

WSR 24-06-050

AGENDA

PUBLIC DISCLOSURE COMMISSION

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The Administrative Procedure Act requires state agencies to prepare a biannual rules development agenda that includes the issues under consideration for rule making for the upcoming six-month period. RCW 34.05.314. Agendas are published in the State Register at the end of January and July each year. Staff proposes the following rule-making agenda for the period from January through July 2024:

Implementation of ESSB 5152 regarding the use of synthetic media in electioneering communications: The legislature passed ESSB 5152, which became effective on July 23, 2023. The law creates a private cause of action against a sponsor of an electioneering communication using synthetic media (deepfake), unless a disclaimer is included in the communication that it has been manipulated. The law requires the public disclosure commission (PDC) to adopt rules in furtherance of the law. While the law will be administered through legal cases filed in state court and does not create any direct regulatory authority for PDC, the required rule making presumably is intended to draw upon PDC's expertise in regulating campaign activity, particularly in regards to electioneering communications.

The law has two main aspects. First, the law defines the scope of activity that is subject to judicial enforcement, namely the use of synthetic media in electioneering communications, and the use of disclaimers with the communication. Second, the law sets out the procedure for filing an action in court, including the level of proof required, as well as the injunctive relief and damages that can be sought.

A judicial procedure will govern the second aspect of this law, PDC rule making should focus on the first aspect in helping to identify the scope of activity covered under the law, including the definition of synthetic media and the determination of sponsorship and publication, particularly in regards to the dissemination through digital platforms and the use of artificial intelligence.

Rule making was opened on January 18, 2024.

Preparation for possible implementation of SSB 5857 (reorganization of the campaign finance chapter): Legislation proposed this year, SSB 5857 would reorganize the campaign finance law, chapter 42.17A RCW, into a new statutory title. The reorganization as proposed would not make any substantive changes to the current law, but would require all statutory references in rule to be changed to the references in the new title. The bill would not take effect until 2026, but PDC would begin the process of drafting the new rules to prepare for ultimate adoption.

Update PDC Interpretation 07-04 RE online campaign activities, including digital advertising: The continuing development of new digital technology and Internet consumer products requires an update to existing PDC guidance on the use of websites, social media, and digital advertising. Over the past several years, PDC has reviewed and analyzed the policy and mechanisms for improving disclosure in the evolving area of digital political advertising. PDC will look to expand upon this work to analyze the broader use of social media, including influencers, websites, and other forms of communication in relation to disclosure requirements and the regulation of campaign expenditure activity.

Further need for rule making may generate from this work, particularly regarding the campaign reporting of expenditure details for digital advertising. Such rule making would connect with the previous work of PDC adopting rules on the responsibilities of commercial advertisers to maintain records of the digital advertising they sell.