asked that question.

Representative Skarphol: There were two potential alternatives that Representative Kelsch mentioned were brought forward, and is the least expensive of the two. It is the least comprehensive of the two. The question comes down to whether or not it's mandated by federal government to do this. As Representative Monson said, if it is not a mandate, then the university systems are building some fences to make sure that they are the only entities out there that have the ability to control who it is that can provide education in our state. That was the reason for my second. If it's mandated, we'll hear about it later.

Chairman Delzer: We'll take this motion, if it passes, then what I would do is I would hang on to this and we would check with Representative Kelsch to see whether there was legal ramifications that we're not aware of.

Representative Glassheim: If we don't pass this, anybody could do anything in our state and there's no supervision of anything at all?

Chairman Delzer: No. It's currently being done by CTE, this split it between CTE for the undergraduate and the university system for the post graduate.

Representative Skarphol: It does kind of do what Representative Glassheim is saying. Without this bill, there is no requirement that an institution from outside of the state has some type of certification within the state; accreditation. There are non accredited institutions out there that do provide an education for people free of charge. If an employer wishes to hire someone who went to one of those institutions, why should they not have the freedom to do so? This is about our system. If it's not required by the federal government, I'm not sure that I can support it.

Chairman Delzer: Currently CTE is doing it to only those that apply.

Representative Martinson: I don't necessarily disagree with anything anybody has said about CTE, except for the fact that the language in here exempting U Mary, Jamestown and Ellendale is critical to them so that they are not under the control of CTE. If you want to eliminate the other stuff, fine eliminate that; but, don't put the University of Mary, Jamestown and Ellendale under the guidance of CTE.

Representative Monson: Haven't they been there already? I would like to know that.

Representative Martinson: They have not. They don't have to go to CTE and ask to establish a new program, but if this bill passes they will. The federal government doesn't ever do anything in moderation. So what they did because of a couple of internet schools scammed a few people, they decided that every institution in a state has to be regulated by somebody. I'm talking Harvard, Yale and Dartmouth have got to be regulated by a state entity unless they receive an exemption; as this does for those three private schools in North Dakota. At least they have two years to see what happens; but the University of Mary, Jamestown, and Ellendale don't have to go to a state entity right now. If this doesn't exempt them then they will.

Representative Monson: You're saying that because the feds have changed their policy and come down with a mandate that wasn't there before, we need a portion of this bill to exempt those three entities within our borders from having to get certified by CTE. That would be the change.

Representative Martinson: Correct. The law says those entities that were accredited before 1977. Isn't that what it says? Which those three institutions were.

Representative Skarphol: It's on page 3.

Chairman Delzer: Number 8: Private four year institutions chartered or incorporated and operating in the state before July 1, 1977.

Representative Hawken: If there is not a Fiscal Note attached, why are we dealing with this? This should be another one that should go back to the education committee and let them do that.

Chairman Delzer: We have the motion before us unless someone wishes to rescind their motion.

Representative Monson rescinded his motion.

Representative Skarphol withdrew his second.

Representative Nelson made a motion to move a "Do Pass as Amended".

Representative Hawken seconded the motion.

Chairman Delzer: Discussion.

Representative Monson: We're back to the same dilemma. I think this bill needs more work. Without a Fiscal Note maybe we can sum it up as amended and rerefer back to education.

Chairman Delzer: I don't believe that's an option. We could send it up "Do Pass" or "Do Not Pass" or we could further amend; just to leave the exemptions in.

Representative Skarphol: On page 5 section on minimum standards. It's exactly what I said; you have to be accredited by a national regional accrediting agency. While I think that's a good thing, I think as education changes you're going to see entities that aren't worried about achieving that accreditation. Accreditation doesn't have the same level of respect it once had.

A roll call vote was made for a "Do Pass as Amended". 9 Yea's 12 Nay's.

Representative Monson: I would like to sit down with Representative Kelsch and maybe we can come up with a further amendment that would keep the language that we need without.

Chairman Delzer: We can certainly do that. If you would check with her before noon; if we need to, we can ask to have it rereferred if she's amenable and if the leadership is amenable.

Representative Martinson: How about if I would ask Council to draft amendments for the higher education bill to exempt those three schools?

Chairman Delzer: We'll be taking up higher education tomorrow; that is an option to try to cover it.

Representative Skarphol: If you're going to do the exemptions, why don't you do all of the exemptions listed on page 2 and 3?

Chairman Delzer: Then we could run a further motion if Representative Monson wishes to make that motion again.

Representative Monson made a motion for a "Do Not Pass as amended."

Representative Skarphol seconded the motion.

Representative Monson: If the discussion on the floor or the house education committee feels that this is still needed or would like to have this pass; she can make her case on the floor.

Representative Glassheim: I understand with the internet and the freedom of everybody to say anything they want, to believe anything they want, to do whatever they want; we're moving away from any standards at all. I think this is a mistake and it's all the more reason because of the widespread influence of the internet to have standards. This means there's no protection at all against false claims, fraudulent diplomas, people thinking they're getting an education and they aren't. Are there any standards at all?

Representative Dahl: To be clear, if we don't pass this bill, everything just stays in CTE; so, I don't think we're without standards or without penalty. This was just the transition to the university system office.

Chairman Delzer: I believe this was put in at the request of CTE because they felt uncomfortable with doing this stuff above post secondary.

Representative Dahl: I am going to vote against the "Do Not Pass"; because I think this is the preview of the policy committee.

A roll call vote was made for a "Do Not Pass as Amended". 14 Yea's 7 Nay's 0 Absent

Chairman Delzer recessed the discussion.

Chairman Delzer reopened the discussion on HB1129.

Chairman Delzer: We had an opportunity to visit some on 1129 and there are some things that possibly need to be different than what they are.

Representative Monson made a motion to reconsider our "Do Not Pass".

Representative Skarphol seconded the motion.

Voice vote was made and approved the reconsideration of action.

Representative Monson: We did amend it to make it clear in the policy that there is no new money. Representative Kelsch said they would have done that in her committee; had they thought they could.

Chairman Delzer: It does not remove the Fiscal Note, but it gives it intent that it be done within the language. I think they were told that just their discussion of that puts intent over; but, when you put it in the bill it's much better.

Representative Monson made a motion for a "Do Pass as Amended".

Representative Skarphol seconded the motion.

A roll call vote was made for a "Do Pass as Amended". 20 Yea's 1 Nay 0 Absent

Chairman Delzer closed the discussion.

VK
2/18/11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1129

Page 1, line 11, after the semicolon insert "to provide for application;"

Page 17, after line 19, insert:

"SECTION 14. APPLICATION. The state board for career and technical education shall administer the provisions of sections 2 through 13 of this Act, relating to providing authorizations to operate private postsecondary career schools offering instruction at a level no higher than an associate of applied science, within the limits of the budget requested by the department. The department may not add any full-time equivalent positions to assist with the administration of these provisions."

Renumber accordingly

Date: 2/17
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1129

House Appropriations Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Klein Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

add legislative intent that it be done
within the budget
voice vote carries

Date: 2/17
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1129

House Appropriations Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Monson Seconded By Rep. Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Withdrawn

Date: 2/17
Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1129

House Appropriations Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Nelson Seconded By Rep. Hawken

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer		X	Representative Nelson	X	
Vice Chairman Kempenich		X	Representative Wieland		X
Representative Pollert		X			
Representative Skarphol		X			
Representative Thoreson		X	Representative Glassheim	X	
Representative Bellew		X	Representative Kaldor	X	
Representative Brandenburg		X	Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams		X
Representative Hawken	X				
Representative Klein		X			
Representative Kreidt		X			
Representative Martinson	X				
Representative Monson		X			

Total (Yes) 9 No 12

Absent _____

Floor Assignment _____

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

motion fails

Date: 2/17
Roll Call Vote #: 4

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1129

House Appropriations Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Monson Seconded By Rep. Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson		X
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim		X
Representative Bellew	X		Representative Kaldor		X
Representative Brandenburg	X		Representative Kroeber		X
Representative Dahl		X	Representative Metcalf		X
Representative Dosch	X		Representative Williams	X	
Representative Hawken		X			
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 14 No 7

Absent _____

Floor Assignment Rep. Monson

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

Date: 2/17
Roll Call Vote #: 5

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1129

House Appropriations Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Monson Seconded By Rep. Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice vote carries

Date: 2/17
Roll Call Vote #: 60

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1129

House Appropriations Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Monson Seconded By Rep. Skarphol

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew		X	Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 20 No 1

Absent 0

Floor Assignment Rep. Kelsch

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

REPORT OF STANDING COMMITTEE

HB 1129, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1129 was placed on the Sixth order on the calendar.

Page 1, line 11, after the semicolon insert "to provide for application,"

Page 17, after line 19, insert:

"SECTION 14. APPLICATION. The state board for career and technical education shall administer the provisions of sections 2 through 13 of this Act, relating to providing authorizations to operate private postsecondary career schools offering instruction at a level no higher than an associate of applied science, within the limits of the budget requested by the department. The department may not add any full-time equivalent positions to assist with the administration of these provisions."

Renumber accordingly

2011 SENATE EDUCATION

HB 1129

2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee
Missouri River Room, State Capitol

HB 1129
March 9, 2011
15170

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authority of the state board of higher education to provide authorizations to operate private postsecondary educational institutions offering instruction at the associate in arts level or higher and to false academic degrees and accreditation mills; Relating to authority of the state board for career and technical education to provide authorizations to operate private postsecondary career schools offering instruction at the level of no higher than the associate of applied science level; to provide for application; relating to false academic degrees and accreditation mills; and to provide a penalty.

Minutes:

See "attached testimony."

Vice Chairman Schaible opened the hearing on HB 1129; fiscal note attached.

Wayne Kutzer, Director, Department of Career and Technical Education (CTE), introduced the bill. (#1 Testimony, #2 Brief Legislative History – Private Postsecondary Institutions, #3 State Offices with Regulatory Responsibility for Private Postsecondary (Degree Granting) Institutions)

Senator Freborg: Page 2, bottom of the page the responsibility to make recommendations to the board—explain why it was changed from the Board of Higher Education to CTE. **Wayne Kutzer:** Not sure; that was before his time so refer to #2 Brief History. In 1977 it codified (ch 15-20.3) the establishment of a Postsecondary Education Commission and then in 1983 it was repealed. The reference to postsecondary education commission or the commissioner was removed, so assume it was about those times. Right now when a request is received from someone offering a bachelors or masters degree program in the state, CTE sends the information that is received to the University System for a review. At this point they get back that it was reviewed it but no recommendation on it. Really created more discomfort for the CTE board because they are not comfortable in making that decision in terms of what happens with a bachelors, masters, or doctoral degree program. As mentioned, up until last year there were eight schools to work with—a manageable number. It has grown so much and has created a backlog in terms of trying to approve individual programs at those levels.

Vice Chairman Schaible: Where are the students coming from; how many of them are in-state, out-of-state, this is mushrooming—but where are the programs and students coming from? **Wayne Kutzer:** The schools are all over; private for profit institutions have sprung up all over the place in the US and internationally. University of Phoenix, etc. Because

most are totally on-line it can be done from anywhere. **Vice Chairman Schaible:** The students are North Dakota students and not going to state institutions? **Wayne Kutzer:** Yes they would be North Dakota students. They may or may not be attending a North Dakota university. May be just taking an individual class, but there are a lot taking totally on-line classes and we don't know how many there are unless there is a complaint.

Michel Hillman, Vice Chancellor for Academic and Student Affairs, North Dakota University System testified in favor of HB 1129. (#5 Testimony)

Higher ed board and CTE have a great partnership; both offices had an extensive review recently and the focus was on consumer protection. Who does a student file a complaint with? What do they do if one of these schools closes? Not a clear procedure and the current process did not offer any protection. Recently the US Department of Education released new "program integrity" regulations; one of the regulations focused on the need for institutions to acquire authorization from any state in which it "operates" in order to participate in federal funding programs. (#6 2010 Federal Regulations on State Approval of Out-Of-State Providers) This has greatly increased the number of requests. They also checked with the eleven state institutions to see how many had a presence in other states (#4 North Dakota University System Institutions serving students in other states). Were surprised to learn that most of them have on-line students in most of the 50 states. If there are 3,000 higher education institutions in the country, you could easily expect when the new regulations go into effect on July 1, 2011 that there could be that many applications to operate in North Dakota.

This will become a huge issue; the North Dakota University System recognizes that students are not currently protected, has supported this discussion and the two approaches in the two bills that were introduced, HB 1128 and 1129, with the legislature having the option to choose which approach the House thought most appropriate. Do not currently have resources to administer their part of program, so asking for assistance. This will be a huge growth area and that students are not currently protected adequately.

No further testimony in favor; no opposition. Hearing closed.

Senator Heckaman: Missed some of the hearing (in another committee to testify) so visited with both individuals that testified. Pretty comfortable with the way it is set up right now in this bill. They have this organized the way CTE needs it and the way North Dakota University System needs it. Not really out of the loop; would appreciate discussion from other committee members on it.

Senator Freborg: Would the committee members prefer to hold this until next week when everyone has a chance to read through the testimony. **Senator Gary Lee:** Wasn't here either so talked to Wayne Kutzer; was there opposition testimony to it? **Senator Freborg:** Not on that bill. **Senator Gary Lee:** Wayne and Michel Hillman were the only ones to testify? **Senator Freborg:** Yes; we'll hold that until next week to let everyone look it over.

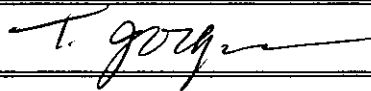
2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee
Missouri River Room, State Capitol

Committee Work on HB 1129
March 14, 2011
15417

☐ Conference Committee

Committee Clerk Signature



Minutes:

No "attached testimony."

(Beginning of the tape is conversation regarding HB 1465)

Chairman Freborg: Who all testified on this bill? (clerk—Wayne Kutzer, CTE & Michel Hillman, Higher Ed Board)

Senator Flakoll: There is a fiscal note for \$200,000 including rental. Was there any testimony about charging a fee for this? **Senator Schaible:** No, no mention of fees just that CTE is doing all of it now and the recommendation to switch these based on the level of degree that they were offering. Think the rental is that, think all the actual work would be done at the university system and it was to offset that cost.

Senator Flakoll: One concern is that the system office has people squirreled away all over the state. Think that some time we need to get a better handle on that; whether germane to this topic or not. One campus he talked to said they have \$12 million in system office employees that they pay for but are direct reports to the system office. Need to at some point get a better handle on where all of these people are at and what their reporting relationships are and the like. This is somewhat germane to this because we have this interaction between higher ed and CTE on this specific topic and when we look at who it is for, you could certainly argue it is for higher ed and not CTE. That is one of his concerns. Haven't read the full testimony; read what they said orally but think it is important and necessary work to do. Wish they would have said more as far as what problems they are solving better by doing this.

Chairman Freborg: Seemed to him that one of the people that testified gave justification for that person. May not have been in their written testimony but they did talk about it.

Senator Gary Lee: He wasn't here for the testimony either so can't respond to it. Does seem to make sense in terms of the division they are trying to create. Don't know that he supports adding staff to make that happen, but seems like they have plenty of people around to make that determination. He wouldn't expect that they are coming routinely and frequently to have degree granting kinds of programs—could be wrong but . . .

Senator Schaible: He asked the question of Wayne after the hearing, what would happen if this bill does not pass. He said then CTE is totally responsible for the delegation of all of these entities, bills and colleges and college type credit. Guesses that the situation is that by dividing it out and putting it in appropriate places. Think that was the money and the

FTE's because most of the transfer from CTE to university system was their way of justifying giving it to higher ed or university system.

Chairman Freborg: What does the committee wish to do? Senator Flakoll do you want some time to look this over?

Senator Flakoll: Seems like we are all kind of grinding on this, so maybe more time to get information together on this. There are a couple of committee members out to testify so is hard to move it. **Chairman Freborg:** You have all of the testimony? **Senator Flakoll:** Slightly germane to the bill, but when we look at the scope as a whole in terms of approving institutions, he thinks one of the things that will have coming down the pipeline is that now that the scholarships has been established in the state of North Dakota he thinks there will be institutions such as the University of Phoenix who will set up a physical presence here, and others quite possibly, so that they can harvest those scholarship dollars for their students. Thinks that is one thing they have to think about in the whole and have some of that in 2150 and a bill or two later on related to that. Those would have to be approved at a higher level of scrutiny; do see someone renting a 10x10 office space and calls it an institution of higher education—fully legitimate but it would be a meager branch location that would have a phone, small office space and a part-time person working there so they could harvest some of the scholarship dollars. Have to start thinking about that too toward the end of the session.

Chairman Freborg: stand at ease and take this up later.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee
Missouri River Room, State Capitol

Committee Work on HB 1129
March 15, 2011
15458

☐ Conference Committee

Committee Clerk Signature



Minutes:

No "attached testimony."

Senator Flakoll: Just some comments regarding the fiscal note on HB 1129. \$192,000 in this bill for PT staff and storage.

Chairman Freborg: The only discussion that can take care of the fiscal note, because there is not an appropriation in the bill, is to amend the bill to put so money in it or to kill the bill. There isn't an appropriation to take out. Did you wish to amend it? All they are doing is receiving and filing—asking that question? Is that all they are doing?

Senator Schaible: That is a problem; see the logic in the bill but not for the money in it. Maybe best way is to just kill it as we are not in favor of the money that goes to it and if they want to divvy up power between the organizations they should submit it that way and clarify so there is an avenue to do that without spending more money. Move a Do Not Pass on the bill; second by **Senator Luick**.

Chairman Freborg: The fiscal note talks about rental space and equipment; do you remember anything from testimony that talked about how much rental space or how much equipment—and what would the equipment be? (clerk—read from minutes of testimony). Don't think they said anything about it; may have mentioned a part-time staff.

Senator Luick: If they come back and are looking for this program to be beneficial then maybe also the funding should follow. If it goes from one agency to another maybe the funding should be deducted from one agency and transferred to the other also.

Senator Flakoll: Did they (not here for testimony) say if they had it included in their request in their budgetary request to the governor? Or is this one of those things they may have left off? **Chairman Freborg:** Don't think so, but we have the minutes and can check to see. Don't believe it was addressed. **Senator Flakoll:** Know it is not in the executive budget but was it in their request to the, did the board make that request? Not see that they probably did to the Governor's office; they make the request to the Governor's office and he develops the executive budget. Could support as is either way, just trying to understand better. **Chairman Freborg:** Don't think it came up; don't think they talked about making the request and no one asked the question.

Senator Schaible: Most of the discussion came from the CTE that they were doing this and didn't mind doing their part but they thought some of it was an expansion and they

wanted to divvy up these duties with the department of higher ed. But the money seems to be only coming from that avenue for what they were asking. Their take on it, as it says, a half-time of professional and other staff for North Dakota University System. CTE isn't asking for expansion of anything; all the money is for the other department. They never said that, just what came off the fiscal note.

Senator Gary Lee: Missed the testimony also, but the last page of Mr. Kutzer's testimony indicates "this bill does have a fiscal note which contains .5 FTE professional staff, and .5 FTE support staff for the North Dakota University System." That is all it says.

(clerk shared more information from testimony from hearing)

Chairman Freborg: Committee if we want to change that, think we have to have an amendment and be careful how it was drafted so could eliminate this fiscal note and provide some dollars in the bill. That may take longer than we have.

Senator Heckaman: When looking at who sponsored this bill, was that the commission on education improvement? Is this the interim education committee—it says introduced by the education committee at the request of the state board. Was this an interim recommendation? **Senator Flakoll:** This would be one of those cases where an agency has a bill they want so they just apply—possibly the House education committee was considered the sponsor. This is not the interim committee or the commission, to his knowledge.

Senator Heckaman: Does the CTE do grades 7-16; what grades do they cover? 9-12? 9-16? **Senator Luick:** Believe that for the vocational schools it is 9-12. **Senator Heckaman:** When looking at the first part of the testimony from Hillman it says no other state department of career and technical education are charged with oversight of private degree granting institutions.

Chairman Freborg: Higher education only supports it if there are appropriate resources provided to implement the requirements. We have a motion on the table for Do Not Pass; let's take the vote.

Motion carried 5-2-0; **Senator Schaible** will carry the bill.

Date: 3/15/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1129

Senate 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 Sen. Schaible Seconded By Sen. Luick

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) 5 No 2

Absent 0

Floor Assignment Sen. Schaible

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

REPORT OF STANDING COMMITTEE

HB 1129, as reengrossed: Education Committee (Sen. Freborg, Chairman)
recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
Reengrossed HB 1129 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1129

**House Education Committee
Testimony on HB 1129
January 12, 2011**

Madam Chair and Members of the Committee, my name is Wayne Kutzer, Director of the Department of Career and Technical Education. HB1129 is a companion bill to HB1128, and offers the committee an alternative to establishing an independent commission on private postsecondary education in North Dakota. In HB1128, it was proposed that one governing board, the Commission on Private Postsecondary Education, be created and charged with the regulation of private postsecondary institutions and career schools in the state. In HB 1129, the proposal is to divide the regulatory duties, and have Higher Education take responsibility for the private degree granting institutions, while the CTE Board retains responsibility for private career schools. For example, degree granting institutions such as Capella University and Embry Riddle University would be regulated by the State Board of Higher Education. Career schools, such as Lynnes Welding, would remain the responsibility of the CTE Board.

The dividing line between the private institutions and private career schools would be determined by the level of degrees or credentials offered by the school or institution. Private "career schools" are defined as those granting the occupational associate degree, and lower. Private "institutions" would be those offering the associate in arts and science degree and higher. The reason for this definition is that the occupational associate degree is designed to be a terminal degree: once earned, the student should be prepared for the world of work. The associate in arts or science degree is designed to prepare the student for transfer to higher level degree programs.

In a nut shell, this bill takes all of the oversight responsibility for private institutions and schools that is with the CTE Board, and splits the duties between the CTE Board and the Higher Ed Board based upon the type of institution or school seeking to operate in North Dakota.

The bill would achieve the split in regulatory authority as follows, the first section of the bill, the first 10 pages, creates a new chapter of the Century Code applying to higher education's new regulatory role regarding private institutions. The second part of the bill, starting near the bottom of page 10 and ending on page 17, amends the current act to restrict the CTE Board's authority to career schools.

Section on Definitions:

One of the key ways the split is achieved is by definition. The definitions sections in the bill, one on page 2 pertaining to a postsecondary educational institution and one on page 11 pertaining to postsecondary career school, clarify the role of each agency by defining the difference between a postsecondary educational institution vs. a career school.

Our current law, NDCC 15-20.4-01 (7) states: "a postsecondary educational institution includes an academic, vocational, technical, home study, business, professional, or other school, college, or university, or other organization or person, operating in this state, offering educational credentials, or offering instruction or educational services (primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance) for attainment of educational, professional or vocational objectives." This is the all-encompassing definition that the bill changes in the respective section by clarifying the difference between a private institution and career school.

On page 2, lines 8-14, the bill narrows the definition of “postsecondary educational institution” by adding this descriptor - “for attainment of educational or professional objectives at the associate in arts level or higher” – at the end of the definition.

On page 11, line 9-16, the bill section applicable to CTE, the definition is changed to reflect “career school”, by using the descriptor: “... for attainment of educational, professional, or vocational objectives at a level no higher than the associate of applied science level.” at the end of that definition.

Section on Exemptions:

In the current law, NDCC 15-20.4-02, in the section dealing with exemptions, the only change is a “sorting” of the current exemptions by the level of education to which they apply. Those exemptions that would apply to higher education were assigned to them in their section of the act, and those exemptions that would apply to CTE remained in the CTE section. It is important to note that none of the current exemptions are eliminated; they are all still there. Please also note that there is also an amendment for HB1129 which we also offered in HB1128 that retains the exemption for “Private four-year institutions chartered or incorporated and operating in the state prior to July 1, 1977, so long as the institutions retain accreditation...” for this bill, as well. Consequently, the existing exemptions would not be changed at all; they would simply appear in two different sections of the law.

Fee Fund:

The bill takes the current section 15-20-4-03.1, Authorization Fee Fund, and creates an Institution Fee Fund for fee revenue to Higher Education on page 5 line 4 and a Career School Fee Fund for CTE on page 14 line 3, depending upon the kind of institution or school applying for authorization to operate in the state.

To summarize, the first 10 pages authorize Higher Education to have regulatory authority over institutions using language that is taken from current law, with the difference being that it limits the scope of the Higher Education Board's duties to institutions that offer an Associate of Arts degree or higher. The last seven pages amend current language pertaining to CTE by limiting regulatory authority to private career schools offering the associate in applied science degree and lower.

Madam Chair and members of the committee, HB1129 offers an alternative to HB1128. We would prefer HB1128 as we think that a commission would offer more for the citizens of our state and private schools and institutions by offering a one-stop shop for both.

I will be glad to answer any questions that you may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1129

Page 3, after line 3, insert:

"4. Private four-year institutions chartered or incorporated and operating in the state prior to July 1, 1977, so long as the institutions retain accreditation by national or regional accrediting agencies recognized by the United States office of education."

Page 3, line 4, replace "4." With "5."

Page 3, line 5, replace "5." With "6."

Page 3, line 7, replace "6." With "7."

Page 3, line 8, replace "7." With "8."

Renumber accordingly

Reasons to support an Independent Commission model

1. No appearance of protectionism from public boards making decisions affecting private businesses; decisions would be made from an impartial point of view
2. The independent commission would be composed of public and private stakeholders; the private institutions and schools would finally be at the table when decisions are made
3. There are certain procedures, issues, responsibilities and skills that apply to both levels (degree granting institutions and private career schools). Example: transcript storage and retrieval.
4. There would still be one primary source for information on the legitimacy of schools, and one primary source for complaint resolution.

Reasons to support the split duties model:

1. May be cheaper, although it may actually be more expensive in terms of staff time (Staff in CTE and in Higher Ed would have some duplicative duties; example, process authorization requests)
2. Places institutional regulation in departments with appropriate expertise
3. Avoids creation of a new commission

Senate Education Committee
Testimony on HB 1129
March 9, 2011

Mr. Chairman and members of the committee, for the record my name is Wayne Kutzer, Director of the Department of Career and Technical Education. HB 1129 divides the regulatory duties for the regulation of Private Postsecondary Institutions and Schools between CTE and the North Dakota Board of Higher Education.

The result of this bill will be that the State Board of Higher Education will take responsibility for the private degree granting institutions, while the CTE Board retains responsibility for private career schools. Examples of degree granting institutions would be Capella University, Embry Riddle University, or Rasmussen College and they would be regulated through the State Board of Higher Education. Career schools, such as Lynnes Welding, would remain the responsibility of the CTE Board.

It is important to know some of the history behind this bill; our agency, with the cooperation of the ND University System, offered HB 1128 which was defeated in the House. HB 1128 would have created a commission whose sole focus was private postsecondary education. This commission would have been comprised of representatives of the public and private educational sectors, business, industry and other essential stakeholders. That was our preferred scenario. HB 1129 was offered as an alternative by placing the authority in each respective agency.

Since 1971, the State Board for Career and Technical Education has had, in addition to its primary responsibility for Career and Technical Education, the oversight of private postsecondary institutions as mandated in chapter 15-20.4 of the North Dakota Century Code.

#1 HB1129

As noted in the Brief History document (yellow handout), this responsibility has traveled among Higher Education, the Department of Public Instruction, and for the last 40 years has been in Career and Technical Education. The oversight responsibility basically entails the following:

To review, investigate, approve or deny applications for authorization to operate in North Dakota by private colleges, universities and career schools; to handle new program requests; to handle student complaints; to respond to student requests for closed school transcripts, and related duties.

We have brought HB 1129 before you as a result of what has been happening in the world of private postsecondary institutions. In a word, it is "On-line". On-line education has exploded. We have gone from monitoring and approving a total of eight schools to now getting requests from schools and programs nearly every week. In the last year alone, there have been 92 new program requests by authorized schools – an unprecedented number. Beyond that, we are fielding inquiries nationwide from degree granting institutions or their legal representatives seeking information on requirements to operate in North Dakota.

When schools and institutions submit an application for authorization to operate in North Dakota, we review each of the programs the application contains. Consequently, if an institution wants to offer bachelor, master and doctoral programs, reviewing those programs is also part of the process. As an example, Capella University has authorization to offer 120 different bachelor, master, and doctorate programs in the State, and has more applications pending. The staff time needed has increased, which accounts for the fiscal note of two half time FTEs, one professional and one support position for the University System, and secondly we simply do not have the expertise to review content of bachelor, master or doctoral level programs. Prior to the 1999 Legislative Session, the responsibility to make recommendations to the Board regarding degree

programs was assigned to the "commissioner of higher education and/or his designee". But following that session, all authority was assigned to CTE, regardless of degree level. As a consequence, the State Board for Career and Technical Education has become increasingly uncomfortable with the numbers of decisions they must make concerning graduate level programs.

Also in 1999, at the request of the CTE Board, the Legislature created an exemption for schools "not operating in the state", or having a physical presence here. A physical presence is basically any instruction, testing, counseling or enrollment services taking place in our state. But in 1999, we could not have foreseen that institutions would develop a new kind of hybrid distance education program: programs that deliver theory courses on-line, but still require face to face instruction or supervision to complete the program. These include programs in the areas of teaching, counseling, and nursing. In the past six months we learned of five private out-of-state nursing schools that have established clinical sites in our state. We feel, however, that nursing schools represent the tip of the iceberg. Private out of state teacher education programs, counselor education programs, allied health and others are also likely to have established a physical presence in North Dakota for similar purposes. Programs like these will require more staff time.

Beyond the issue of physical presence however, is the greater issue of establishing the appropriate level of oversight for private postsecondary institutions that want to offer instruction to the citizens of this state. The CTE Board has seen a steady increase in the number of new program requests by authorized institutions at the bachelor, master and doctoral levels. From June 30, 2009 to July 1, 2010, only four percent of the authorized programs and only four percent of the gross tuitions reported came from the private career schools. Ninety-six percent

of all programs and gross tuitions reported, amounting to approximately \$20 million, are from authorized institutions conferring bachelor, master, and doctorate degrees. This represents a vast change from just a few years ago, when most of the authorized programs were at the associate level or below. As you can see on the blue handout no other state has a CTE Board make decisions affecting institutions offering bachelor, master or doctorate degrees.

HB 1129 would split the regulatory authority. The first section of the bill, the first 10 pages, creates a new chapter of the Century Code applying to higher education's new regulatory role regarding private institutions. The second part of the bill, starting near the bottom of page 10 and ending on page 17, amends the current act to restrict the CTE Board's authority to career schools.

The dividing line between the private institutions and private career schools would be determined by the level of degrees or credentials offered by the school or institution. Private "career schools" are defined as those granting the occupational associate degree, and lower. Private "institutions" would be those offering the associate in arts and science degree and higher. The reason for this definition is that the occupational associate degree is designed to be a terminal degree: once earned, the student should be prepared for the world of work. The associate in arts or science degree is designed to prepare the student for transfer to higher level degree programs.

Section on Definitions:

The definitions sections in the bill, one on page 2, starting on line 8, pertaining to a postsecondary educational institution and one on page 11, starting on line 14 pertaining to postsecondary career school, clarify the role of each agency by defining the difference between a postsecondary educational institution and a career school.

On page 2, starting on line 13, the bill narrows the definition of “postsecondary educational institution” by adding this descriptor - “for attainment of educational or professional objectives at the associate in arts level or higher” – at the end of the definition.

On page 11, starting on line 20, the bill section applicable to CTE, the definition is changed to reflect “career school”, by using the descriptor: “... for attainment of educational, professional, or vocational objectives at a level no higher than the associate of applied science level.” at the end of that definition.

Section on Exemptions:

In the current section of law dealing with exemptions, NDCC 15-20.4-02, the only change is a “sorting” of the current exemptions by the level of education to which they apply. Those exemptions that would apply to higher education were assigned to them in their section of the act which starts on the bottom of page 2, line 23, and those exemptions that would apply to CTE remained in the CTE section, which starts on the bottom of page 11 line, 28. It is important to note that none of the current exemptions are eliminated; they are all still there.

Fee Fund:

The bill takes the current section 15-20-4-03.1, Authorization Fee Fund, and creates an Institution Fee Fund for fee revenue for the Board of Higher Education on page 5 line 7 and a Career School Fee Fund for CTE on page 14 line 8, depending upon the kind of institution or school applying for authorization to operate in the state.

To summarize, the first 10 pages authorize the Board of Higher Education to have regulatory authority over institutions using language that is taken from current law, with the difference being that it limits the scope of the Higher Education Board’s duties to institutions that offer an associate of arts degree or higher. The last seven pages amend current language

pertaining to CTE by limiting regulatory authority to private career schools offering the associate in applied science degree and lower.

Mr. Chairman and members of the committee, as I mentioned earlier this bill does have a fiscal note which contains a .5 FTE professional staff and .5 FTE support staff for the NDUS. HB1129 does offer an improved process for authorizing private postsecondary institutions and schools. We hope that you would concur with the House and vote for a Do Pass on HB1129.

I will be glad to answer any questions that you may have.

Brief Legislative History: Private Postsecondary Institutions

1943: NDCC ch15-50: Trade and Correspondence Schools

Established dual regulatory roles between Voc Ed and Higher Ed

Empowered the Commissioner of the Board of Higher Ed to issue licenses to Trade and Correspondence Schools, and to issue permits to solicitors

Empowered the State Board for Vocational Education to make rules and regulations prescribing standards for private trade and correspondence schools

1959: House Bill 820, amended legislation pertaining to trade and correspondence schools

Removed authority from the Commissioner of the Board of Higher Ed; delegated authority to the "Executive Officer"

Defined "Executive Officer" as "the officer who directs the policy making division of vocational education. The superintendent of public instruction is by law the executive officer for vocational education."

1971: House Bill 1361: Regulating Trade and Correspondence Schools

Defined "Executive Officer" as the officer who directs the policy making of the division of vocational education. The director of vocational education is by board appointment the executive officer for vocational education."

The director of vocational education was empowered to license schools and issue permits to solicitors.

Expanded the types of educational institutions to include "private trade, industrial, vocational, technical, business, and correspondence schools."

1977: Legislative Council Report: Committee on Higher Education

Recommendations:

1. Creation of a Postsecondary Education Commission with representation by both the public and private education sectors;
2. Development of a bill draft: The Postsecondary Educational Authorization Act to prevent academic and vocational diploma mills from operating in ND.

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In the report, the Board of Higher Education staff recommended the creation of such legislation based upon model legislation offered by the Education Commission of the States and the American Council on Education, concerning the needs for consumer protection in postsecondary education. The staff acknowledged that North Dakota had provided for licensure of proprietary institutions, "but there is no law providing for licensing or recognizing academic institutions in North Dakota. (emphasis added).

"Under the bill, Chapter 15-50, which presently provides for licensing of private trade, industrial, vocational, technical, business, and correspondence schools, would be repealed, and a comprehensive Act modeled after suggested state legislation would regulate academic, vocational, technical, home study, business and profession schools offering educational credentials or instruction or educational services on a postsecondary level for the attainment of educational, professional, or vocational objectives." (emphasis added)

"The Board of Vocational Education would have the power to establish and require applicant compliance with minimum standards and criteria..."

"Accreditation by national or regional accrediting agencies recognized by the United States Office of Education would be required of all postsecondary educational institutions... No person, agent, or organization would be allowed to operate an institution not exempted from the Act unless the institution has a currently valid authorization to operate, nor could it offer instruction or grant educational credentials unless the institution has an agent with a valid agent's permit."

1977: SB 2029, codified as ch 15-20.3: Establishment of Postsecondary Education Commission

The Postsecondary Education Commission "shall consist of the state board of higher education, the state board of vocational education, and three additional members to be appointed by the governor with the consent of the senate. Of the appointed members, one shall represent the governing boards of junior colleges, one shall represent the governing boards of four-year colleges, and one shall represent the governing boards of the proprietary institutions. Powers and duties of the commission included:

1. To coordinate comprehensive planning of postsecondary education as specified in the 1972 amendments to Title XII of the Higher Ed Act of 1965, etc.
2. To conduct comprehensive inventories of and studies with respect to all public and private postsecondary educational resources in the state, including planning necessary for such resources to be better coordinated, improved, expanded, or altered so that all persons within the state who desire and can benefit from postsecondary education may have the authority.
3. To establish committees or task forces to "make studies, conduct surveys, submit recommendations, or otherwise contribute the best available expertise from the institutions, interest groups, minorities, and segments of the society most concerned with a particular aspect of the commission's work."

1977: Passage of HB 1031, Postsecondary Educational Institutions

Defined "Board" as the State Board for Vocational and Technical Ed and designated the Executive Officer as the Director of Vocational and Technical Education

1983: Repeal of NDCC 15-20.3 – the Postsecondary Education Commission

1999: HB 1151: Removed all statutory language pertaining to agents and solicitors; exempted "postsecondary educational institutions not operating in this state" (distance ed institutions) from regulation.

2003: Legislature added added sections 15 and 16 to NDCC 15-20.4 outlawing the manufacture, issuance or use of false academic credentials. Assigned the felony penalty to issuance and manufacture, misdemeanor penalty to use.

2009: Legislature outlawed the advertising of false credential in North Dakota and the operation of accreditation mills in the state, and assigned the felony penalty.

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State Offices with Regulatory Responsibility
for
Private Postsecondary (Degree Granting) Institutions

Alabama: Alabama Commission on Higher Education

Alaska: Alaska Commission on Postsecondary Education

Arizona: State Board for Private Postsecondary Education

Arkansas: Arkansas Department of Higher Education

California: new legislation restructuring

Colorado: Colorado Department of Higher Education

Connecticut: Department of Higher Education

Delaware: Delaware State Department of Education

District of Columbia: State Education Office

Florida: Commission for Independent Education

Georgia: Nonpublic Postsecondary Education Commission

Kansas: Kansas Board of Regents

Hawaii: Office of Consumer Protection

Idaho: Idaho State Board of Education

Illinois: Illinois State Board of Higher Education

Indiana: Indiana Commission on Proprietary Education

Iowa: Iowa College Student Aid Commission

Kansas: Kansas Board of Regents

Kentucky: Kentucky Council on Postsecondary Education

Louisiana: Louisiana Board of Regents

Maine: Maine Department of Education

Maryland: Maryland Higher Education Commission

Massachusetts: Massachusetts Board of Higher Education

Michigan: Michigan Department of Labor and Economic Growth
Minnesota: Minnesota Office of Higher Education
Missouri: Missouri Department of Higher Education
Nebraska: Nebraska Coordinating Commission for Postsecondary Education
Nevada: Nevada Commission on Postsecondary Education
New Hampshire: Postsecondary Education Commission
New Jersey: Commission on Higher Education
New Mexico: New Mexico Higher Education Department
New York: New York State Board of Regents
North Dakota: North Dakota Career and Technical Education
Ohio: Ohio Board of Regents
Oklahoma: Oklahoma State Regents for Higher Education
Oregon: Oregon Student Assistance Commission
Pennsylvania: Pennsylvania Department of Education
Puerto Rico: Puerto Rico Council on Higher Education
Rhode Island: Rhode Island Office of Higher Education
South Carolina: South Carolina Commission on Higher Education
South Dakota: South Dakota Board of Regents
Tennessee: Tennessee Higher Education Commission
Texas: Texas Higher Education Coordinating Board
Vermont: Vermont Department of Education
Virginia: State Council for Higher Education
Washington: Washington Higher Education Coordinating Board
West Virginia: West Virginia Council
Wisconsin: Wisconsin Educational Approval Board
Wyoming: Wyoming Department of Education

North Dakota University System
HB 1129 – Senate Education Committee
March 9, 2011
Michel Hillman

Good morning, Mister Chairman, members of the Senate Appropriations Committee. For the record, my name is Michel Hillman, Vice Chancellor for Academic and Student Affairs, North Dakota University System. Chancellor Goetz is in Senate Appropriations this morning and asked me to provide testimony on HB 1129. The NDUS supports HB 1129 if appropriate resources are provided for resources to implement the requirements.

The NDUS has a close working relationship with CTE regarding the regulation of out-of-state higher education providers. Current state law gives CTE the authority to regulate out-of-state providers, but they work closely with us on the review of requests for authority to operate in the state.

In 2008, NDUS and CTE jointly formed and co-chaired a Higher Education Consumer Protection Standards Committee which included representation from tribal (Sitting Bull College), private (University of Mary) and proprietary colleges (Rasmussen College) operating in the state. At the time, the committee report indicated that:

The Committee considered whether the responsibility for oversight of private institutions and schools should remain within the Department of Career and Technical Education. A review of practices in other states revealed that no other state departments of career and technical education are charged with oversight of private degree-granting institutions. Most higher education oversight responsibilities are housed within states' higher education agencies, or in independent commissions. The Committee's consensus was that although an independent body might represent the best possible structure for oversight, a more economical approach would be to establish a Commission composed of broad representation of public and private institutions and related entities housed administratively within the North Dakota University System.

The new governing body would, in addition to assuming the current responsibilities assigned to NDCTE for Postsecondary Education Institutions (NDCC 15-20.4), continue the work of the Higher Education Consumer Protection Standards Committee: to develop a comprehensive set of higher education quality standards for all postsecondary institutions in North Dakota, public or private. A suggested title for this organization is The North Dakota Commission on Private Postsecondary Education.

In addition, the report recommended representation on the new commission as well as administrator qualifications, standards, faculty qualification standards, distance education standards, expectations for student records and records protection and, the establishment of a tuition protection fund. At the time higher education consumer protection issues were not highly visible and public, and, resources were not available to implement improvements.

Since then there have been a number of highly visible national news stories related to student loan default rates in high cost programs from propriety colleges, student inability to qualify for adequately compensated jobs and repay loans after graduating from high cost programs, and the General Accountability Office report on fraud and deceptive marketing practices of some for-profit colleges. All of this has led to re-consideration of the shared responsibility of the federal government, state government, and accreditors in assuring quality and value to higher education consumers.

On October 29, 2010, the federal government released its 145 page Final Rule on Program Integrity Issues: <http://edocket.access.gpo.gov/2010/pdf/2010-26531.pdf>. Although labeled "final" we are expecting that the U.S. Department of Education will be releasing a letter further clarifying the regulations. The WICHE WCET summary of the federal regulations and status is attached for your information.

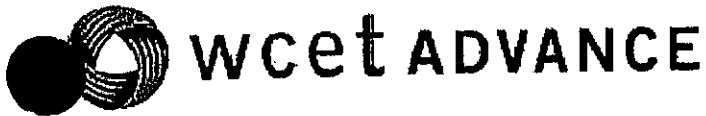
The North Central Association of Colleges and Schools, Higher Learning Commission has released a "Commission Statement on Marketing Practices at For-Profit Institutions" (attached) in response to the GAO report. The commission is reviewing its distance education guidelines including methods used to verify student identity. A more complete commission response is not expected until the federal requirements receive final clarification.

The NDUS supports improved state standards as part of a comprehensive approach to protect higher education consumers. The federal requirements clearly require states to approve institutions to operate in the state. The attached table summarizes enrollment at NDUS institutions by students in other states. The table indicates that most campuses have students enrolled from most of the 50 states. With approximately 3,000 post-secondary institutions operating in the country, the new federal requirement will trigger the need for hundreds of additional institutions to operate in North Dakota. HB 1129 provides an appropriate approach to a state approval process. The approval process and higher education consumer protection is a major state policy issue. We look forward to this important discussion and stand ready to provide any background requested to support a decision.

NDUS INSTITUTIONS SERVING STUDENTS IN OTHER STATES

State	NDUS Institutions	Students
Alabama	7	31
Alaska	9	36
Arizona	10	96
Arkansas	9	28
California	11	226
Colorado	10	145
Connecticut	8	35
Delaware	3	7
District of Columbia	2	5
Florida	10	130
Georgia	8	61
Hawaii	5	18
Idaho	6	41
Illinois	10	106
Indiana	10	58
Iowa	7	50
Kansas	5	21
Kentucky	6	19
Louisiana	9	31
Maine	6	13
Maryland	9	69
Massachusetts	6	71
Michigan	10	199
Minnesota	11	1,451
Mississippi	6	10
Missouri	8	69
Montana	10	212
Nebraska	8	44
Nevada	7	30
New Hampshire	6	18
New Jersey	9	59
New Mexico	8	31
New York	8	96
North Carolina	10	73
North Dakota	11	
Ohio	9	83
Oklahoma	7	35
Oregon	7	34
Pennsylvania	10	226
Rhode Island	2	5
South Carolina	8	34
South Dakota	11	157

NDUS INSTITUIONS SERVING STUDENTS IN OTHER STATES		
State	NDUS Institutions	Students
Tennessee	8	32
Texas	10	159
Utah	7	38
Vermont	4	10
Virginia	10	88
Virgin Islands	2	3
Washington	10	118
West Virginia	7	29
Wisconsin	11	136
Wyoming	10	130
TOTAL:		4,906



Advance

good practices and sound policies that accelerate the effective adoption and use of technologies in teaching and learning.

2010 Federal Regulations on State Approval of Out-of-State Providers

[Join the State Authorization Network](#)

Download 'State Approval Regs for Distance Ed: A Starter List'

On October 29, 2010, the U.S. Department of Education (USDOE) released new "program integrity" regulations. One of the regulations focused on the need for institutions to acquire authorization from any state in which it "operates." In a December 2010 webcast on this issue, Fred Sellers of the USDOE said that: "Under the Higher Education Act, for an institution in any State to be eligible to participate in Federal programs, it must be legally authorized by the State to provide postsecondary education." Note that, in this case, the term "Federal programs" applies to any federal funding, including federal financial aid programs.

These regulations have their basis in the [Higher Education Opportunity Act \(HEOA\) of 2008](#). A "Negotiated Rulemaking" process was conducted to create regulations regarding how the USDOE will interpret and enforce the language passed by Congress.

The "state approval" language originally proposed in June 2010 by USDOE can be found in the [Federal Register](#) beginning on page 34812. The final changes to that language were released on October 29, 2010 and can be found in the [Federal Register](#), beginning on page 66858. This includes discussions on comments submitted as part of the Rulemaking process and indications of how the USDOE will interpret the regulations.

The final complete language (without comments of how this regulation will be interpreted) can be found in the [Electronic Code of Federal Regulations](#). Note that this includes only the regulatory language.

Below is a summary of these regulations compiled by Russ Poulin of WCET. While the content appearing on this page has been researched, this page is not officially sanctioned by USDOE.

Requirements for States

The announcement in the [Federal Register](#) (p. 66858) reads: "These final regulations do not mandate that a State create any licensing agency for purposes of Federal program eligibility." State licensure and approval agencies need to:

- Approve institutions to "operate" in the state.
- If not an institution, approve the entity to offer postsecondary education in the state. "In the case of an entity established as a business or nonprofit charitable organization, i.e., not as an educational institution, the entity would be required to have authorization from the State to offer educational programs beyond secondary education." ([Federal Register](#) p. 66858) Some states require entities to have a business license, but this seems to require that states also approve the entity to offer postsecondary education.
- Upon request of the USDOE, provide a list of institutions approved to operate in the state by name.
- Maintain a process to review and address complaints from students attending institutions approved to operate in that state.

December 7, 2010 Webcast with Fred Sellers, USDOE:

- [Webcast Archive](#).
- [Slides from Webcast](#).
- [Links and Resources](#).
- [Chat Log](#).

Requirements for Institutions

Institutions must:

- Comply with any applicable state approval or licensure requirements in each state in which it 'operates' and be approved by that state by name.
- Provide its students and prospective students with contact information for filing complaints with its accrediting agency and with the appropriate state agency.

Exceptions

- Federal institutions - meet provisions if authorized by name by the Federal Government. (Note: This implies an institution established by the Federal Government, not land grant institutions.)
- Tribal institutions - meet provisions if authorized by name by the tribal government.
- Religious institutions - if qualify as a religious institution, exempt from these requirements. (Note: A religious institution is defined as an institution that is owned, controlled, operated, and maintained by a religious organization and awards only religious degrees or certificates).

NOTE: This exception only applies to the state in which the institution is located and does not imply that these institutions are exempt from meeting the laws in other states. If these institutions are offering distance education in other states, the institutions would meet the requirements of those states.

Timeline

These rules:

- Are effective July 1, 2011.
- Provide for extensions if an institution's state cannot provide the necessary authorization by July 1, 2011. An institution may request one-year extensions for the 2011-12 and 2012-13 award years. The institution's State has until July 1, 2013 to make any needed adjustments to assure that institutions in the State may meet the new regulatory requirements.

NOTE: This extension is only for institutions meeting the requirements of the state in which it is located. Institutions offering instruction via distance education are expected to meet the July 1, 2011 deadline.

Timeline Clarification and Definition of 'Good Faith' Effort from USDOE

Russ Poulin, WCET, asked Fred Sellers from the U.S. Department of Education about the timeline regarding institutions offering distance education in other states. Due to the complexity and length of the approval process in some states, the July 1, 2011 deadline will be impossible for many institutions to meet. Is it possible to develop a timeline that the institutions can achieve?

On January 11, 2011, Fred Sellers replied:

We can approach this issue from the point of view of enforcement in the initial award year of implementation as we often do with new regulations and look to whether the institution is making a good-faith effort to comply with State requirements.

For the 2011-2012 award year, we will consider an institution to be making a good-faith effort to comply with the distance education regulations for State authorization, if—

- *The institution has applied for approval of its offerings in such a State, and*
- *The State confirms that the out-of-state institution is trying to meet the State's requirements,*

If a State does not regulate such activities by out-of-State institutions, the institution is considered to be legally operating in that State.

Distance or Correspondence Education

From the Federal Register (p. 66867): "If an institution is offering postsecondary education through distance or correspondence education in a State in which it is not physically located, the institution must meet any State requirements for it to be legally offering distance or correspondence education in that State. An institution must be able to document upon request from the Department that it has such State approval."

"A public institution is considered to comply with § 600.9 to the extent it is operating in its home State. If it is operating in another State, we would expect it to comply with the requirements, if any, the other State considers applicable or with any reciprocal agreement between the States that may be applicable."

Reciprocal Agreements

from the [Federal Register](#) (p. 66867): "If both States provide authorizations for institutions that comply with § 600.9 and they have an agreement to recognize each other's authorization, we would consider the institution legally authorized in both States as long as the institution provided appropriate documentation of authorization from the home State and of the reciprocal agreement."

Paul Shiffman wrote a guest blog post about a grant from Lumina Foundation to the Presidents' Forum of Excelsior College to [create a model reciprocal agreement](#). Watch for more new on reciprocal agreements.

Blog Postings

As we learn more, WCET will continue to blog on this subject. Current blog posts from earliest to most recent:

- [Distance Ed Institutions May Need More State Approvals](#) - An initial analysis of the impact of the regulations written the day they were released.
- [What do We Know About State Approval of Distance Ed?](#) - Three surveys provide us with some insight on existing state regulations and the possible impact for both state regulators and institutions.
- ["State Approval Regulations: Update on Conversations and Activities"](#): Posted on December 21, the post gives an update on several activities underway.
- ["State Approval: Eight Things You Can Be Doing Now"](#) - Posted on January 11, 2011, we give you some advice on next steps to take preparing to contact the states.
- ["State Approval Update: No Extensions for Distance Ed, but WCET Helps"](#) - Posted on Jan 12, 2011, we learn that distance education must meet the July 1 deadline. WCET helped to get assurance that institutions applying by that date will be in compliance."
- ["State Approval: A 'Starter' List"](#) - Posted on January 26, 2011, announces the release of a draft state-by-state list of state authorization agencies.
- ["State Approval: Creating model Reciprocal Agreements"](#) - Posted on February 10, 2011, a guest blog from Paul Shiffman about the Presidents' Forum of Excelsior College's work.

State Approval Updates from Other Organizations and the Media

- [Council for Higher Education Accreditation](#), Nov 3, 2010.
- [National Association of Independent Colleges and Universities](#), Dec 14, 2010.
- ["State-Oversight Rule Draws Protests From Colleges and Congress"](#), Chronicle of Higher Education, Dec 19, 2011.
- ["The States of Online Regulation"](#), Inside Higher Ed, Jan 21, 2011.
- ["State Authorization for Institutions Offering Distance Education to Out-of-State Students"](#), Jan 25, 2011, Instructional Technology Council.
- [Lawsuit regarding compensation, misrepresentation, and state authorization regulations](#) (.pdf), Jan. 21, 2011, Association of Private Sector Colleges and Universities.

What's Next?

Many conversations have taken place over the past few weeks. Activities include:

- In partnership with the Southern Regional Education Board, the American Distance Education Consortium, and the University of Wyoming, WCET released "State Approval Regulations for Distance Education: A Starter's List." this DRAFT document was released in January 2011. About half the states have corrected or updated their entries. Watch for the final version by the end of February. Also, watch for an announcement about the on-going maintenance of a state-by-state list.
- The U.S. Department of Education will be releasing soon a "Dear Colleague" letter clarifying elements of the regulations. As of February 10, the exact date of the issuance of that letter is uncertain and it might be pushed back again.
- The Presidents' Forum of Excelsior College and the Council of State Governments is moving forward on the [grant from the Lumina Foundation for Education](#) to "develop a model interstate compact that provides a basis for more rational and efficient state approval of online programs, protects consumers and addresses barriers to student success." Watch for an announcement about additional reciprocal agreement activities.
- WCET is working on a plan to better support states on how institutions can address the state authorization issue.
- There is plenty of "buzz" about advocating the delay or dropping of this regulation. Something will happen in this regard, but it is difficult to say exactly what.

Frequently Asked Questions about the Federal Regulations

We've started compiling a [list of answers \(or as close as we can get\)](#) about what we have learned.

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1229

That the Senate recede from its amendments as printed on pages 1177 and 1178 of the House Journal and pages 890 and 891 of the Senate Journal and that Engrossed House Bill No. 1229 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to abstinence-based concepts within the school health curriculum.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Abstinence - based concepts - Health curriculum.

Beginning July 1, 2012, each school district shall ensure that its curriculum for health includes abstinence-based concepts. Using age-appropriate methodologies, the curriculum shall address:

1. Health risks associated with adolescent sexual activity;
2. The impact of alcohol, drugs, and social media on sexual decision-making;
3. Proactively dealing with peer pressure; and
4. Personal responsibility and choices."