

**State of Washington
PUBLIC DISCLOSURE COMMISSION
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MINUTES – Regular Meeting

9:30 a.m. | May 23, 2019
Evergreen Plaza Building, Room 206
711 Capitol Way
Olympia, Washington

Commission Members Present

Anne Levinson, Chair; David Ammons, Vice-Chair; Bill Downing, member; Russell Lehman, member; 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; Jennifer Hansen, Compliance Officer; Chad Johnson, Budget Analyst, Department of Enterprise Services; John Meader and Chad Standifer, Assistant Attorneys 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](#)

No comment made.

Meeting Minutes | [PDC Meeting Video](#)

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

MOTION 19-032 Moved by Commissioner Ammons, seconded by Commissioner Jarrett that:

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

The motion passed 5-0. Commissioners Levinson, Ammons, Downing, Lehman, and Jarrett approved.

Legislative Update| [PDC Meeting Video](#)

Sean Flynn, General Counsel, updated the Commission on the status of:

[HB 1195](#) concerning the efficient administration of campaign finance and public disclosure reporting and enforcement.

The bill was signed by the Governor May 21, 2019 and is effective immediately (other than sections 35 & 36, which are effective January, 2020). The Governor did veto section 7 of the bill, as requested by the Commission, to eliminate the late addition of language that would have prohibited the online publication of F-1 information.

The Commission publicly committed at the April Commission meeting, and in a partial veto

request letter to the Governor, that other elements contained in section 7 will be accommodated through rules and policies in the interim and then will be considered for agency request legislation as needed next session.

The Governor also vetoed section 41 of the bill, concerning the payment of attorney's fees in citizen action cases. Staff received comments earlier this year from the public on whether a respondent (defendant) in the citizen action suit who loses would have to pay their own attorney's fees, and whether fees would be reimbursed by the State. The PDC's position remains consistent with that of the Attorney General, that the State doesn't pay the attorney's fees for a litigant who a court determines has violated the law but would reimburse an amount awarded to the State that includes attorney's fees for a successful third-party litigant.

The Commission also anticipates its legislative request next year may include the need for any changes to the financial affairs reporting requirements.

Next steps/follow-up: ¹Staff will compile a list of ideas for potential agency-request legislation.

[HB1375](#) Port district contribution limits and ESHB1379 PAC-to-PAC political advertising.

Both bills become effective July 28th, in the middle of an election season and during a rulemaking freeze period. Questions are anticipated and staff will provide guidance on the legislative changes, with an eye toward what PDC rules will be when they can take effect after election day.

The port bill contribution limits apply to all port districts, and because there are currently no contribution limits on ports under 200,000 residents, candidates for those districts can receive contributions of any size. Starting July 28th, counting of contributions will restart at zero, and contributions given to any candidate before that date will not be counted against the contribution limit going forward.

PDC staff will continue to offer and provide guidance, and emails will be sent out to the port candidates and their campaigns to highlight the new requirements.

Next steps/follow-up: ²The Commission asked that, in recognition of the help and cooperation of the Governor, legislators and others who worked with the PDC this session, a letter of thanks be sent to each.

Rulemaking | [PDC Meeting Video](#)

BG Sandahl, Deputy Director, reviewed rulemaking timelines for [SHB1195](#) and [ESHB1379](#).

Staff recommended the Commission wait until the September Commission meeting to hold a public hearing for the rulemaking for [SHB1195](#). This timeframe allows adequate time for the public to participate in the rulemaking process and for the Commission to consider adoption in October.

[ESHB1379](#) takes effect on July 28th. Staff will file the CR 101 now, and on September 20th can file the CR 102, which would then appear in the state register on October 16th. The Commission

could potentially have a special meeting in November or utilize the December regular meeting to consider adoption. If adopted, the rule would become effective 31 days after filing.

Next steps/follow-up: ³Staff will look at the possibility of aligning the hearings for permanent rules and the filing of [S^HB1195](#) and [ES^HB1379](#).

The Commission considered for possible adoption emergency rules implementing [S^HB1195](#), Laws of 2019. If approved, staff will file with the Code Revisor by the end of next week, and the emergency rule would not be in effect until the end of July once the law is effective. New permanent rules can be worked on but not effective until the day after Election Day, PDC can give guidance in the interim and as of the day after the election can move directly to a permanent rule.

Staff received general questions and a specific comment/suggestion from the State Broadcasters Association (SBA), who reiterated their concerns under the commercial advertiser rules that the Commission looked at in the fall. General Counsel Flynn reached out to the SBA to explain the purpose of these emergency rules. He will be scheduling a meeting with SBA to discuss their concerns about the commercial advertising requirements.

Next steps/follow-up: ⁴ Sean Flynn will be scheduling a meeting with SBA to discuss their concerns about the commercial advertising requirements.

Counsel Flynn presented proposed emergency rules for consideration:

- WAC 390-05 General policies and definitions
- WAC 390-16 Campaign finance reporting
- WAC 390-18 Political advertising
- WAC 390-19 Electronic filing
- WAC 390-24 Reports of financial affairs
- WAC 390-28 Modifications of reporting requirements
- WAC 390-37 Enforcement rules

The proposed rules do not incorporate implementation of [ESHB 1379](#) (Political advertising top contributors, or “PAC-to-PAC” political advertising disclosure) and other legislation that will become effective later this year. Any rules affected by those new laws will be amended after the 2019 general election. The PDC will publish guidance on those changes in law as they become effective.

Commissioner Downing suggested an edit to [WAC 390.28.080](#), page 9 of the draft, regarding requests for sealing records in advance of a hearing on a request for modification. There is a sentence that has two different instances of “request” and concludes by saying the matter will be resolved at the time of the hearing of the request. Commissioner Downing recommended that the sentence end with “hearing on the request for modification,” so that there is no suggestion that there will be a separate hearing on the preliminary request for sealing public records.

Mr. Flynn reviewed the five areas that staff looked at in the emergency rules that were held over, so that the Commission could address them in permanent rulemaking process.

- The reorganization of definitions and terms in 390-05—clean-up that does not warrant emergency rules
- Suggestions about terminology so that it is updated and current throughout
- Whether to retain the requirement in 390-24 that the staff do a presentation and publication of a list of legislative professional staff who are required to file an F-1 annually
- Update and clarify the use of administrative law judges to apply generally, rather than only in the context of modification requests as is in 390-28
- Providing a uniform size measurement for political paraphernalia that would qualify for an exemption for requiring sponsor ID in 390-18

The Commission asked the staff to also make sure to address in the rules any aspects of Sec. 7 from SHB 1195 that had to be removed because of the partial veto that might best be addressed now in rule.

General Counsel Flynn recommended that in the lobbying reporting requirements, [WAC 390-20](#), there is one statutory citation that could be corrected and included in the emergency rules, concerning a provision that the Commission may change the reporting thresholds based on inflation.

MOTION 19-033 Moved by Commissioner Ammons, seconded by Commissioner Lehman, that:

The Commission adopt the emergency rules as proposed and amended.

The motion passed 5-0. Commissioners Levinson, Ammons, Downing, Lehman, and Jarrett approved.

Proposed Approach and Schedule for Financial Affairs (F-1) Stakeholder Outreach | [PDC Meeting Video](#)

Kim Bradford, Director of Outreach and Communications, presented the proposed approach and schedule for the Financial Affairs reporting survey and outreach.

Staff's intent with the responses from the survey is to determine areas of interest to inform decisions on access to information, to ensure that information released to the public is beneficial, as well as determine whether any additional disclosures would be warranted. Staff intends to release the survey in early June, collect data, and bring results to the June Commission meeting, and revisit at the July Commission meeting with recommendations on potential regulatory reform.

Next steps/follow-up:⁵

- Staff to conduct legal review regarding income tax returns on financial disclosure reports and how federal laws intersect with PDC laws

- Staff to revise language in the survey to convey the contents of the survey, and to note that separate stakeholder communications will be sent in the future regarding specific questions on the development of the application.
- Staff to come back at the June Commission meeting with initial results from responses, and then come back in the July Commission meeting to make recommendations on regulatory reform
- Staff to consider federal and other states financial disclosure requirements and provide any resulting considerations to the Commission in June

Enforcement – Request for Reconsideration Hearing | [PDC Meeting Video](#)
Carla Marconi, [PDC Case 38883](#)

Alice Fiman, Compliance Officer, presented Carla Marconi's request, PDC Case 38883, for reconsideration to the Commission.

Carla Marconi participated via telephone.

Compliance Officer Fiman noted that on October 25, 2018, Carla Marconi, an incumbent Parks and Recreation Commissioner for the Coulee Area Park and Recreation District and an incumbent School Director for Grand Coulee School District 301, was found in violation of [RCW 42.17A.700](#) for failing to timely file a Personal Financial Affairs Statement (F-1 report) due no later than April 16, 2018, disclosing financial activities for calendar year 2017. At that hearing, a \$500 penalty was assessed.

PDC Staff discussed the numerous outreach attempts made to contact Ms. Marconi both by email and post; and how several attempts had returned undeliverable. Staff noted on the work done to locate valid email and mailing address information until they were successful in delivery of the initial order. Due to service issues, Ms. Marconi's hearing was rescheduled to accommodate further attempts to make contact, through which staff successfully delivered the initial order electronically on November 26, 2018, which became the final order December 20, 2018, as no request for reconsideration had been received at that time.

Ms. Marconi asked that due to financial hardships, issues with mail and email services, and raising a grandchild alone, the penalty amount assessed be reconsidered by the full Commission.

PDC Staff recommended that the Commission suspend \$250 of the \$500 penalty assessed in the November 20, 2018 final order, conditioned upon Carla Marconi file two missing F-1 reports for calendar year 2016 and 2017, make payments in the amount of \$50 per month toward civil penalties assessed in 2013, 2017, and 2018 until such time they are paid in full, and committing no further violations of Chapter 42.17A RCW or Title 390 WAC for a period of four years from the date of the Final Order.

MOTION 19-034 Moved by Commissioner Ammons, seconded by Commissioner Downing, that:

The Commission reconsider the penalty assessed in the November 20, 2018 Final Order for PDC Case 38883.

The motion passed 5-0. Commissioners Levinson, Ammons, Downing, Lehman, and Jarrett approved.

MOTION 19-035 Moved by Commissioner Downing, seconded by Commissioner Ammons, that:

The Commission suspend \$400 of the \$500 penalty that was imposed on the condition that Carla Marconi file two missing F1 reports for calendar year 2016 and 2017, make one \$50 payment in June and one \$50 payment in July and commit no further violations of Chapter 42.17A RCW or Title 390 WAC for a period of four years from the date of the Final Order.

The motion passed 5-0. Commissioners Levinson, Ammons, Downing, Lehman, and Jarrett approved.

Executive Session

The Commission went in to Executive Session at 11:54 a.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. Any action regarding pending litigation, or other matters properly discussed during executive session, would be taken following the Executive Session.

The Commission meeting returned to open session at 1:02 p.m.

Reporting Modification Requests | [PDC Meeting Video](#)

The Commission conducted a hearing as part of the regular meeting to hear requests for reporting modifications. Jennifer Hansen, Compliance Officer, presented the requests.

Three applicants waived their right to participate at the hearing; Lisa Janicki participated by phone.

The following individuals requested a renewal of a reporting modification:

RENEWALS

- [Lisa Janicki](#) – Commissioner, Skagit County, requested a renewal of a reporting modification that would exempt her from disclosing the business customers that paid \$12,000 or more during calendar year 2018 to Janicki Industries, Inc. (JI) where her husband serves as a Director.
- [Bruce Dammeier](#) - County Executive, Pierce County, requested a renewal of a reporting modification that would exempt him from disclosing the business customers that paid \$12,000 or more during 2018 to Valley Press d.b.a Print NW.

MOTION 19-036 Moved by Commissioner Downing, seconded by Commissioner Ammons, that:

The Commission grant the partial reporting modifications as requested by Lisa Janicki, and Bruce Dammeier, finding that literal application of the law would cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the Act.

The motion passed 4-1. Commissioners Levinson, Ammons, Downing, and Jarrett approved. Commissioner Lehman voted no.

RENEWALS

Claire Sussman - District Court Judge, Pierce County, requested a renewal of a reporting modification that would exempt her from disclosing her personal residential address information, including street address, parcel number, or legal description, on her Personal Financial Affairs Statement covering calendar year 2018.

- Linda C.J. Lee - Judge, Court of Appeals, Division II, requested a renewal of a reporting modification that would exempt her from disclosing her personal residential address information, including street address, parcel number or legal description, on her Personal Financial Affairs Statement for 2018. Additionally, Judge Lee also requested a renewal of a modification that exempts her from disclosing the business and governmental customers that paid \$12,000 or more in 2018 to her spouse's law firm. Her spouse's ownership interest in the firm is less than 10%.

MOTION 19-037 Moved by Commissioner Ammons, seconded by Commissioner Downing that:

The Commission grant the partial reporting modifications as requested by Judge Claire Sussman, and Judge Linda C.J. Lee, finding that literal application of the law would cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the Act.

The motion passed 5-0. Commissioners Levinson, Ammons, Downing, Lehman, and Jarrett approved.

Next steps/follow-up: ⁶ Staff to review the explanation of rules provided in the modification request cover sheet to check the rule citations and links to the modification filing requirements.

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

Kurt Young, Compliance Officer, reported on the status of PDC cases and case statistics in the period since the last Commission meeting.

- 8 cases closed with no evidence of violations
- 24 cases closed with a reminder
- 10 cases closed with a formal written warning
- 1 case closed administratively
- 3 cases closed with a statement of understanding
- 1 case closed as a request for technical correction

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- 2 cases closed with Commission finding violations

Interpretations Update | [PDC Meeting Video](#)

General Counsel Sean Flynn discussed three interpretations identified by staff that would need improvements based on volume of questions and issues raised in filer assistance and compliance. Staff identified the Primary Purpose Test, Online Advertising, and the disposition of Surplus Funds that would require more clarification. Staff's initial timeline to complete interpretations was by mid-2019; however, due to the need for careful consideration of the complex issues raised and given the busy legislative session and other pressing agency business, staff will begin work on interpretations in the second half of the year.

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

Executive Director

Executive Director Peter Lavallee summarized the discussions and topics held throughout the Commission meeting regarding enforcement, legislative and rulemaking, as well as the upcoming budget update, all demonstrating significant progress and continued successful stewardship of the agency. Executive Director Lavallee expressed his thankfulness to the staff for all the work that has been done and their continued efforts.

Budget update

DES Budget Analyst, Chad Johnson, reported to the Commission on the approval of the supplemental funding that was much needed and the appropriation of \$22,000 from the Transparency Account.

Communications, Outreach and Filer Assistance update

Communications and Outreach Director Kim Bradford presented the work staff has done on the campaign registration application, declarations from filing week, and future communications and outreach to be performed by Staff. Director Bradford discussed the many challenges staff has had to overcome with the new registration application, from learning the new application internally on a tight timeframe, to guidance of filers through a new process, and creating new tutorial videos.

Director Bradford highlighted upcoming initiatives to communicate with filers about the new legislation and rules that recently took effect, as well as preparing the glossary that is now required by statute, as well as PAC-to-PAC sponsor ID guidance.

IT Activity Report

Chief Information Officer James Gutholm discussed the campaign finance registration application that was released May 13th, 2019, including both successes and hardships that came with its release. He commended staff from IT to Filer Assistance and Customer Service who have been working diligently together to make fixes quickly and smoothly when issues arise.

CIO Gutholm talked about the upcoming campaign registrations project closeout and how the team would have time to reflect on the decisions made and, as a result, integrate continuous improvement into projects moving forward.

Demonstration of Campaign Registration Application | [PDC Meeting Video](#)

Chief Information Officer James Gutholm and IT senior specialist David Metzler demonstrated to the Commission the Campaign Finance Registration Application.

Annual Review of PDC Penalty Schedule | [PDC Meeting Video](#)

General Counsel Sean Flynn reported to the Commission that staff recommended no additional updates to the PDC penalty schedule due to the penalty schedule being recently revised after the passage of HB 2938 in 2018. Deputy Director Sandahl noted that staff would be working with OFM on the inflationary factors this December and would develop a recommendation on any threshold contribution limit adjustments later this year.

MOTION 19-038 Moved by Commissioner Ammons, seconded by Commissioner Downing, that:

The Commission leave the PDC penalty schedule unchanged per the recommendation of staff.

The motion passed 5-0. Commissioners Levinson, Ammons, Downing, Lehman, and Jarrett approved.

Process Improvement Spotlight | [PDC Meeting Video](#)

Chief Information Officer, James Gutholm, demonstrated to the Commission the tool staff has been utilizing for the Campaign Finance Project as well as other IT related projects. The tool allows staff to communicate with one another, create and solve issues, enter test environments for code prior to release, and it includes an automatic process of testing and uploading code before going to production. CIO Gutholm explained that multiple quality checks are done to ensure prior to release that not only code but language is correct.

Strategic Plan Update | [PDC Meeting Video](#)

The strategic plan update will be presented at the next Commission meeting in June.

Executive Session

The Commission went in to Executive Session at 3:35 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. Any action regarding pending litigation, or other matters properly discussed during executive session, would be taken following the Executive Session.

The Commission meeting returned to open session at 4:42 p.m.

Meeting adjourned at 4:42 p.m.

Approved June 27, 2019.

Next Steps/Follow-Up Items

- ¹ Staff will compile a list of ideas for potential agency-request legislation.
- ² The Commission asked that, in recognition of the help and cooperation of the Governor, legislators and others who worked with the PDC this session, a letter of thank you be sent to each.
- ³ Staff will look at the possibility of aligning the hearings and filings of SHB1195 and ESHB1379.
- ⁴ Sean Flynn will be scheduling a meeting with SBA to discuss their concerns about the commercial advertising requirements.
- ⁵

 - Staff to conduct legal review regarding income tax returns on financial disclosure reports and how federal laws intersect with PDC laws
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- ⁶ Staff to review the explanation of rules provided in the modification request cover sheet to check the rule citations and links to the modification filing requirements.