

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

.....
**October 2, 2019
St Croix Room
Centennial Office Building**

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MINUTES

The meeting was called to order by Chair Leppik.

Members present: Flynn, Haugen, Leppik, Moilanen, Rosen (arrived during review of legislative recommendations for lobbyist program), Swanson

Others present: Sigurdson, Engelhardt, Olson, Pope staff; Hartshorn, counsel

MINUTES (September 4, 2019)

After discussion, consideration of the September minutes was postponed until the November meeting.

CHAIR'S REPORT

A. Meeting schedule

The next Board meeting is scheduled for 10:30 a.m. on Wednesday, November 6, 2019.

EXECUTIVE DIRECTOR REPORT

Mr. Sigurdson told members that testing of the online version of Campaign Finance Reporter was advancing, and was a very high priority for staff. Mr. Sigurdson also said that staff would be testing the Board's continuance of operations plan (COOP) by working from home for a half-day in October. Mr. Sigurdson stated that the purpose of the plan and the test was to ensure that the Board could continue its operations in the event that the Board's physical office space was not available. Ms. Engelhardt then told members that in response to numerous requests, staff was conducting compliance training in greater Minnesota throughout the fall. Ms. Engelhardt said that the training conducted to date had been well received and well attended.

ENFORCEMENT REPORT

A. Consent Item

1. Administrative termination of lobbyist Kimberly Crockett (2607)

Mr. Olson told members that the Center of the American Experiment had asked that Ms. Crockett's registration be terminated effective August 9, 2019, which was the date the principal had severed its relationship with her. Mr. Olson said that Ms. Crockett had been asked to file a termination statement

but had not done so. Board staff administratively terminated Ms. Crockett's lobbyist registration effective August 9, 2019. Mr. Olson said that the principal had stated that Ms. Crockett did not have any lobbying disbursements after the period covered by the most recent lobbyist disbursement report filed by its reporting lobbyist.

After discussion, the following motion was made:

Member Moilanen's motion: To confirm the administrative termination of lobbyist Kimberly Crockett.

Vote on motion: Unanimously passed (Rosen absent).

B. Discussion Item

1. Balance adjustment request – St. Paul DFL (20518)

Mr. Olson told members that the St. Paul DFL had reported an ending cash balance in 2017 of \$22,313.78, but that the party unit's bank statements had reflected a balance at that time of \$22,707.72, a difference of \$393.94. Mr. Olson said that the discrepancy began in 2016 or 2017. The party unit's current treasurer, Rick Varco, took over in mid-2018 and had been unable to ascertain the cause of the discrepancy. Mr. Olson said that Mr. Varco believed that the most likely cause was a combination of small transactions that had not been entered into the Campaign Finance Reporter software and data entry errors. Mr. Varco had access to the party unit's bank statements, but did not have easy access to the details of all the checks and deposits listed on those statements. Mr. Olson said that there also were at least six copies of the party unit's 2016 CFR database and the one copy of the 2017 CFR database in Mr. Varco's possession had some discrepancies when the 2018 database was created. Consequently, before Mr. Varco could start reconciling the bank account to the party unit's reports, he would need to spend some time comparing the 2016 and 2017 databases to the filed reports to determine which database, if any, was used to file the last amended report. Mr. Olson said that due to the difficulty of finding the cause of the discrepancy, the size of the discrepancy, and Mr. Varco's unease over certifying amended reports for years when he was not treasurer, the party unit was asking the Board to adjust its 2017 ending cash balance upward from \$22,313.78 to \$22,707.72.

After discussion, the following motion was made:

Member Swanson's motion: To grant the St Paul DFL's balance adjustment request.

Vote on motion: Unanimously passed (Rosen absent).

C. Waiver request

<u>Name of Candidate or Committee</u>	<u>Late Fee & Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Protect Minnesota Political Action Fund	\$1,000 LFF	2018 year-end	Former employee of political fund's supporting association incorrectly told other staff that 2018 year-end report had been filed. once it was discovered that report had never been submitted, report was promptly filed. Fund has sent a check for \$1,000 but is seeking a waiver or reduction of amount due.	Member Moilanen	To reduce the late filing fee to \$250.	Unanimously passed (Rosen absent).

D. Informational Items

1. Payment of late filing fee for 2018 year-end report of receipts and expenditures

Protect Minnesota Political Action Fund, \$1,000

2. Payment of civil penalty for excess personal contributions

Hainey (Shaun) for House, \$135

3. Payment of civil penalty for exceeding individual contribution limit

Jim Read for State Representative, \$35

4. Payment of civil penalty for excess party unit contributions

Ruth (Richardson) for House, \$110

5. Payment of civil penalty for excess special source contributions

Urdahl (Dean) Volunteer Committee, \$125

6. Payment of late filing fee for lobbyist disbursement report due 6/17/2019

Jan Alswager, \$25

7. Payment of late filing fee for lobbyist principal report due 3/15/2019

Delta Dental of MN, \$1,000

8. Return of public subsidy due to exceeding carryforward limit

Stephenson (Zachary) for House, \$84

OPTIONS FOR CIVIL PENALTIES IN CONCILIATION MATTERS

Ms. Engelhardt presented members with a memorandum regarding this issue that is attached to and made a part of these minutes. Ms. Engelhardt reviewed the three options for imposing civil penalties that were outlined in the memorandum and discussed how those options would apply to the examples given. Members then discussed the matter and decided to delay a decision until Member Rosen could join the discussion.

REPORT ON HISTORICAL USE OF POLITICAL CONTRIBUTION REFUND PROGRAM

This report is attached to and made a part of these minutes. Mr. Sigurdson told members that a similar report had been prepared in 2016 and that the document before them had been updated to include information through 2018. Mr. Sigurdson said that he would send a copy of the report to the chairs of the legislative committees with jurisdiction over the Board.

REVIEW OF LEGISLATIVE RECOMMENDATIONS FOR LOBBYIST REGISTRATION AND REPORTING

Mr. Sigurdson presented members with a memorandum regarding this issue that is attached to and made a part of these minutes. Mr. Sigurdson reviewed the legislative proposals and how, in his opinion, they would provide more meaningful disclosure of efforts to influence governmental actions. Mr. Sigurdson said that he had incorporated several suggestions made by the Minnesota Governmental Relations Council (MGRC) into the proposals but that the MGRC had not seen the proposed statutory language until a week before the Board meeting. Mr. Sigurdson said that he therefore expected the MGRC to have more specific comments and feedback at the November meeting.

Kathy Hahne then addressed the Board on behalf of the MGRC. Ms. Hahne confirmed that the MGRC had not had the chance to fully review the proposed statutory language. Ms. Hahne said that the members of MGRC did not disagree with the purpose of the legislation but wanted to ensure that any new reporting requirements would not lead to unintentional violations. Ms. Hahne explained the importance of a lobbyist's reputation at the Capitol and stated that MGRC members were worried that even unintentional violations of reporting requirements would damage that reputation. Ms. Hahne said that the MGRC would bring specific comments about the proposal to the November meeting.

Marie Ellis with the Minnesota Council of Nonprofits then addressed the Board. Ms. Ellis said that she was concerned about the language that would require lobbyists to report specific bill numbers. Ms. Ellis stated that lobbyists sometimes educate officials about an issue during one session with the goal of introducing a specific bill addressing that issue during the next session. Ms. Ellis pointed out that there would be no bill number to report during the first session in these situations.

Members then discussed the proposal and directed Mr. Sigurdson to continue working on it for additional discussion at the November meeting.

REVIEW OF PUBLIC COMMENTS RECEIVED ON 2019 LEGISLATIVE RECOMMENDATIONS, FURTHER DISCUSSION ON RECOMMENDATIONS

Mr. Sigurdson presented members with a memorandum regarding this issue that is attached to and made a part of these minutes. Ms. Engelhardt reviewed the few public comments that had been submitted in response to the Board's request for feedback. Mr. Moilanen told members that at the next meeting, he would like to discuss raising the amount of the political contribution refund. Members also

discussed the fact that any proposal would need bipartisan support to be successful even if Governor Walz did not specifically require bipartisan support for election bills.

OPTIONS FOR CIVIL PENALTIES IN CONCILIATION MATTERS

Members resumed the discussion of the three civil penalty options in Ms. Engelhardt's memorandum. Mr. Sigurdson told members that any option adopted would simply be guidance for staff in drafting conciliation agreements and that the Board would always be free to adopt different penalties in different cases depending on the facts of those matters.

After discussion, the following motion was made:

Member Flynn's motion:	To direct staff when drafting conciliation agreements to follow option 3 in the memorandum, which would require 1) the return of any excess or improper contributions, and 2) the imposition a civil penalty equal to one times the amount of the excess with a minimum payment of \$100 or 25% of the penalty (whichever is greater) and a stay of the remaining 75% of the penalty.
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Vote on motion:	Unanimously passed.
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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 had nothing to add to the legal report.

OTHER BUSINESS

Member Swanson asked staff to prepare more examples of enforcement decisions using the Office of Administrative Hearings format. There was no other business to report.

EXECUTIVE SESSION

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the chair had the following to report into regular session:

Findings, conclusions, and order in the matter of the MN Gun Owners PAC, the MN Gun Owners IE Fund, and the Minnesota Gun Owners Support Fund

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

Respectfully submitted,



Jeff Sigurdson
Executive Director

Attachments:

Memorandum regarding options for civil penalties in conciliation matters

Report on historical use of political contribution refund program

Memorandum regarding legislative recommendations for lobbyist registration and reporting

Memorandum regarding public comments received on 2019 legislative recommendations

Legal report

Findings, conclusions, and order in the matter of the MN Gun Owners PAC, the MN Gun Owners IE Fund, and the Minnesota Gun Owners Support Fund



MINNESOTA CAMPAIGN FINANCE BOARD

Date: September 25, 2019

To: Board Members

From: Megan Engelhardt
Assistant Executive Director

Subject: **Review of guidelines for civil penalties in conciliation matters.**

Board members asked staff to provide possible options for imposing civil penalties in certain circumstances, specifically when a committee has exceeded a contribution limit or accepted a prohibited contribution. When such a violation occurs, the committee must always return the excess and/or improper contribution and, in most cases, is also ordered to pay a separate civil penalty.

Although the Board considers each case on its own merits, many of the violations considered by the Board are very similar. Consequently, the penalties imposed for those violations also are very similar. In recent years, the Board typically has imposed a civil penalty in the amount of the excess and/or improper contribution. The Board has required immediate payment of 25% of the imposed civil penalty and has stayed payment of the remaining 75% of the penalty until the end of the next election segment on the condition that the committee have no similar violations during that time. If the committee has another similar violation, then the outstanding civil penalty is due immediately. If the committee has no other similar violations by the end of the next election segment, the outstanding civil penalty is waived. In situations where the amount of the excess and/or improper contribution was \$50 or less, no part of the civil penalty has been stayed¹.

¹ Minnesota Statutes section 14.045 states factors to be used by agencies when they have discretion over the amount of a fine. Those factors include

(a) If a statute or rule gives an agency discretion over the amount of a fine, the agency must take the following factors into account in determining the amount of the fine:

- (1) the willfulness of the violation;
- (2) the gravity of the violation, including damage to humans, animals, and the natural resources of the state;
- (3) the history of past violations;
- (4) the number of violations;
- (5) the economic benefit gained by the person by allowing or committing the violation; and
- (6) other factors that justice may require.

(b) For a violation after an initial violation, the following factors must be considered in addition to the factors in paragraph (a):

- (1) similarity of previous violations to the current violation to be penalized;
- (2) time elapsed since the last violation;
- (3) number of previous violations; and
- (4) response of the person to the most recent previous violation identified.

Here are some examples that will help illustrate the different options.

Example 1: The Jane Smith for House committee accepted a contribution from an individual in the amount of \$1,200 in 2018. The individual contribution limit for a house candidate was \$1,000. The Jane Smith for House campaign committee did not return the excess \$200 to the individual within 90 days of depositing the check and therefore the contribution was deemed accepted.

Example 2: The John Doe for Senate committee accepted a total of \$8,100 from political committees, political funds, and lobbyists in 2018. The aggregate special source limit for a senate candidate was \$6,600. The John Doe for Senate campaign committee did not return any of the excess \$1,500 to the political committees, political funds, or lobbyists within 90 days and therefore all the contributions were deemed accepted.

Example 3: The Jill Jackson for House committee accepted \$10,300 from political party units and terminating principal campaign committees in 2018. The aggregate political party unit and terminating principal campaign committee contribution limit for a house candidate was \$10,000 in 2018. The Jill Jackson for House committee did not return any of the excess \$300 to the political party units or terminating principal campaign committees within 90 days and therefore all the contributions were deemed accepted.

Example 4: The Mike Anderson for Senate committee accepted \$50 from Bob's Coffee, LLC. The Mike Anderson for Senate committee did not return the \$50 corporate contribution to Bob's Coffee, LLC within 90 days and therefore the contribution was deemed accepted.

Example 5: The Joe Hanson for Governor committee accepted \$1,000 from an unregistered association without obtaining the required disclosure statement. The Joe Hanson for Governor committee did not return any of the \$1,000 contribution to the unregistered association within 90 days and therefore the contribution was deemed accepted.

Example 6: The Anne Williams for House committee accepted \$400 from a registered lobbyist during the session. The Anne Williams for House committee did not return the \$400 contribution to the lobbyist within 90 days and therefore the contribution was deemed accepted.

Option 1: No civil penalty imposed and the excess and/or improper contribution returned. Board staff agree that generally most committees, lobbyists, corporations, and unregistered association have no intent to violate the law and are disappointed to discover a violation. This option would recognize that lack of intent by not imposing a civil penalty but would prevent the candidate committee from benefiting from the excess and/or improper contribution. The option of no civil penalty would only apply to a first violation; any subsequent violations would have a civil penalty.

Example 1: The conciliation agreement for the Jane Smith for House committee requires proof that the committee returned the excess contribution of \$200 to the individual.

Example 2: The conciliation agreement for the John Doe for Senate committee requires proof that the committee returned the excess \$1,500 to the political committees, political funds, and lobbyists.

Example 3: The conciliation agreement for the Jill Jackson for House committee requires proof that the committee returned the excess \$300 to political party units and terminating principal campaign committees.

Example 4: The conciliation agreement for the Mike Anderson for Senate committee requires proof that the committee returned the \$50 to Bob's Coffee, LLC. Bob's Coffee, LLC also has conciliation agreement that agrees to violation.

Example 5: The conciliation agreement for the Joe Hanson for Governor committee requires proof that the committee returned \$800 to the unregistered association. Unregistered association also has conciliation agreement that agrees to violation.

Example 6: The conciliation agreement for the Anne Williams for House committee requires proof that the committee returned \$400 to lobbyist. Lobbyist also has a conciliation agreement that agrees to violation.

Option 2: Civil penalty is one times the excess and/or improper amount and return the excess and/or improper contribution. Although a committee's violation may be unintentional, the committee still has violated Chapter 10A. This option treats all violations equally in that the amount of the civil penalty is exactly the amount of the excess and/or improper contribution.

Example 1: The conciliation agreement for the Jane Smith for House committee requires proof that the committee returned the excess contribution of \$200 to the individual and imposes a civil penalty of \$200. Individual also has conciliation agreement that agrees to imposition of a civil penalty of \$200.

Example 2: The conciliation agreement for the John Doe for Senate committee requires proof that the committee returned the excess \$1,500 to special source contributors and imposes a civil penalty of \$1,500.

Example 3: The conciliation agreement for the Jill Jackson for House committee requires proof that the committee returned the excess \$300 to political party units and terminating principal campaign committees and imposes a civil penalty of \$300.

Example 4: The conciliation agreement for the Mike Anderson for Senate committee requires proof that the committee returned the \$50 to Bob's Coffee, LLC and agrees to a civil penalty of \$50. Bob's Coffee, LLC also has conciliation agreement that agrees to a civil penalty of \$50.

Example 5: The conciliation agreement for the Joe Hanson for Governor committee requires proof that the committee returned \$800 to the unregistered association and agrees to a civil penalty of \$800. Unregistered association also has a conciliation agreement that agrees to a civil penalty of \$800.

Example 6: The conciliation agreement for the Anne Williams for House campaign committee requires proof that the committee returned \$400 to lobbyist and agrees to a civil penalty of \$400. Lobbyist also has a conciliation agreement that agrees to a civil penalty of \$400.

Option 3: Civil penalty is one times the excess and/or improper amount with a minimum payment of \$100 or 25% of the penalty (whichever is greater); remaining 75% of civil penalty stayed; and return excess and/or improper contribution. Option 3 is similar to recent penalties imposed by the Board, but it sets a minimum amount that must be paid to prevent committees with violations involving large contributions from paying less in civil penalties than committees with similar violations involving smaller amounts due to the 75% stay.

Example 1: The conciliation agreement for the Jane Smith for House committee requires proof that the committee returned the excess contribution of \$200 to the individual and imposes a civil penalty of \$200 with \$100 of the civil penalty due immediately and \$100 stayed until January 1,

2023. If the committee has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the committee does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

Individual also has a conciliation agreement that imposes a civil penalty of \$200 with \$100 of the civil penalty due immediately and \$100 stayed until January 1, 2023. If the individual has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the individual does not have another similar violation January 1, 2023, the outstanding civil penalty is waived.

Example 2: The conciliation agreement for the John Doe for Senate committee requires proof that the committee returned the excess \$1,500 to special source contributors and imposes a civil penalty of \$1,500 with \$375 of the civil penalty due immediately and \$1,125 stayed until January 1, 2023. If the committee has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the committee does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

Example 3: The conciliation agreement for the Jill Jackson for House committee requires proof that the committee returned the excess \$300 to political party units and terminating principal campaign committees and imposes a civil penalty of \$300 with \$100 of the civil penalty due immediately and \$200 stayed until January 1, 2023. If the committee has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the committee does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

In this example 25% of the \$300 civil penalty should be \$75; however we are recommending a minimum payment to make sure that a committee with a similar violation but a smaller excess does not pay more than a committee with a larger excess.

Example 4: The conciliation agreement for the Mike Anderson for Senate committee requires proof that the committee returned the \$50 to Bob's Coffee, LLC and imposes a civil penalty of \$50. Bob's Coffee, LLC also has conciliation agreement that imposes a civil penalty of \$50.

In this example, there is no stay of a portion of the civil penalty because the civil penalty of \$50 is less than the minimum payment.

Example 5: The conciliation agreement for the Joe Hanson for Governor committee requires proof that the committee returned \$800 to the unregistered association and imposes a civil penalty of \$800 with \$200 of the civil penalty due immediately and \$600 stayed until January 1, 2023. If the committee has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the committee does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

The unregistered association also has a conciliation agreement that imposes a civil penalty of \$800 with \$200 of the civil penalty due immediately and \$600 stayed until January 1, 2023. If the unregistered association has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the unregistered association does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

Example 6: The conciliation agreement for the Anne Williams for House committee requires proof that the committee returned \$400 to lobbyist and imposes a civil penalty of \$400 with \$100 of the civil penalty due immediately and \$300 stayed until January 1, 2023. If the committee has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately.

If the committee does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

Lobbyist also has a conciliation agreement that imposes a civil penalty of \$400 with \$100 of the civil penalty due immediately and \$300 stayed until January 1, 2023. If the lobbyist has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the lobbyist does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

Conclusion and action

Staff requests that the Board provide guidance on which approach to use with conciliation agreements starting with violations that occur in 2019.

**Review of the Political Contribution Refund Program
During the Years 2002 - 2018**



**Prepared by the
Campaign Finance and Public Disclosure Board
September 25, 2019**

Administration of PCR Program

The political contribution refund (PCR) program is administered by the Department of Revenue as provided in Minnesota Statutes section 290.06. The program provides that an eligible Minnesota voter who contributes to a candidate who has signed the public subsidy agreement, or to a major or minor political party unit, may apply for a refund from the Department of Revenue. The maximum amount that may be refunded in a calendar year is \$50 per person, or \$100 per married couple. To apply for a refund the donor must submit a PCR receipt issued by a candidate or party unit, and a Department of Revenue application on which the donor must provide a social security number. The Department of Revenue tracks refund requests by social security number so that no individual receives more than a \$50 refund in a calendar year.

The Campaign Finance Board provides a computer file that lists all candidate committees that have a current public subsidy agreement on file and all political party units registered with the Board. The Department of Revenue uses that information to verify that the donor gave to a candidate or party unit eligible to issue a PCR receipt. The Board also provides paper PCR receipts to eligible candidates and party units and has developed the Campaign Finance Reporter software so that the software can be used to generate a PCR receipt.

In August of each year the Department of Revenue sends a file to the Board that provides the number of PCR refunds, and the total value of the refunds, issued to donors in the prior calendar year. The file provides the refund totals by candidate committee and by political party unit. The Board converts the file contents into reports which are posted on the Board's website at <https://cfb.mn.gov/citizen-resources/board-programs/public-subsidy-of-campaigns/historical-use-of-public-subsidy-program/>. On the website there are separate reports for candidates and party units for the years 2013 through 2018.

The Board also compares the PCR refunds issued for contributions to candidates and political party units to the contributions disclosed on the reports of receipts and expenditures filed with the Board. The comparison is used to verify that the value of the refunds issued to contributors to a committee or party unit do not exceed the contributions reported as received by that same committee or party unit.

History and Status of the PCR Program

The PCR program was initiated in 1990. The program is funded through the general fund of the state. It is not funded through the political party check-off on state income tax and property tax forms.

The PCR program has not always been funded. In 2009 then Governor Pawlenty used an unallotment of funds to balance a budget deficit. Among the programs that lost funding was the PCR program. Contributions received after June 30, 2009, were not eligible for refunds. The statutory language in Chapter 290 authorizing the program remained in place, but the program was unfunded during the following FY 2012 – 2013 biennium. The program was funded for the FY 2014 – 2015 biennium, but was not funded for the FY 2016 – 2017 biennium. The program was funded again for the FY 2018 – 2019 biennium, and is currently funded for FY 2020 – 2021. In total, the PCR program was not funded for contributions received in the last six months of 2009, all of calendar years 2010, 2011, 2012, and 2016, and the first six months of 2013, 2015, and 2017.

PCR Refunds Issued by Candidates

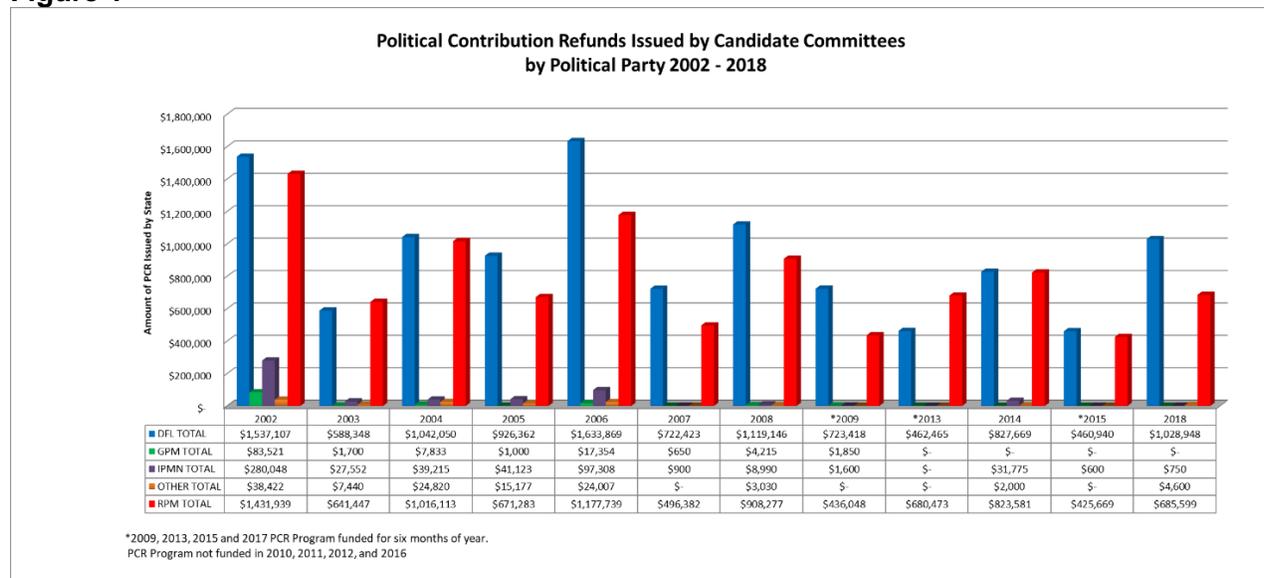
Total refunds

From 2002 through 2018 about \$77,857,000 in cash contributions was donated by individuals to candidates who signed the public subsidy agreement. Based on those contributions, the Department of Revenue paid \$22,274,373 in PCR refunds to donors. The total amount of the refunds equals about 29% of the total amount donated by individuals to eligible candidate committees.

Refunds for donations to candidate committees by political party

As shown in **Figure 1**, the vast majority of refunds issued for contributions made to candidate committees were for contributions to candidates with the Democratic-Farmer-Labor (DFL) or Republican Party of Minnesota (RPM) parties. In ten of the twelve years, the total of the refunds issued for donations to DFL candidates was higher than the total issued for donations to RPM candidates. RPM donors received more PCR refunds in 2003 and 2013, and in 2014 the difference between the total refunds issued to donors to candidates of the two parties was only about \$4,000.

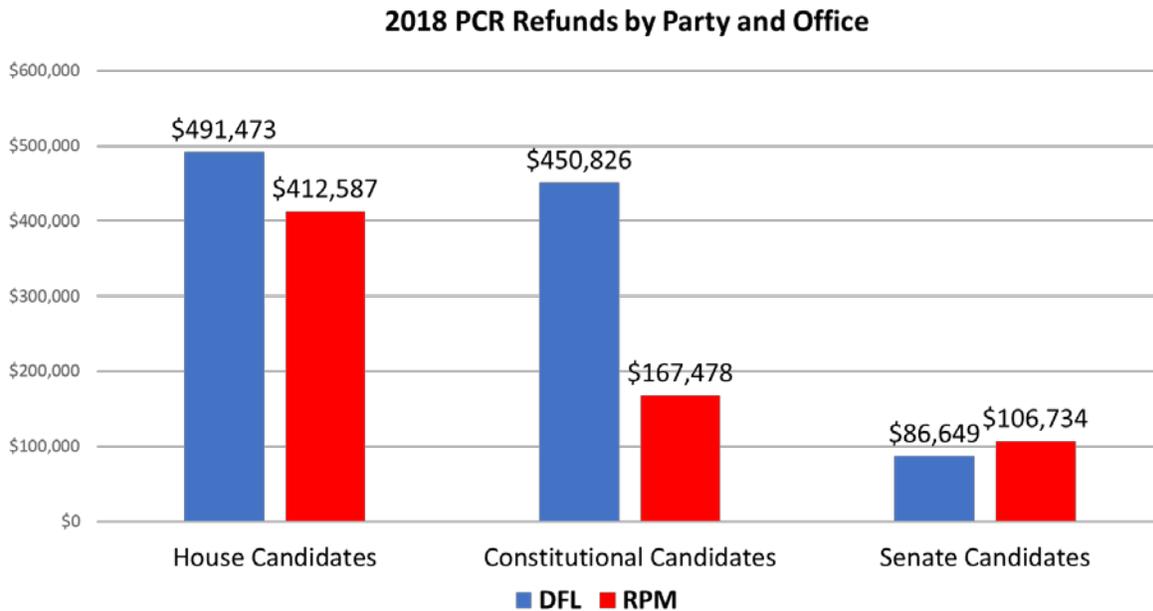
Figure 1



2018 refunds for donations to candidate committees by office

As shown in Figure 1, donors to DFL candidates were refunded about \$343,000 more than donors to RPM candidates in 2018. The majority of the difference in PCR refunds issued to DFL and RPM candidate donors occurred because of the disparity in refunds issued to contributors to candidates for constitutional office. As shown in **Figure 2**, donors to RPM House candidates received refunds equal to 84% of the total issued to donors to DFL House candidates. In contrast, donors to RPM constitutional candidates received refunds equal to only 37% of the total refunds issued to donors to DFL constitutional candidates. Senate candidates were not on the ballot in 2018, so the total refunds issued for donations to Senate candidates is much smaller. Of note, donors to RPM senate committees received more refunds than donors to DFL senate committees in 2018.

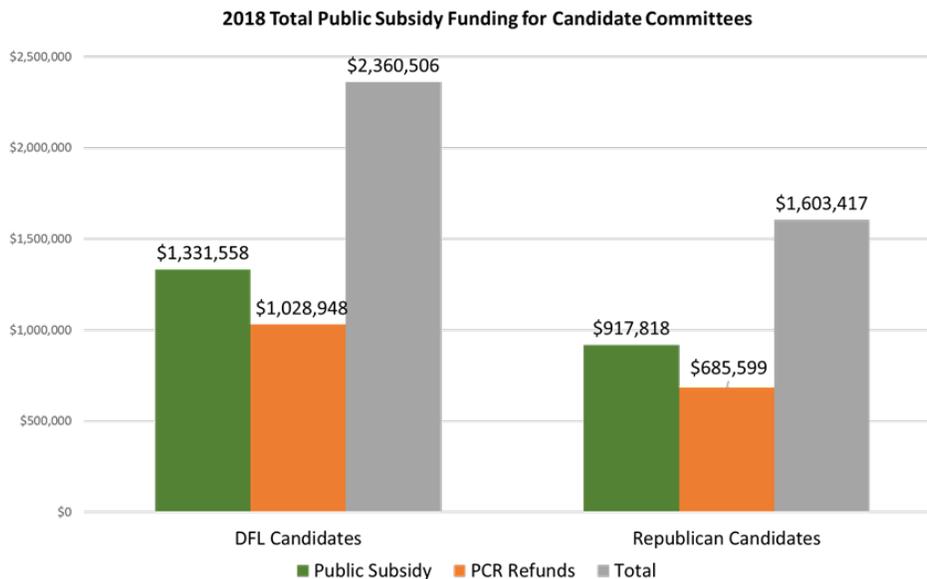
Figure 2



PCR program in relation to total public subsidy payments to candidates in 2018

Use of the PCR program to encourage contributions to a candidate’s committee is only one benefit of the public subsidy offered to candidates for state-level office in Minnesota. Candidates who sign the public subsidy agreement are eligible to immediately issue PCR receipts to contributors, and if they qualify, will also receive a direct public subsidy payment. If added together, refunds to candidate committee contributors and public subsidy payments to candidate committees equal the cost of the public subsidy program for candidates. In 2018 the total cost to the state was \$3,963,923. In **Figure 3**, the total public subsidy funding to candidate committees by political party in 2018 is shown.

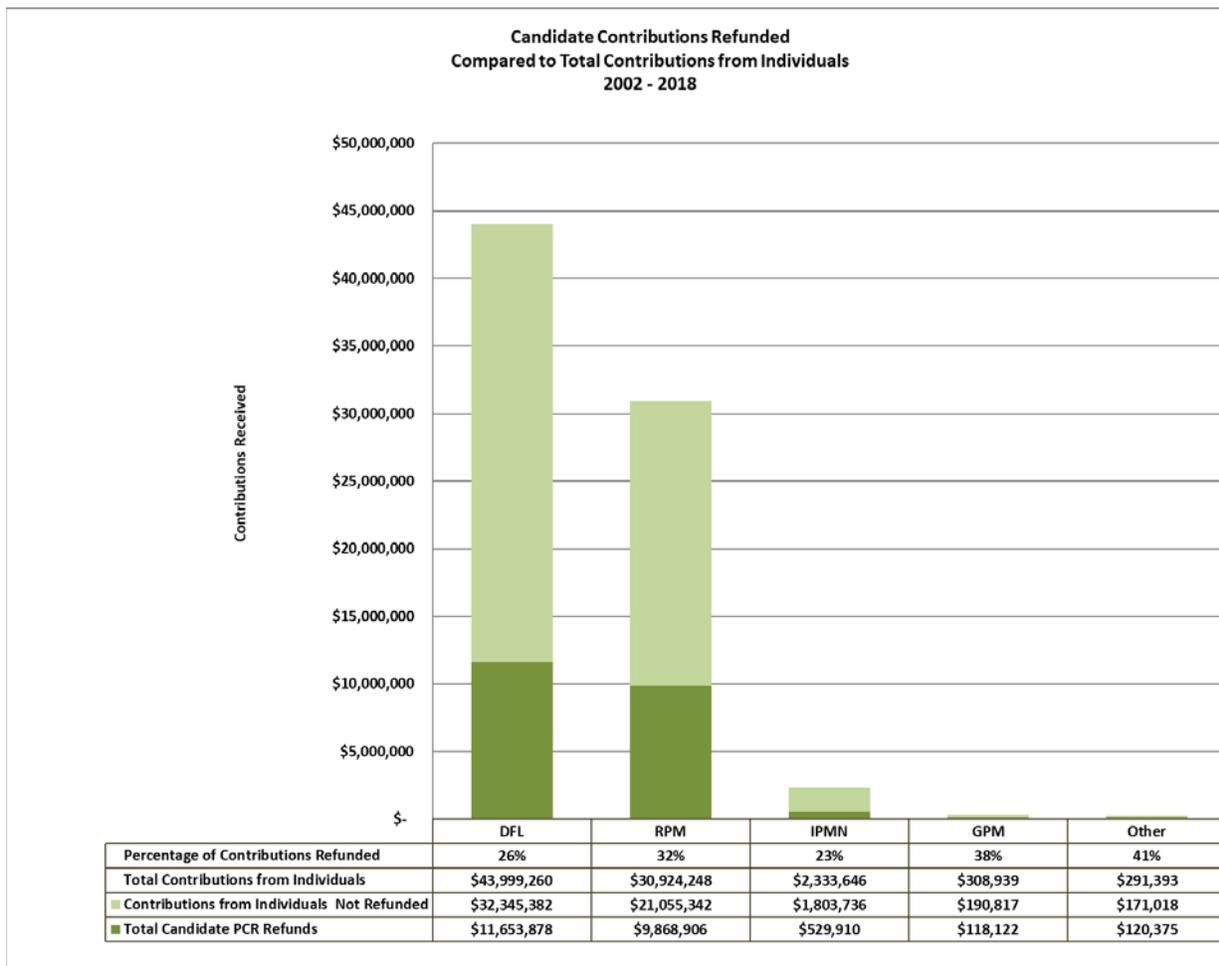
Figure 3



Percentage of individual contributions refunded by PCR program

In **Figure 4** the total contributions from individuals to candidates who signed the public subsidy agreement are grouped by party and compared to the amount refunded through the PCR program to donors of those candidates. Although the total value of contributions to DFL candidates refunded through the PCR program is higher than the amount refunded for contributions to RPM candidates, the percentage of contributions refunded is actually higher for RPM candidates. The individual donors to RPM candidates were refunded 32% of the total amount contributed, compared to 26% of the amount contributed to DFL candidates. Although the total amount of dollars involved is much smaller for minor party candidates, the PCR program is still used for a significant portion of the contributions received. The Green Party of Minnesota (GPM) candidate donors were refunded 38%, and Independence Party of Minnesota (IPMN) candidate donors were refunded 23%, of the total contributed. When averaged together, individual contributors to candidates with the Libertarian Party of Minnesota, Legal Marijuana Now Party, and Grassroots-Legalize Cannabis Party were refunded 41% of the total amount contributed.

Figure 4

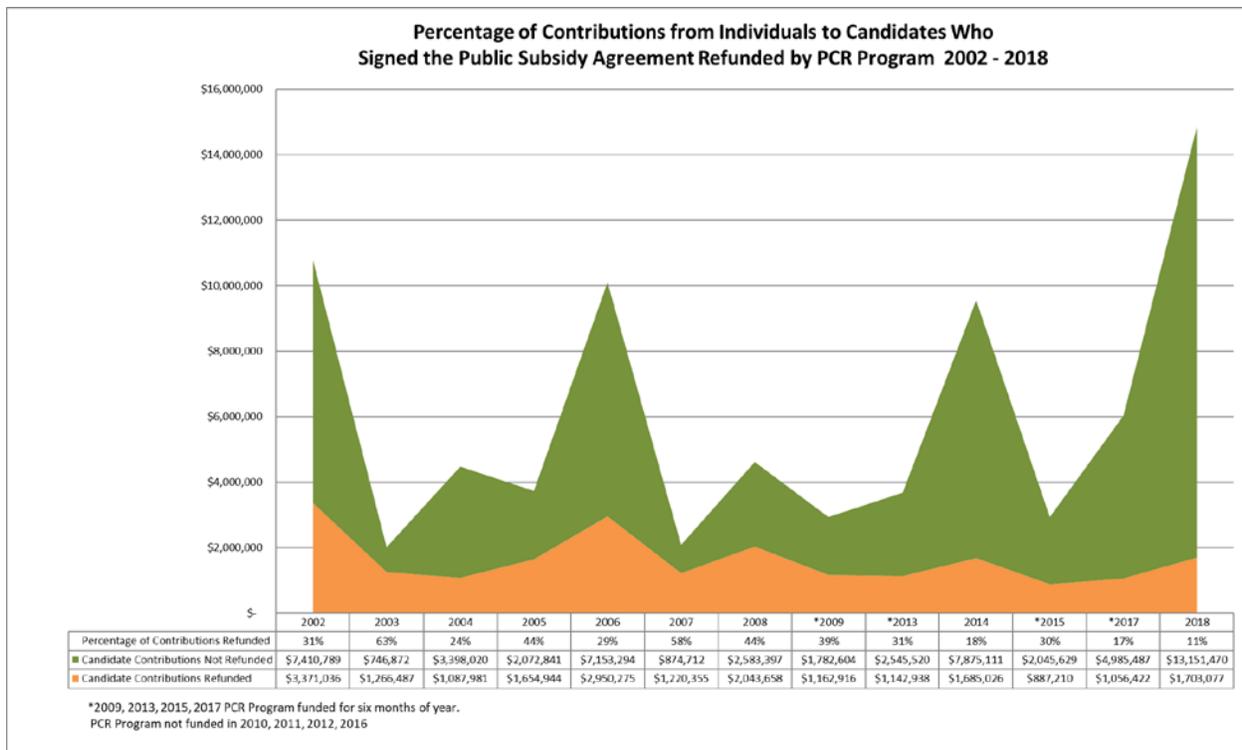


Use of PCR program during non-election and election years

The percentage of donations to candidates that are refunded through the PCR program also varies significantly when comparing election years to non-election years. In **Figure 5** the taller spikes in the graph correspond to election years when the total amount raised by candidates (and the total amount of contributions refunded) increases dramatically compared to non-election years. However, the percentage of contributions refunded through the PCR program is higher in non-election years. This may indicate that the PCR program is used more consistently by contributors who are involved with the political process and who are aware of the program, and less consistently by contributors who only contribute during an election year when there is greater interest from the public. For example, 63% of contributions were refunded in 2003, and then in the election year 2004, about 24% of contributions from individuals were refunded. A similar pattern is seen in the non-election year 2005, during which 44% of contributions were refunded, followed by 29% refunded in 2006. This pattern continues through 2013 (the PCR program was funded for only six months in 2013) in which 31% of contributions were refunded, followed by 18% in the election year 2014, and again in 2017 (the PCR program was funded for only 6 months) when 17% of contributions were refunded, followed by 11% during the election year 2018.

Of note, **Figure 5** also shows that the total amount refunded through the PCR program for contributions to candidates has generally been in decline over the life of the program. In 2002, a little over \$3,371,000 in refunds were issued to candidate contributors, compared to about \$1,703,000 in 2018.

Figure 5

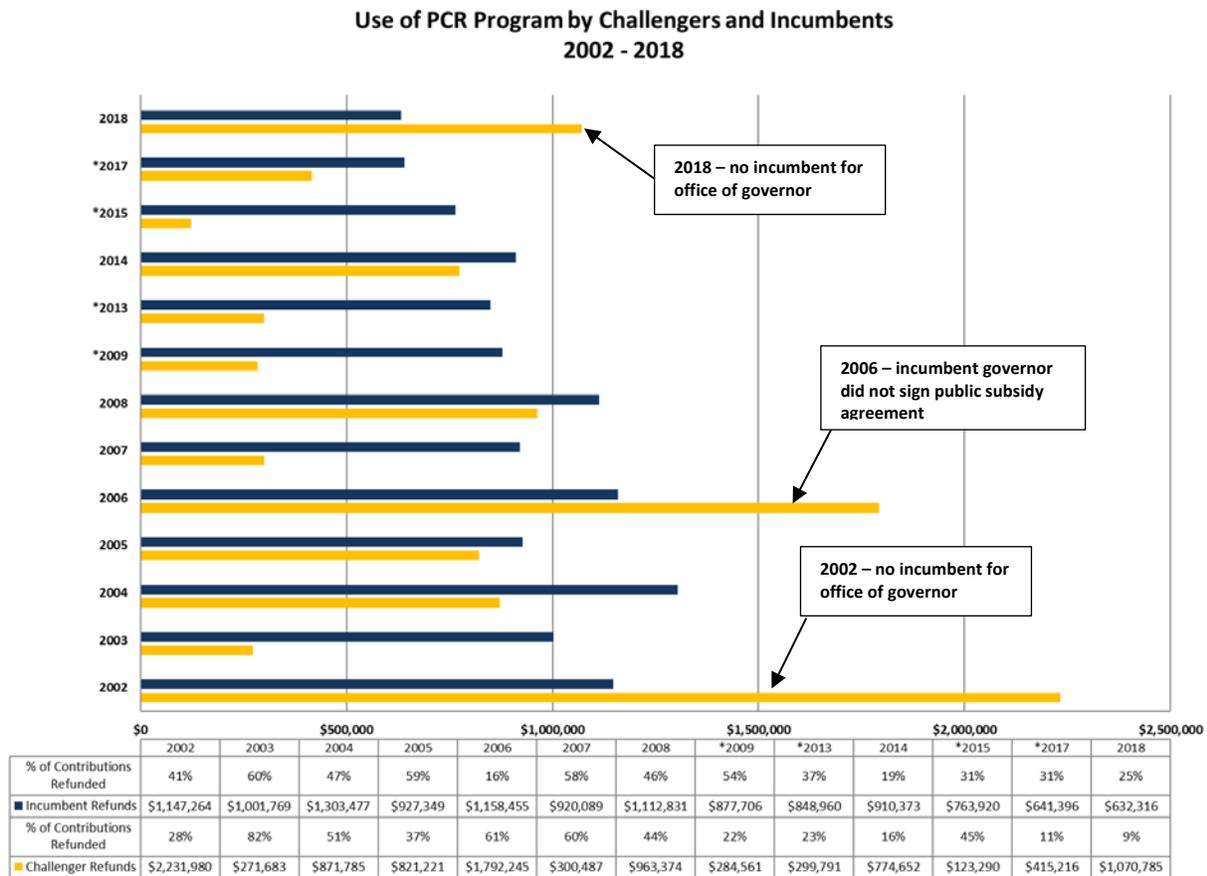


Use of PCR program by incumbents and challengers

In **Figure 6** the refunds for donations made to challengers is compared to refunds for donations made to incumbents for the years 2002 - 2018. In total, about \$12,245,000 in refunds have been issued for donations made to candidates who are incumbent office holders, and about \$10,221,000 in refunds have been issued for donations made to candidates who are challengers.

These totals are somewhat skewed because of three gubernatorial elections. In 2002, 2006, and 2018, it appears that refunds to non-incumbent candidate donors greatly exceeded refunds to incumbent candidate donors. However, in 2002 and 2018 the incumbent governor did not run for reelection, which for the purpose of this graph made all donations to gubernatorial candidates in those years donations to a “challenger.” In 2006 then Governor Pawlenty did not sign the public subsidy agreement so his committee could not issue PCR receipts during his reelection campaign. Therefore, during that election only challengers to Governor Pawlenty were able to issue a PCR receipt. If you exclude those three years as anomalies the total amount of refunds issued for donations to incumbent candidates is about \$9,307,000, and the total refunds issued for donations to challengers is about \$5,126,000.

Figure 6



*2009, 2013, 2015, 2017 PCR Program funded for six months of year.
PCR Program not funded in 2010, 2011, 2012, 2016

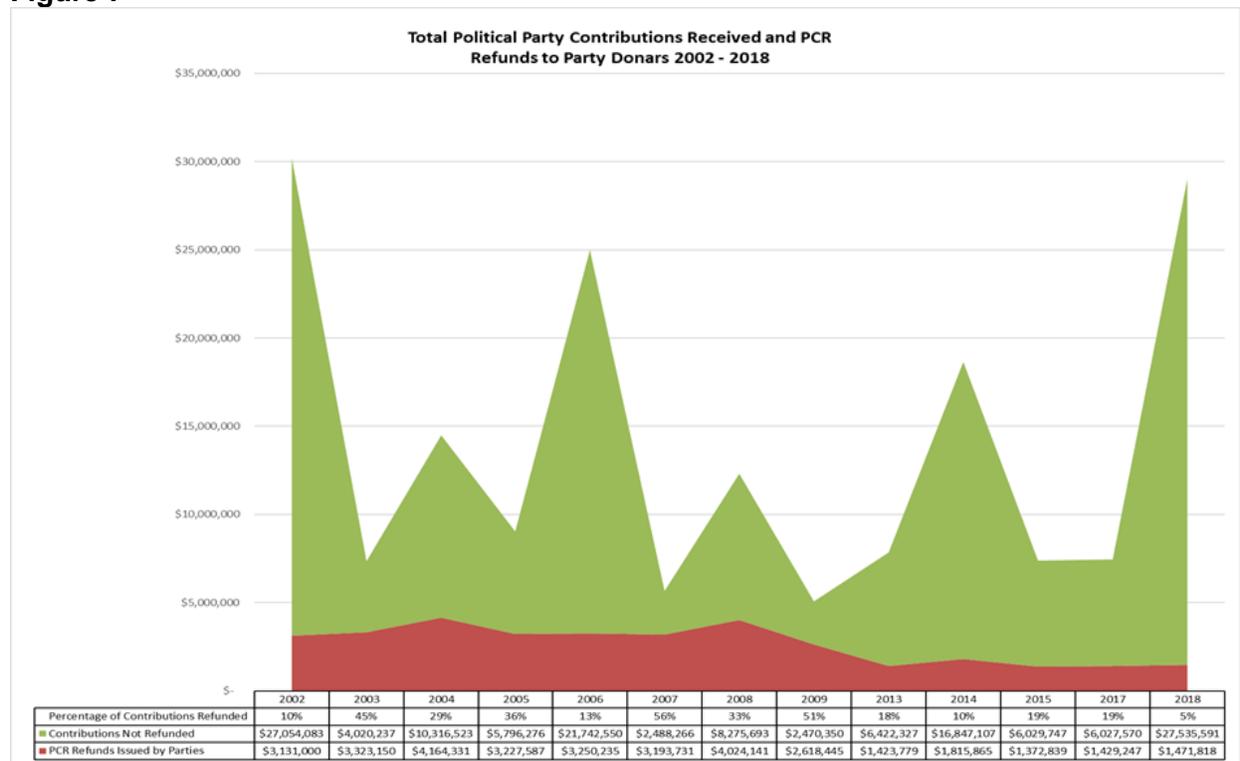
PCR Refunds Issued by Political Parties

Total PCR refunds issued relative to total political party contributions

During the years 2002 through 2018 the total of PCR refunds to political party donors was \$34,452,178, compared to \$22,274,373 refunded for donations to candidate committees. In **Figure 7** the total of refunds issued to political party donors is compared to the total of contributions received by party units during the years 2002 - 2018. Unlike candidate committees, political party units do not separate donations from individuals on reports filed with the Board. The total contributions reported and shown on the graph below include not only contributions from individuals, but contributions from political committees and funds, unregistered associations, and other party units. Only individuals are eligible for a PCR refund. Therefore, the comparison of PCR refunds to total donations received shows only the relative importance of the PCR program compared to total funds raised by political parties. In contrast, the charts for candidate committees show the percentage of individuals who donate to a candidate committee that received a PCR refund.

The spikes in total contributions raised by party units correspond to election years in which the office of governor was on the ballot. The percentage of total contributions received by party units that resulted in a PCR refund topped out in 2007 and 2009 when over 50% of the contribution total was refunded. When the PCR program was funded again in 2013 the percentage was in the low teens until 2018. In 2018, only about 5% of the total contributions raised by party units resulted in a PCR refund.

Figure 7



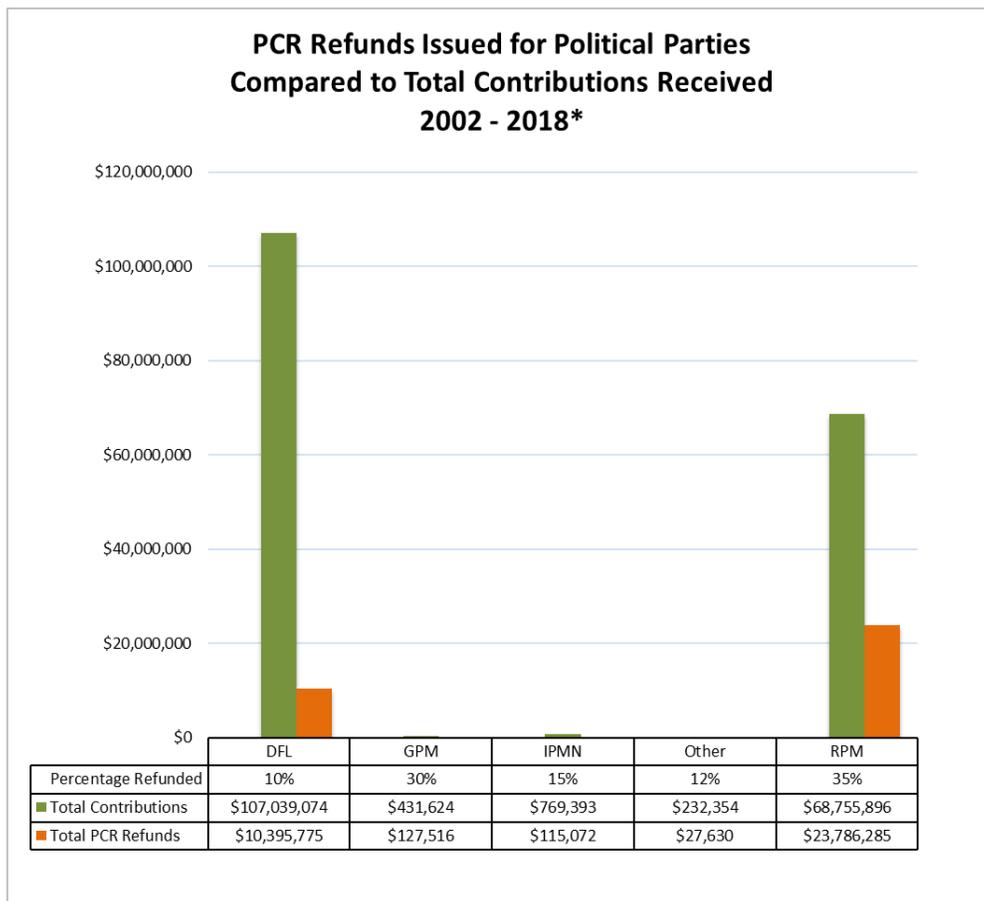
2010, 2011, 2012, and 2016 are not included in the time line because the PCR program was not funded for those years

Use of PCR program by specific political parties

During the years 2002 through 2018 donors to RPM party units received \$23,786,285 in PCR refunds, compared to \$10,395,775 refunded for donations to DFL party units. The relative importance of contributions refunded through the PCR program to selected parties is illustrated in **Figure 8** by comparing total contributions received to those refunded to contributors via PCR refunds. The PCR refunds issued for contributions raised by RPM party units was equal to about 35% of the total funds raised by the party. By comparison, PCR refunds were issued for about 10% of the total contributions raised by DFL party units.

Although the total of PCR refunds issued to donors of other political parties was in comparison much smaller than the amounts issued to DFL and RPM donors, the program nonetheless is actively used by all registered parties. In particular, IPMN donors received refunds for about 15% of the total contributions raised by the party, and GPM donors received refunds for about 30% of the contributions received by the party.

Figure 8

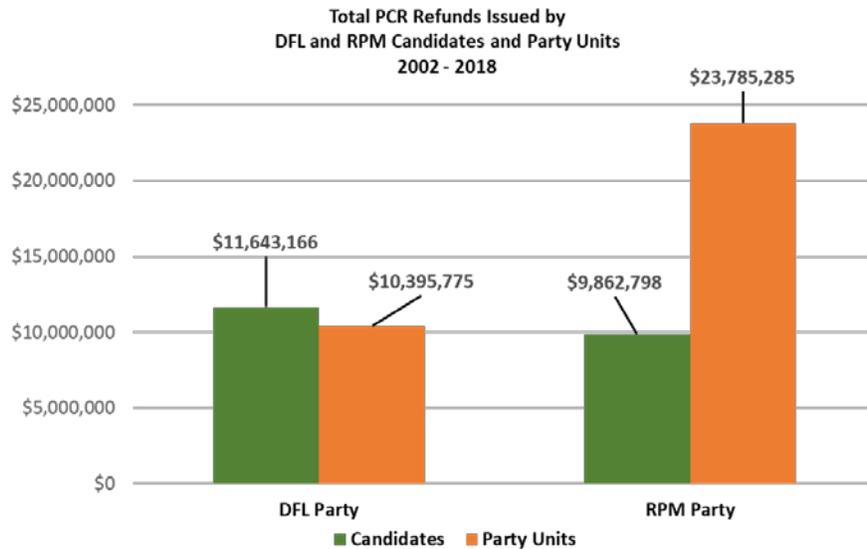


*Total contributions do not include 2010, 2011, 2012, and 2016, which are years in which the PCR program was not funded.

Total PCR refunds for RPM and DFL candidates and party units 2002 - 2018

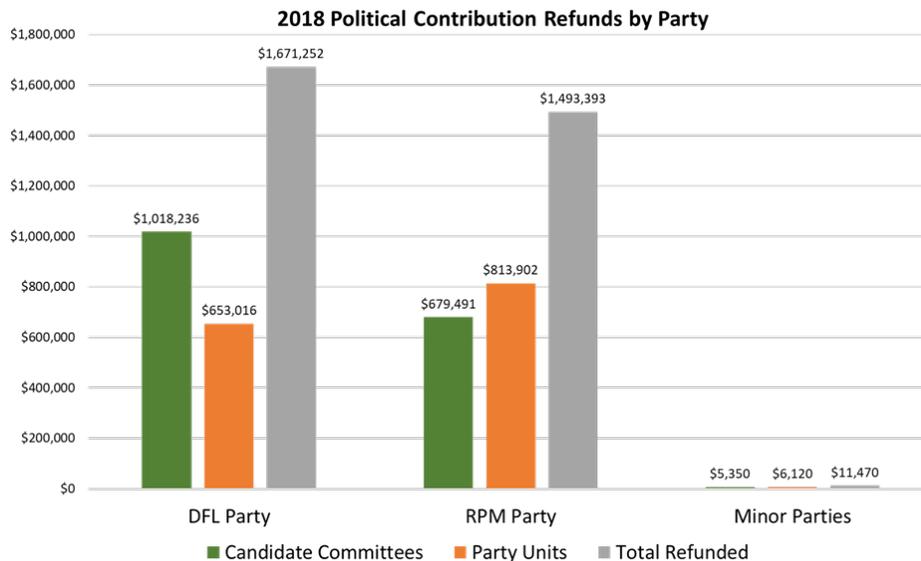
In **Figure 9** the refunds paid to donors to RPM and DFL candidate committees are compared to the refunds paid to donors to RPM and DFL political party units during the years 2002 - 2018. Combined, donors to RPM candidate committees and party units were refunded \$33,648,083. In comparison, donors to DFL candidate committees and party units were refunded \$22,038,941.

Figure 9



While historically RPM donors have received more refunds than DFL donors, 2018 did not follow that trend. In 2018, donors to DFL candidate committees and party units were refunded about \$180,000 more than donors to RPM candidate committees and party units. As shown in **Figure 10**, the disparity in refunds for donations to DFL candidate committees compared to RPM candidate committees explains why 2018 is an outlier.

Figure 10





MINNESOTA CAMPAIGN FINANCE BOARD

Date: September 25, 2019

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: **Possible legislative proposals for lobbying program**

The Board's mission is, in part, to promote public confidence in state government decision-making. This is a shared goal for the campaign finance, economic interest, and lobbying programs. After years of administering the lobbyist registration and disclosure statutes I have concluded that the disclosure information required by statute is both limited to financial information and focused on reporting details that do not help the public understand the relationship between lobbyists and the making of public policy. Indeed, because the current lobbying expenditure information is provided to the Board without context related to the public decisions of concern to the lobbyist, this disclosure may even promote the false narrative that those lobbying disbursements are just a big pot of money thrown at elected officials, which fuels public cynicism of government decision making.

For example, lobbyists file two periodic reports of disbursements. The first covers the period of January 1 through May 31, the second June 1 through December 31. A report is filed for each client represented. The reports disclose disbursements made by lobbyists on behalf of the associations that they represent.¹ The disbursements are provided in nine separate categories, further delineated by whether the expenditure was to influence legislative, administrative, or metropolitan government official actions. The majority of the disbursement categories are provided in statute, and then expanded on in administrative rule. They include the amount spent on postage, telephone and telegraph bills, travel, and administrative overhead. A contract lobbyist who represents more than one client will need to estimate the percentage of each category spent to represent each registered client. I am unsure of the meaningful disclosure gained from knowing the cost of a lobbyist's cell phone plan, much less from a calculation that splits the cost of the plan among multiple clients.

The disbursement reports are also clearly an incomplete view of the money spent to lobby in Minnesota. Lobbyists are not required to disclose their compensation for lobbying on behalf of the client. The compensation paid to lobbyists is included in the annual lobbyist principal report, which is filed in March. The principal report provides a single number for all lobbying disbursements made on the principal's behalf by lobbyists, in other words the total of the disbursements already reported on the lobbyist disbursement reports, and the compensation paid to lobbyists. The difference between the disbursements reported by the lobbyists and the total for lobbying reported by the principals can be stark. For example, in 2018, total lobbying

¹ The designated lobbyist for a principal or employer also reports the disbursements made directly by the principal or employer.

disbursements reported by lobbyists came to \$9,570,158. In contrast, principals reported that they spent \$78,757,615 to lobby in Minnesota in 2018. In 2018, there were 4,202 lobbyist disbursement reports filed, all of which are available for viewing on the Board's website. However, because the lobbyist disbursement categories are mostly of marginal use or interest, and because the principal reports are clearly a more complete picture of total lobbying expenditures, the media rarely cover the release of the lobbying disbursement reports.

In contrast, the release of the lobbyist principal reports in March is of interest to the media, and by extension, appears to be of interest to the public. That is generally a good thing for public disclosure. However, as noted, principals report only a lump sum number. There is no information on either the lobbyist disbursement reports, or the principal reports, on the bills, ordinances, or administrative actions that were of interest to the principal during the reporting period. Therefore, there is little analysis that can be done with the information in the principal report except to measure total spending over time, and perhaps identify the top ten spenders on lobbying for the year. Deeper analysis, for example, on the specific legislation of interest to the principal, or to a group of principals with shared interests, is not possible. If the only disclosure available is about lobbying money, then it shouldn't be a surprise that the public concludes that lobbying is all about the money.

I have provided my view on the current state on lobbying disclosure in Minnesota to support the changes that I ask the Board to consider. These changes are in four areas; the information provided on lobbying subjects when the lobbyist registers, the information provided on the lobbyist disbursement reports, the information provided on the lobbyist principal reports, and the threshold of personal expenditures that require an individual to register with the Board. The recommendations attempt to provide more meaningful disclosure by leveraging what the lobbyist knows best, namely what the lobbyist was working on for the principal during the reporting period, and by using what the principal knows best, namely the total expenditures made by the principal in Minnesota.

Registration

A lobbyist registers on behalf of each principal or association represented. At the time of registration, the lobbyist is required to provide a general description of the subjects on which the lobbyist expects to lobby. In concept that is fine. In practice the descriptions are either too broad (it got to the point that staff had to put "general legislation is not a subject" on the registration form) or so specific that it is difficult to use the information to categorize the association represented. For example, the lobbyist database currently contains 2,326 distinct lobbying subjects provided at time of registration. In order for the public to understand or research the interests of the 1,449 associations currently represented by lobbyists, the list of subject areas needs some standards. The draft language replaces the current open subject line with a two-step approach. The lobbyist will first select one or more general lobbying categories from a list developed and maintained by the Board. Second, for each general lobbying category the lobbyist will provide one or more specific subjects of interest. The specific subject of interest is an open field, the Board would not provide a list to choose from. Here are some possible examples of what this could look like:

General Category (from Board list)

- 1.) Education
- 2.) Civil Law
- 3.) Taxes
- 4.) Energy

Specific Subject of Interest (from lobbyist)

- 1.) Charter Schools
- 2.) Tort Reform
- 3.) Commercial Property Tax
- 4.) Wind power

This approach would allow the Board to index principals and lobbyists by general category, and to some extent by specific subject. This would make it possible to search for all principals interested in a general category, and relate that interest to lobbying expenditures and other principals with similar interests. Development of the list of general categories would be done in consultation with lobbyists so as to avoid obvious omissions. The specific subject of interest for lobbying would be too dynamic for a static list, and would best be described by the lobbyist.

Lobbyist Reporting

A lobbyist reports for every principal or association represented, however, many lobbyists delegate the reporting requirement to another lobbyist. In addition, each principal or association must be represented by a designated lobbyist who reports the lobbying disbursements made directly by the principal or association. As mentioned earlier the disbursements are attributed to one of three lobbying types: legislative, administrative, and metropolitan governmental unit. The use of reporting lobbyists and designated lobbyists is not changed under the recommendations.

With one exception that applies only to the designated lobbyist, the recommendations will end the disclosure of lobbying disbursements by lobbyists. Instead, lobbyists will identify for each type of lobbying the official actions that were lobbied on during the reporting period but only if the effort on the official action represented at least 10% of the lobbying effort on behalf of the principal. Additionally, lobbying on a matter before the Public Utilities Commission, which is currently reported as administrative lobbying, is recognized as a separate type of lobbying. Finally, for administrative lobbying and lobbying of metropolitan governmental units, the lobbyist will also identify the specific state agency or metropolitan governmental unit that is the subject of the lobbying.

Here are some examples to make this clearer. In example 1, the lobbyist only does legislative lobbying, and had only three bills that each met the threshold of 10% of the lobbying effort on behalf of the principal. The report would list the three bills (if there is a companion bill the report will show both numbers) and the reasonable, good faith estimate of the percentage of effort placed on each bill.

Example 1:

Legislation	Percentage
SF 2009/HF 1344	40%
SF 1200/HF 1003	35%
HF 200	20%

Note that the total does not equal 100%. There were several other bills that the lobbyist was monitoring or may have even directly lobbied on, but none of those bills must be included on the report because the time spent lobbying on each of them was less than 10% of the total effort for the principal.

In example 2, the lobbyist is active in the legislature and this year is also lobbying a metropolitan governmental unit. Again, the totals do not need to total 100%.

Example 2:

Legislation SF 1222/HF3000	Percentage 40%	
Metropolitan Gov Unit Minneapolis	Official Action City Ordinance 77B	Percentage 30%

The “reasonable, good faith estimate” is a standard used with success for reporting some lobbying information in Wisconsin. The standard relies, as does the current reporting of disbursements, on the integrity of lobbyists to provide accurate reports of lobbying activity on behalf of their clients.

As noted above, the designated lobbyist currently reports expenditures made directly by the principal. Under the recommendations the designated lobbyist will continue to report paid advertising by the principal that urges the public to contact public or local officials to influence official action on an issue if the advertising costs more than \$2,000 during the reporting period. Asking the public to contact a public official on an issue is a type of grassroots lobbying, and under current statute is included in the lobbyist disbursement report. However, there is no itemization of the advertising costs or purpose of the advertisement, as you would find for example in a campaign finance report. I believe there is public interest in advertising campaigns for lobbying, especially when the public is the target of the advertising. The disclosure is triggered by a fairly high threshold of over \$2,000, but the disclosure will include the cost of the advertisement, information on the vendor, a description of the advertising purchased (for example, radio advertisements), and the specific lobbying subject of interest for the advertisement (for example, gas tax).

Attached are both the current lobbyist disbursement report, and a rough draft of a report that reflects the proposed changes. The changes are found in schedules A and F.

Principal Reporting

Currently principals report two lobbying expenditure amounts; the amount spent to influence rate setting, power plant and powerline siting, and granting of certificates of need by the Public Utilities Commission, and the amount spent on all other types of lobbying. The amount spent may be rounded to the nearest \$20,000.

The recommendations require total spending to be reported for each of the four types of lobbying; legislative, metropolitan governmental unit, administrative, and Public Utilities Commission. The amount spent may be rounded to the nearest \$10,000, so as to provide greater accuracy on the amount of lobbying disbursements, and to also capture smaller lobbying expenditures that are missed by the \$20,000 threshold.

Citizen Lobbyist Registration

The Board was addressed at the June 26, 2019, meeting by Kim Pettman, who is registered as a lobbyist with the Board. Ms. Pettman is registered to represent herself, and advocates on a number of issues. Ms. Pettman asked the Board to consider a two-tiered reporting system for lobbyists that would exclude individuals that are registered to represent themselves.

I considered that approach, but from a policy standpoint I was unable to find a reason why any registered lobbyist should be excluded from reporting subjects of interest and lobbying efforts. Currently an individual may need to register as a lobbyist, even if they are not compensated and

are representing only themselves, if they spend more than \$250 of their own money on lobbying efforts. That is a fairly low expenditure threshold, which is inconsistent with the current requirement that an individual register as a lobbyist if they are paid more than \$3,000 a year for lobbying. The recommendation raises the threshold for registration for individuals who are spending their own money for lobbying to more than \$3,000, so that the same threshold is used to trigger registration.

Attachments

Legislative recommendations on lobbying

Current designated lobbyist report and mock up of report with recommended changes

Current principal report and mock up of report with recommended changes



MINNESOTA CAMPAIGN FINANCE BOARD

Date: September 25, 2019

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Review of 2019 Legislative Recommendations

The Board reviewed the 2019 legislative recommendations at the September meeting, and requested that staff solicit public input on the recommendations. Staff sent emails requesting comments to everyone on the Board's meeting notice, rulemaking, campaign finance, lobbying and general information Lists, and posted the request on the Board's website homepage. Staff received comments from both individuals and organizations. Those comments are attached for your review.

Also attached to this memo are the 2019 legislative recommendations with accompanying draft statutory language changes. This is the same information provided to members at the September meeting. The recommendations are grouped by program area, and technical changes are listed separately from policy recommendations.

I would recommend that the Board use this meeting and the November meeting to identify which, if any, of the proposals should be brought forward again at the 2020 legislative session. That would still leave most of November and December to arrange meetings with legislators to discuss the proposals and hopefully identify legislators from both parties who would be willing to author a bill carrying the proposals.

Attachments

Public comments on recommendations
2019 legislative recommendations

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
October 2019**

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Chilah Brown Michele Berger	Brown (Chilah) for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures Unpaid late filing fee on 10/31/16 Pre- General Election Report	\$1,000 LF \$1,000 CP \$50 LF	3/6/18	8/10/18			Board is working on the matter. Placed on hold.
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16	5/26/17			Personal Service Requested 9/18/19
Katy Humphrey, Kelli Latuska	Duluth DFL	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	3/6/18	8/10/18			Board is working on the matter. Placed on hold. 3/5/19
Christopher John Meyer	Meyer for Minnesota	Fees and Penalty for late filing of 2016 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			Personal Service Requested 9/19/19

