

## STATE BOARD OF HIGHER EDUCATION - HISTORICAL DEVELOPMENT

### LEGISLATIVE ASSEMBLY OF THE TERRITORY OF DAKOTA - CREATION OF UNIVERSITIES

On April 21, 1862, the Legislative Assembly of the Territory of Dakota created the territorial university of the Territory of Dakota. This institution was to be located in the town of Vermillion and eventually became the University of South Dakota. Twenty-one years later, in 1883, the territorial legislature articulated its conception of how the institution was to be organized and governed. The object of the university, or in today's parlance, its purpose, was to "provide the best and most efficient means of imparting to young men and women on equal terms a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications." The university was to begin the courses of study "at the points where the same are completed in high schools," and no student was to be admitted unless the student had previously completed the elementary studies in such branches as are taught in the common schools throughout the territory. The university was also directed to include a collegiate, scientific, normal and such other departments with such courses of instruction and elective studies as the board of directors may determine."

If a student had resided in the territory for a period of one year prior to entering the university, that student could not be required to pay any fees for tuition, except in the law department and for extra studies. The directors were given the authority to "prescribe the rates of tuition for any pupil in the law department, or who shall not have been a resident of the territory as aforesaid, and for teaching extra studies."

The governance of the university was to be by a five-member board of directors appointed by the Governor, with the consent of the Legislative Council. The board of directors was given the authority to elect a secretary, to elect a treasurer, to contract for the erection of buildings, to enact rules for the government of the university, to appoint a president and necessary faculty and staff and determine their compensation, and to "expend such sums of money as may be appropriated for the university in the purchase of apparatus, library and a cabinet of natural history, in providing suitable means to keep and preserve the same, and in procuring all other necessary facilities for giving instruction."

In 1883 the Legislative Assembly of the Territory of Dakota also created the University of North Dakota. This institution was to be governed by a six-member Board of Regents, which consisted of five members appointed by the Governor, with the consent of the Legislative Council, and the Governor himself. The Board of Regents was given "all the powers necessary or convenient to accomplish the object and perform the duties prescribed by law." Specifically, the Board of Regents was directed to "enact laws for the government of the university in all its branches; elect a president and the requisite number of professors, instructors, officers and employees, and fix the salaries and the term of office of each; and determine the moral and educational qualifications of applicants for admission to the various courses of instruction . . . ." The Board of Regents also was given the power to "prescribe rules and regulations for the management of the libraries, cabinet, museum, laboratories, and all other property of the university, and of its several departments, and for the care and preservation thereof. . . ."

The 1883 enactment gave the Board of Regents the authority to "expend such portion of the income of the university fund as they may deem expedient for the erection of suitable buildings and the purchase of apparatus, a library, cabinets, and additions thereto . . . ."

Like its neighbor to the south, the University of North Dakota also had certain "objects"--namely, to:

[P]rovide the means of acquiring a thorough knowledge of the various branches of learning connected with scientific, industrial and professional pursuits, in the instruction and training of persons in the theory and art of teaching, and also instruction in the fundamental laws of the United States, and of this territory, in what regards the rights and duties of citizens, and to this end it shall consist of the following colleges or departments, to wit:

1. The college or department of arts.
2. The college or department of letters.
3. The normal college or department.
4. Such professional or other colleges or department as now are or may from time to time be added thereto or connected therewith, and the board of regents are hereby authorized to establish such professional and other colleges or departments when in their judgment they may be deemed necessary and proper; provided, that no money shall be expended by the board of regents in establishing and organizing any of the additional colleges or departments provided for in this section, until an appropriation therefore shall have first been made.

The enactment goes on to provide that the "college or department of arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to the industrial arts, such as agriculture, mechanics, engineering, mining and metallurgy, manufactures, architecture, and commerce, and such branches

included in the college of letters as shall be necessary to proper fitness of the pupils in the scientific and practical courses for their chosen pursuits, and in military tactics; in the normal department the proper instruction and learning in the theory and art of teaching, and in all the various branches and subjects needful to qualify for teaching in the common schools; and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their application to the practical arts shall be expanded into distinct colleges of the university, each with its own faculty and appropriate title. The college of letters shall be co-existent with the college of arts, and shall embrace a liberal course of instruction in language, literature and philosophy, together with such courses or parts of courses in the college of arts, as the regents of the university shall prescribe."

The university was to be open to female as well as male students, and tuition was free to those who had resided in the territory for one year, with the exception of the law department and extra studies. The Board of Regents was directed to establish the tuition in those cases. The Board of Regents also was directed to make rules, regulations, and bylaws for the good government and management of the university and of each department, to prescribe rules and regulations for the admission of students, and to fix the salary of the president and the faculty.

### **Constitution of North Dakota 1889**

When the Constitution of North Dakota was adopted on October 1, 1889, it required that certain institutions be permanently located "at the places hereinafter named." Among these are:

- The State University and School of Mines at the city of Grand Forks;
- The Agricultural College at the city of Fargo;
- A State Normal School at the city of Valley City;
- A State Normal School at the city of Mayville;
- An Industrial School and School for Manual Training, or such other educational or charitable institution as the Legislative Assembly may provide, at the town of Ellendale;
- A School of Forestry, or such other institution as the Legislative Assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau, or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the Legislative Assembly; and
- A Scientific School, or such other educational or charitable institution as the Legislative Assembly may prescribe, at the city of Wahpeton.

The 1889 Constitution also provided that "no other institution of a character similar to any one of those located by this article shall be established or maintained without a revision of this constitution. The Political Code addressed the governance structures for the University of North Dakota, the Normal schools at Valley City and Mayville, the North Dakota Academy of Science at Wahpeton, the Agricultural College at Fargo, and the Industrial School at Ellendale. The governance structure for the School of Forestry at Bottineau was enacted in 1897. Each institution had its own governing board, which was charged with, among other things, budget preparation.

A constitutional amendment to add a state normal school at the city of Minot was passed in 1910, and a constitutional amendment to add a state normal school at the city of Dickinson was passed in 1916. Bismarck Junior College, Lake Region Community College, and the University of North Dakota - Williston center came under the jurisdiction of the State Board of Higher Education on July 1, 1984, in accordance with 1983 Senate Bill No. 2073.

### **State Board of Education**

The Legislative Assembly's effort to consolidate educational governance began in 1913, with the enactment of Senate Bill No. 236, which created the state Board of Education. It consisted of the president of the University of North Dakota, the president of the Agricultural College, the state Superintendent of Public Instruction, the state inspector of graded and rural schools, the state high school inspector, and a state normal school president, an industrial school president, a county superintendent, and a male citizen who is not connected with the educational system, all appointed by the Governor. The role of this body was to administer a teacher certification program and to secure uniformity and best results among the schools receiving state aid as rural, graded, or consolidated schools. The Board of Education was also placed in charge of classifying schools and apportioning state aid.

### **State Board of Regents**

Two years later, in 1915, the Legislative Assembly enacted House Bill No. 361, which created the State Board of Regents. This five-member board was created for the general control and administration of:

- The State University and School of Mines at Grand Forks;

- The State Agricultural College and Experiment Station at Fargo;
- The School of Science at Wahpeton;
- The State Normal Schools at Valley City, Mayville, and Minot;
- The Normal and Industrial School at Ellendale;
- The School of Forestry at Bottineau; and
- Such other state educational institutions as may be hereafter established.

Each of the members of the Board of Regents was to be a qualified elector and taxpayer of the state and was to be appointed for their fitness and ability to efficiently serve the people of the state. Not more than one member could be appointed from any one county, and not more than one alumnus from a particular institution could serve at the same time. Upon nomination by the Governor, each nominee had to be confirmed by the Senate and could be removed for incompetency, neglect of duty, immorality, malfeasance in office, or other good cause.

The Board of Regents was to assume all the powers and perform all the duties of the existing institutional boards and it was to make all necessary rules and regulations for its own official procedure and for the efficient management and control of the educational institutions and of their various departments. It was also directed to engage a competent expert from outside the state to survey the various institutions for the purpose of ascertaining their efficiencies and economies. Thereafter, the board was to appoint a commissioner of education from outside the state. This individual was to be a graduate of a reputable college or university, was to have made a special study of educational problems, and was to have had at least three years' experience in educational administration.

In addition, the Board of Regents was directed to coordinate and correlate the work in the different institutions so as to prevent wasteful duplication, to develop cooperation among the institutions in the exchange of instructors and students, and to fix tuition if not otherwise provided by law. Its other listed duties were recommending necessary legislation and preparing a budget for the institutions. The legislation specifically states that the Board of Regents must submit with its budgets all plans for betterments and improvements or buildings costing more than \$5,000, which for a point of comparison was also the maximum annual salary of the commissioner of education. The legislation specifically states that in "no event shall the board direct or permit an expenditure for any purpose in excess of the amount appropriated by law, or contemplated by the statute. . . ."

### **Board of Administration**

In the 1918 election for the position of state superintendent, Mr. N. C. MacDonald, the Nonpartisan League candidate was defeated by Ms. Minnie Nielson. Governor Lynn Frazier, also a member of the Nonpartisan League, persuaded the Legislative Assembly to assign the functions of the Board of Education and the Board of Regents to a new entity known as the Board of Administration. This was done within 1919 Senate Bill No. 134. This board was made responsible for the general supervision and administration of all "Penal, Charitable and Educational Institutions of the State, and the general supervision of the public and common schools of the State." The statute provides that the "presidents or heads of the several State institutions and [the] Superintendent of Public Instruction shall be responsible to the Board." The Board consisted of:

- The State Superintendent of Public Instruction (ex officio);
- The Commissioner of Agriculture and Labor (ex officio); and
- Three individuals appointed by the Governor.

The term of office was for six years, and the Governor was given the authority to remove any appointed member for cause.

The Board of Administration assumed all the power and duties of the State Board of Regents, as well as that of the State Board of Education and the State Board of Control. With respect to higher education, the State Board of Regents was authorized to make all necessary rules and regulations for the general administration, supervision and management of the various educational institutions.

The gubernatorial appointees constituted a majority of the board and were able to name Mr. N. C. MacDonald as the executive director. With this move, the duly elected Superintendent of Public Instruction became subordinate to the individual she defeated. More importantly, the overall responsibility for the state's education system fell solely under executive branch control.

The legislation that created the Board of Administration was referred to the voters at a special election on June 26, 1919. The legislation was supported by a vote of 59,749 to 51,894.

Eighteen years later, in 1937, "Wild Bill" Langer was Governor. The Board of Administration fired seven faculty members at the North Dakota Agricultural College, including the state county extension agent leader. The director of the Experiment Station and Extension Service was relieved of his duties, and the president of the Agricultural College resigned. Some sources suggest that these actions were undertaken in the interest of economy and efficiency. Other sources, however, suggest that the true purpose was to give Governor Langer control of the Experiment Station and Extension Service funds and appointments. Included within this was the ability to allocate approximately \$20 million annually in benefit payments to farmers under the Agricultural Adjustment Act and to use farm and home demonstration agents for political purposes. See, Richard B. Crockett, *Constitutional Autonomy and the North Dakota State Board of Higher Education*, 54 ND. L. Rev. 529 (1978).

The following year, the North Central Association of Colleges and Secondary Schools revoked the accreditation of the North Dakota Agricultural College on the grounds:

[That there had been] "undue interference" by the Board in the internal administration of the college, that faculty morale had declined to the point that the quality of instruction was "seriously jeopardized," and that the legal structure and organization of the Board of Administration provided no assurance of a "stable and constructive leadership" or of a "sufficient degree of autonomy" for the [college] and the other institutions of higher education in the State. *Id.* at 532

### **Initiated Measure to Create State Board of Higher Education**

Public response came in the form of an initiated measure to transfer control of the state's institutions of higher education from the Board of Administration to a constitutionally created Board of Higher Education. Although documentation substantiating the intent of the initiative's drafters remains elusive, *The Forum*, on June 17, 1938, published the following:

Arguments for this measure include these:

1. This amendment would remove the institutions of higher education from political control, which is all too obvious under the present state board of administration setup.
2. The higher educational system of the state would be unified and co-ordinated by supervision of a board interested only in its welfare and not concerned with the other state institutions, such as the penitentiary, the training school, etc.
3. The single appropriation bill for the various schools would eliminate the possibility of the legislature, for political reasons, making "a football" out of any one bill, "punishing" any one legislative delegation by tinkering with the appropriation bill for the school in its district, and from playing the appropriation bill for one school against another for political purposes.
4. Important savings in school operation, along with increased efficiency of the system generally, is more than likely to result from non-political, unified supervision.
5. A qualified educator as commissioner of higher education subject to the board, of course, would serve the institutions and the taxpayers better than the present board of administration, whose appointive members need no experience in school matters whatsoever.

Arguments against this measure include these:

1. Simply another board is created at additional expense to the taxpayers, whereas the board of administration setup has functioned satisfactorily for many years.
2. The amendment leaves the way open to domination of the schools by the educators themselves. Two members of the committee of three making recommendations to the governor for appointment would be school men – the state superintendent of public instruction and the president of NDEA.
3. The small institution would be handicapped and discriminated against if appropriations for the entire system were made by the legislature under one blanket act.
4. A board such as proposed, interested only in the schools, would press for more and more funds for the schools instead of effecting savings in their operation.
5. Seven year appointments are too long, and the board would not therefore be amenable to the will of the people which is subject to change.

On June 28, 1938, the people of North Dakota, by a vote of 93,156 to 71,448, approved the initiated measure and it became Article 54 of the Constitution of North Dakota. The following table highlights the principal provisions of Article 54 and changes to those provisions during the ensuing 73 years.

Original Article 54 of the Constitution of North Dakota	Current Section 6 of Article VIII of the Constitution of North Dakota
State Board of Higher Education is created for the "control and administration" of the listed institutions	No change
7 members appointed by Governor <ul style="list-style-type: none"> <li>• Must be qualified electors and taxpayers</li> <li>• Must have resided in the state for at least 5 years</li> </ul>	No change
	Governor shall appoint as the 8 <sup>th</sup> member a full-time resident student at an institution under the board's control (1994)
Governor shall select appointee from a list of 3 names unanimously agreed to by: <ul style="list-style-type: none"> <li>• The president of the North Dakota Education Association</li> <li>• The Chief Justice of the Supreme Court</li> <li>• The Superintendent of Public Instruction</li> </ul>	Governor shall select appointee from a list of 3 names agreed to by four of the following five: <ul style="list-style-type: none"> <li>• The president of the North Dakota Education Association</li> <li>• The Chief Justice of the Supreme Court</li> <li>• The Superintendent of Public Instruction</li> <li>• President Pro Tempore of the Senate</li> <li>• Speaker of the House of Representatives (1996)</li> </ul>
Appointee must be confirmed by Senate	No change
Members are removable by impeachment	No change
Term of office is 7 years	Term of office is 4 years (1996)
Legislature shall provide adequate funds for the proper carrying out of the functions and duties of the State Board of Higher Education	No change
Board shall elect a competent person to serve as secretary	No change
Board has "full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions"	No change
Board has the "power to delegate to its employees details of the administration of the institutions under its control"	No change
Board has "full authority to organize or re-organize within constitutional and statutory limitations, the work of each institution under its control, and do each and everything necessary and proper for the efficient and economic administration" of the institutions	No change
Board shall prescribe "standard systems of accounts and records"	No change
Board shall biennially and within six months of a regular legislative session provide "a report to the Governor, covering in detail the operations of the educational institutions under its control"	No change
Heads of the institutions are to submit budget requests for the biennial appropriations to the board <ul style="list-style-type: none"> <li>• Board shall consider and revise the budgets "as in its judgment shall be for the best interests of the educational system of the State"</li> <li>• Board shall prepare and present a single unified budget to the legislature</li> <li>• Appropriations for all of the institutions must be contained in one legislative measure</li> </ul>	No change
	Budgets and appropriation measures for the agricultural experiment stations and their substations and the extension division of the North Dakota State University of Agriculture and Applied Science may be separate from those of state educational institutions (1964)
Board shall have "control of the expenditure of the funds belonging to and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in this State"	No change
Board shall appoint a state commissioner of higher education <ul style="list-style-type: none"> <li>• 3-year term</li> <li>• Removable by board for cause</li> <li>• Graduate of a reputable college or university</li> <li>• By training and experience must be familiar with the problems peculiar to higher education</li> </ul>	No change

As first enacted and in its current form, this constitutional provision uses words and phrases such as "control and administration," "full authority over the institutions under its control with the right . . . to prescribe, limit, or modify the courses offered at the several institutions," "full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution," the power to "delegate . . . details of the administration of the institutions," and the power to "do each and everything necessary and proper for the efficient and economic administration of said state educational institutions." (emphasis supplied) Neither the original document nor the current version provides any additional guidance with respect to the intended nature and scope of the selected verbiage. Even the North Dakota Century Code, which contains parallel versions of the constitutional language, contains no further elaboration.

### **North Dakota Century Code Provisions Pertaining to the State Board of Higher Education and Institutions Under Its Control**

In addition to paralleling the Constitution of North Dakota with respect to the State Board of Higher Education, the North Dakota Century Code contains numerous legislative directives to the board and a variety of provisions that authorize board activities. Examples include:

15-10-01	Provides that the State Board of Higher Education shall have the control and administration of the listed state educational institutions
15-10-01.2	Declares the institutions of higher education to be a unified system of higher education known as the "North Dakota university system"
15-10-02	Reiterates the membership of the State Board of Higher Education
15-10-07	Requires members of the State Board of Higher Education to take an oath
15-10-08	Provides for the compensation of members of the State Board of Higher Education and for expense reimbursement
15-10-09	Requires the annual election of a board president and the election of a secretary
15-10-10	Requires the appointment of a state commissioner of higher education and sets forth the requisite qualifications
15-10-11	Provides that the State Board of Higher Education has "full authority over the institutions under its control with the right to prescribe, limit, or modify the courses offered at the several institutions." The section continues with the following: "In furtherance of its powers, the board has the power to delegate to its employees details of the administration of the institutions under its control. The board has authority to organize or reorganize, within constitutional and statutory limitations, the work of each institution under its control, and to do everything necessary and proper for the efficient and economical administration thereof."
15-10-12	Authorizes the State Board of Higher Education to accept donations, gifts, grants, and bequests for the benefit of any institution under its control or subject to its administration and requires that all donations, gifts, grants, and bequests be used for the specific purpose they were given  Appropriates moneys in institution accounts to the State Board of Higher Education on a continuing basis
15-10-12.1	Provides that the State Board of Higher Education may authorize campus improvements and building maintenance, financed by donations, gifts, grants, and bequests, provided the cost is not more than \$385,000  Requires the consent of the Legislative Assembly (or the Budget Section) for the construction of any building financed by donations, gifts, grants, and bequests if the cost exceeds \$385,000 (Budget Section approval must include a specific dollar amount per project.)
15-10-12.2	Provides that all income from college and university funds not deposited in the state treasury must be retained by those funds
15-10-12.3	Provides that if any institution undertakes a capital construction project with legislative approval, all local funds for the project must come from the sources that were presented during the approval process  Provides that local matching funds may not come from the state general fund, state or federal grants, tuition, fees, endowment or investment income, institutional sales and services income, transfers or loans from other institutions' funds, or agency funds, unless legislative approval was obtained
15-10-13	Defines institutional faculty as including the president, instructors, teachers, and assistants and authorizes the faculty to adopt rules for the government of the institution
15-10-13.1	Requires that professors, instructors, teachers, and assistants exhibit proficiency in written and verbal English
15-10-13.2	Requires each faculty member to take an oath or affirmation
15-10-13.3	Requires each faculty member who is not a United States citizen to take an oath supporting or to affirm support for the institutions and policies of the United States
15-10-14.1	Requires the State Board of Higher Education to submit the reports delineated in Section 15-10-14.2
15-10-14.2	Requires the State Board of Higher Education to develop a strategic plan to define and prioritize University System goals and objectives and provide an annual performance and accountability report regarding performance and progress toward the stated goals and accountability measures
15-10-16	Provides that the State Board of Higher Education has control of the funds belonging to and allocated to the institutions and also of the funds appropriated by the Legislative Assembly for such institutions
15-10-16.1	Authorizes the institutions to borrow money from the Bank of North Dakota provided the amounts do not exceed 90 percent of the value of an institution's certificates of deposit held by the Bank

15-10-17	Provides that the State Board of Higher Education has all the power and shall perform all the duties necessary to the control and management of the institutions and authorizes the board to: <ul style="list-style-type: none"> <li>• Appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions, and fix their salaries and terms of office</li> <li>• Appoint and remove the commissioner of higher education</li> <li>• Appoint and remove all University System office personnel, fix their salaries and terms of office, and prescribe their duties</li> <li>• Employ law enforcement officers at the institutions</li> <li>• Set tuition and fees</li> <li>• Establish a retirement program</li> <li>• Determine University System purchasing policies in coordination with the Office of Management and Budget</li> <li>• Establish by rule an early retirement program for faculty and officers of the board</li> <li>• Adopt rules to protect the confidentiality of student records, medical records, trade secrets, and proprietary, commercial, and financial information</li> <li>• Authorize and encourage University System entities to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or to foster basic and applied research or technology transfer</li> <li>• Adopt rules to promote research, encourage development of intellectual property and other inventions and discoveries by University System employees, and to protect and market the inventions and discoveries</li> </ul>
15-10-28	Authorizes the State Board of Higher Education to contract with institutions of higher education in other states and enter into regional education compacts
15-10-28.2	Authorizes the State Board of Higher Education to contract with the University of Nebraska Board of Regents and the governing boards of institutions in other states for a program of regional veterinary medical education and services
15-10-37	Requires the State Board of Higher Education to administer a science, technology, engineering, and mathematics occupations student loan program
15-10-38	Requires the State Board of Higher Education to administer a student loan forgiveness program for individuals teaching at grade levels or in content areas identified as having a teacher shortage
15-10-40	Requires the State Board of Higher Education to use revenue earned from certain long-term lease and leaseback transactions for the repair and upkeep of campus buildings
15-10-42	Requires the State Board of Higher Education to create a policy relating to the assessment of faculty and teaching assistant communication skills, including the ability to speak English clearly and with good pronunciation, the notification to students of opportunities to file complaints, the process for responding to student complaints, and the resolution of reported communication problems
15-10-43	Authorizes the State Board of Higher Education to contract with Kansas State University for the enrollment of up to five students in the veterinary medical education program at Kansas State University
15-10-44	Requires the State Board of Higher Education to manage and regulate information technology planning and services for the institutions
15-10-47	Requires the State Board of Higher Education to provide monthly variance reports to the director of the Office of Management and Budget whenever any new construction, renovation, or repair, valued at more than \$250,000, is underway on the campus of an institution

In addition to providing directives to and authorizing various activities of the State Board of Higher Education, the North Dakota Century Code also provides directives to and authorizes various activities of the institutions under the control of the board. Examples of this include:

15-10-17.4	Authorizes institutions to enter a contract to prepare and provide meals, snacks, or other food services, for persons or programs not affiliated with the institution and to provide catering services under certain conditions
15-10-18	Requires institutions to charge and collect tuition from each nonresident student in the amount determined by the State Board of Higher Education
15-10-18.3	Provides that military dependents accepted for enrollment at an institution must be allowed to obtain a baccalaureate degree or certificate of completion free of any tuition and fee charges (with certain listed conditions)
15-10-18.5	Provides that survivors of certain firefighters or peace officers accepted for enrollment at an institution must be allowed to obtain a baccalaureate degree or certificate of completion free of any tuition and fee charges (with certain listed conditions)