

LEGISLATIVE BILL 546

Approved by the Governor March 26, 2014

Introduced by Kolowski, 31.

FOR AN ACT relating to universities and colleges; to amend sections 85-404 and 85-408, Reissue Revised Statutes of Nebraska, sections 85-1413 and 85-1416, Revised Statutes Cumulative Supplement, 2012, and section 85-1418, Revised Statutes Supplement, 2013; to eliminate and change provisions relating to the review of certain capital construction projects as prescribed; to harmonize provisions; to repeal the original sections; and to outright repeal section 85-1415, Revised Statutes Cumulative Supplement, 2012.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 85-404, Reissue Revised Statutes of Nebraska, is amended to read:

85-404 Either of the boards referred to in section 85-403 is hereby specifically authorized and empowered, by resolution or agreement, to pledge all or any part of the revenue and fees derived from the operation of the dormitories, residence halls, single-dwelling or multiple-dwelling units, buildings, and facilities for parking and other facilities for housing, boarding, athletic purposes, medical care, and physical development and other activities of students, faculties, or employees of such institutions referred to in section 85-403, or any of them, erected or acquired, or previously erected or acquired by such board, and contract as to the care, insurance, management, and operation of such buildings and facilities and the charges to be made and the rights of the holders of the revenue bonds. When the board contracts that the operation of any building or facility or part thereof shall be performed other than by the board itself, the board shall at all times maintain supervision thereof and control over the fees and charges imposed for the use thereof.

When such board proposes to pledge all or any part of the revenue and fees from buildings and facilities other than the building or facility to be constructed, the plans for such building or facility to be constructed, including financing plans, shall ~~first~~ be reviewed by ~~the Coordinating Commission for Postsecondary Education as provided in section 85-1415~~ and approved or disapproved by the Legislature or, if the Legislature is not in session, the Executive Board of the Legislative Council, ~~as provided in such section.~~

Sec. 2. Section 85-408, Reissue Revised Statutes of Nebraska, is amended to read:

85-408 The boards are authorized and directed to establish and maintain such schedule of rates, fees, or charges for the use of the facilities afforded by the buildings constructed or acquired under sections 85-401 to 85-411 and other facilities controlled by such board, the revenue of which in whole or in part is pledged to the holder of the bonds, which shall be in an amount at least sufficient on the amortization plan to pay the operating and maintenance charges thereof and the principal and interest representing the indebtedness against the income and revenue therefrom and may be sufficient in amount to provide for such bond reserve, replacement, and surplus funds as the boards in their discretion shall determine. The amounts in such funds shall be expended for such purposes in connection with the facilities as the boards shall determine, and any amount in any surplus or replacement fund and any amounts received through the sale, condemnation, or destruction of any facilities may be used to construct, repair, or replace any of the types of facilities described in section 85-403. Any amounts in such funds are specifically appropriated to the purposes of such funds and shall at all times be subject to the orders of the boards accordingly.

Before any single expenditure in excess of five hundred thousand dollars is made from any such surplus or replacement fund, the board concerned shall first submit such proposed expenditure to ~~the Coordinating Commission for Postsecondary Education for review as provided in section 85-1415~~ and secure the approval or disapproval of the Legislature or, if the Legislature is not in session, of the Executive Board of the Legislative Council, ~~as provided in such section.~~

Sec. 3. All capital construction projects, including applicable financing plans, proposed by any nonprofit corporation created by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges shall be submitted to the Legislature for review and approval or disapproval by the Legislature, or if the Legislature is not in session,

the Executive Board of the Legislative Council, when (1) state general funds, (2) funds received by the University of Nebraska or any state college for the purposes of reimbursing overhead costs and expenses in connection with any federal or other grant or contract, (3) tuition, or (4) the state's operating investment pool investment income constitutes all or any part of the funds used for the repayment of all or any part of the bonds of such nonprofit corporation.

Sec. 4. Section 85-1413, Revised Statutes Cumulative Supplement, 2012, is amended to read:

85-1413 (1) Pursuant to the authority granted in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act, the commission shall establish and revise as needed a comprehensive statewide plan for postsecondary education which shall include (a) definitions of the role and mission of each public postsecondary educational institution within any general assignments of role and mission as prescribed in sections 85-917 to 85-966 and (b) a plan for facilities which utilize tax funds designated by the Legislature.

(2) The planning process of the commission (a) shall be policy-based and ongoing in order to achieve, within the coordination function of the commission pursuant to section 85-1403, the best possible use of available state resources for high quality and accessible postsecondary educational services and (b) shall take into consideration (i) the needs of the state as described in subsection (3) of this section, (ii) general assignments of role and mission for each public institution in sections 85-917 to 85-966, and (iii) plans for facilities which utilize tax funds designated by the Legislature.

(3) In establishing the plan, the commission shall assess the postsecondary educational needs of the state in the following areas:

- (a) The basic and continuing needs of various age groups;
- (b) Business and industrial needs for a skilled work force;
- (c) Demographic, social, and economic trends;
- (d) The needs of the ethnic populations;
- (e) College attendance, retention, and dropout rates;
- (f) The needs of recent high school graduates and place-bound adults;

- (g) The needs of residents of all geographic regions; and
- (h) Any other areas the commission may designate.

(4) The plan shall provide a structure or process which encourages and facilitates harmonious and cooperative relationships between public and private postsecondary educational institutions and shall recognize the role and relationship of elementary and secondary education and private postsecondary educational institutions in the state to postsecondary education.

(5) The commission shall incorporate into the plan provisions and policies to guide decisionmaking by the commission pursuant to this section and ~~sections 85-1414 and 85-1415.~~ section 85-1414. The provisions and policies shall address issues which include, but are not limited to:

(a) The facilitation of statewide transfer-of-credit guidelines to be considered by institutional governing boards. The statewide transfer-of-credit guidelines shall be designed to facilitate the transfer of students among public institutions. The statewide transfer-of-credit guidelines shall not require nor encourage the standardization of course content and shall not prescribe course content or credit value assigned by any public institution to the courses;

(b) Recommended guidelines for admissions which recognize selective and differentiated admission standards at public institutions and which are consistent with the role and mission of each public institution. It is the intent of the Legislature that changes in admission standards be implemented in conjunction with the role and mission statements established pursuant to this section and sections 85-917 to 85-966 and the adoption of statewide transfer-of-credit and remedial program policies to assure that access to postsecondary education is not limited;

(c) Recommended enrollment guidelines consistent with the role and mission of each public institution and specific recommendations designed to increase diversity through more effective enrollment and retention at public institutions;

(d) Recommended guidelines for rational and equitable statewide tuition rates and fees for public institutions. The commission shall identify public policy issues relating to tuition and fees of the public postsecondary educational institutions in the state. The recommended guidelines shall take into account the role and mission of each public institution and the need to maximize access to public postsecondary education regardless of a student's

financial circumstance;

(e) In conjunction with and consistent with its recommended guidelines on admission standards, recommended guidelines which place the primary emphasis at the community college level for postsecondary education remedial programs and reduce the role of the University of Nebraska in offering remedial programs. The commission shall collaborate with the Commissioner of Education to develop recommendations for secondary schools designed to reduce the need for remedial or developmental programs at the postsecondary level;

(f) In consultation with the governing boards or their designated representatives, designation of geographic and programmatic service areas for each public institution consistent with role and mission assignments. Except as permitted by the commission pursuant to section 85-1414, no public institution shall provide programs at any site outside its assigned geographic and programmatic service area unless permitted under rules and regulations adopted and promulgated by the commission;

(g) After consultation with the governing boards and experts from outside the State of Nebraska, the establishment of a peer group or groups for each public institution for purposes of budget review. In fulfilling this charge, the commission may accept a peer group determined by a governing board in consultation with out-of-state experts;

(h) Effective use of information technologies and telecommunications to aid in the delivery of instruction at the postsecondary level. In cooperation with the Nebraska Educational Telecommunications Commission, other state agencies, and, when appropriate, representatives of elementary and secondary public education, the commission may assist in the development of instructional delivery systems employing information technologies and telecommunications. The commission, with the involvement of faculties, public institutions and private postsecondary educational institutions, and the information technology and telecommunications community, shall establish policies to ensure that the objectives of quality and efficiency are met in the delivery of information technology and telecommunications-aided instruction;

(i) Workforce development. The commission shall explore methods to improve the competitive quality of the work force and shall encourage enhanced communications and partnerships between public institutions and business and industry;

(j) Public service activities. The public institutions shall develop and provide to the commission a comprehensive inventory of public service programs and activities of public institutions; and

(k) Financial aid strategy. The commission shall develop a state strategy for state-supported student financial aid programs with the goal of assuring access to and choice in postsecondary education in Nebraska for Nebraska residents within the limits of available state resources.

(6) The commission shall develop a unified statewide facilities plan in consultation with the governing boards or their designated representatives and update the plan periodically.

(7) Prior to March 15 of the year following a year in which any revision is made to the comprehensive statewide plan, the Education Committee of the Legislature shall review the comprehensive statewide plan and revisions thereto at a public hearing and report its findings electronically to the Legislature.

Sec. 5. Section 85-1416, Revised Statutes Cumulative Supplement, 2012, is amended to read:

85-1416 (1) Pursuant to the authority granted in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act, the commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403, review and modify, if needed to promote compliance and consistency with the comprehensive statewide plan and prevent unnecessary duplication, the budget requests of the governing boards.

(2)(a) At least thirty days prior to submitting to the Governor their biennial budget requests pursuant to section 81-1113 and any major deficit appropriation requests pursuant to instructions of the Department of Administrative Services, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges shall each submit to the commission an outline of its proposed operating budget. The outline of its proposed operating budget or outline of proposed state aid request shall include those information summaries provided to the institution's governing board describing the respective institution's budget for the next fiscal year or biennium. The outline shall contain projections of funds necessary for (i) the retention of current programs and services at current funding

levels, (ii) any inflationary costs necessary to maintain current programs and services at the current programmatic or service levels, and (iii) proposed new and expanded programs and services. In addition to the outline, the commission may request an institution to provide to the commission any other supporting information to assist the commission in its budget review process. An institution may comply with such requests pursuant to section 85-1417.

(b) On September 15 of each biennial budget request year, the boards of governors of the community colleges or their designated representatives shall submit to the commission outlines of their proposed state aid requests.

(c) The commission shall analyze institutional budget priorities in light of the comprehensive statewide plan, role and mission assignments, and the goal of prevention of unnecessary duplication. The commission shall submit to the Governor and Legislature by October 15 of each year recommendations for approval or modification of the budget requests together with a rationale for its recommendations. The recommendations submitted to the Legislature shall be submitted electronically. The analysis and recommendations by the commission shall focus on budget requests for new and expanded programs and services and major statewide funding issues or initiatives as identified in the comprehensive statewide plan. If an institution does not comply with the commission's request pursuant to subdivision (a) of this subsection for additional budget information, the commission may so note the refusal and its specific information request in its report of budget recommendations. The commission shall also provide to the Governor and the Appropriations Committee of the Legislature on or before October 1 of each even-numbered year a report identifying public policy issues relating to student tuition and fees, including the appropriate relative differentials of tuition and fee levels between the sectors of public postsecondary education in the state consistent with the comprehensive statewide plan. The report submitted to the committee shall be submitted electronically.

(3) At least thirty days prior to submitting to the Governor their biennial budget requests pursuant to section 81-1113 and any major deficit appropriation requests pursuant to instructions of the Department of Administrative Services, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges shall each submit to the commission information the commission deems necessary regarding each board's capital construction budget requests. The commission shall review the capital construction budget request information and may recommend to the Governor and the Legislature modification, approval, or disapproval of such requests consistent with the statewide facilities plan and any project approval determined pursuant to subsection (10) of section 85-1414, ~~and to section 85-1415.~~ The recommendations submitted to the Legislature shall be submitted electronically. The commission shall develop from a statewide perspective a unified prioritization of individual capital construction budget requests for which it has recommended approval and submit such prioritization to the Governor and the Legislature for their consideration. The prioritization submitted to the Legislature shall be submitted electronically. In establishing its prioritized list, the commission may consider and respond to the priority order established by the Board of Regents or the Board of Trustees in their respective capital construction budget requests.

(4) Nothing in this section shall be construed to affect other constitutional, statutory, or administrative requirements for the submission of budget or state aid requests by the governing boards to the Governor and the Legislature.

Sec. 6. Section 85-1418, Revised Statutes Supplement, 2013, is amended to read:

85-1418 (1) No state warrant shall be issued by the Department of Administrative Services or used by any public institution for the purpose of funding any program or capital construction project which has not been approved or which has been disapproved by the commission pursuant to the Coordinating Commission for Postsecondary Education Act. If state funding for any such program or project cannot be or is not divided into warrants separate from other programs or projects, the department shall reduce a warrant to the public institution which includes funding for the program or project by the amount of tax funds designated by the Legislature which are budgeted in that fiscal year by the public institution for use for the program or project.

(2) Until July 1, 2013, the department may reduce the amount of state aid distributed to a community college area pursuant to the Community College Aid Act, or for fiscal years 2010-11, 2011-12, and 2012-13 pursuant to section 90-517, by the amount of funds used by the area to provide a program or capital construction project which has not been approved or which has been disapproved by the commission.

(3) The district court of Lancaster County shall have jurisdiction to enforce an order or decision of the commission entered pursuant to the Coordinating Commission for Postsecondary Education Act and to enforce this section.

(4) Any person or public institution aggrieved by a final order of the commission entered pursuant to section 85-1413, 85-1414, ~~85-1415~~, or 85-1416 shall be entitled to judicial review of the order. Proceedings for review shall be instituted by filing a petition in the district court of Lancaster County within thirty days after public notice of the final decision by the commission is given. The filing of the petition or the service of summons upon the commission shall not stay enforcement of such order. The review shall be conducted by the court without a jury on the record of the commission. The court shall have jurisdiction to enjoin enforcement of any order of the commission which is (a) in violation of constitutional provisions, (b) in excess of the constitutional or statutory authority of the commission, (c) made upon unlawful procedure, or (d) affected by other error of law.

(5) A party may secure a review of any final judgment of the district court by appeal to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

Sec. 7. Original sections 85-404 and 85-408, Reissue Revised Statutes of Nebraska, sections 85-1413 and 85-1416, Revised Statutes Cumulative Supplement, 2012, and section 85-1418, Revised Statutes Supplement, 2013, are repealed.

Sec. 8. The following section is outright repealed: Section 85-1415, Revised Statutes Cumulative Supplement, 2012.