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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. **2337**

03/01/2023 Authored by Greenman and Freiberg

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

03/20/2023 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act

1.2 relating to campaign finance; regulating electioneering communications; requiring
1.3 statements of electioneering communications to be submitted to the Campaign
1.4 Finance and Public Disclosure Board; adopting relevant definitions; establishing
1.5 fees; amending Minnesota Statutes 2022, sections 10A.121, subdivision 1; 10A.20,
1.6 subdivisions 5, 12; 10A.244; 10A.25, subdivision 3a; proposing coding for new
1.7 law in Minnesota Statutes, chapter 10A.

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

1.9 Section 1. Minnesota Statutes 2022, section 10A.121, subdivision 1, is amended to read:

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

1.12 (1) pay costs associated with its fundraising and general operations;

1.13 (2) pay for communications that do not constitute contributions or approved expenditures;

1.14 (3) make contributions to independent expenditure or ballot question political committees
1.15 or funds;

1.16 (4) make independent expenditures;

1.17 (5) make expenditures to promote or defeat ballot questions;

1.18 (6) return a contribution to its source;

1.19 (7) for a political fund, record bookkeeping entries transferring the association's general
1.20 treasury money allocated for political purposes back to the general treasury of the association;

1.21 **and**

- 2.1 (8) for a political fund, return general treasury money transferred to a separate depository
2.2 to the general depository of the association; and
2.3 (9) make disbursements for electioneering communications.

2.4 Sec. 2. Minnesota Statutes 2022, section 10A.20, subdivision 5, is amended to read:

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

2.6 (1) to a political committee or political fund from any one source totaling more than
2.7 \$1,000;

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

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

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

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

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

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

2.20 (2) by electronic means sent ~~within 24 hours after its receipt~~ by the end of the next
2.21 business day after its receipt.

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

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

2.28 (e) This subdivision does not apply to a ballot question or independent expenditure
2.29 political committee or fund that has not met the registration threshold of section 10A.14,
2.30 subdivision 1a. However, if a contribution that would be subject to this section triggers the

3.1 registration requirement in section 10A.14, subdivision 1a, then both registration under that
3.2 section and reporting under this section are required.

3.3 Sec. 3. Minnesota Statutes 2022, section 10A.20, subdivision 12, is amended to read:

3.4 Subd. 12. **Failure to file; late fees; penalty.** (a) If an individual or association fails to
3.5 file a report required by this section or section 10A.202, the board may impose a late filing
3.6 fee and a civil penalty as provided in this subdivision.

3.7 (b) If an individual or association fails to file a report required by this section that is due
3.8 January 31, the board may impose a late filing fee of \$25 per day, not to exceed \$1,000,
3.9 commencing the day after the report was due.

3.10 (c) If an individual or association fails to file a report required by this section that is due
3.11 before a primary or general election, subdivision 2, 2a, or 5, or by section 10A.202, the
3.12 board may impose a late filing fee of \$50 per day, not to exceed \$1,000, commencing on
3.13 the day after the date the statement was due, provided that if the total receipts received
3.14 during the reporting period or total expenditure reportable under section 10A.202 exceeds
3.15 \$25,000, then the board may impose a late filing fee of up to two percent of the amount that
3.16 should have been reported, per day, commencing on the day after the report was due, not
3.17 to exceed 100 percent of the amount that should have been reported.

3.18 (d) If an individual or association has been assessed a late filing fee or civil penalty
3.19 under this subdivision during the prior four years, the board may impose a late filing fee, a
3.20 civil penalty, or both, of up to twice the amount otherwise authorized by this subdivision.

3.21 (e) Within ten business days after the report was due or receipt by the board of
3.22 information disclosing the potential failure to file, the board must send notice by certified
3.23 mail to an individual who fails to file a report within ten business days after the report was
3.24 due that the individual or association may be subject to a civil penalty for failure to file the
3.25 report. An individual who fails to file the report within seven days after the certified mail
3.26 notice was sent by the board is subject to a civil penalty imposed by the board of up to
3.27 ~~\$1,000~~ \$2,000 in addition to the late filing fees imposed by this subdivision.

3.28 Sec. 4. **[10A.201] ELECTIONEERING COMMUNICATIONS; DEFINITIONS.**

3.29 Subdivision 1. **Definitions.** The terms defined in this section apply to this section and
3.30 to section 10A.202.

4.1 Subd. 2. **Broadcast, cable, or satellite communication.** "Broadcast, cable, or satellite
4.2 communication" means a communication that is publicly distributed by a television station,
4.3 radio station, cable television system, or satellite system.

4.4 Subd. 3. **Can be received by 10,000 or more individuals.** (a) "Can be received by
4.5 10,000 or more individuals" means:

4.6 (1) in the case of a communication transmitted by an FM radio broadcast station or
4.7 network, where the district lies entirely within the station's or network's protected or primary
4.8 service contour, that the population of the district is 10,000 or more;

4.9 (2) in the case of a communication transmitted by an FM radio broadcast station or
4.10 network, where a portion of the district lies outside of the protected or primary service
4.11 contour, that the population of the part of the district lying within the station's or network's
4.12 protected or primary service contour is 10,000 or more;

4.13 (3) in the case of a communication transmitted by an AM radio broadcast station or
4.14 network, where the district lies entirely within the station's or network's most outward service
4.15 area, that the population of the district is 10,000 or more;

4.16 (4) in the case of a communication transmitted by an AM radio broadcast station or
4.17 network, where a portion of the district lies outside of the station's or network's most outward
4.18 service area, that the population of the part of the district lying within the station's or
4.19 network's most outward service area is 10,000 or more;

4.20 (5) in the case of a communication appearing on a television broadcast station or network,
4.21 where the district lies entirely within the station's or network's Grade B broadcast contour,
4.22 that the population of the district is 10,000 or more;

4.23 (6) in the case of a communication appearing on a television broadcast station or network,
4.24 where a portion of the district lies outside of the Grade B broadcast contour:

4.25 (i) that the population of the part of the district lying within the station's or network's
4.26 Grade B broadcast contour is 10,000 or more; or

4.27 (ii) that the population of the part of the district lying within the station's or network's
4.28 broadcast contour, when combined with the viewership of that television station or network
4.29 by cable and satellite subscribers within the district lying outside the broadcast contour, is
4.30 10,000 or more;

4.31 (7) in the case of a communication appearing exclusively on a cable or satellite television
4.32 system, but not on a broadcast station or network, that the viewership of the cable system
4.33 or satellite system lying within a district is 10,000 or more; or

5.1 (8) in the case of a communication appearing on a cable television network, that the
5.2 total cable and satellite viewership within a district is 10,000 or more.

5.3 (b) Cable or satellite television viewership is determined by multiplying the number of
5.4 subscribers within a district, or a part thereof, as appropriate, by the current national average
5.5 household size, as determined by the Bureau of the Census.

5.6 (c) A determination that a communication can be received by 10,000 or more individuals
5.7 based on the application of the formula in this section shall create a rebuttable presumption
5.8 that may be overcome by demonstrating that:

5.9 (1) one or more cable or satellite systems did not carry the network on which the
5.10 communication was publicly distributed at the time the communication was publicly
5.11 distributed; and

5.12 (2) applying the formula to the remaining cable and satellite systems results in a
5.13 determination that the cable network or systems upon which the communication was publicly
5.14 distributed could not be received by 10,000 individuals or more.

5.15 **Subd. 4. Direct costs of producing or airing electioneering communications.** "Direct
5.16 costs of producing or airing electioneering communications" means:

5.17 (1) costs charged by a vendor, including studio rental time, staff salaries, costs of video
5.18 or audio recording media, and talent; and

5.19 (2) the cost of airtime on broadcast, cable, or satellite radio and television stations, studio
5.20 time, material costs, and the charges for a broker to purchase the airtime.

5.21 **Subd. 5. Disclosure date.** "Disclosure date" means:

5.22 (1) the first date on which an electioneering communication is publicly distributed,
5.23 provided that the person making the electioneering communication has made one or more
5.24 disbursements, or has executed one or more contracts to make disbursements, for the direct
5.25 costs of producing or airing one or more electioneering communications aggregating in
5.26 excess of \$10,000; or

5.27 (2) any other date during the same calendar year on which an electioneering
5.28 communication is publicly distributed, provided that the person making the electioneering
5.29 communication has made one or more disbursements, or has executed one or more contracts
5.30 to make disbursements, for the direct costs of producing or airing one or more electioneering
5.31 communications aggregating in excess of \$10,000 since the most recent disclosure date
5.32 during that calendar year.

6.1 Subd. 6. **Electioneering communication.** (a) "Electioneering communication" means
6.2 any broadcast, cable, or satellite communication that:

6.3 (1) refers to a clearly identified candidate for state office;

6.4 (2) is publicly distributed within 60 days before a general election for the office sought
6.5 by the candidate; or within 30 days before a primary election, or a convention or caucus of
6.6 a political party that has authority to nominate a candidate, for the office sought by the
6.7 candidate, and the candidate referenced is seeking the nomination of that political party;
6.8 and

6.9 (3) is targeted to the relevant electorate, in the case of a candidate for senate, house of
6.10 representatives, or other office elected by district.

6.11 (b) A communication is not an electioneering communication if it:

6.12 (1) is publicly disseminated through a means of communication other than a broadcast,
6.13 cable, or satellite television or radio station;

6.14 (2) appears in a news story, commentary, or editorial distributed through the facilities
6.15 of any broadcast, cable, or satellite television or radio station, unless such facilities are
6.16 owned or controlled by any political party, political committee, or candidate, provided that
6.17 a news story distributed through a broadcast, cable, or satellite television or radio station
6.18 owned or controlled by any political party, political committee, or candidate is not an
6.19 electioneering communication if the news story meets the requirements described in Code
6.20 of Federal Regulations, title 11, section 100.132(a) and (b);

6.21 (3) constitutes an expenditure or independent expenditure, provided that the expenditure
6.22 or independent expenditure is required to be reported under this chapter;

6.23 (4) constitutes a candidate debate or forum, or that solely promotes such a debate or
6.24 forum and is made by or on behalf of the person sponsoring the debate or forum; or

6.25 (5) is paid for by a candidate.

6.26 Subd. 7. **Identification.** "Identification" means, in the case of an individual, the
6.27 individual's full name, including first name, middle name or initial, if available, and last
6.28 name; mailing address; occupation; and the name of the individual's employer; and, in the
6.29 case of a person who is not an individual, the person's name and principal place of business.

6.30 Subd. 8. **Individuals sharing or exercising direction or control.** "Individuals sharing
6.31 or exercising direction or control" means officers, directors, executive directors or the

7.1 equivalent, partners, and in the case of unincorporated organizations, owners, of the entity
7.2 or person making the disbursement for the electioneering communication.

7.3 Subd. 9. **Publicly distributed.** "Publicly distributed" means aired, broadcast, cablecast,
7.4 or otherwise disseminated through the facilities of a television station, radio station, cable
7.5 television system, or satellite system.

7.6 Subd. 10. **Refers to a clearly identified candidate.** "Refers to a clearly identified
7.7 candidate" means that the candidate's name, nickname, photograph, or drawing appears, or
7.8 the identity of the candidate is otherwise apparent through an unambiguous reference such
7.9 as "the governor," "your legislator," or "the incumbent," or through an unambiguous reference
7.10 to the candidate's status as a candidate such as "the [political party] gubernatorial nominee"
7.11 or "the [political party] candidate for senate."

7.12 Subd. 11. **Targeted to the relevant electorate.** "Targeted to the relevant electorate"
7.13 means the communication can be received by 10,000 or more individuals:

7.14 (1) in the district the candidate seeks to represent, in the case of a candidate for
7.15 representative, senator, or other office represented by district; or

7.16 (2) in the entire state, if the candidate seeks a statewide office.

7.17 **Sec. 5. [10A.202] ELECTIONEERING COMMUNICATION; REPORTING**
7.18 **REQUIREMENTS.**

7.19 Subdivision 1. **Reports required.** Any person who has made an electioneering
7.20 communication, as defined in section 10A.201, aggregating in excess of \$10,000 during
7.21 any calendar year shall file a statement with the board no later than 11:59 p.m. on the day
7.22 following the disclosure date. The statement shall be filed under penalty of perjury, and
7.23 must contain the information set forth in subdivision 2. Political committees that make a
7.24 communication described in section 10A.201 must report the communication as a campaign
7.25 expenditure or independent expenditure as otherwise provided by this chapter and are not
7.26 required to file a report under this section.

7.27 Subd. 2. **Content of report.** A statement of electioneering communications required by
7.28 this section shall disclose the following information:

7.29 (1) the identification of the person who made the disbursement or who executed a contract
7.30 to make a disbursement and, if the person is not an individual, the person's principal place
7.31 of business;

8.1 (2) the identification of any individual sharing or exercising direction or control over
8.2 the activities of the person who made the disbursement or who executed a contract to make
8.3 a disbursement;

8.4 (3) the identification of the custodian of the books and accounts from which the
8.5 disbursements were made;

8.6 (4) the amount of each disbursement, or amount obligated, of more than \$200 during
8.7 the period covered by the statement, the date the disbursement was made or the contract
8.8 was executed, and the identification of the person to whom that disbursement was made;

8.9 (5) all clearly identified candidates referred to in the electioneering communication and
8.10 the elections in which they are candidates;

8.11 (6) the disclosure date;

8.12 (7) if the disbursements were paid exclusively from a segregated bank account consisting
8.13 of funds provided solely by persons other than national banks, corporations organized by
8.14 federal law or the laws of this state, or foreign nationals, the name and address of each donor
8.15 who donated an amount aggregating \$1,000 or more to the segregated bank account,
8.16 aggregating since the first day of the preceding calendar year;

8.17 (8) if the disbursements were not paid exclusively from a segregated bank account
8.18 consisting of funds provided solely by persons other than national banks, corporations
8.19 organized by federal law or the laws of this state, or foreign nationals, and were not made
8.20 by a corporation or labor organization, the name and address of each donor who donated
8.21 an amount aggregating \$1,000 or more to the person making the disbursement, aggregating
8.22 since the first day of the preceding calendar year; and

8.23 (9) if the disbursements were made by a corporation or labor organization and were not
8.24 paid exclusively from a segregated bank account consisting of funds provided solely by
8.25 persons other than national banks, corporations organized by federal law or the laws of this
8.26 state, or foreign nationals, the name and address of each person who made a donation
8.27 aggregating \$1,000 or more to the corporation or labor organization, aggregating since the
8.28 first day of the preceding calendar year, which was made for the purpose of furthering
8.29 electioneering communications.

8.30 Subd. 3. **Recordkeeping.** All persons who make electioneering communications or who
8.31 accept donations for the purpose of making electioneering communications must maintain
8.32 records as necessary to comply with the requirements of this section.

9.1 Subd. 4. **Disclaimer required.** An electioneering communication must include a
9.2 disclaimer in the same manner as required for campaign material under section 211B.04,
9.3 subdivision 1, paragraph (c).

9.4 Subd. 5. **Late fees; failure to file; penalties.** A person who fails to file a report required
9.5 by this section is subject to the late fees and penalties provided in section 10A.20, subdivision
9.6 12.

9.7 Sec. 6. Minnesota Statutes 2022, section 10A.244, is amended to read:

9.8 **10A.244 VOLUNTARY INACTIVE STATUS; POLITICAL FUNDS.**

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

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

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

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

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

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

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

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

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

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

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

10.7 (b) A political fund placed in voluntary inactive status must resume active status within
10.8 14 days of the date that it has accepted contributions or made expenditures, contributions,
10.9 or disbursements, including disbursements for electioneering communications, that aggregate
10.10 more than \$750 since the political fund was placed on inactive status. If, after meeting this
10.11 threshold, the association does not notify the board that its fund has resumed active status,
10.12 the board may place the association's political fund in active status and notify the association
10.13 of the change in status.

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

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

10.20 Sec. 7. Minnesota Statutes 2022, section 10A.25, subdivision 3a, is amended to read:

10.21 Subd. 3a. **Independent expenditures and electioneering communications.** The principal
10.22 campaign committee of a candidate must not make independent expenditures or
10.23 disbursements for electioneering communications. If the principal campaign committee of
10.24 a candidate makes a contribution to an independent expenditure committee or independent
10.25 expenditure fund on or after January 1 of the year the candidate's office will appear on the
10.26 ballot, the independent expenditure committee or independent expenditure fund must not
10.27 make an independent expenditure for that candidate.

10.28 Sec. 8. **EFFECTIVE DATE.**

10.29 This act is effective January 1, 2024, and applies to expenditures and electioneering
10.30 communications made on or after that date.