

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. **2548**

03/08/2016 Authored by Laine and Bly

The bill was read for the first time and referred to the Committee on Government Operations and Elections Policy

1.1 A bill for an act
1.2 relating to campaign finance; amending prorating method for contributions or
1.3 use of general treasury money; modifying definition of expressly advocating;
1.4 providing for disclosure of electioneering communications; providing penalties;
1.5 amending Minnesota Statutes 2014, sections 10A.01, subdivision 16a; 10A.121,
1.6 subdivision 1; 10A.244; 10A.25, subdivision 3a; 10A.27, subdivision 15;
1.7 Minnesota Statutes 2015 Supplement, section 10A.20, subdivision 3; proposing
1.8 coding for new law in Minnesota Statutes, chapter 10A.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2014, section 10A.01, subdivision 16a, is amended to
1.11 read:

1.12 Subd. 16a. **Expressly advocating.** "Expressly advocating" means:
1.13 (1) that a communication clearly identifies a candidate and uses words or phrases
1.14 of express advocacy; or
1.15 (2) that a communication when taken as a whole and with limited reference to
1.16 external events, such as the proximity to the election, is susceptible of no reasonable
1.17 interpretation other than as an appeal advocating the election or defeat of one or more
1.18 clearly identified candidates.

1.19 Sec. 2. Minnesota Statutes 2014, section 10A.121, subdivision 1, is amended to read:

1.20 Subdivision 1. **Permitted disbursements.** An independent expenditure political
1.21 committee or fund, or a ballot question political committee or fund, may:

1.22 (1) pay costs associated with its fund-raising and general operations;
1.23 (2) pay for communications that do not constitute contributions or approved
1.24 expenditures;

- (3) make contributions to independent expenditure or ballot question political committees or funds;
- (4) make independent expenditures;
- (5) make expenditures to promote or defeat ballot questions;
- (6) return a contribution to its source;
- (7) for a political fund, record bookkeeping entries transferring the association's general treasury money allocated for political purposes back to the general treasury of the association; ~~and~~
- (8) for a political fund, return general treasury money transferred to a separate depository to the general depository of the association-; and
- (9) make disbursements for electioneering communications.

Sec. 3. Minnesota Statutes 2015 Supplement, section 10A.20, subdivision 3, is amended to read:

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, 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.

(d) The report must disclose the sum of contributions to the reporting entity during the reporting period.

(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, 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.

(f) The report must disclose each receipt over \$200 during the reporting period not otherwise listed under paragraphs (c) to (e).

(g) The report must disclose the sum of all receipts of the reporting entity during the reporting period.

(h) The report must disclose the following:

(1) the name, 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, and disbursements for electioneering communications have been made by or on behalf of the reporting entity within the year in excess of \$200, together with;

(2) the amount, date, and purpose of each expenditure and;

(3) the name and address of, and office sought by, each candidate on whose behalf the expenditure was made or, in the case of electioneering communications, each candidate identified positively in the communication;

(4) 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

(5) in the case of independent expenditures made in opposition to a candidate or electioneering communications in which a candidate is identified negatively, 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, address, and registration number if registered with the board 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, 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.

(n) The report must disclose the sum of all noncampaign disbursements made within the year by or on behalf of the reporting entity.

(o) The report must disclose the name and address of a nonprofit corporation that provides administrative assistance to a political committee or political fund as authorized by section 211B.15, subdivision 17, the type of administrative assistance provided, and the aggregate fair market value of each type of assistance provided to the political committee or political fund during the reporting period.

Sec. 4. **[10A.201] ELECTIONEERING COMMUNICATIONS.**

Subdivision 1. Electioneering communication. (a) "Electioneering communication" means a communication distributed by television, radio, satellite, or cable broadcasting system; by means of printed material, signs, or billboards; through the use of telephone communications; or by electronic mail or electronic text messaging that:

(1) refers to a clearly identified candidate;

(2) is made within:

(i) 30 days before a primary election or special primary election for the office sought by the candidate; or

(ii) 60 days before a general election or special election for the office sought by the candidate;

(3) is targeted to the relevant electorate; and

(4) is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, a candidate or a candidate's principal campaign committee or agent.

- 5.1 (b) Electioneering communication does not include:
- 5.2 (1) the publishing or broadcasting of news items or editorial comments by the news
- 5.3 media;
- 5.4 (2) a communication that constitutes an approved expenditure or an independent
- 5.5 expenditure;
- 5.6 (3) a voter guide, which is a pamphlet or similar printed material, intended to help
- 5.7 voters compare candidates' positions on a set of issues, as long as each of the following is
- 5.8 true:
- 5.9 (i) the guide does not focus on a single issue or a narrow range of issues, but
- 5.10 includes questions and subjects sufficient to encompass major issues of interest to the
- 5.11 entire electorate;
- 5.12 (ii) the questions and any other description of the issues are clear and unbiased in
- 5.13 both their structure and content;
- 5.14 (iii) the questions posed and provided to the candidates are identical to those
- 5.15 included in the guide;
- 5.16 (iv) each candidate included in the guide is given a reasonable amount of time and
- 5.17 the same opportunity as other candidates to respond to the questions;
- 5.18 (v) if the candidate is given limited choices for an answer to a question, for example:
- 5.19 "support," "oppose," "yes," or "no," the candidate is also given an opportunity, subject to
- 5.20 reasonable limits, to explain the candidate's position in the candidate's own words; the
- 5.21 fact that a candidate provided an explanation is clearly indicated in the guide; and the
- 5.22 guide clearly indicates that the explanations will be made available for public inspection,
- 5.23 subject to reasonable conditions;
- 5.24 (vi) answers included in the guide are those provided by the candidates in response
- 5.25 to questions, the candidate's answers are unedited, and the answers appear in close
- 5.26 proximity to the question to which they respond;
- 5.27 (vii) if the guide includes candidates' positions based on information other than
- 5.28 responses provided directly by the candidate, the positions are based on recorded votes
- 5.29 or public statements of the candidates and are presented in an unedited and unbiased
- 5.30 manner; and
- 5.31 (viii) the guide includes all major party candidates for each office listed in the guide;
- 5.32 (4) any other communication specified in board rules or advisory opinions as being
- 5.33 excluded from the definition of electioneering communication; or
- 5.34 (5) a communication that:
- 5.35 (i) refers to a clearly identified candidate who is an incumbent member of the
- 5.36 legislature or a constitutional officer;

(ii) refers to a clearly identified issue that is or was before the legislature in the form of an introduced bill; and

(iii) is made when the legislature is in session or within ten days after the last day of a regular session of the legislature.

(c) A communication that meets the requirements of paragraph (a) but is made with the authorization or express or implied consent of, or in cooperation or in concert with, or at the request or suggestion of a candidate, a candidate's principal campaign committee, or a candidate's agent is an approved expenditure.

(d) Distributing a voter guide questionnaire, survey, or similar document to candidates and communications with candidates limited to obtaining their responses, without more, do not constitute communications that would result in the voter guide being an approved expenditure on behalf of the candidate.

Subd. 2. Targeted to relevant electorate. (a) For purposes of this section, a communication that refers to a clearly identified candidate is targeted to the relevant electorate if the communication is distributed to or can be received by:

(1) more than 1,500 persons in the district the candidate seeks to represent, in the case of a candidate for the house of representatives, senate, or a district court judicial office; or

(2) more than 6,000 persons in the state, in the case of a candidate for constitutional office or appellate court judicial office.

(b) When determining the number of persons to whom a communication in the form of printed material, telephone communication, electronic mail, or electronic text messaging is distributed, an association may exclude communications distributed to its own members.

(c) A communication consisting of printed materials, other than signs, billboards, or advertisements published in the print media, is targeted to the relevant electorate if it meets the requirements of paragraph (a) and is distributed to voters by means of United States mail or through direct delivery to a resident's home or business.

Subd. 3. Disclosure of electioneering communications. (a) Electioneering communications made by a political committee, a party unit, or a principal campaign committee must be disclosed on the periodic reports of receipts and expenditures filed by the association on the schedule and in accordance with the terms of section 10A.20.

(b) An association other than a political committee, party unit, or principal campaign committee may register a political fund with the board and disclose its electioneering communications on the reports of receipts and expenditures filed by the political fund. If the association does so, it must disclose its disbursements for electioneering communication on the schedule and in accordance with the terms of section 10A.20.

7.1 (c) An association that does not disclose its disbursements for electioneering
7.2 communications under paragraph (a) or (b) must disclose its electioneering
7.3 communications according to the requirements of subdivision 4.

7.4 Subd. 4. **Statement required for electioneering communications.** (a) Except for
7.5 associations providing disclosure as specified in subdivision 3, paragraph (a) or (b), every
7.6 person who makes a disbursement for the costs of producing or distributing electioneering
7.7 communications that aggregate more than \$1,500 in a calendar year must, within 24
7.8 hours of each disclosure date, file with the board a disclosure statement containing the
7.9 information described in this subdivision.

7.10 (b) Each statement required to be filed under this section must contain the following
7.11 information:

7.12 (1) the names of: (i) the association making the disbursement; (ii) any person
7.13 exercising direction or control over the activities of the association with respect to the
7.14 disbursement; and (iii) the custodian of the financial records of the association making
7.15 the disbursement;

7.16 (2) the address of the association making the disbursement;

7.17 (3) the amount of each disbursement of more than \$200 during the period covered
7.18 by the statement, a description of the purpose of the disbursement, and the identification of
7.19 the person to whom the disbursement was made;

7.20 (4) the names of the candidates identified or to be identified in the communication;

7.21 (5) if the disbursements were paid out of a segregated bank account that consists
7.22 of funds donated specifically for electioneering communications, the name and address
7.23 of each person who gave the association more than \$200 in aggregate to that account
7.24 during the period beginning on the first day of the preceding calendar year and ending on
7.25 the disclosure date; and

7.26 (6) if the disbursements for electioneering communications were made using general
7.27 treasury money of the association, an association that has paid more than \$5,000 in
7.28 aggregate for electioneering communications during the calendar year must file with its
7.29 disclosure statement a written statement that includes the name, address, and amount
7.30 attributable to each person that paid the association membership dues or fees, or made
7.31 donations to the association that, in total, aggregate more than \$5,000 of the money used
7.32 by the association for electioneering communications. The statement must also include
7.33 the total amount of the disbursements for electioneering communications attributable to
7.34 persons not subject to itemization under this clause. The statement must be certified as
7.35 true by an officer of the association that made the disbursements for the electioneering
7.36 communications.

(c) To determine the amount of the membership dues or fees, or donations made by a person to an association and attributable to the association's disbursements for electioneering communications, the association must separately prorate the total disbursements made for electioneering communications during the calendar year over all general treasury money received during the calendar year.

(d) If the amount spent for electioneering communications exceeds the amount of general treasury money received by the association during that year:

(1) the electioneering communications must be attributed first to all receipts of general treasury money received during the calendar year in which the electioneering communications were made;

(2) any amount of current year electioneering communications that exceeds the total of all receipts of general treasury money during the current calendar year must be prorated over all general treasury money received in the preceding calendar year; and

(3) if the allocation made in clauses (1) and (2) is insufficient to cover the subject electioneering communications, no further allocation is required.

(e) After a portion of the general treasury money received by an association from a person has been designated as the source of a disbursement for electioneering communications, that portion of the association's general treasury money received from that person may not be designated as the source of any other disbursement for electioneering communications or as the source for any contribution to an independent expenditure political committee or fund.

Subd. 5. Disclosure date. For purposes of this section, the term "disclosure date" means the earlier of:

(1) the first date on which an electioneering communication is publicly distributed, provided that the person making the electioneering communication has made disbursements for the direct costs of producing or distributing one or more electioneering communication aggregating in excess of \$1,500; or

(2) any other date during the same calendar year on which an electioneering communication is publicly distributed, provided that the person making the electioneering communication has made disbursements for the direct costs of distributing one or more electioneering communication aggregating in excess of \$1,500 since the most recent disclosure date.

Subd. 6. Contracts to disburse. For purposes of this section, a person shall be treated as having made a disbursement if the person has entered into an obligation to make the disbursement.

9.1 Subd. 7. **Statement of attribution.** (a) An electioneering communication must
9.2 include a statement of attribution.

9.3 (1) For communications distributed by printed material, signs, and billboards, the
9.4 statement must say, in conspicuous letters: "Paid for by [association name] [address]."

9.5 (2) For communications distributed by television, radio, satellite, or cable
9.6 broadcasting system, the statement must be included at the end of the communication and
9.7 must orally state at a volume and speed that a person of ordinary hearing can comprehend:
9.8 "The preceding communication was paid for by the [association name]."

9.9 (3) For communications distributed by telephone, the statement must precede the
9.10 communication and must orally state at a volume and speed that a person of ordinary
9.11 hearing can comprehend: "The following communication is paid for by the [association
9.12 name]."

9.13 (b) If the communication is paid for by an association registered with the board, the
9.14 statement of attribution must use the association's name as it is registered with the board.
9.15 If the communication is paid for by an association not registered with the board, the
9.16 statement of attribution must use the association's name as it is disclosed to the board on
9.17 the association's disclosure statement associated with the communication.

9.18 Subd. 8. **Failure to file; penalty.** (a) If a person fails to file a statement required by
9.19 this section by the date the statement is due, the board may impose a late filing fee of \$50
9.20 per day, not to exceed \$1,000, commencing the day after the statement was due.

9.21 (b) The board must send notice by certified mail to a person who fails to file a
9.22 statement within ten business days after the statement was due that the person may be
9.23 subject to a civil penalty for failure to file the statement. A person who fails to file the
9.24 statement within seven days after the certified mail notice was sent by the board is subject
9.25 to a civil penalty imposed by the board of up to \$1,000.

9.26 (c) An association that provides disclosure under section 10A.20 rather than under
9.27 this section is subject to the late filing fee and civil penalty provisions of section 10A.20
9.28 and is not subject to the penalties provided in this subdivision.

9.29 (d) An association that makes electioneering communications under this section and
9.30 willfully fails to provide the statement required by subdivision 4, paragraph (b), clause
9.31 (6), within the time specified is subject to an additional civil penalty of up to four times
9.32 the amount of the electioneering communications disbursements that should have been
9.33 included on the statement.

9.34 Sec. 5. Minnesota Statutes 2014, section 10A.244, is amended to read:

9.35 **10A.244 VOLUNTARY INACTIVE STATUS; POLITICAL FUNDS.**

Subdivision 1. **Election of voluntary inactive status.** An association that has a political fund registered under this chapter may elect to have the fund placed on voluntary inactive status if the following conditions are met:

(1) the association makes a written request for inactive status;

(2) the association has filed all periodic reports required by this chapter and has received no contributions into its political fund and made no expenditures or disbursements, including disbursements for electioneering communications, through its political fund since the last date included on the association's most recent report; and

(3) the association has satisfied all obligations to the state for late filing fees and civil penalties imposed by the board or the board has waived this requirement.

Subd. 2. **Effect of voluntary inactive status.** After an association has complied with the requirements of subdivision 1:

(1) the board must notify the association that its political fund has been placed in voluntary inactive status and of the terms of this section;

(2) the board must stop sending the association reports, forms, and notices of report due dates that are periodically sent to entities registered with the board;

(3) the association is not required to file periodic disclosure reports for its political fund as otherwise required under this chapter;

(4) the association may not accept contributions into its political fund and may not make expenditures, contributions, or disbursements, including disbursements for electioneering communications, through its political fund; and

(5) if the association maintains a separate depository account for its political fund, it may continue to pay bank service charges and receive interest paid on that account while its political fund is in inactive status.

Subd. 3. **Resumption of active status or termination.** (a) An association that has placed its political fund in voluntary inactive status may resume active status upon written notice to the board.

(b) A political fund placed in voluntary inactive status must resume active status within 14 days of the date that it has accepted contributions or made expenditures, contributions, or disbursements, including disbursements for electioneering communications, that aggregate more than \$750 since the political fund was placed on inactive status. If, after meeting this threshold, the association does not notify the board that its fund has resumed active status, the board may place the association's political fund in active status and notify the association of the change in status.

(c) An association that has placed its political fund in voluntary inactive status may terminate the registration of the fund without returning it to active status.

Subd. 4. **Penalty for financial activity while in voluntary inactive status.** If an association fails to notify the board of its political fund's resumption of active status under subdivision 3, the board may impose a civil penalty of \$50 per day, not to exceed \$1,000 commencing on the 15th calendar day after the fund resumed active status.

Sec. 6. Minnesota Statutes 2014, section 10A.25, subdivision 3a, is amended to read:

Subd. 3a. **Independent expenditures and electioneering communications.** The principal campaign committee of a candidate must not make independent expenditures or disbursements for electioneering communications.

Sec. 7. Minnesota Statutes 2014, section 10A.27, subdivision 15, is amended to read:

Subd. 15. **Contributions or use of general treasury money.** (a) An association may, if not prohibited by other law, contribute its general treasury money to an independent expenditure or ballot question political committee or fund, including its own independent expenditure or ballot question political committee or fund, without complying with subdivision 13.

(b) Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed more than \$5,000 in aggregate to independent expenditure political committees or funds during the calendar year or has contributed more than \$5,000 in aggregate to ballot question political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each person that paid the association dues or fees, or made donations to the association that, in total, aggregate more than \$5,000 of the contribution from the association to the independent expenditure or ballot question political committee or fund. The statement must also include the total amount of the contribution attributable to persons not subject to itemization under this section. The statement must be certified as true by an officer of the donor association.

(c) To determine the amount of membership dues or fees, or donations made by a person to an association and attributable to the association's contribution to the independent expenditure or ballot question political committee or fund, the donor association must: separately prorate the total independent expenditures and ballot question expenditures made during the calendar year over all general treasury money received during the calendar year.

~~(1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or~~

12.1 ~~(2) as provided in paragraph (d), identify the specific individuals or associations~~
12.2 ~~whose dues, fees, or contributions are included in the contribution to the independent~~
12.3 ~~expenditure political committee or fund.~~

12.4 ~~(d) Dues, fees, or contributions from an individual or association must be identified~~
12.5 ~~in a contribution to an independent expenditure political committee or fund under~~
12.6 ~~paragraph (c), clause (2), if:~~

12.7 ~~(1) the individual or association has specifically authorized the donor association to~~
12.8 ~~use the individual's or association's dues, fees, or contributions for this purpose; or~~

12.9 ~~(2) the individual's or association's dues, fees, or contributions to the donor~~
12.10 ~~association are unrestricted and the donor association designates them as the source of the~~
12.11 ~~subject contribution to the independent expenditure political committee or fund.~~

12.12 (d) If the amount contributed to independent expenditure and ballot question
12.13 political committees or funds in a calendar year exceeds the amount of general treasury
12.14 money received by the association during that year:

12.15 (1) the contributions must be attributed first to all receipts of general treasury money
12.16 received during the calendar year in which the contributions were made;

12.17 (2) any amount of current-year contributions that exceeds the total of all receipts of
12.18 general treasury money during the current calendar year must be prorated over all general
12.19 treasury money received in the preceding calendar year; and

12.20 (3) if the allocation made in clauses (1) and (2) is insufficient to cover the subject
12.21 independent expenditures and ballot question expenditures, no further allocation is
12.22 required.

12.23 (e) After a portion of the general treasury money received by an association from a
12.24 person has been designated as the source of a contribution to an independent expenditure
12.25 or ballot question political committee or fund, that portion of the association's general
12.26 treasury money received from that person may not be designated as the source of any
12.27 other contribution to an independent expenditure or ballot question political committee
12.28 or fund, or as the source of funds for a disbursement for electioneering communications
12.29 made by that association.

12.30 Sec. 8. **EFFECTIVE DATE.**

12.31 Sections 1 to 7 are effective the day following final enactment.