

BOARD OF REGENTS  
BRIEFING PAPER

**1. Agenda Item Title: Authority to Negotiate Purchase of Real Property**

**Meeting Date: September 9, 2010**

**2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

Board policy (Title IV, Chapter 10, Section 1, Paragraph 9 permits an NSHE institution to conduct negotiations for the acquisition or disposition of real property with the approval of the Chancellor, However, the Chancellor must obtain Board approval prior to commencing any such negotiations. The nature of real property transactions is such that a range of likely costs and other terms cannot be narrowed in advance of some negotiations and Board approval is therefore granted in a relative information vacuum

**3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

The Chancellor requests an amendment of Title IV, Chapter 10, Section 1.9 to permit the Chancellor to commence negotiating for the acquisition and disposition of real property after consulting with the Chair of the Investment and Facilities Committee (or the Chair of the Board). Once a contract is negotiated, the actual purchase agreement would then be brought to the Board for approval. A form of a Proposed Amendment attached.

**4. IMPETUS (WHY NOW?):**

Negotiations for the acquisition or disposition of real property are generally complex and, especially in the context of a favorable market, delay in commencing negotiations can result in a lost opportunity. In today's real property market sellers, especially with respect to lenders who have foreclosed or will be foreclosing, time is a critical factor. Given, the usual timeline for obtaining Board approval of an agreement to acquire or sell real property, the System is at a negotiating disadvantage where it must first obtain formal Board approval prior to commencing the formal negotiating process.

**5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- The System leases a number of real property locations for a variety of occupancies where significant cost savings, especially total long term costs, can be achieved by financing the purchase of properties at current low values and near record low interest rates with resulting low debt service costs compared to every increasing rental costs.
- Under current Board policy, the Chancellor may not commence negotiations for an acquisition or sale without first obtaining Board approval, a process which, in the absence of a special meeting of the Board, can delay the start of negotiations by a substantial period, during which time the seller/buyer may proceed to contract with a 3<sup>rd</sup> party.
- Any agreement negotiated by the Chancellor under a revised policy would remain subject to Board approval.

**6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

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**7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

- Require approval by the Chair of the Investment and Facilities committee as the specifics of the transaction.
- Require the Chancellor to consult with or obtain the approval of the Chair of the Board
- Leave existing policy in place.

**8. COMPLIANCE WITH BOARD POLICY:**

- Amends Current Board Policy: Title # IV Chapter # 10 Section # 1.9
- Amends Current Procedures & Guidelines Manual: Chapter # \_\_\_\_\_ Section # \_\_\_\_\_
- Other: \_\_\_\_\_
- Fiscal Impact: Yes \_\_\_\_\_ No. X

Explain: This item only requests approval for the Chancellor to commence negotiation of a contract which would be subject to separate Board approval.

**POLICY PROPOSAL – HANDBOOK**  
**TITLE IV, CHAPTER 10, SECTION 1**  
**Paragraph 9a**  
**ACQUISITION OR SALE OF REAL PROPERTY**

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Title IV, Chapter 10, Section 1, Paragraph 9 of the Handbook outlines the codified policies of the Board of Regents relating to the acquisition or sale of real property. Paragraph 9a is proposed to be modified as follows:

- a. Before the President of a NSHE institution can commence negotiations for the purchase or sale of real property on behalf of the Board of Regents, the Chancellor's approval must first be obtained. The Board's approval of a campus master plan is deemed to constitute prior approval of the acquisition of property according to the terms of the master plan.

Before the Chancellor can commence negotiations for the purchase or sale of real property on behalf of the Board of Regents, [~~Board approval must first be obtained.~~] ***the Chancellor shall first consult the Chair of the Investment and Facilities Committee. Upon completion of negotiations any agreement shall then be subject to Board approval.***

All real property acquired or sold by the Board of Regents of NSHE or any unit or subdivision thereof shall be acquired in the name of the Board of Regents of the NSHE.

The granting of an easement is considered a 'sale' of an interest in real property except that the granting of a subsurface utility easement shall not be considered a "sale" subject to approval by the Board of Regents and may be approved by the Chancellor if: (i) there is first a determination by the Chancellor that the easement being granted is not inconsistent with the intent of an applicable campus master plan; (ii) form of the grant of easement has been reviewed and approved by the NSHE Office of the Chief Counsel; (iii) the Chancellor finds that the grant of the easement is either in the best interest of the System or the grantee is paying consideration not less than the fair market value of the easement; and (iv) notice of intent to grant the easement is given to the members of the Investment and Facilities Committee of the Board of Regents at least 30 days prior to the granting of the easement.