Summary of Proposed Action
State Board of Higher Education Meeting
April 27, 2017

1. **Issue:** SBHE Policy 340.2 – Nonprofit Affiliates.

2. **Proposed actions:** Approve first reading of revised [SBHE Policy 340.2](#).

3. **Background information:** In its present form, SBHE Policy 340.2 outlines the “framework which enables and enhances a sound and mutually supportive foundation/institutional relationship.” Specifically, 340.2 identifies the responsibilities and obligations that foundations, as independent nonprofits, must meet while working to support and advance the missions and objectives of institutions and/or institutional functions. Starting in the summer of 2015, draft revisions were made to 340.2 to address the liability risks that foundations could present to their respective institutions as well as the NDUS and SBHE. Further, the State Auditor has found on several occasions that the NDUS and its institutions do not have adequate oversight over the operations of their affiliated foundations.

The following is a summary of revisions to 340.2:

- The term “nonprofit affiliate” replaces “foundation” throughout the policy.
- A requirement in 3(c) that a nonprofit affiliate will comply with applicable SBHE policies identified in individual operating agreements when government functions are delegated to the nonprofit affiliate.
- The deletion of the list of items that are not deemed government functions (old 3(c)).
- An acknowledgement in 3(d) that the mission/purpose of a nonprofit affiliate will not conflict with the strategic plan of the affiliated institution or SBHE.
- A requirement in 3(g) that an operating agreement between an institution and nonprofit affiliate include the latter’s policies for investment and spending.
- A requirement in 3(j) that operating agreements include a provision acknowledging the application of North Dakota’s open records and meetings law to the nonprofit affiliate’s operations, including applicable exemptions to that law.
- A requirement in 3(n) that the President of an institution serve on the nonprofit affiliate’s governing board in an *ex officio*, non-voting capacity.
- A requirement in 4 that operating agreements be filed with the Chancellor or Chancellor’s designee (was “NDUS General Counsel”).
- A requirement in 6 that nonprofit affiliate officers report concerns to the President of their affiliated institution. This includes a list of “significant events” that could have a negative impact on the affiliated institution/NDUS/SBHE.

4. **Financial implications:** None

5. **Legal/policy issues:** None

6. **Academic issues:** None
7. **Coordination:** Revisions to SBHE Policy 340.2 started in the summer of 2015. In the last eighteen months, revisions have been shared with and feedback solicited from the Chancellor’s cabinet and the nonprofit affiliates on multiple occasions.

8. **Attachments:** SBHE Policy 340.2.

9. **Contact information:** Nick Vaughn, Assistant Attorney General, 328-3611 or nvaughn@nd.gov; and Dr. Lisa Feldner, NDUS Chief of Staff, 328-1510 or lisa.feldner@ndus.edu.

10. **Chancellor’s recommendation:** Approve