



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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TO: PDC Commissioners
FROM: Sean Flynn, General Counsel
DATE: July 16, 2021
RE: Consideration of Priorities for the 2022 Legislative Session

The following issues comprise the outstanding and emergent legislative priorities of the PDC. This is not intended to be an exhaustive list of potential issues or a recommendation from staff for making a legislative proposal, but rather an overview of priorities the Commission has previously articulated and the most timely and significant current issues that staff has identified.

Provisions of previous PDC-request legislation that were not enacted.

- [HB 1195 \(2019\)](#) This bill passed the legislature, but the Governor vetoed Section 7, which prohibited the publication of F-1 reports online. That section contained other technical changes relating to outdated duties of the Commission that were caught up in the veto, including:
 - *Removing specific requirement for publishing a manual on bookkeeping practices (which is now produced online).*
 - *Adding qualifying language that PDC audits are conducted as staff capacity permits.*
 - *Removing reference to reporting on enforcement actions by law enforcement agencies.*
 - *Removing instructions for county auditors to maintain copies of PDC reports.*
 - County Auditors no longer maintain PDC reports and the need is obviated by statewide availability via the PDC website.

- [HB 2772 \(2020\)](#) - This PDC-request legislation passed the House but did not pass the Senate after several amendments were added to the bill. The original PDC-requested provisions included:
 - *Restoring the technical changes that were vetoed in HB 1195 (see above);*
 - *Requiring a disclaimer on political advertising that includes an endorsement acknowledging if the endorsement was made for a different election or a different elected office.*
 - This policy is similar to a bill introduced in the same session, [HB 2253 \(2020\)](#). The language of this bill was eventually incorporated into the PDC-request bill.
 - *Clarifying the definition of “ballot proposition.”*
 - The bill would have amended the definition to reflect the holding of *State v. Evergreen Freedom Foundation* (2019), in which the court interpreted the definition of “ballot proposition” to apply to local ballot propositions that involve petition gathering before the initiative is filed, rectifying the language of the statute with the interpretation of the court.
 - *Making the Transparency Account (22-W) a non-appropriated fund in order to establish a permanent independent funding source.*
 - *Aligning the reporting periods for the F-1 in order to provide consistent reporting periods for elected officials who also are candidates.*
 - *Redrafting the F-1 reporting requirements to focus on the classifications of information required and establishing minimum standards of disclosure that would be expounded by rule.*
 - *Allowing commissioners to be involved in political activity and legislative advocacy, as long as it does not involve campaigns, candidates or lobbying activity that the agency regulates.*

Emergent Issues – The following are selected priorities for the Commission’s consideration that staff has identified as having the most significant impact on agency administration and public understanding of the law.

- *Enhancing Grassroots Lobbying Disclosures and Reporting.*
 - [HB 1586](#) was introduced at the end of the 2021 session to include additional reporting and disclosure requirements for grassroots lobbying campaigns. Namely, the bill would require sponsor identification on grassroots lobbying communications and include additional reporting of activities during the legislative session.

- *Clarifying Political Advertising Reporting for Ballot Initiatives.*
 - Current law requires sponsors of political advertising for or against ballot propositions to file an expedited report when the ad is published within 21 days of an election. A question arises whether this requirement should apply to registered PAC's who already regularly report expenditure activity. By analogy, the expedited reporting for political ads in a candidate campaign only apply to independent expenditure activity, and does not apply to a candidate's authorized PAC (since the candidate PAC is already registered and regularly reporting its activity).
- *Ballot Proposition Committee Registration and Reporting.*
 - More specification may be warranted for PAC's supporting or opposing ballot propositions. Current reporting requirements do not always provide the public the necessary information to track whether a contribution or expenditure applies to a specific campaign. Other questions arise as to which (if any) PAC can be designated as the official or authorized committee of a campaign.
- *Contribution Limits Applied to Recall PACs.*
 - Contribution limits as applied to recall committees are evaluated in light of the federal circuit court case, *Farris v. Seabrook* (9th Cir. 2012), which held that contribution limits are unconstitutionally applied to recall committees without some showing that the committee (seeking to recall an elected official) is coordinated with a prospective candidate or the authorized body to appoint a replacement. In response to that decision, the Commission has used the declaratory order process to evaluate on a case-by-case basis whether a recall committee should have an exception from the contribution limits if it can show it is not connected with a candidate or the decision-making authority. Further clarity on the application of the court decision and the declaratory order process may be warranted through codification in law.
- *Adjusting Campaign Reporting Schedules.*
 - The longstanding campaign reporting schedules are tied to an election calendar that sets a single election date. For example, campaign expenditure reports are due 21 and seven days before the election "date" and 10 days after the election. Since 2011, however, Washington has implemented statewide vote-by-mail elections, which allow voters up to 18 days to vote before an election. The consequence is that the election "date" is no longer the day voting occurs, but rather a deadline that cuts off voting. The extended voting period raises questions whether the reporting

schedule should likewise be expanded to account for voter activity within the election period. The schedule could affect expenditure reporting, as well as special reporting that is triggered in the period approaching an election, such as electioneering communications (60 days), last minute (large) contributions (7/21 days), and political advertising (21 days).

- *Clarifying Last Minute Contributions Report Timing.*
 - Campaigns must file a special report upon receiving a contribution over \$1,000 within seven days of a primary, or 21 days of a general election. However, campaigns generally are required to report contributions only upon the deposit of the contribution, which can be up to five days after the contribution is received. Therefore, a question arises whether and when a special report is due where a contribution over \$1,000 is *received* just outside the reporting period (for example 22 days before the general election), but deposited within the reporting period.
- *Aligning Independent Expenditure Reporting Categories*
 - Independent expenditures generally cover activity that is not coordinated with a candidate. Such activity requires special reporting depending on the timing and nature of the activity, which is categorized by several definitions within the law. An independent expenditure has separate meaning when applied to political advertising as when applied to activity not otherwise reportable by a PAC. In addition, electioneering communications specifically exclude expenditures made by a candidate. While these laws have been woven together within the regulatory scheme, certain alignment of definitions and terminology could help to streamline the reporting requirements for independent expenditure activity.