

2011 SENATE EDUCATION

HB 1411

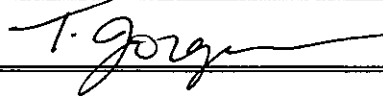
2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee
Missouri River Room, State Capitol

HB 1411
March 28, 2011
16039

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to duties of the commissioner of higher education and the budget requests and appropriations for the North Dakota university system.

Minutes:

See "attached testimony."

Chairman Freborg opened the hearing on HB 1411; no fiscal note attached.

Representative Carlson, District 41 introduced the bill; it provides changes to the duties of the Commissioner of Higher Education (Chancellor) and changes the method of funding for higher education institutions. North Dakota Century Code is amended to provide that the Commissioner of Higher Education may not have governance duties over higher education institution. The bill provides that the Commissioner may administer state-wide programs and collect and maintain reporting data.

The second part of the bill deals with the funding; relates to the submission of budget data for the OMB and the preparation of draft appropriation bills by the Office of Management and Budget. Currently the budget requests of higher education institutions and the higher education appropriation bill draft must be in a format that includes block grants for base funding, initiative funding and capital asset funding—three areas. The bill keeps the block grant funding format but provides that the funding provided in the block grants must be based on separate calculations for research institutions (UND & NDSU), baccalaureate institutions and two year institutions. The bill is no more complicated than that.

Obviously there are people that are going to say that the way funding is set up is just fine. Has always maintained that there is a huge difference between the mission of a research institutions (Division I) and that of a baccalaureate or a technical school. By separating these out; have heard a lot in the press about UND or NDSU being underfunded because of various reasons. Have equity formulas; all kinds of things in parody, all kinds of categories in the budgets to try and balance these imperfections. Quite honestly that is part of the problem of a system; when there are 11 institutions and you put everybody in one pot who is going to be a deciding factor as to who gets the money. Hire some very qualified college presidents to prepare their budgets and information, and can have a plan of growth for their schools. Thinks they should be allowed to come in in categories to make that request; still be submitted through the board, submitted the same way just in three categories instead of one.

The Governor said we need to look at higher education funding; SB 2300 deals with the Commission on Higher Education funding. Tells him that something needs to be addressed as to how the system is funded. Obvious that some people feel there are inequities in the system, and we are always back here dealing with whether tuition should freeze or not, cap tuition or not. Thinks this is a start; in 1999 his first session on appropriations. Each person was given a number of colleges to go through and sit with the college president, the institution's financial manager, and went through their needs. Need that type of contact; lost something there.

Senator Flakoll: We passed SB 2300, the higher education funding reform bill; do you feel these two bills as compatible? **Representative Carlson:** Would think be compatible; this is definitely telling you to come in and provide requests in three categories. This bill is more definite than 2300; the first part of the bill that deals with who is in charge of these institutions and what role the college presidents have. Governance part is important; want the college presidents to not be muzzled—want them to come in and say what they want to say about their budgets. It is never popular to take on a system, can vouch for that by the articles in the newspaper. But need to address higher education because the solution isn't just to say "give me more money". The solution is are we getting the best dollar bang for our buck, should we be allowing institutions in trade and tech areas grow, should they be allowed more flexibility to grow with the job market, should our research institutions have more flexibility to pursue grants and other methods of financing besides public dollars, should our baccalaureate schools maybe be established as feeder campuses so there are not so many remedial education (2,350 remedial kids taking a class less than 100 in the system today) classes. Think the whole things needs a good serious look; think the funding is part of it, thinks putting more back on those college presidents and campuses to group together for the common good is a good thing. Yes, it is a change; no, not trying to strip higher ed of its power. Bill just says we'd like to see appropriated requests in a different fashion.

House appropriations changed and reduced some things; Centers of Excellence, took out some equity money, etc. The formula needs to be looked at and how we fund them.

Senator Flakoll: In the second part of the bill, basically just asking them to present the budgets in a specific way to the legislature. Much like the board currently requires the campuses to present to them? **Representative Carlson:** Yes, the last page of the bill sums it up (reads the listed items).

Senator Flakoll: Is the word "renewal" the same as remodel? **Representative Carlson:** Same as deferred maintenance; couple terms in higher ed. Take care of the buildings; budget requests for building improvements or new buildings. They changed the list around in the House this time; did not follow all their guidelines. Took out the library at DSU, took out another; added the diesel mechanics building at Wahpeton because it was one that was going to generate jobs and make us money. Had a different priority, but then chastised if they looked at those things. But not our money—it's the public's money; not our campuses as they belong to the people of North Dakota. Don't belong to the system; don't belong to the college presidents.

Senator Heckaman: What category do you consider the two year campuses to go in when they are doing cooperative efforts with four year campuses now? How do you consider those on a two year basis needs comparative to much larger enrollment in some of the four year campuses? **Representative Carlson:** Obviously a two year proponent because he thinks that is where a lot of our workforce is trained. Think it is fine that they cooperate; if that is part of their mission. Still can only get their four year degree from a four year accredited school. Let's not lose the fact that not everything has to be a liberal arts two year school. We need some trade and technical schools to train the workforce. Two year schools make their money on the liberal arts side; technical/trade cost more to run with all of the equipment and the cost to run those systems. Need to make sure they hold to their mission and the cooperative agreements wouldn't be affected by this.

Senator Gary Lee: In regards to the governance piece on the first page, it seems like what you are trying to do there is clarify who has responsibility and saying that the presidents' report to the board, the Commissioner is the CEO of the board, but really doesn't have responsibility for those presidents. What are you trying to accomplish there?

Representative Carlson: Trying to clarify the role of these college presidents; when you look at what they are paid (\$300,000 plus housing and vehicles) they should be able to be in charge of those institutions . . . The system is fine if you want a system, but anytime you have a system the tendency is to try and balance the system. That is where there is trouble on the funding; would like a greater role by campus presidents.

Senator Gary Lee: So the presidents report to the board as itself then, they don't go through the commissioner to get what they need? **Representative Carlson:** That would have to be worked out as far as the details; obviously the board has certain functions and the board office has certain functions. Not sure that it is very easy for them to come to the legislature with concerns.

Senator Heckaman: So then the bottom line is what do you expect the Chancellor's duties to be? **Representative Carlson:** Think it is pretty clear; the board shall provide for the Commissioner to administer programs that affect students and institutions on a state-wide basis, and collect and maintain student and institutional data—think that is the main functions up there. All have seen their report on higher education they put out. Obviously a coordinating spot; need to make sure the presidents have the ability to think outside the box and to grow their system if they can without having to be held back for whatever reason.

Last comment—if the system of funding higher education was working so well, then why do we need to have the Governor take a step back from K-12 and now develop a commission with legislators, etc. to deal with higher educational funding. Has tried to push this idea a couple of times—and think it is now time.

No further testimony in support; opposition:

John Backes, President, North Dakota University System (#1 Testimony) Would encourage committee to read Article 8 of the Constitution and see what it says. Talks about what the Board's role and the Chancellor's role is. Try to make sure they fulfill that role to the greatest extent possible. Feels this bill takes the system back to a low point in

higher education in North Dakota. Takes us back to who is in charge of the presidents? Since he came on the board four years ago, looked at it and said they believe the board needs to set policy, to set direction for the institutions, and need to have the Chancellor to make sure the policy is put in place, that there is appropriate oversight to it. To restrict the board's ability to delegate to the Chancellor would be to say we are going to have a corporation, have a board of directors for the corporation, going to have a CEO but the CEO can't talk to the division heads, the board has to do that. Really makes very little sense from a management standpoint. The presidents deal directly with the presidents; he says he talks to the institution presidents on a weekly basis, some more often. If they have a question or a problem with something going on with the board, he doesn't feel they have a problem calling him or another board member and question it. Feels that input occurs on a day to day basis. Good board governance would be for the board to delegate to the Chancellor. Will admit everything doesn't go smoothly all the time. The presidents aren't always happy with what the board and Chancellor does.

Even though the missions aren't the same, the same issues apply from Williston to Wahpeton to Fargo to Dickinson. Those are the issues of: access, affordability for students, student success, safety. Those are the initiatives that the board sets policy on, delegates to the Chancellor to accomplish and looks at the budget as a method for moving forward across the system.

Budgeting piece—not very difficult to take the budget they submit, to listen to the presentations of each of the campuses, and if you like the three tiered category—to add up six numbers on the two (means UND/NSDU??) year, four numbers on the four year, and two numbers on the two year and get exactly the numbers the bill mandates. What it does not allow for is the conjoined vision of the system as a whole. It separates them into three pods and those three pods then compete against each other for the funding dollars available. With respect to the commission proposed by SB 2300; the current funding model came from (as he understands) higher education round table from the legislature. That shared process is critical to the state achieving its goals; if the board says these are our goals and this is the funding model that achieves them, and that is diametrically opposed to what the legislature or executive branch thinks the funding model should look like or the goals that ought to be achieved, the board isn't going to be successful in that plan. Really requires all three entities to sit down and decide what to achieve through higher education and what is the best model for achieving that from a funding basis, from a goal setting basis. That is why the commission on higher education (SB 2300) is an important piece, and when the Governor asked what he thought of it, said it is a great idea.

Clear to him that there are disconnects, whether perceived or reality. Also clear to him that funding in higher education is changing, and they have been at the front end of that—10 years ago with the round table on higher education. Need in-depth discussion of the issues and support from the Governor, Legislature and Higher Education.

Some comment that institutions will respond in whatever manner makes their books look better—hasn't found the money to be the driving force in the schools missions. Thinks institutions take very seriously their roles as independent institutions that play a workforce training role, play a research role, play an education role. Thinks each of the presidents is best served to carry that forward, and (as a board member) Board is to let the CEO's take

the campus in the direction they believe they need to go. Do pay them a lot of money and expect results from them. If the board or legislature micromanages, it will not be achieved. There job has to be this is where I need to take my institution, and the board's job to say this is where we want the system to go—so take your institutions and move them in that direction (access, affordability, economic development connections)

Senator Flakoll: Concern—in 2005 there was a bill is to look at alternatives. One example of a problem in terms of communication and the like—somewhat disturbing reply from a campus president (no longer there) is if I talk to you, I will be fired. That was a significant problem and don't know if it was ever addressed. Basically were told when they could and could not respond to legislators. In a flexible and responsive system, how does that work very well? **John Backes:** Not aware of this issue; predates his tenure, but from where the system is now and the discussions he has with the presidents with communications—feels there is a balance to be had. The board comes out with a unified budget request and they expect when the process (which starts with the schools and their priorities) is completed that they will support that budget process and that they will not lobby for requests that did not make the “grade”. In terms of communication, has had presidents say a legislator wants to talk about this on my campus—absolutely. Other issues should be shared openly. Has made it clear that they should not lobby for something that did not make the priority list.

Senator Flakoll: How will you feel if the budget that came from the House passes the Senate unamended? **John Backes:** It would be a step backwards for higher education. **Senator Flakoll:** How many capital construction projects are still on the list as they came out of the board's office? **John Backes:** Good question; the board's priority list came out and the Governor added DSU library, and reduced the IT building and some of those other things. The House took out Valley City and added Wahpeton; also took out DSU. Of their priorities —#1 was IT building; #2 was Valley City; #3 Old Main at Wahpeton—they swapped the Diesel Mech building. Of their original list, thinks that only the #1 priority has remained.

Senator Flakoll: Is the list still generated by approximately 21 different criteria that one person in the higher ed office decides on and forwards to the board, and they don't score it but just say which ones they want on it—is that the process? **John Backes:** His experience with the process is to ask the campuses to prioritize the top two, top four at UND & NDSU. They come with the list, the system offices does put them in what they consider rank order based on what the criteria is. Don't think the list passed out of there had very much commonality with the systems office. The board listened to each of the campuses give a presentation on that, then take the information back to consider. The board members rank in their own minds what that priority list ought to be.

William Woodworth, North Dakota Student Association lobbyist: testified in opposition (#2 Testimony) Mainly has constitutional issues with the bill; Article 8, Section 7C. Could make it more difficult for the students to bring issues to the higher education board. First step for students is to take concerns to the university system office. If the problem isn't fixed there, then it would go to the Chancellor's office. After that would reach the state board's attention. Students feel their concerns would be better addressed with the Chancellor in that system than going directly to the board. Could take care of issues before they reach the level of the legislature.

The bill would also create the three tiered funding system. There is already legislation proposed to deal with this issue; SB 2300 will study funding issue so students feel that it would be imprudent to just change the funding system before the commission finishes its work. Based on what he's heard on the House side, feels it will pass.

Senator Flakoll: Your citation of the Webster's definition of a chief executive officer reads that the executive with the decision making authority in an organization or business—so are we in non-compliance right now since technically the board of higher education has full authority over that position? **William Woodworth:** Was just using that definition as a guidance; the Supreme Court of North Dakota would have the final say as to which definition to use. Was checking the Century Code this morning and the only interpretation that they had was a case where it appeared that the Chancellor was trying to build a building without the authority of the legislature. That was just a guiding definition; the point he was trying to get to is that in the Constitution there are specific authorities that go to the Chancellor and thinks this bill would probably eliminate or be against what is prescribed.

Senator Flakoll: About 4-6 years ago, the student association members were promoting the tiered system. What types of processes did your organization do in terms of developing a position on this bill? **William Woodworth:** At the September and October meetings they had in-depth discussions about the issues of dealing with equity and parity; think those were the concerns the students have the most with the current funding formulas. That would be what they determined necessary to study in the SB 2300. More concerned with the Chancellor's authority in the first part of the bill. Also felt that with SB 2300 it would be unwise to change anything without that work being finished.

No further testimony; hearing closed.

Senator Heckaman: Not sure if she can support this bill. SB 2300 is not disrespectful to anyone, and thinks it is a good mechanism to address this issue. She considers this one to be a power struggle, and we are just getting to the point where the university presidents and the board are looking at their roles together. Don't want to go back to the way it was before. No way she can support this bill.

Senator Flakoll: How funding is presented to us has strong merit in that we have expectations in how we want things delivered. Thinks this bill actually did not go before the policy committee on the House side. Went to Appropriations committee because it dealt with how they wish to receive the information that they had. Thinks when looking at varying missions of campuses they're one but unique in each of the eleven campuses. Think that also has merit. To say that there hasn't been concern on the budget that has come to the legislature in terms of how they presented it to the selection information they took—certainly been a lot of concerns about that. He expressed a concern to the board, at an interim committee meeting, because they presented information to the committee. They essentially have the lists from the campuses, one member in the system office decides what she feels is the list to move forward; this person has no experience in anything but finance—no construction experience. Need to get to a better model that involves the board members to a much larger extent. That was his major concern; the board was (he thinks) abdicating their authority to the office, and weren't fully engaged and understanding all of the various projects out there.

The interim committee, led by Senator Andrist, had some concerns in terms of the deferred maintenance, and that this maybe would be a good time to look at that. Thinks there are a lot of issues in terms of how they bring proposals to the legislators. In SB 2300, if they don't bring it to us in a form we like, thinks they will be challenged on an ongoing basis to have the success they wish to have. If you read the Constitution we have the purse strings; in reading Article 8, Subsection 7 of the constitution you look at the duties of the Commissioner, which is the same title as the Chancellor, doesn't think this bill deters in any manner from what they will be doing with that position. Thinks there is a significant amount of brain power out there and we don't want to stifle that brain power that we have paid a quality sum of money for—and rightly so. Those are some of the reasons he is supportive of this. The issue is not going away; need to continue to work toward solutions that work within our system for them to be successful. Doesn't have anything to do with the current Chancellor or whatever—just a systemic problem that exists.

Move a Do Pass to HB 1411; Second by **Senator Luick**.

Senator Gary Lee: Certainly not been enamored with what the board of higher education has done or not done in some recent times here. Don't subscribe to the theory that if everyone is unhappy, they must be doing something right as Mr. Backes had indicated. Don't think he'll support the motion because we did pass out the Commission, whether we needed that or not. If the board had been doing their job; but have passed that and maybe the House won't, but think that might be a vehicle. Not sure about the governance piece; doesn't seem to clarify anything just makes it a bit more confusing at least in terms of the explanation that Representative Carlson offered in the question he asked. Not support a Do Pass.

Motion carried 4-3-0; **Senator Flakoll** will carry the bill.

Date: 3/28/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1411

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. Flakoll 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) 4 No 3

Absent 0

Floor Assignment Sen. Flakoll

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

REPORT OF STANDING COMMITTEE

HB 1411: Education Committee (Sen. Freborg, Chairman) recommends DO PASS
(4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1411 was placed on the
Fourteenth order on the calendar.

2011 HOUSE APPROPRIATIONS

HB 1411

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Education and Environment Division
Sakakawea Room, State Capitol

HB 1411
1/31/11
13718

☐ Conference Committee

Committee Clerk Signature

Meredith Trachsel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to duties of the commissioner of higher education and the budget requests and appropriations for the North Dakota university system.

Minutes:

You may make reference to "attached testimony."

Chairman Skarphol: We'll open the hearing on HB 1411.

Rep. Al Carlson, District 41, House Majority Leader: See attachment 1. By the Governor putting in a Commission for Higher Education like he had for K12, he signaled it is time we look at the model we're using for funding higher ed, and this goes along with that. I have a problem grouping all the institutions together, when they have very separate functions. The research institutions and trade and technical schools are completely different in their focus. We spend millions on higher ed, millions on workforce training and development outside of higher ed, and every session we come back and there's more money for both groups. We have less than 4% unemployment, but we have a disconnect on what jobs are required to keep our kids in ND. The model needs to be looked at. What will higher ed look like in 20 years? That is why the bill is before you. We spend a lot of time and effort hiring our college presidents, and it is imperative we put them on the hot seat and let them run their institutions and sell their wares to us as legislators. With a little imagination we can create a new, workable funding model.

Rep. Hawken: I don't disagree with your premise. Where we differ is that I remember the days when schools came in to sell their wares, and the school I'm closest to didn't come off quite as well as another, because the president was more charismatic. That is a concern of mine. How do you deal with funding and personalities?

Rep. Carlson: That is why you would want to group like schools, like the two research institutions. They come in as a block grant, and we can better understand their missions. We used to go through college by college, and quite honestly, we had a much better understanding of what was taking place in those institutions. We need to be in line with ND, not our neighbors, and the needs of ND taxpayers.

Chairman Skarphol: You want to do this within the current funding?

Rep. Carlson: Absolutely.

Chairman Skarphol: Reading from the bill, page 2 lines 26-29, rather than have one line for all institutions, we would have a line for each institution and the system office for operating, and a separate capital line on each institution?

Rep. Carlson: I believe they each do business a bit differently. Mayville State is probably more like Valley City than like NDSU.

Chairman Skarphol: With the change you are recommending, you are envisioning a much larger responsibility on the state board of higher education to oversee the schools?

Rep. Carlson: That would be my intention. I have been here since that has grown from an agency of \$1 million budget to a \$7 million budget. There has been tremendous growth, and some of us wonder if it was duplicating the functions we're doing on the campuses themselves. Our state has a strong commitment to our institutions. I would like them to have an opportunity to grow. On the other hand, we need to take a hard look at those that have not.

Chairman Skarphol: This requires that OMB require this format, and that format could be a product of the university system itself.

Rep. Carlson: Yes. I would hope they want to look at this, rather than say it works perfect as a block grant.

Chairman Skarphol: Is there any further testimony in support of HB 1411? Do we have testimony in opposition?

Jon Backes, President, State Board of Higher Education (SBHE): I am here to oppose HB 1411. It is the view of the SBHE that this bill would not be beneficial to higher ed in ND. We view the bill as having two components. The first one restricts the ability of the board to delegate duties to the chancellor. The state constitution is pretty clear as to SBHE's authority over institutions under its control, including the right of delegation. We think that is necessary. More problematic is the effect it has on the state board and the state of ND to adequately address governance and control of the institutions under the state board. Currently, SBHE sits like a board of directors would in a private corporation. It has a chancellor (the CEO), and 11 division heads, chairmen, presidents, whatever you want to call them. That line of reporting is fairly clear. In my experience, I've never seen a governance model that would have the board of directors be the direct supervisors of the 11 division heads of a company. 8 people cannot manage 11 people directly; those 11 people must answer to one person, and that one person can answer to the board of directors. With multiple bosses, there is no consistency of effort, consistency of vision, and consistency of achievement. Changing to this type of governance would limit, hinder, or eliminate the collaboration that has occurred in our system. You would have 11 institutions going the direction that each of those 11 thinks is best for it at the time. That doesn't lead to a systemic or sustained effort moving forward. The other issue created by splitting the system is it tends to ignore the history we had. Back in the '80s, each institution came before the board with its budget request, and it excluded all the other institutions from that

discussion. This is not consistent with a state-wide effort develop higher education. By outside measures, our system produces at a fairly high level. That's not to say we can't be more productive, but if we want that, we must do it systemically. We must work together to achieve common goals. Regarding the budget piece of the legislation, whether our methodology is broken is debatable. The governor has raised the question of if there's a better system out there, and that is a legitimate discussion. We need to decide what makes the most sense for the state of ND, and I don't think this bill does that.

Rep. Williams: Are you making progress?

Backes: Absolutely. There are those who would say they are further from their peers than they've ever been, despite significant equity funding over time. But you have to look at the numbers. We are making progress, but we haven't solved all the problems yet.

Chairman Skarphol: The dilemma is that the role of the SBHE is to resolve the problems that are being proposed to be solved by the commission. Isn't there a stronger role that the SBHE should take?

Backes: The board of education has taken steps to move that direction, and we've proposed moving towards a performance funding model. We are looking at 20-35% of the total dollars to be performance driven. Is that enough change? The institutions are not telling me they're displeased with the current equity funding.

Rep. Martinson: I am frustrated with higher education, and we have tried to change things, during sessions and during the interims, and it is like knocking your head against a wall. Nobody that I know, except maybe some board members, think anything good about the peer funding. I'm really against the governor's idea to have a commission, because that's either our job, your job, or our job together. Now they propose giving it to a separate interim group to solve the problems we can't solve. Part of our frustration is that we still can't get information we request from the board office. I've had board members tell me they can't get requested information from the board office. It's frustrating for all of us.

Backes: There should be no information that you or I or board members can't get. I have not had that problem, and no one should be. I get what they have, so if I ask for something they don't keep, they tell me, and we decide whether to collect it or use a different data set.

Rep. Martinson: It is not that they say, we won't give you that. It takes time, the request is forgotten, you know that game. You are well aware of our problems with the system office. We've told you lots of times. Am I wrong on that? The chairman is in agreement, and the rest of the committee.

Backes: We obviously have an issue to deal with there.

Chairman Skarphol: There is a distinct difference between our institutions. How does the board or system office recognize that in the budget process?

Backes: Each institution comes in with its baseline budget. The first set of data we see is by institution, for all 11. These account for the differences between them. The question is,

how much new money does it take to expand into areas they're not currently serving or do things they're not currently doing. That is where the peer model long term finance plan comes in. That model is designed to take the 11 institutions and show how each is funded. The one farther away from like institutions gets the larger piece of the pie.

Rep. Hawken: The board's job is to set policy. Our job is to appropriate the money. It is frustrating to see the cost to continue. We do this every two years. But all we ever see is where we're adding on. No one ever comes in and says, we're not doing these programs anymore because they're not valuable. We had hoped to have those types of discussions in the interim and it didn't happen. We need to take a look at the big picture, the overall vision. It is not our job to micromanage the institutions, that is your job. It needs to have some direction. I am disappointed that I did not get the information that I asked for. What are the programs? We're not seeing that.

Backes: I do look at the programs added and the programs deleted. The numbers aren't equal. From my view, our biggest problem is that here in the capitol we talk about only about 20% of the big picture. The state system needs to start looking at the whole picture. SBHE has started this, but it's not without challenges. SBHE is attempting to look at the whole funding system across the board, not just the state funding piece, and have that be transparent to you, so you can look at the whole system across the board. It is a slow process.

Rep. Williams: There is nothing personal about this. You have been listening to our frustrations. I've been here several years and seen very little change. As a board member who is stepping down, what has been your greatest frustration?

Backes: My greatest frustration is that it does not seem the board has sufficient system resources to manage the system with which it is charged. We don't have the resources to take someone and say, this is your area of expertise, go put together a working plan for this, or work with these people at these institutions to do that.

Rep. Hawken: That was a wonderful idea. There are people tied to the board office at each campus, people we could utilize, but it needs a plan to get there.

Rep. Monson: When you say resources, what are you lacking?

Backes: I see it in terms of personnel, which is a function of money. Also in terms of flexibility, to some extent. We are allocated up, if you will; everything we have is already heading in a direction.

Chairman Skarphol: If we were ever to achieve peer levels we would have to restrict enrollment, or else use a fixed student number to have an accurate measurement of movement. If we allow student numbers to continue to increase, we're never going to make progress no matter what we do.

Backes: You can drive that peer system using enrollment, because the metric you're using is student numbers.

Rep. Martinson: When we talked about the peer stuff a couple of years ago, we were shown numbers from the system office that we weren't keeping up with the peers, or even falling behind. They hadn't really checked the finances of the peer groups, they just added an inflation factor. As it turned out, we weren't falling behind. Do you have factual information to say we're falling behind, or is someone just adding an inflation factor to the other schools? We are the envy of the country when we go around to higher ed meetings, we give more money than anybody while they have to make cuts.

Backes: With the exception of NDSU, every campus in our system is closer to its peers today than it was four years ago. NDSU has gone the other way, partly because of enrollment increases.

Chairman Skarphol: Anything else? Anyone else wishing to testify in opposition?

William Woodworth, Legislative Lobbyist, North Dakota Student Association: See attachment 2.

Chairman Skarphol: Questions? Any other testimony? With that, we will close the hearing on HB 1411.

2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Education and Environment Division
Sakakawea Room, State Capitol

HB 1411
2/10/11
14315

☐ Conference Committee

Committee Clerk Signature

Shirley Branning

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 15-10-10, 54-44.1-04, and 54-44.1-06 of the North Dakota Century Code, relating to duties of the commissioner of higher education and the budget requests and appropriations for the North Dakota university system.

Minutes:

You may make reference to "attached testimony."

Chairman Skarphol: Called the Committee together to discuss HB 1411. NDSU's peer funding declined and it was because of increased student numbers.

Rep. Monson: This assumes that this new commission actually is approved?

Chairman Skarphol: No, this actually directs the State Board of Higher Education, as soon as practical, shall appoint for a term not to exceed three years a state commissioner as principal office must be. It goes on, the board shall provide for the commissioner to administer programs that affect students and institutions on a state wide basis, collect and maintain student and institutional data for reporting purposes. The board may not prescribe duties to the commissioner which includes governance over institutions under the control of the board. In other words, it is basically saying is that the position now called chancellor would be an executive director to the State Board of Higher Education. That would be the change on page 1. Page 2 would create a three tiered system for funding purposes. It would direct the board and the office to develop that type of funding mechanism and bring it forward.

Rep. Hawken: I think a lot of things in that bill merit discussion, but it may be a bit ahead of its time. I don't disagree with the idea of looking at different levels for funding but I think that a piece of it goes a bit too far without trying to make a few adjustments first.

Chairman Skarphol: I agree that, in the budgeting process, there is a significant difference between a research institution and our baccalaureate institutions. It warrants a discussion on a larger scale than just in this committee. I would suggest that we be patient and move this bill forward because there may be something forthcoming that would give us more direction.

Rep. Hawken: Do not pass

Motion Dies for lack of a Second

Rep. Williams: Governor Dalrymple is putting something together, a commission to study the funding and some of the other mechanics of higher education.

Chairman Skarphol: The Governor does have a budget in the Senate to create a commission on Higher Education. I was asked to be a sponsor but declined. The House's perception of that may be as accepting as the Senate's.

Rep. Williams: The underlined portion on page 1. What is the motion behind that?

Chairman Skarphol: We pay our president's of our research institutions about twice as much as we pay the Chancellor. Some of our baccalaureate institutions presidents are paid nearly what we pay the Chancellor. The motivation is that maybe we should let those folks govern as opposed to have to answer to someone who does not have near the qualifications or experience that they do. The system office should be more of a data collection entity and less of a governance of the institutions.
Further discussion? Do I have a motion?

Rep. Monson: Move Do Pass

Rep. Dosch: Second

Roll Call Vote: 5-1-0 Opposed by Rep. Hawken. Motion Carried
Carrier: Chairman Skarphol.

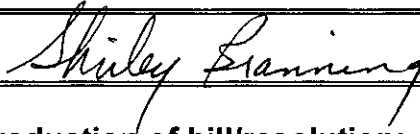
2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1411
2/18/11
14752

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact sections 15-10-10, 54-44.1-04, and 54-44.1-06 of the North Dakota Century Code, relating to duties of the commissioner of higher education and the budget requests and appropriations for the North Dakota university system

Minutes:

You may make reference to "attached testimony."

Representative Skarphol: Introduced the bill. It was heard in the Education and Environment sub committee and it was given a five-one Do Pass. Reading from pg. 8 of the bill, he describes its purpose, The language intervening is with regard to the reauthorization of the Round Table, with some additional components included, referring to pp 2-3.

Move Do Pass.

Vice Chairman Kempenich: Second

Chairman Delzer: discussion

Representative Dahl: Are we setting ourselves up for a confrontation with the chancellor?

Representative Skarphol: It is our perspective that we hire presidents of these institutions and they may bring to the table a more experienced perspective than we have had available in most of the chancellors that we have hired. It seems hypocritical to hire someone then tell him to answer to an individual above him. According to the constitution he does answer to the Board.

Chairman Delzer: The chancellor was put in, was that constitutional statutory?

Representative Skarphol: The chancellor is statutory at best, it refers to a commissioner.

Chairman Delzer: What is the reason for keeping the chancellor's office, if you want to do this?

Representative Skarphol: There needs to be entity that collects the data, provided by the institutions so that we have the ability to evaluate the data. The system office would be an

informational structure. What are our expectations? Do we expect the State Board to run our institutions?

Representative Kaldor: The way I read this, the board would have authority, except for prescribing the duties to the commissioner which would include governance over the institutions under the control of the board. So would the Board have the power to govern over all of the institutions so that the presidents would report directly to the board and not at all to the commissioner?

Representative Skarphol: The Board would actually govern.

Representative Glassheim: Boards don't deal with day to day stuff...it doesn't make any sense. You're going to have no capacity for a system wide approach to anything or to deal with duplications. The board members don't spend 50 hours a week running institutions, they just have meetings. We complain about duplication, we want to have institutions cooperate,this is self defeating.

Representative Skarphol: If I recall, we cosponsored a bill 2-3 sessions ago that gave the chancellor the authority to run the system. Let's give the authority or take it away, same with the board. Who is truly accountable? The Board, the chancellor, the institutions?

Representative Glassheim: Currently, the board is accountable and responsible and the chancellor is hired by the board and reports to the board. If chancellor is not doing the job, the board fires the chancellor. The board is constitutionally in charge of the system. The board is accountable. The Chancellor is their agent.

Representative Skarphol: Were you supportive of the board running WSI? If the shoe fits, let's wear it, but if it doesn't, it's probably not a good governance structure.

Representative Kaldor: The discussion isn't hitting the point. The board has authority, we want them to be accountable, we want them to be in charge, but they need an executive who works under them...otherwise we have silos. Our only hope for a system wide approach is through the process we have right now. It has faults and failings. We get frustrated with them, and they with us, or the public may be unhappy with our actions. But it seems like we should not be prescribing to them what their chancellor should or should not do unless we want to change the constitution.

Chairman Delzer: Representative Kaldor, in your mind, do the college presidents answer to the chancellor now?

Representative Kaldor: It's my understanding they do. Some more so or less than others but that may be at the wishes of the Board. They do report to the Chancellor.

Representative Hawken: We know we need to do something different. But I don't know that jumping in in the middle, when we haven't laid it out and put the pieces together is the right move. I would like to look at a different funding formula. This bill is ahead of its time and having said that I call the question.

House Appropriations Committee

HB 1411

2/18/11

Page 3

Roll Call Vote: 12-7-2 Motion carries.

Carrier: Representative Skarphol

Representative Nelson: Why were the last two bills before us? They're policy with no appropriations. This debate should take place in a policy committee.

Meeting closed on HB 1411

Date: 2/10/11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1411

House Appropriations – Education and Environment 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. Monson Seconded By Rep. Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Bob Skarphol	X		Clark Williams	X	
Vice Chair Hawken		X			
Mark Dosch	X				
Rep. Martinson:	X				
David Monson	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Rep. Skarphol

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

Date: 2/18
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1411

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. Skarphol Seconded By Rep. Kempenich

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		
Representative Hawken		X			
Representative Klein		X			
Representative Kreidt	X				
Representative Martinson					
Representative Monson	X				

Total (Yes) 12 No 7

Absent 2

Floor Assignment Rep. Skarphol

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

REPORT OF STANDING COMMITTEE

HB 1411: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO PASS** (12 YEAS, 7 NAYS, 2 ABSENT AND NOT VOTING). HB 1411 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1411

HB 1411
Jan. 31, 2011
Attachment 1

This bill provides for changes in the duties of the Commissioner (Chancellor) of Higher Education and for changes in the method of funding higher education institutions.

- North Dakota Century Code (NDCC) Section 15-10-10 is amended to provide that the Commissioner of Higher Education may not have governance duties over higher education institutions. The bill provides that the commissioner may administer statewide programs and collect and maintain reporting data.
- NDCC Sections 54-44.1-04 and 54-44.1-06 are amended which relate to the submission of budget data to the Office of Management and Budget and the preparation of draft appropriations bills by the Office of Management and Budget. Currently, the budget requests of higher education institutions and the higher education appropriations bill draft must be in a format that includes block grants for base funding, initiative funding, and capital asset funding. This bill keeps the block grant funding format but provides that the funding provided in the block grants must be based on separate calculations for research institutions, baccalaureate institutions, and two-year institutions.

HB 1411
State Board of Higher Education
1/31/11
attachment #2



Chairman Skarpol, and members of the committee, I am William Woodworth, the current Legislative Lobbyist for the North Dakota Student Association. We are here to testify against HB 1411. Section 1 of the bill would limit the authority of the State Board of Higher Education to prescribe duties to the State Commissioner of Higher Education. Specifically, the bill would prohibit the SBHE from delegating duties to the Commissioner "which include governance over institutions under the control of the board" (line 18, page 1). If this committee recommends a do-pass on HB 1411, it will be more difficult for the State Board of Higher Education to carry out its duties under the North Dakota Constitution, art. VIII, §6(6)(a) which states "The said state board of higher education shall have full authority over the institutions under its control". The State Board of Higher Education was designed to prevent the political process from micromanaging the administration of higher education. Since the SBHE is not able to administer the daily activities of the University System in the fact that the Board does not meet daily, the Board must be able "to delegate to its employees details of the administration of the institutions under its control" ND Constitution art. VIII, §6(6)(b). This would be akin to telling a superintendant of public schools that he could not manage the schools under his jurisdiction. Also, the spending models that HB 1411 creates is vague and is already addressed in other legislation. Thank you for your time.

William Woodworth

North Dakota Student Association, Legislative Lobbyist

North Dakota University System

HB 1411 – Senate Education Committee

March 28, 2011

Jon Backes, President, State Board of Higher Education

Good morning, Mr. Chairman, and members of the Senate Education Committee. For the record, my name is Jon Backes and I am the President of the State Board of Higher Education. I am here to urge your "Do Not Pass" on HB 1411.

The Constitution of North Dakota states that the "commissioner of higher education shall be the chief executive officer of said state board of higher education" (Article VIII, Section 6, 7.c.)

In general, CEO is defined as "The highest-ranking executive in a company or organization, responsible for carrying out the policies of the board of directors on a day-to-day basis."

"The chief executive of a public university or college system. . . is the top educational leader and spokesperson for the entire system (or for all of state higher education), as well as the top administrator with management responsibilities to see that the system office implements the policies of the governing board. The system head is the conduit to the board for institutional presidents, the mediator of institutional disputes, the leverage for cooperation and collaboration, and above all, the champion for a strategic agenda to address the needs of the state and its citizens." [See "The Leadership Dynamic in Public College and University Systems," National Association of System Heads/American Association of State Colleges and Universities/Association of Governing Boards].

The State Board of Higher Education is the policy setting and oversight body for North Dakota's University System. It acts as a "board of directors" in its role of both oversight and policy making. As you are well aware, Board membership is not a full-time job for any members. In any management structure, including that of the North Dakota's University System someone – whether called the president, CEO, Chancellor or commissioner – must be responsible for the day to day implementation of the policy initiatives established by the board. Without a Chancellor to whom the board can delegate overall responsibility for operation or governance of the system, there is simply no effective manner of accomplishing sustained board initiatives such as:

- The implementation and administration of the policies established by the board;
- Acting on behalf of the board between meetings;
- The leveraging and oversight of initiatives that incentivize the cooperation and collaboration among the eleven institutions;
- Overseeing that the System, operating as a whole, is effectively and efficiently moving in the direction set by the board;
- Coordination of the development of a strategic agenda for higher education to address the needs of the state;
- Annual assessment of the performance of each president.

As stakeholders, the legislative and executive branches, state business leaders, and citizens of North Dakota all expect an effective and efficient University System. Institutional collaboration is critical if the NDUS is to fulfill that expectation. However, if the duties of the Chancellor are limited to administering statewide programs and collecting data for reporting purposes (what ever definition might develop for those terms), who will be responsible for ensuring collaboration and efficiency within the System?

The system has achieved efficiencies because North Dakota has a unified system of higher education led by a Chancellor. Without a chief executive to lead in the implementation and administration of board policy and provide daily oversight, it would be difficult to continue achievement of efficiencies throughout the system, such as:

- Implementation of common technology. This includes the use of common administrative systems and development of a data warehouse to provide standard reporting across all institutions and consistent administration of programs such as state scholarship and loan forgiveness programs.
- Multi-campus licensing agreements for common collaboration and learning management software for instruction. For example, moving institutions to Moodle cut the overall cost by more than half, and the system and help desk services are available 24x7.
- Risk management. Approaching risk assessment on a system-wide basis provides consistency across campuses and reduces overall cost through system-wide contracting.
- Budget guidelines. Through system-wide budget guidelines, the Chancellor can specify that campuses are to invest funds in initiatives that will lead to student success. For the past two years, campuses have been asked to "target investments to improve college student retention and graduation, including student advisement and career counseling." Campuses have responded with programs that most effectively meet the needs of their own students.

Collaboration also is essential for development of a system-wide strategic plan and goals as required by Century Code 15-10-14.2. In fact, one of the goals of the University System's current Strategic Plan states that "The eleven institutions comprising the NDUS work together to achieve the vision effectively." Clear leadership at the system level is necessary to achieve and, more importantly, sustain this high level of collaboration.

Finally, members of the committee, I would encourage you to take your copy of the North Dakota Constitution and read Article VII Section 8. I would submit to you that HB 1411 infringes upon the constitutional authority provided by that section.

Thank you, Mr. Chairman. I will be pleased to address any questions.



Chairman Freborg, and members of the committee, I am William Woodworth, the current Legislative Lobbyist and President-Elect of the North Dakota Student Association. We are here to testify in opposition of HB 1411. Section 1 of the bill would limit the authority of the State Board of Higher Education to prescribe duties to the State Commissioner of Higher Education. Specifically, the bill would prohibit the SBHE from delegating duties to the Commissioner "which include governance over institutions under the control of the board" (line 18, page 1). If this committee recommends a do-pass on HB 1411, it will be more difficult for the State Board of Higher Education to carry out its duties under the North Dakota Constitution, art. VIII, §6(6)(a) which states "The said state board of higher education shall have full authority over the institutions under its control" The State Board of Higher Education was designed to prevent the political process from micromanaging the administration of higher education. Since the SBHE is not able to administer the daily activities of the University System in the fact that the Board does not meet daily, the Board must be able "to delegate to its employees details of the administration of the institutions under its control" ND Constitution art. VIII, §6(6)(b). This would be akin to telling a superintendant of public schools that he could not manage the schools under his jurisdiction. Also, the Constitution specifically states in art. VIII §7(c) "Such commissioner of higher education shall be the chief executive officer of said state board of higher education, and shall perform such duties as shall be prescribed by the board". According to Merriam-Webster's 11th Collegiate Dictionary, a chief executive officer is "the executive with the chief decision-making authority in an organization or business" which would seem to imply that that officer would have more authority than to merely make studies. With the CEO having limited power, this is a chance students will be hurt by the lack of administration.

Also, the spending models that HB 1411 creates is vague and is already addressed in other legislation. Earlier in the session Governor Dalrymple spoke at length in favor of SB 2300 before this committee. Since this bill will likely pass, and it will take a hard look at higher education funding, it would be imprudent to change funding for the brief period before the commission on higher education funding finishes its work.

Thank you for your time.

William Woodworth

North Dakota Student Association, Legislative Lobbyist

#2 HB 1411