

BOARD OF REGENTS
BRIEFING PAPER

Agenda Item Title: **Proposed Amendment to Board of Regents Code, Title 2, Chapter 5, Sections 5.4.3 and 5.4.4 Regarding Employment Contracts**

Meeting Date: **December 3-4, 2015**

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

The Board of Regents Code, Title 2, Chapter 5, Section 5.4.4 provides that employment contracts are not binding until executed by both the appointee and appointing authority. Requiring written employment contracts to be signed on an annual basis is inefficient and unnecessary. The iNtegrate 2 project will automate the employment contract process. The current policy also does not specifically address renewal, amendment of or the governing law to be used in interpreting employment contracts. Questions about these issues have arisen internally and in litigation. Some institutions already renew contracts by written notice. The Code language in Sec. 5.4.4 should be amended to allow for the electronic execution, automatic renewal of employment contracts, and to address contract amendment and legal interpretation. Amend Section 5.4.3 to make the provision consistent with the proposed amendments in Section 5.4.4.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

It is recommended that Title 2, Chapter 5, Section 5.4.4 be amended to clarify that:

1. Initial employment contracts shall be executed through an electronic or other process which demonstrates that the contract terms are accepted by the employer and employee;
2. Except as otherwise provided in the Code Section 5.4.2 or in the contract itself, and if no notice of termination/nonreappointment has been issued, employment contracts renew annually without requiring any action on the part of the employer and employee;
3. Earned merit pay, cost of living or other compensation funded by the Nevada Legislature, and any unpaid leave or salary reduction imposed by the Legislature, are automatically included in renewed contracts.
4. Other amendments must be accepted by any process, electronic or otherwise which demonstrates acceptance by both parties, and the cashing of a paycheck or automatic deposit that is not refunded to NSHE within 7 days, also constitute acceptance of the contract.
5. Employment contracts are interpreted in accordance with Nevada law and Board of Regents' Code; and
6. Amend Section 5.4.3 to conform to the amendments in Section 5.4.4, and to clarify that Code amendments are also incorporated into the employment contract.

4. IMPETUS (WHY NOW?):

These Code amendments are needed to clarify the execution, renewal and amendment processes for employment contracts, and to address legal issues raised internally and in litigation. The planned implementation of iNtegrate 2 in 2016 will allow the employment contract processes to be automated. To avoid the inefficient and unnecessary annual issuing of employment contracts in FY 2016, the proposed Code amendment should be in effect before the end of this fiscal year. The Board will be requested to take action on these proposed amendments at the March 2016 Board meeting.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The Code requires employment contracts to be executed by the appointee and the appointing authority.
- Requiring actual signatures on thousands of employment contracts and/or annual renewals is inefficient and unnecessary.
- The electronic execution and/or acceptance of contracts has become a common and accepted process.
- Institutions have developed different practices for contract renewal.
- The institution renewal practices include: annual signing of a contract, renewal letters; no notice or

contract signed and e-mail notice of renewal.

- The Code should be amended to clarify how contracts are executed and renewed in a consistent and efficient manner throughout the System.
- The Efficiency and Effectiveness study recommended elimination of annual employment contracts.
- With the implementation of iNtegrate 2, the employment contract process will be automated with consistent standardized business practices.
- The proposed amendments provide that:
 - Initial contracts may be executed by any means, electronic or otherwise that demonstrates acceptance of the terms and condition of the contract. A paper contract with signatures is not required.
 - Unless otherwise provided in the contract and if no notice of termination or non-reappointment has been issued, contracts renew annually without any action required on the part of the employer or employee;
 - Salary increases resulting from COLA, merit or other Legislative action are automatically included in the employment contract;
 - Furloughs or salary reductions imposed by the Nevada Legislature are automatically included in the employment contract;
 - For all other amendments to the contract, any electronic or other process that demonstrates acceptance, cashing of the payroll check or electronic deposit of the check without refunding to the institution within 7 calendar days, constitutes acceptance of the employment contract.
- The NSHE Grievance Procedures, in Section 5.7 of the Code, provide a mechanism for employees to address concerns regarding aspects of contractual status. If an employee disagrees with the employment contract terms, a grievance may be pursued.
- All NSHE employment contracts should be interpreted in accordance with Nevada law regardless of where the employee resides.
- Clarification of the employment contract execution and renewal process, and the application of Nevada law and the Board of Regents' Code are also needed because these issues have arisen in litigation.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- All employment contracts, including amendments, should only be renewed in writing signed by both parties, regardless of time and expense.
- Automatic renewal of employment contracts does not allow employees the opportunity to review the contract terms and raise any objections.
- Nevada law should not apply to employment contracts when the employee resides out of state.

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

- Do not amend Section 5.4.4 of the Code.

8. COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____

Amends Current Board Policy: Title #2, Chapter 5, Sections 5.3.3 and 5.4.4

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

Other: _____

Fiscal Impact: Yes No

Allowing electronic execution and renewal of employment contracts will reduce the institutions' administrative burden which cannot be estimated at the present time.

PROPOSED REVISIONS – Board of Regents' Code
TITLE 2, Chapter 5, Sections 5.4.3 and 5.4.4
Employment Contracts

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

5.4.3 Terms and Conditions of Employment. *In accordance with Section 5.4.4 below, [A]all* employment contracts shall be in writing, ***electronic or hard copy***, and shall specify therein the terms and conditions of employment. The provisions of the NSHE Code, in their entirety ***and as amended from time to time***, shall be a part of the terms and conditions of every employment contract, except as may be varied [~~in writing by the parties to~~] ***in*** the contract. Any understanding, promise, term, condition or representation not contained in the contract is of no effect.

5.4.4 [When Binding] Employment Contracts and Interpretation. An ***initial*** employment contract shall not be binding until executed, ***electronically or by any process that demonstrates the acceptance of its terms and conditions*** by both the appointee and the appointing authority, and approved as may be provided in this NSHE Code. ***Except as otherwise provided in Code Section 5.4.2, and if the employment contract has not been terminated or expired as provided in the terms of the contract and notice of non-reappointment or termination has not been issued, subsequent employment contracts shall renew, without any action required of the appointing authority or the appointee, on July 1 and end on the following June 30th. The renewed employment contract, if any, shall include any merit increases awarded to the employee, cost of living or other compensation adjustments funded by the Nevada Legislature, as well as any unpaid leave or salary reductions imposed by the Nevada Legislature. Any other amendments of the terms and conditions in an employment contract shall be accepted by the employee, who shall be deemed to have accepted the amended terms and conditions by any of the following means: (i) an electronic or other process which demonstrates acceptance of the amended and renewed contract; (ii) the cashing of a payroll check during the term of the renewed contract; or (iii) the failure to refund within seven calendar days the entirety of any payroll check electronically deposited into the employee's account during the term of the renewed contract. All employment contracts are subject to and interpreted in accordance with Nevada law and Board of Regents' Code.***