

BOARD OF REGENTS  
BRIEFING PAPER

**1. Agenda Item Title: *Handbook* Revision to Title 4, Chapter 10, Section 1(9)  
Meeting Date: March 3-4, 2016**

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

At the December 3-4, 2015, Board of Regents meeting, the Board gave final approval to a revision to the committee charges for the Business and Finance Committee and the Investment and Facilities Committee that was first presented at the September 10-11, 2015, Board meeting. Because the committee charges are contained in the Bylaws, two readings of a proposed revision were required. The revision consisted of revising the charge for the Business and Finance Committee and the Investment and Facilities Committee by transferring responsibility for oversight of property acquisitions and use, recommendations respecting NSHE capital and improvement priority lists with the primary objective of affirming connections between requests and the institutional facilities master plans, and review and recommendations regarding institutional facilities master plans and space utilization models and data to the former committee from the latter. This revision also resulted in a change of the respective committee names to the Business, Finance and Facilities Committee and the Investment Committee.

Title 4, Chapter 10, Section 1(9) contains references to certain duties of the former Investment and Facilities Committee respecting real property issues such as purchase and sale of real property, dedication of real property, and the granting of easements. These references should have been revised to reflect the transfer of these duties to the new Business, Finance and Facilities Committee at the same time as the revisions to the committee charges were made. However, the Title 4 references were inadvertently not included in the December meeting request. The references in Title 4 to the Investment and Facilities Committee should be revised to reflect that they now pertain to the Business, Finance and Facilities Committee instead of the former Investment and Facilities Committee.

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

Revise the provisions in Title 4, Chapter 10, Section 1(9) referring to the former Investment and Facilities Committee to instead refer to the Business, Finance and Facilities Committee.

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

The Investment and Facilities Committee no longer exists and the correct reference should appear in the *Handbook*.

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

- The Investment and Facilities Committee no longer exists and the correct reference should appear in the *Handbook*.

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

There are none.

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

There are none; the *Handbook* provisions must be accurate.

**8. COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title # 1 Article # VI Section # 3 (b) \_\_\_\_\_
- Amends Current Board Policy: Title # 4 Chapter # 10 Section # 1(9) \_\_\_\_\_
- Amends Current Procedures & Guidelines Manual: Chapter # \_\_\_\_\_ Section # \_\_\_\_\_
- Other: \_\_\_\_\_
- Fiscal Impact: Yes \_\_\_\_\_ No X \_\_\_\_\_
- Explain: \_\_\_\_\_

**POLICY PROPOSAL - HANDBOOK**  
**TITLE 4, CHAPTER 10, SECTION 1(9)**  
**Real Property Transactions**

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

9. Real Property Transactions

All real property transactions are subject to the requirements of this section and Table 9.1.

a. Except as otherwise provided in Table 9.1, the vice chancellor for legal affairs shall review all contracts, deeds, and other documents related to real property transactions and shall approve the same as to form prior to execution.

b. The chancellor may authorize the retention of a licensed real estate broker to assist in any real estate transaction upon such terms and conditions as he or she deems appropriate. Such authorization may include the payment of a reasonable and customary real estate commission.

c. Every proposed real estate transaction shall be based on an arm's length transaction. Conflicts of interest or other reasons that could lead a reasonable person to question the independence of the transaction must be disclosed to the approving authority. All real estate transactions are subject to applicable laws and policies relating to conflicts of interest and ethical standards, including those related to affiliated foundations.

d. In June and December of each year, each Institution shall submit a report to the chancellor listing all real property transactions approved by the institution's president pursuant to the authority granted in Table 9.1 in the preceding semiannual period. Information about the retention of any real estate agent or broker for a transaction shall be included in the report.

Table 9.1 - NSHE Real Property Transactions:

Transaction:	Type:	Approving Authority	Conditions and Restrictions:
Purchase or Sale			
	Approval to negotiate	Chancellor	<p>*Before an institution can commence negotiations for the purchase or sale of real property, the chancellor's written approval must first be obtained. Once the chancellor has approved the negotiation for the purchase or sale of real property he or she shall promptly inform the chair of the Board of Regents and the chair of the [<del>Investment and Facilities</del>] <b>Business, Finance and Facilities</b> Committee of that fact.</p> <p>*No prior approval is necessary to negotiate the purchase or sale of real property identified for acquisition or sale pursuant to a campus master plan that has been approved by the Board of Regents.</p> <p>*Any contract, memorandum of understanding, letter of intent or similar document related to the proposed sale or acquisition of real property shall contain a provision similar to the following: "This [purchase or sale] offer is contingent upon the approval of the terms of the [purchase or sale] by the Board of</p>

			Regents of the Nevada System of Higher Education. If the Board of Regents, in its sole and absolute discretion, does not approve the terms of this [purchase or sale] the offer made herein shall be deemed null and void without the necessity of further documentation and shall be deemed to be of no binding effect whatsoever.”
	Approval to purchase or sell	Board of Regents	<p>*Any purchase or sale of real property must be approved by the Board of Regents and all property shall be acquired in the name of the Board of Regents of the Nevada System of Higher Education on behalf of the respective institution.</p> <p>*A current appraisal by a licensed real estate appraiser concerning the fair and reasonable market value of the property proposed for acquisition or sale shall be submitted to the Board of Regents at the time of the request for approval of the transactions. “Current appraisal” is defined as an appraisal having an effective date of not more than twelve (12) months prior to the Board of Regents consideration of the purchase or sale.</p> <p>*The Board in its discretion may waive the requirement for an appraisal.</p>

Transaction:	Type:	Approving Authority	Conditions and Restrictions:
Dedication		Chancellor	<p>* "Dedication" means transfer of ownership of land to a governmental entity required by the governmental entity as a condition of approval of a development application. For example, a deed of dedication of property that will be used for a flood control project.</p> <p>* A dedication may be approved by the chancellor provided that the chancellor determines that (i) there is an essential nexus between the dedication and a public burden created by the proposed development, (ii) the dedication is roughly proportional to the public burden created by the proposed development, and (iii) notice of intent to dedicate the property to the government entity is given to the members of the [<del>Investment and Facilities</del>] <b>Business, Finance and Facilities</b> Committee of the Board of Regents at least fifteen (15) days prior to dedication.</p>
Right of Way Vacation		Institution President	<p>* "Right of Way Vacation" means the removal of public ownership or interest in property and the relinquishment of that interest to NSHE as abutting property owner. For example, a local government may vacate its interest in a bus turn-out located on or adjoining NSHE property.</p> <p>* A right of way vacation may be accepted by the institution president provided he or she determines that (i) doing so is consistent with the applicable campus master plan, and (ii) doing so will not adversely impact the value and use of the abutting NSHE property.</p> <p>* Right of way vacations shall be reviewed by the Institution's general counsel, which shall approve the same as to form prior to execution.</p>
Easement			
	Affirmative Easement	Board of Regents	<p>* "Affirmative Easement" means an easement that allows another to use or access NSHE property for a specific purpose. For example, an easement that allows a company to erect and maintain a cellular phone tower.</p> <p>* The chancellor may, in his or her discretion, require a current appraisal as part of any request to approve an affirmative easement. "Current appraisal" is defined as an appraisal having an effective date of not more than twelve (12) months prior to the Board of Regents' consideration of the affirmative easement.</p>

Transaction:	Type:	Approving Authority	Conditions and Restrictions:
	Negative Easement	Chancellor	<p>* "Negative Easement" means an easement that prevents or limits NSHE from using its property in a manner in which it would otherwise be entitled. A negative easement does not grant the holder any right to possession of the property. For example, a conservation easement is a negative easement.</p> <p>* A negative easement may be approved by the chancellor provided that (i) the chancellor determines that the easement is consistent with the applicable campus master plan and that the granting of the easement is in the best interest of the System, (ii) the easement will not adversely impact the value and use of the property, and (iii) notice of intent to grant the easement is given to the members of the [<del>Investment and Facilities</del>] <b>Business, Finance and Facilities</b> Committee of the Board of Regents at least fifteen (15) days prior to the granting of the easement.</p>
	Utility Easement	Chancellor	<p>* "Utility Easement" means an easement that allows a utility company to use or access NSHE property. Notwithstanding the foregoing, a utility easement that relates to a utility surface structure that occupies more than 10,000 square feet shall constitute an affirmative easement.</p> <p>* A utility easement may be approved by the chancellor provided that (i) the chancellor determines that easement is consistent with the applicable campus master plan and that the granting of the easement is in the best interest of the System, (ii) the easement will not adversely impact the value and use of the property, and (iii) notice of intent to grant the easement is given to the members of the [<del>Investment and Facilities</del>] <b>Business, Finance and Facilities</b> Committee of the Board of Regents at least fifteen (15) days prior to the granting of the easement.</p>
	Public Easement	Chancellor	<p>* "Public Easement" means an easement granted to a governmental entity allowing use or access to NSHE property for a public purpose. For example, an easement that allows the construction and maintenance of a bus stop. Notwithstanding the foregoing, a Public Easement that encompasses more than 10,000 square feet shall constitute an affirmative easement.</p> <p>* A public easement may be approved by the chancellor provided that (i) the chancellor determines that the easement is consistent with the applicable campus master plan and that the granting of the easement is in the best interest of the System, and (ii) notice of intent to grant the easement is given to the members of the [Investment and Facilities] <b>Business, Finance and Facilities</b> Committee of the Board of Regents at least fifteen (15) days prior to the granting of the easement.</p>

Transaction:	Type:	Approving Authority	Conditions and Restrictions:
	Temporary Easement	Institution President	<p>* "Temporary Easement" means an easement that allows another to use or access NSHE property for a period of no longer than twenty four (24) months. For example, a temporary construction easement.</p> <p>*A temporary easement may be approved by an institution president provided that (i) the institution president determines that the temporary easement is consistent with the applicable campus master plan and that the granting of the temporary easement is in the best interest of the institution.</p> <p>*The party requesting the temporary easement must agree to return the property to the condition it was in at the time of entry.</p> <p>*The party requesting the temporary easement must agree to indemnify the Board of Regents, its officers and employees for any and all damages arising from the temporary easement.</p> <p>*Temporary easements shall be reviewed by the institution's general counsel, which shall approve the same as to form prior to execution.</p>
Lease			
	Minor Lease	Institution President	<p>* "Minor Lease" means a lease with a demising period of two (2) years or less and total consideration of \$50,000 or less. For purposes of this definition, any renewal or option period(s) shall be added to the fixed term to determine the demising period. The forgoing definition shall apply to all leases, whether NSHE is the landlord or the tenant.</p> <p>* Any amendment or modification to a previously approved minor lease that would extend the demising period or increase the total consideration such that the lease becomes a short term lease or long term lease shall be approved as required by this chart.</p> <p>* Minor leases shall be reviewed by the institution's general counsel, who shall approve the same as to form prior to execution.</p>

Transaction:	Type:	Approving Authority	Conditions and Restrictions:
	Short Term Lease	Chancellor	<p>* "Short Term Lease" means a lease with a demising period of greater than two (2) years and up to five (5) years, or alternatively, where the total consideration is greater than \$50,000 but not more than \$500,000. For purposes of this definition, any renewal or option period(s) shall be added to the fixed term to determine the demising period. The foregoing definition shall apply to all leases, whether NSHE is the landlord or the tenant.</p> <p>* The exercise of any renewal or option period(s) as part of a short term lease may be approved and executed by the institution president.</p> <p>*Any amendment or modification to a previously approved short term lease that would extend the demising period to greater than five (5) years, or increase the total consideration to greater than \$500,000 must be approved by the Board of Regents. All other amendments or modification to a previously approved short term lease may be approved by the chancellor.</p>
	Long Term Lease	Board of Regents	<p>* "Long Term Lease" means a lease with a demising period of greater than five (5) years, or alternatively, where the total consideration is greater than \$500,000. For purposes of this definition, any renewal or option period(s) shall be added to the fixed term to determine the demising period. The foregoing definition shall apply to all leases, whether NSHE is the landlord or the tenant.</p> <p>*The exercise of any renewal or option period(s) as part of a long term lease may be approved and executed by the institution president.</p> <p>*Except as otherwise provided in the lease itself, any amendment or modification to a previously approved long term lease must be approved by the Board of Regents.</p>
	Student Union Retail Lease	Institution President	<p>**"Student Union Retail Lease" means a lease of 5,000 square feet or less of retail space within a student union or similar facility with a demising period of fifteen (15) years or less. For purposes of this definition any renewal or option period(s) shall be added to the fixed term to determine the demising period.</p> <p>*Student union retail leases may be approved by the institution president provided that the general form of the lease used for the facility has previously been approved by the Board of Regents.</p> <p>* Student union retail leases shall be reviewed by the institution's general counsel, who shall approve the same as to form prior to execution.</p>

Transaction:	Type:	Approving Authority	Conditions and Restrictions:
License		Institution President	<p>*“License” means written permission to use NSHE property for a limited purpose for a limited time. A license is revocable at the will of the grantor and the grantee obtains no interest in the property. For example, permission to operate a concession stand at a sporting event may be made via a license.</p> <p>*Licenses shall be reviewed by the institution’s general counsel, who shall approve the same as to form prior to execution.</p>

(B/R 6/14)