

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....
**December 15, 2022
Blazing Star Room
Centennial Office Building**
.....

MINUTES

The meeting was called to order by Chair Rashid.

Members present: Asp, Flynn (by Webex), Leppik (by Webex), Rashid, Soule, Swanson (by Webex)

Others present: Sigurdson, Engelhardt (by Webex), Hager, Olson, staff; Hartshorn, counsel (by Webex; joined during discussion of possible legislative recommendations)

MINUTES (November 14, 2022)

The following motion was made:

Member Soule's motion: To approve the November 14, 2022, minutes as drafted.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

CHAIR'S REPORT

2023 meeting schedule

The next Board meeting is scheduled for 9:30 a.m. on Wednesday, January 4, 2023. The February meeting has been tentatively scheduled for February 8, 2023.

EXECUTIVE DIRECTOR'S REPORT

Mr. Sigurdson stated that there is a lot of activity with filings for the campaign finance, lobbyist, and economic interest programs. Mr. Sigurdson said that in total approximately 8,000 reports and statements of economic interest are due in January.

Mr. Sigurdson stated that he and Mr. Olson attended the annual conference of the Council on Governmental Ethics Laws (COGEL) in Montreal from December 4-7, 2022.

Mr. Sigurdson stated that the December public subsidy payments are being sent out today.

Mr. Sigurdson said that he has been working with the Department of Management and Budget on proposed budget recommendations. Mr. Sigurdson said that he has submitted two changes to the base budget. Mr. Sigurdson explained that the first change item would increase the Board's annual budget by \$100,000 to account for higher staff expenses and ensure that the Board is able to pay for costs unrelated to staff expenses and rent. Mr. Sigurdson stated that the second change item would increase the Board's annual budget by an additional \$50,000 to pay for expenses related to maintaining the Board's IT resources, including various databases, within cloud computer servers. Mr. Sigurdson explained that moving the Board's IT resources to cloud servers would improve security, minimize the likelihood of disruption to Board functions, and allow the Board's IT staff to focus more of their efforts on priorities other than managing physical servers.

Mr. Sigurdson stated that Chair Rashid will form a committee to nominate members to serve as the Board's chair and vice chair in 2023, and the Board is expected to consider those nominations at its meeting in January.

POSSIBLE 2023 LEGISLATIVE RECOMMENDATIONS

Mr. Sigurdson presented members with a memorandum that is attached to and made a part of these minutes. Mr. Sigurdson said that the Board has the option to make legislative recommendations and explained that suggested recommendations are broken down by program area.

Economic Interest Statement Policy Recommendations from Prior Years

Mr. Sigurdson stated that the Board may wish to make the following recommendations:

- Establish a two-tiered disclosure system in which soil and water conservation district supervisors and members of watershed districts and watershed management organizations would not be required to disclose ownership of securities or their professional or business categories.
- Require public and local officials to disclose direct interests in government contracts.
- Require economic interest disclosures to include the financial interests of an official's spouse.
- Require economic interest disclosures to include assets owned by another if they will provide a direct beneficial interest to the public official because of a contract or relationship. This recommendation is designed in part to address public officials who are in long-term relationships but are not married.

Member Leppik stated that she thinks that a beneficial interest disclosure requirement could become very broad unless there is a conflict of interest that needs to be disclosed. In response to a question from Chair Rashid Mr. Sigurdson said that no conflict of interest needs to exist prior to the disclosure of economic interests. Mr. Sigurdson explained that financial interests are disclosed to the public so the public can evaluate whether issues that come before the official create a conflict of interest based on the financial interests that have been disclosed. In response to a question from Chair Rashid Mr. Sigurdson said that disclosure of beneficial interests is a difficult concept to explain and that the

Board may wish to consider, as an alternative, requiring disclosure of the economic interests of the spouse or domestic partner of a public official, rather than seeking a broader disclosure requirement.

The following motion was made:

Member Swanson's motion: To prepare draft legislation for the first three recommendations listed above for the economic interest program.

Member Leppik said that an official does not have any way to control the decisions made by their spouse and that if assets of an official's spouse are to be revealed to the public, there should be a reason for requiring that disclosure, such as a conflict of interest. Chair Rashid stated that it is hard to know what will be a conflict of interest in the abstract and if the spouse or domestic partner of a public official owns large investments in a company, that information should be disclosed so that the public will know about that potential conflict if the public official should ever need to vote on a matter affecting that company. Member Leppik asked to vote on each of the first three bullet points listed above individually.

Member Swanson withdrew his previous motion and the following motion was made:

Member Swanson's motion: To prepare draft legislation for a two-tiered disclosure system.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

The following motion was made:

Member Swanson's motion: To prepare draft legislation requiring disclosure of direct interests in government contracts.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

The following motion was made:

Member Swanson's motion: To prepare draft legislation requiring disclosure of the financial interests of an official's spouse or domestic partner.

Vote on motion: A roll call vote was taken. Members Asp, Flynn, Rashid, Soule, and Swanson voted in the affirmative. Member Leppik voted in the negative.

Campaign Finance Program Recommendations from Previous Years

Mr. Sigurdson stated that the Board may wish to make the following recommendations:

- Redefine independent expenditures to include both express advocacy and words that are the functional equivalent.

Mr. Sigurdson stated that the Board has previously offered recommendations regarding electioneering communications, which is a more challenging concept to explain and implement than expanding the definition of what qualifies as an independent expenditure.

- Regulate contributions made with Bitcoin and other virtual currency

Potential New Campaign Finance Program Recommendations

- Recognize the use of a fair booth as a multicandidate political party expenditure
- Allow the Board 60 days to issue a probable cause determination, rather than 45 days, and clarify that the provision that allows the Board to extend the deadline for action on a written complaint applies to making a probable cause determination
- Create a new noncampaign disbursement category for costs related to a recount
- Provide a specific distance requirement for the notice required for the sale of goods or services for fund-raising purposes
- Provide for a penalty for ballot question committees and funds that make contributions to a candidate's committee
- Expand the requirement to provide Board registration numbers with contributions made by registered entities to include contributions made to certain Hennepin County candidates
- Clarify the reporting periods for entities registered with the Board that seek to influence certain Hennepin County elections during odd-numbered years
- Provide a penalty for candidates who sign a public subsidy agreement and fail to provide closed captioning or transcription of certain advertisements

The following motion was made:

Member Soule's motion: To adopt all of the proposed campaign finance recommendations listed above.

Member Asp asked to amend the motion to vote on the campaign finance recommendations from previous years separately and Vice Chair Soule consented to that amendment. Member Asp asked for the rationale behind prohibiting the use of virtual currency to make campaign expenditures and requiring the conversion of virtual currency contributions to United States currency. Mr. Sigurdson stated that the rationale is to limit the effects of the volatility of the valuation of some virtual currencies. Mr. Sigurdson also said that allowing virtual currency to be used to make campaign expenditures would allow a committee to make expenditures that are not made through its bank account. Chair Rashid asked whether the Board is seeing a lot of activity involving virtual currency. Mr. Sigurdson explained that he has received questions about it and Chapter 10A does not address virtual currency, including how to address fluctuations in value between when a virtual currency contribution is made and when it is converted to United States currency. In response to a question from Member Asp, Mr. Sigurdson

stated that there are several states that either prohibit or regulate the use of virtual currency in political campaigns.

The following motion was made:

Member Asp's motion: To adopt the proposed recommendation regarding virtual currency.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

Member Asp said he is concerned about a standard regarding express advocacy that would require the Board to gauge the intent of the speaker. Member Asp said he is also concerned that the proposed standard would result in more complaints filed with the Board. Member Asp stated that he prefers a more clear standard. Mr. Sigurdson stated that the proposed standard may result in more complaints, but many states and the Federal Election Commission already use a similar standard.

The following motion was made:

Member Swanson's motion: To adopt the proposed recommendation regarding express advocacy.

Member Swanson said that he thinks it makes sense for the Board to offer draft legislation and seek to have that legislation introduced so that when Mr. Sigurdson is asked about the Board's position, he can refer to that legislation. Chair Rashid echoed the sentiment of Member Swanson.

Vote on motion: A roll call vote was taken. Members Flynn, Leppik, Rashid, Soule, and Swanson voted in the affirmative. Member Asp voted in the negative.

Member Soule's amended motion: To adopt all of the new proposed campaign finance recommendations listed above.

Member Asp suggested expanding the noncampaign disbursement category for the transition expenses of a winning gubernatorial candidate to include the transition expenses of others elected to constitutional office.

Member Soule's amended motion: To adopt all of the new proposed campaign finance recommendations listed above and the recommendation suggested by Member Asp.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

Lobbyist Program Recommendation from Previous Years

- Overhaul the lobbyist program to eliminate the need to report a series of administrative costs; require disclosure of the specific subjects lobbied on during a reporting period; require disclosure of any metropolitan governmental unit lobbied, any specific administrative rule that was subject to lobbying, and any specific project before the Public Utilities Commission on which lobbying occurred

Mr. Sigurdson explained that he has been working with the Minnesota Government Relations Council (MGRC) for over two years on this proposal and believes that working with the MGRC increases the likelihood that the legislation will be introduced and perhaps pass.

New Lobbyist Program Recommendation

- Modify definition of lobbyist to delete new language that takes effect on January 3, 2023, to ensure that individuals whose job duties do not involve communication with a public official are not required to register as lobbyists

Member Rashid's motion: To adopt the proposed lobbyist recommendation from previous years listed above.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

Member Swanson's motion: To adopt the new proposed lobbyist recommendation listed above.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

Member Swanson suggested considering a proposal regarding public financing that was developed by former Board member Robert Moilanen. Member Flynn said she would like a report from staff regarding the legislation that Representative Greenman authored in 2021 (H.F. 9).

ENFORCEMENT REPORT

Mr. Hager stated that three of the five matters approved for referral to the Attorney General's Office at the November Board meeting have been resolved.

A. Discussion Items

1. Administrative termination of lobbyist Elizabeth Van Holt (4865)

Mr. Hager stated that the American Petroleum Institute (API) requested that the lobbyist registration of Ms. Van Holt be terminated as she ceased to be employed by that principal as of October 31, 2022,

and the principal attempted to contact Ms. Van Holt asking her to file a termination statement, but she has not done so. Mr. Hager said that API is the only principal represented by Ms. Van Holt and there are no outstanding reports.

Member Soule's motion: To approve the administrative termination of Ms. Van Holt's lobbyist registration.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

B. Waiver Requests

Larry Etkin, treasurer of the 62nd Senate District DFL, appeared before the Board by Webex regarding request number 1 listed below. Mr. Etkin stated that the party unit currently has approximately \$770. Mr. Etkin said that his predecessor did not keep good records and he has been doing his best to catch up in terms of the party unit's recordkeeping. Mr. Etkin stated that most of the party unit's issues have been resolved. Mr. Etkin said that his predecessor claims that the 2021 year-end report was timely filed but he has no evidence of the report having been filed.

Member Soule's motion: To approve the staff recommendation and waive the late filing fee.

Member Leppik and Chair Rashid said they feel that some penalty, such as \$100 or \$200, seems appropriate, rather than a complete waiver of the amount owed. Member Leppik proposed amending the motion to reduce the late filing fee to \$100 but Vice Chair Soule declined to accept that amendment.

Vote on motion: A roll call vote was taken. Members Asp, Flynn, Soule, and Swanson voted in the affirmative. Members Leppik and Rashid voted in the negative.

Entity	Late Fee/ Civil Penalty	Report Due	Factors and Recommended Action	Board Member's Motion	Motion	Vote on Motion
1. 62nd Senate District DFL (20483)	\$1,000 LFF	2021 Year- End	This matter was initially heard by the Board on October 5, 2022 and the Board waived a \$1,000 CP related to this matter. Report was due January 31, 2022 and filed July 16, 2022. The report was a no change statement and subsequent reports have been filed timely. The cash balance on October 24, 2022 was \$777.28. RECOMMENDED ACTION: Waive	Soule	Approve the staff recommendation	Asp, Flynn, Soule, and Swanson voted in the affirmative. Leppik and Rashid voted in the negative.

2. Maribella McDermid (Aff Only)	\$30 LFF	Original EIS	EIS due June 15, 2022 and received July 8, 2022. This is an affidavit only candidate who was running for the first time and overlooked the deadline. RECOMMENDED ACTION: Waive	Soule	Approve the staff recommendation	Unanimously passed
3. Planned Parenthood MN PAC (41162)	\$2,000 LFF	2x Pre-Primary 24-Hour Notice	Notices were due on July 22, 2022 and July 23, 2022 and have not been filed. This matter was brought to the attention of the PAC by staff. One contribution was reported incorrectly and no actual violation occurred as the contribution was only for \$104.35. The PAC did not amend its reports within 10 days to reflect the correction had occurred. The second contribution was for \$1,000 but the individual also paid the processing fees which went directly to the processor making the total contribution over \$1,000. The PAC has implemented controls to prevent this from occurring in the future. The cash balance as of October 24, 2022 was \$376,697.33. RECOMMENDED ACTION: Reduce to \$250 total	Soule	Approve the staff recommendation	Unanimously passed
4. Mabelle Frisbie (Public Official)	\$100 LFF \$1,000 CP	2021 Annual EIS	EIS due January 31, 2022 and filed November 18, 2022. The individual thought she had filed the EIS and did not read notices from the Board. RECOMMENDED ACTION: Waive CP only	Soule	Approve the staff recommendation	Unanimously passed

C. Informational Items

1. Payment of late filing fee for 2022 pre-general report of receipts and expenditures

- 60th Senate District RPM, \$50
- Minnesota AFL-CIO, \$25
- Working America Minn Political Committee, \$150

2. Payment of late filing fee for September 2022 report of receipts and expenditures

- Minnesota AFL-CIO, \$25

3. Payment of late filing fee for 2022 pre-primary report of receipts and expenditures

1st Congressional District IAP, \$50
MNisReady PAC, \$50
MEDPAC Minn Medical Political Action Comm, \$200

4. Payment of late filing fee for 2022 pre-primary 24-hour notice of large contribution

DAGA Victory Fund MN, \$2,000
Leigh Finke for MN, \$250

5. Payment of late filing fee for lobbyist disbursement report due 6/15/2022

G Byron Laher, \$50

6. Payment of late filing fee for lobbyist disbursement report due 6/15/2021

G Byron Laher, \$50

7. Payment of late filing fee for lobbyist disbursement report due 1/15/2020

G Byron Laher, \$25

8. Payment of late filing fee for 2021 Annual EIS

Kelly Kirkpatrick, \$30

9. Payment of late filing fee for original EIS

Laura Pride, \$100
Katie Malchow, \$50
Hugh McTavish, \$15
Martera Nelson, \$60

10. Payment of civil penalty for disclaimer violation

DougKernHouse6B, \$300
Eichorn (Justin) for MN Senate Campaign Committee, \$200

11. Payment of civil penalty for exceeding individual contribution limit

Hornstein (Frank) Volunteer Committee, \$100

12. Payment of civil penalty for prohibited contribution during legislative session

Carpenters Local Union 361 Pol Fund, \$125

13. Forwarded anonymous contributions

Kim Crockett for Secretary of State Committee, \$50
Ned Carroll for MN House, \$60

PRIMA FACIE DETERMINATION

Mr. Sigurdson presented members with a memorandum that is attached to and made a part of these minutes. Mr. Sigurdson stated that a complaint alleged that the People Over Prosecution Political Fund failed to properly report and provide a disclosure statement for a \$70,000 contribution received from an unregistered association. Mr. Sigurdson said that shortly after the complaint was filed he was contacted by the fund, it filed an amended report properly disclosing the contribution and provided a disclosure statement from the unregistered association that made the contribution, and the Board chair then found that there was no ongoing violation and dismissed the complaint.

LEGAL COUNSEL'S REPORT

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn stated that the Burg and Ohlmann matters have been closed. Mr. Hartshorn stated that a default judgment motion will likely be filed in the Martinez-Perez matter in January.

EXECUTIVE SESSION

Chair Rashid recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the chair reported the following matters into regular session:

Findings:

- In the Matter of the John (Thompson) For 67A committee

Dismissal:

- In the Matter of the complaint of Neil A. Shah, M.D., regarding the Minnesota Democratic-Farmer-Labor Party
- In the Matter of the complaint of Chantal Oechsle regarding Theis (Tama) for Senate

There being no other business, the meeting was adjourned by the chair.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeff Sigurdson". The signature is written in a cursive style with a large, stylized initial "J".

Jeff Sigurdson
Executive Director

- Attachments:
- Memorandum regarding possible legislative proposals
 - Text of past statutory language
 - Memorandum regarding prima facie determination
 - Prima facie determination
 - Legal report



MINNESOTA CAMPAIGN FINANCE BOARD

Date: December 8, 2022

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Possible legislative proposals

This memo reviews the legislative recommendations previously proposed by the Board that have not been adopted by the legislature, and also provides a number of new recommendations that staff believes would improve the Board's administration and enforcement of Chapter 10A. The statutory language for recommendations from prior years is attached to this memo, and specific language for the new recommendations will be drafted if the Board is interested in the recommendation.

The recommendations are grouped by program area, and include a brief history of the Board's efforts with recommendations from prior years.

Economic Interest Statement Policy Recommendations from Prior Years

Starting in 2018, the Board recommended that economic interest statements (EIS) include the financial holdings of the public official's spouse. This recommendation was heard in the House, but ultimately stalled because it did not cover domestic partners, and language to resolve that issue to the legislature's satisfaction could not be drafted. In 2019 the Board attempted to solve the issue by moving to a standard that would require disclosure of a "beneficial interest." This interest would include a spouse, and any other individual whose financial holdings might directly benefit the public official. The beneficial interest recommendation has not ever been authored. The recommendation that the EIS program have a two-tiered disclosure system, with the second tier requiring less financial disclosure for public officials who have limited authority, was presented and authored in 2018. Some legislators told me that they personally supported this idea, but in the end the Board's recommendations on a two-tiered system did not pass out of committee. In 2019 the Board recommended that public officials disclose direct interests in government contracts, but that proposal was not authored.

- **Establish a two-tiered disclosure system.** The disclosure required for soil and water conservation district supervisors and members of watershed districts and watershed management organizations is excessive given their limited authority. In a two-tiered system, members of these boards and districts would disclose their occupation, sources of compensation and non-homesteaded property owned in the state. The members of

these boards and districts would not disclose securities or professional or business categories.

- **Require public and local officials to disclose direct interests in government contracts.** This new disclosure would consist of a listing of any contract, professional license, lease, franchise, or permit issued by a state agency or any political subdivision of the state to the public official as an individual, or to any business in which the public official has an ownership interest of at least 25 percent.
- **Disclosure for spouse.** Increase disclosure on the EIS to include the financial interests of the public official's spouse. Many other states have concluded that the financial interests of the public official's spouse could create a conflict of interest for the public official, and therefore require disclosure of those holdings.
- **Expand EIS disclosure to include beneficial interests that may create a conflict of interest.** This recommendation would require disclosure of assets owned by another if those assets will provide direct financial benefit to the public official because of a contract or relationship between the public official and the owner of the asset. This is a broader group of individuals than spouse, and was offered in part in recognition of public officials who are in a long-term relationship, but not married.

Campaign Finance Program Legislative Recommendations from Previous Years

The Board first proposed the campaign finance recommendation to expand independent expenditures to include material that uses words that do not expressly advocate for the election or defeat of a candidate in 2013. A recommendation on this issue was made in 2014, 2015, 2016, 2019, and 2020. There have been variations on the wording used in the recommendation on independent expenditures, but the basic issue is the same; is the express advocacy standard found in the Supreme Court decision *Buckley v. Valeo* still adequate for Minnesota? The Board's recommendation was authored in 2014, 2015, and 2016, but has not passed the legislature. Similar language to the Board's recommendation has been authored independent of the Board's recommendation on many occasions. I strongly suspect that one or more bills on this issue will be introduced again this year.

The recommendation on cryptocurrency was first offered in 2018. I'm at a loss as to why this recommendation has not been passed. No one seems to ever be opposed to providing a procedure to follow when a cryptocurrency contribution is received, but the recommendation has never really progressed very far.

- **Provide regulation of contributions made with bitcoins and other virtual currency.** Staff has received calls from campaign committees asking for guidance on accepting and reporting contributions made with bitcoins and other virtual currencies. Chapter 10A does not provide any guidance on the subject, other than to view virtual currency as something of value. The Board's proposal will provide a statutory basis for disclosing and regulating the conversion of virtual currency into United States currency.
- **Redefine independent expenditures to include both express advocacy and words that are the functional equivalent.** Under current statute an independent expenditure

must use words of express advocacy (vote for, elect, support, cast your ballot for, Smith for House, vote against, defeat, reject, or very similar words) to state support of, or opposition to, a candidate. A communication that avoids words of express advocacy, but which nonetheless has the clear purpose of influencing voting for a clearly identified Minnesota candidate, does not in many cases need to be reported to the Board. The Board proposal expands the definition of independent expenditure to include communications that do not use so-called “magic words” but could have no reasonable purpose other than to influence voting in Minnesota.

Potential New Campaign Finance Program Recommendations

- **Recognize the use of a fair booth as a multicandidate political party expenditure.** Multicandidate political party expenditures are specified in Minn. Stat. § 10A.275, and must benefit three or more candidates (or individuals on the ballot). A multicandidate political party expenditure is reported by the party unit as a general expenditure, and not counted or reported as a contribution to any candidate. Examples of multicandidate political party expenditures include official sample party ballots and phone bank solicitations in support of three or more individuals on the ballot. Currently, a political party that distributes candidate literature at a county or state fair booth, or that allows candidates to use the fair booth as a venue to meet potential voters, is making an in-kind contribution to those candidates. Determining the fair market value of the in-kind contribution is difficult, and in most cases will not exceed the \$200 threshold for disclosure. The proposed change would add the use of a fair booth by three or more individuals on the ballot to the list of multicandidate political party expenditures.
- **Probable Cause determination issued within 60 days of prima facie determination, time frame may be extended by vote of the Board.** Current statute provides that within 45 days of issuing a prima facie determination that a complaint stated a violation of Chapter 10A or 211B, the Board must make a probable cause determination as to whether it is more likely or not that an alleged violation occurred. The probable cause determination is the first opportunity for the subject of the complaint to respond to the allegations, and for complaints that are dismissed, the probable cause determination is the most important step in the complaint process. The subject of the complaint may want to be represented by counsel, and the process of hiring representation and putting together a response often cannot be done in within the 45 days available. Further, that 45 days also includes the time needed by Board staff to analyze the response and draft a probable cause determination and provide it to the Board seven days before the meeting at which the determination will be considered. If the subject of the complaint needs additional time to prepare a response, staff contacts the complainant to determine if they object to extending the deadline for issuing a probable cause determination. If there is no objection, the Board extends the deadline, typically to the next monthly Board meeting. It is unclear what the Board would do if the subject of a complaint could not put together a response within 45 days, and the complainant objected to an extension.

Under current statute, if the Board makes a probable cause determination that an investigation is needed, then the Board is required to either issue findings to conclude the

investigation within 60 days, or if more time is needed to complete a thorough investigation, may vote to extend the time frame for concluding the investigation. The proposed change would extend the 45 days to issue a probable cause determination to the same 60 days available for findings, and clarify that the ability to extend the time frame by Board vote applies to making a probable cause determination.

- **Add costs related to a recount as a new noncampaign disbursement.** There are currently twenty-seven noncampaign disbursements provided in statute for candidate committees. Noncampaign disbursements are an approved use of campaign committee funds under Minn. Stat. § 211B.12, and if the candidate signed the public subsidy agreement, the cost of the disbursement does not count against the candidate’s campaign spending limit. The Board is given the authority to recognize other noncampaign disbursements in Minn. Stat. § 10A.01, subd. 26, which classifies as noncampaign disbursements “other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question”. In Advisory Opinion 415 the Board concluded that a recount of ballots was a part of the election process, and that a recount of ballots will ascertain the result of the election, but does not influence voting at the election. Therefore, the use of candidate committee campaign funds to support a recount could be reported as a noncampaign disbursement. Although advisory opinions are referenced for guidance by many committees, an opinion provides safe harbor only to the individual or association that requested the opinion. Adding costs associated with a recount as a noncampaign disbursement in statute will provide all candidate committees with equal access to the conclusion reached in the advisory opinion.
- **Provide specific distance for placement of notice required for sale of goods or services for fund-raising purposes.** Minn. Stat. § 10A.271 requires that a political committee or fund, political party unit, or candidate committee that raises funds through the sale of goods or services provide notice to potential customers that the proceeds from the purchase are a political contribution, and what committee or funds will receive the contribution. The statute currently provides that notice may be provided by a sign placed “in immediate proximity” to the point of sale. Immediate proximity is not a defined term, and could be reasonably interpreted in more than one way. The recommendation is to provide a set distance, within three feet, of the point of sale. Additional language clarifying how the requirement is satisfied when the sale is via a website would also be beneficial.
- **Provide penalty for ballot question committees and funds that make contributions to a candidate’s committee.** Minn. Stat. § 10A.121, currently prohibits independent expenditure committees and funds and ballot question committees and funds from making contributions to candidates. However, the penalty provided in that statute for contributing to a candidate committee does not extend to ballot question committees and funds, which is inconsistent because ballot question committees may also receive corporate contributions.
- **Expand requirement to provide registration number with contributions to include Hennepin County candidates.** Minn. Stat. § 10A.15, subd. 5, requires a lobbyist, political committee or fund, or party unit to provide their registration number with their contributions

to state level candidates. Now that contributions to certain Hennepin County candidates are also reported by these registered committees and funds, it would be useful to expand the candidates covered to include those same Hennepin County candidates.

- **Clarify report periods for political committees, political funds, and party units that make contributions to impact Hennepin County elections during a non-state election year.** Political committees, political funds, and party units that contribute to or make independent expenditures regarding certain Hennepin County candidates, or make ballot question expenditures in Hennepin County during an odd-numbered year, are required to file additional reports with the Board. However, the current schedule provided in Minn. Stat. § 10A.20, subd. 2a, does not explicitly state whether the pre-primary report is required of an entity that only seeks to influence elections in a municipality with no municipal primary election. Minneapolis and Bloomington used ranked-choice voting and therefore do not hold primary elections for municipal candidates. Similarly, ballot questions are not voted on at primary elections. The statute would be clarified to state that a “pre-primary” report is required even if the candidate or issue is not on a primary ballot.
- **Provide a penalty for a violation of Minn. Stat. §10A.38.** Candidates who sign the public subsidy agreement are generally required to close caption broadcast or cable television advertisements, and must provide the script for radio advertisements on the candidate’s campaign website. However, there is not a penalty provided for violating the statute, which leaves in doubt its effectiveness. The recommendation would provide a civil penalty of up to \$1,000 per violation of the statute.

Lobbyist Program Legislative Recommendation from Previous Years

The recommendation to change the focus of the disclosure provided by the lobbying program began in 2019. I say started, because the recommendations were modified substantially in 2020 and 2021 in response to concerns brought forth by the Minnesota Government Relations Council (MGRC). The recommendations, in what I view as close to final form, were introduced in HF 2173 by Rep. Nelson. The bill was heard in 2021, and had discussion on the floor of the House in 2022. The recommendations have not been heard in the Senate. I have had some discussions with legislators on the recommendations and believe that there is interest in introducing a bill that contains the recommendations.

As review, the lobbying proposal would eliminate the need to report a series of administrative costs related to lobbying. In place of administrative costs, the recommendations would require disclosure of the specific subjects lobbied on during the reporting period. Also, for the first time, the lobbyist would disclose any metropolitan governmental unit lobbied, any specific administrative rule that was subject to lobbying, and any specific project before the Minnesota Public Utilities Commission on which lobbying occurred.

New Lobbyist Program Legislative Recommendation

- **Modify definition of lobbyist.** The definition of lobbyist has been based on an action: communication with a public or local official for the purpose of attempting to influence an official action by that official. At the 2021 special legislative session the definition was

amended to include any individual who earns more than \$3,000 a year “from a business whose primary source of revenue is derived from facilitating government relations or government affairs services between two third parties”. Under this new expanded definition (which takes effect January 3, 2023) an individual may need to register as a lobbyist even though their job does not ever include communication with a public official. Or at least it might; staff is unsure what “services between two third parties” means. The goal of the change in 2021 was to strengthen the ban on legislators working as a lobbyist, and that issue was addressed in the same legislation with a modification to Chapter 3, which specifically prohibits legislators from working as a registered lobbyist, or working for firms that are in the government relations space. The recommendation would be to delete the change to the definition.

Attachments

EIS statutory language

Campaign finance statutory language

Lobbying Program – HF 2173 with authors amendments that were not added in 2022

Economic interest statement program, prior year policy proposals

10A.01 DEFINITIONS

* * * *

Subd. 7e. **Beneficial interest.** “Beneficial interest” means the right, or reasonable expectation of the right to the possession of, use of, or direct financial benefit from an asset owned by another due to a contract or relationship with the owner of the asset.

10A.09 STATEMENTS OF ECONOMIC INTEREST

* * * *

Subd. 5. Form; general requirements. (a) A statement of economic interest required by this section must be on a form prescribed by the board. Except as provided in subdivision 5a, ~~t~~The individual filing must provide the following information:

(1) name, address, occupation, and principal place of business;

(2) the name of each associated business and the nature of that association including any associated business in which the individual has a beneficial interest;

(3) a listing of all real property within the state, excluding homestead property, in which the individual holds: (i) a fee simple interest, a beneficial interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000;

(4) a listing of all real property within the state in which a partnership of which the individual is a member holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the individual's share of the partnership interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000. A listing under this clause or clause (3) must indicate the street address and the municipality or the section, township, range and approximate acreage, whichever applies, and the county in which the property is located;

(5) a listing of any investments, ownership, or interests in property connected with pari-mutuel horse racing in the United States and Canada, including a racehorse, in which the individual directly or indirectly holds a partial or full interest or an immediate family member holds a partial or full interest;

(6) a listing of the principal business or professional activity category of each business from which the individual receives more than \$250 in any month during the reporting period as an employee, if the individual has an ownership interest of 25 percent or more in the business;

(7) a listing of each principal business or professional activity category from which the individual received compensation of more than \$2,500 in the past 12 months as an independent contractor; ~~and~~

(8) a listing of the full name of each security with a value of more than \$10,000 owned in part or in full by the individual, or in which the individual has a beneficial interest, at any time during the reporting period; and

(9) a listing of any contract, professional license, lease, franchise, or professional permit that meets the following criteria:

(i) it is held by the individual or any business in which the individual has an ownership interest of 25 percent or more; and

(ii) it is entered into with or issued by any state department or agency listed in section 15.01 or 15.06 or any political subdivision of the state.

Subd. 5a. Form; exception for certain officials. (a) This subdivision applies to the following individuals:

(1) a supervisor of a soil and water conservation district;

(2) a manager of a watershed district; and

(3) a member of a watershed management organization as defined under section 103B.205, subdivision 13.

(b) Notwithstanding subdivision 5, paragraph (a), an individual listed in subdivision 5a, paragraph (a), must provide only the information listed below on a statement of economic interest:

(1) the individual's name, address, occupation, and principal place of business;

(2) a listing of any association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity from which the individual receives compensation in excess of \$250, except for actual and reasonable expenses, in any month during the reporting period as a director, officer, owner, member, partner, employer, or employee;

(3) a listing of all real property within the state, excluding homestead property, in which the individual holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000; and

(4) a listing of all real property within the state in which a partnership of which the individual is a member holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the individual's share of the partnership interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000. A listing under this clause or clause (3) must indicate the street address and the municipality or the section, township, range and approximate acreage, whichever applies, and the county in which the property is located.

(c) If an individual listed in subdivision 5a, paragraph (a), also holds a public official position that is not listed in subdivision 5a, paragraph (a), the individual must file a statement of economic interest that includes the information specified in subdivision 5, paragraph (a).

Disclosure of spousal assets

10A.01 DEFINITIONS

* * * *

Subd. 5. **Associated business.** "Associated business" means an association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity from which the individual, or the individual's spouse, receives compensation in excess of \$250, except for actual and reasonable expenses, in any month during the reporting period as a director, officer, owner, member, partner, employer or employee, or whose securities the individual, or the individual's spouse, holds worth more than \$10,000 at fair market value.

10A.09 STATEMENTS OF ECONOMIC INTEREST

* * * *

Subd. 2. **Notice to board.** The secretary of state or the appropriate county auditor, upon receiving an affidavit of candidacy or petition to appear on the ballot from an individual required by this section to file a statement of economic interest, and any official who nominates or employs a public ~~or local~~ official required by this section to file a statement of economic interest, must notify the board of the name of the individual required to file a statement and the date of the affidavit, petition, or nomination.

Subd. 5. **Form; general requirements.** (a) A statement of economic interest required by this section must be on a form prescribed by the board. Except as provided in subdivision 5a, ~~t~~The individual filing must provide the following information:

- (1) the individual's name, address, occupation, and principal place of business;
- (2) a listing of the name of each associated business and the nature of that association;
- (3) a listing of all real property within the state, excluding homestead property, in which the individual, or the individual's spouse, holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000;
- (4) a listing of all real property within the state in which a partnership of which the individual, or the individual's spouse, is a member holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the individual's share of the partnership interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000. A listing under this clause or clause (3) must indicate the street address and the municipality or the section, township, range and approximate acreage, whichever applies, and the county in which the property is located;
- (5) a listing of any investments, ownership, or interests in property connected with pari-mutuel horse racing in the United States and Canada, including a racehorse, in which the

individual directly or indirectly holds a partial or full interest or an immediate family member holds a partial or full interest;

(6) a listing of the principal business or professional activity category of each business from which the individual, or the individual's spouse, receives more than \$250 in any month during the reporting period as an employee, if the individual, or the individual's spouse, has an ownership interest of 25 percent or more in the business;

(7) a listing of each principal business or professional activity category from which the individual, or the individual's spouse, received compensation of more than \$2,500 in the past 12 months as an independent contractor; ~~and~~

(8) a listing of the full name of each security with a value of more than \$10,000 owned in part or in full by the individual, or the individual's spouse, at any time during the reporting period; and

(9) a listing of the name of any state department or agency listed in section 15.01 or 15.06, or any political subdivision, with which the individual, the individual's spouse, the individual's employer, or the employer of the individual's spouse has a contract.

(b) The business or professional categories for purposes of paragraph (a), clauses (6) and (7), must be the general topic headings used by the federal Internal Revenue Service for purposes of reporting self-employment income on Schedule C. This paragraph does not require an individual to report any specific code number from that schedule. Any additional principal business or professional activity category may only be adopted if the category is enacted by law.

(c) The listings required in paragraph (a), clauses (2) through (9), must not identify whether the individual or the individual's spouse is associated with or owns the listed item. For the purpose of an original statement of economic interest, "compensation in any month" includes only compensation received in the calendar month immediately preceding the date of appointment as a public official or filing as a candidate.

Campaign finance program, prior year policy proposals

10A.01 DEFINITIONS

* * * *

Subdivision 16a. **Expressly advocating.** “Expressly advocating” means:

(1) that a communication clearly identifies a candidate and uses words or phrases of express advocacy; or

(2) when taken as a whole and with limited reference to external events could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because (1) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s).

* * * *

Subd. 37. **Virtual currency.** (a) “Virtual currency” means an intangible representation of value in units that can only be transmitted electronically and function as a medium of exchange, units of account, or a store of value.

(b) Virtual currency includes cryptocurrencies. Virtual currency does not include currencies issued by a government.

10A.15 CONTRIBUTIONS

* * * *

Subd. 8. **Virtual currency contributions.** (a) A principal campaign committee, political committee, political fund, or party unit may accept a donation in kind in the form of virtual currency. The value of donated virtual currency is its fair market value at the time it is donated. The recipient of a virtual currency contribution must sell the virtual currency in exchange for United States currency within five business days after receipt.

(b) Any increase in the value of donated virtual currency after its donation, but before its conversion to United States currency, must be reported as a receipt that is not a contribution pursuant to section 10A.20, subdivision 3. Any decrease in the value of donated virtual currency after its donation, but before its conversion to United States currency, must be reported as an expenditure pursuant to section 10A.20, subdivision 3.

(c) A principal campaign committee, political committee, political fund, or party unit may not purchase goods or services with virtual currency.

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State of Minnesota HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2173

03/11/2021 Authored by Nelson, M., The bill was read for the first time and referred to the Committee on State Government Finance and Elections

1.1 A bill for an act
1.2 relating to lobbyists; modifying lobbyist registration and reporting; creating
1.3 definitions; amending Minnesota Statutes 2020, sections 10A.01, subdivision 21,
1.4 by adding subdivisions; 10A.025, subdivision 4; 10A.03, subdivision 2, by adding
1.5 a subdivision; 10A.04, subdivisions 3, 4, 6, 9; repealing Minnesota Rules, part
1.6 4511.0600, subpart 5.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2020, section 10A.01, is amended by adding a subdivision
1.9 to read:

1.10 Subd. 12a. Designated lobbyist. "Designated lobbyist" means the lobbyist responsible
1.11 for reporting the lobbying disbursements and activity of the entity the lobbyist represents.

1.12 Sec. 2. Minnesota Statutes 2020, section 10A.01, is amended by adding a subdivision to
1.13 read:

1.14 Subd. 17d. General lobbying category. "General lobbying category" means an area of
1.15 interest for lobbying for an entity that is on a list of categories specified by the board.

1.16 Sec. 3. Minnesota Statutes 2020, section 10A.01, is amended by adding a subdivision to
1.17 read:

1.18 Subd. 19a. Legislative action. "Legislative action" means any of the following:

1.19 (1) the development of prospective legislation, including the development of amendment
1.20 language to prospective legislation;

2.1 (2) the review, modification, adoption, or rejection by a member of the legislature or an
 2.2 employee of the legislature, if applicable, of any (i) bill, (ii) amendment, (iii) resolution,
 2.3 (iv) confirmation considered by the legislature, or (v) report;

2.4 (3) the development of, in conjunction with a constitutional officer, prospective legislation
 2.5 or a request for support or opposition to introduced legislation; and

2.6 (4) the action of the governor in approving or vetoing any act of the legislature or portion
 2.7 of an act of the legislature.

2.8 Sec. 4. Minnesota Statutes 2020, section 10A.01, subdivision 21, is amended to read:

2.9 Subd. 21. **Lobbyist.** (a) "Lobbyist" means an individual:

2.10 (1) engaged for pay or other consideration of more than \$3,000 from all sources in any
 2.11 year for the purpose of attempting to influence legislative or administrative action, or the
 2.12 official action of a metropolitan governmental unit, by communicating or urging others to
 2.13 communicate with public or local officials; or

2.14 (2) who spends more than ~~\$250~~ \$3,000 of the individual's personal funds, not including
 2.15 the individual's own traveling expenses and membership dues, in any year for the purpose
 2.16 of attempting to influence legislative or administrative action, or the official action of a
 2.17 metropolitan governmental unit, by communicating or urging others to communicate with
 2.18 public or local officials.

2.19 (b) "Lobbyist" does not include:

2.20 (1) a public official;

2.21 (2) an employee of the state, including an employee of any of the public higher education
 2.22 systems;

2.23 (3) an elected local official;

2.24 (4) a nonelected local official or an employee of a political subdivision acting in an
 2.25 official capacity, unless the nonelected official or employee of a political subdivision spends
 2.26 more than 50 hours in any month attempting to influence legislative or administrative action,
 2.27 or the official action of a metropolitan governmental unit other than the political subdivision
 2.28 employing the official or employee, by communicating or urging others to communicate
 2.29 with public or local officials, including time spent monitoring legislative or administrative
 2.30 action, or the official action of a metropolitan governmental unit, and related research,
 2.31 analysis, and compilation and dissemination of information relating to legislative or
 2.32 administrative policy in this state, or to the policies of metropolitan governmental units;

3.1 (5) a party or the party's representative appearing in a proceeding before a state board,
 3.2 commission, or agency of the executive branch unless the board, commission, or agency is
 3.3 taking administrative action;

3.4 (6) an individual while engaged in selling goods or services to be paid for by public
 3.5 funds;

3.6 (7) a news medium or its employees or agents while engaged in the publishing or
 3.7 broadcasting of news items, editorial comments, or paid advertisements which directly or
 3.8 indirectly urge official action;

3.9 (8) a paid expert witness whose testimony is requested by the body before which the
 3.10 witness is appearing, but only to the extent of preparing or delivering testimony; or

3.11 (9) a party or the party's representative appearing to present a claim to the legislature
 3.12 and communicating to legislators only by the filing of a claim form and supporting documents
 3.13 and by appearing at public hearings on the claim.

3.14 (c) An individual who volunteers personal time to work without pay or other consideration
 3.15 on a lobbying campaign, and who does not spend more than the limit in paragraph (a), clause
 3.16 (2), need not register as a lobbyist.

3.17 (d) An individual who provides administrative support to a lobbyist and whose salary
 3.18 and administrative expenses attributable to lobbying activities are reported as lobbying
 3.19 expenses by the lobbyist, but who does not communicate or urge others to communicate
 3.20 with public or local officials, need not register as a lobbyist.

3.21 Sec. 5. Minnesota Statutes 2020, section 10A.01, is amended by adding a subdivision to
 3.22 read:

3.23 Subd. 26b. Official action of metropolitan governmental units. "Official action of
 3.24 metropolitan governmental units" means any action that requires a vote or approval by one
 3.25 or more elected local officials while acting in their official capacity; or an action by an
 3.26 appointed or employed local official to make, to recommend, or to vote on as a member of
 3.27 the governing body, major decisions regarding the expenditure or investment of public
 3.28 money.

3.29 Sec. 6. Minnesota Statutes 2020, section 10A.01, is amended by adding a subdivision to
 3.30 read:

3.31 Subd. 35c. Specific subject of interest. "Specific subject of interest" means a particular
 3.32 topic or area of lobbying interest within a general lobbying category.

4.1 Sec. 7. Minnesota Statutes 2020, section 10A.025, subdivision 4, is amended to read:

4.2 Subd. 4. **Changes and corrections.** Material changes in information previously submitted
4.3 and corrections to a report or statement must be reported in writing to the board within ten
4.4 days following the date of the event prompting the change or the date upon which the person
4.5 filing became aware of the inaccuracy. The change or correction must identify the form and
4.6 the paragraph containing the information to be changed or corrected. A request from the
4.7 board to a lobbyist to provide more detailed information about a specific subject of interest
4.8 disclosed on a lobbyist disbursement report is a change or correction governed by this
4.9 subdivision.

4.10 A person who willfully fails to report a material change or correction is subject to a civil
4.11 penalty imposed by the board of up to \$3,000. A willful violation of this subdivision is a
4.12 gross misdemeanor.

4.13 The board must send a written notice to any individual who fails to file a report required
4.14 by this subdivision. If the individual fails to file the required report within ten business days
4.15 after the notice was sent, the board may impose a late filing fee of \$25 per day up to \$1,000
4.16 starting on the 11th day after the notice was sent. The board may send an additional notice
4.17 by certified mail to an individual who fails to file a report within ten business days after the
4.18 first notice was sent by the board. The certified notice must state that if the individual does
4.19 not file the requested report within ten business days after the certified notice was sent, the
4.20 individual may be subject to a civil penalty for failure to file a report. An individual who
4.21 fails to file a report required by this subdivision within ten business days after the certified
4.22 notice was sent by the board is subject to a civil penalty imposed by the board of up to
4.23 \$1,000.

4.24 Sec. 8. Minnesota Statutes 2020, section 10A.03, subdivision 2, is amended to read:

4.25 Subd. 2. **Form.** The board must prescribe a registration form, which must include:

4.26 (1) the name, address, and e-mail address of the lobbyist;

4.27 (2) the principal place of business of the lobbyist;

4.28 (3) the name and address of each individual, association, political subdivision, or public
4.29 higher education system, if any, by whom the lobbyist is retained or employed or on whose
4.30 behalf the lobbyist appears;

4.31 (4) the website address of each association, political subdivision, or public higher
4.32 education system identified under clause (3), if the entity maintains a website; ~~and~~

5.1 (5) ~~a~~ the general description of the subject or subjects lobbying categories on which the
 5.2 lobbyist expects to lobby; on behalf of a represented entity; and

5.3 (6) if the lobbyist lobbies on behalf of an association, the registration form must include
 5.4 the name and address of the officers and directors of the association.

5.5 Sec. 9. Minnesota Statutes 2020, section 10A.03, is amended by adding a subdivision to
 5.6 read:

5.7 Subd. 6. **General lobbying categories.** A list of general lobbying categories must be
 5.8 specified by the board and updated periodically based on public comment. The board must
 5.9 publish on its website the current list of general lobbying categories. Chapter 14 does not
 5.10 apply to the specification, publication, or periodic updates of the list of general lobbying
 5.11 categories.

5.12 Sec. 10. Minnesota Statutes 2020, section 10A.04, subdivision 3, is amended to read:

5.13 Subd. 3. **Information to lobbyist.** An employer or employee about entity or lobbyist
 5.14 whose activities a are reported to the board by another lobbyist is required to report must
 5.15 provide the information required by subdivision 4 to the lobbyist no later than five days
 5.16 before the prescribed filing date.

5.17 Sec. 11. Minnesota Statutes 2020, section 10A.04, subdivision 4, is amended to read:

5.18 Subd. 4. **Content.** (a) A report under this section must include information the board
 5.19 requires from the registration form and the information required by this subdivision for the
 5.20 reporting period.

5.21 (b) A lobbyist must report the specific subjects of interest for an entity represented by
 5.22 the lobbyist on each report submitted under this section. A lobbyist must describe a specific
 5.23 subject of interest in the report with enough information to show the particular issue of
 5.24 importance to the entity represented.

5.25 (b)(c) A lobbyist must report the lobbyist's total disbursements on lobbying, separately
 5.26 listing lobbying to influence legislative action, lobbying to influence administrative action,
 5.27 and lobbying to influence the official actions of a metropolitan governmental unit, and a
 5.28 breakdown of disbursements for each of those kinds of lobbying into categories specified
 5.29 by the board, including but not limited to the cost of publication and distribution of each
 5.30 publication used in lobbying; other printing; media, including the cost of production; postage;
 5.31 travel; fees, including allowances; entertainment; telephone and telegraph; and other
 5.32 expenses. every state agency that had administrative action that the represented entity sought

6.1 to influence during the reporting period. The lobbyist must report the specific subjects of
 6.2 interest for each administrative action and the revisor rule draft number assigned to the
 6.3 administrative rulemaking.

6.4 (d) A lobbyist must report every metropolitan governmental unit that considered official
 6.5 action that the represented entity sought to influence during the reporting period. The lobbyist
 6.6 must report the specific subjects of interest for each action.

6.7 (e) A lobbyist must report general lobbying categories and up to four specific subjects
 6.8 of interest related to each general lobbying category on which the lobbyist attempted to
 6.9 influence legislative action during the reporting period. If the lobbyist attempted to influence
 6.10 legislative action on more than four specific subjects of interest for a general lobbying
 6.11 category, the lobbyist, in consultation with the represented entity, must determine which
 6.12 four specific subjects of interest were the entity's highest priorities during the reporting
 6.13 period and report only those four subjects. If a reported specific subject of interest was
 6.14 contained in legislation that the lobbyist attempted to influence that passed at least one body
 6.15 of the legislature, the lobbyist must identify that legislation by bill number.

6.16 (f) A lobbyist must report the Public Utilities Commission project name for each rate
 6.17 setting, power plant and powerline siting, or granting of certification of need before the
 6.18 Public Utilities Commission that the represented entity sought to influence during the
 6.19 reporting period.

6.20 ~~(e)~~(g) A lobbyist must report the amount and nature of each gift, item, or benefit,
 6.21 excluding contributions to a candidate, equal in value to \$5 or more, given or paid to any
 6.22 official, as defined in section 10A.071, subdivision 1, by the lobbyist or an employer or
 6.23 employee of the lobbyist. The list must include the name and address of each official to
 6.24 whom the gift, item, or benefit was given or paid and the date it was given or paid.

6.25 ~~(d)~~(h) A lobbyist must report each original source of money in excess of \$500 in any
 6.26 year used for the purpose of lobbying to influence legislative action, administrative action,
 6.27 or the official action of a metropolitan governmental unit. The list must include the name,
 6.28 address, and employer, or, if self-employed, the occupation and principal place of business,
 6.29 of each payer of money in excess of \$500.

6.30 (i) The designated lobbyist must report disbursements made, and obligations incurred,
 6.31 that exceed \$2,000 for paid advertising used for the purpose of urging members of the public
 6.32 to contact public or local officials to influence official actions during the reporting period.
 6.33 Paid advertising includes the cost to increase the distribution of an advertisement on social
 6.34 media. The designated lobbyist must provide in the report the date that the advertising was

7.1 purchased, the name and address of the vendor, a description of the advertising purchased,
 7.2 and any specific subject or subjects of interest addressed by the advertisement.

7.3 ~~(e)-(j) On the report due June 15, the a lobbyist must provide a disclose the general~~
 7.4 ~~description of the subjects lobbying categories that were lobbied on in the previous 12-~~
 7.5 ~~months reporting period.~~

7.6 Sec. 12. Minnesota Statutes 2020, section 10A.04, subdivision 6, is amended to read:

7.7 Subd. 6. **Principal reports.** (a) A principal must report to the board as required in this
 7.8 subdivision by March 15 for the preceding calendar year.

7.9 (b) ~~Except as provided in paragraph (d),~~ The principal must report the total amount,
 7.10 rounded to the nearest ~~\$20,000~~ \$10,000, spent by the principal during the preceding calendar
 7.11 year ~~to influence legislative action, administrative action, and the official action of~~
 7.12 ~~metropolitan governmental units.~~ on each type of lobbying listed below:

7.13 (1) lobbying to influence legislative action;

7.14 (2) lobbying to influence administrative action, other than lobbying described in clause 7.15
 7.15 (3);

7.16 (3) lobbying to influence administrative action in cases of rate setting, power plant and
 7.17 powerline siting, and granting of certificates of need under section 216B.243; and

7.18 (4) lobbying to influence official action of metropolitan governmental units.

7.19 (c) ~~Except as provided in paragraph (d),~~ For each type of lobbying listed in paragraph
 7.20 (b), the principal must report ~~under this subdivision~~ a total amount that includes:

7.21 (1) the portion of all direct payments for compensation and benefits paid by the principal
 7.22 to lobbyists in this state for that type of lobbying;

7.23 (2) the portion of all expenditures for advertising, mailing, research, consulting, surveys,
 7.24 expert testimony, studies, reports, analysis, compilation and dissemination of information,
 7.25 social media and public relations campaigns related to legislative action, administrative
 7.26 action, or the official action of metropolitan governmental units, and legal counsel used to
 7.27 support that type of lobbying in this state; and

7.28 (3) a reasonable good faith estimate of the portion of all salaries and administrative
 7.29 overhead expenses attributable to activities of the principal relating to efforts to influence
 7.30 legislative action, administrative action, or the official action of metropolitan governmental
 7.31 units for that type of lobbying in this state.; and

8.1 (4) the portion of all lobbying disbursements not listed in clause (2) that were made or
8.2 incurred on behalf of the principal by all lobbyists for the principal in this state for that type
8.3 of lobbying.

8.4 ~~(d) A principal that must report spending to influence administrative action in cases of~~
8.5 ~~rate setting, power plant and powerline siting, and granting of certificates of need under~~
8.6 ~~section 216B.243 must report those amounts as provided in this subdivision, except that~~
8.7 ~~they must be reported separately and not included in the totals required under paragraphs~~
8.8 ~~(b) and (c).~~

8.9 Sec. 13. Minnesota Statutes 2020, section 10A.04, subdivision 9, is amended to read:

8.10 Subd. 9. **Reporting by multiple lobbyists representing the same entity.** Clauses (1)
8.11 to (6) apply when a single individual, association, political subdivision, or public higher
8.12 education system is represented by more than one lobbyist.

8.13 (1) The entity must appoint one designated lobbyist to report lobbyist disbursements
8.14 made by the entity. An entity represented by more than one lobbyist may only have one
8.15 designated lobbyist at any given time. The designated lobbyist must indicate that status on
8.16 the periodic reports of lobbyist disbursements.

8.17 (2) A reporting lobbyist may consent to report on behalf of one or more other lobbyists
8.18 for the same entity, in which case, the other lobbyists are persons whose activities the
8.19 reporting lobbyist must disclose and are subject to the disclosure requirements of subdivision
8.20 3. Lobbyist disbursement reports filed by a reporting lobbyist must include the names and
8.21 registration numbers of the other lobbyists whose activities are included in the report.

8.22 (3) Lobbyists whose activities are accounted for by a reporting lobbyist are not required
8.23 to file lobbyist disbursement reports.

8.24 (4) A lobbyist whose lobbying disbursements are provided to the board through a
8.25 reporting lobbyist must supply all relevant information on disbursements to the reporting
8.26 lobbyist no later than five days before the prescribed filing date.

8.27 (5) The reporting periods and due dates for a reporting lobbyist are those provided in
8.28 subdivision 2. The late filing provisions in subdivision 5 apply to reports required by this
8.29 subdivision.

8.30 (6) The reporting lobbyist must indicate the names and registration numbers of any
8.31 lobbyists who did not provide their lobbying disbursements for inclusion in a report. The
8.32 late filing provisions in subdivision 5 apply to lobbyists who fail to report information to
8.33 the reporting lobbyist.

9.1 Sec. 14. **REPEALER.**

9.2 Minnesota Rules, part 4511.0600, subpart 5, is repealed.

4511.0600 REPORTING DISBURSEMENTS.

Subp. 5. **Specific disbursement categories.** Lobbying disbursements must be reported based on the categories in items A to I.

A. "Lobbying materials" includes the cost of production, purchase, or other acquisition of materials that directly support lobbying.

B. "Media costs" includes the cost of media space or time, including website design and maintenance, used for lobbying activities. The cost of preparation of materials for use in the media is reported in the lobbying materials category.

C. "Telephone and communications" includes costs for local and long-distance telephone services, electronic mail, pagers, cellular telephones, facsimile distribution services, telegraph, and other communications services.

D. "Postage and distribution" includes costs of postage from the United States Postal Service as well as other distribution costs associated with lobbying activities.

E. "Fees and allowances" includes fees for consulting, surveys, polls, legal counsel, or other services as well as expenses associated with those services.

F. "Entertainment" includes costs of all entertainment associated with any situation where lobbying activities take place.

G. "Food and beverages" includes costs of all food and beverages associated with any situation where lobbying activities take place.

H. "Travel and lodging" includes costs of all travel and lodging associated with any lobbying activity, excluding the costs of the lobbyist's own travel to accomplish the lobbying activity.

I. "Other disbursements" includes general administration and overhead and any other lobbyist disbursements not reported in other categories.



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: December 8, 2022

To: Board members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Prima facie determination finding no violation

Complaints filed with the Board are subject to a prima facie determination which is made by the Board chair or the Board chair's designee in consultation with staff. If the determination finds that the complaint states a violation of Chapter 10A or the provisions of Chapter 211B under the Board's jurisdiction, the complaint moves forward to a probable cause determination by the full Board.

If the determination finds that the complaint does not state a prima facie violation, the prima facie determination must dismiss the complaint without prejudice. When a complaint is dismissed, the complaint and the prima facie determination become public data. The following complaint was dismissed by Chair Rashid the prima facie determination is provided here as an informational item to the other Board members. No further action of the Board is required.

Complaint regarding the People Over Prosecution Political Fund

On November 4, 2022, the Board received a complaint submitted by Matthew Sullivan regarding the People Over Prosecution Political Fund.¹ The complaint alleged that the fund failed to provide a disclosure statement to the Board for a contribution totaling \$70,000 from "Solidaire Network" in violation of Minnesota Statutes section 10A.27, subdivision 13.

On November 23, 2022, Chair Rashid concluded that the complaint did not state a prima facie violation of any statute under the Board's jurisdiction. The determination concluded that the fund filed amended reports within 10 days of becoming aware of its error, and corrected the name of the contributor to "Tides Advocacy" and filed a disclosure statement for that entity. Therefore, the complaint was dismissed. The prima facie determination is attached to this memo.

Attachments:

People Over Prosecution prima facie determination

¹ https://cfb.mn.gov/pdf/bdactions/1610_Complaint.pdf?t=1670530609

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF MATTHEW SULLIVAN REGARDING THE PEOPLE OVER PROSECUTION POLITICAL FUND

On November 4, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Matthew Sullivan regarding the People Over Prosecution Political Fund. The People Over Prosecution Political Fund is an independent expenditure political fund assigned Board registration number 30729.

The complaint alleges that the People Over Prosecution Political Fund violated Minnesota Statutes section 10A.27, subdivision 13, when it disclosed a contribution of \$70,000 from “Solidaire Network” within its 2022 pre-general report of receipts and expenditures, without filing the disclosure statement required when accepting a contribution from an association that is not registered with the Board. The complaint alleges, and Board records confirm, that Solidaire Network is not a registered committee and the contribution should not have been itemized within schedule A1 - IR, which is limited to contributions made by individuals and registered committees.

On November 4, 2022, Board staff was contacted by Corenia Smith, on behalf of the People Over Prosecution Political Fund. Ms. Smith stated that the fund was aware of the complaint and wanted to address the issues if possible. Board staff explained the statutory timeframe for filing an amended report with the Board, and reviewed the requirement to file a disclosure statement for contributions over \$200 from unregistered associations. On November 5, 2022, the fund filed an amended pre-general report of receipts and expenditures and a disclosure statement for the \$70,000 contribution noted in the complaint. The amended report listed the source of the \$70,000 contribution as Tides Advocacy, and the accompanying disclosure statement was from Tides Advocacy, rather than Solidaire Network.

Determination

Minnesota Statutes section 10A.27, subdivision 13, paragraph (a) provides that:

The treasurer of a . . . political fund . . . must not accept a contribution of more than \$200 from an association not registered under this chapter unless the contribution is accompanied by a statement that meets the disclosure and reporting period requirements imposed by section 10A.20. The statement may be a written statement or a government website where the disclosure report for the unregistered association may be viewed. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or

party unit that accepts the contribution must include a copy of the written statement or website with the report that discloses the contribution to the board.

Minnesota Statutes section 10A.27, subdivision 15, provides that when an association uses general treasury money to make a contribution to an independent expenditure political fund, rather than a general purpose political fund, it may choose not to comply with subdivision 13, and instead provide a disclosure statement that complies with the requirements set forth in subdivision 15. That provision requires that an independent expenditure political fund obtain a disclosure statement from an unregistered association that has contributed more than \$5,000 in aggregate within the calendar year to independent expenditure or ballot question political committees or funds. The statement must include:

the name, address, and amount attributable to each person that paid the association dues or fees, or made donations to the association that, in total, aggregate more than \$5,000 of the contribution from the association to the independent expenditure or ballot question political committee or fund. The statement must also include the total amount of the contribution attributable to persons not subject to itemization under this section. The statement must be certified as true by an officer of the donor association.

The recipient committee or fund must obtain the disclosure statement from the contributor and then file it with the Board no later than the due date of the report that discloses the contribution in question.

Minnesota Statutes section 10A.20, subdivision 3, provides that the Board shall develop forms for reporting receipts received and expenditures made by registered committees and funds. The forms developed by the Board for independent expenditure political committees and funds provide separate schedules for reporting contributions from unregistered associations. Reporting a contribution from an unregistered association on the schedule for contributions from individuals and other registered committees and funds is a reporting error.

Minnesota Statutes section 10A.025, subdivision 4, provides the time frame in which a political committee or fund registered with the Board must amend a report of receipts and expenditures after the committee or fund becomes aware of an error:

Material changes in information previously submitted and corrections to a report or statement must be reported in writing to the board within ten days following the date of the event prompting the change or the date upon which the person filing became aware of the inaccuracy...

The People Over Prosecution Political Fund filed two amended pre-general reports on November 5, 2022, and filed a third amended pre-general report on November 10, 2022. The reports were filed within 10 days of the fund becoming aware of the allegations of reporting errors in the complaint. The amended reports state that the \$70,000 contribution in question was made by Tides Advocacy rather than Solidaire Network, and the contribution is correctly itemized within schedule A1 - UA, the schedule used for contributions from unregistered

associations that were derived from fees, dues, or donations. The fund also provided the Board with a disclosure statement for Tides Advocacy on November 5, 2022, the date the first two amended reports were filed. The disclosure statement was certified as true by Jennifer Jorczak an officer of Tides Advocacy, on November 4, 2022.

The complaint correctly identified that the \$70,000 contribution was not disclosed on the correct reporting schedule, and that a disclosure statement for the contribution had not been filed. Unknown to the complainant, the donor's name was also incorrectly stated in the original pre-general report filed by the People Over Prosecution Political Fund. However, the fund filed amended reports to correct the reporting errors within 10 days of becoming aware of the inaccurate information, and filed the disclosure statement required for the contribution from Tides Advocacy with the amended report. The chair therefore concludes that the complaint no longer states a prima facie violation of Minnesota Statutes section 10A.20, or Minnesota Statutes section 10A.27, subdivision 13.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, paragraph (c), this prima facie determination is made by a single Board member and not by any vote of the entire Board. Based on the above analysis, the chair concludes that the complaint does not state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction. The complaint is dismissed without prejudice.



Faris Rashid, Chair
Campaign Finance and Public Disclosure Board

Date: November 23, 2022

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
December 2022**

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Personally Served	Default Hearing Date	Date Judgment Entered	Case Status
Burg, Ashley, Candidate		Candidate Statement of Economic Interest, due 6/14/22	\$100 LFF \$1,000 CP	12/6/22				
	Environment America dba Environment Minnesota Contacts: Timothy Schaefer, Chuck Caldart	2021 Annual Report of Lobbyist Principal, due 3/15/22	\$1,000 LFF \$1,000 CP	12/6/22				
Martinez-Perez, Ashley, Candidate	Ashley Martinez-Perez for MN House	2020 pre-general report of receipts and expenditures due 10/26/20, filed 10/28/20 2020 year end report of receipts and expenditures due 1/31/22, not filed	\$100 LFF \$1,000 LFF	6/13/22	8/12/22			
Ohlmann, Stephanie, Lobbyist	Protect Minnesota Contact: Rashmi Seneviratne	Lobbyist Disbursement Report: period 1/1-5/31/22, due 6/15/22	\$1,000 LFF	12/6/22				
	Trace, LLC Contacts: Ashley Moore, Patrick Hynes	2021 Annual Report of Lobbyist Principal, due 3/15/22	\$1,000 LFF \$1,000 CP	12/6/22				