MINNESOTA

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

Report to the Legislature

Lobbying of Political Subdivisions

Report pursuant to:
Laws of Minnesota, Chapter 112, Article 4, Section 27
January 15, 2025

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Background

Under Minnesota Statutes Chapter 10A, registration and reporting as a lobbyist is required when an individual is compensated more than $3,000 for attempting to influence legislative or administrative action, or the official action of a political subdivision, by communicating with public or local officials.[1] Prior to 2023, lobbyist registration and reporting requirements had applied only to attempts to influence state-level bodies and a defined group of "metropolitan governmental units" in the seven-county metropolitan area. For purposes of lobbying, metropolitan governmental units included counties in the metropolitan area, regional railroad commissions in the metropolitan area, the Metropolitan Council, the Metropolitan Airport Commission, the Metropolitan Parks and Open Space Commission, the Metropolitan Sports Facilities Commission, and cities within the metropolitan area with a population greater that 50,000. After the 2020 census there were 17 cities with a population of over 50,000 in the Metropolitan area.[2]

All other political subdivisions within the state were outside of the scope of lobbyist registration and reporting. Therefore, from the standpoint of Chapter 10A, lobbying of local government did not occur outside of the metropolitan area, or even within the metropolitan area if the city had a population of 50,000 or less or the local government was a different type of political subdivision, such as a school district or township. Of course, lobbying efforts to influence local government does occur throughout the state, but public disclosure on those efforts did not exist. To address this problem the legislature moved to expand lobbyist registration and reporting to include all political subdivisions in 2023. The effective date of the legislative change was January 1, 2024.[3]

Expanding lobbying to all political subdivisions created questions and uncertainty in the lobbying profession, among individuals who were not lobbyists but who regularly communicate with local government, and among elected and appointed local officials in political subdivisions. Questions as to how the Board would administer the expanded definition of lobbying were brought forward in a series of advisory opinion requests sent to the Board. Starting in December of 2023, through February of 2024, the Board issued five advisory opinions[4] that provided guidance regarding fifty scenarios involving various communications with local officials and addressed whether the communications would require registration and reporting as a lobbyist.

The legislature was also receiving comments and requests for clarification on the expansion of lobbying to include political subdivisions. A number of proposals to modify the statutory provisions regarding lobbying of political subdivisions were considered, but ultimately not acted upon as the legislature focused on other issues as the legislative session came to an end in 2024. However, the legislature did hear the concerns expressed on the issue, and directed the Board to study statutory provisions that expand lobbying registration, reporting, and related regulations, to all

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[1] An individual is also required to register as a lobbyist if they are compensated more that $3,000 from a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients; or if the individual spends more than $3,000 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 political subdivision, by communicating with public or local officials. Minnesota Statutes section 10A.01, subdivision 21.

[2] Apple Valley, Blaine, Bloomington, Brooklyn Park, Burnsville, Coon Rapids, Eagan, Eden Prairie, Edina, Lakeville, Maple Grove, Minneapolis, Minnetonka, Plymouth, St. Paul, St. Louis Park, Woodbury

[3] 2023 Minn. Laws ch. 62, art. 5.

[4] Advisory Opinions 456, 457, 458, 460, and 461.

political subdivisions, and report back to the legislature in January of 2025. The legislature also stayed the requirement to register and report as a lobbyist for individuals who attempt to influence the actions of political subdivisions until June 1, 2025. 2024 Minnesota Laws, chapter 112, article 4, section 27, provides:

> **STATE AND LOCAL LOBBYING ACTIVITY; STUDY REQUIRED; REGISTRATION REQUIREMENTS STAYED.**
>
> (a) The Campaign Finance and Public Disclosure Board must study and make recommendations to the legislature on the definitions of "lobbyist," "local official," "public official," and "official action of a political subdivision" for purposes of Minnesota Statutes, chapter 10A. The study and recommendations must focus on whether the law does or should distinguish between activities that constitute lobbying of a public official and activities that constitute lobbying of a local official. If the study determines that a distinction between these activities is appropriate and is not adequately articulated within current law, then the board must recommend options for the legislature to consider in adopting that distinction by law. The board must submit a report describing the study, its results, and any associated recommendations from the board to the chairs and ranking minority members of the legislative committees with jurisdiction over campaign finance and lobbyist registration policy no later than January 15, 2025.
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> (b) Registration requirements under Minnesota Statutes section 10A.03, for an individual attempting to influence the official action of a political subdivision that is not a metropolitan governmental unit are stayed until June 1, 2025. An individual who attempts to influence the official action of a "metropolitan governmental unit," as defined in Minnesota Statutes, chapter 10A, must comply with the registration and reporting requirements in Minnesota Statutes sections 10A.03 and 10A.04. A lobbyist principal that is represented by a lobbyist who attempts to influence the official action of a metropolitan governmental unit must comply with the reporting requirement in Minnesota Statutes section 10A.04.

This report and legislative recommendations are the Board's fulfillment of this requirement.

The Board actively sought public participation in discussing the issues reviewed in the report. The Board held public hearings on lobbying of political subdivisions on August 19 and October 25, 2024.[5] The Board's review of the differences between lobbying at the state level and lobbying of political subdivisions relied on the public comments to frame the issues created by expanding lobbying requirements to political subdivisions, and considered the changes to statutes recommended in the comments. The issues raised in public comments are provided to the legislature in this report regardless of whether the Board recommends the proposed change suggested in the comment.

Written comments received in response to the Board's proposed administrative rules regarding lobbying of political subdivisions are also reviewed in this report. The Board started the process of promulgating administrative rules on lobbying prior to receiving the direction to draft this report. Some of the provisions in the proposed rules are in response to questions raised in the aforementioned advisory opinions on lobbying of political subdivisions. In some cases, comments

[5] Video recordings of both hearings and copies of all written comments received are available at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/report-to-the-legislature-on-lobbying.

made in response to the draft administrative rules raised concerns about lobbying of political subdivisions that are relevant to this report.

All written comments received by the Board are provided as an appendix to the report.

Board Review

The mission statement of the Board, adopted in 2009, is:

> To promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs which will ensure public access to and understanding of information filed with the Board.

It would be inconsistent with this mission statement for the Board to support providing less meaningful disclosure to the public on lobbying of political subdivisions. However, not all information represents meaningful disclosure. The disclosure obtained on lobbying supports public confidence in government decision making only if the information is relevant in explaining how and why a decision was made by a political subdivision. Collecting information that does not meet this criterion does not promote public confidence and understanding, and therefore is not needed for the Board to complete its mission.

Determining what information is relevant requires asking what does the public view as lobbying? Are there activities captured by the current statutes on lobbying of political subdivisions that the public does not consider to be lobbying or does not need to be informed about in order to understand government decision making? These questions and the Board's mission to promote public confidence through disclosure were used to evaluate the public comments and suggestions in this report.

Finally, the Board understands the scope of the report to be an examination of issues related to lobbying of political subdivisions. Public suggestions that go beyond that scope are provided in the report as informational to the legislature, but are not recommended by the Board for legislative action.

Definitions Reviewed

The legislature specifically directed the Board to study the following definitions in Chapter 10A: "lobbyist," "local official," "public official," and "official action of a political subdivision". Most of the public comments received relate to one or more of these definitions, and are reviewed with the definition.

General Definition of Lobbyist

The thresholds for determining when an individual needs to register as a lobbyist in Minnesota are based on either receiving at least $3,000 in compensation for lobbying or providing certain types of consulting or advice for lobbying, or spending at least $3,000 of personal funds to support a lobbying effort. Minnesota Statutes section 10A.01, subdivision 21 provides:

> (a) "Lobbyist" means an individual:

> (1) engaged for pay or other consideration of more than $3,000 from all sources in any year:
>
> (i) for the purpose of attempting to influence legislative or administrative action, or the official action of a political subdivision, by communicating with public or local officials; or
>
> (ii) from a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients; or
>
> (2) who spends more than $3,000 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 political subdivision, by communicating with public or local officials.

The Minnesota Governmental Relations Council (MGRC) and the Minnesota Council of Nonprofits (MCN) recommend modifying the basic thresholds of activity that require registration, although in different ways.

Th MGRC suggests that the lobbyist registration requirement should recognize the professional nature of lobbyists' work and better exclude ordinary citizens. To do this, the MGRC recommends including a time spent lobbying component to the definition:

> Other states have created registration parameters for "lobbying" that consider not just compensation, but the **time spent on lobbying activities** and whether lobbying is a key part of their work duties. An hourly threshold is a fair approach to marking the line between citizen advocate and professional advocate, rather than relying on a case-by-case determination of compensation and activities. Furthermore, Minnesota previously had an hourly threshold. We urge this study group to strongly consider reinstating an hourly threshold that, combined with the compensation threshold, more accurately delineates between professional lobbyists, professional advisors, and regular citizens.[6]

The MGRC also provided that a survey of its membership found support for the federal definition of lobbyist:

> Several members have suggested Minnesota adopt the federal definitions at 2 U.S. Code § 1602 related to lobbying, including lobbying activities, lobbying contact, and exceptions. Conformity with the federal definitions would provide the desired clarity requested by the professional lobbying community.

The MCN did not make a specific recommendation on the threshold for registration as a lobbyist, but did suggest that the Board consider aligning the definition of "lobbying" to match the definition used by the Internal Revenue Service (IRS). The MCN states that the differences in the definition of "lobbying" between the IRS and Minnesota causes nonprofits problems:

> One specific challenge nonprofits face in reporting compliance is that the IRS and

[6] Letter dated August 19, 2024.

Minnesota define lobbying differently and ask for different data. We must track lobbying time and expenses under both definitions, distinguishing between legislative, administrative, or local lobbying, and whether it is direct or grassroots.[7]

The Scott County Association for Leadership and Efficiency (SCALE) suggested a different approach, and recommends a separate definition for "local lobbyist":

> **Redefining "Local Lobbying"** The current broad definition of "lobbying" inherently assumes a relationship or transaction that is common at the Legislature and state agencies, and very *uncommon* at the local level. Merely expanding the existing definition to local officials will, without question, inadvertently capture routine interactions between citizens and their local governments, potentially stifling civic engagement and unnecessarily burdening local officials and citizens alike. *Recommendation*: We propose creating a definition of "local lobbying" that more closely aligns with what public expectations of who a "lobbyist" is:
>
> o A "local lobbyist" should be defined as a person or firm paid by a client specifically for the purpose of advocacy before a governmental agency.
> o The primary purpose of the lobbyist should be advocacy, not information-sharing or where discussion of an official action is ancillary to the regular business of the purported "lobbyist."
> o Exemptions should be clearly stated for:
>
> - Local business owners collaborating with local officials in the regular course of their business
> - Community relations representatives of large businesses require regular interactions with local officials (e.g., electric utilities, railroads, communications companies).
> - Residents leading specific efforts to change local laws, even where expenditures may be made to influence the outcome, if the expenditures are for a "one off" and not part of the resident holding themselves out as a "local lobbyist."
> - Professionals providing specific expertise (e.g., engineers, architects, lawyers)[8]

Board Recommendation

The legislature's direction to the Board for this report included a review of the definition of "lobbyist", so suggestions to change the basis for registration are within the scope of issues for the Board to review. Nonetheless, the Board declines to suggest changing the existing registration thresholds for the following reasons.

The MGRC provided examples of states that have a time spent lobbying component to the definition of lobbyist.[9] However the time components vary significantly by state, and are not always clear. California, for example, requires registration only if the individual's "principal duties" are lobbying. Kansas requires registration if the person is employed "to a considerable degree" for lobbying. Presumably, these terms equate to the majority of the individual's work time. If "principal activity" and "considerable degree" are determined in

[7] Written testimony provided at October 25, 2024, public hearing.
[8] Letter dated August 15, 2024.
[9] Written testimony dated February 6, 2024

some other way, then it is questionable if those standards provide a threshold that is easier to track than $3,000 in compensation for lobbying in a calendar year. Some states do set a specific hourly amount, but there does not seem to a consistent time threshold that states have landed on. For example, Hawaii does not require registration until the individual has lobbied for more than ten hours in a calendar year; Alaska requires registration if the individual lobbies for more than ten hours in a 30-day period.

The federal definition of lobbyist suggested by some MGRC members also contains a time element:

> The term "lobbyist" means any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period.[10]

Assuming a forty-hour work week, the federal definition of lobbyist allows an individual to lobby for up to 138 hours every three months for a client before registration as a lobbyist is required.

Moving to the IRS definition of "lobbying", as suggested by the MCN, would also require modification of Minnesota's definition of "lobbyist" because the IRS definition does not include attempting to influence actions by executive or administrative bodies[11], and appears to exclude non-policy actions by local government. This would require changing the scope of communications that define a lobbyist to excludes administrative rulemaking, application of administrative rules by the Minnesota Public Utilities Commission, and actions by non-elected local officials.

The SCALE proposal includes an exception for expert testimony, which is reviewed later in this report, and a host of other exceptions that do not exist for lobbying of public officials. The assertion by SCALE that business owners and "community relations representatives" of large corporations are engaging in "routine interactions" with local governments that should thereby not be defined as lobbying, is a conclusion that the Board declines to recommend.

Adding a time spent lobbying threshold to the definition of lobbyist as recommended by the MGRC, and the IRS definition raised by the MCN, or a new definition for local lobbyist as recommended by SCALE, would result in changes to the lobbying program that are broader than the Board's understanding of the scope of the report requested by the legislature.

Exclusion for Expert Testimony

The definition of "lobbyist" also provides a list of positions and activities that are excluded from the definition. Minnesota Statutes section 10A.01, subdivision 21, paragraph (b), clause (8) provides that a lobbyist does not include:

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

[10] 2 U.S. Code § 1602 - Definitions.
[11] irs.gov/charities-non-profits/lobbying; irs.gov/charities-non-profits/charitable-organizations/definition-of-legislation.

Several comments received during the rulemaking hearings and hearings on this report argued for an expansion of this provision.

The American Council of Engineering Companies of Minnesota (ACEC/MN) and the American Institute of Architects Minnesota (AIA Minnesota) commented on the subject of expert witness testimony at both the administrative rule hearings and in public testimony collected for this report. The associations' comments describe the problem from the perspective of their membership, and suggests two possible solutions:

> The remaining concern involves situations where a developer or land owner hires an architect or a consulting engineer while pursuing a project under the jurisdiction of the particular political subdivision. For example, in many cases, a municipality will enter into a development agreement with the landowner with regard to a particular project such as a residential subdivision. Under that development agreement, the engineer, at the developer's expense, designs infrastructure for the project which meets the city's requirements. In connection with this work, the engineer often needs to provide information to the municipality with respect to the proposed designs to ensure that the designs meet the municipality's approval and the relevant ordinances. In addition, there needs to be discussion regarding making the municipality's existing infrastructure available to the new project.
>
> Similarly, often times an architect hired by a developer will consult with and confer with a local code official or the political subdivision's planning commission regarding the elements and code compliance of the project. This may include using their expertise, skill and experience to make recommendations regarding how the project should be completed.
>
> Under the new definition of lobbying in the statute, all of these discussions could be considered for the "purpose of influencing the official action of the political subdivision" and therefore lobbying. We discussed addressing this by creating a rule which confirmed that such discussions were not lobbying, but the rules committee was concerned that the rule may conflict with the statutory mandate. As a result, when an amendment to the statute was introduced, we worked with the author to address the issue at the legislature. The revisions to the statutes were not adopted and as a result, architects and engineers are left in limbo regarding how to perform their jobs without being accused of lobbying.
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> Our recommendation is for either a statutory amendment or a clarification of the regulations to make it clear that an Architect, Engineer or other design professional making recommendations and opinions based upon their education, training and experience are not "Lobbyists" under the statute. An example of such an exemption is the expert exemption located in Minn. Stat. Section 10A.01 Subd. 21 (b)(8). In the alternative, and as we discussed at length this spring, we could also add a section to the statute or regulations making it clear that a professional who offers his or her opinions based upon his or her education, training and experience is not engaged in "communications for the purpose of attempting to influence the official action of a political subdivision". Either of these changes would insulate architects, engineers, land surveyors, landscape architects, geologists, and certified interior designers from being considered

> lobbyists while practicing their professions as defined by Minnesota Statutes § 326.[12]

ACEC/MN provided two proposed solutions, the first would exempt from the definition of lobbyist any testimony provided by professionals regulated by Chapter 326; the second offers a broader exception that is not limited to Chapter 326:

> An individual providing an elected or nonelected local official information, data, advice, opinions, variables, options or directions as professional licensee under Minnesota Statutes Section 326.02 through 326.15 or under the direct supervision of a licensee under Minnesota Statutes Section 326.02 through 326.15 shall not be considered attempting to influence that elected or nonelected local official.[13]

Or

> An individual providing an elected or nonelected local official information, data, advice, opinions, variables, options or direction in an area where the individual has a particular expertise through education, training, or experience shall not be considered attempting to influence that elected or nonelected local official.[14]

The MGRC also commented that the issue of expert testimony needed to be addressed and reviewed its proposal:

> MGRC proposed legislation in 2024 to clarify this issue such that *an individual providing information, data, advice, professional opinions, variables, options, or direction on a topic on which the individual has particular expertise through education or professional or occupational training to a public or local official at a lobbyist's request* would not be required to register (other factors notwithstanding). This language was not adopted by the legislature, leaving professionals with disparate and confusing reporting requirements for subject matter experts working across various levels of government. We encourage the CFB to thoroughly research, consider, and recommend clarifications in this area.[15]

During hearings for the Board's proposed administrative rules the Minnesota Regional Railroads Association (MRRA) also stated that employees of its membership were often in contact with local officials on engineering and other technical issues, and that tracking when employees would meet the $3,000 compensation registration threshold for lobbying would be extremely burdensome.[16]

However, Clean Elections Minnesota (CEM) expressed concern that an exemption for expert testimony could negatively impact disclosure:

> We should be cautious about proposals to carve out specific professions from registration requirements. Exempting executives or professionals who engage with lawmakers can obscure the public's ability to know who is attempting to influence

[12] Letter dated January 24, 2024.
[13] Email dated February 7, 2024.
[14] Email dated February 13, 2024.
[15] Letter dated August 19, 2024.
[16] Letter dated January 26, 2024.

policy decisions. This could inappropriately allow significant interests to operate without transparency or accountability.[17]

Board Recommendation

From the information provided to the Board it appears that local officials receive information on specific projects and plans from experts on a routine basis, or at least more commonly than most public officials. The current exception for expert testimony was drafted with the legislature in mind, and does not reflect the importance of expert testimony to local officials when carrying out certain aspects of their job. These interactions highlight that local officials are trying to make an informed decision based on the best information available, and that expert testimony may be the only, or at least the most readily available, way to gather the needed information.

Limiting an exception for expert testimony to professionals regulated by Chapter 326 is hard to justify and would quickly lead to efforts to include testimony from experts in the fields of finance, the environment, health, law, and undoubtably many other fields as well. The Board also agrees with CEM that exempting expert testimony, if done in all situations, could provide a loophole that obscures disclosure on who is communicating with local officials. Further, while the expert may be providing information that is technical in nature, that doesn't change the fact that most expert testimony before a local government is made as part of a lobbying effort to influence an official action by a political subdivision.

Looking at the regulations for expert testimony in other states the Board found several examples where expert testimony was not lobbying as long as the testimony was either made at a public hearing, or written testimony was entered into the public record. For example:

> *Rhode Island* - Lobbying does not include: "A qualified expert witness testifying in an administrative proceeding or legislative hearing, either on behalf of an interested party or at the request of the agency or legislative body or committee."
>
> *District of Columbia* – Lobbying does not include "Testimony given before the Council or a committee of the Council, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record."
>
> *Michigan* - Lobbying does not include "providing of technical information when appearing before an officially convened legislative committee or executive department hearing panel. As used in this subsection, 'technical information' means empirically verifiable data provided by a person recognized as an expert in the subject area to which the information provided is related."

Limiting an exception for expert testimony to public meetings and the public record is consistent with the existing exception, and addresses the concern raised by the CEM that an exception for certain types of testimony provides a means to avoid public scrutiny of that testimony. The Board recommends that the exemption for expert testimony in Minnesota Statutes section 10A.01, subdivision 21, paragraph (b), clause (8) be modified to provide that the term "lobbyist" does not include:

> (8) a qualified expert witness who provides testimony, or enters written testimony into the official record, at a public meeting held by the legislature, a political

[17] Letter dated June 14, 2024.

subdivision, a metropolitan governmental unit, or a state agency that is adopting, modifying, or repealing administrative rules. If the expert witness provides testimony at the request of a principal the cost of preparing and providing the testimony is a lobbying disbursement.

The Board notes that it deliberately left out a hearing held by the Minnesota Public Utilities Commission (PUC) from this exception. The nature of the testimony provided to the PUC when it considers cases of rate setting, power plant and powerline siting, and granting of certificates of need under Minnesota Statutes section 216B.243, is unique. The PUC should be consulted before including a public hearing held by that agency within the exclusion.

Exclusion for a Nonelected Local Official or an Employee of a Political Subdivision

The definition of "lobbyist" also provides an exception for all elected local officials, and generally for nonelected local officials and employees of political subdivisions. However, the exception for nonelected local officials and employees of political subdivisions is limited. Minnesota Statutes section 10A.01, subdivision 21, paragraph (b), clause (4) provides that a lobbyist does not include:

> (4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a political subdivision other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a political subdivision, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of political subdivisions;

Before reviewing comments received on this provision it is important to note that prior to 2024 this provision read (emphasis added):

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

The definition of metropolitan governmental units includes, in part, the Metropolitan Airport Commission, the Metropolitan Parks and Open Space Commission, and the Metropolitan Sports Facilities Commission. Statements in the comments received regarding metropolitan governmental units reference this change.

The Coalition of Greater Minnesota Cities (CGMC) and the Greater Minnesota Partnership (GMNP) submitted comments asking that this exception be modified to exclude working to influence the actions of another political subdivision. The CGMC provided that:

> The expansion of the definition of lobbying newly brought more than 3,000 local government subdivisions under the purview of campaign finance laws. Undoubtedly, multiple appointed officials or employees at almost all these entities engage regularly in projects that involve "official action" by their respective bodies and other government entities, whether it be a construction project, a purchase or sale, contracting for services, or something else. Many employees may be engaged in multiple projects performing activities that meet the very broad definition of lobbying under Minn. Stat. 10A.01, Subd. 21(4), which could trigger lobbyist registration and reporting requirements based on activities that most people would not consider lobbying. This collaboration between governments is not isolated to larger, special projects. It happens every day.
>
> For example, a city's engineering department and public works staff engage daily with their counterparts in county or state government regarding the maintenance of basic public infrastructure, including roads, water and wastewater. This collaboration is expected by the public, which demands that basic infrastructure be safe and well-maintained regardless of which level of government is responsible for it.
>
> Cities and counties routinely collaborate, which arguably may include trying to influence one another—on projects in ways that have not traditionally been considered lobbying. For example, appointed officials or staff who engage with one another to iron out specific design elements, cost allocations between levels of government, or important decisions about the timing of project delivery have traditionally been understood to be simply doing their jobs.[18]

The CGMC noted the origins of the provision, and provided:

> We understand that attempting to include the official action of a different political subdivision other than the political subdivision at which one is employed was originally targeted toward communications involving the Metropolitan council and local governments that may be reporting to or seeking something from it. Narrowing the definition to such circumstances may be the best approach and would allow collaboration between local governments to continue.[19]

The CGMC also expressed concern that the 50-hour threshold included work on collecting information used to influence legislative or administrative action:

> We are concerned that the … language regarding research, analysis, and compilation of information relating to legislative or administrative policy could sweep up local government employees working on projects that result in legislation, such as a bonding request. Countless hours are spent on activities such as research or analysis that become part of the materials related to a legislative bonding request, such as engineering studies or financial analysis. Public employees would need to track all their hours when working on projects related to legislative action to determine whether they are exceeding

[18] Letter dated November 19, 2024.
[19] Letter dated August 21, 2024.

> the 50-hour threshold in any month. Identifying all public employees who exceed that threshold as lobbyists does not serve the public interest.[20]

The GMNP also encouraged the Board to consider the impact of the 50-hour threshold for public employees:

> Members have also expressed concern that the definition of lobbyist under Minn. Stat. 10A.01 Subd. 21 (2(b)(4) is overly broad. Under the current definition, it's easy for an employee of a political subdivision to spend more than 50 hours in any month in the normal course of business doing work that meets the definition in (4). To ensure compliance with this statute, employees will need to track all hours doing qualifying work so in any given month they can report those activities if they exceed 50 hours.[21]

Board Recommendation

This provision raises the question of what types of activities do the public view as lobbying to influence official actions by their county, city, or any other political subdivision? It's likely that the public views work between political subdivisions on shared responsibilities as something different than a lobbyist requesting funding or a policy decision from a political subdivision. The original language that required a public employee to register as a lobbyist for spending more than 50 hours attempting to influence the official action of a metropolitan governmental unit makes sense given the budget and regional authority of an entity like the Metropolitan Council. It seems to make less sense to require lobbyist registration for public employees of a political subdivision trying to share costs and responsibilities for a public service with another political subdivision.

The Board also questions why this exception includes "time spent monitoring legislative or administrative action, or the official action of a political subdivision, and related research, analysis, and compilation and dissemination of information". The definition of lobbyist generally requires direct communication between the lobbyist and a public or local official to occur before an activity is deemed lobbying. Here, time spent listening to a committee hearing, but not talking to anyone at the hearing, is counted towards a lobbyist registration requirement. The exception also counts time spent urging others to communicate with public officials, more commonly known as grass roots lobbying. The requirement to register for grass roots lobbying was removed from the general definition of lobbyist in 2024. It also appears that the 50-hour threshold counts activity that is arguably an administrative task that supports lobbying. Counting that type of activity is inconsistent with another exception in the definition of lobbyist found in Minnesota Statutes section 10A.01, subdivision 21, paragraph (d) which provides that a lobbyist does not include:

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

The Board suggests modifying Minnesota Statutes section 10A.01, subdivision 21, paragraph (b)(4), as follows to keep the requirement for public employee registration as a lobbyist when the 50 hour threshold is exceeded for attempting to influence a metropolitan governmental unit, but eliminate the broader registration requirement for attempting to influence another political

[20] Letter dated August 21, 2024.
[21] Letter dated August 19, 2024.

subdivision, or for preparing information that will be used by a lobbyist in attempting to influence an official action. The provision would provide that a lobbyist is not:

> (4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit by communicating with public or local officials;

For purposes of clarity the definition of metropolitan governmental unit provided in Chapter 10A should also be amended to remove counties, cities with a population of over $50,000, and regional railroad authorities in the metropolitan area. If not modified the counties, cities and regional railroad authorities will be both a political subdivision and a metropolitan governmental unit, which at best will be confusing and inconsistent.

Minnesota Statutes section 10A.01, subdivision 24:

> "Metropolitan governmental unit" means the Metropolitan Council, the Metropolitan Parks and Open Space Commission, Metropolitan Airports Commission, and the Metropolitan Sports Facilities Commission.

Excluding Quasi-Judicial Decisions

Several comments were received on the issue of excluding “quasi-judicial decisions” from the definition of “official action of a political subdivision” found in Minnesota Statutes section 10A.01, subdivision 26b, which currently states:

> "Official action of a political subdivision" 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.

The Minnesota State Bar Association (MSBA) supports an exception for quasi-judicial decisions, and provided an explanation on how a quasi-judicial decision differs from other types of official decisions by local officials:

> Most planning and zoning decisions are made by local zoning boards, commissions, and elected officials. Such actions fit in one of two categories:
>
> 1. **Legislative decisions** formulate broadly-applicable policies for future application and include such actions as passing budgets, adopting plans, and adopting ordinances or amendments to ordinances.
>
> **2. Quasi-judicial decisions** occur when an established policy (e.g., an ordinance or state statute) is applied to particular facts. Examples include decisions on variances, conditional use permits, site-plan review, zoning code violations, and many planning commission decisions.
>
> When making quasi-judicial decisions, the local government body applies preexisting law to a single parcel or a limited number of individuals. Typically,

> quasi-judicial decisions do not directly affect the entire political subdivision, so there is limited public interest. In addition, quasi-judicial proceedings function more like court actions than political proceedings. For example, stricter procedural requirements must be followed, and the body's decision is subject to review by the Minnesota Court of Appeals (in other words, the public body is essentially standing in the shoes of the district court). Conversely, when making legislative decisions, the public body has considerable discretion, fewer procedural requirements, and is generally subject to less strict judicial review.[22]

The MSBA also noted that something like an exception for quasi-judicial decisions already exists for state agencies:

> It is important to note that our proposed quasi-judicial exemption is not inconsistent with existing law. Specifically, Minn. Stat. §10A.01 subd. 2 provides that, with limited exceptions, the definition of administrative action does not include **"the application or administration"** of existing rules.
>
> We suggest that a similar quasi-judicial exemption be applied in the context of political subdivision decision-making. Perhaps something like: "**Official action of a political subdivision" does not include the application or administration of a statute, rule, or ordinance.** This would exempt individuals who are merely dealing with how existing standards are applied, but it would still cover those who are attempting to influence whether and how an ordinance is created or modified.[23]

Comments received from Housing First Minnesota (HFM) during the rule making hearings also recommend exempting from lobbyist registration individuals advocating for an application of an existing regulation or plan:

> We recommend that 4511.1000, subpart 1 (an administrative rule on lobbying) be amended to limit registration to advocating for an amendment to the local jurisdiction's comprehensive plan. The rationale is that no housing project can advance if the local comprehensive plan doesn't authorize it in the first instance. Any request for a zoning amendment or subdivision is statutorily predicated on being in compliance with an approved comprehensive plan. The comprehensive plan process will adequately identify the project applicants if that is deemed important. As noted above, the follow-on process is already very transparent.
>
> We also recommend that 4511.1000, subpart 1 be further amended to not require registration for any public proceeding in which a landowner or their hired representative is statutorily required to participate in order to preserve a legal objection, such as when a city advances a special assessment proceeding under Minn. Stat. 429.169 and proposes to assess project costs to affected landowners over their objection; failure to confirm an objection to a proposed assessment at the scheduled assessment hearing constitutes waiver of the objection and precludes any future challenge to it. It seems to us fundamentally unfair and burdensome to both compel participation in a statutory process in order to

[22] Letter dated August 16, 2024.
[23] Letter dated October 22, 2024.

> preserve a legal right and convert it into "lobbying" requiring registration and reporting.[24]

The Board also received comments from local officials who opposed creating a quasi-judicial decision exception. The objections were based on the experiences of elected and appointed local officials. Paige Rohman, a former planning commissioner in the City of Bloomington provided:

> There are many important decisions that are made that do not happen at the elected official level. In my experience as a planning commissioner, we have significant authority as a quasi-judicial body. And while we commissioners are often the closest to and reflect the sense of the people in the community, our role is sometimes less visible to and less scrutinized by most because we are appointed.
>
> Let me provide an example of why expanded standards are good. This past spring, toward the end of my term, we made recommendations to the council on additional areas that should be considered for final decision making at the commission level. We did this in the interest of making government more efficient, reducing administrative burden, and speeding up the bureaucratic process. These are the right things to do. But with expanded authority comes expanded opportunity for influence. When that influence happens, it needs to be done in a structured, transparent manner. Lobbying of decision makers like us should certainly fall within the scope of lobbying standards anywhere across the state.
>
> … I know some have suggested quasi-judicial bodies should not be subject to these standards, and I disagree. Anybody who can make a final decision on behalf of the people should be governed by these standards. Carve outs only invite suspicion and create potential division.[25]

Michael Wojcik, former member of the Rochester City Council, also expressed opposition to a quasi-judicial decision:

> I would urge the board not to carve out any exceptions for individual professions or individual parts of the governing processes. In local government the application of policies (quasi-judicial) by appointed bodies, elected bodies, and professional staff is as important as the creation of policy itself. Disclosure of lobbying activities is not a high bar and is a fair expectation for people paid even a de minimis amount for direct or indirect lobbying.[26]

Sean Hayford Oleary, former planning commissioner and current city council member for the City of Richfield, also provided examples of attempts to influence his actions while serving in both roles, that are not currently disclosed as lobbying, but which should be available to the public.[27]

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[24] Email dated March 1, 2024.
[25] Written testimony submitted October 25, 2024.
[26] Letter dated October 24, 2024.
[27] Letter dated October 23, 2024.

The Board reviewed the lobbyist regulations in other states, and found that some states do not view quasi-judicial decisions as lobbying. For example:

> *South Carolina* – Lobbyist does not include "a person who appears only before public sessions of committees or subcommittees of the General Assembly, public hearings of state agencies, public hearings before any public body of a quasi-judicial nature, or proceedings of any court of this State."
>
> *Arizona* – Lobbyist does not include "An attorney who represents clients before any court or before any quasi-judicial body."
>
> *Florida* – Lobbyist does not include "an attorney who represents a client in a judicial proceeding or in a formal administrative proceeding or any other formal hearing before an agency, board, commission, or authority of this state;"
>
> *Massachusetts* – Lobbying does not include "an act made in compliance with written agency procedures regarding an adjudicatory proceeding, as defined in section one of chapter thirty A, conducted by the agency, or similar adjudicatory or evidentiary proceedings conducted by any department, board, commission or official."

It appears that these states apply an exception to lobbying for the application of existing rules and regulations to all levels of government within the state.

Board Recommendation

The Board notes that the comments received on quasi-judicial decisions, both in favor and in opposition, all reference zoning, planning, and housing development decisions. There seems to be agreement on the importance of these decisions, but disagreement on the level of discretion that zoning and planning commissions have in making official decisions. The comments received from former and current local officials state that developers and their representatives lobby local officials on the decisions before the commissions. Whatever level of discretion the commissioners have, it appears to be significant to the regulated community in at least some situations.

On the other hand, the example brought by HFM where representing a client in a public statutory process in order to preserve a legal right could require registration as a lobbyist, does seem closer to litigation than lobbying. If the legislature decides to create an exception for quasi-judicial decisions, then the Board recommends that the exception applies only to participation in the public hearing of the decision-making body, and not extend to private meetings with local officials.

Definition of Political Subdivision

The definition of political subdivision for purposes of Chapter 10A is found in Minnesota Statutes section 10A.01, subdivision 31:

> "Political subdivision" means the Metropolitan Council, a metropolitan agency as defined in section 473.121, subdivision 5a, or a municipality as defined in section 471.345, subdivision 1.

This definition includes counties, cities, school districts, townships, soil and water conservations districts, and a host of other entities that do not have elected membership. The Minnesota Association of Townships (MAT) provided comment that the nature of township government made certain lobbying provisions unnecessary, and the application of the gift prohibition for lobbyists found in Chapter 10A a trap for township officials who do not know about the prohibition. The MAT provides a possible way to mitigate the problems it sees:

> The Township Association believes that this could be improved with a few tweaks. First, the board might consider mirroring the language of Minnesota Government Data Practices Act, which divides townships between those with enough administrative lift capacity to handle the requirement and those that do not. See Minn. Stat. 13.02 subd. 11. The change could be as simple as adding "excluding any town not exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2"[28]

The Board also received a recommendation that the application of lobbying regulations should continue to apply to all political subdivisions. SCALE provided:

> **Uniform Treatment of Local Governments** The current population-based distinction in lobbying requirements creates an arbitrary divide between similarly functioning local governments. We agree with Rep. Coulter that the distinction between (for example) Bloomington and Shakopee is arbitrary. Recommendation: Treat all local units of government the same, regardless of population size. This approach recognizes that while larger municipalities may experience more lobbying activity, the fundamental nature of local government operation remains similar across the state.[29]

Board Recommendation

The definition of political subdivision needs to be amended to exclude the Metropolitan Council and a metropolitan agency as defined in Minnesota Statutes section 473.121. Metropolitan agencies should be defined separately from political subdivision to avoid confusion and circular references in Chapter 10A. At this point the Board declines to recommend excluding any government body with an elected membership from the definition of political subdivision. However, the Board believes the legislature should consider if all of the entities defined in Minnesota Statutes section 471.345, subdivision 1, should be included in the definition of political subdivision. Attached as Appendix 2 is a Board staff memo that reviews the entities that appear to be included in the definition of political subdivision.

Lobbyist Register and Report with the Political Subdivision

Among its comments on how to improve the lobbying program for political subdivisions SCALE suggested that individuals who lobby political subdivisions registration and report locally:

> **Local Disclosure vs. State Reporting** Residents seeking information about "local lobbying" activities are far more likely to look to their local government than to a state agency for information about that activity. Recommendation: Consider a modified disclosure requirement that mandates local units of government maintain

[28] Email dated July 29, 2024.
[29] Letter dated August 15, 2024.

> and make available records of "local lobbying" activity to their residents upon request. This approach would be more accessible to the public and more manageable for those required to report. Local governments could comply in a way that best fits their communities. Minneapolis, for example, may have a volume of local lobbying activity that requires a searchable database with regular reporting. Northome may go years or decades without any such activity, and should it occur, may merely keep a record of who was retained, for what purpose, as a document available upon request to a resident.[30]

There are a number of states that allow counties and cities to regulate local lobbying. The state of Maryland requires all cities and counties to adopt local lobbying ordinances. To the Board's knowledge, other states do not allow regulation of local lobbying below the municipal level.

Board Recommendation

The Board has already developed an online reporting system for lobbyists that will accommodate individuals who lobby political subdivisions. The system also provides online access to the lobbyist reports. It does not seem cost effective to require political subdivisions to administer lobbyist registration and reporting when the Board already provides that function.

This report was adopted by resolution of the Campaign Finance and Public Disclosure Board at its regular meeting of January 8, 2025.

[30] Letter dated August 15, 2024.

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Clean Elections Minnesota – June 14, 2024

Coalition of Greater Minnesota Cities – August 21, 2024

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Minnesota State Bar Association – October 22, 2024

Paige Rohman, former planning commissioner, City of Bloomington – October 25, 2024

Scott County Association for Leadership and Efficiency – August 15, 2024

Sean Hayford Oleary, Richfield City Council member – October 23, 2024

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Willem F. van Vliet
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January 25, 2024

VIA EMAIL

Mr. Jeff Sigurdson
Executive Director
Minnesota State Campaign Finance and Public Disclosure Board
190 Centennial Building
658 Cedar Street
St. Paul, Mn 55155

Re: ACEC/MN and AIA Minnesota Comments Regarding Proposed Regulations

Dear Jeff:

I'm an attorney licensed to practice in Minnesota, and I work with the American Council of Engineering Companies of Minnesota ("ACEC/MN") and the American Institute of Architects Minnesota ("AIA Minnesota") on a volunteer basis to help them address various legal issues which may affect the membership. ACEC/MN's members are consulting engineering firms. AIA Minnesota members are Architects and their firms. Members of both AIA Minnesota and ACEC/MN provide professional services to the State, Counties, municipalities, other governmental entities, individuals and private businesses.

ACEC/MN and AIA Minnesota have reviewed the 2023 changes in the statute regarding lobbyist registration and reporting as well as the and the recent advisory opinions issued by this Board. As you know, I also attended most if not all of the rule making committee hearings to provide input on our concerns regarding the new Statutes. After the work we put in and the unsuccessful attempt to address the issues legislatively,

we are concerned that work which consulting engineers and architects perform on a daily basis will be considered "lobbying" under the statutory changes. As a result, we submit this letter in connection with the legislatively mandated study to express our concerns and to suggest a means to address the work of Architects and Professional Engineers which is not truly lobbying, but could be considered lobbying under the current language.

As you know, we addressed the situation where a consulting engineer is hired as a City Engineer in the rulemaking process. We also addressed the situation where the Architect or Consulting Engineer is hired by the municipality directly to perform the design work. The remaining concern involves situations where a developer or land owner hires an architect or a consulting engineer while pursuing a project under the jurisdiction of the particular political subdivision. For example, in many cases, a municipality will enter into a development agreement with the landowner with regard to a particular project such as a residential subdivision. Under that development agreement, the engineer, at the developer's expense, designs infrastructure for the project which meets the city's requirements. In connection with this work, the engineer often needs to provide information to the municipality with respect to the proposed designs to ensure that the designs meet the municipality's approval and the relevant ordinances. In addition, there needs to be discussion regarding making the municipality's existing infrastructure available to the new project.

Similarly, often times an architect hired by a developer will consult with and confer with a local code official or the political subdivision's planning commission regarding the elements and code compliance of the project. This may include using their expertise, skill and experience to make recommendations regarding how the project should be completed.

Under the new definition of lobbying in the statute, all of these discussions could be considered for the "purpose of influencing the official action of the political subdivision" and therefore lobbying. We discussed addressing this by creating a rule which confirmed that such discussions were not lobbying, but the rules committee was concerned that the rule may conflict with the statutory mandate. As a result, when an amendment to the statute was introduced, we worked with the author to address the issue at the legislature. The revisions to the statutes were not adopted and as a result, architects and engineers are left in limbo regarding how to perform their jobs without being accused of lobbying.

As a result, we seek an exception in the regulations for architects, engineers and other design professionals working on the behalf of their clients in such a scenario.

Our recommendation is for either a statutory amendment or a clarification of the regulations to make it clear that an Architect, Engineer or other design professional making recommendations and opinions based upon their education, training and experience are not "Lobbyists" under the statute. An example of such an exemption is

the expert exemption located in Minn. Stat. Section 10A.01 Subd. 21 (b)(8). In the alternative, and as we discussed at length this spring, we could also add a section to the statute or regulations making it clear that a professional who offers his or her opinions based upon his or her education, training and experience is not engaged in "communications for the purpose of attempting to influence the official action of a political subdivision". Either of these changes would insulate architects, engineers, land surveyors, landscape architects, geologists, and certified interior designers from being considered lobbyists while practicing their professions as defined by Minnesota Statutes § 326.

We believe that this clarification within the regulation is not only consistent with the intent of changes in the statute, but is also in the State's best interest. The municipalities benefit from having licensed professionals with experience in industry providing them information, opinions and recommendations related to issues within their profession. The result of having those professionals considered to be "lobbyists" will be the inability of the political subdivisions to obtain the information, opinions and recommendations directly from the source in connection with potential projects. As a result, projects will take longer to approve, will likely be more expensive, and the decisions will be made by the political subdivisions without the full picture often needed to make an informed and rational decision.

We appreciate the opportunity to participate in the study of the impacts of the statutory and regulatory changes. We are committed to working with the Board to develop a statute and regulations which accomplish the legislative goals while also protecting the architectural and engineering profession. If you have any questions about these proposals, please do not hesitate to contact me. I would be more than happy to discuss them with you.

Sincerely,

HELEY, DUNCAN & MELANDER, PLLP

s/ Eric R. Heiberg

Eric R. Heiberg

cc: Thomas Poul (via email)
Jonathan Curry (via email)
Megan Engelhardt (via email)
Sheri Hansen (via email)
Sarah Strong (via email)

ERH/jb

From: Eric Heiberg
To: Engelhardt, Megan (CFB); Sigurdson, Jeff (CFB)
Cc: Tom Poul; Jonathan Curry; Jamie Baumgart
Subject: RE: Regulatory Language Submission on behalf of ACEC Minnesota
Date: Wednesday, February 07, 2024 10:25:52 AM

Megan and Jeff,

As you know at the last subcommittee hearing on the new regulations, the subcommittee invited me on behalf of ACEC/MN to propose language for the regulations relating to engineers hired by third parties interacting with a political subdivision as a part of the design process. Our goal is to allow engineers and other design professionals in the practice of their professions to interact with the required political subdivisions without having to register as a lobbyist. The subcommittee asked that our proposed language:

1. Incorporate our request that it apply to licensees and those working directly for licensees; and
2. Be consistent with the statute.

Based upon that request, here are our requested additions to the regulatory language. They would be used either/or since we think they are each a reasonable approach to accomplish the same thing:

4511.1200 ATTEMPTING TO INFLUENCE AN ELECTED OR NONELECTED LOCAL OFFICIAL. An individual providing an elected or nonelected local official information, data, advice, opinions, variables, options or directions as professional licensee under Minnesota Statutes Section 326.02 through 326.15 or under the direct supervision of a licensee under Minnesota Statutes Section 326.02 through 326.15 shall not be considered attempting to influence that elected or nonelected local official.

or

Add the following sentence to the end of 4511.0100 Subp. 6:

“Providing an elected or nonelected local official information, data, advice, opinions, variables, options or directions as professional licensee under Minnesota Statutes Section 326.02 through 326.15 or under the direct supervision of a licensee under Minnesota Statutes Section 326.02 through 326.15 is not lobbying or an activity that directly supports lobbying.”

Please let me know what you think. If you and/or legal counsel want to discuss the proposals, we are more than willing to do that as well. Thank you for your continued work on this issue.

Eric R. Heiberg Esq.
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From: Eric Heiberg
To: Sigurdson, Jeff (CFB); Engelhardt, Megan (CFB)
Cc: Tom Poul; Jonathan Curry; Jamie Baumgart
Subject: RE: Regulatory Language Submission on behalf of ACEC Minnesota
Date: Tuesday, February 13, 2024 2:53:48 PM

Jeff,

Thank you again for your and your staff's hospitality at the subcommittee hearing on Friday. As discussed with the committee members, below is our attempt to split the difference between the 2 language proposals for Rule 4511.1200. In drafting this language we are trying to address the following concerns of the subcommittee:

1. Make the language more broad than just licensees under Minn. Stat. §326 so it could cover other professionals like railroad employees discussing railroad crossings;
2. Make the language narrow enough that it does not include any member of the public who is advocating for a project; and
3. Making sure there is not an exception that makes the rule moot.

Our proposed language is as follows:

4511.1200 ATTEMPTING TO INFLUENCE AN ELECTED OR NONELECTED LOCAL OFFICIAL. An individual providing an elected or nonelected local official information, data, advice, opinions, variables, options or direction in an area where the individual has a particular expertise through education, training, or experience shall not be considered attempting to influence that elected or nonelected local official.

We propose this as a compromise between the 2 proposals from Friday, and in our opinion is consistent with the exception to the definition of lobbyist intended by the legislature in Minn. Stat. §10A.01 Subd. 21(b)(8). Please call or email with thoughts or comments. As I discussed with the subcommittee, we are interested in finding a solution that works for everybody and still complies with the statutory language.

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AIA Minnesota

February 8, 2024

Jeff Sigurdson, Executive Director
Andrew Olson, Management Analysit
Minnesota Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
Saint Paul, MN 55155

Dear Mr. Sigurdson and Mr. Olson,

We are writing today to offer our support for the rule amendment proposed by ACEC/MN to clarify that specified activities by design professionals licensed under MN Statutes 326.02 through 326.25 do not require registration as a lobbyist. Architects, like engineers, work regularly with government entities at the state, county, and local levels, and want to ensure that design work engaging with political subdivisions in the general course of business is not considered lobbying.

We respectfully ask that the Rulemaking committee adopt one of the proposed options from ACEC/MN as part of your Chapter 4511 rule update.

We appreciate the efforts of the Campaign Finance Board to clarify regulations and provide advisory opinions to professionals who wish to remain in compliance with the new law and are happy to provide further insight on our specific interactions where that is useful.

Thank you for your time.

Sincerely,

Mary-Margaret Zindren, CAE
Executive Vice President, AIA Minnesota

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Clean Elections Minnesota
2533 Colfax Avenue South
Minneapolis, MN 55405

Members of the Campaign Finance Board
190 Centennial Office Building
638 Cedar St.
St. Paul, MN 55155

June 14, 2024

Dear Members of the Minnesota Campaign Finance Board. My name is Mary Hartnett and I'm Executive Director of the non-partisan, non-profit organization, Clean Elections Minnesota (CEM). We educate Minnesotans as well as advocate on issues such as expanded voter access, public transparency and campaign finance reform.

The Legislature has instructed the Campaign Finance Board to study and make recommendations on who should be required to register as a lobbyist when paid to influence state and local officials. This topic has gained attention due to recent legal changes aimed at ensuring that lobbyists at the local level also register and disclose their activities. However, following these changes, there has also been significant lobbying to narrow the scope of who must register, potentially limiting publicly available information about those trying to influence government decisions.

The essential democracy issue at stake is the public's ability to know who is being paid to lobby decision-makers. So far, the testimony received has chiefly been from corporate and private interests. There has been significantly less input from the general public or organizations advocating transparency and accountability. For that reason, we appreciate the Campaign Finance Board holding an additional hearing to receive a broader set of perspectives on this matter

CEM believes transparency and disclosure are fundamental to public trust in government. Minnesota's current lobbying laws, much like our campaign finance laws, are designed to provide visibility into who is influencing public policy decisions. Consequently, we must maintain a system that allows the public, journalists, and lawmakers themselves to see who is being paid to engage with government officials.

Today's threshold for registration, $3,000 for those directly influencing government officials, is an effective standard.Raising it would mean that unknown, possibly secretive, persons could influence government decisions without transparency for the public.

We should be cautious about proposals to carve out specific professions from registration requirements. Exempting executives or professionals who engage with lawmakers can obscure the public's ability to know who is attempting to influence policy decisions. This could inappropriately allow significant interests to operate without transparency or accountability.

Therefore, we urge you to recommend broader registration requirements that will serve the public interest. Registering as a lobbyist is not a punishment; it's simply a way to ensure the public is informed about who is advocating for specific interests and policies.

As the Campaign Finance Board continues its deliberations, we urge you to always prioritize public interests—those of residents, workers, communities, and voters--- in matters related to transparency in lobbying.

Thank you for your time and attention.

Mary Hartnett
Executive Director

Ken Peterson
Legislative Committee Chair

COALITION OF GREATER MN CITIES

DEDICATED TO A STRONG GREATER MINNESOTA

August 21, 2024

Minnesota Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Re: Lobbying Definitions Study

Dear Members of the Campaign Finance Board,

On behalf of the Coalition of Greater Minnesota Cities (CGMC), I am writing to submit comments as you embark on studying and making recommendations regarding the lobbying laws as they pertain to the lobbying of public officials and local officials in political subdivisions.

The CGMC is a group of more than 100 cities throughout the state dedicated to developing viable progressive communities for families and businesses through good local government and strong economic growth. Our member cities and their employees may be impacted by changes to laws and regulations relating to the lobbying rules.

First, we want to acknowledge the changes that the Campaign Finance Board (CFB) and the Legislature have made in response to earlier concerns that we raised about the 2023 legislative changes. For example, Advisory Opinion 456 clarified that when a member organization comprised of political subdivisions reaches out to its members regarding legislation, that activity does not constitute lobbying. The Legislature also amended the definition of an employee of a political subdivision to include consultants, independent contractors, and others hired by local governments. These changes recognize that certain activities of local governments are part of the ordinary course of business and should not be considered lobbying. We thank the CFB for working on these changes and urge that these concepts remain in place when the CFB makes its final recommendations on further changes.

Challenges remain, however, with the recent legislative changes to the lobbying statute that may cause confusion and consternation for local governments. Our remaining comments focus on the need for better clarity for local government employees in certain scenarios.

As the CFB considers its recommendations for local government lobbying, we also urge it to be mindful of the many public disclosure requirements and other laws promoting transparency that political subdivisions already comply with. Most purchasing decisions are subject to competitive bidding statutes. City council decisions and discussions are subject to open meeting laws. The

availability of information with respect to what a city or similar subdivision is deciding and the information that goes into those decisions is much more readily available than at a state level.

Communications Between Local Governments Regarding Joint Activity Should Not Be Considered Lobbying

Local governments in Minnesota frequently collaborate on projects that involve decision-making by their respective bodies. A city and a county may work together on the construction of a building, a road, or a park. A watershed district and a township may collaborate on a wetland project. A city and a township may negotiate an orderly annexation agreement. A school board may purchase or sell land from a county. There are countless permutations of potential intergovernmental projects in which the employee of a local government may be having discussions with another governmental entity that could be construed as attempts to influence a decision by that other government entity. Requiring such employees to register as lobbyists when they spend more than fifty hours in any month on such work would be cumbersome and would not further the public interest in transparency. We urge the CFB to make clear that such cooperative work between governmental entities does not fall within the definition of lobbying.

We understand that attempting to include the official action of a different political subdivision other than the political subdivision at which one is employed was originally targeted toward communications involving the Metropolitan council and local governments that may be reporting to or seeking something from it. Narrowing the definition to such circumstances may be the best approach and would allow collaboration between local governments to continue.

The Definition of Local Government Employees as Lobbyists Should Be Narrowly Construed

We appreciate that the definition of lobbyists excludes elected local officials and some unelected local officials, but we are still concerned that the definition is still too broad and confusing, especially when combined with the more expanded definition of legislative action. Specifically, Minn. Stat. 10A.01 Subd. 21 (b)(4) excludes nonelected local officials or employees of a political subdivision unless:

> . . . [u]nless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a political subdivision other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a political subdivision, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of political subdivisions.

We are concerned that the highlighted language regarding research, analysis, and compilation of information relating to legislative or administrative policy could sweep up local government employees working on projects that result in legislation, such as a bonding request. Countless hours are spent on activities such as research or analysis that become part of the materials related

to a legislative bonding request, such as engineering studies or financial analysis. Public employees would need to track all their hours when working on projects related to legislative action to determine whether they are exceeding the 50-hour threshold in any month. Identifying all public employees who exceed that threshold as lobbyists does not serve the public interest. We urge the CFB to narrow and simplify the category of local government employees who are considered lobbyists to those who actively participate in advocacy communication with legislators.

Thank you very much for your time and consideration. If you have any questions or would like to discuss this issue further, please contact me or our attorney, Elizabeth Wefel, at eawefel@flaherty-hood.com.

Shelly Carlson, Mayor of Moorhead
President, Coalition of Greater Minnesota Cities

COALITION OF GREATER MN CITIES

DEDICATED TO A STRONG GREATER MINNESOTA

November 19, 2024

Minnesota Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Re: Lobbying Definitions Study – Supplemental Comments

Dear Members of the Campaign Finance Board,

On behalf of the Coalition of Greater Minnesota Cities (CGMC), I am writing to supplement our earlier comments and testimony as you study and make recommendations regarding the lobbying laws as they pertain to the lobbying of public officials and local officials in political subdivisions. The purpose of this letter is to amplify and clarify a few comments that we raised in our August 12 letter and in testimony to the CFB.

Widespread Cooperation Between Governmental Entities Requires Narrow Definition of Lobbying

We would like to reiterate our concern about keeping the definition of lobbying as it pertains to activities between local government subdivisions as narrow as possible. These concerns were also outlined in our August submission, but we write again to emphasize just how fundamental intergovernmental collaboration is to many local government roles. Specifically, as the CFB continues to study this issue, we want to emphasize that a narrow definition of lobbying is necessary to avoid the sudden inclusion of hundreds or thousands of local government officials, without any additional public benefit. Collaboration between local government subdivisions should be considered a hallmark of good government, not a trigger for lobbying requirements.

The expansion of the definition of lobbying newly brought more than 3,000 local government subdivisions under the purview of campaign finance laws. Undoubtedly, multiple appointed officials or employees at almost all these entities engage regularly in projects that involve "official action" by their respective bodies and other government entities, whether it be a construction project, a purchase or sale, contracting for services, or something else. Many employees may be engaged in multiple projects performing activities that meet the very broad definition of lobbying under Minn. Stat. 10A.01, Subd. 21(4), which could trigger lobbyist registration and reporting requirements based on activities that most people would not consider lobbying. This collaboration between governments is not isolated to larger, special projects. It happens every day.

For example, a city's engineering department and public works staff engage daily with their counterparts in county or state government regarding the maintenance of basic public infrastructure, including roads, water and wastewater. This collaboration is expected by the public, which demands that basic infrastructure be safe and well-maintained regardless of which level of government is responsible for it.

Cities and counties routinely collaborate, which arguably may include trying to influence one another—on projects in ways that have not traditionally been considered lobbying. For example, appointed officials or staff who engage with one another to iron out specific design elements, cost allocations between levels of government, or important decisions about the timing of project delivery have traditionally been understood to be simply doing their jobs. Under too broad a definition, these activities might be considered lobbying other local governments. Therefore, we urge that the definition of lobbying be narrowed as it pertains to cooperation between local government subdivisions.

Requiring Lobbying Registration Could Impose Costly and Unnecessary Burdens on Local Government Officials

Throughout the discussions on lobbying laws, the question has been raised regarding whether requiring a host of local government officials to register imposes a burden that should cause concern. We believe that answer is yes for a variety of reasons:

- **Unnecessary and confusing record keeping.** To determine whether any given employee or unelected official must register and to prepare the information needed for reporting, many local government employees will need to closely track their time on any project or projects involving another government entity if that work involves communicating or asking someone else to communicate with someone at another local subdivision or performing research, analysis, or compilation of information relating to that project. The employee may find it challenging to determine whether their conduct fits within the definition of lobbying. The employee may not know whether they will reach the 50-hour threshold on a project or combination of projects until the end of the month, so there may be multiple instances where they track their time but ultimately do not need to register. Requiring this level of record keeping on collaborative projects will be costly, in terms of time and money, but it will not likely provide information of value to justify that cost.

- **Restrictions on the unwary could lead to fines.** Lobbyists are subject to restrictions not imposed on the general public. For example, lobbyists are prohibited from making campaign donations during the legislative session. One could easily envision a city engineer who now falls within the definition of lobbyist getting asked to make a campaign donation by his friend down at the local Rotary Club who has no idea that this person is a lobbyist, and neither thinks twice about the fact that it's the legislative session. That engineer could now be facing a fine. Failure to register or missing a reporting deadline by even a day can result in a fine. Even if fines are rare and/or complaint driven, it does not serve a public purpose to put those employees, or taxpayer money, in the position to face a potential fine.

Applying Broad Lobbying and Reporting Burdens to Local Officials Does Not Significantly Benefit the Public

Finally, we want to continue to be very clear that a narrow definition of lobbying for these purposes can be a win-win. It would avoid placing unnecessary burden and liability on local officials and do so without diminishing the information already available to the public on local government activities.

Local governments are already subject to extensive public data, disclosure, open meeting, and information retention laws. In fact, in nearly all cases, the activity, records, communications, and deliberations of local governments are *already* public to a much greater degree than at other levels of government—particularly when contrasted against the state legislature.

Other Considerations Regarding Local Government Lobbying

Finally, we wanted to distinguish some recent comments from current and former elected local officials. Some recent comments in this process have advocated for applying lobbying restrictions to local governments in order to add transparency to situations where attorneys or others are seeking to influence individual council members or staff to a specific end, for a specific client. It is important to note that those are different from the situations that we discussed above.

Moreover, while those comments are worth considering, cities also have existing tools at their disposal to address some of these issues. Cities that seek to shine a light on non-public communications often adopt rules or codes of ethics that include specific disclosure procedures and penalties for "ex parte" communications. Adding layers of lobbying reporting may not be necessary to achieve those commenters' goals.

Thank You

Thank you very much for your time and consideration. If you have any questions or would like to discuss this issue further, please contact me or our attorney, Elizabeth Wefel, at eawefel@flaherty-hood.com.

Shelly Carlson, Mayor of Moorhead
President, Coalition of Greater Minnesota Cities

COMMON CAUSE MINNESOTA
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November 13, 2024

To the Honorable Members of the Campaign Finance Board,

Common Cause MN is a nonpartisan grassroots organization working to create open, honest, and accountable government, more information about our work at www.commoncause.org.

Minnesota is home to over 24,000 multipartisan members across the state and despite belonging to various MN party affiliations, or not being affiliated, the one thing they've come together to do is support our work ensuring our Republic's democracy is safeguarded.

We believe democracy is how a free society resolves its differences. To do that well, there must be an opportunity for all to give input into decisions made by elected and appointed leaders and transparency as to who is giving this input. This is how we ensure decisions are fair, produce equitable outcomes, and reflect our communities, our values, and our priorities.

The ensure greater parity among grassroots citizen lobby efforts and professional lobbyists, we urge the Campaign Finance Board to prioritize making lobbying requirements clearer and easier to digest for community stakeholders and other Minnesotans who are not professional lobbyists. We also formally request that the Board prioritizes transparency as it makes recommendations to the Legislature.

The exchange during Marie Ellis' testimony, Minnesota Council of Nonprofits, during the Lobbying Listening Session, highlights the significant confusion about which activities count as lobbying, and which do not. If the Minnesota Council of Nonprofits with multiple experienced staff focused on legislative advocacy is confused, this is an even greater issue for smaller grassroots organizations, especially those from BIPOC communities, who may have even less experience advocating at the state or local level.

Talking to decision makers is intimidating enough; being unsure what the rules are and how to ensure that you're in compliance has discouraged some organizations from engaging at all. Everyone loses when there are barriers to engagement. A healthy democracy is one that is transparent and open where decisions are made with insights from a broach section of impacted communities, especially those most directly impacted by these decisions.

We urge the Board to create practical guidance about the lobbying requirements in consultation with small organizations, especially those from impacted BIPOC communities, who are newer to this arena. The guidance should provide information in plain language as to which activities:

- constitute lobbying and count toward the threshold that requires registration,
- constitute "lobbying activity" and need to be reported by Principals, but don't count toward the threshold, and
- which don't count as either one.

A resource like this builds greater parity promoting civic engagement, empower grassroots communities, and remove barriers to participation.

In addition to prioritizing clarity, we urge the Board to prioritize transparency as it makes recommendations to the Legislature.

The public has a right to know who is trying to influence elected and appointed officials as they make decisions. For starters, Minnesota should maintain, not increase, the $3,000 threshold for when a person needs to register as a lobbyist. Additionally, we ask that information should be centralized within the Campaign Finance Board body, making access to pertinent information about lobbying at the state and local level easy for the public to find.

Furthermore, the lobbying threshold should include the time a person spends urging decisionmakers to act, including time spent testifying at a public hearing. Not having that detail compromises the intent in maximizing accountability and transparency because this information would not be captured. The person looking up the information would have to know which hearing(s) it was that a specific topic was discussed and go to a different website, if the information is online, to find the records or recordings from a specific meeting of a local political subdivision (or the Legislature if this was expanded to the state level) to see who testified. This is in effect a step backwards and would counteract added transparency that the Campaign Finance Board intends to provide with the recent changes to lobbyist reporting. The public deserves more access to information about who is being paid to influence decisions.

Other ways to protect the public's right to know who is being paid to influence decisions are to maintain the lobbying reporting requirements for all types of local decisions and for everyone urging action including "experts." Some groups are arguing that project-specific decisions should be exempt from the lobbying requirements. We strongly disagree. A neighborhood is impacted when a gas station asks for a zoning variance, so the public has a right to know if the gas station owner, the convenience store chain, or even Exxon Mobil is pushing the decision. Similarly, the public has a right to know about everyone who meets the threshold who is urging action, regardless of their credentials or position in a company. If the Board provided clear guidance about the activities that count as lobbying as we urge above, then there is no reason to exempt any category of experts. Transparency for the public certainly outweighs a little additional paperwork.

Thank you for your dedication to *all* Minnesotans as you develop your recommendations.

Annastacia Belladonna-Carrera
Annastacia Belladonna-Carrera
Executive Director

August 19, 2024

Minnesota Campaign Finance and Public Disclosure Board

190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Re: Lobbying Definitions Study

Dear Minnesota Campaign Finance Board:

On behalf of the Greater Minnesota Partnership ("GMNP"), an organization focused on expanding economic prosperity in Greater Minnesota, thank you for the opportunity to weigh-in on the state's campaign finance regulations. Members of the GMNP are nonprofits, Economic Development Associations, businesses, local chambers of commerce, and Greater Minnesota cities.

Should the laws regulating lobbying distinguish between lobbying public officials in state government and lobbying local officials in political subdivisions?

Yes, the laws regulating lobbying should distinguish between lobbying state officials versus lobbying local officials in political subdivisions.

Most of our members work regularly with local government to address community challenges and opportunities in a spirit of collaboration and for mutual benefit. The work our members do with local governments is different in nature than the advocacy and lobbying that they do at the state level. It would be unusual in Greater Minnesota communities to be advocating for changes to a city ordinance or around the allocation of resources, but most of our members regularly work with local governments on community issues in the normal course of business. These activities can include working with city staff and local government officials to address transportation issues with a development project or working with local government to develop a housing project as just two examples.

Members have expressed concerns that changing the requirements for this sort of activity to require reporting it to the Campaign Finance Board as lobbying would vastly expand the reporting requirements for these community groups in terms of the number of staff reporting and the breath of the activities they would need to report. This change could also potentially create issues for some members around their nonprofit status and would vastly expand the time and resources that organizations would be required to commit to reporting. MGNP members strongly encourage the Board to distinguish between activities lobbying public officials in state government and lobbying local officials in political subdivisions and to narrow those activities that constitute lobbying with respect to political subdivisions.

Feedback on the Definition of Local Government Employees as Lobbyists

Members have also expressed concern that the definition of lobbyist under Minn.Stat. 10A.01 Subd. 21 (2(b)(4) is overly broad. Under the current definition, it's easy for an employee of a political subdivision to spend more

than 50 hours in any month in the normal course of business doing work that meets the definition in (4). To ensure compliance with this statute, employees will need to track all hours doing qualifying work so in any given month they can report those activities if they exceed 50 hours. We urge you to narrowly construe the definition of local government employees as lobbyists.

Thank you again for giving us a chance to share our feedback. If you have questions, please contact me at darielle@gmnp.org.

Thank you,

Darielle Dannen
Executive Director
Greater Minnesota Partnership

From: Coyle, Peter J.
To: Sigurdson, Jeff (CFB); Olson, Andrew (CFB)
Cc: Mark Foster - Housing First Minnesota (mark@housingfirstmn.org); Coyle, Peter J.
Subject: Current Draft of CFB Rules
Date: Friday, March 01, 2024 2:26:49 PM

Good afternoon, our firm represents Housing First Minnesota, a homebuilder trade association representing thousands of Minnesota builders, developers and suppliers. I am submitting comments regarding the proposed expansion of the lobbyist registration and reporting requirements as reflected in proposed Minn. Rules Ch. 4511. Member company representatives routinely engage local governments both formally and informally to advocate for their proposed housing projects; while we appreciate the desire of the drafters to provide more transparency to that process, it is important to note that every application to plan and develop a new housing development is statutorily required to undergo a significant public process, replete with signed applications and public hearings at which the identity of the applicant companies and their hired representatives must be disclosed. The proposed rules add one more regulatory burden to an already extensive public process which, in our opinion, provides minimal or no new insight into the identity of project applicants or their hired representatives.

Having said that, we appreciate the positive changes made to the draft rules and urge your consideration of two additional changes:

1. We recommend that 4511.1000, subpart 1 be amended to limit registration to advocating for an amendment to the local jurisdiction's comprehensive plan. The rationale is that no housing project can advance if the local comprehensive plan doesn't authorize it in the first instance. Any request for a zoning amendment or subdivision is statutorily predicated on being in compliance with an approved comprehensive plan. The comprehensive plan process will adequately identify the project applicants if that is deemed important. As noted above, the follow-on process is already very transparent.
2. We also recommend that 4511.1000, subpart 1 be further amended to not require registration for any public proceeding in which a landowner or their hired representative is statutorily required to participate in order to preserve a legal objection, such as when a city advances a special assessment proceeding under Minn. Stat. 429.169 and proposes to assess project costs to affected landowners over their objection; failure to confirm an objection to a proposed assessment at the scheduled assessment hearing constitutes waiver of the objection and precludes any future challenge to it. It seems to us fundamentally unfair and burdensome to both compel participation in a statutory process in order to preserve a legal right and convert it into "lobbying" requiring registration and reporting.

Thank you for considering these comments.

Peter J. Coyle
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Larkin Hoffman Attorneys

October 24, 2024

Minnesota Campaign Finance and Public Disclosure Board
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Re: Lobbying Definitions Study

Dear Members of the Campaign Finance Board,

Thank you for this opportunity to comment on proposed changes to add transparency to the process of lobbying of state & local officials. I currently serve as the Executive Director of the Bicycle Alliance of Minnesota, however these comments are my own. From 2009 - 2021; I served on the Rochester City Council. In that environment I saw pressure placed on myself and my peers by individuals paid to influence policy and decisions related to the billions of dollars spent by local governments in the state of Minnesota. Most of the contact I and my peers had with paid lobbyists or their surrogates were outside of public meetings. This is why strong disclosure standards are so important.

Based on my own experiences I would encourage the state to enact a broad definition of lobbying that includes all individuals who are paid entirely or in part to engage with individual elected officials, professional staff, advisory boards or full elected bodies. Further this definition should be extended to paid individuals who organize unpaid individuals to lobby on behalf of their cause.

In the case of the Rochester City Council, we were often lobbied by the Rochester Area Chamber of Commerce, Rochester Area Builders Association, Southeastern Minnesota Association of Realtors, and Sierra Club among others. In some cases I agreed with these groups, others I did not. But in all cases, the public deserves to know who was lobbying the City of Rochester.

I would urge the board not to carve out any exceptions for individual professions or individual parts of the governing processes. In local government the application of policies (quasi-judicial) by appointed bodies, elected bodies, and professional staff is as important as the creation of policy itself. Disclosure of lobbying activities is not a high bar and is a fair expectation for people paid even a de minimis amount for direct or indirect lobbying.

A lobbyist is not a bad person and many times their intentions may be noble. Irrespective of the person or the cause; no one should be allowed to lobby without the sunlight of disclosure. Disclosure is particularly important when lobbying happens in front of government bodies where little or no media may be present. This is certainly the case with most local governments.

In closing, I would ask the board to ensure all those paid to influence local and state governments can do so, but only with the sunlight of disclosure.

Michael Wojcik
984 Fox Knoll Dr. SW
Rochester, MN 55902

From: Graham Berg-Moberg
To: Sigurdson, Jeff (CFB)
Subject: Minnesota Association of Townships" Initial Comments on 10A issues
Date: Monday, July 29, 2024 2:48:06 PM

Hi Jeff,

Thank you for highlighting this issue for us. I will be present at the August 19 meeting; I'm looking forward to a productive conversation on these issues. In any event, let me dive right in to our comments.

Present law is structured in a way that is problematic for township officers in a variety of ways. First, a word about townships so that the Board understands what makes us distinct and unusual among local governments. Townships were the original form of local government in Minnesota, established in the late 1700s when Congress ordered a survey that divided the territory into 36 square mile tracts of land. Townships exist in every area of the state, including the metropolitan area. Some, with populations of more than 1,000 function in much the same way as a small city. Most are much smaller. A township board of supervisors, usually three members, are elected by their residents to staggered three-year terms, and make up the township governing body.

The annual meeting is what really sets townships apart from other forms of local government. At this meeting, the residents of the township have a direct voice in how the township will be run, can pass laws on certain subjects, and can set their own taxes. As a result, townships are not usually run by professionals. Instead, the board of supervisors is usually composed of individuals who have another primary job. As a result of Minnesota Law requiring the voters to approve their own taxes, the supervisors are subject to serious checks that other forms of government simply are not. Based on the most recent data for the state demographer's office, approximately 922,013 residents of Minnesota live in one of Minnesota's 1,780 townships. The largely non-professional nature of Township governance means that legal technicalities can be more significantly more burdensome for us

For example the inconsistencies between the gift-and-interested persons provisions in chapter 10A (which appears to include township officers) and Minn. Stat. 471.895 (which excludes them) appear to operate as a trap for the unwary. Diligent township officers looking to understand their obligations would likely look to Chapter 471 (governing municipalities generally) rather than the more specialized 10A, and would therefore likely be led to believe that certain conduct was legal when it is not. This issue is amplified by the whack-a-mole nature of the way 10A defines its terms. Minn. Stat. § 10A.071 subd. 1 provides that "official" means "a public official, an

employee of the legislature, or a local official." Local official is not defined in § 10A.071. Instead we must turn to §10A.01 subd. 22 which provides that "Local official" means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority 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." Next, we must flip to subdivision 31 to find out that "political subdivision" means "a municipality as defined in section 471.345, subdivision 1." Finally, section 471.345 tells us that "municipality" means a town.

In addition, the extremely broad brush nature of the way that "lobbyist" and "principal" are defined creates particular difficulties for our members. Minn. Stat. § 10A.01 subd. 21 tells us that a "lobbyist" is an individual who is "(1) engaged for pay or other consideration of more than $3,000 from all sources in any year: (i) for the purpose of attempting to influence legislative or administrative action" and prohibitions often bind not just the lobbyist but the principal. To bring home how hard this can be to administer on the sharp end, picture a situation in which a supervisor sits down at the bar next to a neighbor who he has known for years. This neighbor happens to own a business that unequivocally lobbies the state legislature but is not located in the town and has no dealings with the town board. The neighbor buys the supervisor, his friend, a $6 beer. The town supervisor may not be aware that the neighbor counts as a principal, may not be aware that he even owns a business. There is no risk of the public being swindled by this transaction, yet it would appear to be in violation of 10A.071 subd. 2.

The Township Association believes that this could be improved with a few tweaks. First, the board might consider mirroring the language of Minnesota Government Data Practices Act, which divides townships between those with enough administrative lift capacity to handle the requirement and those that do not. See Minn. Stat. 13.02 subd. 11. The change could be as simple as adding "excluding any town not exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2" to Minn. Stat. 10A.01 subd. 33 or subd. 22. (cf. with Minn. Stat. 13.02 subd. 11. Gift-giving to all township officials with the intent to influence a decision would remain illegal. See e.g. Minn. Stat. § 609.42. Self-interested transactions would remain illegal. Minn. Stat. 365.37.

If the Board believes that this provides insufficient protection for the public, the board might consider leaving smaller townships bound, but requiring a higher degree of knowledge for the smaller townships.

Regardless, the Board can rest assured that Townships' voter-focused structure offers a strong barrier to the sort of back-scratching under-the-table skullduggery 10A aims to prevent. At the end of the day, town supervisors must submit their tax requests to the voters themselves, who may approve or deny it. Minn. Stat. § 365.431. As a result, the Township Association believes that a simpler structure for township officers is simply a better fit for the people of Minnesota.

Graham Berg-Moberg
In House Counsel
Minnesota Association of Townships

October 25, 2024

Testimony to the Minnesota Campaign Finance and Public Disclosure Board

Hello, my name is Marie Ellis and I am the public policy director at the Minnesota Council of Nonprofits (MCN). MCN is the largest statewide association of nonprofits in the country, representing over 2,000 member organizations across the state, most of which are 501(c)(3) nonprofits who also report their lobbying activity to the IRS. MCN's mission is to inform, promote, connect, and strengthen individual nonprofits and the nonprofit sector, and a large part of that work is done though our public policy advocacy and lobbying initiatives.

Thank you for this opportunity to provide testimony. While today's focus is on lobbying of local officials, my broader comments will be relevant to the conversation and hopefully helpful in guiding your decisions. MCN believes there can be a balance between ensuring transparency and simplifying the reporting obligations so that all nonprofits and individuals from historically marginalized communities can access their elected officials.

This balance must include clear practical guidance from the Campaign Finance Board as to what constitutes lobbying activity, and must offer support to nonprofits and others so that they can navigate compliance without the fear of unintended violations.

MCN appreciates the Campaign Finance Board's efforts to address significant challenges in lobbying reporting, and we urge you to consider innovative solutions to address these issues. Innovative thinking to find the right balance should include considering: higher thresholds for reporting for small organizations, aligning the state's definition of lobbying with the IRS's definition, removing some requirements for entities that already report lobbying activity to the IRS, and other ideas. To be clear, we are not advocating for any specific policies at this time, but rather for conversations that explore the ideas further.

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MINNESOTA COUNCIL OF NONPROFITS

Nonprofits support transparency and disclosure

The nonprofit sector strongly supports transparency of our own organizations, and the public's right to know who is being paid to lobby elected officials. In fact, 501(c)(3) charitable nonprofits, which make up the majority of nonprofits, already disclose information about our lobbying efforts to the IRS, and that information is free and easily accessible online. We support a strong democracy, which must include appropriate disclosures about who is being paid to lobby.

The challenges of Lobbying reporting deter some 501(c)(3) nonprofits from participating in the public debate

Reporting lobbying activity can genuinely be challenging for nonprofits, particularly small nonprofits, as well as individuals from communities that have historically been shut out of government decision-making spaces, which of course includes communities of color.

Complex and unclear lobby reporting rules can be a deterrent that keeps nonprofits from adding their valuable perspectives to the policy debate and keep them from participating in civic discourse.

One specific challenge nonprofits face in reporting compliance is that the IRS and Minnesota define lobbying differently and ask for different data. We must track lobbying time and expenses under both definitions, distinguishing between legislative, administrative, or local lobbying, and whether it is direct or grassroots.

There can be serious consequences for reporting incorrectly to the IRS, including loss of an organization's 501(c)(3) status, meaning they are no longer exempt from paying income tax, and donations to the organization would not be tax-deductible.

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Over 70% of nonprofits in Minnesota have annual revenue of under $1 million, relying on volunteers and limited staff who already juggle numerous responsibilities. These organizations do not have the resources to navigate lobbying reporting rules.

Given how high those stakes are, and the lack of practical guidance and support, it is no wonder many nonprofits steer clear of any kind of policy advocacy altogether.

Nonprofits provide critical information to decision-makers

Nonprofit organizations are vital advocates for policies that support a thriving state. We do not want the complexity of lobbying reporting to unintentionally discourage advocacy and silence the voices of those organizations.

This is not just a burden for nonprofits—it is a loss for the legislative process. These organizations provide valuable, on-the-ground insight into communities across Minnesota. Without their voices in the conversation, the policymaking process is less inclusive and critical perspectives are lost. This is particularly harmful to historically marginalized communities, whose perspectives are often misunderstood or overlooked in mainstream policy debates.

Practical guidance is missing

You might be wondering, “Is registering and reporting really that hard?” Yes, it is. The actual requirements are not the main barrier. The main barrier is the lack of practical guidance from the Campaign Finance Board or any other entity, which leads to confusion and misunderstanding.

A good example is what I’m doing right now. I’m sharing opinions with a government entity, which looks and feels like lobbying. But, I’m not discussing specific legislation or administrative rules. It’s not obvious whether this should be included in my lobbying time or not. Further, let’s say it is lobbying time. Do I

count only the 5 or 10 minutes I'm speaking with you? Or should I also count the time I spent preparing these remarks, and the time spent in conversations with many nonprofit advocates to ensure I was representing their concerns well?

Depending on what we count as lobbying, this testimony could be 10 minutes or 10 hours. I imagine there is specific guidance in a CFB Advisory Opinion, but we can't expect people to dive in that deep, especially if lobbying is not a main part of their job. We can't have a productive conversation about the $3,000 threshold if we don't have clear understanding of what activities are included in that time.

People should not need to be legal experts on the ins and outs of lobbying rules to feel comfortable talking with their elected officials.

Possible solutions

We urge the Campaign Finance Board to think big, and engage nonprofit advocates in considering reforms that would simplify compliance for nonprofits and their advocates while maintaining robust transparency measures. The Minnesota Council of Nonprofits can be a partner in this effort, in convening nonprofits to participate in these conversations, sharing our experiences, and our expertise on federal reporting requirements for 501(c)(3) nonprofits.

As noted above, we understand and appreciate the importance of transparency in lobbying. It is crucial for the public to have access to information about who is advocating for policy changes and who is being compensated for that work.

Our goal is to ensure that Minnesota's legislative process remains open and accessible to all, and that the rules do not inadvertently create or perpetuate structural barriers to participation for smaller organizations and the communities they represent — communities that are often already underrepresented in our state's policymaking. This accessibility is critical to a healthy democracy.

Thank you again for the opportunity to provide input. We look forward to working with you to find solutions that enhance both transparency and equity in Minnesota's legislative process.

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MGRC
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January 29, 2024

Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

On behalf of the Board of Directors and membership of the Minnesota Governmental Relations Council (MGRC), we appreciate the opportunity to submit comments to the Minnesota Campaign Finance and Public Disclosure Board Rulemaking Committee regarding new lobbyist registration and reporting guidelines.

The Minnesota Government Relations Council (MGRC) is a Minnesota nonprofit organization serving government relations professionals by providing advocacy, professional development, networking, and an enhanced working experience inside and outside the Capitol. We are a network of more than 500 lobbyists and public relations professionals in Minnesota, whose common goal is to influence the public policy process through ethical representation.

For several years, MGRC board members have been meeting with legislators and representatives of the Minnesota Campaign Finance and Public Disclosure Board (CFB) to discuss legislation relating to lobbyist regulation and public disclosure. To date, MGRC has engaged our full membership at several points to compile feedback, which we have shared with Campaign Finance Board staff and members. We appreciate the collaboration with the CFB staff and commend their willingness to engage MGRC on matters that directly affect our membership.

MGRC members take compliance with lobbying regulations very seriously. Ethical representation and adherence to the laws governing our community are among our core principles.

However, the message we continue to hear from our members is: the new statutes and rules aimed at lobbyist regulation and disclosure are confusing and cumbersome. The professional lobbying community desires a set of regulations that are clear and do not pose an undue compliance burden.

Several members have suggested Minnesota adopt the federal definitions at 2 U.S. Code § 1602 related to lobbying, including lobbying activities, lobbying contact, and exceptions. Conformity with the federal definitions would provide the desired clarity requested by the professional lobbying community.

MGRC greatly values citizen engagement in the legislative process. Several of the changes made in statute and proposed in the rules have the potential to silence voices and restrict free speech. As a community, we are concerned about burdensome regulations impacting citizens from participating in local and state issues due to fear of inadvertently triggering the need to register as a lobbyist. It would be unfortunate if requirements aimed at the professional lobbying community had the unintended consequence of chilling speech for regular citizens.

Although the new statute and rules are confusing and cumbersome, MGRC's membership is actively tracking the work by the CFB and preparing our organizations to comply with the new measures. However, many of whom will be affected by the new rules are citizens or organizations that are not tuned into the work of the CFB or already members of the lobbying community. How will they be notified that their advocacy may now trigger a need to register as a lobbyist?

Additionally, we have been assured that the public will not be affected by the changes because CFB will not, or does not have the capacity to, investigate or enforce the new rules. This assurance does not lessen our members' duty to be compliant.

We are enclosing an Appendix which contains questions and comments recently received from our members. A similar previous submission was made to the Campaign Finance Board in September 2023.

The Minnesota Governmental Relations Council stands ready to continue our collaboration with the Campaign Finance Board staff and members.

Thank you again and we look forward to continuing this dialogue during the rule making process in the coming weeks.

Sincerely,

Michael Karbo
MGRC President

APPENDIX: FEEDBACK RECEIVED (December 2023 – January 2024)

Are Advisory Opinions informing the rules or the rules informing the Advisory Opinions?

What happens if they are in conflict with each other?

***

How many new lobbyist registrations do they anticipate?

***

The definition in our state's campaign finance law is far broader than the FEC's definition of lobbying in federal law. Minn. Stat. 10A.01 includes "development of legislation, review, and modification" This seems to include subject matter experts simply providing the legislature with expertise on a bill that could inform a decision without what the federal government would consider as lobbying. Has the board looked at honing that definition more to ensure that the legislature continues to receive expert opinion? The fear is that this will have a chilling effect of expert participation in the process.

***

I am confused about the $500 reporting. The way I read it: an association, who has members companies with dues over $500, that lobbies at the Capitol or other government as part of their mission must have lobbyists report the individual names of the companies that have contributed to the association for lobbying purposes if it is over $500.

***

What happens if an expert is appearing at the invitation of the committee or city council? How about if they show up on their own - it is lobbying?

Would this exclude a variance from zoning code from actions/approval of elected local officials?

****

As an advocacy organization, because the definition of Lobbying is more expansive than the federal definition (as another question referenced) and because there is some ambiguity, we have tried to err on the side of over-reporting, and registering most of our staff as lobbyists, even if they not doing direct lobbying but are doing community organizing, for example. Am curious if this is a recommended approach that others are taking.

***

What is "routine"? Many permits, licenses and variances can become very controversial and require advocacy.

***

Some state agencies are overseen by a governor-appointed board and are tasked with advocating for issues in their areas of focus. Some examples are the Board on Aging, Council on Disability,

Commission of the Deaf, DeafBlind & Hard of Hearing. As part of their mission they provide testimony to legislators and meet with them on the issues. Sometimes this is at the invitation of legislators, but not always. Do their government relations people need to register as lobbyists?

***

We have some local elected officials who are also engaged in lobbying. If a local elected official who is a registered lobbyist that appears before a county board or another city council, will they have to report that interaction if they exceed the $3k threshold despite them being elected officials?

***

Is the $3000 per individual, or $3000 to a lobbyist employer who may employ multiple lobbyists?

***

Employers of contract lobbyists may, for internal and other reasons, not always disclose to that lobbyist contractor all relationships/expenses including some that fall into the MN definition of lobbing. Therefore it can, I believe it has, that a designated lobbyist has no way of knowing of certain items that should be reported - and yet is the party that could be held responsible for that lack of reporting. For this reason and for the benefit of direct reporting from the actual source of the funding wouldn't it make more sense to have all expense reported by the Principal vs the lobbyist?

***

Thank you for noting the complexities in reporting for in-house advocates at nonprofits!

***

I think the concern from larger state associations that represent governments is that our members/government professionals are constantly asked to provide input and advice on legislative proposals. There is concern that many local government professionals (assessors, zoning administrators, child protection workers) now have to register as lobbyists because they provide some input legislatively.

***

Most (if not all) of the attendees here are already registered lobbyists for at least one client. Does that mean that purely personal interactions with local elected officials (city council, county board) are now reportable? E.g., XXX needs to report to the state that she is working with the city council to amend her lot lines, even though she is not being paid for that action?

***

In your AO example, what about time the CEO spent prepping etc.

***

Nonprofits cannot go over a lobbying threshold in order to maintain their tax status. Is there any clarifying guidance for nonprofits?

E.g., if Nathan spends $3k and is registered once, each subsequent interaction is a lobbying activity. Now he's jeopardized his nonprofit status.

***

I'm attempting to follow the changes to lobbying reporting rules, but not succeeding. One thing I think would be massively helpful would be for MN to match our definition of lobbying to the IRS. I worked with an attorney last year who advised that my org report only what the IRS would consider to be lobbying, but that doesn't sit well, since MN's definition is much more expansive.

****

Minnesota Campaign Finance Board – Local Lobbying Definition Clarifying Questions

- Presume the company owns property that impacts a public infrastructure project. Does providing engineering and real estate review of municipal plans, including feedback and required changes for activity on private property, constitute lobbying under the new regulations? Are these reviews or redrawn plans or designs expenses that need to be reported on the Lobbyist Principal Expenditure Report?

- Presume the company runs a private railroad and the political subdivision is looking for guidance on building an industrial park with access to the private rail infrastructure. Does informing the political subdivision of our design standards and operational requirements, or reviewing their plans for such a project, constitute lobbying under the new regulations? Are these reviews or plans expenses that need to be reported on the Lobbyist Principal Expenditure Report?

- If a company regularly pays a permit fee to a political subdivision and the political subdivision changes the policy by which the fee is determined, does providing feedback and/or legal arguments opposing those fee changes constitute lobbying under the new regulations?

MINNESOTA GOVERNMENTAL RELATIONS COUNCIL

COMMENTS TO MINNESOTA CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD (CFB)

FEBRUARY 6, 2024

1. DEFINITION OF "LEGISLATIVE ACTION"

- Minnesota's definition of "legislative action" is broad and the proposed rules do not achieve much in the way of clarification.
- The proposed rules attempt to clarify "the development of prospective legislation" but in doing so, they do not solve the called-for clarity and, moreover, create more questions about how this will impact regular citizens.

> 4511.0100, Subp. 3. Development of prospective legislation. "Development of prospective legislation" means communications that:
>
> A. explain the need for legislation that has not been introduced as a bill;
>
> B. request support for legislation that has not been introduced as a bill;
>
> C. provide language, or comments on language, used in draft legislation that has not been introduced as a bill; or
>
> D. are intended to facilitate the drafting of language, or comments on language, used in draft legislation that has not been introduced as a bill.

- The effect of these proposed rules restricts speech even more than the underlying statute by expanding the definition of "prospective legislation" to conversations about issues that may – or may not – eventually become bills.
- Here are examples of potential unintended impact:

> Jane attends a legislator's constituent townhall meeting. Jane stands up during Q&A to talk about how important internships are for high school students. The legislator requests a follow-up conversation to learn more about the issue. Jane and the legislator and the legislator's staff met for several hours to talk about the issue, following which, the legislator drafts a bill to mandate internships in high school. While Jane was not seeking a bill when she expressed her opinion, Jane happens to be a highly compensated individual, so does the time she has spent explaining the issue now compel her to register as a lobbyist?
>
> John attends the same community church as his state representative. After services, they often talk about issues. John has opinions about a particular energy credit in place in other states that be believes would be great for the environment, and John has remarked from time to time that it would be great if the legislator could support a similar credit if it ever came before the state legislature. Because John's company is a pass-through company, corporate revenue is attributed to his individual income taxes - so after a particularly good business year, his compensation is high and do the casual conversations about supporting an energy credit now become "legislative action" even though the energy credit never became a bill?

Mary is an expert on dyslexia education. Her state senator wants to learn more about how best to educate students with severe dyslexia. They have several conversations about best practices, following which the senator asks Mary for technical assistance developing potential language. Mary spends many hours of her own time researching other states' dyslexia statutes and rules, and she conducts numerous interviews with educators and parents to help with drafting language, which then is never introduced as a bill. Based on the amount of time she spent working on the project and research costs of $3,000 to conduct interviews, Mary has reached the threshold of "legislative action" through "development of prospective legislation" does she need to register, even though her work never became a bill?

- The question inherent in these scenarios is: **what information is gained from requiring regular citizens register as lobbyists?** The U.S. Supreme Court has held that restrictions on free speech must be narrowly tailored to serve compelling governmental interests. We question whether requiring regular citizens engaging in political discourse to register as lobbyists meets a compelling government interest, and whether the proposed rules (not to mention the underlying statute) are sufficiently narrowly tailored.

- **We recommend that the section on "development of prospective legislation" be deleted or reworked** so that it does not unconstitutionally ensnare regular citizens and create additional confusion for the professional community.

- Further, **we propose that proposed rules conform with the federal definition of "legislative action" to the extent possible**. The Minnesota professional lobbying community is familiar with the federal definition, which provides more uniform direction on what does – or does not – constitute legislative activity. The nonprofit community in particular relies upon Internal Revenue Service guidance on "legislative action" and "lobbying" to ensure compliance with IRS regulations with regard to 501(c)(3) entities.

2. DEFINITION OF "LOBBYIST"

- Members of Minnesota's professional lobbying community have an inherent understanding of what professional lobbying means, and why we are different from citizens exercising their rights to petition the government. As the National Council on State Legislators (NCSL) states: **Lobbyists are not simply individuals who engage in lobbying**. Lobbyists are **professional advocates** who work to influence political decisions on behalf of individuals and organizations.

- Minnesota's new definition of "lobbyist" does not take into account the professional nature of lobbyists' work and instead expands it to individuals who are not professional advocates. In doing so, it forces ordinary citizens to monitor – and perhaps forego – their engagement with government officials.

- **We express concern with the draft rules at Part 4511.0200, which define registration parameters based on a compensation equation.** The proposed equation creates an unlevel playing field for advocates due to their compensation levels. For example, one advocate can trigger professional lobbying registration where her coworker who is spending the same time on the issue does not, solely based on compensation.

- **We encourage the CFB to incorporate an HOURLY THRESHOLD or EMPLOYMENT FACTOR in the draft rules**. Other states have created parameters for "lobbying" that take into account not just compensation, but the time spent on lobbying activities and whether lobbying is a key part of their work duties. We think an hourly threshold or employment factor test is a better approach to marking the line between citizen advocate and professional advocate than a case-by-case determination of compensation and activities.

  For example:

  - Alaska: "Lobbyist" means a person who: (A) is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislation or administrative action *for more than 10 hours in any 30-day period in one calendar year*; or (B) represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation, or profession. Alaska Stat. § 24.45.171.

  - California: Lobbyist" means either of the following: (1) Any individual who receives $2,000 or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or *whose principal duties as an employee* are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. Cal. Gov. Code § 82039.

  - Hawaii: "Lobbyist" means any individual who : (1) Receives or expects to receive $1,000 or more in monetary or in-kind compensation in any calendar year for engaging in lobbying; or (2) For pay or other consideration, on behalf of another person:(A) Engages in *lobbying in excess of five hours in any month* of any reporting period; (B) Engages in *lobbying in excess of ten hours during any calendar year*; or (C) Makes expenditures of $1,000 or more of the person's or any other person's money lobbying during any reporting period described in section 97-3. Haw. Rev. Stat. Ann. § 97-1.

  - Kansas: "Lobbyist" means: (1) Any person *employed in considerable degree* for lobbying; (2) any person formally appointed as the primary representative of an organization or other person to lobby in person on state-owned or leased property; or (3) any person who makes expenditures in an aggregate amount of $1,000 or more, exclusive of personal travel and subsistence expenses, in any calendar year for lobbying; (4) any person hired as an independent contractor and compensated by an executive agency for the purpose of evaluation, management, consulting or acting as a liaison for the executive agency and who engages in lobbying, except an attorney or law firm representing the executive agency in a legal matter. Kan. Stat. Ann. § 46-222.

  - Louisiana: "Lobbyist" means either: (i) *Any person who is employed or engaged for compensation to act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the principal duties of such employment or engagement*. (ii) Any person who acts in a representative capacity and makes an expenditure. La. Stat. Ann. § 24:51.

- Maine: "Lobbyist" means any person who is *specifically employed* by another person for the purpose of and who *engages in lobbying in excess of 8 hours in any calendar month*, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. Me. Rev. Stat. tit. 3, § 312-A.

- New Mexico: "Lobbyist" means any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the *course of his employment is engaged in lobbying on a substantial or regular basis*. N.M. Stat. Ann. § 2-11-2.

- North Carolina: Lobbyist - An individual who engages in lobbying for payment and meets any of the following criteria: a. Represents another person or governmental unit, but is not directly employed by that person or governmental unit. b. Contracts for payment for lobbying. c. Is employed by a person and a *significant part of that employee's duties* include lobbying. Exceptions: an employee if in no 30-day period *less than 5% of employee's actual duties* include engaging in lobbying; individuals who are specifically exempted or registered as liaison personnel. N.C. Gen. Stat. Ann. § 163A-250.

- Wisconsin: "Lobbyist" means an individual who is employed by a principal, or contracts for or receives economic consideration, other than reimbursement for actual expenses, from a principal and *whose duties include lobbying* on behalf of the principal*. If an individual's duties on behalf of a principal are not limited exclusively to lobbying, the individual is a lobbyist only if he or she makes lobbying communications on each of at least 5 days within a reporting period*. Wis. Stat. Ann. § 13.62.

[Additional states' definitions are available at: https://www.ncsl.org/ethics/how-states-define-lobbying-and-lobbyist]

- In hearing from our members, **we encourage the CFB to consider additional EXEMPTIONS from lobbying** for certain categories. Many other states (including Minnesota) have exemptions, and states like Rhode Island provide an expanded and well-considered list of exemptions from lobbying:

  > The following persons shall not be deemed "lobbyists" for purposes of this chapter: (from 42 R.I. Gen. Laws Ann. § 42-139.1-3)
  >
  > (1) *Licensed attorneys* who: (i) Represent a client in a contested administrative proceeding, a licensing or permitting proceeding, or a disciplinary proceeding; and (ii) Engage in any communications with an executive branch official or office if those communications are incidental to the attorney's representation of their client rather than lobbying activities as defined in this section.
  >
  > (2) A *qualified expert witness* testifying in an administrative proceeding or legislative hearing, either on behalf of an interested party or at the request of the agency or legislative body or committee;
  >
  > (3) Any member of the general assembly, general officer of the state, municipal elected or appointed official, head of any executive department of state government, and/or head of any public corporation, or a duly appointed designee of one of the foregoing offices acting

in the official capacity of said office, and any judge of this state *acting in their official capacity*;

(4) Persons participating in a governmental *advisory committee or task force*;

(5) Persons appearing on behalf of a *business entity by which they are employed* or organization with which they are associated, *if that person's regular duties do not include lobbying or government relations*;

(6) Persons appearing solely on *their own behalf*;

(7) *Employees or agents of the news media* who write, publish, or broadcast news items or editorials which directly or indirectly promote or oppose any action or inaction by any member or office of the executive or legislative branch of state government;

(8) *Individuals participating in or attending a rally, protest, or other public assemblage* organized for the expression of political or social views, positions, or beliefs;

(9) Individuals participating in any proceeding pursuant to chapter 35 of this title;

(10) Individuals, other than employees or agents of the news media, involved in the *issuance and dissemination of any publication, including data, research, or analysis on public policy issues* that is available to the general public, including news media reports, editorials, commentary or advertisements; and

(11) *Individuals responding to a request for information* made by a state agency, department, legislative body, or public corporation.

- Finally, **we encourage the CFB ELIMINATE the reporting requirement at 4511.0500**, Subp. 2 (C) – underlying sources of money are more appropriate for the Principal Report than the Designated Lobbyist Report. Contract lobbyists are hired by organizations to advocate for their interests to policymakers, and they typically do not have direct access to the funding sources of those organizations. While we question in general why this information is necessary or if it is narrowly tailored, it is not suitable for the Designated Lobbyist report.

3. POLITICAL SUBDIVISIONS

The inclusion of all "political subdivisions" in the lobbyist registration and reporting regulatory schema is unwieldy and leads to significant confusion. While we question why the extensive regulation of advocacy matters at the political subdivision level is necessary – or constitutional – we appreciate the Campaign Finance Board's attempts to provide better clarity on actions of elected local officials and who may be considered an employee of a political subdivision. Nonetheless, we think additional clarifications are needed, and we reiterate our comments above about narrow tailoring where free speech – particularly at the community level – is concerned.

MGRC
Minnesota Governmental Relations Council

380 St. Peter Street, Suite 1050
Saint Paul, MN 55102
info@mngrc.org
(612) 682-7826

August 19, 2024

VIA EMAIL

Jeff Sigurdson
Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

The Minnesota Governmental Relations Council (MGRC) is a Minnesota nonprofit organization serving government relations professionals by providing advocacy, professional development, networking, and an enhanced working experience inside and outside the Capitol. We are a network of more than 500 lobbyists and public relations professionals in Minnesota, whose common goal is to influence the public policy process through ethical representation.

On behalf of Minnesota's professional lobbying community, we are hopeful the Campaign Finance and Public Disclosure Board (CFB) will engage in a thorough dialog with MGRC and perform the research necessary to better understand the work and role of government relations professionals.

We have engaged our membership throughout the past several years to provide feedback on legislation and rulemaking related to registration and disclosure requirements for lobbyists. Our members universally support transparent, meaningful, and clear disclosure requirements. However, as the CFB embarks on this study group, we are currently hearing the following themes from our membership:

1. **We are concerned about the level of understanding and appreciation for the work professional lobbyists do and how it gets done.**

Professional lobbyists differ from citizens exercising their rights to petition the government. As the National Council on State Legislators (NCSL) states: *Lobbyists are not simply individuals who engage in lobbying. Lobbyists are **professional advocates** who work to influence political decisions on behalf of individuals and organizations*.

Minnesota's new definition of "lobbyist" does not consider the professional nature of lobbyists' work and instead expands it to individuals who are not professional advocates. In doing so, it forces ordinary citizens to monitor – and perhaps forego – their engagement with government officials.

We welcome the opportunity to provide critically important examples of this work that should be considered as additional clarity is sought on definitions and application to the work performed.

For example, appreciating the amount of time it could take to change one word in legislation could trigger certain reporting, as can merely assisting a legislator with improving their bill based on a client's expertise versus their advocacy. Currently there is no differentiation between these types of activities and the input we have received in the past from the legislature and Campaign Finance Board is there is a desire to in fact capture some of this activity but not others.

Several MGRC members have individually submitted advisory opinion requests and written comments to the CFB highlighting ambiguities in current statute and interpretation. Where much of the ambiguity lies is in the deficit of understanding what professional lobbyists do and how engagement by citizens, professional advisors and subject matter experts differ. We urge this committee to continue to engage in dialogue with our members so that the definition of "lobbying activity" is clear to all.

2. **We are concerned that the current statutory threshold to meet registration requirements does not effectively delineate between citizens and professional lobbyists.**

Minnesota requires registration for individuals who communicate with public or local officials or urge others to communicate with public or local officials after the individual is paid more than $3,000 in a year from all sources for lobbying.

Other states have created registration parameters for "lobbying" that consider not just compensation, but the **time spent on lobbying activities** and whether lobbying is a key part of their work duties. An hourly threshold is a fair approach to marking the line between citizen advocate and professional advocate, rather than relying on a case-by-case determination of compensation and activities. Furthermore, Minnesota previously had an hourly threshold. We urge this study group to strongly consider reinstating an hourly threshold that, combined with the compensation threshold, more accurately delineates between professional lobbyists, professional advisors, and regular citizens.

3. **We are concerned about the impact of new registration requirements on 1) professional experts; and 2) people serving as volunteers or on nonprofit boards.**

In 2023, the legislature adding a new definition of "legislative action" and expanded registration requirements to all "political subdivisions." This language was not well-vetted with the professional lobbying community, and it quickly became apparent there was significant confusion about WHO must register and WHAT activities constitute legislative action. The Campaign Finance Board has attempted to make clarifications through formal advisory opinion guidance and in rulemaking. However, the issue of "professional advisors" or "subject matter experts" has remained unsettled.

MGRC proposed legislation in 2024 to clarify this issue such that *an individual providing information, data, advice, professional opinions, variables, options, or direction on a topic on which the individual has particular expertise through education or professional or occupational training to a public or local official at a lobbyist's request* would not be required to register (other factors notwithstanding). This language was not adopted by the legislature, leaving professionals with disparate and confusing reporting requirements for subject matter experts working across various levels of government. We encourage the CFB to thoroughly research, consider, and recommend clarifications in this area.

Furthermore, we are concerned about a lack of clarity for individuals serving as volunteers, particularly those attending days at the Capitol and/or serving as directors on nonprofit boards. While some language has been drafted regarding volunteers in the proposed rules, MGRC membership and the nonprofit community remain confused about persons serving on nonprofit boards, persons attending days at the Capitol, and pro bono activities. We urge this committee to study these areas and engage in conversations with nonprofit leaders.

As this study group commences its work, we want to reiterate the commitment of the Minnesota Governmental Relations Council, its Board of Directors, and our 500+ members to engage with the Campaign Finance and Public Disclosure Board and the Minnesota Legislature to attain better understanding of the role professional lobbyists contribute to the legislative process as well as clarify definitions of professional advisors and volunteers, "legislative activity" relative to state and local public officials, and an updated threshold for lobbyist registration. We stand ready to work with you to achieve these objectives, with the underlying goal of transparent, meaningful, and clear lobbying disclosure requirements.

Sincerely,

Nancy Haas
President
Minnesota Governmental Relations Council

MINNESOTA REGIONAL RAILROADS ASSOCIATION

January 26, 2024

Campaign Finance and Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
Saint Paul, MN 55155

RE: Proposed Rules for Lobbyists and Lobbyist Reporting, Revisor's ID Number 4809

Dear Members of the Campaign Finance Board,

On behalf of the Minnesota Regional Railroads Association (MRRA), we are reaching out with concerns about the broad expansion of the definition of lobbying to interactions with local units of governments and the additional tracking and reporting that will be required.

The MRRA is comprised of 18 railroad companies, 4 of which are large national carriers, 2 which operate regionally, and the balance are short lines, which on average run 79 miles. Collectively, our members own and operate 4,373 miles of track in Minnesota, crossing many counties and hundreds of cities. In their course of doing routine business, their interactions with locally-elected and appointed officials can be numerous:

- discussing rail-highway grade crossings with the municipality that serves as the local road authority;
- providing engineering and real estate reviews of municipal plans that abut or take place on railroad property;
- engaging in siting industrial parks, rail spurs, transload facilities, or other economic development opportunities, sometimes as the request of the municipality;
- monitoring drainage and negotiating municipal fees related to stormwater runoff; and
- advising on local response to incidents and providing training to first responders.

Beyond that, some of our short line members operate on track owned by a regional rail authority. As tenants of the line, they are in constant communication with the authority and often provide direction and discuss the finances of the line. Managing these conversations to determine when they crossover from information sharing to lobbying would be extremely cumbersome – as their daily operations are tied to the regional rail authority. Then figuring out when the $3,000 compensation threshold is hit for each employee who engages in lobbying, would be another operational challenge. None of the employees of these railroads were hired to "lobby." They are fulfilling other job duties – in sales, safety, operations. Because their business partner is a public entity, they would now be subject to a regulatory scheme that serves no helpful purpose. Since these regional rail authorities are public entities, they must follow open meeting laws and their agendas, attendees, and minutes are publicly available. What

more does the public gain by having the Campaign Finance Board require the railroad employees to register as lobbyists based on their daily duties? What is the benefit of this additional disclosure?

For the Class I railroads, their large employee base makes it less likely that individual employees will hit the compensation requirement triggering the lobbyist registration requirement. However, as lobbyist principles, any dollars spent reviewing technical plans or evaluating real estate impacts – often at the request of local governments - would now have to be tracked and reported to the CFB. Again, the railroads aren't trying to influence development of municipal policy, but attempting to be a good partner and do the due diligence requested of them and make recommendations that may impact an official decision. Having to create a system to track all of this seems completely unwieldy.

Lastly, Minnesota has seen a growing number of passenger and commuter rail lines that do or will operate on railroad property (Northstar, Southwest LRT, and NLX, to name a few.) The development of these projects again involves constant communication between the railroads and local officials. Some of these conversations can be extremely sensitive, for both the railroad and local authority. Monitoring and tracking of all the discussions adds a level of complexity to what can already be a tenuous partnership – and could, in fact, discourage important conversations on tough topics from even happening if the individuals involved are required to now register as lobbyists under the proposed rules. Adding more obstacles to these negotiations only slows project development and construction, adding costs to the system and taxpayers, which is in no one's best interest.

Furthermore, we'd ask how the CFB will enforce this rule if enacted as proposed. The fiscal note on the original bill (House File 1776) references that one new FTE will be hired "to help with registration, communication, and outreach related to the legislation" for the 567 new individuals expected to register as lobbyists "who are paid to influence the actions" of local governments. No mention is made of the extra work to enforce the new rule. And based on recent advisory opinions, the number of people who would be required to register are not just professional lobbyists, but any employee of a company that may interact with a local unit of government and recommend a course of action if they hit the $3,000 threshold. If compliance is going to be complaint-based, we have more concerns. Our members have already been targets of unfounded complaints to the CFB that resulted in additional, unwarranted scrutiny, when there was absolutely no hint of wrongdoing. That's no way to a run a railroad.

In closing, we ask that the proposed rule be scaled back and limited to individuals specifically hired to lobby local governments, as has been practice at the state level for almost 50 years.

Sincerely,

Amber L. Backhaus
Executive Director
Minnesota Regional Railroads Association

MSBA

Minnesota
State Bar
Association

600 Nicollet Mall
Suite 380
Minneapolis, MN 55402

August 16, 2024

Minnesota Campaign Finance & Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Board Members:

The Minnesota State Bar Association (MSBA) is a voluntary professional organization that represents over 12,000 lawyers throughout the state. As you begin your legislatively-mandated study of issues relevant to lobbyist regulations, the MSBA asks that you consider making an important distinction regarding the definition of "official action of a political subdivision." Specifically, we request that you recommend requiring lobbyist registration for anyone attempting to influence the policymaking functions of political subdivisions, but not the court-like proceedings of political subdivisions.

Most planning and zoning decisions are made by local zoning boards, commissions, and elected officials. Such actions fit in one of two categories:

1. **Legislative decisions** formulate broadly-applicable policies for future application and include such actions as passing budgets, adopting plans, and adopting ordinances or amendments to ordinances.

2. **Quasi-judicial decisions** occur when an established policy (e.g., an ordinance or state statute) is applied to particular facts. Examples include decisions on variances, conditional use permits, site-plan review, zoning code violations, and many planning commission decisions.

When making quasi-judicial decisions, the local government body applies preexisting law to a single parcel or a limited number of individuals. Typically, quasi-judicial decisions do not directly affect the entire political subdivision, so there is limited public interest. In addition, quasi-judicial proceedings function more like court actions than political proceedings. For example, stricter procedural requirements must be followed, and the body's decision is subject to review by the Minnesota Court of Appeals (in other words, the public body is essentially standing in the shoes of the district court). Conversely, when making legislative decisions, the public body has considerable discretion, fewer procedural requirements, and is generally subject to less strict judicial review.

Because of their essentially judicial nature, and because no attempt is being made to influence broad public policy, participation in a quasi-judicial process should not require lobbyist registration.

We appreciate the Board's consideration and we would be happy to answer questions or provide additional information.

Sincerely,

Bryan Lake

MSBA lobbyist
bryan@lakelawmn.com
612-227-9504

MSBA

Minnesota
State Bar
Association

600 Nicollet Mall
Suite 380
Minneapolis, MN 55402

October 22, 2024

Minnesota Campaign Finance & Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Re: Comments for October 25, 2024 meeting

Board Members:

The Minnesota State Bar Association (MSBA) is a voluntary professional organization that represents over 12,000 lawyers throughout the state. As you continue studying laws regarding lobbying political subdivisions, we again urge you to recommend exempting from lobbyist registration requirements those individuals who are attempting to influence the quasi-judicial actions of political subdivisions.

As explained in our August 16, 2024 letter, when local government bodies make quasi-judicial decisions, they apply preexisting law to a limited number of people or a single parcel of property. When functioning in this capacity, local government bodies are not setting broad public policy.

It is important to note that our proposed quasi-judicial exemption is not inconsistent with existing law. Specifically, Minn. Stat. §10A.01 subd. 2 provides that, with limited exceptions, the definition of administrative action does not include "**the application or administration**" of existing rules.

We suggest that a similar quasi-judicial exemption be applied in the context of political subdivision decision-making. Perhaps something like: **"Official action of a political subdivision" does not include the application or administration of a statute, rule, or ordinance.** This would exempt individuals who are merely dealing with how existing standards are applied, but it would still cover those who are attempting to influence whether and how an ordinance is created or modified.

We appreciate the Board's consideration, and we would be happy to answer questions or provide additional information.

Sincerely,

Bryan Lake
MSBA lobbyist

My name is Paige Rohman, district 50B. Thank you for the opportunity to speak today. I recently completed two terms as planning commissioner in Bloomington, serving for six years including two years as chair. I also grew up in small town Minnesota with a parent who managed that city for almost 40 years, and so I have an appreciation for the issue of lobbying local officials in multiple types of Minnesota communities.

I am here today to express my support for expanded lobbying registration standards, especially standards that are common sense, are not onerous, and preserve our right to free speech. There are many important decisions that are made that do not happen at the elected official level. In my experience as a planning commissioner, we have significant authority as a quasi-judicial body. And while we commissioners are often the closest to and reflect the sense of the people in the community, our role is sometimes less visible to and less scrutinized by most because we are appointed.

Let me provide an example of why expanded standards are good. This past spring, toward the end of my term, we made recommendations to the council on additional areas that should be considered for final decision making at the commission level. We did this in the interest of making government more efficient, reducing administrative burden, and speeding up the bureaucratic process. These are the right things to do. But with expanded authority comes expanded opportunity for influence. When that influence happens, it needs to be done in a structured, transparent manner. Lobbying of decision makers like us should certainly fall within the scope of lobbying standards anywhere across the state. I mentioned that I grew up in small town Minnesota, and the same level of transparency is just as good of an idea there as it is in a city like Bloomington.

I find the standards being considered to be reasonable. They do not impede free speech, they do not impede the ability of lobbyists to do what they do. What they do, however, is provide good information to the public. If this is the right thing at the state level and a handful of metro-area cities, it's the right thing for government lobbying across the state. I know some have suggested quasi-judicial bodies should not be subject to these standards, and I disagree. Anybody who can make a final decision on behalf of the people should be governed by these standards. Carve outs only invite suspicion and create potential division. And I think everyone can agree that we don't need more of that in our society today.

Thank you for your consideration.

SCALE
Scott County Association for Leadership & Efficiency

Members

Cities:
Belle Plaine
Credit River
Elko New Market
Jordan
New Prague
Prior Lake
Savage
Shakopee

Townships:
Belle Plaine
Blakeley
Cedar Lake
Helena
Jackson
Louisville
New Market
St. Lawrence
Sand Creek
Spring Lake

School Districts:
Belle Plaine
Burnsville-Eagan-Savage
Jordan
New Prague
Prior Lake-Savage
Shakopee
Shakopee Area Catholic Schools
Southwest Metro Intermediate District

County Entities:
Scott County
Scott County Community Development Agency
Scott County Township Association

Tribal Community:
Shakopee Mdewakanton Sioux Community

Regional Entities:
Metro Cities (AMM)
Minnesota Valley Transit Authority
Prior Lake-Spring Lake Watershed District
Scott Soil & Water Conservation District
Three Rivers Park District

August 15, 2024

Minnesota Campaign Finance Board
658 Cedar Street,
Suite 190
St. Paul, MN 55155
Attn: Jeff Sigurdson, Executive Director

Re: SCALE Comments on Potential Changes to Minnesota's Law Regulating Lobbying Local Units of Governments

Dear Mr. Sigurdson and Members of the Minnesota Campaign Finance Board:

On behalf of the Scott County Association for Leadership and Efficiency (SCALE), I am writing in response to the Board's call for input regarding potential changes to Minnesota's law regulating lobbying of local units of government. We appreciate the opportunity to contribute to this important discussion and offer our perspective on the matter.

Introduction
SCALE is a unique organization designed to facilitate efficiency and conversation across county, tribal, city, township, school, and other governments in Scott County. Our mission aligns closely with the principles of transparency and good governance. We commend the Board's initiative to study and potentially refine the distinctions between lobbying public officials and local officials in political subdivisions.

SCALE members fully support full transparency in local governments to their constituents. But, we believe that the 2023 law, without substantial modifications, may have significant unintended consequences which will frustrate, rather than foster, transparency. We offer the following considerations and recommendations:

Key Considerations and Recommendations: Unlike the Minnesota Legislature or state agencies, local governments are already highly transparent entities, *especially* to the residents of our communities. For example, the Minnesota Open Meeting Law ensures that discussions of official business among a quorum of local officials occur only with proper public notice and opportunity for public attendance. The gift ban prohibits gifts from "interested persons" to local officials. This inherent transparency differs significantly from the more private nature of legislative lobbying at the state level. In crafting its revisions, we urge the Board to recognize these fundamental differences and tailor any new regulations to complement, rather than duplicate, existing transparency measures in local governments.

1. **Redefining "Local Lobbying"** The current broad definition of "lobbying" inherently assumes a relationship or transaction that is common at the Legislature and state agencies, and very *uncommon* at the local level. Merely expanding the existing definition to local officials will, without question, inadvertently capture routine interactions between citizens and their local governments, potentially stifling civic engagement and unnecessarily burdening local officials and citizens alike. *Recommendation:* We propose creating a definition of "local lobbying" that more closely aligns with what public expectations of who a "lobbyist" is:

- A "local lobbyist" should be defined as a person or firm paid by a client specifically for the purpose of advocacy before a governmental agency.
- The primary purpose of the lobbyist should be *advocacy*, not information-sharing or where discussion of an official action is ancillary to the regular business of the purported "lobbyist."
- Exemptions should be clearly stated for:
  - Local business owners collaborating with local officials in the regular course of their business
  - Community relations representatives of large businesses require regular interactions with local officials (e.g., electric utilities, railroads, communications companies).
  - Residents leading specific efforts to change local laws, even where expenditures may be made to influence the outcome, if the expenditures are for a "one off" and not part of the resident holding themselves out as a "local lobbyist."
  - Professionals providing specific expertise (e.g., engineers, architects, lawyers)

2. **Uniform Treatment of Local Governments** The current population-based distinction in lobbying requirements creates an arbitrary divide between similarly functioning local governments. We agree with Rep. Coulter that the distinction between (for example) Bloomington and Shakopee is arbitrary. *Recommendation:* Treat all local units of government the same, regardless of population size. This approach recognizes that while larger municipalities may experience more lobbying activity, the fundamental nature of local government operation remains similar across the state.

3. **Local Disclosure vs. State Reporting** Residents seeking information about "local lobbying" activities are far more likely to look to their local government than to a state agency for information about that activity. *Recommendation:* Consider a modified disclosure requirement that mandates local units of government maintain and make available records of "local lobbying" activity to their residents upon request. This approach would be more accessible to the public and more manageable for those required to report. Local governments could comply in a way that best fits their communities. Minneapolis, for example, may have a volume of local lobbying activity that requires a searchable database with regular reporting. Northome may go years or decades without any such activity, and should it occur, may merely keep a record of who was retained, for what purpose, as a document available upon request to a resident.

4. **Balancing Transparency and Administrative Burden** Any new regulations should strike a balance between providing meaningful transparency and avoiding undue administrative burdens on local governments and citizens engaging with their local officials. The board should clearly express its desire to avoid creation of a chilling effect between residents and their local officials. *Recommendation:* Consider a tiered approach to reporting requirements based on the nature and frequency of lobbying activities, rather than the size of the local government.

Conclusion

SCALE believes that with thoughtful modifications, the lobbying regulations can achieve their intended purpose of transparency while respecting the unique nature of local governance and citizen engagement. We stand ready to collaborate with the Board in refining these regulations to best serve Minnesota's communities.

We appreciate your consideration of our input and would welcome the opportunity to discuss these matters further.

Sincerely,

Commissioner Barbara Weckman Brekke
Chair
Scott County Association for Leadership and Efficiency (SCALE)

Sean Hayford Oleary
Richfield City Council, Ward 2
7229 2nd Ave S
Richfield MN 55423

October 23, 2024

Members of the committee:
As a local elected official, I am in favor of additional study of local lobbying and reasonable requirements for registration, when hired professionals work to influence city council members like me.

I have served as a Richfield City Council member for four years, and previously served six years as a member of the Richfield Planning Commission. Although this issue is not part of our city legislative platform, I have experienced the need for greater regulation here. Both as a Planning Commissioner and City Council member, I have had calls and meetings from hired contractors (attorneys, developer representatives) who were attempting to influence the process.

There is value in developers and their representatives sometimes meeting one-on-one with electeds, allowing an informal conversation and discussion of details that are difficult to manage in the formal approvals. However, there is also a need for transparency when this occurs.

Just this year, I received a call from a hired attorney, who described himself as trying to help a local business cut through red tape with our staff. In fact, this individual was attempting to avoid the required public process, by persuading electeds to pressure staff and look the other way on his client's applications. I was suspicious of his description of the situation, but I reached out to staff only because I recognized the attorney's name from a previous approval I considered when I was a member of the Planning Commission.

I shouldn't have had to recognize an attorney by name to understand the scope of his lobbying efforts. This information should be freely available to all local elected officials, and to the public at large. We need rules that will help bring needed transparency, and ensure that local officials like me can help make decisions that are fair to the Minnesotans we represent.

Thank you for your consideration.

Sean Hayford Oleary
Richfield City Council member, Ward 2

Appendix Two

Memo on Political Subdivisions

MINNESOTA CAMPAIGN FINANCE BOARD

Date: February 20, 2024

To: Jeff Sigurdson, Executive Director

From: Andrew Olson, Legal/Management Analyst **Telephone:** 651-539-1190

Re: Definition of political subdivision

Minnesota Statutes section 10A.01, subdivision 31, defines the term political subdivision to mean "the Metropolitan Council, a metropolitan agency as defined in section 473.121, subdivision 5a, or a municipality as defined in section 471.345, subdivision 1." Minnesota Statutes section 471.345, subdivision 1 defines the term municipality to include a "municipal corporation or political subdivision of the state authorized by law to enter into contracts." The definition of political subdivision under section 10A.01, subdivision 31 is somewhat circular because it includes "a municipality as defined in section 471.345, subdivision 1" which in turn includes a "municipal corporation or political subdivision of the state authorized by law to enter into contracts."

Minnesota Statutes section 6.465, subdivision 2, which pertains to the office of the State Auditor, provides a more precise definition. That provision defines the term political subdivision to mean "a county, home rule charter or statutory city, town, school district, metropolitan or regional agency, public corporation, political subdivision, or special district," and defines the term special district to mean

> a public entity with a special or limited purpose, financed by property tax revenues or other public funds, that is not included in a city, county, or town financial report as a component of that local government, that is created or authorized by law, and that is governed by (1) persons directly elected to the governing board of the district, (2) persons appointed to the governing board of the district by local elected officials, (3) local elected officials who serve on the board by virtue of their elected office, or (4) a combination of these methods of selection. Special district includes special taxing districts listed in section 275.066.

Minnesota Statutes section 6.465, subdivision 2 excludes from its definition of political subdivision any "metropolitan or regional agency or a public corporation audited by the legislative auditor." Minnesota Statutes section 275.066 provides that the term special taxing districts includes:

> (1) watershed districts under chapter 103D;
> (2) sanitary districts under sections 442A.01 to 442A.29;
> (3) regional sanitary sewer districts under sections 115.61 to 115.67;

(4) regional public library districts under section 134.201;
(5) park districts under chapter 398;
(6) regional railroad authorities under chapter 398A;
(7) hospital districts under sections 447.31 to 447.38;
(8) St. Cloud Metropolitan Transit Commission under sections 458A.01 to 458A.15;
(9) Duluth Transit Authority under sections 458A.21 to 458A.37;
(10) regional development commissions under sections 462.381 to 462.398;
(11) housing and redevelopment authorities under sections 469.001 to 469.047;
(12) port authorities under sections 469.048 to 469.068;
(13) economic development authorities under sections 469.090 to 469.1081;
(14) Metropolitan Council under sections 473.123 to 473.549;
(15) Metropolitan Airports Commission under sections 473.601 to 473.679;
(16) Metropolitan Mosquito Control Commission under sections 473.701 to 473.716;
(17) Morrison County Rural Development Financing Authority under Laws 1982, chapter 437, section 1;
(18) Croft Historical Park District under Laws 1984, chapter 502, article 13, section 6;
(19) East Lake County Medical Clinic District under Laws 1989, chapter 211, sections 1 to 6;
(20) Floodwood Area Ambulance District under Laws 1993, chapter 375, article 5, section 39;
(21) Middle Mississippi River Watershed Management Organization under sections 103B.211 and 103B.241;
(22) fire protection and emergency medical services special taxing districts under section 144F.01;
(23) a county levying under the authority of section 103B.241, 103B.245, or 103B.251;
(24) Southern St. Louis County Special Taxing District; Chris Jensen Nursing Home under Laws 2003, First Special Session chapter 21, article 4, section 12;
(25) an airport authority created under section 360.0426; and
(26) any other political subdivision of the state of Minnesota, excluding counties, school districts, cities, and towns, that has the power to adopt and certify a property tax levy to the county auditor, as determined by the commissioner of revenue.

Advisory Opinion 297, issued by the Board in 1998, states that a political subdivision is not a principal. Advisory Opinion 441, issued by the Board in 2016, states that a state agency is not a principal.

Application to Specific Types of Entities

There are multiple entities that have filed principal reports with the Board under Minnesota Statutes section 10A.04, subdivision 6, that may be political subdivisions, and are thereby excluded from what constitutes a principal under Advisory Opinion 297. Those entities and the categories of political subdivisions to which they may belong are listed below.

Counties

A county is a municipality under Minnesota Statutes section 471.345, subdivision 1, and thereby is a political subdivision under Minnesota Statutes section 10A.01, subdivision 31. Below are entities that have filed principal reports that appear to be the equivalent of a county:

- Hennepin County Sheriffs Office (5973)- hennepinsheriff.org
- Three Rivers Park District (3216) - threeriversparks.org/page/about-us; this is part of Hennepin County; see Minnesota Statutes sections 383B.68 - 383B.73.
- Lake Shamineau Lake Improvement District (7809) - lakeshamineaulid.org - Lake improvement districts are typically created by counties under Minnesota Statutes sections 103B.501 - 103B.581, as was the case with this district (Morrison County). Their operations are funded by the county, which may impose assessments upon property owners, impose service charges, issue improvement bonds, and collect ad valorem taxes. Lake improvement districts have semi-autonomous boards that are elected by property owners within the district, but my understanding is that they have no means to raise revenue independent of their county board.

Municipalities

A municipality is a political subdivision under Minnesota Statutes section 10A.01, subdivision 31.

- Minneapolis Park & Recreation Board (427) - minneapolisparks.org/about-us/leadership-and-structure - this entity was initially created by state law and later became part of the City of Minneapolis; see Minneapolis City Charter Article VI.

Sanitary Districts and Regional Sanitary Sewer Districts

Sanitary districts and regional sanitary sewer districts are special taxing districts under Minnesota Statutes section 275.066 and thereby are political subdivisions under Minnesota Statutes section 6.465, subdivision 2. Under Minnesota Statutes section 115.61, a sanitary sewer district is "a municipal corporation and governmental subdivision of the state. . . ." Under Minnesota Statutes section 115.62, a sanitary sewer district is controlled by a board of directors "consisting of one member appointed by the governing body of each municipality situated wholly or partly within its corporate limits. . . ." Minnesota Statutes section 442A.29, subdivision 5, provides that nothing "shall be construed to permit a sanitary district, municipality, town, or other political subdivision to take, or agree to take, an action that is not otherwise authorized by this chapter," strongly implying that a sanitary district is a political subdivision. On that basis I believe the following are political subdivisions under Minnesota Statutes section 10A.01, subdivision 31:

- Alexandria Lakes Area Sanitary District (7391) - alasdistrict.org
- Crane Lake Sewer & Water District (5967) - clwsd.org (I think its name has changed to Crane Lake Water & Sanitary District)
- Duluth/North Shore Sanitary District (5272) -

- East Itasca Joint Sewer Board (7448) - this appears to be a regional sanitary sewer district created by the cities of Nashwauk and Keewatin, and Lone Pine Township.
- Western Lake Superior Sanitary District (2772) - wlssd.org - this sanitary district was established by statute, specifically Chapter 458D, and Minnesota Statutes section 458D.03, subdivision 1, provides that WLSSD is a "political subdivision of the state. . . ."

Joint Powers Entities

Minnesota Statutes section 10A.01, subdivision 31, defines "political subdivision" to include "a municipality as defined in" Minnesota Statutes section 471.345, which in turn defines "municipality" as "a county, town, city, school district or other municipal corporation or political subdivision of the state authorized by law to enter into contracts." Minnesota Statutes sections 471.59 - 471.631 address joint powers entities. Joint powers entities are authorized to enter into contracts under Minnesota Statutes section 471.59. Minnesota Statutes section 465.717 strongly implies that a joint powers entity should be treated the same as a political subdivision. Also, Minnesota Statutes section 355.01, subdivision 3g, defines the term "local governmental subdivision" to include "any instrumentality established under a joint powers agreement under section 471.59. . . ." On that basis I believe the following are political subdivisions under Minnesota Statutes section 10A.01, subdivision 31:

- Cloquet Area Fire District (7414) - cloquetareafiredistrict.com/about/history
- Great River Rail Commission (7635) - greatriverrail.org/about-the-commission
- Lakes Area Police Commission (7850) - lakesareapd.com/department.htm
- Mahnomen Health Care Center (7929) - mahnomenhealth.org/about/board-of-directors - see this document and page 101 of this document (labeled as p. 87) showing that this entity is a joint powers entity.
- Metropolitan Emergency Services Board (5854) - mn-mesb.org/about-us
- MN Environmental Science & Economic Review Bd (4979) - meserb.org/about
- Northeast Regional ATV Trail Joint Powers Board (7871) - sehinc.com/online/northeastern-regional-atv-joint-powers-board
- Northland Learning Center ISD #6076 (7916) - northlandsped.org- see this document and this document showing that this entity is the same as the Northland Joint Powers Board.
- Pope/Douglas Solid Waste Management (6172) - popedouglasrecycle.com - see this document
- St. Cloud Regional Airport Authority (8038) - stcloudairport.com/278/Board
- South Central MN EMS Joint Powers Bd (3122) - centralmnems.com/27/About-Us
- Southeastern MN EMS Joint Powers (6062) - seems.com
- Voyageurs Natl Park Clean Water Project Joint Powers Board (6733) - sehinc.com/online/namakan

Regional Development Commissions, Housing and Redevelopment Authorities, and Economic Development Authorities

These are special taxing districts under Minnesota Statutes section 275.066 and thereby are political subdivisions under Minnesota Statutes section 6.465, subdivision 2.

- Dakota County Community Development Agency (3811) - dakotacda.org/about - this CDA was establish by statute, Minnesota Statutes section 383D.41, which provides that it is a public corporation, specifically a "public body corporate and politic."
- Fridley Housing & Redevelopment Authority (7710) - ci.fridley.mn.us/234/Fridley-HRA

Municipal Corporations and Utilities

Under Minnesota Statutes section 216B.02, subdivision 2, which pertains to public utilities, a corporation is defined to include "a private corporation, a public corporation, a municipality, an association, a cooperative whether incorporated or not, a joint stock association, a business trust, or any political subdivision or agency." Minnesota Statutes section 452.08 provides first-class cities with the authority to "to own, construct, acquire, purchase, maintain, and operate any public utility within its corporate limits, and to lease the same, or any part of the same, to any company incorporated under the laws of this state, for the purpose of operating such public utility. . . ." I believe the following are municipal corporations and are thereby political subdivisions.

- Grand Rapids Public Utilities Commission (7934) - cityofgrandrapidsmn.com/utilities
- Hennepin County Medical Center (HCMC) (6372) - hennepinhealthcare.org/about-us/ - Hennepin Healthcare System, Inc. is a "county subsidiary corporation" created by Minnesota Statutes sections 383B.901 - 383B.928, and under Minnesota Statutes section 383B.912, subdivision 1, it "shall be considered a continuation of HCMC for purposes of all the rights, liabilities, and contractual obligations of the county pertaining to the operations of HCMC except as otherwise provided herein. The corporation succeeds to all rights and contractual obligations of the county pertaining to the operations of HCMC with the same force and effect as if those rights and obligations had been continued by the county itself."
- Southern MN Municipal Power Agency (SMMPA) (1979) - smmpa.com
- Rochester Public Utilities (6148) - rpu.org/about-rpu.php

Relief Associations

Under Minnesota Statutes section 424A.001, subdivision 4, with the exception of the Bloomington Fire Department Relief Association and the Statewide Volunteer Firefighter (SVF) Plan, a relief association is "is a governmental entity that receives and manages public money to provide retirement benefits for individuals providing the governmental services of firefighting and emergency first response." It must be:

> directly associated with: (i) a fire department established by municipal ordinance; (ii) an independent nonprofit firefighting corporation that is organized under the provisions of chapter 317A and that operates primarily for firefighting purposes; or

(iii) a fire department operated as or by a joint powers entity that operates primarily for firefighting purposes.

Under Minnesota Statutes section 424A.091, subdivision 2, "a municipality may lawfully contribute public funds, including the transfer of any applicable fire state aid, or may levy property taxes for the support of a firefighters relief association. . . ." Therefore, I think relief associations are political subdivisions.

- Eden Prairie Firefighter Relief Assn (6182) - edenprairie.org/city-government/departments/fire-department/firefighter-relief-association
- Plymouth Fire Relief Association (7661)

Others

I believe the following are political subdivisions under Minnesota Statutes section 10A.01, subdivision 31 for the varied reasons stated below:

- Duluth Entertainment and Convention Center (5678) - decc.org/about-the-decc/decc-board - The DECC Authority was created by state law in 1963. My understanding is that because it was a special law, the law was never codified in statute. The law was amended in 1998. The DECC is controlled by a board of eleven directors, four of whom are appointed by the Governor, and seven of whom are appointed by the mayor of Duluth subject to the approval of the Duluth City Council. It is funded largely by special tourism (sales) tax revenue collected by the City of Duluth from hospitality business such as hotels and restaurants.
- Metropolitan Mosquito Control District (3599) - mmcd.org/about - This district was created by Minnesota Statutes sections 473.701 - 473.717, it has taxing authority under Minnesota Statutes section 473.711, and it is controlled by a commission comprised of "three members from Anoka County, two members from Carver County, three members from Dakota County, three members from Hennepin County, three members from Ramsey County, two members from Scott County, and two members from Washington County. Commissioners shall be members of the Board of County Commissioners of their respective counties, and shall be appointed by their respective boards of county commissioners." See Minnesota Statutes section 473.703, subdivision 1. It is a special taxing district under Minnesota Statutes section 275.066.
- MN State Agricultural Society (5692) - lrl.mn.gov/agencies/detail?AgencyID=52 - Minnesota Statutes section 37.01 provides that "The State Agricultural Society is a public corporation." Therefore, it is a political subdivision at least within the meaning of Minnesota Statutes section 6.465, subdivision 2. Moreover, it is a quasi-state agency and its existence in codified in statute within Chapter 37.

I believe that the following two entities are not political subdivisions under Minnesota Statutes section 10A.01, subdivision 31, but are instead state agencies, which are similarly excluded from what constitutes a principal, under Advisory Opinion 441:

- MN Higher Education Facilities Authority (MNHEFA) (7751) - Minnesota Statutes section 136A.25 states that "A state agency known as the Minnesota Higher Education Facilities Authority is hereby created." Therefore, I think it is a state agency. Also, the definition of lobbyist under Minnesota Statutes section 10A.01, subdivision 21, excludes "an employee of the state. . . ."
- MN Historical Society (3519) - Minnesota Constitution article XIII, section 10 provides that "The Minnesota Historical Society shall always be a department of this institution." Therefore, I think it is a state agency. Also, the definition of lobbyist under Minnesota Statutes section 10A.01, subdivision 21, excludes "an employee of the state. . . ."

University of MN Physicians

I believe that University of MN Physicians (4917) is a principal. It is organized as a nonprofit corporation and according to an opinion issued by the Minnesota Supreme Court in Healtheast v. Cnty. of Ramsey, 749 N.W.2d 15, 17 (Minn. 2008), it is "the designated faculty clinical practice organization of the University of Minnesota Medical School. My review did not local any state law that authorized its existence and insofar as I can tell, it is essentially the same as any other private physicians practice except that it is a nonprofit and it has the permission of the University of Minnesota to use its name. I do not believe that it is a political subdivision or a state agency. Also, its lobbyists are contract lobbyists employed by Stinson LLP, so I do not believe that the exclusion from the definition of lobbyist of "an employee of the state, including an employee of any of the public higher education systems," or Advisory Opinion 288, have any impact.