

Presentation to the North Dakota Legislative Management Interim Higher Education Committee  
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# **History of the North Dakota University System 1938-2003; Higher Education Governance Models in the United States; and Best Recommended Governance Practices**

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# Section I.

## History of NDUS

# 1938 Constitutional Amendment

- Initiated measure of the citizens
- Response to political intrusion
  - NDSU President and staff fired
  - Loss of accreditation at NDSU
- State Board of Higher Education (SBHE) created...one governing board
- SBHE given broad authority/responsibility

# Key Provisions of Constitution Article

- SBHE “created for control and administration of the institutions”
- Governor appoints board members after a multi-step process
- Beginning of a unified system
  - Constitutional provision requiring SBHE to submit a unified budget is an early reference to “unified” as it applies to higher education

## Key Provisions *(continued)*

- “The SBHE shall have the control of the expenditure of the funds belonging to, and allocated to such institutions and also those appropriated by the legislature, for the institutions of higher education in the state; provided, however, that funds appropriated by the legislature and specifically designated for any one or more of such institutions, shall not be used for any other institution.”

## Key Provisions *(continued)*

- “The Legislature shall provide adequate funds for the proper carrying out of the functions and duties of the SBHE.”
- “The SBHE shall have full authority over the institutions under its control....”
- “The SBHE shall have full authority to organize or reorganize **within** constitutional and statutory limitations, the work of each institution under its control....”

# 1939-1990

- Eight state institutions until 1984
- Seven board members serving 7-year terms
- Usually one board member from each campus region
- Board members were designated as campus liaisons
- Individual campus agendas dominate board agenda

## 1939-1990 *(continued)*

- Board and office focused on regulation of campuses(examples)
  - Approve hiring and salaries of deans and above
  - Heavy construction oversight:
    - Board approves architects, designs and contractors
    - Board office approves all change orders
  - All employment actions for every position approved by board office
  - Focus is on separate campus agendas and less on state public agenda



# 1939-1990 *(continued)*

- However, there are some steps in evolution of system:
  - Starting in late 60s, all campus budget requests are based on a formula primarily based on credit hour production (workload)
  - Establishment of Higher Education Computer Network (HECN) in late 70s
  - Establishment of statewide library system in 80s (ODIN). All campuses except NDSU.
  - In mid 80s board begins submitting prioritized capital construction budget request encompassing all campuses
  - Statewide interactive video network begins in late 80s

## 1939-1990 *(continued)*

- In 1984 the Legislature and vote of people place three additional two-year campuses under board governance
  - No more one board member per campus
  - New issues emerge
    - Collaboration
    - Different campus missions more evident
      - Went from 6 four year campuses, one two-year campus and one branch campus, to 6 four year campuses and five two year campuses

# 1939-1990 *(continued)*

- 1983-1984 legislative study of higher education budgeting:
  - Committee develops separate input formulas for:
    - Instruction (based on credit hour production/workload)
    - Student services
    - Academic Support
    - Institutional Support/administration
    - Physical plant operations
    - Physical plant repairs

## 1939-1990 *(continued)*

- 1986... first Bush Foundation study of higher education in North Dakota. Recommendations:
  - Create a cohesive system
  - Shared vision for higher education needed
  - Link higher ed to economic development
  - Board should focus on long-range planning
  - Create higher education centers
  - Flexible funding needed
  - Build coalitions

## 1939-1990 *(continued)*

- State University of North Dakota (SUND) created by Board in mid 80s in attempt to respond to Bush Foundation study
- However, 1987 legislature gives “university” status to four campuses and renames them, and makes community college in Devils Lake a branch of UND. Result is undoing of SUND
- In late 80s legislature enacts law requiring board to develop six year plans in line with earlier Bush Foundation study recommendations

# 1939-1990 *(continued)*

- During the 80s there are several interim reductions of appropriations because of state revenue shortfalls creating recurrent financial uncertainty
- During this time the board challenges in court the governor's authority to impose mid-biennium reductions, (allotments), based on the board's constitutional authority to manage appropriated funds belonging to the board, even though the board plans to voluntarily comply. Case is not resolved as governor writes a letter requesting the board to make the reductions.
- By early 1990, the budget formulas adopted in 1984 are not adhered to because of low state revenues

# December 1989

- Voters reject tax increases
- Major confidence and financial crisis
- Board holds meetings on creating a “true state system” as recommended in 1986 by Bush Foundation study
- Supported publicly by many legislators and governor
- Policy makers frustrated with no clear focused higher education agenda and spokesperson

*1990 Board Creates NDUS*

# Why the System was Created

- Board recognized that ND higher education is comprised of very diverse campuses and there was growing concern among policy makers about the need for a focused, coordinated, and collaborative higher education enterprise and for creating a public agenda for higher education
- Board believed that institutional diversity was a strength that can bring value to all North Dakota citizens through collaboration when needed and when it makes sense
- The system was created to use the diverse collective capacity of the campuses to serve citizens wherever they lived and provide administrative efficiency where it makes sense. i.e. nursing program, workforce training, technology, on-line programs, payroll, library system, purchasing, skills training center.
- The system was not created to make campuses “look alike”.





# Why the System was Created *(continued)*

- Board recognized that a system of diverse campuses is also major challenge requiring different approaches, policies, time and attention of board
  - Size (from 400 students to over 14,000 students)
  - Location (Small towns to cities)
  - Missions
  - Students
  - Focus was on collaboration, not regulation

# 1990 Board Creates NDUS

- SBHE policies defined on role of board, chancellor, presidents
- SBHE changes title from commissioner to chancellor as a result of new roles. Constitution states commissioner is CEO of the Board. Board policy says chancellor is CEO of the board and of the NDUS.
- Presidents now report directly to chancellor, instead of to the board through the commissioner (more on this later)
- Board retains presidential employment authority, but requires chancellor to make recommendations
- More responsibility given to presidents to manage institutional affairs
- New administrative and reporting systems recommended (seed of Connect ND)
- Collaboration on academic and administrative issues is stressed

# October 1990-June 1994

- Early turnover of NDUS leadership until 1994:
  - UND President is appointed chancellor from October 1990-June 1991 (9 months)
  - New chancellor from July 1991-February 1994 (32 months)
  - Several long-term presidents retire
  - 1994 Board appoints chancellor who serves nearly ten years

# 1991-1999

- Board member terms reduced from 7 to 4 years
- Student member becomes a voting member
- Legislature creates non-voting faculty representative to board
- Non-voting staff representative added
- Legislature and governor continue push for “focused” state higher education policy agenda

# 1991-1999 *(continued)*

- Atmosphere of collaboration and consistency takes hold:
  - More collaborative academic programs implemented
    - i.e Joint nursing program among two year institutions
  - Common course numbering system implemented
  - Interactive video network expands many programs from campus to campus sites.
  - Board creates College Tech. Ed. Council (CTEC)
  - Major workforce training effort begins in late 1990's
  - Skills Training Center established in Fargo

## 1991-1999 (continued)

- Board engages in major effort to focus campus missions by creating “principal participating institutions” to focus diverse campus missions to better serve all of North Dakota
- Board eliminates/streamlines many administrative policies
- Board establishes presidential goal and evaluation process
- NDUS is codified in statute

# 1991-1999 *(continued)*

- Second Bush Foundation governance study in 1996-1997
  - Board needs to elevate its role...enhance its leadership position...develop a public agenda
  - Board appointments process should change
  - Legislature should ensure oversight is focused on major policy items
  - Resolve number of institutions issue
  - Need better information infrastructure for decision making
  - Use collective resources to serve all of ND
  - Empower campus leaders
  - Change budget structure

## 1991-1999 *(continued)*

- 1998-voters reject constitutional amendment to remove campus names, locations and mission
- As a result of continuing different visions and expectations for the NDUS and the 1998 vote, the Legislature in 1999 creates the Higher Education Roundtable.



# 1999-2003

- Roundtable recommendations result in consensus about statutory and policy changes:
  - Board charged with helping define and connect to a public agenda
  - Recommits to unified system
  - Lump sum campus budgets
  - Accountability reporting defined linked to the report's six cornerstones

# 1999-2003 *(continued)*

- Major laws and policies change *(continued)*
  - Board has authority to set tuition
  - Legislature makes Lake Region and Williston independent campuses (no longer UND branches)
  - Board charged with developing new finance plan
    - Peer funding model developed
  - Board and campus alignment planning process tied to Roundtable goals (replaces six year planning process)
    - New System vision and mission statements developed (“The NDUS is the vital link to a brighter future”)

## 1999-2003 *(continued)*

- Major laws and policies change *(continued)*
  - Board reviews policies that are “barriers” for campuses
  - 2002 annual accountability report to the legislature begins
  - In 2003, Board redefines roles and responsibilities and system core values
  - Centers of Excellence established

Section II.  
Higher Education Governance  
in the United States

# Higher Education Governance *(continued)*

- Examples of extensive constitutional autonomy:
  - University of California System
  - California State University System
  - University of Minnesota and its branch campuses
  - Michigan institutions

Source: Hutchens, N. H. (2010). Preserving the independence of public higher education: An examination of state constitutional autonomy provisions for public colleges and universities. *Journal of College and University Law*, 1-30; and State Constitutional Provisions and Higher Education Governance, *Midwestern Higher Education Compact*, May 2013

# Higher Education Governance *(continued)*

- Examples of moderate-limited, varying degrees of constitutional autonomy:
  - Idaho, Louisiana, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Kansas
- Examples of constitutional autonomy subject to extensive legislative control:
  - Nebraska, South Dakota
  - Source: Hutchens, N. H. (2010). Preserving the independence of public higher education: An examination of state constitutional autonomy provisions for public colleges and universities. *Journal of College and University Law*, 1-30; and State Constitutional Provisions and Higher Education Governance, *Midwestern Higher Education Compact*, May 2013

# Higher Education Governance *(continued)*

- Examples of low level of or no constitutional autonomy:
  - Arizona, Colorado, Missouri, Utah, Florida, Georgia, Alabama, Alaska, Hawaii, Mississippi, Wisconsin, Minnesota State Colleges and Universities, Ohio, Indiana
- Source: Hutchens, N. H. (2010). Preserving the independence of public higher education: An examination of state constitutional autonomy provisions for public colleges and universities. *Journal of College and University Law*, 1-30; and State Constitutional Provisions and Higher Education Governance, Midwestern Higher Education Compact, May 2013

# Higher Education Governance *(continued)*

- State approaches to governance:
  - Consolidated Governing Board.
    - Broad authority over finances, degrees, personnel, property. Authority over a state's system of public higher education.
    - 23 states have consolidated governing boards.
    - 9 states have one board overseeing all public institutions
    - 14 states have two boards to split authority between two and four year institutions

Source: *State Constitutional Provisions and Higher Education Governance*, Midwestern Higher Education Compact, May 2013





# Higher Education Governance *(continued)*

- Coordinating Boards work alongside governing boards:
  - These boards do not govern institutions
  - Many approve institution programs, submit budget requests to the governor and legislature, or may make recommendations on institutional budget requests.
  - Some may allocate lump sum appropriations from legislature, recommend tuition and fee levels, and/or develop statewide articulation and transfer agreements
  - Most are responsible for statewide strategic planning and information gathering and reporting
  - Several administer state financial aid programs, state approval process for out-state institutions and other functions.
  - Generally, states with coordinating boards have separate governing boards for each institution, (four year institutions and comm. colleges)
  - 24 states have coordinating boards

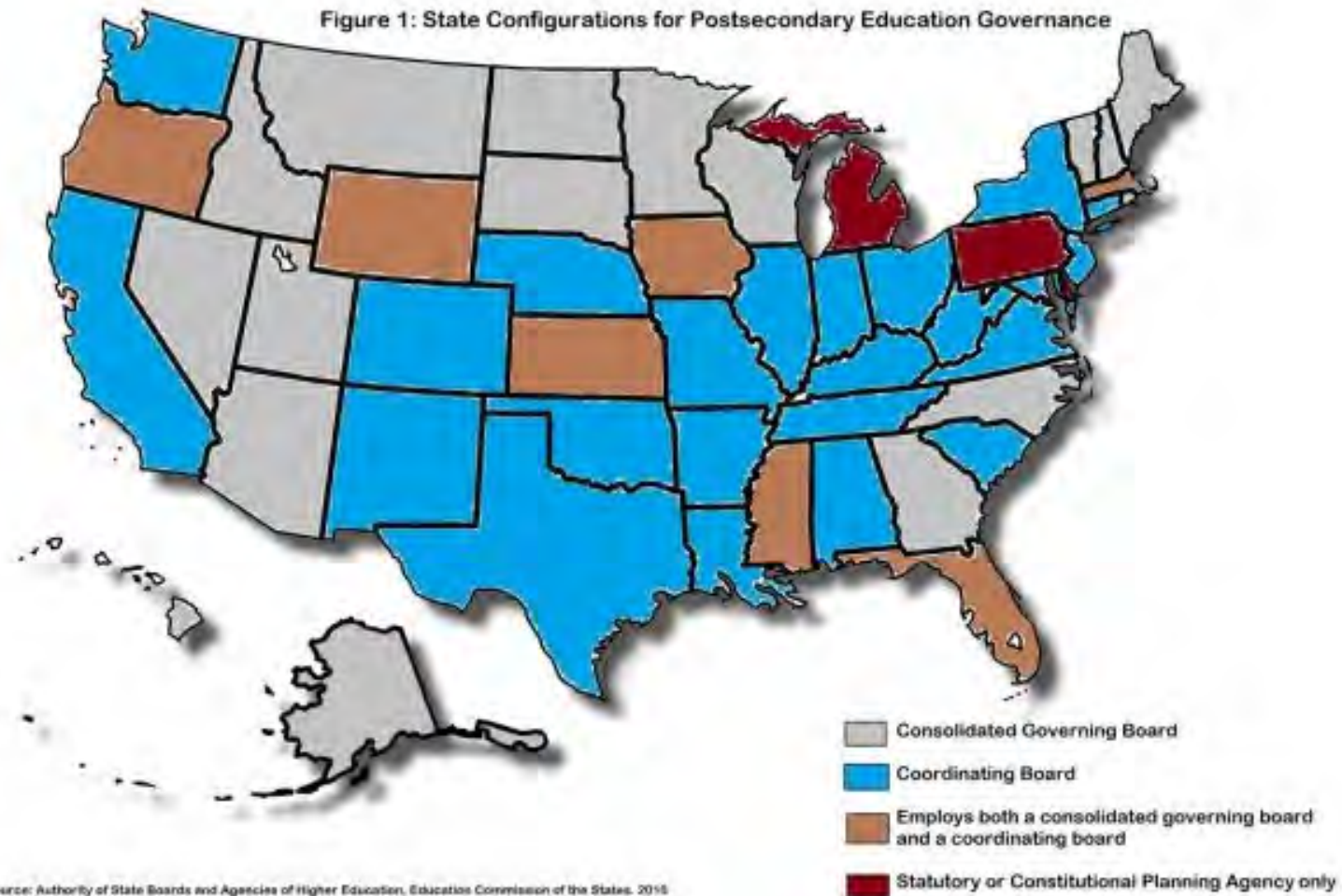
Source: *State Constitutional Provisions and Higher Education Governance*, Midwestern Higher Education Compact, May 2013



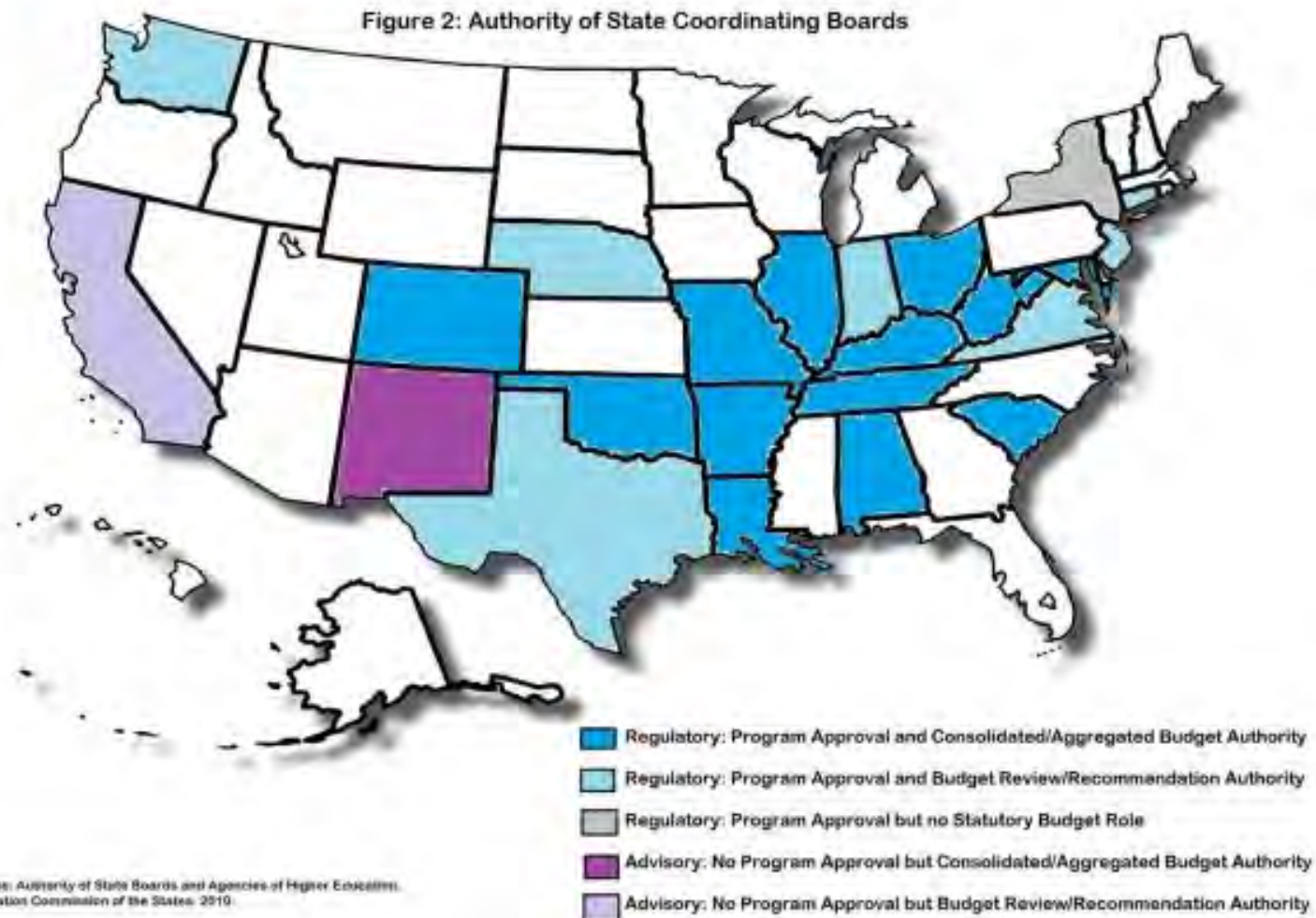
# Higher Education Governance *(continued)*

- One state (Michigan) has no state coordinating board or state governing board .
  - All four year institutions and community colleges have individual governing boards.
  - There is an independent non- profit President's Council comprised of four year institutional presidents, and a community college association
  -

# Higher Education Governance *(continued)*



# Higher Education Governance *(continued)*



Source: Authority of State Boards and Agencies of Higher Education, Education Commission of the States, 2010.

# Section III.

## Governance Observations

## Governance Observations:

# General Attributes of Successful Systems

- Entire enterprise is student success focused plus focused on enhancing the economic and social vitality of the state
- Governing board is focused on state policy issues and developing public agenda
- Governing Board is charting system and institutions' paths
- System and institutions are flexible and responsive to changing conditions that present opportunities

## Governance Observations:

# General Attributes of Successful Systems

- Successful systems are based on structure and, as importantly, on relationships:
  - Clear and unambiguous reporting relationships are defined by the board (More on this later)
  - Open communication and input from Board, system CEO, campus CEO's, employees, students
  - Confidence of and communication with governor, legislative and business leaders is critical
  - The board(s), governor and legislative leaders meet regularly to understand respective roles and agree on a shared vision for the system



## Governance Observations:

# General Attributes of Successful Systems

- Governing board provides leadership to create and communicate expectations and desired results
- Governing Board maintains its independence and is a safeguard to political and special interest intrusion
- Significant coalition building both internally and externally



# Higher Education Governance

- Association of Governing Boards (AGB) Report: Consequential Boards: Adding Value Where it Matters Most (2014), makes seven recommendations for boards:
  1. Boards must improve value in their institutions and lead a restoration of public trust in higher education itself.
  2. Boards must add value to institutional leadership decision making by focusing on their role as institutional fiduciaries.
  3. Boards must act to ensure the long-term sustainability of their institutions by addressing changed finances and the imperative to deliver high quality education at a lower cost.

# Higher Education Governance *(continued)*

## AGB recommendations *(continued)*

4. Boards must improve shared governance within their institutions through attention to board-president relationships and a reinvigoration of faculty shared governance

(All boards and presidents should have clear understanding of the respective roles and responsibilities.)

5. Boards must improve their own capacity and functionality through increased attention to the qualifications and recruitment of members, board orientation, committee composition and removal of members for cause.

# Higher Education Governance *(continued)*

## AGB recommendations *(continued)*

6. Boards must focus their time on issues of greatest consequence to the institution by reducing time spent reviewing routine reports and redirecting attention to cross-cutting and strategic issues not addressed elsewhere.
7. Boards must hold themselves accountable for their own performance by modeling the same behaviors and performance they expect from others in their institution(s)

# Section IV.

## Best Recommended Practices

# Best Recommended Practices State/System Governing Boards

- State/system governing boards vs. separate institution boards:
  - A state/system governing board is common in small to medium populated states like ND, Montana, Utah, South Dakota, Kansas, Iowa, Minnesota, Wisconsin, Nevada, Arizona
  - In 2014 North Dakota citizens voted to not change governance
  - Thus, the focus through HCR3046, is on effective governance and best practices

# Best Recommended Practices *(continued)*

- Definition 1: Three components of authority:
  - Governance
  - Policy
  - Management
- Definition 2: “System”: The system is comprised of institutions which are comprised of students. The system is not the system office and/or the board. The system office is part of the system, it is not apart from the system.

# Best Recommended Practices *(continued)*

- Governors and Legislatures:
  - Ensure boards fulfill and comply with state law, the constitution and their (the board's) fiduciary responsibility
  - Ensure governors and legislatures comply with state law and constitution regarding higher education
  - Maintain and enact formal ways for collaboration with boards to pursue agreed upon ways in which the system can:
    - Meet state needs for human capital, relevant research and public service
    - Meet other defined state goals

# Best Recommended Practices *(continued)*

- Governors and Legislatures:
  - Appropriate adequate funds (stated in the constitution as it applies to ND)
  - Target some level of appropriations (examples)
    - Institutional incentives for completion based on need for a more highly educated workforce.
    - Link state financial aid grants to requirements for student completion (Indiana)
    - Target some measure of appropriations to specific state goals tied to major economic sectors (STEM workforce, energy workforce, agricultural workforce, healthcare workforce, others)



# Best Recommended Practices *(continued)*

- Governors and Legislatures:
  - Oversight: Define expectations for accountability measures along with the board. Get agreement among the governor, board, legislature. This strengthens institutions ability to deliver and should eliminate excessive reporting requirements.
    - Reasonable number focused on big goals, not regulation
  - If enacting tuition policy, the discussion encompasses all finance sectors...institution costs, financial aid, program costs, state appropriations

# Best Recommended Practices *(continued)*

- Governors and Legislatures:
  - Provide adequate support for Boards to effectively carry out their role.
  - Promote a strong relationship between K-12 and higher education focused on improving student success
  - Expect long term financial plan for the system
  - Expect long term capital plans for the system

# Best Recommended Practices *(continued)*

- Boards:
  - Because of its constitutional status in ND, the SBHE has primary responsibility for the success of the system and the system institutions. The board is responsible for the institutions.
  - Successful systems are comprised of successful institutions

# Best Recommended Practices *(continued)*

- Boards: Three major roles
  1. Identify key needs of state and its citizens (the public agenda) utilizing institutions to collectively respond
  2. Govern the institutions
  3. Buffer/safeguard to political and special interest influence/intrusion

# Best Recommended Practices *(continued)*

- Boards should establish the “what” is to be accomplished and “whether” it is being accomplished
- Boards delegate to system and campus leadership the “how” things are accomplished

# Best Recommended Practices *(continued)*

- Boards define clear and unambiguous roles, responsibilities and employment conditions for system CEO, and, for campus CEOs unless delegated to system CEO
  - The structure works best when board actions follow their own policies on these roles

# Defining Reporting Relationships

## Current SBHE Policy

- Current SBHE policy states:
  - that the Chancellor serves as the CEO of the Board and the NDUS.
  - *“The president reports and is responsible to the Chancellor for all matters concerning the institution.....”*
  - The Chancellor makes recommendations to the board on presidents’ appointments, compensation and other terms of employment
  - The Chancellor evaluates president’s performance
  - The Chancellor *“serves as the channel of communication between the Board and all subordinate administrative officers and personnel including presidents”, and “directs the activities of the presidents in a manner which promotes the general welfare of the NDUS while, at the same time, ensuring support for the approved mission of each institution”*

# Defining Reporting Relationships

Current SBHE Policy *(continued)*

- SBHE adopts Roles and Responsibilities Report in January 2015. (Board states that these are not board policies)
- Adopted Report States:
  - *“The Chancellor is the CEO of the University System”*
  - *“The presidents work for the Board. However, through various policies the Board delegates authority to the Chancellor....”*
    - (This may leave the question of who the presidents report to open to interpretation since board policy says the presidents report to the chancellor, and this report says they “work” for the board.)



# Defining Reporting Relationships

## Current SBHE Policy *(continued)*

- The 2015 SBHE report also states:
  - *“The most common channel of communication with the Board is through the Chancellor to the Board”*; and
  - *“Any president who would like to brief the board on an item can request to have time on the Board agenda to do so; however, items requiring Board action must be coordinated with the chancellor”*.

(This appears to provide that presidents can discuss matters with the board at Board meetings without informing the chancellor. Does this create any misunderstanding with board policy or does it clarify board policy which states: *The Chancellor “serves as the channel of communication between the Board and all subordinate administrative officers and personnel including presidents”, and “directs the activities of the presidents in a manner which promotes the general welfare of the NDUS while, at the same time, ensuring support for the approved mission of each institution”*)

# Defining Reporting Relationships

Current SBHE Policy *(continued)*

- The 2015 report adopted by the SBHE states in conclusion that *“major revisions to policies are required to streamline operations, define delegated authorities, and eliminate conflicting requirements”*

# Best Recommended Practices *(continued)*

- Boards:
  - Responsible for strategic planning for system and individual institutions (and that such plans are focused on student success)
  - Monitor institutional performance against institutional strategic plans
  - Define clear institutional missions, and expect institutional plans consistent with mission and state priorities
  - Define accountability measures for campuses (this is different than defining accountability measures for the system which was discussed earlier)

# Best Recommended Practices *(continued)*

- Boards:
  - To help institutions be successful, boards ensure that institutions have leadership, mission, infrastructure, policy, resources, and independence from political and special interests
  - Multi-campus systems can be very diverse in size and mission. Therefore, boards should understand and nurture the unique attributes that become the institutions' strengths
  - Oversee that educational quality is being delivered:
    - Understand accreditation
    - Ensure institutions are complying with accreditation
  - New academic program approval should undergo rigorous review and be performed in the context of all programs in the system. Consider a review of all programs over five years to determine relevancy and financial feasibility

# Best Recommended Practices *(continued)*

- Boards:
  - Develop budget requests to the governor/legislature
  - Establish tuition and fee policies
  - Establish budget policies for institution budget execution
  - Develop capital plans and policies (Institutions manage capital projects within board policy)

# Best Recommended Practices *(continued)*

- Boards
  - Review all policies and reporting requirements regularly to determine where policies and reports can be eliminated, streamlined or where new policies are necessary. (The same could be done by governors and legislatures with state statutes and reporting requirements.)
  - Regularly review student, faculty and employee governance at campuses to ensure there is an avenue to gather factual and relevant information about institutional policy and other issues.

# Best Recommended Practices *(continued)*

- Boards:
  - Develop human resource policies (Institutions are responsible for human resource management within board policy)
  - Review system and institutional plans for long term financial sustainability
  - Review long-term enrollment and demographic trends and enrollment plans of institutions
  - Monitor compliance with board policies and laws
    - Audit function
    - Fiduciary responsibility

# Best Recommended Practices *(continued)*

- Boards:
  - Boards have a legal fiduciary responsibility for the system and each institution (This is a very important role that boards sometime do not give enough attention). The board should have in-depth training and understanding of this role. This encompasses laws and policies on conflicts of interest, facilitating open discussion, open meetings/records, risk assessment, roles of an individual board member vs. that of the board as a whole, confidentiality, disciplining board members, and maintaining independence from political or special interest influence.



# Best Recommended Practices *(continued)*

- Boards:
  - Public boards are a buffer/safeguard for the institutions they govern to political and special interest influence/intrusion. This role is important to protect the academic integrity for the institutions' students and faculty, and to fulfill the board's statutory/constitutional obligations.
  - This is a difficult role at times but it is a board's responsibility even though it is difficult.
  - Effective communication with state leaders is key to carrying out this role effectively. But, it should not deter a board from doing what they believe is right and in the best interest of academic integrity for the faculty and students, and as required by their statutory/constitutional obligation.

# Best Recommended Practices *(continued)*

- Boards
  - Boards and system CEOs have effective and experienced staff advising them on academic and financial/administrative affairs who have credibility, experience and comparable standing with campus peers
  - Boards have frequent professional development on good governance practices and fiduciary responsibility (more than once per year)
  - Professional development is also important on a board's role in strategic planning, academic programs, budgeting, etc.
  - Boards should initiate annual meeting with governor and legislative leaders to understand and agree on state and system goals
  - Boards have a regular evaluation conducted of the board

# Questions

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