

BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES
ITEMS FOR DISCUSSION AND ACTION\FISCAL, FACILITIES AND AUDIT

ACTION: **First and Final Round Approval of Revisions to Board Policy 7007; Risk Avoidance, Risk Bearing Indemnification & Legal Defense**

Proposed revisions to Board Policy 7007 include renumbering the policy to 6607; updating the policy format; changing the Policy name; and minor grammar and punctuation corrections.

The System Office recommends approval of the Revisions to Board Policy 7007; Risk Avoidance, Risk Bearing Indemnification & Legal Defense.

ATTACHMENTS:

- Revisions to Board Policy 7007 (PDF)

Board of Trustees of the Nebraska State Colleges

Business Management

POLICY NAME: ~~Risk Avoidance, Risk Bearing Indemnification and Legal Defense~~
Indemnification and Legal Defense

POLICY NUMBER: ~~70076607~~

A. PURPOSE

The purpose of this policy is to set forth the scope of the State of Nebraska's responsibility to indemnify and provide legal defense for members of the Board of Trustees, any officers and employees of the Board and of any State College.

B. DEFINITIONS

None

C. POLICY

1. Indemnification

- 1.1. To the extent authorized by law, the State of Nebraska will indemnify members of the Board or any officer or employee of the Board or of any State College including past Board members, officers and employees for money damages and reasonable costs incurred as a result of an act or omission occurring in the course and scope of such individual's duties for or employment with the Board or any State College. Such individual's right to indemnification shall include the payments of awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal. Such individual's right to indemnification shall not exceed the amount subject to collection by a party directly against such individual. The provisions of this policy shall not apply in the case of malfeasance in office or willful or wanton neglect of duty. The provisions of this policy shall not be interpreted as an expansion of the personal liability of any such individual or as an obligation that the Board initiate legal action on behalf of any Board member, officer, or employee.
- 1.2. The Board may maintain insurance coverage on behalf of the Board and employees of the State Colleges ~~System~~ to provide defense and indemnification with respect to liabilities discussed hereunder. If such

insurance is provided, the Board strongly encourages individuals seeking indemnification, to first request legal representation from the Board.

2. Legal Defense Provided by the Board

- 2.1. If any civil action is brought against any member of the Board or any officer or employee of the Board or of any State College, such individual may request that the Board provide legal counsel if such civil action is based in fact on an alleged act or omission in the course and scope of the individual's duties or employment. Such request shall be made in writing to the Chancellor. At its discretion, the Board may arrange for the legal defense of the requesting individual unless after investigation it is found that the claim or demand does not arise out of an alleged act or omission occurring in the course and scope of such individual's duties or employment or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Board shall give the requesting individual written notice that the request for legal counsel in defense of the claim has been rejected.
- 2.2. Any such individual against whom a claim is made which is not rejected by the Board pursuant to ~~2a)~~[2.1](#) shall cooperate fully with the legal counsel provided for in the defense of such claim. If such individual does not cooperate or otherwise acts to materially prejudice the defense of the claim or the appearance, such legal counsel may be withdrawn.
- 2.3. If the request for legal counsel is rejected or if it is established by a judgment ultimately rendered on the claim that the act or omission complained of was not in the course or scope of employment or amounted to willful or wanton neglect of duty, no public money shall be paid in settlement of such claim or in payment of any judgment against such individual. The rejection of a request for legal counsel shall not prejudice the defense that the claim arose out of an alleged act or omission occurring in the course and scope of such individual's duties or employment or that the act or omission complained of did not amount to malfeasance in office or willful or wanton neglect of duty. If such individual is successful in asserting such defense, they shall be indemnified to the extent authorized by law for the reasonable cost of defending the claim.
- 2.4. If such individual has been defended by legal counsel provided by the Board, the Chancellor and such other individuals whose involvement is necessary and proper may formulate procedures to implement this policy and coordinate the processing of claims under this policy with insurance and risk management practices.

3. Legal Defense Provided by the Attorney General

- 3.1. If any civil action is brought against any member of the Board or any officer or employee of the Board or of any State College, such individual may file a written request for legal counsel with the Attorney General asserting that such civil action is based in fact on an alleged act or

omission in the course and scope of their duties or employment. The individual seeking legal counsel shall provide a copy of the written request to the Chancellor at the time the request is filed with the Attorney General. The Attorney General shall appear and defend or represent the requesting individual unless after investigation it is found that the claim or demand does not arise out of an alleged act or omission occurring in the course and scope of such individual's duties or employment or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney General shall give the requesting individual written notice that the request for legal counsel in defense of the claim has been rejected.

- 3.2. Any such individual against whom a claim is made which is not rejected by the Attorney General pursuant to ~~3a~~[3.1](#) shall cooperate fully with the Attorney General in the defense of such claim. If the Attorney General determines that such individual has not cooperated or has otherwise acted to prejudice the defense of the claim or the appearance, the Attorney General may at any time reject the defense of the claim or representation before the tribunal.
- 3.3. If the Attorney General rejects the defense of a claim or if it is established by a judgment ultimately rendered on the claim that the act or omission complained of was not in the course or scope of employment or amounted to willful or wanton neglect of duty, no public money shall be paid in settlement of such claim or in payment of any judgment against such individual. Such Action by the Attorney General shall not prejudice the right of the individual to assert and establish as a defense that the claim arose out of an alleged act or omission occurring in the course and scope of such individual's duties or employment or that the act or omission complained of did not amount to malfeasance in office or willful or wanton neglect of duty. If such individual is successful in asserting such defense, they shall be indemnified to the extent authorized by law for the reasonable cost of defending the claim.
- 3.4. If such individual has been defended by the Attorney General and it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not covered by Neb. Rev. Stat. §-81-8,239.05, the judgment against that individual shall provide for payment to the state of the state's costs, including a reasonable attorney's fee.

FORMS/APPENDICES:

None

SOURCE:

Legal Reference:

Neb. Rev. Stat. 81-8,239.05	Indemnification of state officials and employees; when; Attorney General; duties; attorney's fees ; report.
Neb. Rev. Stat. 81-8, 329 239 .06	Civil action against state officer or employee; Attorney General; represent; cooperation required; payment for defense; when required.

Policy Adopted: June 1986

Policy Revised: March 1994, September 2006, June 2016, **September 2022**