

North Dakota State Board of Higher Education
February 23, 2022, Meeting Minutes

The State Board of Higher Education met on Wednesday, February 23, at 8:00 a.m. CT., the meeting originated from North Dakota State University, Memorial Union/Ballroom B, 1401 Administration Ave, Fargo, ND.

Chair Ryan called the meeting to order at 8:10 a.m. CT.

SBHE Members participating:

Dr. Casey Ryan, Chair	Dr. Jill Louters, Vice Chair
Ms. Gracie Lian	Mr. Nick Hacker
Mr. Tim Mihalick	Mr. John Warford
Mr. Jeffrey Volk	Ms. Danita Bye
Dr. Elizabeth Legerski, Faculty Adviser	Ms. Retha Mattern, Staff Adviser

Chancellor present: Dr. Mark Hagerott

Institution Representatives Present:

Dr. Brian Van Horn, President, MaSU
Dr. Steve Shirley, President, MiSU
Dr. Bernell Hirning, President, WSC
Dr. Jerry Migler, Dean, DCB
Dr. Doug Darling, LRSC
Dr. Harvey Link, Interim President, NDSCS
Dr. Doug Jensen, President, BSC
Mr. Steve Easton, J.D., President, DSU
Dr. Andy Armacost, President, UND
Dr. Alan LaFave, President, VCSU
Dr. Greg Lardy, NDSU

NDUS Senior Staff Participating:

Mr. David Krebsbach, NDUS
Ms. Jane Grinde, NDUS
Ms. Lisa Johnson, NDUS
Mr. Darin King, CTS
Ms. Terry Meyer, NDUS
Ms. Kristie Hetzler, NDUS
Mr. Jerry Rostad, NDUS

Others Participating:

Dr. Greg Lardy, NDSU President Search Committee Co-chair
Mr. Eric Olson, AG's Office

1. **Agenda**

Louters moved, Warford seconded, to approve the agenda, with an amendment to conduct the interview of Dr. David Cook via Teams Live in lieu of in-person, due to weather/travel.

Volk, Mihalick, Hacker, Bye, Lian, Louters, Warford, and Ryan voted yes.

2. **Presidential Interviews**

NDSU Presidential Search Co-Chairs, Drs. Jill Louters and Greg Lardy provided an overview of the search committee's process.

The Board held interviews of the following candidates for the North Dakota State University Presidency:

- [David Cook, Ph.D.](#) (via Teams Live)
- [Hesham El-Rewini, Ph.D., P.E.](#) (in-person)
- [Mary Holz Clause, Ph.D.](#) (in-person)

3. **Executive Session** (12:09 p.m CT.)

Louters moved, Warford seconded, to enter Executive Session to (1) consider the appointment of, and contract terms for, the next President of North Dakota State University; (2) to discuss negotiating strategy and provide negotiating instructions to its counsel and/or negotiators related to the same; and (3) limit the executive session to voting board members, nonvoting advisors, the chancellor, invited NDUSO staff, board counsel, and co-chairs of the presidential search committee. The legal authority for closing this portion of the meeting is North Dakota Century Code sections 15-10-17(1)(d), 44-04-19.1(9), and 44-04-19.2.

Bye, Lian, Louters, Volk, Mihalick, Hacker, Warford, and Ryan voted yes.

Executive Session began at 12:34 p.m. CT.

SBHE Members participating:

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|---|----------------------------------|
| Dr. Casey Ryan, Chair | Dr. Jill Louters, Vice Chair |
| Ms. Gracie Lian | Mr. Nick Hacker |
| Mr. Tim Mihalick | Mr. John Warford |
| Mr. Jeffry Volk | Ms. Danita Bye |
| Dr. Elizabeth Legerski, Faculty Adviser | Ms. Retha Mattern, Staff Adviser |

Other participating;

- Dr. Mark Hagerott, NDUS
- Ms. Terry Meyer, NDUS
- Ms. Kristie Hetzler, NDUS
- Mr. Eric Olson, AG's Office
- Ms. Janice Fitzgerald, AGB
- Mr. James McCormick, AGB
- Dr. Greg Lardy, NDSU President Search Committee Co-chair

Bye moved, Louters seconded, to adjourn Executive Session at 2:13 p.m. CT.

Louters, Volk, Mihalick, Hacker, Bye, Lian, Warford, and Ryan voted yes.

Reconvene in open meeting to take action at 2:20 p.m CT.

Louters moved, Volk seconded, to offer Dr. David Cook the position of North Dakota State University President, with a start date of no later than July 1st, 2022, and to authorize Chair Ryan, Chancellor Hagerott, and SBHE's legal counsel to negotiate and initiate an employment agreement with Dr. Cook.

Louters, Volk, Mihalick, Hacker, Bye, Lian, Warford, and Ryan voted yes.

Board Consent (4 - 8)

4. January 27, 2022, Meeting Minutes.

SBHE Budget and Finance Committee:

5. Amend from January 27th motion to authorize NDSU request authority to increase the project authorization of the [Nodak Insurance Football](#) Performance Complex project from \$37,200,000 to \$50,000,000 (a difference of \$12,800,000) to be funded from special funds (donations); ~~and further seek Legislative Budget Section approval per NDCC 15-10-12.1; and proceed with finishing the project contingent on Budget Section approval.~~ And further seek Legislative Budget Section approval per NDCC Section 48.01.2-25 in lieu of Section 15-10-12.1, requirements of NDCC Section 48-01.2-25 specify that changes in legislatively approved projects seek further legislative approval, or authorization from the interim budget section if the legislature is not in session.
6. Amend from January 27th motion to authorize NDSU request authority to increase the project authorization of the [Softball Indoor Facility project](#) from \$2,000,000 to \$2,600,000 (a difference of \$600,000) to be funded from special funds (including donations and/or local sources); ~~and further seek Legislative Budget Section approval per NDCC 15-10-12.1; and proceed with project contingent on Budget Section approval.~~ And further seek Legislative Budget Section approval per NDCC 48.01.2-25 in lieu of Section 15-10-12.1, requirements of NDCC Section 48-01.2-25 specify that changes in legislatively approved projects seek further legislative approval, or authorization from the interim budget section if the legislature is not in session.
7. [MaSU to increase the project budget from \\$1,600,000 to \\$1,998,970](#) (a difference of \$398,970) to be funded from General Fund Carryover, Tier funding and/or operating funds; and further seek Legislative Budget Section approval per NDCC 48-01.2-25; and proceed with finishing the project contingent on Budget Section approval.
8. [UND request to ratify Chancellor's approval of \\$4,361,801 and \\$2,250,000](#), respectively, transfer of the NDUS System Office Tier II and Tier III capital building fund appropriation line to the UND capital building fund appropriation line.

Warford moved, Bye seconded, to approve the consent agenda, items 4 – 8.

Hacker, Bye, Volk, Mihalick, Lian, Warford, and Louters voted yes. Chair Ryan temporarily absent.

9. **Policy 311, Public Records**

Mr. Eric Olson provided information on proposed updates made after the first reading that was approved at the October 2021 meeting to [Policy 311](#).

Bye moved, Louters seconded, to approve 2nd reading and final adoption of Policy 311, Public Records.

Member Volk voiced opposition to section ten that prohibits Board members access to specified past Board records/recordings. The Board noted specified records/recordings are not available to non-serving Board members. The records requested were denied to Mr. Volk because the records were for a timeframe in which he was not serving on the Board.

Mihalick, Lian, Louters, Warford, Hacker, Bye, and Ryan voted yes. Volk voted no.

10. **Teachers Insurance and Annuities Association of America (TIAA)**

Mr. Olson explained that the NDUS retirement plans 401(a), 457(b), 403(b), and executive compensation 401(a) are serviced by Teachers Insurance and Annuities Association of America [\(TIAA\) as recordkeeper](#). Fiduciary responsibilities of the NDUS retirement plans are defined in SBHE Policy 703.3, Retirement. The Budget Finance Committee (BFC) is currently considering a stepped process to review the performance of the recordkeeper and the hiring of an investment adviser or consultant to assist with the management of the Retirement Plan. The committee indicated the first

necessary step is to hire an attorney with deep experience in this area to advise the Committee and SBHE. Outside counsel could also advise on the current fiduciary structure of the SBHE oversight and process.

The NDUS retirement plans earn revenue credits as part of TIAA's plan performance structure. A revenue credit is generated based on plan performance in participating accounts which include annuity accounts. The revenue credit amount is placed in a suspense account under the terms of each plan which is funded with excess revenue generated from the Plan. Per the terms of the Investment Policy Statement, the revenue credit balance may be used either to pay direct, reasonable, and necessary expenses of the plans or to provide benefits for the plan participants and beneficiaries in the form of a revenue credit. The costs of retaining an attorney to advise on this process and potentially to continue to provide advice to the SBHE and plan oversight bodies is such an expense that can be paid from revenue credits.

Mihalick moved, Volk seconded, to authorize the Chancellor, in his capacity as Plan Administrator, to retain an attorney or attorneys to provide advice and counsel related to the Retirement Plan. Further, authorize the use of an appropriate, informal procurement process, and authorize the payment of such attorney's legal fees from the revenue credits from the Plan.

Volk, Mihalick, Lian, Hacker, Bye, Louters, Warford, and Ryan voted yes.

11. Policy 605.2, Standing Committee on Faculty Rights

Ms. Lisa Johnson reviewed proposed amendments for 2nd reading of [Policy 605.2](#), Standing Committee on Faculty Rights, no changes made since the 1st reading.

Bye moved, Warford seconded, to approve 2nd reading and final adoption of Policy 605.2.

Mihalick, Lian, Warford, Hacker, Bye, Volk, Louters, and Ryan voted yes.

12. Policy 605.1, Academic Freedom and Tenure; Academic Appointments

Ms. Lisa Johnson reviewed proposed amendments for 1st reading of [Policy 605.1](#), Academic Freedom and Tenure; Academic Appointments.

Bye moved, Warford seconded, to approve 1st reading of Policy 605.1.

Louters, Hacker, Bye, Volk, Mihalick, Lian, Warford, and Ryan voted yes.

SBHE Committee Reports/Updates/Discussion

13. SBHE Audit Committee report was provided by Committee Chair, Mr. Hacker. He informed the Board that the Committee re-visited the independent assessment and specific findings within it at the request of the full Board at their last meeting. The committee had a thorough discussion regarding components of that assessment, along with an IA tracking process, including some timeline to ensure everyone involved is informed and accountable. He thanked Ms. Glur from NDSU for her input during the committee discussion and noted it is included in the SBHE Audit Committee minutes. Mr. Hacker stated the reporting structure, IA standards, expectations, process and reporting structure between NDUSO, institutional IA, and SBHE Audit Committee function will continue to be discussed at future meetings.

14. SBHE Research and Governance Committee was provided by Committee Co-chairs, Dr. Ryan and Ms. Bye. Dr. Ryan state Dr. Warford leads the EPSCOR committee and Drs. Fitzgerald and John Mihelich are leading a five state research initiative that includes North Dakota; both groups have

reported very positive communication channels, stakeholder involvement, advancements towards long-term goals, and possible funding resources.

Ms. Bye reported the governance portion of the meeting worked through Policy 311 that the was passed today. She also provided information regarding a short version or a longer version as options for the 2022 SBHE Self-Assessment:

- a. 2022 Board [Self-Assessment process](#)
- b. [Tool to use for the 2022 Board Self-Assessment](#)
- c. Method to use for the 2022 Board Self-Assessment

She stated the committee discussed the assessment process, objective and timeline, noting there was no SBHE Self-assessment last year due to the pandemic. Ms. Bye requested that Board members contact Ms. Dina Cashman with individual preference; the Governance Committee will re-visit at their next meeting.

15. SBHE Budget and Finance Committee (BFC) report was provided by Committee Chair Mihalick. He provided an update on the presidential compensation study that the SBHE sent back to BFC last month with the authority to determine how to proceed with the procurement of a study. He informed the Board that last week the BFC voted not to award any of the bids received in response to that IFB, as the procurement no longer met the needs of the SBHE. Instead, the Committee voted to instruct the system office to again issue an IFB seeking a compensation study with a more limited scope and with additional clarification to the types of data to be used. We anticipate CTS will prepare a new IFB document and submit it for approval by BFC at next month's meeting, if not sooner, at which time it will be issued.
16. SBHE Academic and Student Affairs Committee provided by committee member, Dr. Warford.
17. NDSCS Presidential Search report was provided by search committee Co-chair, Mr. Volk. He stated that the process is in alignment with the NDSU presidential search process that was just completed. The committee did conduct virtual interviews, narrowed down the number of candidates and are currently moving forward with campus visits and open forums with invited candidates.

Other Reports:

18. NDSA report provided by Ms. Gracie Lian.
19. CCF report provided by Dr. Elizabeth Legerski.
20. Staff Senate report provided by Ms. Retha Mattern.
21. Public Comment – No public comment.

22. Motion to Adjourn

Hacker Moved, Bye seconded, to adjourn the meeting at 3:45 p.m. CT.

Volk, Mihalick, Lian, Louters, Warford, Hacker, Bye, and Ryan voted yes.

Approved March 31, 2022.