

North Dakota University System
Mid- Year Budget Status Report to the SBHE Budget and Finance Committee
For FY20 – Period Ending December 31, 2019
Policy 302.3

Campuses are required to report to the State Board of Higher Education Budget and Finance Committee on a mid-year basis, in December anytime one or more of the conditions noted below exist. If none of these conditions exists, campuses are not required to submit a report, but must notify the NDUS Office that none of these conditions exist.

1. Report a variance of (+/-) 5 percent or more is expected from original ANNUAL budget net tuition revenue estimates. Provide description of variance below – Report \$ and % amount of variance and # of students – Will variance continue Y/N? If yes, will variance continue into next fiscal year?

VCSU +\$403,000/+6.6%/+68 Student FTE - Increased enrollment along with conservative tuition budget predictions resulted in this increase. VCSU expects this positive variance will continue to year-end.

2. Report a variance of (+/-) 5 percent or more is expected from original annual budget revenue estimates for total auxiliaries. Provide description of variance below. Report \$ and % amount of variance. Report variance of 5% (+/-) in resident hall occupancy rates (fall to fall) over the previous year that is expected and/or realized.

DSU +112,000/+25% - Housing revenue is up due to a 10% increase in occupancy - which also relates the dining budget with more students on meal plans.

NDSCS +\$457,000/+5.7% - Revenue increase is due to the original budget being conservative.

VCSU +392,000/+14.3% - Revenue increase due to a 10% increase in housing occupancy from first year students with a corresponding increase in board plans.

MaSU -6.0% - Occupancy decrease due to lower than anticipated number of on-campus enrolled students.

NDSU -7.7% Occupancy variance is primarily due to increased bed availability as a result of new residence hall opening Fall 2019, compared to prior period.

3. Report a net position or fund variance deficit balance of \$100,000 or more (all campuses, except UND and NDSU) and \$250,000 or more at UND/NDSU that will be reportable at fiscal year-end. Provide description of deficit, explain the reason it happened and the expected timeframe and plan for elimination of the deficit. Is deficit tracking according to plan.

MiSU

Scoreboard Advertising-Dome; Fund 22245 has a deficit net asset balance of \$208,229; 8 local companies have signed 6-year advertising contracts which range from \$8,000 to \$12,000 per year. These funds will be deposited in this fund to cover the purchase cost and installation of the scoreboard. The annual advertising revenue will continually reduce the fund net asset deficit each year. The SBHE at their January 29, 2015 meeting authorized MiSU to proceed with an inter-fund borrowing for this project to be repaid by FY2020.

June 30, 2015	Dec 31, 2015	June 30, 2016	Dec 31, 2016	June 30, 2017
(\$425,323)	(\$467,905)	(\$471,729)	(\$449,229)	(\$392,229)
Dec 31, 2017	June 30, 2018	Dec 31, 2019		
(\$367,229)	(\$310,229)	(\$208,229)		

UND and UND Medical School**21546, EERC Fiscal Year End Carryover (2,158,503)**

June 30, 2013	June 30, 2014	June 30, 2015	June 30, 2016	June 30, 2017
(\$1,145,893)	(\$1,738,248)	(\$2,158,503)	(\$2,158,503)	(\$2,158,503)
Dec 31, 2017	June 30, 2018	Dec 31, 2019		
(\$2,158,503)	(\$2,158,503)	(\$1,814,590)		

22364, EERC Legal Costs. (903,885)

June 30, 2008	June 30, 2009	June 30, 2010	June 30, 2011	June 30, 2012
(\$1,937,385)	(\$1,753,238)	(\$1,551,701)	(\$1,356,000)	(\$1,153,847)
June 30, 2013	June 30, 2014	June 30, 2015	June 30, 2016	June 30, 2017
(\$945,875)	(\$945,615)	(\$915,150)	(\$904,340)	(\$903,885)
Dec 31, 2017	June 30, 2018	Dec 31, 2019		
(\$903,885)	(\$903,885)	(\$697,635)		

The EERC secured \$44M in new awards during FY18, met all financial obligations, and has a budget in place for FY19 that includes a six-year deficit reduction payment. The six-year deficit reduction plan includes paying down both the legal costs and the deficit over a six-year period, beginning with this fiscal year (FY19).

WSC

Athletics: (\$177,000) The deficit originated in fiscal years 15 & 16. Steady progress has been made toward the elimination of the deficit. The current approved deficit plan resolution date is 6/30/2020. WSC plans to write-off the remaining deficit against institutional funds at 6/30/2020. Increases in revenue streams are being generated through corporate sponsorships, ticket sales and fundraising efforts. Athletics will operate within budget by not adding expenditures.

NDSU **Roers Construction :** (\$474,657) As approved by the NDUS Chancellor, a fund was established to pay the costs of litigation for claims arising out of the A. Glenn Hill construction project.

NDSCS **Workforce Training :** (\$138,421) NDSCS has identified and implemented a plan which included a restructure of personnel and operating expenditures, as well as focusing on increased revenues. The net asset position has shown slight improvement. We will continue to monitor and review the plan at 6/30/2020 and make further adjustments if necessary.

4. Annual bond reserve requirements.

All campuses will meet bond reserve requirements.

5. If campus is a party to a legal action, provide the following for each:

- a. **Brief summary statement of the nature of the claim – (with first report)**
- b. **Summary statement concerning likelihood and estimate of loss – (with first report)**
- c. **Current status – (until action is closed)**

DSU

- a) Brief summary statement of the nature of the claim: DSU is party to a Title IX claim filed with the OCR(Office for Civil Rights), DSU has some legal costs outside of the AG's office to report to the OCR to be in compliance.
- b) Summary statement concerning likelihood and estimate of loss: Unknown amount at this time.
- c) Current Status: Working on a resolution agreement.

MiSU

- a) Brief summary statement of the nature of the claim: MiSU is party to a Title IX legal action for which there will likely be some liability.
- b) Summary statement concerning likelihood and estimate of loss: We are unable to estimate the amount at this time.
- c) Current Status: Complaint filed on January 23, 2017, and plaintiff requested a jury trial but no date has been set.

MiSU

- a) Brief summary statement of the nature of the claim: A student has filed suit against MiSU after slipping on an icy sidewalk.
- b) Summary statement concerning likelihood and estimate of loss: Attorneys for both parties are gathering information.
- c) Current Status: A court date has not been set.

- NDSCS** a) Brief summary statement of the nature of the claim:
CSI, Inc. v. KPH, Inc. and Western Surety Company v. NDSCS
 In March of 2016, NDSCS entered into a contract for KPH to be the general contractor for a campus infrastructure project. KPH subcontracted the asphalt paving work on the project to CSI. After completing its work on the project, CSI made a demand to KPH to be paid in excess of the executed contract and change order. Without providing any notice to NDSCS or the architect that a claim had been made, KPH denied the demand for payment. As a result, CSI filed a bond claim and initiated the present litigation. In answering the complaint, KPH added NDSCS as a third-party defendant. In its Answer, KPH denies that any damages are owed and states that CSI's claims are barred; additionally, the Answer states that any damages would be the responsibility of NDSCS, not KPH.
- b) Summary statement concerning likelihood and estimate of loss:
 NDSCS has answered the third-party complaint, asserting contractual and common law defenses, as well as a counterclaim against KPH. Loss likelihood is unknown, estimate up to \$148,067.
- c) Current Status:
 In the process of submitting a written mediation document for the mediator to propose a settlement.
- UND** a) Brief summary statement of the nature of the claim:
Robin Ayling v. Sens et al.
 Plaintiff is the mother of a former UND student killed while crossing the BNSF railyard in Grand Forks. She has previously sued the railroad as well as a fraternity and is now pressing several claims relating to Dr. Mary Ann Sens' role as medical examiner in the case. Suit was filed in the Northeast Central Judicial District Court (18-2017-CV-00889); the case was heard before Judge McCullough of the East Central District, and the case was subsequently dismissed. The North Dakota Supreme Court affirmed the decision of the District Court on April 25, 2019. Plaintiff filed a Petition for Rehearing on May 10, 2019. Order of Denial was served on August 7, 2019.
- b) Summary statement concerning likelihood and estimate of loss: Remote
- c) Current Status: This matter is now concluded. Plaintiff is pro se. Randall Hanson of Camrud, Maddock Olson and Larson, PO Box 5849 Grand Forks, ND 58206-5849 was appointed as SAAG for the state defendants.
- UND** a) Brief summary statement of the nature of the claim:
Padraic Power v. UND School of Law
 Plaintiff is a former law applicant who claims discrimination based on disability. The Office of Civil Rights at the Department of Education has investigated, concluding that there was no discrimination. A lawsuit was filed in US District Court of North Dakota (3:16-cv-00038-DLH-ARS). Plaintiff filed notice of Appeal to the Eighth Circuit on November 26, 2018. Plaintiff's brief was

accepted for filing on June 5th. Assistant Attorney General Elizabeth Fischer's brief was then accepted on July 8th.

Assistant Attorneys General James Wiese and Elizabeth Fischer are handling for UND. The Plaintiff is proceeding pro se.

- b) Summary statement concerning likelihood and estimate of loss: Likelihood of loss is remote.
- c) Current Status: Oral Arguments were made on December 10, 2019 - currently pending Oral Argument Response.

UND

- a) Brief summary statement of the nature of the claim:
Dr. Frank Cuozzo v. University of North Dakota and President Mark Kennedy.
Case Number: 18-2018-CV-00115

Former employee of the University sued in state court alleging monetary damages in the form of past and future lost wages, as a result of breach of Dr. Cuozzo's employment contract. An Order on Motions for Judgment on the Pleadings was filed August 15, 2018 by the Honorable Judge Jay Knudson denying Plaintiff's motion for Judgment and Granting Defendant's Motion for Judgment on Pleadings. The North Dakota Supreme Court affirmed the District Court's motion for Judgment on April 11, 2019.

- b) Summary statement concerning likelihood and estimate of loss: The likelihood of loss is remote.
- c) Current Status: This case has concluded.

UND

- a) Brief summary statement of the nature of the claim:
Breanna Berndsen et al. v. The North Dakota University System
Class action suit served and filed in the District Court of North Dakota (3:18 – cv-000125-DLH-ARS) on June 12, 2018 included eleven former UND women's hockey players alleging Title IX violation of discrimination and seeking reinstatement of the women's hockey program. The University filed its motion to dismiss Plaintiffs' complaint on August 24, 2018. An Order of Dismissal was granted on June 19, 2019. However, a Notice of Appeal was served and filed on July 17, 2019. Appellants' reply brief has been filed December 5, 2019 in the 8th Circuit Court of Appeals

Attorneys for the plaintiffs are Dan Siegel, 475 14th Street, Suite 500, Oakland, California 94612 and Attorney Sharon L. Van Dyck, 310 4th Avenue South, Suite 5010, Minneapolis, Minnesota 55415.

Matthew Sagsveen and Daniel Cohen are representing NDUS.

- b) Summary statement concerning likelihood and estimate of loss: The likelihood of loss is remote.
- c) Current Status: Pending decision.

- UND a) *Brief summary statement of the nature of the claim:*
Hans Bjellum et al. v. Dr. Cyril Tabe; Dr. Matthew Heberer; and Sanford Clinic North
 Pending medical malpractice case served in the District Court of North Dakota in which Plaintiff suffered complications following the placement of a pigtail catheter; which in turn resulted in additional medical care and treatment. Plaintiff passed away on July 28, 2017. Dr. Matthew Heberer is named as a Defendant. Dr. Heberer is a UND surgery resident.
- b) *Summary statement concerning likelihood and estimate of loss:* The likelihood of loss is remote.
 The Summons and Complaint were delivered to the School of Medicine and Health Sciences on June 14, 2018. Answer was served and filed alleging Dr. Heberer was, at all times acting as an Agent or employee of the UND SMHS. To date, Plaintiff has not engaged in Discovery. Defendant Heberer's Motion for Summary Judgment was filed on December 4, 2019. The University's professional liability carrier is providing the defense and Risk Management (Vicki Ableidinger) is coordinating. Randi Hanson from Camrud, Maddock, Olson and Larson is providing the defense.
- Attorney for Plaintiff is Nathan Severson of Severson, Wogsland & Liebl, 4627 44th Avenue South, Suite 108, Fargo, ND, 58104.
- c) *Current Status:* Motion for Summary Judgment has been Filed

- UND a) *Brief summary statement of the nature of the claim:*
Duane Barth v. Sanford Clinic North, Sanford Health, Sanford Medical Center Fargo, State of North Dakota (The University of North Dakota) and JOHN AND JANE DOES 1 to 5.
 Pending medical malpractice claim served and filed on September 12, 2018 arising out of Plaintiff's treatment by UND employee Dr. Sticca and medical resident Crystal Cardwell at Sanford Medical Center circa September 1, 2008. Cardwell documented that Plaintiff had a CT scan with findings of renal cell carcinoma in Plaintiff's right kidney. However, Plaintiff was ultimately not advised by Dr. Sticca or Cardwell of the renal cell carcinoma diagnosis. No additional right renal mass workup was performed, nor was Plaintiff advised of urological consultation or of any further care and treatment of the kidney. Numerous healthcare providers continued to treat Plaintiff over the course of the next ten years, each failing to provide further notation or notification to Plaintiff of the presence of the renal cell carcinoma. On March 7, 2018 Urologist Dr. Bates evaluated Plaintiff and recommended the removal of the right kidney. Plaintiff is seeking monetary relief in the amount of \$50,000.00 for economic damages. Plaintiff is also seeking monetary relief in the amount of \$50,000.00 for non-economic damages. Lastly, Plaintiff is seeking judgment of interest, including judgment of pre-judgment

interest, costs and disbursements incurred as well as further relief that may be just and proper. Plaintiff's Notice to Take Deposition on September 4, 2019, and Subpoena Duces Tecum directed to Dr. Robert Sticca and Dr. Jay MacGregor was served on August 6, 2019. Subsequently Objections to Plaintiff's Subpoena Duces Tecum directed to Dr. Robert Sticca and Dr. Jay MacGregor served August 14, 2019. Jury Trial has been scheduled for March 10, 2020.

Plaintiff is pro se ; service was never effected on any named Defendants.

Summary statement concerning likelihood and estimate of loss: The likelihood of loss is remote.

a) Current Status: Jury Trial Scheduled for March 10, 2020

6. Campus anticipates the need for deficiency appropriation.

NDSU On January 16, 2018 NDSU was served with a complaint for claims arising out of the A. Glenn Hill Center construction project. NDSU was authorized to: (1) retain outside counsel and defend the lawsuit including initiating 3rd-party actions; and (2) establish a deficiency fund to pay the costs of the litigation in the expectation that NDSU would seek reimbursement of such costs through a deficiency appropriation in a future legislative session. The litigation ultimately involved nine different parties and settled prior to trial pursuant to a Settlement Agreement and Release, dated November 7, 2019, which was approved by the SBHE. NDSU is seeking a deficiency appropriation to cover the litigation costs in the amount of \$474,657 in the 2021-23 legislative session.

NDSU NDSU entered into a Settlement Agreement and Release, dated November 7, 2019, with the approval of the SBHE, which ended the construction litigation pertaining to the A. Glenn Hill Center. Pursuant to the Settlement Agreement, NDSU paid the plaintiff \$38,609.38 which was the amount remaining of the Legislative authorization for the project. In addition, NDSU agreed to seek Legislative authorization and appropriation for an additional payment to the plaintiff of \$125,000. NDSU could not make this payment without Legislative authorization pursuant to NDCC 54-27-12.

7. Other events having a significant impact on campus revenues or expenses.

NDSU **Student enrollment**
Student enrollment trends and demographics indicate a regional and nation-wide decrease in the number of college age students. This will affect NDSU's student enrollment. We continue to evaluate and monitor tuition revenues, adjusting spending levels as necessary.

WSC TrainND assisted the Petroleum Council in the development of the One Basin One Way program and this will result in an increase of TrainND revenues by 10%.

NDUS New Capital and Operating Leases		
6/30/2019 through 12/31/2019		
Campus	Capital Leases	Operating Leases
	Ending Principal Balance Due	Minimum Future Payments Reported
DCB	\$ 8,656	\$ -
DSU	25,714	149,448
LRSC	66,742	-
MaSU	12,780	-
MiSU	23,436	67,587
NDSCS	57,204	-
NDSU	-	52,463
UND*	-	73,278
VCSU	9,043	-
NDUS Total	\$ 203,575	\$ 342,776

* UND has a new Aerospace Foundation 72 month operating lease that is not included in the minimum future payments due to the payment based on monthly usage.

Campus	Lease Type	Lease Start Date	Fund #	Description	Lease Term (in months)	Principal New Leases
LRSC	Capital	07/01/19	31550	Copier Lease (Nursing-Grand Forks)	60	\$ 5,671
LRSC	Capital	08/01/19	31550	Copier Lease (Student Services)	60	11,904
LRSC	Capital	08/01/19	31550	Copier Lease (Copy Center)	60	14,407
LRSC	Capital	09/01/19	31550	Printer Lease (I.T.)	36	1,602
LRSC	Capital	08/01/19	31550	Copier Lease (GFAFB)	60	10,014
LRSC	Capital	08/01/19	31550	Copier Lease (Business Office)	60	6,693
LRSC	Capital	08/01/19	31550	Copier Lease (Academic Affair)	60	11,904
LRSC	Capital	08/01/19	10100	Copier Lease (Bookstore)	60	4,547
MASU	Capital	07/01/19	31500	Copier/Printer Lease	60	12,780
DSU	Capital	07/01/19	26502	Konica Press	60	25,714
VCSU	Capital	11/01/19	20099	Copier Lease	63	9,043
DCB	Capital	11/01/19	31401	Postage Meter	60	8,656
MiSU	Capital	Waiting on final paperwork	30206	Copier Lease (Teacher Education)	60	9,832
MiSU	Capital	Waiting on final paperwork	10213/3021	Copier Lease (Humanities)	60	6,045
MiSU	Capital	Waiting on final paperwork	31800	Copier Lease (Facilities)	60	7,559
NDSCS	Capital	08/01/19	10250	Postage Meter	60	19,215
NDSCS	Capital	08/01/19	10250	Mail Tracking System	60	37,989

Campus	Lease Type	Lease Start Date	Fund #	Description	Lease Term (in months)	Minimum Operating Future Payments Reported
NDSU	Operating	09/07/18	None Yet	Edward Lechner - Land	38	17,510.00
NDSU	Operating	11/01/18	None Yet	Edward Lechner - Land	36	34,953.00
MISU	Operating	07/01/19	44377	Space in Horizon Building-BSC	24	67,586.52
DSU	Operating	07/01/19	22545	Horizon Building Lease	24	149,448.00
UND	Operating	07/01/19	31400	ND Vision Services/School for the Blind	24	5,800.00
UND	Operating	07/01/19	None Yet	UND Aerospace Foundation (PMATS)	72	varies based on usage
UND	Operating	07/01/19	26134	Empire Arts Center	12	15,000.00
UND	Operating	12/01/19	20895/43300	Lake Agassiz Regional Development	10	3,500.00
UND	Operating	07/01/19	31100	Trinity Health	24	48,978.00