

WSR 23-17-038

PERMANENT RULES

EXECUTIVE ETHICS BOARD

[Filed August 9, 2023, 11:06 a.m., effective September 9, 2023, 11:06 a.m.]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Updating language/pronouns to be gender-neutral; deletes fax reference and number.

Citation of Rules Affected by this Order: Amending 6 [WAC 292-100-020, 292-110-020, 292-110-060, 292-130-020, 292-130-050, and 292-130-100].

Statutory Authority for Adoption: RCW 42.52.360.

Adopted under notice filed as WSR 23-12-068 on June 5, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 9, 2023.

Ruthann Bryant
Administrative Officer

OTS-3830.1

AMENDATORY SECTION (Amending WSR 17-01-138, filed 12/20/16, effective 1/20/17)

WAC 292-100-020 Complaint procedures—Status of complainant and others. (1) When a complaint has been filed with the board, neither the complainant, if other than board, nor any other person will have special standing to participate or intervene in the investigation or consideration of the complaint by the board. The complainant is not a party to an ethics case for any purpose.

(2) If a member of the board or the board's staff files a complaint in (~~his or her~~) their individual capacity, the board member or staff member will be disqualified from acting in (~~his or her~~) their official capacity with regard to the disposition of that complaint.

(3) This section does not affect the right to request a review of a board staff decision to dismiss a complaint, pursuant to RCW 42.52.425 and WAC 292-100-045.

OTS-3831.1

AMENDATORY SECTION (Amending WSR 18-11-062, filed 5/14/18, effective 6/14/18)

WAC 292-110-020 Working hours. (1) Nothing in RCW 42.52.180(1) or this rule prohibits a state officer or state employee from assisting in a campaign during nonworking hours provided that the state officer or state employee who engages in activity that would fall under RCW 42.52.180(1) during nonworking hours does not use any facilities of an agency.

(2) Some state officers and state employees occupy positions that have fixed schedules with the same beginning and ending times. For state officers and state employees with fixed schedules, working hours are the hours between the starting and ending times of their scheduled working hours. State officers and state employees with fixed schedules may not engage in activity that would fall under RCW 42.52.180(1) during these fixed working hours, unless (~~they are~~) on a lunch break under subsection (5) of this rule or on leave under subsection (6) of this rule.

(3) Some state officers and state employees occupy positions that do not have fixed schedules with the same starting and ending times. For state officers and state employees who do not have fixed schedules, working hours are defined as:

(a) The hours set forth in any policy on working hours adopted by their agency; or

(b) If the agency has not adopted a working hours policy, 8:00 a.m. to 5:00 p.m. Monday through Friday; or

(c) The work schedule for the state officer or state employee approved by (~~their~~) the agency.

(4) Working hours do not include state legal holidays unless the state officer's or state employee's work schedule requires the state officer or state employee to work on a state legal holiday.

(5) Working hours do not include the time designated for a state officer's or state employee's lunch break. A lunch break is between 12:00 p.m. and 1:00 p.m., unless the agency has designated a different time in a working hours policy or has approved a different lunch break as part of the state officer's or state employee's work schedule. If a state officer or state employee engages in activity that would fall under RCW 42.52.180(1) during the lunch break, the state officer or state employee may not make use of any of the facilities of the agency.

(6) Working hours do not include the time in official leave status. If a state officer or state employee engages in activity that would fall under RCW 42.52.180(1) while on leave, the state officer or state employee may not make use of any of the facilities of the agency.

(7) The definition of working hours also includes any time a state officer or state employee is actually working; for example overtime.

(8) The governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands, and the insurance commissioner are elected to office and hold office for a term of four years and until their successors are elected and qualified. Since these officers are elected to a term of office, they do not have working hours and may engage in

activity that would fall under RCW 42.52.180(1) at any time. However, if these officers engage in activity that would fall under RCW 42.52.180(1), they may not make use of any facilities of an agency except as provided in RCW 42.52.180(2).

AMENDATORY SECTION (Amending WSR 18-11-062, filed 5/14/18, effective 6/14/18)

WAC 292-110-060 Current state officers and employees contracting with state agencies. (1) **Approval required** - Under RCW 42.52.120(2), a state officer or state employee must receive board approval before entering into, or obtaining a beneficial interest in, a contract or grant with a state agency only if the process for awarding the contract or grant was not open and competitive, or, whenever only one bid or application was received. The review of the contract or grant is to determine whether performance under the contract or grant by the state employee or state officer is in accordance with the Ethics in Public Service Act.

(2) **Application for approval** - State officers and state employees seeking the approval of the board for a contract or grant application, must provide the following information to the executive director no later than thirty days prior to the commencement of the contract or grant:

(a) A description of current official duties and responsibilities;

(b) A statement of the work to be performed and a copy of the contract or grant;

(c) The duration and dollar value of the contract or grant, if applicable;

(d) A statement that no state resources will be used to perform or to fulfill the contract or grant;

(e) A description of how the work will be performed without the use of state resources; and

(f) A statement that the employing agency has reviewed or approved the outside contract or grant under applicable rules or policies, except when requesting a conditional approval as provided in subsection (3)(b) of this section.

(3) **Approval process** - The executive director will review the contract or grant application and related documents and determine whether there could be a potential conflict with RCW 42.52.120(1) or other applicable provisions of the Ethics in Public Service Act. If the executive director determines:

(a) There would be no potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, the executive director will approve the contract or grant application;

(b) There would be no potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW but the contract or grant application has not been approved by the appointing authority, the executive director may conditionally approve the contract or grant application; or

(c) There could be a potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, the executive director will refer the matter to the board for approval or disapproval.

(4) **Contract or grant amendments.** If a contract or grant has been amended or the scope of work altered, and the effect of the amendment

or alteration may create a potential conflict of interest under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, a state officer or state employee must resubmit the contract or grant to the board at least fifteen days prior to commencement of work under the amended or altered contract or grant.

(5) **Series of similar contracts or grants.** If a state officer or state employee anticipates receiving a series of substantially identical contracts or grants with a state agency, the state officer or state employee may request that the board preapprove such contracts or grants. Preapproval will be effective for the period of one calendar year, after which the state officer or state employee must resubmit the request.

(6) **Exemptions, preapproved contracts or grants.** A state officer or state employee who has a contract or grant or a beneficial interest in a contract or grant which is preapproved by the board under this section is not required to file an application for approval of the contract or grant. However, a state officer or state employee is responsible for determining that the contract or grant would not conflict with RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW. Provided that the applicable conditions in RCW 42.52.120(1) are met, the following contracts or grants are preapproved by the board:

(a) A contract or grant in which a state officer or state employee receives assistance through state programs or federal programs administered by the state when they are entitled to receive such assistance by law and on the same basis as similarly situated citizens, and when the state officer or state employee does not exercise discretionary judgment with regard to an assistance program for which (~~he or she~~) the state officer or employee is otherwise eligible;

(b) A contract to perform teaching duties at a community college, vocational-technical school, or institution of higher learning, provided no state resources are used to perform the duties; there is no conflict with the performance of official duties; and the state officer or state employee did not use (~~his or her~~) the state officer or state employee's official position to influence the contract of employment;

(c) A contract held by a spouse, in which the state officer or state employee has a beneficial interest, with a state agency, provided that the state officer or state employee did not participate in the contract;

(d) A contract that was received by a state officer or state employee of an institution of higher education to provide expert witness services in state litigation provided no state resources are used to perform the duties; there is no conflict with the performance of official duties; and the state officer or state employee did not use (~~his or her~~) the state officer or state employee's official position to influence the contract.

(7) **Filing required** - Final contracts or grants reviewed under this rule must be filed with the board within thirty days of execution.

OTS-3832.1

AMENDATORY SECTION (Amending WSR 18-20-107, filed 10/2/18, effective 11/2/18)

WAC 292-130-020 Agency description—Contact information—Public records officer. (1) The executive ethics board was created by chapter 42.52 RCW to enforce the state's ethics law and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

(2) Any person wishing to request access to public records of the executive ethics board, or seeking assistance in making such a request, should contact the public records officer of the executive ethics board:

Executive Director
Executive Ethics Board
2425 Bristol Court S.W.
P.O. Box 40149
Olympia, WA 98504-0149
360-664-0871
(~~360-586-3955~~ (fax))
ethics@atg.wa.gov

Information and a request form is also available at the executive ethics board's website at www.ethics.wa.gov.

(3) The public records officer will oversee compliance with the act but another executive ethics board staff member may process the request. Therefore, these rules will refer to the public records officer or "designee."

AMENDATORY SECTION (Amending WSR 18-20-107, filed 10/2/18, effective 11/2/18)

WAC 292-130-050 Availability of public records. (1) Public records are available for inspection and copying Monday through Friday, 9:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m., excluding legal holidays and during scheduled board meetings. Records must be inspected at the offices of the executive ethics board. Many public records are also available for inspection and copying on www.ethics.wa.gov at any time, at no cost.

(2) An index of public records is available for use by members of the public, including final orders, stipulations and advisory opinions. The indices for these documents are available upon request.

(3) The executive ethics board will maintain its records in a reasonably organized manner. The executive ethics board will take reasonable actions to protect records from damage and disorganization. A requestor must not take executive ethics board records from executive ethics board offices without the permission of the public records officer or designee. A variety of records is available on the executive ethics board website at www.ethics.wa.gov. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

(4) Any person wishing to inspect or copy public records of the executive ethics board should make the request in writing on the executive ethics board request form or through an online portal, or by

letter (~~(, fax,)~~) or email addressed to the public records officer at the email address publicly designated by the executive ethics board, or by submitting the request in person at the executive ethics board office and including the following information:

- (a) Name of requestor;
 - (b) Address of requestor;
 - (c) Other contact information, including telephone number and email address;
 - (d) Identification of the public records adequate for the public records officer or designee to locate the records; and
 - (e) The date and time of day of the request.
- (5) If the requestor wishes to have copies of the records made instead of simply inspecting them, (~~(he or she)~~) the requestor should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 292-130-110, charges for copies are provided in a fee schedule available at the executive ethics board office or www.ethics.wa.gov.
- (6) A records request form is available for use by requestors at the executive ethics board office and online at www.ethics.wa.gov.
- (7) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, (~~(he or she)~~) the public records officer or designee will confirm receipt of the information and the substance of the request in writing.
- (8) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

AMENDATORY SECTION (Amending WSR 18-20-107, filed 10/2/18, effective 11/2/18)

WAC 292-130-100 Processing of public records requests—General.

- (1) Upon receipt of a request, the executive ethics board will assign it a tracking number and log it in.
- (2) The public records officer or designee will evaluate the request according to the nature of the request, volume, and availability of requested records.
- (3) Following the initial evaluation of the request under this subsection, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:
 - (a) Make the records available for inspection or copying including:
 - (i) If the copies are available on the executive ethics board's website, provide the internet address and link on the website to the specific records requested;
 - (ii) If copies are requested and payment of a deposit for the copies, if any, is made or other terms of payment are agreed upon, send the copies to the requestor.
 - (b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available; or

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time the executive ethics board will require to respond to the request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the executive ethics board need not respond to it. The executive ethics board will respond to those portions of a request that are clear; or

(d) Deny the request.

(4) If the executive ethics board does not respond in writing within five business days of receipt of the request for disclosure, the requestor should contact the public records officer or designee to determine the reason for the failure to respond.

(5) In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask ~~((him or her))~~ the requestor to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) Some records are exempt from disclosure, in whole or in part. If the executive ethics board believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(7) Consistent with other demands, the executive ethics board will promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor must indicate which documents ~~((he or she wishes))~~ they wish the executive ethics board to copy.

The requestor must claim or review the assembled records within thirty days of the executive ethics board's notification to ~~((him or her))~~ the requestor that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that ~~((he or she))~~ they should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the executive ethics board may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(8) After inspection is complete, the public records officer or designee will make the requested copies or arrange for copying. Where executive ethics board charges for copies, the requestor must pay for the copies.

(9) When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if ~~((he or she))~~ the public records officer or designee reasonably determine~~((s))~~ that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(10) When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the executive ethics board has completed a reasonable search for the requested records and made any located non-exempt records available for inspection.

(11) When the requestor either withdraws the request, fails to clarify an entirely unclear request, fails to fulfill ~~((his or her))~~ their obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer or designee will close the request and, unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the executive ethics board has closed the request.

(12) If, after the executive ethics board has informed the requestor that it has provided all available records, the executive ethics board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.