

VII. STANDING COMMITTEES**B. Finance, Audit and Facilities**Attorney General's Office - Payment for Personal Legal CounselRECOMMENDED ACTION:

It is the recommendation of the administration and the Finance, Audit and Facilities Committee that the Board of Regents adopt the following policy.

BACKGROUND:

In 1976, the legislature passed RCW 28B.20.250 et. seq., authorizing the University to provide for the defense and indemnification of its employees against liability from any actions, claims, or proceedings instituted against them and arising out of their University-assigned duties. The Regents acted on that authority in adopting Standing Orders of the Board of Regents, Volume One, Part III, Chapter 5, Section 2.

The primary purpose of the Standing Order has been defense of claims and lawsuits brought by individuals for personal injury and other damages. In such cases, the University provides an employee who acted within the course and scope of his or her University responsibilities with protection against personal financial liability. As a condition of this protection, the University controls the defense of the matter, including selection and payment of the defense counsel and settlement decisions.

In contrast, sometimes an employee becomes the individual subject of an external regulatory or criminal matter where the potential consequences to the employee can be highly personal (not just a monetary judgment). In most instances, the burden of defending against such matters properly falls to the employee personally and it would be inappropriate for the University to take on responsibility for the outcome or take control of the defense. Occasionally, however, a personal regulatory or criminal matter arises in which it serves the interests of the University to share with the employee the costs of his or her legal defense. The following amendment to the Standing Orders delegation would act on the authority of RCW 28B.20.250 to allow the President to enter into appropriate agreements that fully or partially indemnify the employee for defense costs in such instances. It would not extend this authority to the costs associated with responding to internal investigative matters initiated by the University itself.

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B. Finance, Audit and Facilities

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Amendment to Standing Orders

If adopted by the Board, the Standing Orders of the Board of Regents, Volume One, Part III, Chapter 5 would be amended by the addition of the following section:

Section 8.

Pursuant to the above authority, the President or the President's designee may enter into an agreement with an employee to indemnify the employee for some or all of the expenses of legal counsel to represent the employee in his or her personal capacity in connection with external regulatory or criminal matters arising out of acts or omissions within the scope of the employee's University duties. Payment of personal legal fees in connection with such external regulatory matters is to be extended only in unusual circumstances. It is not intended to be treated as an employee benefit or contractual right.

The decision to enter into such an agreement is to be based on considerations that include, but are not limited to:

- the degree to which the employee's challenged conduct aligns with University job-related expectations of the employee
- assurance that the employee and his or her attorney will defend the matter in accordance with University interests
- the University's policy, programmatic, financial, or strategic interests at stake in the matter
- the anticipated cost and its relative value to the University's interests

Such an agreement shall, among other things, provide the University with the right to approve the employee's selection of counsel, address potential conflicts of interest and the handling of confidential information, obtain the employee's release of relevant claims against the University, and address the University's rights to limit and terminate the agreement.

The President is not authorized to agree to pay any of the expenses of legal counsel associated with responding to internal UW investigations or other regulatory enforcement processes initiated by the University.