SBHE LEGAL ORIENTATION

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Achtung!
State Board of Higher Education

- Voters approved 1938, effective 1939
- SBHE has “full authority over the institutions under its control” – now eleven
- Constitutional authority also supplemented by statutory authority
- Eight voting members with two statutory advisors (faculty and staff)
- Appoints chancellor (f/k/a commissioner) as chief executive officer
Statutory Advisors

- Council of College Faculties annually appoints one advisor
- Staff Senate annually appoints one advisor
- Advisors may participate in all meetings, but may not vote
- Advisors’ loyalty and responsibilities are to the SBHE, not to the appointing organization
SBHE established a unified system of higher education with a chancellor as CEO in 1990 (Policy 100.6)

Legislature designated it the “North Dakota University System” in 2001 (§15-10-01.2)

System include +50,000 students, +18,000 employees/faculty, 11 institutions, system office, and Core Technology Services (CTS)

SBHE responsible for $2.6B/biennium
One Board
Eleven Unique Institutions

- **Research Universities**
  - NDSU*
  - UND*

- **Four-Year Universities**
  - DSU*
  - MaSU*
  - MiSU*
  - MiSU*
  - VC SU*

- **Two-Year Colleges**
  - BSC
  - DC B*
  - LRSC
  - NDSC S*
  - WSC

*Eight institutions are named in ND Constitution Articles VIII and IX.*
SBHE members are also ex officio members of several boards, commissions, and committees:
- Association of Community College Trustees
- Centers of Excellence Commission
- Challenge Grant Review Committee
- Midwestern Higher Education Compact (MHEC)
- School of Medicine and Health Sciences Advisory Council
Board Committees

- Audit (Policy 302.2)
- Budget and Finance (Policy 302.3)
- Academic and Student Affairs (Policy 302.1)
NDUS Organization
System Services

- Academic policy, planning, and quality assessment
- Capital planning and construction
- Budgeting
- Human resource policy and compliance
- Institutional research
- Risk management
- Internal auditing
- Legal services
- Information technology systems and services
- Legislative and community relations
Key Governance Policies

- ND Constitution – Article VIII, Section 6
- ND Century Code – Chap. 15-10 and others
- SBHE Authority and Responsibility – 100.6
- Chancellor Authority – 304.1
- Code of Conduct – 308.1
- Beliefs and Core Values – 100.5
- Mission and Vision – 100.4
- Presidents’ Authority and Responsibilities – 305.1
Strategic Plan

- Key governance function
  - Planning
  - Implementation
  - Monitoring and accountability
- Required by state law - §15-10-14.2
- Required by policy – 303.2
- Current plan is under review (tomorrow)
Open Meetings

- Four voting (or more) members of SBHE conducting public business is a “meeting”
- Meeting can be in person, telephone, video conference, or email
- Includes committee meetings when two or more are working on a task assigned or delegated by SBHE
- Exception: social gathering **IF** public business is **NOT** discussed
Open Records

- All records regarding public business in possession of SBHE members, at NDUS office, at institutions, in possession of employees, etc. are public records.
- Must be disclosed, upon request, unless state or federal law prohibits disclosure.
- Documents can be paper, email (including personal), digital (on personal computer, laptop, smart phone, etc.) and on official or personal devices.
Liability of SBHE Members

- Board members are protected by state law when acting within the scope of their appointment.
- Lawsuits against SBHE or named board members are defended by AG-appointed lawyers.
- If judgment against board members in federal court or other state, ND will indemnify board member.
Fiduciary Responsibilities

- Prepare for, attend, and participate in board meetings
- Avoid, declare conflicts of interest
- Robust debate prior to, but unified voice following, board decision
- Continuing education about governing (as a board member - AGB) and the institutions
- Specific responsibility for retirement plans (Policy 703.3)
Foundations

- Each institution has one or more foundations associated with it
- Foundations now receiving state grants through Challenge Grant Program
- NDSU Research Foundation manages NDSU’s IP
- Policy 340.2 requires operating agreement between institution and foundation
- AG has opined that campus-related foundations are subject to open records/meetings laws
- State auditor may focus on foundations in 2014-15
Accreditation

- Higher Learning Commission evaluates the eleven institutions and the SBHE for accreditation purposes
  - HLC currently evaluating SBHE in response to 2013 complaint
- Nearly 100 other organizations accredit individual schools and programs within the NDUS
- SBHE is ultimately responsible for accreditation of the NDUS
Compensation - Reimbursement

- SBHE members compensated [$14.80/hour]
  - If more than 1 hour, paid for 5 hours ($74)
  - If more than 4 hours, paid for 10 hours ($148)
- Student member not compensated, but tuition and fees are waived IAW Policy 820(2)(a)
- Campus reimbursed $4500/yr for each advisor’s services
- Reimbursed for travel expenses IAW policies governing all state employees
- Board president must approve all out-of-state travel
- Student member and advisors may use state fleet vehicles and others may use POVs
Constitutional Measure 3

- Measure 3 (HCR 3047) is on November 4 ballot
- If approved, SBHE would be replaced with three-member full-time commission
- Board members may express their personal opinion when “off the clock”
- However, NDCC § 16.1-10-02 prohibits using state funds, services, or resources to campaign for or against Measure 3
Use of Public Property or Services for Political Purposes

- No person may use public property or services for political purposes (NDCC § 16.1-10-02)
- Political purpose includes any activity to support or oppose a constitutional measure
- May not use language such as “vote for” or “oppose” or any similar support or opposition language
- However...
However...

- “[Political purpose] does not include activities undertaken in the performance of public office or a position taken in any bona fide news story, commentary, or editorial.”

- “Factual information may be presented regarding a ballot questions solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question.”
THANK YOU