

BOARD OF REGENTS
BRIEFING PAPER

Agenda Item Title: Amendments to the Board of Regents Code, Title 2, Chapters 1 and 5 Including, but Not Limited to, Amendments to Curricular Review Provisions, Separation of Curricular Review and Financial Exigency, and Procedural Amendments.

Meeting Date: Sept. 6-7, 2012

1. BACKGROUND & POLICY CONTEXT OF ISSUE:

The Code Review Task Force has been working on proposed amendments to the Code, Title 2, Chapters 1 and 5 regarding both curricular review and financial exigency. The Task Force in consultation with the Faculty Senate Chairs prepared revisions to the Code regarding curricular review which include separating financial exigency from curricular review. While the proposal does not make substantive changes to the Code provisions on financial exigency, it is recommended that the proposed procedural changes in Sec. 5.4.8 for curricular review should also be made in Sec. 5.4.6 for financial exigency. The proposal was presented to the Board at its meeting on June 1, 2012 for information and is now being presented for action.

2. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

The attached proposal sets forth the proposed amendments. The amendments are summarized as follows:

- Separate the current financial exigency/curricular review procedural section into Section 5.4.6 for financial exigency and Section 5.4.8 for curricular review.
- Revise the definition of "curricular review" in Sec. 1(f) to include "declining student demand, changes in the mission of a system institution, or adverse financial conditions forcing a system institution to prioritize its projects, programs and curricula."
- Revise the curricular review process in Section 5.4.7 to specify that administration must consult with faculty senates regarding written curricular review plan on the following:
 - o the reasons for the proposed curricular revisions;
 - o the criteria by which an administrative unit, project, program or curriculum were selected for curricular revision which results in the elimination of faculty positions;
 - o the process and criteria that will be used in attempting to continue faculty members in employment under Sec. 5.4.8(b); and;
 - o the process and criteria which will be used to determine whether a laid off faculty member should be offered reappointment under Sec. 5.4.8(c).

In addition:

- the administration shall provide access to all the financial data relied upon in developing the proposal;
- an affected administrative unit, project, program or curriculum shall be given the opportunity to suggest alternatives to the initial proposal;
- the faculty senate shall review the initial proposal (along with any alternatives suggested by an affected administrative unit, project, program or curriculum), and may comment on the necessity of the proposed curricular revisions and

- make recommendations for alternatives to the proposed curricular revision
- the administration shall present the final curricular revision proposal to the Board of Regents for approval at a regular or special meeting of the Board before layoff notices are served.

The reconsideration process for laid off faculty is also clarified in Sec. 5.4.8 and it is recommended that these changes should also apply to financial exigency Sec. 5.4.6

3. IMPETUS (WHY NOW?):

As a r

Amends Current Procedures & Guidelines Manual: Chapter # _____ Section

Other:

Fiscal Impact: Yes _____ No X

Explain: _____

POLICY PROPOSAL - CODE
TITLE 2 , CHAPTER 5, SECTIONS 5.4.5 thru 5.4.8
PERSONNEL POLICY FOR FACULTY

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

Ch. 5 Personnel Policy for Faculty

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Sec. 5.4.5 Financial Reasons for Furlough, Reduction in Pay or Lay Off Termination,

- (a) A faculty member may be furloughed, have pay reduced, or be laid off as an employee before the end of the contract term because of a financial exigency declared by the Board of Regents. For faculty members of the Desert Research Institute, however, refer to Section 5.8 of the Nevada System of Higher Education Code.
- (b) Faculty members may be furloughed, have pay reduced, or be laid off under this subsection for a financial exigency upon a declaration of the Board of Regents, after a recommendation for same by the chancellor and by the presidents of the System institutions to be affected by the proposed financial exigency, that a financial exigency exists in the System, a System institution, or an administrative unit of a System institution. Nothing in this provision shall prevent the layoff of a faculty member under this subsection without such a declaration of the Board of Regents when such faculty member's employment contract contains the specific provision that such faculty member's continued employment during the term of the contract is dependent on the availability of funds, nor is a declaration of financial exigency (with the accompanying requirements of Section 5.4[.7] ~~6~~) required in order for the Board of Regents to consider and implement pay reductions or unpaid leave equating to 6% (six percent) or less of base pay as a result of final legislative action to generally reduce all state employee pay by that amount. Such legislatively authorized pay reduction shall not be implemented earlier than the start of the next fiscal year commencing after the date of Board of Regents approval nor without first considering the recommendation of the Chancellor and the Council of Presidents after consultation with the faculty senates, with consideration of alternative means of reducing expenses to meet budget reductions and methods of maintaining recognition of base pay and salary schedules. The pay reductions or unpaid leave shall be for no more than two years. If the final legislative action continues to generally reduce all state employee pay beyond a two year period, the Board of Regents may likewise extend such reductions beyond two years, up to a cumulative cap of 6% for the entire period of the reduction, based on the same process of consultation and recommendation required for the initial implementation.
- (c) Before a recommendation is made to the Board of Regents by the chancellor and the president or presidents that a financial exigency should be declared:

1. The chancellor and the president or presidents shall be satisfied that all available means to reduce the expenditure levels (i) are exhausted, (ii) would not be adequate, (iii) would not be feasible or (iv) would not be appropriate.
 2. The president or presidents shall seek the advice of the senates or senate representatives of System institutions to be affected by the proposed declared financial exigency concerning said exigency and such advice shall be forwarded to the Board of Regents along with recommendations of the chancellor and the president or presidents.
- (d) After a financial exigency has been declared by the Board of Regents, depending upon the circumstances, the Board may choose to immediately implement a financial exigency or authorize the following provisions to be put into effect:
1. Each System institution affected shall select an ad hoc financial exigency committee to prepare recommendations for a plan to implement the discontinuance or reduction in size of administrative units, projects, programs or curricula, to include furloughs, pay reductions or faculty lay-offs if necessary, due to the financial exigency. Each such plan shall establish the criteria necessary for recommending and determining such actions.
 2. The president shall determine the number of persons to serve on the ad hoc financial exigency committee, shall choose the chair of the committee and, in addition, shall choose one half of the remaining membership of the committee. The senate shall elect one half of the membership of the committee. The chair shall vote only in case of a tie vote. The plan recommended by the committee must receive the approval of the president.
 3. The plan, as approved by the president, must be submitted to the chancellor within a time limit agreed to by the president and the chancellor. If the plan is not submitted within that time, the chancellor, at the chancellor's option, may extend the time for such submission or may prepare a plan for the System institution which fails to submit such plan within the time limit set or as may be extended.
 4. In the case of a System-wide financial exigency, all plans must be forwarded to the Council of Presidents for review and recommendations as to any necessary coordination between the System institutions in the implementation of the plans and to harmonize or eliminate any material conflicts in the plans.
 5. All plans must be reviewed by the chancellor and the president or presidents before being forwarded to the Board of Regents.
 6. All plans must be forwarded to the Board of Regents with the recommendations of the chancellor and the president or presidents and all plans must receive the approval of the Board, which shall be final. The

Board may appoint an ad hoc financial exigency committee composed of members of the Board to work with the System institutions in preparing and reviewing plans and to report to the Board concerning plans prior to their consideration by the full Board.

7. A plan shall take into consideration the affirmative action goals of the System, the responsibility of the System and the System institutions to continue to offer the appropriate ranges of programs or curricula to its enrolled students and the missions of the ***institutions of the Nevada System of Higher Education*** University of Nevada.

(e) A financial exigency, once declared, may be reviewed every 180-calendar days or sooner if appropriate, by the Board of Regents on the issue of whether it should continue or be declared ended. Before making a recommendation to the Board of Regents on whether a state of financial exigency should be continued or be declared ended, the president or presidents shall seek the advice of the senates of the System institutions to be affected by the financial exigency and shall obtain their respective recommendations concerning whether the state of financial exigency should continue or be declared ended. The senate recommendations shall be forwarded to the Board of Regents along with the recommendations of the chancellor and the president or presidents.

5.4.6 Curricular Reasons for Termination. A faculty member may be laid off because an administrative unit, project, program or course is eliminated or discontinued. (5)(me)2 06-9 TE cBT(g)H2 1054.0 0034010071.044T r40009

two years of a faculty member's lay off, intends to establish tenure track positions in the faculty member's former subject area, and if an offer of appointment is made to the former faculty member, it must include an offer of tenure.

~~[(d)]~~ If a faculty member is notified of a lay off for curricular reasons on or before December 1 of the faculty member's current contract year, the layoff shall not be in effect until the following June 30. If a faculty member is notified of a lay off for curricular reasons after December 1 of the faculty member's current contract year, the layoff shall not be in effect until the completion of the contract year immediately following the June 30 of the contract year of notice. ~~][Note: This section appears in new Sec. 5.4.8(d).]~~

(e)(d) A lay off for financial exigency shall require at least 60 calendar days notice, except that if a financial exigency is such that adequate funds do not exist to pay the salary of the faculty member being laid off for such period, the notice period of termination may be shortened to a period commensurate with the amount of funds reasonably available to make such payments. Notice of furlough or pay reduction for financial exigency shall require at least 15-calendar days notice.

~~[(f)](e)~~ Notice of the furlough or pay reduction of faculty members for financial exigency or notice of a lay off for financial exigency~~[or curricular reasons]~~, except for notice of nonreappointment to employment of faculty members given under Subsections 5.4.2, 5.8.2, 5.9.1 or 5.9.2 of the Nevada System of Higher Education Code, shall be in writing and shall furnish the faculty member with a reasonably adequate statement of the basis for the decision to furlough, reduce pay or lay off the faculty member, a reasonably adequate description of the manner in which the decision was arrived at and a reasonably adequate disclosure of the information and data upon which the decision-maker or makers relied. The notice shall also inform the faculty member of the right to reconsideration, the procedures for reconsideration and the identity of the person or persons to whom a request for reconsideration should be directed.

~~[(g)](f)~~ Within 15 calendar days after receipt of the notice of furlough, pay reduction or lay off **for financial exigency**, the faculty member may request reconsideration of the decision to furlough, reduce pay or to lay off at which time the following provisions and procedures are applicable:

1. The reconsideration process shall be limited in its scope to the issue of whether there is sufficient evidence to support the specific decision to furlough, reduce pay or to lay off the faculty member requesting the reconsideration or whether there has been material deviation from the procedures established on which such a specific furlough, pay reduction or lay off decision has been based, or both. There shall be no reconsideration of the policy decisions to declare a financial exigency, to discontinue or reduce in size an administrative unit, project, program or curriculum because of financial exigency~~[or to discontinue, reduce in size or reorganize an administrative unit, project, program or curriculum because of curricular reasons.]~~
2. In the event decisions are made to furlough, reduce pay or to lay off faculty members under this section because of financial exigency ~~[or because of curricular reasons]~~, the president shall establish one or more employment review committees. The president shall determine the number of persons to serve on each committee, shall determine their terms of service, shall choose the chair of each committee and, in addition, shall choose one half of the remaining membership of each committee. The senate shall elect one half of the membership of each committee. A chair shall vote only in case of a tie vote. No one who took part in making the specific recommendation to the president to

attempt to offer reappointment has been unsuccessful or reappointment has been offered in writing and the faculty member has not accepted the same in writing within 20 calendar days of the receipt of the offer. The reappointment referred to herein shall be at the faculty member's previous rank or salary level. ***If the institution, within two years of a faculty member's lay off, intends to establish tenure track positions in the faculty member's former subject area, and if an offer of appointment is made to the former faculty member, it must include an offer of tenure.***

- (d) If a faculty member is notified of a lay off for curricular reasons on or before December 1 of the faculty member's current contract year, the layoff shall not be in effect until the following June 30. If a faculty member is notified of a lay off for curricular reasons after December 1 of the faculty member's current contract year, the layoff shall not be in effect until the completion of the contract year immediately following the June 30 of the contract year of notice.
- ~~(e)~~ A lay off for financial exigency shall require at least 60 calendar days notice, except that if a financial exigency is such that adequate funds do not exist to pay the salary of the faculty member being laid off for such period, the notice period of information may be shortened to a period commensurate with the amount of funds reasonably available to make such payments. Notice of furlough or pay reduction for financial exigency shall require at least 15 calendar days notice.
- ~~(f)~~(e) Notice of the furlough or pay reduction of faculty members for financial exigency or notice of a lay off for financial exigency or curricular reasons, except for notice of nonreappointment to employment of faculty members given under Subsections 5.4.2, 5.8.2, 5.9.1 or 5.9.2 of the Nevada System of Higher Education Code, shall be in writing and shall furnish the faculty member with a reasonably adequate statement of the basis for the decision to furlough, reduce pay or lay off the faculty member, a reasonably adequate description of the manner in which the decision was arrived at, and a reasonably adequate disclosure of the information and data upon which the decision-maker or makers relied. The notice shall also inform the faculty member of the right to reconsideration, the procedures for reconsideration and the identity of the person or persons to whom a request for reconsideration should be directed.
- ~~(g)~~(f) Within 15 calendar days after receipt of the notice of furlough, pay reduction or lay off, the faculty member may request reconsideration of the decision to furlough, reduce pay or lay off at which time the following provisions and procedures are applicable:
1. The reconsideration process shall be limited in its scope to the issue of whether there is sufficient evidence to support the specific decision to furlough, reduce pay or lay off the faculty member requesting the reconsideration or whether there has been material deviation from the procedures established on which such a specific furlough, pay reduction or lay off decision has been based, or both. There shall be no reconsideration of the policy decisions to declare a financial exigency, to discontinue or reduce in size an administrative unit, project, program or curriculum because of financial exigency or to discontinue, reduce in size or reorganize an administrative unit, project, program or curriculum because of curricular reasons.
 2. In the event decisions are made to furlough, reduce pay or lay off faculty members under this section because of financial exigency or because of curricular reasons, the president shall establish one or more employment review committees. The president shall determine the number of persons to serve on each committee, shall determine their terms of service, shall choose the chair of

each committee and, in addition, shall choose one half of the remaining membership of each committee. The senate shall elect one half of the membership of each committee. A chair shall vote only in case of a tie vote. No one who took part in making the specific recommendation to the president [~~to furlough, reduce pay or~~] to lay off the faculty member requesting the reconsideration may be a member of an employment review committee.

3. The request for reconsideration shall be submitted in writing to the president,

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