

NORTH DAKOTA STATE SENATE  
POLITICAL SUBDIVISIONS COMMITTEE  
SENATOR RANDALL BURCKHARD, CHAIRMAN  
FRIDAY, JANUARY 27, 2017

Senate Bill 2152 -- Relating to Open Records, Meetings and Searches  
Letter of Concern

**Richard D. Legon**  
**President, Association of Governing Boards of Universities and Colleges**

On behalf of the Association of Governing Boards of Universities and Colleges (AGB), I am pleased to provide this letter in support of Senate Bill 2152 (SB 2152), which would allow the North Dakota University System (NDUS) to maintain the confidentiality of candidates who apply for chancellor/president positions, except those confirmed as finalists.

Established in 1921, AGB's mission is educate the governing bodies of some 2000 institutions. We work with institution and state system leadership and their board members, providing education and counsel to over 37,000 leaders across higher education. AGB has helped to shape best practices in institution and board governance with a primary focus on institution mission achievement. AGB's board of directors, most of whom serve as college and university board members is committed to advancing policies that strengthen and improve governance and leadership, and SB 2152 is one such piece of legislation.

In today's higher education environment, the selection of a chief executive of a college, university, or university system is among the paramount responsibilities for which a governing body assumes responsibility. To meet this fundamental responsibility, boards (and search committees) must have confidence that their search is well positioned to attract the best pool of candidates possible. Current state law requires that the names of all candidates who apply for a presidency in the system will be made public—on websites associated with the search and in public meetings. While the appeal of a fully open process is understood, the reality is that such a process can chill the overall quality of the pool of candidates. The competition for quality leadership is intense across all of higher education; the mandate that all candidates shall commit to initial exposure as candidates, does have the unintended risk of limiting the overall quality of the candidate pool.

AGB recognizes that the State Board of Higher Education is appropriately concerned about current search practices within the System and that it supports SB 2152—demonstrating its understanding of the importance and strategic significance of some level of confidentiality in executive searches. The challenges assigned to institution leaders, including ensuring accessible and affordable education, increased retention and completion rates, a viable and sustainable financing model, innovation and knowledge creation, and an ability to educate a diverse population, mandate strong and visionary leadership. A search process should facilitate the ability to attract those skills that are needed to meet the profile of leadership. While respecting the essence of openness, the greater cause, in my

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opinion, is stimulating interest among the best candidates. Both objectives can be met by SB 2152. Many of the best higher education leaders may think twice before entering the search process knowing the risks to their current professional circumstances and their reputation, should they not move to finalist status.

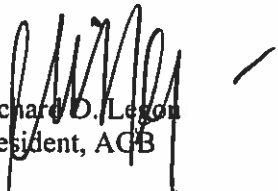
If enacted, SB 2152 would require that only the names of the top three finalists be announced, which is in line with 35 other public higher education systems across the country. To be clear, the majority of states have thus far retained their commitment to full disclosure of all candidates in a search pool. We think that North Dakota has the opportunity to join the 22 states plus the District of Columbia that have come to recognize the need for some protections for candidates while balancing the commitment to the public's interests. The proposed legislation allows for transparency regarding the search, yet does not provide unintended consequences for candidates or the search committee.

Further, it is our understanding that open-meeting requirements would not be affected as a result of SB 2152.

It is noteworthy that all eight members of the State Board of Higher Education were nominated by the governor and confirmed by the legislature. As the governing body with fiduciary authority over NDUS and the responsibility to ensure institution independence, the board's judgment and support of SB 2152 should be valued and taken into consideration.

In my role as CEO of the Association of Governing Boards of Universities and Colleges, I am pleased to represent the association's endorsement of SB 2152, a bill that if passed will help to ensure that the state's higher education sector can continue to advance the state's priorities. I am available to answer any questions related to this endorsement. Please do not hesitate to contact me at [rlegon@agb.org](mailto:rlegon@agb.org) or 703-505-6916.

Respectfully submitted,



Richard D. Legon  
President, AGB

Enclosure: *Consequential Board Governance in Public Higher Education Systems*