

LEGISLATIVE BILL 196

Approved by the Governor March 13, 2006

Introduced by Raikes, 25

AN ACT relating to postsecondary education; to amend sections 85-408, 85-1402, and 85-1409, Reissue Revised Statutes of Nebraska, and section 85-1414, Revised Statutes Cumulative Supplement, 2004; to redefine terms; to change provisions relating to program and project review; and to repeal the original sections.

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

Section 1. 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 two hundred fifty 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 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. 2. Section 85-1402, Reissue Revised Statutes of Nebraska, is amended to read:

85-1402 For purposes of the Coordinating Commission for Postsecondary Education Act:

(1)(a) Capital construction project shall mean a project which utilizes tax funds designated by the Legislature and shall be: Any proposed new capital structure; any proposed addition to, renovation of, or remodeling of a capital structure; any proposed acquisition of a capital structure by gift, purchase, lease-purchase, or other means of construction or acquisition that (i) will be directly financed in whole or in part with tax funds designated by the Legislature totaling at least the minimum capital expenditure for purposes of this subdivision or (ii) is likely, as determined by the institution, to result in an incremental increase in appropriation or expenditure of tax funds designated by the Legislature of at least the minimum capital expenditure for the facility's operations and maintenance costs in any one fiscal year within a period of ten years from the date of substantial completion or acquisition of the project. No tax funds designated by the Legislature shall be appropriated or expended for any incremental increase of more than the minimum capital expenditure for the costs of the operations and utilities of any facility which is not included in the definition of capital construction project and thus is not subject to commission approval pursuant to the Coordinating Commission for Postsecondary Education Act. No institution shall include a request for funding such an increase in its budget request for tax funds designated by the Legislature nor shall any institution utilize any such funds for such an increase. The Governor shall not include in his or her budget recommendations, and the Legislature shall not appropriate, such funds for such increase.

(b) For purposes of this subdivision:

(i) Directly financed shall mean funded by:

(A) Appropriation of tax funds designated by the Legislature for the specific capital construction project;

(B) Property tax levies used to establish a capital improvement and bond sinking fund pursuant to section 85-1515; or

(C) That portion of tax funds designated by the Legislature and appropriated by the Legislature for the general operation of the public institution and utilized to fund the capital project;

(ii) Incremental increase shall mean an increase in appropriation or expenditure of tax funds designated by the Legislature of at least the minimum capital expenditure for a facility's operations and maintenance costs, beyond any increase due to inflation, to pay for a capital structure's operations and maintenance costs that are a direct result of a capital construction project; and

(iii) Minimum capital expenditure shall mean:

(A) For purposes of subdivision (a)(i) of this subdivision, a base amount of ~~two~~ five hundred thousand dollars; and

(B) For the facility's operations and maintenance costs pursuant to subdivision (a)(ii) of this subdivision, a base amount of ~~fifty~~ seventy-five thousand dollars for any one fiscal year.

Both base amounts shall be subject to any inflationary or market adjustments made by the commission pursuant to this subdivision. The commission shall adjust the base amounts on a biennial basis beginning January 1, ~~1996~~ 2008. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, both as selected by the commission in cooperation with the public institutions. The index or indices shall reflect inflationary or market trends for the applicable operations and maintenance or construction costs;

(2) Commission shall mean the Coordinating Commission for Postsecondary Education;

(3) Coordination shall mean:

(a) Authority to adopt, and revise as needed, a comprehensive statewide plan for postsecondary education which shall include (i) definitions of the role and mission of each public postsecondary educational institution within any general assignments of role and mission as may be prescribed by the Legislature and (ii) plans for facilities which utilize tax funds designated by the Legislature;

(b) Authority to review, monitor, and approve or disapprove each public postsecondary educational institution's programs and capital construction projects which utilize tax funds designated by the Legislature in order to provide compliance and consistency with the comprehensive plan and to prevent unnecessary duplication; and

(c) Authority to 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 or any other governing board for any other public postsecondary educational institution which may be established by the Legislature;

(4) Education center shall mean an off-campus branch of a public institution or cooperative of either public or public and private postsecondary educational institutions which offers instructional programs to students;

(5) Governing board shall mean the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, or the board of governors for each community college area;

(6) Program shall mean any program of instruction which leads directly to a degree, diploma, or certificate and, for purposes of section 85-1414, shall include public service programs and all off-campus instructional programs, whether or not such programs lead directly to a degree, diploma, or certificate. Program shall also include the establishment of any new college, school, major division, education center, or institute but shall not include reasonable and moderate extensions of existing curricula which have a direct relationship to existing programs;

(7) Public institution shall mean each campus of a public postsecondary educational institution which is or may be established by the Legislature, which is under the direction of a governing board, and which is administered as a separate unit by the board; and

(8) Tax funds designated by the Legislature shall mean all state tax revenue and all property tax revenue.

Sec. 3. Section 85-1409, Reissue Revised Statutes of Nebraska, is amended to read:

85-1409 (1) The members of the commission shall annually elect a chairperson and vice-chairperson from among their members.

(2) The commission shall hold regular meetings at times determined by the commission. Special or additional meetings may be held on the call of the chairperson or upon the call of at least three members. A majority of the members shall constitute a quorum at all meetings. Commission action on any

item shall require a majority of those present at meetings in which there is a quorum, except that adoption of the comprehensive statewide plan, or any changes or alternatives thereto, required by section 85-1413 and approval or disapproval of a new program or disapproval of an existing program pursuant to section 85-1414 shall require the concurrence of a majority of the members.

Sec. 4. Section 85-1414, Revised Statutes Cumulative Supplement, 2004, is amended to read:

85-1414 (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 an ongoing process to review, monitor, and approve or disapprove the new and existing programs of public institutions and proposed capital construction projects which utilize tax funds designated by the Legislature in order to provide compliance and consistency with the comprehensive statewide plan and to prevent unnecessary duplication. When complying with requests for information during the review, monitoring, and approval process, public institutions may comply pursuant to section 85-1417.

(2) (a) Governing boards shall submit to the commission all proposals for any new program after the governing board has approved the program and prior to implementation of the program. Except for programs submitted for conditional approval by the commission pursuant to subdivision (b) of this subsection, the commission shall have ninety days from the date the program was submitted to take action to approve or disapprove a program or it shall stand approved. The commission shall establish a waiver process for specific, short-term job training programs and short-term public service programs as defined by the commission. New programs submitted for review may be approved or disapproved in whole or in part and with or without recommended modifications based on criteria established pursuant to subsection (7) of this section.

(b) After approval of the program by the governing board, the governing board may submit a proposal for a program which is not authorized by the role and mission provisions of sections 85-917 to 85-966 to the commission for conditional approval. Within one hundred twenty days from its receipt of the proposal, the commission shall report to the Legislature its recommendation in support for or opposition to the amendments to the role and mission statutes that would be necessary for the commission to approve the program and for the institution to offer the program. The time period for submission of the report may be extended for up to an additional ninety days by resolution of the commission which shall show good cause why the extent of review required for this particular proposal necessitates an extension of time to complete the review. Such extension shall be filed with the chairperson of the Education Committee of the Legislature prior to the expiration of the initial one hundred twenty days. The report shall contain supporting rationale for the commission's position, such additional comments as the commission deems appropriate and, in the event the commission supports the amendments to the role and mission statutes, the commission's specific recommendation as to the form of such amendments. If the report indicates support for the necessary amendments to the role and mission statutes, the report shall also constitute the commission's conditional approval of the program, unless the report specifically indicates disapproval of the program. If the necessary amendments to the role and mission statutes supported by the commission in its report to the Legislature are subsequently enacted by the Legislature, the program shall stand approved. Nothing in this section for conditional approval shall be construed to affect the commission's future consideration of such proposal or approval or disapproval of any programs affected by the proposal.

(3) Following approval of a new program, such program shall be added to the schedule of existing programs to be reviewed by the commission. Following consultation with the governing board, new programs approved by the commission may also be required to meet, within a reasonable time as stipulated by the commission, minimum performance standards established by the commission pursuant to its rules and regulations. If a program fails to meet minimum performance standards, the commission shall review the program and may continue or withdraw its approval for the program.

(4) Existing programs shall be reviewed by the commission pursuant to a program review process established by the commission in consultation with the governing boards or their designated representatives which, to the extent possible while still allowing for timely review by the commission, shall coincide with institutional review and accreditation cycles. In reviewing existing programs, the commission may make use of nonconfidential information and conclusions provided by accreditation processes supplied to the commission by the institutions. All programs in existence prior to January 1, 1992, shall be considered approved until the approval is confirmed or withdrawn by the

commission pursuant to the program review process conducted by the commission.

(5) Existing programs which do not meet criteria established by the commission pursuant to subsection (7) of this section shall be targeted for indepth review by the public institutions and their governing boards. In performing such indepth review, institutions may make use of information and conclusions provided by accreditation and other established and ongoing academic review processes rather than providing for a separate review process. Programs continued by the governing boards shall be further monitored by the governing board which shall report the status and process of the monitoring to the commission. If the commission determines that a program does not merit continuation, it shall hold a public hearing, following thirty days' notice to the public institution, to consider if the program should be continued. Following the hearing, the commission shall take action to approve or disapprove continuance of the program.

(6) Existing programs disapproved for continuance by the commission shall be terminated by a public institution when all students in the program on the date of the decision of the commission to disapprove continuance of the program have had a reasonable opportunity, as determined by the governing board of the public institution, to complete the program. Existing public service programs disapproved for continuance by the commission shall be terminated at the end of the fiscal year in which the decision to disapprove is made.

(7) The commission shall establish criteria for the review, monitoring, and approval or disapproval of programs. The governing boards of the public institutions shall be responsible for assuring the quality and effectiveness of programs offered by their institutions. The commission's criteria shall be designed to (a) meet educational needs and (b) assure efficiency and avoid unnecessary duplication. Criteria shall include:

- (i) Centrality to the role and mission of the public institution;
- (ii) Consistency with the comprehensive statewide plan;
- (iii) Evidence of need and demand; and
- (iv) Adequacy of resources to support proposed new programs.

The criteria shall not infringe on the prerogative of the governing boards to make decisions on the quality of staff and the design of curriculum.

(8) The commission shall develop specific criteria for review, monitoring, and approval or disapproval of participation by any public institution in proposed or existing education centers in addition to the criteria specified in this section. Participation by a public institution in an education center shall also be approved by the governing board of such public institution. The commission shall develop policies and procedures for conducting and approving off-campus programming in an education center.

(9) Each public institution shall submit its most recent institutional facilities plan to the commission subject to commission guidelines for the format and content of such plans. The commission shall (a) review each institutional facilities plan to ensure (i) consistency with the comprehensive statewide plan, statewide facilities plan, and institutional role and mission assignments and (ii) identification of unnecessary duplication of facilities and (b) make a written report of its review to the governing board of the public institution within ninety days after receipt of the institutional facilities plan. The commission may, in accordance with the coordination function of the commission pursuant to section 85-1403, recommend modifications to the institutional facilities plans and may require submission of periodic updates of the institutional facilities plans.

(10) Governing boards shall submit all proposed capital construction projects which utilize tax funds designated by the Legislature to the commission for review and approval or disapproval. The commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403, review, monitor, and approve or disapprove each such capital construction project to provide compliance and consistency with the statewide facilities plan and the comprehensive statewide plan and to prevent unnecessary duplication of capital facilities. The commission may disapprove a project only on the basis of a finding by the commission that the project (a) does not comply or is inconsistent with one or more provisions of the statewide facilities plan or other relevant provisions of the comprehensive statewide plan or (b) will result in unnecessary duplication of capital facilities.

(11) In fulfilling its program and project approval activities prescribed in this section, the commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403, recognize educational activities among all segments of postsecondary education and take into account the educational programs, facilities, and other resources of both public and independent and private postsecondary educational institutions.

(12) Any program which is authorized by action of the Legislature or a governing board and which is not in existence prior to January 1, 1992, shall not become operative unless and until such program has been approved by the commission pursuant to this section.

Sec. 5. Original sections 85-408, 85-1402, and 85-1409, Reissue Revised Statutes of Nebraska, and section 85-1414, Revised Statutes Cumulative Supplement, 2004, are repealed.