

BOARD OF REGENTS

BRIEFING PAPER

1. **Agenda Item Title:** Acceptance of Gifts of Art and certain Endowment Gifts
Meeting Date: September 7, 2017 meeting of the Business Finance and Facilities Committee

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

System Administration recently received two separate requests for changes to the Board's current policy governing the acceptance and administration of gifts. The first request from UNR asked for revisions that would allow institution presidents to accept and sell gifts of art without Board approval. The second request came from the Business Officers Council and proposed that the Chancellor be authorized to accept monetary gifts of \$50,000 or less into the System Endowment without Board approval.

The Board's policy governing the acceptance and administration of gifts (Title 4, Chapter 10, Section 9 of the *Board of Regents' Handbook*) is confusing and difficult to interpret. The policy needs to be updated and modernized. Ideally, the entire policy would be re-written as part of the above described changes. However, completely updating the gifts policy will require a significant investment of time and will need to be carefully vetted with the institutions, their development officers, and the institution Foundations. The attached policy proposal combines and simplifies UNR's art proposal and the Business Officers Council endowment proposal. This simplified proposal addresses the immediate needs of UNR and the Business Officers Council without the need for a complete re-write of the Board's gift policy. Approval of the attached policy proposal will serve as a stop-gap measure – meeting the immediate needs of UNR and the Business Officers Council while allowing System Administration time to conduct a comprehensive evaluation and re-write of the Board's gift policy.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

That the Board approve the attached policy proposal amending Title 4, Chapter 10, Section 9 of the Board of Regents Handbook in order to (1) authorize institution presidents to accept, sell, and dispose of gifts of art without Board action, and (2) authorize the Chancellor to accept cash gifts of \$50,000 or less into the System Endowment without Board action.

4. IMPETUS (WHY NOW?):

UNR is in the process of reviewing its art collection and needs flexibility to accept and sell items from its collection as it prepares to move into a new facility. The institution Business Officers would like the Chancellor to have authority to accept cash gifts of \$50,000 or less into the System Endowment without Board approval. The attached policy proposal is intended to meet both needs until comprehensive revisions to the Board's gift policy can be prepared.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Authority for the acceptance, sale and disposal of art is best left to the institution Presidents.
- The Chancellor should be authorized to accept monetary gifts of \$50,000 or less into the Endowment without Board approval.
- The acceptance of art and smaller monetary gifts into the endowment without Board action promotes effectiveness and efficiency.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- No changes to the Board's gift policy are necessary at this time.
- Stop-gap changes to the Board's gift policy should be avoided. Changes should only be made as part of a comprehensive effort to update and modernize the policy.

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

- Do not approve the policy proposal as presented and provide alternative direction and guidance to System staff.

8. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title #_____ Chapter #_____ Section #_____
- Amends Current Board Policy: Title 4, Chapter 10, Section 9
- Amends Current Procedures & Guidelines Manual: Chapter #_____ Section #_____
- Other:_____
- Fiscal Impact: No
- Explain:_____

POLICY PROPOSAL - HANDBOOK
TITLE 4, CHAPTER 10, SECTION 9

**Approval, Acknowledgment, and Administration of Gifts, Contracts, and
Sponsored Programs**

(adding new subsections J and K; authorizing institution presidents to accept gifts of art and
authorizing the Chancellor to accept endowment gifts of \$50,000 or less)

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

**Section 9. Approval, Acknowledgment, and Administration of Gifts, Contracts, and
Sponsored Programs.**

I. Introduction

In order to establish a basis for approval of any proposed gift, contract, or sponsored program, the institution, System Administration, and special units of the Chancellor's Office will provide assurances to the Board of Regents that:

- A. The designation of the purpose of the gift, contract, or sponsored program is in accordance with mission statements, the Board of Regents' policies and procedures including the Academic Master Plan and capital construction priorities, the laws of the State of Nevada and the Internal Revenue Code;
- B. The proposal for acceptance of any gift, contract or sponsored program must include a reporting of total direct and indirect costs as compared to anticipated revenue;
- C. The gift, contract or sponsored program is free from injurious racial or gender biases or any other illegal restrictions imposed by the parties;
- D. Acceptance of the gift, contract or sponsored program does not obligate the institution, System Administration or a special unit of the Chancellor's Office to matching commitments or other costs exceeding the amount of the gift, contract or sponsored program unless funds are identified and encumbered to cover such costs;
- E. Funds designated by the gift, contract or sponsored program for employee compensation, which includes cash or in-kind perquisites, comply with Board of Regents' Handbook Title 4, Chapter 3;
- F. Gifts, contracts or sponsored programs involving related parties or parties that appear to have conflicting roles in the transaction have been publicly noticed and approved by the Board of Regents;
- G. The basic elements in a donor or contractor's proposal that will be, or have been used to categorize it as a gift, contract or sponsored program are defined;

- H. Gifts intended to fully or partially fund a faculty or administrative position that are made on the condition that a particular person be offered a position within NSHE without going through the regular selection process will not be accepted;
- I. During the course of the selection process to fill a faculty or administrative position supported by a donor gift, no undue or inappropriate influence by or on behalf of the donor may be exerted; and
- J. While a donor may, if legally permissible, restrict the use of a gift, restricted gifts will not be accepted from a donor if a condition of the gift precludes NSHE or an institution from pursuing other work or scholarly activity.

II. Gifts

A gift to an institution of the NSHE, System Administration, or a special unit of the Chancellor's Office may be accepted only by the Board of Regents, except as provided herein. A gift is defined as a benevolent donation, which does not require any commitment of institutional resources, or services other than the commitment made to carry out the agreed-upon intent of the donor for the use of the gift funds. A gift includes legally enforceable pledges, personal and real property, professional services and forgiveness of indebtedness. A grant will qualify as a gift, contract or sponsored program but not as a separate category for purposes of the Board of Regents' policy. The President of each institution or the Chancellor will accept gifts, or when required, recommend the Board of Regents' acceptance of gifts, regardless of the form of the gift, only after providing assurances:

- A. That all gifts to the endowment, loan, plant and current fund groups have been reported for information purposes or submitted to the Board of Regents for acceptance in accordance with guidelines established by the Chancellor's Office which provide that:
 - 1. Current loan and endowment fund group gifts which are additions to previously approved or existing programs will not require Board of Regents' approval before acceptance but will be summarized, along with all other gifts, and reported to the Board of Regents annually;
 - 2. Approved or existing programs will be defined by the Chancellor's Office;
 - 3. Charitable remainder trusts, under which the institution is named as remainder man, must be approved by the Board of Regents before the remainder interest is transferred (acceptance) whether or not the trusts are guaranteed and/or managed by the Board of Regents. The gift is included in information reports to the Board of Regents in the year the remainder interest is received by the institution;
 - 4. All endowment funds will be administered in accordance with the Board of Regents' policy Title 4, Chapter 10.
 - 5. Endowment funds held in trust by foundations or others require Board of Regents' approval and are to be recorded on the general ledger of the institution or the System. The Chancellor's Office will monitor the investment performance and management of these funds. The amount of the gift for information reports to the Board of Regents is the endowment income recorded in the institution's annual financial statements;

6. Endowment funds will not be accepted if they include requirements in perpetuity for delivery of goods or services to the donor or the donor's designee;
7. Plant fund gifts must be recommended by the institution and accepted by the Board of Regents. The amount of the gift is included in the annual information report to the Board of Regents during the reporting period that the plant fund gift is recorded for annual financial statement purposes;
8. Contributions, which are gifts only in part, must be accepted by the Board of Regents and also included in tests for acceptance of contracts and sponsored programs;
9. If the administration or application of any gift does not comply with institutional policies or meet the criteria established in Section 9 (I). (*above*) the non-compliance will be reported to the Board of Regents for a determination as to whether or not the program should be terminated;
10. Gifts to an institution, gifts to the Board of Regents on behalf of an institution, or gifts that can otherwise be determined to be for the benefit of a particular institution, will be transmitted to the institution for management as part of the institution's foundation endowment accounts, unless such transmittal is contrary to the express wishes of the donor. If the institution's foundation does not maintain endowment accounts, the NSHE shall manage the funds on behalf of the institution as part of the NSHE endowment pool.

Any transfer of such funds to the foundation for such activities is subject to the institution having an operating agreement in place between the institution and the foundation providing for adequate accounting and oversight of such funds consistent with Board of Regents' requirements specified in Title 4, Chapter 10, and shall further provide that the institution or NSHE may obtain the return of the principal and income of these funds for the purpose of depositing such funds in the NSHE endowment pool, subject to any investment restrictions that limit when such funds may be liquidated, under the following circumstances: 1) a material breach of the operating agreement, 2) the declaration of a financial exigency by the Board of Regents, or 3) without cause and effective June 30 upon written notice to the institution no later than March 1 of the preceding year.

11. Gifts to System Administration or special units of the Chancellor's Office will be managed on behalf of System Administration or the special unit as part of the NSHE endowment pool.
- B. That the institution, System Administration, or special unit of the Chancellor's Office has complied with all applicable federal income tax regulations and restrictions by donors;
 - C. That expenditures for entertaining, hosting, travel expenses, or employee perquisites comply with Board of Regents' policies and procedures and will not be authorized by the institution's administration, System Administration, or special unit of the Chancellor's Office unless the donor has been notified in writing that unrestricted gifts and the investment income from such gifts may be used for these purposes;
 - D. That the institution System Administration, or special unit of the Chancellor's Office has obtained an independent appraised evaluation of the property received when value is stated for insurance purposes, when the property is sold or recommended for sale by the institution, when the property is recorded officially on the institution's books and records, or

when the appraised value is a basis for compliance with tax law. Board of Regents' approval is specifically required for acceptance of all gifts of property except personal property with an estimated fair market value of less than \$5,000.00;

- E. That costs for insurance, real property clean up or storage have been considered in calculating the obligations to the institution, System Administration, or special unit of the Chancellor's Office in recommending to the Board of Regents the acceptance of gifts of property;
- F. That a donor's restriction on the sale or use of property is reported along with reason why the restriction is not unreasonable and should be accepted by the Board of Regents;
- G. That procedures for receipt and acknowledgment of non-cash gifts shall be the same as for cash gifts except that specific value cannot be placed on non-cash or in-kind gifts;
- H. That procedures have been established to provide for timely acknowledgments to donors by the President or Chancellor specifically on behalf of the institution, System Administration, or special unit of the Chancellor's Office and the Board of Regents, including a written gift receipt issued in accordance with applicable federal income tax regulations. Gifts to foundations or other legally separate organizations for the benefit of the institution are to be acknowledged by the foundation or other organization rather than the President of the institution or the Board of Regents; and
- I. That the President or Chancellor, when required by this policy, recommend the gift for acceptance by the Board of Regents as soon as possible after it has been offered or the offer announced; however, public announcement of gifts received shall not be made until the gift is accepted by the Board of Regents.

III. Contracts and Sponsored Programs

The Board of Regents has adopted the following policies to guide the institutions, System Administration, and special units of the Chancellor's Office in their administration of contracts and sponsored programs. The provisions of this policy are intended to address contracts or sponsored programs under proposed agreements that would commit the institution's resources or commit the institution to a specific course of action for work to be carried out in its academic departments, laboratories, or administrative units whether on or off-campus, and contracts or sponsored programs entered into by System Administration or special units of the Chancellor's Office. Institutional contracts and sponsored programs must be submitted to the institution's President for approval of the conditions and/or contents of the contract or sponsored program and submitted to the Chancellor's Office for approval of format and signature authority.

- A. The Board of Regents accepts the terms and conditions attached to federal government sponsored programs sought by the institutions. If there is any exception to this policy, the institution will be specifically notified that it should not enter into such programs.
- B. Contracts and sponsored program proposals and agreements shall be executed in accordance with criteria and directions described by the Chancellor's Office in published procedures.

- C. The institution, System Administration, and special units of the Chancellor's Office will have an established policy for the application of indirect overhead to private and governmental contracts and sponsored programs; the policy will include requirements for justification of all modifications to the established overhead rate; the institution will be able to demonstrate that overhead charges based on the established criteria are applied uniformly and equitably to all contractors or sponsors without favoritism.
- D. The institution, System Administration, and special unit of the Chancellor's Office will through appropriate rules and regulations adhere to basic academic values in contracts and sponsored programs by ensuring in the contract agreement the openness of research results and faculty freedom to follow any line of inquiry. Sponsors are to be limited to receiving the research results, publicity for their sponsorship and the goodwill resulting from both.
- E. Interlocal cooperative agreements (*Nevada Revised Statutes 277.080*) and interlocal contracts (*Nevada Revised Statutes 277.180*) shall be executed in accordance with the criteria and directions described by the Chancellor's Office in published procedures. The Board of Regents accepts the terms and conditions of any interlocal cooperative agreements and interlocal contracts approved pursuant to these provisions, which are in furtherance of federal government sponsored programs sought by the institutions.
- F. *Notwithstanding any other provision in this Section 9, institution presidents may accept gifts of art made to the institution, and may sell or dispose of gifts of art provided any such sale or disposition is made in accordance with the provisions of any applicable gift agreement. The acceptance, sale or disposition of any art under this subsection F shall be reported to risk management for insurance purposes.***
- G. *Notwithstanding any other provision in this Section 9, the Chancellor may accept gifts into the System Administration Endowment Fund, given for the benefit of the System or any institution, provided that the gift is a cash contribution of \$50,000 or less.***