BOARD OF REGENTS
BRIEFING PAPER

1. **Agenda Item Title: *CODE* REVISION, ATHLETIC DIRECTOR AND COACH CONTRACT PROCEDURES**

Meeting Date: September 5-6, 2013

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

At the April 19, 2013, Special Meeting of the Board, the Regents requested a proposal be brought forward to revise existing policies regarding approval of coaching contracts to only require contracts that exceed three years in length and $1.2 million in total compensation, including incentives but excluding standard perquisites available to all NSHE employees. These new limits would also apply to head football and men's and women's head basketball coaches, whose contracts currently must be approved by the Board. The new thresholds would not apply to athletic director contracts, which would continue to require Board approval.

The Regents also requested the proposal include new intercollegiate athletic best practices policies regarding athletic director and coach contract negotiations and approval by requiring the institutional counsel to negotiate such contracts on behalf of the institutional president and to further require the Vice Chancellor for Legal Affairs to approve the form of the contract prior to the contract becoming effective.

The background to consideration of revising the coaching oversight provisions is rooted in the "Crowley study". In June 2011, an eight member ad hoc committee was formed at the request of Chancellor Daniel Klaich to conduct a comparative study of athletic director and head coach search and appointment processes. The committee was chaired by former University of Nevada, Reno President Dr. Joe Crowley and included the athletic directors of the two universities, two NSHE head coaches, two Emerita and the NSHE Director of Human Resources. One of the findings of the Crowley Study was expressed in this language:

> *The committee is concerned that, as a policy-making entity, the Board of Regents is significantly burdened by the necessity of reviewing and approving a number of head coach and assistant coach appointments that could effectively be handled in other ways.*

The Crowley study recommended relieving the Board of the burden of reviewing contracts below certain monetary and length thresholds and instead assigning to the presidents the authority for these contracts, with a requirement for regular reporting to the Board by the presidents through the chancellor. The Board adopted the Crowley recommendations. However, in recent meetings, some Board members have expressed concern that the Board is still burdened by review of some athletic contracts beyond the scope of the Crowley study revisions.

Additionally, recent Association of Governing Boards of Universities and Colleges best practices recommendations have emphasized the importance of involving institutional counsel in contract negotiations, especially because of the growing practice of multi-year contracts and the so-called "arms race" in contract amounts.

At the June 6-7, 2013, meeting of the Board of Regents, the Board considered a proposal to revise existing policies regarding approval of coaching contracts based upon the Board's discussion at the April 19, 2013 meeting. Additionally, there was discussion about the proper role and scope of Board approval of athletic contracts and the extent to which, if any, the Board should limit its review process to contract terms as opposed to reviewing more general athletic oversight policies during review of a specifically proposed athletic contract .

A revised proposal is presented to the Board incorporating suggestions and concerns raised at the June meeting. Among the revisions are the use of the term "total compensation" instead of the term "salary", use of the terms, "fringe benefit" and "outside income" in addition to the existing terms such as "perquisites" and "performance bonuses." These new definitions are designed to address concerns raised at the June meeting about exactly what elements would be considered part of the term "salary" and the desire for a more precise definition of what is included in the term "perquisites." The revised proposal also presents several decision units to address concerns

expressed during the June meeting about the proposed level of involvement of institutional counsel and the role of the Vice Chancellor for Legal Affairs in contract negotiation and preparation. Additionally, the revision addresses some issues surrounding the appropriate scope of Board contract review and the extent to which it should or should not involve discussions of general athletic policies unrelated to the particular contract under consideration. Finally, the revision addresses the issue of relocating candidates or holding events involving introductions of new coaches or athletic directors prior to Board approval of a candidate's contract.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

The revised proposal regarding approval of coaching contracts only requires contracts that exceed three years in length and $1.2 million in total compensation, including incentives and perquisites but excluding standard fringe benefits, be approved by the Board. These new limits would also apply to head football and men's and women's head basketball coaches, whose contracts currently must be approved by the Board. The new thresholds would not apply to athletic director contracts, which would continue to require Board approval.

The revised proposal modifies the original proposal by using the term "total compensation" instead of "salary." It also differentiates between "fringe benefits" and "perquisites" and defines both these terms. "Total compensation" is defined to include "perquisites" but exclude "fringe benefits."

The revised proposal contains decision units regarding the level of involvement of institutional counsel in the contract negotiation process. It also contains decision units regarding whether candidates for appointment shall appear before the Board at the time their contract is under consideration by the Board.

The proposal specifies the scope of the Board's contract review, providing for focus on the appropriateness of the contract terms and whether the president complied with due diligence policies but refraining from discussing general athletic policy consideration except those that pertain to the particular contract under consideration.

The proposal requires institutions to refrain from relocating a candidate or holding events introducing a candidate as a new coach or athletic director prior to a candidate's approval by the Board.

This is the second hearing at which this request is presented. Final action will be requested at the September 2013 meeting of the Board. *Handbook Title 2, Chapter 5, Section 5.4.2.*

4. IMPETUS (WHY NOW?):

Athletic oversight is an increasingly important function of governing boards and NSHE is no exception. However, as oversight increases, it is important that the time devoted to athletic issues be expended in the most efficient manner, delegating authority for certain functions when that is appropriate. Such a process allows the Board to allocate its time in a more balanced manner so that academic issues receive the time necessary to achieve the primary mission of a higher education institution, which is education and research. This is especially true in the current climate of budget restrictions which necessitate additional Board attention to fiscal issues. It is also prudent to address the increasingly complex and expensive athletic contract negotiation process by bringing to bear the expertise of institutional and System counsel.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Boards function most efficiently by appropriate delegation of authority over athletic issues, coupled with focused Board oversight on specific critical areas.
- Raising the threshold for Board approval of athletic contracts to $1.2 million and removing the requirement that head football coach contracts and men's and women's head basketball coach contracts must be approved by the Board, unless the contracts exceed the new thresholds, will lessen the number of such contracts the Board would otherwise have to review.
- Institutional and System counsel have special skills and expertise in contractual matters which can and should be deployed to serve the best interests of the institutions.
- Contract review should focus on contract terms and due diligence but avoid general athletic policy discussions.
- Institutions should not anticipate Board action by relocating a candidate or holding events introducing a candidate as a new coach or athletic director prior to approval of a candidate by the Board.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

Current delegation of authority over athletic policies adequately balances the need for institutional latitude and Board oversight. Raising the contract amount threshold to $1.2 million and eliminating Board approval of head football coach and men's and women's head basketball coach contracts will reduce Board oversight too much in important athletic program positions. As to the contract negation process, institutional presidents can currently avail themselves of assistance from counsel whenever a president desires counsel's participation.

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

Continue with existing policies and practices.

8. COMPLIANCE WITH BOARD POLICY:

☑ Consistent With Current Board Policy: Title # 4 Chapter # 24 Section #1(1)(a); 1(2)(a), and 1(5)(c) & Title # 4, Chapter # 3, Section # 30

☑ Amends Current Board Policy: Title # 2 Chapter # 5 Section # 5.4.2

❑ Amends Current Procedures & Guidelines Manual: Chapter #_____ Section #_____

❑ Other:_____

❑ Fiscal Impact: Yes_____ No_X__

Explain:_____

POLICY PROPOSAL - *HANDBOOK*
TITLE 2, CHAPTER 5, SECTION 5.4.2
Duration of Employment Contracts

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

INSERT NEW SECTIONS 5.4.2(f)-(h)

5.4.2 Duration of Employment Contracts.

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First Decision Unit 1. $1,200,000 contract term threshold 2. Definition of "total compensation" 3. Definition of "perquisites" 4. Chancellor approval of certain extended coaching contracts	[~~Except for head coaches of football and men's and women's basketball, c~~] ***C***ontracts for appointment of head athletic coaches and assistant coaches, including interim or acting appointments, shall require only approval of the institutional President as long as the term or remaining term of the contract together with any option that has been exercised or any extension that has been offered a) does not exceed 36 months, and b) the [~~salary~~] ***total compensation*** is [~~$200,000~~] ***$1,200,000*** or less for[~~a~~] ***the*** contract ~~year~~ ***term***. For these purposes, [~~salary~~] ***total compensation*** does not include standard [~~perquisites~~] ***fringe benefits*** available to all NSHE employees ***including but not limited to retirement contributions, insurance, travel, out-of-pocket expense reimbursement, annual and sick leave*** nor does it include ***outside income from sources including but not limited to commercial endorsements of products and services, income from written and video materials, summer camps or apparel and equipment endorsements. Total compensation includes*** performance bonuses [~~if such bonuses do not exceed $75,000 in any contract year~~] ***and perquisites including but not limited to moving expenses, host account, automobile allowance or privilege, housing allowance or privilege, club membership, guest travel, event tickets and media and personal appearances.*** (e) [~~Approval by~~] [t]***T***he chancellor [~~is required for~~] ***may approve*** [~~such~~] contracts [~~if the length of the contract or the salary~~] ***that*** exceed[~~s~~] [~~these limits~~] ***36 months for head athletic coaches and assistant coaches, other than head athletic coaches of football and men's and women's basketball***. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or

	binding, until the chancellor approves the appointments. The appointments shall be reported to the Board of Regents by the President and/or the chancellor. If, in the chancellor's opinion, any contract rises to a level in [~~size or~~] ***length of*** term that the Board's approval is needed, such approval will be required.
5. Continued Board approval of certain extended head coaching contracts, all contracts above the $1,200,000 threshold and all AD contracts	Contracts for ***head athletic coaches of football and men's and women's basketball that exceed 36 months, all contracts that exceed $1,200,000 for the contract term, and all contracts for*** directors of athletics [~~and head coaches of football and men's and women's basketball~~] shall require approval of the Board of Regents.
Second Decision Unit **(f-1)** Institutional counsel negotiates athletic contracts; president approves contract and Vice Chancellor for Legal Affairs reviews	***(f-1) Institutional counsel shall negotiate all athletic department personnel contracts involving directors of athletics or coaches on behalf of the president. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until approved by the president and by the Vice Chancellor for Legal Affairs, including as to consistency of form.***
	-or-
(f-2) Institutional counsel actively participates in athletic contract negotiations under president's direction; president approves contract and Vice Chancellor reviews	***(f-2) Under the direction of the president, institutional counsel shall actively participate in all athletic department personnel contracts involving directors of athletics or coaches and then shall draft the contract in accordance with the president's instructions. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until approved by the president and by the Vice Chancellor for Legal Affairs, including as to consistency of form.***
	-or-
f-3) President negotiates athletic contracts with assistance of institutional counsel; president approves contract and Vice Chancellor reviews	***(f-3) The president shall negotiate all athletic department personnel contracts involving directors of athletics or coaches with the assistance of institutional counsel. Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until approved by the president and by the Vice Chancellor for Legal Affairs, including as to consistency of form.***
	-or-
(f-4) President approves contract and Vice Chancellor reviews	***(f-4) Such appointments shall not take effect, and no employment contracts for such positions shall be issued or binding, until approved by the president and by the Vice Chancellor for Legal Affairs, including as to consistency of form.***

Third Decision Unit **(g-1)** Candidate must appear before Board during contract consideration	***(g-1) A candidate for appointment shall appear before the Board at the time the candidate's contract is under consideration. During the time devoted to the candidate's appearance, the Board's focus should be on the appropriateness of the contract terms and whether the president complied with Board due diligence policy in making the offer. The Board should refrain from discussing general athletic policy considerations except as those policies pertain to the particular contract under consideration.***
	-or-
(g-2) Candidate does not appear before Board during contract consideration	***(g-2) A candidate for appointment shall not appear before the Board at the time the candidate's contract is under consideration. The Board's focus should be on the appropriateness of the contract terms and whether the president complied with Board due diligence policy in making the offer. The Board should refrain from discussing general athletic policy considerations except as those policies pertain to the particular contract under consideration.***
Fourth Decision Unit No relocation or introduction of a candidate prior to Board approval of a contract	***(h) Institutions shall not relocate a candidate or hold events introducing a candidate as a new coach or athletic director until after the Board has approved the candidate's contract.***

REFERENCE BOR 19 – SEPTEMBER 5-6, 2013:
***CODE* REVISION, ATHLETIC DIRECTOR AND COACH CONTRACT PROCEDURES**

The Board of Regents approved the *Handbook* amendment presented in Ref. BOR 19 as follows:

- **First decision unit**: Approved as presented;
- **Second decision unit**: Approved (f3);
- **Third decision unit**: Approved neither (g1) nor (g2); and
- **Fourth decision unit**: Approved as presented.