

**GUIDELINES FOR DETERMINING PRIVATE BUSINESS USE
and
INSTRUCTIONS FOR COMPLETING THE PRIVATE BUSINESS USE REPORT**

Guidelines for Determining “Private Business Use”

Private business use can involve the use of space or facilities or a program by:

- A private for-profit business
- A natural person
- A private nonprofit organization (501(c)(3) or otherwise)
- An agency or instrumentality of the federal government

For this purpose, the above users are referred to as “private users”. Private users do *not* include state or local governmental units, or any private person acting solely and directly as an officer or employee of or on behalf of the academic institution or another governmental unit.

Private business use exists when there is direct or indirect use by one or more private users in a manner or on a basis different than normal use of that space or facility or program by the general public (general public includes students, faculty and staff).

In the case of renovations, expansions or improvements of existing space, the use of the facility or space as renovated, expanded or improved is the issue. In the case of site improvements and equipment, the use of the space or facility(ies) to be served by those improvements or equipment, as well as the use of the financed improvements themselves, are to be considered. In reviewing for possible private business use, all uses (except general public use) of a financed project and any portions of the project are to be considered.

Private business use exists if there is, or the Institution expects or intends that there will be, an oral or written understanding, arrangement, agreement or contract under which any of the following apply:

- The private user will be a lessee, tenant or user of space or facilities (other than as a member of the general public).
- The private user will manage the space or facility, or use or operations of the space or facility. (There are detailed IRS “management contract” regulations that apply.)
- The private user is entitled to a portion of the output or services of operations of the space or facility, and the general public is not entitled to a portion of the output or services on the same basis.
- The facility is so situated that it is useful only or predominantly to one or a few private users or to their customers, clients or business visitors.

AND

The private user pays, directly or indirectly, for use of the space or facility. Direct or indirect payments to or on behalf of an Institution that meet this “payment test” include *any* of the following:

- Rent
- A share of receipts from the use
- Donations of money or other items or services in exchange for the use

- Other tangible benefits to or on behalf of the Institution

Instructions for Completing the Private Business Use Report

Before State bond proceeds may be released for a capital project, the attached Private Business Use Report must be completed and filed. A separate Private Business Use Report must be completed for each appropriation line item created in each capital act (or created via a transfer of appropriation authority). Just one copy need be submitted. Regents and OBM will not approve a Controlling Board request unless a Private Business Use Report has been submitted for the particular appropriation line item/capital act.

The report should be completed in the context of the financed project only. A project may involve one or more of the following:

- Building or adding new space
- Renovating or reconfiguring existing space
- General improvements (interior or exterior) that do not alter existing space but which benefit or serve that space (such as a new roof, HVAC system, utility line serving the facility, communications/computer wiring)
- Site improvements (such as land clearance, landscaping, sidewalks, parking)
- Equipment.

Please follow these steps to complete each Private Business Use Report

- 1/ Enter name of institution, project title, appropriation act and line item numbers, appropriation amount and the total project amount.
- 2/ Briefly describe the financed project/facility. Generally, the same phrasing of project scope in a program plan or budget request can be used.
- 3/ Determine if there will be or will not be “private business use” in or of the financed project/facility, and check the appropriate line. If you check WILL BE, the reverse side of the report must be completed.
- 4/ Review the certification for accuracy and institutional understanding, and sign and date it.

Reverse Side of Private Business Use Report

The reverse side of the Report seeks information as to how the facility or improvement being financed will be used when the project is completed.

Column

- (1) Lists a number of potential private business uses. Write in other uses on additional lines provided.
- (2) Check each of the reasonably anticipated "private business uses". It is understood that uses may change in the future; this Report is designed to measure your honest, reasonable expectations as to the intended use of the financed facilities or space served.
- (3) Provide an estimate of the portion of the cost of the financed project/facility that is allocable to the particular private business use.
- (4) State the approximate net assignable square feet set aside for or assignable to the private business use. Measuring space should follow procedures similar to those used for the Board of Regents Uniform Information System reporting. Specific space may be allocable to more than one use during particular time periods (day, week or month, or summer months only). In such cases, the prorating of use between private and public uses can be estimated as in other space reporting procedures. One manner of calculating the amount of space to enter in column 4 in the case of multi-use space is to divide the total time used for private purposes by the total time used for all purposes.
- (5) Indicate the nature of the private business use arrangement and identify any direct or indirect payment made or to be made by the private user. Elaborate on an attachment if necessary.
- (6) State the total of the estimated costs allocable to private business use.
- (7) State the total of the square feet in private business use.
- (8) State the total square feet in the entire financed area or facility.

**REPORT OF ANY PRIVATE BUSINESS USE OF CAPITAL FACILITIES
FINANCED WITH STATE HIGHER EDUCATION BOND PROCEEDS**

This report must be submitted to the Board of Regents concurrently with the first Controlling board release request for each appropriation line item enacted in each capital act (or created via a transfer of appropriation authority).

1/

INSTITUTION:

PROJECT TITLE:

APPROPRIATION ACT:

APPROPRIATION AMOUNT:

APPROPRIATION LINE ITEM:

TOTAL PROJECT AMOUNT:

2/

Briefly describe the financed project/facility:

3/

Based upon review of the guidelines for determining private business use of facilities financed with State higher education bond funds, there

_____ WILL BE _____ WILL NOT BE
private business use in or of the project.

NOTE: If there **WILL BE** any private business use in or of the project, complete the reverse side of this form. If there **WILL NOT BE** any private business use, disregard the reverse side.

4/

Complete this report by signing off on the following certifications:

The institution does not intend to sell or otherwise dispose of the financed project or facility, or any part thereof.

None of the State appropriations for the project will be used to make principal or interest payments on, or refund, renew, roll over, retire or replace, any other obligations previously issued by the Institution.

Any expenditures by the Institution that are to be reimbursed from State capital appropriations were made in anticipation of the reimbursement from those appropriations.

To the best of my knowledge, information and belief, all statements and representations in this report (including its reverse side, if applicable) are facts or the expectations of this Institution. Those expectations are reasonable, and there are currently no other facts or circumstances that would or could materially change those statements and representations. The Institution recognizes that those statements and representations will be relied upon by the State for the purposes of its certifications relating to tax exemption of its Bonds as described in certain Treasury Regulations. **The Institution acknowledges that any change in those facts or expectations may result in different requirements, and that the Board of Regents and OBM should be promptly advised if such changes occur or are anticipated to occur.**

Confirmed By: _____
(Appropriate Institution VP)

Title

Date of Signing: _____

PRIVATE BUSINESS USE REPORT
(Complete Only If Private Business Uses Are Involved)

Indicate below the use of space in the financed facility (in whole or in part) from State bond proceeds. Include space that benefits from or is served by financed improvements to the facility such as utilities, parking or equipment.

POTENTIAL PRIVATE BUSINESS USES (1)	CHECK PRIVATE USES THAT ARE PLANNED (2)	COST OF PROJECT ALLOCATED TO PRIVATE USES (3)	SQUARE FEET IN PRIVATE USE AREA (4)	NATURE OF USE ARRANGEMENT, INCLUDING PAYMENTS, IF ANY (Use separate page if necessary - be sure to describe lease or other payments) (5)
Ad Display Area				
Airport				
Banking/ATM				
Bookstore				
Classrooms				
Concession/News Stand				
Copying/Printing				
Delivery/Shipping				
Dining Room				
Dormitory				
Exercise/Recreation				
Food Court/Cafeteria				
Game Room				
Gymnasium				
Health/Exercise Club				
Hospital				
Hotel/Residences				
Job Training				
Laboratory				
Laundry/Dry-Cleaning				
Library				
Mass Transportation				
Medical Clinic or Office				
Museum				
Office Space				
Post Office				
Publications				
Retail Stores/Shops				
Storage				
Telecommunications				
Theater				
Travel Agency				
Vending				
Other (List)				

(6) TOTAL PRIVATE USE COSTS: _____

(7) TOTAL SQUARE FEET IN PRIVATE USE: _____

(8) TOTAL SQUARE FEET IN IMPROVED AREA OR FACILITY: _____