

**STATE OF MINNESOTA
ETHICAL PRACTICES BOARD**

**In the Matter of the Proposed
Adoption of Rules of the
Ethical Practices Board Governing
General Administration of the Ethics
in Government Act, Campaign Financing,
Economic Interest Disclosure, Lobbyist
Registration and Reporting, Prohibition
of Gifts, Conflicts of Interest, Representation
Disclosure, and Hearings (Minnesota Rules
Chapters 4500 through 4525)**

**STATEMENT OF NEED AND
REASONABLENESS**

Introduction

The Ethics in Government Act, Minnesota Statutes, Chapter 10A, was enacted in 1974. The Ethical Practices Board (EPB) was designated as the agency for administration of the act and was granted rulemaking authority to carry out the purposes of the act. Rules relating to the programs administered by the board were adopted and periodically amended through 1988. Rules relating to campaign financing and economic interest disclosure were further amended in 1990. There have been no new rules and no amendments to the rules since 1990.

The Ethics in Government Act was amended in 1990, 1991, 1993 and 1994. Many of those amendments significantly changed the statutory requirements of the act. Among the most significant changes were prohibitions of certain contributions or transfers by candidate's principal campaign committees and the enactment of a broad prohibition on gifts from lobbyists and lobbyist principals to public officials and local officials in metropolitan governmental units.

The first goal of this rulemaking procedure is to provide the new and amended rules necessary for the orderly administration of the Ethics in Government Act, as it has changed since 1990.

The second goal of this procedure is to reorganize the rules into a format which will be easier to understand and follow and to clarify and simplify the text of the individual rules. To that end, a new chapter 4501 is proposed at the beginning of the rules. This chapter will contain definitions and other rules that are applicable throughout the programs administered. Placing these rules in a separate chapter allows them to be repealed from each individual chapter where they were re-stated. As a result of the need for a new first chapter, the existing chapter 4500 will be re-numbered to 4503. Many rules are simplified, generalized or clarified in an attempt to make the entire body of rules easier to understand and use.

Finally, an effort has been made to repeal rules which were essentially a restatement of statutory language, and to distill rules relating to specific situations into statements of more general applicability.

A more limited approach has been taken to the existing rules relating to lobbyist registration and reporting and to economic interest disclosure. In those two cases, the proposed rules are limited to incorporation of standardized introductory sections and the repeal of rules which tend to restate

statutory language, are no longer supported by statute, or have been incorporated into the general rules of Chapter 4501.

Impact on Agricultural Lands

These proposed rules do not have a direct and substantial adverse impact on agricultural land in Minnesota within the meaning of Minn. Stat. § 14.11, subd. 2. These proposed rules also would not affect farming operations within the meaning of Minnesota Laws 1995, chapter. 233, article 1, §1, and therefore, the requirements of those sections do not apply to this proceeding.

Affect on Small Business

Minn. Stat. §14.115 requires agencies proposing new rules which may affect small businesses to consider methods for reducing the impact of the rule on small business. These proposed rules do not affect small business directly. Minn. Stat. §14.115, subd. 7(2). These rules do not impose compliance or reporting requirements or schedules or deadlines or establish performance standards for small business within the meaning of Minn. Stat. §14.115, subd. 2. Rather, these rules provide for the interpretation, implementation and administration of provisions of the Ethics in Government Act which apply to individuals and to political parties, political committees, and political funds. These proposed rules do not include any changes in existing rules which would affect small businesses. The proposed rules relating to the prohibition of gifts by lobbyist principals to certain officials are applicable to those small businesses which are lobbyist principals. However, the prohibition of gifts arises as a result of the statute, not these rules, and these rules impose no reporting or other obligation relating to gifts on small business.

Fiscal impact

Under Minn. Stat. §14.11, subd. 1, if a rule will require the expenditure of over \$100,000 in either of the two following years by local public bodies, the agency adopting the rule must prepare a written statement estimating the total cost of the rule to all local bodies.

Only one proposed rule imposes a procedural requirement on local public bodies. That is rule 4501.0500 which requires metropolitan governmental units to identify those positions in the governmental unit which meet the definition of "local official" in Minn. Stat. § 10A.01, subd. 25. This requirement applies only to those few public bodies which meet the definition of a metropolitan governmental unit and is not expected to have any fiscal impact on any such body.

Additional Notice

The EPB published A Notice of Solicitation of Comments in the *State Register* on October 23, 1995. The notice was also placed on the EPB's world wide web page, as was the text of the Ethics in Government act and the EPB's current rules. The notice requested readers to contact the EPB to have their names added to the rulemaking list and advised readers that they could request a copy of the draft EPB rules or review and download such a draft from the world wide web site. The names of all requesters were added to the list which was then reviewed by staff and copies of the notice and the draft rules were sent to each requester on November 21, 1995 with a letter inviting written, oral, or electronically submitted comments. The letter further advised that the EPB would consider comments at its meeting of December 8, 1995. While nearly 100 copies of the letter and request for comments were sent to interested persons, only one question and no comments were received.

Need and Reasonableness of Specific Provisions

Minn. Stat. § 14.23 requires an agency to prepare a Statement of Need and Reasonableness justifying the proposed rules. A substantial amount of the proposed rule language exists in current EPB rules. Much of this rules proposal is a re-arrangement, restatement, clarification, and simplification of those current rules. In many cases, rather than amend an existing rule, it was simpler to repeal the existing rule and restate it as a new rule. Thus, while the whole of Chapter 4500 is repealed, in reality it has undergone substantial change and rearrangement and is restated as Chapter 4503. This process was used to eliminate the extensive strikeouts and cross references which would have been needed to state the rules as amendments to existing rules. In fact, the original rules proposal, circulated widely for comment, did track the amendments to the original rules. In the process of seeking approval of the form of the rules by the Revisor of Statutes Office, the format was changed to one of repeal and restatement as a new rule. To the extent that an agency is proposing amendments to existing rules, the agency need not demonstrate the need for or reasonableness of existing rules not affected by the proposed amendments. Minn. Rule 1400.0500, subp. 1. The substance of many of the amended rules is not affected by the proposed amendments or restatements. However, each new or amended rule will be addressed in this statement to identify its origin and any changes. Any substantive changes will be justified for need and reasonableness. Where a rule is merely moved from one part to another, clarified, or simplified without changing the meaning or scope of the rule, that fact will be noted and the justification which supported adoption of the original rule will not be repeated. The specific administrative rulemaking justification follows:

PROPOSED RULES - CHAPTER 4500 REPEALER, RENUMBERER

All of the rules of chapter 4500 are repealed or renumbered. The substance of chapter 4500 is included in the new chapter 4503. The reasons for repeal of the existing chapter 4500 rules, in order of frequency, are: (1) the rule is restated, moved, or incorporated into another rule; (2) the rule is a restatement of statute or is based on statutory authority which no longer exists; (3) the rule is not a statement of current practice. A brief note about each repealed rule follows:

- 4500.0100.** Definitions either repeat statute; are not necessary because of the plain meaning of the words defined; or are re-stated in part 4503.000 or part 4501.0100.
- 4500.0200.** Restated in 4503.0010.
- 4500.0300.** Restated in 4503.1500.
- 4500.0400.** Restated in 4503.0800, subp. 2.
- 4500.0600.** Restated in 4503.0600, subp. 5.
- 4500.0700.** Restatement of statutory language.
- 4500.0800.** Restated in 4503.0800, subp. 3.
- 4500.0900.** Restated in 4503.0800, subp. 4.
- 4500.1000.** Concept of rule incorporated into 4503.1000.
- 4500.1100.** Incorporated into 4501.0300.
- 4500.1200.** Restatement of statutory language.
- 4500.1400.** No longer valid due to statutory change prohibiting such contributions.
- 4500.1500.** Restated in 4503.0400.
- 4500.1600.** Restatement of statutory language.
- 4500.1700.** Subpart 1 restated in part 4503.0200, subp 1. Remaining subparts are restatements of statutory language.
- 4500.1900.** Incorrect statement of the law; some of the fundraising expenses are campaign expenditures, some are noncampaign disbursements.
- 4500.2000.** Statutory basis for rule (10A.32) does not exist.
- 4500.2100.** Statutory basis for rule (10A.32) does not exist.

- 4500.2200. Statutory basis changed; restated in 4503.1200
- 4500.2300. Restatement of statutory language.
- 4500.2400. Restated in 4503.0500, subp. 4.
- 4500.2500. Restated and amended in 4503.1300.
- 4500.2600. Partially restatement of statutory language. Partially incorporated into 4501.0600 and 4501.0700.
- 4500.2700. Since late filing fees are optional with the EPB, a rule is not required to give the board the authority to waive such a fee.
- 4500.2800. Concept incorporated into 4503.1000.
- 4500.2900. Renumbered without change to 4503.0600.
- 4500.3000. Restated as 4503.0500, subp. 6.
- 4500.3100. Partially incorporated into statute by amendment of by 10A.02, subd. 10c(f). Partially incorporated into 4503.0900, subp. 2 and 4503.0800, subp. 5.
- 4500.3200. Partially incorporated into statute by amendment of 10A.02, subd. 10; partially restated in 4503.0900.
- 4500.3300. Restatement of statutory language. Subp. 4 partially incorporated into 4503.0200, subp. 6.
- 4500.3400. Partially restatement of statute. Concept incorporated into 4503.0500, subp. 2.
- 4500.3500. Restatement of statutory language.
- 4500.3600. Restated in 4503.0500, subp. 1.
- 4500.3700. Statutory authority repealed. Earmarking now prohibited.
- 4500.3800. Restatement of statutory language.
- 4500.3900. Subparts 1 and 2 restated as 4503.0200, subps. 2 and 3. Subp. 3 restated as 4503.0100, subp. 5.
- 4500.4000. Concept incorporated into 4503.1000, subp 2.
- 4500.4300, **subparts 1, 2, 4, and 5.** Subparts 1 and 2 restated as 4503.0700, subps. 2 and 3. Subps. 4 and 5 are restatements of statutory language.
- 4500.4400. Restatement of statutory language.

PROPOSED RULES - CHAPTER 4501 - GENERAL PROVISIONS

4501.0010 SCOPE AND AUTHORITY.

This rule is a statement of general scope and authority. Because several chapters of Minnesota Rules apply to the Ethics in Government Act (the Act), it is reasonable and necessary to begin the rules by indicating the range of chapters which may need to be consulted.

4501.0100 DEFINITIONS.

Subpart 1. Scope.

This rule explains the scope of application of the definitions. This rule is needed to avoid repeating the definitions in each chapter. It is the basis for the repeal of the same definitions which currently appear in individual chapters.

Subp 2. Address.

This subpart clarifies and simplifies an existing definition which is repeated in multiple chapters (e.g. 4500.0100, subp 1a). This rule is needed to indicate that the address required is the mailing address and to make clear which of possible addresses should be used.

Subp. 3. Business day.

This subpart moves and restates, without change in substance, an existing definition which is repeated in multiple chapters (e.g. 4500.0100, subp. 3).

Subp. 4. Compensation.

This subpart moves an existing definition (4505.0100, subp. 2) to the general chapter and simplifies it. This rule is needed to define the scope of a word used in the Act and in these rules. The amendment also deletes alimony and child support from the list of exclusions since a rule is not required to make it clear that alimony and child support are not "payment for labor or personal services".

Subp. 5. Honorarium.

This subpart moves an existing definition (4510.0600, subp. 4) to the general chapter and clarifies it without change in substance.

Subp. 6. Money.

This subpart moves an existing definition (4500.0100, subp. 6) to the general chapter and simplifies it. The amendment is reasonable because it includes as money those items generally treated by the public and banks as money. The rule is needed to define a word used in the Act and in these rules.

Subp. 7. Occupation.

This subpart moves an existing definition (4505.0600) to the general chapter and simplifies and clarifies it. It is needed to explain what is required when one's occupation is asked for. It is reasonable because it includes all of the endeavors commonly considered to be one's occupation.

Subp. 8. Principal place of business.

This subpart is needed to clarify what various persons or organizations should report when the principal place of business is requested. It is reasonable because it requires information which would usually be provided in response to such a request.

Subp. 9. Promptly.

This subpart provides a new definition for a word used, but not defined in the Act. The rule is needed to allow persons required to do something "promptly" to know how long they have to do it. It is reasonable because its application is limited to acts which can reasonably be performed within three days and which require that there not be delay in their performance.

4501.0200 SECURITIES

Subpart 1. Items which are securities.

This rule moves an existing definition (4505.0800, subp. 1) to the general chapter. It adds mutual funds to the items which constitute securities. This rule is needed to define the scope of holdings which constitute securities for the identification of associated businesses. It is reasonable because the items identified are normally considered securities and because of the limitations provided by the other subparts of this part.

Subp. 2. Items which are not securities.

This subpart moves an existing definition (4505.0800, subp. 2) to the general chapter. The change in words from "shares in a pension fund" to "holdings in a pension and retirement plan" is needed to better reflect the range of pension or retirement benefits now in wide use.

Subp. 3. Holder of securities.

This subpart moves an existing definition (4505.0800, subp. 2) to the general chapter and simplifies it by deleting extraneous words. It is amended to provide an exclusion for securities underlying mutual funds. This amendment is needed and reasonable so that owners of mutual funds do not need to be concerned with tracking and reporting the underlying securities.

Subp. 4. Valuation of securities.

This subpart provides a method of valuing securities, which must be done in order to identify associated businesses. It also clarifies that the value of a partial interest is the proportionate value of the partial interest only, not the value of the entire interest. It is reasonable because it requires standard and accepted methods of valuation. The rule is needed to provide a uniform way to value securities.

Subp. 5. Exception for charitable trusts.

This subpart moves an existing exception (4505.0800, subp. 5) to the general chapter. It also simplifies the language by eliminating a long list of charitable trusts in favor of the more general language modeled after the statutory definition of a charitable trust. The simplification is reasonable and necessary to eliminate what may be an incomplete, specific list in favor of a general and, thus, more inclusive definition.

4501.0300 CERTIFICATION, SIGNATURES, AND NOTARIZATION.

Subpart 1. Signature required.

This subpart describes the signature requirement for filing of documents and clarifies how that requirement applies to documents filed by facsimile transmission. The requirement of a signature on a filed document is reasonable and necessary to assure that the document is an authentic submission.

Subp. 2. Certification.

Certain sections of the Act require filers to certify the truth and accuracy of filings. This rule is needed to clarify that the signature on such a filing is all that is required to meet the certification requirement.

Subp. 3. Notarization.

Because notarization is not generally required for filings with the EPB, this rule is needed to point out the one affidavit and one sworn statement required by the Act which must be notarized.

Subp. 4. Candidates.

This subpart moves an existing rule (4500.1100, subp. 1) to the general chapter and clarifies it.

4501.0400 DETERMINATION OF LOCAL OR PUBLIC OFFICIAL STATUS.

Subpart 1. Metropolitan governmental units to determine local official status.

Many provisions of the act relate to local officials in metropolitan governmental units. While the Act provides a definition for "local official" it is not one by which the positions of local officials can then be readily identified because of the degree of variability between metropolitan governmental units. Thus, the most reasonable way to determine who is a local official is for each metropolitan governmental unit to identify the positions in the unit which meet the definition of local official and to inform the EPB of those positions. Identification of local officials is necessary to implement statutory provisions relating to prohibitions of gifts, lobbying activities, and disclosure of economic interests. This subpart is needed to provide a mechanism for determining which positions in a metropolitan governmental unit are local official positions.

Subp. 2. Acting or part-time local or public official.

This subpart clarifies that persons filling official positions on an acting or part-time basis are still considered officials for purposes of the Act. It is reasonable that provisions of the act which apply to officials should also apply to persons temporarily holding official positions. The rule is needed to make it clear that acting or part-time individuals are not exempt from provisions of the Act applicable to officials.

4501.0500 FILINGS, SUBMISSIONS, AND DISCLOSURES.

Subpart 1. Completion of filing.

This subpart moves an existing rule (e.g. 4500.0100, subp. 4) from multiple chapters to the general chapter. The general requirement of receipt or postmark to complete filing is unchanged. A reference

to the alternative facsimile filing procedure of subpart 5 is added, which is necessary to tie the subpart to the new subpart 2.

Subp. 2. Alternate filing by facsimile transmission.

This subpart provides a mechanism for filing by facsimile transmission. It is reasonable to permit this type of filing which is now common. The rule gives filers one more option for completing filing in a timely manner. The rule is needed to allow the EPB to offer filing by facsimile.

Subp. 3. Filings on non-business days.

This subpart extracts part of an existing rule (e.g. 4500.0100, subp. 4) from multiple chapters and moves it to the general chapter.

Subp. 4. Submissions and disclosures. The Act requires certain disclosures and certain submissions be made to the EPB, but does not specify how such disclosures or submissions must be made. This rule is needed to clarify that all submissions and disclosures must be by means of a written filing. This rule is reasonable because it states the current practice and because a number of simple methods of filing are available.

4501.0600 UNDELIVERED CERTIFIED MAIL.

Subpart 1. Refused certified mail.

This subpart moves a part of an existing rule (e.g. 4500.2600) from multiple chapters to the general chapter changing only "shall be deemed" to "is deemed".

Subp. 2. Returned certified mail.

This subpart moves a part of an existing rule (e.g. 4500.2600) from multiple chapters to the general chapter. It also amends the existing versions by substituting "addressee" for the various specific types of addressee, such as treasurer or lobbyist. This change is reasonable to make the rule one of general application, incorporating multiple current versions. The amendment also recognizes the possibility of undeliverable mail by making an exception for first class mail returned by the post office. In such a case, the mailing is not deemed received, which is reasonable since the Ethical Practices Board will know for a fact that it was not received. The rule is needed to provide a mechanism by which the EPB board may conclude that mail has been received.

4501.0700 ASSESSMENT OF LATE FILING FEES.

This rule moves a part of an existing rule from multiple chapters (e.g. 4500.2600) to the general chapter with only minor grammatical changes.

PROPOSED RULES - CHAPTER 4503 - CAMPAIGN FINANCING

4503.0010 SCOPE.

This rule is a general statement of scope needed to clarify the application of the chapter.

4503.0100 DEFINITIONS.

Subpart 1. Scope. This rule is a statement of incorporation and scope of definitions and is reasonable and necessary so that definitions stated elsewhere do not need to be repeated.

Subp. 2. Adjournment sine die.

This subpart states the accepted definition of "adjournment sine die", a term used in the Act. The rule is needed to provide this definition in convenient and accessible place.

Subp. 3. Anonymous contribution.

This subpart restates, with simplification, the definition contained in M. R. 4500.0100, subp. 1b.

Subp. 4. Fundraising event.

This part is a restatement in more general terms of the existing definition in M. R. 4500.0100, subp. 5.

Subp. 5. Receipted bill.

This part provides a definition for an undefined term used in the Act. More importantly, it provides a practical alternative to an actual receipted bill, by defining an invoice and a canceled check as the equivalent of a receipted bill. The rule is needed to provide a workable alternative to requiring actual receipted bills for record keeping purposes.

Subp. 6. Services for a constituent.

This part provides a definition for a term used elsewhere in the Act and in these rules. It is reasonable to limit the definition to things which actually constitute services and to exclude things which clearly are not services. The rule is needed in order to provide instruction on which expenditures of campaign funds may be considered noncampaign disbursements for services to constituents.

Subp. 7. Statewide election.

This subpart is a restatement of the current rule at M. R. 4500.0100, subp. 7a.

Subp. 8. Unpaid bill.

This part defines a common term in place of the phrase "advance of credit" used in the Act. It also clarifies the statutory requirement that an unpaid bill must be accounted for from the time the debt is incurred, not from the date the invoice is received. The rule is needed to provide a more widely understood term for advance of credit and to provide a clear statement of when an unpaid bill is incurred.

4503.0200 ORGANIZATION OF POLITICAL COMMITTEES AND POLITICAL FUNDS.

Subpart 1. Organizational information to be provided by a political party.

This subpart is a restatement of M. R. 4500.1700 with clarification. It also establishes that a political party provide the names and addresses of the chair and treasurer of each of the listed sub-units. The rule is needed to assure that the EPB has list of party sub-units and contacts needed to administer such provisions of the Act as those limiting aggregate contributions from a party and its sub-units. The rule is reasonable because it requests information readily available to political parties and because it is a statement of the current practice.

Subp. 2. Officers of principal campaign committee.

This subpart moves the existing rule, M. R. 4500.3300, subp. 1a. to the new part devoted to rules related to organization of political committees and funds.

Subp. 3. When registration is not required.

This subpart moves part of a rule (M. R. 4500.3300) to a separate subpart without change and deletes language from the rule which is a restatement of statute..

Subp 4. Change of officer.

This subpart is a restatement of M. R. 4500.3900, subp. 1 in more general terms. The current rule applies only to a change in treasurers. The proposed rule includes changes of all officers. The rule is needed to assure that the EPB has current information about the officers of political committees and funds for various notification and disclosure purposes.

Subp. 5. Termination of responsibility of former treasurer.

This rule requires that in order for a terminating treasurer of a political committee or fund to be relieved of responsibilities, the EPB must be notified. The rule is reasonable because it permits the notification to be either in the form of the mandatory notice which the new treasurer must give under subpart 4, or it may be an optional written notice given by the departing treasurer. The rule is needed to provide a mechanism for formal termination of a treasurer and to provide the EPB with current information regarding the treasurer. It is reasonable because the burden on the terminating treasurer is minimal.

Subp 6. Depositories.

This subpart makes it clear that a depository includes not only those depositories where an association has savings or checking accounts, but also those in which it has certificates of deposit or money market certificates. It is reasonable since each of these assets represent a form of money on deposit. The rule is needed to assure that all depositories are identified as required by the Act.

4503.0300 TERMINATION OF POLITICAL COMMITTEE OR POLITICAL FUND.

Subpart 1. Termination report.

This subpart moves part of current rule 4500.4400 to a new section and deletes unnecessary language from the rule.

Subp. 2. Time of termination after making transfers between principal campaign committees.

The Act provides that one principal campaign committee may make a contribution to another only when the contributing committee is terminating. Any other contribution from one principal campaign committee to another is prohibited. It is reasonable to require that committees making contributions in anticipation of termination make them within the reporting period in which they will terminate. The rule is needed to establish a time frame within which termination contributions are permitted and thus provide a way to distinguish a permitted contribution from one principal campaign committee to another from a prohibited contribution.

Subp. 3. Transfer of debts.

This subpart is a restatement, with a minor correction, of M. R. 4500.4400, subp 2. The correction is that the "agreement" referred to in the rule is an agreement to transfer debts upon termination, not an agreement to terminate as the current rule states.

Subp. 4. Payment plan pending dissolution of inactive political committee or political fund.

This subpart is a restatement of current rule M. R. 4500.4400, subp. 3. The Act permits the EPB to establish a payment plan in certain cases. This implements the Act by permitting the committee being dissolved to propose a plan for the EPB's approval. The rule is needed to permit the committee to propose a plan for EPB approval rather than to have the plan proposal originate with the EPB.

4503.0400 DISTRICT COURT JUDICIAL CANDIDATES.

Subpart 1. Donations in kind.

This subpart is a restatement of current rule M. R. 4500.1500, subp. 1 with the clarification that it applies to donations in kind, not to all contributions.

Subp. 2. Contributions from one source.

This subpart is a restatement of current rule M. R. 4500.1500, subp. 2. The only change is that the phrase "candidate for district court" has been changed to "candidate for district court judge".

4503.0500 CONTRIBUTIONS

Subpart 1. Transmission of contributions.

This subpart is a relocation of a portion of current rule M. R. 4500.3600 to a separate subpart and a restatement of the rule in active rather than passive voice. Repetition of statutory language is deleted.

Subp. 2. Identification of contributor.

This subpart clarifies who should be reported as the contributor when goods are delivered or services performed by a third party. It is reasonable to consider the payer to be the contributor since that person or entity is the original source of the contribution. The rule is needed to clarify that a contribution in the form of a donation in kind is made by the person or entity paying for the goods or services donated.

Subp. 3. Contributions from Hennepin County registered associations.

This subpart is a restatement of current rule M. R. 4500.1600, subp. 3. The only change is the addition of a requirement that the Hennepin County registration number be included with the contribution. This change is reasonable because it requests information readily available to the contributor and does not add any burden to either the contributor or the receiver of the contribution. The rule is needed to enable the receiving committee and the EPB to verify the contributor's Hennepin County registration when contributions are accepted from associations granted an exemption from EPB registration under this subpart.

Subp. 4. Contributions by joint check.

This subpart clarifies that the mere fact that a contribution is on a joint account does not make it a contribution of the joint holders of the account. If the check is signed by more than one of the joint holders, the contribution is allocated equally between them, or they may indicate a different allocation on the check. This interpretation is reasonable because it allocates the contribution to the person or persons who authorized it. The rule is needed to provide for the accurate allocation of contributions made by checks drawn on joint accounts.

Subp. 5. Forwarding anonymous contributions.

This subpart is a moves existing rule M. R. 4500.0600 to the new contribution part and restates it in simpler terms, but does not change its substance.

Subp. 6. Value of contributions of automobile use.

This subpart provides a simple method for determining the value of a contribution of automobile use. Valuation based on mileage rather than gasoline cost better reflects the actual value of the contribution since it includes other costs associated with use of an automobile. The rule is needed to provide a uniform and fair method of valuing a common donation in kind.

4503.0700 CONTRIBUTION LIMITS

Subpart 1. Loans included in aggregation of contributions.

The Act provides that an individual may not loan a principal campaign committee more than the individual contribution amount, nor may the individual endorse a loan for more than the individual could contribute. This subpart clarifies that those restrictions mean that the aggregate of contributions and loans or endorsements cannot exceed the contribution limit. This is a reasonable and logical interpretation of the statute since if an individual has made a contribution, the amount of additional contributions which may be made is lower. Thus the amount of a loan which could then be endorsed would be lower. The rule is needed to provide a clear statement to principal campaign committees so that they do not inadvertently accept a total of contributions and loans which would exceed the permitted limit.

Subp 2. Special election contribution limits.

This subpart moves existing rule 4500.4300, subpart 1 to a new location. The rule clarifies two points: first, that the §10A.27 limits apply to special elections as well as to general elections and, second, that the election year limits apply during the entire special election cycle, regardless of whether or not that cycle crosses a calendar year. The rule is a reasonable interpretation of the statute. Because of the short duration of a special election cycle, it would be unreasonable to have non-election year limits apply to part of the cycle and election year limits apply to another part merely because of the fact that the cycle crossed a calendar year. The rule is needed to clearly state the contribution limits for a special election cycle.

Subp. 3. Independent application of limits for special election.

This subpart moves existing rule 4500.4300, subpart 2 to a new location. The rule clarifies that candidates may apply the contribution limits separately for general elections and special election cycles. The rule is needed to make it clear that contribution limits have independent application to separate elections and to separate years.

4503.0800 DONATIONS IN KIND AND APPROVED EXPENDITURES

Subpart 1. Approved expenditure is always a donation in kind.

This subpart clarifies the classification of approved expenditures. While various parts of the Act, when read together, lead to the same conclusion, the rule is needed to provide a clear statement of the classification and eliminate the need to reach the conclusion by deduction.

Subp. 2. Multi-candidate materials.

This subpart requires a reasonable allocation of an approved expenditure on behalf of multiple candidates. The rule is needed to establish a basis for allocation of such expenditures.

Subp. 3. Multi-purpose materials.

This subpart requires a reasonable allocation between campaign and non-campaign purposes of the value of newsletters or other multi-purpose materials. The rule is needed to establish a basis for allocation of such expenditures.

Subp. 4. Office facilities.

This subpart makes it clear that the practice of sharing office space without charge results in a contribution to the candidate. The rule is needed to help candidates avoid inadvertent acceptance of contributions. The rule is reasonable because it requires only that the fair market value of the services be treated as a contribution.

4503.0900 NONCAMPAIGN DISBURSEMENTS.

This part sets forth additional costs which are to be categorized as noncampaign disbursements. Minn. Stat. § 10A.02, subd. 10c (s) provides that noncampaign disbursements include those established by EPB rule or advisory opinion. The rule is needed to establish by rule those disbursements which have been recognized by EPB advisory opinion or which are otherwise appropriately categorized as noncampaign disbursements. Subpart 2 is needed to clarify that payment for constituent services which fall within the definition of noncampaign disbursements are not reportable if paid with personal funds.

4503.1000 CAMPAIGN MATERIALS INCLUDING OTHER CANDIDATES.

Subpart 1. Inclusion of others without attempt to influence nomination or election.

This subpart results from the extraction of the underlying concept from existing rules M. R. 4500.1000 and 4500.2800. It clarifies the circumstances in which a candidate may be included in campaign materials without the materials being considered a contribution to the candidate. The rule is needed to establish guidelines for inclusion of candidates in materials which are not intended to be contributions to the included candidate.

Subp. 2. Multi-candidate materials prepared by a candidate.

This subpart is a corollary to subp. 1 and is an extraction of the principal stated in M. R. 4500.4000. It addresses the case where a candidate's materials do include appeals for the support of other candidates. This rule is needed to establish a procedure under which candidates may produce and distribute such materials without making prohibited contributions.

4503.1100 CARRYFORWARD OF CAMPAIGN FUNDS; UNPAID ADVANCES OF CREDIT.

Subpart 1. Retention for unpaid advances of credit.

The Act permits certain carryforwards of campaign funds into a new election cycle. The carryforward is stated in terms of an amount after all expenses of the election cycle are paid. The first subpart of this rule is needed to permit committees to add to the statutory carryforward amount an amount equal to the unpaid bills which are also being carried forward. Since an unpaid bill which is forgiven or paid by someone else in a subsequent year results in a contribution in the year the bill was incurred, the carryforward for that unpaid bill is no longer needed. The second subpart is needed to establish the requirement and method for return of funds carried forward for a bill which no longer has to be paid. The rule is reasonable because it permits retention of funds into the next year for unpaid bills and provides a mechanism consistent with statute for returning any funds which are not needed because an unpaid bill is later forgiven.

4503.1200 JOINT FUNDRAISING EVENTS BY PRINCIPAL CAMPAIGN COMMITTEES.

Subpart 1. General requirements.

Joint fundraising events have the potential to result in inadvertent violations of prohibitions against earmarking of contributions and prohibited contributions or donations in kind from one principal campaign committee to another. Prohibitions on earmarking and contributions between committees are new and may require adjustments in the way joint fundraising efforts are conducted. The first subpart of this rule is a general statement summarizing the law as it applies to joint fundraising events. It is needed to make it clear that the new prohibitions do not bar joint fundraising efforts entirely, but that they do apply to joint fundraising events.

Subp. 2. Elective procedures to assure compliance.

The second subpart establishes elective procedures which, if employed in a joint fundraising event, will assure that prohibited transfers or earmarking do not inadvertently take place. This rule is needed both to provide a safe harbor for those committees which want to be absolutely certain that their events won't violate the Act and as a guide for those committees who wish to develop their own procedures to assure compliance with the Act.

Subp. 3. Record keeping and reconciliation of expenses.

The third subpart defines the record keeping and reconciliation requirements for joint fundraising events. It generally requires records which would be kept anyway. It is needed to assure that committees uniformly document joint fundraising events and complete any allocation of expenses which is needed.

4503.1300 GOVERNOR AND LIEUTENANT GOVERNOR.

Subpart 1. Seeking endorsement as lieutenant governor.

The Act permits a lieutenant governor candidate to raise and spend money to seek endorsement at the party convention. This subpart clarifies that this process is to take place through a principal campaign committee in the same manner as other campaign spending. The rule is needed to clarify a process which is suggested, but not clearly stated, by the Act. It is reasonable because the creation of a principal campaign committee is something that the candidate will be required to do anyway in order to raise funds to seek election.

Subp 2. Separate records for seeking endorsement.

Up to a prescribed limit, funds spent for seeking endorsement by the lieutenant governor are in addition to the normal campaign expenditure limit for governor and lieutenant governor. This subpart requires a candidate to keep a separate record of those expenses. The requirement is reasonable since it does not require significant additional record keeping. It merely requires the identification of certain expenditures which are already recorded. The rule is needed so that both the candidate and the EPB can track these extra expenditures to verify that total expenditures by the candidate do not exceed the statutory limit.

Subp. 3. Merger of committees.

A governor and lieutenant governor may originally establish separate campaign committees. However, once they are endorsed, they run together and all limits apply to the two as a unit. This subpart uses the established concepts of termination of a committee and amendment of a committee's statement of organization to establish a procedure for merging the separate committees. It also makes it clear that transfers of funds and assets to the joint committee is permitted without restriction and is not a prohibited transfer. The rule is a clarification of M. R. 4500.2500, subparts 2 and 3 and is a codification of the current practice. It is reasonable because it uses established concepts and procedures to provide a simple way for the separate committees to merge.

Subp. 4. Contribution limits for governor and lieutenant governor before and after merger of separate committees.

This subpart is a new rule which clarifies how separate committees for governor and lieutenant governor are affected by contribution limits. The only limit which is generally relevant during the period when there are separate committees is the aggregate individual contribution limit. This subpart is reasonable because it takes the most liberal and most workable approach by permitting each committee to accept individual contributions up to the full aggregate limit. It then requires a combination of the contributions and a new review of aggregate contributions after the merger of the committees. At that time, if any contributions exceed the aggregate limits, they must be returned in the same manner as any excessive contribution. The rule is needed to clarify the rights of governor and lieutenant governor committees to accept contributions prior to their merger and to clarify the process and requirements relating to aggregation of contributions after the merger.

Subp. 5. Return of contributions after merger.

If the aggregate of contributions to a joint committee after a merger exceeds the applicable limit, the excess contributions must be returned. This subpart extends to the joint committee application of the 60 day rule for returns of contributions. This time period will give committees adequate time to identify and return excess contributions. The rule is needed to provide a mechanism and adequate time for merged committees to bring aggregate contributions into compliance with the limits.

Subp. 6. Public subsidy agreement.

This subpart clarifies the need for both the governor and the lieutenant governor to sign a public subsidy agreement in order to receive public subsidy. The rule is needed because the governor and lieutenant governor are considered as a unit and both must be bound by the public subsidy agreement for the unit to take advantage of public subsidy.

4503.1400. PUBLIC SUBSIDY AGREEMENTS.

Subpart 1. Expenditure limits.

This subpart is an amendment of current rule M. R. 4500.3500, subpart 1. The amendment changes election year to election cycle and is needed to maintain consistency with the Act.

Subp. 2. Affidavit of contributions for special elections.

This subpart is a renumbering and amendment of 4500.3500, subpart 4. The amendment consists of deleting statutory material and clarifying that the affidavit referred to is the affidavit of contributions. The amendment is needed for simplification and clarification.

4503.1500 AGREEMENT TO MAKE LOAN.

This part is a clarification and renumbering of existing rule 4500.0300. The rule is needed to make it clear that loans must be documented by written agreements.

4503.1600 FUNDRAISING DURING LEGISLATIVE SESSION.

This rule currently exists as subpart 3 of part 4500.0300 and is restated here with minimal grammatical changes.

PROPOSED RULES - CHAPTER 4505 - ECONOMIC INTEREST DISCLOSURE

4505.0010 SCOPE.

This subpart indicates the application of the chapter. It is needed to identify the particular statute that this rules chapter implements.

4505.0100 DEFINITIONS.

Subpart 1. **Scope.**

This subpart is a statement of incorporation and scope of definitions and is needed so that definitions stated elsewhere do not need to be repeated.

Repealer

4505.0100, subparts 1a, and 2. Subpart 1a is moved to 4501.0100, subp. 2; subpart 2 is moved to 4501.0100, subp. 4.

4505.0200. Restated in 4501.0400, subp. 2.

4505.0300. Part of this rule is a restatement of statute; the remainder of it is incorporated into 4501.0600 and 4505.0700.

4505.0400. This part is repealed. Since late fees are optional with the EPB, a rule is not required to permit the board to waive a late fee.

4505.0500. Restated in 4501.0100, subp. 5.

4505.0600. Restated in 4501.0100, subparts 7 and 8.

4505.0800. Restated in 4501.0200.

4505.0900, subp. 1. Incorporated into 4501.0500

4505.1000. Incorporated into 4501.0200, subparts 3 and 4.

PROPOSED RULES - CHAPTER 4510 - LOBBYIST REGISTRATION AND REPORTING

4510.0010 SCOPE.

This subpart indicates the application of the chapter. It is needed to identify the particular statute that this rules chapter implements.

4510.0050 INCORPORATION AND APPLICATION OF DEFINITIONS.

This rule is a statement of incorporation and scope of definitions and is needed so that definitions stated elsewhere do not need to be repeated.

Repealer

4510.0100. Subpart 1 is restated in 4510.0050; subpart 1a is restated at 4501.0100, subp. 2; subpart 2 and 4 are restatements of statutory language; subpart 3 is incorporated into 4501.0500; subpart 5 does not require a rule to establish the definition.

4510.0200. Restated in 4510.0010.

4510.0300. Subparts 1 and 3 are restatements of statutory language; subpart 2 as stated is applicable to certain lobbyists, but because of a change in statute since the rule was adopted, it is no longer universally applicable.

4510.0400, subparts 1 and 2. Restatements of statutory language.

4510.0600, subp. 4. Restated in 4501.0100, subp. 5.

4510.1000. Restatement of statutory language.

4510.1200. Restatement of statutory language and partially incorporated into 4501.0600 and 4501.0700.

4510.1300. Repealed. Late filing fees are optional with the EPB, so a rule is not required to permit a waiver.

4510.1400. Subpart 1 is restatement of statutory language. Subpart 2 does not require a rule since the statutory requirements for registration of a lobbyist are clear.

PROPOSED RULES - CHAPTER 4512 - PROHIBITION OF GIFTS

4512.0010 SCOPE.

This subpart indicates the application of the chapter. It is needed to identify the particular statute that this rules chapter implements.

4512.0100 DEFINITIONS.

Minn. Stat. 10.071 provides a definition of a gift and further provides a number of exceptions to the general prohibition of certain gifts. Administration of this provision since its enactment has demonstrated the need for additional definitions to clarify the scope and application of the provision.

Subpart 1. **Scope.** This subpart is a statement of incorporation and scope of definitions and is needed so that definitions stated elsewhere do not need to be repeated.

Subp. 2. **Field of specialty.** A plaque may be given, without limit on the cost, for individual services in a field of specialty. This rule is needed to clarify what is meant by a field of specialty. It is reasonable because it defines field of specialty very broadly, thus bringing the gift exception into effect for a broad range of personal endeavors.

Subp. 3. **Gift.**

The definition of a gift in Minn. Stat. §10A.071 is broad, but does not specifically address certain gifts which have been considered by the EPB. To eliminate confusion as to which part of the definition these additional items fall under, they are simply listed by rule. Each of the specific items could fall under one of the included categories. The rule is needed to clarify their inclusion in the general prohibition. Listing these items specifically eliminates doubt on the part of the giver and receiver as to whether they fall into one or another of the statutory categories.

Clause C. **Giving preferential treatment for purchases.** This clause is needed to clarify that a gift is given when an official is allowed to make a purchase on terms not available to the general public. It covers such arrangements as reduced price purchases, the waiving of requirements made of other purchasers, making the purchase opportunity available when it is not available to the public, or other changes in terms or conditions of the purchase. This clause is reasonable because these

arrangements could be placed in one or another of the classes of gifts defined by the statute. For example, a reduced price purchase is the equivalent of a gift of money. Placing the category in this definition removes the need to determine which specific class of prohibited gift these preferences fall within.

Subp. 4. Insignificant value, insignificant monetary value or unexceptional value.

Three phrases used in the exceptions are specifically defined in this subpart. The value selected is the value established in Minn. Stat. § 10A.04, subd. 3(e) for reporting of gifts by lobbyists. Since a lobbyist need not report a gift valued at less than \$5.00 and must report gifts valued at \$5.00 or more, there is some indication that anything valued at less than \$5.00 is not considered significant. The rule is needed make definite the value of gifts which are excluded from the statutory prohibition.

Subp. 5. Individual services. The statute provides an exception for gifts of plaques of any value for individual services in a field of specialty or to a charitable cause. The question arises regularly as to what, if any, public services may be the basis for the gift of a plaque. This rule is needed to allow givers and receivers to have a clear definition of the phrase "individual services". While not including all possible services, the rule is reasonable because it permits application of the exception for any services except official duties. In view of the general prohibition of gifts, it is consistent with the act, and reasonable, not to extend the exception to awards for official conduct. This is a reasonable interpretation of the term "individual services" since the phrase must mean something different from any type of services, otherwise the word "individual" would not be needed. Official duties are generally considered to be performed by the official in the official's public capacity and are services for the public as a whole. Thus it is reasonable to conclude that public services are different from individual services.

Subp. 6. Plaque or similar memento.

In connection with the exception for certain gifts of plaques or similar mementos, the question of what is a memento similar to a plaque arises regularly. The definition of plaque or similar memento is a distillation of the common dictionary definition. The rule is needed to allow lobbyists and officials to determine the scope of the plaque exception.

4512.0200 GIFTS WHICH MAY NOT BE ACCEPTED.

This rule is in part a restatement of the statute in concise terms. It also clarifies that the prohibition against acceptance of gifts extends to gifts requested by a lobbyist or lobbyist principal. This application is implicit in the statute. A gift given as the result of a request by a lobbyist or principal is treated the same as a gift given by the lobbyist or principal and is prohibited. The rule is needed to provide a clear statement of the prohibition from the receiver's standpoint.

4512.0300 GIFTS PAID FOR BY THIRD PARTIES.

This rule makes it clear that gifts may not be passed through conduits to avoid the prohibition. The person or entity paying for the gift is the giver. It is reasonable to require that the legality of a gift be based on the status of the person or entity paying for the gift, not on that of some other person or entity through which the gift merely passes. The rule is needed to make it clear that passing a gift through a conduit does not change the identity of the giver.

4512.0400 GIFTS PARTIALLY PAID FOR BY LOBBYIST OR LOBBYIST PRINCIPAL.

If a gift is prohibited because it was partly paid for by a lobbyist or lobbyist principal, the gift may be removed from the prohibition by paying for the share that the prohibited giver provided. This rule provides officials with a reasonable mechanism for accepting joint gifts where not all givers are subject to the prohibition. The rule is needed to clearly state this mechanism, which is implied by the statute.

4512.0500 WHEN A GIFT IS REQUESTED BY LOBBYIST OR LOBBYIST PRINCIPAL.

The statute prohibits gifts requested by a lobbyist or lobbyist principal. It has been unclear just what constitutes such a request. This rule establishes the requirement of a direct cause and effect relationship between the lobbyist or principal's activity and the giving of the gift before the gift is considered to be requested by the lobbyist or principal. The rule is needed to limit application of the prohibition on requested gifts to those circumstances where the request activity is, in fact, the cause for the giving of the gift.

4512.0600 SPECIFIC EXCLUSIONS FROM GIFT DEFINITION.

Certain specific questions have arisen about the what payments may be made to officials and about how the gift prohibition affects an official's employment relation. This part clarifies that purchases of goods and services from an official in the ordinary course of business are not gifts, nor are normal employer/employee transactions relating to the official's employment.

PROPOSED RULES - CHAPTER 4515 - CONFLICTS OF INTEREST

4515.0010 SCOPE.

This subpart indicates the application of the chapter. It is needed to identify the particular statute that this rules chapter implements.

4515.0100 DEFINITIONS.

Subpart 1. **Scope.** This rule is a statement of incorporation and scope of definitions and is needed so that definitions stated elsewhere do not need to be repeated.

Subp. 5. Financial interest.

This subpart is a simplified and clarified restatement of the existing subpart without changing its meaning. It is needed to define a term used in the Act and in this chapter.

4515.0500 ABSTENTION.

This part is an amendment of the current rule. It is simplified and clarified. Minn. Stat. § 10A.07 requires certain officials to abstain "in a manner prescribed by the board". Through this rule, the EPB fulfills its obligation to prescribe a manner for these officials to abstain from a matter. Abstention is to be accomplished by assigning another or having the appointing authority assign another to determine the matter. Since the official has an acknowledged conflict of interest, it is also reasonable that the official not participate in activities surrounding consideration of the matter. The rule is needed to implement an abstention procedure as mandated by the statute.

4515.0700 CHANGES AND CORRECTIONS.

This rule is a restatement of the existing rule in a clear and simplified way. It requires a correction to any erroneous statement filed. It is needed to assure that statements of conflict of interest, as maintained in the records of the EPB are complete and accurate.

Repealer:

4515.0100, subparts 2, 4, 6 and 7. Subpart 2 is incorporated into 4501.0100, subp. 2; subpart 4 does not require a rule for the definition; subpart 6 is not needed because all statutory definitions are incorporated under subpart 1; subpart 7 is not needed because the defined phrase is not used elsewhere in the rules or in the Act.

4515.0200. Incorporated into 4515.0010.

4515.0300. Restatement of statutory language.

4515.0400. Restatement of statutory language.

4515.0500, subp. 2. Restatement of statutory language.

4515.0600. Repealed. Use of board forms is not mandatory.

4515.0800. Restatement of statutory language.

PROPOSED RULES - CHAPTER 4520 - REPRESENTATION DISCLOSURE

4520.0010 SCOPE.

This subpart indicates the application of the chapter. It is needed to identify the particular statute that this rules chapter implements.

4520.0100 DEFINITIONS.

Subpart 1. Scope.

This rule is a statement of incorporation and scope of definitions and is needed so that definitions stated elsewhere do not need to be repeated.

Subp. 4. Fee.

This rule is a restatement of the existing subpart with minor grammatical changes not affecting the meaning of the rule.

Subp. 6. Initial appearance at a hearing.

This rule is a restatement and simplification of the existing subpart, without changing the meaning of the rule.

4520.0400 OBLIGATION TO DISCLOSE REPRESENTATION.

This rule extracts the substance of the existing rule and eliminates restatement of statutory language. The rule is needed to clarify that the obligation to disclose representation arises at the first appearance, not upon conclusion of the representation. This interpretation is reasonable and necessary to provide disclosure of the representation at a meaningful time.

4520.0500 REQUIRED REPORTING INFORMATION.

This rule is a restatement of the existing rule with only a minor clarification that clients which are reported are only those represented at the hearing.

4520.0700 CHANGES AND CORRECTIONS.

This rule is a restatement of the existing rule in a clear and simplified way. It requires a correction to any erroneous statement filed. It is needed to assure that statements of conflict of interest, as maintained in the records of the EPB are complete and accurate.

Repealer:

4520.0100, subparts 2, 5 and 7. Subpart 2 is incorporated into 4501.0100, subp. 2; subpart 5 is incorporated into 4501.0500; subpart 7 not required because all statutory definitions are incorporated into the chapter in subpart 1.

4520.0200. Incorporated into 4520.0010.

4520.0300. Restatement of statutory language.

4520.0600. Repealed. Board forms are not mandatory.

4520.0800. Restatement of statutory language.

PROPOSED RULES - CHAPTER 4525 - HEARINGS

4525.0010 SCOPE.

This subpart indicates the application of the chapter. It is needed to identify the particular statute that this rules chapter implements.

4525.0100 DEFINITIONS.

Subpart 1. **Scope.**

This rule is a statement of incorporation and scope of definitions and is needed so that definitions stated elsewhere do not need to be repeated.

Subp. 6. **Person.**

This subpart is a simplification of the existing subpart. It provides an inclusive definition of "person" so that no entity is precluded from participating in the EPB hearing processes. The rule is needed to provide a broad interpretation of the word which is used in the chapter.

4525.0200 COMPLAINTS OF VIOLATIONS.

Subp. 4. **Oath.**

This subpart is an amendment of the existing subpart. It clarifies that testimony at hearings will be under oath. The amendment deletes the mandate of a specific oath. The rule is needed to maintain the requirement of sworn testimony while deleting an oath which may be broader than required.

4525.1000 INITIATING ANONYMOUS PROCEEDINGS.

Subp. 2. **Application.**

A minor change is made to this subpart. The anonymous person's representative is now described as the person "authorized to receive official notices or correspondence from the board and upon whom legal process may be served" instead of the person "on whom service can be made". This change is needed to clarify and broaden the role of the anonymous person's representative.

Repealer:

4525.0100, subparts 1a, 2, 4, 7. Subpart 1a restated in 4501.0100, subp. 2; subpart 2 is restatement of statutory language; subpart 4 incorporated into 4501.0500; subpart 7 is no longer needed due to amendments to 4525.1000.

4525.0200. Incorporated into 4525.0010.

4525.0500, subpart 5. This subpart is repealed because it is a restatement of the statutory authority of the EPB.

