



MINNESOTA

CAMPAIGN FINANCE BOARD

VIA EMAIL

October 1, 2024

Legislative Reference Library

sonars@lrl.leg.mn

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

Dear Legislative Reference Library:

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

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

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

Respectfully,

A handwritten signature in black ink, appearing to read "Andrew Olson".

Andrew Olson
Legal/Management Analyst

Enclosure: Statement of Need and Reasonableness



MINNESOTA
CAMPAIGN FINANCE BOARD

STATEMENT OF NEED AND REASONABLENESS

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

Campaign Finance and Public Disclosure Board

September 2024

General information

1. The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rules will be available during the public comment period on the Board's rulemaking docket webpage at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/.
2. Records of the Board's past rulemaking projects are available at cfb.mn.gov/citizen-resources/the-board/statutes-and-rules/rulemaking-docket/completed-rulemaking-projects/.
3. Upon request, this SONAR may be made available in an alternative format. To make a request, contact Andrew Olson by email at andrew.d.olson@state.mn.us, by phone at 651-539-1190, 800-657-3889 (toll free), or 800-627-3529 (Minnesota Relay), or by mail at Campaign Finance and Public Disclosure Board, Suite 190, Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155-1603.

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Glossary of abbreviations, initialisms, and acronyms

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

Introduction and overview

Introduction

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

General need

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

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

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

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

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

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

Scope

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

Public participation and stakeholder involvement

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

shape proposed rule language regarding lobbying.

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

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

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

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

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

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

Statutory authority

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

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

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

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

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

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

The Board has statutory authority to adopt the proposed rules.

General reasonableness

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

Rule-by-rule analysis

PART 4501.0100 DEFINITIONS.

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

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

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

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

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

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

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

PART 4501.0500 FILINGS, SUBMISSIONS, AND DISCLOSURES.

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

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

PART 4503.0100 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 4503.0200 ORGANIZATION OF POLITICAL COMMITTEES AND POLITICAL FUNDS.

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

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

PART 4503.0450 JOINT PURCHASES.

Proposed addition of Minnesota Rules, chapter 4503, part 0450

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

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

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

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

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

PART 4503.0500 CONTRIBUTIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 4503.0700 CONTRIBUTION LIMITS.

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

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

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

PART 4503.0800 DONATIONS IN KIND AND APPROVED EXPENDITURES.

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

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

Contribution processing fees are increasingly being paid by contributors, rather than recipients, and whether recipients are required to record processing fees paid by contributors is a common topic of concern.

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

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

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

PART 4503.0900 NONCAMPAIGN DISBURSEMENTS.

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

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

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

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

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

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

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

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

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

PART 4503.1000 CAMPAIGN MATERIALS INCLUDING OTHER CANDIDATES.

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

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

PART 4503.1900 AGGREGATED EXPENDITURES.

Proposed addition of Minnesota Rules, chapter 4503, part 1900

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

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

PART 4503.2000 DISCLAIMERS.

Proposed addition of Minnesota Rules, chapter 4503, part 2000

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

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

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

PART 4511.0100 DEFINITIONS.

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

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

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

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

actions that do not constitute development of prospective legislation.

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

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

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

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

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

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

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

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

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

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

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

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

PART 4511.0200 REGISTRATION.

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

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

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

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

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

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

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

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

PART 4511.0300 PRINCIPALS.

Proposed amendment of Minnesota Rules, chapter 4511, part 0300

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

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

PART 4511.0400 TERMINATION.

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

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

PART 4511.0500 LOBBYIST REPORTING REQUIREMENTS.

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

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

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

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

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

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

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

PART 4511.0600 REPORTING DISBURSEMENTS.

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

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

PART 4511.0700 REPORTING COMPENSATION PAID TO LOBBYIST.

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

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

PART 4511.0900 LOBBYIST REPORTING FOR POLITICAL SUBDIVISION MEMBERSHIP ORGANIZATIONS.

Proposed addition of Minnesota Rules, chapter 4511, part 0900

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

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

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

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

PART 4511.1000 ACTIONS AND APPROVAL OF ELECTED LOCAL OFFICIALS.

Proposed addition of Minnesota Rules, chapter 4511, part 1000

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

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

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

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

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

PART 4511.1100 MAJOR DECISION OF NONELECTED LOCAL OFFICIALS.

Proposed addition of Minnesota Rules, chapter 4511, part 1100

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

decisions regarding the expenditure or investment of public money.” The phrase “major decisions” is not defined in Minnesota Statutes, chapter 10A, or within the Board’s rules. In 1991 the Board issued Advisory Opinion 111 stating that local governing bodies may determine for themselves what constitutes a major decision, and that they should maintain a public list of nonelected individuals they consider to be local officials within the meaning of Minnesota Statutes, chapter 10A. In 2023 the legislature enacted legislation that, effective beginning in 2024, amended the definition of the term lobbyist to include those attempting to influence the official action of any political subdivision, and added Minnesota Statutes, section 10A.01, subdivision 26b, defining the term “official action of a political subdivision” to include “an action by an appointed or employed local official to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.”

The Board issued Advisory Opinions 457 and 458 on January 3, 2024, during the rulemaking process. Each opinion provided answers to questions that depended, in part, on whether the actions sought would qualify as major decisions regarding the expenditure or investment of public money. For example, in Advisory Opinion 457 the Board stated that a real estate developer seeking approval of a subdivision plat from a city or county planning commission may constitute lobbying, even if the members of that commission are not elected, because approval of the subdivision plat would likely obligate the political subdivision to incur significant costs for the infrastructure needed to support the subdivision. Within the same opinion the Board stated that a representative of a group speaking at a city planning commission meeting to object to a short-term rental license would not be lobbying if the commission’s members are not elected local officials, because issuing or revoking a short-term rental license presumably would not involve major decisions regarding public money. The Board intends to apply principles announced in those opinions more broadly than to the requesters of the opinions. Therefore, the Board is required to adopt those principles as rules under Minnesota Statutes, section 10A.02, subdivision 12a.

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

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

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

PART 4512.0200 GIFTS WHICH MAY NOT BE ACCEPTED.

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

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

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

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

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

PART 4525.0100 DEFINITIONS.

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

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

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

PART 4525.0200 COMPLAINTS OF VIOLATIONS.

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

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

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

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

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

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

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

PART 4525.0210 DETERMINATIONS PRIOR TO AND DURING FORMAL INVESTIGATION.

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

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

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

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

PART 4525.0220 SUMMARY PROCEEDINGS.

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

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

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

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

PART 4525.0500 INVESTIGATIONS AND AUDITS; GENERAL PROVISIONS.

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

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

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

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

PART 4525.0550 FORMAL AUDITS.

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

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

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

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

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

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

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

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

Regulatory analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice Plan

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

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

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

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

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

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

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

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

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

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

Performance-based rules

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Consult with MMB on local government impact

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

Impact on local government ordinances and rules

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

Costs of complying for small business or city

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

Witnesses

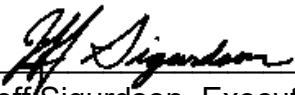
If the proposed rules are considered at a public hearing, the Board anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

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

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

Conclusion

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



Jeff Sigurdson, Executive Director
Campaign Finance and Public Disclosure Board

September 30, 2024

Date