



Washington State Public Disclosure Commission
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To: Commissioners, Washington State Public Disclosure Commission
From: Evelyn Fielding Lopez, Executive Director *eff*
Date: February 15, 2017
Re: Petition for Rulemaking

Petition for Rulemaking

On January 26, 2017, Conner Edwards filed a petition for to amend a PDC rule. See copy attached. The petition suggests amending WAC 390-37-182 as follows (proposed amendment is underlined):

WAC 390-37-182

Penalty factors.

(1) In assessing a penalty, the commission considers the purposes of chapter 42.17A RCW, including the public's right to know of the financing of political campaigns, lobbying and the financial affairs of elected officials and candidates as declared in the policy of RCW 42.17A.001; and, promoting compliance with the law. The commission also considers and applies RCW 42.17A.755 and may consider any of the additional factors described in subsection (3) of this section.

(2) Under RCW 42.17A.755, the commission:

(a) May waive a penalty for a first-time violation;

(b) Shall assess a penalty for a second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee;

(c) Shall assess successively increased penalties for succeeding violations of the same rule.

(d) Shall require a first time violator to attend the PDC compliance training for candidates and political committees if they have violated a provisions between RCW 42.17A.200 and 42.17A.550 or rules relevant to those sections.

PDC Rule on Petitions for Rulemaking

The PDC rule on petitions for rulemaking at WAC 390-12-255 provides: Any person may submit a petition requesting the adoption, amendment or repeal of any rule by the commission, pursuant to RCW 34.05.330 [Administrative Procedure Act] and the uniform rules adopted by

the office of financial management that are set forth in chapter 82-05 WAC.

Administrative Procedure Act

The Administrative Procedure Act (APA) at RCW 34.05.330(1) provides in pertinent part that: Within sixty days after submission of a petition, the agency shall either (a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or (b) initiate rule-making proceedings in accordance with RCW 34.05.320.

Copy of statute attached, and copy of WAC 82-05-040(2).

Recommendation

The Commission has 60 days to determine how to proceed with the petition, by denying it or initiating formal rulemaking. The petition will be added to the Commission's February 23, 2017 meeting for initial discussion.

Enclosures



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

In accordance with [RCW 34.05.330](#), the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

CONTACT INFORMATION *(please type or print)*

Petitioner's Name – Conner Edwards

Name of Organization – N/A

Mailing Address – 1510A 20th Ave SE

City – Olympia State – WA Zip Code 98501

Telephone – (425) 533-1677 Email – Eurus53@gmail.com

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClst.htm>.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: See attached.

1. NEW RULE - I am requesting the agency to adopt a new rule.

The subject (or purpose) of this rule is: _____

The rule is needed because: _____

The new rule would affect the following people or groups: _____

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: 390-37-182

I am requesting the following change: See attached.

This change is needed because: See attached.

The effect of this rule change will be: See attached.

The rule is not clearly or simply stated: _____

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: _____

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: _____

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

Other (please explain): _____

Administrative Procedures Act (RCW 34.05.330)

Petition to Amend Rule WAC 390-37-182

Introduction

To Whom It May Concern –

I am writing to request that the Public Disclosure Commission amend WAC 390-37-182 "Penalty factors".

This formal request is being made pursuant to the Administrative Procedures Act, specifically, RCW 34.05.330(1).

Proposed Amendment

WAC 390-37-182

Penalty factors.

(1) In assessing a penalty, the commission considers the purposes of chapter 42.17A RCW, including the public's right to know of the financing of political campaigns, lobbying and the financial affairs of elected officials and candidates as declared in the policy of RCW 42.17A.001; and, promoting compliance with the law. The commission also considers and applies RCW 42.17A.755 and may consider any of the additional factors described in subsection (3) of this section.

(2) Under RCW 42.17A.755, the commission:

(a) May waive a penalty for a first-time violation;

(b) Shall assess a penalty for a second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee;

(c) Shall assess successively increased penalties for succeeding violations of the same rule.

(d) Shall require a first time violator to attend the PDC compliance training for candidates and political committees if they have violated a provisions between RCW 42.17A.200 and 42.17A.550 or rules relevant to those sections.

###statute truncated to save space###

Explanation

When candidates or committee officers commit violations of either WAC 390 or RCW 42.17A, it is often unintentional. While adjudicating a meritorious complaint, the Commission currently has very few options with dealing with first time offenders.

Oftentimes, the proceedings will lead to a warning letter, or a small fine. Unfortunately, neither one of these options usually lead to long-term compliance. This is because they fail to teach the offender how to be compliant in the future.

Requiring first time offenders to attend PDC training courses (for violating any provision between RCW 42.17A.200 and 42.17A.550) is a logical low-cost option for both the violator and the PDC. Moreover, requiring these violators to attend a training course will give them the information and hands-on experience needed to comply with campaign finance laws in the future.

Current options for dealing with first time violators only punish them. On the other hand, requiring them to attend a PDC training course will educate them so that they have the knowledge to be compliant in the future, avoiding future adjudicative proceedings.

This proposal specifically excludes first time violators of statutes related to personal financial affairs, lobbying disclosure, and illegal agency campaign-assistance violations. This is because the training is not currently relevant to these types of violations.

Conclusion

I urge the Commission to adopt my proposal at the next Commission meeting.

Please don't hesitate to contact me if you have any questions.

Best,

Conner Edwards
(425) 533-1677 cell

RCW 34.05.330**Petition for adoption, amendment, repeal—Agency action—Appeal.**

(1) Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. The office of financial management shall prescribe by rule the format for such petitions and the procedure for their submission, consideration, and disposition and provide a standard form that may be used to petition any agency. Within sixty days after submission of a petition, the agency shall either (a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or (b) initiate rule-making proceedings in accordance with RCW 34.05.320.

(2) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, and the petition alleges that the rule is not within the intent of the legislature or was not adopted in accordance with all applicable provisions of law, the person may petition for review of the rule by the joint administrative rules review committee under RCW 34.05.655.

(3) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, the petitioner, within thirty days of the denial, may appeal the denial to the governor. The governor shall immediately file notice of the appeal with the code reviser for publication in the Washington state register. Within forty-five days after receiving the appeal, the governor shall either (a) deny the petition in writing, stating (i) his or her reasons for the denial, specifically addressing the concerns raised by the petitioner, and, (ii) where appropriate, the alternative means by which he or she will address the concerns raised by the petitioner; (b) for agencies listed in RCW 43.17.010, direct the agency to initiate rule-making proceedings in accordance with this chapter; or (c) for agencies not listed in RCW 43.17.010, recommend that the agency initiate rule-making proceedings in accordance with this chapter. The governor's response to the appeal shall be published in the Washington state register and copies shall be submitted to the chief clerk of the house of representatives and the secretary of the senate.

(4) In petitioning for repeal or amendment of a rule under this section, a person is encouraged to address, among other concerns:

- (a) Whether the rule is authorized;
- (b) Whether the rule is needed;
- (c) Whether the rule conflicts with or duplicates other federal, state, or local laws;
- (d) Whether alternatives to the rule exist that will serve the same purpose at less cost;
- (e) Whether the rule applies differently to public and private entities;
- (f) Whether the rule serves the purposes for which it was adopted;
- (g) Whether the costs imposed by the rule are unreasonable;
- (h) Whether the rule is clearly and simply stated;
- (i) Whether the rule is different than a federal law applicable to the same activity or subject matter without adequate justification; and
- (j) Whether the rule was adopted according to all applicable provisions of law.

(5) The *department of community, trade, and economic development and the office of financial management shall coordinate efforts among agencies to inform the public about the existence of this rules review process.

(6) The office of financial management shall initiate the rule making required by subsection (1) of this section by September 1, 1995.

[1998 c 280 § 5; 1996 c 318 § 1; 1995 c 403 § 703; 1988 c 288 § 305; 1967 c 237 § 5; 1959 c 234 § 6. Formerly RCW 34.04.060.]

NOTES:

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.