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Campaign Finance and Public Disclosure Board

STATEMENT OF NEED AND REASONABLENESS

Amendment and or Adoption of Rules Governing Electronic Filing of Documents with the Board, the Valuation of Donations In Kind, Noncampaign Disbursements, First Time Candidates, Loans Made to Principal Campaign Committees and Political Committees and Funds, Reporting Requirements for Candidates, Political Committees and Funds, and Political Party Units, the Reporting of Securities by a Public Official, Lobbyist Reporting Requirements, Gifts to an Official of a Metropolitan Governmental Unit, and Filing of Complaints with the Board. *Minnesota Rules*, Chapters 4501, 4503, 4511, 4512, and 4525.

INTRODUCTION

The goal of the Campaign Finance and Public Disclosure Board (the Board) in promulgating this set of administrative rules is to meet a legislative directive to the Board on the filing of electronic documents, to eliminate ambiguity in the administration of a range of programs that are under the jurisdiction of the Board, and to promulgate rules that will allow the Board to uniformly apply standards provided in advisory opinions to all clients in similar circumstances.

The legislative directive to the Board to adopt administrative rules is contained in Minnesota Laws of 2005, Chapter 156, Article 6, Section 3, which amends Minn. Stat. §10A.025 to read "Subd. 1a. [Electronic Filing.] A report or statement required to be filed under this chapter may be filed electronically. The board shall adopt rules to regulate electronic filing and to ensure that the electronic filing process is secure." The Board believes that the proposed administrative rules on electronic filing will satisfy the legislative directive.

The rules the Board intends to adopt will also resolve reporting ambiguities in the campaign finance and lobbying programs and in the filing of a complaint with the Board.

The Board provides formal advisory opinions to clients that provide safe harbor to the client as long as the client follows the advice of the Board. As provided in Minn. Stat. §10A.02, subd. 12a, "If the board intends to apply principals of law or policy announced in an advisory opinion ...more broadly than to the individual or association to whom the opinion was issued, the board must adopt these principals or policies as rules under chapter 14". Some of the administrative rules the Board intends to adopt are in response to this requirement and reflect positions taken by the Board in advisory opinions.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact:

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(651) 296 –1720 or 800- 657 - 3889
-TTY users may call the Board at (800) 627-3529.

STATUTORY AUTHORITY

The Board's general statutory authority to adopt the proposed rule is set forth in Minnesota Statutes, section 10A.02, subd. 13, which provides:

> "Chapter 14 applies to the board. The board may adopt rules to carry out the purposes of this chapter."

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

In addition Minnesota Laws of 2005, Chapter 156, Article 6, Section 3, amends Minn. Stat. §10A.025 to read "Subd. 1a. [Electronic Filing.] A report or statement required to be filed under this chapter may be filed electronically. The board shall adopt rules to regulate electronic filing and to ensure that the electronic filing process is secure." The new definitions related to electronic filing found in section 4501.0100 and the procedures for using an electronic filing system found in section 4501.0300 and 4501.0500 are in response to this legislative directive.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out six factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (6) below quote these factors and then give the agency's response.

"(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

The rules affect several classes of persons that interact with the Board including: lobbyists, candidates for state level office, political committees and funds registered with the Board, political party units registered with the Board, local officials of a metropolitan governmental unit, members of the public who wish to examine disclosure information filed with the Board, individuals and entities that are required to file documents or disclosure statements with the Board, and any individual who wish to lodge a formal complaint with the Board.

Sections 4501.0300 to 4501.0500 may affect individuals and entities that file documents or disclosure statements with the Board if the document or disclosure is filed electronically. It is

important to note that the amended rules do not require the use of electronic documents and reports. The modifications provide for the security and operation of an optional method of filing documents and disclosure required by statute; individuals and entities may continue to use paper reports if they so choose.

A candidate for state level office (as defined in Chapter 10A) may be affected by the amendment to section 4503.0500 which provides a method to assign value for the use of an automobile during the campaign. The valuation of a non cash contribution affects both contribution limits and expenditure limits (if the candidate agreed to expenditure limits). The amendment benefits all candidates in that it provides an alternate method to use in establishing the value of the contribution and expenditure so that candidates may choose the method that best fits the needs of their campaign.

A successful candidate for the office of Governor will benefit from the addition to section 4503.0900 that provides that the candidate may use funds from their campaign committee to run a transition office during the first six months following the election.

Candidates for state level office may be affected by section 4503.1400 if they are a first time candidate, or if they are running against a first time candidate. The amendment to this section will provide first time candidates with a 10% increase in campaign spending for each year of the election cycle. To the extent that first time candidates may raise sufficient contributions to take advantage of the increased campaign spending limit they will benefit from the rule change more than their opponent(s) if the opponent is not a first time candidate.

Candidates may also be affected by the new provisions of section 4503.1500 which state that a candidate's committee that does not reimburse an individual (including the candidate) for an expenditure maid on behalf of the committee within 18 months must convert the unpaid obligation onto a loan. There is not a particular group or class of candidates that will be affected by this rule change more than any other group or class of candidates.

All candidates, political committees and funds, and political parties registered with the Board are affected by the new reporting requirements of section 4503.1800. To the extent that the above mentioned entities will need to report their contributions and expenditures in a particular format the rule may represent a cost, most likely in time needed to complete the report. However, in that the disclosure and reporting requirements provided in the rules reflect statutory requirements the rules do not affect a class of persons who are not already impacted by Minnesota Statutes Chapter 10A. The rules clarify ambiguous references in the statutes that will make compliance with the intent of the statute easier and more consistent. A benefit of the reporting requirement is that the public as well as other candidates, political committees, and political party units will be better able to understand the disclosure provided on the report. It should be noted that section 4503.1800, subp. 2, requires that all political party units and candidates who issue political contribution refund receipts disclose the contribution that is the basis of issuing the receipt on the periodic reports of Receipts and Expenditures filed with the Board. The requirement is political party neutral, however, the Minnesota Democratic Farmer Labor Party has provided written comment that this provision will be a particular burden to them, and that the party unit is likely to oppose this provision during the period of comment provided after the Notice of Intent to Adopt is published.

Section 4505.0900 is amended to require that securities must be listed by their full name when disclosed on the Statement of Economic Interest. This provision does not create a new

filing requirement, but rather claries the detail of the information provided on a filing required by statute.

The amendment to sections 4511.0500 and 4511.0600 may affect lobbyists that are either the reporting lobbyist for the association they represent, or are a self reporting lobbyist for the association they represent. In either case the lobbyist is required to submit periodic Lobbyist Disbursement reports to the Board. The amendments to sections 4511.0500 and 4511.0600 do not establish a new reporting requirement. Section 4511.0600 removes possible uncertainty as to what types of expenditures are disclosed in the lobbyist disbursement report. It is important to note that the requirement for lobbyist disbursement reports is already set as a requirement in statute and administered by existing administrative rules. The general public will benefit from the amendment to section 4511.0600 because there will be greater uniformity in the disclosure provided by lobbyists, and a clearer understanding of the type of information provided in the disbursement reports.

All clients of the Board are effected by, and will benefit from section 4525.0200 which provides that complaints filed with the Board must be in writing. The complaint may be submitted on a form provided by the Board, or a written statement may be provided in a format of the complainants choosing; the rule is not restrictive therefore it creates no additional burden.

Section 4512 may affect local officials of a metropolitan governmental unit who wish to receive gifts from a lobbyist or a lobbyist principal. An official is not prohibited from using the gift by the rule, but the timing of using the gift is affected by the requirement to have the gift accepted by the local governing body. The Board considers this a minimal disruption to the actions of the official.

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

The adoption of the proposed rules related to electronic filing of documents and disclosure has the potential to reduce copying and mailing costs of the Board if the use of electronic filing is widespread among Board clients. In FY05 the Board spent over $28,000 on printing and mailing costs. Not all of that cost is attributable to mailing out reports and forms to clients; but the development and use of electronic filing has the probable effect of reducing printing and mailing costs for the Board.

The Board will have costs associated with the development and deployment of electronic filing systems, but those will occur regardless as to whether the proposed rude are adopted. No other costs to the Board are anticipated as a result of the adoption of the proposed rules. The Board's activities are largely self-contained therefore no other agencies costs are affected by these rules. The adoption of these rules will not affect state revenues.

"(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule"

In all aspects of rule drafting the Board examined less intrusive methods of implementing statutory requirements. However, the statues that form the framework for these rules are in part disclosure statutes. Disclosure statutes by their nature are intrusive and impose some costs on those covered by the statue. Board staff made themselves available to receive comments and

concerns from those covered by the provisions of the rules. In response to comments and concerns the Board has modified the language of some proposed rules, and dropped from consideration a proposed rule related to multi-candidate political party expenditures. To make the rules any less intrusive than they are would result in the failure of the Board to collect disclosure required by statute and necessary to accomplish its purpose of providing information to the public.

"(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule"

Disclosure, which is a primary purpose of Chapter 10A, may be accomplished by only one method: requiring persons subject to the law to provide required disclosure. The statutes require that disclosure, and the rules implement it. Alternatives to the rules clarifying the disclosure were considered but were discarded because they did not achieve the type and level of disclosure required by statute.

Similarly, the rules that put into place the standards stated in advisory opinions reflect the considered position of the Board on how ambiguous references in the statutes may be administered and complied with. Alternative methods of interpreting the statute were considered and discarded at the time the advisory opinions were written.

"(5) the probable costs of complying with the proposed rule"

The proposed rules related to electronic filing are intended to produce a frame work that supports e-government services to the public and individuals and entities regulated by the Board. The benefit of e-government services, as stated by the Governor's "Drive to Excellence" initiative is to reduce costs to agencies and the public by moving government services out of an office in St. Paul to any Internet capable PC. The Board believes that the implementation of secure electronic filing of documents and reports, even if the use of such a system is voluntary, will result in reduced costs for both the Board and for the individuals and entities regulated by the provisions of Chapter 10A.

The proposed rule section 4503.1800 subparts 1 and 3 clarifies what information is included in the Report of Receipts and Expenditures filed by state candidates, political party units, political committees, and political funds. Because these two subparts do not create new or additional reporting requirements they do not represent a significant cost for entities covered by the sections.

The Board has received written correspondence and verbal statements from the DFL State Central Party that expresses concern over the potential cost of complying with Section 4503.1800, subpart 2. The reporting of all contributions that generate a Political Contribution Refund (PCR) receipt on the periodic Report of Receipts and Expenditures would apparently require significant modifications to the proprietary software used by the DFL State Central Party. The exact cost of the required modification has not been provided to the Board, but is expected to be several thousand dollars. Partially because of cost and partially because of reasons that will be addressed in the rule by rule analysis portion of this document, the Board anticipated that the DFL State Central Party will be opposed to Section 4503.1800, subpart 2, as proposed.

The other proposed rules do not add to the cost of disclosure or compliance for individuals and entities regulated by the Board.

"(6) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference"

There are no federal regulations applicable here; therefore this factor does not apply.

COMMISSIONER OF FINANCE REVIEW OF CHARGES

Minnesota Statutes, section 16A.1285, does not apply because the proposed rule does not set or adjust fees or charges.

IMPACT ON FARMING OPERATIONS

The proposed rules do not have a significant impact on farming operations, and therefore, the requirements of Minnesota Statutes, §14.111 do not apply.

IMPACT ON SMALL BUSINESS AND SMALL CITIES

The proposed rules do not create costs in the first year after the rules take effect in excess of $25,000 on small business (a business with less than 50 full-time employees) or on a statutory or home rule charter city that has less than 10 full time employees. Therefore, the requirements of Minnesota Statutes, §14.127 do not apply.

PERFORMANCE BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, requires the statement of need and reasonableness to describe how the agency, in developing the rules, considered and implemented performance based standards that emphasize superior achievement in meeting the Board's regulatory objectives and maximum flexibility for the regulated party and the Board in meeting those goals.

The regulatory objectives of the Board in regards to providing public disclosure includes securing statutorily required disclosure in a timely manner, minimizing the reporting overhead to the entities that provide disclosure to the Board, presenting the required disclosure to the public in an accurate, efficient and understandable manner, and administering the Board's programs within the confines of a limited budget.

These objectives are not always complimentary, and must be balanced in relation to each other while drafting administrative rules. For example part 4505.0900 of the proposed rules requires public officials to provide the full name of investments disclosed to the Board on the Statement of Economic Interest. This rule provides less flexibility to public officials in reporting their investments, but is needed because some officials have been using the stock exchange symbol when reporting investments. A stock exchange symbol is not easily recorded by Board staff, and does not provide disclosure to the public that may be easily understood. The cost to the official for providing the actual name of the investment is nominal to nonexistent.

The proposed rules parts 4501.0100, 4501.0300, and 4501.0500 provide for electronic filing of documents and reports with the Board. The adoption of administrative rules to regulate electronic filing meets all of the regulatory objectives of the Board and provides maximum flexibility to the regulated community. By providing the regulated community with the choice of using either paper reports or filing with software developed by the Board the proposed rules allow the regulated community to choose a disclosure method that best meets their needs while still providing required disclosure to the public. The use of electronic filing developed by the Board is also cost effective because it puts in place a system that does not cost the regulated community anything to use, but which provides the public with disclosure that is timely and accurate. The use of electronic filing is also cost effective for the Board because electronic filings are transferred directly into Board databases, thereby eliminating the need for Board staff to data entry the disclosure into databases in preparation for web based disclosure to the Public.

The proposed rules parts 4503.0100 and 4503.1500 provide standards for candidates, political parties, political committees, and political funds to use in complying with the campaign finance provisions of Chapter 10A, and in categorizing expenditures for disclosure to the Board. While these provisions may not provide flexibility to the regulated community they meet the cost benefit test by providing better disclosure to the public without raising the cost to the regulated community of providing disclosure.

The provisions of 4503.0500, 4503.0900 and 4503.1400 are based on formal advisory opinions issued by the Board in response to questions from candidates and committees regulated by Chapter 10A. An advisory opinion provides guidance and safe harbor only for the individual or entity that requested the opinion. Therefore, even an entity with the same fact situation as an opinion already issues by the Board must ask for their own advisory opinion to guide their conduct. The Board is authorized to adopt rules that put in place the guidance provided in an advisory opinion. One cost benefit of adopting rules that reflect advisory opinions is to reduce the overhead of regulated entities (so they do not have to ask for their own advisory opinion when the answer of the Board has already been provided).

Additionally, 4503.0500, 4503.0900, and 4503.1400 all provide flexibility to the regulated community. Part 4503.0500 provides an additional method for calculating the cost of using an automobile during a campaign, so the candidate or committee can use the best method to meet their needs. Part 4503.0900 provides flexibility to first successful candidates for the office of Governor in that they may use campaign funds for a transitional office. Part 4503.1400 provides flexibility to first time candidates in how they conduct their campaign prior to election year. The flexibility provided in these proposed rules does not hinder the ability of the Board to regulatory objectives because they do not hinder the collection of disclosure or the compliance requirements of Chapter 10A.

Parts 4503.1800 and 4511.0600 provide reporting requirements; 4503.1800 for candidates, political party units, and political committees that file reports with the Board; 4511.0600 for lobbyists that report lobbying disbursements to the Board. The disclosure provided by 4503.1800 reflects statutory requirements; the proposed rule is needed to provide a standard format for use in reporting the disclosure to the Board. The primary cost to the regulated community is in collecting and recording the disclosure, these costs are fixed as the disclosure is required by statute. The proposed rule may provide a secondary cost in that the disclosure will have to be reported in a certain order. However that cost is anticipated to be minor and easily outweighed by the regulatory goal of providing easily understood disclosure to

the public.

The same cost benefit analysis applies for part 4511.0600 which provides guidance on the categorization of lobbying disbursements by lobbyists reporting to the Board. The requirement to report lobbying disbursements, which is the primary expenditure by the regulated community, is statutory and is not affected by the proposed rule. The purpose of part 4511.0600 is to provide consistent guidance on how lobbying disbursements are categorized by the regulated community. To the extent that clear guidance will help lobbyist complete their report for the Board the proposed rule is a cost reduction for the regulated community. But more importantly the clarification on how to categorize lobbying disbursements will improve the quality of disclosure provided to the public, which is of course a regulatory objective of the Board.

Part 4512.0200 provides a procedure for metropolitan governmental units to use in accepting gifts from lobbyists and lobbyist principals and then providing the gifts to officials for their use. The part attempts to reconcile two statutes (Minn. Stat. §10A.071 and Minn. Stat. §465.03) that potentially conflict. By providing the procedure for accepting a gift that is used by an official the Board is providing flexability to the Metropolitan governmental units covered by Minn. Stat. §10A.071 and doing so with creating a reporting requirement or any apparent cost to the individuals and entities affected by the proposed rule.

ADDITIONAL NOTICE

The Campaign Finance and Public Disclosure Board is responsible for administrative rules needed to implement Chapter 10A of the Minnesota Statutes, the Ethics in Government Act. Among other subjects the act regulates and provides disclosure for public officials, state candidates, political party units, political committees, political funds, and lobbyists.

It is these groups that the Board wishes to reach through this plan. By providing additional notice to these persons, either individually or through organizations that represent these persons, the Board believes it will have met its obligation to provide a good faith effort to alert all individuals who would potentially like to comment on the rules that the Board is proposing to adopt.

The additional notice plan contains the following elements:

1. Provide information on the Notice of Intent to Adopt and the proposed rules to the Minnesota Governmental Relations Council (the Council). The Council is the professional association for lobbyist in Minnesota, with membership including over 400 lobbyists registered with the Board. The Council has participated in previous rule making efforts by the Board that impacted lobbyists, and is very active in representing the interests of lobbyists.

2. The Board will provide the Notice of Intent to Adopt and the proposed rules to the Republican and Democratic caucuses in the State House and Senate. These four organizations are very active in representing the interests of incumbent office holders and potential candidates for their parties

3. The Board will provide the Notice of Intent to Adopt and the proposed rules to state central committees of the four registered political parties in Minnesota; Republican, Democrat, Green, and Independence. These four organizations are active in representing candidates, and potential candidates for state level office.

4. The Board will make available the Notice of Intent to Adopt and the proposed rules at training sessions the Board will conduct during the comment period. Starting in January the Board will hold monthly training on software and compliance issues through out the spring for candidates and political committees. Students at these training sessions are often newly registered with the Board, or intend to register with the Board, and therefore may be affected by the proposed rules.

5. The Notice of Intent to Adopt Rules and the proposed rules (as well as the statement of need and reasonableness) will be placed on the Board web site, and will be linked to numerous topic areas (pages) within the site. In particular the Notice of Intent to Adopt Rules will be referenced from pages used by public officials seeking information or downloadable forms for use in making Statements of Economic Interest.

6. The Board maintains a list of individuals interested in rule making, and a list of persons interested in the general operations of the Board. The Notice of Intent to Adopt Rules and the proposed rules will be sent to the approximately 140 individuals on those lists. These two lists contain the individuals from all types of individuals and entities regulated by the Board, and are likely to be both interested in, and affected by, the proposed rules. Notification that the Notice of Intent, proposed rules, and statement of need and reasonableness are available at the Board web site will be e-mailed to all parties that signed up for list serve notification of Board activities.

7. The Board will provide the Request for Comments to the metropolitan governmental units that are regulated by the gift prohibition to public officials.

8. The Notice of Intent to Adopt, the proposed rules, and the statement of need and reasonableness will be sent to the legislators required by Minnesota Statutes, section 14.116.

RULE-BY-RULE ANALYSIS

Part 4501.0100, Subp. 2a, defines "Audit Trail" for the submission of electronic files with the Board. The definition is needed to set a standard of proof that an individual or entity may present to the Board to show that a filing was submitted in a timely fashion. The audit trail verifies that a technical failure is the reason that the electronic filing was not received by the Board in a timely fashion. Standardizing the proof accepted by the Board to prove a technical problem is needed because of the fines that are assessed for missing a filing deadline. The Board

will waive or reduce late filing fees for a compelling reason. The term "audit trail" is used in proposed rule section 4501.0500, subp. 23 (F), as a reason that the Board may consider when waiving late filing fees.

It is reasonable that the audit trail include evidence of when the electronic filing was submitted so that the Board has substantiation of the claim that the filing was submitted in a timely manner. It is further reasonable to include in the audit trail any verification message or report indicating the filing was received by the Board as supporting evidence that the filer acted in good faith when submitting an electronic document to the Board.

Part 4501.0100, Subp. 4a, defines "Electronic File" as a report or statement required by Chapter 10A submitted using an electronic filing system. The definition is needed so that the rules administering electronic filings with the Board have a common reference point as to what documents are regulated by the proposed rules.

It is reasonable to limit the scope of "electronic file" to those documents required under the provisions of Chapter 10A given the statutory directive of Minnesota Laws of 2005, Chapter 156, Article 6, Section 3, which amends Minn. Stat. §10A.025 to read "Subd. 1a. [Electronic Filing.] A report or statement required to be filed under this chapter may be filed electronically. The board shall adopt rules to regulate electronic filing and to ensure that the electronic filing process is secure."

Part 4501.0100, Subp. 4b, defines "Electronic Filing System" as a computer-based system developed by the Board for use in submitting an electronic file to the Board. The definition is needed to limit the scope of electronic filing systems to those developed by the Board. Without this limitation individuals and entities required to file documents with the Board may attempt to do so with systems developed by vendors and for other political jurisdictions.

It is reasonable to limit the filing of electronic documents to those systems developed by the Board for the following reasons. 1) *Compatibility with the Board's databases and computer systems.* The Board maintains numerous databases for each program it administers. Electronic filing systems developed by the Board are designed to be compatible with the existing electronic infrastructure of the Board. 2) *Compliance with statutory disclosure requirements.* The level of detail and itemization provided in disclosure reports and filings submitted to the Board is set in Minnesota statute and administrative rule. Electronic filing systems developed by third parties are unlikely to have been developed with Minnesota requirements as a critical standard. Any third party system will be marketed in many states with the hope that the system may be conformed to a state's filing requirement if a sale is made. Filing systems developed by the Board are built to comply solely with the particulars of Minnesota statutes and administrative rules. 3) *Limited Board resources.* The Board has nine full time positions; of which two are technology related. The Board is developing and maintaining electronic filing systems with Board staff and cannot afford to use budget or personal resources to support file formats, file content, and transfer methods developed by vendors. The Board believes that it is a reasonable use of its resources to develop electronic filing systems that may be provided at no charge to all individuals and entities that file reports and documents with the Board; as opposed to using Board resources to support electronic filing systems sold by third parties to only those individuals and entities that can afford the cost.

Part 4501.0100, Subp. 4c, defines "Facsimile Transmission" as either the use of a fax machine or e-mail to submit an image of a completed report or statement to the Board. The definition is needed to distinguish between the submission of an electronic image (fax or e-mail attachment) and an electronic file. An electronic file may only be submitted on an electronic filing system developed by the Board. A facsimile transmission may be submitted on any fax machine or e-mail system and is not dependent on a system developed by the Board.

Administering "facsimile transmissions" differently than electronic filings is reasonable because of the nature of the data provided. A facsimile transmission is using a fax machine or e-mail as a substitute for the US Postal system. The image delivered is electronic, but it is nothing more than a copy of a paper report. The issues of security, signature, and compatibility with Board systems are different or nonexistent compared to how those issues must be dealt with when the submission to the Board is an "electronic file".

Part 4501.0100, Subp. 7a, defines "personal identification code" as the combination of a user name and password provided by the Board. The definition is needed to provide a common understanding of a primary security requirement of electronic filing systems developed by the Board.

Part 4501.0300, Subp. 1a, provides the signature requirements for reports and filings submitted to the Board. In particular the section is needed to provide a signature equivalent for files that are submitted electronically. Additionally, the rule is needed to provide that an initial registration may be submitted as an electronic file without the use of a personal identification code pending a confirmation of the registration.

It is reasonable to view the submission of an electronic file with a personal identification code as the equivalent as a paper document with signature because the personal identification code is provided by the Board only to the individual or to the treasurer of record of the entity submitting the report. Use of the personal identification code sets a reasonable standard to insure that the filing or report is legitimate and secure.

It is also reasonable to provide for a method that allows individuals and entities to submit an initial registration on an electronic filing system without a personal identification code. The Board will accept the initial registration provisionally until the authenticity of the registration is verified by the Board. Without this provision web based registration for any program administered by the Board would be impossible because the personal identification code is provided only to individuals or entities registered with the Board.

Part 4501.0500, Subp. 1, is needed to establish a framework of paper forms and electronic files that may be used to submit filing and report information to the Board. It is reasonable to authorize the Board to create forms and electronic filing systems for the purpose of collecting the disclosure information so as to insure that the information is provided in a way that is useful to the public, the Board, and meets filing requirements set in statute and administrative rule.

Additionally, this section provides the Board with the authority to accept reports and filings submitted to the Board in other formats or media. This is a reasonable authority because it allows the Board to try new filing formats experimentally to see if they meet statutory requirements and the administrative needs of the Board. Without this authority to experiment

the Board will not be able to try new technologies or formats that may be useful or better than existing technology.

Part 4501.0500, Subp. 1a (D), is needed to provide that the successful use of an electronic filing system is the equivalent of filing a completed paper report or filing with the Board. This part is reasonable because the information provided in the electronic filing is the same as that provided on paper documents. If electronic files are not given equivalent status to paper documents then use of electronic filing systems will be of no value to either the regulated community or the Board.

Part 4501.0500, Subp. 2, is needed to establish electronic filing as a valid method to submit a report or statement to the Board. It is reasonable to provide electronic filing as the equivalent of paper documents in order to provide Internet based e-government services to the public. It is also reasonable to provide electronic filing as an equivalent to paper forms because the content of the report or filing is the information required by rule or statute, not the media or technology used to supply the content.

Part 4501.0500, Subp. 2, items (A) through (F), are needed to incorporate electronic files into the administrative procedures used by the Board when processing reports and filings. In specific:

Item A. This item is needed to establish that the deadline for submitting an electronic file on a particular day is the end of business hours for that day. This is reasonable because the point of the report or filing is to provide public disclosure of the individuals or entities activities. An electronic file submitted after Board staff has left for the day does not provide disclosure that may be used until the next business day. Therefore the deadline is the end of business hours, not the end of a calendar day.

Item B. This modification is needed to clarify: 1) that the use of an electronic filing system is always at the option of the individual or entity submitting the document, 2) that the filer must use a personal identification code when submitting the electronic file, 3) provide that the Board may request, but not require, an e-mail address in order to send confirmation or verification messages to the user.

The provisions of this item are reasonable because: 1) While the Board has been directed by the legislature to develop rules for the secure use of electronic filing systems there is no statutory requirement that electronic filing systems must be used. 2) The use of a personal identification code is a reasonable requirement to prevent fraudulent or inadvertent filing of information by individuals not authorized to submit reports or documents to the Board. The security of any internet based data collection system is dependent on limiting access to those users authorized to use the system. It is therefore reasonable that the Board uses the personal identification code as a method to identify authorized users. 3) It is reasonable to allow the Board to collect the e-mail addresses voluntarily provided by individuals who use the electronic filing systems in order to inform the user of a successful submission of a report or filing or, conversely, of technical problems preventing a successful submission. For individuals who choose to use electronic filing systems e-mail may be their preferred means of communication

with the Board, so it is reasonable that the Board facilitate the use of a communication tool to provide information to filers.

Item C. This item is needed to clarify that the information contained in an electronic filing is subject to the terms of the Data Practices Act. This is a reasonable provision because data provided on paper reports or forms is subject to the Data Practices Act, and there is no basis to treat the information submitted in an electronic filing system in a different manner.

Item D. This item is needed to clarify that the successful use of an electronic filing system to submit data to the Board does not release the filer from the requirement to keep the documentation of the information provided in the filing. This is a reasonable standard in order for the Board to maintain the ability to conduct audits of individuals and entities that report under the provisions of Chapter 10A.

Item E. This item is needed to provide the Board with the authority to request the resubmission of the data in an electronic file on a paper form or report. Submission of data on a paper document may be required if the electronic file submitted to the Board is in someway corrupted or incompatible with Board systems. This is reasonable given that one of the primary functions of the Board is to provide the public with disclosure information; technical difficulties that prevent the use of an electronic filing system may not be a basis for denying timely disclosure to the public.

Item F. This item is needed to provide that an unsuccessful attempt to use electronic filing systems does not relieve the filer of the requirement to submit a report or filing to the Board. Additionally this item is needed to set a procedure for the Board to use in considering appeals for late filing fees and possible civil penalties accessed for the late submission of electronic files.

It is reasonable to provide that an attempted electronic filing is not sufficient to meet the disclosure requirements of Chapter 10A because disclosure of required information is a statutory requirement that is not relieved by technical issues. Conversely, it is reasonable for the Board to consider extenuating circumstances when accessing late fees and civil penalties. In particular if the filer has an audit trail indicating that an electronic file was sent to the Board it is reasonable to consider the audit trail as evidence of a good faith effort by the filer to comply with the requirements of Chapter 10A.

Part 4503.0100, Subp. 3a, is needed to define the term "Fair Market Value" as the amount any individual would expect to pay for an item on the open market. This term is used in statutes and rules regulating the disclosure of investments by public officials, the valuation of donations in-kind to candidates, political parties, political committees, and political funds, and in the disposing of physical assets by principal campaign committees, political parties, political committees and political funds when they terminate.

Board staff is often asked what the term "fair market value" means in reference to statutes and rules and it is reasonable to provide a consistent definition in order to administer statutory and administrative requirements in a uniform manner.

Part 4503.0100, Subp. 4a, is needed to define "Loan" for the purposes of submitting a report of Receipts and Expenditures to the Board from candidates, political party units, political committees, political funds and ballot question committees.

Chapter 10A and existing administrative rules refer to "Loan" without ever providing a definition; it is reasonable to provide a consistent definition in order to administer statutory and administrative requirements in a uniform manner.

Part 4503.0500, Subp. 8, is needed to provide an alternative method of calculating the value of the use of an automobile and to clarify that the use of an automobile is either a contribution or an expenditure that must be reimbursed. This part reflects the direction provided by the Board in Advisory Opinion 366, issued on February 22, 2005.

Minn. Stat. §10A.02, subd. 12a, provides in part "If the board intends to apply principals of law or policy announced in an advisory opinion ...more broadly than to the individual or association to whom the opinion was issued, the board must adopt these principals or policies as rules under chapter 14" This part represents the intention of the Board to apply the provisions of an advisory opinion to all individuals and entities covered by the provisions of Chapter 10A.

That advisory opinion provided in part that "An individual may either apply for reimbursement under the standard mileage amount or may itemize for the cost of gas, repairs and other items related to the operation of the car during the trip". The Board considered this a reasonable position to take given that the Internal Revenue Service (IRS) reimbursement rate, upon which the standard state reimbursement rate for employees is based, provides that an individual may use either the IRS standard rate or determine a reimbursement based on actual costs. The Board sees no reason to apply part of the IRS mileage standard but ignore other provisions of the same standard that provide for an alternative method of calculating the value of the use of an automobile.

Part 4503.0900, Subp. 1, (F), is needed to provide that a successful candidate for the office of Governor may use funds in the candidate's principal campaign committee to run a transition office during the first six months after election. This part reflects the direction provided by the Board in Advisory Opinion 346, issued on November 20, 2002.

Minn. Stat. §10A.02, subd. 12a, provides in part "If the board intends to apply principals of law or policy announced in an advisory opinion ...more broadly than to the individual or association to whom the opinion was issued, the board must adopt these principals or policies as rules under chapter 14" This part represents the intention of the Board to apply the provisions of an advisory opinion to all individuals and entities covered by the provisions of Chapter 10A.

Additionally, the Board may classify the disbursement of funds by a principal campaign committee as a noncampaign disbursement under Minn. Stat. §10A.01, subd. 26 (18), which states "other purchases or payments specified in board rules or advisory opinions as being for any purpose other than to influence the nomination or election of a candidate or to promote or defeat a ballot question".

Advisory Opinion 346 provides in part that "The function of the transition is to insure a smooth transfer of power, a continuation of government services, and to provide that the new Governor can effectively serve in office. Therefore, some of the expenses of the transition may be seen as a cost of serving as Governor. Costs incurred by a candidate because the candidate is serving in public office are allowable noncampaign disbursements under Minn. Stat. §10A.01, subd. 26, (9), and may be paid for with principal campaign committee funds". It is reasonable to

provide this conclusion to all future successful candidates for the office of Governor so that the same questions do not need to be asked of the Board by each candidate facing a similar circumstance.

Part 4503.1400, Subp. 9, is needed to clarify that the increase in campaign spending available to first time candidates under Minn. Stat. §10A.25, subd. 2 (d), applies to all years of the election cycle; not just to the election year. This part reflects the direction provided by the Board in Advisory Opinion 281, issued on November 21, 1997.

Minn. Stat. §10A.02, subd. 12a, provides in part "If the board intends to apply principals of law or policy announced in an advisory opinion ...more broadly than to the individual or association to whom the opinion was issued, the board must adopt these principals or policies as rules under chapter 14" This part represents the intention of the Board to apply the provisions of an advisory opinion to all individuals and entities covered by the provisions of Chapter 10A.

Advisory Opinion 281 provides in part "For candidates who meet the qualifications of Minn. Stat. § 10A.25, subd 2(c), the 10% campaign expenditure limit increase provided therein applies to the campaign expenditure limit in each year of the election cycle". It is reasonable to provide this conclusion to all future first time candidates so that the same question does not need to be asked of the Board by each candidate facing a similar circumstance.

Part 4503.1500, Subp. 1, is needed to clarify that the requirement to make a loan to a principal campaign committee must be in writing. The requirement for a written document already exists for political committees and political funds. It is reasonable to include principal campaign committees under this provision because candidate committees are more likely to take a loan to attain the funds needed at the campaign's start up, or to attain funds needed for a media buy or other important expenditure just prior to the election. By providing a paper trail documenting loans there will be less chance that the loan is not reported to the Board, or that the loan is from an inappropriate source or in an excessive amount.

Part 4503.1500, Subp. 2, is needed to clarify the maximum amount that may be loaned by an individual or an association that is not a financial institution to the principal campaign committee of a legislative or constitutional office. It is unclear from statute (Minn. Stat. §10A.27, subd. 8) at what point the maximum loan amount is calculated. The Board has been unsure if a violation exists when a loan in excess of the contribution limit is partially or wholly paid off within 60 days, within a reporting period, or within a calendar year.

It is reasonable to set the time frame for calculating the maximum loan that may be received from a individual or an association that is not a financial institution as the calendar year because the other contribution limits set in Minn. Stat. §10A.27 are also set by election or non-election calendar year. A yearly time frame for maximum loans as set in this part will be consistent with the statute and will allow the Board to enforce the maximum loan limit in a uniform manner.

Part 4503.1500, Subp. 3, is needed define the point at which an unpaid bill owed to an individual or candidate by a principal campaign committee becomes in effect a loan to the principal campaign committee. Without the definition provided in this part an individual or candidate could hypothetically provide a principal campaign committee with a formal loan for

the maximum contribution amount (as provided in Part 4503.1500, subp. 2) and then use their personal resources or credit card to purchase items for the committee with no real expectation that the committee will reimburse the expenditure. This part provides that if the principal campaign committee does not reimburse within a set time frame the unpaid bill becomes a loan that must be considered when determining the maximum amount the candidate or individual may loan to the committee.

It is reasonable to convert unpaid obligations to individuals and candidates into loans after 18 months because it allows the principal campaign committee a reasonable amount of time to raise funds with which to pay off obligations. Initially the Board was going to set the time frame as 12 months. However, during the Request for Comments period the Board received input from the DFL and Republican Senate Caucuses reminding the Board that principal campaign committees are limited in their fund raising during legislative session. In order to compensate for restricted fund raising during legislative session representatives from the caucuses suggested that the period for repayment be extended to 18 months. The Board has accepted this suggestion.

It is further reasonable to restrict the provisions of this part to individuals and candidates, and exclude unpaid bills owed to businesses or associations. Most businesses are incorporated, and are prohibited under Chapter 211B from making contributions to candidates. If the committee does not pay the business within 18 months for the service provided did the business violate the prohibition on corporate contributions, or is the committee behind on its payments? The Board did not believe it was reasonable to view the principal campaign committee's inability to pay as a violation by a business that provided services with the expectation that payment would be forthcoming.

It is reasonable to restrict the provisions of this part to the unpaid obligations of principal campaign committees because political party units, political committees, and political funds do not have contribution limits and are not covered by the provisions of Minn. Stat. §10A.27.

Part 4503.1800, Subp. 1, is needed to insure that the reporting of contributions received by a principal campaign committee, political party unit, political committee or political fund is made in a consistent format that meets statutory requirements and is understandable by the public. In particular the part clarifies that the contents of a report filed by the principal campaign committee of a candidate for any statewide office, political party unit, or any political committee or political fund must provide the itemization of contributions required in Minn. Stat. §10A.20, subd. 3 (b).

It is reasonable to require that all entities that are required to file campaign finance reports under Minn. Stat. §10A.20, subd. 1, do so in a consistent manner so that the Board may easily process the reports and so that the disclosure on the reports may be easily accessed and understood by the public.

Part 4503.1800, Subp. 2, is needed to provide that a principal campaign committee or a political party unit that issues a political contribution refund receipt (PCR) in response to a contribution from an individual will report the contribution on the Report of Receipts and Expenditures filed with the Board.

The PCR program refunds Minnesota residents who contribute to major and minor political parties in Minnesota or to the principal campaign committees of legislative or

constitutional candidates who have signed the public subsidy agreement. Contributors may be refunded up to $50 per individual or $100 per couple. The Board receives from the Department of Revenue a report of the total amount of PCR issued per candidate and per political party unit. The Board compares this list with the Annual Report of Receipts and Expenditures filed with the Board by candidates and political party units. If the amount of PCR refunds issued by the Department of Revenue for a particular candidate or party unit is greater than the contributions disclosed on the Report of Receipts and Expenditures the Board contacts the principal campaign committee or political party unit to resolve the discrepancy. The Board has found that not all political party units include all contributions that generate a PCR receipt on their periodic reports to the Board.

It is reasonable to require that the disclosure of contributions made by a Minnesota resident, to a political party unit or principal campaign committee registered in Minnesota, and refunded by the Minnesota Department of Revenue, is reported to the Minnesota Campaign Finance and Public Disclosure. To allow the disclosure of contributions that generate a PCR refund on a report to the Federal Election Commission, or on a report to any other entity, undermines the completeness of the disclosure provided by the Board to the public, and compromises the ability of the Board to use the report of PCR payments issued by the Department of Revenue as a means to detect fraud or under reporting.

Part 4503.1800, Subp. 3, is needed to provide that the reporting of expenditures and noncampaign disbursements received by a principal campaign committee, political party unit, political committee or political fund is made in a consistent format that meets statutory requirements and is understandable by the public. In particular the part clarifies that the contents of a report filed by the principal campaign committee of a candidate for any statewide office, political party unit, or any political committee or political fund must provide the itemization of contributions required in Minn. Stat. §10A.20, subd. 3(g), and that expenditures and noncampaign expenditures are reported alphabetically by vendor.

It is reasonable to require that all entities that are required to file campaign finance reports under Minn. Stat. §10A.20, subd. 1, do so in a consistent manner so that the Board may easily process the reports and so that the disclosure on the reports may be easily accessed and understood by the public.

Part 4505.0900, Subp. 7, is needed to provide that public officials supply the full name of investments on their Statement of Economic Interest filed with the Board. Some public officials have filed Economic Interest Statements that list abbreviations or symbols for the stocks or funds in which they have invested. While the abbreviation or symbol may be useful for checking in the newspaper how the investment is doing the full name of the investment is needed to provide disclosure that the Board may record and the public may understand.

It is not reasonable to allow public officials to disclose investments with a symbol or abbreviation because it requires the average person to decipher the disclosure with a reference guide of stock exchange abbreviations and symbols. It is reasonable to assume that public officials know the full names of the investments they hold and require that they provide that information when filing with the Board.

Part 4511.0500, Subp. 2, (E) and (F), is needed to conform the notification given to reporting lobbyists and the lobbyists on behalf of whom they report to the notification requirement provided in Minn. Stat. §10A.04, subd. 5. The part is needed because reporting lobbyists and the procedure used by reporting lobbyists to disclose disbursements to the Board currently set in administrative rule reflect a prior statutory standard. The part needs to provide notification and a late filing fee starting date because the provisions in Minn. Stat. §10A.04, subd. 5, are general in application and do not cover lobbyists who provide information to a reporting lobbyist.

It is reasonable to use the notification provisions provided in Minn. Stat. §10A.04, subd. 5, so that there are not two standards of notification and late filing fees for the Board to administer, and two standards of compliance for the lobbying community.

Part 4511.0600, Subp. 5, is needed to clarify the type of disbursements provided to the Board. The clarification was requested by representatives of the Minnesota Government Relations Council, and it is reasonable for the Board to respond to comments received during the Request for Comments period assuming that they strengthen the proposed rules. The Board believes that this change meets that test.

Part 4511.0600, Subp. 5 (B), is needed to clarify that the design and maintenance of a Web site used for lobbying purposes is a lobbying disbursement that must be reported under the category "Media costs". Minn. Stat. §10A.04, Subd. 4 (b), requires the reporting of all disbursements related to lobbying with a breakdown of disbursements into categories specified by the Board.

This part reflects the direction provided by the Board in Advisory Opinion 358, issued on June 15, 2004.

Minn. Stat. §10A.02, subd. 12a, provides in part "If the board intends to apply principals of law or policy announced in an advisory opinion ...more broadly than to the individual or association to whom the opinion was issued, the board must adopt these principals or policies as rules under chapter 14". This part represents the intention of the Board to apply the provisions of an advisory opinion to all individuals and entities covered by the provisions of Chapter 10A.

Advisory Opinion 358 provides in part "A web site has the potential to be a lobbying expenditure if a purpose of the content on the site is to motivate people to contact public officials or local officials in order to influence an official action". It is reasonable for the Board to reach the conclusion that the use of the Internet is no different than any other medium if used for lobbying purposes and the cost of the lobbying effort provided on the Internet is a lobbying disbursement most reasonably categorized as a "Media cost". It is reasonable for the Board to place this conclusion into administrative rule so that this type of lobbying disbursement is reported uniformly by all lobbyists.

Part 4511.0600, Subp. 5 (E), is needed to clarify that the cost of surveys, polls, and legal counsel are lobbying disbursements that are reported under the category "Fees and allowances" if the purpose of the survey, poll, or legal counsel is to support a lobbing effort. Minn. Stat. §10A.04, Subd. 4 (b), requires the reporting of all disbursements related to lobbying with a breakdown of disbursements into categories specified by the Board. Under existing administrative rule the Board has provided that ""Fees and allowances" include fees for

consulting or other services as well as expenses associated with those services".

This part reflects the direction provided by the Board in Advisory Opinion 332, issued on September 25, 2001.

Minn. Stat. §10A.02, subd. 12a, provides in part "If the board intends to apply principals of law or policy announced in an advisory opinion ...more broadly than to the individual or association to whom the opinion was issued, the board must adopt these principals or policies as rules under chapter 14". This part represents the intention of the Board to apply the provisions of an advisory opinion to all individuals and entities covered by the provisions of Chapter 10A.

In Advisory Opinion 332 the Board is asked if the costs of contracting with a public relations firm to assist in a lobbying effort were a reportable lobbying disbursement. While the terms "survey, polls, and legal counsel" are not used in the advisory opinion the Board makes it clear that all disbursements made by a public relations firm in support of a lobbying effort must be reported. In the advisory opinion the Board stated that "The report must include disbursements related to lobbying made directly by the lobbyist, and those made by the lobbyist's employer or an association represented by a lobbyist. As provided in Minnesota Rules 4511.0600, subp. 5, lobbying disbursements are reported in one of nine categories. The categorization of fees paid to a public relations firm would depend on the nature of the services provided by the firm".

It is reasonable to categorize the costs of surveys, polls, and legal counsel as "Fees and allowances" because they are specific types of "consulting or other services" that are provided by public relations firms to support a lobbying effort. It is reasonable for the Board to place this conclusion into administrative rule so that this type of lobbying disbursement is reported uniformly by all lobbyists.

Part 4512.0200, Subp. 1, is needed to number the provisions of Part 4512.0200. The text of subpart 1 is existing language. It is reasonable to number this provision to that the administrative rule is organized in a consistent manner.

Part 4512.0200, Subp. 2, is needed to provide the conditions under which an official with a metropolitan governmental unit may use a gift that was provided by a lobbyist or lobbyist principal to a metropolitan governmental unit. The need for this part arises from the decision reached in Minnesota Court of Appeals A03-970, Mayor Randy Kelly, Relator, vs. Campaign Finance and Public Disclosure Board, Respondent, filed May 11, 2004. The Board issued Findings stating that Mayor Kelly accepted a prohibited gift from the Minnesota Wild (a lobbyist principal) when he accepted a ride on a private jet to Denver, transportation from the airport to the hockey arena, and a game ticket to a Minnesota Wild – Denver Avalanche playoff game. Legal counsel for Mayor Kelly argued that the gifts provided by the Minnesota Wild were accepted by the St. Paul City Counsel as gifts to the City after the Mayor accepted and used the gifts. Minn. Stat. §465.03 authorizes the governing bodies of cities and counties to accept gifts on behalf of its citizens. The Minnesota Court of Appeals overturned the findings against Mayor Kelly. In its rational for overturning the Findings the Court stated, "We recognize that in the future respondent has the authority, through appropriate decisions or rulemaking, to interpret Minn. Stat. §10A.071 and determine how the ban on gifts interacts with Minn. Stat. §465.03. And we recognize that prior use of a gift, as occurred here, may raise the appearance of impropriety". The Board agrees with the Court of Appeals that the Board has the authority to adopt an administrative rule that clarifies how an official may comply with Minn. Stat. §10A.071

given the provisions of Minn. Stat. §465.03, and that such a rule is needed to prevent both the appearance and actual occurrence of impropriety when officials accept gifts from a lobbyist or lobbyist principal.

The provisions of this part are reasonable because they will allow a metropolitan governmental unit to accept a gift from a lobbyist or lobbyist principal, as provided by Minn. Stat. §465.03, but eliminates the appearance that the gift was actually for the personal use of a public official. The more formal process of having the gift accepted by a vote of the governing body of the governmental unit before it is used by the official allows for public input on the use of the gift. Additionally it prevents the potential of an official caught accepting a gift from a lobbyist or lobbyist principal from pressuring the governing body to accept the gift on behalf of the governmental unit.

Part 4525.0200, Subp. 1, and the repeal of Subp. 3, the modification to subpart1 and the repeal of subpart 3 are needed to make the administrative procedure for filing a complaint with the Board consistent with the provisions of Minn. Stat. §10A.02, subd. 11. This statute provides that the Board investigates violations alleged in a written complaint. The deleted language in subpart 1 and the all of subpart 3 provide for oral complaints.

It is reasonable and required that administrative rules have the same requirements as the statutes on which they are based. The statute requires written complaints in part to eliminate the filing of frivolous complaints. Additionally oral complaints invite mistakes and omissions that are unlikely to occur if the complaint is a written format.

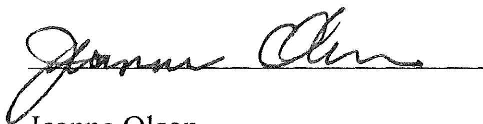
Part 4525.0500, Subp. 5, is needed to eliminate the reference to Part 4525.0200, subp. 3, which is being repealed.

It is reasonable to keep references to other statutes and rules updated and accurate.

CONCLUSION

Based on the foregoing, the proposed rule is both needed and reasonable.

October 7, 2005



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