

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....

November 18, 2014

Room G-31

Minnesota Judicial Center

.....

MINUTES

The meeting was called to order by Chair Wiener.

Members present: Beck, Oliver (arrived during Chair's report), Peterson, Sande, Wiener
Members absent: Member Rosen, who had notified the Chair that he would not be able to attend.

Others present: Goldsmith, Sigurdson, Fisher, Pope, staff; Hartshorn, counsel

MINUTES (October 7, 2014)

After discussion, the following motion was made:

Member Sande's motion: To approve the October 7, 2014, minutes.

Vote on motion: Unanimously passed (Oliver absent).

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for January 6, 2015. A tentative schedule for 2015 was presented to members for consideration.

Appointment of nominating committee for 2015 officers

The Chair appointed herself and member Peterson to the nominating committee.

EXECUTIVE DIRECTOR TOPICS

Status of office operations

Mr. Goldsmith reported that since the last meeting, staff had been busy with complaints, the deadline for filing the 10-day pre-general-election report, public subsidy payments, and compliance efforts.

Reconciliation of board data

Assistant Director Sigurdson reported that although a reporting deadline had prevented staff from focusing on the reconciliation effort, progress had been made on the year 2009. Mr. Sigurdson reported that 97% percent of the unreconciled transactions for that year now had been reconciled.

Website redevelopment

Mr. Goldsmith told members that MN.IT had pushed back the delivery date for the upgrades to the state's web content management system to next spring. Consequently, MN.IT would not have the resources or the platform for the Board's website redevelopment project until next spring. In addition, MN.IT has stopped allowing agencies to access the current web content management system to create new websites even on a temporary basis.

Mr. Goldsmith told members that as a workaround for this delay, the Board could contract with one or two outside IT employees under the Accelerated Staff Augmentation Program. Mr. Goldsmith said that under this program, the Board could temporarily hire a database developer to begin making the changes to the Board's databases that will be necessary to support the improved search capabilities on the new website. Mr. Goldsmith told members that the Board also could temporarily hire a website developer to begin developing templates for webpages that could be delivered to MN.IT for finalization when MN.IT resources are available.

Mr. Goldsmith said that as an alternative to waiting for MN.IT, the Board could hire outside developers to complete the entire project. This option, however, probably would be more costly than using MN.IT. Mr. Goldsmith also explained that the MN.IT delay was due, in part, to the fact that the new web platform is statutorily required to comply with accessibility requirements for websites. Mr. Goldsmith stated that an outside developer might not be familiar with all of those requirements and, further, paying an outside developer to develop accessibility components that MN.IT is already developing for the use of all state agencies would be duplicative and add to the cost of the project.

Mr. Sigurdson told members that a request for proposals to develop online compliance training was in progress. Mr. Goldsmith also said that staff had started preliminary work on an online campaign finance reporting system.

Members asked Mr. Goldsmith to prepare a formal report on the website redevelopment efforts for the legislature. Mr. Goldsmith stated that because reporting was nearly finished for the year and other projects such as the rulemaking had been completed, office resources now were available to make the website a top priority.

Board policy review – special expense policy

Mr. Goldsmith presented members with a memorandum on this topic that is attached to and made a part of these minutes. Mr. Goldsmith told members that at the September 2, 2014, meeting, the Board had modified its special expenses policy to be consistent with revisions

made by Minnesota Management and Budget to the state policy applicable to all agencies. Mr. Goldsmith said that the Board's advisors at the Small Agency Resource Team (SmART) in the Department of Administration's Financial Management and Reporting Division had reviewed the new policy and noted a few very technical differences between the policy and the state model. Mr. Goldsmith stated that the amended policy included minor changes to make the Board's policy consistent with the corresponding state policy.

After discussion, the following motion was made:

Member Beck's motion: To approve the amended special expense policy.

Vote on motion: Unanimously passed.

Approach to conciliation agreements and penalties under the new statutes and rules

Mr. Goldsmith presented members with a memorandum and two charts on this topic that are attached to and made a part of these minutes. Mr. Goldsmith first reviewed the implementation of the new staff review process. Mr. Goldsmith said that staff anticipated that in the future, routine matters would be resolved by agreement between the executive director and the respondent and then submitted to the Board for approval, as contemplated in the rules and as was the case with the test matters authorized by the Board. Mr. Goldsmith then stated that the terms of the agreement and the amount of the civil penalty to be assessed in a matter are policy questions to be decided by the Board. Mr. Goldsmith said that he believed that until a significant body of experience with the Board's approach to civil penalties in the new conciliation agreement context was developed, the Board should provide direction on these issues prior to the executive director signing a conciliation agreement.

Mr. Goldsmith stated that Minnesota Rules 4525.0340 provides that any matter that is not resolved by conciliation agreement so that it can be submitted for Board approval under rule 4525.0330 must be submitted to the Board which can then provide direction to the executive director. Mr. Goldsmith said that unless directed otherwise, staff reviews that would likely result in conciliation agreements would be handled under 4525.0340. Mr. Goldsmith said that this approach would mean that he would discuss the terms of a possible conciliation agreement with a respondent and then seek Board input rather than submitting a completed agreement to the Board for approval. Mr. Goldsmith said that the use of this approach would continue until a body of experience had been developed to the extent that the executive director could confidently enter into conciliation agreements to submit to the Board for approval without Board direction in each individual matter.

Mr. Goldsmith also said that most conciliation agreements entered into to date had incorporated the concept of remediation and staying a portion of the imposed civil penalty. Mr. Goldsmith stated that in most cases, the civil penalty imposed was a multiple of the amount of the violation. Mr. Goldsmith asked members for guidance on whether staff should continue these practices for future conciliation agreements.

After discussion, the consensus of the Board was that staff should continue the current approach to conciliation agreements but that each case should be judged on its own merits.

Board budget

Mr. Sigurdson presented members with a copy of the Board's budget for fiscal years 2014 and 2015 that is attached to and made a part of these minutes. Mr. Sigurdson reported that the funds not used for IT services in fiscal year 2014 had been rolled forward and were available for use for IT services in fiscal year 2015.

ENFORCEMENT REPORT

Discussion items

A. Request to terminate with a cash balance discrepancy and waive \$700 in late filing fees for 1st Quarter Report due 4/14/2014 – Sue Jeffers for Governor

Mr. Fisher reported that this committee had filed no change statements with the Board since 2006. On the committee's 2014 1st quarter report, the no-change statement listed a cash balance of \$2,700. Because the committee had been inactive for quite some time and because the cash balance had been reported as between \$2,700 and \$3,100 at various times in the preceding years, staff informed Ms. Jeffers that she had to terminate the committee and submit to the Board a bank statement verifying the reported cash balance.

Mr. Fisher said that in a September 29, 2014, letter, Ms. Jeffers informed the Board that her bank account had been closed in July 2009 and stated that automatic advertising and debt charges had used up the remaining balance. Ms. Jeffers provided a bank statement that confirmed the account's closure. Ms. Jeffers had been unaware of these developments because her treasurer had moved out of state and left Ms. Jeffers no access to the account. Mr. Fisher said that the Board had waived \$1,000 in civil penalties and \$400 in late filing fees incurred for the committee's failure to file 2006 pre-general-election and year-end reports and had waived a \$50 late fee incurred for the 2010 year-end report.

After discussion, the following motion was made:

Member Peterson's motion: To waive the \$700 in late filing fees and allow the Sue Jeffers for Governor committee to terminate with a cash balance discrepancy.

Vote on motion: Unanimously passed.

B. Request to terminate with a cash balance in excess of \$100 – HCAPE Political Fund

Mr. Fisher told members that the fund planned to be active at the local level only as it seeks to end the account. The fund last reported a balance of \$880.16 on 12/31/2013.

After discussion, the following motion was made:

Member Peterson's motion: To allow the HCAPE Political Fund to terminate with a cash balance in excess of \$100.

Vote on motion: Unanimously passed.

C. Request to withdraw registration – Better Future for All Beltrami

Mr. Fisher stated that the committee registered with the Board on 10/7/2014. Mr. Fisher said that the committee was focused on the campaigns of Beltrami County and had no interest or resources to assist state campaigns.

After discussion, the following motion was made:

Member Oliver’s motion: To allow the Better Future for All Beltrami committee to withdraw its registration.

Vote on motion: Unanimously passed.

D. Request for payment plan – Terra Cole for State Representative

Mr. Fisher told members that this committee accrued a \$325 late filing fee on its 2013 year-end report. The committee last reported a cash balance of \$9.47 on 12/31/2013. Ms. Cole had proposed a payment plan based on the following schedule:

- \$25 due on October 15, 2014
- \$150 due on November 15, 2014
- \$150 due on December 15, 2014

Mr. Fisher stated that after the late filing fee was paid in full, the committee planned to terminate. Mr. Fisher said that the initial \$25 payment had been received. Mr. Fisher told members that in similar matters where a waiver was requested, the Board had granted the waiver conditioned on termination of the committee.

After discussion, the following motion was made:

Member Peterson’s motion: To waive \$300 in late filing fees for the Terra Cole for State Representative committee on the condition that the committee terminate its registration.

Vote on motion: Unanimously passed.

E. Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member’s Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Pass the Minnesota Health Plan	\$50	\$0	10/27/2014 Pre-general	Bulletin stated that due date for report was 10/27/2014; however, bulletin also stated that reports must be postmarked or faxed to the Board by midnight on 10/28/2014 to avoid a late filing fee.	Beck	To waive the late fee.	Unanimous

Roger Smith ¹	\$50	\$0	6/16/2014 LDR	Lobbyist had a new mailman who lost numerous individuals' mail.	No motion.		
School Lunch Bunch	\$50	\$0	9/23/2014 Pre-general	Treasurer had issues submitting the report with the software. Board records show that the treasurer uploaded the wrong report on the filing deadline. Individual has been the treasurer and has submitted reports electronically since 9/2012.	No motion.		
IUPAT District Council 82 PAC	\$50	\$0	9/23/2014 Pre-general	Office manager who normally files reports was out with a back injury. Office manager is not the treasurer registered with the Board.	No motion.		
66th Senate District DFL	\$700	\$0	7/28/2014 Pre-primary	Former treasurer did not provide sufficient information to new treasurer in March. New treasurer had to recreate all information and first attempt at submission was not received by the Board.	No motion.		
Your Exchange	\$100	\$0	3/17/2014 LPR	Did not know that report was needed. Believed lobbyist registration had been terminated and therefore the report was not required. However, registration was not terminated until May 31, 2014.	No motion.		

Informational Items

A. Payment of a late filing fee for Candidate Economic Interest Statement:

Justin Boals Campaign, \$5

B. Payment of a late filing fee and civil penalty for 2012 Amended Year-end Report of Receipts and Expenditures

Branden Peterson for House, \$100 LF, \$1,000 CP

C. Payment of a late filing fee for 2013 Year-end Report of Receipts and Expenditures:

Terra Cole for State Representative, \$25 (partial)
 Joe Hoppe for State Representative, \$1,000
 Duane Johnson Volunteer Committee, \$425

D. Payment of a civil penalty for 2013 Year-end Report of Receipts and Expenditures:

Joe Hoppe for State Representative, \$1,000

¹ Mr. Smith had already paid the \$50 late filing fee; a waiver would reimburse Mr. Smith.

E. Payment of a late filing fee for June 16, 2014, Report of Receipts and Expenditures:

Leech Lake PAC, \$250

F. Payment of a late filing fee for July 28, 2014, Report of Receipts and Expenditures:

St. Paul Firefighters Local 21, \$50
Watsonwan County RPM, \$50

G. Payment of a late filing fee for September 23, 2014, Report of Receipts and Expenditures:

IFAPAC, \$50
Iron Workers Local 512, \$50

H. Payment of a late filing fee for October 27, 2014, Report of Receipts and Expenditures:

7B House District RPM, \$50

I. Payment of a late filing fee for June 15, 2012, lobbyist disbursement report:

Scott Moen, Fish & Wildlife Legis. Alliance, \$35

J. Payment of a late filing fee for June 16, 2014, lobbyist disbursement report:

Cristine Almeida, Waldon University, \$75
David Anderson, All Parks Alliance for Change, \$125
Scott Moen, Fish & Wildlife Legis. Alliance, Drageo North America, Public Employee Pension Service, Intl Council of Shopping Centers, \$300
Christopher Parsons, MN Prof Firefighters, \$50
Thomas Perkins, MN Public Employees Association, \$100
Roger Smith, American Citizens, \$50

K. Payment of a late filing fee for March 17, 2014, Annual Report of Lobbyist Principal:

International Council of Shopping Centers, \$75

L. Payment of a civil penalty for failure to provide registration number with a contribution:

Michael Madigan, \$50

M. Payment of a civil penalty for excess contribution:

Branden Petersen for Senate, \$2,000. The Branden (Petersen) for Senate committee is the principal campaign committee of Branden Petersen. The 2013-2014 non-election segment contribution limit from a political committee to a state senate candidate was \$1,000, as provided in Minnesota Statutes section 10A.27, subdivision 1(a)(4). On its 2013 year-end report, the committee reported receiving a \$2,000 contribution from MN United

PAC, a political committee registered with the Board. The contribution exceeded the applicable limit by \$1,000. Senator Petersen entered into a conciliation agreement on September 29, 2014.

RULEMAKING

Mr. Goldsmith told members that the Office of Administrative Hearings and the Governor's Office had approved the proposed rules. Mr. Goldsmith said that the rules would be published in the State Register on December 1, 2014, and would be effective on that date.

LEGISLATIVE RECOMMENDATIONS

Mr. Goldsmith presented members with a memorandum on this topic, a list of proposed legislative recommendations, draft language that would implement the proposed recommendations, and a grid showing spousal financial disclosure requirements in other states. These documents are all attached to and made a part of these minutes.

After discussion, the following motions were made:

Member Beck's motion: To adopt the technical recommendations numbered 1 through 6 and to adopt the technical/policy recommendations numbered 1 through 15 on pages 1 through 5 of the list of proposed legislative recommendations.

Vote on motion: Unanimously passed.

Member Peterson's motion: To adopt technical/policy recommendation number 16 on page 6 of the list of proposed legislative recommendations.

Vote on motion: Unanimously passed.

Member Sande's motion: To adopt policy recommendation number 1 on page 6 of the list of proposed legislative recommendations with the following amendment:

Delete the ~~Modify~~ prima facie determination for investigations, or modify this requirement to allow staff to make this determination, and review language related to probable cause determination.

Vote on motion: Unanimously passed.

Member Beck's motion: To adopt policy recommendation number 2 on pages 6 and 7 of the list of proposed legislative recommendations as drafted.

Vote on motion: Unanimously passed.

Member Sande's motion; To adopt policy recommendation number 3 on page 7 of the list of proposed legislative recommendations.

Vote on motion: Unanimously passed.

Member Beck's motion: To adopt policy recommendation number 4 on page 7 of the list of proposed legislative recommendations.

Vote on motion: Unanimously passed.

LEGAL COUNSEL'S REPORT

Ms. Hartshorn had nothing to add to the provided report.

EXECUTIVE SESSION

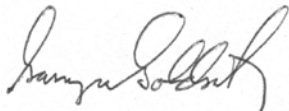
The Chair recessed the regular session of the meeting and called to order the executive session. Upon completion of the executive session, the regular session of the meeting was called back to order and the Chair had the following items to report into regular session:

Probable cause determination in the complaint of Sanborn regarding Bob Frey MN

This decision is attached to and made a part of these minutes.

OTHER BUSINESS

There being no other business, the meeting was adjourned by the Chair.



Gary Goldsmith
Executive Director

Attachments:

- Memorandum regarding minor revisions to the special expense policy
- Revised special expense policy
- Memorandum regarding approach to conciliation agreements and penalties
- Conciliation agreement flowchart
- Conciliation agreement grid
- Board budget for fiscal years 2014 and 2015
- Memorandum regarding proposed legislative recommendations

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List of proposed legislative recommendations

Statutory language implementing proposed legislative recommendations

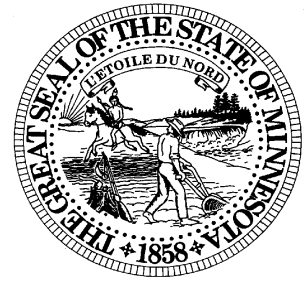
Analysis grid for spousal financial interest disclosure and gift provisions

Legal report

Probable cause determination in the complaint of Sanborn regarding Bob Frey MN

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: November 10, 2014

To: Board members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Special expense policy.

At its meeting of September 2, 2014, the Board modified its special expenses policy to be consistent with revisions made by Minnesota Management and Budget to the state policy and applicable to all agencies.

Our advisors at the Small Agency Resource Team (SmART) in the Department of Administration's Financial Management and Reporting Division reviewed the new policy and noted a few very technical differences between our policy and the state model.

The attached amended policy includes minor changes to make the Board's policy consistent with the corresponding state policy.

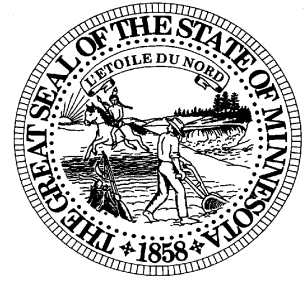
This matter will require a resolution adopting the Special Expense Policy and Procedure with amendments proposed by staff at the meeting of November 18, 2014.

Attachment

Special Expenses Policy and Procedure

Minnesota

Campaign Finance and Public Disclosure Board



Special Expenses Policy and Procedure

This policy ~~replaces~~ amends the Board's special expenses policy and procedure originally adopted September 2, 2014. ~~November, 2005, and revised September 1, 2009, which policy and procedure is hereby revoked.~~

Background Information

Under the various state employee contracts and plans, provision is made for the reimbursement of "special expenses", which are not specifically defined in the plans. Minnesota Management and Budget (MMB) has enacted Administrative Procedure 4.4, which defines these special expenses. In addition to requiring specific approval protocols when special expenses are paid by employees or board members and then reimbursed, the MMB procedure also requires special approval protocols for special expenses that are incurred by an agency through its regular encumbering and purchasing processes.

Policy Objectives

The purpose of this policy is to implement MMB Administrative Procedure 4.4 as it applies to the Minnesota Campaign Finance and Public Disclosure Board.

This special expense policy is will:

- Establish a clear definition of costs to be regarded as special expenses
- Provide a consistent process for review and approval of special expenses
- Promote better accountability

Expense types that constitute special expenses

The types of expense items identified in this section are defined as special expenses. Expenses not defined in this section are regular expenses subject to all applicable statewide and agency purchasing policies and requirements.

The following constitute special expenses:

1. Full cost of a meal when it is a part of the structured agenda of a conference, workshop, seminar, or meeting which the appointing authority has authorized the employee to attend, excluding routine staff meetings.
2. Registration and tuition fees for conferences, seminars, workshops, or education courses.

3. Refreshments for Board sponsored meetings, conferences or workshops where the majority of participants are not state employees.
4. Refreshments, meals and other conference costs for Board sponsored events where registration fees are charged and the majority of the participants are not state employees.
5. Refreshments and/or meals during official meetings of the Board, its task forces, advisory committees, subcommittees, provided such meetings are authorized by the full Board.
6. Lodging for an employee who is not in travel status if:
 - a. weather conditions or other unforeseen occurrences prevent the employee from returning home; or
 - b. the appointing authority authorizes overnight participation in an approved event.
7. Expense reimbursement for lodging, travel and meals for one attendant for an employee with a disability who requires daily assistance in performing various personal tasks or who has special mobility needs.
8. Expenses as follows for individual employee awards and agency recognition/appreciation events:
 - a. awards for individual or group achievements which are limited to non-cash/non- negotiable items of nominal value (not taxable wages or benefits) under IRS guidelines.
 - b. reasonable costs for annual official agency/institution employee recognition events which may include up to 100% meal reimbursement for employees being recognized but shall not include reimbursement for other guests and travel.
 - c. reasonable costs for staff recognition/appreciation events, including employee retirement events, where refreshments are provided.
9. Expenses for international travel authorized by the appointing authority.
10. Employee recognition events beyond those listed in 8 above.
11. Other special expenses not identified in this policy.

Limitations, restrictions, and thresholds for special expenses.

1. A special expense request and approval for registration and tuition fees for conferences, seminars, workshops, or education courses is required only for expenses of ~~more than~~ \$500 or more per person.
2. Except in emergency situations, special expense requests must be approved before any expenses are incurred.

3. Special expenses included in MMB Administrative Procedure 4.4 but not listed in the above special expenses definition are not available for use by the Board.
4. Where a special expense may include the cost of meals at a meeting, meetings must be scheduled to minimize the inclusion of meals.
5. All special expenses must be limited to costs that are reasonable under the circumstances.
6. Unless otherwise authorized by MMB, costs for international travel are limited to the out-of-state travel reimbursement amounts permitted by the applicable collective bargaining agreement or plan.
7. Special expenses may not be used to pay for:
 - private club memberships,
 - alcoholic beverages,
 - entertainment,
 - employee parties, or
 - refreshments or meals for meetings consisting of a majority of state employees.

Requests for approval of special expenses

Employee reimbursement requests

An employee requesting reimbursement for a special expense must complete a special expenses reimbursement request using MMB form MMB-00668 or a form provided by the Board including substantially the same information.

Agency direct purchases

If a special expenses is requested by the appointing authority and encumbered and paid through the usual state and agency purchasing policies and procedures, the request for special expense may ~~be included with the purchase order or other encumbrance request. Signature of the appointing authority on the purchase order or encumbrance request constitutes the request for the special expense as well as approval of the expense signed by the Board's Executive Director or Assistant Executive Director.~~

Approval of special expenses

Approval by MMB

Special expenses defined in paragraphs 9, 10, and 11 require the approval of MMB.

Approval by agency

The Executive Director is authorized to approve special expense requests for employees and Board members, excluding requests for the Executive Director's own special expenses.

The Assistant Executive Director is authorized to approve special expense requests up to \$1,000 for requests made by the Executive Director or requests made by other staff or Board members in the absence of the Executive Director. The Assistant Executive Director may not approve his or her own special expense request.

The Board Chair is authorized to approve special expense requests for expenses of the Executive Director in excess of \$1,000.

The Board Chair is authorized to act on behalf of the Board in cases where the Board is the appointing authority and approval or authorization of the appointing authority is required under these special expense policies and procedures. In the absence or unavailability of the Board Chair, the Vice Chair is authorized to act on behalf of the Chair.

The preceding provisions notwithstanding, the Executive Director may approve special expenses for staff, including the Executive Director to attend a Heartland Regulators regional conference and for up to three staff or Board members, including the Executive Director, to attend the annual conference of the Council of Government Ethics Regulators.

Procedures

Except as provided otherwise herein, or in other situations where prior approval is not possible, all special expenditures must have approval signed in advance of the time the expense is incurred. Requests received after the fact or too late to receive prior approval must include an explanation as to why the request was not submitted in a timely manner.

After the approved special expenses have been incurred, the employee expense report will be reviewed for compliance with Board, state, and employee bargaining unit agreement or plan. Once approved by the Executive Director, or designee, the employee expense report and a copy of the Request for Approval to Incur Special Expenses will be submitted to the SmART team of the Department of Administration's Financial Management and Reporting unit for final review and payment.

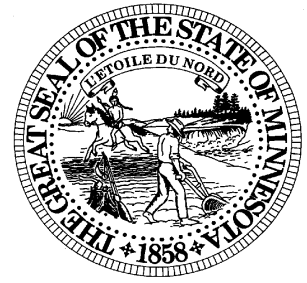
The Financial Management and Reporting review is to provide an additional control measure and is not required for approval of the special expenses. Financial Management and Reporting will advise the Board in the event that any special expenses request is not consistent with applicable state policies or procedures.

This policy and procedure adopted by vote of the Campaign Finance and Public Disclosure Board at a regularly scheduled meeting on November 18, 2014.

Deanna Wiener, Chair

Minnesota

Campaign Finance and Public Disclosure Board



Date: November 10, 2014

To: Board members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Approach to conciliation agreements and penalty assessments under new statutes and rules

This memorandum relates to compliance matters that result from staff reviews of reported transactions. Under the rules, a staff review is a less formal investigative process that will usually result in resolution of a matter by agreement. The topics discussed in this memo do not apply directly to formal investigations ordered by the Board either as the result of a filed complaint or on the Board's own motion.

Since the Board began implementation of the new statutes and proposed rules relating to investigations three significant changes to the Board's historic approach to enforcement have been evolving. They are as follows:

- There has been a slight shift away from formal findings, conclusions, and orders in favor of conciliation agreements.
- There has been a shift away from basing civil penalties strictly on a multiple of the amount of a financial violation, although the tendency has still been to impose a penalty of 1x the violation amount for the first violation.
- There has been a shift away from requiring immediate payment of the entire civil penalty in favor of staying part or all of the penalty conditioned on the violator implementing remedial steps to prevent future violations of the same kind.

At this time, staff wants to make sure Board members understand the evolution that has been taking place and to receive direction as to whether the modified approaches should continue to be developed.

Shift from findings to conciliation agreements

Chapter 10A requires the use of conciliation agreements for most limits-type violations. On the other hand, the statutes permit the issuance of findings, conclusions, and orders for non-limits violations such as sessional fundraising, recordkeeping, and unregistered association violations. Chapter 10A does not prohibit the broader use of conciliation agreements in situations beyond limits violations.

The new rules provide that for most violations disclosed on filed reports, the Executive Director will initiate an investigation in the form of a staff review. Pursuant to the rules, a matter under

staff review may be resolved by a conciliation agreement. It is anticipated that most staff reviews based on filed reports will be successfully concluded by agreement.

The key new rules state as follows:

4525.0320. Subject to Board approval under part 4525.0330, a respondent may agree to resolve a matter under staff review by entering into a conciliation agreement. The agreement must describe any actions that the respondent has agreed to take to remedy the violation or to prevent similar violations in the future. The agreement must also include the amount of any civil penalty that the respondent has agreed to pay and any other provision to which the respondent has agreed.

4525.0330. A matter under staff review that is resolved by conciliation agreement under 4525.0320 must be presented to the board for approval at a meeting closed to the public under part 4252.0200, subpart 5.

...

A conciliation agreement made under part 4525.0320 to resolve a matter under staff review is final only after the board approves the agreement.

Under rule 4525.0330, if the Board does not approve a conciliation agreement presented to it, it may lay the matter over with instructions to the Executive Director as to how to proceed or may direct the Executive Director to prepare the matter for resolution through findings, conclusions, and an order.

Any matter not resolved by the Executive Director through a conciliation agreement must be brought to the Board for direction under rule 4525.0340.

The rules contemplate an approach where the Executive Director and the respondent enter into a conciliation agreement which is then submitted to the Board for possible approval.

Under the historic approach, the Board offered a conciliation agreement to a respondent and the respondent could accept or reject the agreement or propose a counter agreement. Once the terms were agreed upon, the agreement was between the Board and the respondent.

However, as the new rules were being developed and the legislative concept of a "summary proceeding" was being implemented, the approach to routine conciliation agreements based on filed reports evolved. A flowchart describing the conciliation agreement process was developed during the rulemaking procedure and shared with the rules subcommittee and later with the Board. I attach a copy for your information as it shows the thinking at the time the rules were being developed.

As the flowchart shows, when the rules were being developed the approach assumed that in most staff reviews the Executive Director would enter into a conciliation agreement with the respondent and present it to the Board for approval. The flowchart shows the approval of routine conciliation agreements as occurring on the consent agenda. Subsequently the staff review was modified to be a form of investigation to preserve its confidentiality.

The new rules say that a matter that "is resolved by a conciliation agreement under 4525.0320 must be presented to the board for approval." The use of the phrase "is resolved" rather than "is to be resolved" is consistent with the idea that the completed conciliation agreement would be presented to the Board for approval. The rule saying that the conciliation agreement "is final

only after the Board approves the agreement" further suggests that the agreement is completed on a conditional basis and then goes to the Board for approval.

This approach was used in a few test matters authorized by the Board. In those matters, the conciliation agreement was signed by the Executive Director and the respondent and then presented to the Board for acceptance or rejection. In each case, the Board accepted the agreement.

Phase in of staff review and conciliation agreement procedures

It is anticipated that in the future routine matters will be resolved by agreement between the Executive Director and the respondent and then submitted to the Board for approval, as contemplated in the rules and as was the case with the test matters. However, the terms and amount of civil penalty to be assessed in a matter are policy questions to be decided by the Board. Until a significant body of experience in the Board's approach to civil penalties in the new conciliation agreement context is developed, the Executive Director believes that the Board should provide direction prior to the Executive Director signing a conciliation agreement.

Rule 4525.0340 provides that any matter that is not resolved by conciliation agreement so that it can be submitted for Board approval under rule 4525.0330 must be submitted to the Board which can then provide direction to the Executive Director. Unless the Executive Director is otherwise directed by the Board, staff reviews that will likely result in conciliation agreements will be handled under 4525.0340 until a body of experience is developed to the extent that the Executive Director can confidently enter into conciliation agreements to submit to the Board for approval without Board direction in each individual matter.

This approach would mean that during an implementation period the Executive Director would discuss the terms of a possible conciliation agreement with a respondent and then seek Board input rather than submitting a completed agreement to the Board for approval. Under this approach, both the process and the end result are likely to be similar to the process envisioned in the rules where routine conciliation agreements are presented to the Board for approval as noncontroversial matters. However, the process will differ in the level of Board involvement and input into the terms of each resulting conciliation agreement. Only when sufficient experience with conciliation agreements has been gained would the Executive Director present signed conciliation agreements for approval.

The basis for setting the amount of civil penalties

In many cases Chapter 10A provides that the Board may impose a civil penalty of up to four times the amount of the violation. Historically the Board has imposed a penalty of one times the amount of the violation for a first-time violation, two times for a second violation, etc. No current staff member was with the Board when this approach was first adopted, but presumably it was based at least partly on the fact that the legislature specified the maximum penalties in terms of multiples of the amount of a financial violation. For violations not tied to the amount, the typical civil penalty authority vested in the Board is capped at \$3,000, though there are exceptions.

One concern that Board members have expressed from time to time over the years is that although most violations are inadvertent, the amount of the penalty is not based on fault or culpability, but on the size of the transaction. Thus, if a committee accepts a \$500 contribution from a lobbyist during the session because the committee did not carefully check the donor's status, the penalty would be \$500 while another committee making exactly the same mistake for the same reason on a \$100 contribution would be penalized only \$100. If the Board wishes to reconsider its approach to civil penalties that result from financial violations, this would be an appropriate time to do so since the passage of the new statutes and adoption of new rules give the Board a logical point in time to re-examine its enforcement strategies.

In the few recent conciliation agreements based on the concept of remediation rather than financial penalty, the Board has, in fact, adopted a modified approach to civil penalties. In some matters the initial penalty is less than one times the amount of the violation and in most matters all or a portion of the penalty is stayed conditioned on the respondent not having similar violations during a defined future timeframe.

In discussing its approach to penalty amounts, the Board should keep in mind two things. First, the statutory multiple-of-violation-amount concept applies to contribution and spending limits violations. In both cases, the violating committee has the use of the prohibited amounts until the matter is remedied. This fact may lend support to continuing an approach that generally assesses a penalty based on the amount of the violation. Second, if the Board wants to adopt a formal approach based on a grid or some other criteria, it would have to do so by enacting administrative rules. The Board's case-by-case approach that has been historically used considers each matter on its own merits while considering the Board's history with similar matters to maintain consistency across similar violations.

Requirement of immediate payment of entire civil penalty versus requirement of partial payment with remaining amount stayed and later discharged if agreed conditions are met.

Historically respondents agreeing to civil penalties in conciliation agreements have been given 30 days to pay the penalty. In all matters, the respondent may also propose a payment plan. If a payment plan is proposed, the Board may accept the plan, propose a modification, or reject the plan.

The approach staff has presented to the Board through recent conciliation agreements has included the concept of a civil penalty that is imposed, but not paid in its entirety. In most of the test matters, a civil penalty of one times the amount of the violation was imposed but much of the penalty was stayed. If the respondent complies with all of the conditions of the conciliation agreement, which include the condition of no similar future violations, the stayed portion of the civil penalty is automatically discharged. If the respondent has a similar violation the stayed amount is automatically imposed and is due immediately. If the respondent fails to complete the other requirements of the agreement, the Board may reopen the matter and take appropriate action.

In the test matters, staff has typically proposed stays that will require the respondent to avoid violations at least through the next election year in which the respondent is likely to be active.

Policy questions for discussion

Staff requests that the Board discuss the following questions so that the Executive Director has direction in approaching future matters that may be resolved by conciliation agreement. For this discussion, the Board should assume that its direction is limited to matters that have each of the following characteristics:

1. The violation under consideration is not disputed by the respondent
2. The violation resulted from error, carelessness, or lack of diligence in performing the work of the treasurer rather than from an intent to violate statutes or to avoid disclosure or some other statutory requirement.
3. The violation is of a type that can be avoided through appropriate steps being taken by the treasurer.
4. The matter is the first violation of the subject type for the respondent.

1. Should the Executive Director continue the approach to conciliation agreements that incorporates the concept of remediation and prevention with a stayed penalty into the agreement or should the Executive Director negotiate a civil penalty all of which must be paid?

2. Should some amount of civil penalty be imposed in every matter where a civil penalty is available?

3. When a civil penalty is imposed in a conciliation agreement, should the Executive Director approach the civil penalty amount primarily as a multiple of the amount of the financial violation or by using a variety of criteria which could include the degree of culpability of the respondent for the violation, the remedial steps the respondent agrees to take, and other relevant factors?

Under a multiple-of-violation-amount approach the Executive Director would attempt to negotiate conciliation agreements similar to those historically approved by the Board for similar matters. In most cases the Board's approach has been to approve agreements that result in the payment of a civil penalty of one times the violation amount for the first violation. Under both the historic approach and any modified approach, the respondent would be required to return any amount of a financial transaction that resulted in a violation.

Under both the historic approach and any modified approach reaching similar results for similar violations would remain an important goal.

To assist in the discussion of this point, which is not a simple one, I attach a spreadsheet that provides details about recent conciliation agreements that the Board has adopted as well as some matters yet to come before the Board.

Attachments:

Conciliation agreement flowchart
Conciliation agreement grid

Campaign Finance Board civil penalty analysis

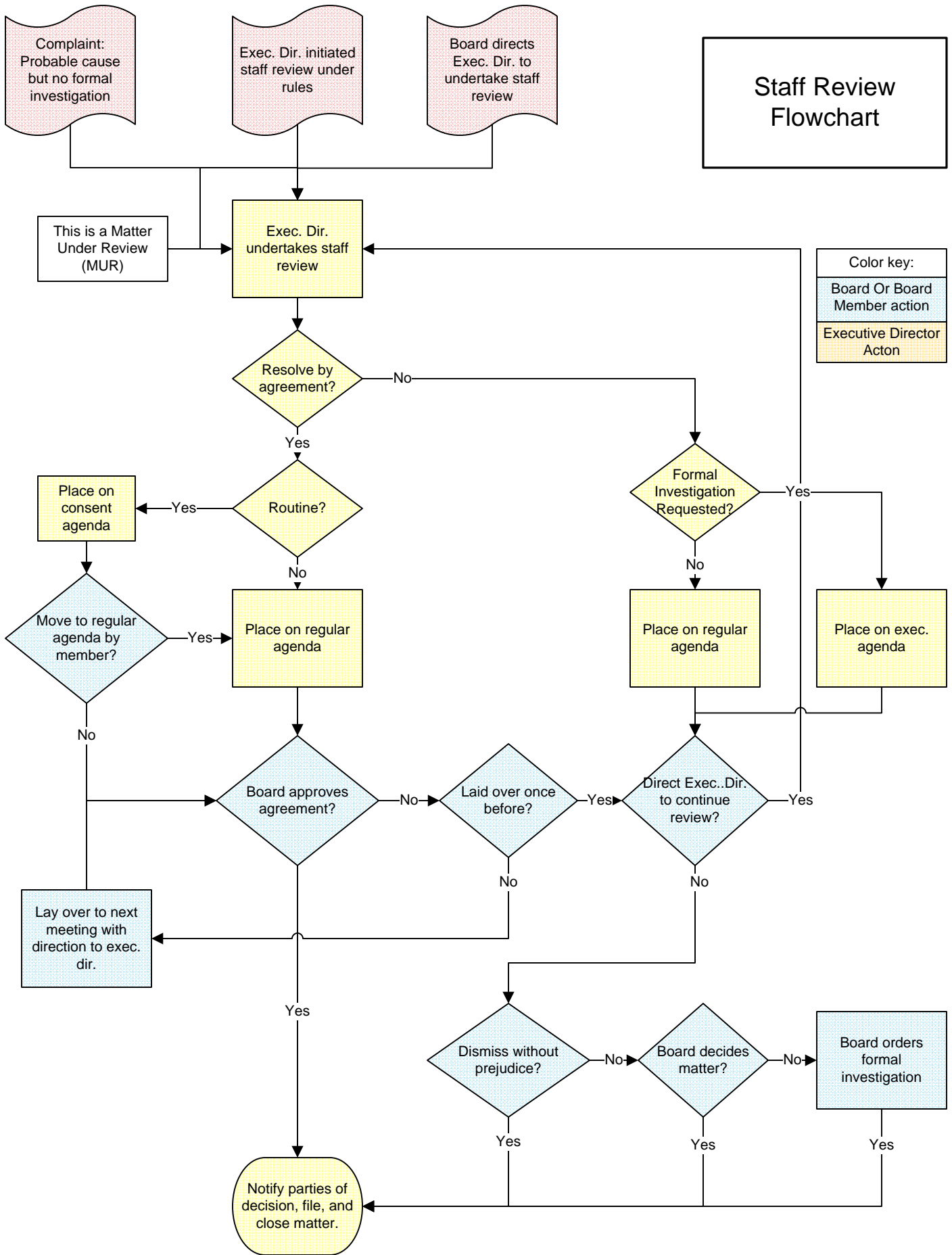
Green shaded items are for discussion on executive session agenda for November 18, 2014

Type of violation	Amount of violation	Max Penalty	Total civil penalty imposed	Pd amt	Stayed amt	Stay period
Lobbyist reg. num. not provided						
Lobbyist	\$500	\$1,000	\$250	\$50	\$200	2 yrs.
Unregistered association contrib. (includes corp. contrib.)						
Political Committee	\$300	\$1,000	\$300	\$100	\$200	4 yrs.
Unreg. Assoc.	\$300	\$1,200	\$300	\$100	\$200	4 yrs.
Corporation	\$1,000	\$1,000	\$250	\$0	\$250	4 yrs.
Party Unit	\$1,000	\$4,000	\$1,000	\$250	\$750	4 yrs.
Corporation	\$50	\$10,000	\$50	\$0	\$50	12/31/2016
Principal Campaign Committee						
Note on above: Prohibition on a candidate accepting a corporate contribution is not under Board's jurisdiction, so no action with respect to candidate other than requiring return of contribution.						
Unreg. Assoc.	\$100	\$1,000	\$100	\$25	\$75	12/31/2016
Principal Campaign Committee	\$100	400 (4x)	\$100	\$25	\$75	12/31/2016
Note on above: The donation of \$300 exceeded by \$100 the amount that a unregistered association may contribute to a						
Corp./Unreg. Assoc.	\$1,000	\$10,000	\$1,000	\$250	\$750	12/31/2016
Political Committee	\$800	\$3,200	\$800	\$200	\$600	12/31/2016
Note on above: Recipient violation treated as unregistered association contribution violation.						
Exceeding spec. source limit						
Principal Campaign Committee	\$500	\$2,000	\$0	\$0	\$0	N/A
Note on above: follows historic approach for violations caused by lobbyist omitting reg. num. on check						
Principal Campaign Committee	\$305	\$1,220	\$200	\$0	\$200	12/31/2016
Principal Campaign Committee	\$764	\$3,056	\$500	\$0	\$500	12/31/2016

Prohibited contribution during session						
Party Unit	\$550	\$1,000	\$550	\$0	\$550	2 yrs.
Lobbyist	\$500	\$1,000	\$500	\$0	\$500	2 yrs.
Lobbyist	\$50	\$1,000	\$50	\$0	\$50	2 yrs.
Principal Campaign Committee	\$250	\$1,000	\$0	\$0	\$0	12/31/2016
Lobbyist	\$250	\$1,000	\$250	\$50	\$200	12/31/2016
Note on above: Lobbyist reg. num. not provided, results in \$0 civil penalty against recipient.						
Principal Campaign Committee	\$250	\$1,000	\$250	\$50	\$200	12/31/2016
Lobbyist	\$250	\$1,000	\$250	\$50	\$200	12/31/2016
Note on above: Treasurer checked with lobbyist who told treasurer that she had terminated registration prior to making the contribution. This contradicts the information provided to the treasurer by the Board's software (which was accurate).						
Excess Indiv. Contribution						
Principal Campaign Committee	\$50	\$200	\$50	\$0	\$50	12/31/2016

All stayed penalties include conditions designed to prevent repeat violations.

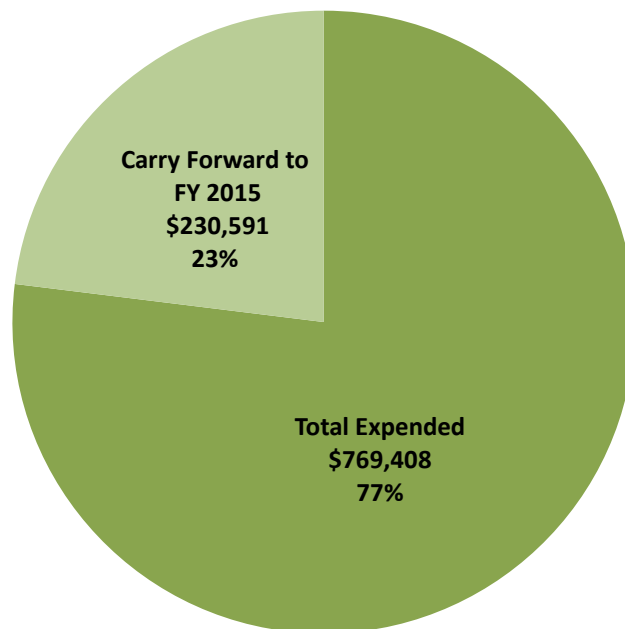
All violations required return of amount sufficient to bring committee within applicable limit.



Fiscal Year 2014
Fourth Quarter Report - July 1, 2013 through June 30, 2014

	Board Spending Plan	Adjusted Budget	Change in Budget Item	Expended	Percentage Expended	Balance
Full time salaries	\$708,000.00	\$681,800.00	-\$26,200.00	\$600,907.05	88.14%	\$80,892.95
Part time salaries	\$65,000.00	\$65,000.00		\$55,503.92	85.39%	\$9,496.08
Other Benefits	\$5,000.00	\$6,200.00	\$1,200.00	\$6,187.09	99.79%	\$12.91
Space Rental	\$39,966.00	\$39,966.00		\$39,746.04	99.45%	\$219.96
Repairs	\$500.00	\$500.00		\$0.00	0.00%	\$500.00
Printing	\$4,200.00	\$4,200.00		\$540.15	12.86%	\$3,659.85
Professional Legal Services	\$10,000.00	\$10,000.00		\$1,698.84	16.99%	\$8,301.16
IT Professional Technical Services	\$116,500.00	\$116,500.00		\$8,016.25	6.88%	\$108,483.75
Computer Systems and Services	\$20,500.00	\$35,500.00	\$15,000.00	\$24,311.16	68.48%	\$11,188.84
Postage	\$7,700.00	\$10,100.00	\$2,400.00	\$10,098.44	99.98%	\$1.56
Travel - In State	\$1,400.00	\$4,000.00	\$2,600.00	\$3,948.17	98.70%	\$51.83
Travel - Out of state	\$5,400.00	\$5,400.00		\$4,174.43	77.30%	\$1,225.57
Supplies	\$4,804.00	\$4,804.00		\$4,211.18	87.66%	\$592.82
Equipment Rental (Copier)	\$2,700.00	\$2,700.00		\$2,302.90	85.29%	\$397.10
Maintenance Contract	\$1,200.00	\$1,200.00		\$1,204.09	100.34%	-\$4.09
Equipment	\$0.00	\$5,000.00	\$5,000.00	\$4,563.63	91.27%	\$436.37
Employee Training	\$1,700.00	\$1,700.00		\$1,595.00	93.82%	\$105.00
OAH Rule Services	\$4,500.00	\$4,500.00		\$0.00	0.00%	\$4,500.00
Other Operating Costs	\$930.00	\$930.00		\$400.00	43.01%	\$530.00
Total	\$1,000,000.00	\$1,000,000.00		\$769,408.34	76.94%	\$230,591.66

Percentage of Original Budget Spent in Fiscal Year 2014



**Operating Budget Detail
Fiscal Year 2014**

Original

Acct		FTE	Budget	Actual
41000	Full time salaries	8	708,000	600,907
41000	Total		708,000	600,907
41030	Part time salaries	1	65,000	55,504
41030	Total		65,000	55,504
41070	Other Benefits			
	Per Diem			
	12 mtgs x 6 + 1 special (6) + 2 confirmations = 80		4,400	4,565
	Workers comp admin fee		400	327
	Contingency		200	1,295
41070	Total		5,000	6,187
41100	Space Rental			
	Board parking =13 mtgs x 7 permits + 4 confirmations = 95 permits @ \$5		475	500
	Office Lease		39,491	39,491
	Contingency		0	255
41100	Total		39,966	40,246
41500	Repairs, Maint		500	0
41500	Total		500	0
41110	Printing and advertising			
	State Register Rulemaking		4,000	0
	Statute books @ \$12 each		0	478
	State Register misc required notices		200	25
	Contingency		0	515
	Total		4,200	1,018
41130	Prof Technical Services			
	Court Reporter (411313)		5,000	1,738
	Website consult/design (artistic		5,000	0
	41130 Total		10,000	1,738
41145	IT Prof Technical Services			
	Govt IT symposium 3 attendees per year		1,500	0
	IT Training		0	0
	Coding/development - Web		100,000	0
	Consult -Elect records mgmnt		10,000	8,016
	Consultant - website management		5,000	0

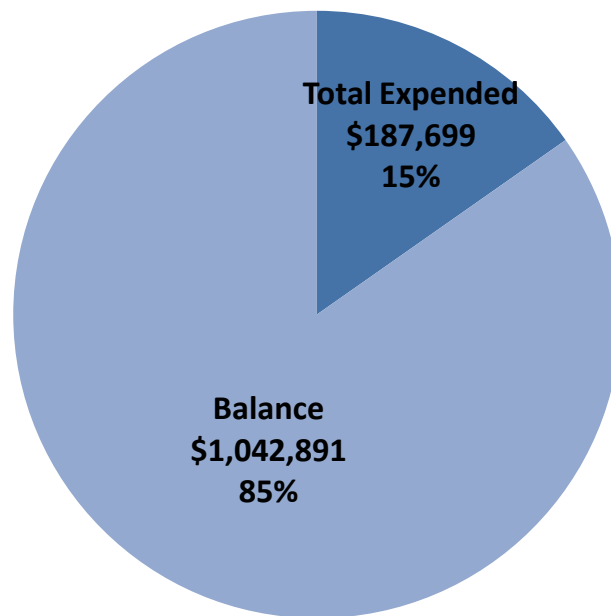
	41145 Total		116,500	8,016	
41150	Computer systems and services				
	Northstar + email = \$176.50/mo		2,118	2,118	
	Microsoft Enterprise License		1,040	1,040	
	SHI Software upgrades		12,000	14,111	
	Installshield or similar		1,200	0	
	Trend Micro anti virus		300	404	
	Smart SVN		125	0	
	Madcap products support updates		1,200	0	
	XML Editor		0	156	
	Windows Virtual Server Manager		0	0	
	Adobe Acrobat		1,000	2,092	
	Dreamweaver		200	0	
	Security certificates		0	0	
	Web content management system		1,000	0	
	Camtasia		300	0	
	Contingency		17	0	
41150	Total		20,500	19,921	
41155	Communications				
	Admin - Central Mail		3,200	10,098	
	MN.IT WAN Services IVR/Ccnet = \$118/mo		1,416	1,536	
	MN.IT VOIP, Voice and Webex		3,000	2,854	
	contingency		84	0	
41155	Total		7,700	14,488	
41160	Travel - in state				
	Board: \$100*13 mtgs - FY 12-13		1,300	3,376	
	Staff - misc		100	72	
41160	Total		1,400	3,448	
41170	Travel - Out of state				
	Cogel Hotel		1,400		
	Cogel Air		1,500		
	Meals		350		
	Incidental		150		
	Cogel Conf and Steering Subtotal		3,400	4,174	
	Heartland Total		2,000	0	
41170	Total		5,400	4,174	
41300	Supplies				
	IOS office supplies		3,870	1,154	
	Premium Waters		200	186	
	Letterhead and env printing - Minncor		0	1,451	
	Legal Leger - PIM and cap. rpt		238	127	

	Locate Plus subscription		400	384	
	Battery		0	362	
	Tape Backup		0	0	
	Memory upgrade - server		0	0	
	contingency		96	0	
41300	Total		4,804	3,664	
41400	Equip. rental		2,700	2,303	
41400	Total		2,700	2,303	
41500	Maintenance contracts (copy machine)		1,200	1,205	
41500	Total		1,200	1,205	
47160	Equipment - non-capital		0	4,564	
47160	Total		0	4,564	
41180	Employee development				
	Cogel conf x 2		1,100	1,100	
	Heartland x 2		200	0	
	Staff training		400	50	
41180	Total		1,700	1,150	
41190	OAH Rule review/ Contested cases		4,500	0	
41190	Total		4,500	0	
43000	Other operating costs				
	Service of process fees		400	350	
	Contract operations services		0	50	
	Security badges and keys		30	30	
	Cogel membership		500	445	
43000	Total		930	875	
	Operating exp total		1,000,000	769,409	
	Appropriation		1,000,000	1,000,000	
	Surplus (Shortage)		0	230,591	

Fiscal Year 2015
1st Quarter Report - July 1, 2014 through September 30, 2014

	Board Spending Plan	Adjusted Budget	Change in Budget Item	Expended	Percentage Expended	Balance
Full time salaries	741,000	741,000		\$137,643.58	18.58%	\$603,356.42
Part time salaries	70,000	70,000		\$10,574.96	15.11%	\$59,425.04
Other Benefits	5,000	5,000		\$1,314.00	26.28%	\$3,686.00
Space Rental	39,966	39,966		\$9,872.76	24.70%	\$30,093.24
		0				
Repairs	500	500		\$0.00	0.00%	\$500.00
Printing	4,600	4,600		\$754.80	16.41%	\$3,845.20
Professional Legal Services	5,000	5,000		\$0.00	0.00%	\$5,000.00
IT Professional Technical Services	92,000	286,000	194,000	\$0.00	0.00%	\$286,000.00
Computer Systems and Services	12,000	40,000	28,000	\$24,699.09	61.75%	\$15,300.91
Postage	5,000	5,000		\$0.00	0.00%	\$5,000.00
Travel - In State	1,400	1,400		\$375.20	26.80%	\$1,024.80
Travel - Out of state	5,400	5,400		\$0.00	0.00%	\$5,400.00
Supplies	6,404	6,695	291	\$729.34	10.89%	\$5,965.66
Equipment Rental (Copier)	2,700	2,700		\$346.58	12.84%	\$2,353.42
Maintenance Contract	1,200	1,200		\$236.51	19.71%	\$963.49
Equipment	0	5,000	5,000	\$1,152.69	23.05%	\$3,847.31
Employee Training	1,700	5,000	3,300	\$0.00	0.00%	\$5,000.00
OAH Rule Services	5,000	5,000		\$0.00	0.00%	\$5,000.00
Other Operating Costs	1,130	1,130		\$0.00	0.00%	\$1,130.00
Total	\$1,000,000	\$1,230,591	\$230,591	\$187,700	15%	\$1,042,891

**Percentage of Original Budget
Spent in Fiscal Year 2015**



**Operating Budget Detail
Fiscal Year 2015**

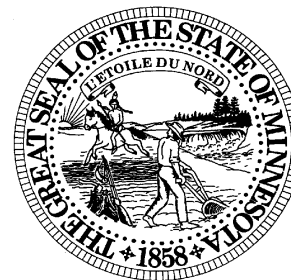
Acct		FTE	Original FY15 Budget	Actual	
41000	Full time salaries	8	741,000	137,644	
41000	Total			137,644	
41030	Part time salaries	1	70,000	10,575	
41030	Total			10,575	
41070	Other Benefits				
	Per Diem				
	12 mtgs x 6 + 1 special (6) + 2 confirmations = 80		4,400	990	
	Workers comp admin fee		400	324	
	Contingency		200		
41070	Total		5,000	1,314	
41100	Space Rental				
	Board parking =13 mtgs x 7 permits + 4 confirmations = 95 permits @ \$5		475	56	
	Office Lease		39,491	9,873	
	Contingency				
41100	Total		39,966	9,929	
41500	Repairs, Maint		500	0	
41500	Total			0	
41110	Printing and advertising				
	State Register Rulemaking		4,000	755	
	Statute books @ \$12 each		400		
	State Register misc required notices		200		
	Contingency				
	Total		4,600	755	
41130	Prof Technical Services				
	Court Reporter (411313)		5,000		
	Website consult/design (artistic				
	41130 Total		5,000	0	
41145	IT Prof Technical Services				
	Govt IT symposium 3 attendees per year		1,500		
	IT Training		5,000		

	Coding/development - Web		85,500		
	Consult -Elect records mgmnt		0		
	Consultant - network development		0		
	41145 Total		92,000	0	
41150	Computer systems and services				
	Northstar + email = \$176.50/mo		2,118	404	
	Microsoft Enterprise License		1,040		
	SHI Software upgrades		0		
	Trend Micro anti virus		300		
	Smart SVN		125		
	XML Editor		560		
	Windows Server Software			23,656	
	Adobe Acrobat		1,000		
	Dreamweaver		200		
	Security certificates		1,500		
	Web content			87	
	Camtasia		300		
	Contingency		357		
41150	Total		7,500	24,147	
41155	Communications				
	Admin - Central Mail		5,000		
	MN.IT WAN Services IVR/Ccnet = \$118/mo		1,416	256	
	MN.IT VOIP, Voice and Webex		3,000	296	
	contingency		84		
41155	Total		9,500	552	
41160	Travel - in state				
	Board: \$100*13 mtgs - FY 12-13		1,300	319	
	Staff - misc		100		
41160	Total		1,400	319	
41170	Travel - Out of state				
	Cogel Hotel		1,400		
	Cogel Air		1,500		
	Meals		350		
	Incidental		150		
	Heartland Total		2,000	0	
41170	Total		5,400	0	
41300	Supplies				
	IOS office supplies		3,470	657	
	Premium Waters		200	40	
	Letterhead and env printing - Minncor		2,000		

	Legal Leger - PIM and cap. rpt		238		
	Locate Plus subscription		400	32	
	contingency		96		
41300	Total		6,404	729	
41400	Equip. rental		2,700	347	
41400	Total			347	
41500	Maintenance contracts (copy machine)		1,200	237	
41500	Total			237	
47160	Equipment - non-capital			1,153	
47160	Total		0	1,153	
41180	Employee development				
	Cogel conf x 2		1,100		
	Heartland x 2		200		
	Staff training		400		
41180	Total		1,700	0	
41190	OAH Rule review/ Contested cases		5,000	0	
41190	Total			0	
43000	Other operating costs				
	Service of process fees		600		
	Contract operations services				
	Security badges and keys		30		
	Cogel membership		500		
43000	Total		1,130		
	Operating exp total		1,000,000	187,700	
	Appropriation + FY14 Carryforward		1,230,591	1,230,591	
	Surplus (Shortage)		230,591	1,042,891	

Minnesota

Campaign Finance and Public Disclosure Board



Date: November 10, 2014

To: Board

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Legislative Recommendations

Attached is a draft of possible legislative recommendations for 2015. Staff has removed those that the Board previously decided not to pursue. Additionally we have added a few topics that we believe are generally noncontroversial and address issues that arose during the election.

The attached draft is in the form that would go to the legislature, so members should carefully review its language. I am also attaching draft language that would implement the technical and technical/policy recommendations. This attachment is for informational purposes since drafting of the actual bills is done by the Revisor's office and in cooperation with the authors.

Members will note that the policy recommendations are stated in general terms with the exception of the disclosure recommendation, which ties to the Board's recommendation last year and was embodied in SF 2083.

Staff is prepared to work with authors and legislative staff to assist with language implementing any policy recommendations that are to move forward, but unless the Board directs otherwise, we would not prepare draft bill language prior to beginning work with a potential author. It is the recommendation of the Executive Director that the Board put special emphasis on its recommendation that there be a legislative solution to the special source constitutional issues.

The draft bill also does not include language to implement public subsidy in the event of a vacancy in the nomination. This is a very technical provision and should be noncontroversial. Staff is still working on language.

With respect to public integrity laws, which in Minnesota consist essentially of an economic interest disclosure requirement and a conflict of interest disclosure requirement, the draft recommendation is very general. Last year the House attempted to expand the conflict of interest provisions to include spouses. The original bill would have required spousal interest disclosure, but that provision did not even make it out of the House committee system. The bill that passed the House required disclosure of conflicts that would affect a spouse's financial interests, but did not require disclosure of the interests themselves. The companion bill did not make it out of committee in the Senate. In conference committee the Senate objected to any expansion of the law to include spouses and the House provision was stripped out.

To provide some context, staff has reviewed two aspects of economic interest disclosure to see if there is a trend in other states. We reviewed spousal disclosure and we also reviewed the disclosure of gifts to officials. In Minnesota, as you know, there is no spousal disclosure and there is no disclosure of gifts from interested persons who are not lobbyists or principals. The

lobbying statutes require the lobbyist to disclose gifts from lobbyists or principals. There is no corresponding requirement on the recipient official.

I attach to this email a grid showing the results of our analysis. Members will note that some 34 states require more-or-less complete disclosure of spousal financial interests. Another five states provide for more limited or optional disclosure. Only five states require more-or-less full disclosure of the financial interests of all children, including adult children. Another 25 require disclosure of children's financial interests with some limitations. Most of these states limit disclosure to minor or dependent children or children living in the same household. I say "more-or-less" complete disclosure because thresholds and specific terms vary by state.

With respect to gifts, the statutes do not fall into convenient categories with respect to disclosure. In fact, most states prohibit gifts from interested parties, so disclosure is apparently not required. Minnesota's gift prohibition is limited to lobbyists and principals, so other interested parties are free to give gifts to officials and there is no disclosure of these gifts.

Interestingly, Minnesota's prohibition on gifts to *local* officials is broader than the prohibition on gifts to public officials. The local official prohibition extends to every "interested person", which means "a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make." Minnesota Statutes section 471.895.

Attachments:

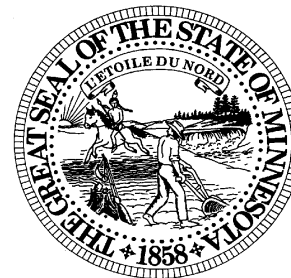
Draft legislative recommendations

Draft statutory language for technical and technical/policy recommendations

Analysis grid for spousal financial interest disclosure and gift provisions

Minnesota

Campaign Finance and Public Disclosure Board



Recommendations to the 2015 Minnesota Legislature

I. Technical

1. Eliminate filing of second election-year report for candidates whose names will not be on the primary election ballot because they did not file for office.

In 2014, section 10A.20, subdivision 2, was amended to exempt candidates from the additional reporting requirements in an election year when their offices or their names would not be on the general election ballot. Under the current law constitutional office and appellate court candidates who did not file for office, nevertheless, have a report due June 15. Exempting candidates who did not file for office this requirement was inadvertently omitted in the 2014 legislation.

2. Move the provision that provides confidentiality for audit information from the statutory provisions governing economic interest statements to the section governing all Board audits and investigations.

In 2014 legislation was passed that directed the Board to conduct audits of economic interest statements. A separate provision classified all data related to audits as confidential until the final audit report was issued. In the adopted legislation, the direction to conduct audits was placed in a section 10A.02, which has general applicability but the confidentiality provision was placed in section 10A.09, which relates to economic interest statements, even though the terms of the provision gave it general applicability. To clarify that audit data in all programs is confidential until the completion of any audit, the confidentiality provision should be moved to the section that includes the audit requirement itself.

3. Correct a technical error by changing the description of the opponent spending threshold for releasing a candidate from the public subsidy agreement from "election cycle" to "election segment" to preserve the concept as it existed in statute prior to the 2013 amendments.

The triggering thresholds in the section 10A.25, subdivision 10, allowing a candidate to be released from a public subsidy agreement due to an opponent's conduct were not changed from election cycle to election segment when that new terminology was adopted in 2013. The technical change would ensure that the current statute uses the same time periods for triggering release from a public subsidy agreement as the previous statute did.

4. Repeal Minnesota Rules 4503.1500, subpart 2, which may be read to permit candidates to accept loans in excess of the statutory limit.

Section 10A.27, subdivision 8, provides that candidates cannot accept loans to their committees that exceed the contribution limits. Minnesota Rules part 4503.1500, subpart 2, however, provides that the unpaid year-end balance of the candidate's loans to the committee may not

exceed the contribution limits. The rule implies that the unpaid balance may exceed the limit prior to the end of the year, which would conflict with the statutory limit.

5. Provide a statutory basis, procedures, and funding to provide for public subsidy in the case of a vacancy in the nomination.

In 2013, the legislature adopted new provisions governing vacancies in nomination for partisan office. To provide for public subsidy in the case of a vacancy in the nomination, the public subsidy provisions in Chapter 10A will need to be amended to explain how a replacement candidate qualifies for public subsidy and how money appropriated for public subsidy is made available if public subsidy payments have already been made to the replacement candidate's predecessor. The election cycle will need to be defined for special elections that may result from the new provisions.

6. Rearrange section 10A.02 to move the compliance provisions into a new section to improve the organization of Chapter 10A without changing any provisions.

The provisions governing the Board's authority to inspect, audit, and investigate reports and to take enforcement actions currently are located in section 10A.02. Section 10A.02 contains 15 subdivisions and subdivision 11 in particular has long paragraphs of text. When a section or a subdivision grows too long, it becomes more difficult to find provisions in that section or subdivision. The Revisor of Statutes has recommended extracting the compliance provisions from section 10A.02 and moving them to a new section devoted to compliance. No language would be amended and the Revisor would make all necessary cross-references changes in both Minnesota Statutes and Minnesota Rules.

II. Technical/Policy

1. Require filing of an annual supplemental economic interest statement for all officials rather than exempting those filers whose interests have not changed; specify the time period included for the supplemental statement.

Section 10A.09, subdivision 6, requires filing a new economic interest statement only if interests have changed since the last filing. This makes it impossible for the Board to determine whether an official did not file because there were no changes or because the official forgot or declined to file. The annual supplementary statement process is a simple online process that requires reviewing the existing statement and making any changes online, then certifying online. If there are no changes, the only requirement for the official would be to review the existing statement and re-certify it.

Additionally, although the statute requires the supplementary statement to be filed by April 15, it does not specify what period should be included in the statement. As a matter of policy the Board has advised filers that the statement should include interests through March 30. That requirement should be put into statute.

2. Increase late filing fee to \$25 per day, not to exceed \$1,000 and eliminate grace period for lobbyist registrations, representation disclosure filings, and campaign finance registrations.

This recommendation continues the Board's efforts to standardize late filing fees at \$25 per day and to eliminate the grace period before the late fee begins for a missing filing. The

recommendation would result in amendments to sections 10A.03, subdivision 3, 10A.08, subdivision 1, and 10A.14, subdivision 4.

3. Clarify that the 60-day timeline for investigating complaints involving contribution or spending limits violations begins running after the probable cause determination is made.

Section 10A.02, subdivision 11, paragraph (a), provides that an investigation of complaints involving contribution or spending limits violations must be completed within 60 days of the filing of the complaint. This deadline can be extended by majority vote of the Board.

In 2014, however, language was added to subdivision 11 requiring the Board to make a prima facie determination within 30 days after the filing of the complaint and a probable cause determination within 45 days of the prima facie decision. Consequently, under the new provisions, an investigation may not begin until 75 days after the complaint has been filed. To give effect to both the new provisions and the existing 60-day timeline for investigations of contribution and spending limits violations, subdivision 11, paragraph (a) should be amended to clarify that the 60 days begins to run after the Board has made the probable cause determination.

4. Set contribution limits for judicial candidates at a level that will be the same regardless of whether the candidate is on the ballot during a particular two-year segment or not.

When registering principal campaign committees, judicial candidates are not required to identify the seat for which they are running. In addition, unlike legislative and constitutional offices, not all judicial seats are up for election at the same time. Consequently, for non-incumbent judicial candidates, it is not possible to know whether the election segment or the non-election segment contribution limits should apply in any particular 2-year period until after the candidate files to be on the ballot. A fixed limit applicable in every 2-year segment would resolve the problem. The limit for appellate court candidates could be higher than the limit for district court candidates.

5. Amend section 211B.15 to include a prohibition on candidates and party units accepting corporate contributions and provide for a civil penalty

The Board has jurisdiction over the provision that prohibits corporations from making political contributions to candidates and party units. However, the prohibition against candidates or party units *accepting* a corporate political contribution is in section 211B.13, which is not under the Board's jurisdiction. The Board should have jurisdiction over both the donor and the recipient in the case of corporate contributions so as to avoid complaints being filed with both the Board and the Office of Administrative Hearings.

6. Establish civil penalties that the Board may impose for the violation of section 211B provisions.

Chapter 211B grants the Office of Administrative Hearings general authority to impose a civil penalty for any violation of the chapter. However, when jurisdiction over certain sections of Chapter 211B was transferred to the Board, the penalty provision was not referenced. Consequently, the Board has no authority to impose a civil penalty for violations of the disclaimer requirement of section 211B.04, the use of political money provisions of section 211B.12, or the acceptance of corporate contributions.

7. Expand the prohibition for issuing political contribution refund receipts to prohibit willfully issuing a receipt to an individual who is not qualified to receive a receipt and provide a civil penalty.

Section 10A.322, subdivision 4, makes the willful issuance of a political contribution refund receipt by a candidate who did not sign a public subsidy agreement a misdemeanor. However, there is no penalty for the willful issuance of a receipt to a non-qualified individual (for example, to someone who did not actually donate) by a candidate who *did* sign a public subsidy agreement. Also the current remedy is limited to criminal prosecution. The statute could be extended to wrongful issuance of receipts by a public subsidy candidate and a civil penalty could be added as a penalty that the Board could impose.

8. Amend section 10A.20 by removing obsolete language that was applicable during the implementation phase of the electronic reporting requirement and eliminating the requirement that the Board withhold publication of a party unit report until the report of the corresponding opposing party unit has been filed.

The provision giving party units approval of the Board's electronic filing standard was adopted before the standard was developed and implemented. Since all party units who had the right to approve the standard are now using it to file electronically, this provision is no longer necessary.

Additionally, the language requiring the Board to withhold from publication the reports of certain party units until the reports of all party units of that type have been filed prevents the public from having timely access to filed reports and should also be repealed.

9. Require recipients to report contributors' Board registration numbers and require contributors to report recipients' Board registration numbers on campaign finance reports filed with Board.

Chapter 10A currently requires donors to provide their Board registration numbers to recipients of their contributions but section 10A.20, which governs the content of campaign finance reports, does not require the recipients to include these numbers on their reports. Additionally, donors are not required to report the recipients' Board registration numbers on their reports of contributions made. Requiring donors and recipients to report this information will help to reconcile contributions between entities registered with the Board and to standardize data for public use.

10. Amend registration and reporting statutes to make it clear that if the registration threshold has been met before the last day for transactions that are to be included on a report, both registration and reporting are required by the report due date.

Chapter 10A currently gives candidate committees, political committees and funds, and party units 14 days to register with the Board after reaching the registration threshold. If a reporting threshold is met before the report cutoff date by an association not yet required to register, the statutes do not make it clear that the report is, nevertheless, required. This recommendation would clarify that if the registration threshold is met before the end of a reporting period both registration and the report are required by the report due date.

11. Require that subjects of an investigation preserve evidence once notified of a Board investigation.

Nothing in Chapter 10A or Chapter 211B requires the subject of an investigation to preserve evidence that could be relevant to an investigation.

12. Eliminate prohibition on contributions between the caucus committees and their candidates during the legislative session.

The Board assumes that the prohibition of sessional contributions in section 10A.273 is intended to prevent groups outside of the legislature from using contributions to influence legislation and to avoid the appearance of such use. The sessional contribution prohibition, however, also applies to contributions between the legislative caucus committees and their candidates. This creates the potential for violations of the campaign finance laws with no apparent benefit to the public. Removing this prohibition would not lead to circumvention of the sessional prohibition by other entities because neither legislative caucuses nor candidates are permitted to accept contributions from lobbyists, political committees or funds, or unregistered associations during the session.

13. Clarify that the ban on sessional contributions includes the entire first and last days of the session.

The section 10A.273 ban on sessional contributions states that it applies “during” a regular session of the legislature. Typically, however, a legislative session begins sometime in the middle of the first day and ends late in the evening of the last day. Amending the statute to specify that the prohibition on sessional fundraising applies for the entire first day and the entire last day of the session would relieve the Board and donors from the burden of ascertaining the specific time of day that a contribution was made and received.

14. Extend right to make unlimited charitable contributions upon termination to political committees or funds.

Section 211B.12 provides that candidate committees are permitted to contribute more than \$100 to 501(c)(3) charities if the committee dissolves within one year. There appears to be no reason why this provision should not be extended to political committees, political funds, and party units.

15. Repeal obsolete language in section 211B.37 that requires the Office of Administrative Hearings to assess costs of Fair Campaign Finance Act complaints for state candidates against the public subsidy appropriation.

Up until 2009, Chapter 10A included a set-aside from the public subsidy program in the amount of \$130,000 per biennium against which the OAH charged the costs of Chapter 211B complaints related to candidates under the Board's jurisdiction. In 2009 the \$130,000 was changed to a direct appropriation to the OAH, the set-aside language was repealed from Chapter 10A, and the public subsidy appropriation was reduced by \$130,000. However, the language in Chapter 211B that directed the OAH to assess costs of complaints involving state candidates against the assessment was inadvertently not repealed. Since the money continues to be a direct appropriation to the OAH, the obsolete language should be repealed.

16. Amend the section 211B.04 requirement for a "prepared and paid for" disclaimer to provide clarification, exemptions, and more comprehensive financial trigger thresholds. Also amend the section 10A.17 independent expenditure disclaimer to provide financial trigger thresholds and exemptions.

Section 211B.04 requires campaign material to include a "prepared and paid for" statement of attribution. Section 10A.17 requires a separate disclaimer for independent expenditures.

The constitutionality of 211B.04 has been challenged twice in the past. After each challenge, the legislature modified an exemption provision that exempted communications made at least seven days prior to an election.

However, there is no exemption threshold whatsoever for the independent expenditure disclaimer and no exemption at any threshold for the "prepared and paid for" statement if the communication is made less than seven days before an election. In other words an individual or association spending *any* amount on an independent expenditure without the disclaimer would be in violation of the independent expenditure disclaimer requirement regardless of when the communication is distributed. An individual or association spending *any* amount on a communication made less than seven days before an election would be in violation of both statutes.

The statutes also lack an exception for communications where it is impossible or highly impractical to include a disclaimer, for example, campaign buttons and skywriting.

Although these statutes could benefit from a thorough rewriting, the Board believes that establishing thresholds that are consistent with registration and reporting thresholds and including limited exceptions to these requirements would significantly improve their constitutional foundations.

III. Policy

1. Modify prima facie determination for investigations and review language related to probable cause determination.

In 2014, the legislature directed the Board to make prima facie and probable cause determinations for all complaints. The Board's implementation of these provisions has demonstrated that there are many matters that could be resolved more quickly and with less burden on both complainants and respondents with modifications to the prima facie and probable cause determination procedures.

2. Provide a legislative solution to the potential constitutional issues related to the large giver component of the special source limit requirements, as illuminated in *Seaton v. Wiener*. Also examine potential constitutional issues with the other aspects of the special source limit not directly addressed in *Seaton v. Wiener* and provide a legislative solution.

Seaton v. Wiener challenges the large giver component of the special source limit. A federal court has concluded that the application of the large giver limit is likely unconstitutional and has restrained the Board from enforcing it. As a result, large givers are not included in special source limit calculations. Legislation should be enacted to address the constitutionality of the large giver component of the special source limit. Multiple legislative options are available,

including removing large givers from the special source limit or making the limit voluntary as a condition of participating in the public subsidy program. To make the latter option viable a significant increase in the public subsidy appropriation would likely be required.

The legislature should also consider addressing the lobbyist, political committee, and political fund components of the special source limit and, if it does, may wish to consider lobbyist contribution limits in general; as well as limits on contributions from lobbyists' spouses. A Wisconsin federal district court recently enjoined enforcement of Wisconsin's comparable political committee special source limit on constitutional grounds similar to those used by the Minnesota court to enjoin enforcement of the large giver special source limit.

3. Revisit electioneering communication disclosure, underlying source disclosure, and definition of independent expenditures.

The Board recommends enactment of a bill that includes the language of Senate File 2083.

4. Modify the conflict of interest and economic interest statutes to provide improved financial disclosure by public officials.

**Campaign Finance and Public Disclosure Board
2015 Draft Legislative Proposals**

10A.02 CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

Subd. 11. **Violations; enforcement.** (a) The board may investigate any alleged violation of this chapter. The board may also investigate an alleged violation of section 211B.04, 211B.12, or 211B.15 by or related to a candidate, treasurer, principal campaign committee, political committee, political fund, or party unit, as those terms are defined in this chapter.

(1) Upon receipt of a written complaint filed with the board, the board shall promptly provide a copy of the complaint to the subject of the complaint and notify the subject that a determination as to whether the complaint states a prima facie violation will be made and that the subject may, within 15 days of the date the board provided notice to the subject, submit a written statement addressing the prima facie determination. The notice must include the definition of a prima facie determination.

(2) Within 30 days after the filing of the complaint, the board chair or another board member designated by the chair shall make a determination as to whether the complaint alleges a prima facie violation. If a determination is made that the complaint does not allege a prima facie violation, the complaint shall be dismissed without prejudice and the complainant must be notified of the reasons the complaint did not allege a prima facie violation. If the complainant files a revised complaint regarding the same facts and the same subject, the prima facie determination must be completed by a board member other than the member who made the initial determination and who does not support the same political party as the member who made the initial determination. The chair may order that the prima facie determination for any complaint be made by the full board and must order that the prima facie determination for a complaint being submitted for the third time be made by the full board.

(3) If a determination is made that the complaint alleges a prima facie violation, the board shall, within 45 days of the prima facie determination, make findings and conclusions as to whether probable cause exists to believe the alleged violation that warrants a formal investigation has occurred. Any party filing a complaint and any party against whom a complaint is filed must be given an opportunity to be heard by the board prior to the board's determination as to whether probable cause exists to believe a violation that warrants a formal investigation has occurred.

(4) Upon a determination by the board that probable cause exists to believe a violation that warrants a formal investigation has occurred, the board must undertake an investigation under subdivision 10 and must issue an order at the conclusion of the investigation, except that if the complaint alleges a violation of section 10A.25 or 10A.27, the board must either enter a conciliation agreement or make public findings and conclusions as to whether a violation has occurred and must issue an order within 60 days after the filing of the complaint probable cause determination has been made. Prior to making findings and conclusions in an investigation, the board must offer the subject of the complaint an opportunity to answer the allegations of the complaint in writing and to appear before the board to address the matter. The deadline for action on a written complaint may be extended by majority vote of the board.

* * * *

(c) Within a reasonable time after beginning an investigation of an individual or

association, the board must notify the individual or association of the fact of the investigation. The board must not make a finding that a violation has occurred without notifying the individual or association of the nature of the allegations and affording an opportunity to answer those allegations. After the board has sent notice of the investigation to the individual or association, the individual or association must preserve evidence related to the investigation.

Subd. 11c. **Data privacy related to board audits.** All data related to an audit, including the existence of the audit, are classified as confidential data on individuals, as defined in section 13.02, subdivision 3, or protected nonpublic data, as defined in section 13.02, subdivision 13. A member, employee, or agent of the board must not disclose information obtained by the member, employee, or agent concerning the audit except as required to carry out the audit or take action in the matter. Upon completion of the audit, the board's final audit report is public. The final audit report must contain the name of the individual subject to the audit, a description of any audit findings, a description of any responses provided by the individual who was subject to the audit, and a description of the manner in which any findings were resolved.

10A.03 LOBBYIST REGISTRATION

~~Subd. 3. **Failure to file.** The board must send a notice by certified mail to any lobbyist who fails to file a registration form within five days after becoming a lobbyist. If a lobbyist fails to file a registration form within ten business days after the notice was sent by the date that the form was due, the board may impose a late filing fee of \$5 \$25 per day, not to exceed \$400 \$1,000, starting on the 44th day after the notice was sent form was due. The board must send an additional notice by certified mail to a lobbyist who fails to file a form within 44 ten business days after the first notice was sent by the board form was due that the lobbyist may be subject to a civil penalty for failure to file the form. A lobbyist who fails to file a form within seven days after the second certified mail notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.~~

10A.08 REPRESENTATION DISCLOSURE

~~Subdivision 1. **Disclosure required.** A public official who represents a client for a fee before an individual, board, commission, or agency that has rulemaking authority in a hearing conducted under chapter 14, must disclose the official's participation in the action to the board within 14 days after the appearance. If the public official fails to disclose the participation within ten business days after by the date that the disclosure required by this section was due, the board may impose a late filing fee of \$5 \$25 per day, not to exceed \$100 \$1,000, starting on the 44th day after the disclosure was due. The board must send notice by certified mail to a public official who fails to disclose the participation within ten business days after the disclosure was due that the public official may be subject to a civil penalty for failure to disclose the participation. A public official who fails to disclose the participation within seven days after the certified mail notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.~~

10A.09 STATEMENTS OF ECONOMIC INTEREST

~~Subd. 6. **Supplementary statement.** Each individual who is required to file a statement of economic interest must file a supplementary statement on by April 15 of each year that the individual remains in office. The supplementary statement must cover the period through March 30 of that year. if information on the most recently filed statement has changed. The~~

supplementary statement, if required, must include the amount of each honorarium in excess of \$50 received since the previous statement and the name and address of the source of the honorarium. The board must maintain a statement of economic interest submitted by an officeholder in the same file with the statement submitted as a candidate.

10A.14 REGISTRATION

Subdivision 1. **First registration.** (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a registration statement. The registration statement must be filed by the earliest of the following dates:

(1) no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$750,

(2) no later than the next report of receipts and expenditures filing date applicable to the committee, fund, or party unit if the committee, fund, or party unit reached the threshold in clause (1) before the end of the reporting period covered by that report; or

(3) by the end of the next business day after it has received a loan or contribution that must be reported under section 10A.20, subdivision 5, ~~whichever is earlier.~~

(b) This subdivision does not apply to ballot question or independent expenditure political committees or funds, which are subject to subdivision 1a.

Subd. 1a. **Independent expenditure or ballot question political committees and funds; first registration; reporting.** The treasurer of an independent expenditure or ballot question political committee or fund must register with the board by filing a registration statement. The registration must be filed by the earliest of the following dates:

(1) no later than 14 calendar days after the committee or the association registering the political fund has:

(i) received aggregate contributions for independent expenditures of more than \$1,500 in a calendar year;

(ii) received aggregate contributions for expenditures to promote or defeat a ballot question of more than \$5,000 in a calendar year;

(iii) made aggregate independent expenditures of more than \$1,500 in a calendar year; or

(iv) made aggregate expenditures to promote or defeat a ballot question of more than \$5,000 in a calendar year; or

(2) no later than the next report of receipts and expenditures filing date applicable to the independent expenditure or ballot question committee or fund if the committee or fund reached the threshold in clause (1) before the end of the reporting period covered by that report; or

(3) by the end of the next business day after it has received a loan or contribution that must be reported under section 10A.20, subdivision 5, and it has met one of the requirements of clause (1).

Subd. 4. **Failure to file; penalty.** If an individual fails to file a statement required by this section ~~within ten business days after~~ by the date that the statement was due, the board may impose a late filing fee of ~~\$5~~ \$25 per day, not to exceed ~~\$100~~ \$1,000, ~~commencing with the 11th starting on the day~~ after the statement was due.

The board must send notice by certified mail to any individual who fails to file a statement within ten business days after the statement was due that the individual may be subject to a civil penalty for failure to file the statement. An individual who fails to file the statement within seven days after the certified mail notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.

10A.17 EXPENDITURES

Subd. 4. **Independent expenditures.** (a) Except as provided in paragraph B, An ~~An~~ an individual, political committee, political fund, principal campaign committee, or party unit that independently solicits or accepts contributions or makes independent expenditures on behalf of a candidate must publicly disclose that the expenditure is an independent expenditure. All written communications with those from whom contributions are independently solicited or accepted or to whom independent expenditures are made on behalf of a candidate must contain a statement in conspicuous type that the activity is an independent expenditure and is not approved by the candidate nor is the candidate responsible for it. Similar language must be included in all oral communications, in conspicuous type on the front page of all literature and advertisements published or posted, and at the end of all broadcast advertisements made by that individual, political committee, political fund, principal campaign committee, or party unit on the candidate's behalf.

(b) Paragraph (a) does not apply to individuals or associations that are not required to register or report under this chapter.

(c) Paragraph (a) does not apply to the following:

(1) bumper stickers, pins, buttons, pens, or similar small items on which the independent expenditure statement cannot be conveniently printed;

(2) skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of the independent expenditure statement would be impracticable; and

(3) online banner ads and similar electronic communications that link directly to an online page that includes the independent expenditure statement.

10A.20 CAMPAIGN REPORTS

Subdivision 1. **First filing; duration.** (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must begin to file the reports required by this section for the first year it receives contributions or makes expenditures that require it to register under section 10A.14 and must continue to file until the committee, fund, or party unit is terminated.

(b) If a political committee, political fund, principal campaign committee, or party unit, on or before the last date included in a reporting period, receives contributions or makes

expenditures that would require it to register under section 10A.14, the political committee, political fund, principal campaign committee, or party unit must both register with the board under section 10A.14 and report under this section by the date that the report for that reporting period is due.

(c) The reports must be filed electronically in a standards-based open format specified by the board. For good cause shown, the board must grant exemptions to the requirement that reports be filed electronically.

~~Subd. 1c. **Reports of certain political party units.** (a) This subdivision applies to the following party units:~~

~~(1) the two state party units of major political parties that received the highest level of contributions in the last election year;~~

~~(2) the two party units established by members of a major party in the house of representatives that received the highest level of contributions in the last election year; and~~

~~(3) the two party units established by members of a major party in the senate that received the highest level of contributions in the last election year.~~

~~(b) A report filed under this section by a member of one of the party units listed in paragraph (a) is nonpublic data until the reports of each of the party units in that group have been filed.~~

~~(c) A report filed electronically under this section by a member of one of the party units listed in paragraph (a) is nonpublic data unless the reports of each of the party units in that group are filed electronically or until the board has created electronic data from the nonelectronic report so that data from each report are available in the same electronic form. The board may produce a viewable image of an electronic report after the requirements of paragraph (b) have been met.~~

~~(d) A party unit may waive the restrictions on publication of data established in this section through a written statement signed by the treasurer.~~

~~(e) Nothing in this subdivision prevents the board from publicly disclosing that an entity subject to this section has filed a report and the date the report was filed.~~

~~(f) Each group listed in paragraph (a) is exempt from the electronic filing requirement unless both members of the group have approved the filing format specified by the board.~~

Subd. 2. Time for filing. (a) The reports must be filed with the board on or before January 31 of each year and additional reports must be filed as required and in accordance with paragraphs (b) to (f).

(b) In each year in which the name of a candidate for legislative or district court judicial office is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary election and ten days before a general election, seven days before a special primary election and seven days before a special general election, and ten days after a special election cycle.

(c) In each general election year, a political committee, a political fund, a state party

committee, and a party unit established by all or a part of the party organization within a house of the legislature must file reports on the following schedule:

14; (1) a first-quarter report covering the calendar year through March 31, which is due April

(2) a report covering the calendar year through May 31, which is due June 14;

(3) a pre-primary-election report due 15 days before a primary election;

(4) a pre-general-election report due 42 days before the general election; and

(5) a pre-general-election report due ten days before a general election.

(d) In each general election year, a party unit not included in paragraph (c) must file reports 15 days before a primary election and ten days before a general election.

(e) In each year in which a constitutional office or appellate court judicial seat is on the ballot, the principal campaign committee of a candidate for that office or seat must file reports on the following schedule:

14; (1) a first-quarter report covering the calendar year through March 31, which is due April

(2) a report covering the calendar year through May 31, which is due June 14;

(3) a pre-primary-election report due 15 days before a primary election;

(4) a pre-general-election report due 42 days before the general election;

(5) a pre-general-election report due ten days before a general election; and

(6) for a special election, a constitutional office candidate whose name is on the ballot must file reports seven days before a special primary election, seven days before a special general election, and ten days after a special election cycle.

(f) Notwithstanding paragraphs (a) to (e):

(1) the principal campaign committee of a candidate who did not file for office is not required to file the report due June 14, the report due 15 days before the primary election, or the report due seven days before a special primary election; and

(2) the principal campaign committee of a candidate whose name will not be on the general election ballot is not required to file the report due 42 days before the general election, the report due ten days before a general election, or the report due seven days before a special general election.

Subd. 3. Contents of report. (a) The report required by this section must include each of the items listed in paragraphs (b) to (o) that are applicable to the filer. The board shall prescribe forms based on filer type indicating which of those items must be included on the filer's report.

(b) The report must disclose the amount of liquid assets on hand at the beginning of the

reporting period.

(c) The report must disclose the name, address, and employer, or occupation if self-employed, and registration number if registered with the board of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$200 for legislative or statewide candidates or more than \$500 for ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

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(e) The report must disclose each loan made or received by the reporting entity within the year in aggregate in excess of \$200, continuously reported until repaid or forgiven, together with the name, address, occupation, and principal place of business, if any, and registration number if registered with the board of the lender and any endorser and the date and amount of the loan. If a loan made to the principal campaign committee of a candidate is forgiven or is repaid by an entity other than that principal campaign committee, it must be reported as a contribution for the year in which the loan was made.

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(h) The report must disclose the name, and address, and registration number if registered with the board of each individual or association to whom aggregate expenditures, approved expenditures, independent expenditures, and ballot question expenditures have been made by or on behalf of the reporting entity within the year in excess of \$200, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat and an indication of whether the expenditure was to promote or to defeat the ballot question, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

(i) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.

(j) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. If an advance of credit incurred by the principal campaign committee of a candidate is forgiven by the creditor or paid by an entity other than that principal campaign committee, it must be reported as a donation in kind for the year in which the advance of credit was made.

(k) The report must disclose the name, ~~and address,~~ and board registration number of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$200 within the year and the amount and date of each contribution.

(l) The report must disclose the sum of all contributions made by the reporting entity during the reporting period.

(m) The report must disclose the name, ~~and address,~~ and registration number if registered with the board of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$200 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.

10A.25 SPENDING LIMITS.

Subd. 10. **Effect of opponent's conduct.** (a) After the deadline for filing a spending limit agreement under section 10A.322, a candidate who has agreed to be bound by the expenditure limits imposed by this section as a condition of receiving a public subsidy for the candidate's campaign may choose to be released from the expenditure limits but remain eligible to receive a public subsidy if the candidate has an opponent who has not agreed to be bound by the limits and has received contributions or made or become obligated to make expenditures during that election cycle in excess of the following limits:

(1) up to the close of the reporting period before the primary election, receipts or expenditures equal to 20 percent of the election segment expenditure limit for that office as set forth in subdivision 2; or

(2) after the close of the reporting period before the primary election, cumulative receipts or expenditures during that election cycle equal to 50 percent of the election cycle expenditure limit for that office as set forth in subdivision 2.

Before the primary election, a candidate's "opponents" are only those who will appear on the ballot of the same party in the primary election.

(b) A candidate who has not agreed to be bound by expenditure limits, or the candidate's principal campaign committee, must file written notice with the board and provide written notice to any opponent of the candidate for the same office within 24 hours of exceeding the limits in paragraph (a). The notice must state only that the candidate or candidate's principal campaign committee has received contributions or made or become obligated to make campaign expenditures in excess of the limits in paragraph (a).

(c) Upon receipt of the notice, a candidate who had agreed to be bound by the limits may file with the board a notice that the candidate chooses to be no longer bound by the expenditure limits. A notice of a candidate's choice not to be bound by the expenditure limits that is based on the conduct of an opponent in the state primary election may not be filed more than one day after the State Canvassing Board has declared the results of the state primary.

(d) A candidate who has agreed to be bound by the expenditure limits imposed by this section and whose opponent in the general election has chosen, as provided in paragraph (c), not to be bound by the expenditure limits because of the conduct of an opponent in the primary election is no longer bound by the limits but remains eligible to receive a public subsidy.

10A.27 CONTRIBUTION LIMITS.

Subdivision 1. **Contribution limits.** (a) Except as provided in subdivision 2, a candidate must not permit the candidate's principal campaign committee to accept aggregate contributions made or delivered by any individual, political committee, political fund, or association not registered with the board in excess of the following:

(1) to candidates for governor and lieutenant governor running together, \$4,000 in the election segment of an election cycle for the office sought and \$2,000 in the nonelection segment of the election cycle;

(2) to a candidate for attorney general, \$2,500 in the election segment of an election cycle for the office sought and \$1,500 in the nonelection segment of the election cycle;

(3) to a candidate for secretary of state or state auditor, \$2,000 in the election segment of an election cycle and \$1,000 in the nonelection segment of the election cycle;

(4) to a candidate for state senator, \$1,000 in the election segment of an election cycle for the office sought and \$1,000 in a nonelection segment of the election cycle;

(5) to a candidate for state representative, \$1,000 in the election segment of an election cycle for the office sought; ~~and~~

(6) to a candidate for appellate court judicial office, ~~\$2,500~~ \$1,500 in the election segment of an election cycle for the office sought and ~~\$1,000~~ \$1,500 in a nonelection segment of the election cycle; and

(7) to a candidate for district court judicial office, \$1,000 in the election segment of an election cycle for the office sought and \$1,000 in a nonelection segment of the election cycle.

10A.273 CONTRIBUTIONS AND SOLICITATIONS DURING LEGISLATIVE SESSION.

Subdivision 1. **Contributions during legislative session.** (a) A candidate for the legislature or for constitutional office, the candidate's principal campaign committee, or a political committee or party unit established by all or a part of the party organization within a house of the legislature, must not solicit or accept a contribution from a registered lobbyist, political committee, political fund, or an association not registered with the board, ~~or a party unit established by the party organization within a house of the legislature~~, during a regular session of the legislature.

(b) A registered lobbyist, political committee, political fund, or an association not registered with the board, ~~or a party unit established by the party organization within a house of the legislature~~, must not make a contribution to a candidate for the legislature or for constitutional office, the candidate's principal campaign committee, or a political committee or party unit established by all or a part of the party organization within a house of the legislature during a regular session of the legislature.

Subd. 2. **Party unit solicitations.** A political party unit must not solicit or receive at an event hosted by a candidate for the legislature or by a candidate for constitutional office a contribution from a lobbyist, political committee, political fund, or party unit during a regular

session of the legislature.

Subd. 3. **Definition.** For purposes of this section, "regular session" does not include a special session or the interim between the two annual sessions of a biennium. For purposes of this section, a "regular session of the legislature" includes the entire first day and the entire last day of each annual session.

10A.322 SPENDING LIMIT AGREEMENTS

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Subd. 4. **Refund receipt forms; penalty.** (a) The board must make available to a political party on request and to any candidate for whom an agreement under this section is effective, a supply of official refund receipt forms that state in boldface type that:

(1) a contributor who is given a receipt form is eligible to claim a refund as provided in section 290.06, subdivision 23; and

(2) if the contribution is to a candidate, that the candidate has signed an agreement to limit campaign expenditures as provided in this section.

The forms must provide duplicate copies of the receipt to be attached to the contributor's claim.

(b) The willful issuance of an official refund receipt form or a facsimile of one to any of the candidate's contributors by a candidate or treasurer of a candidate who did not sign an agreement under this section is subject to a civil penalty imposed by the board of up to \$3,000. The willful issuance of an official refund receipt form or a facsimile to an individual not eligible to claim a refund under section 290.06, subdivision 23, is subject to a civil penalty imposed by the board of up to \$3,000

(c) A violation of paragraph (b) is a misdemeanor.

10A.34 REMEDIES.

Subdivision 1. **Personal liability.** A person charged with a duty under this chapter is personally liable for the penalty for failing to discharge it.

Subd. 1a. **Recovering fees and penalties.** The board may bring an action in the district court in Ramsey County to recover a fee, late filing fee, or penalty imposed under this chapter. Money recovered must be deposited in the general fund of the state.

Subd. 2. **Injunction.** The board or a county attorney may seek an injunction in the district court to enforce this chapter.

Subd. 3. **Not a crime.** Unless otherwise provided, a violation of this chapter is not a crime.

Subd. 4. **Penalty for violations of chapter 211B under board's jurisdiction.** If a civil penalty is not specified in a section of chapter 211B brought under the board's jurisdiction by section 10A.02, subdivision 11, paragraph (a), the board may impose a civil penalty of up to

\$3,000.

13.607 CAMPAIGN FINANCE, PUBLIC DISCLOSURE, AND ELECTION DATA CODED ELSEWHERE.

Subd. 3a .Campaign Finance and Public Disclosure Board audit data. The record of certain audits conducted under chapter 10A is classified, and disposition of certain information is governed, by section 10A.02, subdivision 11c.

Subd. 5. **Statements of economic interest.** (a) Disclosure of statements of economic interest filed by local officials is governed by section 10A.09, subdivision 6a.

~~(b) Data related to audits of statements of economic interest are governed by section 10A.09, subdivision 10.~~

211B.04 CAMPAIGN LITERATURE MUST INCLUDE DISCLAIMER.

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the committee,(address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the committee,(address), in support of(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee. If the material is produced and disseminated without cost, the words "paid for" may be omitted from the disclaimer.

(c) In the case of broadcast media, the required form of disclaimer is: "Paid for by the committee." If the material is produced and broadcast without cost, the required form of the disclaimer is: "The committee is responsible for the content of this message."

~~(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to.....(insert name of candidate or ballot question.....)"; or that "this publication is not circulated on behalf of any candidate or ballot question."~~

~~(e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, business cards, or personal letters, or similar items that are clearly being sent distributed by the candidate.~~

~~(f) (e) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates that is not required to register or report under chapter 10A or chapter 211A.~~

(f) This section does not apply to the following:

(1) bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed;

(2) skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and

(3) online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer.

(g) This section does not modify or repeal section 211B.06.

211B.12 LEGAL EXPENDITURES.

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

(1) salaries, wages, and fees;

(2) communications, mailing, transportation, and travel;

(3) campaign advertising;

(4) printing;

(5) office and other space and necessary equipment, furnishings, and incidental supplies;

(6) charitable contributions of not more than \$100 to any charity organized under section 501(c)(3) of the Internal Revenue Code annually, except that the amount contributed ~~by a~~ is not limited by this clause if the political committee, political fund, party unit, principal campaign committee, or from the campaign fund of a candidate for political subdivision office that made the contribution dissolves within one year after the contribution is made ~~is not limited by this clause~~; and

(7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

211B.15 CORPORATE POLITICAL CONTRIBUTIONS

Subd. 2. **Prohibited contributions.** (a) A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a ~~major~~ political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.

(b) A political party, organization, committee, or individual may not accept a contribution or an offer or agreement to make a contribution that a corporation is prohibited from making under paragraph (a).

(c) For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.

211B.37 COSTS ASSESSED.

Except as otherwise provided in section 211B.36, subdivision 3, the chief administrative law judge shall assess the cost of considering complaints filed under section 211B.32 as provided in this section. Costs of complaints relating to a statewide ballot question or an election for a statewide or legislative office must be assessed against the appropriation from the general fund to the general account of the state elections campaign account in section 10A.31, subdivision 4 paid from appropriations to the office for this purpose. Costs of complaints relating to any other ballot question or elective office must be paid from appropriations to the office for this purpose.

REVISOR'S INSTRUCTION.

The revisor of statutes shall renumber the provisions of Minnesota Statutes listed in column A to the references listed in column B. The revisor shall also make necessary cross-reference changes in Minnesota Statutes and Minnesota Rules consistent with the renumbering.

<u>Column A</u>	<u>Column B</u>
<u>10A.02, subd. 9</u>	<u>10A.022, subd. 1</u>
<u>10A.02, subd. 10, paragraphs (a) and (b)</u>	<u>10A.022, subd. 2</u>
<u>10A.02, subd. 10, paragraph (c)</u>	<u>10A.02, subd. 13, paragraph (b)</u>
<u>10A.02, subd. 11, paragraph (a)</u>	<u>10A.022, subd. 3</u>
<u>10A.02, subd. 11, paragraph (b)</u>	<u>10A.022, subd. 8</u>
<u>10A.02, subd. 11, paragraph (c)</u>	<u>10A.022, subd. 4</u>
<u>10A.02, subd. 11, paragraph (d)</u>	<u>10A.022, subd. 5, paragraph (a)</u>
<u>10A.02, subd. 11, paragraph (e)</u>	<u>10A.022, subd. 7</u>
<u>10A.02, subd. 11a</u>	<u>10A.022, subd. 5, paragraph (b)</u>
<u>10A.02, subd. 11c</u>	<u>10A.022, subd. 6</u>
<u>10A.02, subd. 13</u>	<u>10A.02, subd. 13, paragraph (a)</u>

REPEALER.

Minnesota Statutes section 10A.09, subdivision 10, and section 10A.20, subdivision 1c, and Minnesota Rules 4503.1500, subpart 2, are repealed.

New section 10A.022 Compliance

Subd. 1. **Documents; information.** The executive director must inspect all material filed

with the board as promptly as necessary to comply with this chapter, with other provisions of law requiring the filing of a document with the board, and with other provisions of law under the board's jurisdiction pursuant to subdivision 3. The executive director must immediately notify an individual if a written complaint is filed with the board alleging, or it otherwise appears, that a document filed with the board is inaccurate or does not comply with this chapter, or that the individual has failed to file a document required by this chapter or has failed to comply with this chapter or other provisions under the board's jurisdiction pursuant to subdivision 3.

Subd. 2. Audits and investigations. (a) Within limits of available resources, the board must make audits and investigations with respect to the requirements of this chapter. A final audit report completed under this chapter must contain the name of the primary board employee responsible for conducting the audit. The board may impose statutory civil penalties, and issue orders for compliance with respect to the requirements of this chapter and provisions under the board's jurisdiction pursuant to subdivision 3. In all matters relating to its official duties, the board has the power to require testimony under oath, to permit written statements to be given under oath, and to issue subpoenas and cause them to be served. If a person does not comply with a subpoena, the board may apply to the District Court of Ramsey County for issuance of an order compelling obedience to the subpoena. A person failing to obey the order is punishable by the court as for contempt.

(b) The board shall issue rules, using the expedited rulemaking process in section 14.389, setting forth procedures to be followed for all audits and investigations conducted by the board under this chapter and other provisions under the board's jurisdiction pursuant to subdivision 3. The rules regarding the board's investigative procedure shall set forth:

- (1) the process for the board initiating and overseeing an investigation;
- (2) when summary proceedings may be available;
- (3) dedication of staff resources in taking witness testimony and conducting discovery;
- (4) parties' rights and opportunities to be heard by the board; and
- (5) board hearings and disposition of complaints, audits, and investigations.

(moved to 10A.02, subd. 13, paragraph (b)) (c) In addition to the notice required under chapter 14, the board shall notify the chairs and ranking minority members of the committees or subcommittees in the senate and house of representatives with primary jurisdiction over elections within seven calendar days of taking the following actions:

- (1) publication of a notice of intent to adopt rules or a notice of hearing;
- (2) publication of proposed rules in the state register;
- (3) issuance of a statement of need and reasonableness; or
- (4) adoption of final rules.

Subd. 3. Violations; enforcement. The board may investigate any alleged violation of this chapter. The board may also investigate an alleged violation of section 211B.04, 211B.12, or 211B.15 by or related to a candidate, treasurer, principal campaign committee, political

committee, political fund, or party unit, as those terms are defined in this chapter.

(a) Upon receipt of a written complaint filed with the board, the board shall promptly provide a copy of the complaint to the subject of the complaint and notify the subject that a determination as to whether the complaint states a prima facie violation will be made and that the subject may, within 15 days of the date the board provided notice to the subject, submit a written statement addressing the prima facie determination. The notice must include the definition of a prima facie determination.

(b) Within 30 days after the filing of the complaint, the board chair or another board member designated by the chair shall make a determination as to whether the complaint alleges a prima facie violation. If a determination is made that the complaint does not allege a prima facie violation, the complaint shall be dismissed without prejudice and the complainant must be notified of the reasons the complaint did not allege a prima facie violation. If the complainant files a revised complaint regarding the same facts and the same subject, the prima facie determination must be completed by a board member other than the member who made the initial determination and who does not support the same political party as the member who made the initial determination. The chair may order that the prima facie determination for any complaint be made by the full board and must order that the prima facie determination for a complaint being submitted for the third time be made by the full board.

(c) If a determination is made that the complaint alleges a prima facie violation, the board shall, within 45 days of the prima facie determination, make findings and conclusions as to whether probable cause exists to believe the alleged violation that warrants a formal investigation has occurred. Any party filing a complaint and any party against whom a complaint is filed must be given an opportunity to be heard by the board prior to the board's determination as to whether probable cause exists to believe a violation that warrants a formal investigation has occurred.

(d) Upon a determination by the board that probable cause exists to believe a violation that warrants a formal investigation has occurred, the board must undertake an investigation under subdivision 10 and must issue an order at the conclusion of the investigation, except that if the complaint alleges a violation of section 10A.25 or 10A.27, the board must either enter a conciliation agreement or make public findings and conclusions as to whether a violation has occurred and must issue an order within 60 days after the filing of the complaint. Prior to making findings and conclusions in an investigation, the board must offer the subject of the complaint an opportunity to answer the allegations of the complaint in writing and to appear before the board to address the matter. The deadline for action on a written complaint may be extended by majority vote of the board.

Subd. 4. Notice. Within a reasonable time after beginning an investigation of an individual or association, the board must notify the individual or association of the fact of the investigation. The board must not make a finding that a violation has occurred without notifying the individual or association of the nature of the allegations and affording an opportunity to answer those allegations.

Subd. 5. Data privacy. (a) A hearing before the board or action of the board concerning a complaint or investigation other than findings, conclusions, and orders or a conciliation agreement is confidential. Until the board makes a public finding or enters a conciliation agreement:

(1) a member, employee, or agent of 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 this chapter; and

(2) an individual who discloses information contrary to this subdivision is subject to a civil penalty imposed by the board of up to \$1,000.

(b) If, after making a public finding or entering a conciliation agreement, the board determines that the record of the investigation contains statements, documents, or other matter that, if disclosed, would unfairly injure the reputation of an innocent individual, the board may:

(1) retain the statement, document, or other matter as a private record, as defined in section 13.02, subdivision 12, for a period of one year, after which it must be destroyed; or

(2) return the statement, document, or other matter to the individual who supplied it to the board.

Subd. 6. Data privacy related to board audits. All data related to an audit, including the existence of the audit, are classified as confidential data on individuals, as defined in section 13.02, subdivision 3, or protected nonpublic data, as defined in section 13.02, subdivision 13. A member, employee, or agent of the board must not disclose information obtained by the member, employee, or agent concerning the audit except as required to carry out the audit or take action in the matter. Upon completion of the audit, the board's final audit report is public. The final audit report must contain the name of the individual subject to the audit, a description of any audit findings, a description of any responses provided by the individual who was subject to the audit, and a description of the manner in which any findings were resolved.

Subd. 7. Prosecution. A matter that is under the board's jurisdiction pursuant to this section and that may result in a criminal offense must be finally disposed of by the board before the alleged violation may be prosecuted by a city or county attorney.

Subd. 8. Recovery of funds. The board may bring legal actions or negotiate settlements in its own name to recover money raised from contributions subject to the conditions in this subdivision.

(a) No action may be commenced unless the board has made a formal determination, after an investigation, that the money was raised for political purposes as defined in section 211B.01, subdivision 6, and that the money was used for purposes not permitted under this chapter or under section 211B.12.

(b) Prior to commencing an action, the board must give the association whose money was misused written notice by certified mail of its intent to take action under this subdivision and must give the association a reasonable opportunity, for a period of not less than 90 days, to recover the money without board intervention. This period must be extended for at least an additional 90 days for good cause if the association is actively pursuing recovery of the money. The board may not commence a legal action under this subdivision if the association has commenced a legal action for the recovery of the same money.

(c) Any funds recovered under this subdivision must be deposited in a campaign finance recovery account in the special revenue fund and are appropriated as follows:

(1) an amount equal to the board's actual costs and disbursements in the action, including court reporter fees for depositions taken in the course of an investigation, is appropriated to the board for its operations;

(2) an amount equal to the reasonable value of legal services provided by the Office of the Attorney General in the recovery matter, calculated on the same basis as is used for charging legal fees to state agencies, is appropriated to the attorney general for the attorney general's operations; and

(3) any remaining balance is appropriated to the board for distribution to the association to which the money was originally contributed.

(d) Notwithstanding paragraph (c), clause (3), if the candidate of a principal campaign committee is the person who used the association's money for illegal purposes, or if the association or political fund whose money was misused is no longer registered with the board, any money remaining after the payments specified in paragraph (c), clauses (1) and (2), must be transferred to the general account of the state elections campaign account.

(e) Any action by the board under this paragraph must be commenced not later than four years after the improper use of money is shown on a report filed with the board or the board has actual knowledge of improper use. No action may be commenced under this paragraph for improper uses disclosed on reports for calendar years prior to 2011.

(f) If the board prevails in an action brought under this subdivision and the court makes a finding that the misuse of funds was willful, the court may enter judgment in favor of the board and against the person misusing the funds in the amount of the misused funds.

Repealer

4503.1500 LOANS.

Subp. 2. **Unpaid year-end balance.** The unpaid year-end balance of all loans from a political committee, political fund, party unit, individual, or candidate to a principal campaign committee for a legislative or constitutional office may not exceed the applicable yearly contribution limit for the entity that made the loan.

50-State Analysis

Spousal and gift provisions related to public officials

State	Spousal Disclosure	Child Disclosure	Gift Rules/Disclosure
Alabama		Dependent	No disclosure; all gifts prohibited that influence official action; all lobbyist gifts prohibited
Alaska		In household	Lobbyist gifts prohibited; \$250 limit for non-lobbyists; gifts of travel or legal services over \$250 relating to legislative service reported
Arizona		Household members	Lobbyists limited to \$10; disclosure over \$500
Arkansas		Income for benefit of official	Lobbyist over \$100 prohibited; gifts over \$100 disclosed
California			Lobbyist prohibited over \$10/mo.; others prohibited over \$250/yr.; disclosure over \$50
Colorado		Minors	Lobbyist prohibited; others prohibited over \$50; disclosure over \$50 and have to provide equal value
Connecticut		Dependent/ income for benefit	No disclosure; interested persons prohibited
Delaware			Gifts prohibited if impairs legislative actions; disclosure over \$250
Florida	Income for benefit of official	Income for benefit of official	Gifts prohibited if impairs official actions; disclosure over \$100
Georgia		Dependent	No disclosure; lobbyist prohibited
Hawaii		Dependent/income for benefit	Gifts prohibited if impairs official actions; disclosure over \$200
Idaho			Gifts prohibited if impairs legislative actions; no disclosure
Illinois			Gifts from interested persons prohibited; disclosure over \$500
Indiana		In household	Lobbyists must disclose all gifts
Iowa			Gifts prohibited by restricted donors; no disclosure
Kansas			Gifts over \$40 from interested persons prohibited; identify giver if over \$500
Kentucky			Gifts from lobbyists prohibited; disclosure over \$200
Louisiana			Gifts from interested persons prohibited; no disclosure
Maine		Dependent	Gifts from interested persons is a conflict; disclosure of each specific source for gifts

Maryland		Excludes minors' employment info	Soliciting gifts prohibited; gifts from interested persons prohibited; disclose gifts of over \$20 individually or \$100 in aggregate from interested persons
Massachusetts			Gifts from interested persons prohibited; disclose over \$100 from interested persons
Michigan			Gifts prohibited if impairs official actions; no disclosure
Minnesota			Lobbyist gifts prohibited; no disclosure
Mississippi		Household members	Cannot use position to obtain gift; no disclosure
Missouri	Spouse can refuse	Dependent	Gifts prohibited if impairs official actions; disclosure over \$200
Montana			Gifts prohibited if impairs official actions; no disclosure
Nebraska	Creditors	Creditors	Lobbyist gifts over \$50 prohibited; disclosure over \$100
Nevada		Household/Dependent and 18+	Gifts prohibited if impairs official actions; lobbyist gifts over \$100 prohibited; disclosure over \$200
New Hampshire	Optional to avoid conflict		All gifts over \$25 prohibited; money prohibited; no disclosure
New Jersey		Minors	Lobbyists gifts over \$250 prohibited; disclose gifts connected to legislative process
New Mexico			Restricted donors gifts over \$250 prohibited; lobbyists gifts over \$1,000 prohibited; gifts prohibited if influences official actions; no disclosure
New York		Household minors	Gifts prohibited if influences official actions; disclosure over \$1,000
North Carolina			Gifts from lobbyist or interested persons prohibited; gifts prohibited if influences official actions; disclosure over \$200 if for lobbying
North Dakota			Lobbyists must supply cost and allow legislator to pay for gifts; no disclosure
Ohio	Income for benefit of off.	Income for benefit of official	Gifts prohibited if influences official actions; disclosure over \$75; disclosure over \$25 for lobbyists
Oklahoma			Gifts prohibited if influences official actions; gifts from lobbyists or interested persons over \$100 prohibited; no disclosure
Oregon		Household members	Gifts over \$50 from interested persons prohibited; no disclosure
Pennsylvania			Gifts prohibited if influences official actions; disclosure over \$250

Rhode Island		Dependent	Gifts prohibited if influences official actions; lobbyists limited to \$25/gift \$75/year; disclosure over \$100
South Carolina			Gifts prohibited from lobbyists; gifts prohibited if influences official actions; disclosed if only given b/c official, seeking business relationship with receiver, or more than \$25/day or \$200/yr. and regulated by agency of official
South Dakota		Minor	No restrictions or disclosure
Tennessee		Minor	Lobbyist gifts prohibited; no disclosure
Texas		Dependent	Lobbyists gifts over \$500 prohibited; gifts that influence official actions prohibited; gifts from regulated individuals prohibited; disclosure over \$250
Utah			Gifts that influence official actions prohibited; no disclosure
Vermont			Lobbyist gifts prohibited; no disclosure
Virginia		Dependent	Gifts that influence official actions prohibited; disclosure for gifts over \$50 singly or \$100 in aggregate
Washington		Dependent	Gifts that influence official actions prohibited; gifts over \$50 prohibited; no disclosure
West Virginia			Lobbyist gifts prohibited; disclose gifts over \$100 from interested persons
Wisconsin		>50% support from official	Gifts that influence official actions prohibited; disclose identity of individuals giving over \$50
Wyoming			Gifts received b/c of holding public office prohibited; no disclosure

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

PROBABLE CAUSE
DETERMINATION

IN THE MATTER OF THE COMPLAINT OF JAMES SANBORN (COMPLAINANT) REGARDING THE BOB FREY MN COMMITTEE (RESPONDENT):

This matter came before the Board in executive session at its meeting of November 18, 2014, for a probable cause determination. Both parties were notified of their right to appear before the Board at this meeting. Complainant submitted a written communication in support of his complaint on October 7, 2014. Respondent also submitted a statement on November 3, 2014.

The complaint alleges that on June 2, 2014, the Bob Frey MN Committee accepted a personal loan of \$9,000 from the candidate, Bob Frey, and that the loan was in excess of the statutory limit. Respondent does not deny the acceptance of the loan but disputes the allegation that the loan violated applicable statutes and rules.

In support of his complaint, Complainant argues that Minnesota statutes section 10A.27, subdivision 8, provides that “[a] candidate must not permit the candidate’s principal campaign committee to accept a loan from other than a financial institution for an amount in excess of the contribution limits imposed by this section.” Complainant also argues that the contribution limit for House of Representatives candidates who sign a public subsidy agreement is \$5,000 for the 2013-2014 election segment. Board records indicate that Mr. Frey signed a public subsidy agreement for the 2013-2014 election cycle.

Respondent does not dispute the fact that the candidate contribution limit applicable to the committee for the 2013-2014 segment is \$5,000. However, Respondent relies on Minnesota Rules part 4503.1500, subpart 2, which provides that the unpaid balance of a loan must not exceed the applicable limit *at the end of the calendar year*. On the basis of this rule, Respondent argues that an excessive loan during the calendar year is not a violation if the loan balance is reduced to the statutory limit by December 31.

The Board recognizes, consistent with Respondent’s argument, that the cited rule has historically been interpreted by the Board to mean that an outstanding loan balance that exceeds the applicable limit during the calendar year is not a violation of the statutory excess loan provision unless the loan amount still exceeds the limit after December 31 of the two-year segment during which the limit applies.

Findings of fact:

1. The Board concluded on September 29, 2014, that the complaint stated a prima facie violation and the matter was scheduled for a probable cause determination on November 18, 2014. The parties were duly notified and given an opportunity to appear

before the Board during the probable cause determination.

2. State representative candidate Bob Frey loaned his principal campaign committee, Bob Frey MN, \$9,000 on June 2, 2014, as reported on the committee's 2014 pre-primary-election Report of Receipts and Expenditures.
3. Candidate Bob Frey signed a public subsidy agreement for the election cycle ending December 31, 2014.

Conclusions:


1. For state representative candidates who sign a public subsidy agreement, section 10A.27 prohibits a loan of more than \$5,000 from the candidate to the candidate's principal campaign committee during the election segment.
2. Minnesota Rules part 4503.1500, subpart 2, provides that the balance due on a loan to a principal campaign committee may not exceed the applicable limit at the end of the calendar year.
3. The Board has interpreted Minnesota Rules part 4503, subpart 2, to permit loans to exceed the statutory limit during the calendar year as long as the balance of the loan is within the limit by the end of the year.
4. Complainant's contention that the Board's interpretation of the rule is inconsistent with the statutory requirements supports a finding of probable cause to believe that a violation exists, which the Board hereby makes.
5. Because the Board has given advice based on Rule 4503, subpart 2 in the past and during the current election cycle, the Board would not impose a penalty or require repayment of the loan prior to December 31, 2014, even if a formal investigation was ordered. As a result, there is no public benefit to be obtained by further proceedings in this matter.

Order

The complaint is dismissed and the matter is closed.

Comment

If the committee's year-end report shows that the balance of Mr. Frey's loan has not been reduced to \$5,000 or less, the Board's routine compliance testing will recognize the violation and will trigger an investigation of the matter.



Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

Dated: 11-18-14