



PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcca.wa.gov

To: Members, Washington State Public Disclosure Commission
From: Nancy Krier, General Counsel
Lori Anderson, Communications & Training Officer
Date: November 26, 2013
Re: Continued Discussion – Lobbying Disclosure Thresholds and Reporting of Lobbying Expenses for Entertainment, Food and Beverages – December 5, 2013 Meeting

Agenda Item

At the December 5 meeting, the Commission is scheduled to continue its discussion regarding lobbying disclosure thresholds and reporting of lobbying expenses for entertainment, food and beverages.

Status

In September 2013, the Commission began rule making to incorporate more instruction on the L-2 form at WAC 390-20-020 (Forms for Lobbyist Report of Expenditures). At that time, the Commission received stakeholder comments regarding the draft changes to the forms as well as comments regarding lobbying disclosure thresholds, reporting of entertainment, and how the current thresholds in RCW 42.17A compare and relate to gift reporting set out in the State Ethics Act at RCW 42.52. The Commission approved draft language in September in order to have the L-2 form changes in effect for 2014 reporting. That public hearing is set for December 5, 2013. Staff was also directed to work with the Legislative Ethics Board (LEB) staff and to identify how RCW 42.17A and RCW 42.52 interrelate. At the October meeting, staff reported its progress to the Commission and identified the two preliminary issues set out below regarding thresholds and entertainment vs. food/beverages. The Commission asked staff to solicit stakeholder comments on these issues.

Stakeholder Work

A stakeholder meeting was held November 20 and 15 people attended. Comments offered at the meeting are summarized below along with the issues discussed. Those stakeholders generally agreed that:

- simplifying the reporting requirements will likely result in more accurate and timely reports and
- receptions should be reported differently than other food and beverage expenditures.

Opinions differed as to whether lobbying disclosure thresholds should be adjusted and the merits of attributing per person costs when the total meal or other entertainment cost exceeds \$25.

*Issue #1 **Thresholds.** By statute, if the Commission wishes to revise the \$25 threshold for reporting entertainment on the L-2 form, it must also revise all thresholds in all lobbying reports (for lobbyist employers, grassroots lobbying, and public agency lobbying). It must make those changes by rule.*

Stakeholder comments: There was disagreement whether the thresholds should be adjusted. Those who favored an adjustment described that the >\$25 trigger to itemize entertainment expenses should not be raised beyond >\$50. None of the other lobbying threshold amounts elicited comments.

*Issue #2 **Entertainment vs. Food and Beverages.** The Commission adopted an interpretation describing that most food and beverage reporting on the L-2 form is part of reporting “entertainment.” That means most food and beverages (including reception expenses) must be itemized when more than \$25 is spent, and the lobbyist must attribute those amounts expended to each person lobbied.*

However, the State Ethics Law provides a threshold of more than \$50 for when certain foods and beverages are “gifts” and it describes when certain food, beverages and attendance at receptions are not “gifts.”

In addition, F-1 filers must report food and beverages received but not paid for by their governmental agency, when they cost over \$50 per occasion.

Stakeholder comments – Entertainment vs. Food and Beverages:

Food and beverages, with the exception of receptions, should continue to be disclosed as entertainment.

Stakeholder comments – Per person attribution: There was disagreement as to the merits of attributing the actual entertainment cost to each individual.

Some described that disclosing the total cost of an event and the names of the individuals entertained was sufficient. Stakeholders explained that it is difficult to accurately track per person costs for a number of reasons, including, for example:

- when menu items are shared;
- when individuals briefly attend an event;
- when some attendees arrive late and others leave early; and
- when some attendees eat/drink more or less than other attendees.

Stakeholders reported these problems are exacerbated the larger a gathering is – what may be relatively easy for a meal of 2-4 people becomes increasingly difficult for a meal involving 6, 10, or more people. The current level of detail required was described as a disincentive to file accurate reports.

Others described that disclosing the per person cost is equally important as disclosing the total cost of the event. They described that attributing or simply

averaging the cost among participants would be unfair to individuals who are eating/drinking less than others. Attributing per person entertainment costs was described as important if the public is to have confidence in their elected officials' interactions with lobbyists.

One stakeholder described that attribution was important for a "working lunch" where issues were discussed, but should not be required for a social gathering.

One stakeholder suggested there may be value in creating a separate category of entertainment that addresses the "mini reception" situation, where a meal event is larger than a small number of attendees at a restaurant, but smaller than a full-blown catered reception. Another stakeholder suggested that good faith estimates of per person attribution of expenses should be allowed and would encourage more complete reporting by lobbyists.

Stakeholder comments – Reporting Receptions:

Stakeholders described that receptions should be reported differently from other entertainment because:

- tracking who attends is difficult,
- the sponsoring association's members are typically consuming most of the food and beverages (rather than legislators),
- simplifying reporting will yield more accurate reporting,
- associations often schedule receptions in conjunction with other non-lobbying events (such as a board meeting) and there is no easy way to prorate the staging costs (facility, table & chair rental, etc.) so as to report just the lobbying portion, and
- attributing the per person cost of receptions, including staging costs, gives a false impression of how much entertainment is being provided to those who are lobbied.

Currently, the total cost of a reception is disclosed along with a per person cost determined by dividing the total cost by the number of individuals expected to attend. As mentioned above, a stakeholder suggested this reporting method should also be allowed in attributing per person costs for dinners or other food and beverage events where there are many people (more than six was suggested) invited, multiple lobbyists are splitting the costs, menu items are shared, or attendees are coming and going throughout the event.

Stakeholders were generally supportive of a simplified reporting model used in other states for legislative receptions where only the total cost of the event is required to be reported without listing a per person cost or who actually attended, provided all members of the House and/or Senate are invited to attend.

Other Comments: When a legislator or spouse is a member of an association which employs a lobbyist and the membership predates the legislator's election to office, the association should not have to disclose its interaction with that legislator/spouse as "lobbying."

Next Steps

1. Does the Commission still wish to engage in rule making to adjust the lobbying disclosure thresholds? [The CR-101 was filed with the Code Reviser on November 1, 2013 to give notice that the Commission was soliciting stakeholder comments and the potential rule making.]

Note that all entertainment costing more than \$25 per occasion is currently itemized, regardless of whether the entertainment is a food and beverage event, tickets to a performance or sporting event, greens fees, or some other type of entertainment. Tickets, greens fees, and certain other entertainment is considered a “gift” under the State Ethics Law and subject to a calendar year limit of \$50 from a single source. RCW 42.52.150. Adjusting the >\$25 threshold to >\$50 or some higher amount will eliminate the requirement to itemize gifts of entertainment.

2. Does the Commission wish to pursue legislation that would allow for alternative disclosure of receptions or entertainment?

Staff’s preliminary research of other states’ disclosure requirements for lobbyist receptions found that Ohio and Iowa require the total reception cost to be disclosed with no per person attribution or attendees listed, provided that all legislators are invited. At least one other state (Ohio), and possibly others, allow reporting of good faith estimates if it is “impractical or impossible” to determine exact dollar amounts or values of expenditures related to legislative functions such as dinners or parties sponsored by lobbyists or their employers.

Should the Commission proceed with agency-request legislation, it will be doing so in 2015. Staff will therefore have more time to review other states’ practices and do more stakeholder work to develop proposals for the Commission’s consideration.

3. Does the Commission wish to pursue legislation that would revise the per person attribution requirement, regardless of the threshold amount?