

State of Washington
PUBLIC DISCLOSURE COMMISSION
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MINUTES – Regular Meeting

9:30 a.m. | August 20, 2019
Evergreen Plaza Building, Room 206
711 Capitol Way
Olympia, Washington

Commission Members Present

Anne Levinson, Chair; David Ammons, Vice-Chair; Russell Lehman, member; Bill Downing, member.

Absent

Fred Jarrett, member.

Staff Present

Peter Lavallee, Executive Director; BG Sandahl, Deputy Director; Kim Bradford, Communications and Outreach Director; Sean Flynn, General Counsel; James Gutholm, Chief Information Officer; Jana Greer, Administrative Officer; Kurt Young, Compliance Officer; Alice Fiman, Compliance Officer; Phil Stutzman, Compliance Officer; Chad Johnson, Budget Analyst, Department of Enterprise Services; John Meader, Assistant Attorney General; and Chad Standifer, Assistant Attorney General.

The regular meeting of the Public Disclosure Commission (PDC) was called to order by Commission Chair Anne Levinson at 9:30 a.m.

Public Comments | [PDC Meeting Video](#)

Rowland Thompson ([in-person](#))

Rowland Thompson, representing Allied Daily Newspapers of Washington, commented on the Commercial Advertiser rule [WAC 390-18-050](#), stating that the emergency rules adopted exceed the PDC's authorities and that they have advised their members to abide by the law as described in [RCW 42.17A.345](#) and not the rule put into place.

Mr. Thompson read a statement from Keith Shipman, director of Washington State Association of Broadcasters, stating that they joined allied Daily Newspapers in opposing the adoption of the emergency rules.

Bill Stauffacher ([in-person](#))

Bill Stauffacher, on behalf of Pacific Printing Industries Association representing 500 commercial printers in Washington State, accompanied Rowland Thompson in his discussion on Commercial Advertiser rule [WAC 390-18-050](#). He said the statute is direct about what printers are obligated to provide, but the rule requires the printer to put information in a digital format that could disclose pricing information to competitors.

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John Bonifaz ([via telephone](#))

John Bonifaz, Co-founder and President of Free Speech for People, spoke on the proposed ordinance soon to be introduced to the Seattle City Council and asked that the Commission support this legislation to set reasonable limits on donations to PACs, to address the threat of foreign corporate money in Seattle elections, and to strengthen Seattle's longstanding law requiring Commercial Advertisers to disclose funding behind certain political ads. He noted the numerous written testimonies received in support and presented to the Seattle Ethics and Elections Commission (SEEC). He said he welcomed a partnership with the PDC on the bill and asked for endorsement of the legislation by the Commission or Chair.

Cindy Black ([in-person](#))

Cindy Black, Executive Director of Fix Democracy First, commented on need for the draft legislation presented to the SEEC and asked the PDC for endorsement.

Kathy Sakahara ([in-person](#))

Kathy Sakahara, Chair of the Democracy Advocacy Team for the League of Women Voters, discussed the strong support for the ordinance from the state LWV as well as the Seattle-King County LWV. Kathy asked the Commission for its advice and ideally some form of endorsement from the Chair.

Discussion on Proposed Seattle Ordinance Related to Foreign Ownership Interest

Contributors, Independent Expenditures, Commercial Advertisers – SEEC | [PDC Meeting Video](#)

Executive Director Peter Lavalley explained that advocacy groups brought the idea for the proposed ordinance to the Seattle City Council, which then turned to the SEEC to get its thoughts. It was determined that the PDC's opinion would be valuable as well. He mentioned the intersection between state law and city laws, and the ability of local jurisdictions to enact laws that go beyond state requirements.

Sean Flynn, General Counsel, noted that at the state level there have been proposals on the issue of foreign-influenced corporations. In the last biennium, a bill was introduced that proposed requiring a disclosure statement from any corporation with more than 50% ownership by a foreign individual. It did not pass out of committee.

PDC staff discussed the possibility of taking a future in-depth look at the language related to Commercial Advertisers, perhaps in conjunction with public hearings on the issue. That approach would allow the staff a chance to identify experts to ask for input.

John Bonifaz explained the idea behind the Commercial Advertiser provision of the proposed legislation and its intent to strengthen the existing Seattle law by extending it to cover additional types of advertisements on political matters of local importance. Cindy Black noted that the particular provision was added at the request of a Seattle City Councilmember to address disclosure of ads that attempt to influence policy decisions, such as Seattle saw last year with the head tax.

Mr. Bonifaz said the legislation also would help protect the democracy voucher program, which is currently threatened by unlimited donations to super PACs that circumvent Seattle's contribution limits.

Chair Levinson said she is personally and philosophically aligned with the legislation's goals and agrees that the amount of money spent on independent expenditures in Seattle is distressing. Commissioner Ammons stated that he thinks the Commission can be supportive in concept and should instruct the staff to collaborate with parties in Seattle. Commissioner Lehman concurred, adding that the Commission also should consider encouraging legislative action at the state level if it is determined that this approach is better. Commissioner Downing also agreed, but said he was hesitant to go too far in endorsing language since the Commission has not had a chance to hear from anyone with concerns about the legislation.

Chair Levinson proposed the Commission endorse the goals of the proposed ordinance, ask the staff to continue working with the SEEC and advocates, and discuss it further at the September meeting. Commissioner Ammons invited Chair Levinson to write a statement of support on behalf of the Commission.

Next Steps/Follow up:

- (i) Staff to provide assistance to SEEC staff on the analysis of the propose ordinance and to be available to interested parties as a resource on how the bill would interact with and may affect state campaign finance law.

Staff will present the "next steps" at the September Commission meeting.

Meeting Minutes | [PDC Meeting Video](#)

The Commission considered approval of meeting minutes for the July 25, 2019, regular meeting.

MOTION 19-054 Moved by Commissioner Ammons, seconded by Commissioner Lehman, that:

The Commission approve the meeting minutes for the July 25, 2019, regular meeting as presented.

The motion passed 4-0.

Consideration and Possible Adoption of Agency Budget, Including Transparency Fund | [PDC Meeting Video](#)

PDC agency general fund expenditures remain steady. There are plans to request decision packages for an agency project management position and possibly a decision package to cover the Washington Technology Service (WATech) transition costs as that agency transitions into more of a technology service broker. CIO Gutholm will continue to review the information from WATech and advise if a decision package is needed.

Chad Johnson, DES Budget Analyst, reviewed the timeline for decision packages, which are due Sept. 20, 2019. Handouts were made available for a continued discussion later in the meeting.

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Executive Director Lavallee reported that he has met with several legislators to discuss the performance the agency has achieved over the last year as well as to preview what they can expect next session in agency-request legislation.

Revolving Fund Examples

The Commission and staff discussed whether it would be timely to request to move to an unappropriated approach for the PDC Transparency Fund. Executive Director Lavallee provided an overview of what a “Revolving Fund” is and its purpose. He provided examples of other state agencies’ revolving funds.

Chair Levinson noted that the PDC is not seeking authority that would incentivize the agency to further fine or litigate. Nor does it want to promote use of the fund to supplant operational funding. The PDC has been very specific about the backlog of projects, particularly regarding IT, where the regulated community and filers could be better served if improvements were made. The objective is to have approved authorization for implementing priority projects as money becomes available in the Fund, making the agency nimbler and bringing projects online sooner than the traditional cyclical request and authorization process allows.

Mr. Johnson reviewed the requirement for requesting a non-appropriation approach for the Transparency Fund. The PDC will need to include this in its agency-request legislation.

Mr. Johnson will be meeting with the Office of Financial Management Budget Group on August 30. He will discuss the non-appropriation of the Transparency Fund and point out the projects that have been identified.

Next Steps/Follow up:

(ii) The staff will add proposed language to the draft agency-request legislation and will update the IT Portfolio to explain the strategic plan outcomes that each project is intended to achieve.

Rulemaking Update | [PDC Meeting Video](#)

BG Sandahl, Deputy Director, updated the Commission on the status of current rulemaking. A public hearing has been scheduled on September 26, 2019, at 9:45 a.m. for rules related to ESHB 1379 and SHB 1195. The proposed rules are on the [PDC website](#). Comments should be submitted no later than September 24, 2019, to pdcc@pdcc.wa.gov.

Consideration and Possible Adoption of Agency Legislative Priorities | [PDC Meeting Video](#)

Executive Director Lavallee has had productive meetings with legislators and legislative staff discussing the proposed agency-request bill topics. Some legislators have expressed interest in potential sponsorship, with particular interest in the F-1 reforms. He discussed the Commissioner political activities and advocacy provisions and received feedback that there should be a mechanism for disclosure. Also discussed were various funding ideas/stewardship of the Transparency Fund and the conceptual framework needed; and the topic of “faux mailers” and how to address the issues they raise.

The Commission and staff reviewed the proposed legislative priorities for 2020.

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1. Potential reforms to the F-1 reporting requirements;
2. Restoration of agency operational provisions of the section vetoed in SHB 1195 that are best to remain in statute, as the agency committed to do in requesting the partial veto;
3. Commissioner political activities and advocacy;
4. Clarification of the definition for “ballot proposition”;
5. Consideration of amendment to the false advertising prohibition;
6. Making the Transparency Account a non-appropriated fund;
7. Amending NDA language; and
8. Consideration of changes to the disclosure requirements for Commercial Advertisers and to creating the capacity on the PDC website for housing all Commercial Advertiser reporting.

Next Steps/Follow-up:

(iii) Staff will bring an outline of the proposed F-1 reform language to the Commission at the September 25, 2019, Commission meeting, along with draft language for each of the other sections that are ready, including Commissioner activities, ballot proposition definition, non-appropriated fund, NDAs, and reinstatement of operational requirements that were included in the partial veto. Draft language for the entire bill will then be presented at the October 2019 Commission meeting.

Staff will add the phrase “disclose as appropriate” to the pending draft of the Commissioner political activities and advocacy language.

Discussion of New App for F-1 Filers | [PDC Meeting Video](#)

Chief Information Officer (CIO) James Gutholm highlighted the first phase of the F-1 filing system replacement project. The new system will identify filers so that their records are appropriately matched in the system to ensure their compliance and trackability over time. CIO Gutholm also talked about the next phase of the project which would match and verify new F-1 filers in the system to the appropriate records, if any, and that function would continue to work with the old filing system using all the new processes.

He discussed the F-1 project is overall going well and a kickoff meeting in the coming week with public stakeholders is scheduled to explain the project and their involvement. Director Bradford noted there were 200 individuals who expressed interest in being involved in the project, and of those 16 have signed up to be project team members.

Staff discussed with the Commission making F-1s submitted in the new application after January 1, 2020, accessible to the public online. Any F-1 records submitted prior to that date would still be accessible via public records request. Staff asked the Commission to consider making a decision at the September meeting about accessibility and which reports the agency should make readily available online.

Executive Session

The Commission went into Executive Session at 11:58 p.m. to discuss matters allowed in Executive Session pursuant to [RCW 42.30.110](#), including but not limited to discussion of enforcement matters, pending and potential litigation with legal counsel, and review of performance of public employees.

The Commission meeting returned to open session at 1:00 p.m.

Enforcement Hearing, Consideration and Possible Acceptance of Proposed Stipulation | [PDC Meeting Video](#)

Chad Standifer, Assistant Attorney General, and Alice Fiman, Compliance Officer, presented for Commission consideration and possible approval a Stipulation as to Facts, Violations, and Penalty for [PDC Case 43080](#) The Grant County Republican Central Committee, which involved alleged violations of (1) [RCW 42.17A.220](#) for failing to timely deposit contributions within five business days of receipt; and (2) [RCW 42.17A.235](#) for failing to timely file Monetary Contribution reports (C-3 reports) and Campaign Summary Receipts and Expenditure reports (C-4 reports) in campaign years 2015 – 2018.

Dan Brady, Attorney for the Respondent, and RaeAnne Journey, Treasurer, participated via telephone.

PDC Staff recommended approval of the proposed Stipulation as to Facts, Violations, and Penalty to which both parties have agreed.

The Commission went into deliberation at 1:36 pm and returned to the hearing at 1:41 pm.

Chair Levinson asked if the parties would concur in amending the Proposed Stipulation to include in the Findings that the Respondent is in compliance with reporting requirements and that there are no other PDC cases comparable to these facts for purposes of determining the penalty amount. Counsel for both parties agreed with the proposed amendments and stated they would re-execute the Stipulation to include them.

MOTION 19-055 Moved by Commissioner Ammons, seconded by Commissioner Lehman, that:

The Commission accept the Stipulations as to Facts, Violation and Penalty as amended and assess a civil penalty of \$6,500 with \$3,250 suspended, conditioned on no further violations of RCW 42.17A or WAC 390 within four years from the date of the Final Order. The non-suspended portion of the penalty shall be paid within 30 days from the date of the Final Order.

The motion passed 4-0.

Enforcement and Compliance Update | [PDC Meeting Video](#)

Kurt Young, Compliance Officer, reported the status of PDC cases and statistics for the period of July 12, 2019 through August 12, 2019.

- 7 cases closed with no evidence of violations
- 23 cases closed with a reminder
- 3 case closed with a formal written warning
- 1 case closed similar to a case resolved by citizen as a citizen action notice
- 1 case closed by complaint publication process
- 3 cases closed with a statement of understanding
- 1 case closed with Commission finding violations

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Kurt Young, Compliance Officer, reported that there are 180 active cases, including 72 pre-ESHB 2938 and 108 post-ESHB 2938 cases.

Phil Stutzman, Compliance Officer, explained the provisions of the Campaign Fair Practices Code in [WAC 390-32](#) and that a violation of one of its provisions is not violation of [RCW 42.17A](#) punishable by any penalty but violation to code.

Next Steps/Follow Up:

(iv) Staff to provide more clarity on status codes and milestones.

Staff to add a column or indicator to status report about case relevance to upcoming election cycles.

Update on F-1 Regulatory Reform | [PDC Meeting Video](#)

Kim Bradford, Outreach and Communications Director, noted staff has reached out to those stakeholders who identified themselves in the June survey as interested in participating in further discussions about potential F-1 regulatory reform. So far, the responses seem to indicate the agency is headed in the right direction in regard to the ideas presented to the Commission at the July meeting. Staff will return to the Commission with the results and an outline of proposed reforms in September.

Sean Flynn, General Counsel, reported on the research and staff recommendation regarding the topic of privileged/confidential relationships and reporting requirements.

Staff recommends the existing factors under [WAC 390-28-100](#) include policy considerations that provide reasonable guidance for determining whether an NDA warrants an exemption from disclosure. Similar to the federal regulations, adding a factor that limits recognized NDA's to agreements made at the beginning of the relationship could help to narrow exemptions to legitimate business interests, rather than attempts simply to avoid disclosure.

Regarding privileged relationships, recognizing an exemption for confidential information protected under regulated professional standards, as seen in the federal and state examples provided, would give guidance to filers subject to such professional standards for avoiding potential conflicts with those standards. The scope and limits of such exemptions should be incorporated within the defined exemption in order to prevent an overly broad category of information.

Next steps/Follow-up:

(v) Staff will bring back additional factors and information for any third-party interest as well as proposed agency-request bill language to the Commission at the September Commission meeting.

Management Team Updates | [PDC Meeting Video](#)

Communications, Outreach and Filer Assistance update | [PDC Meeting Video](#)

Kim Bradford, Communications and Outreach Director, said the filer assistance team is currently occupied with the work required to process requests from filers who want to change from mini to full reporting ahead of the Sept. 3 deadline.

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Director Bradford also discussed the two new positions that are currently in the hiring process, one an opening caused by an internal promotion. Deputy Director Sandahl discussed the loss of one of her team members, Micaiah Ragins, to higher education. With his departure, Tabitha Townsend has transitioned from the Customer Service section into Compliance, bringing a good base of knowledge about the PDC with her.

Executive Director, Budget Discussion | [PDC Meeting Video](#)

Executive Director Peter Lavalley continued the budget discussion and highlighted the financial overview of the upcoming biennium. He touched on the areas that saw the biggest changes from their original allotments due to changes in funding, namely salaries and goods and services, the latter of which includes Attorney General's Office billings. The PDC's underspend was \$364,000.

Executive Director Lavalley discussed the potential budget submittal for the Washington Technology Service (WATech) transition that CIO Gutholm would clarify if needed, and budget submittal for the project management position to support the agency.

Next Steps/Follow Up:

(vi) Staff to review nomenclature to ensure that descriptions of Transparency Fund projects reinforce that the Fund is not being used for operational expenses.

Staff to review and update the IT portfolio to make sure it includes all projects, aligns each project with a strategic plan outcome and identifies those that could be handled by third-party vendors.

Process Improvement | [PDC Meeting Video](#)

Jana Greer, Administrative Officer, reported on the recent implementation of penalty statements being sent via email to the respondents. In the past, Department of Enterprise Services (DES) would mail a hardcopy of an invoice and then follow up with a monthly statement. DES now sends a PDF of the statements which are saved to the case file and sent via Freshdesk to the respondent as an additional reminder. This process improvement aligns with the agency decision to have email as the main point of contact for all candidates and cases.

Meeting adjourned at 3:00 p.m.

Approved September 26, 2019

Next Steps/Follow-Up Items

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