

CERTIFICATION OF ENROLLMENT

SENATE BILL 5854

Chapter 173, Laws of 2022

67th Legislature
2022 Regular Session

HIGHER EDUCATION FACULTY—ETHICS

EFFECTIVE DATE: June 9, 2022

Passed by the Senate February 10,
2022

Yeas 48 Nays 1

DENNY HECK

President of the Senate

Passed by the House March 3, 2022

Yeas 93 Nays 4

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved March 24, 2022 9:32 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5854** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

March 24, 2022

**Secretary of State
State of Washington**

SENATE BILL 5854

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

By Senators Randall, Hunt, Lovick, Nobles, and C. Wilson

Read first time 01/13/22. Referred to Committee on Higher Education & Workforce Development.

1 AN ACT Relating to ethical performance of faculty duties;
2 amending RCW 42.52.200, 42.52.220, and 42.52.360; and reenacting and
3 amending RCW 42.52.010.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 42.52.010 and 2011 c 60 s 28 are each reenacted and
6 amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Agency" means any state board, commission, bureau,
10 committee, department, institution, division, or tribunal in the
11 legislative, executive, or judicial branch of state government.
12 "Agency" includes all elective offices, the state legislature, those
13 institutions of higher education created and supported by the state
14 government, and those courts that are parts of state government.

15 (2) "Assist" means to act, or offer or agree to act, in such a
16 way as to help, aid, advise, furnish information to, or otherwise
17 provide assistance to another person, believing that the action is of
18 help, aid, advice, or assistance to the person and with intent so to
19 assist such person.

20 (3) "Beneficial interest" has the meaning ascribed to it under
21 the Washington case law. However, an ownership interest in a mutual

1 fund or similar investment pooling fund in which the owner has no
2 management powers does not constitute a beneficial interest in the
3 entities in which the fund or pool invests.

4 (4) "Compensation" means anything of economic value, however
5 designated, that is paid, loaned, granted, or transferred, or to be
6 paid, loaned, granted, or transferred for, or in consideration of,
7 personal services to any person.

8 (5) "Confidential information" means (a) specific information,
9 rather than generalized knowledge, that is not available to the
10 general public on request or (b) information made confidential by
11 law.

12 (6) "Contract" or "grant" means an agreement between two or more
13 persons that creates an obligation to do or not to do a particular
14 thing. "Contract" or "grant" includes, but is not limited to, an
15 employment contract, a lease, a license, a purchase agreement, or a
16 sales agreement.

17 (7) "Ethics boards" means the commission on judicial conduct, the
18 legislative ethics board, and the executive ethics board.

19 (8) "Family" has the same meaning as "immediate family" in RCW
20 42.17A.005.

21 (9) "Gift" means anything of economic value for which no
22 consideration is given. "Gift" does not include:

23 (a) Items from family members or friends where it is clear beyond
24 a reasonable doubt that the gift was not made as part of any design
25 to gain or maintain influence in the agency of which the recipient is
26 an officer or employee;

27 (b) Items related to the outside business of the recipient that
28 are customary and not related to the recipient's performance of
29 official duties;

30 (c) Items exchanged among officials and employees or a social
31 event hosted or sponsored by a state officer or state employee for
32 coworkers;

33 (d) Payments by a governmental or nongovernmental entity of
34 reasonable expenses incurred in connection with a speech,
35 presentation, appearance, or trade mission made in an official
36 capacity. As used in this subsection, "reasonable expenses" are
37 limited to travel, lodging, and subsistence expenses incurred the day
38 before through the day after the event;

39 (e) Items a state officer or state employee is authorized by law
40 to accept;

1 (f) Payment of enrollment and course fees and reasonable travel
2 expenses attributable to attending seminars and educational programs
3 sponsored by a bona fide governmental or nonprofit professional,
4 educational, trade, or charitable association or institution. As used
5 in this subsection, "reasonable expenses" are limited to travel,
6 lodging, and subsistence expenses incurred the day before through the
7 day after the event;

8 (g) Items returned by the recipient to the donor within thirty
9 days of receipt or donated to a charitable organization within thirty
10 days of receipt;

11 (h) Campaign contributions reported under chapter 42.17A RCW;

12 (i) Discounts available to an individual as a member of an
13 employee group, occupation, or similar broad-based group; and

14 (j) Awards, prizes, scholarships, or other items provided in
15 recognition of academic or scientific achievement.

16 (10) "Head of agency" means the chief executive officer of an
17 agency. In the case of an agency headed by a commission, board,
18 committee, or other body consisting of more than one natural person,
19 agency head means the person or board authorized to appoint agency
20 employees and regulate their conduct.

21 (11) "Honorarium" means money or thing of value offered to a
22 state officer or state employee for a speech, appearance, article, or
23 similar item or activity in connection with the state officer's or
24 state employee's official role.

25 (12) "Institution of higher education" has the same meaning as in
26 RCW 28B.10.016.

27 (13) "Official duty" means those duties within the specific scope
28 of employment of the state officer or state employee as defined by
29 the officer's or employee's agency or by statute or the state
30 Constitution.

31 ~~((13))~~ (14) "Participate" means to participate in state action
32 or a proceeding personally and substantially as a state officer or
33 state employee, through approval, disapproval, decision,
34 recommendation, the rendering of advice, investigation, or otherwise
35 but does not include preparation, consideration, or enactment of
36 legislation or the performance of legislative duties.

37 ~~((14))~~ (15) "Person" means any individual, partnership,
38 association, corporation, firm, institution, or other entity, whether
39 or not operated for profit.

1 (~~(15)~~) (16) "Regulatory agency" means any state board,
2 commission, department, or officer, except those in the legislative
3 or judicial branches, authorized by law to conduct adjudicative
4 proceedings, issue permits or licenses, or to control or affect
5 interests of identified persons.

6 (~~(16)~~) (17) "Responsibility" in connection with a transaction
7 involving the state, means the direct administrative or operating
8 authority, whether intermediate or final, and either exercisable
9 alone or through subordinates, effectively to approve, disapprove, or
10 otherwise direct state action in respect of such transaction.

11 (~~(17)~~) (18) "State action" means any action on the part of an
12 agency, including, but not limited to:

13 (a) A decision, determination, finding, ruling, or order; and

14 (b) A grant, payment, award, license, contract, transaction,
15 sanction, or approval, or the denial thereof, or failure to act with
16 respect to a decision, determination, finding, ruling, or order.

17 (~~(18)~~) (19) "State employee" means an individual who is
18 employed by an agency in any branch of state government. For purposes
19 of this chapter, employees of the superior courts are not state
20 officers or state employees.

21 (~~(19)~~) (20) "State officer" means every person holding a
22 position of public trust in or under an executive, legislative, or
23 judicial office of the state. "State officer" includes judges of the
24 superior court, judges of the court of appeals, justices of the
25 supreme court, members of the legislature together with the secretary
26 of the senate and the chief clerk of the house of representatives,
27 holders of elective offices in the executive branch of state
28 government, chief executive officers of state agencies, members of
29 boards, commissions, or committees with authority over one or more
30 state agencies or institutions, and employees of the state who are
31 engaged in supervisory, policy-making, or policy-enforcing work. For
32 the purposes of this chapter, "state officer" also includes any
33 person exercising or undertaking to exercise the powers or functions
34 of a state officer.

35 (~~(20)~~) (21) "Thing of economic value," in addition to its
36 ordinary meaning, includes:

37 (a) A loan, property interest, interest in a contract or other
38 chose in action, and employment or another arrangement involving a
39 right to compensation;

1 (b) An option, irrespective of the conditions to the exercise of
2 the option; and

3 (c) A promise or undertaking for the present or future delivery
4 or procurement.

5 ~~((+21))~~ (22) (a) "Transaction involving the state" means a
6 proceeding, application, submission, request for a ruling or other
7 determination, contract, claim, case, or other similar matter that
8 the state officer, state employee, or former state officer or state
9 employee in question believes, or has reason to believe:

10 (i) Is, or will be, the subject of state action; or

11 (ii) Is one to which the state is or will be a party; or

12 (iii) Is one in which the state has a direct and substantial
13 proprietary interest.

14 (b) "Transaction involving the state" does not include the
15 following: Preparation, consideration, or enactment of legislation,
16 including appropriation of moneys in a budget, or the performance of
17 legislative duties by an officer or employee; or a claim, case,
18 lawsuit, or similar matter if the officer or employee did not
19 participate in the underlying transaction involving the state that is
20 the basis for the claim, case, or lawsuit.

21 ~~((+22))~~ (23) "University" includes "state universities" and
22 "regional universities" as defined in RCW 28B.10.016 and also
23 includes any research or technology institute affiliated with a
24 university(~~(, including without limitation, the Spokane~~
25 ~~intercollegiate research and technology institute and the Washington~~
26 ~~technology center))~~).

27 ~~((+23))~~ (24) "University research employee" means a state
28 officer or state employee employed by a university, but only to the
29 extent the state officer or state employee is engaged in research,
30 technology transfer, approved consulting activities related to
31 research and technology transfer, or other incidental activities.

32 **Sec. 2.** RCW 42.52.200 and 2005 c 106 s 3 are each amended to
33 read as follows:

34 (1) Each agency may adopt rules consistent with law, for use
35 within the agency to protect against violations of this chapter.

36 (2) Each agency proposing to adopt rules under this section shall
37 forward the rules to the appropriate ethics board before they may
38 take effect. The board may submit comments to the agency regarding
39 the proposed rules.

1 (3) This section applies to (~~universities~~) institutions of
2 higher education only to the extent their activities are not subject
3 to RCW 42.52.220.

4 **Sec. 3.** RCW 42.52.220 and 2005 c 106 s 4 are each amended to
5 read as follows:

6 (1) Consistent with the state policy to encourage basic and
7 applied scientific research by the state's research universities as
8 stated in RCW 28B.140.005, and consistent with the expectations of
9 university faculty to produce, publish, and disseminate research and
10 scholarship, each university and the state board for community and
11 technical colleges may develop, adopt, and implement one or more
12 written administrative processes that shall(~~(, upon approval by the~~
13 ~~governor,~~) apply in place of the obligations imposed on
14 (~~universities~~) institutions of higher education, faculty, and
15 university research employees under RCW 42.52.030, 42.52.040,
16 42.52.080, 42.52.110, 42.52.120, 42.52.130, 42.52.140, 42.52.150, and
17 42.52.160. The (~~universities~~) institutions of higher education
18 shall coordinate on the development of administrative processes to
19 ensure the processes are comparable. Each policy shall apply upon
20 approval by boards of trustees or regents for the state universities,
21 regional universities, and The Evergreen State College, or by the
22 state board for community and technical colleges. Each board of
23 trustees or regents and the state board for community and technical
24 colleges must provide the executive ethics board with a copy of each
25 institution's policy upon approval. A faculty member or university
26 research employee in compliance with the processes authorized in this
27 section shall be deemed to be in compliance with RCW 42.52.030,
28 42.52.040, 42.52.080, 42.52.110, 42.52.120, 42.52.130, 42.52.140,
29 42.52.150, and 42.52.160.

30 (2) The executive ethics board shall enforce activity subject to
31 the written approval processes under this section, as provided in RCW
32 42.52.360.

33 **Sec. 4.** RCW 42.52.360 and 2013 c 190 s 3 are each amended to
34 read as follows:

35 (1) The executive ethics board shall enforce this chapter and
36 rules adopted under it with respect to statewide elected officers and
37 all other officers and employees in the executive branch, boards and
38 commissions, and institutions of higher education.

1 (2) The executive ethics board shall enforce this chapter with
2 regard to the activities of ((university)) institution of higher
3 education faculty and research employees as provided in this
4 subsection.

5 (a) With respect to compliance with RCW 42.52.030, 42.52.110,
6 42.52.130, 42.52.140, and 42.52.150, the administrative process for
7 university research employees shall be consistent with and adhere to
8 no less than the current standards in regulations of the United
9 States public health service and the office of the secretary of the
10 department of health and human services in Title 42 C.F.R. Part 50,
11 Subpart F relating to promotion of objectivity in research.

12 (b) With respect to compliance with RCW 42.52.040, 42.52.080, and
13 42.52.120, the administrative process shall include a comprehensive
14 system for the disclosure, review, and approval of outside work
15 activities by ((university)) institution of higher education faculty
16 and research employees while assuring that such employees are
17 fulfilling their employment obligations to the ((university))
18 institution of higher education.

19 (c) With respect to compliance with RCW 42.52.160, the
20 administrative process shall include ((a)) reasonable determinations
21 by the ((university)) institution of higher education of
22 ((acceptable)).

23 (i) Acceptable private uses having de minimis costs to the
24 ((university)) institution of higher education and a method for
25 establishing fair and reasonable reimbursement charges for private
26 uses the costs of which are in excess of de minimis; and

27 (ii) Acceptable private uses having more than de minimis costs to
28 the institution of higher education, but which are performed as part
29 of the faculty or research employee's duties or job requirements.

30 (3) The executive ethics board shall:

31 (a) Develop educational materials and training;

32 (b) Adopt rules and policies governing the conduct of business by
33 the board, and adopt rules defining working hours for purposes of RCW
34 42.52.180 and where otherwise authorized under chapter 154, Laws of
35 1994;

36 (c) Issue advisory opinions;

37 (d) Investigate, hear, and determine complaints by any person or
38 on its own motion;

39 (e) Impose sanctions including reprimands and monetary penalties;

1 (f) Recommend to the appropriate authorities suspension, removal
2 from position, prosecution, or other appropriate remedy; and

3 (g) Establish criteria regarding the levels of civil penalties
4 appropriate for violations of this chapter and rules adopted under
5 it.

6 (4) The board may:

7 (a) Issue subpoenas for the attendance and testimony of witnesses
8 and the production of documentary evidence relating to any matter
9 under examination by the board or involved in any hearing;

10 (b) Administer oaths and affirmations;

11 (c) Examine witnesses; and

12 (d) Receive evidence.

13 (5) The board shall not delegate to the board's executive
14 director its authority to issue advisories, advisory letters, or
15 opinions.

16 (6) Except as provided in RCW 42.52.220, the executive ethics
17 board may review and approve agency policies as provided for in this
18 chapter.

19 (7) This section does not apply to state officers and state
20 employees of the judicial branch.

Passed by the Senate February 10, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 24, 2022.

Filed in Office of Secretary of State March 24, 2022.

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