

# The Effect of Washington's Ethics Law on Public University Technology Transfer:

Technology Alliance Study Group  
Findings & Recommendations

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## Overview and Objectives

There is growing concern over the unintended consequences of Washington State's Ethics in Public Service Act, especially among members of the academic community and the technology business sector. The Act, commonly referred to as the state ethics law, has had the unintended consequence of curbing legitimate and desired technology transfer and commercial activity. Unfortunately, this has resulted in limiting some of the great potential of our state to achieve national leadership stature in university-based technology development, technology transfer, and new company formation to commercialize the most important technologies.

Washington State has made significant attempts over the past several years to improve its comparative competitive position with other states and regional economies. The work of the Competitiveness Council initiated by then Governor Gary Locke is a recent example of this effort. During the Council's work, and in other meetings of business leaders over the past several years, there emerges a recurring question of how the state's ethics law has been interpreted regarding technology transfer and commercialization activity. It has often been cited as a leading cause for limiting the type of robust technology transfer and commercialization that other states enjoy. The more than 1,000 business and government leaders attending the Prosperity Partnership conference on November 19, 2004, ranked university technology transfer and commercialization second only to quality-of-life issues as one of the leading contributing factors to Washington's regional economic foundation.

The Technology Alliance, a statewide consortium of technology leaders, was strongly encouraged by academia, business and trade associations to undertake a study of the state's Ethics in Public Service Act, focusing on its impact on the effective commercialization of new technology generated at the state's leading public research universities. The Technology Alliance asked Dr. Alan Nelson to chair a committee of distinguished experts to carefully and thoughtfully explore this issue with the ultimate objective of putting forward its analysis and recommendations to provide guidance toward an actionable plan for the new Governor, Attorney General and the 2005 state legislature.

The committee undertook its fact finding mission by first reviewing the state's ethics law and its legislative history. The committee then conducted interviews with approximately 20 key leaders in the technology transfer arena. Additionally, outside advisors Lee Huntsman, President Emeritus, University of Washington; Dr. Malcolm Parks, Associate Vice Provost for Research at University of Washington and Dr. James A. Severson, Vice Provost for Technology Transfer, University of Washington, were asked to attend committee meetings to offer guidance and provide context for comments gathered from interviewees. Following this, the committee analyzed the information, examined certain central themes and specific issues in greater detail, and looked at other states' practices.

Though unintentional, the law as it currently is written appears to be stifling valuable entrepreneurial and collaborative activities and if not corrected will continue to diminish Washington's opportunities for economic growth. The committee has concluded that some changes are in order and has prepared recommendations to achieve the desired outcomes. This involved establishing a consensus among the principal stakeholders in

technology transfer, including the presidents of University of Washington and Washington State University, and coming up with proposed language for a revised ethics law, which we provided to Governor Gregoire in late January 2005. The following report provides important background and context for the recommended changes.

## **Brief Background**

The purpose of the Ethics in Public Service Act is to ensure that all state officials and employees conduct business with the highest ethical and moral standards, in order to preserve the integrity of government itself. As part of the responsibilities of being a public servant, state employees are accountable for their public actions and responsible for acting only in a manner that “advances the interest of the public” (RCW 42.52.900). The law is designed to hold Washington State employees and officials to this standard of conduct.

The ethics law was not designed to address the complicated set of circumstances that is involved in the research and technology transfer activities of the modern public research university. However, because faculty are state employees, the law currently applies to these individuals engaged in these activities.

The transfer of new technology from university laboratories to the private sector has a long history and has taken many different forms. The current national emphasis on this activity can be dated to the 1980 enactment of P.L. 96-517, The Patent and Trademark Law Amendments Act, more commonly known as the Bayh-Dole Act.

The passage of the Bayh-Dole Act served as the catalyst for the formation of university technology transfer offices across the country. The Act brought a fundamental change to how universities deal with their inventions, and carried a new mandate that these inventions shall be owned and managed by the university in an effort to bring those inventions to commercial partners for the benefit of the public. The Act included stipulations that a preference be given to small businesses when licensing, and required that inventors receive a share of the royalty income, although the percentage was left to the discretion of individual universities.

In the past twenty-five years the commercialization of new technology at universities under the Bayh-Dole Act has grown nearly ten-fold. The following are examples of new technologies that have originated at universities that have successfully taken advantage of the Bayh-Dole Act:

- Ultrasound imaging for medical evaluation and pre-natal care, pioneered at University of Washington
- Cisplatin and carboplatin cancer therapeutics, Michigan State University
- Citracal<sup>®</sup> calcium supplement, University of Texas Southwestern Medical Center
- Haemophilus B conjugate vaccine, University of Rochester
- Metal Alkoxide Process for Taxol production, Florida State University
- Neupogen<sup>®</sup> used in conjunction with chemotherapy, Memorial Sloan Kettering Cancer Institute

- Process for inserting DNA into eucaryotic cells and for producing proteinaceous materials, Columbia University
- Recombinant DNA technology, central to the biotechnology industry, Stanford University and University of California
- TRUSOPT<sup>®</sup> (dorzolamide) ophthalmic drop used for glaucoma, University of Florida

The technologies licensed from these universities have been integral in forming entirely new areas of industry, a climate of competitiveness and a boom in regional economic growth. In Washington State, the Bayh-Dole Act certainly paved the way for boosting technology transfer and commercialization; the Hepatitis B vaccine, developed by UW researchers Benjamin Hall and Gustav Ammerer in collaboration with scientists at the University of California, is another outstanding example and has been a major success for the University of Washington.<sup>1</sup> However, as a result of the confusion brought on by the Ethics in Public Service Act, our state has not been able to take full advantage of these opportunities.

The state ethics law is designed to avoid conflicts between a state employee's personal interests and his or her duties as an employee in the public eye and serving the public good. Faculty engaged in discoveries with commercial potential are inevitably going to encounter what is considered a "conflict of interest" in the state ethics law. Because our faculty members are guided by a law designed to avoid conflict rather than manage it in a careful manner, multiple opportunities for technology transfer are lost. The rules that have been developed in other states as a result of Bayh-Dole acknowledge these conflicts and carefully manage them, smoothing the way for technology transfer and commercialization. Many other states use the federal guidelines in order to manage these complex cases of multiple interests. In Washington, research faculty must abide by the current ethics law which results in a confusing and obstacle-laden technology transfer process.

Since a revised State Ethics in Public Service Act was adopted in 1994 [under the Revised Code of Washington, Chapter 42.52, ETHICS IN PUBLIC SERVICE], there has been an ongoing effort to accommodate and ameliorate its impact on technology transfer in the context of the state's research institutions. The first major correction occurred in 1996 [SHB 2535] through revisions that allowed the state's research institutions to utilize their existing federally mandated procedures for managing potential conflicts regarding outside financial interests, such as research grants. However, ambiguities in the drafting of the 1996 revisions left the universities at considerable risk of inadvertently stumbling into apparent conflicts surrounding legitimate actions. Much of that problem was addressed in March 2003 when the Executive Ethics Board issued an advisory opinion that explicitly extended the 1996 revisions to cover all research and technology transfer arrangements, including those with companies. However, ambiguities in the ethics law remain, in part, because the advisory opinion in 2003 could not change or extend the law or fix its ambiguities; it could only interpret them. The ethics law applies to all state

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<sup>1</sup> The invention simply labeled Polypeptides in Yeast, also invented by Hall and Ammerer, is used to manufacture more than 1% of all drugs sold in the U.S. (hepatitis B vaccine, human insulin, human serum albumin). Income received from these patents has supported research by many UW faculty and graduate students. (<http://www.uwmedicine.org/Research/IndustryRelations/InventoroftheYear.htm>)

organizations and state employees alike, including university employees. Situations regarding when the universities' internal rules apply and when the state rules apply are not always clear. This continued ambiguity has meant continued reluctance by university faculty to engage in any behavior that might be considered questionable.

The consensus of the committee after consulting with key university personnel and industry leaders is that the 1996 revisions have not solved the problem. Technology transfer is an integral part of the universities' mission, and university research has the potential to dramatically impact on the state's economy. Washington needs to make the commercialization process a clear priority. In turn, the faculty need to be educated about this priority.

## **Committee Process**

To provide expert guidance directly to our committee members, certain key leaders at the university/business interface were invited as Session Advisors to attend meetings. The committee followed a two-phase approach to meet its objectives in a timely manner.

### Phase I: Discovery & Analysis

The committee undertook a fact-finding mission to better understand the state ethics law, its legislative history and how it has been interpreted in the context of the state's technology economy where the research institutions play a central role in technology creation. Leaders of academic technology transfer offices, professors, and business professionals who have worked closely with the research institutions and their faculty were invited to provide perspectives to the committee. Through interviews with involved professionals from within the organizations most affected by the ethics law, and through the participation of key advisors at committee sessions, the committee gained a thorough appreciation of how the law has been implemented and its consequences. In addition, the committee investigated how other states with large public research universities manage their ethics rules as they affect state employees engaged in technology transfer activities. While analyzing the information obtained through comparative research and the interview process, certain themes emerged that contributed to a better understanding of the underlying issues.

### Phase II: Recommendations & Strategy

The committee formulated its recommendations based on the Phase I analysis and created an actionable strategy for improving the conditions under which the ethics law operates, especially with regard to fostering successful commercial ventures that involve university technology and/or employees while assuring the state's interests are protected and a more vibrant technology economy is achieved.

For a discussion of how other states manage their conflict of interest policies please see Appendix I.

## **Phase I: Discovery & Analysis**

### **Emerging Themes from Interviews with Selected Comments from Interviewees (Paraphrased)**

Although most interviewees had not read the State Ethics in Public Service Act, many were familiar with its impact and knew of instances where the ethics law had been invoked to limit technology transfer-related activity. University faculty members are clearly reluctant to behave in any way that might harm their reputations. They also hesitate to put effort into activities that state rules might eventually disallow. In the university context, the ambiguous nature of the law and inconsistent interpretations of it have led to a climate that unnecessarily complicates the university's ability to interact with business. The following provides one representative example:

*One major challenge that many faculty members face is that the state ethics act tends to make the administrators focus on risk avoidance and a bureaucratic and legalistic rather than a customer-oriented -- 'we can do it so let's make it work'-- attitude. Of course, the administrators are largely influenced by the interpretations of the ethics act from assistant attorney generals who are generally highly conservative. Many administrators and their staffs have looming risks (e.g., being plastered on the front page of the newspaper for a "colossal" mistake) compared to a minor professional gain.*

Nearly every interviewee noted that if the state ethics law was modified or interpreted in a manner more supportive of the university's overall mission, this could be highly beneficial to Washington's technology economy. A sample perspective:

*This risk-averse culture has become pervasive among the administration at universities. When faculty members face this attitude of reluctance, many quickly conclude that the institution and the state are uninterested and the system is broken, leading the faculty to frustration and a lower level of trust. The mention of technology transfer causes a lot of emotion and bitter experience from quite a few faculty members. This may not be entirely the fault of the administration given the constraints of the ethics law. Considering that most innovation comes from the research faculty at our state research institutions, this discouraging situation leads to lower productivity in terms of invention disclosures, patenting activities, licensing and company start-ups, compared to the amount of research funding and cutting-edge research that the universities produce.*

Several interviewees recommended that university researchers should be permitted to use their offices, computers, telephones, labs and other university resources to cultivate appropriate business relationships. Recommendations included having the university develop a payment system to allow reimbursement for limited use of university facilities. In addition, several commented on the need for more flexibility regarding exchange of



personnel between universities and businesses, explaining that faculty need more freedom to generate win-win collaborations. Collaborations may include faculty assisting in transactions within approved guidelines.

Another representative sample:

*Due to the unique nature of universities the ethics law should be modified or interpreted somewhat leniently for research institutions towards more open disclosure and active risk management. This would encourage the faculty to be more risk-taking and entrepreneurial. This approach would send a clear signal to the faculty that the state is serious about its mission to “bring our research results out for the public good” and is willing to go along with the faculty step-by-step. Certainly, it will take some time, real actions rather than words only, consistency, and faculty training before the faculty believe that the institution is really behind them. Removing those elements of the state ethics law that are obstacles would allow the institutions to focus on the remaining real problems.*

In reflecting upon the candid perspectives gleaned from the committee’s interview period, ideas consistently emerged from these individuals that pointed to issues of confusion for both faculty and administrators, lingering misinformation regarding past attempts to clarify the rules and guidelines that governed technology transfer, and a clear need for universities to gain independence from the constraints of the ethics law as it existed even following the revision in 1996 and the advisory opinion issued in 2003. These attempts to clarify the law appear in some cases to have compounded pre-existing ambiguities and the trend of inaction in the university setting.

## **Phase II: Recommendations & Strategy**

### **Specific Issues Requiring Modification**

The following five issues inherent in the state ethics law create problems for effective technology transfer:

- (1) Faculty cannot use their university offices, computers or telephones in consulting activities that would benefit the university and the state. (RCW 45.52.160)
- (2) There is no method for a company to reimburse the university for use of facilities. (RCW 45.52.160)
- (3) Faculty cannot assist in negotiations between the university and an outside company for the mutual benefit of all parties. The so-called “assisting transactions” component of the ethics law is overly restrictive. (RCW 45.52.040)
- (4) Faculty cannot consult with and receive research funding from a company without running into conflict of interest issues that may be unjustified. (RCW 45.52.120)

(5) Personnel exchange is discouraged despite the fact that such exchanges often can be an integral component of technology transfer. The so-called “revolving door” component of the ethics law is overly restrictive. (RCW 45.52.080)

### **Understanding and Managing Conflicts of Interest**

It has become clear that some of the biggest stumbling blocks attributable to the state ethics law relate to conflicts of interest and how they are managed. Based on its interviews and observations the committee has concluded that the ethics law as it applies to research universities needs to be amended to allow for guidelines that promote technology transfer while protecting the interests of all parties---individual researchers, institutions and the public. The current law does not.

Potential conflicts of interest are inherent in the successful creation of new companies to commercialize university inventions and other intellectual property that will contribute to the improved health and prosperity of the people in Washington. These apparent conflicts are inevitable. Therefore, to facilitate those initial processes that are crucial elements of commercialization, universities must be prepared and diligent in the management of potential conflicts of interest. The state ethics law in its current form and its literal interpretation would prohibit many of the necessary personnel interactions for effective technology transfer, making it difficult or impossible to create successful start-up companies to leverage university technology for the public good.

Recognizing the value of start-up companies to Washington’s economic future, the state should allow the establishment of conflict of interest guidelines, specifically for its public research institutions. In effect, the state’s public research institutions should be granted autonomy from aspects of the state ethics law that are covered by the university’s published internal plan and procedures to monitor and manage conflict of interest issues. In any event, the research institutions will need to comply with the ethics rules of the National Institutes of Health (NIH) as they pertain to university technology creation and transfer to the commercial enterprise. Under the NIH guidelines, most conflicts are assumed to be manageable by the institutions themselves. The NIH guidelines should be sufficient to safeguard the interests of the public while not inhibiting the creation of start-up companies that benefit the public through the creation of new jobs, new tax revenues, health and prosperity.

### **Committee Recommendations**

So that the state can continue to have only one ethics law applicable to all state agencies and employees, but at the same time provide the flexibility required by the state research institutions, we recommend that the state research institutions be permitted to establish and manage their own internal policies and procedures for relationships with businesses that are consistent with the principles of academic integrity and federal guidelines. They

should further be required to develop systems to disclose, monitor and resolve potential conflicts. More particularly, the modifications to the state ethics law should:

1. Authorize the universities to develop their own rules. These rules would be reviewed and endorsed by the Governor and/or Attorney General, and universities would report regularly on their implementation.
2. Allow a "business friendly" interpretation of what is considered *de minimis* use of university resources.
3. Allow faculty interactions with business facilitated by mechanisms through which faculty would reimburse the university for reasonable direct and indirect costs arising from consulting activities. This would include allowing the universities to establish a fair charge for the use of office, telephone, computer, Internet, and library facilities in connection with approved outside work.
4. Allow corporate entities, and especially those that are affiliated with university spin-off companies, to rent laboratory and office space in university buildings near university researchers, enhancing technology and knowledge transfer opportunities.
5. Allow more flexible exchange of faculty and business personnel between entities. Specifically, make it possible for university faculty to work directly in companies for approved purposes for short periods of time without running afoul of the "revolving door" restrictions in RCW 42.52.080, and vice versa for company personnel who need to spend time at the university. If required for effective technology transfer, a faculty member should be allowed to leave the university in a timely manner to work for the company that, by agreement, will attempt to commercialize the university technology.
6. Clarify and limit what counts as "assisting in transactions."

Finally, the state must send a clear message that it endorses the universities' vital role in the generation and ultimate commercialization of technology that would benefit the state, thus fueling a more robust technology economy.

## Supporting Documents

**Appendix I:** Constitutional Autonomy and State Conflict of Interest Policies

**Appendix II:** Interview Questionnaire

**Appendix III:** Committee Member Biographies

**Appendix I:**  
**Constitutional Autonomy and State Conflict of Interest Policies:**  
**From the University Perspective.**

<b>State</b>	<b>Description of Constitutional Autonomy for Selected State Universities</b>	<b>Conflicts of Interest Policies and University Personnel</b>
<b>California</b>	<p>California has two public university systems: UC and CSU. While the California Constitution grants UC autonomy, it does not grant such independence to CSU. <i>See</i> Article IX, section 9 of the California Constitution. The California Constitution declared UC a public trust, and the UC Regents administer this trust. The constitution grants the Regents “full powers of organization and government” over the university, which allows the Regents to exercise almost complete independent control over UC operations.</p> <p>The California Attorney General stated the following when discussing the autonomy the constitution grants the Regents: “It is a constitutional corporation or department and constitutes a branch of the state government equal and coordinate with the legislature, the judiciary and the executive. The Regents, not the legislature, have the general rule-making or policy-making power in regard to the University. It is clear, however, that the power of the Regents to operate, control and administer the university is virtually exclusive.” <i>Ishimatsu v. The Regents of the University of California</i>, 72 Cal.Rptr. 756, 266 Cal. App. 2d 854 (1968) (quoting 30 Ops. Atty. Gen., 162, 166). California courts have confirmed this authority. <i>See Ishimatsu</i>. However, UC’s constitutional autonomy is not unfettered. UC regulations and policies are subordinate to the police power of the California Legislature, the federal Constitution, and the general policies of the state. While matters that are exclusively university affairs fall under UC’s autonomy, matters that concern the state do not fall under UC’s autonomy. <i>See</i> Caitlin Scully, <i>Autonomy and Accountability: The University of California and the State Constitution</i>, 38 Hastings, L.J. 927 (1987).</p>	<p>California’s principal conflict of interest law is the California Political Reform Act of 1974 (the “Act”). Government Code section 81000 <i>et seq.</i> The Act requires that state and local government agencies, which includes UC and CSU, adopt and promulgate conflict of interest codes. The Act generally provides that “[n]o public employee at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” Government Code section 87100. The UC and CSU conflict of interest codes state that the Act applies to their them and their employees.</p> <p>The Act requires that UC and CSU adopt conflict of interest codes. The California Fair Political Practices Commission has adopted a standard conflict of interest code based on the Act. The Commission is the state body that administers, interprets and enforces the Act. UC’s and CSU’s codes follow the Act. In fact, UC’s code is revised annually and submitted to the Commission for approval. In addition to UC’s conflict of interest code, it has a Patent Policy and Equity Policy (a policy on accepting equity when licensing university technology), both of which are attached to this memorandum. The Equity Policy Guidelines state that any involvement of inventors must be in accordance with the Act, and the Equity Guidelines state that the Equity Policy applies to UC rights in patents, copyrights, and tangible research products and related matters. <i>See</i> Equity Guidelines attached to this memorandum. Accordingly, the UC’s and CSU’s conflict of interest codes are no less stringent than the Act.</p>
<b>Florida</b>	<p>An agency of the state with “constitutional</p>	<p>Under Chapter 112, Section 313 (attached), ethics/conflicts of interest laws apply to all employees of state agencies.<sup>2</sup> Section 313(7) of this chapter,</p>

<sup>2</sup> State universities are state agencies under Chapter 112, Section 312(2)(attached). Chapter 1000, Section 21 (attached) lists the state universities as The University of Florida, Florida State University, Florida Agricultural and Mechanical University, The University of South Florida, Florida Atlantic University, The University of West Florida, The University of Central Florida, The University of North Florida, Florida International University, Florida Gulf Coast University and The New College of Florida.

	<p>autonomy” is a “self-governing political entity with respect to exclusively local affairs, in the performance of which functions it is distinguished from its creator, the state, and for its acts and obligations when acting in purely local matters, the state is not responsible.” <i>Amos v. Matthews</i>, 99 Fla. 1, 35-36 (FL. 1930). Under the Florida Code of Ethics for Public Officers and Employees (Chapter 112, Section 312(2) (attached)), Florida state universities are agencies of the state</p>	<p>“Conflicting Employment or Contractual Relationship”, subsection (b) states, however, <i>[t]his subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.</i></p> <p>Thus, specific laws passed by the Florida legislature or ordinances passed by other bodies may allow conflicting employment or contractual relationships to occur. Once such law was Chapter 1004 Section 225 (attached) of the Florida statutes, the “Florida Technology Development Act.” This law was passed to identify and pursue, <i>opportunities for university scholars ... and private businesses to form collaborative partnerships ... to develop commercially promising and innovative technologies ... to transfer to ... commercial sectors.</i><sup>3</sup></p> <p>Laws such as Chapter 112, Section 313(7)(b) and Chapter 1004, Section 225 allow avenues for professors to pursue collaborations with outside companies.</p> <p>The United Faculty of Florida creates a Collective Bargaining Agreement with The Board of Regents of the State University System of Florida. This Collective Bargaining Agreement includes ethics/conflict of interest rules (attached) that are “consistent with the code of ethics of the State of Florida.”</p> <p>In light of the applicable rules, when a professor desires to work with an outside company, he must file a disclosure with his university. At the University of West Florida, this disclosure takes the form of a “Report of Outside Activity/Determination of Conflict of Interest.” (attached). In light of guidelines published by the provost (attached) a committee determines if the outside work should be allowed. This committee generally will consist of (at least) the director of sponsored research, the general counsel of the university, and the provost.</p>
<p><b>Georgia</b></p>	<p>The state universities in Georgia are constitutionally derived entities (as opposed to legislatively derived) and are governed by the Board of Regents of the University System of Georgia. However, "the Board of Regents has never asserted constitutional autonomy in the state, but it may have it." The Board of Regents has considered making the argument that the university is constitutionally autonomous and therefore exempt from certain state laws, but has thus far elected not to do so because the</p>	<p>Since the university has not asserted constitutional autonomy, state laws, including ethics laws, apply to the university's personnel. There are no restrictions or limits on the substance of ethics policies at the university, but the usual floor/ceiling rule applies--the university can impose equally or more restrictive ethics laws than the state on its personnel, but not less restrictive.</p> <p>The state ethics rules on equity ownership are found in OCGA 45-10-23 (It shall be unlawful for any full-time employee, for himself or on behalf of any business, or for any business in which such employee or member</p>

<sup>3</sup> This law expired on July 1, 2004. It probably is still active in another form, but I have not found it yet.

	<p>university's budget is controlled by the legislature.</p>	<p>of his family has a substantial interest to transact any business with the agency by which such employee is employed; provided, however, that neither this Code section nor any other provision of law shall prevent full-time employees of the Board of Regents of the University System of Georgia from serving as members of the governing boards of private, nonprofit, educational, athletic, or research related foundations and associations which are organized for the purpose of supporting institutions of higher education in this state and which in furtherance of this purpose may transact business with such institutions or with the Board of Regents of the University System of Georgia). "Substantial interest" is defined in OCGA 45-10-20 (the direct or indirect ownership of more than 25 percent of the assets or stock of any business).</p> <p>The university typically assigns inventions to another entity--research foundation--to get around the equity ownership problem. Thus far, the university has not been told to stop this practice.</p>
<p><b>Michigan</b></p>	<p>Under the Michigan Constitution Art. 8, section 3, the boards of state universities are granted the power to “<i>supervise their respective institutions and to control and direct the expenditure of the institutions’ funds...</i>” According to University of Michigan legal counsel, the extent of constitutional autonomy is limited and University employees are still required to comply with state conflict of interest laws.</p>	<p>University of Michigan counsel explained that the current Conflict of interest laws, found at Michigan Stat. 15.301 <i>et. seq.</i> apply to university personnel but provide for an exception to the absolute prohibition on contracts between a university and a company in which university personnel have a financial interest.</p> <p>Any contracting issue requires review and approval by a public body, in the case of the University of Michigan, the Board of Regents via a 2/3ds vote. He noted that 10 years ago licensing revenue to the U were low and he believes that the revision to the ethics rules have benefited the tech transfer activities of the U by permitting contracting, subject to the review and approval mechanisms. The Board of Regents meet monthly and review a large number of contracts (large and small). If an approved contract is later subject to amendment, it must be re-approved. He is not aware of any tech transfer deals that were rejected by the Board of Regents.</p>
<p><b>Minnesota</b></p>	<p>The University of Minnesota was established under territorial laws prior to statehood. The territorial laws provided that the University board would have general authority to govern the university. Under the Minnesota Constitution, Article III, section 3, the University of Minnesota’s charter is recognized and it retains all rights, immunities, franchises and endowments heretofore granted or conferred...”</p> <p>According to a state legislative analyst, the State cannot legislate the universities actions except for generally neutral regulations applicable to all state agencies which laws do not interfere with the university’s educational mission. For example, the health and safety laws and freedom of information rules have been held to apply.</p> <p>The University recently lost a case requiring that the Board of Regents release the names of</p>	<p>According to the state legislative analyst interviewed, state ethics rules have not been applied under case-law to University employees. Conflicts laws do however apply to elected and appointed officials.</p> <p>There are two sets of ethics rules:</p> <p>(1) Conflicts of Interest requiring disclosures of financial interests (Minnesota Stat. 10A07, which applies to public officials or local elected officials.) The definition at 10A.01 do not include professorial employees of the Universities.</p> <p>(2) Acceptance of advantage by state employee; penalty (Minnesota Stat. 15.43), which applies to purchases by a state entity from a company in which a state employee has an interest. Subdivision 2 of that statute exempts purchases of certain items and provides that “(t)extbooks, software, and other course materials authored by an employee of the Minnesota State Colleges and Universities or of the University of Minnesota may be used as required course material.”</p>

	<p>candidates considered in connection with a university presidential search (Star Tribune Company v. University of Minnesota Board of Regents 683 N.W.2d. 274.). The court held that compelling the release of information under freedom of access rules did not violate the University’s autonomy to conduct its educational mission.</p> <p>University counsel explains that the issue of autonomy is a delicate one and that the University chooses its battles carefully. The concept of “technology transfer” as a part of the educational mission and therefore off limits for regulation has not been tested. Apparently, there has not been a test case.</p>	<p>Naturally, this raises the implication that University employees are covered to some degree by these rules.</p> <p>In discussing these conflicts of interest rules with University counsel, the University takes the private position that the University has autonomy and is therefore free to self-regulate on matters of conflicts of interest. The University has a conflicts of interest policy (See: <a href="http://www1.umn.edu/regents/policies/academic/Conflictofinterest.pdf">http://www1.umn.edu/regents/policies/academic/Conflictofinterest.pdf</a>). In connection with research professors and outside companies in which a professor has an interest, the policy governs University purchases from those companies through an independent review process normally resulting in the purchasing decision made by another professor or the applicable department chair.</p> <p>Currently, subject to the University policy on purchasing items from a company in which a professor has a commercial interest, technology transfer activities have not been hindered by state ethics rules.</p>
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## Appendix II

Name: \_\_\_\_\_ Position: \_\_\_\_\_ Date: \_\_\_\_\_

### Interview Questionnaire

NOTE: Please address the following questions from your personal perspective within the context of the Washington State ethics law, or its interpretations and/or limitations, and within the context of a growing technology economy.

- First, a little information about you would be helpful. Do you consider yourself and/or your associates to be entrepreneurs? Are you a businessperson or scientist/engineer working in a for-profit company? Or, are you employed by a state university? What aspects of your position give you exposure to situations that may be influenced or controlled by the state ethics law?
- Do you have a general sense that the state ethics law has influenced the current level of achievement for Washington's technology economy?
- Have you worked at the interface between the state universities and business, or are you involved with those who have?
- Have you attempted to license intellectual property (IP) rights from the state universities, and if so, what were your expectations and experiences?
- Have you attempted to form collaborations between a state university and a business venture, and if so, what developed? Were your expectations met, and if not, what were the compromises, shortcomings or limitations?
- Are there certain aspects of the state ethics law that have complicated or diminished your success or opportunities in business ventures?
- Do you feel the state ethics law would be more beneficial to Washington's technology economy if it were modified or interpreted differently?
- Do you have specific recommendations for a more business friendly state ethics law that might improve the value of relationships between the business sector and the universities?
- Outside the context of the ethics law, do you have recommendations regarding other aspects of the technology commercialization process where universities can/should play a role?
- How does our state stack-up against others in competition for resources and job creation through the formation of new companies?



## **Appendix III: Committee Member Bios**

### **Alan C. Nelson, Committee Chair**

Alan Nelson, Ph.D., is Chairman and CEO of VisionGate, Inc., a company he founded in 2001 to develop novel technologies for the 3-dimensional analysis of gene expression in cells, focusing initially on the earliest detection of lung cancer in high-risk patients. Concurrently, he is an Affiliate Professor at the University of Washington.

Prior to VisionGate, Dr. Nelson was the technical founder of NeoPath, Inc., where he served as President and CEO, and later served as Executive Chairman of TriPath Imaging, Inc., both companies focusing on the earliest detection of cervical cancer. Under his leadership, NeoPath achieved the first and only FDA approval on a machine that diagnoses cancer more accurately than doctors. NeoPath went public in 1996, then through acquisition and merger, became TriPath in 2000.

Before becoming a biomedical business entrepreneur, Dr. Nelson was a tenured Associate Professor of Bioengineering at the University of Washington where he established the Center for Imaging Systems Optimization with significant funding from the Keck Foundation, IBM and the NIH. Prior to this, Dr. Nelson held the W.M. Keck Foundation endowed chair professorship at MIT, was jointly appointed to the faculty at Harvard and directed the Harvard/MIT Radiological Sciences Program. He also held honorary professorships at Queens University in Belfast and at Trinity College in Dublin.

Dr. Nelson received his Ph.D. in Biophysics from the University of California, Berkeley, in 1980. He earned his Bachelors Degree in physics from USC.

Dr. Nelson holds over 20 patents and has published over 100 scholarly papers in the field of biomedical imaging. He has lectured widely throughout the world. He serves on various company boards and advises certain institutional funds. Dr. Nelson is a Fellow of the American Institute for Medical and Biological Engineering.

### **Daniel J. Evans**

Daniel J. Evans became Governor of the State of Washington in 1965, serving an unprecedented three terms. He was named “One of Ten Outstanding Governors of the 20<sup>th</sup> Century” by a University of Michigan study. After declining to run again, he assumed the presidency of The Evergreen State College in Olympia in 1977.

From 1981 to 1983 he served as Chairman of the Pacific Northwest Electric Power and Conservation Planning Council. In 1983, after the death of Senator Henry “Scoop” Jackson, Evans was appointed and then elected to complete the remainder of Jackson’s term in the United States Senate. While in the Senate, he served on the Energy and Natural Resources Committee, the Foreign Relations Committee and the Select Committee on Indian Affairs. In 1989, he chose not to run again for the Senate.

He chaired the National Academy of Science’s Commission on Policy Options for Global Warming, and in 1990 co-chaired with former President Jimmy Carter, a delegation to

monitor the elections in Nicaragua. For five years he was a political analyst for KIRO TV and radio.

Currently, he heads his own consulting firm of Daniel J. Evans Associates with an office at Foster Pepper and Shefelman. In addition, he serves on numerous civic boards, including the Parkinson's Foundation Board and The Nature Conservancy of Washington. He has served on the corporate boards of Puget Sound Energy, Burlington Northern Santa Fe and currently serves on the boards of Cray, Inc., Costco, Western Wireless Corporation and the Archimedes Technology Group. He is a Fellow of the American Academy of Arts and Sciences. In 1993 he was appointed to the Board of Regents of the University of Washington by Governor Mike Lowry and was re-appointed in 1999 by Governor Gary Locke.

In 1999 the University of Washington Board of Regents voted to rename the Graduate School of Public Affairs at the University of Washington – “The Daniel J. Evans School of Public Affairs.” In June of 2001, he and his wife Nancy were awarded the E. Donnell Thomas Medal of Achievement by the Northwest Industry Partnership at the Fred Hutchinson Cancer Research Center.

### **William H. Gates, Sr.**

Bill Gates, Sr., brings a distinguished career in law and many years of public service to his role as Co-Chair of the Bill & Melinda Gates Foundation, the world's largest foundation with an endowment of \$24 billion granted by Mr. Gates' son Microsoft founder Bill Gates and a his wife, Melinda.

Mr. Gates earned his bachelor's and law degrees from the University of Washington, following three years of U.S. Army service in World War II. He became a partner in the law firm of Shidler McBroom Gates & Lucas in 1964, guiding it through growth and mergers that would eventually establish Preston Gates & Ellis, one of Seattle's leading law firms.

He has served as president of both the Seattle/King County Bar Association and the Washington State Bar Association. His other leadership positions in the field of law have included membership in the American Bar Association House of Delegates and the presidency of the National Conference of Bar Presidents. He was named the 1991 University of Washington Law School Distinguished Alumnus, and awarded the 1992 American Judicature Society Herbert Harley Award.

Mr. Gates has been a lifetime advocate for education, chairing the Seattle Public School Levy Campaign in 1971 and serving as a member of the University of Washington's Board of Regents since 1997.

He has served as trustee, officer and volunteer for more than two dozen Northwest organizations, including the Greater Seattle Chamber of Commerce and King County United Way. In 1995, he founded the Technology Alliance, a cooperative regional effort to expand technology-based employment in Washington.

## **Slade Gorton**

Slade's dedication to public service began in 1959 when he was elected to the Washington State House of Representatives where he served for ten years, including the last two as Majority Leader.

In 1969, Slade was sworn in as the state's Attorney General, a post he would hold for three terms. Gorton's illustrious career as Washington Attorney General saw him argue fourteen cases before the United States Supreme Court (1973-1980), prompting Chief Justice Warren Burger to comment: "[Slade Gorton] makes the best arguments before the Supreme Court of any Attorney General in America."

Slade was elected to the United States Senate in 1980, serving three terms. His terms in the Senate saw him appointed to powerful committee posts including Appropriations, Budget, Commerce, Science and Transportation, and Energy and National Resources. He served as the Chairman of the Interior Appropriation Subcommittee (1995-2001), the Commerce Subcommittee on Consumer Affairs (1995-99), and Aviation (1999-2000). He was a member of the Republican leadership as counsel to the Majority Leader (1996-2000).

Slade joined Preston Gates & Ellis LLP in 2001 as of counsel. He served on the National Commission on Federal Election Reform in 2001, and in 2002 Slade was appointed to serve as a Commissioner on the National Commission on Terrorist Attacks Upon the United States.

## **Susannah Malarkey**

Susannah Malarkey is the Executive Director of the **Technology Alliance** (TA), a statewide consortium of leaders from technology businesses, research institutions, and the community dedicated to Washington State's economic success through support for excellent education systems, strong research capacity, and a robust entrepreneurial environment. Founded in 1996, the Alliance manages programs, conducts research, and produces publications and events to advance its mission.

Susannah Malarkey has been the Executive Director of the Alliance since its inception, and manages TA programs and publications that include: the **Alliance of Angels**, a membership group of 100 investors who invest in early-stage Northwest technology companies; the **Science & Technology Roundtable**, a monthly series featuring presentations on cutting-edge developments in science and technology; an annual **benchmarking** report; and a bi-annual **economic impact** study.

Prior to assuming her current position, she was the Director of Public Policy Programs for the Greater Seattle Chamber of Commerce for five years. She also served as the Executive Director of Business Volunteers for the Arts from 1987-1995, and spent the five years previous to that working in community outreach and public relations for KCTS, Seattle's public television station. She has an M.S. in Public Affairs and B.S. in Community Services, both with high honors, from the University of Oregon.

She currently serves on the board of Humanities Washington; on both the Executive and Screening Committees of the Alliance of Angels; on the Advisory Board for the WTC Angel Network, as well as with various other civic and charitable organizations.

## **Richard R. Rohde**

*Partner at Perkins Coie LLP*

### **AREAS OF EMPHASIS**

Licensing and technology transfer  
Research, development and commercialization of technology  
Product distribution  
Patent portfolio management  
Joint ventures and strategic alliances  
Technology transactions with Universities  
Clinical trials for medical devices  
Company formation  
Private financings (founders, angels and venture capital)  
Mergers and acquisitions

### **REPRESENTATIVE INDUSTRIES**

Computers (software, semiconductor, hardware)  
Medical devices  
Internet and e-commerce

### **SPEECHES AND PUBLICATIONS**

Pacific Rim Computer Law  
Participant of various legal seminars sponsored by the Washington Software Board (e.g., on intellectual property, licensing and outsourcing)  
Law Seminars International, the Bellevue Chamber of Commerce (e.g., on U.S. export controls, U.S. trade with the Pacific Rim and artificial intelligence)

### **PROFESSIONAL RECOGNITION**

Listed in *The Best Lawyers in America*  
Listed in *Washington Law & Politics*, “Washington Super Lawyers”

### **EDUCATION**

Boston University, J.D., *magna cum laude*, 1976  
Editor, *Boston University Law Review*  
Harvard College, A.B., *cum laude*, 1972

## **Martin F. Smith**

*Partner at Preston Gates & Ellis LLP*

Marty Smith is Chair of the Intellectual Property Practice Group at Preston Gates & Ellis LLP. His practice emphasizes information technology, software and computer law. He advises companies in all aspects of technology development, licensing, exploitation and protection, both domestically and overseas. He is included in An International Who's Who Of E-Commerce Lawyers and Washington Law & Politics 2002 and 2003 Super Lawyers.

### **PROFESSIONAL ACTIVITIES**

Member, Seattle-King County Bar Association Trade Law Mission to the People's Republic of China, April 1984  
Chairman, International Comparative Law, Seattle-King County Bar Assc., 1986-88  
Member, Steering Committee, International Comparative Law Section, Seattle-King County Bar Association, 1983-90  
Member, Business and International Law, Washington State Bar Association  
Member, Business, International Law and Intellectual Property, American Bar Assc.  
Member, Computer Law Association

### **CIVIC ACTIVITIES**

Chair, Governor Gary Locke's Digital Education Task Force  
Chairman of the Board, Washington Digital Learning Commons  
Citizen member, K-20 Network Oversight Board  
Co-Chair, Advisory Board, Shidler Center for Law, Commerce and Technology at UW  
Co-Chair, Technology Alliance Task Force on Technology in Education  
Member, Congressman Adam Smith's Technology Advisory Council  
Board Member and Executive Committee Member, Technology Alliance  
Advisory Board member, Science & Technology Center on Materials and Devices for Information Technology Research at the UW  
Former Board Member and secretary, Washington Software Alliance (WSA)  
Member, Technology Compact of the Alliance for Education  
Member, Bainbridge Island Public Schools Technology Committee  
Participant, Leadership Tomorrow, 1986-87  
Participant, Alki Foundation Political Involvement Institute, 1989

### **EDUCATION**

**B.A.**, *magna cum laude*, Whitman College, 1978  
Phi Beta Kappa  
**J.D.**, University of Washington Law School, 1981  
Member, Order of Barristers, 1979-80  
Chairman, Moot Court Honor Board, 1980-81