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STATE OF WASHINGTON  
SUPERIOR COURT

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SUPREME COURT OF THE STATE OF WASHINGTON

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PERRY MILLS,

Appellant,

v.

WESTERN WASHINGTON UNIVERSITY,

Respondent.

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**RESPONDENT'S ANSWER TO AMICUS CURIAE BRIEF OF  
ALLIED DAILY NEWSPAPERS OF WASHINGTON AND  
WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION  
WASHINGTON EDUCATION ASSOCIATION**

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## I. INTRODUCTION

The Legislature specifically authorized the state universities to develop a means of addressing faculty peer review. RCW 28B.10.648. Pursuant to this statutory authority, Western Washington University developed a faculty handbook which states that peer disciplinary review will be conducted privately. If the peer review is considered by the court, it becomes an open judicial proceeding.

The legislative decision to permit universities to develop a confidential peer review system does not offend article I, section 10 of the state constitution or deprive the faculty of due process for two reasons. Like other states, this Court has consistently recognized there are exceptional circumstances which justify statutory closure of some proceedings. Faculty peer review, in which fellow faculty members seek to remediate employee conduct, is such an exceptional circumstance.

## II. ARGUMENT

### A. **Peer Review Disciplinary Proceedings Are Not Akin To Courts That Hear Cases And Administer Justice.**

Peer review panels, whether for medical professionals or faculty, serve a different purpose than regulatory agencies set up to protect the public. In enacting RCW 28B.10.648, the House Committee on Higher Education found that "peer review is considered an important aspect of the personnel

practices of colleges and universities. For peer review to be successful, it is essential that the faculty who participate as reviewers are able to express their honest judgment without fear of retaliation. . . . Faculty sitting on disciplinary committees are under even more pressure to render a favorable decision for fear that an adverse decision might result in a lawsuit. . . . Peer review procedures **shall be conducted privately** under rules adopted by the institution.” House Comm. on Higher Education, H.B. Rep. on S.H.B. 915, 48<sup>th</sup> Leg., Reg. Sess. (Wash. 1984) (emphasis supplied and submitted as an additional authority). The House Committee Report is evidence of the Legislature’s intent that university and college peer review proceedings should be closed under rules adopted by the institution. *Port of Edmonds v. Wash. State Pub. Relations Comm’n*, 103 Wn.2d 331, 336, 692 P.2d 814 (1985) (citations omitted).

Like confidential medical peer review proceedings, the reason for closing these proceedings is premised on the belief that absent the statute or legislative rule closing these hearings, peers “would be reluctant to sit on peer-review committees and engage in frank evaluations of their colleagues.” *C.f., Jenkins v. Wu*, 102 Ill.2d 468, 468 N.E.2d 1162, 1168–69 (1984) (relating to medical peer review proceedings and *quoted with approval in Daily Gazette v. Bd. of Med.*, 177 W.Va. 316, 352 S.E.2d 66, 72 (1986)). *See also Coburn v. Seda*, 101 Wn.2d 270, 274–75, 677 P.2d

173 (1984) (purpose of RCW 4.24.250 prohibiting discovery of hospital quality review committee records is premised on theory that external access to those records would stifle candor and inhibit constructive criticism thought necessary for effective quality review). RCW 70.41.200(3) (information and documents, including complaints and incident reports, collected for quality improvement committees are not subject to review or disclosure). These are all important policy reasons for closing peer review proceedings—at least until the faculty peer review committee determines that misconduct occurred. Due in part to their mentoring function, peer review proceedings bear little resemblance to trial courts that hear cases and administer justice.

The Amicus asks this Court to overrule its precedent in *Cohen v. Everett City Council*, 85 Wn.2d 385, 535 P.2d 801 (1975) by applying article I, section 10 of the Washington State Constitution to university and college faculty peer review disciplinary proceedings. Article I, section 10 provides that “[j]ustice in all cases must be administered openly. . . .” But even in court proceedings, this Court has held that article I, section 10 does not prohibit the legislature or a court from reaching a determination that exceptional circumstances justify closure.

In *Matter of Welfare of Lewis*, 51 Wn.2d 193, 316 P.2d 907 (1957), the parents challenged former RCW 13.04.09, which permitted the court to

exclude the public from juvenile proceedings. The parents argued that the statute was unconstitutional under article I, section 10. This Court in upholding the closure of the proceeding held that the purpose of juvenile proceedings is not to punish the child but to inquire into the welfare of the child. *Id.* at 198.

Like *Lewis*, the purpose of faculty peer review proceedings is not to punish faculty but to remediate the misconduct if possible. In doing so, the panel does not administer justice within the context of article I, section 10. If there is a judicial review of the peer review, the judicial proceeding is open to the public.

Even if this Court were to overturn *Cohen* and disregard *Lewis*, the textual language of the words “cases” and administration of “justice” as those words were commonly understood by the Framers in 1889 does not support the Amicus’ contention that article I, section 10 applies to peer review proceedings. The Amicus cites to Blacks Law Dictionary from 2002 to define the word “case” as including “proceedings,” but current dictionary definitions are of little assistance in defining constitutional provisions. This Court held in *Washington Water Jet Workers Ass’n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004) that “[w]hen interpreting constitutional provisions, we look first to the plain language of the text and will accord it its reasonable interpretation. . . . The words of the

text will be given their common and ordinary meaning, as determined at the time they were drafted.”

The 1891 definition of “case” in *Henry Campbell Black, A Dictionary of Law* (1891) does include the term “legal proceedings” but only in context of the exercise of a court of justice: “CASE. 1. A general term for an action, cause, suit, or controversy, at law or in equity. A question contested before a court of justice. The primary meaning of ‘case’ is ‘cause.’ When applied to legal proceedings, it imports a state of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice.” *Id.* at 175 (citation and internal quote omitted), *see* Resp’t’s Supplemental Br. App. B at 13. The text of article I, section 10 indicates that it was meant to apply to court proceedings rather than university and college faculty peer review disciplinary proceedings.

The Amicus cites *Bellingham Bay Imp. Co., v. City of New Whatcom*, 20 Wash. 53, 54 P. 774 (1898) for the proposition that executive branch officers and agencies that engage in quasi-judicial activity are subject to article I, section 10. In *Bellingham Bay* the company argued that the city lacked jurisdiction to reassess taxes, since that was a judicial function. The court held that the legislature had properly delegated to the city the authority to make these reassessments. The court noted that many administrators and members of the executive branch exercised legislatively

delegated judicial powers, but that did not make them courts or justices of the peace. *Id.* at 57–58.

By way of example, the *Bellingham Bay* court noted that many officers exercise some “judicial functions,” such as license examiners, clerks who accept affidavits, auditors who accept title, and even the Governor when issuing a requisition of a fugitive from justice. *Id.* at 59. Even though administrative agencies and officers exercise some judicial powers, *Bellingham Bay* does not stand for the proposition that executive branch officers and agencies hear cases or administer justice. The reading advocated by Amicus to apply article I, section 10 to these functions would be quite an unprecedented expansion of article I, section 10 beyond even peer review disciplinary proceedings.<sup>1</sup>

Contrary to Amicus’ assertion, universities and colleges do not use administrative law judges in their peer review proceedings. RCW 34.05.425(2) (“[I]nstitutions of higher education shall designate a presiding officer as provided by rules adopted by the agency”); *see also*

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<sup>1</sup> The Legislature closes similar Department of Revenue proceedings. RCW 82.32.330 provides that tax records are confidential and can be disclosed under very limited circumstances. If a taxpayer requests that the Department of Revenue change the amount of tax or penalties due, the Department considers the request pursuant to RCW 82.31.160. This internal review by the Department is not a hearing under the APA. It is an informal opportunity for the taxpayer to have a tax assessment corrected without subjecting the taxpayer’s information to public disclosure. If the Department’s decision is appealed, the superior court holds a public, de novo trial. RCW 82.32.180; RCW 82.32.330(3)(a). Amicus’ argument would presumably invalidate these statutes as well.

RCW 28B.10.648(2) (“Peer review proceedings shall be pursuant to the rules and regulations adopted by the respective institutions of higher education.”). RCW 34.05.010(16)(iv) (college and university rules involving employment relationships are exempt from the notice and comment provisions of the APA). Article XVII.2 of the *Faculty Handbook* provides that the “hearing panel will consist of five or more members selected by the Executive Council of the Faculty Senate.” CP 206.

In issuing a two-quarter suspension, Professor Mills’ faculty peers did not administer justice; rather as most employers should, they sought to remediate Professor Mills’ misconduct for violation of the Faculty Code of Conduct: “The panel [concludes] that [Professor Mills] was capable of changing his conduct for the hearing. He therefore appears able to do so for his students, fellow faculty and staff.” Findings and Judgment of Hearing Panel at 10, CP 1169.

**B. Washington’s Recognition Of The Authority Of The Legislature And The Courts To Limit Open Proceedings In Exceptional Circumstances Is Consistent With Other States.**

The Amicus asserts that RCW 34.05.001 requires this Court to apply another state’s constitutional open courts provisions. RCW 34.05.001 provides that the APA is meant “to achieve greater consistency with other states administrative and the federal government in administrative procedure. . . . The legislature also intends that the courts should interpret

provisions of this chapter consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts.”

Instead of citing to other state and federal cases interpreting “similar provisions” under their administrative procedure acts, the Amicus incorrectly identifies 1 state out of 40 with a constitutional open courts provision that requires some of its administrative proceedings to be open to the public. Amicus Br. at 15. *Daily Gazette*, 352 S.E.2d 66; see Suzanne L. Abram, *Problems of Contemporaneous Construction in State Constitutional Interpretation*, 38 Brandeis Law Journal, 613, 620 n.36 (2000).

Out of the two states cited by Amicus and Professor Mills, they are incorrect in stating that New York’s constitution requires open hearings. In *Herald v. Weisenberg*, 89 A.D.2d 224, 277, 455 N.Y.S.2d 413 (1982), *aff’d*, 59 N.Y.2d 378, 452 N.E.2d 1190 (1983), a *statute* required that administrative hearings must be open. New York Judiciary Law, § 4. See Resp’t’s Br. at 9 n. 28. The statute did not apply to other administrative proceedings that were closed by law.

In *Johnson Newspaper Corp. v. Melino*, 77 N.Y.2d 1, 563 N.Y.S.2d 380, 564 N.E.2d 1046, 1049–50 (1990), the newspaper sought access to a dental disciplinary hearing at the preliminary adversarial stage before the

state's Office of Professional Discipline. The court noted that while there was no reason to close unemployment benefit hearings in *Weisenberg*, the legislature enacted a statute to preserve the confidentiality of information pertaining to medical disciplinary proceedings until a decision had been reached.

In the second case cited by Amicus, *Daily Gazette Co. Inc. v. W. Va. Bd. of Medicine*, 174 W. Va. 359, 352 S.E.2d 66 (W. Va. 1986), the court did not apply its open courts constitutional provision, West Virginia Const. art. III, § 17, (Resp't's Br. at 28 n.6), to medical peer review proceedings until those findings were referred to the Board of Medicine for disciplinary purposes and only if there was first a finding of probable cause that the physician had committed misconduct. *Id.* at 70, 72 ("Some forty-five states have enacted legislation placing some limitation on the discovery, disclosure, or evidentiary use of peer review committee reports."). Since faculty peer review proceedings serve many of the same purposes as medical peer review proceedings, the West Virginia constitution does not support the Amicus' argument that these proceedings should be open under article I, section 10.

Most states do not require that all of their court proceedings be open to the public. For example, Louisiana statutorily closes adoption proceedings, *Suttle v. Easter*, 26 So.3d 1001, 1015 (La. App. 2009) (Juvenile "child

support proceedings, traffic violations . . . and misdemeanor trials of adults pursuant to Chapter 4 of Title XV, proceedings before the juvenile court shall not be public.”); *see also Vargas v. Doe*, 96 Conn. App. 399, 900 A.2d 525, 531 (Conn. App. 2006) (internal cites and quotations omitted) (recognizing statutory provisions for closing hearings involving family relations matter where the court determines the welfare of any children involved or the nature of the case so requires; permitting closed hearings in divorce, separation and annulment proceedings when in the interests of justice and the persons involved; exclusion from courtroom in juvenile matters of any person whose presence is, in the court’s opinion, not necessary; requiring omission of the name of a minor child involved in appeals taken from termination of parental rights; sealing of court file during investigation to determine whether defendant is eligible to be adjudged a youthful offender; requiring that some youthful offender proceedings to be private; holding in camera hearing concerning evidence of sexual conduct of victims in prosecution for sexual assault; permitting taking of child’s testimony in child abuse cases outside of courtroom.). *In re Care and Protection of Sharlene*, 445 Mass. 756, 840 N.E.2d 918, 929 (Mass. 2006) (closing proceeding to remove child’s life support). The Amicus’ position that other state constitutions require that all of their

proceedings be open is not supported by the number of states holding to the contrary.

**C. Like Washington's APA, Legislative Rules That Are Exempt From The Federal APA's Notice And Comment Provisions Also Have The Force Of Law.**

Rather than looking to another state's constitution under RCW 34.05.001, it is appropriate to look to case law interpreting other state and federal APAs to determine whether a legislative rule has the force of law.

Like this Court, the federal courts have interpreted the federal APA, 5 U.S.C. § 553, to hold that policy or interpretive statements do not carry the force of law, while substantive or legislative rules do carry the force of law. *Hemp Indus. Ass'n v. Drug Enforcement Agency*, 333 F.3d 1082, 1087 (9th Cir. 2003); *See* University's Supplemental Br. at 6. Like the "rules" referenced in RCW 34.05.010(16)(iv), 5 U.S.C. § 553(a)(1) exempts rules involving any "military and foreign affairs function of the United States" from the public notice and comment procedures of the federal APA. Like college and university rules involving employment relationships, those rules carry the "force of law."

In *City of New York v. Permanent Mission of India to the United Nations*, \_\_\_ F.3d \_\_\_ (2d Cir. 2010), 2010 WL 3221889, the city of New York challenged a notice from the Department of Justice that exempted

foreign nations from paying local property taxes. The city challenged the notice since it was not adopted through the public notice and comment provisions in the federal APA. The court held that the notice was exempt from the public notice and comment provisions under the “foreign affairs” exemption to 5 U.S.C. § 553(a)(1) and the Notice was “a final rule with the force of law. . .”). *Id.* at \* 23.

Here, there is no question that procedures closing faculty peer review disciplinary proceedings are legislative rules and not internal policy statements. *See* RCW 34.05.010(16)(b) (“ ‘Rule’ means any agency order, directive, or regulation of general applicability . . . (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings.”); RCW 28B.10.648(2) (“Peer review proceedings shall be pursuant to rules and regulations promulgated by the respective institutions of higher education.”). Like *City of New York*, rules relating to faculty peer review proceedings are exempt from the public notice and comment provisions of the APA under RCW 34.05.010(16)(iv). Like the notice in *City of New York*, the University’s rule closing faculty disciplinary peer review proceedings is a legislative provision of law.

**D. The Due Process Clause Does Not Require That Faculty Peer Review Disciplinary Proceedings Allow For Spectators.**

The Amicus incorrectly analogizes the due process afforded faculty in peer review proceedings to the process available to litigants at trial, including the right to examine and cross-examine witnesses. Amicus Br. at 6 n.2. Unlike trial courts, neither RCW 34.05.449(5) nor the Due Process clause requires that peer review disciplinary proceedings be open to the public. RCW 34.05.449(5) provides that such proceedings may be closed pursuant to “a provision of law.” Statutes are presumed constitutional. *Retired Pub. Employees Council of Washington v. Charles*, 148 Wn.2d 602, 623, 62 P.3d 470 (2003). Amicus bears the heavy burden of showing that RCW 34.05.449(5) is unconstitutional beyond a reasonable doubt.” *Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000).

Under the Due Process clause, this Court applies the three-part test established in *Mathews v. Eldridge*, to determine how much process is due:

[F]irst, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, **and the probable value, if any, of additional or substitute safeguards**, and finally, the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Islam v. State, Dept. of Early Learning*, \_\_\_ Wn. App. \_\_\_, 238 P.3d 74, 79. (2010) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334–35, 96 S. Ct. 893,

47 L. Ed. 2d 18 (1976)) (emphasis supplied); *Nguyen v. State, Dept. of Health Med. Quality Assurance Comm'n*, 144 Wn.2d 516, 523, 29 P.3d 689 (2001).

The hallmark of these safeguards is notice and an opportunity for “some kind of a hearing prior to the discharge of an employee who has a constitutionally protected property interest in his employment.” *Loudermill v. Cleveland Bd. of Educ.*, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) (citations omitted). The APA with its opportunity for discovery, representation by counsel, and the right to cross-examine witnesses provides much more process than is due in employment dismissal proceedings. These additional rights were available to Professor Mills. See *Faculty Handbook*, Appendix E, IV, D. CP 276–78.

A number of courts in other jurisdictions have looked at whether tenure dismissal proceedings were adequate under the Due Process clause. In *Levitt v. Univ. of Texas*, 759 F.2d 1224, 1227-28 (5th Cir. 1985), the court held that minimal due process standards for a tenure dismissal proceeding requires (1) notice; (2) names of witnesses and their testimony; (3) an opportunity to be meaningfully heard; (4) in a reasonable time; and (5) by an impartial panel with appropriate academic expertise.

In *Potema v. Ping*, 462 F.Supp. 328, 332 (E.D. Ohio, 1978) (citing *Mathews*, 424 U.S. at 334–35), the court held that due process requires that

the tenured instructor be provided (1) a written statement of the reasons for the proposed termination; (2) adequate notice of the hearing; (3) an impartial hearing at which the instructor has an opportunity to submit evidence to controvert the grounds for dismissal; and 4) a final statement of the grounds for dismissal.

In *King v. Univ. of Minnesota*, 774 F.2d 224, 226-28 (8th Cir. 1985) (*cert. denied*, 475 U.S. 1095 (1986)), the court found "as exhaustive" the process provided to a dismissed tenured instructor: (1) frequent communications about the misconduct; (2) a department vote with the instructor present to remove him from the department; (3) notice of the dismissal charges; (4) a hearing with the right to object to any of the panel members; (5) representation by counsel and document discovery; (6) a prehearing conference to exchange witness and exhibit lists; (7) the ability to cross-examine witnesses; (8) review by the university president and Board of Regents; and (9) an opportunity to appear before the Board of Regents.

Professor Mills was provided with all of these rights under the Faculty Handbook and the APA with the exception that the Executive Board of the Faculty Senate approved the disciplinary charges rather than Professor Mills' department. *Faculty Handbook*, Appendix E, IV, C, D. CP 275-78.

In *Franklin v. Bd. of Trustees, Kent State*, 626 F.2d 19, 21–22 (6th Cir. 1980), the dismissed tenured instructor was allowed to have his lawyer present at the hearing, but the lawyer was not allowed to cross-examine, conduct direct examination, or raise objections. The court in applying the three-part test in *Mathews* held that while the administrative burden on the university in allowing the lawyer to participate was “comparatively slight,” the institution’s interest in avoiding a “full-fledged adversary trial” was reasonable and there was no showing the instructor had been prejudiced by the limited role played by his attorney.

In none of these cases did the courts hold that due process requires that tenure disciplinary proceedings be open to the public. Even more than in *Franklin*, the university has an interest in maintaining confidentiality in peer review proceedings to promote faculty participation on peer review committees, allow for frank evaluations of faculty, and to avoid the administrative burden of disrupting the educational process through public disciplinary proceedings. Like *Franklin*, Professor Mills is unable to show the probable value, if any, of the additional or substitute procedural safeguards of an open hearing. Like *Franklin*, Professor Mills has not shown how he was prejudiced through the closure of the peer review proceeding.

Contrary to the Amicus' argument, these tenure dismissal cases establish that peer review proceedings involving discipline of tenured instructors do not require the same due process as in trial courts. They serve a different purpose than trials. Accordingly, the University did not violate Professor Mills' due process rights when it closed the peer review disciplinary proceeding to spectators in accordance with RCW 34.05.449(5) and the *Faculty Handbook*.

### III. CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeals' decision that the University improperly closed Professor Mills' hearing and hold that article I, section 10 does not apply to faculty peer review disciplinary proceedings.

RESPECTFULLY SUBMITTED this 15 day of October, 2010.

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## Appendix

### Revised Code of Washington

#### RCW 4.24.250

#### **Health care provider filing charges or presenting evidence— Immunity—Information sharing.**

(1) Any health care provider as defined in RCW 7.70.020 (1) and (2) who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society or hospital whose duty it is to evaluate the competency and qualifications of members of the profession, including limiting the extent of practice of such person in a hospital or similar institution, or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care and any person or entity who, in good faith, shares any information or documents with one or more other committees, boards, or programs under subsection (2) of this section, shall be immune from civil action for damages arising out of such activities. For the purposes of this section, sharing information is presumed to be in good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading. The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, are not subject to review or disclosure, or subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2).

(2) A coordinated quality improvement program maintained in accordance with RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or any committee or board under subsection (1) of this section may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a coordinated quality improvement committee or committees or boards under subsection (1) of this section, with one or more other coordinated quality improvement programs or committees or boards under subsection (1) of this section for the improvement of the quality of health care services

rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program or committee or board under subsection (1) of this section to another coordinated quality improvement program or committee or board under subsection (1) of this section and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (1) of this section and by RCW 43.70.510(4), 70.41.200 (3), 18.20.390 (6) and (8), and 74.42.640 (7) and (9).

[2005 c 291 § 1; 2005 c 33 § 5; 2004 c 145 § 1; 1981 c 181 § 1; 1979 c 17 § 1; 1977 c 68 § 1; 1975 1st ex.s. c 114 § 2; 1971 ex.s. c 144 § 1.]

Notes:

Reviser's note: This section was amended by 2005 c 33 § 5 and by 2005 c 291 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings -- 2005 c 33: See note following RCW 18.20.390.

### **RCW 28B.10.648**

#### **Employees — Peer review committees — Members' immunity — Proceedings — Statement of reasons — Legal representation of members.**

(1) Employees, agents, or students of institutions of higher education serving on peer review committees which recommend or decide on appointment, reappointment, tenure, promotion, merit raises, dismissal, or other disciplinary measures for employees of the institution, are immune from civil actions for damages arising from the good faith performance of their duties as members of the committees. Individuals who provide written or oral statements in support of or against a person reviewed are also immune from civil actions if their statements are made in good faith.

(2) Peer review proceedings shall be pursuant to rules and regulations promulgated by the respective institutions of higher education.

(3) Upon the request of an evaluated person, the appropriate administrative officer of the institution shall provide a statement of the reasons of the peer review committees and of participating administrative officers for a final unfavorable decision on merit, promotion, tenure or reappointment. In the case of a disciplinary or dismissal proceeding, a statement of reasons shall be provided by the reviewing committee to the evaluated person for any decision unfavorable to such person.

(4) The institutions of higher education shall provide legal representation for any past or current members of the peer review committee and for individuals who testify orally or in writing in good faith before such committee in any legal action which may arise from committee proceedings.

[1984 c 137 § 1.]

Notes:

Severability -- 1984 c 137: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 137 § 2.]

#### **RCW 34.05.001**

##### **Legislative intent.**

The legislature intends, by enacting this 1988 Administrative Procedure Act, to clarify the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision making. The legislature intends that to the greatest extent possible and unless this chapter clearly requires otherwise, current agency practices and court decisions interpreting the Administrative Procedure Act in effect before July 1, 1989, shall remain in effect. The legislature also intends that the courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts.

[1988 c 288 § 18.]

**RCW 34.05.010**

**Definitions.**

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

....

16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

....

**RCW 34.05.425**

**Presiding officers — Disqualification, substitution.**

(1) Except as provided in subsection (2) of this section, in the discretion of the agency head, the presiding officer in an administrative hearing shall be:

- (a) The agency head or one or more members of the agency head;
- (b) If the agency has statutory authority to do so, a person other than the agency head or an administrative law judge designated by the agency head to make the final decision and enter the final order; or
- (c) One or more administrative law judges assigned by the office of administrative hearings in accordance with chapter 34.12 RCW.

(2) An agency expressly exempted under RCW 34.12.020(4) or other statute from the provisions of chapter 34.12 RCW or an institution of higher education shall designate a presiding officer as provided by rules adopted by the agency.

.....

[1989 c 175 § 14; 1988 c 288 § 406.]

**Notes:**

Effective date -- 1989 c 175: See note following RCW 34.05.010.

**RCW 34.05.449**

**Procedure at hearing.**

- (1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.
- (2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.
- (3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.
- (4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.
- (5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order entered by the presiding officer pursuant to applicable rules. A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied

by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency.

[1989 c 175 § 18; 1988 c 288 § 414.]

**Notes:**

Effective date -- 1989 c 175: See note following RCW 34.05.010.

**RCW 70.41.200**

**Quality improvement and medical malpractice prevention program — Quality improvement committee — Sanction and grievance procedures — Information collection, reporting, and sharing.**

(1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes

and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action,

the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the

department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se.

[2007 c 273 § 22; 2007 c 261 § 3. Prior: 2005 c 291 § 3; 2005 c 33 § 7; 2004 c 145 § 3; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

**Notes:**

Reviser's note: This section was amended by 2007 c 261 § 3 and by 2007 c 273 § 22, each without reference to the other. Both amendments

are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date -- Implementation -- 2007 c 273: See RCW 70.230.900 and 70.230.901.

Finding -- 2007 c 261: See note following RCW 43.70.056.

Findings -- 2005 c 33: See note following RCW 18.20.390.

Severability -- Headings and captions not law -- Effective date -- 1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Findings--Intent -- 1993 c 492: See notes following RCW 43.20.050.

Short title -- Severability -- Savings -- Captions not law -- Reservation of legislative power -- Effective dates -- 1993 c 492: See RCW 43.72.910 through 43.72.915.

Legislative findings -- Severability -- 1986 c 300: See notes following RCW 18.57.245.

### **RCW 82.32.180**

#### **Court appeal — Procedure.**

Any person, except one who has failed to keep and preserve books, records, and invoices as required in this chapter and chapter 82.24 RCW, having paid any tax as required and feeling aggrieved by the amount of the tax may appeal to the superior court of Thurston county, within the time limitation for a refund provided in chapter 82.32 RCW or, if an application for refund has been made to the department within that time limitation, then within thirty days after rejection of the application, whichever time limitation is later. In the appeal the taxpayer shall set forth the amount of the tax imposed upon the taxpayer which the taxpayer concedes to be the correct tax and the reason why the tax should be reduced or abated. The appeal shall be perfected by serving a copy of the notice of appeal upon the department within the time herein specified and by filing the original thereof with proof of service with the clerk of the superior court of Thurston county.

The trial in the superior court on appeal shall be de novo and without the necessity of any pleadings other than the notice of appeal. At trial, the burden shall rest upon the taxpayer to prove that the tax as paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax. In such proceeding the taxpayer shall be deemed the plaintiff, and the state, the defendant; and both parties shall be entitled to subpoena the attendance of witnesses as in other civil actions and to produce evidence that is competent, relevant, and material to determine the correct amount of the tax that should be paid by the taxpayer. Either

party may seek appellate review in the same manner as other civil actions are appealed to the appellate courts.

It shall not be necessary for the taxpayer to protest against the payment of any tax or to make any demand to have the same refunded or to petition the director for a hearing in order to appeal to the superior court, but no court action or proceeding of any kind shall be maintained by the taxpayer to recover any tax paid, or any part thereof, except as herein provided.

The provisions of this section shall not apply to any tax payment which has been the subject of an appeal to the board of tax appeals with respect to which appeal a formal hearing has been elected.

[1997 c 156 § 4; 1992 c 206 § 4; 1989 c 378 § 23; 1988 c 202 § 67; 1971 c 81 § 148; 1967 ex.s. c 26 § 51; 1965 ex.s. c 141 § 5; 1963 ex.s. c 28 § 9; 1961 c 15 § 82.32.180. Prior: 1951 1st ex.s. c 9 § 12; 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

**Notes:**

Effective date -- 1992 c 206: See note following RCW 82.04.170.

Severability -- 1988 c 202: See note following RCW 2.24.050.

Appeal to board of tax appeals, formal hearing: RCW 82.03.160.

**RCW 82.32.330**

**Disclosure of return or tax information.**

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the

taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under this title or chapter 83.100 RCW is a party in the proceeding;

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding; or

(iii) Brought by the department under RCW 18.27.040 or 19.28.071;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department is not required to disclose any information under this subsection if a taxpayer has entered a deferred payment arrangement with the department for the payment of a warrant that has not been filed and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(e) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(f) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(g) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county

prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(i) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies, for official purposes;

(j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection may not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(l) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(m) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(n) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(o) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(p) Disclosing real estate excise tax affidavit forms filed under RCW 82.45.150 in the possession of the department, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

(q) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted;

(r) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.115;

(s) Disclosing to a person against whom the department has asserted liability under RCW 83.100.120 return or tax information pertaining to that person's liability for tax under chapter 83.100 RCW;

(t) Disclosing such return or tax information to the streamlined sales tax governing board, member states of the streamlined sales tax governing board, or authorized representatives of such board or states, for the limited purposes of:

(i) Conducting on behalf of member states sales and use tax audits of taxpayers; or

(ii) Auditing certified service providers or certified automated systems providers; or

(u) Disclosing any such return or tax information when the disclosure is specifically authorized under any other section of the Revised Code of Washington.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Service of a subpoena issued under RCW 82.32.115 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under RCW 82.32.115 may disclose the existence or content of the subpoena to that person's legal counsel.

(6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3) (e), (f), (g), (h), (i), or (m) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter.

[2010 c 112 § 13; 2010 c 106 § 104. Prior: 2009 c 563 § 213; 2009 c 309 § 2; 2008 c 81 § 11; 2007 c 6 § 1502; 2006 c 177 § 7; prior: 2005 c 326 § 1; 2005 c 274 § 361; prior: 2000 c 173 § 1; 2000 c 106 § 1; 1998 c 234 § 1; 1996 c 184 § 5; 1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330; prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

**Notes:**

Reviser's note: This section was amended by 2010 c 106 § 104 and by 2010 c 112 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Retroactive application -- 2010 c 112: See note following RCW 82.32.780.

Application -- 2010 c 106 §§ 104 and 111: "Sections 104(3) (a)(i) and (s) and 111 of this act apply to return or tax information in respect to the tax imposed under chapter 83.100 RCW in the possession of the department of revenue on or after July 1, 2010." [2010 c 106 § 403.]

Effective date -- 2010 c 106: See note following RCW 35.102.145.  
Finding -- Intent -- Construction -- Effective date -- Reports and recommendations -- 2009 c 563: See notes following RCW 82.32.780.  
Findings -- Savings -- Effective date -- 2008 c 81: See notes following RCW 82.08.975.  
Part headings not law -- Savings -- Effective date -- Severability -- 2007 c 6: See notes following RCW 82.32.020.  
Findings -- Intent -- 2007 c 6: See note following RCW 82.14.495.  
Effective date -- 2006 c 177 §§ 1-9: See note following RCW 82.04.250.  
Part headings not law -- Effective date -- 2005 c 274: See RCW 42.56.901 and 42.56.902.  
Effective date -- 2000 c 173: "This act takes effect July 1, 2000." [2000 c 173 § 2.]  
Effective date -- 2000 c 106: "This act takes effect July 1, 2000." [2000 c 106 § 13.]  
Effective date -- 1996 c 184: See note following RCW 46.16A.030.  
Effective date -- 1995 c 197: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 197 § 2.]

## **United State Code**

### TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

#### PART I--THE AGENCIES GENERALLY

#### CHAPTER 5--ADMINISTRATIVE PROCEDURE

#### SUBCHAPTER II--ADMINISTRATIVE PROCEDURE

### **5 U.S.C. Sec. 553. Rule making**

(a) This section applies, according to the provisions thereof, except to the extent that there is involved--

(1) a military or foreign affairs function of the United States;  
or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include--

- (1) a statement of the time, place, and nature of public rule making proceedings;
- (2) reference to the legal authority under which the rule is proposed; and
- (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply--

- (A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or
- (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except--

- (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
- (2) interpretative rules and statements of policy; or
- (3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383.)

## **Other Laws**

### **West Virginia Constitution Article III, Section 17**

The courts of this State shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial, or delay.

### **New York Judiciary Law, § 4.**

The sittings of every court within this state shall be public, and every citizen may freely attend the same, except that in all proceedings and trials in cases for divorce, seduction, abortion, rape, assault with intent to commit rape, criminal sexual act, bastardy or filiation, the court may, in its discretion, exclude therefrom all persons who are not directly interested therein, excepting jurors, witnesses, and officers of the court.