

Contact: Andrea Anania

### **ANNUAL REPORT ON COMPETITION WITH PRIVATE ENTERPRISE**

**Action Requested:** Receive the annual report.

**Executive Summary:** State laws prohibit government entities from competing with private enterprise unless specifically authorized by statute, rule, ordinance, or regulation. The Iowa Administrative Code and Board Policy Manual state that Regent institutions shall not engage in competition with private enterprise unless the activity will assist in the education, research, extension, or service mission of the institutions.

Each institution has a committee to review potential situations that may compete with private enterprise.

During the past year, the University of Iowa and Iowa State University each approved three proposals. (See pages 3-7.) The University of Northern Iowa, Iowa School for the Deaf, and the Iowa Educational Services for the Blind and Visually Impaired did not receive any proposals for consideration.

#### **Background:**

Iowa Code Chapter 23A (Noncompetition by Government) prohibits a public entity from competing with private enterprise unless specifically authorized by statute, rule, ordinance, or regulation and authorizes the Board of Regents to provide, by administrative rule, exemptions to this prohibition for the institutions under the control of the Board.

Iowa Code §23A.2(2) lists exemptions and §23A.2(10)k lists items for which the chapter does not apply. Both lists may be found on page 2.

Iowa Administrative Code (IAC) §681-9.4 and Board Policy Manual §2.2(8)(D) specify the Board's rules and requirements regarding competition with private enterprise by Regents institutions.

Each institution has established written policies regarding competition with private enterprise to ensure that:

- ◆ Activities provided by the institutions are consistent with Board policy;
- ◆ Processes are identified to handle inquiries about activities carried out by the institution; and
- ◆ There is a means for community businesses to interact with the institutions including discussion of complaints.

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**Exemptions from Competition with Private Enterprise**

**Iowa Code  
§23A.2(2)**

The state Board of Regents or a school corporation may, by rule, provide for exemption from the application of this chapter for any of the following:

- a. Goods and services that are directly and reasonably related to the educational mission of an institution or school.
  - b. Goods and services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost.
  - c. Use of vehicles owned by the institution or school for charter trips offered to the public, or to full, part-time, or temporary students.
  - d. Durable medical equipment or devices sold or leased for use off premises of an institution, school, or University of Iowa Hospitals or Clinics.
  - e. Goods or services which are not otherwise available in the quantity or quality required by the institution or school.
  - f. Telecommunications other than radio or television stations.
  - g. Sponsoring or providing facilities for fitness and recreation.
  - h. Food service and sales.
  - i. Sale of books, records, tapes, software, educational equipment, and supplies.
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**Iowa Code  
§23A.2(10)k**

This chapter does not apply to the following activities of an institution or school under the control of the state Board of Regents as provided in Iowa Code §23A.2(10)k or any other applicable provision of Iowa law.

- (1) Residence halls.
  - (2) Student transportation, except as specifically listed in §23A.2(2)(c).
  - (3) Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.
  - (4) Sponsoring or providing facilities for cultural and athletic events.
  - (5) Items displaying the emblem, mascot, or logo of the institution or school, or that otherwise promote the identity of the institution or school and its programs.
  - (6) Souvenirs and programs relating to events sponsored by or at the institution or school.
  - (7) Radio and television stations.
  - (8) Health care and related services to patients and visitors by the University of Iowa.
  - (9) Goods, products, or professional services provided to the public in furtherance of the institution's or school's mission.
  - (10) Services to the public at the Iowa State University College of Veterinary Medicine.
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**Analysis:**

**UNIVERSITY OF IOWA**

Department of Health and Human Physiology - Community Health Collaborative

The Department of Health and Human Physiology (DHHP) Community Health Collaborative submitted a proposal for the University to enter into a contractual agreement with software company Fitnescity to connect clients interested in health testing with local health testing sites.

Neither the name of The University of Iowa nor any UI trademark is listed on the Fitnescity website. Rather, clients see "Iowa City" as a potential testing site. The agreement with Fitnescity can be terminated at any time without penalty.

These health tests are useful for individuals trying to improve their overall health and well-being and provide patients and physicians with important information difficult to ascertain in other settings.

The program is overseen by DHHP faculty members and tests are administered by trained undergraduate or graduate level students as part of a practicum/internship. Following each test, DHHP uploads non-identifiable data to the Fitnescity HIPAA secure platform. Clients can purchase a personalized feedback report from Fitnescity, but are not obligated to do so. Further, DHHP is not prohibited from providing feedback to clients about their tests, a critical component of the student experience.

Offering this service furthers the educational mission of the University by providing students an experiential learning opportunity not accessible elsewhere. Fitnescity also furthers the educational mission of the institution by increasing the volume of testing by connecting clients interested in health testing with local health testing sites.

This test, a support service for wellness and fitness and primarily for the benefit of students, faculty, staff and members of the community meets a demand for the campus and the community that is not otherwise available. DHHP is unaware of any local private business or organization in the state that offers this service.

The Committee previously approved fee-for-service health testing for DHHP through its Community Outreach Lab to provide Bod Pod, VO2 Max Fitness, and Resting Metabolic Rate testing services on the condition that requests for additional fee-for-service health testing require submission of a new proposal.

The Committee recommendation to the Senior Vice-President was to move forward with a contractual relationship with Fitnescity. Senior Vice President Rod Lehnertz concurred with the Committee's recommendation.

Department of Health and Human Physiology - Community Health Collaborative

The Department of Health and Human Physiology (DHHP) submitted a proposal to provide Physical Activity, Sedentary and Sleep Profile fee-for-service health screening tests for the Community Health Collaborative.

These health tests are useful for individuals trying to improve their overall health and well-being and provide patients and physicians with important information difficult to ascertain in other settings.

The program is overseen by DHHP faculty members and tests are administered by trained undergraduate or graduate level students as part of a practicum/internship. Following each test, trained DHPP faculty, staff and/or students meet with clients to discuss results and propose solutions for improving physical activity, sedentary, and/or sleep behaviors.

The tests are offered to individuals who contact DHPP directly as well as individuals referred to DHHP by their primary care provider such as patients being referred to Weight Loss Management, Bariatric Surgery and Diabetes Clinics.

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The Committee recommended the proposal move forward. Senior Vice President Rod Lehnertz concurred with the Committee's recommendation.

UI REACH Program

The UI REACH Program submitted a proposal to expand its Alumni Support Program by extending mentoring services to its graduates who relocate to Iowa City. The proposal is in response to requests from alumni of the program and their parents.

UI REACH is a comprehensive transition program for students ages 18-25 with intellectual, cognitive, and learning disabilities. The program offers these students an integrated college experience. Academics, career and transition, social growth, and campus life are areas of focus. While enrolled in the UI REACH program, students receive mentoring from traditional students who are paid staff of the UI REACH program.

Iowa Code Chapter 23A provides applicable exemptions:

- ▶ Section 23A.2(2)(a) allows for the exemption of services that are directly and reasonably related to the educational mission of the school. The proposed extension of UI REACH enhances the educational mission of the University through experiential learning opportunities that students would not have ready access to elsewhere. Services will continue to be overseen by UI REACH employees and will provide valuable experience for these students.
- ▶ Section 23A.2(2)(b) allows for the exemption of services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost. The services are offered only to UI REACH alumni. The unique and important post-graduation educational needs of UI REACH alumni justify recognizing alumni as either continuing students or guests of the institution.
- ▶ Iowa Code §23A.2(2)(e) allows for the exemption the provision of goods or services which are not otherwise available in the quantity or quality required by the institution or school. Because these alumni have not yet established residency in Iowa, they do not qualify for payment of the drop-in-supports through mechanisms such as a Medicaid waiver. Even if residency were established, there is a waiting list for waiver enrollment. Community providers also offer drop-in services for persons with qualifying disability for private pay, but UI REACH represents that there is a waiting period for these services.
- ▶ This initiative aligns with the institution's strategic goals and is exempt from the law pursuant to Section 23A.2(10)(k)(9) as a service provided in furtherance of the institution's mission. Specifically, the initiative explores new venture creation (expanded alumni supports), creates lifelong learning opportunities, engages the time and talent of alumni, and educates UI REACH students to become engaged citizens.

The Committee recommended moving forward with the UI REACH proposal with the understanding the services be limited to UI REACH graduates only and the program be reassessed every two years for the availability of these services from either Medicaid or private providers. Senior Vice President Rod Lehnertz concurred with the Committee's recommendation.

**IOWA STATE UNIVERSITY**

Dr. Maria Salas-Fernandez – Sorghum Line

Michigan State University (MSU) requested ISU's Department of Agronomy's Dr. Maria Salas-Fernandez make hybrid crosses of sorghum seeds using her male sorghum line (IA100RPS), a proprietary line released by ISU's Research Foundation.

MSU will use the sorghum seeds in their five-year Great Lakes Bioenergy Research Center Project funded by the U.S. Department of Energy. A new hybrid cross will need to be made each year of the project. ISU's University Counsel created a one-time fee-for-service agreement for this request.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational, research, and public outreach functions and activities and provides an integral good or service that is not reasonably available in the community since it is proprietary to ISU.

The Committee approved the request.

Learning About STEM Student Outcomes

Learning About STEM Student Outcomes (LASSO) is a free online platform instructors can use to assess student learning in their STEM (science, technology, engineering, and math) courses. The platform hosts, administers, scores, and analyzes pre-test and post-test scores.

STEM instructors can use these research-based assessments to make pedagogical (teaching) decisions about their courses. Additionally, LASSO anonymizes student responses to create a large-scale national dataset educational researchers can use. The request was to sell anonymized data and tools to the education researchers who want to test and disseminate assessments of their own.

The Competition with the Private Sector Review Committee reviewed the request and determined the activity is an integral part of the institution's educational and public outreach activities that provide continuing education.

The Committee approved the request.

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Microelectronics Research Center

ISU's Microelectronics Research Center (MRC) exists to be a catalyst for next-generation education, research, and technology transfer in micro-nanoelectronics, semiconductors, photonics, magnetics, sensors, and nanomaterials through multidisciplinary collaboration by faculty and scientists across campus.

MRC went through a process this year to establish rates for four pieces of equipment as shown below. Rates were established for internal and external users. While most users will be internal, MRC requested to charge for external use of the equipment (and possibly staff time) by researchers in other institutions or industry partners.

▶ MJB-4 Contact Aligner

This photolithography system aligns and prints a high-resolution pattern onto standard or non-standard substrates (i.e., materials [in this case, 3" or smaller]). It is a major instrument used in semiconductor research and development.

▶ Nanoscribe 3D Printer

Unlike most commercial 3D printers, this 3D printer uses specialized two-photon polymerization (2PP) to print extremely high-resolution (sub-micrometer) structures, materials, or devices with sizes ranging from a few hundreds of nanometers to millimeters. All printing is related to scientific research and not for general public sale.

The external services with this equipment are expected to be minor; however, because federal grant funds were used to acquire this equipment, MRC is striving to make broader impacts with this equipment by providing the micro-nanoprinting capacity to researchers from other institutions as was approved by the federal granting agency.

▶ Reactive Ion Etching (RIE) System

The reactive ion etching (RIE) system is a tool used to etch away materials for micro- or nanomanufacturing sensors, semiconductors, microelectronics, and other devices. Etching is a critical step of patterning micro- and nanostructures in material and device research. These materials and devices are for scientific research.

▶ Ultraviolet-Visible Spectrophotometer

The ultraviolet-visible spectrophotometer is a tool for analyzing samples with minimal sample preparation. The spectrophotometer has an excellent photometric performance (i.e., measuring the intensity of light) in the 175-900 nm range.

This tool can be widely used in various disciplines, such as materials, molecular biology, chemistry and biochemistry, with applications ranging from semiconductor and organic material and device characterizations to biomaterial and chemical identification.

External users may find this tool useful in materials, biomedical and life science research because the tool provides measurements of material characteristics, nucleic acids, proteins, and bacterial density.

The Competition with the Private Sector Review Committee reviewed the requests and determined the activities are an integral part of the institution's educational, research, and public outreach functions and activities.

The Committee approved the requests.



**BOARD OF REGENTS  
STATE OF IOWA**

**AGENDA ITEM 4g  
APRIL 19-20, 2023**

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