

HIGHER EDUCATION STUDY - BACKGROUND MEMORANDUM

STUDY RESPONSIBILITIES

The Legislative Management has assigned the following studies to the 2013-14 interim Higher Education Funding Committee:

1. Section 39 of 2013 Senate Bill No. 2018 provides for a study of the intellectual property policies and procedures at research institutions in the state, including consideration of the current and potential income generated through the commercialization of intellectual property, consideration of the best practices related to intellectual property, and related federal Bayh-Dole and Patent Reform Acts. The Judiciary Committee, through direction from the Chairman of Legislative Management, is also studying intellectual property policies and procedures.
2. Section 3 of 2013 Senate Bill No. 2200 provides for a study of higher education funding methods, including options to implement a funding method that is not based on existing levels of funding at institutions. As part of the study, the committee is to consult with representatives of the State Board of Higher Education, the North Dakota University System office, higher education institutions, and other appropriate entities. The section also identifies specific areas that are to be reviewed as part of the study.
3. House Concurrent Resolution No. 3009 provides for a study of the use of open textbooks in the University System, including options to develop partnerships with other states to use open textbooks.

A copy of Section 39 ([Appendix A](#)) of Senate Bill No. 2018, Section 3 ([Appendix B](#)) of Senate Bill No. 2200, and House Concurrent Resolution 3009 ([Appendix C](#)) are attached.

BACKGROUND

The University System consists of 11 higher education institutions under the control of the State Board of Higher Education. Of the 11 institutions, two are doctoral-granting institutions, two are master's-granting institutions, two are universities that offer baccalaureate degrees, and five are colleges that offer associate and technical degrees. Each institution is unique in its mission to serve the people of North Dakota.

Legislative appropriations for the 2013-15 biennium for higher education institutions and the University System office total \$1,075,110,856, of which \$902,629,915 is from the general fund. The following is a history of higher education legislative appropriations since the 1997-99 biennium:

Biennium	General Fund	Special Funds	Total
1997-99	\$306,825,098	\$323,595,863	\$630,420,961
1999-2001	\$334,449,287	\$713,538,799	\$1,047,988,086
2001-03	\$366,953,836	\$80,367,201	\$447,321,037
2003-05	\$364,029,938	\$110,546,775	\$474,576,713
2005-07	\$387,157,893	\$178,552,108	\$565,710,001
2007-09	\$472,036,237	\$165,419,701	\$637,455,938
2009-11	\$593,355,047	\$202,764,364	\$796,119,411
2011-13	\$657,838,539	\$108,817,759	\$766,656,298
2013-15	\$902,629,915	\$172,480,941	\$1,075,110,856

NOTE: The special funds amounts for the 1997-99 biennium reflect the appropriation of tuition income and the 1999-2001 biennium reflect the appropriation of tuition and local funds.

The following is a summary of ongoing and one-time general fund appropriations for the University System since the 2007-09 biennium:

Biennium	General Fund Appropriations		
	Ongoing Appropriations	One-Time Appropriations	Total
2007-09	\$443,654,169	\$28,382,068	\$472,036,237
2009-11	\$534,062,895	\$59,292,152	\$593,355,047
2011-13	\$606,525,437	\$51,313,102	\$657,838,539
2013-15	\$679,271,846	\$223,358,069	\$902,629,915

The University System reported a total degree credit headcount enrollment of 48,203 students and a total degree credit full-time equivalent (FTE) enrollment of 38,703 students in the fall 2012 enrollment report. The following is a summary of University System degree credit headcount and FTE fall enrollments for 2003 through 2012:

Fall Headcount Enrollment ¹										
Institution	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Bismarck State College	3,430	3,546	3,370	3,477	3,591	3,788	4,020	4,177	4,392	4,109
Dickinson State University	2,461	2,479	2,516	2,572	2,670	2,730	2,767	2,485	2,346	1,837
Lake Region State College	1,473	1,464	1,471	1,508	1,520	1,657	1,702	1,913	2,056	1,974
Mayville State University	817	897	912	832	769	789	887	982	970	1,020
Minot State University	3,825	3,851	3,798	3,712	3,424	3,432	3,649	3,866	3,657	3,560
Dakota College at Bottineau	620	602	523	605	637	655	748	863	812	774
State College of Science	2,468	2,481	2,457	2,490	2,417	2,545	2,651	2,833	3,127	3,066
North Dakota State University	11,623	12,026	12,099	12,258	12,527	13,229	14,189	14,407	14,399	14,443
University of North Dakota	13,034	13,187	12,954	12,834	12,559	12,748	13,172	14,194	14,697	15,250
Valley City State University	998	1,033	1,035	1,037	982	1,019	1,083	1,285	1,384	1,362
Williston State College	871	937	947	912	731	850	949	932	993	808
Total	41,620	42,503	42,082	42,237	41,827	43,442	45,817	47,937	48,833	48,203

¹Headcount enrollment includes all students enrolled at an institution regardless of the number of credit hours the student is enrolled in.

Fall Full-Time Equivalent Enrollment ¹										
Institution	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Bismarck State College	2,747	2,800	2,602	2,651	2,792	2,937	3,160	3,208	3,209	2,990
Dickinson State University	1,992	2,034	2,031	2,059	2,158	2,294	2,187	2,054	1,959	1,454
Lake Region State College	738	738	738	750	764	784	868	921	988	973
Mayville State University	700	761	722	652	586	563	662	704	704	759
Minot State University	3,021	3,022	3,063	2,928	2,730	2,720	2,832	3,002	2,795	2,731
Dakota College at Bottineau	473	447	386	399	402	440	490	540	524	474
State College of Science	2,323	2,271	2,223	2,171	2,097	2,041	2,076	2,217	2,366	2,354
North Dakota State University	10,294	10,692	10,752	10,890	11,221	11,794	12,577	12,708	12,606	12,707
University of North Dakota	11,704	11,815	11,531	11,381	10,967	11,137	11,306	12,018	12,319	12,729
Valley City State University	879	956	899	844	807	824	833	957	1,011	995
Williston State College	704	709	702	648	551	562	573	570	608	537
Total	35,575	36,245	35,649	35,373	35,075	36,096	37,564	38,899	39,089	38,703

¹In order to be more consistent with common practice in enrollment reporting, the State Board of Higher Education changed the definition of undergraduate FTE to 15 credit hours from 16 credit hours in August 2006. In order to provide a consistent basis for comparing 2006 enrollments to prior years, the prior year FTE enrollments have been recalculated based on the new definition. The FTE enrollment of an institution is calculated by dividing undergraduate student credit hours by 15 and by dividing graduate student credit hours by 12. Full-time professional students are counted as one FTE enrollment.

PREVIOUS AND CURRENT HIGHER EDUCATION FUNDING METHODS Long-Term Financing Plan and Resource Allocation Model (2001-03 Biennium Through 2011-13 Biennium)

The 1999-2000 Higher Education Roundtable recommended the State Board of Higher Education and the Chancellor develop a long-term financing plan and resource allocation model. As a result, the board contracted with the National Center for Higher Education Management Systems for assistance with the development of the plan and model. The board reviewed the recommendations of the National Center for Higher Education Management Systems and adopted a long-term financing plan consisting of base operating funding, incentive funding, and capital asset funding components. The following is a description of the long-term financing plan and resource allocation model that was used prior to the 2013-15 biennium appropriation.

Base operating funding component - The base operating funding component of the long-term financing plan provided funding to each higher education institution to support core campus functions, such as instruction, research, and public service. The funding for each institution was based on the institution's current state general fund appropriation with general fund appropriation increases to address parity and equity. Parity funding was to

be used to continue current programs and services, including salaries, benefits, and inflationary increases. Equity funding was to be distributed to institutions based on a funding comparison to peer institutions.

Incentive funding component - The incentive funding component of the long-term financing plan included funding for the State Board of Higher Education to support state and system priorities consistent with the goals of the Higher Education Roundtable.

Capital asset funding component - The capital asset funding component of the long-term financing plan provided funding to each of the higher education institutions for maintenance and replacement of facilities and infrastructure. The funding provided to each of the institutions was left to the discretion of the institution with appropriate approvals by the State Board of Higher Education for projects greater than \$250,000. Institutions were given the authority to allocate funds for repair and replacement priorities for both deferred maintenance and regular repair and replacement projects as determined by the institution. Institutions were allowed to continue unspent capital asset funding from one biennium to the next in order to complete the projects started in one biennium but not completed until the next and to accumulate funds to complete large projects that require multiyear funding. The capital asset funding component was applied to new state buildings built on campuses; however, no new operating funds were added to the base operating budget for operating costs if the operating base was already at the benchmark target.

Adjusted Student Credit Hour Funding Method (2013-15 Biennium)

The Legislative Assembly, through 2013 Senate Bill No. 2200, adopted a new higher education funding method for the 2013-15 biennium based on an adjusted student credit hour calculation. The calculation involves multiplying a base amount per student credit hour by an adjusted student credit hour calculation for each institution. The resulting equalized base budget is then adjusted for inflation to determine total funding for an institution.

The adjusted student credit hour amount for an institution is determined as follows:

1. Completed student credit hours are determined for each institution. A completed credit-hour is one for which a student met all institutional requirements and obtained a passing grade.
2. A weighted completed student credit hour calculation is determined by multiplying each institution's completed student credit hours by an instructional program classification factor. The factor amount for each program classification is based upon historical costs of instruction in each program.
3. The weighted completed student credit hour amount for each institution is then adjusted for:
 - a. A credit completion factor which is based on total credits completed at an institution. Institutions that have a lower credit hour output receive a greater weighting factor.
 - b. An institutional size factor based on the square footage of facilities at an institution. Institutions that have a large amount of infrastructure may receive an additional factor adjustment.

The adjusted student credit hours are then multiplied by a base per credit amount which varies based on institution type. The following is a summary of the base rates for each institution:

Institution(s)	Base Rate Per Credit Hour
North Dakota State University, University of North Dakota	\$66.35
Dickinson State University, Mayville State University, Valley City State University	\$95.57
Minot State University	\$98.75
Bismarck State College, Dakota College at Bottineau, Lake Region State College, State College of Science	\$101.73
Williston State College	\$104.88

Through June 30, 2017, an institution may not receive less than 96 percent of the state aid to which the institution was entitled during the previous fiscal year. Under the adjusted student credit hour funding method funding for major capital projects is appropriated separately from the formula.

Attached as [Appendix D](#) is North Dakota Century Code Chapter 15-18.2 which contains the statutory sections enacted as part of 2013 Senate Bill No. 2200.

INTELLECTUAL PROPERTY

State Board of Higher Education policy 611.2 ([Appendix E](#)) establishes guidelines regarding intellectual property for institutions of higher education, including research universities. Each research university is required to establish its own procedures consistent with the board policies to determine ownership and income distribution for intellectual property.

Ownership

State Board of Higher Education policy provides a research university retains ownership of all intellectual property created or developed solely by the research university's faculty, staff, and students using university resources. A private sector partner retains ownership of all intellectual property created or developed solely by its employees. When intellectual property is developed or created jointly by a research university and a private sector partner, both the research university and the private sector partner have an equal, undivided ownership interest in the intellectual property. If the intellectual property was created or developed using federal funding, either the research university retains ownership or the ownership transfers to the federal government. This applies even if the intellectual property was developed jointly between a research university and a private sector partner. The federal Bayh-Dole Act governs intellectual property created or developed using federal funding and requires the research university to try to commercialize the intellectual property. A research university may assign or transfer its ownership interest to an independent foundation.

Royalties

As required by State Board of Higher Education policy, an institution is required to make annual payments of at least 30 percent of the net royalties and fees associated with intellectual property to the inventor. The net royalties are the gross royalties and fees reduced by taxes, expenses for procuring and protecting the patent, and any other relevant costs. The 30 percent minimum for the disbursement of royalties applies both to intellectual property developed solely by a research university's faculty, staff, and students and to intellectual property developed jointly between a research university and a private sector partner.

Royalty-Bearing Licenses

The owner of the intellectual property has the right to negotiate exclusive or nonexclusive commercially reasonable royalty-bearing licenses for the commercialization of the intellectual property. If the intellectual property was created jointly between a private sector partner and a research university, both parties have the right to negotiate royalty-bearing licenses. A private sector partner may request an exclusive royalty-bearing license with the research university to gain complete control over the intellectual property. A nonexclusive royalty-bearing license usually costs less, but allows other private sector partners to gain access to and to utilize the intellectual property. In cases where the intellectual property was created or developed jointly between a private sector partner and a research university using federal funding, the private sector partner has the first option to negotiate a royalty-bearing license with the research university assuming the research university retained ownership of the intellectual property. The terms of royalty-bearing licenses are unique to each agreement.

OPEN TEXTBOOKS

An open textbook is a digital textbook made available to students, teachers, and others at little or no cost. An open textbook is generally available online but may be made available through other formats. Open textbooks are generally licensed under an open copyright license which allows individuals to use, modify, and distribute the materials.

Textbook Costs

The University System currently lists anticipated student book and supply costs to be \$1,100 per year. A June 2013 United States Government Accountability Office report found the cost of new college textbooks increased by 82 percent between 2002 and 2012. As a comparison, overall consumer prices increased by 28 percent during the same time period. Options for students to save on textbook costs include renting textbooks, buying used textbooks, buying an e-textbook version, or buying textbooks online.

Actions by Other States Relating to Open Textbooks

Several states have created initiatives to use open textbooks for elementary, secondary, and postsecondary education courses. In 2009 the Florida Legislature passed a bill to establish the Florida Distance Learning Consortium and assigned the consortium the duty to "develop and operate a central instructional content repository that allows public school and postsecondary educational institution users to search, locate, use, and contribute digital and electronic instructional resources and content, including open access textbooks. In the development of the repository, the consortium shall identify and seek partnerships for the purpose of sharing instructional content."

As part of the effort an Open Access Textbook Task Force was established to study the use of open textbooks and prioritize high enrollment general education courses for the use of open access textbooks. The task force developed several recommendations which were used in developing an open textbooks initiative. As part of the initiative, open textbooks are stored on the Florida statewide digital repository named "The Orange Grove." The Orange Grove is an online statewide initiative to store and manage instructional, organizational, and professional development resources for faculty, staff, and students. In addition to open textbooks, the repository includes books, maps, graphs, lesson plans, and other resources.

In 2012 the University of Minnesota created an open academics textbook catalog to help faculty find affordable textbook options for courses, including open textbooks. Instructors can customize the open textbooks to fit course needs by remixing, editing, and adding additional content. Students can generally receive a free digital version of the open textbook or can purchase low-cost printed copies.

ATTACH:5

SECTION 39. LEGISLATIVE MANAGEMENT STUDY - INTELLECTUAL PROPERTY AT RESEARCH UNIVERSITIES. During the 2013-14 interim, the legislative management shall consider studying the intellectual property policies and procedures at research universities within the state. The study must include consideration of the current and potential income generated through the commercialization of intellectual property. The study must include consideration of the best practices related to intellectual property, the federal Bayh-Dole Act, and the federal Patent Reform Act of 2011. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HIGHER EDUCATION FUNDING. During the 2013-14 interim, the legislative management shall appoint an interim committee to study higher education funding methods.

1. The committee shall review higher education funding methods and recommend for the North Dakota university system a new funding method that is not based on existing levels of funding.
2. The committee shall consult with representatives of the state board of higher education, the North Dakota university system office, higher education institutions, and other appropriate entities.
3. The committee shall consider:
 - a. The inclusion of tuition revenue as a component of the funding method;
 - b. The level of nonresident tuition rates, including whether the rates charged should provide for the entire cost of a student's education and whether state funding should be provided to offset the educational costs of nonresident students;
 - c. Options to address unique institution needs due to program facility requirements, local costs of goods and labor, and other extraordinary needs;
 - d. The appropriateness of including remedial education and dual-credit course completions in the funding method and which entity should be responsible for paying course costs;
 - e. Facilities required to meet an institution's mission, including the utilization of existing institution facilities and additional facilities needs as identified in the university system campus master plan and space utilization study;
 - f. Administrative costs at institutions, including the appropriateness of providing separate funding allocations to institutions for instructional and administrative costs;
 - g. Options to provide enhanced funding for programs that address state priorities and workforce needs;
 - h. Options to provide performance funding distributions to campuses for meeting specified goals such as on-time graduation rates and job placements; and
 - i. Any other issues the committee deems appropriate.
4. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE CONCURRENT RESOLUTION NO. 3009
(Representatives Beadle, Heilman, N. Johnson, Sanford, Mock)
(Senators Flakoll, Miller)

A concurrent resolution directing the Legislative Management to study the use of open textbooks in the North Dakota University System, including options to develop partnerships with other states to use open textbooks.

WHEREAS, a North Dakota University System student pays an estimated average of \$1,100 per year for academic course textbooks; and

WHEREAS, high textbook costs create a financial burden for students to attend a higher education institution which may limit student access to higher education; and

WHEREAS, open textbooks are published under a license that enables students to obtain free or low-cost versions of electronic or printed academic textbooks; and

WHEREAS, the use of open textbooks can significantly reduce higher education costs for students which increases student access to higher education; and

WHEREAS, the use of open textbooks among all North Dakota University System institutions and other states' higher education systems for common core courses may result in efficiencies reducing state costs related to higher education;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Management study the use of open textbooks in the North Dakota University System, including options to develop partnerships with other states to use open textbooks; and

BE IT FURTHER RESOLVED, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-fourth Legislative Assembly.

CHAPTER 15-18.2
STATE AID FOR INSTITUTIONS OF HIGHER EDUCATION

15-18.2-01. Credit-hours - Determination.

1. For each institution under its control, the state board of higher education shall determine the number of credit-hours completed by students during the two-year period ending June thirtieth of each odd-numbered year.
2. For purposes of this section, a completed credit-hour is one for which a student met all institutional requirements and obtained a passing grade.

15-18.2-02. Weighted credit-hours - Determination - Instructional program classification factors - Submission to legislative management.

1. In order to determine the weighted credit-hours for each institution under its control, the state board of higher education shall multiply each of an institution's completed credit-hours, as determined under section 15-18.2-01, by an instructional program classification factor, as set forth in this section.
 - a. The factors for credits completed in agriculture are:
 - (1) 1.9 for lower division credits;
 - (2) 3.8 for upper division credits;
 - (3) 5.7 for professional level credits; and
 - (4) 7.6 for graduate level credits.
 - b. The factors for credits completed in architecture are:
 - (1) 1.8 for lower division credits;
 - (2) 3.6 for upper division credits;
 - (3) 5.4 for professional level credits; and
 - (4) 7.2 for graduate level credits.
 - c. The factors for credits completed in aviation are:
 - (1) 1.9 for lower division credits;
 - (2) 3.8 for upper division credits;
 - (3) 5.7 for professional level credits; and
 - (4) 7.6 for graduate level credits.
 - d. The factors for credits completed in the biological and physical sciences are:
 - (1) 1.9 for lower division credits;
 - (2) 3.8 for upper division credits;
 - (3) 5.7 for professional level credits; and
 - (4) 7.6 for graduate level credits.
 - e. The factors for credits completed in business are:
 - (1) 1.9 for lower division credits;
 - (2) 3.8 for upper division credits;
 - (3) 5.7 for professional level credits; and
 - (4) 7.6 for graduate level credits.
 - f. The factors for credits completed in education are:
 - (1) 1.9 for lower division credits;
 - (2) 3.8 for upper division credits;
 - (3) 5.7 for professional level credits; and
 - (4) 7.6 for graduate level credits.
 - g. The factors for credits completed in engineering are:
 - (1) 2.5 for lower division credits;
 - (2) 5.0 for upper division credits;
 - (3) 7.5 for professional level credits; and
 - (4) 10.0 for graduate level credits.
 - h. The factors for credits completed in the health sciences are:
 - (1) 3.0 for lower division credits;
 - (2) 6.0 for upper division credits;
 - (3) 9.0 for professional level credits;
 - (4) 12.0 for graduate level credits; and

- (5) 38.0 for medical school credits.
- i. The factors for credits completed in legal studies are:
 - (1) 3.5 for lower division credits;
 - (2) 7.0 for upper division credits;
 - (3) 10.5 for professional level credits; and
 - (4) 14.0 for graduate level credits.
- j. The factors for credits completed in the core disciplines are:
 - (1) 1.0 for lower division credits;
 - (2) 2.0 for upper division credits;
 - (3) 3.0 for professional level credits; and
 - (4) 4.0 for graduate level credits.
- k. The factor for credits completed in career and technical education is 2.0.
- l. The factor for completed remedial credits is 2.3.
- 2. a. The state board of higher education shall ensure that all delineations in this section reflect the requirements of a nationally recognized and standardized instructional program classification system.
- b. Before adopting any changes to the delineations implemented in accordance with this section, the state board of higher education shall present the proposed changes to and receive the approval of the legislative management.

15-18.2-03. Credit completion factor - Determination.

- 1. For each institution under its control, the state board of higher education shall multiply the product determined under section 15-18.2-02 by a factor of:
 - a. 1.00 if the number of credit-hours is at least 100,000;
 - b. 1.05 if the number of credit-hours is at least 95,000 but less than 100,000;
 - c. 1.10 if the number of credit-hours is at least 90,000 but less than 95,000;
 - d. 1.15 if the number of credit-hours is at least 85,000 but less than 90,000;
 - e. 1.20 if the number of credit-hours is at least 80,000 but less than 85,000;
 - f. 1.25 if the number of credit-hours is at least 75,000 but less than 80,000;
 - g. 1.30 if the number of credit-hours is at least 70,000 but less than 75,000;
 - h. 1.35 if the number of credit-hours is at least 65,000 but less than 70,000;
 - i. 1.40 if the number of credit-hours is at least 60,000 but less than 65,000;
 - j. 1.45 if the number of credit-hours is at least 55,000 but less than 60,000;
 - k. 1.50 if the number of credit-hours is at least 50,000 but less than 55,000;
 - l. 1.55 if the number of credit-hours is at least 45,000 but less than 50,000;
 - m. 1.60 if the number of credit-hours is at least 40,000 but less than 45,000;
 - n. 1.65 if the number of credit-hours is at least 35,000 but less than 40,000;
 - o. 1.70 if the number of credit-hours is at least 30,000 but less than 35,000;
 - p. 1.75 if the number of credit-hours is at least 25,000 but less than 30,000;
 - q. 1.80 if the number of credit-hours is at least 20,000 but less than 25,000;
 - r. 1.85 if the number of credit-hours is at least 15,000 but less than 20,000;
 - s. 1.90 if the number of credit-hours is at least 10,000 but less than 15,000;
 - t. 1.95 if the number of credit-hours is at least 5,000 but less than 10,000; and
 - u. 2.00 if the number of credit-hours is less than 5,000.
- 2. For purposes of this section, the number of credit-hours must be those determined by the state board of higher education in accordance with section 15-18.2-01.

15-18.2-04. Institutional size factor - Determination.

- 1. For each institution under its control, the state board of higher education shall multiply the product determined under section 15-18.2-03 by a size factor of:
 - a. 1.0 if the square footage of the institution, when divided by the institution's weighted credit-hours results in a quotient of less than 5.00; or
 - b. 1.8 if the square footage of the institution, when divided by the institution's weighted credit-hours results in a quotient of 5.00 or more.
- 2. For purposes of this section, an institution's square footage:

- a. Includes all real property owned by the state within an institution's perimeter, except for agricultural experiment stations, agricultural research extension centers, technology parks, and state agencies; and
- b. Is determined as of June thirtieth in each odd-numbered year.

15-18.2-05. Base funding - Determination of state aid.

In order to determine the state aid payment to which each institution under its control is entitled, the state board of higher education shall multiply the product determined under section 15-18.2-04 by a base amount of:

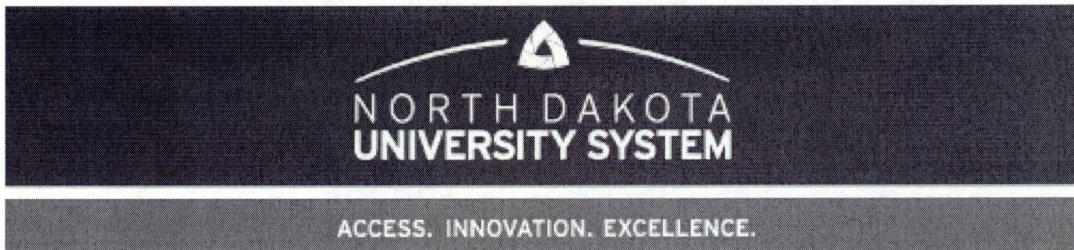
1. \$66.35 in the case of North Dakota state university and the university of North Dakota;
2. \$95.57 in the case of Dickinson state university, Mayville state university, and Valley City state university;
3. \$98.75 in the case of Minot state university;
4. \$101.73 in the case of Bismarck state college, Dakota college at Bottineau, Lake Region state college, and North Dakota state college of science; and
5. \$104.88 in the case of Williston state college.

15-18.2-06. (Effective through June 30, 2017) Base funding - Minimum amount payable.

Notwithstanding any calculations required by this chapter, during each fiscal year, beginning with 2014-15, an institution may not receive less than ninety-six percent of the state aid to which the institution was entitled under this chapter during the previous fiscal year.

15-18.2-07. Funding - Distribution.

The state aid to which each institution is entitled under this chapter must be forwarded at the time and in the manner agreed to by the institution and the office of management and budget.



Policies and Procedures

SBHE Policies

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SUBJECT: 600s: Personnel

EFFECTIVE: June 20, 2002

Section: 611.2 Employee Responsibility and Activities: Intellectual Property

1. General Principles.

The primary purposes of this policy are to encourage and promote research and scholarship based on the traditional principles of the academic profession. These products may constitute Intellectual Property that could be of financial benefit to the individuals involved and the Institution. This policy establishes guidelines to support faculty, staff, and students, in identifying, protecting and administering Intellectual Property and defining the rights and responsibilities of all involved. This policy governs unless a policy on specific Intellectual Property provides a different rule.

2. Definitions.

- a. "Author": Person who creates a Copyrightable Work.
- b. "Copyrightable Work or Work": An original Work of authorship which has been fixed in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, such as books, journals, software, computer programs, musical work, dramatic works, videos, multimedia products, sound recordings, pictorial and graphical works, etc. A Work may be the product of a single Author or a group of Authors who have collaborated on a project. A Work is created by an Author.
- c. "Creator": Either an inventor in the context of an Invention, or an Author in the context of a Copyrightable Work.
- d. "Institution": The individual colleges and universities and the North Dakota University System.
- e. "Intellectual Property": Collectively, all forms of property created by the mind including, but not limited to, Inventions, Copyrightable Work, Trademarks, and Tangible Research Property.
- f. "Invention": A process, method, discovery, device, plant, composition of matter, or other Invention that reasonably appears to qualify for protection

under the United States patent law (including, but not limited to, utility patent, plant patent, design patent, certificate of Plant Variety Protection, etc.), whether or not actually patentable. An Invention may be the product of a single inventor or a group of inventors who have collaborated on a project.

- g. "Mediated Courseware": Teaching aids created and/or deployed electronically. Mediated Courseware may incorporate text, graphics, video, and audio elements. Examples of such materials include, but are not limited to, hypertext modules, simulation software, web sites, and databases containing numbers, images, or text.
- h. "Significant Use of University System or Institution Resources": Significant Use of Institution Resources means an Author's use of other employees' time or Institution facilities or equipment that appreciably increases the Institution's costs beyond those normally incurred in support of an employee in the Institution. Significant Use does not include the normal use of Institution employees, facilities, or equipment commonly available to faculty, staff, or the public, such as libraries, Internet access, office space, office equipment, computers, and/or office supplies. Unless otherwise agreed, Significant Use also does not include the use of Institutional developmental leave time, so long as it does not appreciably increase the Institution's costs beyond those normally incurred in support of an employee of the Institution.
- i. "Tangible Research Property": Tangible items produced in the course of research including, but not limited to, such items as biological materials, engineering drawings, integrated circuit chips, computer databases, prototype devices, circuit diagrams, and equipment. Individual items of Tangible Research Property may be associated with one or more intangible properties, such as Inventions, Copyrightable Work, and Trademarks. An item of Tangible Research Property may be the product of a single Creator or a group of individuals who have collaborated on the project.
- j. "Trademark" (including Service Mark): A distinctive word, design, or graphic symbol, or combination word and design, that distinguishes and identifies the goods and services of one party from those of another, such as names or symbols used in conjunction with plant varieties or computer programs, or the Institutional names, logos, or derivatives thereof.
- k. "Work For Hire": Defined pursuant to Federal Copyright Law which includes a Work prepared by an employee within the scope of employment or a Work created pursuant to a written agreement identifying the Work as a Work for Hire.

3. General Patent Policy.

- a. The North Dakota State Board of Higher Education encourages the faculty, staff, and others associated with the Institutions under its jurisdiction to seek patents on Inventions as a method of bringing recognition and remuneration to all parties involved. Each Institution shall establish a "patent review procedure" to define the Institution's processing of such Inventions or discoveries, consistent with Board policy. The inventor(s) shall submit to the Institution the conception and/or reduction to practice of all potentially patentable discoveries prior to public "enabling" disclosure.
- b. A patentable discovery may arise from the development of a new and useful process, device or apparatus, article of manufacture, composition of matter (including chemical compounds, microorganisms, and the like),

plant, or related improvement, or a new use for a known material or device. A public "enabling" disclosure is one which will enable others in the same or a related field to fully understand and practice the Invention. The Institutional "patent review procedure" shall assure provision of guidelines to the inventor(s) in defining what constitutes a public "enabling" disclosure.

- c. The Institution shall have the right of first refusal to the title of all patentable discoveries derived with the use of facilities, gifts, grants, or contract funds through the university, subject to restrictions arising from the overriding obligations of the Institution pursuant to gifts, grants, contracts, or other agreements with outside organizations. The inventor(s) shall provide all necessary declarations, assignments, or other documents as may be necessary in the course of Invention evaluation, patent prosecution, or protection of patent rights to assure that title in such Inventions shall be held by the Institution or other parties as may be appropriate under the circumstances.
- d. The Institution shall have six months in which to assess the technical and commercial viability and patentability of the discovery in accordance with Institutional procedures. If the Institution judges the discovery not to be patentable, or decides not to pursue a patent, and in the absence of overriding obligations to outside sponsors of the discovery, all rights will revert to the inventor. In no instance, and regardless of ownership of the patent, may the Institution's name be used in connection with the marketing of the Invention.
 1. Subject to restrictions arising from overriding obligations of the Institution pursuant to gifts, grants, contracts, or other agreements with outside organizations, the Institution agrees, for and in consideration of the assignment of patent rights, to pay annually to the named inventor(s), or to the inventor(s)' heirs, successors, or assigns, a minimum of 30 percent of the net royalties and fees received by the Institution. Net royalties are defined as gross royalties and fees less the expenses incurred by the Institution in conducting the research and in procuring, protecting, preserving, maintaining, and licensing the patent and related property rights, and such other costs, taxes, or reimbursements as may be necessary or required by law.
 2. When there are two or more inventors, each inventor shall share equally in the inventor's share of royalties, unless all inventors have agreed in writing to a different distribution of such share. The Institution will have final authority over any agreement purporting to share rights and/or royalties between participating parties.
 3. In addition to the inventor(s) share, the net royalties shall be disbursed by negotiated agreement with allocations to the originating department, the originating college/school, and the Institution. In the disposition of any net royalty income accruing to Institutional parties, other than the inventor(s), support of research shall receive first consideration. The "patent review procedure" shall outline the negotiation and distribution mechanism at each Institution.
 4. The provisions of this section apply to plant variety protection unless inconsistent with Institution policy.

4. General Copyright Policy.

- a. Except as otherwise explicitly provided under this policy or applicable law, an employee who creates a Work retains copyright ownership of the Work. If there has been Significant Use of University System or Institutional Resources, the provisions of section 4b of this policy shall apply.
- b. If there has been Significant Use of Institutional Resources, as defined in section 2 of this policy, to create a Copyrightable Work, the ownership of which is vested in the individual employee, the Institution shall be reimbursed out of the royalties, in accord with an agreement between the employee and the Institution, up to that amount that constitutes the Institution's Significant Use. The Institution shall be reimbursed for the Significant Use of any facilities, personnel or resources, except those considered part of the normal academic environment including library facilities.
- c. If employees are employed or commissioned by the Institution or agencies of the Institution for the creation of Work, or if by prior agreement they are assigned to produce or develop Work in the course of their regular duties, and if such Work is deemed appropriate for copyright, it must be reported to the Institution pursuant to its copyright review procedure. In such instances the Institution shall have the first option to secure copyright in the name of the Institution. Should the Institution decide, in writing, it would not be appropriate to secure copyright, the employee then may proceed to personally secure the copyright.
- d. Royalties received as a result of copyright ownership by the Institution will be disbursed at least 30 percent to the employee(s) and the remainder pursuant to the copyright review procedure.

5. Mediated Courseware.

- a. Self-initiated Mediated Courseware. When employees develop Mediated Courseware without specific direction by the Institution, unless otherwise agreed, the ownership of the courseware shall remain with the employee. Normally, no royalty, rent or other consideration shall be paid to the employee when that Mediated Courseware is used for instruction at the Institution and such Mediated Courseware shall not be used or modified without the consent of the employee. While the Creator is under Institutional employment, the Mediated Courseware shall not be sold, leased, rented or otherwise used in a manner that competes in a substantial way with the for-credit offering of the employee's own Institution unless that transaction has received the approval of the chief academic officer of the Institution. The Institution shall have a perpetual, non-exclusive royalty-free right to use such courseware for archival research purposes. Should approval be granted to offer the course outside of the Institution, the provisions of section 4b of this policy shall apply.
- b. Institution-directed Mediated Courseware. When the Institution directs in an employment contract the creation of a specific Mediated Courseware, the resulting Mediated Courseware belongs to the Institution and the Institution shall have the right to revise it and decide who will utilize the Mediated Courseware in instruction. The Institution may specifically agree to share revenues and control rights with the employee.
- c. Institutions shall develop procedures for reporting the development of Institution-directed Mediated Courseware to the appropriate administrator at the Institution.

6. Copyrightable Software.

Unless a separate written agreement provides otherwise, software created by employees within the scope of their employment and not covered under Mediated Courseware in section 5 of this policy shall be treated as a Work for Hire, owned by the Institution and commercialized pursuant to the General Patent Policy, with the employee(s) getting a minimum of 30 percent of the net royalties and fees.

7. Student Work.

a. The ownership of copyrights in student Work is governed by the following:

1. Copyright ownership of student Work that is performed in whole or in part by the student with financial support in the form of wages, salaries, stipend, or grants from funds administered by the Institution shall be determined in accordance with the terms of the support agreement, or in the absence of such terms, shall become the property of the Institution.
2. Copyright ownership of student Work generated by research performed in whole or in part utilizing equipment or facilities provided by the Institution under conditions that impose copyright restrictions shall be determined in accordance with such restrictions.
3. Students will own the copyrights to their Work not within the provisions of (1) and (2) above; however, a student must, as a condition to a degree award, grant royalty-free permission to the Institution to reproduce and publicly distribute, including by electronic means, copies of the student's Work.
4. Where there is Significant Use of Institution Resources, copyright ownership shall be determined under section 4b of this policy.

b. Ownership of student Inventions shall be governed by the Patent Policy in section 3 of this policy.

8. General Trademark Policy

Each Institution may develop a Trademark policy that provides for the protection of the Trademarks and Service Marks of the Institution.

9. Institutional Procedures. Each Institution shall adopt procedures implementing this policy that include:

- a. Procedures for required disclosure of Intellectual Property;
- b. Procedures for review, evaluation, and protection of Intellectual Property;
- c. Rules governing distribution of net royalties or fees;
- d. A process for resolving disputes; and
- e. A process for informing faculty, staff, and students of the rights and responsibilities of Intellectual Property.

10. Transfer of Rights

- a. Institutions may assign or transfer ownership rights in Intellectual Property to independent foundations created for the purpose of obtaining or administering and marketing Institution Intellectual Property, receiving gifts, or supporting or promoting the Institution or Institution research.
- b. It is the responsibility of employees to ensure that the terms of their consulting agreements with third parties do not conflict with their commitments to the Institution. Each employee shall make the nature of the employee's obligations to the Institution clear to any third party for whom the employee expects to consult. Specifically, the scope of the consulting services must be distinguished from the scope of research commitments to the Institution.

History:

Replaces the current 611.2. New policy. SBHE Minutes, April 24-25, 1989, page 5812. Amendment SBHE Minutes, June 20-21, 2002.

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