Submission of Proposed Rules to Office of Administrative Hearings

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VIA EFILING
January 2, 2025

The Honorable Judge Kristien R. E. Butler
Assistant Chief Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed Rules Relating to Campaign Finance; Lobbying; and Audits and Investigations; Revisor's ID Number 4809; OAH Docket No. 24-9030-39382

Dear Judge Butler:

The Campaign Finance and Public Disclosure Board requests that the Office of Administrative Hearings review and approve its rules governing campaign finance, lobbying, and audits and investigations for legality and form according to Minnesota Statutes, section 14.26. Enclosed for your review are the documents required under Minnesota Rules, part 1400.2310, items A to P. Paragraphs A to P of this letter are keyed to items A to P of part 1400.2310.

A. Enclosed: the Request for Comments as published in the *State Register* on July 24, 2023.

B. Not enclosed: a petition for rulemaking because no petition was filed on the rules.

C. Enclosed: the proposed rules dated August 15, 2024, with the Revisor's approval.

D. Enclosed: the Statement of Need and Reasonableness.

E. Enclosed: the Notice of Intent to Adopt Rules, as sent and published in the *State Register* on October 7, 2024.

F. Not enclosed: a letter from the Chief Administrative Law Judge authorizing the Board to omit the text of the proposed rules from the Notice of Intent to Adopt Rules published in the *State Register*. This is not enclosed because the Board included the text of the proposed rules with the Notice of Intent to Adopt Rules published in the *State Register*.

G. Enclosed: the Certificate of Mailing the Notice of Intent to Adopt Rules and the Certificate of Accuracy of the Mailing List.

H. Enclosed: the Certificate of Additional Notice or a copy of the transmittal letter.

I. Enclosed: a copy of the transmittal letter showing that the Board sent the Statement of Need and Reasonableness to the Legislative Reference Library.

J. Enclosed: all written comments and submissions on the proposed rules that the Board received during the comment period, except those that only requested copies of documents, and responses to those comments.

Not enclosed: requests for hearing and withdrawals of requests for hearing received by the Board during the comment period. The Board received no such requests or withdrawals.

K. Not enclosed: a notice of withdrawal of hearing request, evidence that the Board sent its notice of withdrawal to all persons who requested a hearing, and any responsive comments received. These are not enclosed because no request for a public hearing was withdrawn, and Minnesota Statutes, section 14.25, subdivision 2, thereby did not require the Board to send a notice of withdrawal.

L. Enclosed: a copy of the adopted rules dated December 17, 2024. The modifications to the proposed rules are reflected in the rules as adopted and are approved by the Revisor.

M. Not enclosed: a notice of adopting substantially different rules that was sent to people or groups that commented during the comment period and evidence that the notice was sent to these people or groups. This is not enclosed because the Board did not adopt substantially different rules.

N. Enclosed: the unsigned Order Adopting Rules that complies with part 1400.2090.

O. Not enclosed: a notice of submission of rules to the Office of Administrative Hearings and a copy of a transmittal letter or certificate of mailing the notice of submission of rules to the Office of Administrative Hearings. No people requested notification of the submission of the rules to the Office of Administrative Hearings.

P. Enclosed: any other document or evidence to show compliance with any other law or rule that the Board must follow to adopt the rules.

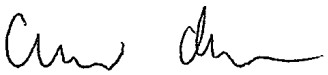
- P.1. Copies of transmittal letters mailed October 1, 2024, showing that the Board sent notice to the chairs and ranking minority members of the committees in the senate and house of representatives with primary jurisdiction over elections within seven days of publication of the Notice of Intent to Adopt Rules, publication of the proposed rules, and the issuance of the Statement of Need and Reasonableness, pursuant to Minnesota Statutes, section 10A.02, subdivision 13, paragraph (b), which also satisfied the requirement to notify the same legislators pursuant to Minnesota Statutes, section 14.116, paragraph (b).

- P.2. A copy of the email sent to the Legislative Coordinating Commission at lcc@lcc.leg.mn on October 1, 2024, with the Board's Notice of Intent to Adopt Rules and Statement of Need and Reasonableness, pursuant to Minnesota Statutes, section 14.116, paragraph (b).

- P.3. A copy of the transmittal letter showing the Board consulted with MMB, and MMB's response, dated June 21, 2024, pursuant to Minnesota Statutes, section 14.131.

If you have any questions or concerns, please contact me at andrew.d.olson@state.mn.us or 651-539-1190.

Respectfully,



Andrew Olson
Legal/Management Analyst

Minnesota Campaign Finance and Public Disclosure Board

REQUEST FOR COMMENTS

Possible Adoption, Amendment, and Repeal of Rules Governing Campaign Finance Regulation and Reporting; Lobbyist Regulation and Reporting; Audits and Investigations; and Other Topics, *Minnesota Rules*, chapters 4501 through 4525; Revisor's ID Number 4809

Subject of Rules. The Minnesota Campaign Finance and Public Disclosure Board requests comments on its possible adoption of, amendment to, and repeal of rules governing campaign finance regulation and reporting, lobbyist registration and reporting, audits and investigations, and other topics including technical changes to and clarification of various rules.

The Board is considering rule adoptions, amendments, and repeals concerning campaign finance regulation and reporting that 1) establish how campaign finance filers may jointly purchase goods or services without making or receiving a donation in kind, as discussed in Advisory Opinions 452 and 436; 2) establish the circumstances under which a principal campaign committee may pay for expenses related to the operation of a legislative caucus, as discussed in Advisory Opinion 450; 3) establish criteria that campaign finance filers must consider regarding the underlying sources of funding of an unregistered association that may make a contribution in determining whether the contribution may be accepted as discussed in Advisory Opinion 447; 4) clarify the circumstances under which vendors that electronically process monetary contributions to campaign finance filers are not making contributions to the recipients, and are not required to register with the Board as a political committee or fund, as discussed in Advisory Opinions 319, 369, and 434; 5) clarify whether a contributor who pays a processing fee when making a monetary contribution to a campaign finance filer has made a donation in kind to the recipient consisting of the amount of the fee as discussed in Advisory Opinion 434; 6) establish that a treasurer may group expenses together within campaign finance reports on a monthly basis if the expenses are for the same goods or services, from the same vendor, and all expenses incurred within a reporting period are disclosed through the end of that period; 7) establish criteria required in order for a candidate to be deemed not responsible for the actions of a vendor or subcontractors of a vendor hired by the candidate's committee, such as when those actions unintentionally result in coordinated expenditures; 8) amend *Minnesota Rules*, 4503.0900 to clarify the circumstances under which an equipment purchase by a principal campaign committee may not be classified as a noncampaign disbursement as discussed in Advisory Opinions 89, 127, 209, 211, and 228; 9) update rules within *Minnesota Rules*, chapter 4501 concerning electronic filing to reflect the Board's current electronic reporting systems; 10) establish a definition of the term "county office in Hennepin County" as used in *Minnesota Statutes*, section 10A.01, subdivision 10d; 11) establish a definition of the term "nomination" as used within *Minnesota Statutes*, chapter 10A; 12) delete the text "when notice required under subpart 4 is filed or" within *Minnesota Rules*, 4503.0200, subpart 5, because subpart 4 was repealed in 2005; 13) amend *Minnesota Rules*, 4503.0800, subparts 2-4, and 4503.1000 to be inclusive of a local candidate as that term is defined by *Minnesota Statutes*, section 10A.01, subdivision 10d, to match the changes made by the legislature in 2021 to the definitions of approved expenditure and contribution within *Minnesota Statutes*, section 10A.01; 14) amend *Minnesota Rules*, 4503.0900, subpart 1 to codify the noncampaign disbursement category for costs incurred by a principal campaign committee to

maintain a required bank account; 15) clarify the extent to which a disclaimer is required by *Minnesota Statutes*, section 211B.04 when campaign material is disseminated via social media; and 16) establish a definition of the term “headquarters” as used in *Minnesota Statutes*, section 211B.15, subdivision 8.

The Board is considering rule adoptions, amendments, and repeals concerning lobbyist regulation and reporting that 1) clarify that state agencies and local government bodies are not lobbyist principals as discussed in Advisory Opinions 224, 297, and 441; 2) clarify that informational material may be provided to a public official by a lobbyist principal without violating the gift prohibition if the principal had a significant role in creating, developing, or producing the information as discussed in Advisory Opinion 445; 3) implement the changes made by the legislature in 2023 to statutes governing lobbyist regulation and reporting; 4) change the cross-reference within *Minnesota Rules*, 4511.0500, subpart 1, to refer to *Minnesota Statutes*, section 10A.04, subdivision 9, because “subpart 2” was repealed in 2017; and 5) update rules within *Minnesota Rules*, chapter 4501 concerning electronic filing to reflect the Board’s current electronic reporting systems.

The Board is considering rule adoptions, amendments, and repeals concerning audits and investigations that 1) establish a procedure for withdrawing a complaint filed with the Board; 2) establish procedures and criteria to be used when conducting audits of campaign finance filers; 3) establish procedures and criteria to be used when auditing affidavits of contributions submitted by principal campaign committees when seeking to qualify for a public subsidy payment; 4) amend *Minnesota Rules*, 4525.0200, subpart 2, to clarify that a complaint may include an authorized representative’s address, rather than the complainant’s personal address, if the complaint is signed by an individual authorized to act on behalf of the complainant; 5) amend *Minnesota Rules*, 4525.0210 to expand and clarify the procedures that will be used after a finding of probable cause; and 6) amend *Minnesota Rules*, 4525.0220 to state whether a complainant will be informed of, and provided an opportunity to respond to, a request by a respondent for a summary proceeding.

The Board is considering rule adoptions, amendments, and repeals concerning other topics within *Minnesota Statutes*, chapter 10A that may arise during the rulemaking process.

Persons Affected. The adoption, amendment, and repeal of rules governing campaign finance regulation and reporting would likely affect 1) candidates for state-level offices; 2) principal campaign committees; 3) political party units; 4) political committees and funds; 5) entities not registered with the Board that seek to influence state elections in Minnesota as well as certain local elections within Hennepin County; and 6) contributors. The adoption, amendment, and repeal of rules governing lobbyist regulation and reporting would likely affect 1) lobbyists; and 2) lobbyist principals. The adoption, amendment, and repeal of rules governing audits and investigations would likely affect 1) complainants; and 2) respondents, which may include actual or alleged candidates for state-level offices, principal campaign committees, political party units, political committees and funds, entities not registered with the Board that seek to influence state elections in Minnesota as well as certain local elections within Hennepin County, contributors, lobbyists, lobbyist principals, and public officials and local officials.

Statutory Authority. *Minnesota Statutes*, section 10A.02, subdivision 13 provides that *Minnesota Statutes*, chapter 14 applies to the Board and authorizes the Board to "adopt rules to carry out the purposes of" *Minnesota Statutes*, chapter 10A. *Minnesota Statutes,* section 10A.02, subdivision 12a provides that when the Board "intends to apply principles of law or policy announced in an advisory opinion issued under subdivision 12 more broadly than to the individual or association to whom the opinion was issued," the Board "must adopt these principles or policies as rules under" *Minnesota Statutes*, chapter 14. *Minnesota Statutes,* section 10A.022, subdivision 2, paragraph (b) provides that the Board must issue rules "setting forth procedures to be followed for all audits and investigations conducted by the" Board under *Minnesota Statutes*, chapter 10A "and other provisions under" the jurisdiction of the Board pursuant to *Minnesota Statutes*, section 10A.022, subdivision 3. *Minnesota Statutes,* section 10A.025, subdivision 1a provides that the Board must "adopt rules to regulate electronic filing and to ensure that the electronic filing process is secure." *Minnesota Statutes*, section 10A.01, subdivision 26, paragraph (a), clause (26), provides that noncampaign disbursements include "other purchases or payments specified in" rules adopted by the Board.

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing until 4:30 p.m. on Friday, September 22, 2023. Written comments may be submitted via the Office of Administrative Hearings rulemaking eComments website at minnesotaoah.granicusideas.com. Alternatively, written comments may be submitted to the agency contact person listed below. The Board plans to appoint a subcommittee of Board members to develop the proposed rule language. The first subcommittee meeting will be held after September 22, 2023. Notice of the subcommittee meetings will be posted on the Board's website at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket. The subcommittee meetings will be open to the public and interested parties will have the opportunity to comment on the proposed rule topics and language. The Board does not plan to appoint an advisory committee to comment on the possible rules.

Rules Drafts. The Board has not yet drafted the possible rule adoptions, amendments, and repeals, but anticipates that draft rule language will be made available to the public before publication of the proposed rules.

Agency Contact Person. Written comments not submitted via the Office of Administrative Hearings rulemaking eComments website, as well as questions, requests to receive a draft of the rules when it has been prepared, and requests for more information on these possible rules should be directed to: Andrew Olson, Campaign Finance and Public Disclosure Board, 190 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155; email: andrew.d.olson@state.mn.us; phone: (651) 539-1190; fax: (651) 539-1196 or (800) 357-4114.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person listed above. TTY users may call (800) 627-3529 and ask for (651) 539-1190.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The Board is required to submit to the administrative law judge only the

written comments that are received in response to the rules after they are proposed. If you submit comments during the development of the rules and you want to ensure that the administrative law judge reviews your comments, you should resubmit the comments after the rules are formally proposed.

Dated: July 11, 2023

Jeff Sigurdson, Executive Director
Campaign Finance and Public Disclosure Board

Campaign Finance and Public Disclosure Board

Proposed Permanent Rules Relating to Campaign Finance

4501.0100 DEFINITIONS.

[For text of subparts 1 to 3, see Minnesota Rules]

Subp. 4. **Compensation.** "Compensation" means every kind of payment for labor or personal services. Compensation does not include payments of Social Security, unemployment compensation, workers' compensation, health care, retirement, or pension benefits.

[For text of subparts 4a to 7a, see Minnesota Rules]

Subp. 7b. **Original signature.** "Original signature" means:

A. a signature in the signer's handwriting or, if the signer is unable to write, the signer's mark or name written in the handwriting of another or applied by stamp at the request, and in the presence, of the signer;

B. an electronic signature consisting of the letters of the signer's name, applied using a cursive font or accompanied by text or symbols clearly indicating an intent to apply a signature, including but not limited to the letter S with a forward slash mark on one or both sides of the letter S or the placement of a forward slash mark before and after the signer's name; or

C. the signer's name on the signature line of an electronic file submitted using the filer's personal identification code.

[For text of subparts 8 and 9, see Minnesota Rules]

4501.0500 FILINGS, SUBMISSIONS, AND DISCLOSURES.

Subpart 1. **Format.** A report or statement required under Minnesota Statutes, section 10A.20, must be filed electronically in a format specified by the board, to the extent required

by that section. Any other report or statement required under Minnesota Statutes, chapter 10A, must be ~~submitted~~ filed electronically in a format specified by the board or on the forms provided by the board for that purpose ~~or by an electronic filing system~~. The board may provide alternative methods for submitting information, including other means for the electronic submission of data.

[For text of subparts 1a to 4, see Minnesota Rules]

4503.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes, chapter 10A, except that the definition in subpart 4a applies to Minnesota Statutes, section 211B.15. The definitions in chapter 4501 and Minnesota Statutes, chapter 10A, also apply to this chapter.

[For text of subparts 2 to 3a, see Minnesota Rules]

Subp. 3b. **County office.** "County office" means the offices specified in Minnesota Statutes, chapter 382, and does not include the office of Three Rivers Park District commissioner.

[For text of subpart 4, see Minnesota Rules]

Subp. 4a. **Headquarters.** For the purpose of Minnesota Statutes, section 211B.15, subdivision 8, "headquarters" means a building or other structure that is used for all or part of the year as the primary location where the party's business is conducted.

Subp. 4b. **Legislative caucus.** "Legislative caucus" means an organization whose members consist solely of legislators belonging to the same house of the legislature and the same political party, and is not limited to a majority or minority caucus described in Minnesota Statutes, chapter 3, but does not include a legislative party unit.

Subp. 4c. **Legislative caucus leader.** "Legislative caucus leader" means a legislator elected or appointed by a legislative caucus to lead that caucus, and is not limited to leaders designated pursuant to Minnesota Statutes, section 3.099.

Subp. 4d. **Legislative party unit.** "Legislative party unit" means a political party unit established by the party organization within a house of the legislature.

Subp. 4e. **Nomination.** Except as used in Minnesota Statutes, sections 10A.09 and 10A.201, "nomination" means the placement of a candidate or a local candidate's name on a general election or special general election ballot.

[For text of subparts 5 to 8, see Minnesota Rules]

4503.0200 ORGANIZATION OF POLITICAL COMMITTEES AND POLITICAL FUNDS.

[For text of subparts 1 to 4, see Minnesota Rules]

Subp. 5. **Termination of responsibility of former treasurer.** A former treasurer who transfers political committee or political fund records and receipts to a new treasurer or to the chair of the committee or fund is relieved of future responsibilities ~~when notice required under subpart 4 is filed or~~ when the former treasurer notifies the board in writing of the change.

Subp. 6. [Repealed, L 2017 1Sp4 art 3 s 18]

4503.0450 JOINT PURCHASES.

Subpart 1. **General requirement.** Principal campaign committees, political party units, and political committees and funds may jointly purchase goods or services without making or receiving a donation in kind. If each purchaser pays the vendor for their share of the fair market value of the purchase, each purchaser must report that amount to the board as an expenditure or noncampaign disbursement as required by Minnesota Statutes, section 10A.20. If a purchaser pays the vendor for the total amount of the purchase and obtains

payment from another purchaser for that purchaser's share of the fair market value of the purchase, each purchaser must use the same reporting method under Minnesota Statutes, section 10A.20, subdivision 13.

Subp. 2. **Proportionate shares of joint purchase.** If a purchaser pays a vendor for the total amount of a joint purchase and each joint purchaser receives goods or services of equal value, each joint purchaser must pay the purchaser that paid the vendor an amount equal to the total amount paid to the vendor divided by the number of joint purchasers in order to prevent the occurrence of a donation in kind. If a purchaser pays a vendor for the total amount of a joint purchase and joint purchasers receive goods or services of differing value, each joint purchaser must pay the purchaser that paid the vendor in proportion to the value of the goods or services received in order to prevent the occurrence of a donation in kind. If a joint purchaser pays the purchaser that paid the vendor less than its proportionate share of the fair market value of the joint purchase, the difference must be reported as a donation in kind from the purchaser that paid the vendor to the joint purchaser as required by Minnesota Statutes, section 10A.20.

Subp. 3. **No impact on prohibited contributions.** Nothing in this part permits an independent expenditure or ballot question political committee or fund to make a contribution, including an approved expenditure, that is prohibited by Minnesota Statutes, section 10A.121, or alters what constitutes a coordinated expenditure.

4503.0500 CONTRIBUTIONS.

Subpart 1. **All receipts are contributions.** Any donation of money, goods, or services received by a principal campaign committee, political party unit, political committee, or political fund is considered a contribution at the time the item is received.

Subp. 2. [Repealed, L 2018 c 119 s 34]

Subp. 2a. **Contribution processors and professional fundraisers.** A vendor may solicit, process, collect, or otherwise facilitate the accumulation of contributions made to a principal campaign committee, political party unit, political committee, or political fund, and may temporarily retain or control any contributions collected, without thereby making a contribution to the intended recipient of the contributions, if the vendor is paid the fair market value of the services provided. Contributions collected must be transmitted to the intended recipient, minus any fees withheld by the vendor. A vendor that is paid the fair market value of any goods or services provided is not a political committee or a political fund by virtue of providing those goods or services. A vendor that determines which principal campaign committee, political party unit, political committee, or political fund receives the contributions collected is a political committee or political fund as provided in Minnesota Statutes, section 10A.01, even if the recipient of the contributions pays the vendor the fair market value of the services provided to collect the contributions.

Subp. 3. **Transmission of contributions.** Promptly after receipt of any contribution intended for a principal campaign committee, political party unit, political committee, or political fund, or on demand of the treasurer, ~~an~~ any individual, association, or vendor retaining or controlling the contribution must transmit the contribution together with any required record to the treasurer.

Subp. 4. **Identification of contributor.** An individual or association that pays for or provides goods or services, or makes goods or services available, with the knowledge that they will be used for the benefit of a principal campaign committee, political party unit, political committee, or ~~a~~ political fund, is the contributor of those goods or services.

[For text of subparts 5 to 9, see Minnesota Rules]

Subp. 10. **Underlying sources of funding of unregistered associations.** A principal campaign committee, party unit, or political committee or fund that is not an independent expenditure or ballot question political committee or fund, must consider an association's

sources of funding in determining whether a contribution may be accepted from an association that is not registered with the board as a principal campaign committee, a party unit, a political committee, or the supporting association of a political fund. A contribution from an unregistered association is prohibited if any of that association's sources of funding would be prohibited from making the contribution directly under Minnesota Statutes, section 211B.15, subdivision 2.

4503.0700 CONTRIBUTION LIMITS.

[For text of subparts 1 to 3, see Minnesota Rules]

Subp. 4. **Commercial vendors not subject to bundling limitation.** A vendor retained by a principal campaign committee, political party unit, political committee, or political fund for the accumulation of contributions, and paid by that committee, party unit, or fund the fair market value of the services provided, as described in part 4503.0500, subpart 2a, is not subject to the bundling limitation in Minnesota Statutes, section 10A.27, subdivision 1.

4503.0800 DONATIONS IN KIND AND APPROVED EXPENDITURES.

Subpart 1. [Repealed, L 2005 c 156 art 6 s 68]

Subp. 1a. **Contributor payment of processing fee.** If a contributor pays a processing fee when making a contribution and the fee would otherwise have been billed to the recipient of the contribution or withheld from the amount transmitted to the recipient, the amount of the fee is a donation in kind to the recipient of the contribution. If the donation in kind exceeds the amount specified in Minnesota Statutes, section 10A.13, subdivision 1, the recipient's treasurer must keep an account of the contribution and must include the contribution within campaign reports as required by Minnesota Statutes, section 10A.20. If the donation in kind does not exceed the amount specified in Minnesota Statutes, section 10A.13, subdivision 1, the recipient's treasurer is not required to keep an account of the

contribution or to include it within campaign reports filed under Minnesota Statutes, section 10A.20.

Subp. 2. **Multicandidate materials.** An approved expenditure made on behalf of multiple candidates or local candidates must be allocated between the candidates or the local candidates on a reasonable basis if the cost exceeds $20 per candidate or local candidate.

Subp. 3. **Multipurpose materials.** A reasonable portion of the fair market value of preparation and distribution of association newsletters or similar materials which, in part, advocate the nomination or election of a candidate or a local candidate is a donation in kind which must be approved by the candidate or the local candidate if the value exceeds $20, unless an independent expenditure is being made.

Subp. 4. **Office facilities.** The fair market value of shared office space or services provided to a candidate or a local candidate without reimbursement is a donation in kind.

[For text of subpart 5, see Minnesota Rules]

4503.0900 NONCAMPAIGN DISBURSEMENTS.

Subpart 1. **Additional definitions.** In addition to those listed in Minnesota Statutes, section 10A.01, subdivision 26, the following expenses are noncampaign disbursements:

[For text of items A to D, see Minnesota Rules]

E. payment of fines assessed by the board; ~~and~~

F. costs of running a transition office for a winning gubernatorial candidate during the first six months after election~~.~~; and

G. costs to maintain a bank account that is required by law, including service fees, the cost of ordering checks, and check processing fees.

Subp. 2. [Repealed, 21 SR 1779]

Subp. 2a. **Expenses incurred by leaders of a legislative caucus.** Expenses incurred by a legislative caucus leader in carrying out their leadership responsibilities may be paid by their principal campaign committee and classified as a noncampaign disbursement for expenses incurred by leaders of a legislative caucus. These expenses must be incurred for the operation of the caucus and include but are not limited to expenses related to operating a website, social media accounts, a telephone system, similar means of communication, travel expenses, and legal expenses.

Subp. 2b. **Signage and supplies for office holders.** Expenses incurred by an office holder for signage outside their official office and for basic office supplies purchased to aid the office holder in performing the tasks of their office may be paid by their principal campaign committee and classified as a noncampaign disbursement for expenses for serving in public office. These expenses may include signage, stationery, or other means of communication that identify the office holder as a member of a legislative caucus.

Subp. 2c. **Equipment purchases.** The cost of durable equipment purchased by a principal campaign committee, including but not limited to computers, cell phones, and other electronic devices, must be classified as a campaign expenditure unless the equipment is purchased to replace equipment that was lost, stolen, or damaged to such a degree that it no longer serves its intended purpose, or the equipment will be used solely:

A. by a member of the legislature or a constitutional officer in the executive branch to provide services for constituents during the period from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held;

B. by a winning candidate to provide services to residents in the district in accordance with subpart 1;

C. for campaigning by a person with a disability in accordance with subpart 1;

D. for running a transition office in accordance with subpart 1; or

E. as home security hardware.

[For text of subpart 3, see Minnesota Rules]

4503.1000 CAMPAIGN MATERIALS INCLUDING OTHER CANDIDATES.

Subpart 1. **Inclusion of others without attempt to influence nomination or election.** Campaign materials, including media advertisements, produced and distributed on behalf of one candidate which contain images of, appearances by, or references to another candidate or local candidate, but which do not mention the candidacy of the other candidate or local candidate or make a direct or indirect appeal for support of the other candidate or local candidate, are not contributions to, or expenditures on behalf of that candidate or local candidate.

Subp. 2. **Multicandidate materials prepared by a candidate.** A candidate who produces and distributes campaign materials, including media advertisements, which include images of, appearances by, or references to one or more other candidates or local candidates, and which mention the candidacy of the other candidates or local candidates or include a direct or indirect appeal for the support of the other candidates or local candidates must collect from each of the other candidates or local candidates a reasonable proportion of the production and distribution costs.

4503.1900 AGGREGATED EXPENDITURES.

Expenditures and noncampaign disbursements may be aggregated and reported as lump sums when itemized within a report filed under Minnesota Statutes, section 10A.20, if:

A. each expenditure or noncampaign disbursement was made to the same vendor;

B. each expenditure or noncampaign disbursement was made for the same type of goods or services;

C. each lump sum consists solely of aggregated expenditures or solely of aggregated noncampaign disbursements;

D. each lump sum consists solely of aggregated expenditures or noncampaign disbursements that are paid, are unpaid, or represent the dollar value of a donation in kind;

E. the expenditures and noncampaign disbursements are aggregated over a period of no more than 31 days; and

F. all expenditures and noncampaign disbursements made prior to the end of a reporting period are included within the report covering that period.

Lump sums must be dated based on the last date within the period over which the expenditures or noncampaign disbursements are aggregated. This subpart does not alter the date an expenditure is made for purposes of the registration requirements provided in Minnesota Statutes, section 10A.14.

4503.2000 DISCLAIMERS.

Subpart 1. **Additional definitions.** The following definitions apply to this part and Minnesota Statutes, section 211B.04:

A. "broadcast media" means a television station, radio station, cable television system, or satellite system; and

B. "social media platform" means a website or application that allows multiple users to create, share, and view user-generated content, excluding a website controlled primarily by the association or individual that caused the communication to be prepared or disseminated.

Subp. 2. **Material linked to a disclaimer.** Minnesota Statutes, section 211B.04, does not apply to the following communications that link directly to an online page that includes a disclaimer in the form required by that section if the communication is made by or on behalf of a candidate, principal campaign committee, political committee, political fund, political party unit, or person who has made an electioneering communication, as those terms are defined in Minnesota Statutes, chapter 10A:

A. text, images, video, or audio disseminated via a social media platform;

B. a text or multimedia message disseminated only to telephone numbers;

C. text, images, video, or audio disseminated using an application accessed primarily via mobile phone, excluding email messages, telephone calls, and voicemail messages; and

D. paid electronic advertisements disseminated via the internet by a third party, including but not limited to online banner advertisements and advertisements appearing within the electronic version of a newspaper, periodical, or magazine.

The link must be conspicuous and when selected must result in the display of an online page that prominently includes the required disclaimer.

4511.0100 DEFINITIONS.

[For text of subparts 1 and 1a, see Minnesota Rules]

Subp. 1b. **Administrative overhead expenses.** "Administrative overhead expenses" means costs incurred by the principal for office space, transportation costs, and website operations that are used to support lobbying in Minnesota.

Subp. 1c. **Development of prospective legislation.** "Development of prospective legislation" means communications that request support for legislation that has not been introduced as a bill, communications that provide language, or comments on language, used in draft legislation that has not been introduced as a bill, or communications that 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 following actions do not constitute development of prospective legislation:

A. responding to a request for information by a public official;

B. requesting that a public official respond to a survey on the official's support or opposition for an issue;

C. providing information to public officials in order to raise awareness and educate on an issue or topic; or

D. advocating for an issue without requesting action by the public official.

[For text of subpart 2, see Minnesota Rules]

Subp. 3. **Lobbying.** "Lobbying" means attempting to influence legislative action, administrative action, or the official action of a ~~metropolitan governmental unit~~ political subdivision by communicating with or urging others to communicate with public officials or local officials ~~in metropolitan governmental units~~. Any activity that directly supports this communication is considered a part of lobbying. Payment of an application fee, or processing charge, for a government service, permit, or license is not lobbying or an activity that directly supports lobbying.

Subp. 4. **Lobbyist's disbursements.** "Lobbyist's disbursements" include ~~all~~ disbursements for ~~lobbying made~~ each gift given by the lobbyist, the lobbyist's employer ~~or employee~~, or any person or association represented by the lobbyist~~, but do not include compensation paid to the lobbyist~~.

Subp. 5. **Original source of funds.** "Original source of funds" means a source of funds, provided by an individual or association other than the entity for which a lobbyist is registered, paid to the lobbyist, the lobbyist's employer, the entity represented by the lobbyist, or the lobbyist's principal, for lobbying purposes.

Subp. 5a. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the gross compensation paid to an individual for lobbying. An individual whose job responsibilities do not include lobbying, and who has not been directed or requested to

lobby on an issue by their employer, does not receive pay or consideration for lobbying they undertake on their own initiative.

[For text of subpart 6, see Minnesota Rules]

Subp. 7. **Reporting lobbyist.** "Reporting lobbyist" means a lobbyist responsible for reporting lobbying ~~disbursements~~ activity of two or more lobbyists representing the same entity. Lobbying ~~disbursements made~~ activity on behalf of an entity may be reported by each individual lobbyist that represents an entity, or by one or more reporting lobbyists, or a combination of individual reports and reports from a reporting lobbyist.

Subp. 8. **State agency.** "State agency" means any office, officer, department, division, bureau, board, commission, authority, district, or agency of the state of Minnesota.

4511.0200 REGISTRATION.

[For text of subpart 1, see Minnesota Rules]

Subp. 2. **Separate registration for each lobbyist.** Multiple lobbyists representing the same individual, association, political subdivision, or higher education system must each register separately. A lobbyist who ~~provides~~ reports lobbying ~~disbursements~~ activity to the board through a reporting lobbyist must list the name and registration number of the reporting lobbyist on a lobbyist registration. If the reporting lobbyist changes, or if the lobbyist ceases to report through a reporting lobbyist, the lobbyist must amend the registration within ten days.

Subp. 2a. **Registration threshold.** An individual must register as a lobbyist with the board upon the earlier of when:

A. the individual receives total pay or consideration from all sources that exceeds $3,000 in a calendar year for the purpose of lobbying or 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. The pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the gross compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year; or

B. the individual spends more than $3,000 of their own funds in a calendar year for the purpose of lobbying. Membership dues paid by the individual, and expenses for transportation, lodging, and meals used to support lobbying by the individual, are not costs that count toward the $3,000 expenditure threshold that requires registration.

Subp. 2b. **Registration not required.** An individual is not required to register as a lobbyist with the board:

A. to represent the lobbyist's own interests if the lobbyist is already registered to represent one or more principals, unless the lobbyist spends over $3,000 in personal funds in a calendar year for the purpose of lobbying; or

B. as a result of serving on the board or governing body of an association that is a principal, unless the individual receives pay or other consideration to lobby on behalf of the association, and the aggregate pay or consideration for lobbying from all sources exceeds $3,000 in a calendar year.

[For text of subpart 3, see Minnesota Rules]

Subp. 4. **Registration of reporting lobbyist.** A reporting lobbyist must indicate on the lobbyist registration form that the lobbyist will be reporting ~~disbursements~~ lobbying activity for additional lobbyists representing the same entity. The registration must list the name and registration number of each lobbyist that will be included in reports ~~of disbursements~~ to the board made by the reporting lobbyist. Changes to the list of lobbyists represented by a reporting lobbyist must be amended on the reporting lobbyist registration

within ten days, or provided to the board at the time of filing a report required by Minnesota Statutes, section 10A.04, subdivision 2.

4511.0300 PRINCIPALS.

Individuals or associations represented by lobbyists are presumed to be principals until they establish that they do not fall within the statutory definition of a principal. A political subdivision; public higher education system; or any office, department, division, bureau, board, commission, authority, district, or agency of the state of Minnesota is not an association under Minnesota Statutes, section 10A.01, and is not a principal.

4511.0400 TERMINATION.

Subpart 1. **Lobbyist termination.** A lobbyist who has ceased lobbying for a particular entity may terminate registration by filing a lobbyist termination form and a lobbyist ~~disbursement~~ report covering the period from the last report filed through the date of termination. If the lobbying ~~disbursements~~ activity of the lobbyist ~~are~~ is reported by a reporting lobbyist, the nonreporting lobbyist may terminate by filing a lobbyist termination form and notifying the reporting lobbyist of all ~~disbursements made~~ lobbying activity by the lobbyist during the period from the last report filed through the date of termination.

Subp. 2. **Reporting lobbyist termination.** A reporting lobbyist who has ceased lobbying for a particular entity may terminate registration by filing a lobbyist termination form and a lobbyist ~~disbursement~~ report covering the period from the last report filed through the date of termination. The termination of a reporting lobbyist reverts the reporting responsibility back to each lobbyist listed on the registration of the reporting lobbyist.

Subp. 3. **Designated lobbyist termination.** A designated lobbyist who has ceased lobbying for a particular entity may terminate their registration using the procedure provided in subpart 1. When the designated lobbyist of a lobbying entity terminates, the entity is

responsible to assign the responsibility to report ~~entity~~ the entity's lobbying disbursements to another lobbyist.

4511.0500 LOBBYIST REPORTING REQUIREMENTS.

Subpart 1. **Separate reporting required for each entity.** A lobbyist must report separately for each entity for which the lobbyist is registered, unless ~~the disbursements are~~ their activity is reported in the manner provided in ~~subpart 2~~ Minnesota Statutes, section 10A.04, subdivision 9.

Subp. 2. [Repealed, L 2017 1Sp4 art 3 s 18]

Subp. 3. **Report of ~~officers and directors information~~ designated lobbyist.** With each report of lobbyist ~~disbursements~~ activity, a designated lobbyist must report ~~any change in the name and address of~~:

A. the name and address of each person, if any, by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears; ~~or~~

B. if the lobbyist represents an association, a current list of the names and addresses of each officer and director of the association~~.~~;

C. each original source of money in excess of $500 provided to the individual or association that the lobbyist represents; and

D. each gift to a public or local official given by or on behalf of a principal or a lobbyist registered for the principal.

[For text of subpart 4, see Minnesota Rules]

Subp. 5. [See repealer.]

4511.0600 REPORTING DISBURSEMENTS.

Subpart 1. **Determination of actual costs required.** To the extent that actual costs of lobbying activities or administrative overhead expenses incurred by the principal to

support lobbying can be obtained or calculated by reasonable means, those actual costs must be determined, recorded, and used for reporting purposes.

Subp. 2. **Approximation of costs.** If the actual cost of a lobbying activity or administrative overhead expenses incurred by the principal to support lobbying cannot be obtained or calculated through reasonable means, those costs must be reasonably approximated.

[For text of subparts 3 to 6, see Minnesota Rules]

4511.0700 REPORTING COMPENSATION PAID TO LOBBYIST.

Subpart 1. **Reporting by lobbyist.** Compensation paid to a lobbyist for lobbying is not reportable by the lobbyist ~~as a lobbyist disbursement~~.

[For text of subpart 2, see Minnesota Rules]

4511.0900 LOBBYIST REPORTING FOR POLITICAL SUBDIVISION MEMBERSHIP ORGANIZATIONS.

Subpart 1. **Required reporting.** An association whose membership consists of political subdivisions within Minnesota and which is a principal that provides lobbyist representation on issues as directed by its membership must report:

A. attempts to influence administrative action on behalf of the organization's membership;

B. attempts to influence legislative action on behalf of the organization's membership; and

C. attempts to influence the official action of a political subdivision on behalf of the organization's membership, unless the political subdivision is a member of the association.

Subp. 2. **Communication with membership.** A membership association described in subpart 1 is not lobbying political subdivisions when the association communicates with

its membership regarding lobbying efforts made on the members' behalf, or when the association recommends actions by its membership to support a lobbying effort.

4511.1000 ACTIONS AND APPROVAL OF ELECTED LOCAL OFFICIALS.

Subpart 1. **An action that requires a vote of the governing body.** Attempting to influence the vote of an elected local official while acting in their official capacity is lobbying of that official's political subdivision.

Subp. 2. **Approval by an elected local official.** Attempting to influence a decision of an elected local official that does not require a vote by the elected local official is lobbying if the elected local official has discretion in their official capacity to either approve or deny a government service or action. Approval by an elected local official does not include:

A. issuing a government license, permit, or variance that is routinely provided when the applicant has complied with the requirements of existing state code or local ordinances;

B. any action which is performed by the office of the elected local official and which does not require personal approval by an elected local official;

C. prosecutorial discretion exercised by a county attorney; or

D. participating in discussions with a party or a party's representative regarding litigation between the party and the political subdivision of the elected local official.

4511.1100 MAJOR DECISION OF NONELECTED LOCAL OFFICIALS.

Subpart 1. **Major decision regarding the expenditure of public money.** Attempting to influence a nonelected local official is lobbying if the nonelected local official may make, recommend, or vote on as a member of the political subdivision's governing body, a major decision regarding an expenditure or investment of public money.

Subp. 2. **Actions that are a major decision regarding public funds.** A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:

A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;

B. whether to apply for or accept state or federal funding or private grant funding;

C. selecting recipients for government grants from the political subdivision; or

D. expenditures on public infrastructure used to support private housing or business developments.

Subp. 3. **Actions that are not a major decision.** A major decision regarding the expenditure of public money does not include:

A. the purchase of goods or services with public funds in the operating or capital budget of a political subdivision;

B. collective bargaining of a labor contract on behalf of a political subdivision; or

C. participating in discussions with a party or a party's representative regarding litigation between the party and the political subdivision of the local official.

4512.0200 GIFTS WHICH MAY NOT BE ACCEPTED.

Subpart 1. **Acceptance.** An official may not accept a gift given by a lobbyist or lobbyist principal or given as the result of a request by a lobbyist or lobbyist principal unless the gift satisfies an exception under this part or Minnesota Statutes, section 10A.071.

Subp. 2. **Use of gift to ~~metropolitan governmental unit~~ a political subdivision.** An official may not use a gift given by a lobbyist or lobbyist principal to a ~~metropolitan~~

~~governmental unit~~ political subdivision until the gift has been formally accepted by an official action of the governing body of the ~~metropolitan governmental unit~~ political subdivision.

Subp. 3. **Exception.** A gift is not prohibited if it consists of informational material given by a lobbyist or principal to assist an official in the performance of official duties and the lobbyist or principal had a significant role in the creation, development, or production of that material.

4525.0100 DEFINITIONS.

[For text of subparts 1 to 6, see Minnesota Rules]

Subp. 6a. **Preponderance of the evidence.** "Preponderance of the evidence" means, in light of the evidence obtained by or known to the board, the evidence leads the board to believe that a fact is more likely to be true than not true.

[For text of subparts 7 and 8, see Minnesota Rules]

4525.0200 COMPLAINTS OF VIOLATIONS.

[For text of subpart 1, see Minnesota Rules]

Subp. 2. **Form.** Complaints must be submitted in writing. The name and address of the person making the complaint, or of the individual who has signed the complaint while acting on the complainant's behalf, must be included on the complaint ~~and it~~. The complaint must be signed by the complainant or an individual authorized to act on behalf of the complainant. A complainant ~~shall~~ must list the alleged violator and the alleged violator's address if known by the complainant and describe the complainant's knowledge of the alleged violation. Any evidentiary material should be submitted with the complaint. Complaints are not available for public inspection or copying until after the complaint is dismissed or withdrawn or the board makes a finding.

Subp. 3. [Repealed, 30 SR 903]

Subp. 3a. **Withdrawal.** Prior to a prima facie determination being made, a complaint may be withdrawn upon the written request of the person making the complaint or any individual authorized to act on that person's behalf. After a prima facie determination is made, a complaint may not be withdrawn.

[For text of subparts 4 to 6, see Minnesota Rules]

4525.0210 DETERMINATIONS PRIOR TO AND DURING FORMAL INVESTIGATION.

[For text of subparts 1 to 3, see Minnesota Rules]

Subp. 3a. **Making the probable cause determination.** In determining whether there is probable cause to believe a violation occurred, any evidence obtained by or known to the board may be considered. Arguments of the respondent and complainant must be considered. Probable cause exists if there are sufficient facts and reasonable inferences to be drawn therefrom to believe that a violation of law has occurred.

[For text of subpart 4, see Minnesota Rules]

Subp. 5. **Action after probable cause found.** If the board finds that probable cause exists to believe that a violation has occurred, the board then must determine whether the alleged violation warrants a formal investigation.

When making this determination, the board must consider the type of possible violation; the magnitude of the violation if it is a financial violation; the extent of knowledge or intent of the violator; the benefit of formal findings, conclusions, and orders compared to informal resolution of the matter; the availability of board resources; whether the violation has been remedied; and any other similar factor necessary to decide whether the alleged violation warrants a formal investigation.

If the board orders a formal investigation, the order must be in writing and must describe the basis for the board's determination, the possible violations to be investigated, the scope

of the investigation, and the discovery methods available for use by the board in the investigation.

The executive director must promptly notify the complainant and the respondent of the board's determination.

The notice to the respondent also must:

[For text of items A to C, see Minnesota Rules]

D. state that the respondent will be given an opportunity to be heard by the board prior to the board's determination as to whether any violation occurred.

At the conclusion of the investigation, the board must determine whether a violation occurred. The board's determination of any disputed facts must be based upon a preponderance of the evidence.

[For text of subpart 6, see Minnesota Rules]

4525.0220 SUMMARY PROCEEDINGS.

[For text of subparts 1 and 2, see Minnesota Rules]

Subp. 3. **Consideration of request by board.** Upon receipt of a request for a summary proceeding, the executive director must submit the request to the board. If the matter was initiated by a complaint, the complaint has not been dismissed, and a probable cause determination has not been made, the executive director must send a copy of the request to the complainant no later than the time that the request is submitted to the board. Under any other circumstances a complainant must not be notified or provided a copy of the request. The request must be considered by the board at its next meeting that occurs at least ten days after the request was received. If the executive director sends a copy of the request to the complainant pursuant to this subpart, the complainant must be given an opportunity to be heard by the board.

The board is not required to agree to a request for a summary proceeding. If the board modifies the respondent's request for a summary proceeding, the board must obtain the respondent's agreement to the modifications before undertaking the summary proceeding.

4525.0500 INVESTIGATIONS AND AUDITS; GENERAL PROVISIONS.

[For text of subparts 1 and 2, see Minnesota Rules]

Subp. 2a. **Penalties.** In exercising discretion as to the imposition of a civil penalty for violation of a statute within the board's jurisdiction, the board must consider the factors identified in Minnesota Statutes, section 14.045. The board also may consider additional factors such as whether a violator created and complied with appropriate internal controls or policies before the violation occurred, whether the violator could have avoided the violation, whether the violator voluntarily reported or corrected any violation, and whether the violator took measures to remedy or mitigate any violation or avoid future violations.

[For text of subparts 3 to 7, see Minnesota Rules]

4525.0550 FORMAL AUDITS.

Subpart 1. **Formal audit.** The purpose of a formal audit is to ensure that all information included in the report or statement being audited is accurately reported. The fact that the board is conducting a formal audit does not imply that the subject of the audit has violated any law. When conducting an audit, the board may require testimony under oath, permit written statements to be given under oath, and issue subpoenas and cause them to be served. When conducting an audit the board may require the production of any records required to be retained under Minnesota Statutes, section 10A.025.

[For text of subparts 2 and 3, see Minnesota Rules]

Subp. 4. **Audits of affidavits of contributions.** The board may audit the affidavit of contributions filed by a candidate or the candidate's treasurer to determine whether the candidate is eligible to receive a public subsidy payment. The executive director must contact

the principal campaign committee of a candidate and request the information necessary to audit any affidavit of contributions that was not filed by electronic filing system, if the committee has accepted contributions from individuals totaling less than twice the amount required to qualify for a public subsidy payment.

Subp. 5. **Audits of other campaign finance filings.** The board may audit any campaign finance report or statement that is filed or required to be filed with the board under Minnesota Statutes, chapter 10A or 211B. The board may conduct a partial audit, including auditing a campaign finance report to determine whether a beginning or ending balance reconciles with the filer's financial records. In determining whether to undertake an audit, the board must consider the availability of board resources, the possible benefit to the public, and the magnitude of any reporting failures or violations that may be discovered as a result of the audit. The board may conduct audits in which respondents are selected on a randomized basis designed to capture a sample of respondents that meet certain criteria. The board may conduct audits in which all respondents meet certain criteria. When undertaking an audit with respondents selected on a randomized basis, the board must, to the extent possible, seek to prevent selecting respondents based on their political party affiliation, or if the respondents are candidates, based on their incumbency status.

RENUMBERING INSTRUCTION. A. Renumber Minnesota Rules, part 4501.0100, subpart 7a, as Minnesota Rules, part 4501.0100, subpart 7c.

B. Renumber Minnesota Rules, part 4503.0100, subpart 3a, as Minnesota Rules, part 4503.0100, subpart 3c.

REPEALER. Minnesota Rules, part 4511.0500, subpart 5, is repealed.

Office of the Revisor of Statutes
Administrative Rules

TITLE: Proposed Permanent Rules Relating to Campaign Finance

AGENCY: Campaign Finance and Public Disclosure Board

REVISOR ID: R-4809

MINNESOTA RULES: Chapters 4501, 4503, 4511, 4512, and 4525

The attached rules are approved for
publication in the State Register

Jason F. Kuenle
Assistant Deputy Revisor

MINNESOTA
CAMPAIGN FINANCE BOARD

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota Rules, Chapters 4501, 4503, 4511, 4512, and 4525; Revisor's ID No. 04809

Campaign Finance and Public Disclosure Board

September 2024

General information

1. The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rules will be available during the public comment period on the Board's rulemaking docket webpage at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/.

2. Records of the Board's past rulemaking projects are available at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/completed-rulemaking-projects/.

3. Upon request, this SONAR may be made available in an alternative format. To make a request, contact Andrew Olson by email at andrew.d.olson@state.mn.us, by phone at 651-539-1190, 800-657-3889 (toll free), or 800-627-3529 (Minnesota Relay), or by mail at Campaign Finance and Public Disclosure Board, Suite 190, Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155-1603.

Contents

Glossary of abbreviations, initialisms, and acronyms

APA	Administrative Procedure Act, Minnesota Statutes, chapter 14
ALJ	Administrative Law Judge
Board	Campaign Finance and Public Disclosure Board
CFR	Code of Federal Regulations
FEC	Federal Election Commission
LDA	Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601 et seq.
MGRC	Minnesota Governmental Relations Council
MMB	Minnesota Management and Budget
Revisor	Office of the Revisor of Statutes
OAH	Office of Administrative Hearings
SONAR	Statement of Need and Reasonableness

Introduction and overview

Introduction

The Board is charged with the administration of Minnesota Statutes, chapter 10A, as well as three sections within chapter 211B insofar as they apply to those under the jurisdiction of the Board. The Board's three major program areas are campaign finance registration and disclosure, lobbyist registration and disclosure, and economic interest disclosure by public officials and certain local officials.

General need

There are several general reasons why the proposed rules are necessary. First, six statute sections within Minnesota Statutes, chapter 10A, that directly impact the regulation of lobbying were amended, and two rule subparts related to lobbying were repealed, effective January 1, 2024. The amendments altered the type of information lobbyists must report to the Board and the scope of who is defined as a lobbyist. A particularly consequential change to the scope of who is defined as a lobbyist involved classifying individuals as lobbyists if they lobby any Minnesota county, township, city, or school district, among other political subdivisions. Previously the scope of what was defined as lobbying of local government bodies was largely limited to lobbying of seven metropolitan area counties, and cities with a population in excess of 50,000 within those seven counties. That change increased the number of individuals required to register as lobbyists and file lobbyist reports, the number of lobbyist principals on whose behalf some existing lobbyists must be registered, thereby requiring the filing of additional lobbyist reports, and the number of principals required to file annual reports. The legislative changes effective January 1, 2024, introduced undefined terms to Minnesota Statutes, chapter 10A, generally replaced the term "metropolitan governmental unit" with the term "political subdivision" insofar as it applies to lobbying, and caused multiple organizations to seek an advisory opinion from the Board or otherwise raise questions as to whether they are engaged in lobbying of political subdivisions within the meaning of Minnesota Statutes, chapter 10A, and if so, how their lobbyists need to report that activity. The proposed changes to Minnesota Rules, chapter 4511, would address those issues, enable the Board to better administer Minnesota Statutes, chapter 10A, and provide increased clarity to the regulated community and members of the public.

Legislation enacted in 2024 stays enforcement of the lobbyist registration requirement, for an individual who lobbies a political subdivision that is not a metropolitan governmental unit, through June 1, 2025. *See* Laws 2024, chapter 112, article 4, section 27. That legislation does not eliminate the need to adopt rules regarding lobbying for two reasons. First, the need is broader than addressing issues raised by generally replacing the term metropolitan governmental unit with the term political subdivision within Minnesota Statutes, chapter 10A. Second, the stay expires on June 1, 2025, at which point the proposed rules will be needed to address those issues.

Second, Minnesota Statutes, section 10A.02, subdivision 12a, provides that if the Board

"intends to apply principles of law or policy announced in an advisory opinion . . . more broadly than to the individual or association to whom the opinion was issued," rules must be adopted under the APA to implement those principles or policies. The Board has articulated legal principles and policies in multiple advisory opinions that are generally applicable and have not yet been adopted as administrative rules.

Third, six statute sections within Minnesota Statutes, chapter 10A, that directly impact the regulation of campaign finance were amended effective January 1, 2022. Broadly speaking those changes involved repealing much of Minnesota Statutes, chapter 383B, and requiring associations other than candidate committees, seeking to influence certain local elections within Hennepin County, to register and file reports with the Board rather than Hennepin County. The amendments introduced the term "local candidate" to Minnesota Statutes, chapter 10A, and made multiple changes in order to be inclusive of contributions to and expenditures regarding local candidates, as well as expenditures regarding certain local ballot questions. Definitions of the terms "local candidate" and "ballot question" have been amended, effective January 1, 2025, to eliminate distinctions regarding Hennepin County and be inclusive of local elections in any Minnesota county, city, school district, township, or special district. Corresponding amendments are needed to Minnesota Rules, chapter 4503, to fully implement the changes.

Fourth, some existing rules are partially obsolete or duplicative and need to be amended in accordance with Minnesota Statutes, section 14.05, subdivision 5. Fifth, the Board's procedures regarding audits, investigations, and the handling of complaints need to be clarified and the proposed changes to Minnesota Rules, chapter 4525, would provide that clarity. Sixth, several terms used within Minnesota Statutes, chapter 10A, need to be more clearly defined.

Scope

Minnesota Rules, chapters 4501, 4503, 4511, 4512, and 4525 will be affected.

Public participation and stakeholder involvement

During its June 7, 2023, meeting, the Board discussed and decided to proceed with adopting new and amended administrative rules in order to improve the Board's administration of Minnesota Statutes, chapter 10A, and those sections within chapter 211B under the Board's jurisdiction. On June 8, 2023, the Board published a list of potential administrative rule topics on its website and sought public feedback regarding those topics and any additional topics that should be addressed by the Board. On June 9, 2023, emails containing a hyperlink to a memorandum expressing the Board's intent to adopt administrative rules and soliciting public feedback were sent to all candidates and treasurers of principal campaign committees registered with the Board, all treasurers and chairs of political party units, political committees, and political funds registered with the Board, and all lobbyists registered with the Board. In response, the Board received feedback from five individuals and the MGRC. As a result of that feedback, the Board decided to pursue one additional rulemaking topic regarding disclaimer requirements for campaign material, and feedback from the MGRC was later used to help

shape proposed rule language regarding lobbying.

A draft version of the Board's request for comments was published on the Board's website on June 29, 2023. During its July 6, 2023, meeting, the Board discussed the rulemaking topics to be pursued and approved the final version of its request for comments. The Board's request for comments was published in the State Register on July 24, 2023, and was also published on the Board's website and the eComments website maintained by the OAH. That same day, a copy of the request for comments was mailed to all legislators serving on the Senate Elections Committee and the House Elections Finance and Policy Committee, and one former legislator who previously asked to receive rulemaking notices by mail, and a hyperlink to the request for comments was sent to the following by email:

- 143 email addresses on the Board's email list for those who requested notices regarding rulemaking;
- 438 email addresses on the Board's email list for those who requested notice of Board meetings, decisions, and policies;
- All candidates and treasurers of principal campaign committees registered with the Board;
- All treasurers and chairs of political party units, political committees, and political funds registered with the Board;
- The MGRC;
- 35 separate organizations that may be interested in the rulemaking topics pursued; and
- 32 attorneys who have been in contact with the Board regarding topics that may be impacted by rulemaking.

In total, a hyperlink to the request for comments was sent to over 2,700 unique email addresses. In response to its request for comments, the Board received comments from four individuals and five organizations during the period from July 24 through September 22, 2023. The comments were considered by the Board at its meeting on October 6, 2023.

Three of the Board's members formed a rulemaking committee to consider and draft proposed rule language. The committee met three times, on January 29, February 9, and February 23, 2024. Each rulemaking committee meeting was open to the public and individuals were able to participate remotely. The rulemaking committee's meetings were well attended and several individuals provided testimony in person before the committee. Over the course of three meetings the rulemaking committee received and considered 10 written comments submitted by six separate organizations and one individual. All of the written comments and nearly all of the oral testimony received by the rulemaking committee focused exclusively on lobbying. The comments and testimony assisted the rulemaking committee in drafting proposed rule language that seeks to address concerns raised during the rulemaking process regarding lobbyist registration and reporting.

The rulemaking committee recommended draft proposed rule language to the full Board at its meeting on March 8, 2024. During that meeting the Board heard and discussed testimony from a representative of the American Council of Engineering Companies of Minnesota regarding

three similar versions of a potential new rule that would narrow the circumstances under which an individual seeking to influence the actions of local officials would be defined to be engaged in lobbying. The Board declined to proceed with that potential rule and voted to proceed in proposing new and amended rule language impacting a total of 29 rule parts within Minnesota Rules, chapters 4501, 4503, 4511, 4512, and 4525.

Statutory authority

The Board's general statutory authority to adopt, amend, and repeal rules is codified at Minnesota Statutes, section 10A.02, subdivision 13, paragraph (a), which provides that "Chapter 14 applies to the board. The board may adopt rules to carry out the purposes of this chapter." While the precise text of subdivision 13 has changed since January 1, 1996, including the addition of paragraph (b) requiring that notice be provided to certain legislators when the Board engages in rulemaking, the substance of the text within paragraph (a) has remained the same. As of January 1, 1996, Minnesota Statutes, section 10A.02, subdivision 13, provided that "[t]he provisions of chapter 14 apply to the board. The board may adopt rules to carry out the purposes of this chapter." Because the Board's general statutory authority to adopt, amend, and repeal rules has remained the same since January 1, 1996, that authority is not constrained by the 18-month limit imposed by Minnesota Statutes, section 14.125. *See* Laws 1995, article 2, section 58, stating that "Section 12 applies to laws authorizing or requiring rulemaking that are finally enacted after January 1, 1996."

Minnesota Statutes, section 10A.02, subdivision 12a, provides that "[i]f the board intends to apply principles of law or policy announced in an advisory opinion issued under subdivision 12 more broadly than to the individual or association to whom the opinion was issued, the board must adopt these principles or policies as rules under chapter 14." The text of subdivision 12a has not changed since it was enacted, effective July 1, 1995. The Board has issued multiple advisory opinions announcing principles of law or policy that apply more broadly than to just the requester and have yet to be adopted as administrative rules.

Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), clause (22), provides that the term "noncampaign disbursement" includes "other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question," which demonstrates that the Board is authorized to adopt rules specifying types of disbursements that qualify as noncampaign disbursements. While that provision has been renumbered, its text has not changed since it was enacted in 1993.

In 2014 the legislature directed the Board to use the expedited rulemaking process to adopt rules related to audits and investigations. *See* Minnesota Statutes section 10A.022, subdivision 2, paragraph (b), codifying Laws 2014, chapter 309, section 6, originally codified at Minnesota Statutes section 10A.02, subdivision 10. The legislature also directed the Board to notify certain legislators when it engages in rulemaking. Those provisions were not grants of new rulemaking authority and did not eliminate any then-existing authority of the Board to adopt

rules. Instead, one provision required the Board to use the expedited rulemaking process to adopt rules it already had the authority to adopt, and one provision added notice procedures in addition to those set forth in Minnesota Statutes, section 14.116, requiring the Board to notify certain legislators when it publishes proposed rules, issues a SONAR, and adopts final rules. The Board followed the directive to engage in expedited rulemaking, which was completed with the publication of the expedited rules in the State Register on December 1, 2014. The rule parts that were added or amended included Minnesota Rules, chapter 4525, parts 0100, 0200, 0210, 0220, 0500, and 0550, among others. Therefore, the Board is authorized to amend those rule parts pursuant to Minnesota Statutes, section 14.125.

In 2005 the legislature directed the Board to adopt rules regarding electronic filing of reports and statements required by Minnesota Statutes, chapter 10A. *See* Minnesota Statutes section 10A.025, subdivision 1a, paragraph (a), codifying Laws 2005, chapter 156, article 6, section 3. That provision was not a grant of new rulemaking authority and did not eliminate any then-existing authority of the Board to adopt rules. Instead, it required the Board to adopt rules it already had the authority to adopt. The Board followed the directive to adopt rules regarding electronic filing, which were published in the State Register on February 21, 2006. The rule parts that were added or amended included Minnesota Rules, chapters 4501, parts 0100 and 0500, 4503, parts 0100, 0500, 0900, and 1800, 4511, parts 0500 and 0600, 4512, part 0200, and 4525, part 0200, among others. Therefore, even if the Board was granted new rulemaking authority in 2005, it would be authorized to amend those rule parts pursuant to Minnesota Statutes, section 14.125.

The Board has statutory authority to adopt the proposed rules.

General reasonableness

The proposed rules are the culmination of a process that lasted more than a year and involved several opportunities for the consideration of input from the regulated community and the general public. The proposed rules, particularly those concerning lobbying, were drafted to address multiple concerns raised during and prior to the rulemaking process by members of the regulated community. The Board received comments and testimony raising concerns regarding legislative changes to lobbyist registration and reporting requirements that became effective on January 1, 2024. The Board sought to address those concerns to the extent possible while also fulfilling its responsibility to effectuate the intent of the legislature. For those reasons and for the specific reasons stated below, the proposed rules are reasonable.

Rule-by-rule analysis

PART 4501.0100 DEFINITIONS.

Proposed amendment of Minnesota Rules, chapter 4501, part 0100, subpart 4

The words compensate and compensation are used within Minnesota Statutes, chapter 10A, to

describe remuneration for services performed by a lobbyist, an official required to file a statement of economic interest or their spouse, or the business of an official required to file a statement of economic interest or their spouse. Under Minnesota Rules, chapter 4511, part 0100, subpart 4, and Minnesota Rules, chapter 4511, part 0700, compensation paid to a lobbyist is not required to be included within a lobbyist report filed pursuant to Minnesota Statutes, section 10A.04, subdivision 4, but must be included within a principal report filed pursuant to Minnesota Statutes, section 10A.04, subdivision 6. The amendment is necessary because the existing definition of the word compensation excludes pension and Social Security benefits, but does not address other types of retirement benefits, and excludes unemployment compensation and workers' compensation benefits, but does not exclude health insurance. The definition of the word compensation has not been amended since it was first adopted in 1996.

The amendment would add healthcare and retirement benefits to the list of benefits that are excluded from the definition of compensation. That change would provide clarity to the regulated community and ensure that benefits similar to those already excluded from the definition of compensation will also be excluded. It is reasonable to update a definition that has not changed in 28 years and thereby improve the administration of Minnesota Statutes, chapter 10A. It is also reasonable to provide greater clarity and certainty to the regulated community.

Proposed addition of Minnesota Rules, chapter 4501, part 0100, subpart 7b

Within Minnesota Statutes, section 10A.025, subdivision 1b, the term "original signature" is used to describe the signature required to appear on documents required to be filed with the Board under Minnesota Statutes, chapter 10A. Minnesota Rules, chapter 4501, part 0300, subpart 1a, provides that "[a] document filed by facsimile transmission" satisfies the original signature requirement "if the original document being transmitted bears the required signature," and provides that "[a]n electronic filing meets the requirement of this part if it is submitted with a personal identification code." Subpart 7b is necessary because the term "original signature" is not defined.

The proposed addition would define the term and provide that an original signature includes a signature applied by another person in the presence of the signer if the signer is unable to write, an electronic signature consisting of the signer's name, or the signer's name on an electronic file submitted using a user name and password provided by the Board. That change would provide clarity to the regulated community, alleviate a potential accessibility barrier, reduce reliance on facsimile transmissions, and better align the Board's rules with the Uniform Electronic Transactions Act, Minnesota Statutes, chapter 325L. It is reasonable to define undefined terms when needed to provide clarity and improve the administration of Minnesota Statutes, chapter 10A. The addition of subpart 7b will necessitate the renumbering of subpart 7a as subpart 7c so that terms defined within part 0100 remain in alphabetical order.

PART 4501.0500 FILINGS, SUBMISSIONS, AND DISCLOSURES.

Proposed amendment of Minnesota Rules, chapter 4501, part 0500, subpart 1

This subpart, which has not been changed since 2006, provides that reports "must be submitted on the forms provided by the board for that purpose or by an electronic filing system." However, Minnesota Statutes, section 10A.20, subdivision 1, paragraph (c), generally requires that campaign finance reports be filed electronically. The proposed amendment is needed to state that campaign finance reports must be filed electronically to the extent required by Minnesota Statutes, section 10A.20. That change would provide clarity to the regulated community and lessen the likelihood that the rule language may be misinterpreted to generally permit the use of a paper form to file a campaign finance report. It is reasonable to provide greater clarity by amending language that could be misinterpreted to mean something different than what is required by statute.

PART 4503.0100 DEFINITIONS.

Proposed amendment of Minnesota Rules, chapter 4503, part 0100, subpart 1

The proposed amendment would establish an exception regarding the scope of the definitions in this part and is needed to accommodate the addition of a definition of the word headquarters in subpart 4a, which pertains to Minnesota Statutes, section 211B.15. That statute is administered by the Board pursuant to Minnesota Statutes, section 10A.022, subdivision 3, paragraph (a). It is reasonable to accurately state the scope of the definitions in this part.

Proposed addition of Minnesota Rules, chapter 4503, part 0100, subpart 3b

Minnesota Statutes, chapter 10A, was amended effective January 1, 2022, to regulate the actions of associations seeking to influence the nomination or election of certain candidates for local offices within Hennepin County. Provisions within Minnesota Statutes, section 10A.01, have been amended again, effective January 1, 2025, to eliminate distinctions regarding Hennepin County and be inclusive of local elections in any Minnesota county, city, school district, township, or special district. Specifically, Minnesota Statutes, section 10A.01, subdivision 10d, will define the term "local candidate" to include an individual who seeks to be elected to any county office. Minnesota Statutes, section 383B.041, provides that "[c]andidates for county commissioner, county attorney, and sheriff of Hennepin County must file campaign disclosure forms with the filing officer for Hennepin County. These candidates are subject to the provisions of chapter 211A." Omitted from that list are individuals seeking to be appointed or elected to the Three Rivers Park District Board of Commissioners. Subpart 3b is necessary because there is ambiguity as to whether the position of Three Rivers Park District commissioner is a county office within the meaning of Minnesota Statutes, section 10A.01, subdivision 10d.

Minnesota Statutes, section 383B.703, and other provisions within chapter 383B, make it clear that the Three Rivers Park District is a park district "existing under" Minnesota Statutes, chapter 398. Minnesota Statutes, section 398.01, provides that park districts "shall be deemed

to be political subdivisions of the state of Minnesota and public corporations." Although two of the Park District's seven commissioners are appointed by the Hennepin County Board of Commissioners, the Park District is otherwise largely autonomous. Minnesota Statutes, chapters 10A and 383B, were amended at the same time to shift campaign finance reporting by associations seeking to influence the election of certain candidates within Hennepin County, other than the candidates themselves, from Hennepin County to the Board. To the Board's knowledge, no association that attempted to influence the nomination or election of a Three Rivers Park commissioner ever reported such activity to Hennepin County. Therefore, the proposed addition would define the phrase "county office" to include the offices specified in Minnesota Statutes, chapter 382, and to exclude the office of Three Rivers Park District commissioner. It is reasonable to resolve ambiguity caused by a newly defined term in a manner that is consistent both with past practice and the current text of Minnesota Statutes, chapters 382 and 383B. The addition of subpart 3b will necessitate the renumbering of subpart 3a as subpart 3c so that terms defined within part 0100 remain in alphabetical order.

Proposed addition of Minnesota Rules, chapter 4503, part 0100, subpart 4a

Minnesota Statutes, section 211B.15, is administered by the Board pursuant to Minnesota Statutes, section 10A.022, subdivision 3, paragraph (a). Minnesota Statutes, section 211B.15, subdivision 8, establishes an exception to the general prohibition on corporate contributions with respect to a nonprofit corporation formed by a political party "for the sole purpose of holding real property to be used exclusively as the party's headquarters." Subpart 4a is necessary because questions have arisen regarding the meaning of the word headquarters, which is not defined within Minnesota Statutes, chapters 10A, 200, or 211B. Following publication of the Board's request for comments, the Minnesota Democratic-Farmer-Labor Party requested that the Board adopt a rule providing guidance similar to that provided in this definition.

The proposed addition would define the word to mean a building or structure used as the primary location where a party's business is conducted. That definition would provide clarity to the regulated community and allow the Board to better administer the statutory exception. It is reasonable to define undefined terms when needed to provide clarity and improve the administration of Minnesota Statutes, chapter 10A, and those provisions under the Board's jurisdiction within chapter 211B.

Proposed addition of Minnesota Rules, chapter 4503, part 0100, subparts 4b-4d

Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), clause (9), classifies a principal campaign committee's "payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities" as a noncampaign disbursement. In 2019 the Board issued Advisory Opinion 450, which confirms that a principal campaign committee may use campaign funds to pay for such expenses. Within that opinion, the Board used the term "legislative party unit" to differentiate "a political party unit organized in a legislative body" from other types of caucuses. The terms "legislative caucus," "legislative caucus leader," and "legislative party unit" are not defined within Minnesota Statutes, chapter 10A.

The proposed additions would define those terms. Specifically, the term “legislative caucus” would be defined to be an organization comprised of members of the same house of the legislature and the same political party, and would not be limited to the majority and minority caucuses in each chamber. The term legislative caucus leader would be defined broadly and would not be limited to the maximum of five leadership positions per chamber referenced in Minnesota Statutes, section 3.099, subdivision 3. The term “legislative party unit” would be defined to be a “party unit established by the party organization within a house of the legislature.” While a principal campaign committee’s payment of expenses for the operation of a legislative party unit would not fall within the noncampaign disbursement category for expenses incurred by leaders of a legislative caucus, such payments would nonetheless qualify as noncampaign disbursements under a separate category for contributions to a party unit, under Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), clause (18).

The Board intends to apply principles announced in Advisory Opinion 450 more broadly than to the requester of that opinion. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a. The definitions would also provide clarity to the regulated community. It is reasonable to comply with a statutory requirement, and it is also reasonable to define undefined terms when needed to provide clarity to the regulated community.

Proposed addition of Minnesota Rules, chapter 4503, part 0100, subpart 4e

The word nomination is used in multiple provisions applicable to campaign finance regulation within Minnesota Statutes, chapter 10A. The word plays a role in defining terms that are foundational to what activity must be reported to the Board, such as the terms “campaign expenditure,” “candidate,” “local candidate,” “political committee,” and “political fund.” The term “campaign expenditure” is defined in relevant part to mean a purchase or payment “for the purpose of influencing the nomination or election of a candidate or a local candidate.” Subpart 4e is necessary because the word nomination is not defined within Minnesota Statutes, chapter 10A.

Within Minnesota Statutes, chapters 204B, 204C, 204D, 205, 205A, 206, 209, 211A, and 211B, which pertain to elections, the words nominate and nomination are generally used to refer to an individual’s name being selected to appear on a general election ballot for a particular office. With very few exceptions, under those chapters a nomination is the result of a candidate succeeding in a partisan or nonpartisan primary election, the failure of a threshold number of candidates to file to appear on the ballot making a primary election unnecessary, or in the case of certain political subdivisions, the decision to not hold a primary election regardless of how many individuals file for the same office. One instance in which the term nomination has a somewhat different meaning is with respect to a presidential nomination primary because in that case voters are effectively selecting a slate of delegates, who in turn vote for candidates to receive their party’s nomination and thereby gain the right to appear on the general election ballot.

Despite how the term nomination is used outside of Minnesota Statutes, chapter 10A, questions have arisen as to whether the term nomination, in Minnesota Statutes, chapter 10A, includes a political party unit endorsing a candidate prior to any primary election. The proposed addition would answer that question in the negative. That interpretation appears to be consistent with the definition of the word candidate under Minnesota Statutes, section 10A.01, subdivision 10, which provides that an individual is a candidate "if the individual has taken the action necessary under the law of this state to qualify for nomination or election." While there are processes set forth in statutes and rules concerning how a candidate's name may qualify for placement on the ballot, there are no such procedures established under state law to qualify for a political party's endorsement.

The definition of the term nomination would include two exceptions. First, the new definition would not apply to Minnesota Statutes, section 10A.09, in which the words nominates and nomination are used to describe an official appointing another official to a position that is not an elective office. Second, the new definition would not apply to Minnesota Statutes, section 10A.201. That section was enacted effective January 1, 2024, and the Board's understanding is that in that instance, legislators intended that the words nominate and nomination be inclusive of a political party unit's endorsement of a candidate. Minnesota Statutes, section 10A.201, has been amended, effective January 1, 2025, to delete the word nomination and replace the word nominate with endorse, so as of that date there will no longer be a potential conflict with that section as to the meaning of the word nomination.

The definition would provide clarity to the regulated community and members of the public and better align the Board's rules with other statutes and rules applicable to elections. It is reasonable to define undefined terms when needed to provide clarity and improve the administration of Minnesota Statutes, chapter 10A.

PART 4503.0200 ORGANIZATION OF POLITICAL COMMITTEES AND POLITICAL FUNDS.

Proposed amendment of Minnesota Rules, chapter 4503, part 0200, subpart 5

The proposed amendment would delete a cross-reference to Minnesota Rules, chapter 4503, part 0200, subpart 4, which was repealed by the legislature in 2005. It is reasonable, and under Minnesota Statutes, section 14.05, subdivision 5, the Board is required to attempt, to delete an obsolete cross-reference to a subpart that no longer exists.

PART 4503.0450 JOINT PURCHASES.

Proposed addition of Minnesota Rules, chapter 4503, part 0450

Principal campaign committees are generally prohibited from making contributions to each other under Minnesota Statutes, section 10A.27, subdivision 9, paragraph (a). As a result, when principal campaign committees jointly purchase goods or services, such as when holding a joint fundraising event, it is important that each committee ensures that it does not inadvertently pay more than its share of any expenses, thereby resulting in a donation in kind to the other

committee. A donation in kind is more commonly known as an in-kind contribution.

In 2013 the Board issued Advisory Opinion 436, generally stating that committees may jointly purchase research and polling services without creating an in-kind contribution if each committee pays an equal or proportionate share of the cost. In 2020 the Board issued Advisory Opinion 452, generally stating that committees need not use a third-party intermediary to prevent the creation of an in-kind contribution when jointly purchasing goods or services. The Board intends to apply principles announced in those advisory opinions more broadly than to the requesters of the opinions. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a. It is a common concern to avoid creating an in-kind contribution inadvertently when purchasing goods or services jointly. Adopting rules that elaborate on past advisory opinions would offer clarity and greater certainty to the regulated community.

Subpart 1 would state the general rule that associations may jointly purchase goods or services without creating an in-kind contribution, and if one association reimburses another, each must report the reimbursement using the same of two permitted reporting methods under Minnesota Statutes, section 10A.20, subdivision 13. Subpart 2 would state that each joint purchaser must pay their share of the value of the joint purchase to prevent the creation of an in-kind contribution. Subpart 3 would state that part 0450 does not alter what constitutes a coordinated expenditure under Minnesota Statutes, sections 10A.175 through 10A.177, nor does it alter what is prohibited by Minnesota Statutes, section 10A.121.

It is reasonable to comply with a statutory requirement, and it is also reasonable to add provisions providing greater clarity and certainty to the regulated community.

PART 4503.0500 CONTRIBUTIONS.

Proposed amendment of Minnesota Rules, chapter 4503, part 0500, subpart 1

This subpart states that a donation received by a principal campaign committee is considered a contribution at the time it is received. Its text has remained the same since 1997. It is unclear why the rule was drafted in a manner that includes contributions received by principal campaign committees, but not by other types of associations required to register with the Board. The amendment is needed to include a contribution received by a political party unit, political committee, or political fund, which is consistent with how the word contribution is defined within Minnesota Statutes, section 10A.01, subdivision 11. That would provide clarity to the regulated community and decrease the likelihood that someone may misinterpret the rule to mean that the date that a contribution was received may differ depending on whether the recipient is a principal campaign committee or another type of association required to register with the Board. It is reasonable to correct an omission within an existing rule, and to thereby provide greater clarity to the regulated community.

Proposed addition of Minnesota Rules, chapter 4503, part 0500, subpart 2a

The Board issued Advisory Opinion 319 in 1999, generally stating that a business may provide internet-based contribution processing services for a fee to principal campaign committees without thereby making contributions to the committees that receive the contributions, minus the fees. The Board issued Advisory Opinion 369 in 2005, generally stating that a political committee may provide contribution processing services for a fee, and must charge the fair market value of those services in order to avoid making a contribution to a principal campaign committee that benefits from those services. The Board issued Advisory Opinion 434 in 2013, generally stating that a business that provides internet-based contribution processing services for a fee is not thereby required to register with the Board, regardless of whether the fee is paid by the contributor or the recipient. The Board intends to apply principles announced in those advisory opinions more broadly than to the requesters of the opinions. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a. Avoiding the inadvertent creation of a secondary contribution when processing and disbursing the proceeds from monetary contributions processed electronically remains a topic of concern. Adopting rules elaborating on the principles announced in past advisory opinions would provide clarity and greater certainty to the regulated community.

This subpart would state that a vendor may solicit, process, collect, or otherwise facilitate the accumulation of contributions without thereby making a contribution to the intended recipient, if fair market value is paid for the services provided, and the vendor does not play a role in deciding which association will ultimately receive a contribution. It is reasonable to comply with a statutory requirement, and it is also reasonable to add language providing greater clarity and certainty to the regulated community.

Proposed amendment of Minnesota Rules, chapter 4503, part 0500, subpart 3

This subpart states that an individual who serves as an intermediary by receiving a contribution on behalf of the intended recipient must promptly transmit the contribution to the recipient's treasurer. Consistent with the proposed text of subpart 2a, the amendment is needed to expand the scope of the language to include an intermediary that is an association or vendor, rather than an individual. It is reasonable to amend a subpart to accommodate changes made to another subpart, and to thereby provide greater clarity and certainty to the regulated community and members of the public.

Proposed amendment of Minnesota Rules, chapter 4503, part 0500, subpart 4

This subpart describes who is the contributor of a contribution to a political committee or political fund. It has not been amended since 1997. At that time, Minnesota Statutes, section 10A.01, defined the term "political committee" in a way that explicitly included principal campaign committees and political parties. However, the definition of the term "political committee" was amended by the legislature in 1999 to explicitly exclude principal campaign committees and political party units. This subpart was not updated to accommodate that change, resulting in language with a different meaning than what was originally intended. The amendment is needed to again include principal campaign committees and political party units within the list of

contribution recipients. It is reasonable to amend a subpart to accommodate statutory changes made by the legislature, and to thereby provide greater clarity to the regulated community and members of the public.

Proposed addition of Minnesota Rules, chapter 4503, part 0500, subpart 10

The Board issued Advisory Opinion 447 in 2018, generally stating that a principal campaign committee must consider the sources of funding of an association that is not registered with the Board when considering whether the committee may accept a contribution from that association without violating the prohibition on corporate contributions under Minnesota Statutes, section 211B.15. The Board intends to apply principles announced in the opinion more broadly than to the requester. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a. Elaborating on the principles announced in Advisory Opinion 447 would provide clarity and greater certainty to the regulated community and members of the public.

Subpart 10 would state that associations registered with the Board that are subject to the prohibition on corporate contributions must consider an unregistered association's sources of funding, and that a "contribution from an unregistered association is prohibited if any of that association's sources of funding would be prohibited from making the contribution directly under Minnesota Statutes, section 211B.15, subdivision 2." Stated simply, the rule would clarify that corporations are prohibited from indirectly doing what they are prohibited from doing directly. It is reasonable to comply with a statutory requirement, and it is also reasonable to add language providing greater clarity and certainty to the regulated community and members of the public.

PART 4503.0700 CONTRIBUTION LIMITS.

Proposed addition of Minnesota Rules, chapter 4503, part 0700, subpart 4

The Board issued Advisory Opinion 319 in 1999, generally stating that a business may provide internet-based contribution processing services for a fee to principal campaign committees without thereby making contributions to the committees that receive the contributions, minus the fees. Within the opinion the Board noted that the contribution limits imposed by Minnesota Statutes, section 10A.27, subdivision 1, include not only contributions made, but also contributions delivered, by an individual or association. The practice of collecting contributions made by others and delivering them to the recipient is commonly known as bundling. Within Advisory Opinion 319 the Board concluded that a vendor that processes contributions and then delivers the contributions, minus a fee, to the intended recipient is not engaged in bundling, but rather is providing services for a fee. The Board intends to apply principles announced in the opinion more broadly than to the requester. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a. Adopting rules elaborating on the principles announced in the opinion would provide clarity to the regulated community and members of the public. This subpart would state that a vendor that accumulates contributions and is paid the fair market value of the services provided is not subject to the bundling limitation. It is reasonable to comply with a statutory requirement, and it is also

reasonable to add a provision providing greater clarity to the regulated community and members of the public.

PART 4503.0800 DONATIONS IN KIND AND APPROVED EXPENDITURES.

Proposed addition of Minnesota Rules, chapter 4503, part 0800, subpart 1a

The Board issued Advisory Opinion 434 in 2013, generally stating that a business that provides internet-based contribution processing services for a fee is not thereby required to register with the Board, regardless of whether the fee is paid by the contributor or the recipient. The Board intends to apply principles announced in the opinion more broadly than to the requester of the opinion, and intends to elaborate on those principles. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a. Contribution processing fees are increasingly being paid by contributors, rather than recipients, and whether recipients are required to record processing fees paid by contributors is a common topic of concern.

Subpart 1a would state that if a contributor pays a processing fee that "would otherwise have been billed to the recipient of the contribution or withheld from the amount transmitted to the recipient, the amount of the fee is a donation in kind to the recipient of the contribution." That language would generally only impact reports filed with the Board if the processing fee for a specific contribution exceeds $20 because associations registered with the Board are not required to record in-kind contributions of lesser value under Minnesota Statutes, section 10A.13, subdivision 1, paragraph (1). It is reasonable to comply with a statutory requirement, and it is also reasonable to add language providing greater clarity and certainty to the regulated community and members of the public.

Proposed amendment of Minnesota Rules, chapter 4503, part 0800, subparts 2-4

Minnesota Statutes, chapter 10A, was amended effective January 1, 2022, to regulate the actions of associations seeking to influence the nomination or election of certain candidates for local offices within Hennepin County. Definitions within Minnesota Statutes, section 10A.01, have been amended again, effective January 1, 2025, to eliminate distinctions regarding Hennepin County and be inclusive of local elections in any Minnesota county, city, school district, township, or special district. Specifically, Minnesota Statutes, section 10A.01, subdivision 10d, defines the term "local candidate" and the definitions of the terms "approved expenditure" within Minnesota Statutes, section 10A.01, subdivision 4, and "contribution" within Minnesota Statutes, section 10A.01, subdivision 11, were amended to include donations in kind to local candidates, including approved expenditures. The amendments are necessary to be inclusive of donations in kind to local candidates, including approved expenditures. It is reasonable to amend subparts to accommodate statutory changes made by the legislature and to thereby provide greater clarity to the regulated community and members of the public.

PART 4503.0900 NONCAMPAIGN DISBURSEMENTS.

Proposed amendment of Minnesota Rules, chapter 4503, part 0900, subpart 1

Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), clause (22), provides that noncampaign disbursements include types of payments not enumerated within that paragraph if they are recognized as noncampaign disbursements within rules or advisory opinions issued by the Board. In 2006 the Board issued Advisory Opinion 387, which stated that bank service fees, check processing fees, and other costs required to maintain the bank account of a principal campaign committee may be classified as noncampaign disbursements. Although the opinion was revoked by the Board in July 2023 for an unrelated reason, the Board intends to apply the principle that bank fees may be classified as noncampaign disbursements more broadly than to the requester of that opinion. The amendment is necessary to clearly state that costs to maintain a principal campaign committee's bank account as required by law are noncampaign disbursements. It is reasonable to exercise the authority provided by Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), clause (22), by stating that costs incurred by a principal campaign committee to maintain the depository account required by Minnesota Statutes, section 10A.15, subdivision 3, are noncampaign disbursements.

Proposed addition of Minnesota Rules, chapter 4503, part 0900, subparts 2a-2b

In 2019 the Board issued Advisory Opinion 450, which confirms that a principal campaign committee may use campaign funds to pay for "expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities" and that those expenses are noncampaign disbursements pursuant to Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), clause (9). Within the opinion the Board stated that campaign funds used to pay for signage, stationary, and basic office supplies for individual office holders should be classified as noncampaign disbursements pursuant to Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), clause (10), which includes payment "of the candidate's expenses for serving in public office, other than for personal uses." The Board intends to apply principles announced in Advisory Opinion 450 more broadly than to the requester of that opinion. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a.

Subpart 2a would provide a non-exhaustive list of types of expenses incurred by legislative caucus leaders in carrying out their leadership responsibilities. Subpart 2b would provide a non-exhaustive list of types of expenses incurred by individual office holders for signage and basic office supplies. It is reasonable to comply with a statutory requirement, and it is also reasonable to elaborate upon the language provided in Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), and in Minnesota Statutes, section 10A.173, subdivision 4, in order to provide clarity to the regulated community and members of the public.

Proposed addition of Minnesota Rules, chapter 4503, part 0900, subpart 2c

The Board has issued multiple advisory opinions stating that a principal campaign committee's purchase of durable equipment, such as computer equipment or a fax machine, generally must

be classified as a campaign expenditure, rather than as a noncampaign disbursement. Those opinions include Advisory Opinions 89 (1984), 127 (1992), 209 (1995), 211 (1995), and 228 (1996). Durable equipment typically is used to attempt to influence the nomination or election of a candidate, and Minnesota Statutes, chapter 10A, does not provide for prorating expenses for equipment between campaign purposes and noncampaign purposes. The Board intends to apply principles announced in those opinions more broadly than to the requesters of the opinions. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a.

This subpart would provide that a durable equipment purchase must be classified as a campaign expenditure, unless the purchase replaces equipment that was lost, damaged, or stolen as provided in Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), clause (30), or the equipment will be used solely A) to provide constituent services as provided in Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), clause (6), and in Minnesota Statutes, section 10A.173, subdivision 1; B) to provide services to residents of a district immediately after the general election as provided in Minnesota Rules, chapter 4503, part 0900, subpart 1, item C; C) for campaigning by a person with a disability as provided in Minnesota Rules, chapter 4503, part 0900, subpart 1, item B; D) for running a transition office as provided in Minnesota Rules, chapter 4503, part 0900, subpart 1, item F; or E) as home security hardware as provided in Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), clause (29). It is reasonable to comply with a statutory requirement, and it is also reasonable to elaborate upon the language provided in Minnesota Statutes, section 10A.01, subdivision 26, paragraph (a), Minnesota Statutes, section 10A.173, and Minnesota Rules, chapter 4503, part 0900, subpart 1, in order to provide clarity to the regulated community and members of the public.

PART 4503.1000 CAMPAIGN MATERIALS INCLUDING OTHER CANDIDATES.

Proposed amendment of Minnesota Rules, chapter 4503, part 1000, subparts 1-2

Minnesota Statutes, chapter 10A, was amended effective January 1, 2022, to regulate the actions of associations seeking to influence the nomination or election of certain candidates for local offices within Hennepin County. Definitions within Minnesota Statutes, section 10A.01, have been amended again, effective January 1, 2025, to eliminate distinctions regarding Hennepin County and be inclusive of local elections in any Minnesota county, city, school district, township, or special district. Specifically, Minnesota Statutes, section 10A.01, subdivision 10d, now defines the term “local candidate” and the definitions of the terms “approved expenditure” within Minnesota Statutes, section 10A.01, subdivision 4, and “contribution” within Minnesota Statutes, section 10A.01, subdivision 11, were amended to include donations in kind to local candidates, including approved expenditures. The amendments are necessary to be inclusive of campaign material that references local candidates. It is reasonable to amend subparts to accommodate statutory changes made by the legislature, and to thereby provide greater clarity to the regulated community and members of the public.

PART 4503.1900 AGGREGATED EXPENDITURES.

Proposed addition of Minnesota Rules, chapter 4503, part 1900

Entities required to file campaign finance reports may incur multiple expenses payable to the same vendor for the same types of goods or services over a period of days or weeks. Examples include fees to process individual contributions and certain transportation expenses, such as for parking, taxi service, bus and train fare, gasoline, and mileage reimbursement. Minnesota Statutes, section 10A.20, subdivision 3, often requires that such expenses be itemized within reports filed with the Board. Specifically, campaign finance reports must include "the amount, date, and purpose of each" expenditure and noncampaign disbursement if the vendor is owed or paid more than $200 within the calendar year. Minnesota Statutes, section 10A.01, subdivisions 9 and 26 define the terms "campaign expenditure" and "noncampaign disbursement" in a manner that is inclusive of each purchase or advance of credit, and do not address whether separate, small amounts for the same goods or services, provided by the same vendor, to the same purchaser, are each separate expenditures or noncampaign disbursements for purposes of the itemization requirements within Minnesota Statutes, section 10A.20.

Recording and reporting multiple small expenses that occurred over a short period of time, for the same goods or services, provided by the same vendor, may be labor-intensive, lead to reporting errors, and provide little valuable disclosure to members of the public. For those reasons, the Board has permitted campaign finance filers to group certain expenses together on a monthly basis. This part is needed to clearly state that a treasurer may group expenses together within campaign finance reports on a monthly basis if the expenses are for the same goods or services, from the same vendor, and all expenses incurred within a reporting period are disclosed through the end of that period. It is reasonable to adopt rules clarifying statutory requirements. It is also reasonable to permit reporting practices that are likely to reduce errors and decrease the amount of effort required by treasurers, while not significantly decreasing the value of disclosure provided to the public.

PART 4503.2000 DISCLAIMERS.

Proposed addition of Minnesota Rules, chapter 4503, part 2000

Minnesota Statutes, section 211B.04, generally requires those preparing or disseminating campaign material to include a disclaimer stating who was responsible for that material. The Board is responsible for enforcing the disclaimer requirement pursuant to Minnesota Statutes, section 10A.022, subdivision 3, paragraph (a). Minnesota Statutes, section 211B.04, specifies disclaimer formats applicable to campaign material disseminated by "broadcast media," and that term is not defined within Minnesota Statutes, chapters 10A, 200, or 211B. Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3), provides an exclusion to the disclaimer requirement for "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer," and the phrase "online banner ads and similar electronic communications" is not defined within Minnesota Statutes, chapters 10A, 200, or 211B. Minnesota Statutes, section 211B.04, subdivision 4, provides that the disclaimer

requirement is “satisfied for an entire website or social media page when the disclaimer . . . appears once on the home page of the site” and the term “social media” is not defined within Minnesota Statutes, chapters 10A, 200, or 211B. Minnesota Statutes, section 211B.04 does not explicitly refer to campaign material disseminated by text or multimedia message, by mobile phone applications, or within the electronic version of a newspaper, periodical, or magazine.

Subpart 1 is needed to define the terms “broadcast media” and “social media platform” for purposes of the disclaimer requirement, to the extent that the requirement is enforced by the Board rather than another agency. Subpart 2 is needed to elaborate upon the exclusion stated in Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3), for “online banner ads and similar electronic communications” by providing that the exclusion applies to campaign material disseminated by a social media platform, by text or multimedia message, by mobile phone applications, or within the electronic version of a newspaper, periodical, or magazine, if the campaign material links directly to an online page that includes the required disclaimer, to the extent that the disclaimer requirement is enforced by the Board rather than another agency. It is reasonable to define undefined terms when needed to clarify and improve the administration of Minnesota Statutes, chapter 10A, and those provisions within chapter 211B that are under the jurisdiction of the Board. It is reasonable to adopt rules clarifying statutory requirements by explaining what types of communications are included within the scope of “online banner ads and similar electronic communications.”

PART 4511.0100 DEFINITIONS.

Proposed addition of Minnesota Rules, chapter 4511, part 0100, subparts 1b-1c, 5a

In 2023 the legislature enacted legislation that, effective beginning in 2024, amended several statutes that govern lobbying. Previously lobbying was defined to only involve seeking to influence the legislature, certain actions by state agencies, and the official actions of certain local and regional government bodies within the seven-county metro area. Lobbying now includes seeking to influence the official actions of any political subdivision, including any entity defined as a municipality under Minnesota Statutes, section 471.345, subdivision 1. Other changes included modifications to what information must be included within lobbyist reports and generally replacing the term “metropolitan governmental unit” with “political subdivision” insofar as that term relates to lobbying.

Minnesota Statutes, section 10A.04, subdivision 6, requires principals to file an annual report disclosing the total amount spent on lobbying. Previously that total was required to include “administrative expenses attributable to” lobbying. Now that total is required to include “administrative overhead expenses attributable to” lobbying. Subpart 1b is needed to define the phrase “administrative overhead expenses” to include costs incurred for office space, transportation, and a website.

Minnesota Statutes, section 10A.01, subdivision 19a, now defines the term “legislative action” to include “the development of prospective legislation,” and the phrase “development of prospective legislation’ is not defined. Subpart 1c is needed to define that phrase and also list

actions that do not constitute development of prospective legislation.

Minnesota Statutes, section 10A.01, subdivision 21, defines the term lobbyist, in part, as an individual "engaged for pay or other consideration of more than $3,000 from all sources in any year" for lobbying. Minnesota Statutes, section 10A.03, subdivision 1, requires an individual to register with the Board within five days after becoming a lobbyist. Subpart 5a is needed to define the phrase "pay or consideration for lobbying." The phrase "pay or consideration for lobbying" is used in the proposed text of Minnesota Rules, chapter 4511, part 0200, subparts 2a-2b, to help describe when an individual must register as a lobbyist.

It is reasonable to define undefined terms when needed to provide clarity and improve the administration of Minnesota Statutes, chapter 10A, and Minnesota Rules, chapter 4511. It is reasonable to add subparts to accommodate statutory changes made by the legislature, and to thereby provide greater clarity to the regulated community and members of the public.

Proposed amendment of Minnesota Rules, chapter 4511, part 0100, subparts 3-5, 7

Subpart 3, which defines the term lobbying, needs to be amended to accommodate the general replacement of the term "metropolitan governmental unit" with the term "political subdivision" throughout Minnesota Statutes, chapter 10A. During the rulemaking process concerns were raised regarding the payment of a standard fee to a government body being defined as lobbying, such as the fee to review a proposed subdivision plat or a request for a zoning variance. Subpart 3 would be amended to also clarify that payment of an application or processing fee to a government body is not lobbying.

Minnesota Statutes, section 10A.04, subdivision 4, previously required lobbyist reports to disclose disbursements related to lobbying. That is generally no longer the case, except that each principal's designated lobbyist must report the principal's disbursements, and all lobbyists must report gifts valued at $5 or more that are given to officials by the lobbyist, an employer, or an employee. Subpart 4 needs to be amended to limit the definition of the term "lobbyist's disbursements" to disbursements made for such gifts. Subpart 7 needs to be amended to define the term "reporting lobbyist" to reflect that lobbyists are now generally required to report lobbying activity, as opposed to lobbying disbursements.

Minnesota Statutes, section 10A.04, subdivision 4, paragraph (h), requires a lobbyist to disclose "each original source of money in excess of $500 . . . used for the purpose of lobbying. . . ." That requirement provides for disclosure of the sources of funding used by principals to pay for lobbying in Minnesota. Subpart 5, which defines the term "original source of funds," needs to be amended to eliminate ambiguity regarding whether an original source of funds may be an individual or an association.

It is reasonable to amend subparts to accommodate statutory changes made by the legislature, and to thereby provide greater clarity to the regulated community and members of the public. It is reasonable to amend definitions to more clearly define terms that impact how lobbying activity is disclosed to the public within lobbyist reports.

Proposed addition of Minnesota Rules, chapter 4511, part 0100, subpart 8

The Board issued Advisory Opinion 224 in 1996, stating that the University of Minnesota is not an association within the meaning of Minnesota Statutes, chapter 10A, and therefore is not a lobbyist principal. The Board issued Advisory Opinion 297 in 1998, stating that a Minnesota county is not an association within the meaning of Minnesota Statutes, chapter 10A, and therefore is not a lobbyist principal. The Board issued Advisory Opinion 441 in 2016, stating that a state agency, the Minnesota Zoo, is not an association within the meaning of Minnesota Statutes, chapter 10A, and therefore is not a lobbyist principal. The Board intends to apply principles announced in those advisory opinions more broadly than to the requesters of the opinions. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a. Questions have continued to arise regarding whether certain types of political subdivisions are associations and may therefore be defined as lobbyist principals. The Board is aware of instances in which political subdivisions, which are not lobbyist principals, have filed annual principal reports pursuant to Minnesota Statutes, section 10A.04, subdivision 6, despite not being required to do so.

Additionally, the legislature amended Minnesota Statutes, section 10A.04, subdivision 4, paragraph (c), effective beginning in 2024, to require that lobbyist reports disclose “every state agency that had administrative action that the represented entity sought to influence during the reporting period.” The term “state agency” is not defined within Minnesota Statutes, chapter 10A.

Subpart 8 would define the term “state agency” consistently with how that term is defined within the Minnesota Government Data Practices Act, specifically Minnesota Statutes, section 13.02, subdivision 17. The proposed amendment of chapter 4511, part 0300, would explicitly exclude state agencies, among other entities, from the definition of the term association, and thereby from the definition of the term principal.

It is reasonable to comply with a statutory requirement. It is reasonable to add a subpart to accommodate statutory changes. It is also reasonable to define undefined terms when needed to provide clarity to the regulated community and members of the public.

PART 4511.0200 REGISTRATION.

Proposed addition of Minnesota Rules, chapter 4511, part 0200, subparts 2a-2b

In 2021 the legislature enacted legislation that, effective beginning in 2023, amended Minnesota Statutes, section 10A.01, subdivision 21, defining the term lobbyist, to include certain individuals paid by a business that is primarily engaged in providing government relations or government affairs services. In 2023 the definition was amended again, effective beginning in 2024, to limit that portion of the definition to individuals whose job duties involve the provision of government relations or government affairs services. Also, the threshold at which an individual must register as a lobbyist based on spending personal funds on lobbying was increased from $250 to $3,000 within a calendar year.

Questions have arisen regarding another portion of the definition of the term lobbyist, stating that an individual is a lobbyist if they are compensated more than $3,000 in a year for the purpose of lobbying. Specifically, individuals have asked when an individual is required to register as a lobbyist under Minnesota Statutes, section 10A.03, subdivision 1, if the individual is compensated primarily to perform job duties that do not constitute lobbying, but is compensated more than $3,000 within a calendar year to perform job duties that are lobbying.

During the rulemaking process questions arose regarding whether an individual, who is already registered as a lobbyist based on compensation they receive, is required to separately register as a lobbyist on their own behalf if they spend less than $3,000 of their personal funds on lobbying that is completely separate from their employment, pursuant to Minnesota Statutes sections 10A.01, subdivision 21, and 10A.03, subdivision 1, and Minnesota Rules, chapter 4511, part 0200. For example, if a lobbyist for an insurance company spends $500 of their personal funds circulating a petition to encourage their local school board to change the attendance boundaries for elementary schools, and that effort is unrelated to the individual's employment as a lobbyist for the insurance company, does that individual need to register as a lobbyist, on behalf of that individual, because they are already defined as a lobbyist by virtue of lobbying on behalf of the insurance company?

Subpart 2a is needed to state that if an individual is compensated both for lobbying and functions unrelated to lobbying, whether the individual has reached the registration threshold is calculated by multiplying their gross compensation by the percentage of time spent on lobbying. It would also specify that travel expenses and membership dues are excluded from the monetary threshold for individuals who spend personal funds on lobbying, pursuant to Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (2).

Subpart 2b is needed to provide that a lobbyist is not required to register as a lobbyist on their own behalf unless they spend more than $3,000 of their personal funds within a calendar year on lobbying. Subpart 2b would also clarify that an individual who serves on the board of a lobbyist principal is not required to register as a lobbyist as a result of that service unless they are compensated for lobbying on behalf of that principal. The proposed rule is consistent with Advisory Opinion 308, issued in 1996, in which the Board concluded that an uncompensated Board member of an association was not required to register as a lobbyist.

Subparts 2 and 4 would be amended to make minor changes in wording that would accommodate the changes to Minnesota Statutes, section 10A.04, subdivision 4, regarding the reporting of lobbying activity, as opposed to lobbying disbursements.

It is reasonable to add and amend subparts to accommodate statutory changes. It is reasonable to elaborate upon the language provided in Minnesota Statutes, sections 10A.01, subdivision 21, and 10A.03, subdivision 1, and in Minnesota Rules, chapter 4511, part 0200, pertaining to lobbyist registration, in order to provide clarity to the regulated community and members of the public.

PART 4511.0300 PRINCIPALS.

Proposed amendment of Minnesota Rules, chapter 4511, part 0300

The Board issued Advisory Opinion 224 in 1996, stating that the University of Minnesota is not an association within the meaning of Minnesota Statutes, chapter 10A, and therefore is not a lobbyist principal. The Board issued Advisory Opinion 297 in 1998, stating that a Minnesota county is not an association within the meaning of Minnesota Statutes, chapter 10A, and therefore is not a lobbyist principal. The Board issued Advisory Opinion 441 in 2016, stating that a state agency, the Minnesota Zoo, is not an association within the meaning of Minnesota Statutes, chapter 10A, and therefore is not a lobbyist principal. The Board intends to apply principles announced in those advisory opinions more broadly than to the requesters of the opinions. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a. Questions have continued to arise regarding whether certain types of political subdivisions are associations and may therefore be defined as lobbyist principals. The Board is aware of instances in which political subdivisions, which are not lobbyist principals, have filed annual principal reports pursuant to Minnesota Statutes, section 10A.04, subdivision 6, despite not being required to do so.

Part 0300 would clarify that political subdivisions, public higher education systems, and state agencies are not associations within the meaning of Minnesota Statutes, chapter 10A, and therefore are not principals under Minnesota Statutes, section 10A.01, subdivision 33. It is reasonable to comply with a statutory requirement. It is reasonable to elaborate upon the language provided in Minnesota Statutes, section 10A.01, subdivisions 6 and 33, and in Minnesota Rules, chapter 4511, part 0300, pertaining to what constitutes a principal, in order to provide clarity to the regulated community and members of the public.

PART 4511.0400 TERMINATION.

Proposed amendment of Minnesota Rules, chapter 4511, part 0400, subparts 1-3

In 2023 the legislature enacted legislation that, effective beginning in 2024, amended provisions regarding lobbyist reporting to generally require lobbyists to disclose lobbying activity rather than lobbying disbursements. Subparts 1 and 2 need to be amended to make minor changes in language to accommodate the updated reporting requirements. Subpart 3 needs to be amended to address minor grammatical issues. It is reasonable to amend subparts to accommodate statutory changes. It is reasonable to improve the text of rules in order to provide clarity to the regulated community and members of the public.

PART 4511.0500 LOBBYIST REPORTING REQUIREMENTS.

Proposed amendment of Minnesota Rules, chapter 4511, part 0500, subpart 1

Minnesota Rules, chapter 4511, part 0500, subpart 2, was repealed by the legislature in 2017 and replaced with Minnesota Statutes, section 10A.04, subdivision 9, which allows a lobbyist to report the lobbying activity of other lobbyists who represent the same principal, rather than requiring each lobbyist to file a separate report. Subpart 1 needs to be amended to replace a

cross-reference to subpart 2 with a cross-reference to Minnesota Statutes, section 10A.04, subdivision 9. Subpart 1 would also be amended to make minor changes in language to accommodate updated reporting requirements. It is reasonable to amend a subpart to remove an obsolete cross-reference and to accommodate statutory changes.

Proposed amendment of Minnesota Rules, chapter 4511, part 0500, subpart 3

Each lobbyist principal is required to have a single designated lobbyist who is responsible for reporting certain information about the principal within their lobbyist reports. In 2023 the legislature enacted legislation that, effective beginning in 2024, amended Minnesota Statutes, section 10A.04, subdivision 4, to significantly alter the content of lobbyist reports required to be filed with the Board. Subpart 3 needs to be amended to accommodate those changes and eliminate the need for subpart 5, which applies to the reporting of gifts. It is reasonable to amend a subpart to accommodate statutory changes.

Proposed repeal of Minnesota Rules, chapter 4511, part 0500, subpart 5

The proposed text of subpart 3 would eliminate the need for this subpart because each addresses the reporting of gifts. It is reasonable to repeal a duplicative subpart.

PART 4511.0600 REPORTING DISBURSEMENTS.

Proposed amendment of Minnesota Rules, chapter 4511, part 0600, subparts 1-2

Minnesota Statutes, section 10A.04, subdivision 6, requires principals to file an annual report disclosing the total amount spent on lobbying. That total is required to include “administrative overhead expenses attributable to” lobbying. Subparts 1 and 2 need to be amended to explicitly state that the requirement to determine the actual costs of lobbying or to approximate those costs applies to administrative overhead expenses. It is reasonable to add language to subparts in order to provide clarity to the regulated community.

PART 4511.0700 REPORTING COMPENSATION PAID TO LOBBYIST.

Proposed amendment of Minnesota Rules, chapter 4511, part 0600, subpart 1

In 2023 the legislature enacted legislation that, effective beginning in 2024, amended provisions regarding lobbyist reporting to generally require lobbyists to disclose lobbying activity rather than lobbying disbursements. Subpart 1 needs to be amended to make minor changes in language to accommodate the updated reporting requirements. It is reasonable to amend a subpart to accommodate statutory changes.

PART 4511.0900 LOBBYIST REPORTING FOR POLITICAL SUBDIVISON MEMBERSHIP ORGANIZATIONS.

Proposed addition of Minnesota Rules, chapter 4511, part 0900

In 2023 the legislature enacted legislation that, effective beginning in 2024, amended several

statutes that govern lobbying. Previously lobbying was defined to only involve seeking to influence the legislature, certain actions by state agencies, and the official actions of certain local and regional government bodies within the seven-county metro area. Lobbying now includes seeking to influence the official actions of any political subdivision, including any entity defined as a municipality under Minnesota Statutes, section 471.345, subdivision 1. That change prompted the request for Advisory Opinion 456, issued by the Board on December 13, 2023, during the rulemaking process. The opinion addresses the question of whether a membership organization whose members are political subdivisions is engaged in lobbying its own members if it encourages its members to take official action, such as by voting on a resolution, to support or oppose a specific action by the legislature. The opinion concluded that under those circumstances, the membership organization would not be lobbying its own members, but rather would be lobbying the legislature. That conclusion has significant reporting implications because amended lobbyist reporting requirements that took effect in 2024 require that lobbyist reports list each political subdivision that considered official action the lobbyist sought to influence and the subject of each action. Some membership organizations comprised of political subdivisions have hundreds of members.

The Board intends to apply principles announced in Advisory Opinion 456 more broadly than to the requesters of that opinion. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a. Subpart 1 would provide that under the specific circumstances described above, lobbyists for a principal that is a membership organization comprised of political subdivisions are not required to report attempts to influence the official actions of that principal's own members. Subpart 2 would further provide that under those circumstances, the principal is not lobbying its own members if it encourages those members to take action to support a broader lobbying effort, such as an effort to influence legislative action or administrative rulemaking. This part would help prevent recent changes to lobbyist reporting requirements from being interpreted in a manner that would produce absurd results or make compliance unreasonable.

It is reasonable to comply with a statutory requirement. It is reasonable to add a part to accommodate statutory changes. It is also reasonable to elaborate upon the language provided in Minnesota Statutes, sections 10A.01, subdivision 21, and 10A.04, subdivision 4, paragraph (d), in order to provide clarity to the regulated community.

PART 4511.1000 ACTIONS AND APPROVAL OF ELECTED LOCAL OFFICIALS.

Proposed addition of Minnesota Rules, chapter 4511, part 1000

In 2023 the legislature enacted legislation that, effective beginning in 2024, amended several statutes that govern lobbying. Previously lobbying was defined to include seeking to influence the official actions of certain local and regional government bodies within the seven-county metro area. Lobbying now includes seeking to influence the official actions of any political subdivision, including any entity defined as a municipality under Minnesota Statutes, section 471.345, subdivision 1. Minnesota Statutes, section 10A.01, subdivision 26b, was

added to define the phrase “official action of a political subdivision” to mean an action requiring the approval of elected local officials, or an action by a nonelected local official making or supporting a major decision regarding spending or investing public money. That change prompted the request for Advisory Opinion 457, issued by the Board on January 3, 2024, during the rulemaking process. The opinion addresses whether 27 different scenarios would constitute lobbying, and in many instances the answer provided depended, in part, on whether the action to be influenced involves voting on, or approval by, one or more elected local officials. The Board issued Advisory Opinion 458 on the same day and that opinion, to a lesser extent, also provided answers that depended, in part, on whether the action to be influenced involves voting on, or approval by, one or more elected local officials. The Board intends to apply principles announced in Advisory Opinion 457 more broadly than to the requester of that opinion. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a.

During the rulemaking process additional concerns were raised regarding the possibility that requesting routine or nondiscretionary acts by an elected local official may be considered lobbying. For example, a business may pay an individual to prepare and submit an application for a building permit, and in some political subdivisions the individual tasked with issuing the permit may be an elected official.

Subpart 1 would provide that attempting to influence the vote of an elected local official constitutes lobbying that official’s political subdivision. Subpart 2 would provide that attempting to influence an elected local official to make a decision that does not require a vote constitutes lobbying if the local official has discretion to approve or deny the act in question. Subpart 2 would enumerate four specific exclusions from what constitutes approval by an elected local official under Minnesota Statutes, section 10A.01, subdivision 26b. Those exclusions involve issuing a license, permit, or variance routinely provided when specific requirements are satisfied, acts performed by the office of the elected official that do not require the personal approval of the elected local official, prosecutorial discretion exercised by a county attorney, and discussions regarding litigation between a litigant that is a political subdivision and another litigant, such as settlement negotiations.

It is reasonable to comply with a statutory requirement. It is reasonable to add a part to accommodate statutory changes. It is also reasonable to elaborate upon the language provided in Minnesota Statutes, section 10A.01, subdivision 26b, in order to prevent it from being interpreted in a manner that could make compliance unreasonable, and to provide clarity to the regulated community and members of the public.

PART 4511.1100 MAJOR DECISION OF NONELECTED LOCAL OFFICIALS.

Proposed addition of Minnesota Rules, chapter 4511, part 1100

Minnesota Statutes, section 10A.01, subdivision 22, defines the term “local official” to include nonelected political subdivision officials with authority to make, recommend, or vote on “major

decisions regarding the expenditure or investment of public money." The phrase "major decisions" is not defined in Minnesota Statutes, chapter 10A, or within the Board's rules. In 1991 the Board issued Advisory Opinion 111 stating that local governing bodies may determine for themselves what constitutes a major decision, and that they should maintain a public list of nonelected individuals they consider to be local officials within the meaning of Minnesota Statutes, chapter 10A. In 2023 the legislature enacted legislation that, effective beginning in 2024, amended the definition of the term lobbyist to include those attempting to influence the official action of any political subdivision, and added Minnesota Statutes, section 10A.01, subdivision 26b, defining the term "official action of a political subdivision" to include "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 Board issued Advisory Opinions 457 and 458 on January 3, 2024, during the rulemaking process. Each opinion provided answers to questions that depended, in part, on whether the actions sought would qualify as major decisions regarding the expenditure or investment of public money. For example, in Advisory Opinion 457 the Board stated that a real estate developer seeking approval of a subdivision plat from a city or county planning commission may constitute lobbying, even if the members of that commission are not elected, because approval of the subdivision plat would likely obligate the political subdivision to incur significant costs for the infrastructure needed to support the subdivision. Within the same opinion the Board stated that a representative of a group speaking at a city planning commission meeting to object to a short-term rental license would not be lobbying if the commission's members are not elected local officials, because issuing or revoking a short-term rental license presumably would not involve major decisions regarding public money. The Board intends to apply principles announced in those opinions more broadly than to the requesters of the opinions. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a.

Subpart 1 would state that an attempt to influence a nonelected local official regarding a major decision involving public money is lobbying. While that conclusion may be clear to those who have read and understand the relationship between the definitions provided in Minnesota Statutes, section 10A.01, subdivisions 21, 22, and 26b, and Minnesota Rules, chapter 4511, part 0100, subpart 3, this subpart would provide needed clarity by providing a clear and concise statement of the circumstances under which seeking to influence nonelected local officials constitutes lobbying. Subpart 2 would provide a non-exhaustive list of decisions by political subdivisions that qualify as major decisions regarding the expenditure or investment of public funds. Subpart 3 would provide a non-exhaustive list of decisions by political subdivisions that do not qualify as major decisions regarding the expenditure or investment of public funds. Activities that would be categorically excluded are purchases made using funds allocated within the political subdivision's operating or capital budget, negotiation of a labor contract with a collective bargaining unit, and discussions regarding litigation between the political subdivision and another litigant, such as settlement negotiations.

It is reasonable to comply with a statutory requirement. It is reasonable to add a part to

accommodate statutory changes. It is also reasonable to further explain the language in Minnesota Statutes, section 10A.01, subdivisions 21, 22, and 26b, as well as in existing rules. This part will help define relevant terms and provide a concise explanation of when attempting to influence a non-elected local official constitutes lobbying. This part will thereby provide clarity to the regulated community and the general public.

PART 4512.0200 GIFTS WHICH MAY NOT BE ACCEPTED.

Proposed amendment of Minnesota Rules, chapter 4512, part 0200, subparts 1-2

Subpart 1 needs to be amended solely to note that there are statutory exceptions to the general prohibition on gifts from lobbyist and principals to public and local officials, under Minnesota Statutes, section 10A.071. Subpart 2 needs to be amended to accommodate the general replacement of the term “metropolitan governmental unit” with the term “political subdivision” throughout Minnesota Statutes, chapter 10A, insofar as that term relates to lobbying. It is reasonable to amend subparts to accommodate statutory changes. It is reasonable to add language noting the existence of exceptions to a general rule, and to thereby provide clarity to the regulated community and members of the public.

Proposed addition of Minnesota Rules, chapter 4512, part 0200, subpart 3

Minnesota Statutes, section 10A.071, subdivision 3, paragraph (a), paragraph (2), provides that the gift prohibition does not apply to a gift that consists of “services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents.” In 2018 the Board issued Advisory Opinion 445, stating that informational material may qualify for that exception if the principal or the principal’s lobbyist had a significant role in the creation, development, or production of the information. Likewise, in 2008 the Board issued Advisory Opinion 396, stating that in order to qualify for that exception “it is necessary that that the lobbyist or principal have a significant role in the creation, development, or production of the information.” The Board intends to apply principles announced in those opinions more broadly than to the requesters of the opinions. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a.

Subpart 3 would provide that a gift is not prohibited if it consists of informational material given “to assist an official in the performance of official duties and the lobbyist or principal had a significant role in the creation, development, or production of that material.” It is reasonable to comply with a statutory requirement. It is also reasonable to elaborate upon the language provided in Minnesota Statutes, section 10A.071, subdivision 3, paragraph (a), paragraph (2), in order to provide clarity to the regulated community and members of the public.

PART 4525.0100 DEFINITIONS.

Proposed addition of Minnesota Rules, chapter 4525, part 0100, subpart 6a

Minnesota Statutes, chapter 10A, does not establish an evidentiary standard to be used by the

Board in determining whether a violation has occurred. A proposed amendment to Minnesota Rules, chapter 4525, part 0210, would establish a preponderance of the evidence standard. This subpart is needed to define the term "preponderance of the evidence." It is reasonable to define undefined terms when needed to provide clarity and improve the administration of Minnesota Statutes, chapter 10A, and those provisions within chapter 211B that are under the jurisdiction of the Board.

PART 4525.0200 COMPLAINTS OF VIOLATIONS.

Proposed amendment of Minnesota Rules, chapter 4525, part 0200, subpart 2

This subpart currently provides that a complaint must include the "name and address of the person making the complaint" and "must be signed by the complainant or an individual authorized to act on behalf of the complainant." That language has prompted questions as to whether a complaint may include the address of the complainant's representative, rather than the personal address of the complainant. The text needs to be amended to provide that a complaint may include the name and address of someone acting on the complainant's behalf, such as an attorney, rather than requiring the inclusion of the complainant's address. The purpose of requiring an address is so that the Board may communicate by mail with the individual who filed the complaint. There is no need for the Board to know the personal address of a complainant if the Board is able to communicate by mail with the complainant's authorized representative.

This subpart currently provides that complaints are not public until after the Board "makes a finding." The proposed addition of subpart 3a would establish a process whereby a complainant may withdraw a complaint shortly after being filed. This subpart needs to be amended to accommodate that change. This subpart would also be amended to explicitly state that a dismissed complaint is public, such as a complaint dismissed by the Board's chair or their designee within a prima facie determination, rather than by a vote of the entire Board.

It is reasonable to amend a subpart to provide clarity and improve the administration of Minnesota Statutes, chapter 10A, and those provisions within chapter 211B that are under the jurisdiction of the Board. It is reasonable to amend a subpart to accommodate other rule amendments and to more clearly articulate when a complaint filed with the Board becomes public pursuant to Minnesota Statutes, section 10A.022, subdivision 5.

Proposed addition of Minnesota Rules, chapter 4525, part 0200, subpart 3a

Minnesota Statutes, chapter 10A, does not address whether a complaint may be withdrawn at the request of the complainant. There have been multiple instances in which a complainant has asked that their complaint be withdrawn, typically before the Board's chair or their designee had the opportunity to determine whether the complaint stated a prima facie violation. In many cases the complainant asked that their complaint be withdrawn because they realized that the complaint alleged a violation that is not under the jurisdiction of the Board, such as an alleged campaign finance violation by a candidate for local or federal office. When a complainant asks

that their complaint be withdrawn under those circumstances, little purpose is served by proceeding with issuing a prima facie determination dismissing the complaint. Subpart 3a needs to be added to provide that a complaint may be withdrawn upon written request, but only if the Board's chair or their designee has yet to make a prima facie determination. It is reasonable to add a subpart to provide clarity and improve the administration of Minnesota Statutes, chapter 10A, and those provisions within chapter 211B that are under the jurisdiction of the Board. It is also reasonable to add a subpart that may aid in conserving Board resources and potentially prevent embarrassment to a complainant who mistakenly filed a complaint with the wrong government agency.

PART 4525.0210 DETERMINATIONS PRIOR TO AND DURING FORMAL INVESTIGATION.

Proposed addition of Minnesota Rules, chapter 4525, part 0210, subpart 3a

Minnesota Statutes, section 10A.022, subdivision 3, provides that when a determination is made that a complaint states a prima facie violation, the Board must "make findings and conclusions as to whether probable cause exists to believe the alleged violation that warrants a formal investigation has occurred." The term "probable cause" is not defined within Minnesota Statutes, chapter 10A, or within the Board's rules. Subpart 3a is necessary to provide that "[p]robable cause exists if there are sufficient facts and reasonable inferences to be drawn therefrom to believe that a violation of law has occurred." Subpart 3a would also state that any arguments offered by the complainant and respondent must be considered. It is reasonable to define undefined terms when needed to provide clarity and improve the administration of Minnesota Statutes, chapter 10A, and those provisions under the Board's jurisdiction within chapter 211B.

Proposed amendment of Minnesota Rules, chapter 4525, part 0210, subpart 5

Minnesota Statutes, chapter 10A, does not establish an evidentiary standard to be used by the Board in determining whether a violation has occurred. The Board has used a preponderance of the evidence standard, which is consistent with the general standard established for alleged violations of Minnesota Statutes, chapters 211A and 211B, under Minnesota Statutes, section 211B.32, subdivision 4. The proposed amendment of subpart 5 is necessary to add language stating that the Board's "determination of any disputed facts must be based upon a preponderance of the evidence." It is reasonable to amend a subpart to establish a clear evidentiary standard and thereby improve the administration of Minnesota Statutes, chapter 10A, and those provisions under the Board's jurisdiction within chapter 211B, and provide greater clarity to the regulated community and members of the public.

PART 4525.0220 SUMMARY PROCEEDINGS.

Proposed amendment of Minnesota Rules, chapter 4525, part 0220, subpart 3

In 2014 the legislature enacted language now codified at Minnesota Statutes, section 10A.022, subdivision 2, paragraph (b), stating that the Board must issue rules that set forth "when

summary proceedings may be available." The Board complied with that directive by adopting part 0220, which does not address whether a complainant should be informed of and given an opportunity to respond to a respondent's request for a summary proceeding. Minnesota Statutes, section 10A.022, subdivision 3, paragraph (d), provides that a complainant must be given an opportunity to be heard by the Board prior to the Board making a probable cause determination. The statute does not describe any role to be played by a complainant after the Board has determined that probable cause exists and ordered an investigation. The Board may not disclose information to a complainant while an investigation is being conducted "except as required to carry out the investigation or take action in the matter as authorized by" Minnesota Statutes, chapter 10A, pursuant to Minnesota Statutes, section 10A.022, subdivision 5, paragraph (a).

Subpart 3 needs to be amended to provide that if a request for a summary proceeding in a matter initiated by complaint is received prior to any dismissal of the complaint and prior to a probable cause determination being made, the request must be provided to the complainant and the complainant must be given an opportunity to respond. Subpart 3 would be amended to provide that under any other circumstances, the complainant must not be informed of a request for a summary proceeding. It is reasonable to amend a subpart to provide clarity and improve the administration of Minnesota Statutes, chapter 10A, and those provisions within chapter 211B that are under the jurisdiction of the Board. It is also reasonable amend a subpart to help ensure that the Board complies with its statutory obligation to treat an investigation as confidential until the investigation is resolved.

PART 4525.0500 INVESTIGATIONS AND AUDITS; GENERAL PROVISIONS.

Proposed addition of Minnesota Rules, chapter 4525, part 0500, subpart 2a

The Board is authorized to impose civil penalties up to varying maximum amounts for various types of violations of Minnesota Statutes, chapter 10A, and those provisions within chapter 211B under the Board's jurisdiction. For some monetary violations the Board may impose a civil penalty of up to four times the amount involved with no limit on the total amount. As a state agency under the APA, the Board is required to consider the factors enumerated in Minnesota Statutes, section 14.045, subdivision 3, when imposing a civil penalty. The Board would like to encourage practices that may decrease the likelihood of, or minimize the negative impact of, any violation, and also articulate the factors the Board will consider when considering the amount of any civil penalty to be imposed.

Subpart 2a is necessary to cross-reference Minnesota Statutes, section 14.045, and also state that the Board may consider the violator's internal controls or polices, whether the violator could have prevented the violation, whether a violation was self-reported, and whether the violator sought to remedy or mitigate any violation and has taken steps to prevent a future violation. It is reasonable to add a subpart to improve the administration of Minnesota Statutes, chapter 10A, and those provisions under the Board's jurisdiction within chapter 211B, and provide greater clarity and certainty to the regulated community and members of the public. It is also

reasonable to add a subpart that encourages practices to reduce the likelihood, or negative impact, of a violation under the Board's jurisdiction.

PART 4525.0550 FORMAL AUDITS.

Proposed amendment of Minnesota Rules, chapter 4525, part 0550, subpart 1

From its inception the Board has had statutory authority to audit reports and statements required to be filed with the Board. That authority is currently codified primarily at Minnesota Statutes, section 10A.022, subdivisions 2 and 6. The Board's audit authority has been exercised sparingly, in part due to limited resources. In 2014 the Board adopted part 0550 regarding formal audits. The Board's annual budget appropriation increased significantly starting with fiscal year 2024, thereby affording the Board the resources necessary to conduct additional audits. The proposed changes to part 0550 are needed to establish more clear procedures and criteria to be used by the Board when conducting audits of those required to file campaign finance reports.

The amendment of subpart 1 is needed to provide that the Board may require testimony under oath and issue subpoenas, including for the production of documents required to be retained under Minnesota Statutes, section 10A.025, subdivision 3. It is reasonable to amend a subpart to improve the administration of Minnesota Statutes, chapter 10A, and those provisions under the Board's jurisdiction within chapter 211B, and provide greater clarity and certainty to the regulated community and members of the public.

Proposed addition of Minnesota Rules, chapter 4525, part 0550, subpart 4

A specific type of audit that is routinely conducted by the Board following each election in which candidates receive direct public subsidy payments is an audit of the affidavits of contributions filed by some of those candidates. An affidavit of contributions is a document certifying that the candidate in question has raised a threshold amount of monetary contributions from individuals, counting only the first $50 given by each individual. That document must be filed by a candidate seeking to receive a direct public subsidy payment. In order to help prevent potential abuse of the public subsidy program, the Board audits a portion of the affidavits of contributions filed with the Board that were not filed using the Board's electronic reporting system or an application compatible with that system.

Subpart 4 is needed to provide, consistent with current practice, that the Board's executive director will initiate an audit of any affidavit of contributions that is not filed using an electronic reporting system and states that the candidate received contributions totaling less than double the threshold amount required by Minnesota Statutes, section 10A.323. It is reasonable to add a subpart to improve the administration of Minnesota Statutes, chapter 10A, and provide greater clarity and certainty to the regulated community and members of the public. It is also reasonable to add a subpart to help ensure that standardized criteria are used when determining which affidavits of contributions will be audited.

Proposed addition of Minnesota Rules, chapter 4525, part 0550, subpart 5

Subpart 5 is needed to provide that in deciding whether to initiate an audit, the Board must consider its resources, the potential benefit to the public, and the potential magnitude of any failures or violations to be discovered as a result of the audit. Subpart 5 would provide that the Board may conduct partial audits, may audit all filers who meet specific criteria, and may select audit respondents on a randomized basis designed to capture a sample of respondents that meet specific criteria. Subpart 5 would provide that when selecting audit respondents on a randomized basis, the Board must, to the extent possible, seek to prevent selecting respondents based on political party affiliation or a candidate's incumbency status. It is reasonable to add a subpart to improve the administration of Minnesota Statutes, chapter 10A, and those provisions under the Board's jurisdiction within chapter 211B, and provide greater clarity and certainty to the regulated community and members of the public. It is also reasonable to add a subpart to help ensure that audit respondents are not selected in a manner intended to favor or disfavor those affiliated with any political party or to favor or disfavor incumbent or nonincumbent candidates.

Regulatory analysis

Minnesota Statutes, section 14.131, requires the Board the provide the following information to the extent it may be ascertained through reasonable effort. Paragraphs 1 through 8 below state the statutory requirements followed by the information required to be provided.

1) Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The classes of persons who probably will be affected by the proposed rules include lobbyists, lobbyist principals, those required to file campaign finance reports with the Board, state agencies and local governments that hire lobbyists and are not lobbyist principals, public officials who receive informational material prepared by lobbyists or lobbyist principals, complainants, respondents, and members of the general public. Within each of those classes only a small proportion of persons are likely to be affected. The Board will also be affected.

The proposed rules are not expected to increase costs for any of those classes of persons. Legislative changes effective January 1, 2024, expanded the definition the term lobbyist, which may result in increased compliance and reporting costs for some lobbyists and lobbyist principals. However, any such increase would be the result of legislative changes rather than the proposed rules.

The regulated community is likely to benefit from the proposed rules because they align the Board's rules with amended statutory provisions, define undefined terms, provide increased clarity and certainty, codify principles articulated in multiple advisory opinions, and make it easier for the regulated community to ensure that they comply with Minnesota Statutes, chapter 10a, and those provisions under the Board's jurisdiction within chapter 211B.

Complainants and respondents are likely to benefit from the proposed rules due to increased clarity and more standardized criteria for handling complaints and audits. The general public is likely to benefit from the proposed rules because they will aid the regulated community in satisfying their registration and disclosure obligations. Finally, the Board is likely to benefit by improving its ability to efficiently perform its duties and provide meaningful disclosure to the public.

2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

Neither the Board, nor any other agency, is expected to incur additional costs as a result of the proposed rules. The Board intends to conduct more audits of campaign finance filers than it has in the past and some of the proposed rules would establish procedures and criteria to be used when conducting audits. Any associated increase in costs would be the result of conducting more audits, rather than the result of the Board's implementation or enforcement of the proposed rules. The proposed rules are unlikely to significantly impact state revenues. Payments of late filing fees and civil penalties imposed by the Board are required by statute to be deposited into the state general fund. The proposed rules likely will make it easier for the regulated community to comply with Minnesota Statutes, chapter 10a, and those provisions under the Board's jurisdiction within chapter 211B, so the Board hopes to impose fewer late filing fees and civil penalties as a result of there being fewer violations. However, the amount of revenue attributable to fees and penalties imposed by the Board is so small that any impact is likely to be negligible.

3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Because the proposed rules will not increase costs for any entity, there are not less costly methods to achieve the purposes of the proposed rules. With respect to the proposed rules that seek to implement the changes made by the legislature in 2023 to statutes governing lobbyist regulation and reporting, the Board has limited options. The proposed rules are designed to be minimally intrusive while still effectuating the intent of the legislature and serving the purpose of the rules. Below are several examples demonstrating that design:

- The term "development of prospective legislation" would be defined, for purposes of lobbying, to exclude four specific actions and thereby generally remove them from the scope of what is defined as lobbying;
- An individual who is already a registered lobbyist would not be required to register as a lobbyist on their own behalf as a result of personal lobbying efforts unless they spend more than $3,000 of their personal funds within a calendar year;
- An individual who serves on the board of a lobbyist principal would not be required to register as a lobbyist on behalf of that principal unless they receive consideration to lobby on behalf of that principal;

- Political subdivisions, public higher education systems, and all agencies and other components of the State of Minnesota would be categorically excluded from the definition of the term “association,” and would thereby be excluded from the definition of the term “principal,” meaning they are not be required to file lobbyist principal reports pursuant to Minnesota Statutes, section 10A.04, subdivision 6, even if they employ registered lobbyists;
- An association comprised of political subdivisions would be considered not to be lobbying its own members when communicating with them regarding the association’s lobbying efforts, which significantly simplifies the reporting required of such an association’s lobbyists;
- Four specific actions would be excluded from what is considered approval by an elected local official, thereby excluding those actions from what is defined as “official action of a political subdivision” under Minnesota Statutes, section 10A.01, subdivision 26b, and from what is defined as lobbying; and
- Three specific actions would be excluded from what are considered major decisions regarding the expenditure or investment of public money, thereby excluding those actions from what is defined as “official action of a political subdivision” under Minnesota Statutes, section 10A.01, subdivision 26b, and from what is defined as lobbying.

The Board considered and then declined to pursue adopting a rule proposed by the American Council of Engineering Companies of Minnesota stating that an individual communicating with a local official regarding a topic on which the individual has particular expertise is categorically not attempting to influence an official action of the official’s political subdivision, thereby excluding such communications from what is defined as lobbying. Board members articulated their judgement that such an exclusion would need to be enacted by the legislature, rather than adopted as part of an administrative rule. Within the legislative changes that became effective on January 1, 2024, the legislature added a definition of the term “official action of a political subdivision” and amended the definition of the term “lobbyist,” without enacting any provisions singling out those communicating with local officials on their topic of expertise. Also, in 2024 the legislature considered an exclusion to the definition of the word lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, which was intended to have a similar effect, but that exclusion was not enacted into law. Therefore, the Board does not believe that such an exclusion was intended by the legislature.

With respect to the remainder of the proposed rules, most are intended to make compliance by the regulated community easier and do not appear to have the capacity to be intrusive. Notably, the Board did not receive any written feedback regarding draft rule language concerning topics other than lobbying, with the exception of an email asking a question about the intent behind the proposed definition of the term “legislative caucus.”

One proposed rule would provide that an entity prohibited from accepting corporate contributions must consider a potential contributor’s sources of funding in determining whether a contribution may be accepted, because such entities are prohibited from accepting corporate contributions, whether they are made directly or indirectly. While that rule could be considered

intrusive, its intent is to ensure compliance with Minnesota Statutes, section 211B.15, and it is no more intrusive than is necessary to encourage compliance with the statute.

One proposed rule would provide that a processing fee paid by a contributor that otherwise would be paid by the recipient of the contribution is a donation in kind. While that rule could be considered intrusive, it is no more intrusive than is necessary in order to clarify the circumstances under which a processing fee is a donation in kind, and thereby a contribution, under Minnesota Statutes, section 10A.01, subdivisions 11 and 13.

One proposed rule would define the word headquarters for purposes of Minnesota Statutes, section 211B.15, subdivision 8. While the rule could be considered intrusive, it is no more intrusive than is necessary in order to define headquarters in a manner that affords some flexibility, remains consistent with its common usage, and effectuates legislative intent.

The proposed rules would state that when conducting an audit, the Board may require testimony under oath, permit written statements given under oath, and require the production of records, such as by issuing a subpoena. The proposed rules would also state that the Board may audit affidavits of contributions and any other campaign finance report or statement required to be filed with the Board. While those rules could be considered intrusive, they restate the Board's statutory authority under Minnesota Statutes, section 10A.022, subdivision 2, and are consistent with previously adopted rules, including Minnesota Rules, chapter 4525, parts 0500 and 0550.

One proposed rule would include a standard for what constitutes probable cause. While that rule could be considered intrusive, the standard to be adopted is very similar to both the standard currently utilized by the Board, and the standard routinely applied by the OAH in addressing complaints filed pursuant to Minnesota Statutes, section 211B.32. Adopting a standard that created a higher or lower evidentiary threshold would likely undermine legislative intent.

One proposed rule would provide that a determination regarding disputed facts must be made upon a preponderance of the evidence. While that rule could be considered intrusive, the standard to be adopted is the same as the standard currently utilized by the Board, and is very similar to the standard routinely applied by the OAH pursuant to Minnesota Statutes, section 211B.32, subdivision 4. Adopting a different standard would likely undermine legislative intent.

One proposed rule would provide that if the respondent to a complaint requests a summary proceeding prior to the Board making a probable cause determination, a copy of that request must be provided to the complainant. The rule would provide that under any other circumstances, a complainant will not be notified or provided a copy of a request for a summary proceeding. That rule could be considered intrusive. Specifically, during the period following publication of the Board's request for comments, the Minnesota Democratic-Farmer-Labor Party submitted comments generally asserting that "[t]he Board should allow complainants to continue to be involved in the Board's processes following a probable cause determination. At a

minimum, this should include allowing complainants to review any proposed resolution of the matter—whether through findings and an order or through a conciliation agreement—an to present the complainant's perspective to the Board before any final action is taken."

The Board is not proposing rules that would generally allow a complainant to be involved in any investigation that follows a probable cause determination, because Minnesota Statutes, section 10A.022, subdivision 5, paragraph (a), clause (1) provides that the Board "must not disclose to an individual information obtained by that member, employee, or agent concerning a complaint or investigation except as required to carry out the investigation or take action in the matter as authorized by" Minnesota Statutes, chapter 10A. A complainant is provided the opportunity to assert any facts or provide any evidence that may have been omitted from the complaint prior to the Board making a probable cause determination. A complainant is provided a copy of any draft probable cause determination and is afforded the opportunity to appear before the board prior to a probable cause determination being made. The complainant's participation in the complaint process up until a probable cause determination is made is intended to ensure that the Board has a complete understanding of the complainant's factual assertions, any evidence supporting those assertions, and any legal arguments the complainant wishes to make.

There may be rare instances in which the Board will request additional information from a complainant after a probable cause determination is made, on the basis that such a request is "required to carry out the investigation or take action in the matter." However, in most instances the Board is capable of obtaining the information it needs and performing the requisite legal analysis without involving the complainant after a probable cause determination has been made. Unlike the process utilized by the OAH for complaints filed under Minnesota Statutes, section 211B.32, investigations ordered by the Board based on a complaint filed under Minnesota Statutes, section 10A.022, do not involve a strictly adversarial process with direct confrontation between a complainant and a respondent. Instead, any investigation conducted following a probable cause determination is typically conducted in the same fashion as an investigation that was not prompted by a complaint, in which the Board seeks to ascertain whether a violation occurred, and if so what penalty, if any, should be imposed.

For the foregoing reasons there are not less costly or less intrusive methods for achieving the purposes of the proposed rules that would effectuate the intent of the legislature.

4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

The Board considered the extent to which any of the purposes of the proposed rules regarding lobbying should be addressed by legislation. Board staff had multiple conversations with legislators, legislative staff, and others regarding the impact of the statutory provisions that became effective on January 1, 2024, and the extent to which any unintended consequences might be addressed by legislation. The Board's request for comments was published in July 2023 and draft rule language regarding lobbying was first released to the public by Board staff

on December 27, 2023, signaling the Board's intent to adopt rules seeking to implement the statutory changes the legislature made to lobbyist registration and reporting effective January 1, 2024. To date, the legislature has not enacted legislative changes that accomplish the purposes of the proposed rules, with one exception. The legislature recently enacted a definition of the term "employee of a political subdivision," to be codified at Minnesota Statutes, section 10A.01, subdivision 16b. That definition will improve the Board's ability to apply an exclusion to who is defined as a lobbyist, under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (b), clause (4). Over the past several months the Board has issued multiple advisory opinions regarding lobbying, mostly due to questions that arose as a result of the statutory changes that took effect on January 1, 2024. Some of the advisory opinions issued by the Board contain principles that the Board intends to apply more broadly than to the requesters of the opinions. Therefore, the Board is required to adopt those principles as administrative rules under Minnesota Statutes, section 10A.02, subdivision 12a, and as a practical matter, it does not serve the regulated community or the general public to wait any longer to address the purposes stated above. Moreover, the Board's existing rules need to be amended anyway to update provisions that are now outdated due to the statutory changes that took effect on January 1, 2024, and some of the proposed amendments are noncontroversial technical changes that are well-suited to administrative rulemaking.

The Board considered whether any of the purposes of the proposed rules regarding campaign finance and audits and investigations should be addressed by legislation. The Board's request for comments was published in July 2023 and draft rule language regarding campaign finance and audits and investigations was released to the public by Board staff on September 29 and December 6, 2023, signaling the Board's intent to adopt rules very similar to those being proposed. To date, the legislature has not enacted, and is not expected to enact, legislative changes that accomplish the purposes of the proposed rules. Many of the proposed amendments are noncontroversial technical changes that are well-suited to administrative rulemaking. Many of the proposed amendments and additions are based on advisory opinions issued by the Board and must be adopted as administrative rules under Minnesota Statutes, section 10A.02, subdivision 12a. The proposed rule addressing disclaimer requirements for campaign material disseminated by social media addresses a question that has been raised repeatedly by the regulated community over a number of years. The proposed rules defining probable cause, establishing a preponderance of the evidence standard, and setting forth procedures to be followed after a probable cause determination is made will largely codify the Board's current practice. The proposed rules regarding audits will also largely codify the Board's current practice and expand upon the administrative rules adopted through the expedited rulemaking process in 2014. Moreover, some of the Board's existing rules regarding campaign finance need to be amended anyway to update provisions that are now outdated due to the statutory changes that took effect on January 1, 2022, regarding local candidates.

For the foregoing reasons the alternative method of recommending legislative changes was rejected in favor of the proposed rules.

5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The proposed rules are not expected to increase compliance costs for any class of affected persons, including those referenced above.

6) The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

If the proposed rules are not adopted there will be significant unresolved questions, particularly regarding lobbyist registration and reporting, that are likely to cause uncertainty, increased requests for advisory opinions from the Board, and perhaps violations of Minnesota Statutes, chapter 10A, due to a lack of clarity. Lobbyists and individuals who think they may be or might become lobbyists, and lobbyist principals and entities who think they may be or might become principals, will bear the cost of that lack of clarity, including increased compliance costs and perhaps late filing fees and civil penalties imposed but the Board. The general public will bear the consequences of that lack of clarity in the form of less accurate public disclosure of the information required to be disclosed under Minnesota Statutes, sections 10A.03 and 10A.04. The Board will also bear the consequences in the form of increased requests for advisory opinions, an increase in enforcement actions including those initiated by complaint, and increased demand for training and other guidance to aid in complying with Minnesota Statutes, chapter 10A. There is the possibility that a lack of clarity in the absence of the proposed rules could prompt a lawsuit against the Board, in which case the Board would bear the costs of defending itself and any challenged statutes or administrative rules.

If the proposed rules are not adopted there may also be costs borne by entities subject to campaign finance provisions under the Board's jurisdiction, as well as potential complainants and respondents. For example, a complainant may spend considerable time, or hire legal counsel, to draft a complaint alleging a violation of Minnesota Statutes, section 211B.04, based on campaign material consisting of a social media post that does not include a disclaimer, but does include a link to a website with the required disclaimer, because absent the proposed rules it is unclear whether a social media post is sufficiently similar to an online banner ad to benefit from the exception provided by Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3). In such a scenario the respondent may also spend considerable time, or hire legal counsel, in order to respond to the complaint and appear before the Board. An entity may feel the need to consult legal counsel, rather than attempt to analyze the Board's many advisory opinions on its own, in seeking an answer to a legal question that could be clearly addressed by one of the proposed rules that would adopt principles articulated within one or more prior advisory opinions pursuant to Minnesota Statutes, section 10A.02,

subdivision 12a. Absent the proposed rules an entity may feel the need to consult legal counsel, or expend time drafting or responding to a complaint, as a result of a lack of clarity regarding the meaning of the word nomination, which is foundational to how multiple terms are defined within Minnesota Statutes, chapter 10A. Absent the proposed rules a campaign finance filer may incur additional reporting costs because its treasurer believed that they needed to report every individual contribution processing fee withheld by or paid to a single vendor, rather than generally having the option to group those fees together on a monthly basis.

There are likely fewer potential consequences to the regulated community and the general public of not adopting the proposed rules regarding audits and investigations. However, complainants and respondents may face increased legal costs, or at least uncertainty, in the absence of the proposed rules due to a lack of clarity regarding the Board's complaint procedures, including the preponderance of the evidence and probable cause standards, and the factors the Board considers prior to imposing a civil penalty. The proposed rules regarding audits would help preserve the Board's reputation for impartial administration of Minnesota Statutes, chapter 10A, and those provisions within chapter 211B that are under the jurisdiction of the Board. Absent the proposed rules an entity may be able to more convincingly argue that a future audit conducted by the Board is designed to advantage or disadvantage incumbent or nonincumbent candidates, or filers affiliated with a particular political party.

7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

At the federal level lobbyist registration and disclosure is governed by the LDA as well as the rules of the United States Senate and the United States House of Representatives. The LDA does not govern lobbying of state or local officials or government bodies and there is no federal executive branch agency with authority to promulgate regulations implementing the LDA. For those reasons, the proposed rules regarding lobbying are not comparable to any existing federal regulations.

Regulations promulgated by the FEC are codified within Title 11, Chapter I, of the Code of Federal Regulations. Generally speaking, those regulations do not govern attempts to influence state or local elections and there is no federal executive branch agency with broad authority to regulate campaign contributions and spending intended to influence only state or local elections, as opposed to federal elections. For those reasons, the proposed rules regarding campaign finance generally do not address the same activity as existing federal regulations.

However, there are some similarities and differences in terms of how comparable issues are addressed by the FEC and by the Board. The proposed rule to be codified at Minnesota Rules, chapter 4501, part 0100, subpart 7b, is comparable to 11 CFR part 100, subpart A, section 100.36. The proposed rule differs from the federal rule in that a signer who is unable to

write may sign a filing by having another person apply their mark or name at the signer's request, and in the signer's presence, which removes a potential accessibility barrier. The rules are otherwise very similar.

The proposed amended text of Minnesota Rules, chapter 4501, part 0500, subpart 1, is comparable to 11 CFR part 104, section 104.18, in that each require a large proportion of campaign finance reports and statements to be filed electronically in a specific format. The rules differ in that the federal rule sets a $50,000-per-year monetary threshold at which point filers must file campaign finance reports electronically. The rules differ in that regard because Minnesota Statutes, section 10A.20, subdivision 1, paragraph (c), provides that "[f]or good cause shown, the board must grant exemptions to the requirement that reports be filed electronically." The Board does not believe that raising or spending less than $50,000 within a calendar year constitutes good cause for an exemption from the electronic filing requirement for campaign finance reports filed with the Board. The Board presently provides campaign finance filers with access to a web-based online reporting system, free of charge, and generally does not grant exemptions to the electronic filing requirement unless filers have or expect to consistently raise or spend no more than $5,000 per year. Moreover, it is possible that a filer may be able to demonstrate good cause that is not directly related to the amount of money raised or spent.

The proposed rule to be codified at Minnesota Rules, chapter 4503, part 0450, is somewhat comparable to 11 CFR part 9034, section 9034.8, in that each addresses joint activity of campaign finance filers. One major difference is that the federal regulation requires the participants in a joint fundraising activity to enter into a written agreement that sets forth a formula for allocating proceeds and generally requires that the allocation of costs be proportionate to the allocation of proceeds. A second major difference is that the Board's proposed rule addresses purchases that are unrelated to fundraising activity. A third major difference is that the Board's proposed rule is drafted to help prevent a principal campaign committee from inadvertently making a contribution to another principal campaign committee, which is generally prohibited unless the contributing committee is in the process of terminating its registration with the Board, while at the federal level, a candidate committee may make a contribution to another candidate committee up the statutory limit, which is currently $2,000 per election. The rules are different because they serve different purposes, are based on different statutory schemes, and relate to different classes of campaign finance filers. While it may be reasonable to require those engaged in joint campaign activity to enter into a written agreement allocating expenses and any proceeds, the Board did not consider that possibility during the rulemaking process.

The proposed rules to be codified at Minnesota Rules, chapter 4503, part 0500, subparts 2a and 3, are somewhat comparable to 11 CFR parts 102, section 102.8, paragraph (d), and 103, section 103.3, paragraph (a), clause (1), in that they each pertain to contributions processed by vendors. The proposed rules more explicitly state that contribution processing services are not in-kind contributions to the ultimate recipient if the vendor is paid the fair market value of the

services provided, and that vendors are not political committees or political funds solely by virtue of processing contributions. The federal rule requires that contributions processed by vendors be transmitted to the ultimate recipient within 10 days, while the Board's proposed rule would require such contributions to be transmitted to the ultimate recipient within 10 business days. Part 0500, subpart 3, uses the word promptly, which is defined as "within ten business days" under Minnesota Rules, chapter 4501, part 0100, subpart 9. One notable difference is that the proposed rules provide that if the entity that processes or otherwise facilitates a contribution decides which entity will be the recipient of that contribution, the entity that facilitated the contribution thereby is a political committee or a political fund. That language was included to prevent an entity claiming to be a contribution processing vendor from asserting that it is not required to register and file campaign finance reports with the Board despite collecting money and then deciding which candidates or other entities should receive that money.

The proposed rule to be codified at Minnesota Rules, chapter 4503, part 2000, is somewhat comparable to 11 CFR part 110, section 110.11, in that each pertain to disclaimers. The federal rule provides that when the required disclaimer "cannot be provided or would occupy more than 25 percent of the communication due to character or space constraints intrinsic to the advertising product or medium, an adapted disclaimer may be used within the communication instead." Adapted disclaimers include "hyperlinks to a landing page" that contains the required disclaimer. Minnesota Statutes, section 211B.04, subdivision 3, exempts from the disclaimer requirement "bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed," as well as "skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable." Minnesota Statutes, section 211B.04, subdivision 3, also exempts "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer." The proposed rule is limited to the exemption for certain electronic communications. The rules are different because they serve somewhat different purposes and are based on different statutory schemes.

The proposed amended text of Minnesota Rules, chapter 4525, part 0200, subpart 2, is comparable to 11 CFR part 111, subpart A, section 111.4, in that each pertain to the form of a complaint. The federal rule differs from the Board's rule in that it requires complaints to be "sworn to and signed in the presence of a notary public," and provides that statements in complaints are made under penalty of perjury. The Board has not found it to be necessary, and Minnesota Statutes, chapter 10A, does not require, that complaints be submitted under oath or be notarized. The federal rule differs from the proposed rule in that it requires inclusion of the "address of the complainant," whereas the proposed rule would allow a complaint to only include the address of the complainant's representative, such as an attorney, if that representative has signed the complaint on behalf of the complainant. As explained more fully above within the rule-by-rule analysis, that serves the purpose of facilitating communication between the Board and any representative of the complainant while not requiring a complainant to disclose their personal address if the complaint is signed by their representative. The rules are similar in that they each require that a complaint be submitted in writing, be signed, identify

the alleged violator, describe the alleged violation, and include any evidence available to the complainant.

The proposed rule to be codified at Minnesota Rules, chapter 4525, part 0500, subpart 2a, is somewhat comparable to 11 CFR part 111, subpart B, section 111.24, paragraph (a), in that each applies to civil penalties for which the amount is discretionary up to a maximum amount. However, the federal rule sets general maximum amounts for violations that are not reporting violations, whereas the maximum civil penalties that may be imposed by the Board are set forth within multiple sections of Minnesota Statutes, chapter 10A. Also, the proposed rule would list factors to be considered before imposing a civil penalty, including a cross-reference to Minnesota Statutes, section 14.045, which requires state agencies to consider specific factors when determining the amount of a discretionary fine. The rules are different because they serve somewhat different purposes, are based on different statutory schemes, and relate to different classes of campaign finance filers.

The proposed text of Minnesota Rules, chapter 4525, part 0550, subparts 1 and 5, is comparable to 11 CFR part 104, section 104.16. The proposed text of subpart 1 differs in that the scope of audits conducted by the Board is not limited to campaign finance filings. The federal rule differs in that it requires the FEC, prior to conducting an audit, to conduct an internal review to determine whether filings meet specific thresholds of “substantial compliance.” The proposed text of subpart 5 would require the Board to consider a variety of factors in determining whether to conduct an audit of campaign finance filings, including “the possible benefit to the public, and the magnitude of any reporting failures or violations that may be discovered as a result of the audit.” Also, in practice the Board would likely conduct an internal review prior to initiating an audit, which may eliminate some or all potential respondents from the scope of a potential audit. However, in some instances an internal review will not be sufficient to determine whether the filings in question comply with Minnesota Statutes, chapter 10A, so the proposed rule would not require such an exercise.

The proposed rule to be codified at Minnesota Rules, chapter 4525, part 0550, subpart 4, is somewhat comparable to 11 CFR parts 9007, section 9007.1, and 9038, section 9038.1, in that they each pertain to audits related to candidates who have sought public financing. The federal rules require a considerably more extensive audit involving a “thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate.” The proposed rule, on the other hand, only involves auditing certain affidavits of contributions filed under Minnesota Statutes, section 10A.323. Also, the timing differs in that audits of presidential candidates occur after those candidates have received public financing, whereas audits of affidavits of contributions conducted by the Board are intended to occur prior to public subsidy payments being issued. The rules are different because they serve different purposes, pertain to public financing programs involving vastly different sums of money and vastly different numbers of participating candidates, and are based on different statutory schemes.

8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

There are no state administrative rules applicable to campaign finance or lobbying, or audits and investigations conducted by the Board, other than those adopted and administered by the Board. Some entities under the jurisdiction of the Board may be subject to federal rules or regulations, such as regulations promulgated by the FEC or the United States Department of the Treasury. However, those rules and regulations serve different specific purposes than those served by the proposed rules. Therefore, there is no cumulative effect to be assessed.

Notice Plan

Minnesota Statutes, sections 14.131 and 14.23, require that an agency include in its SONAR a description of its efforts to provide notice to persons or classes of persons who may be affected by the proposed rules, or an explanation of why those efforts were not made. The Board intends to issue a dual notice comprised of a notice of intent to adopt rules without a public hearing, in case less than 25 persons request a hearing, and a notice of hearing, in case 25 or more persons request a hearing.

Copies of the Board's dual notice and this SONAR will be mailed to:

- the chair and ranking minority member of the Senate Elections Committee;
- the chair and ranking minority member of the House Elections Finance and Policy Committee;
- a former legislator who previously asked to receive rulemaking notices by mail;
- the Legislative Coordinating Commission; and
- the Legislative Reference Library.

Hyperlinked webpage addresses for the Board's dual notice, this SONAR, the text of the proposed rules, and the Board's rulemaking docket, will be emailed to those subscribed to the Board's rulemaking email list, which includes approximately 228 subscribers.

Hyperlinked webpage addresses for the Board's dual notice, this SONAR, the text of the proposed rules, and the Board's rulemaking docket, will also be emailed to:

- all legislators serving on the Senate Elections Committee;
- all legislators serving on the House Elections Finance and Policy Committee;
- those who submitted comments or testimony during the rulemaking process, including the MGRC, American Council of Engineering Companies of Minnesota, Housing First Minnesota, Minnesota State Bar Association, Minnesota Regional Railroads Association, St. Paul Area Chamber, AIA Minnesota, Coalition of Greater Minnesota Cities, Minnesota Democratic-Farmer-Labor Party, Democratic Governors Association, Maureen Shaver, Conrad Zbikowski, James Newberger, Sue Rasmussen, and Ethel Cox;
- those subscribed to the Board's email lists regarding Board meeting dates and agenda

items, press releases and announcements, lobbyist report filing dates, principal report filing dates, lobbying summary reports, compliance training classes, enforcement actions, the public subsidy program, and the gift prohibition, which excluding those subscribed to the rulemaking email list include approximately 1,293 unique subscribers;

- all registered lobbyists for whom the Board has an email address, which includes approximately 1,544 unique addresses;
- all associations with a registered lobbyist for which the Board has a contact person's email address, which includes approximately 1,713 unique addresses;
- all candidates, treasurers, deputy treasurers, and chairs of principal campaign committees registered with the Board for whom the Board has an email address, which includes approximately 1,289 unique addresses;
- all treasurers, deputy treasurers, and chairs of political party units, political committees, and political funds registered with the Board for whom the Board has an email address, which includes approximately 1,310 unique addresses;
- entities that requested an advisory opinion regarding lobbying in 2023 or 2024, including the League of Minnesota Cities, Association of Metropolitan Municipalities, Minnesota Association of Small Cities, Coalition of Greater Minnesota Cities, Municipal Legislative Commission, Minnesota School Boards Association, Education Minnesota, Minnesota Building and Construction Trades Council, Teamsters Joint Council 32, and others who cannot be publicly identified under Minnesota Statutes, section 10A.02, subdivision 12, paragraph (c);
- 35 organizations that may be interested, including the Republican Party of Minnesota, Clean Elections Minnesota, Minnesota Chamber of Commerce, Common Cause Minnesota, Minnesota Business Partnership, ISAIAH, League of Women Voters of Minnesota, Freedom Club, Minnesota Council of Nonprofits, Minnesota Council on Foundations, North Star Liberty Alliance, Jewish Community Action, Upper Midwest Law Center, Minnesota Voice, Minnesota Indivisible Alliance, Minnesota Citizens Concerned for Life, Main Street Alliance, Minnesota College Republicans, Ayada Leads, Minnesota Voters Alliance, Pro-Choice Minnesota, Protect Minnesota, CAIR Minnesota, Minnesota Gun Rights, Asian American Organizing Project, Center of the American Experiment, ERA Minnesota, Citizens League, Minnesota Family Council, Joint Religious Legislative Coalition, Taxpayers League of Minnesota, Somali Action Alliance of Minnesota, Urban League Twin Cities, NAACP Minneapolis, NAACP St. Paul, and ACLU of Minnesota; and
- 32 attorneys who have been in contact with the Board within the past several years regarding topics that may be impacted by the proposed rules, including David Zoll, Charles Nauen, R. Reid LeBeau II, Benjamin Pachito, Roxanne Reinfeld, Jeffrey O'Brien, Jennifer Crancer, Brian Dillon, Wade Hauser, Amy Erickson, K. Davis Senseman, Tammera Diehm, Jordan Mogensen, Thomas Boyd, Erick Kaardal, William Mohrman, Jason Torchinsky, Dennis Polio, Jessica Furst Johnson, Charles Spies, Darrin Rosha, Daniel Rosen, Nick Harper, Jon Erik Kingstad, Christopher Madel, Kevin Beck, Richard Dahl, Brian Wajtalewicz, Jon Berkon, Emily Hogin, Derek Ross, and Steven Timmer.

The Board's rulemaking docket webpage will be updated to include hyperlinks to the dual notice

and this SONAR. The Latest News section of the Board's website homepage will be updated to include hyperlinks to the dual notice and this SONAR.

Performance-based rules

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to "develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals." The Board sought to develop proposed rules that are flexible, to the extent possible, while achieving the desired objective and complying with relevant statutes. The proposed rules include multiple examples demonstrating that flexibility.

The proposed definition of "original signature" within Minnesota Rules, chapter 4501, part 0100, provides for multiple ways in which to sign a report or statement to be filed with the Board. Minnesota Rules, chapter 4501, part 0500, would allow campaign finance reports to be filed using third-party software capable of submitting a report in the format specified by the Board.

The proposed definition of "headquarters" within Minnesota Rules, chapter 4503, part 0100, is not limited to a single building or structure, and is flexible in allowing any building or structure to satisfy the definition if used as the primary location where business is conducted for any portion of a calendar year. The proposed definitions of "legislative caucus," "legislative caucus leader," and "legislative party unit" within Minnesota Rules, chapter 4503, part 0100, are broader than how the words caucus and leader are used within Minnesota Statutes, chapter 3. Minnesota Rules, chapter 4503, part 0450, would explicitly permit joint purchases by campaign finance filers, not require those engaging in joint purchases to enter into a written agreement with each other, and allow flexibility in terms of how reimbursements are reported as long as each joint purchaser uses the same method for reporting reimbursements.

Minnesota Rules, chapter 4503, part 0500, subpart 2a, would explicitly permit vendors to facilitate contributions to campaign finance filers without thereby making contributions themselves or being required to register with the Board as a political committee or political fund, allow vendors to withhold processing fees from amounts forwarded to contribution recipients rather than requiring them to forward the full amount and then bill recipients for any processing fees, and allow vendors 10 business days in which to forward contributions to recipients. Minnesota Rules, chapter 4503, part 0500, subpart 10, would not require a potential contribution recipient to obtain a statement or financial records from a potential contributor that is an unregistered association, and would not require the filing of any additional disclosure beyond that required by Minnesota Statutes, section 10A.27, subdivisions 13-16.

Minnesota Rules, chapter 4503, part 0700, would permit flexibility by explicitly stating that

commercial vendors that facilitate the accumulation of contributions are not subject to the bundling limitation imposed by Minnesota Statutes, section 10A.27, subdivision 1.

Minnesota Rules, chapter 4503, part 0800, would permit flexibility by providing that a treasurer is only required to report the value of a payment processing fee paid by a contributor as an in-kind contribution if the amount of the fee exceeds the amount stated in Minnesota Statutes, section 10A.13, subdivision 1, which is currently $20.

Minnesota Rules, chapter 4503, part 0900, subparts 2a and 2b, would permit flexibility by providing non-exhaustive lists of types of expenses that qualify as noncampaign disbursements for expenses incurred by a leader of a legislative caucus and expenses for serving in public office, respectively. Minnesota Rules, chapter 4503, part 0900, subpart 2c, would permit flexibility by articulating six specific scenarios in which equipment purchases by principal campaign committees may be classified as noncampaign disbursements.

Minnesota Rules, chapter 4503, part 1900, would permit flexibility by allowing campaign finance filers, under certain circumstances, to group multiple expenses paid or payable to the same vendor for the same goods or services together on a monthly basis, rather than requiring that each such expense be entered and reported separately.

Minnesota Rules, chapter 4503, part 2000, would permit flexibility by allowing certain campaign material disseminated electronically, such as by social media, to satisfy the disclaimer requirement by including a hyperlink to a webpage that contains the required disclaimer, rather than requiring the communications themselves to each contain the disclaimer text.

Minnesota Rules, chapter 4511, part 0100, would define the term “development of prospective legislation” in a manner that specifically excludes four types of actions. Minnesota Rules, chapter 4511, part 0100, would also permit flexibility by excluding the payment of an application or processing fee for a government service, permit, or license, from the definition of lobbying, and by stating that an individual whose job duties do not involve lobbying and has not been asked to engage in lobbying by their employer does not receive consideration for lobbying they undertake at their own initiative.

Minnesota Rules, chapter 4511, part 0200, subpart 2b, would permit flexibility by providing that an individual is not required to register as a lobbyist for a particular principal under two specific scenarios.

Minnesota Rules, chapter 4511, part 0300, would permit flexibility by explicitly permitting

political subdivisions and other government entities to engage lobbyists without thereby being required to submit annual principal reports under Minnesota Statutes, section 10A.04, subdivision 6.

Minnesota Rules, chapter 4511, part 0900, would permit flexibility by allowing membership organizations comprised of political subdivisions to engage in lobbying and communicate with their members about those efforts, without their lobbyists thereby being required to submit lobbyist reports stating that the organization is lobbying its own members.

Minnesota Rules, chapter 4511, part 1000, would permit flexibility by allowing entities to seek four specific types of actions from local elected officials without those actions being considered an approval by an elected local official, which has lobbyist registration and reporting implications.

Minnesota Rules, chapter 4511, part 1100, would permit flexibility by allowing entities to seek three specific types of actions from nonelected local officials without those actions being considered a major decision regarding the expenditure of public money, which has lobbyist registration and reporting implications.

Minnesota Rules, chapter 4512, part 0200, would permit flexibility by explicitly allowing certain informational material to be provided to officials by lobbyists and lobbyist principals without that material being a prohibited gift under Minnesota Statutes, section 10A.071.

Minnesota Rules, chapter 4525, part 0200, subparts 2 and 3a, would permit flexibility by allowing a representative of a complainant, who signs a complaint, to provide the representative’s address rather than the personal address of the complainant, and by allowing complaints to be withdrawn prior to a prima facie determination being made, respectively.

Minnesota Rules, chapter 4525, part 0210, subpart 3a, would permit flexibility by allowing the Board to consider any evidence obtained by or known to the Board when making a probable cause determination.

Minnesota Rules, chapter 4525, part 0500, subpart 2a, would permit flexibility by allowing the Board to consider a variety of factors when determining the amount of a civil penalty to be imposed, if any, while noting that the Board must consider the factors listed in Minnesota Statutes, section 14.045, subdivision 3.

Minnesota Rules, chapter 4525, part 0550, subpart 1, would permit flexibility by allowing the

Board to obtain information regarding an audit by a variety of methods, consistent with Minnesota Statutes, section 10A.022, subdivision 2.

Minnesota Rules, chapter 4525, part 0550, subpart 5, would permit flexibility by allowing the Board to conduct partial audits and to conduct audits in which respondents are selected on a randomized basis designed to capture a sample of entities that meet certain criteria.

Consult with MMB on local government impact

As required by Minnesota Statutes, section 14.131, the Board will consult with MMB. The Board will provide MMB with copies of the proposed rules, this SONAR, and the Governor's Office Proposed Rule and SONAR form, prior to publication of the dual notice.

Impact on local government ordinances and rules

Minnesota Statutes, section 14.128, subdivision 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The Board does not believe that the proposed rules will require any such adoptions or amendments of local ordinances or regulations. To the extent that local governments have ordinances or regulations regarding campaign finance involving local elections that are impacted by changes implemented by the legislature effective January 1, 2022, any required changes are attributable to those legislative changes, rather than the proposed rules. To the extent that local governments have ordinances or regulations regarding lobbying or specifying who is considered a local official that are impacted by changes implemented by the legislature effective January 1, 2024, any required changes are attributable to those legislative changes, rather than the proposed rules.

Costs of complying for small business or city

Minnesota Statutes, section 14.127, subdivisions 1 and 2, require an agency to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees.” The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed $25,000 for any small business or small city. In the unlikely event that a small business or city incurs a more than $25,000 increase in its compliance costs related to Minnesota Statutes, chapter 10A, within a year of the proposed rules taking effect, that increase will almost certainly be attributable to legislative changes regarding lobbying, rather than the proposed rules.

Witnesses

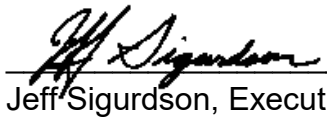
If the proposed rules are considered at a public hearing, the Board anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

- Jeff Sigurdson, Executive Director
- Andrew Olson, Legal/Management Analyst

The Board does not intend to call any non-agency witnesses.

Conclusion

The Board has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapters 4501, 4503, 4511, 4512, and 4525. The Board has provided the necessary notice and documented its compliance with all applicable administrative rulemaking requirements. Based on the forgoing, the proposed amendments are both needed and reasonable.



Jeff Sigurdson, Executive Director
Campaign Finance and Public Disclosure Board

September 30, 2024
Date

Minnesota Campaign Finance and Public Disclosure Board

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID No. 4809; OAH Docket No. 24-9030-39382

Proposed Adoption and Amendment of Rules Governing Campaign Finance; Lobbying; and Audits and Investigations, *Minnesota Rules*, chapters 4501, 4503, 4511, 4512, and 4525.

Introduction. The Campaign Finance and Public Disclosure Board intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on November 6, 2024, the Board will hold a public hearing virtually via Webex. In that case, Administrative Law Judge Kristien R. E. Butler will conduct the hearing starting at 9:30 AM on Tuesday, December 17, 2024.

If a hearing is held, you may join the hearing by internet by navigating to ***https://minnesota.webex.com/minnesota/j.php?MTID=mf1df9849b3e622b9c6a12d142be8e066***. If prompted, enter the meeting password, 121724CFB. Alternatively, you may open the Webex application or navigate to ***https://signin.webex.com/join***, then enter meeting number 2489 827 0759. To join the hearing by telephone, dial 415-655-0003 or 855-282-6330 (toll free), then enter meeting number 2489 827 0759. To find out whether the Board will adopt the rules without a hearing or if it will hold the hearing, you should contact the Board contact person after November 6, 2024 and before December 17, 2024.

Board Contact Person. Comments or questions on the rules and written requests for a public hearing may be directed to the Board contact person: Andrew Olson, Legal/Management Analyst, Campaign Finance and Public Disclosure Board, 190 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155-1603. The Board contact person may be contacted by phone at 651-539-1190 or 800-657-3889 (toll free), by fax at 651-539-1196 or 800-357-4114 (toll free), or by email at ***andrew.d.olson@state.mn.us***. Minnesota Relay users may dial 711 or 800-627-3529.

Subject of Rules and Statutory Authority. The proposed rules are about campaign finance, lobbying, and audits and investigations. The general statutory authority to adopt the rules is *Minnesota Statutes*, section 10A.02, subdivision 13. Additional statutory authority to adopt portions of the rules is provided by *Minnesota Statutes*, sections 10A.02, subdivision 12a, 10A.01, subdivision 26, paragraph (a), clause (22), and 14.125. A copy of the proposed rules is published in the State Register and is also available on the Board's website at ***https://cfb.mn.gov/pdf/legal/rulemaking/2023/Revisor_draft.pdf***.

Comments. You have until 4:30 p.m. on Wednesday, November 6, 2024, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the Board contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules

addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Submit any comments or questions on the rules or written requests for a public hearing to the Board contact person: Andrew Olson, Legal/Management Analyst, Campaign Finance and Public Disclosure Board, 190 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155-1603. The Board contact person may be contacted by phone at 651-539-1190 or 800-657-3889 (toll free), by fax at 651-539-1196 or 800-357-4114 (toll free), or by email at ***andrew.d.olson@state.mn.us***. Minnesota Relay users may dial 711 or 800-627-3529.

You may also review the proposed rules and submit written comments via the Office of Administrative Hearings Rulemaking eComments website at ***https://minnesotaoah.granicusideas.com***.

Request for a Hearing. In addition to submitting comments, you may also request that the Board hold a hearing on the rules. You must make your request for a public hearing in writing, which the Board contact person must receive by 4:30 p.m. on Wednesday, November 6, 2024. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the Board cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Board will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for a hearing are withdrawn to reduce the number below 25, the Board must give written notice of this to all persons who requested a hearing, explain the actions taken to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the Board will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the Board contact person listed above.

Modifications. The Board might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the Board or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Board follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Board encourages you to participate in the rulemaking process.

Cancellation of Hearing. The Board will cancel the hearing scheduled for December 17, 2024, if it does not receive requests for a hearing from 25 or more persons. If you request a public hearing, the Board will notify you before the scheduled hearing whether the hearing will

be held. You may also call or email the Board contact person at 651-539-1190 or andrew.d.olson@state.mn.us after November 6, 2024, to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Board will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Board will hold the hearing via Webex on the date and at the time listed above. The hearing will continue until all interested persons have been heard or until 4:30 PM. Administrative Law Judge Kristien R. E. Butler is assigned to conduct the hearing. Judge Butler's Legal Assistant William Moore can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7900 and fax 651-539-0310 or William.t.moore@state.mn.us.

Hearing Procedure. If the Board holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the Board and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period.

All post-hearing comments and responses must be submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. The Office of Administrative Hearings strongly encourages all persons submitting comments and responses to do so using the Administrative Hearings' Rulemaking eComments website at ***https://minnesotaoah.granicusideas.com***. If using the eComments website is not possible, you may submit post-hearing comments in person, via U.S. mail, or by fax addressed to Judge Butler at the address or fax number listed in the Notice of Hearing section above.

All comments or responses received will be available for review at the Board's office or on the Board's website at ***https://cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket***. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to Administrative Law Judge Kristien R. E. Butler. Judge Butler can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, by phone at 651-361-7893, or by fax at 651-539-0310.

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is available from the Board contact person. You may review or obtain a copy on the Board's website at ***https://cfb.mn.gov/pdf/legal/rulemaking/2023/SONAR.pdf***.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the Campaign Finance and Public Disclosure Board. Ask any questions about this requirement by contacting the Board contact person.

Adoption Procedure if No Hearing. If no hearing is required, the Board may adopt the rules after the end of the comment period. The Board will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want to receive notice of this, to receive a copy of the adopted rules, or to register with the Board to receive notice of future rule proceedings, contact the Board contact person or navigate to ***https://public.govdelivery.com/accounts/MNCFB/subscriber/new***, enter your email address, check the box labeled Administrative Rulemaking, then click Submit.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the Board adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the Board contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

September 30, 2024
Date

Jeff Sigurdson
Jeff Sigurdson, Executive Director
Campaign Finance and Public Disclosure Board

Minnesota Campaign Finance and Public Disclosure Board

CERTIFICATE OF MAILING THE DUAL NOTICE; CERTIFICATE OF ACCURACY OF THE MAILING LIST

Proposed Adoption and Amendment of Rules Governing Campaign Finance; Lobbying; and Audits and Investigations, *Minnesota Rules*, chapters 4501, 4503, 4511, 4512, and 4525.

I certify the following:

1. On Monday, 10/1/2024, at least 33 days before the end of the comment period, at Saint Paul, Ramsey County, Minnesota, I delivered the Dual Notice, SONAR, and proposed rules to all persons and associations on the Board's rulemaking notice list established by Minnesota Statutes, section 14.14, subdivision 1a, by sending an email using the GovDelivery system or by depositing the documents in the State of Minnesota's central mail system for United States mail with postage prepaid or interoffice mail, according to subscriber preferences.

2. The list of persons and associations who have requested that their names be placed on the Board's rulemaking notice list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current.

Date: 10/1/2024

/s/ Andrew Olson
Legal/Management Analyst
Campaign Finance and Public Disclosure Board

Mailing List

The Dual Notice, SONAR, and text of the proposed rules was sent by interoffice mail to:

Representative Esther Agbaje
Centennial Office Bldg, 5th Floor
St Paul, MN 55155

Representative Pam Altendorf
Centennial Office Bldg, 2nd Floor
St Paul, MN 55155

Senator Bruce Anderson
2209 Minnesota Senate Bldg
St Paul, MN 55155

Representative Kristin Bahner
Centennial Office Bldg, 5th Floor
St Paul, MN 55155

Senator Calvin Bahr
2415 Minnesota Senate Bldg
St Paul, MN 55155

Representative Matt Bliss
Centennial Office Bldg, 2nd Floor
St Paul, MN 55155

Senator Liz Boldon
3205 Minnesota Senate Bldg
St Paul, MN 55155

Senator Jim Carlson
3221 Minnesota Senate Bldg
St Paul, MN 55155

Representative Nathan Coulter
Centennial Office Bldg, 5th Floor
St Paul, MN 55155

Senator Steve Cwodzinski
3207 Minnesota Senate Bldg
St Paul, MN 55155

Representative Ben Davis
Centennial Office Bldg, 2nd Floor
St Paul, MN 55155

Senator Gene Dornink
3411 Minnesota Senate Bldg
St Paul, MN 55155

Representative Luke Frederick
Centennial Office Bldg, 5th Floor
St Paul, MN 55155

Representative Mike Freiberg
Centennial Office Bldg, 5th Floor
St Paul, MN 55155

Representative Emma Greenman
Centennial Office Bldg, 5th Floor
St Paul, MN 55155

Senator Mark Koran
2203 Minnesota Senate Bldg
St Paul, MN 55155

Senator Warren Limmer
2221 Minnesota Senate Bldg
St Paul, MN 55155

Senator John Marty
3235 Minnesota Senate Bldg
St Paul, MN 55155

Senator Andrew Mathews
2233 Minnesota Senate Bldg
St Paul, MN 55155

Senator Nicole Mitchell
3229 Minnesota Senate Bldg
St Paul, MN 55155

Senator Lindsey Port
3213 Minnesota Senate Bldg
St Paul, MN 55155

Representative Kristi Pursell
Centennial Office Bldg, 5th Floor
St Paul, MN 55155

Representative Duane Quam
Centennial Office Bldg, 2nd Floor
St Paul, MN 55155

Senator Ann Rest
328 Minnesota Capitol
St Paul, MN 55155

Representative Paul Torkelson
Centennial Office Bldg, 2nd Floor
St Paul, MN 55155

Representative Bianca Virnig
Centennial Office Bldg, 5th Floor
St Paul, MN 55155

Senator Bonnie Westlin
3201 Minnesota Senate Bldg
St Paul, MN 55155

The Dual Notice, SONAR, and text of the proposed rules was sent by U.S. mail to:

Mary Kiffmeyer
16160 201st Ave NW
Big Lake, MN 55309

Subject:	Campaign Finance and Public Disclosure Board - Notice of Proposed Administrative Rules Relating to Campaign Finance; Lobbying; and Audits and Investigations
Sent:	10/01/2024 03:44 PM CDT
Sent By:	andrew.d.olson@state.mn.us
Sent To:	Subscribers of Administrative Rulemaking, Advisory Opinions, Compliance Training Classes, Enforcement Actions, Gift Prohibition, Lobbying Summary Reports, Lobbyist Report Filing Dates, Meeting Dates and Agenda Items, Press Releases and Announcements, Principal Report Filing Dates, Public Subsidy Program, or Rulemaking Dual Notice

5,975 Recipients

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- ✗ SMS
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- ✗ Twitter
- ✓ RSS

95% Delivered

0% Pending
5% Bounced
61% Open Rate
56% Click Rate

Email Delivery Stats

Minutes	Cumulative Attempted
3	92%
5	95%
10	97%
30	97%
60	97%
120	97%

Delivery Metrics - Details

5,975	Total Sent
5,648 (95%)	Delivered
0 (0%)	Pending
327 (5%)	Bounced
0 (0%)	Unsubscribed

Bulletin Analytics

6,723	Total Opens
3441 (61%)	Unique Opens
3,460	Total Clicks
3180 (56%)	Unique Clicks
9	# of Links

Delivery and performance

These figures represent all data since the bulletin was first sent to present time.

	Progress	% Delivered	Recipients	# Delivered	Opened Unique	Bounced/Failed	Unsubscribes
Email Bulletin	Delivered	94.5%	5,975	5,648	3441 / 60.9%	327	0
Digest	n/a	n/a	0	0	0 / 0.0%	0	0
SMS Message	Delivered	0.0%	0	0	n/a	0	n/a

Link URL	Unique Clicks	Total Clicks
https://cfb.mn.gov/pdf/legal/rulemaking/2023/Revisor_draft.p…	818	955
https://cfb.mn.gov/pdf/legal/rulemaking/2023/SONAR.pdf?ut…	594	638
https://cfb.mn.gov/pdf/legal/rulemaking/2023/dual_notice.pdf…	586	623
https://cfb.mn.gov/?utm_medium=email&utm_source=govde…	540	561
https://subscriberhelp.granicus.com/?utm_medium=email&u…	533	552
https://public.govdelivery.com/accounts/MNCFB/subscriber/n…	33	38
https://subscriberhelp.govdelivery.com/	29	38
https://cfb.mn.gov/citizen-resources/the-board/statutes-and-r…	26	34
https://cfb.mn.gov/citizen-resources/the-board/statutes-and-r…	21	22

Olson, Andrew (CFB)

From: Minnesota Campaign Finance Board <MNCFB@public.govdelivery.com>
Sent: Tuesday, October 1, 2024 3:46 PM
To: Olson, Andrew (CFB)
Subject: Campaign Finance and Public Disclosure Board - Notice of Proposed Administrative Rules Relating to Campaign Finance; Lobbying; and Audits and Investigations

To: Legislative leaders, the regulated community, and interested members of the public

The Campaign Finance and Public Disclosure Board intends to adopt administrative rules relating to campaign finance, lobbying, and audits and investigations. The text of the proposed rules is available at cfb.mn.gov/pdf/legal/rulemaking/2023/Revisor_draft.pdf. The Board's Dual Notice of Intent to Adopt Rules contains information about how to submit comments on the rules and how to request a public hearing before an administrative law judge. A copy of the Dual Notice is available at cfb.mn.gov/pdf/legal/rulemaking/2023/dual_notice.pdf. The Board's Statement of Need and Reasonableness (SONAR) explains the content of the proposed rules and why they are necessary and reasonable. The SONAR is available at cfb.mn.gov/pdf/legal/rulemaking/2023/SONAR.pdf.

The Dual Notice and the text of the proposed rules will be published in the *State Register* on October 7, 2024. The public comment period will begin at 8:00 AM on October 7, 2024, and will end at 4:30 p.m. on November 6, 2024. If 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on November 6, 2024, an administrative law judge will hold a public hearing virtually via Webex at 9:30 AM on December 17, 2024.

More information about the rulemaking process is available on the Board's website at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket. Draft rule language previously released by Board staff, comments received by the Board's rulemaking committee, and video of past meetings of the rulemaking committee are available at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/committee-meeting-materials.

If you no longer wish to receive notices regarding the Board's rulemaking efforts, please email me at andrew.d.olson@state.mn.us. Please contact me with any questions or concerns related to rulemaking.

Respectfully,

Andrew Olson
Legal/Management Analyst
651-539-1190
andrew.d.olson@state.mn.us

Update your subscriptions, modify your password or email address, or stop subscriptions at any time on your Subscriber Preferences Page. You will need to use your email address to log in. If you have questions or problems with the subscription service, please visit subscriberhelp.govdelivery.com.

This service is provided to you at no charge by the Minnesota Campaign Finance Board.

Minnesota Campaign Finance and Public Disclosure Board

CERTIFICATE OF GIVING NOTICE UNDER THE NOTICE PLAN

Proposed Adoption and Amendment of Rules Governing Campaign Finance; Lobbying; and Audits and Investigations, *Minnesota Rules*, chapters 4501, 4503, 4511, 4512, and 4525.

I certify that on Monday, 10/1/2024, at least 33 days before the end of the comment period, at Saint Paul, Ramsey County, Minnesota, I gave notice according to the Notice Plan approved by the Office of Administrative Hearings on 10/1/2024. Specifically, I sent the Dual Notice, SONAR, and proposed rules by email to approximately 5,684 unique email addresses, in addition to the approximately 291 email addresses included within the Board's rulemaking notice email list. The email notice was sent using the GovDelivery system. The email list created to accomplish this task included:

- all legislators serving on the Senate Elections Committee;
- all legislators serving on the House Elections Finance and Policy Committee;
- those who submitted comments or testimony during the rulemaking process;
- those subscribed to the Board's email lists regarding Board meeting dates and agenda items, press releases and announcements, lobbyist report filing dates, principal report filing dates, lobbying summary reports, compliance training classes, enforcement actions, the public subsidy program, and the gift prohibition;
- all registered lobbyists for whom the Board has an email address;
- all associations with a registered lobbyist for which the Board has a contact person's email address;
- all candidates, treasurers, deputy treasurers, and chairs of principal campaign committees registered with the Board for whom the Board has an email address;
- all treasurers, deputy treasurers, and chairs of political party units, political committees, and political funds registered with the Board for whom the Board has an email address;
- entities that requested an advisory opinion regarding lobbying in 2023 or 2024;
- at least 36 organizations that may be interested in the proposed rules; and
- at least 32 attorneys who have been in contact with the Board within the past several years regarding topics that may be impacted by the proposed rules.

Date: 10/4/2024

/s/ Andrew Olson
Legal/Management Analyst
Campaign Finance and Public Disclosure Board

MINNESOTA CAMPAIGN FINANCE BOARD

VIA EMAIL
October 1, 2024

Legislative Reference Library
sonars@lrl.leg.mn

In the Matter of the Proposed Permanent Rules Relating to Campaign Finance; Lobbying; and Audits and Investigations; Request to Schedule a Rules Hearing and Request to Review Additional Notice Plan; Revisor's ID Number 4809; OAH Docket No. 24-9030-39382

Dear Legislative Reference Library:

The Campaign Finance and Public Disclosure Board intends to adopt rules relating to campaign finance, lobbying, and audits and investigations. We plan to publish a Dual Notice in the October 7, 2024, *State Register*.

We have prepared a Statement of Need and Reasonableness. As required under Minnesota Statutes, sections 14.131 and 14.23, we are sending the library an electronic copy of the Statement of Need and Reasonableness at the same time that we are sending our Notice of Intent to Adopt Rules.

If you have any questions or concerns, please contact me at andrew.d.olson@state.mn.us or 651-539-1190.

Respectfully,

Andrew Olson
Legal/Management Analyst

Enclosure: Statement of Need and Reasonableness

Comments Received During 30-Day Comment Period

Table of Contents

From: Rep. Nathan Coulter (house.mn.gov)
To: Sigurdson, Jeff (CFB)
Cc: beth.fraser@mnsenate.gov; John Boehler
Subject: Comment on Proposed Rule
Date: Tuesday, October 15, 2024 11:16:40 AM

Jeff,

A proposed CFB rule was brought to my attention by Beth Fraser and John Boehler, and I wanted to offer a thought. The rule I'm referring to is:

4511.1100 MAJOR DECISION OF NONELECTED LOCAL OFFICIALS.
Subpart 1. Major decision regarding the expenditure of public money. Attempting to influence a nonelected local official is lobbying if the nonelected local official may make, recommend, or vote on as a member of the political subdivision's governing body, a major decision regarding an expenditure or investment of public money.
Subp. 2. Actions that are a major decision regarding public funds. A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:
A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;
B. whether to apply for or accept state or federal funding or private grant funding;
C. selecting recipients for government grants from the political subdivision; or
D. expenditures on public infrastructure used to support private housing or business developments.
Subp. 3. Actions that are not a major decision. A major decision regarding the expenditure of public money does not include:
A. the purchase of goods or services with public funds in the operating or capital budget of a political subdivision;
B. collective bargaining of a labor contract on behalf of a political subdivision;
or
C. participating in discussions with a party or a party's representative regarding litigation between the party and the political subdivision of the local official.

My only comment is on Subpart 2, Section D, referring to "expenditures". My concern is that the term could be construed as only referring to direct expenditures, not more indirect forms of financing such as Tax Increment Financing, land value write-downs, etc. I think some clarification is warranted – perhaps something like "expenditures and/or financing"?

Thanks!

Nathan

Representative Nathan Coulter

HD 51B – Bloomington
rep.nathan.coulter@house.mn.gov
651-296-4218

For more information and updates, check out my Facebook page and sign up for Email Updates.

Minnesota Campaign Finance Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155-1603

November 1, 2024

Re: Proposed Permanent Rules Relating to Campaign Finance

On behalf of the Minnesota School Boards Association (MSBA), I submit comments to the Minnesota Campaign Finance and Public Disclosure Board (CFB) regarding the proposed administrative rules relating to campaign finance, lobbying, and audits and investigations.

MSBA is a private, nonprofit organization that supports, promotes, and strengthens the work of Minnesota school boards. Every Minnesota school district is an MSBA member. MSBA employs more than 20 staff members with over 150 years of combined experience in the areas of governance, management, finance, communications, policy, legal matters, elections, and advocacy. MSBA provides workshops, resources, services, and connections designed to help boards save time, reduce expenses, govern efficiently, and stay inspired.

MSBA greatly appreciates the discussions with CFB staff regarding lobbyist regulation.

Development of prospective legislation

Development of prospective legislation" means communications that request support for legislation that has not been introduced as a bill, communications that provide language, or comments on language, used in draft legislation that has not been introduced as a bill, or communications that are intended to facilitate the drafting of language, or comments on language, used in draft legislation that has not been introduced as a bill.

MSBA regularly receives requests for information regarding prospective legislation from state legislators, state agencies and departments (including the Minnesota Department of Education), and the executive branch. The scope of this definition may be too broad as it includes communications that serve to share MSBA's experience and expertise rather than to affect potential legislation.

An exception to "development of prospective legislation" is "responding to a request for information by a public official." The term "public official" is not defined in the existing or proposed rules. MSBA regularly receives requests for information from the Minnesota Department of Education and other state agencies. It is not clear whether these employees, including the Commissioners of these agencies, would constitute a "public official" for purposes of the proposed rule.
The line between "developing" and "responding" is uncertain. Similarly, the exception for "providing information to public officials in order to raise awareness and educate on an issue or topic" may be difficult to distinguish from development of prospective legislation.

MSBA holds an annual meeting, the Delegate Assembly, at which Minnesota's school board members gather to discuss resolutions and potential legislation. It is not clear whether this definition would apply to the Delegate Assembly and, if so, what the ramifications would be.

Finally, it is not clear where this proposed definition would apply in the Rules. The term "development of prospective legislation" appears only in the definition.

Registration threshold

An individual must register as a lobbyist with the board upon the earlier of when: A. the individual receives total pay or consideration from all sources that exceeds $3,000 in a calendar year for the purpose of lobbying or 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. The pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the gross compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year.

Currently, MSBA registers a number of employees as lobbyists. However, other MSBA staff who do not directly interact with public officials support the activities of MSBA's registered lobbyists by conducting research, reviewing language, discussing options and challenges, and other activities related to prospective legislation. Because the definition of "lobbyist" includes *direct or indirect consulting or advice*, it is possible that many more MSBA employees could come within the reporting threshold.

Registration not required

Subpart 2b(B) states that an association board member is not a lobbyist "unless the individual receives pay or other consideration to lobby on behalf of the association." MSBA board members receive a stipend for their service on the MSBA board, yet only a portion of a board member's time is devoted to lobbying. Some MSBA board members travel to Washington, D.C. to talk with federal legislators. The rules are not clear whether they encompass federal activity. The scope of the term "or other consideration" needs clarification. Would airfare, hotel room, food/beverage, and other expense reimbursements be considered "other consideration"?

Report of designated lobbyist

The proposed rules regarding the designated lobbyist report include, "*if the lobbyist represents an association, a current list of the names and addresses of each officer and director of the association*." MSBA hopes to confirm that MSBA's address may be provided rather than residential addresses.

The proposed rules would require a report of "*each original source of money in excess of $500 provided to the individual or association that the lobbyist represents*." For a membership organization that holds an annual conference and other meetings that include exhibitors and sponsorships, publishes the MSBA *Journal* and other materials that include advertisements, has over 2,000 school board members who typically attend one or more paid trainings or webinars, and collects other revenue, this reporting requirement may quickly become challenging to fulfill.

Lobbyist reporting for political subdivision membership organizations

New proposed rule 4511.0900 states:

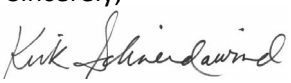
***Required reporting**. An association whose membership consists of political subdivisions within Minnesota and which is a principal that provides lobbyist representation on issues as directed by its membership must report:*
A. attempts to influence administrative action on behalf of the organization's membership;
B. attempts to influence legislative action on behalf of the organization's membership; and

C. attempts to influence the official action of a political subdivision on behalf of the organization's membership, unless the political subdivision is a member of the association.

MSBA hopes that the CFB will provide greater clarity on this expansive requirement. The meaning of "attempt" is uncertain. It could constitute every conversation, phone call, email, and more. If so, the reporting requirement would be tremendously time-consuming and costly, if not actually impossible to fulfill.

MSBA is grateful to the board for its attention to and consideration of these comments. It welcomes an opportunity to work with the board as the rulemaking process proceeds.

Sincerely,



Kirk Schneidawind
Executive Director
Minnesota School Boards Association.

November 6, 2024

Andrew Olson
Legal/Management Analyst
Campaign Finance and Public Disclosure Board
Andrew.d.olson@state.mn.us

Re: Comments on Rule Draft 4809

To the Minnesota Campaign Finance and Public Disclosure Board:

The Minnesota Council of Nonprofits (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.

We appreciate this opportunity to comment on your proposed rule changes. As noted in our comments to the Board at the October 25, 2024 hearing, MCN's focus is on lobbying rules and procedures being as clear as possible, so that a nonprofit staff person who engages in some lobbying can easily understand if they need to register, and if so, what they need to report as lobbying activities.

We are suggesting edits to the following sections:

4501.0100 DEFINITIONS

Subp. 4. **Compensation.**

We appreciate the clarification here in adding health care and retirement to the list of compensation included in the definition of compensation. However, we think the rules can go farther in this clarification.

It is a common practice for nonprofit employers to provide their employees with a personalized benefits statement that provides a comprehensive list of all types of compensation provided to the employee. These lists usually include: salary, stipends, medical insurance, dental insurance, HSA contributions, long- and short-term disability insurance, life insurance, 403(b) plan contributions, Social Security tax, Medicare tax, and paid leave benefits (the dollar amount that paid time off including vacation and sick time would be worth if it was paid out).

MCN recommends adding the following items to the current list of what is not included in the definition of compensation: insurance premiums for short- and long- term disability and life insurance, Medicare tax, and paid leave benefits. If the CFB disagrees and determines that any of these items should be included in the calculation of compensation, that must be clearly spelled out in this section.

We think it would also be very beneficial to add non-exhaustive list of what is included in compensation. That list would include: salary, stipends, and contributions to retirement accounts.

MCN's goal in recommending these changes is that when a nonprofit staff person engages in lobbying activity and reads in the lobbying handbook that they need to register if they have been paid more than $3,000 to lobby, that they can easily understand what number to use to determine their compensation under these rules.

4511.0100 DEFINITIONS

Subp 4. **Lobbyist's disbursements**
Given that the definition of "disbursement" has changed drastically, and is not a commonly used term, we recommend retitling this section "Lobbyist's gifts."

Further, we recommend changing "each" to "any." The word "each" could be construed to imply all lobbyists should be reporting something here. "Any" provides clarity that a lobbyist may have no gifts to report.

Lastly in this section, we recommend adding "to an official" after "gift given," in an effort to be exceedingly clear.

Subp. 5a. **Pay or consideration for lobbying.**
We ask the Board to remove the word "gross" before "compensation," because compensation is defined in section 4501.0100. Adding "gross" in this section signals that the calculation is different than the calculation for "compensation," which we do not think is the intent.

4511.1100 MAJOR DECISION OF NONELECTED LOCAL OFFICIALS

Subp. 1. **Major decision regarding the expenditure of public money.**
Subp. 2. **Actions that are a major decision regarding public funds.**

Subparts 1 and 2 in this section are clear that a major decision regarding the expenditure or investment of public money includes selecting recipients for government grants from the political subdivision, and that attempting to influence a nonelected official is lobbying if that

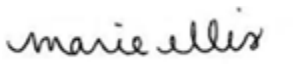
person may make, recommend, or vote on a major decision regarding an expenditure or investment of public money.

We strongly encourage the CFB to clarify this language to include that responding to a grant program's request for proposals or otherwise applying for an existing grant program does not constitute lobbying. Additionally, answering any follow-up questions from the municipality regarding the content of grant application is not lobbying. And finally, that if a potential grantee communicates with a nonelected official about a grant opportunity outside of the normal grant process, and with the intent to influence the nonelected official to choose their proposal, that is lobbying.

We hope these suggestions are helpful in providing the clearest rules possible for lobbyists and potential lobbyists.

As we said in our October comments, MCN's 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 in and equitable access to Minnesota's legislative process.



Marie Ellis
Public Policy Director
Minnesota Council of Nonprofits
(651) 757-3060
mellis@minnesotanonprofits.org

November 6, 2024

Submitted electronically to andrew.d.olson@state.mn.us.

Campaign Finance and Public Disclosure Board
c/o Andrew Olson, Legal/Management Analyst
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155-1603

Re: Comments regarding Proposed Permanent Rules Relating to Campaign Finance, Revisor's ID No. 4809, OAH Docket No. 24-9030-39382

Dear Chair Asp and Members of the Board,

Campaign Legal Center ("CLC") respectfully submits these written comments in response to the Minnesota Campaign Finance and Public Disclosure Board ("Board") regarding the Proposed Permanent Rules Relating to Campaign Finance (Revisor's ID No. 4809, OAH Docket No. 24-9030-39382) ("Proposed Rule").[1]

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy through law at all levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court and in numerous other federal and state court proceedings. Our work promotes every American's right to an accountable and transparent democratic system.

CLC appreciates the opportunity to share these comments with the Campaign Finance and Public Disclosure Board. As digital ads become ever more prominent in federal, state, and local campaigns, it is imperative that political transparency requirements—including on-ad disclaimers—are applied to digital political ads.[2]

[1] 49 Minn. Reg. 377-391 (Oct. 7, 2024) ("Proposed Rule").
[2] By one account, at least $1.6 billion was spent on digital advertising in federal, state, and local elections during the 2019-2020 cycle. See Howard Homonoff, *2020 Political Ad Spending Exploded: Did It Work?*, FORBES (Dec. 8, 2020), https://tinyurl.com/444rua6c. For the 2023-2024 election cycle, spending for political ads on digital platforms and connected

As drafted, however, the Proposed Rule greatly expands the on-ad disclaimer exception in Minn. Stat. § 211B.04(3) for certain types of digital ads, unnecessarily exempting a substantial amount of digital political ads from this transparency requirement. Our comments first discuss the importance of on-ad disclaimers in promoting First Amendment interests and then explain how the Proposed Rule's expansion of this exception undermines those interests. Finally, our comments provide recommendations for a final rule that is both consistent with the statute and ensures that voters have immediate, easy access to information about who is paying for digital political advertisements.

Discussion

I. On-ad disclaimers promote critical First Amendment interests.

"In a republic where the people are sovereign, the ability of the citizenry to make informed choices [in elections] is essential."[3] Disclosure laws, including on-ad disclaimers, help voters to know who is funding a campaign or trying to influence government decision-making,[4] directly serving the government's critical informational interest in "ensur[ing] that voters have the facts they need to evaluate the various messages competing for their attention."[5]

As the Supreme Court has repeatedly recognized in decades of decisions upholding campaign finance disclosure provisions:

> [D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches.[6]

TV—services like Hulu and Netflix—is projected to soar to over $2.6 billion. AdImpact, *Political Projections Report 2023-2024* (June 30, 2024), https://tinyurl.com/2n6536yb.

[3] *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976) (per curiam).

[4] *See No on E v. Chiu*, 85 F.4th 493, 505 (9th Cir. 2023), *cert. denied*, 2024 WL 4426534 (No. 23-926) (Oct. 7, 2024) ("Understanding what entity is funding a communication allows citizens to make informed choices in the political marketplace."); *Gaspee Project v. Mederos*, 13 F.4th 79, 91 (1st Cir. 2021) ("The donor disclosure alerts viewers that the speaker has donors and, thus, may elicit debate as to both the extent of donor influence on the message and the extent to which the top five donors are representative of the speaker's donor base . . . [in *Citizens United*] the Court recognized that the disclaimers at issue were intended to insure that the voters are fully informed . . ." (internal quotation marks and citation omitted)).

[5] *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010).

[6] *Buckley*, 424 U.S. at 66-67 (internal quotation marks and footnote omitted). In *Buckley*, the Supreme Court articulated the constitutional standard for disclosure laws and upheld federal disclosure requirements, explaining that disclosure served three important purposes: "providing the electorate with information, deterring actual corruption and avoiding its

Disclaimers are not only an "efficient tool" for voter education, but also a means of "generating discourse" enabling informed voting—both functions that are "as vital to the survival of a democracy as air is to the survival of human life."[7] On-ad disclaimers are particularly effective at meeting these critical informational interests, facilitating voters' instantaneous appraisal of election advertising.

A robust body of empirical research confirms that knowing the source of election messaging is a "particularly credible" informational cue for voters seeking to make decisions about decisions consistent with their policy preferences.[8] As one legal scholar has observed, "[r]esearch from psychology and political science finds that people are skilled at crediting and discrediting the truth of a communication when they have knowledge about the source, but particularly when they have knowledge about the source at the time of the communication as opposed to subsequent acquisition."[9] Other recent studies also highlight how campaign finance disclosure also provides voters with additional signals regarding candidates' non-policy traits, or "valence" information, "such as competence, honesty, and related characteristics that are important for selecting elected representatives."[10] Avoiding transparency is particularly attractive to spenders with negative messages online, as negative ads are more likely to result in backlash from voters.[11] Together, this research establishes that transparency around and public disclosure of the sources behind campaign spending, including through contemporaneous on-ad disclaimers, equips voters with valuable informational shortcuts that facilitate knowledgeable choices on Election Day.

Minnesota's on-ad disclaimer statute, Minn. Stat. § 211B.04, serves these critical informational interests, while providing, as most disclaimer laws do, for certain

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appearance, and gathering data necessary to enforce more substantive electioneering restrictions." *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (listing the "important state interests" identified in *Buckley*), *overruled in part on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010). The first of these, the public's informational interest, is "alone sufficient to justify" disclosure laws. *Citizens United*, 558 U.S. at 369; *see also No on E*, 85 F.4th at 504-06; *Gaspee Project*, 13 F.4th at 86.

[7] *Gaspee Project*, 13 F.4th at 91, 95.

[8] Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Finance Disclosure Laws in Direct Democracy*, 4 Election L.J. 295, 296 (2015); *see also* Abby K. Wood, *Learning from Campaign Finance Information*, 70 Emory L. J. 1091 (2021) ("Voters use heuristics, or informational shortcuts, to help them make the vote choice most aligned with their priorities without requiring encyclopedic knowledge . . . on every issue."); Keith E. Schnakenberg, Collin Schumock, and Ian R. Turner, *Dark Money and Voter Learning*, SSRN (May 28, 2023), *available at* https://ssrn.com/abstract=4461514 or http://dx.doi.org/10.2139/ssrn.4461514.

[9] Michael Kang, *Campaign Disclosure in Direct Democracy*, 97 Minn. L. Rev. 1700, 1718 (2013).

[10] Schnakenberg, et. al., *supra* note 8, 1-5; *see also* Wood, *supra* note 8, at 1116.

[11] Shomik Jain and Abby K. Wood, *Facebook Political Ads and Accountability: Outside Groups Are Most Negative, Especially When Hiding Donors*, 18 PROC. OF THE INT'L AAAI CONF. ON WEB AND SOCIAL MEDIA 717, 718 (2024), *available at* https://ojs.aaai.org/index.php/ICWSM/article/view/31346/33506.

limited exceptions where disclaimers are impracticable. However, the Proposed Rule—specifically § 4503.2000—would greatly expand one of these exceptions, relieving candidates, principal campaign committees, political committees, political funds, political parties, and electioneering spenders of their obligation to include an on-ad disclaimer and depriving Minnesota voters of one of the most efficient tools available for informed voting.

II. The Proposed Rule's exceptions are overbroad.

The Proposed Rule's on-ad disclaimer exemption for digital ads is overbroad, expanding the scope of the limited exception for banner ads and "similar electronic communications" in Minn. Stat. § 211B.04(3)(c)(3) to relieve political spenders of their obligation to include an on-ad disclaimer for the majority of political spending online, regardless of whether including such a disclaimer is technologically possible. Interpreting the exemption so expansively is both unnecessary and detrimental to Minnesota voters.

The overall statutory scheme for on-ad disclaimers is important for understanding the limited exception for banner ads and "similar electronic communications." Minn. Stat. § 211B.04 outlines disclaimer requirements for paid political material and electioneering communications, including by identifying materials that are exempt from political disclaimer requirements[12] The other materials specifically exempted from on-ad disclaimers are:

- "fundraising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate;"[13]
- "bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed;"[14] and
- "skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable."[15]

Read in context, the exemption for "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer" in the statute reflects that some political ads—including small digital banner ads, but also pens or bumper stickers, shirts, and skywriting—are presented in a format or such limited size as to make an on-ad disclaimer impracticable or technologically impossible. In the case of such communications, the exception—in conjunction with the requirement to link to an online page including the full disclaimer—is an effective way to balance voters' right to know who is spending to influence their ballots and the restrictions of the communication's format.

However, the Proposed Rule expands on this reasonable exception to create a sweeping exemption from Minn. Stat. § 211B.04's disclaimer requirements for a much broader range of paid digital political communications, including any text,

[12] MINN. STAT. § 211B.04(3)(c)(3) (2023).
[13] *Id.* § 211B.04(3)(a).
[14] *Id.* § 211B.04(3)(c)(1).
[15] *Id.* § 211B.04(3)(c)(2).

images, video, or audio disseminated via a social media platform, on an application accessed primarily by mobile phone, or disseminated via the Internet by a third party (among other exceptions), so long as such communications link directly to an online page that includes a disclaimer in the correct format.[16]

While some digital ads included in this sweeping list are truly "similar" to "online banner advertisements"—i.e., communications where the format is so small, short, or otherwise limited that it would not be possible to include a disclaimer without obscuring the message—this is not true for many digital political ads, which may use video or audio formats that are practically identical to traditional broadcast ads.[17] This issue is particularly glaring in Subp. 2(A), (C), and (D), where the Proposed Rule exempts paid political communications distributed through social media platforms, mobile phone applications, and third-party ad brokers. As explained below, such communications should not be exempt from the on-ad disclaimer requirement based solely on these features.

A. Social Media Advertisements

Subp. 2(A) excludes "text, images, video, or audio disseminated via a social media platform" from the on-ad disclaimer requirement outlined in Minn. Stat. § 211B.04, where the communication links directly to an online page containing the disclaimer. Social media platforms, like Meta's Facebook and Instagram and Google's YouTube, are some of the most popular venues for political spending, providing campaigns and other political spenders with the ability to reach large swaths of the voting public with a few clicks.[18]

Social media platforms serve a broad range of content to users—including ads that are virtually indistinguishable from traditional broadcast ads. As a result, political spenders can promote their messages in a wide range of formats, depending on the social media platform, from still images to short-form video (similar to traditional 15-to-60 second broadcast ads) to long-form video of a few minutes and more.[19]

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[16] Proposed Rule § 4503.2000(2).
[17] David Wright, *If you've been seeing more pro-Harris ads online lately, here's why*, CNN, Oct. 30, 2024, https://www.cnn.com/2024/10/30/politics/democratic-digital-advertising-future-forward/index.html.
[18] *See* Brennan Ctr., *Online Political Spending in 2024* (Oct. 16, 2024), https://www.brennancenter.org/our-work/analysis-opinion/online-political-spending-2024 ("So far in the 2024 election cycle, candidates, parties, and other groups have spent more than $619,090,533 on digital advertising concerning the election and political issues on the nation's two largest online platforms, Google (which includes YouTube, Search, and third-party advertising) and Meta. Together they account for almost half of the total digital ad market in the United States, but there is not sufficient publicly available data to determine what percentage of the political ad market they have captured.").
[19] *See, e.g.*, *Facebook ads guide: Update to Meta Ads Manager objectives*, META (last visited Oct. 25, 2025),https://www.facebook.com/business/ads-guide/update *and Create an ad in Meta Ads Manager*, META (last visited Nov. 1, 2024), https://www.facebook.com/business/help/2829711350595695?id=649869995454285. Meta's ad manager page outlines the array of image, video, and carousel (multi-image) advertising

Under Subp. 2(A) of the Proposed Rule, such ads are exempt from including an on-ad disclaimer if they simply link to a page with the disclaimer, even if the ad would be required to include a disclaimer if it were run on broadcast television.

This would result in illogical and inconsistent application of disclaimer requirements to substantially similar (or the same) paid political content if it is distributed via both broadcast channels and social media. Regardless of the platform where an ad reaches a voter, the voter's interest in understanding the source of the advertisement as quickly and easily as possible does not change; excluding digital ads from the on-ad disclaimer requirement is both unnecessary and would harm voters by substantially diminishing the scope of information available about who is spending money to influence their votes.

B. Advertising via Applications and Mobile Devices

The Proposed Rule's effort to address political advertising on mobile applications (or "apps") implicates many of the same issues as social media advertising, and some novel concerns, including how regulators define and apply language around when an app is "accessed primarily via mobile phone."

As with social media, apps—including popular mobile games,[20] music streaming and podcast apps,[21] and major video streaming platforms (like Netflix, Hulu, and

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options available across Meta's platforms, including Facebook, Instagram, Reels, Messenger, WhatsApp, and Audience Network. While some formats are quite limited (e.g., traditional still image ads), others are similar to traditional broadcast television ads or programs (e.g., Meta allows video ads with a duration from one second to 241 minutes).

[20] Reaching potential voters through video games, including images, video, or "playable" ads in mobile apps, is not a new tactic for campaign spenders. In 2020, the Biden campaign developed a playable mobile ad called "Ridin' with Biden" in the eight weeks prior to the election. *See The Biden/Harris 2020 Presidential Campaign: How the Biden Campaign Gamified Democracy and Achieved a Record-Breaking CTR*, MOBILE MARKETING ASSOCIATION (MMA) https://www.mmaglobal.com/case-study-hub/case_studies/view/70842. Barack Obama's 2012 campaign made headlines for its efforts to reach voters via ads in popular video games. *See* Sami Yengun, *Presidential Campaigns Rock The Gamer Vote*, NPR (Oct. 1, 2012), https://www.npr.org/2012/10/01/162103528/presidential-campaigns-rock-the-gamer-vote. Generally, the overlap between gaming, mobile applications, and entertainment presents expanded opportunities for advertisers—including political spenders—to reach audiences and develop positive impressions. *See* Mercedes Cardona, *Level up your video advertising in mobile gaming*, BRAND INNOVATORS (Sept. 19, 2024), https://brand-innovators.com/news/level-up-your-video-advertising-in-mobile-gaming/.

[21] Spotify, a popular audio streaming platform, recently changed its advertising policy to allow political ads after suspending political ads in 2020 over concerns over the rapid online spread of misinformation. Evan Minsker, *Spotify Brings Back Political Ads After Suspending Them in 2020*, PITCHFORK (May 25, 2024), https://pitchfork.com/news/spotify-brings-back-political-ads-after-suspending-them-in-2020/ https://blog.podbean.com/the-new-frontier-for-political-campaigns-harnessing-the-power-of-podcasts/. Across the industry, podcast networks and streaming platforms vary greatly as to their policies regarding political advertising. Alyssa Meyers, *How podcast networks are making their own rules for political advertising—and how they differ from one another*, MARKETING BREW (Oct. 26, 2024),

Peacock)[22]—often offer not only banner-style image ads, but also regular video and still ad breaks, which can include paid political communications.[23] Such ads are often substantially similar in format and content to those distributed on traditional and broadcast media, including video and audio ads.[24] However, under Subp. 2(C) of the Proposed Rule, these digital political ads would be exempt from displaying on-ad disclaimers, provided they comply with the alternative requirement of providing a link.[25] Again, this broad application unnecessarily captures political ads that may be substantially or entirely identical to traditional broadcast ads that would require an on-ad disclaimer.

Subp. 2(C)'s exemption for communications disseminated via app is further complicated by the question of what "an application accessed primarily via mobile phone" means in an era of connected devices, where many popular apps are available on a broad range of devices, including tablets, smart watches, e-readers, smart TVs, and streaming boxes like Apple TV and Roku.[26] Little (if any) public information is available about the relative proportion of smart devices used to access a particular app, although advertisers do distinguish more broadly between ads on

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https://www.marketingbrew.com/stories/2022/10/26/how-podcast-networks-are-making-their-own-rules-for-political-advertising.

[22] *Ads on Netflix*, NETFLIX HELP CENTER (last visited Oct. 25, 2024) https://help.netflix.com/en/node/126831; *Ads on Hulu*, HULU HELP CENTER (last visited Oct. 25, 2024), https://help.hulu.com/article/hulu-ads-on-hulu; *When will I see advertisements during content on Peacock?*, PEACOCK (last visited Oct. 25, 2024), https://www.peacocktv.com/help/article/when-will-i-see-advertisements-during-content; *When will I see ads while watching Disney+?*, DISNEY+ HELP CENTER (last visited Oct. 25, 2024), https://help.disneyplus.com/article/disneyplus-ads.

[23] *See, e.g.*, *About mobile ads*, GOOGLE ADS HELP (last visited Oct. 28, 2024), https://support.google.com/google-ads/answer/2472719 (outlining the various formats mobile ads can take when an advertiser utilizes the Google Ads platform); *Political content*, ADVERTISING POLICIES HELP (last visited Oct. 25, 2024), https://support.google.com/adspolicy/answer/6014595?hl=en#zippy=%2Cunited-states-us-election-ads (discussing Google's policies around political content in advertising).

[24] *Id.* For example, political spenders may run ads on broadcast television and online featuring similar lines of attack on their opponents. *See, e.g.*, Jonathan Weisman, *In Wisconsin's Senate Race, the Republican Highlights Baldwin's Sexuality*, N.Y. TIMES (Oct. 25, 2024), https://www.nytimes.com/2024/10/25/us/politics/wisconsin-senate-race-tammy-baldwin-sexuality.html (discussing a 30-second television ad aired on local broadcast stations) and Eric Hovde, *Investigate Tammy Baldwin*, META AD ARCHIVE (Oct. 4. 2024), *available at* https://www.facebook.com/ads/library/?id=1568975273994700 (Meta Ad Archive record for digital ad with similar content served to Facebook and Instagram users).

[25] Proposed Rule § 4503.2000(2)(C).

[26] For example, Netflix is available on a broad range of devices, from mobile phones to tablets and e-readers to smart TVs and streaming devices. *Netflix Supported Devices | Watch Netflix on your TV, phone, or computer*, NETFLIX HELP CENTER (last visited Oct. 25, 2024), https://help.netflix.com/en/node/14361. Hulu presents a similar range of options. *Download the Hulu app on your device*, HULU HELP CENTER (last visited Oct. 25, 2024), https://help.hulu.com/article/hulu-download-hulu# . Spotify is available on speakers, smart watches, smart TVs, gaming consoles, automobiles, digital voice assistant devices like Alexa, and more. *Devices & troubleshooting*, SPOTIFY (last visited Oct. 25, 2024), https://support.spotify.com/us/category/device-help/.

streaming video content delivered OTT ("over-the-top" – streaming over the internet to devices like mobile phones, tablets, computers via app or website) and CTV ("connected TV" – TV sets connected to the Internet using apps to deliver streaming content, including smart TVs, TV sticks, and gaming consoles).[27]

Even for the subset of apps used for both CTV and OTT streaming, it is unclear under the Proposed Rule how the Board would determine whether an application is "accessed primarily via mobile phone" (as opposed to other mobile devices) for the purposes of this exception; it would seem to necessitate the Board either obtain such information from the multiplicity of apps serving ads or rely on the representation of the political spender. In any event, determining the precise device being used when an ad is seen by a voter is unnecessary because such an approach fails to account for the feature of digital ads that matters, which is whether it is technologically possible to provide a clear on-ad disclaimer.

C. Advertisements Disseminated Online by a Third Party

Perhaps the most problematic exception in the Proposed Rule is Subp. 2(D), which exempts digital political ads via the internet by a third party, "including but not limited to online banner advertisements."[28] Third-party distribution is common for online political ads in many formats, including small online banner ads, but also long-format video ads similar to (or exactly the same as) those aired on broadcast media.[29]

Google dominates the third-party ad market, with its Ad Manager holding "about [a] 90% share of the U.S. Market for ad-serving software."[30] While banner ads remain one of the most common ad formats, appearing in feeds, around articles, and around other online content, Google Ad Manager also presents in-stream ads for audio and video players, "interstitial ads" occurring between content "at natural breaks and transitions, such as level completion," and "rewarded ads" "where a user explicitly opts-into an ad experience to receive a reward from the publisher," as in mobile games.[31] As with ads on social media platforms and mobile apps, there is no reason

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[27] *Need to Know: What's the difference between OTT, CTV, and streaming?*, NIELSEN (Feb. 2024), https://www.nielsen.com/insights/2024/whats-the-difference-ott-vs-ctv/#:~:text=The%20difference%20has%20to%20do,than%20what%20the%20content%20is.&text=Connected%20TV%20(CTV)%20%E2%80%94%20The,internet%20on%20a%20television%20screen.

[28] Proposed Rule § 4503.2000(2)(D).

[29] *Political content*, GOOGLE HELP: ADVERTISING POLICIES HELP (last visited Oct. 25, 2024), https://support.google.com/adspolicy/answer/6014595?hl=en#zippy=%2Cunited-states-us-election-ads.

[30] Paresh Dave, *Google Ad Manager outage costs big websites ad sales*, REUTERS (Dec. 8, 2022), https://www.reuters.com/technology/google-ad-manager-outage-costs-big-websites-ad-sales-2022-12-09/#:~:text=Ad%20Manager%20has%20about%2090,Chmielewski;%20Editing%20by%20Lincoln%20Feast.&text=San%20Francisco%20Bay%20Area%2Dbased,on%20the%20local%20tech%20industry.

[31] *Inventory formats*, GOOGLE AD MANAGER HELP (last visited Oct. 25, 2024), https://support.google.com/admanager/answer/9796545?hl=en.

to categorically exempt such a broad range of advertising formats from on-ad disclaimer requirements in Minnesota.

III. The final rule should incorporate a technological impossibility requirement for determining whether a digital ad is a "similar electronic communication.

CLC recommends the Board narrow the Proposed Rule's language to reflect the statute's more limited exception for banner ads and ads that are truly substantially similar—i.e., ads where it is not technologically possible to display a clear, legible disclaimer statement and still convey the ad's message in the space available—and clarify that disclaimers should be included on digital political ads unless it is technologically impossible to do so.

To enforce this standard, we also propose that the final regulation require that the sponsor of a digital advertisement be able to establish, at the Board's request, why a disclosure statement could not be included on the face of an advertisement due to technological constraints. Where technological constraints prevent the inclusion of an on-ad disclaimer, the rule should continue to require the spender to include a click-through link leading to a page with the clear disclosure statement, as statutorily required.

Other states have similar set similar standards for allowing an alternative method of providing information that would otherwise be included in an on-ad disclaimer. Wisconsin, for example, allows sponsors of "small online ads and similar electronic communications" where disclaimers "could not conveniently be included" to link directly to a website with the required attribution, but "[s]ponsors of such small online ads or similar electronic communications must be able to establish, at the Commission's request, that including the attribution on the ad or communication was not possible due to size or technological constraints."[32] Similarly, California's Political Reform Act permits the sponsor of an "electronic media advertisement" to substitute a complete disclaimer statement on the face of an ad with a hyperlink to the required information when including a complete disclaimer would be "impracticable or would severely interfere with the [sponsor's] ability to convey the intended message due to the nature of the technology used to make the communication."[33] Like Wisconsin, California's Fair Political Practices Commission requires that a sponsor of an electronic media advertisement who claims inclusion of a full disclaimer on the ad is "impracticable" be able to show why it was not possible to include a complete disclaimer on the advertisement.[34]

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[32] WIS. ADMIN. CODE ETH. § 1.96(5)(h); WIS. STATS. § 11.1303(2)(f).
[33] CAL. GOV'T CODE §§ 84501(a)(2)(G), 84504.3(b).
[34] CAL. CODE REGS. tit. 2, § 18450.1(b); *see also* Cal. Fair Political Practices Comm'n, Advice Letter No. I-17-017 (Mar. 1, 2017), at 4 ("Where character limit constraints render it impracticable to include the full disclosure information specified, the committee may provide abbreviated advertisement disclosure on the social media page . . . . If abbreviated disclaimers are used a committee must be able to show why it was not possible to include the full disclaimer.").

At the federal level, the proposed Honest Ads Act would enact a similar standard, requiring qualified internet or digital communications to both "state the name of the person who paid for the communication " and "provide a means for the recipient of the communication to obtain the remainder of the information required under this section with minimal effort and without receiving or viewing any additional material other than such required information" where it is "not possible" to include all of the disclaimer information required on the ad itself.[35]

By adopting the technological impossibility standard, the Board would bring the Proposed Rule into line with the limited list of exceptions outlined in Minn. Stat. § 211B.04. Furthermore, this standard would ensure that Minnesota voters have access to complete information about the sources of digital political ads, provide clear guidance to political spenders, and protect against exploitation of the exemption.

Finally, CLC also recommends the Board specify additional guidelines for how a digital advertisement must provide the required linked disclosure statement for communications that meet the technological impossibility standard. Currently, the Proposed Rule merely requires a communication "link directly to an online page that includes a disclaimer in the form required by that section [of the statute]." We suggest that, in the final rule, the Board should make clear that clicking on a digital advertisement must immediately direct the recipients of the advertisement to a page displaying the disclaimer information required by Minn. Stat. § 211B.04 *without* requiring the recipient to navigate through or view any extraneous material beyond the disclosure statement, as the Honest Ads Act proposes.[36]

Spenders should not get a second bite at the apple in presenting their messages to voters by requiring voters to scroll through additional political or electioneering content to discover who is sponsoring the message. Other states—including

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[35] Honest Ads Act, S. 486, 118th Cong. § 7(b) (2023); *see also* 11 C.F.R. § 110.11(g) (FEC regulation that allows digital political ads covered by current federal disclaimer requirements to use an "adapted disclaimer" where "more than 25% of the communication" would be occupied by a standard disclaimer and requiring such adapted disclaimers to include both an abbreviated on-ad disclaimer (an "indicator") and a "mechanism," which "may take any form including, but not limited to, hover-over text, pop-up screens, scrolling text, rotating panels, and hyperlinks to a landing page," providing the full disclaimer information required); Isaac Baker, *Commission adopts final rule on internet communications disclaimers and the definition of public communication*, FED. ELECT. COMM'N (Dec. 19, 2022), https://www.fec.gov/updates/commission-adopts-final-rule-internet-communications-disclaimers-and-definition-public-communication/ (explaining the adapted disclaimer provision "makes clear that the time or space available for a disclaimer depends on the limitations of the medium or technology in a particular advertisement" and the use of a specific percentage "serves as a bright-line rule that provides sponsors of internet publication communications clear guidance as to when an adapted disclaimer may be used").

[36] Honest Ads Act, S. 486, 118th Cong. § 7(b) (2023).

Wisconsin,[37] Washington,[38] and New York[39]—have promulgated similar regulations for modified disclaimers on certain digital ads, which allow the public to readily obtain key information about the sources of online advertising in elections. This additional clarification would ensure Minnesota voters have one-step access to clear, complete disclosure information when they view digital advertisements that refer to state and local candidates running for office in Minnesota, even where it is not technically possible to include an on-ad disclaimer.

CONCLUSION

CLC thanks the Board for the opportunity to share comments regarding the Proposed Rule and for its consideration during this important rulemaking. We would be happy to answer questions or provide additional information to assist the Board in promulgating the final rule for § 4503.2000.

Respectfully submitted,

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[37] WIS. ADMIN. CODE ETH. § 1.96(5)(h) (permitting "small online ads or similar electronic communications" on which disclaimers cannot be "conveniently printed" to include a link that "direct[s] the recipient of the small online ad or similar electronic communication to the attribution in a manner that is readable, legible, and readily accessible, with minimal effort and without viewing extraneous material.").
[38] WASH. ADMIN. CODE § 390-18-030(3) (specifying that "small online advertising" with limited character space may include, in lieu of full disclaimer, "automatic displays" with the required disclaimer information if such displays are "clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible.").
[39] N.Y. COMP. CODES R. & REGS. tit. 9, § 6200.10(f)(2)(ii) (requiring an "adapted attribution" included on a "paid internet or digital advertisement" to "allow a recipient of the communication to locate the full attribution by navigating no more than one step away from the adapted attribution and without receiving or viewing any additional material other than the full attribution required by this [rule].").

VIA EFILING
January 2, 2025

The Honorable Judge Kristien R. E. Butler
Assistant Chief Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed Permanent Rules Relating to Campaign Finance; Lobbying; and Audits and Investigations; Revisor's ID Number 4809; OAH Docket No. 24-9030-39382

Dear Judge Butler:

This letter contains the Campaign Finance and Public Disclosure Board's responses to comments it received during the 30-day comment period that spanned the period from October 7, through November 6, 2024. Portions of the four comments received by the Board are quoted below, followed by the Board's responses. Comments are ordered sequentially by the rule chapter, part, and subpart to which they pertain. The Board received comments from State Representative Nathan Coulter, the Minnesota School Boards Association (MSBA), the Minnesota Council of Nonprofits (MCN), and the Campaign Legal Center (CLC).

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Chapter 4501, General Provisions

Part 4501.0100, subpart 4. Compensation. - Comment of MCN

The MCN stated:

> We appreciate the clarification here in adding health care and retirement to the list of compensation included in the definition of compensation. However, we think the rules can go farther in this clarification.
>
> It is a common practice for nonprofit employers to provide their employees with a personalized benefits statement that provides a comprehensive list of all types of compensation provided to the employee. These lists usually include: salary, stipends, medical insurance, dental insurance, HSA contributions, long- and short-term disability insurance, life insurance, 403(b) plan contributions, Social Security tax, Medicare tax, and paid leave benefits (the dollar amount that paid time off including vacation and sick time would be worth if it was paid out).
>
> MCN recommends adding the following items to the current list of what is not included in the definition of compensation: insurance premiums for short- and long- term disability and life insurance, Medicare tax, and paid leave benefits. If the CFB disagrees and determines that any of these items should be included in the calculation of compensation, that must be clearly spelled out in this section.
>
> We think it would also be very beneficial to add non-exhaustive list of what is included in compensation. That list would include: salary, stipends, and contributions to retirement accounts.

> MCN's goal in recommending these changes is that when a nonprofit staff person engages in lobbying activity and reads in the lobbying handbook that they need to register if they have been paid more than $3,000 to lobby, that they can easily understand what number to use to determine their compensation under these rules.

Response: The word "compensation" is used throughout Minnesota Statutes, Chapter 10A, and how the term is defined impacts three of the Board's four major program areas, including economic interest disclosure by certain officials and candidates, lobbying, and campaign finance. For example, the word "compensation" is used within Minnesota Statutes, section 10A.09, subdivisions 5 and 5b, which impact the information required to be disclosed within statements of economic interest filed pursuant to Minnesota Statutes, section 10A.09. It is used within the definition of the term "associated business" codified at Minnesota Statutes, section 10A.01, subdivision 5, which impacts the information required to be disclosed within statements of economic interest, and the disclosure of potential conflicts of interest under Minnesota Statutes, section 10A.07. The word "compensate" is used within the definition of the term "principal" codified at Minnesota Statutes, section 10A.01, subdivision 33, and the word "compensation" is used within Minnesota Statutes, section 10A.04, subdivision 6, and Minnesota Rules, part 4511.0700, which impact who is defined as a principal, and what principals must report to the Board, respectively. The word "compensation" is used within the prohibition on contingent fees for lobbying, codified at Minnesota Statutes, section 10A.06. It is used within Minnesota Statutes, section 10A.08, which impacts whether a public official who represents a client before an agency with rulemaking authority must disclose that representation to the Board. It is used in describing exclusions from the definitions of the terms "campaign expenditure" and "contribution" under Minnesota Statutes, section 10A.01, subdivisions 9 and 11, which impact what must be reported to the Board within campaign finance reports filed pursuant to Minnesota Statutes, section 10A.20. Importantly, the word "compensation" is also used within the proposed definition of "pay or consideration for lobbying" to be codified at Minnesota Rules, part 4511.0100, subpart 5a.

The Board shares the MCN's concern regarding the need for clarity in how the word "compensation" is defined. As explained more fully on page 11 of the Board's Statement of Need and Reasonableness (SONAR), the definition of the term has remained the same since 1996, and needs to be updated. The MCN's comment illustrates the difficulty in defining the term "compensation" in a manner that is sufficiently inclusive while also being sufficiently easy to calculate. The Board believes that including a non-exhaustive list of examples of compensation may make the rule more prone to becoming outdated, and may also lead some to believe that types of compensation not clearly included within the list are not defined as compensation. Also, the Board does not believe that it is necessary to exclude the accrual of paid leave from the definition of "compensation." The accrual of paid leave is not a payment and therefore is not included within the definition of "compensation." When an individual is paid, either as a result of using accrued paid leave, or as a result of some type of payout of accrued

leave time, that payment will be defined as “compensation” because the leave time was afforded to the individual in exchange for their labor or personal services.

The MCN’s comment regarding Medicare taxes and insurance premiums, the MCN’s comment regarding the proposed definition of the phrase “pay or consideration for lobbying” to be codified at Minnesota Rules, part 4511.0100, subpart 5a, and the MCN’s broader call for increased clarity, has prompted the Board to propose a revised definition of the term “compensation,” as follows.

Modification to Part 4501.0100, subpart 4

> Subp. 4. **Compensation.** "Compensation" means every kind of payment for labor or personal services, including any amount withheld by an employer for the payment of income tax. Compensation does not include payments ~~of Social Security~~ for Federal Insurance Contributions Act taxes, unemployment ~~compensation~~ taxes, insurance, or benefits, workers' compensation insurance or benefits, disability insurance or benefits, life insurance, health care insurance or benefits, retirement benefits, or pension benefits.

As modified, the rule would provide clarity by excluding many similar types of payments made by employers for various benefits from the definition of compensation, which for some individuals may be difficult to calculate without those exclusions. The rule would continue to define core types of remuneration as compensation, including wages and salaries, payments made to contractors for services rendered, bonuses, commissions, deferred compensation, and payments of stock or other shares of ownership. The modification would also eliminate the need to refer to “gross compensation” within the proposed rule to be codified at Minnesota Rules, part 4511.0100, subpart 5a.

The modification would not make the rule substantially different from the rule text published with the Board’s Dual Notice:

> Subp. 4. **Compensation.** "Compensation" means every kind of payment for labor or personal services. Compensation does not include payments of Social Security, unemployment compensation, workers' compensation, health care, retirement, or pension benefits.

The modification regarding amounts withheld for the payment of income tax, while adding clarity, would not change the substance of the rule because the word “payment” is already considered to include earnings prior to any withholding for payment of income tax. The differences between the rule text published with the Board’s Dual Notice and the modified text are within the scope of the Board’s Dual Notice because they concern the definition of a single word. The differences are a logical outgrowth of the Board’s Dual Notice and MCN’s comment, which seeks additional clarity so that individuals may better understand how to calculate their

compensation for purposes of determining whether they need to register as a lobbyist. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

In each case, the proposed rule would make adjustments regarding types of payments that are excluded from the definition of "compensation" in order to provide clarity and ensure that benefits similar to those already excluded from the definition of "compensation" will also be excluded under the amended rule. The modification will have little impact on the totals reported to the Board by principals pursuant to Minnesota Statutes, section 10A.04, subdivision 6, for two reasons. First, paragraph (c), clause (1), of that subdivision requires principals to include "the portion of all direct payments for compensation *and benefits* paid by the principal to lobbyists in this state for that type of lobbying" (emphasis added). Second, the modification will have only a slight impact on whether individuals are required to register with the Board as lobbyists under Minnesota Statutes, section 10A.03, because payments for disability insurance or benefits, or life insurance, are unlikely to be determinative as to whether an individual has exceeded the $3,000 threshold and is thereby defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1).

Chapter 4503, Campaign Finance Activities

Part 4503.2000, subpart 2. Material linked to a disclaimer. - Comment of CLC

The Campaign Legal Center (CLC) submitted a lengthy comment regarding the proposed rule to be codified at Minnesota Rules, part 4503.2000. The CLC does not appear to object to the definitions provided in subpart 1. The issues raised by the CLC that are specific to the proposed rule are listed below in the order they are listed within the CLC's comment. The Board declines to respond to other portions of the CLC's comment that are extraneous to the proposed rule.

The CLC stated:

> The Proposed Rule's on-ad disclaimer exemption for digital ads is overbroad, expanding the scope of the limited exception for banner ads and "similar electronic communications" in Minn. Stat. § 211B.04(3)(c)(3) to relieve political spenders of their obligation to include an on-ad disclaimer for the majority of political spending online, regardless of whether including such a disclaimer is technologically possible. Interpreting the exemption so expansively is both unnecessary and detrimental to Minnesota voters.
>
> The overall statutory scheme for on-ad disclaimers is important for understanding the limited exception for banner ads and "similar electronic communications."

Minn. Stat. § 211B.04 outlines disclaimer requirements for paid political material and electioneering communications, including by identifying materials that are exempt from political disclaimer requirements The other materials specifically exempted from on-ad disclaimers are:

> • “fundraising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate;”
>
> • “bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed;” and
>
> • “skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable.”

Read in context, the exemption for “online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer” in the statute reflects that some political ads—including small digital banner ads, but also pens or bumper stickers, shirts, and skywriting—are presented in a format or such limited size as to make an on-ad disclaimer impracticable or technologically impossible. In the case of such communications, the exception—in conjunction with the requirement to link to an online page including the full disclaimer—is an effective way to balance voters’ right to know who is spending to influence their ballots and the restrictions of the communication’s format.

However, the Proposed Rule expands on this reasonable exception to create a sweeping exemption from Minn. Stat. § 211B.04’s disclaimer requirements for a much broader range of paid digital political communications, including any text, images, video, or audio disseminated via a social media platform, on an application accessed primarily by mobile phone, or disseminated via the Internet by a third party (among other exceptions), so long as such communications link directly to an online page that includes a disclaimer in the correct format.

While some digital ads included in this sweeping list are truly “similar” to “online banner advertisements”—i.e., communications where the format is so small, short, or otherwise limited that it would not be possible to include a disclaimer without obscuring the message—this is not true for many digital political ads, which may use video or audio formats that are practically identical to traditional broadcast ads. This issue is particularly glaring in Subp. 2(A), (C), and (D), where the Proposed Rule exempts paid political communications distributed through social media platforms, mobile phone applications, and third-party ad brokers. As explained below, such communications should not be exempt from the on-ad disclaimer requirement based solely on these features.

Response: The Board does not agree that the proposed rule is overbroad. The Board does not believe that the statutory exception to the disclaimer requirement for "online banner ads and similar electronic communications" under Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3), is limited to communications for which including a disclaimer on the face of the communication is impracticable or impossible. The CLC contends that the structure of section 211B.04, subdivision 3, indicates that the impracticability or impossibility of including a disclaimer should be considered when determining whether a disclaimer is required on the face of an online banner ad or similar electronic communication. However, the text of the statute leads to the opposite conclusion.

Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), contains three numbered exceptions to the disclaimer requirement. Exception (1) is "bumper stickers, pins, buttons, pens, or similar small items *on which the disclaimer cannot be conveniently printed*" (emphasis added). Exception (2) is "skywriting, wearing apparel, or other means of displaying an advertisement *of such a nature that the inclusion of a disclaimer would be impracticable*" (emphasis added). Exception (3) is "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer." Exception (3) is distinct from exceptions (1) and (2) in two critical respects. First, exception (3) is the only exception of the three that does not include text addressing whether the inclusion of a disclaimer would be inconvenient, impracticable, impossible, or otherwise difficult to accomplish. That distinction, alone, strongly indicates that the legislature did not intend to incorporate an impracticability requirement within exception (3). If the legislature had intended to include an impracticability or impossibility element within exception (3), it presumably would have included language similar to that included within the text of exceptions (1) and (2).

Second, exception (3) is the only exception of the three that nonetheless requires that a disclaimer be provided, albeit via a link to a webpage that contains the disclaimer, rather than via text or other means displayed on the face of the communication. That requirement suggests that communications covered by exception (3) do not require a disclaimer on their face because the inclusion of a link to a webpage with the required disclaimer is an effective means of conveying the same information that would be conveyed by a disclaimer on the face of the communication. It is notable that of the three enumerated exceptions within paragraph (c), exception (3) is the only exception for which the inclusion of a link to a webpage is technologically possible. The three exceptions enumerated within paragraph (c) were added to Minnesota Statutes, section 211B.04, in 2015,[1] which was two years after the Board was first afforded the power to enforce the disclaimer requirement with respect to entities under its jurisdiction.[2]

[1] 2015 Minn. Laws ch. 73, § 22.
[2] 2013 Minn. Laws ch. 138, art. 1, § 13.

In summary, the structure and text of Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), lead to the opposite conclusion than that encouraged by the CLC. The Board cannot interpret exception (3) to mean something other than what the text of the statute says.[3]

The CLC stated:

> Subp. 2(A) excludes "text, images, video, or audio disseminated via a social media platform" from the on-ad disclaimer requirement outlined in Minn. Stat. § 211B.04, where the communication links directly to an online page containing the disclaimer. Social media platforms, like Meta's Facebook and Instagram and Google's YouTube, are some of the most popular venues for political spending, providing campaigns and other political spenders with the ability to reach large swaths of the voting public with a few clicks.
>
> Social media platforms serve a broad range of content to users—including ads that are virtually indistinguishable from traditional broadcast ads. As a result, political spenders can promote their messages in a wide range of formats, depending on the social media platform, from still images to short-form video (similar to traditional 15-to-60 second broadcast ads) to long-form video of a few minutes and more.
>
> Under Subp. 2(A) of the Proposed Rule, such ads are exempt from including an on-ad disclaimer if they simply link to a page with the disclaimer, even if the ad would be required to include a disclaimer if it were run on broadcast television.
>
> This would result in illogical and inconsistent application of disclaimer requirements to substantially similar (or the same) paid political content if it is distributed via both broadcast channels and social media. Regardless of the platform where an ad reaches a voter, the voter's interest in understanding the source of the advertisement as quickly and easily as possible does not change; excluding digital ads from the on-ad disclaimer requirement is both unnecessary and would harm voters by substantially diminishing the scope of information available about who is spending money to influence their votes.

Response: The Board disagrees with the contention that it is illogical or inconsistent to treat "text, images, video, or audio disseminated via a social media platform" in the same manner as online banner ads. While it is true that social media communications and communications disseminated via broadcast media may be and often are very similar with respect to their content, and may reach large numbers of potential voters, the key distinction is that social media communications may be configured to include a link to a webpage that includes the

[3] *See* Minn. Stat. § 645.16 (providing that "[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.").

required disclaimer, whereas that is not the case with broadcast communications. The legislature chose to exempt "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer" regardless of whether it would be practicable or convenient to include a disclaimer on the face of the communication. The Board's role in drafting the proposed rule is to provide clarity regarding the application of the phrase "similar electronic communications," and the Board's role is not to second-guess the decision of the legislature to exempt certain communications from the disclaimer requirement when those communications include a link to the required disclaimer.

The CLC stated:

> The Proposed Rule's effort to address political advertising on mobile applications (or "apps") implicates many of the same issues as social media advertising, and some novel concerns, including how regulators define and apply language around when an app is "accessed primarily via mobile phone."
>
> As with social media, apps—including popular mobile games, music streaming and podcast apps, and major video streaming platforms (like Netflix, Hulu, and Peacock)—often offer not only banner-style image ads, but also regular video and still ad breaks, which can include paid political communications. Such ads are often substantially similar in format and content to those distributed on traditional and broadcast media, including video and audio ads. However, under Subp. 2(C) of the Proposed Rule, these digital political ads would be exempt from displaying on-ad disclaimers, provided they comply with the alternative requirement of providing a link. Again, this broad application unnecessarily captures political ads that may be substantially or entirely identical to traditional broadcast ads that would require an on-ad disclaimer.

Response: The Board disagrees with the contention that the relevant question is whether communications disseminated via mobile applications are similar to broadcast advertisements in terms of their format and content. As explained in more detail above, the Board believes that the relevant question is whether communications disseminated via mobile applications are "similar electronic communications" within the meaning of Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3). The Board believes that the answer to that question is yes, because communications disseminated via mobile applications, like banner ads, typically may be configured to include a link to a webpage that includes the required disclaimer, whereas that is not the case with broadcast communications.

The CLC stated:

> Subp. 2(C)'s exemption for communications disseminated via app is further complicated by the question of what "an application accessed primarily via mobile phone" means in an era of connected devices, where many popular apps

> are available on a broad range of devices, including tablets, smart watches, e-readers, smart TVs, and streaming boxes like Apple TV and Roku. Little (if any) public information is available about the relative proportion of smart devices used to access a particular app, although advertisers do distinguish more broadly between ads on streaming video content delivered OTT ("over-the-top" – streaming over the internet to devices like mobile phones, tablets, computers via app or website) and CTV ("connected TV" – TV sets connected to the Internet using apps to deliver streaming content, including smart TVs, TV sticks, and gaming consoles).
>
> Even for the subset of apps used for both CTV and OTT streaming, it is unclear under the Proposed Rule how the Board would determine whether an application is "accessed primarily via mobile phone" (as opposed to other mobile devices) for the purposes of this exception; it would seem to necessitate the Board either obtain such information from the multiplicity of apps serving ads or rely on the representation of the political spender. In any event, determining the precise device being used when an ad is seen by a voter is unnecessary because such an approach fails to account for the feature of digital ads that matters, which is whether it is technologically possible to provide a clear on-ad disclaimer.

Response: The Board disagrees with the contention that the relevant question is "whether it is technologically possible to provide a clear on-ad disclaimer." As explained in more detail above, the Board believes that the relevant question is whether communications disseminated via mobile applications are "similar electronic communications" within the meaning of Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3).

The CLC's point regarding the challenge in defining communications accessed primarily from mobile phones is well taken. It is difficult, in the midst of ever-evolving and growing means to communicate to draw distinctions between methods of communication that will not quickly become outdated or difficult to apply. The language within subpart 2, item C, including "text, images, video, or audio disseminated using an application accessed primarily via mobile phone, excluding email messages, telephone calls, and voicemail messages" is intended to encompass communications received via a mobile phone application, and buttress the potential argument that a mobile phone application user is not accessing the internet when receiving a communication, such as if the user is connected to a cellular network rather than a wi-fi network. Based on how the proposed rule is drafted, it is highly unlikely that the Board will ever need to inquire into whether a communication was received via an application accessed primarily by mobile phone, because subpart 2, item D, includes "paid electronic advertisements disseminated via the internet by a third party, including but not limited to online banner advertisements and advertisements appearing within the electronic version of a newspaper, periodical, or magazine." That item may be considered a catch-all category for electronic communications disseminated via the internet that, like banner ads, may be configured to include a link to a webpage containing the required disclaimer. Advertisements accessed via

tablets, smart watches, e-readers, smart TVs, and streaming devices will almost certainly be disseminated via the internet, and will thereby be encompassed by the proposed rule.

The CLC stated:

> Perhaps the most problematic exception in the Proposed Rule is Subp. 2(D), which exempts digital political ads via the internet by a third party, "including but not limited to online banner advertisements." Third-party distribution is common for online political ads in many formats, including small online banner ads, but also long-format video ads similar to (or exactly the same as) those aired on broadcast media.
>
> Google dominates the third-party ad market, with its Ad Manager holding "about [a] 90% share of the U.S. Market for ad-serving software." While banner ads remain one of the most common ad formats, appearing in feeds, around articles, and around other online content, Google Ad Manager also presents in-stream ads for audio and video players, "interstitial ads" occurring between content "at natural breaks and transitions, such as level completion," and "rewarded ads" "where a user explicitly opts-into an ad experience to receive a reward from the publisher," as in mobile games. As with ads on social media platforms and mobile apps, there is no reason to categorically exempt such a broad range of advertising formats from on-ad disclaimer requirements in Minnesota."

Response: The Board disagrees with the contention that there is no reason to apply the exception stated in Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3), to paid electronic advertisements disseminated via the internet. As explained in more detail above, the reason is that online electronic communications generally may be configured to include a link to a webpage with the required disclaimer. Moreover, the statutory exception explicitly applies to "online banner ads and similar electronic communications" without defining those terms. If the Board were to limit the exception to banner ads, it would effectively ignore the intent of the legislature and read the phrase "and similar electronic communications" out of the statute.[4]

The CLC stated:

> CLC recommends the Board narrow the Proposed Rule's language to reflect the statute's more limited exception for banner ads and ads that are truly substantially similar—i.e., ads where it is not technologically possible to display a clear, legible disclaimer statement and still convey the ad's message in the space

[4] *See* Minn. Stat. § 645.16 (providing that "[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.").

available—and clarify that disclaimers should be included on digital political ads unless it is technologically impossible to do so.

To enforce this standard, we also propose that the final regulation require that the sponsor of a digital advertisement be able to establish, at the Board's request, why a disclosure statement could not be included on the face of an advertisement due to technological constraints. Where technological constraints prevent the inclusion of an on-ad disclaimer, the rule should continue to require the spender to include a click-through link leading to a page with the clear disclosure statement, as statutorily required.

Other states have similar set similar standards for allowing an alternative method of providing information that would otherwise be included in an on-ad disclaimer. Wisconsin, for example, allows sponsors of "small online ads and similar electronic communications" where disclaimers "could not conveniently be included" to link directly to a website with the required attribution, but "[s]ponsors of such small online ads or similar electronic communications must be able to establish, at the Commission's request, that including the attribution on the ad or communication was not possible due to size or technological constraints." Similarly, California's Political Reform Act permits the sponsor of an "electronic media advertisement" to substitute a complete disclaimer statement on the face of an ad with a hyperlink to the required information when including a complete disclaimer would be "impracticable or would severely interfere with the [sponsor's] ability to convey the intended message due to the nature of the technology used to make the communication." Like Wisconsin, California's Fair Political Practices Commission requires that a sponsor of an electronic media advertisement who claims inclusion of a full disclaimer on the ad is "impracticable" be able to show why it was not possible to include a complete disclaimer on the advertisement.

At the federal level, the proposed Honest Ads Act would enact a similar standard, requiring qualified internet or digital communications to both "state the name of the person who paid for the communication " and "provide a means for the recipient of the communication to obtain the remainder of the information required under this section with minimal effort and without receiving or viewing any additional material other than such required information" where it is "not possible" to include all of the disclaimer information required on the ad itself.

By adopting the technological impossibility standard, the Board would bring the Proposed Rule into line with the limited list of exceptions outlined in Minn. Stat. § 211B.04. Furthermore, this standard would ensure that Minnesota voters have access to complete information about the sources of digital political ads, provide

clear guidance to political spenders, and protect against exploitation of the exemption.

Finally, CLC also recommends the Board specify additional guidelines for how a digital advertisement must provide the required linked disclosure statement for communications that meet the technological impossibility standard. Currently, the Proposed Rule merely requires a communication "link directly to an online page that includes a disclaimer in the form required by that section [of the statute]." We suggest that, in the final rule, the Board should make clear that clicking on a digital advertisement must immediately direct the recipients of the advertisement to a page displaying the disclaimer information required by Minn. Stat. § 211B.04 without requiring the recipient to navigate through or view any extraneous material beyond the disclosure statement, as the Honest Ads Act proposes.

Spenders should not get a second bite at the apple in presenting their messages to voters by requiring voters to scroll through additional political or electioneering content to discover who is sponsoring the message. Other states—including Wisconsin, Washington, and New York—have promulgated similar regulations for modified disclaimers on certain digital ads, which allow the public to readily obtain key information about the sources of online advertising in elections. This additional clarification would ensure Minnesota voters have one-step access to clear, complete disclosure information when they view digital advertisements that refer to state and local candidates running for office in Minnesota, even where it is not technically possible to include an on-ad disclaimer.

Response: As explained in more detail above, the Board cannot read a technological impossibility standard into the exception provided at Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3). The legislature chose to exempt "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer" regardless of whether it would be possible, practicable, or convenient to include a disclaimer on the face of the communication. The Board's role in drafting the proposed rule is to provide clarity regarding the application of the phrase "similar electronic communications," and the Board's role is not to second-guess the decision of the legislature to exempt certain communications from the disclaimer requirement when those communications include a link to the required disclaimer.

Wisconsin's disclaimer exception for "text messages, social media communications, and certain small advertisements on mobile phones" applies to communications on which the required disclaimer "cannot be conveniently printed," is statutory, and explicitly provides that the Wisconsin Ethics Commission "may, by rule, specify small items or other communications to

which this subsection shall not apply."[5] California's disclaimer exception for communications for which the inclusion of the required disclaimer "is impracticable or would severely interfere with the committee's ability to convey the intended message due to the nature of the technology used to make the communication," is also statutory, and explicitly provides that the California Fair Political Practices Commission may promulgate regulations determining the scope of that exception.[6] Unlike in Wisconsin and California, the Board does not have statutory authority to promulgate a rule stating that disclaimers must be included on digital political ads unless it is technologically impossible to do so. The Board also lacks statutory authority to require those preparing and disseminating campaign material to certify that a disclaimer could not be included on the face of a communication. If the legislature had intended to authorize the Board to impose such a requirement, it presumably would have included language similar to that found in Minnesota Statutes, section 10A.38, which requires certain candidates who disseminate advertisements without closed captioning or without a published transcript to file with the Board "a statement setting forth the reasons for not doing so."

With respect to the suggestion that the Board modify the proposed rule to provide that clicking on a link "must immediately direct the recipients of the advertisement to a page displaying the disclaimer information required by Minn. Stat. § 211B.04 without requiring the recipient to navigate through or view any extraneous material beyond the disclosure statement," the Board has no information suggesting that such a rule is necessary in Minnesota. Minnesota Statutes, section 211B.04, subdivision 3, paragraph (c), clause (3), already provides that a communication covered by that exception must "link directly to an online page that includes the disclaimer," and the Board is capable of enforcing that requirement. Since the Board was first afforded the authority to enforce the disclaimer requirement in mid-2013, the Board has not received any complaints filed pursuant to Minnesota Statutes, section 10A.022, and Minnesota Rules, part 4525.0200, alleging that a link within an advertisement required the viewer navigate through extraneous material in order to view the required disclaimer.

The CLC appears to suggest that those clicking on a link should not be required to scroll through any content, after clicking a link, to view the required disclaimer. However, the statute requires the link to go "directly to an online page that includes the disclaimer," not to a page that includes only the disclaimer. Those disseminating campaign material via the internet often include a link within their campaign material to their website's home page, which often will display the required disclaimer at the bottom of the page. Modifying the proposed rule to prohibit linking to a page that requires a viewer to scroll down would thereby significantly alter the statutory requirement, and may exceed the Board's statutory authority. Moreover, such a provision would likely be difficult to administer. Users access the internet from a wide variety of devices that use a wide variety of software applications to display web pages in a wide variety of formats, particularly in terms of the amount of text and images that may be displayed on a user's screen without needing to scroll, either vertically or horizontally. Crafting a rule that

[5] Wis. Stat. § 11.1303 (2) (f).
[6] Cal. Gov't Code § 84501 (a) (2) (G).

would prohibit requiring viewers to scroll, that could account for that variability and the use of assistive software such as screen readers, would be very difficult.

The Board shares the CLC's desire to ensure that individuals are provided with the information necessary to ascertain the source of campaign material as quickly and easily as possible. Many of the CLC's suggestions are topics the legislature may wish to consider, should it decide to amend Minnesota Statutes, section 211B.04. However, implementing those suggestions would, in many cases, exceed the Board's statutory authority to promulgate administrative rules.

Chapter 4511, Lobbyist Registration and Reporting

Part 4511.0100, subpart 1c. Development of prospective legislation. - Comment of MSBA

The MSBA quoted from a portion of the proposed definition of the phrase "development of prospective legislation," then stated:

> MSBA regularly receives requests for information regarding prospective legislation from state legislators, state agencies and departments (including the Minnesota Department of Education), and the executive branch. The scope of this definition may be too broad as it includes communications that serve to share MSBA's experience and expertise rather than to affect potential legislation.
>
> An exception to "development of prospective legislation" is "responding to a request for information by a public official." The term "public official" is not defined in the existing or proposed rules. MSBA regularly receives requests for information from the Minnesota Department of Education and other state agencies. It is not clear whether these employees, including the Commissioners of these agencies, would constitute a "public official" for purposes of the proposed rule.

Response: The term "public official" is defined by Minnesota Statutes, section 10A.01, subdivision 35. A current list of public officials employed by the Department of Education is available on the Board's website at cfb.mn.gov/reports-and-data/officials-financial-disclosure/agency/71500000. Public officials may be searched for by name at cfb.mn.gov/reports-and-data/officials-financial-disclosure/official, or by agency at cfb.mn.gov/reports-and-data/officials-financial-disclosure/agency. Consulting the Board's website allows individuals and organizations to quickly determine which individuals have been identified as public officials.

With respect to the breadth of the definition, it is intended to distinguish between communications requesting support for prospective legislation or communications intended to facilitate the drafting of legislation, versus communications that merely provide information without seeking support for legislation and without intending to facilitate the drafting of legislation. Stated simply, the sharing of experience and expertise, and attempting to influence

the development of prospective legislation, are not mutually exclusive activities. Principals such as the MSBA may share information without engaging in lobbying, but the Board believes that when the sharing of information is coupled with a request for support of legislation, or is intended to facilitate the drafting of legislation, that activity is properly defined as attempting to influence the development of prospective legislation within the meaning of Minnesota Statutes, section 10A.01, subdivision 19a.

The MSBA stated:

> The line between "developing" and "responding" is uncertain. Similarly, the exception for "providing information to public officials in order to raise awareness and educate on an issue or topic" may be difficult to distinguish from development of prospective legislation.

Response: The proposed rule would define the phrase "development of prospective legislation" in a manner that would expressly exclude "responding to a request for information by a public official." As long as there is a request for information by a public official and the communication in question is a response to that request, the communication would not constitute the development of prospective legislation. The term "public official" is defined by statute and the phrase "responding to a request for information" is clear in its meaning. Nonetheless, an individual who is uncertain may contact Board staff for guidance, treat the activity in question as though it is lobbying, or request an advisory opinion from the Board pursuant to Minnesota Statutes, section 10A.02, subdivision 12.

The MSBA stated:

> MSBA holds an annual meeting, the Delegate Assembly, at which Minnesota's school board members gather to discuss resolutions and potential legislation. It is not clear whether this definition would apply to the Delegate Assembly and, if so, what the ramifications would be.

Response: The phrase "development of prospective legislation" appears within the definition of the term "legislative action" that is codified at Minnesota Statutes, section 10A.01, subdivision 19a. The proposed rule defines the phrase "development of prospective legislation" for two purposes. First, so that there is clarity as to the type of communication that may trigger a requirement for an individual to register as a lobbyist. Second, so that there is clarity as to when a lobbyist is first attempting to influence legislative action, which must be reported as required by Minnesota Statutes, section 10A.04, subdivision 4, paragraph (e).

Minnesota Statutes, section 10A.01, subdivision 21, generally defines the term "lobbyist" in a manner that only includes those who communicate "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."[7] Minnesota Rules, part 4511.0100, subpart 3, similarly defines the term "lobbying" in a manner that only includes "communicating with or urging others to communicate with public officials or local officials" as well as "[a]ny activity that directly supports this communication." Therefore, an individual participating in the Delegate Assembly would not need to consider if they must register as a lobbyist for that activity unless there was also a public official at the event, and the individual was attempting to influence legislative action by communicating with the public official. Even if that scenario did play out the other registration thresholds in Minnesota Statutes, section 10A.01, subdivision 21 would apply, and generally would require registration under Minnesota Statutes, section 10A.03, only if the individual was compensated over $3,000 for lobbying.

The MSBA has a number of lobbyists registered with the Board. It is possible that the individuals who are registered to engage in lobbying for the MSBA could prepare future communications with public officials during the event that are intended to influence legislative action, such as by engaging in the development of prospective legislation. Whether activities occurring during the MSBA's annual meeting are defined as lobbying or not, and whether those activities would require a lobbyist to report that activity within a lobbyist report, would likely depend on specific facts regarding the individuals involved, who they are communicating with or intend to communicate with, and the subjects of those communications.

The MSBA stated:

> Finally, it is not clear where this proposed definition would apply in the Rules. The term "development of prospective legislation" appears only in the definition.

Response: The phrase "development of prospective legislation" appears within the definition of the term "legislative action" that is codified at Minnesota Statutes, section 10A.01, subdivision 19a. The definition of the term "legislative action" impacts the definitions of the terms "lobbyist" and "principal" defined at Minnesota Statutes, section 10A.01, subdivisions 21 and 33, the reporting requirements imposed by Minnesota Statutes, sections 10A.04, subdivisions 4 and 6, and 10A.05, the prohibition on contingent fees for lobbying codified at Minnesota Statutes, section 10A.06, and the definition of the term "lobbying" that appears at Minnesota Rules, part 4511.0100, subpart 3. As explained on pages 23-24 of the Board's SONAR, the term "legislative action" was not defined prior to Minnesota Statutes, section 10A.01, subdivision 19a, becoming effective in 2024, and the new definition of that term introduced the phrase "development of prospective legislation" to Minnesota Statutes,

[7] Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1), item (ii), also includes someone compensated by "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," but that provision is unlikely to apply under the circumstances described by the MSBA.

Chapter 10A. The proposed rule is needed to define that phrase, and in turn more clearly define the term "legislative action."

Part 4511.0100, subpart 4. Lobbyist's disbursements. - Comment of MCN

The MCN stated:

> Given that the definition of "disbursement" has changed drastically, and is not a commonly used term, we recommend retitling this section "Lobbyist's gifts."
>
> Further, we recommend changing "each" to "any." The word "each" could be construed to imply all lobbyists should be reporting something here. "Any" provides clarity that a lobbyist may have no gifts to report.
>
> Lastly in this section, we recommend adding "to an official" after "gift given," in an effort to be exceedingly clear.

Response: The rule defines the term "lobbyist's disbursements" because the term "lobbyist disbursements" is used within Minnesota Statutes, section 10A.04, subdivision 9, clause (1), in describing what a designated lobbyist must report to the Board. While the use of the term "lobbyist disbursements" has decreased considerably as a result of legislative changes, the term being defined needs to match the statute to which it pertains.

With respect to the use of the word "each" or "any," the Board believes that either word would be suitable and have the same meaning. However, the word "each" better matches the statute to which the rule pertains. Specifically, Minnesota Statutes, section 10A.04, subdivision 4, paragraph (g), provides that "[a] lobbyist must report the amount and nature of each gift, item, or benefit, excluding contributions to a candidate, equal in value to $5 or more, given or paid to any official, as defined in section 10A.071, subdivision 1, by the lobbyist or an employer or employee of the lobbyist. The list must include the name and address of each official to whom the gift, item, or benefit was given or paid and the date it was given or paid."

With respect to adding "to an official" after the text "gift given," that addition is unnecessary because the reporting of gifts, pursuant to Minnesota Statutes, section 10A.04, subdivision 4, paragraph (g), is limited to gifts "given or paid to any official, as defined in section 10A.071, subdivision 1," and Minnesota Statutes, section 10A.071, subdivision 1, paragraph (c), defines the term "official" to mean "a public official, an employee of the legislature, or a local official." Moreover, Minnesota Rules, part 4511.0200, subpart 2, provides that the word "gift" "has the meaning given in chapter 4512 and Minnesota Statutes, section 10A.071. While the Board shares the MCN's desire for clarity, adding more words than are necessary make it more likely that the Board's rules will become outdated as the result of future legislative changes.

Part 4511.0100, subpart 5a. Pay or consideration for lobbying. - Comment of MCN

The MCN stated:

> We ask the Board to remove the word “gross” before “compensation,” because compensation is defined in section 4501.0100. Adding “gross” in this section signals that the calculation is different than the calculation for “compensation,” which we do not think is the intent.

Response: The Board’s intent was to define “pay or consideration for lobbying” in a manner that includes total compensation, before income taxes. However, the term “gross compensation” may be construed to be inclusive of money withheld via a payroll deduction for things that are currently excluded from the definition of “compensation” under Minnesota Rules, part 4501.0100, subpart 4, such as Social Security taxes, as well as for additional things that the Board seeks to exclude from the definition of “compensation” via the proposed rules. The MCN’s comment has prompted the Board to propose a revised definition of the phrase “pay or consideration for lobbying” that eliminates the use of the word “gross” as follows.

Modification to Part 4511.0100, subpart 5a

> Subp. 5a. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the compensation paid to an individual for lobbying. An individual whose job responsibilities do not include lobbying, and who has not been directed or requested to lobby on an issue by their employer, does not receive pay or consideration for lobbying they undertake on their own initiative.

As modified, the rule would provide clarity by defining a phrase that impacts whether an individual is defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1). The need for this rule is explained in more detail on page 24 of the Board’s SONAR. The modification would eliminate a single word, “gross,” in order to avoid a potential conflict between this rule and the definition of “compensation” under Minnesota Rules, part 4501.0100, subpart 4. The modification would not make the rule substantially different from the rule text published with the Board’s Dual Notice:

> Subp. 5a. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the gross compensation paid to an individual for lobbying. An individual whose job responsibilities do not include lobbying, and who has not been directed or requested to lobby on an issue by their employer, does not receive pay or consideration for lobbying they undertake on their own initiative.

The difference between the rule text published with the Board’s Dual Notice and the modified text is within the scope of the Board’s Dual Notice because it involves the deletion of a single word within the definition of a single phrase. The difference is a logical outgrowth of the Board’s Dual Notice and MCN’s comment, which seeks to avoid a conflict between this rule and the

definition of “compensation” under Minnesota Rules, part 4501.0100, subpart 4. The Board’s Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board’s Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board’s Dual Notice.

In each case, the proposed rule would define a term that needs to be defined in order to provide clarity as to who is defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1). The modification will only impact the totals reported to the Board by principals pursuant to Minnesota Statutes, section 10A.04, subdivision 6, to the extent that a relatively small number of individuals are not defined as lobbyists as a result of deleting the word “gross.” The modification will have only a slight impact on whether individuals are required to register with the Board as lobbyists under Minnesota Statutes, section 10A.03, because the distinction between “gross compensation” and “compensation,” as defined by Minnesota Rules, part 4501.0100, subpart 4, is unlikely to be determinative as to whether an individual has exceeded the $3,000 threshold and is thereby defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1).

In order to clarify that compensation is calculated to include earnings before any payroll deduction for income tax, the Board has also proposed a revised amendment of the definition of the term “compensation” that is codified at Minnesota Rules, part 4501.0100, subpart 4.

Part 4511.0200, subpart 2a. Registration threshold. - Comment of MCN

With respect to the definition of the phrase “pay or consideration for lobbying” to be codified at part 4511.0100, subpart 5a, the MCN stated:

> We ask the Board to remove the word “gross” before “compensation,” because compensation is defined in section 4501.0100. Adding “gross” in this section signals that the calculation is different than the calculation for “compensation,” which we do not think is the intent.

Response: While the MCN did not specifically refer to the proposed rule to be codified at part 4511.0200, subpart 2a, the term “gross compensation” is used and the word “gross” should be removed for the same reasons the Board proposes removing it from the text of the proposed rule to be codified at part 4511.0100, subpart 5a.

Modification to Part 4511.0200, subpart 2a

> Subp. 2a. **Registration threshold.** An individual must register as a lobbyist with the board upon the earlier of when:
>
> A. the individual receives total pay or consideration from all sources that exceeds $3,000 in a calendar year for the purpose of lobbying or 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. The pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year; or

B. the individual spends more than $3,000 of their own funds in a calendar year for the purpose of lobbying. Membership dues paid by the individual, and expenses for transportation, lodging, and meals used to support lobbying by the individual, are not costs that count toward the $3,000 expenditure threshold that requires registration.

As modified, the rule would provide clarity by addressing how the registration threshold applies when an individual is compensated both for lobbying and for functions unrelated to lobbying. The modification would eliminate a single word, “gross,” in order to be consistent with the modification to the proposed rule to be codified at part 4511.0100, subpart 5a, and avoid a potential conflict between this rule and the definition of “compensation” under Minnesota Rules, part 4501.0100, subpart 4. The modification would not make the rule substantially different from the rule text published with the Board’s Dual Notice:

Subp. 2a. **Registration threshold.** An individual must register as a lobbyist with the board upon the earlier of when:

A. the individual receives total pay or consideration from all sources that exceeds $3,000 in a calendar year for the purpose of lobbying or 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. The pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the gross compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year; or

B. the individual spends more than $3,000 of their own funds in a calendar year for the purpose of lobbying. Membership dues paid by the individual, and expenses for transportation, lodging, and meals used to support lobbying by the individual, are not costs that count toward the $3,000 expenditure threshold that requires registration.

The difference between the rule text published with the Board’s Dual Notice and the modified text is within the scope of the Board’s Dual Notice because it involves the deletion of a single

word. The difference is a logical outgrowth of the Board's Dual Notice and MCN's comment, which seeks to avoid a conflict with the definition of "compensation" under Minnesota Rules, part 4501.0100, subpart 4. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

In each case, the proposed rule would provide clarity as to how to apply Minnesota Statutes, sections 10A.01, subdivision 21, and 10A.03, when an individual is compensated both for lobbying and functions unrelated to lobbying. The modification will only impact the totals reported to the Board by principals pursuant to Minnesota Statutes, section 10A.04, subdivision 6, to the extent that a relatively small number of individuals are not defined as lobbyists as a result of deleting the word "gross." The modification will have only a slight impact on whether individuals are required to register with the Board as lobbyists under Minnesota Statutes, section 10A.03, because the distinction between "gross compensation" and "compensation," as defined by Minnesota Rules, part 4501.0100, subpart 4, is unlikely to be determinative as to whether an individual has exceeded the $3,000 threshold and is thereby defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1).

In order to clarify that compensation is calculated to include earnings before any payroll deduction for income tax, the Board has also proposed a revised amendment of the definition of the term "compensation" that is codified at Minnesota Rules, part 4501.0100, subpart 4.

Part 4511.0200, subpart 2a. Registration threshold. - Comment of MSBA

The MSBA quoted from a portion of the proposed rule, then stated:

> Currently, MSBA registers a number of employees as lobbyists. However, other MSBA staff who do not directly interact with public officials support the activities of MSBA's registered lobbyists by conducting research, reviewing language, discussing options and challenges, and other activities related to prospective legislation. Because the definition of "lobbyist" includes *direct or indirect consulting or advice*, it is possible that many more MSBA employees could come within the reporting threshold.

Response: The proposed rule explains when an individual is required to register as a lobbyist pursuant to Minnesota Statutes, section 10A.03. The proposed rule does not expand the scope of who is defined as a lobbyist. Whether an individual is defined as a lobbyist or not is dictated by Minnesota Statutes, section 10A.01, subdivision 21, which generally defines the term "lobbyist" in a manner that only includes those who communicate "with public or local officials." That statute was amended, effective January 3, 2023, to provide that an individual is a lobbyist

if, within a calendar year, they are paid more than $3,000 “from a business whose primary source of revenue is derived from facilitating government relations or government affairs services between two third parties.”[8] The newly added statutory language was amended, effective January 1, 2024, as follows:

> (ii) from a business whose primary source of revenue is derived from facilitating government relations or government affairs services ~~between two third parties~~ if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients; or[9]

Rather than expand the scope of who is defined as a lobbyist, the proposed rule includes text contained within the statutory definition of the term “lobbyist” in describing when a lobbyist is required to register with the Board. The “direct or indirect consulting or advice” language comes directly from the statute and the $3,000 threshold stated within Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1), has not changed. The Board does not believe that the language in question would apply to MSBA employees, because the Board does not believe that the MSBA is a business, or that its “primary source of revenue is derived from facilitating government relations or government affairs services.” Regardless, if additional MSBA employees are now defined as lobbyists because they are compensated by such a business and their job duties include providing consulting or advice that helps the business provide government relations or government affairs services to clients, that is the direct result of a statutory change that is already in effect, rather than the proposed rule.

The MSBA stated that some of its staff, who do not directly interact with public officials, support the “MSBA’s registered lobbyists by conducting research, reviewing language, discussing options and challenges, and other activities related to prospective legislation.” The proposed rules would not impact whether those staff members are required to register as lobbyists for the reasons explained above. However, there is a distinction between the statutory definition of the term “lobbyist” under Minnesota Statutes, section 10A.01, subdivision 21, and the definition of “lobbying” that appears at Minnesota Rules, part 4511.0100, subpart 3. The term “lobbying” is defined to include both communication with public and local officials, and “[a]ny activity that directly supports this communication. . . .” As a result, a principal such as the MSBA is required to include compensation paid to non-lobbyist staff and other expenses directly related to the communications of its registered lobbyists when calculating the totals included within its annual principal report, filed pursuant to Minnesota Statutes, section 10A.04, subdivision 6.

[8] 2021 Minn. Laws 1st Spec. Sess. ch. 14, art. 11, § 6.
[9] 2023 Minn. Laws ch. 62, art. 5, § 5.

Part 4511.0200, subpart 2b. Registration not required. - Comment of MSBA

The MSBA stated:

> Subpart 2b(B) states that an association board member is not a lobbyist "unless the individual receives pay or other consideration to lobby on behalf of the association." MSBA board members receive a stipend for their service on the MSBA board, yet only a portion of a board member's time is devoted to lobbying. Some MSBA board members travel to Washington, D.C. to talk with federal legislators. The rules are not clear whether they encompass federal activity. The scope of the term "or other consideration" needs clarification. Would airfare, hotel room, food/beverage, and other expense reimbursements be considered "other consideration"?

Response: The proposed rule does not encompass the MSBA's communication with members of the United States Congress because it pertains to whether an individual is required to register as a lobbyist, under Minnesota Statutes, Chapter 10A, as a result of serving on the board or governing body of an association that is a principal. The terms "lobbyist" and "principal" are defined by Minnesota Statutes, section 10A.01, subdivisions 21 and 33, respectively. The statutory definitions of those terms are reliant upon the definitions of other terms, namely "legislative action," which is defined by Minnesota Statutes, section 10A.01, subdivision 19a, "administrative action," which is defined by Minnesota Statutes, section 10A.01, subdivision 2, "official action of a political subdivision," which is defined by Minnesota Statutes, section 10A.01, subdivision 26b, "political subdivision," which is defined by Minnesota Statutes, section 10A.01, subdivision 31, "public official," which is defined by Minnesota Statutes, section 10A.01, subdivision 35, "local official," which is defined by Minnesota Statutes, section 10A.01, subdivision 22, and "association," which is defined by Minnesota Statutes, section 10A.01, subdivision 6. With the limited exception of an individual who is defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1), item (ii), which as explained above almost certainly would not encompass MSBA staff, an individual is defined as a lobbyist only to the extent that they communicate with public or local officials, which do not include federal officials such as members of Congress.

The proposed rules would define the phrase "pay or consideration for lobbying" to mean "the compensation paid to an individual for lobbying." That definition would be codified at Minnesota Rules, part 4511.0100, subpart 5a. The word "compensation" is defined by Minnesota Rules, part 4501.0100, subpart 4. The proposed rules would modify the definition of "compensation" slightly to exclude health care and retirement benefits. If the proposed amendment of that rule is adopted, the word "compensation" will be defined to mean "every kind of payment for labor or personal services," excluding "payments of Social Security, unemployment compensation, workers' compensation, health care, retirement, or pension benefits." The reimbursement payments described by the MSBA are not compensation because they are made in order to

reimburse individuals for expenses they have incurred, rather than to compensate them for labor or personal services.

The proposed rule would clarify that an individual, such as an MSBA board member, is not required to register as a lobbyist unless they receive "pay or other consideration to lobby on behalf of the association, and the aggregate pay or consideration for lobbying from all sources exceeds $3,000 in a calendar year." The proposed rule to be codified at Minnesota Rules, part 4511.0200, subpart 2a, would further provide that "pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the gross compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year. . . ." Therefore, if an MSBA board member is not compensated more than $3,000 within a calendar year, from all sources, specifically to engage in lobbying, then that individual will not be required to register with the Board as a lobbyist as a result of being paid a stipend to serve on the MSBA's board of directors.

Part 4511.0500, subpart 3. Report of designated lobbyist. - Comment of MSBA

The MSBA stated:

> The proposed rules regarding the designated lobbyist report include, "*if the lobbyist represents an association, a current list of the names and addresses of each officer and director of the association.*" MSBA hopes to confirm that MSBA's address may be provided rather than residential addresses.

Response: Minnesota Statutes, section 10A.04, subdivision 4, paragraph (a), requires that lobbyist reports "include information the board requires from the registration form," and Minnesota Statutes, section 10A.03, subdivision 2, clause (6), requires that the lobbyist registration form include, "if the lobbyist lobbies on behalf of an association, the name and address of the officers and directors of the association." Minnesota Rules, part 4501.0100, subpart 2, defines the word "address" to mean "the complete mailing address, including the zip code. An individual may use either the person's business address or home address. An association's address is the address from which the association conducts its business." Because the word "address" is defined to include a business or home address, Board staff have advised lobbyists that when listing the addresses of an association's officers and directors, the lobbyist may use the association's address if the association's officers and directors may receive mail at that address. The Board does not intend to deviate from that practice and the proposed rules do not have any impact on how the word "address" is defined. As explained more fully on page 28 of the Board's SONAR, the proposed changes to this rule are needed to accommodate legislative changes that took effect on January 1, 2024, regarding the content of lobbyist reports.

The MSBA stated:

> The proposed rules would require a report of "each original source of money in excess of $500 provided to the individual or association that the lobbyist represents." For a membership organization that holds an annual conference and other meetings that include exhibitors and sponsorships, publishes the MSBA Journal and other materials that include advertisements, has over 2,000 school board members who typically attend one or more paid trainings or webinars, and collects other revenue, this reporting requirement may quickly become challenging to fulfill.

Response: Minnesota Statutes, section 10A.04, subdivision 4, paragraph (h), requires that lobbyist reports include:

> each original source of money in excess of $500 in any year used for the purpose of lobbying to influence legislative action, administrative action, or the official action of a political subdivision. The list must include the name, address, and employer, or, if self-employed, the occupation and principal place of business, of each payer of money in excess of $500.

Minnesota Rules, part 4511.0100, subpart 5, defines the phrase "original source of funds" to mean "a source of funds, other than the entity for which a lobbyist is registered, paid to the lobbyist, the lobbyist's employer, the entity represented by the lobbyist, or the lobbyist's principal, for lobbying purposes." The proposed rules would modify that definition slightly, by adding the text "provided by an individual or association" immediately preceding the text "other than the entity for which a lobbyist is registered. . . ." The proposed rules do not alter the scope of the information that must be reported to the Board. Instead, the requirement to report original sources of money used for lobbying is statutory, and has been in effect since the Ethics in Government Act was first enacted into law in 1974.[10]

Minnesota Statutes, section 10A.04, subdivision 4, paragraphs (g) and (h), do not explicitly state whether each lobbyist registered on behalf of an entity with multiple reporting lobbyists[11] is required to separately report gifts to officials and original sources of money used for lobbying. Each principal or other entity with registered lobbyists must have a single designated lobbyist who is responsible for reporting lobbying disbursements made by the entity, pursuant to Minnesota Statutes, section 10A.04, subdivision 9. Because there is no benefit to requiring multiple lobbyists to report duplicative information, and principals and other entities with registered lobbyists are already required to have a designated lobbyist who reports more information than other lobbyists, Board staff have advised lobbyists that only the designated

[10] 1974 Minn. Laws 1156.

[11] *See* Minn. Stat. § 10A.04, subd. 9 (2). As used in this paragraph, the term "reporting lobbyist" includes a lobbyist who reports only their own lobbying activity, commonly referred to as a self-reporting lobbyist.

lobbyist needs to report their association's gifts to officials and original sources of money used for lobbying. This practice benefits lobbyists registered on behalf of principals, such as the MSBA, that have multiple reporting lobbyists. The proposed rule would codify that practice by stating that the reporting of gifts to officials and original sources of money used for lobbying is the responsibility of the designated lobbyist.

Part 4511.0900. Lobbyist reporting for political subdivision membership organizations. - Comment of MSBA

The MSBA quoted the text of subpart 1 of the proposed rule, then stated:

> MSBA hopes that the CFB will provide greater clarity on this expansive requirement. The meaning of "attempt" is uncertain. It could constitute every conversation, phone call, email, and more. If so, the reporting requirement would be tremendously time-consuming and costly, if not actually impossible to fulfill.

Response: The proposed rule does not impose a new reporting requirement. The word "attempts" was used because Minnesota Rules, part 4511.0100, subpart 3, defines "lobbying" to mean "attempting to influence" one of three categories of government action. The three categories include legislative action, administrative action, and the official action of a political subdivision.[12] Principals such as the MSBA are required to file annual reports disclosing the total amount spent attempting to influence those three categories of government action, pursuant to Minnesota Statutes, section 10A.04, subdivision 6. The principal reporting requirement has been in effect since 1991.[13]

As explained more fully on pages 28-29 of the Board's SONAR, the legislature changed the scope of what is defined as lobbying, effective January 1, 2024, primarily by expanding it to include lobbying any political subdivision in Minnesota. That change prompted the request for Advisory Opinion 456. The question addressed by the advisory opinion is whether a membership organization whose members consist of political subdivisions is lobbying its own members when it communicates with them regarding the organization's lobbying efforts. The Board answered the question in the negative and intends to apply principles announced in the advisory opinion more broadly, necessitating the proposed rule.[14]

Subpart 1 of the proposed rule simply restates the statutory reporting requirement, except that it provides that an association whose members are political subdivisions does not need to report attempts to influence the actions of its own members. Subpart 2 of the proposed rule elaborates on that exception, stating that such an association "is not lobbying political subdivisions when the association communicates with its membership regarding lobbying efforts made on the members' behalf, or when the association recommends actions by its membership

[12] *See* Minn. Stat. §§ 10A.04, subds. 4, 6, 10A.01, subds. 21, 33, 10A.05.
[13] 1991 Minn. Laws 2761-62.
[14] *See* Minn. Stat. § 10A.02, subd. 12a.

to support a lobbying effort." That exception directly benefits the MSBA and its lobbyists by largely, if not completely, eliminating one of the three categories of lobbying from their reports, namely attempts to influence the official action of a political subdivision.

As explained in more detail above with respect to the proposed rule to be codified at Minnesota Rules, part 4511.0100, subpart 1c, Minnesota Statutes, section 10A.01, subdivision 21, generally defines the term "lobbyist" in a manner that only includes those who communicate "with public or local officials."[15] Minnesota Statutes, section 10A.01, subdivision 33, defines the term principal to include those who pay lobbyists and those who engage in lobbying as described in Minnesota Statutes, section 10A.04, subdivision 6, which is limited to communications with public and local officials, urging others to communicate with public and local officials, and activities directly supporting those communications, pursuant to Minnesota Rules, part 4511.0100, subpart 3. To the extent that the MSBA is concerned that the word "attempts" is being used in a manner that encompasses efforts other than those described above, the concern is unwarranted because the proposed rule does not, and cannot, supplant the statutory definitions of "lobbyist" and "principal," nor does it alter the definition of "lobbying" under Minnesota Rules, part 4511.0100, subpart 3.[16] To the extent that the MSBA is concerned about being required to report the total that it spends on in-person conversations, phone calls, emails, and other communications involving public or local officials, in an attempt to influence legislative or administrative action, it should remember that direct communication with public and local officials is conducted through its registered lobbyists. The new statutory reporting requirements for lobbyists have eliminated the need to report disbursements made by the lobbyist in support of lobbying, including telephone, email, and other administrative costs. As a principal the MSBA's reporting obligation is to report the total amount spent in the preceding calendar year for lobbying in Minnesota, rounded to the nearest $5,000. The reporting obligations for lobbyists and principals are statutory, and are not expanded by this administrative rule.

Part 4511.1100. Major decision of nonelected local officials. - Comment of MCN

The MCN stated:

> Subparts 1 and 2 in this section are clear that a major decision regarding the expenditure or investment of public money includes selecting recipients for government grants from the political subdivision, and that attempting to influence

[15] Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1), item (ii), also includes someone compensated by "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," but that provision is unlikely to apply under the circumstances described by the MSBA.

[16] The definition of the term "lobbying" would be amended by the proposed rules, for other reasons, described on page 24 of the Board's SONAR.

a nonelected official is lobbying if that person may make, recommend, or vote on a major decision regarding an expenditure or investment of public money.

We strongly encourage the CFB to clarify this language to include that responding to a grant program's request for proposals or otherwise applying for an existing grant program does not constitute lobbying. Additionally, answering any follow-up questions from the municipality regarding the content of grant application is not lobbying. And finally, that if a potential grantee communicates with a nonelected official about a grant opportunity outside of the normal grant process, and with the intent to influence the nonelected official to choose their proposal, that is lobbying.

Response: Minnesota Statutes, section 10A.01, subdivision 26b, defines the phrase "official action of a political subdivision" to mean "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." As explained in more detail on pages 30-32 of the Board's SONAR, the phrase "major decisions" is not presently defined in Minnesota Statutes, Chapter 10A, or within the Board's rules, and it needs to be defined to provide clarity as to when the action of a local official constitutes the official action of a political subdivision. The statutory definition of the phrase "official action of a political subdivision" does not make a distinction between major decisions that are made, recommended, or voted upon via an existing or "normal" process, and those made, recommended, or voted upon using a new or abnormal process.

Subdivision 3 of the proposed rule would provide a non-exhaustive list of decisions by political subdivisions that do not qualify as major decisions regarding the expenditure or investment of public funds. The three exclusions within that list each have a unique and specific rationale. The first is "the purchase of goods or services with public funds in the operating or capital budget of a political subdivision." That exclusion parallels Minnesota Statutes, section 10A.01, subdivision 21, paragraph (b), clause (6), which provides that the word "lobbyist" does not include "an individual while engaged in selling goods or services to be paid for by public funds." The second is "collective bargaining of a labor contract on behalf of a political subdivision." That exclusion parallels Minnesota Statutes, section 10A.01, subdivision 21, paragraph (b), clause (10), which provides that the word "lobbyist" does not include "an individual providing information or advice to members of a collective bargaining unit when the unit is actively engaged in the collective bargaining process with a state agency or a political subdivision." The third is "participating in discussions with a party or a party's representative regarding litigation between the party and the political subdivision of the local official." That exclusion is the result of a comment submitted to the Board by the Minnesota State Bar Association in January

2024,[17] and is consistent with various statutes and rules protecting the confidentiality of settlement discussions and other communications protected by attorney-client privilege.[18]

There is no statutory basis for categorically excluding a local official's decision regarding a grant application, submitted in response to a request for proposals or as part of an existing grant program, from what is defined as a major decision regarding the expenditure or investment of public money. Moreover, there is no statutory basis for categorially excluding grant applications, or subsequent communications regarding a grant application, from what is defined as lobbying. The text of subpart 2 of the proposed rule would provide that "selecting recipients for government grants from the political subdivision" constitutes a major decision regarding the expenditure or investment of public money. A grant application, and subsequent communications between the prospective grantee and a local official in a position to influence whether the grant is approved by a political subdivision, are almost certainly attempts to influence whether the grant is approved, and thereby are no different than any other communications with a local official seeking to influence the official action of a political subdivision.

Part 4511.1100, subpart 2. Actions that are a major decision regarding public funds. - Comment of Rep. Coulter

State Representative Nathan Coulter was a member of the House Elections Finance and Policy Committee during the 2023-2024 biennium. Representative Coulter quoted the text of the proposed rule, then stated:

> My only comment is on Subpart 2, Section D, referring to "expenditures". My concern is that the term could be construed as only referring to direct expenditures, not more indirect forms of financing such as Tax Increment Financing, land value write-downs, etc. I think some clarification is warranted – perhaps something like "expenditures and/or financing"?

Response: Subpart 2 will provide a non-exhaustive list of types of decisions by political subdivisions that are major decisions regarding the expenditure or investment of public money. As explained more fully on pages 30-32 of the Board's SONAR, the phrase "major decisions regarding the expenditure or investment of public money" is not defined within Minnesota Statutes, Chapter 10A, or the Board's rules, and how the phrase is defined impacts the statutory

[17] The comment is available on the Board's website at cfb.mn.gov/pdf/legal/rulemaking/2023/1_29_24_comments/MSBA.pdf.

[18] *See, e.g.*, Rule 1.6, Minn. R. Prof. Conduct. (providing that generally, "a lawyer shall not knowingly reveal information relating to the representation of a client"); Minn. Stat. § 13D.05, subd. 3 (b) (providing that a meeting of a public body may be closed to the public as "permitted by the attorney-client privilege"); Minn. Stat. § 13.393 (providing that data collected by an attorney acting in a professional capacity for a government entity is "governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility," notwithstanding the Minnesota Government Data Practices Act).

definitions of the terms “local official” and “official action of a political subdivision,” codified at Minnesota Statutes, section 10A.01, subdivisions 22 and 26b, respectively.

One type of decision that would be classified as a major decision within subpart 2, item D, is a decision on “expenditures on public infrastructure used to support private housing or business developments.” Unlike directly spending or investing public money, tax abatement[19] and tax increment financing[20] may involve reducing or deferring property tax payments, or using property tax payments to indirectly finance a portion of the costs related to a specific development. Representative Coulter’s comment has prompted the Board to propose modifying subpart 2, item D, to include tax abatement and tax increment financing as follows.

Modification to Part 4511.1100, subpart 2

> Subp. 2. **Actions that are a major decision regarding public funds.** A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:
>
> A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;
>
> B. whether to apply for or accept state or federal funding or private grant funding;
>
> C. selecting recipients for government grants from the political subdivision; or
>
> D. tax abatement, tax increment financing, or expenditures on public infrastructure, used to support private housing or business developments.

As modified, subpart 2, item D, would clarify that tax abatement and tax increment financing are treated the same as expenditures on public infrastructure, if used to support private housing or business developments. The modification would add the text “tax abatement, tax increment financing, or” to item D and add a comma after the word “infrastructure” to accommodate that change. The need for the rule is explained in more detail on pages 30-32 of the Board’s SONAR. The modification would not make the rule substantially different from the rule text published with the Board’s Dual Notice:

> Subp. 2. **Actions that are a major decision regarding public funds.** A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:

[19] *See* Minn. Stat. §§ 469.1812 - 469.1815.
[20] *See* Minn. Stat. §§ 469.174 - 469.1799.

A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;

B. whether to apply for or accept state or federal funding or private grant funding;

C. selecting recipients for government grants from the political subdivision; or

D. expenditures on public infrastructure used to support private housing or business developments.

The difference between the rule text published with the Board's Dual Notice and the modified text is within the scope of the Board's Dual Notice because it concerns the scope of a single phrase. The difference is a logical outgrowth of the Board's Dual Notice and Representative Coulter's comment, which seeks additional clarity so that the proposed rule will not be construed to exclude indirect forms of financing from what is considered a major decision. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

In each case, subpart 2 would provide a non-exhaustive list of types of decisions by political subdivisions that are major decisions regarding the expenditure or investment of public money. The modification would alter item D slightly to provide clarity and ensure the inclusion of two specific types of major decisions. The modification would have little or no substantive impact for three reasons. First, subpart 2 consists of a non-exhaustive list. The Board believes that tax abatement and tax increment financing, used to support private housing or business developments, likely fall within the scope of "major decisions regarding the expenditure or investment of public money" as that phrase is used within Minnesota Statutes, section 10A.01, subdivisions 22 and 26b, regardless of the proposed rule.

Second, any impact on the definition of the term "local official" under Minnesota Statutes, section 10A.01, subdivision 22, will likely be minimal because there is likely little, if any, difference between the universe of individuals who have the "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" and the universe of individuals who lack that authority but do have the authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding tax abatement or tax increment financing.

Third, any impact on the definition of the phrase "official action of a political subdivision" under Minnesota Statutes, section 10A.01, subdivision 26b, will likely be minimal as well. That phrase already encompasses "any action that requires a vote or approval by one or more elected local officials while acting in their official capacity," and the Board is not aware of a political

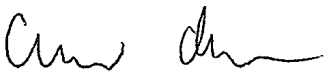
subdivision with nonelected local officials who have the authority to approve tax abatement for economic development purposes or tax increment financing without that approval being subject to a vote or approval by one or more elected officials.[21]

Therefore, the modification is not expected to expand the scope of what is considered lobbying. The benefit of the modification is added clarity and avoiding the appearance of a loophole regarding tax abatement for economic development purposes and tax increment financing.

Conclusion

The Board has addressed many concerns raised during the rulemaking process, including those raised during the formal comment period that followed publication of the Board's Dual Notice. The Board has proposed four modifications to the draft of the rules published with the Board's Dual Notice. The Board has shown that the rules are needed and reasonable. We respectfully submit that the Administrative Law Judge should recommend adoption of these rules, as modified.

Respectfully,



Andrew Olson
Legal/Management Analyst

[21] Minnesota Statutes section 469.1812, subdivision 4, which concerns tax abatement for economic development purposes, defines the term "political subdivision" to be limited to "a statutory or home rule charter city, town, school district, or county." Minnesota Statutes section 469.174, subdivisions 5-6, which concern tax increment financing, define the term "governing body" to mean "the elected council or board of a municipality" and the term "municipality" to mean a city, a county, or in rare instances, a township.

Campaign Finance and Public Disclosure Board

Adopted Permanent Rules Relating to Campaign Finance

4501.0100 DEFINITIONS.

[For text of subparts 1 to 3, see Minnesota Rules]

Subp. 4. **Compensation.** "Compensation" means every kind of payment for labor or personal services, including any amount withheld by an employer for the payment of income tax. Compensation does not include payments ~~of Social Security~~ for Federal Insurance Contributions Act taxes, unemployment ~~compensation~~ taxes, insurance, or benefits, workers' compensation insurance or benefits, disability insurance or benefits, life insurance, health care insurance or benefits, retirement benefits, or pension benefits.

[For text of subparts 4a to 7a, see Minnesota Rules]

Subp. 7b. **Original signature.** "Original signature" means:

A. a signature in the signer's handwriting or, if the signer is unable to write, the signer's mark or name written in the handwriting of another or applied by stamp at the request, and in the presence, of the signer;

B. an electronic signature consisting of the letters of the signer's name, applied using a cursive font or accompanied by text or symbols clearly indicating an intent to apply a signature, including but not limited to the letter S with a forward slash mark on one or both sides of the letter S or the placement of a forward slash mark before and after the signer's name; or

C. the signer's name on the signature line of an electronic file submitted using the filer's personal identification code.

[For text of subparts 8 and 9, see Minnesota Rules]

4501.0500 FILINGS, SUBMISSIONS, AND DISCLOSURES.

Subpart 1. **Format.** A report or statement required under Minnesota Statutes, section 10A.20, must be filed electronically in a format specified by the board, to the extent required by that section. Any other report or statement required under Minnesota Statutes, chapter 10A, must be filed electronically in a format specified by the board or on the forms provided by the board for that purpose. The board may provide alternative methods for submitting information, including other means for the electronic submission of data.

[For text of subparts 1a to 4, see Minnesota Rules]

4503.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter and Minnesota Statutes, chapter 10A, except that the definition in subpart 4a applies to Minnesota Statutes, section 211B.15. The definitions in chapter 4501 and Minnesota Statutes, chapter 10A, also apply to this chapter.

[For text of subparts 2 to 3a, see Minnesota Rules]

Subp. 3b. **County office.** "County office" means the offices specified in Minnesota Statutes, chapter 382, and does not include the office of Three Rivers Park District commissioner.

[For text of subpart 4, see Minnesota Rules]

Subp. 4a. **Headquarters.** For the purpose of Minnesota Statutes, section 211B.15, subdivision 8, "headquarters" means a building or other structure that is used for all or part of the year as the primary location where the party's business is conducted.

Subp. 4b. **Legislative caucus.** "Legislative caucus" means an organization whose members consist solely of legislators belonging to the same house of the legislature and the same political party, and is not limited to a majority or minority caucus described in Minnesota Statutes, chapter 3, but does not include a legislative party unit.

Subp. 4c. **Legislative caucus leader.** "Legislative caucus leader" means a legislator elected or appointed by a legislative caucus to lead that caucus, and is not limited to leaders designated pursuant to Minnesota Statutes, section 3.099.

Subp. 4d. **Legislative party unit.** "Legislative party unit" means a political party unit established by the party organization within a house of the legislature.

Subp. 4e. **Nomination.** Except as used in Minnesota Statutes, sections 10A.09 and 10A.201, "nomination" means the placement of a candidate or a local candidate's name on a general election or special general election ballot.

[For text of subparts 5 to 8, see Minnesota Rules]

4503.0200 ORGANIZATION OF POLITICAL COMMITTEES AND POLITICAL FUNDS.

[For text of subparts 1 to 4, see Minnesota Rules]

Subp. 5. **Termination of responsibility of former treasurer.** A former treasurer who transfers political committee or political fund records and receipts to a new treasurer or to the chair of the committee or fund is relieved of future responsibilities when the former treasurer notifies the board in writing of the change.

Subp. 6. [Repealed, L 2017 1Sp4 art 3 s 18]

4503.0450 JOINT PURCHASES.

Subpart 1. **General requirement.** Principal campaign committees, political party units, and political committees and funds may jointly purchase goods or services without making or receiving a donation in kind. If each purchaser pays the vendor for their share of the fair market value of the purchase, each purchaser must report that amount to the board as an expenditure or noncampaign disbursement as required by Minnesota Statutes, section 10A.20. If a purchaser pays the vendor for the total amount of the purchase and obtains payment from another purchaser for that purchaser's share of the fair market value of the

purchase, each purchaser must use the same reporting method under Minnesota Statutes, section 10A.20, subdivision 13.

Subp. 2. **Proportionate shares of joint purchase.** If a purchaser pays a vendor for the total amount of a joint purchase and each joint purchaser receives goods or services of equal value, each joint purchaser must pay the purchaser that paid the vendor an amount equal to the total amount paid to the vendor divided by the number of joint purchasers in order to prevent the occurrence of a donation in kind. If a purchaser pays a vendor for the total amount of a joint purchase and joint purchasers receive goods or services of differing value, each joint purchaser must pay the purchaser that paid the vendor in proportion to the value of the goods or services received in order to prevent the occurrence of a donation in kind. If a joint purchaser pays the purchaser that paid the vendor less than its proportionate share of the fair market value of the joint purchase, the difference must be reported as a donation in kind from the purchaser that paid the vendor to the joint purchaser as required by Minnesota Statutes, section 10A.20.

Subp. 3. **No impact on prohibited contributions.** Nothing in this part permits an independent expenditure or ballot question political committee or fund to make a contribution, including an approved expenditure, that is prohibited by Minnesota Statutes, section 10A.121, or alters what constitutes a coordinated expenditure.

4503.0500 CONTRIBUTIONS.

Subpart 1. **All receipts are contributions.** Any donation of money, goods, or services received by a principal campaign committee, political party unit, political committee, or political fund is considered a contribution at the time the item is received.

Subp. 2. [Repealed, L 2018 c 119 s 34]

Subp. 2a. **Contribution processors and professional fundraisers.** A vendor may solicit, process, collect, or otherwise facilitate the accumulation of contributions made to a

principal campaign committee, political party unit, political committee, or political fund, and may temporarily retain or control any contributions collected, without thereby making a contribution to the intended recipient of the contributions, if the vendor is paid the fair market value of the services provided. Contributions collected must be transmitted to the intended recipient, minus any fees withheld by the vendor. A vendor that is paid the fair market value of any goods or services provided is not a political committee or a political fund by virtue of providing those goods or services. A vendor that determines which principal campaign committee, political party unit, political committee, or political fund receives the contributions collected is a political committee or political fund as provided in Minnesota Statutes, section 10A.01, even if the recipient of the contributions pays the vendor the fair market value of the services provided to collect the contributions.

Subp. 3. **Transmission of contributions.** Promptly after receipt of any contribution intended for a principal campaign committee, political party unit, political committee, or political fund, or on demand of the treasurer, any individual, association, or vendor retaining or controlling the contribution must transmit the contribution together with any required record to the treasurer.

Subp. 4. **Identification of contributor.** An individual or association that pays for or provides goods or services, or makes goods or services available, with the knowledge that they will be used for the benefit of a principal campaign committee, political party unit, political committee, or political fund, is the contributor of those goods or services.

[For text of subparts 5 to 9, see Minnesota Rules]

Subp. 10. **Underlying sources of funding of unregistered associations.** A principal campaign committee, party unit, or political committee or fund that is not an independent expenditure or ballot question political committee or fund, must consider an association's sources of funding in determining whether a contribution may be accepted from an association that is not registered with the board as a principal campaign committee, a party

unit, a political committee, or the supporting association of a political fund. A contribution from an unregistered association is prohibited if any of that association's sources of funding would be prohibited from making the contribution directly under Minnesota Statutes, section 211B.15, subdivision 2.

4503.0700 CONTRIBUTION LIMITS.

[For text of subparts 1 to 3, see Minnesota Rules]

Subp. 4. **Commercial vendors not subject to bundling limitation.** A vendor retained by a principal campaign committee, political party unit, political committee, or political fund for the accumulation of contributions, and paid by that committee, party unit, or fund the fair market value of the services provided, as described in part 4503.0500, subpart 2a, is not subject to the bundling limitation in Minnesota Statutes, section 10A.27, subdivision 1.

4503.0800 DONATIONS IN KIND AND APPROVED EXPENDITURES.

Subpart 1. [Repealed, L 2005 c 156 art 6 s 68]

Subp. 1a. **Contributor payment of processing fee.** If a contributor pays a processing fee when making a contribution and the fee would otherwise have been billed to the recipient of the contribution or withheld from the amount transmitted to the recipient, the amount of the fee is a donation in kind to the recipient of the contribution. If the donation in kind exceeds the amount specified in Minnesota Statutes, section 10A.13, subdivision 1, the recipient's treasurer must keep an account of the contribution and must include the contribution within campaign reports as required by Minnesota Statutes, section 10A.20. If the donation in kind does not exceed the amount specified in Minnesota Statutes, section 10A.13, subdivision 1, the recipient's treasurer is not required to keep an account of the contribution or to include it within campaign reports filed under Minnesota Statutes, section 10A.20.

Subp. 2. **Multicandidate materials.** An approved expenditure made on behalf of multiple candidates or local candidates must be allocated between the candidates or the local candidates on a reasonable basis if the cost exceeds $20 per candidate or local candidate.

Subp. 3. **Multipurpose materials.** A reasonable portion of the fair market value of preparation and distribution of association newsletters or similar materials which, in part, advocate the nomination or election of a candidate or a local candidate is a donation in kind which must be approved by the candidate or the local candidate if the value exceeds $20, unless an independent expenditure is being made.

Subp. 4. **Office facilities.** The fair market value of shared office space or services provided to a candidate or a local candidate without reimbursement is a donation in kind.

[For text of subpart 5, see Minnesota Rules]

4503.0900 NONCAMPAIGN DISBURSEMENTS.

Subpart 1. **Additional definitions.** In addition to those listed in Minnesota Statutes, section 10A.01, subdivision 26, the following expenses are noncampaign disbursements:

[For text of items A to D, see Minnesota Rules]

E. payment of fines assessed by the board;

F. costs of running a transition office for a winning gubernatorial candidate during the first six months after election; and

G. costs to maintain a bank account that is required by law, including service fees, the cost of ordering checks, and check processing fees.

Subp. 2. [Repealed, 21 SR 1779]

Subp. 2a. **Expenses incurred by leaders of a legislative caucus.** Expenses incurred by a legislative caucus leader in carrying out their leadership responsibilities may be paid by their principal campaign committee and classified as a noncampaign disbursement for

expenses incurred by leaders of a legislative caucus. These expenses must be incurred for the operation of the caucus and include but are not limited to expenses related to operating a website, social media accounts, a telephone system, similar means of communication, travel expenses, and legal expenses.

Subp. 2b. **Signage and supplies for office holders.** Expenses incurred by an office holder for signage outside their official office and for basic office supplies purchased to aid the office holder in performing the tasks of their office may be paid by their principal campaign committee and classified as a noncampaign disbursement for expenses for serving in public office. These expenses may include signage, stationery, or other means of communication that identify the office holder as a member of a legislative caucus.

Subp. 2c. **Equipment purchases.** The cost of durable equipment purchased by a principal campaign committee, including but not limited to computers, cell phones, and other electronic devices, must be classified as a campaign expenditure unless the equipment is purchased to replace equipment that was lost, stolen, or damaged to such a degree that it no longer serves its intended purpose, or the equipment will be used solely:

A. by a member of the legislature or a constitutional officer in the executive branch to provide services for constituents during the period from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held;

B. by a winning candidate to provide services to residents in the district in accordance with subpart 1;

C. for campaigning by a person with a disability in accordance with subpart 1;

D. for running a transition office in accordance with subpart 1; or

E. as home security hardware.

[For text of subpart 3, see Minnesota Rules]

4503.1000 CAMPAIGN MATERIALS INCLUDING OTHER CANDIDATES.

Subpart 1. **Inclusion of others without attempt to influence nomination or election.** Campaign materials, including media advertisements, produced and distributed on behalf of one candidate which contain images of, appearances by, or references to another candidate or local candidate, but which do not mention the candidacy of the other candidate or local candidate or make a direct or indirect appeal for support of the other candidate or local candidate, are not contributions to, or expenditures on behalf of that candidate or local candidate.

Subp. 2. **Multicandidate materials prepared by a candidate.** A candidate who produces and distributes campaign materials, including media advertisements, which include images of, appearances by, or references to one or more other candidates or local candidates, and which mention the candidacy of the other candidates or local candidates or include a direct or indirect appeal for the support of the other candidates or local candidates must collect from each of the other candidates or local candidates a reasonable proportion of the production and distribution costs.

4503.1900 AGGREGATED EXPENDITURES.

Expenditures and noncampaign disbursements may be aggregated and reported as lump sums when itemized within a report filed under Minnesota Statutes, section 10A.20, if:

A. each expenditure or noncampaign disbursement was made to the same vendor;

B. each expenditure or noncampaign disbursement was made for the same type of goods or services;

C. each lump sum consists solely of aggregated expenditures or solely of aggregated noncampaign disbursements;

D. each lump sum consists solely of aggregated expenditures or noncampaign disbursements that are paid, are unpaid, or represent the dollar value of a donation in kind;

E. the expenditures and noncampaign disbursements are aggregated over a period of no more than 31 days; and

F. all expenditures and noncampaign disbursements made prior to the end of a reporting period are included within the report covering that period.

Lump sums must be dated based on the last date within the period over which the expenditures or noncampaign disbursements are aggregated. This subpart does not alter the date an expenditure is made for purposes of the registration requirements provided in Minnesota Statutes, section 10A.14.

4503.2000 DISCLAIMERS.

Subpart 1. **Additional definitions.** The following definitions apply to this part and Minnesota Statutes, section 211B.04:

A. "broadcast media" means a television station, radio station, cable television system, or satellite system; and

B. "social media platform" means a website or application that allows multiple users to create, share, and view user-generated content, excluding a website controlled primarily by the association or individual that caused the communication to be prepared or disseminated.

Subp. 2. **Material linked to a disclaimer.** Minnesota Statutes, section 211B.04, does not apply to the following communications that link directly to an online page that includes a disclaimer in the form required by that section if the communication is made by or on behalf of a candidate, principal campaign committee, political committee, political fund, political party unit, or person who has made an electioneering communication, as those terms are defined in Minnesota Statutes, chapter 10A:

A. text, images, video, or audio disseminated via a social media platform;

B. a text or multimedia message disseminated only to telephone numbers;

C. text, images, video, or audio disseminated using an application accessed primarily via mobile phone, excluding email messages, telephone calls, and voicemail messages; and

D. paid electronic advertisements disseminated via the internet by a third party, including but not limited to online banner advertisements and advertisements appearing within the electronic version of a newspaper, periodical, or magazine.

The link must be conspicuous and when selected must result in the display of an online page that prominently includes the required disclaimer.

4511.0100 DEFINITIONS.

[For text of subparts 1 and 1a, see Minnesota Rules]

Subp. 1b. **Administrative overhead expenses.** "Administrative overhead expenses" means costs incurred by the principal for office space, transportation costs, and website operations that are used to support lobbying in Minnesota.

Subp. 1c. **Development of prospective legislation.** "Development of prospective legislation" means communications that request support for legislation that has not been introduced as a bill, communications that provide language, or comments on language, used in draft legislation that has not been introduced as a bill, or communications that 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 following actions do not constitute development of prospective legislation:

A. responding to a request for information by a public official;

B. requesting that a public official respond to a survey on the official's support or opposition for an issue;

C. providing information to public officials in order to raise awareness and educate on an issue or topic; or

D. advocating for an issue without requesting action by the public official.

[For text of subpart 2, see Minnesota Rules]

Subp. 3. **Lobbying.** "Lobbying" means attempting to influence legislative action, administrative action, or the official action of a political subdivision by communicating with or urging others to communicate with public officials or local officials. Any activity that directly supports this communication is considered a part of lobbying. Payment of an application fee, or processing charge, for a government service, permit, or license is not lobbying or an activity that directly supports lobbying.

Subp. 4. **Lobbyist's disbursements.** "Lobbyist's disbursements" include disbursements for each gift given by the lobbyist, the lobbyist's employer, or any person or association represented by the lobbyist.

Subp. 5. **Original source of funds.** "Original source of funds" means a source of funds, provided by an individual or association other than the entity for which a lobbyist is registered, paid to the lobbyist, the lobbyist's employer, the entity represented by the lobbyist, or the lobbyist's principal, for lobbying purposes.

Subp. 5a. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the ~~gross~~ compensation paid to an individual for lobbying. An individual whose job responsibilities do not include lobbying, and who has not been directed or requested to lobby on an issue by their employer, does not receive pay or consideration for lobbying they undertake on their own initiative.

[For text of subpart 6, see Minnesota Rules]

Subp. 7. **Reporting lobbyist.** "Reporting lobbyist" means a lobbyist responsible for reporting lobbying activity of two or more lobbyists representing the same entity. Lobbying

activity on behalf of an entity may be reported by each individual lobbyist that represents an entity, or by one or more reporting lobbyists, or a combination of individual reports and reports from a reporting lobbyist.

Subp. 8. **State agency.** "State agency" means any office, officer, department, division, bureau, board, commission, authority, district, or agency of the state of Minnesota.

4511.0200 REGISTRATION.

[For text of subpart 1, see Minnesota Rules]

Subp. 2. **Separate registration for each lobbyist.** Multiple lobbyists representing the same individual, association, political subdivision, or higher education system must each register separately. A lobbyist who reports lobbying activity to the board through a reporting lobbyist must list the name and registration number of the reporting lobbyist on a lobbyist registration. If the reporting lobbyist changes, or if the lobbyist ceases to report through a reporting lobbyist, the lobbyist must amend the registration within ten days.

Subp. 2a. **Registration threshold.** An individual must register as a lobbyist with the board upon the earlier of when:

A. the individual receives total pay or consideration from all sources that exceeds $3,000 in a calendar year for the purpose of lobbying or 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. The pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the ~~gross~~ compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year; or

B. the individual spends more than $3,000 of their own funds in a calendar year for the purpose of lobbying. Membership dues paid by the individual, and expenses for

transportation, lodging, and meals used to support lobbying by the individual, are not costs that count toward the $3,000 expenditure threshold that requires registration.

Subp. 2b. **Registration not required.** An individual is not required to register as a lobbyist with the board:

A. to represent the lobbyist's own interests if the lobbyist is already registered to represent one or more principals, unless the lobbyist spends over $3,000 in personal funds in a calendar year for the purpose of lobbying; or

B. as a result of serving on the board or governing body of an association that is a principal, unless the individual receives pay or other consideration to lobby on behalf of the association, and the aggregate pay or consideration for lobbying from all sources exceeds $3,000 in a calendar year.

[For text of subpart 3, see Minnesota Rules]

Subp. 4. **Registration of reporting lobbyist.** A reporting lobbyist must indicate on the lobbyist registration form that the lobbyist will be reporting lobbying activity for additional lobbyists representing the same entity. The registration must list the name and registration number of each lobbyist that will be included in reports to the board made by the reporting lobbyist. Changes to the list of lobbyists represented by a reporting lobbyist must be amended on the reporting lobbyist registration within ten days, or provided to the board at the time of filing a report required by Minnesota Statutes, section 10A.04, subdivision 2.

4511.0300 PRINCIPALS.

Individuals or associations represented by lobbyists are presumed to be principals until they establish that they do not fall within the statutory definition of a principal. A political subdivision; public higher education system; or any office, department, division, bureau,

board, commission, authority, district, or agency of the state of Minnesota is not an association under Minnesota Statutes, section 10A.01, and is not a principal.

4511.0400 TERMINATION.

Subpart 1. **Lobbyist termination.** A lobbyist who has ceased lobbying for a particular entity may terminate registration by filing a lobbyist termination form and a lobbyist report covering the period from the last report filed through the date of termination. If the lobbying activity of the lobbyist is reported by a reporting lobbyist, the nonreporting lobbyist may terminate by filing a lobbyist termination form and notifying the reporting lobbyist of all lobbying activity by the lobbyist during the period from the last report filed through the date of termination.

Subp. 2. **Reporting lobbyist termination.** A reporting lobbyist who has ceased lobbying for a particular entity may terminate registration by filing a lobbyist termination form and a lobbyist report covering the period from the last report filed through the date of termination. The termination of a reporting lobbyist reverts the reporting responsibility back to each lobbyist listed on the registration of the reporting lobbyist.

Subp. 3. **Designated lobbyist termination.** A designated lobbyist who has ceased lobbying for a particular entity may terminate their registration using the procedure provided in subpart 1. When the designated lobbyist of a lobbying entity terminates, the entity is responsible to assign the responsibility to report the entity's lobbying disbursements to another lobbyist.

4511.0500 LOBBYIST REPORTING REQUIREMENTS.

Subpart 1. **Separate reporting required for each entity.** A lobbyist must report separately for each entity for which the lobbyist is registered, unless their activity is reported in the manner provided in Minnesota Statutes, section 10A.04, subdivision 9.

Subp. 2. [Repealed, L 2017 1Sp4 art 3 s 18]

Subp. 3. **Report of designated lobbyist.** With each report of lobbyist activity, a designated lobbyist must report:

A. the name and address of each person, if any, by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears;

B. if the lobbyist represents an association, a current list of the names and addresses of each officer and director of the association;

C. each original source of money in excess of $500 provided to the individual or association that the lobbyist represents; and

D. each gift to a public or local official given by or on behalf of a principal or a lobbyist registered for the principal.

[For text of subpart 4, see Minnesota Rules]

Subp. 5. [See repealer.]

4511.0600 REPORTING DISBURSEMENTS.

Subpart 1. **Determination of actual costs required.** To the extent that actual costs of lobbying activities or administrative overhead expenses incurred by the principal to support lobbying can be obtained or calculated by reasonable means, those actual costs must be determined, recorded, and used for reporting purposes.

Subp. 2. **Approximation of costs.** If the actual cost of a lobbying activity or administrative overhead expenses incurred by the principal to support lobbying cannot be obtained or calculated through reasonable means, those costs must be reasonably approximated.

[For text of subparts 3 to 6, see Minnesota Rules]

4511.0700 REPORTING COMPENSATION PAID TO LOBBYIST.

Subpart 1. **Reporting by lobbyist.** Compensation paid to a lobbyist for lobbying is not reportable by the lobbyist.

[For text of subpart 2, see Minnesota Rules]

4511.0900 LOBBYIST REPORTING FOR POLITICAL SUBDIVISION MEMBERSHIP ORGANIZATIONS.

Subpart 1. **Required reporting.** An association whose membership consists of political subdivisions within Minnesota and which is a principal that provides lobbyist representation on issues as directed by its membership must report:

A. attempts to influence administrative action on behalf of the organization's membership;

B. attempts to influence legislative action on behalf of the organization's membership; and

C. attempts to influence the official action of a political subdivision on behalf of the organization's membership, unless the political subdivision is a member of the association.

Subp. 2. **Communication with membership.** A membership association described in subpart 1 is not lobbying political subdivisions when the association communicates with its membership regarding lobbying efforts made on the members' behalf, or when the association recommends actions by its membership to support a lobbying effort.

4511.1000 ACTIONS AND APPROVAL OF ELECTED LOCAL OFFICIALS.

Subpart 1. **An action that requires a vote of the governing body.** Attempting to influence the vote of an elected local official while acting in their official capacity is lobbying of that official's political subdivision.

Subp. 2. **Approval by an elected local official.** Attempting to influence a decision of an elected local official that does not require a vote by the elected local official is lobbying if the elected local official has discretion in their official capacity to either approve or deny a government service or action. Approval by an elected local official does not include:

A. issuing a government license, permit, or variance that is routinely provided when the applicant has complied with the requirements of existing state code or local ordinances;

B. any action which is performed by the office of the elected local official and which does not require personal approval by an elected local official;

C. prosecutorial discretion exercised by a county attorney; or

D. participating in discussions with a party or a party's representative regarding litigation between the party and the political subdivision of the elected local official.

4511.1100 MAJOR DECISION OF NONELECTED LOCAL OFFICIALS.

Subpart 1. **Major decision regarding the expenditure of public money.** Attempting to influence a nonelected local official is lobbying if the nonelected local official may make, recommend, or vote on as a member of the political subdivision's governing body, a major decision regarding an expenditure or investment of public money.

Subp. 2. **Actions that are a major decision regarding public funds.** A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:

A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;

B. whether to apply for or accept state or federal funding or private grant funding;

C. selecting recipients for government grants from the political subdivision; or

D. tax abatement, tax increment financing, or expenditures on public infrastructure, used to support private housing or business developments.

Subp. 3. **Actions that are not a major decision.** A major decision regarding the expenditure of public money does not include:

A. the purchase of goods or services with public funds in the operating or capital budget of a political subdivision;

B. collective bargaining of a labor contract on behalf of a political subdivision; or

C. participating in discussions with a party or a party's representative regarding litigation between the party and the political subdivision of the local official.

4512.0200 GIFTS WHICH MAY NOT BE ACCEPTED.

Subpart 1. **Acceptance.** An official may not accept a gift given by a lobbyist or lobbyist principal or given as the result of a request by a lobbyist or lobbyist principal unless the gift satisfies an exception under this part or Minnesota Statutes, section 10A.071.

Subp. 2. **Use of gift to a political subdivision.** An official may not use a gift given by a lobbyist or lobbyist principal to a political subdivision until the gift has been formally accepted by an official action of the governing body of the political subdivision.

Subp. 3. **Exception.** A gift is not prohibited if it consists of informational material given by a lobbyist or principal to assist an official in the performance of official duties and the lobbyist or principal had a significant role in the creation, development, or production of that material.

4525.0100 DEFINITIONS.

[For text of subparts 1 to 6, see Minnesota Rules]

Subp. 6a. **Preponderance of the evidence.** "Preponderance of the evidence" means, in light of the evidence obtained by or known to the board, the evidence leads the board to believe that a fact is more likely to be true than not true.

[For text of subparts 7 and 8, see Minnesota Rules]

4525.0200 COMPLAINTS OF VIOLATIONS.

[For text of subpart 1, see Minnesota Rules]

Subp. 2. **Form.** Complaints must be submitted in writing. The name and address of the person making the complaint, or of the individual who has signed the complaint while acting on the complainant's behalf, must be included on the complaint. The complaint must be signed by the complainant or an individual authorized to act on behalf of the complainant. A complainant must list the alleged violator and the alleged violator's address if known by the complainant and describe the complainant's knowledge of the alleged violation. Any evidentiary material should be submitted with the complaint. Complaints are not available for public inspection or copying until after the complaint is dismissed or withdrawn or the board makes a finding.

Subp. 3. [Repealed, 30 SR 903]

Subp. 3a. **Withdrawal.** Prior to a prima facie determination being made, a complaint may be withdrawn upon the written request of the person making the complaint or any individual authorized to act on that person's behalf. After a prima facie determination is made, a complaint may not be withdrawn.

[For text of subparts 4 to 6, see Minnesota Rules]

4525.0210 DETERMINATIONS PRIOR TO AND DURING FORMAL INVESTIGATION.

[For text of subparts 1 to 3, see Minnesota Rules]

Subp. 3a. **Making the probable cause determination.** In determining whether there is probable cause to believe a violation occurred, any evidence obtained by or known to the board may be considered. Arguments of the respondent and complainant must be considered. Probable cause exists if there are sufficient facts and reasonable inferences to be drawn therefrom to believe that a violation of law has occurred.

[For text of subpart 4, see Minnesota Rules]

Subp. 5. **Action after probable cause found.** If the board finds that probable cause exists to believe that a violation has occurred, the board then must determine whether the alleged violation warrants a formal investigation.

When making this determination, the board must consider the type of possible violation; the magnitude of the violation if it is a financial violation; the extent of knowledge or intent of the violator; the benefit of formal findings, conclusions, and orders compared to informal resolution of the matter; the availability of board resources; whether the violation has been remedied; and any other similar factor necessary to decide whether the alleged violation warrants a formal investigation.

If the board orders a formal investigation, the order must be in writing and must describe the basis for the board's determination, the possible violations to be investigated, the scope of the investigation, and the discovery methods available for use by the board in the investigation.

The executive director must promptly notify the complainant and the respondent of the board's determination.

The notice to the respondent also must:

[For text of items A to C, see Minnesota Rules]

D. state that the respondent will be given an opportunity to be heard by the board prior to the board's determination as to whether any violation occurred.

At the conclusion of the investigation, the board must determine whether a violation occurred. The board's determination of any disputed facts must be based upon a preponderance of the evidence.

[For text of subpart 6, see Minnesota Rules]

4525.0220 SUMMARY PROCEEDINGS.

[For text of subparts 1 and 2, see Minnesota Rules]

Subp. 3. **Consideration of request by board.** Upon receipt of a request for a summary proceeding, the executive director must submit the request to the board. If the matter was initiated by a complaint, the complaint has not been dismissed, and a probable cause determination has not been made, the executive director must send a copy of the request to the complainant no later than the time that the request is submitted to the board. Under any other circumstances a complainant must not be notified or provided a copy of the request. The request must be considered by the board at its next meeting that occurs at least ten days after the request was received. If the executive director sends a copy of the request to the complainant pursuant to this subpart, the complainant must be given an opportunity to be heard by the board.

The board is not required to agree to a request for a summary proceeding. If the board modifies the respondent's request for a summary proceeding, the board must obtain the respondent's agreement to the modifications before undertaking the summary proceeding.

4525.0500 INVESTIGATIONS AND AUDITS; GENERAL PROVISIONS.

[For text of subparts 1 and 2, see Minnesota Rules]

Subp. 2a. **Penalties.** In exercising discretion as to the imposition of a civil penalty for violation of a statute within the board's jurisdiction, the board must consider the factors identified in Minnesota Statutes, section 14.045. The board also may consider additional factors such as whether a violator created and complied with appropriate internal controls

or policies before the violation occurred, whether the violator could have avoided the violation, whether the violator voluntarily reported or corrected any violation, and whether the violator took measures to remedy or mitigate any violation or avoid future violations.

[For text of subparts 3 to 7, see Minnesota Rules]

4525.0550 FORMAL AUDITS.

Subpart 1. **Formal audit.** The purpose of a formal audit is to ensure that all information included in the report or statement being audited is accurately reported. The fact that the board is conducting a formal audit does not imply that the subject of the audit has violated any law. When conducting an audit, the board may require testimony under oath, permit written statements to be given under oath, and issue subpoenas and cause them to be served. When conducting an audit the board may require the production of any records required to be retained under Minnesota Statutes, section 10A.025.

[For text of subparts 2 and 3, see Minnesota Rules]

Subp. 4. **Audits of affidavits of contributions.** The board may audit the affidavit of contributions filed by a candidate or the candidate's treasurer to determine whether the candidate is eligible to receive a public subsidy payment. The executive director must contact the principal campaign committee of a candidate and request the information necessary to audit any affidavit of contributions that was not filed by electronic filing system, if the committee has accepted contributions from individuals totaling less than twice the amount required to qualify for a public subsidy payment.

Subp. 5. **Audits of other campaign finance filings.** The board may audit any campaign finance report or statement that is filed or required to be filed with the board under Minnesota Statutes, chapter 10A or 211B. The board may conduct a partial audit, including auditing a campaign finance report to determine whether a beginning or ending balance reconciles with the filer's financial records. In determining whether to undertake an audit, the board

must consider the availability of board resources, the possible benefit to the public, and the magnitude of any reporting failures or violations that may be discovered as a result of the audit. The board may conduct audits in which respondents are selected on a randomized basis designed to capture a sample of respondents that meet certain criteria. The board may conduct audits in which all respondents meet certain criteria. When undertaking an audit with respondents selected on a randomized basis, the board must, to the extent possible, seek to prevent selecting respondents based on their political party affiliation, or if the respondents are candidates, based on their incumbency status.

RENUMBERING INSTRUCTION. A. Renumber Minnesota Rules, part 4501.0100, subpart 7a, as Minnesota Rules, part 4501.0100, subpart 7c.

B. Renumber Minnesota Rules, part 4503.0100, subpart 3a, as Minnesota Rules, part 4503.0100, subpart 3c.

REPEALER. Minnesota Rules, part 4511.0500, subpart 5, is repealed.

Order Adopting Rules

Minnesota Campaign Finance and Public Disclosure Board

Adoption of Rules Relating to Campaign Finance; Lobbying; and Audits and Investigations, Minnesota Rules, Chapters 4501, 4503, 4511, 4512, and 4525; Revisor's ID Number 4809; OAH Docket Number 24-9030-39382

BACKGROUND INFORMATION

1. This order repeals Minnesota Rules, part 4511.0500, subpart 5, which as a result of the amendment of Minnesota Rules, part 4511.0500, subpart 3, will become duplicative and therefore must be repealed under Minnesota Statutes, section 14.05, subdivision 5.

2. The Campaign Finance and Public Disclosure Board has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law. A copy of the Board's authorization to propose the rules is attached.

3. The Board received four written comments and submissions on the rules. Zero persons requested a public hearing. Therefore, there are not 25 or more requests for a public hearing. The Board received zero requests for notice of submission to the Office of Administrative Hearings.

4. The Board modified the proposed rules, in four ways, following publication of its Dual Notice.

A. Modification to Part 4501.0100, subpart 4

> Subp. 4. **Compensation.** "Compensation" means every kind of payment for labor or personal services, including any amount withheld by an employer for the payment of income tax. Compensation does not include payments ~~of Social Security~~ for Federal Insurance Contributions Act taxes, unemployment ~~compensation~~ taxes, insurance, or benefits, workers' compensation insurance or benefits, disability insurance or benefits, life insurance, health care insurance or benefits, retirement benefits, or pension benefits.

As modified, the rule would provide clarity by excluding many similar types of payments made by employers for various benefits from the definition of compensation, which for

some individuals may be difficult to calculate without those exclusions. The rule would continue to define core types of remuneration as compensation, including wages and salaries, payments made to contractors for services rendered, bonuses, commissions, deferred compensation, and payments of stock or other shares of ownership. The modification would also eliminate the need to refer to "gross compensation" within the proposed rule to be codified at Minnesota Rules, part 4511.0100, subpart 5a.

The modification would not make the rule substantially different from the rule text published with the Board's Dual Notice:

> Subp. 4. **Compensation.** "Compensation" means every kind of payment for labor or personal services. Compensation does not include payments of Social Security, unemployment compensation, workers' compensation, health care, retirement, or pension benefits.

The modification regarding amounts withheld for the payment of income tax, while adding clarity, would not change the substance of the rule because the word "payment" is already considered to include earnings prior to any withholding for payment of income tax. The differences between the rule text published with the Board's Dual Notice and the modified text are within the scope of the Board's Dual Notice because they concern the definition of a single word. The differences are a logical outgrowth of the Board's Dual Notice and the comment of the Minnesota Council of Nonprofits, which seeks additional clarity so that individuals may better understand how to calculate their compensation for purposes of determining whether they need to register as a lobbyist. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

B. Modification to Part 4511.0100, subpart 5a

> Subp. 5a. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the compensation paid to an individual for lobbying. An individual whose job responsibilities do not include lobbying, and who has not been directed or requested to lobby on an issue by their employer, does not receive pay or consideration for lobbying they undertake on their own initiative.

As modified, the rule would provide clarity by defining a phrase that impacts whether an individual is defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1). The need for this rule is explained in more detail on page 24 of the Board's SONAR. The modification would eliminate a single word, "gross," in order to avoid a potential conflict between this rule and the definition of "compensation" under Minnesota Rules, part 4501.0100, subpart 4. The modification

would not make the rule substantially different from the rule text published with the Board's Dual Notice:

> Subp. 5a. **Pay or consideration for lobbying.** "Pay or consideration for lobbying" means the gross compensation paid to an individual for lobbying. An individual whose job responsibilities do not include lobbying, and who has not been directed or requested to lobby on an issue by their employer, does not receive pay or consideration for lobbying they undertake on their own initiative.

The difference between the rule text published with the Board's Dual Notice and the modified text is within the scope of the Board's Dual Notice because it involves the deletion of a single word within the definition of a single phrase. The difference is a logical outgrowth of the Board's Dual Notice and the comment of the Minnesota Council of Nonprofits, which seeks to avoid a conflict between this rule and the definition of "compensation" under Minnesota Rules, part 4501.0100, subpart 4. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

In each case, the proposed rule would define a term that needs to be defined in order to provide clarity as to who is defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1). The modification will only impact the totals reported to the Board by principals pursuant to Minnesota Statutes, section 10A.04, subdivision 6, to the extent that a relatively small number of individuals are not defined as lobbyists as a result of deleting the word "gross." The modification will have only a slight impact on whether individuals are required to register with the Board as lobbyists under Minnesota Statutes, section 10A.03, because the distinction between "gross compensation" and "compensation," as defined by Minnesota Rules, part 4501.0100, subpart 4, is unlikely to be determinative as to whether an individual has exceeded the $3,000 threshold and is thereby defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1).

C. Modification to Part 4511.0200, subpart 2a

> Subp. 2a. **Registration threshold.** An individual must register as a lobbyist with the board upon the earlier of when:
>
> A. the individual receives total pay or consideration from all sources that exceeds $3,000 in a calendar year for the purpose of lobbying or 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. The pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year; or

B. the individual spends more than $3,000 of their own funds in a calendar year for the purpose of lobbying. Membership dues paid by the individual, and expenses for transportation, lodging, and meals used to support lobbying by the individual, are not costs that count toward the $3,000 expenditure threshold that requires registration.

As modified, the rule would provide clarity by addressing how the registration threshold applies when an individual is compensated both for lobbying and for functions unrelated to lobbying. The modification would eliminate a single word, "gross," in order to be consistent with the modification to the proposed rule to be codified at part 4511.0100, subpart 5a, and avoid a potential conflict between this rule and the definition of "compensation" under Minnesota Rules, part 4501.0100, subpart 4. The modification would not make the rule substantially different from the rule text published with the Board's Dual Notice:

Subp. 2a. **Registration threshold.** An individual must register as a lobbyist with the board upon the earlier of when:

A. the individual receives total pay or consideration from all sources that exceeds $3,000 in a calendar year for the purpose of lobbying or 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. The pay or consideration for lobbying for an individual whose job duties include both lobbying and functions unrelated to lobbying is determined by multiplying the gross compensation of the individual by the percentage of the individual's work time spent lobbying in the calendar year; or

B. the individual spends more than $3,000 of their own funds in a calendar year for the purpose of lobbying. Membership dues paid by the individual, and expenses for transportation, lodging, and meals used to support lobbying by the individual, are not costs that count toward the $3,000 expenditure threshold that requires registration.

The difference between the rule text published with the Board's Dual Notice and the modified text is within the scope of the Board's Dual Notice because it involves the deletion of a single word. The difference is a logical outgrowth of the Board's Dual

Notice and the comment of the Minnesota Council of Nonprofits, which seeks to avoid a conflict with the definition of "compensation" under Minnesota Rules, part 4501.0100, subpart 4. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

In each case, the proposed rule would provide clarity as to how to apply Minnesota Statutes, sections 10A.01, subdivision 21, and 10A.03, when an individual is compensated both for lobbying and functions unrelated to lobbying. The modification will only impact the totals reported to the Board by principals pursuant to Minnesota Statutes, section 10A.04, subdivision 6, to the extent that a relatively small number of individuals are not defined as lobbyists as a result of deleting the word "gross." The modification will have only a slight impact on whether individuals are required to register with the Board as lobbyists under Minnesota Statutes, section 10A.03, because the distinction between "gross compensation" and "compensation," as defined by Minnesota Rules, part 4501.0100, subpart 4, is unlikely to be determinative as to whether an individual has exceeded the $3,000 threshold and is thereby defined as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 21, paragraph (a), clause (1).

D. Modification to Part 4511.1100, subpart 2

> Subp. 2. **Actions that are a major decision regarding public funds.** A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:
>
> A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;
>
> B. whether to apply for or accept state or federal funding or private grant funding;
>
> C. selecting recipients for government grants from the political subdivision; or
>
> D. tax abatement, tax increment financing, or expenditures on public infrastructure, used to support private housing or business developments.

As modified, subpart 2, item D, would clarify that tax abatement and tax increment financing are treated the same as expenditures on public infrastructure, if used to support private housing or business developments. The modification would add the text "tax abatement, tax increment financing, or" to item D and add a comma after the word "infrastructure" to accommodate that change. The need for the rule is explained in more

detail on pages 30-32 of the Board's SONAR. The modification would not make the rule substantially different from the rule text published with the Board's Dual Notice:

> Subp. 2. **Actions that are a major decision regarding public funds.** A major decision regarding the expenditure or investment of public money includes but is not limited to a decision on:
>
> A. the development and ratification of operating and capital budgets of a political subdivision, including development of the budget request for an office or department within the political subdivision;
>
> B. whether to apply for or accept state or federal funding or private grant funding;
>
> C. selecting recipients for government grants from the political subdivision; or
>
> D. expenditures on public infrastructure used to support private housing or business developments.

The difference between the rule text published with the Board's Dual Notice and the modified text is within the scope of the Board's Dual Notice because it concerns the scope of a single phrase. The difference is a logical outgrowth of the Board's Dual Notice and the comment of Representative Nathan Coulter, which seeks additional clarity so that the proposed rule will not be construed to exclude indirect forms of financing from what is considered a major decision. The Board's Dual Notice provided fair warning that the outcome could be the proposed rule, as modified, because the modification is a logical outgrowth of the Board's Dual Notice, the subject matter remains the same, and the effects of the proposed rule, as modified, are not substantially different from the effects of the proposed rule as published with the Board's Dual Notice.

In each case, subpart 2 would provide a non-exhaustive list of types of decisions by political subdivisions that are major decisions regarding the expenditure or investment of public money. The modification would alter item D slightly to provide clarity and ensure the inclusion of two specific types of major decisions. The modification would have little or no substantive impact for three reasons. First, subpart 2 consists of a non-exhaustive list. The Board believes that tax abatement and tax increment financing, used to support private housing or business developments, likely fall within the scope of "major decisions regarding the expenditure or investment of public money" as that phrase is used within Minnesota Statutes, section 10A.01, subdivisions 22 and 26b, regardless of the proposed rule.

Second, any impact on the definition of the term "local official" under Minnesota Statutes, section 10A.01, subdivision 22, will likely be minimal because there is likely little, if any,

difference between the universe of individuals who have the "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" and the universe of individuals who lack that authority but do have the authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding tax abatement or tax increment financing.

Third, any impact on the definition of the phrase "official action of a political subdivision" under Minnesota Statutes, section 10A.01, subdivision 26b, will likely be minimal as well. That phrase already encompasses "any action that requires a vote or approval by one or more elected local officials while acting in their official capacity," and the Board is not aware of a political subdivision with nonelected local officials who have the authority to approve tax abatement for economic development purposes or tax increment financing without that approval being subject to a vote or approval by one or more elected officials.

Therefore, the modification is not expected to expand the scope of what is considered lobbying. The benefit of the modification is added clarity and avoiding the appearance of a loophole regarding tax abatement for economic development purposes and tax increment financing.

5. The rules are needed and reasonable.

6. A copy of the Board's authorization to adopt the rules is attached.

ORDER

The above-named rules, in the form published in the State Register on October 7, 2024, with the modifications as indicated in the Revisor's draft, file number 4809, dated December 17, 2024, are adopted under the Board's authority in Minnesota Statutes, sections 10A.02, subdivisions 13 and 12a, 10A.01, subdivision 26, paragraph (a), clause (22), 14.125, and 14.05, subdivision 5.

January __, 2025

Jeffrey Sigurdson
Executive Director

MINNESOTA CAMPAIGN FINANCE BOARD

Senator Jim Carlson
3221 Minnesota Senate Bldg
St Paul, MN 55155

October 1, 2024

Re: Campaign Finance and Public Disclosure Board Dual Notice of Intent to Adopt Rules

Dear Legislators:

The Campaign Finance and Public Disclosure Board intends to adopt administrative rules relating to campaign finance, lobbying, and audits and investigations. Copies of the Board's Dual Notice of Intent to Adopt Rules, Statement of Need and Reasonableness (SONAR), and proposed rule text, are enclosed.

The Dual Notice and the proposed rule text will be published in the *State Register* on October 7, 2024. The public comment period will begin at 8:00 AM on October 7, 2024, and will end at 4:30 p.m. on November 6, 2024. If 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on November 6, 2024, an administrative law judge will hold a public hearing via Webex at 9:30 AM on December 17, 2024.

More information about the rulemaking process is available on the Board's website at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket. Draft rule language previously released by Board staff, comments received by the Board's rulemaking committee, and video of past meetings of the rulemaking committee are available at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/committee-meeting-materials.

The Board has undertaken rulemaking to update or eliminate administrative rules that have been made obsolete by legislative changes, eliminate ambiguity in the administration of a range of programs that are under the jurisdiction of the Board, and promulgate rules that will allow the Board to uniformly apply standards provided in advisory opinions. As detailed in the enclosed SONAR the proposed rules will cover a wide range of issues and programs administered by the Board. If you or your legislative staff have questions, or would like additional information, I am available to meet at your convenience to discuss those concerns.

Sincerely,

Jeff Sigurdson
Executive Director
651-539-1189

Enclosures: Dual Notice of Intent to Adopt Rules
SONAR
Proposed rules

MINNESOTA
CAMPAIGN FINANCE BOARD

Senator Mark Koran
2203 Minnesota Senate Bldg
St Paul, MN 55155

October 1, 2024

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Sincerely,

Jeff Sigurdson
Executive Director
651-539-1189

Enclosures: Dual Notice of Intent to Adopt Rules
SONAR
Proposed rules

MINNESOTA CAMPAIGN FINANCE BOARD

Representative Mike Freiberg
Centennial Office Bldg, 5th Floor
St Paul, MN 55155

October 1, 2024

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The Board has undertaken rulemaking to update or eliminate administrative rules that have been made obsolete by legislative changes, eliminate ambiguity in the administration of a range of programs that are under the jurisdiction of the Board, and promulgate rules that will allow the Board to uniformly apply standards provided in advisory opinions. As detailed in the enclosed SONAR the proposed rules will cover a wide range of issues and programs administered by the Board. If you or your legislative staff have questions, or would like additional information, I am available to meet at your convenience to discuss those concerns.

Sincerely,

Jeff Sigurdson
Executive Director
651-539-1189

Enclosures: Dual Notice of Intent to Adopt Rules
SONAR
Proposed rules

MINNESOTA CAMPAIGN FINANCE BOARD

Representative Paul Torkelson
Centennial Office Bldg, 2nd Floor
St Paul, MN 55155

October 1, 2024

Re: Campaign Finance and Public Disclosure Board Dual Notice of Intent to Adopt Rules

Dear Legislators:

The Campaign Finance and Public Disclosure Board intends to adopt administrative rules relating to campaign finance, lobbying, and audits and investigations. Copies of the Board's Dual Notice of Intent to Adopt Rules, Statement of Need and Reasonableness (SONAR), and proposed rule text, are enclosed.

The Dual Notice and the proposed rule text will be published in the *State Register* on October 7, 2024. The public comment period will begin at 8:00 AM on October 7, 2024, and will end at 4:30 p.m. on November 6, 2024. If 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on November 6, 2024, an administrative law judge will hold a public hearing via Webex at 9:30 AM on December 17, 2024.

More information about the rulemaking process is available on the Board's website at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket. Draft rule language previously released by Board staff, comments received by the Board's rulemaking committee, and video of past meetings of the rulemaking committee are available at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/committee-meeting-materials.

The Board has undertaken rulemaking to update or eliminate administrative rules that have been made obsolete by legislative changes, eliminate ambiguity in the administration of a range of programs that are under the jurisdiction of the Board, and promulgate rules that will allow the Board to uniformly apply standards provided in advisory opinions. As detailed in the enclosed SONAR the proposed rules will cover a wide range of issues and programs administered by the Board. If you or your legislative staff have questions, or would like additional information, I am available to meet at your convenience to discuss those concerns.

Sincerely,

Jeff Sigurdson
Executive Director
651-539-1189

Enclosures: Dual Notice of Intent to Adopt Rules
SONAR
Proposed rules

Olson, Andrew (CFB)

From: Minnesota Campaign Finance Board <MNCFB@public.govdelivery.com>
Sent: Tuesday, October 1, 2024 3:46 PM
To: Olson, Andrew (CFB)
Subject: Campaign Finance and Public Disclosure Board - Notice of Proposed Administrative Rules Relating to Campaign Finance; Lobbying; and Audits and Investigations

To: Legislative leaders, the regulated community, and interested members of the public

The Campaign Finance and Public Disclosure Board intends to adopt administrative rules relating to campaign finance, lobbying, and audits and investigations. The text of the proposed rules is available at cfb.mn.gov/pdf/legal/rulemaking/2023/Revisor_draft.pdf. The Board's Dual Notice of Intent to Adopt Rules contains information about how to submit comments on the rules and how to request a public hearing before an administrative law judge. A copy of the Dual Notice is available at cfb.mn.gov/pdf/legal/rulemaking/2023/dual_notice.pdf. The Board's Statement of Need and Reasonableness (SONAR) explains the content of the proposed rules and why they are necessary and reasonable. The SONAR is available at cfb.mn.gov/pdf/legal/rulemaking/2023/SONAR.pdf.

The Dual Notice and the text of the proposed rules will be published in the *State Register* on October 7, 2024. The public comment period will begin at 8:00 AM on October 7, 2024, and will end at 4:30 p.m. on November 6, 2024. If 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on November 6, 2024, an administrative law judge will hold a public hearing virtually via Webex at 9:30 AM on December 17, 2024.

More information about the rulemaking process is available on the Board's website at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket. Draft rule language previously released by Board staff, comments received by the Board's rulemaking committee, and video of past meetings of the rulemaking committee are available at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/committee-meeting-materials.

If you no longer wish to receive notices regarding the Board's rulemaking efforts, please email me at andrew.d.olson@state.mn.us. Please contact me with any questions or concerns related to rulemaking.

Respectfully,

Andrew Olson
Legal/Management Analyst
651-539-1190
andrew.d.olson@state.mn.us

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MINNESOTA

June 18, 2024

Brian Hornbecker
Executive Budget Officer
Minnesota Management and Budget
658 Cedar St., Suite 400
St. Paul, MN 55155

Re: In The Matter of the Proposed Rules of the Campaign Finance and Public Disclosure Board Governing Campaign Finance Regulation and Reporting, Lobbyist Registration and Reporting, and Audits and Investigations; Revisor's ID Number 04809

Dear Mr. Hornbecker,

Minnesota Statutes, section 14.131, requires that an agency engaged in rulemaking consult with the Commissioner of Minnesota Management and Budget, "to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."

Enclosed for your review are copies of the following documents on proposed rules governing campaign finance regulation and reporting, lobbyist registration and reporting, and audits and investigations.

1. The Governor's Office Proposed Rule and SONAR Form (signed by Executive Director Jeff Sigurdson).
2. The June 18, 2024 Revisor's draft of the proposed rule.
3. The June 18, 2024 draft of the SONAR.

I am also delivering copies of these documents to the Governor's Office today.

If you or any other representative of the Commissioner of Minnesota Management & Budget has questions about the proposed rule, please call me at 651-539-1190. Please send any correspondence about this matter to me at the following address: Andrew Olson, Campaign Finance and Public Disclosure Board, 190 Centennial Office Building, 658 Cedar St, St Paul, MN 55155.

Respectfully,

Andrew Olson
Legal/Management Analyst

Date: June 21, 2024

To: Andrew Olson
Legal/Management Analyst
Minnesota Campaign Finance and Public Disclosure Board

From: Brian Hornbecker
Executive Budget Officer
Minnesota Management & Budget

Subject: M.S. 14.131 Review of Proposed Revisions to Minnesota Rules Chapters 4501, 4503, 4511, 4512, 4525

Background

The Minnesota Campaign Finance and Public Disclosure Board proposes to amend Minnesota Rules, Chapters 4501, 4503, 4511, 4512, 4525, governing campaign finance regulation and reporting, lobbyist registration and reporting, and audits and investigations. Pursuant to Minnesota Statutes 14.131, the Board has requested that Minnesota Management and Budget (MMB) evaluate the proposed amendments for fiscal impact and benefits on units of local government.

Evaluation

On behalf of the Commissioner of MMB, I have reviewed the proposed changes and the draft of the Statement of Need and Reasonableness to help evaluate the fiscal impact these changes may have on local governments. There are no anticipated costs or savings to local governments. The proposed changes relate to government regulations for campaign organizations and lobbyists and have no substantial effect on local government expenses.

Cc: Travis Bunch, Budget Policy and Analysis Director, MMB
Simone Frierson, Policy Advisor, Governor's Office