



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** January 10, 2020

**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.<sup>1</sup> 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

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<sup>1</sup> 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**

Under current statute, 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 be left open so that any new specific subject can be added by a lobbyist.

### **Lobbyist Reporting**

Under current statute a lobbyist reports for every principal or association represented. As an option, a lobbyist may delegate the reporting requirement to another lobbyist registered with the principal. In addition, each principal or association must name a designated lobbyist who reports the lobbying disbursements made directly by the principal. As mentioned earlier the disbursements, which focus on costs related to lobbying like cellphone bills and other administrative overhead, are attributed to one of three types of lobbying: legislative, administrative, or metropolitan governmental unit. The use of reporting lobbyists and designated lobbyists is not changed under the recommendations.

Under the proposal lobbyists no longer report disbursements related to lobbying (with one exception that will be detailed later in the memo). Instead, lobbyists will identify, for each type of lobbying, the actions that were lobbied on during the reporting period but only if the effort on the action represented at least 25% 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.

In determining if a lobbying effort meets the 25% threshold for reporting the lobbyists are required to use a "reasonable, good faith estimate" of the efforts made on behalf of the principal. This 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.

Here are some examples to make this proposal more clear. In Example 1, the lobbyist only does legislative lobbying, and had only three bills that each met the threshold of 25% or more of the lobbying effort on behalf of the principal. The lobbyist's report would list the three bills by number. If there is a companion bill the report will show both numbers. If the bill is an omnibus bill the lobbyist would list both the bill number and the section(s) of the bill lobbied on (in this example HF 2000 is an omnibus bill).

#### **Example 1:**

##### **Legislative Lobbying**

SF 2009/HF 1344

SF 1200/HF 1003

HF 2000 (Section 47)

Note that in this example there were several other bills that the lobbyist was monitoring, or perhaps 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 25% of the total effort for the principal.

In Example 2, the lobbyist is active in the legislature and this reporting period is also making a significant lobbying effort in Minneapolis. The report lists the two legislative bills that met the 25% threshold under legislative lobbying, and under the metropolitan government lobbying category lists the particular city and the action that also met the 25% of effort threshold, in this case a city ordinance.

**Example 2:**

**Legislative Lobbying**

SF 1222/HF3000

SF 1800

**Metropolitan Government Lobbying**

Minneapolis

**Official Action**

City Ordinance 77B

In Example 3, the lobbyist is representing the principal on a subject before the legislature, but that subject has not yet been introduced as a bill. The lobbyist is also attempting to influence the content of an administrative rule that is in the process of adoption by a state agency. Both efforts represent 25% or more of the lobbying effort for the principal. Because there is no introduced legislation the lobbyist reports a specific subject of interest under legislative lobbying.

**Example 3:**

**Legislative Lobbying**

Regulation of Game Farms

**Administrative Lobbying**

Dept of Natural Resources

**Administrative Action**

Revisor Number 718

**Reporting of Media Expenditures**

As noted above, under current statute the designated lobbyist reports lobbying disbursements made directly by the principal. Under the recommendations the reporting of disbursements ends with one exception. 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. For example, asking the public to contact their legislators on an issue is grassroots lobbying, and under current statute total media costs are included in the lobbyist disbursement report. However, under current statute, there is no itemization of the advertising costs and the purpose of the advertisement is not reported, as you would find, for example, in a campaign finance report. Because of the limited disclosure, the current information on media costs is of no real value.

Under the recommendations, the public's interest in disclosure of advertising campaigns for lobbying, especially when the public is the target of the advertising, is acknowledged. This disclosure is triggered by a fairly high threshold, 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, highway construction).

### **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 has received comments from individuals who are registered as lobbyists to represent themselves. These individuals are really citizen lobbyists. They are not paid to lobby, they spend only their own money on lobbying, and they advocate on one or more subjects that are important to them personally. Under current statute an individual who is representing them self is required to register as a lobbyist if they spend more than \$250 of their own money on lobbying efforts. That is a fairly low expenditure threshold, and 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 for a citizen lobbyist as is used for a paid lobbyist.

### **Definition of Lobbyist**

Under current statute an individual is required to register as a lobbyist for communicating with a public or local official for the purpose of attempting to influence official actions. Under the recommendations registration as a lobbyist is also required when an individual is paid more than \$3,000 to gain access to public or local officials for lobbying.

For example, a former legislator is paid to make introductions and arrange meetings between public officials and lobbyists. Sometimes the former legislator does not attend the meeting that has been arranged, or perhaps the former legislator does not speak on the lobbying issue at the meeting. In either case the meeting does not occur without the efforts of the former legislator. This is a gap in the reporting of lobbying activities by a principal.

### **Attachments**

Legislative recommendations on lobbying

## 10A.01 DEFINITIONS

Minnesota Statutes 2018, section 10A.01, subdivision 21, is amended to read:

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

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

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

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Minnesota Statutes 2018, section 10A.01, is amended by adding subdivisions to read:

**Designated lobbyist.** "Designated lobbyist" means the lobbyist responsible for reporting the lobbying disbursements and activity of the principal or employer. An employer or principal may have only one designated lobbyist at any given time.

**General lobbying category.** "General lobbying category" means a broad area of interest for lobbying specified by the board.

**Specific subject of interest.** "Specific subject of interest" means a topic of lobbying interest within a general lobbying category described with sufficient specificity to identify the expected areas of interest for the principal or employer.

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

**Legislative action.** "Legislative action" means the discussion or development of prospective legislation; or the review, modification, adoption, or rejection of any bill, amendment, resolution, nomination, administrative rule, or report by a member of the legislature or employee of the legislature. "Legislative action" also means the discussion or development of prospective legislation, or a request for support or opposition to introduced legislation, with a constitutional officer. Legislative action includes the action of the governor in approving or vetoing any bill or portion of a bill.

## 10A.03 LOBBYIST REGISTRATION

Minnesota Statutes 2018, section 10A.03, subdivision 2, is amended to read:

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

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

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

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

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

~~(5) a general lobbying category or categories, description of the subject or subjects and the specific subjects of interest within each general lobbying category, on which the lobbyist expects to lobby for the principal or employer; and~~

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

Minnesota Statutes 2018, section 10A.03, is amended by adding subdivision 6 to read:

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

#### **10A.04 LOBBYIST REPORTS**

Minnesota Statutes 2018, section 10A.04, subdivision 3, is amended to read:

~~Subd. 3. **Information to lobbyist.** A principal, An employer, or employee lobbyist about whose activities are reported to the Board by another a lobbyist is required to ~~report~~ must provide the information required by subdivision 4 to the lobbyist no later than five days before the prescribed filing date.~~

Minnesota Statutes 2018, section 10A.04, subdivision 4, is amended to read:

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

~~(b) A lobbyist must report the lobbyist's total disbursements on lobbying, separately listing lobbying disbursements to influence legislative action, lobbying to influence administrative action, and lobbying to influence the official actions of a metropolitan governmental units and a breakdown of disbursements for each of those kinds of lobbying into categories specified by the board, including but not limited to the cost of publication and distribution of each publication used in lobbying; other printing; media, including the cost of production; postage; travel; fees, including allowances; entertainment; telephone and telegraph; and other expenses.~~

~~(b) A lobbyist must report each state agency that had administrative action that the principal or employer sought to influence during the reporting period. ~~the lobbyist's total disbursements on lobbying, separately listing lobbying to influence legislative action, lobbying to~~~~

~~influence administrative action, and lobbying to influence the official actions of a metropolitan governmental unit, and a breakdown of disbursements for each of those kinds of lobbying into categories specified by the board, including but not limited to the cost of publication and distribution of each publication used in lobbying; other printing; media, including the cost of production; postage; travel; fees, including allowances; entertainment; telephone and telegraph; and other expenses.~~

(c) A lobbyist must report each metropolitan governmental unit that considered, or was asked to take, official action that the principal or employer sought to influence during the reporting period.

(d) A lobbyist must report each legislative action that accounted for 25% or more of that lobbyist's effort on behalf of the principal or employer during the reporting period. The legislative action must be identified by specific subject of interest for prospective legislation, by legislative bill number for introduced legislation, or, if the legislation has been included in an omnibus bill, by bill number and section containing the legislation action. The lobbyist must report a reasonable, good faith estimate of the total percentage of lobbying time spent on each of the actions listed in this paragraph.

(e) A lobbyist must report each administrative action that accounted for 25% or more of the lobbyist's effort on behalf of the principal or employer during the reporting period. The administrative action must be identified by the revisor number assigned to it or a description of the proposed administrative action if a revisor number has not been assigned. The lobbyist must report a reasonable, good faith estimate of the total percentage of lobbying time spent on each of the actions listed in this paragraph.

(f) A lobbyist must report the Public Utilities Commission docket number for each rate setting, each power plant and powerline siting, and each granting of certificate of need that accounted for 25% or more of that lobbyist's effort on behalf of the principal or employer during the reporting period. The lobbyist must report a reasonable, good faith estimate of the total percentage of lobbying time spent on each of the actions listed in this paragraph.

(g) A lobbyist must report each official action of a metropolitan governmental unit that accounted for 25% or more of that lobbyist's effort on behalf of the principal or employer during the reporting period. The official action must be identified by the name of the specific metropolitan governmental unit and the ordinance number or name of the official action. The lobbyist must report a reasonable, good faith estimate of the total percentage of lobbying time spent on each of the actions listed in this paragraph.

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

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



(j) The designated lobbyist must report disbursements made and obligations incurred that exceed \$2,000 for paid advertising used for the purpose of urging members of the public to contact public or local officials to influence official actions during the reporting period. Paid advertising includes the cost to boost the distribution of an advertisement on social media. If a disbursement made or obligation incurred for paid advertising exceeds \$2,000 the report must provide the date that the advertising was purchased, the name and address of the vendor, a description of the advertising purchased, and any specific subject of interest addressed by the advertisement.

(ek) On the report due June 15, the lobbyist must provide update or confirm a the general lobbying categories and specific description of the subjects of interest for the principal or employer that were lobbied on in the previous 12 months.

Minnesota Statutes 2018, section 10A.04, subdivision 6, is amended to read:

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

~~(b) Except as provided in paragraph (d),~~ The principal must report the total amount, rounded to the nearest \$2\_10,000, spent by the principal during the preceding calendar year to influence legislative action, administrative action, and the official action of metropolitan governmental units. on each type of lobbying listed below:

(1) lobbying to influence legislative action;

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

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

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

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

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

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

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

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

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

Minnesota Statutes 2018, section 10A.04, is amended by adding subdivision 10 to read:

Subd. 10. **Specific subjects of interest.** The specific subjects of interest for the principal or employer is identified by the lobbyist at the time the lobbyist registers with the Board, or as provided on the report due on June 15<sup>th</sup>.

#### **4511.0600 REPORTING DISBURSEMENTS**

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

#### **4511.0800 ADMINISTRATIVE ACTION**

Minnesota Rules part 4511.0800 is repealed.