

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH SESSION

S.F. No. 2402

(SENATE AUTHORS: HOFFMAN and Sieben)

DATE	D-PG	OFFICIAL STATUS
03/06/2014	5999	Introduction and first reading Referred to Rules and Administration
03/19/2014	6326a	Comm report: To pass as amended and re-refer to State and Local Government
03/20/2014	6400a	Comm report: To pass as amended and re-refer to Judiciary

A bill for an act

relating to campaign finance; making various technical changes; authorizing the board to request reconciliation information; authorizing certain fees; authorizing the board to establish a system to store electronic records online; modifying certain definitions and fee amounts; imposing penalties; providing board procedures; amending complaint threshold; requiring rulemaking; amending Minnesota Statutes 2012, sections 10A.01, subdivision 5; 10A.02, subdivisions 5, 8, 11a, by adding a subdivision; 10A.025, by adding a subdivision; 10A.09, subdivisions 1, 5, by adding a subdivision; 10A.12, subdivision 5; 10A.255, subdivision 3; 10A.28, subdivision 4; 13.607, subdivision 5a; 211A.02, subdivision 2; Minnesota Statutes 2013 Supplement, sections 10A.01, subdivision 10; 10A.02, subdivisions 10, 11; 10A.025, subdivision 4; 10A.20, subdivisions 2, 5; repealing Minnesota Statutes 2012, section 10A.09, subdivision 8.

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

Section 1. Minnesota Statutes 2012, section 10A.01, subdivision 5, is amended to read:

Subd. 5. **Associated business.** "Associated business" means an association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity from which the individual receives compensation in excess of \$50, except for actual and reasonable expenses, in any month as a director, officer, owner, member, partner, employer or employee, or whose securities the individual holds worth more than \$2,500 ~~or more~~ at fair market value.

Sec. 2. Minnesota Statutes 2013 Supplement, section 10A.01, subdivision 10, is amended to read:

Subd. 10. **Candidate.** "Candidate" means an individual who seeks nomination or election as a state constitutional officer, legislator, or judge. An individual is deemed to seek nomination or election if the individual has taken the action necessary under the law of this state to qualify for nomination or election, has received contributions or

made expenditures in excess of ~~\$100~~ \$750, or has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of ~~\$100~~ \$750, for the purpose of bringing about the individual's nomination or election. A candidate remains a candidate until the candidate's principal campaign committee is dissolved as provided in section 10A.243.

Sec. 3. Minnesota Statutes 2012, section 10A.02, subdivision 5, is amended to read:

Subd. 5. **Executive director; staff.** The board must appoint an executive director. The executive director is in the unclassified service. The executive director is not an ex officio member of the board. The executive director serves as secretary of the board and must keep a record of all proceedings and actions by the board. The board may also employ and prescribe the duties of other permanent or temporary employees in the unclassified service as may be necessary to administer this chapter, subject to appropriation. The executive director and all other employees serve at the pleasure of the board. Expenses of the board must be approved by the chair or another member as the rules of the board may provide and the expenses must then be paid in the same manner as other state expenses are paid.

Sec. 4. Minnesota Statutes 2012, section 10A.02, subdivision 8, is amended to read:

Subd. 8. **Duties.** (a) The board must report at the close of each fiscal year to the legislature, the governor, and the public concerning the action it has taken, the names, salaries, and duties of all individuals in its employ, and the money it has disbursed. The board must include and identify in its report any other reports it has made during the fiscal year. It may indicate apparent abuses and offer legislative recommendations.

(b) The board must prescribe forms for statements and reports required to be filed under this chapter and make the forms available to individuals required to file them.

(c) The board must make available to the individuals required to file the reports and statements a manual setting forth the recommended uniform methods of bookkeeping and reporting.

(d) The board must develop a filing, coding, and cross-indexing system consistent with the purposes of this chapter.

(e) The board must make the reports and statements filed with it available for public inspection and copying by the end of the second day following the day on which they were received. An individual may copy a report or statement by hand or by duplicating machine and the board must provide duplicating services at cost for this purpose.

(f) Notwithstanding section 138.163, the board must preserve reports and statements for a period of five years from the date of receipt.

(g) The board must compile and maintain a current list and summary of all statements or parts of statements pertaining to each candidate.

(h) The board may prepare and publish reports it considers appropriate.

(i) The board shall only vote on a matter before the board at a meeting if:

(1) the matter was placed on an agenda distributed to all members of the board at least seven days before the meeting; and

(2) background or other relevant information to the matter was distributed to all members of the board by the executive director or other staff at least seven days before the meeting.

By unanimous consent of all members of the board, the board may vote on a matter at a meeting that does not satisfy the requirements of this paragraph.

Sec. 5. Minnesota Statutes 2013 Supplement, section 10A.02, subdivision 10, is amended to read:

Subd. 10. **Audits and investigations.** (a) The board may make audits and investigations, impose statutory civil penalties, and issue orders for compliance with respect to the requirements of this chapter and provisions under the board's jurisdiction pursuant to subdivision 11. In all matters relating to its official duties, the board has the power to issue subpoenas and cause them to be served. If a person does not comply with a subpoena, the board may apply to the District Court of Ramsey County for issuance of an order compelling obedience to the subpoena. A person failing to obey the order is punishable by the court as for contempt.

(b) The board shall issue rules setting forth procedures to be followed for all audits and investigations conducted by the board under this chapter and other provisions under the board's jurisdiction pursuant to subdivision 11. The rules regarding the board's investigative procedure shall set forth, at a minimum:

(1) the process for the board initiating and overseeing an investigation;

(2) when summary proceedings may be available;

(3) dedication of staff resources in taking witness testimony and conducting discovery;

(4) parties' rights and opportunities to be heard by the board; and

(5) board hearings and disposition of complaints, audits, and investigations.

Sec. 6. Minnesota Statutes 2013 Supplement, section 10A.02, subdivision 11, is amended to read:

Subd. 11. **Violations; enforcement.** (a) The board may investigate any alleged violation of this chapter. The board may also investigate an alleged violation of section 211B.04, 211B.12, or 211B.15 by or related to a candidate, treasurer, principal campaign committee, political committee, political fund, or party unit, as those terms are defined in this chapter. ~~The board must investigate any violation that is alleged in a written complaint filed with the board and must~~ Upon receipt of a written complaint filed with the board, the board shall make findings and conclusions as to whether the complaint alleges a prima facie violation within 30 45 days after the filing of the complaint make findings and conclusions as to whether a violation has occurred. Any party filing a complaint and any party against whom a complaint is filed must be given an opportunity to be heard by the board prior to the board's determination as to a prima facie violation. Upon a determination by the board that the complaint alleges a prima facie violation, the board must undertake an investigation under subdivision 10 and must issue an order at the conclusion of the investigation, except that if the complaint alleges a violation of section 10A.25 or 10A.27, the board must either enter a conciliation agreement or make public findings and conclusions as to whether a violation has occurred and must issue an order within 60 days after the filing of the complaint. The deadline for action on a written complaint may be extended by majority vote of the board.

(b) The board may bring legal actions or negotiate settlements in its own name to recover money raised from contributions subject to the conditions in this paragraph.

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

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

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

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

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

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

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

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

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

(c) ~~Within a reasonable time~~ As set forth in paragraph (a), after beginning an investigation of an individual or association, the board must notify the individual or association of the fact of the investigation. The board must not make a finding of whether there is probable cause to believe a violation has occurred determination as to whether a complaint filed with the board alleges a prima facie violation without notifying the individual or association of the nature of the allegations and affording an opportunity to answer those allegations and appear before the board.

(d) A hearing or action of the board concerning a complaint or investigation is confidential, including any appearance before the board by a complainant or by a party against whom a complaint is filed, other than a finding concerning probable cause the board's initial determination as to whether a complaint has alleged a prima facie violation or entering into a conciliation agreement is confidential. Until the board makes a public finding concerning probable cause following an initial determination as to whether a complaint alleges a prima facie violation and the conclusion of an investigation under subdivision 10 or enters a conciliation agreement:

(1) a member, employee, or agent of the board must not disclose to an individual information obtained by that member, employee, or agent concerning a complaint or investigation except as required to carry out the investigation or take action in the matter as authorized by this chapter; and

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

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

Sec. 7. Minnesota Statutes 2012, section 10A.02, subdivision 11a, is amended to read:

Subd. 11a. **Data privacy.** If, after making a public ~~finding concerning probable cause~~ determination as to whether a complaint alleges a prima facie violation or entering a conciliation agreement, the board determines that the record of the investigation contains statements, documents, or other matter that, if disclosed, would unfairly injure the reputation of an innocent individual, the board may:

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

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

Sec. 8. Minnesota Statutes 2012, section 10A.02, is amended by adding a subdivision to read:

Subd. 11b. **Data privacy related to electronic reporting system.** The board may develop and maintain systems to enable treasurers to enter and store electronic records online for the purpose of complying with this chapter. Data entered into such systems by treasurers or their authorized agents is not government data under chapter 13 and may not be accessed or used by the board for any purpose without the treasurer's written consent. Data from such systems that has been submitted to the board as a filed report is government data under chapter 13.

Sec. 9. Minnesota Statutes 2013 Supplement, section 10A.025, subdivision 4, is amended to read:

Subd. 4. **Changes and corrections.** Material changes in information previously submitted and corrections to a report or statement must be reported in writing to the board within ten days following the date of the event prompting the change or the date upon

which the person filing became aware of the inaccuracy. The change or correction must identify the form and the paragraph containing the information to be changed or corrected.

A person who willfully fails to report a material change or correction is subject to a civil penalty imposed by the board of up to \$3,000. A willful violation of this subdivision is a gross misdemeanor.

The board must send a written notice ~~by certified mail~~ to any individual who fails to file a report required by this subdivision. If the individual fails to file the required report within ten business days after the notice was sent, the board may impose a late filing fee of ~~\$5~~ \$25 per day up to ~~\$100~~ \$1,000 starting on the 11th day after the notice was sent. The board ~~must~~ may send an additional notice by certified mail to an individual who fails to file a report within ~~14~~ ten business days after the first notice was sent by the board ~~that~~. The certified notice must state that if the individual does not file the requested report within ten business days after the certified notice was sent, the individual may be subject to a civil penalty for failure to file a report. An individual who fails to file a report required by this subdivision within seven ten business days after the ~~second~~ certified notice was sent by the board is subject to a civil penalty imposed by the board of up to \$1,000.

Sec. 10. Minnesota Statutes 2012, section 10A.025, is amended by adding a subdivision to read:

Subd. 5. **Reconciliation information; penalty.** An individual or association required to file a report under this chapter must provide information requested by the board to reconcile discrepancies between the report and reports filed by other individuals or associations. The board's request for information must be in writing. If the individual or association fails to provide the requested information within ten business days after the request was sent, the board may impose a late filing fee of \$25 per day up to \$1,000.

The board may send notice by certified mail to an individual or association that has not timely responded to the board's written request for reconciliation information. The certified notice must state that if the individual or association does not respond to the board's request for information within ten business days after the certified notice was sent, the individual or association may be subject to a civil penalty for failure to provide information to the board. An individual or association that does not provide the requested information within ten business days after the certified notice was sent is subject to a civil penalty imposed by the board of up to \$1,000.

A person who willfully fails to cooperate with the board to reconcile a report discrepancy is subject to a civil penalty imposed by the board of up to \$3,000.

Sec. 11. Minnesota Statutes 2012, section 10A.09, subdivision 1, is amended to read:

Subdivision 1. **Time for filing.** ~~Except for a candidate for elective office in the judicial branch,~~ An individual must file a statement of economic interest with the board:

(1) within 60 days of accepting employment as a public official or a local official in a metropolitan governmental unit;

(2) within 60 days of assuming office as a district court judge, appeals court judge, supreme court justice, or county commissioner;

~~(2)~~ (3) within 14 days after filing an affidavit of candidacy or petition to appear on the ballot for an elective state constitutional or legislative office or an elective local office in a metropolitan governmental unit other than county commissioner;

~~(3)~~ (4) in the case of a public official requiring the advice and consent of the senate, within 14 days after undertaking the duties of office; or

~~(4)~~ (5) in the case of members of the Minnesota Racing Commission, the director of the Minnesota Racing Commission, chief of security, medical officer, inspector of pari-mutuels, and stewards employed or approved by the commission or persons who fulfill those duties under contract, within 60 days of accepting or assuming duties.

Sec. 12. Minnesota Statutes 2012, section 10A.09, is amended by adding a subdivision to read:

Subd. 1a. **Exception; retired judges.** Notwithstanding subdivision 1, a retired judge or justice appointed to serve as a judge or justice under section 2.724 is not required to comply with the provisions of this section.

Sec. 13. Minnesota Statutes 2012, section 10A.09, subdivision 5, is amended to read:

Subd. 5. **Form.** A statement of economic interest required by this section must be on a form prescribed by the board. The individual filing must provide the following information:

(1) name, address, occupation, and principal place of business;

(2) the name of each associated business and the nature of that association;

(3) a listing of all real property within the state, excluding homestead property, in which the individual holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000 ~~or more~~;

(4) a listing of all real property within the state in which a partnership of which the individual is a member holds: (i) a fee simple interest, a mortgage, a contract for deed

as buyer or seller, or an option to buy, whether direct or indirect, if the individual's share of the partnership interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000 ~~or more~~. A listing under clause (3) or (4) must indicate the street address and the municipality or the section, township, range and approximate acreage, whichever applies, and the county in which the property is located; and

(5) a listing of any investments, ownership, or interests in property connected with pari-mutuel horse racing in the United States and Canada, including a racehorse, in which the individual directly or indirectly holds a partial or full interest or an immediate family member holds a partial or full interest.

Sec. 14. Minnesota Statutes 2012, section 10A.12, subdivision 5, is amended to read:

Subd. 5. **Dues or membership fees.** An association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Under section 10A.20, the treasurer of the fund must disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed ~~\$100~~ \$200 in a year.

Sec. 15. Minnesota Statutes 2013 Supplement, section 10A.20, subdivision 2, is amended to read:

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

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

(c) In each general election year, a political committee, a political fund, a state party committee, and a party unit established by all or a part of the party organization within a house of the legislature, ~~and the principal campaign committee of a candidate for constitutional or appellate court judicial office~~ must file reports on the following schedule:

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

(2) ~~in a year in which a primary election is held in August~~, a report covering the calendar year through May 31, which is due June 14;

~~(3) in a year in which a primary election is held before August, a pre-general election report covering the calendar year through July 15, which is due July 29;~~

~~(4) (3) a pre-primary-election report due 15 days before a primary election;~~
~~(5) (4) a pre-general-election report due 42 days before the general election; and~~
~~(6) (5) a pre-general-election report due ten days before a general election; and~~
~~(7) for a special election, a constitutional office candidate whose name is on the ballot must file reports seven days before a special primary and a special election, and ten days after a special election cycle.~~

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

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

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

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

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

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

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

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

~~(e) (f)~~ Notwithstanding paragraphs (a) to ~~(d)~~, (e):

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

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

Sec. 16. Minnesota Statutes 2013 Supplement, section 10A.20, subdivision 5, is amended to read:

Subd. 5. **Pre-election reports.** (a) Any loan, contribution, or contributions:

(1) to a political committee or political fund from any one source totaling more than \$1,000;

(2) to the principal campaign committee of a candidate for an appellate court judicial office totaling more than \$2,000;

(3) to the principal campaign committee of a candidate for district court judge totaling more than \$400; or

(4) to the principal campaign committee of a candidate for constitutional office or for the legislature totaling more than 50 percent of the election ~~eyele~~ segment contribution limit for the office,

received between the last day covered in the last report before an election and the election must be reported to the board in the manner provided in paragraph (b).

(b) A loan, contribution, or contributions required to be reported to the board under paragraph (a) must be reported to the board either:

(1) in person by the end of the next business day after its receipt; or

(2) by electronic means sent within 24 hours after its receipt.

(c) These loans and contributions must also be reported in the next required report.

(d) This notice requirement does not apply in a primary election to a candidate who is unopposed in the primary, in a primary election to a ballot question political committee or fund, or in a general election to a candidate whose name is not on the general election ballot. The board must post the report on its Web site by the end of the next business day after it is received.

(e) This subdivision does not apply to a ballot question or independent expenditure political committee or fund that has not met the registration threshold of section 10A.14, subdivision 1a. However, if a contribution that would be subject to this section triggers the registration requirement in section 10A.14, subdivision 1a, then both registration under that section and reporting under this section are required.

Sec. 17. Minnesota Statutes 2012, section 10A.255, subdivision 3, is amended to read:

Subd. 3. **Publication of expenditure limit.** By April 15 of each election year the board must publish ~~in the State Register~~ on its Web site the expenditure limit for each office for that calendar year under section 10A.25 as adjusted by this section. The revisor of statutes must code the adjusted amounts in the next edition of Minnesota Statutes, section 10A.25, subdivision 2.

Sec. 18. Minnesota Statutes 2012, section 10A.28, subdivision 4, is amended to read:

Subd. 4. **Civil action.** If the board is unable after a reasonable time to correct by informal methods a matter ~~that constitutes probable cause~~ where there is reason to believe that excess expenditures have been made or excess contributions accepted contrary to

12.1 subdivision 1 or 2, the board must make a public finding of ~~probable cause~~ in the matter.
 12.2 ~~After making a public finding, the board must bring an action, or transmit the finding to a~~
 12.3 ~~county attorney who must bring an action, in the District Court of Ramsey County or, in the~~
 12.4 ~~case of a legislative candidate, the district court of a county within the legislative district,~~
 12.5 ~~to collect a civil penalty as imposed by the board under subdivision 1 or 2. All money~~
 12.6 ~~recovered under this section must be deposited in the general fund of the state treasury.~~

12.7 Sec. 19. Minnesota Statutes 2012, section 13.607, subdivision 5a, is amended to read:

12.8 Subd. 5a. **Campaign reports and data.** Certain reports filed with the Campaign
 12.9 Finance and Public Disclosure Board are classified under section 10A.20. Certain data
 12.10 stored by the Campaign Finance and Public Disclosure Board is not government data
 12.11 under section 10A.02, subdivision 11b.

12.12 Sec. 20. Minnesota Statutes 2012, section 211A.02, subdivision 2, is amended to read:

12.13 Subd. 2. **Information required.** The report to be filed by a candidate or committee
 12.14 must include:

- 12.15 (1) the name of the candidate or ballot question;
- 12.16 (2) the printed name, address, telephone number, signature, and e-mail address, if
 12.17 available, of the person responsible for filing the report;
- 12.18 (3) the total cash on hand designated to be used for political purposes;
- 12.19 (4) the total amount of ~~receipts~~ contributions and ~~expenditures~~ disbursements for the
 12.20 period from the last previous report to five days before the current report is due;
- 12.21 (5) the amount, date, and purpose for each ~~expenditure~~ disbursement; and
- 12.22 (6) the name, address, and employer, or occupation if self-employed, of any
 12.23 individual or committee that during the year has made one or more contributions that in
 12.24 the aggregate exceed \$100, and the amount and date of each contribution. The filing
 12.25 officer must restrict public access to the address of any individual who has made a
 12.26 contribution that exceeds \$100 and who has filed with the filing officer a written statement
 12.27 signed by the individual that withholding the individual's address from the financial report
 12.28 is required for the safety of the individual or the individual's family.

12.29 Sec. 21. **RULEMAKING.**

12.30 The Campaign Finance and Public Disclosure Board shall adopt rules required by
 12.31 section 5 using the expedited rulemaking process in Minnesota Statutes, section 14.389.
 12.32 The board must issue these rules by September 30, 2014.

- 13.1
- Sec. 22. **REPEALER.**
- 13.2
- Minnesota Statutes 2012, section 10A.09, subdivision 8, is repealed.
- 13.3
- Sec. 23. **EFFECTIVE DATE.**
- 13.4
- Sections 1 to 22 are effective the day following final enactment.

APPENDIX
Repealed Minnesota Statutes: S2402-1

10A.09 STATEMENTS OF ECONOMIC INTEREST.

Subd. 8. **Failure to file; suspension.** A public official, except a member of the legislature or a constitutional officer, who is required to file a statement of economic interest and fails to do so by the prescribed deadline must be suspended without pay by the board in the manner prescribed in the contested case procedures in chapter 14.