

North Dakota State Board of Higher Education
January 26, 2023, Meeting Minutes

The State Board of Higher Education met Thursday, January 26, 2023, at 8:30 a.m. CT on the Bismarck State College Campus.

SBHE Members participating:

Dr. Casey Ryan, Chair
Dr. John Warford (virtual)
Mr. Nick Hacker (*virtual, late due to tech. difficulty*)
Mr. Jeffry Volk
Mr. Michael Linnell, Staff Adviser

Mr. Tim Mihalick, Vice Chair
Ms. Sadie Hanson
Ms. Danita Bye
Mr. Kevin Black
Dr. Lisa Montplaisir, Faculty Adviser

Institution Representatives Present:

Dr. Brian Van Horn, President, MaSU
Dr. Steve Shirley, President, MiSU
Dr. Bernell Hirning, President, WSC
Dr. Carmen Simone Dean, DCB
Dr. Doug Darling, LRSC
Dr. Doug Jensen, President, BSC
Mr. Steve Easton, J.D., President, DSU
Mr. Andy Armacost, President, UND
Dr. Alan LaFave, President, VCSU
Dr. David Cook, President, NDSU
Dr. Rod Flanigan, NDSCS

NDUS Senior Staff Participating:

Chancellor Mark Hagerott, NDUS
Ms. Lisa Johnson, NDUS
Mr. Darin King, CTS
Ms. Terry Meyer, NDUS
Mr. Jerry Rostad, NDUS
Mr. David Krebsbach, NDUS
Dr. Jen Weber, NDUS
Ms. Tammy Dolan, NDUS
Ms. Anita Cysewski, NDUS
Ms. Jane Grinde, NDUS
Ms. Billie Jo Lorus, NDUS
Mr. Chris Pieske, NDUS
Ms. Meredith Larson, Attorney

1. Agenda

Mr. Black requested adding an agenda item to include a statement of support for North Dakota State University's efforts to strategically align reductions and merger of the five (5) colleges. (Inserted after Item #17)

Mr. Volk requested adding an agenda item: Update on the Presidential Compensation Study Plan. (This will be provided during the Chancellor's Report.)

Volk moved, Hanson seconded, to approve the agenda to include the two additional items.

Warford, Hanson, Volk, Mihalick, Bye, Black, and Ryan voted yes. The motion passed.

Board Consent and Minutes

Bye moved, Mihalick seconded, to approve the Board Consent Agenda items 2-7.

Hanson, Bye, Warford, Black, Volk, Mihalick, and Ryan voted yes. The motion passed.

2. December 8, 2022, Meeting Minutes.

SBHE Academic and Student Affairs Committee

3. Tenure

SBHE Budget and Finance Committee

4. Ratify Chancellor approval to MiSU for interim authorization to proceed with financing for and renovation of the “Beaver Dam” area of the MiSU Student Center at an estimated cost of \$3,100,000. Further provide interim authorization to seek legislative approval for the project during the upcoming 2023-24 legislative session.
5. NDUS Retirement Plan NDUS Investment Consultant RFP
6. NDUS Retirement Plan Revenue Credits.

SBHE Research and Governance Committee

7. June SBHE meeting, date change from 29th to 27th, Valley City State University will host.

Board Action

8. Updated SBHE Legislative Budget – Chancellor Hagerott / Mr. David Krebsbach

Chancellor Hagerott reported that in May there was a request for increases due to inflation and various other factors. In consultation with the governor's office those requests seemed premature at the time, not knowing what inflation costs would do in the upcoming months. Thus, the verbiage was left in the budget that went to the legislature and the governor with the request help was needed for inflation in tuition for students. The university presidents presented requests asking for help at that time. The numbers behind the verbiage referred to as an updated budget based on the governor’s position on inflation. The Budget and Finance Committee endorsed the requests upon review of the changes.

Mr. David Krebsbach presented the report to support the request for approval of an updated budget. This includes all the items in the original budget from June but added in specific funding requests that align with the governor’s request. Those specific items include the 6% and 4% salary increase that the governor has in his recommendation including the tuition increase which equates to approximately \$43.5 million. That includes the increases related to the Health Insurance program. There is a \$12.3 million increase to cover the equity plan for employees, which is approximately \$40 million across the NDUS system of which \$12.3 of that would be attributable to tuition dollars. Inflationary increases of 7.5% on the funding formula, which is just under \$41 million. Another one is the minimum amount payable which was originally approved at the 96% level, suggesting raising that to 98% level which will be a \$9.2 million request vs. a \$5.2 million. It is about a \$4 million increase that would put the institutions at a 2% loss per biennium. Chancellor Hagerott explained the reasons behind raising the 96% level to 98% level. Mr. Krebsbach stated that page 2 of the document provided outlines the changes encompassing the whole budget request that are in front of this Board for approval.

A board member inquired about the minimum amount payable. During a legislative hearing there was a question raised that it would be raised for maybe NDSU and NDSCS for this time allotment and not across the board. Chancellor Hagerott explained that did come up and the legislature may decide to do that however BSC and DSU campuses grew however they are away from the Minnesota border. The main recipients of several hundred dollars are attributed to NDSU and NDSCS who will receive much of the money but for consistency the other colleges should not be excluded. This is a temporary request to help mitigate unusual circumstances. Mr. Volk indicated it would be helpful if the Board could get

information on the breakdown of salary and insurance expenses with the two numbers separated. Mr. Volk inquired about the request to catch up regarding general funds and tuition – are the other salaries that are not part of those two buckets part of the discussion also included in the \$40 million or is that salary still hanging out there? Mr. Krebsbach stated that all the data has been provided to the appropriations committee for the tuition and other salary increases. Historically the legislature has not funded the other funding piece of that because it includes grants, contracts and other such items.

Mihalick moved, Hanson seconded, to approve the updated 2023-25 NDUS budget initiative as presented.

Black, Volk, Mihalick, Bye, Warford, Hacker, Hanson and Ryan voted yes. The motion passed.

9. 1st Reading, Policy 506.1 Immunizations: Presented by Ms. Lisa Johnson.

10. 1st Reading Policy 411 Admission: Presented by Ms. Lisa Johnson.

Black moved, Bye seconded, to suspend the 1st reading and move on to the 2nd reading and final passage, for Policy 506.1 Immunizations; and Policy 411 Admission.

Volk, Bye, Black, Warford, Mihalick, Hanson, Hacker, and Ryan voted yes. The motion passed.

11. 1st Reading, SBHE Policy 102 Objectives and Codification presented by Mr. Jerry Rostad.

12. 1st Reading, SBHE Policy 307.3, Branch Campus Governance and Organization presented by Mr. Jerry Rostad, to include changing the word “branch” throughout the policy to the word “affiliate”.

13. 1st Reading, SBHE Policy 350.1, State Board of Agricultural Research and Education presented by Mr. Jerry Rostad.

Mr. Rostad stated that SBHE Policy 102, SBHE Policy 307.3 and SBHE Policy 350.1 are policies that are over 10 years old. There were minor changes to each of them. He recommended waiving the 1st Reading and proceeding with the 2nd Reading.

Bye moved, Hanson seconded, to waive the 1st Reading and accept the 2nd Reading, for Policy 102 Objectives and Codification; Policy 307.3 Branch Campus Governance and Organization, including changing the word “branch” throughout the policy to the word “affiliate”; and Policy 350.1 State Board of Agricultural Research and Education.

Hanson, Bye, Warford, Volk, Black, Mihalick, Hacker, and Ryan voted yes. The motion passed.

14. 1st Reading, SBHE Policy 302.7 – Research and Governance Committee presented by Ms. Terry Meyer. She explained the request is to add language in Policy 302.7 Research and Governance Committee, which was in the Audit Committee Policy. The Governance Committee approved of this action.

Mr. Volk commented that Policy 302.7 is a follow up to an earlier discussion wherein there were recommendations on doing the Presidential Evaluation, the Chancellor’s Evaluation and the Board Self-Evaluation specifically around considering hiring a consultant to help with making them independent. He discussed his concern with the Governance Committee and this policy change is folding that discussion into not hiring an outside consultant to the Governance Committee. He stated he is not comfortable with that commenting that he believes it should be a Board discussion on the process of

how evaluations are conducted. He stated he is opposed to the change if that is exactly what it is doing. He recommended that the Board have a thorough discussion on that issue.

Chair Ryan stated that policies that come to this Board should go to the respective committee for review and then be submitted to the Board as an action item to be presented to the whole Board for discussion and a vote. This issue would go to the Governance Committee. Mr. Volk suggested doing a 1st Reading and then a discussion be held before it goes for a 2nd Reading.

Volk moved, Black seconded, to approve the 1st Reading of SBHE Policy 302.7 and send it back to the Governance Committee for discussion and then present it to a future whole Board meeting for the 2nd Reading.

Bye, Volk, Hanson, Black, Warford, Hacker, Mihalick and Ryan voted yes. The motion passed.

15. 1st Reading, SBHE Policy 308.1 – Officer and Employee Code of Conduct was presented by Ms. Terry Meyer. Policy 308.1 was reviewed by the Governance Committee. The Compliance Charter was revised and based on some of those changes, additional language needed to be added to the Officer and Employee Code of Conduct Policy. Ms. Meyer recommended waiving the 1st Reading and proceeding with the 2nd Reading.

Hanson moved, Mihalick seconded, to approve waiving the 1st Reading and approve of SBHE Policy 308.1 Officer and Employee Code of Conduct and proceed with the 2nd Reading.

Hacker, Mihalick, Bye, Volk, Warford, Hanson, Black and Ryan voted yes. The motion passed.

16. Reaffirm Policies 100.6, 301.1, 303.2, and 350.3, (no substantive changes)
- a. SBHE Policy 100.6 Authority and Responsibility of the State Board of Higher Education
 - b. SBHE Policy 301.1 Organization & Titles of Institutions Governed by the SBHE
 - c. SBHE Policy 303.2 NDUS Strategic Plan and Objectives
 - d. SBHE Policy 350.3 School of Medicine and Health Sciences Advisory Board; Reports

Chair Ryan stated that Policies 100.6, 301.1, 303.2, and 350.3 are straight forward. Mr. Rostad explained the policies have not been reviewed in over 10 years. There have been no substantive revisions to the language text.

Mr. Volk requested removal of Policy 100.6 Authority and Responsibility of the State Board of Higher Education because that policy has not been reviewed in over 10 years. He pointed out that no one on the current Board was on the Board when it was last approved and stated that it is important that the policy aligns with current practices.

Volk moved, Mihalick seconded, to approve reaffirming SBHE Policies 301.1 (to include changing the word “branches” to “affiliate”), 303.2, and 350.3; and that SBHE Policy 100.6 be returned to the Governance Committee for review and return to the SBHE Board at a future meeting.

Mr. Hacker inquired as to why a vote is required on policies that have not changed? Chair Ryan explained that the policies require reaffirmation if there are no changes. Further, the record will show that the Board has reviewed these policies and the members agree that the policies are appropriate,

and it is documented they did not warrant any change since their last review was conducted. Attorney Larson concurred with Chair Ryan's explanation.

Warford, Black, Mihalick, Volk, Hanson, Bye and Ryan voted yes. Hacker voted no. The motion passed.

Bye moved, Volk seconded, to return SBHE Policy 100.6 Authority and Responsibility of the State Board of Higher Education to the Governance Committee for review and then send it back to the Board at a future meeting.

Black, Mihalick, Warford, Volk, Hanson, Hacker, Bye and Ryan voted yes. The motion passed.

17. SBHE Policy 310.2 – Board Officers; Officer Responsibilities; Election, was presented by Ms. Terry Meyer. She stated there was a proposed change submitted by a Board member to change when the election of the officers would take place. The proposed change was presented to the Governance Committee in January wherein the committee voted to leave the policy intact noting that its last review was in April 2019, with no suggested changes.

Chair Ryan stated the current policy states that the Election of Officers is to take place in May wherein those officers elected would start their duties on July 1st of that year. Ms. Bye explained that the Governance Committee voted to leave the policy as is, due to the necessity of allowing a learning curve to take place prior to the officer's duties being implemented.

Mr. Volk commented that he does not believe it is appropriate that new members do not have input on who the officers will be. He believes that new members to the Board should have input in leadership positions when those decisions are made.

Bye moved, Mihalick seconded, to leave SBHE Policy 310.2 Board Officers; Officer Responsibilities; and Elections, as written, effective April 25, 2019.

Warford, Hacker, Black, Bye, Mihalick, Hanson and Ryan voted yes. Volk voted no. The motion passed.

17-A. Statement of Support by SBHE of NDSU Strategic Alignment

Mr. Kevin Black proposed adopting a statement of support as follows: "The SBHE supports North Dakota State University's efforts to strategically align to the needs of the state by transforming the institution through strategic investments, strategic reductions, and the merger to five colleges."

Black moved; Hanson seconded to adopt the Statement of Support as stated.

Hacker, Bye, Hanson, Mihalick, Black, Volk, Warford, and Ryan voted yes. The motion passed.

SBHE Committee Reports/Updates/Discussion

18. SBHE Academic and Student Affairs Committee (ASAC) presented by Dr. John Warford. The ASAC committee met on January 18, 2023. Items for discussion included Tenure; Addition of programs along with a termination of a program at MiSU; policies were reviewed and affirmed; viewed a presentation on the ND Veteran's Training Program.

Mr. Black briefly summarized the discussion related to Tenure and encouraged this Board to discuss Tenure further and suggested that at the conclusion of this legislative session. What does Tenure mean and what doesn't it mean per SBHE's policy; to include the institutional policies and to educate the public on Tenure. Members concurred that the SBHE-ASAC take the lead on this matter.

19. SBHE Research and Governance Committee (RGC) was presented by Dr. Casey Ryan and Ms. Danita Bye.

Chair Ryan reported the RGC met on January 18, 2023. Several items regarding research programs were discussed. Of note, one of the legislative priorities will be hosting a Research Working Group poster-format presentation depicting the research efforts occurring at all our 11 North Dakota colleges. That event is scheduled for Friday, March 24, 2023, in the Memorial Hall at the State Capitol.

Ms. Bye stated that RGC discussed the Comprehensive President Evaluation that was led by Mr. Rostad. As a result of the evaluation process, Mr. Rostad drilled down the feedback received into four categories (i) Process is thorough, beneficial, useful; (ii) Process provides a happy balance with neutrality; (iii) It's too early to change the process; (iv) NDUS process compared to other state processes.

20. SBHE Budget and Finance Committee (BFC) was presented by Mr. Mihalick.

Mr. Mihalick reported the BFC met on January 18, 2023. The items discussed are included in the meeting agenda today. The legislative update that will be presented by Chancellor Hagerott.

21. SBHE Audit Committee was presented by Mr. Nick Hacker.

Mr. Hacker reported the committee met on January 18, 2023. The continuous review of the audited items selected are considered to be of value to the institutions. An update was received and discussed on the Audit Plan for 2022-2023. A new NDUS internal audit website has been launched and is available now for viewing. Mr. Chris Pieske has joined the staff as the new Compliance Officer effective January 1, 2023.

22. SBHE Ad Hoc Committee was presented by Mr. Nick Hacker.

Mr. Hacker reported the committee was going to meet, however, there were requests from some of the presidents to postpone the meeting until later due to legislature being in session. The committee rescheduled the meeting for February 6, 2023. The survey asking for thoughts or ideas as to what the committee should consider reviewing is open until the end of this week. Consideration will be given to changing the name from "Ad Hoc Committee" to a more appropriate name due to the extensive work issues that need to be addressed over the next several months (or years).

Chancellor Report

23. 2022 Annual Report for Academic/Career and Tech Education/ND Scholarship (Ms. Brenda Zastoupil). Chancellor Hagerott stated that the documentation for this will be emailed out in a link.

24. Legislative Update presented by Chancellor Hagerott/Vice Chancellors Johnson, King, Krebsbach, and Rostad/Dolan.

Chancellor Hagerott stated there are many things going on in the legislature and one of the key bills is the Tenure bill. DSU President Easton provided a brief update

Chancellor Hagerott reported that the gambling bill barely passed the House and will move to the Senate.

Chancellor Hagerott referred to SB2343 as problematic. It would take the authority away from the Board to control the information in Executive Session. He inquired of Attorney Larson that if this bill were to pass, is there a risk that much of the progress this Board has made on closing presidential searches, the presidential contract reviews and hiring athletic directors is it possible it could be pulled into this and be releasable to any future requestors?

Attorney Larson explained that SB2343 it takes away the discretion that this Board has and all public Boards to keep exempt or confidential records private from new members who were not board members when the records were created. Currently, the open records statute provides a procedure for state boards to release exempt records based on a vote by the governing body or the Board. The State Board has a policy that applies to mirror the state law. SB 2343 removes that right, and it says that any new Board member who wasn't previously a Board member has a right to have all exempt and confidential records that the Board has prior to that new Board member's membership. The issues with that: (i) It takes away the right this Board currently has to have the discretion as to whether to release those documents; (ii) It also extends the discretion to the confidential records which could potentially cause a conflict in law; (iii) The bill is written vaguely as to who this would apply to. It uses two terms that the open records statutes define separately – Governing Body and Public Entity - wherein it combines those two definitions together. There are concerns that this could apply to committees or searches that have required a lot of hard work to create confidentiality and facilitate competitive applications. Chancellor Hagerott encouraged members of this group to talk to their legislators about this bill.

Chancellor Hagerott explained that under current policy the most sensitive action of this Board is handling the records and applications of the university presidents. This is an example of the importance that the Board Chair must have the ability to control what is released to all the Board members.

Ms. Tammy Dolan, NDUS office reported on the bills the NDUS is following:

- 951 bills and resolutions have been introduced as of today
- NDUS is tracking 145 of the 951 bills. (Not all related to SBHE, but somewhat related)
- All bills will have to be voted on by their committee prior to February 24, 2023

NDUS Staff members provided updates on other legislation the office is tracking.

25. IT Update was presented by Vice Chancellor King.

~ HB1528 - This is a bill related to record retention law and retaining email. SBHE already has a policy in place that requires archiving of two (2) years of non-student email.

Vice Chancellor King provided a power point presentation outlining the data collection process related to student usage along with some background history of the two largest access systems, Blackboard and Campus Connection systems in place. This presentation is being brought forward because the current systems have been in place for seven (7) years and twenty (20) years respectively, which is within the

timeframe to start discussions on whether to renew or solicit RFPs for new systems. There is some leeway yet before decisions need to be made, however, study groups are looking at both systems now and in January 2024 recommendations should be ready for presentation.

Mr. Black reported that he had a conversation recently with Vice Chancellor King, and discussion ensued that over twenty-two (22) states have banned the program “Tik Tok” and that over twenty (20) large institutions have also banned “Tik Tok”. He requested Vice Chancellor King to provide a briefing on the security risk problems associated with “Tik Tok” for SBHE review at the next meeting,

Chancellor Hagerott commented that there are huge issues hitting the news now about the ChatGPT – Chat Generative Pre-Trained Transformer article in the Wall Street Journal of emergency sessions of Boards and university governance committees across the country because of this AI breakthrough. Dr. Weber and Dr. Armacost have already set up a task group to address ChatGPT.

26. Update on Use of Machine Learning/Artificial Intelligence presented by President Armacost.

President Armacost presented a PowerPoint presentation of the ChatGPT and what our campuses could do to support this. He explained that ChatGPT is a form of AI that is responsive to questions being turned into answers based on the data that it has among many sources of data. A review of the slides included the (i) History of ChatGPT (first released in 2019 and most recent release in November 2022); (ii) A significant advancement in AI; (iii) AI Opportunities and threats for higher education; (iv) Measures Faculty can take to address academic dishonesty enabled by AI; (v) ChatGPT can help students with developing critical thinking skills; and, (vi) Operations of a college campus.

(a) Gen Ed. Digital Literacy Requirement presented by Vice Chancellor Johnson.

Vice Chancellor Johnson reported that a general education group is working on re-enforcing digital literacy concepts into the general education requirements and some campuses are developing stand-alone courses to address it. This request is for the Board’s support with implementing these across our campuses. More to come on this topic in upcoming months.

27. Native American repatriation update presented by Chancellor Hagerott.

Chancellor Hagerott referenced an issue that came up at UND when it discovered some Native American artifacts with anticipation of resolving this by December. It has taken longer than expected and that work in process continues. Updates will be provided when available.

28. Update on Presidential Compensation Study Plan presented by Chancellor Hagerott.

Chancellor Hagerott reported that there is a Governance Sub-Committee consisting of several presidents working on this. Even though this matter was marked as a priority, it has been decided that faculty and lower paid staff should take precedence and be addressed before this is worked on.

Mr. Volk commented that regarding president compensation plans, he does not have sufficient information to make decisions on the president compensation when that time comes. It was his understanding the Board directed the study be done; however, he does not understand how it stopped because it was a board action. It is his opinion that the SBHE needs that study and when the

compensations are reviewed in June, it will be helpful to understand the market information when that discussion occurs.

Chair Ryan explained that this matter came out of a Budget Finance Committee meeting in June. The Board had given permission in June to those Committee's, and he discussed this with Chair Mihalick of the Budget Finance Committee and Chancellor Hagerott that this is not the appropriate time to pursue that study. He clarified that it did not go to the whole Board, it went to the Committee and the Committee was given leeway by the Board to make that decision. Mr. Volk stated that he looked at the recorded minutes, wherein the motion was revised, and Attorney Olson made it clear that the Board authorized Budget and Finance to hire a firm, and they did that. As it sits today, the direction is to do the study. He inquired what is the plan to complete the study?

Chancellor Hagerott commented that in January (2022) inflation accelerated. The intent of holding off on the study plan was to protect the campuses, protect their budgets and stabilize things due to economics. Even though the Board authorized the study to be done, the funding for it would come from campuses budgets.

Mr. Mihalick commented speaking to his past experiences when doing studies, the results will show the presidents are underpaid. He was initially against the study however it was voted on to move forward and he agreed with that decision. He recommended tabling this proposal until the Board is comfortable that this study plan can be done without putting the onus on the institutions.

Mihalick moved, Black seconded to table the discussion of the Presidential Compensation Study Plan until the Board is comfortable with spending funds for a presidential compensation study.

Mihalick, Warford, Hanson, Bye, Black, Hacker, and Ryan voted yes. Volk voted no. The motion passed.

Mr. Hacker respectfully requested the Budget and Finance Committee to look at the Presidential Compensation Study Plan utilizing the resources available in the System Office so that there is some information available by June. Chair Ryan said that would be appropriate.

Other Reports:

28. NDSA presented by Ms. Sadie Hanson.

Ms. Hanson reported that the NDSA met on January 28, 2023, in Valley City. They passed six (6) resolutions. They have been involved with legislative hearings this session.

29. CCF presented by Dr. Lisa Montplaisir.

Dr. Montplaisir reported the last CCF meeting was held January 10, 2023, and several of the items discussed were presented here today. They will continue working on items of not only tenure, but the bills that will affect accreditation; recruitment and retention of students, faculty and staff and safety.

30. Staff Senate presented by Mr. Michael Linnell.

Mr. Linnell reported that the Staff Senate met on January 20, 2023, via teams. He stated that he has been re-elected to another one-year term as the Staff Advisor. Work in progress includes Wellness plans and working with Village Family Services.

31. Public Comment

Mr. Volk inquired what the process is if the legislature requires the SBHE to act on an issue? Chancellor Hagerott explained that if there are questions that come up during a hearing that he is notified on behalf of the SBHE and then he will contact the Board Chair. Past practice has been that the Board Chair will respond to the legislature, and if necessary, he/she will attend any hearing(s) to provide answers or testimony.

32. Assessment of Meeting and Future Agenda Items

Chair Ryan announced that the next meeting will be held via video conference on February 23, 2023.

Adjournment

The meeting adjourned at 11:02 a.m. CT.

Approved February 23, 2023.