STATE OF MINNESOTA
ETHICAL PRACTICES BOARD

Proposed
Permanent Rules
Relating to Ethics in Government;
***Minnesota Rules:* Chapters 4501, 4503, 4510 and 4511 (Proposed new Chapter).**

STATEMENT OF NEED AND REASONABLENESS

I. Introduction

The Ethics in Government Act, Minnesota Statutes, Chapter 10A, was enacted in 1974. The Ethical Practices Board (Board) 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. A significant rulemaking procedure was undertaken in 1995 and completed in May of 1996. In that procedure many rules which restated statutory language were repealed. Other rules were clarified and reorganized. The chapter of rules governing campaign finance (chapter 4500) was completely revised and restated as chapter 4503. Rules common to all programs were consolidated in a new chapter 4501. Less significant changes were made to chapters governing other programs of the Board.

The goals of the current rulemaking procedure are (1) to provide a complete revision of the rules governing lobbying registration and reporting in Minnesota to improve clarity of the chapter and to ensure that the rules reflect both statutory intent and actual practice in administration of the program; (2) to provide amendments in other chapters which are necessary for the orderly administration of the Ethics in Government Act, and (3) to amend some of the provisions enacted in 1996 to accommodate client needs which were not conveyed to the agency during the prior rulemaking procedure but which have been made known since implementation of the 1996 rules.

In the lobbying program, the rules revisions are designed 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 4511 is proposed for the lobbying rules. All of chapter 4510, the current lobbying program rules, will be repealed.

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Gary Goldsmith at Ethical Practices Board, First Floor South, Centennial Office Building, St. Paul, MN 55155. Telephone (612) 296-1720 or (800) 657-3889. Fax (612) 296-1722. TDD users may call (612) 297-5353 and ask for (612) 296-1720.

II. Board's statutory authority.

The Board's statutory authority to adopt the rules is set forth in Minnesota Statutes, Chapter 10A, section 10A.02, subd. 13, which provides: "The provisions of chapter 14 apply to the board. The board may adopt rules to carry out the purposes of this chapter."

Under this statute, the Board has the necessary statutory authority to adopt the proposed rules.

III. Required additional information.

(1) Classes affected. The proposed rules will affect lobbyists and entities that employ or retain lobbyists (lobbyist principals); political committee or political fund treasurers; and candidates for legislative, constitutional, or judicial office.

The proposed rules do not create new activities which will result in costs to any persons or entities; however, the reporting requirements established by the statutes which these rules implement do result in costs. Those costs are borne by the same groups listed as affected classes in the preceding paragraph.

The classes benefited are the same as those affected in that the proposed rules generally clarify and simplify existing rules on the same subjects. To the extent that the proposed rules are new, they provided needed definitions or clarification of statutes necessary to facilitate compliance by those subject to statutory requirements. The public will also benefit from the proposed rules which will further clarify financial reporting by lobbyists and their principals and by political committees and political funds in Minnesota.

(2) Costs and revenues. No change in cost to the proposing agency, nor to any other agency is anticipated as a result of the proposed rules, since they merely implement statutory requirements. The Board already administers all lobbyist and political committee or political fund reporting and compliance activities. The proposed rules do not change the scope of those activities from that specified by statute. Since the Board's activities are largely self-contained, no other agency's costs are affected by these rules. Neither will there be any affect on overall state revenues as a result of these rules.

(3) Other less costly or less intrusive methods. These rules are not expected to have any significant fiscal affect on reporting clients. The reports are already required by statute and the rules merely provide methods or definitions which are unclear in the statute.

In all aspects of this procedure, the Board has examined less intrusive methods of implementing the statute. However, the statute is a disclosure statute which, due to its very purpose, tends to be somewhat intrusive. A number of more stringent requirements were dropped during the drafting process through input from the Board's various client groups, which are the primary persons affected by these rules. To make the rules any less intrusive than they are would result in dilution of the disclosure required by the statute and necessary to accomplish its purposes.

(4) Alternative methods. Disclosure, which is a primary purpose of Chapter 10A, can be accomplished by only one method: requiring persons subject to the law to provide the required disclosure. The statute requires that disclosure, and the rules merely implement it. No alternative to requiring the disclosure is available.

Regulation of financial activities of political committees and political funds is another primary purpose of Chapter 10A. It is the statute, not the rules, which imposes the various limits and requirements. Given the complete statutory basis for regulation, the rules are limited to clarifying and defining. The rules are not intended to expand the scope of the statute, but to implement its requirements.

Where possible, the Board has proposed rules which provide alternatives which are the least burdensome on its clients while still accomplishing the statutory requirements. Examples include the provision of fax filing; permitting committees to accept joint checks based on verbal notice or personal knowledge of the contributors' intention; excluding certain personal or legislative expenditures from reporting requirements; and simplifying many procedures.

Less restrictive alternatives than those included in the proposed rules would result in a loss of the disclosure and regulation of campaign finance and lobbying activities established by Chapter 10A.

(5) Costs. The existing or proposed rules do not add to the costs of disclosure. These costs result solely from the statutory requirement that disclosure be done. Rather, the rules help persons subject to the statute to more easily comply and thus to minimize both the time it takes to provide the required disclosure and the cost of civil fines imposed by the statute for failure to comply.

(6) Federal regulations. There are no federal regulations applicable to lobbying or campaign finance at the state level. The Board's jurisdiction does not extend to candidates for federal office.

(7) Fiscal review. These rules do not propose any fees or charges and are not subject to the fiscal review requirements of Minn. Stat. § 16A.1285.

(8) Impact on farming operations. These proposed rules do not have a significant impact on farming operations, and therefore, the requirements of Minn. Stat. § 14.111 do not apply to this proceeding.

IV. Additional Notice

The Board published a Request For Comments in the *State Register* on October 14, 1996. The notice was also placed on the Board's world wide web page, as was the text of the Ethics in Government act, the Board's current rules, and the proposed new chapter of lobbying rules. The Board developed an additional notice plan for the notice of comments, which was approved by the Office of Administrative Hearings and which was carried out.

The Board published, or will publish, a: 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 in the *State Register on* February 24, 1997. The Board also developed an Additional Notice Plan for the Dual Notice, which plan was approved by the Office of Administrative Hearings and will be implemented. A copy of the Additional Notice Plan is attached to this document.

V. Witnesses and testimony.

If a hearing is held in this matter, Jeanne Olson, Executive Director, and Gary Goldsmith, Assistant Executive Director, of the agency are expected to testify. The substance of the testimony will be the same as the information provided in section VI of this Statement of Need and Reasonableness, along with appropriate elaboration, explanation, or examples.

VI. Need and Reasonableness of Specific Provisions

Minn. Stat. §§ 14.131 and 14.23 require 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 Board rules. Much of this rules proposal is a re-arrangement, restatement, clarification, and simplification of those current rules. In the case of the lobbying program rules, it was simpler to repeal the existing rules and restate them in a new chapter. Thus, while the whole of Chapter 4510 is repealed, in reality it has undergone change and rearrangement and is restated as Chapter 4511. The substance of many of the existing lobbying 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:

CHAPTER 4501

4501.0100, subp. 9. The word "promptly" appears in Chapter 10A in the context of requiring certain acts to be completed promptly. This definition was promulgated to make clear and definite the time within which such an act might be completed in compliance with the statute. Although no comment was received when "promptly" was defined as being within 3 business days, the Board heard from affected groups after the previous rulemaking was final. A definition is still needed so that affected persons may know how soon certain acts must be accomplished to be in statutory compliance. The Board has met with the affected groups, which are candidates, political committee or political fund treasurers, and their representatives. These consultations led to the conclusion that 10 business days was sufficient time to complete the specified acts, which include delivering fundraising money to the committee treasurer and depositing fundraising money in the bank. Since 10 business days assures at least a two week time period, it allows a reasonable time within which a committee member should transfer money raised to the treasurer or the treasurer should deposit it.

4501.0500, subp. 2. The subpart is clarified. Language is deleted which is redundant of the language of subp. 1, which already says that a filing is complete upon receipt of a fax in the Board office. The requirement that the original be mailed to the Board is repealed. This change is needed to simplify the process for the filer. The filer no longer needs to be concerned about a follow-up step after the fax transmission. In lieu of requiring the original to be mailed, two provisions are added: (1) that the original be retained and (2) that the original be filed by a means other than fax if requested by the Board. These changes are needed to preserve the original of a faxed document and to provide a means by which the Board can compel submission of the original. These provisions are reasonable because filers are already required to retain their records, so no new retention requirement is added, and because they are a less burdensome alternative to requiring immediate mail filing of the faxed document.

One additional provision is added for administrative purposes: the restriction that a faxed document received after the close of business is deemed received on the next business day. This rule is

necessary because received faxes are date and time stamped by the sending machine, so if the office is closed, there is no way of knowing when the fax was received. Additionally, since the office is not staffed after business hours, there would be no one to attend to a problem with the machine. This rule is reasonable because late filing fees do not accrue on week-ends, so there is no disadvantage to the filer then. The only time this rule would make a difference is with a filer who wants to file between the close of business and 12:00 midnight on a week day. Those filings would be considered filed the next business day, something not unreasonable when compared with the problems associated with not being able to accurately identify the time an after hours fax arrives, or to guarantee the operation of the Board fax equipment when the office is not staffed.

Chapter 4503

4503.0100, subp. 6. Alternative phrases used in the statute and in the common language of campaign finance include "services for a constituent" and "constituent services". They mean the same thing and the latter is added to the subpart for clarification.

4503.0200, subp. 6. Chapter 10A establishes the requirement that political committees and political funds establish depositories for their funds. They must identify the name of the depository as a requirement of registration. Chapter 10A also specifies the name in which the account must be established, although that requirement is often missed by persons registering political committees or political funds. This rule is needed to establish the time at which the political committee or political fund must establish an account with its designated depository and to further point out the account naming requirement. Since political committees and political funds which register often have funds in hand already, or will soon acquire funds, it is reasonable to have them establish their depository account as a condition of registration.

4503.0500, subp. 1. When money is spent by a candidate's political committee, it is reported as either a campaign expenditure or a noncampaign disbursement. Campaign expenditures apply to campaign spending limits while noncampaign disbursements do not. Candidates are also limited in the amount of contributions they may accept from a single entity. The statute defines a contribution as money given for a campaign expenditure purpose. The question has arisen as to whether candidates may accept money or goods designated for noncampaign disbursement purposes and whether those transfers would be excluded from the "contribution" limits. This rule is needed to clarify the status of transfers to a candidate's committee. The rule makes it clear that any transfer to a candidate's committee is considered a contribution when it is made, regardless of how it is later used. Chapter 10A imposes limits on contributions and includes in those limits money, goods and services, and loans. This rule is reasonable because almost all transfers to a candidate's committee are without restriction on future use. For that reason, they should all be included in the contribution limits. Any other rule could result in circumvention of the contribution limits provisions of the statutes by permitting single entities to make unlimited transfers to a committee on the condition that they be used for items which are not considered campaign expenditures. This issue does not arise regularly and 100% of reporting candidates currently report receipts of money, goods, or services exactly as they will be required to do under the new rule.

4503.0500, subp. 2. The question often arises as to when a contribution is "received" for Chapter 10A purposes. This rule is needed to provide the answer to that question. The rule is reasonable in that it adopts a definition based on actual receipt rather than constructive receipt of the contribution. The rule defines receipt as physical receipt, the usual and normal understanding of the concept. For money received in the mail, receipt occurs when the mail is collected. This is reasonable because often treasurers or authorized committee workers do not gather the mail each day.

4503.0500, subp. 4. Under previous rules, the contributor of goods or services was the individual who paid for the goods. The Board has since encountered situations where goods or services may be provided by someone who has custody or control of the goods or services, though they were paid for by another entity. The paying entity may not, in fact, know that the goods or services are being provided to the committee by the person who has control of them. This rule is needed to provide direction on identification of contributors who make goods or services available, although they may not directly pay for those goods or services. Political committees and political funds need to know how to identify contributors because they must provide this information on their periodic reports. The rule is reasonable because it defines the contributor as the person or entity most directly responsible for the contribution.

4503.0500, subp. 6. Previous Board rules required contributions by joint check to indicate the allocation of the contribution between the joint account holders on the check. This rule proved to be too restrictive for the political committees and political funds bound by it. However, because committees must be able to identify contributors, a rule was still needed to specify how joint check contributors are to be identified. The Board consulted with affected groups who participated in determining what a reasonable requirement for identifying joint contributors would be. The amended rule is reasonable because it provides a number of alternatives for determining who the contribution is from. Either the desired allocation can be noted by the contributors on the check, the candidate or treasurer may know the contributors and may base the attribution on their personal knowledge, or they may inquire by telephone or other means. The requirement that they make a notation of the basis for their attribution is not unduly burdensome. Rather, it is the least restrictive means the Board could employ for recording donor information.

4503.0500, subp. 9. This new rule is a restatement in combined form of existing statutory and rule provisions. It is needed because neither the statute nor the existing rule, which govern contributions by terminating principal campaign committees, make it clear that they also apply to contributions between two committees of the same candidate. This rule is reasonable because it does not impose additional restrictions or requirements, but states in simple terms the restrictions and requirements which already apply to the situation as a result of existing statutes and rules.

4503.0750. The Board has been asked in several advisory opinion requests how the purchase of equipment with campaign funds should be reported. A rule is needed to provide this answer in a prospective manner. Equipment purchased by a campaign is purchased with money raised to further the nomination or election of the candidate. Expenditures to influence the nomination or election of the candidate are reported as campaign expenditures. Certain other limited expenditures which also, though often less directly, influence the nomination or election of the candidate are reported as noncampaign disbursements. Campaign expenditures count toward a candidate's spending limit; noncampaign disbursements do not. Because equipment is not used up in the year purchased, it could be used for one purpose in one year and another purpose in another year. It is not reasonable to establish classes of equipment or to track equipment use over a period of years. By statute, each purchase must be reported in full when the purchase is made. Because every purchase which is permissible from campaign funds tends, to some degree, to influence the candidate's chance of election or re-election, it is reasonable to consider all equipment purchases to be campaign expenditures.

4503.0900, subp. 2. Repealed. This provision is recodified in 4503.0950, subp. 1, clause B.

4503.0900, subp. 3. Chapter 10A requires classification of spending as campaign expenditures or noncampaign disbursements. Noncampaign disbursements are limited to specified categories and are the exception to the classification of most campaign spending as being campaign expenditures. Because the Board is required to determine whether spending is properly reported, enough

information must be provided with the report to enable the Board to make this determination. Chapter 10A requires the principal campaign committee to report "the purpose" of the noncampaign disbursement. This rule is needed to provide specific requirements as to the detail required in reporting this purpose. The rule is reasonable because it requires the reporting of only minimal additional information. The various possible classifications for noncampaign disbursements are provided to reporting treasurers by the Board, so any additional burden on treasurers is only to document the reasons for a classification they have already determined is appropriate for the disbursement in question.

4503.0950, subp. 1. Certain expenditures from a principal campaign committee are reported as noncampaign disbursements. This rule makes it clear that if a candidate makes those same types of expenditures from personal funds, no reportable transaction occurs. This rule is needed to clarify that these specific personal expenditures do not constitute contributions to the candidate's principal campaign committee. The rule is reasonable because it eliminates an unnecessary reporting requirement and clarifies the statute.

4503.0950, subp. 2. This rule is needed to make it clear that Chapter 10A does not control a legislator's use of legislative funds. The rule is reasonable because it limits campaign finance reporting requirements to principal campaign committee transactions and does not extend those requirements to legislatively appropriated funds.

4503.1100, subp 3. Chapter 10A provides carryforward rules for principal campaign committees which are applicable at the end of an election cycle. The statute refers to election cycles in general and to principal campaign committees in general. It does not specifically state whether the carryforward rules apply only to candidates who ran in the election, or to all candidates with committees registered for the office in question. Neither does it specifically state whether the rules apply to special election cycles as well as general election cycles. This rule is needed to make specific the application of the statutory provisions. In the absence of statutory indication to the contrary, it is reasonable to determine that the general reference to an election cycle includes both a general election cycle and a special election cycle. It is also reasonable to conclude that carryforward limits apply to all candidates who could have run in the election, even if they did not file for office in the particular year in question. To determine otherwise would give non-filing candidates an advantage at the beginning of a new election cycle because they could carry unlimited funds into the next cycle while candidates who had run in the election would be limited by the statutory carryforward amounts.

4503.1300, subp. 6. This rule governs applicability of a public subsidy agreement by the merged committees of a governor and lieutenant governor candidate. Under the old rule, the candidates were required to sign a new public subsidy agreement after the merger. However, further consideration suggests that the better solution is to continue the effect of the existing public subsidy agreement, which, by its own terms, is effective for the duration of the election cycle. This rule is needed to simplify the merger process with minimal requirements on the merging committees. The rule is reasonable because the existing public subsidy agreement is already binding on the signer. No new burden or requirement is established; rather the process is simplified for merging committees.

4503.1400. This rule is needed to clarify certain provisions related to effect and expiration of a public subsidy agreement.

Subparts 2 through 4. These subparts are needed to describe the effect of signing a public subsidy agreement in a year later than the first year of the election cycle. A public subsidy agreement requires a candidate to limit spending each year. The question has arisen as to whether a candidate

could spend without limitation during each year of the election cycle prior to the election year, then sign the agreement and receive the election year direct subsidy payments. This rule is needed to provide a mechanism by which candidates signing a public subsidy agreement after the first year of an election cycle will be placed on equal footing with those who signed during the first year.

The vast majority of candidates sign the public subsidy agreement during the first year of the election cycle. They do so because they are then permitted to participate in the contribution refund program, which is also a part of the public subsidy system. However, a few candidates do not sign the agreement in the first year. This is generally because they are uncertain if they will want to agree to the spending limits in the election year, which is the last year of an election cycle.

By statute, a public subsidy agreement is binding until the end of the election cycle. Because limits which are brought into effect by the public subsidy agreement are considered only at the end of a year, a public subsidy agreement is thus effective for the full year in which it was signed. The proposed rule makes the public subsidy agreement effective for the entire election cycle, regardless of when it was signed. This interpretation is reasonable because one of the major the benefits of a public subsidy agreement, the payment of direct public subsidy, comes in the final year of the election cycle.

For candidates who have not exceeded the spending limits which would have been applicable had they signed a public subsidy agreement, the rule has no affect. However, those few candidates who sign a public subsidy agreement after the first year of an election cycle and who have already spent more than the agreed upon limit in a year prior to signing, will make themselves subject to the same sanctions (which consist of civil penalties) to which candidates who had signed public subsidy agreements were subject.

This rule is reasonable because it is consistent with the overall intent of the statute, which is to provide substantial public money in exchange for a candidate's agreement to limit spending. It is also reasonable because the sanctions it imposes on those few committees which might come under its requirements are by means of civil fines only and those fines are no different than those which prior signers of public subsidy agreements were subject to. Finally, the rule is reasonable because a committee always has the option of not bringing itself within the rule by not signing a late public subsidy agreement when doing so would subject the signer to civil penalties.

Subp. 5. Chapter 10A states that public subsidy agreements expire at the end of an election cycle. Subp. 5 of this rule clarifies that this is true in a special election cycle as well as in a general election cycle. This statutory interpretation is reasonable because the statute states that all public subsidy agreements expire at the end of an election cycle. The statute does not distinguish between general election cycles and special election cycles with regard to public subsidy agreement expiration. Neither does the statute exempt candidates who did not actually run in the election from expiration of their public subsidy agreement. This imposes no significant burden on candidates since they merely have to sign a new public subsidy agreement upon expiration of the old one.

Subp. 6. Chapter 10A may require the return of a portion of public subsidy payments based on the candidate's campaign spending. The Board generally relies on the year-end report to determine whether a return of public subsidy is required. However, a few candidates have circumvented this requirement by failing to file year end reports. This rule is needed to permit the Board to make its calculation of public subsidy to be returned based on the last report the candidate filed. The rule is reasonable because it gives the Board a basis for ordering return of public subsidy money which has not been accounted for. It is reasonable from the candidate's perspective because the candidate always has the option of filing the year-end report, which is already required by statute. Only those candidates who have received public subsidy money for their campaigns and who refuse to file the

statutory year end report would be subject to this provision. Holding the candidate accountable for public money based on the most recent candidate report is reasonable in such a situation.

Subp. 7 is a recodification of existing subp. 1 of the same rule, which is repealed. This subpart clarifies that the public subsidy agreement, which is a contract, is not dependent on the candidate ultimately qualifying for payment from the state elections campaign fund. This continuation of the existing rule is reasonable because candidates with public subsidy agreements also receive the benefit of being able to participate in the contribution refund program. Receiving direct public subsidy payments, on the other hand, requires the candidate to meet other requirements, including being named on election ballots or getting specified vote percentages in the general election.

4503.1600. This rule is needed to clarify a current rule which is not an accurate statement of current practice. The statute under consideration requires the Board to collect fines imposed by starting a legal action. In reality, fines imposed are almost always voluntarily paid. The previous rule allowed the Board to negotiate payment of the fine. The clarified language simply permits the Board to accept payment of the fine, which is a reflection of what happens in practice. The rule is reasonable because it permits voluntary payment of fines by committees, the customary practice already in existence.

4503.1700. Chapter 10A permits several methods for filing the notice which is the subject of this rule. Board rules also permit fax filing for all other required filings. This rule is needed to extend the fax filing option to this particular notice. The rule is reasonable because it is consistent with other Board practice and makes filing easier for clients. The rule is also a reasonable interpretation of the statute, which permitted all direct methods of filing available at the time it was written. The Board interprets the statute's inclusion of methods such as telegram and mailgram to include the fax, which is the modern equivalent of those obsolete forms.

Chapter 4510 - Repealer of lobbying rules

All of the rules of chapter 4510, which relates to lobbying, are repealed. The substance of chapter 4510 is included in the new chapter 4511. The reasons for repeal of the existing chapter 451 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.

Chapter 4511 - New chapter of lobbying rules

General statement of need

This chapter is needed as a general revision of current chapter 4510. This general revision is needed to achieve simplification of the rules and to organize them in a more meaningful and easily understood manner. Most of the provisions of Chapter 4511 are restatements of existing rules. Where new provisions are needed, they are necessary to facilitate the orderly administration of the lobbying provisions of Chapter 10A and to inform lobbyists and lobbyist principals of their obligations under the statute.

4511.0010 A renumbering of the existing statement of scope of the chapter; currently part 4510.0050.

4511.0100 A definitions section is needed to clarify terms which are not made definite by the statute.

Subp. 1. This subpart incorporates the statutory definitions into the rule and makes the rule definitions applicable to terms in the statute.

Subp. 2. The word "gift" is used in the lobbying statutes, however, it is not defined. This rule is needed to make the gift definition found in another part of Chapter 10A applicable to the lobbying program. The rule is reasonable because it selects a well-understood definition already in the chapter to define this important term.

Subp. 3. While the overall text of Chapter 10A strongly implies some of the components of "lobbying", it does not actually provide a definition. This rule is needed to provide a definition of a term used throughout the chapter. The rule is reasonable because it incorporates the elements of the definition which are strongly suggested by the chapter. It also includes in lobbying those activities which directly support the key component, which is communication. Without this addition, the definition would be incomplete when applied to such concepts as disbursements for lobbying, most of which are in support of the actual communication, which is the end result of the process. If disbursements for lobbying did not include support activities, there would be virtually no disbursements for lobbying and no disclosure under the statute.

Subp. 4. Chapter 10A requires a lobbyist to report the lobbyist's disbursements, however it does not define what spending is included in these disbursements. This rule is needed to provide this missing definition which will enable lobbyists to know what they must report. The rule is reasonable because it reflects current practice and because it includes those disbursements which are generally understood to be in support of lobbying. It would be unreasonable to limit the definition to disbursements made solely by the individual lobbyist because almost all expenditures in support of lobbying are made on behalf of the lobbyist by an employer or association represented, not directly by the individual lobbyist.

Subp. 5. Chapter 10A requires a lobbyist to report original sources of funds of more than $500. These are sources of funds which come from some outside source. This rule is needed to provide a clear definition of an original source of funds so that the lobbyist knows what must be reported. The rule is reasonable because it is consistent with the statutory requirement. No other logical definition of an original source of funds could be created.

Subp. 6. Chapter 10A includes certain provisions relevant to "public higher education systems." The question has arisen as to what entities are included in this group. The Board reviewed the statutes and found only two public higher education systems: The University of Minnesota and Minnesota State Colleges and Universities (MNSCU). This rule makes it clear that these two entities are included in the statutory phrase. The rule leaves open the possibility that new or additional public higher education systems may exist or come into being and the Board may review further questions about the subject through its advisory opinion process.

4511.0200. This rule is in part a restatement of 4510.0800 and reflects the practice which has been in existence since lobbyist registration began. The last sentence of subpart 1 was added at the suggestion of the Board's lobbyist clients to make it clear that underlying affiliates of a lobbyist's association are not separate entities so as to require separate registration. An example of such a situation would be an association of cities or counties. The association itself is the entity represented by the lobbyist. Even though the association's lobbyist represents the association's member's interests, the lobbyist does not have to register separately for each member. Of course, if the lobbyist has a separate direct lobbying relationship with an association member, a separate registration would be required.

The end result of the rule is that there is a separate registration for each lobbyist-association pair. This is reasonable because it reflects the basis on which lobbyists are required to report. It is

necessary because no other system would provide the meaningful public disclosure required by the statutes.

4511.0300. Lobbyist principals are required to report under Chapter 10A. Previously, the Board required a lobbyist to determine if the association the lobbyist represented met the definition of a principal. Lobbyists suggested that this should not be their responsibility. This rule is needed to give the Board a preliminary basis for determining whether an association is a principal or not. Since most associations are principals, it is reasonable to begin with the assumption that all associations are principals. This way most associations will not be required to take further action. Those associations which contend that they do not meet the definition of a principal may establish that fact through a letter and will then be removed from the Board's principal list.

4511.0400 Chapter 10A states that a lobbyist may file a termination statement to terminate registration with the Board. This rule, which is a restatement of 4510.0100, subp. 3, is needed to describe the nature of the termination statement. Since a lobbyist is required to report through the conclusion of lobbying, it is reasonable that the termination statement should take the form of a final report. This is what the rule provides and it reflects the actual practice which has been in place for many years.

4511.0500, subp. 1. This rule is needed to clarify that reports are based on lobbyist-association pairs. The rule is reasonable because no other method of reporting would provide any meaningful disclosure of the activities of the lobbyist on behalf of a particular association. The rule also reflects current practice.

4511.0500, subp. 2. This rule is needed to provide an easier reporting mechanism for those cases where an association has multiple lobbyists. It is also needed to assure that double reporting of disbursements of the association does not occur. The rule generally reflects the current practice of one lobbyist reporting voluntarily on behalf of multiple others. A new component of the rule requires the association to designate one lobbyist to report lobbying disbursements it makes. Because this disclosure is required by statute, a rule is needed to provide identification of the lobbyist who will be responsible for the reporting. Also, having a designated lobbyist report for the association ensures that the association's disbursements will not be reported more than once. It also relieves all but the designated lobbyist from any responsibility for the association's disbursements.

The provisions of the rule permitting lobbyists to file on behalf of others are not new and reflect current practice. These provisions are necessary because they permit lobbyists to continue to do business in the way which best suits their needs. In many cases, one lobbyist handles financial matters for the group. This rule accommodates that practice by permitting filings to be done along similar lines.

4511.0500, subp. 3. Chapter 10A provides that lobbyists must identify in their registration materials the names and addresses of the officers of the association represented and the names and addresses of individuals represented. The chapter also provides that the Board may require this same information in the lobbyist disbursement reports filed with the Board. Under previous rule, a lobbyist was required to update this information annually. Since current information is important to public disclosure, this rule is needed to provide for more frequent updating of the required information. The rule is reasonable because it imposes little burden on the reporting lobbyist (and only on a lobbyist whose activities are not reported by another lobbyist) and provides timely disclosure of important public information. It is also reasonable to require that this information be updated on each report rather than on only the January report (as current rule requires). This change eliminates the need for the lobbyist to remember when an update is required. It also permits the Board to implement a single reporting form which may be used during each reporting period.

4511.0500, subp. 4. While lobbyists must report loans to officials by their principals, the Board has always interpreted this requirement as excluding commercial loans made in the ordinary course of business and on ordinary terms. This rule is a recodification of 4510.0600, subp. 3, which accomplished the same result.

4511.0500, subp. 5. Chapter 10A requires lobbyists to report gifts given by their employers to specified officials. The chapter does not specifically define employer, although many associations represented by lobbyists are the lobbyist's employer. These associations are also generally the lobbyist's principal. It is clear that these employer-principal's gifts must be reported. However, a narrow reading of the statute would result in a discrepancy in reporting between those principals who were represented by employee lobbyists and those represented by contract lobbyists. This rule is needed to clarify that the word "employer" as used in this disclosure statute is not to be read narrowly. Rather, all principals will treated the same with respect to their reporting obligations. The rule is reasonable because it requires the same reporting by principals who contract their lobbying services as it does from those who use employees for lobbying.

This rule does not impose an undue burden on any lobbyist or principal when it is considered in light of Minn. Stat. § 10A.071, which entirely prohibits most gifts from principals to officials. Since the enactment of this prohibition, only minimal gift-giving occurs. However, when it does occur, disclosure should not depend on the financial relationship between the principal and its lobbyist.

4511.0600, subparts 1-4. These subparts are needed to provide clear and simple guidance to lobbyists who must determine the amounts of disbursements. They are reasonable because they take a straightforward approach and apply the criteria which a logical and reasonable person would expect to use in determining amounts of disbursements. Generally, the rule seeks determination of actual costs and permits a reasonable approximation if actual costs are not available. The rule also permits allocation between multiple entities and pro-ration of costs which are only partly for lobbying. These rules were developed in consultation with the lobbyist community as a reasonable framework for determining disbursement amounts and allocations.

4511.0600, subp. 5. This subpart is needed to describe what is included in each of the statutory categories of lobbying disbursements. It replaces a much more complicated rule (4510.0500, subp. 3) which was, at best, difficult to understand. The rule is reasonable because it includes in each category only those things that a reasonable person would expect to be included. It does not establish either the reporting requirement or the categories, both of which are established by statute. The Board does not believe that the new rule makes any significant change to the items included in the old rule, nor does it make any significant change to lobbyists' current practice.

4511.0600, subp. 6. The reporting requirements for lobbyists include categories such as food, entertainment, and travel which, prior to the enactment of the gift prohibition of Minn. Stat. § 10A.071, were often provided to officials. When the general prohibition was enacted, the disclosure provisions remained although much of what would be disclosed was prohibited. In view of this fact, the Board believes that this subpart is needed to make it clear that the fact that something is listed in the reporting requirements does not somehow override the fact that it may be prohibited by Minn. Stat. § 10A.071.

4511.0700. Compensation paid to the lobbyist has never been considered a disbursement reportable by the lobbyist. On the other hand, the chapter does include lobbyist compensation in the totals used for principal reporting. Since this issue is the subject of recurring questions, the Board determined that a rule was needed to specifically state what has been prior practice and what is required, though not clearly stated, by the statute. The rule is reasonable because it continues

accepted reporting requirements and because it is a clear statement of requirements found in the statute.

4511.0800. This rule is needed to revise the existing provision (4510.1100) regarding when an administrative action begins for lobbying purposes. The rule is changed to be consistent with changes in the Administrative Procedures Act. The rule is reasonable because it defines an administrative action as beginning at the time the first statutory step is taken to begin the official action. After that time, the public disclosure policy behind Chapter 10A requires that persons who attempt to influence the official action should register and report as lobbyists if they otherwise meet the statutory definition of a lobbyist. Subpart 2 of the rule is needed to make it clear that a person sitting on an official advisory committee established by the agency does not become a lobbyist because of that activity. The rule is reasonable because persons on advisory committees are acting at the request of the agency and, although they may advocate a position, and may be paid by some employer while they serve on the committee, it would be unreasonable for that activity to make the person a lobbyist or to make the person's employer a principal.

Jeanne Olson 2/7/97

Jeanne Olson Date
Executive Director
Ethical Practices Board