



HB1349

House Political Subdivisions Committee

February 5, 2021

Nick Hacker, Chair, SBHE; Kathy Neset, Member, SBHE; and

Mark Hagerott, Chancellor, NDUS

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Chair Dockter and Committee Members: Our names are Nick Hacker, Chair State Board of Higher Education; Kathy Neset, member State Board of Higher Education; and Mark Hagerott, Chancellor of the North Dakota University System. We are here today on behalf of the North Dakota University System and its eleven institutions in opposition to H.B. 1349, as it is currently proposed.

The North Dakota University System has a biennial budget of over \$2.5 billion, of which \$648.7 million was appropriated from the general fund during the 2019-2021 biennium. This significant investment by the people of the state of North Dakota resulted in an economic impact of over \$5.5 billion during Fiscal Year 2019, per a recent report by North Dakota State University's Department of Agribusiness and Applied Economics. This is over double the economic impact in Fiscal Year 1999, a significant increase.

This economic impact could not have been achieved without dedicated leadership and sound financial stewardship, much of which takes place at the NDUS's eleven institutions. One of the most challenging jobs of the State Board of Higher Education and the North Dakota University System is recruiting and hiring the presidents of those eleven institutions. On average, one institution president or dean retires or leaves the North Dakota University System every year – since 2015, the SBHE has hired eight institution presidents, along with the Dean of Dakota College at Bottineau, and one presidential search is currently ongoing. Given the high profile of these positions in the state, it is crucial that the SBHE receives a high number of qualified applicants, including preferably applicants who are currently presidents of colleges or universities. We are pleased to report that the SBHE has had incredible success in hiring highly qualified presidents in the last two years. These include President Andrew Armacost, a former Dean of the Faculty at the United States Air Force Academy and Colonel in the United States Air Force. The SBHE hired President Doug Jensen, the then-president of Rock Valley College, to be the President of Bismarck State College. Finally, the SBHE's choice for first interim, and then President at Dickinson State College, Steve Easton, a former United States Attorney and North Dakota native, has been instrumental in addressing many of the challenges at that institution.

One major reason for the successful recruitment and hire of these presidents, not to mention the presidents of Mayville State University and Valley City State University in 2018, is North Dakota Century Code Section 44-04-18.27, which Section 2 of H.B. 1349 amends. Prior to the Legislative Assembly's implementation of Section 18.27 during the 2017 session, all application materials submitted to search committees were considered open records. This had a number of negative effects on the recruitment of institution presidents, most importantly limiting the number of highly qualified candidates who applied for open positions.

Prior to the current version of Section 18.27, having non-finalist application materials be open to the public served as a significant disincentive for highly qualified candidates to apply for open positions, including current presidents, deans, and provosts. These professionals work in a highly competitive field and face potential blowback from their boards of trustees if they (unsuccessfully) apply to be president of an NDUS institution. Since 2017, the number of applicants for these extremely important positions have increased in both quantity and quality of candidates. For example, when the SBHE hired UND's current president in December 2019, the SBHE had the luxury of choosing between the current Dean of the Faculty of the Air Force Academy and two candidates with presidential experience at other universities. Many other applicants were also highly qualified for the position, even though they may not have been named as finalists. The search firm the SBHE has worked with for these searches has relayed that many candidates who applied for the position may not have done so if their applications would have been made public.

However, the proposed change to Section 18.27 would undermine that recent success. Instead of requiring that the application materials of non-finalists remain confidential, the proposed amendment would make those application materials public once the finalists are named. This public disclosure would place the NDUS back in its pre-2017 process, which resulted in lower levels of interest from high quality candidates, a lower total number of applications for open positions, and several hires who saw significant public controversy.

To be clear, the NDUS institutions and we support many of the changes proposed by this bill, including changing the designation of application materials from confidential to exempt. We also support the changes proposed in Section 1, Sections 3-5, and Section 7 (Sections 6 and 8 do not meaningfully impact the NDUS). In particular, the NDUS supports making active litigation records exempt from disclosure, the further clarification of the requirements for electronic meetings, and the designation of records containing medical information as exempt. However, the NDUS opposes the changes in Section 2.

To assist the Committee, we have provided a proposed amendment to H.B. 1349 which would retain all of the proposed changes, except that application records of non-finalists would remain exempt from disclosure after the finalists are selected.

Thank you for your consideration of H.B. 1349. We respectfully request that the members of the Committee adopt NDUS's proposed amendment, or else adopt a "do not pass" recommendation, and we stand ready to answer your questions. Thank you for your time.