State of Washington
PUBLIC DISCLOSURE COMMISSION
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To: Commission members

From: Kim Bradford, Communications and Outreach Director, and Sean Flynn, General Counsel

Re: F-1 regulatory reform discussion

Background

The PDC is engaged in an outreach project that grew out of a 2018 commission decision to make financial affairs disclosure (F-1) information available online. Much of the work to date has been focused on collecting input from F-1 filers and the public. PDC staff have had dozens of one-on-one conversations with concerned parties, and an online survey aimed at identifying possible areas of interest or agreement drew 1,400 response.

In June, staff recommended developing the broad outlines of possible regulatory reform proposals before engaging in further outreach. Commission asked staff to look at ways to make financial affairs disclosure meaningful by eliminating information that might be unnecessary and by strengthening disclosure where it matters.

Drawing from the recent F-1 survey, other current and past outreach, and a review of financial disclosure laws (attached), PDC staff have developed recommendations for further consideration. We are looking for direction from the commission about which changes it is interested in pursuing so that we can do additional work with stakeholders in anticipation of making policy proposals.

What the PDC has heard from filers and the public about the current requirements:

- It's hard to know what to report and how to report it.
- Some details are hard to get and are of limited or no value.
- Pre-1195 dollar codes were out-of-date and too broad to be useful. The new codes that take effect Jan. 1, 2020, help but there remains a concern that they limit the value of the information.
- There should be different levels of disclosure for different offices.
- The information is not useful because of the way it is collected and provided to the public.

- Lobbying and business interests are two areas where public interest is high and privacy concerns low.
- Additional information about occupation and business interests would make it easier to identify potential conflicts.
- Some disclosure requirements threaten the privacy of third parties.

Possible avenues to reform

A. F-1 filing tools:
    - The replacement of the F-1 filing application and the accompanying filer resources, expected to go live by Jan. 1, 2020, in time for the next F-1 filing season, will be a transformational improvement in the way we ask and collect information. It will replace a form that asks filers to supply buckets of information with a guided experience that leads filers through the requirements.

B. Rulemaking:
    - RCW 42.17A.710(1)(n) provides a broad grant of authority, requiring filers to disclose "(s)uch other information as the commission may deem necessary in order to properly carry out the purposes and policies of this chapter, as the commission shall prescribe by rule."

C. Statutory changes:
    - In limited cases, disclosure requirements that the commission may want to consider changing exist in statute. In other cases, legislation might be advisable if the change codifies a longstanding interpretation, and/or the commission wants to have the benefit of the vetting and buy-in that the legislative process provides.

Changes for commission to consider for agency-request legislation:

In general, Washington state has some of the most robust requirements in terms of the amount of financial information that is subject to reporting. Improvements in how the information is collected and provided to the public, as well as some refinement of the details required to be disclosed, could assist in making financial disclosure more relevant.

- Establish that filers must report only the names of adult family members (B,C)
- Clarify that "entity" for purposes of reporting directorships includes nonprofit organizations (A,B,C)
    - Louisiana and Maine specifically require reporting of associations with for-profit and nonprofit organizations.
- Streamline reporting of assets by eliminating requirement to report street address of publicly traded stocks and to move to end-of-period values (C)
    - Missouri generally requires reporting of assets' addresses but makes exception for corporations listed on a stock exchange.
- Require additional information about employment, including hire date (B,C)
    - Both Alaska and federal disclosure require dates of service.

- Expand dollar codes beyond $1 million (C)
    - New York's codes advance in increments of $100,000 to $10 million.
- Provide more disclosure on lobbying and business interests.
    - Report familial and occupational connections to lobbyists
        - Oregon and several other states require disclosure of any lobbyist associated with the filer's businesses.
    - Require additional detail about types and sizes of businesses owned
        - West Virginia, Alabama, New Mexico, North Carolina, and New Hampshire require some form of categorization of business relations.
        - Alabama includes some reporting by size of business, but only for those providing professional services to clients.
        - Arizona and New Mexico require disclosure of all professional business licenses held by the filer.
- Exempt professional staff's information from online accessibility (B,C)
    - Federal law requires the disclosure reports of senior officers to be posted online while all other reports are made available by request.

More analysis needed

- Exclude from reporting requirements customers of "privileged" relationships and individuals involved in real estate transactions (B,C)

Review of other approaches to financial disclosure

This summary is the product of a 50-state analysis of financial disclosure laws for public officials complied by the National Conference of State Legislatures (NCSL).

Almost all states require public officials to disclosure personal financial information. The NCSL data shows that state approaches vary widely in regard to financial disclosure requirements, without any general model to follow, although there are some trends that emerge in some of the reporting categories.

Financial disclosure generally exists to eliminate or expose conflicts of interest, but the ways states try to accomplish that goal varies widely. The approaches fall generally along these lines:

- Naming potential conflicts vs. quantifying them
- Collecting only that information that is determined (by govt or filer) to potentially be a conflict vs. letting the public decide
- Retrospective vs. real-time reporting

Below is a summary of state approaches related to the areas we have identified for consideration of possible changes to the F-1 filing requirements.

<u>Valuation</u> - States generally fall into three categories for reporting the value if assets: Exact value, value within a ranges, or no value required to report.

- *Exact value* - Only a few states appear to require a filer to report the exact value of assets, although we did not look beyond each state's statutory authority to determine if the rules or forms required exact value reporting.
- *Ranges* – Almost one-third of the states do not require filers to report any value of assets. Some of these states do require reporting by category of industry in which the asset is held, or by the number of shares or percentage held in a business.
- *No value* - Of the states that require reporting value by range, the highest range was $10 million and over. A few states simply require the filer to report whether the asset is above or below a static value (for example, above or below $50k).

<u>Family Members</u> – States generally fall into three categories for the family members and relations whose financial interests the filer must include in their report: None, Spouse, dependent children, and household.

- *None* – a few states do not specifically require reporting on any family member's interests and focus exclusively on the filer.
- *Spouse only* – A few states only require a filer to include the financial interests of a spouse. Of these states, the spouse-only reporting is more common for reporting income or business affiliations, rather than property owned.
- *Spouse and dependent/minor children* – This category is more popular than the spouse-only for each kind of asset (income, business, and property).
- *Household* – This category is also more common than spouse-only, and more vaguely defined. Potentially, it is broader than spouse and minor children, to include non-marital relationships,

nondependent children, and others living with the filer. At least one state specifically requires reporting by nondependent children, as opposed to minor children.

Business and Lobbying Associations – Most states require disclose of business associations, though they differ widely on what should be reported. Most states do not require filers (at least legislators) to report on connections to lobbyists, though some require reporting of an economic connection to a lobbyist, including the filer's employer.

- *Business associations* – Several states require filers to report business associations by category of industry. A few states require filers to list all business or professional licenses held.
- *Lobbyist association* – States require reporting lobbyist associations in several general ways, including:
  - lobbyists working directly for the filer;
  - family members who are paid lobbyists;
  - lobbyists associated with the filer's employer or business interests; or
  - Lobbyists who provide income to the filer or employer, or who provides a client referral.