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BEFORE THE HIGHER EDUCATION FUNDING COMMITTEE  
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CHAIRMAN SANFORD, VICE CHAIR KREBSBACH, AND COMMITTEE MEMBERS:

My name is Jason Jenkins, and I am Assistant General Counsel for the North Dakota University System at the University of North Dakota. Thank you for this opportunity to address you about State Board of Higher Education policies relating to intellectual property.

Section 15-10-17(9) of the North Dakota Century Code empowers the State Board of Higher Education (SBHE) to

[a]dopt rules promoting research, encouraging development of intellectual property and other inventions and discoveries by university system employees, and protecting and marketing the inventions and discoveries. The rules must govern ownership or transfer of ownership rights and distribution of income that may be derived from an invention or discovery resulting from research or employment in the university system. The rules may provide for transfer of ownership rights or distribution of income to a private, nonprofit entity created for the support of the university system or one of its institutions.

Effective June 20, 2002, the SBHE adopted the current version of Policy 611.2 regarding intellectual property (IP); it has not been amended since its introduction.

In 2010, Chancellor William Goetz assembled a task force to “review relevant SBHE policy and state statutes and recommend appropriate revisions or amendments designed to encourage and support innovation and creative activities, reward individual initiative and productivity, promote utilization of intellectual property for the public benefit and protect institution and state interests.” The task force, made up of faculty and administrators from the University of North Dakota (UND) and North Dakota State

University (NDSU), determined that existing legislation was adequate but concluded that policy revisions were warranted and carefully prepared a draft of the same. While no formal Board action was taken at the time, this work laid an important foundation for the proposed revisions to Policy 611.2 presently before the SBHE. I should note that in the intervening years since the Chancellor's task force disbanded, further input has been gleaned from actual experience as well as from members of our campus communities, including faculty, students, and staff, and the SBHE is now a beneficiary of this growing body of wisdom.

The current revisions to Policy 611.2 are intended to update and refresh the language, ensure alignment with current best practices, and to clarify the scope of the policy, particularly with respect to research institutions. While Policy 611.2 currently contemplates the establishment of various institution-level *procedures*, UND and NDSU have also each enacted institutional IP policies as a means of providing further guidance to their respective campuses and to address issues not fully contemplated by Policy 611.2. It is not envisioned that Policy 611.2 would be supplanted on any campus. Rather, a revised Policy 611.2 would provide critical guidance to all eleven institutions, would stress the importance of enacting appropriate procedures, and would expressly acknowledge each institution's right and ability to make further, non-conflicting statements of policy.

While at a glance the revisions before the SBHE might appear significant, the core principles of current Policy 611.2 are retained. For example, the statement of purpose is substantially the same, with additional emphasis placed on the role of, and interrelationship between, research, intellectual property, and outcomes. The minimum thirty percent royalty distribution to inventors and authors is retained, as is the premise

embodied in the time-honored academic custom of permitting employee authors to own copyright in almost all of their writings, despite federal 'work-for-hire' law to the contrary. Finally, intact is the guiding principle that barring an overriding obligation – such as a contract or governmental requirement – the institutions are expected to retain ownership of and utilize their intellectual property for the benefit of North Dakota and the public.

The subject matter in Policy 611.2 that has received perhaps the most extensive review is that concerning students and IP. This review reflects an expanding national dialogue about creative activities, entrepreneurship, and how students view – and value – IP. It also demonstrates the view shared by many on our campuses that the SBHE and its institutions should take seriously their responsibility of managing expectations and outcomes with respect to IP which students play a role in developing. A prime example of this is the creation by the UND Senate of a permanent, voting student seat on its IP Committee. A revised Policy 611.2 will clearly outline those situations in which an institution may have an interest in IP created in whole or in part by students.

The North Dakota University System is committed to the recognition, identification, protection, and utilization of intellectual property developed on the campuses of its institutions, and to the recognition and compensation of those individuals responsible for its development. This process is facilitated by your generous allocation of state resources in support of our research mission, and is complemented by effective Board policy, adherence to state and federal laws governing research and IP, appropriate grant and contract management, and thoughtful institutional implementation of policies and procedures.

THANK YOU.