Minnesota Lobbying and Campaign Finance Changes in Effect for 2024

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Now that the legislative session is underway—and the 2024 election is fast approaching—organizations that work to influence public policy or elections should focus on the significant changes to Minnesota's lobbying and campaign finance laws passed in 2023. These include an expansion of lobbying rules and the gift ban to local advocacy, big changes to the reporting requirements for lobbyists and principals, new regulation of "electioneering communications," an expanded definition of "expressly advocating," increased late-filing penalties, and more.

Expansion of Lobbying Rules and Gift Ban to Local Advocacy

a. Attempting to influence the official actions of a local government official is now lobbying

Until these recent changes, Minnesota's lobbyist registration law did not apply to attempting to influence the official action of a local government outside of the Twin Cities metro area. Now, a person must register as a lobbyist if they are paid more than $3,000 to influence legislative or administrative action or the official action of *any political subdivision* in Minnesota—including school boards.[1] Similarly, organizations that engage lobbyists, either as staff or outside consultants, to lobby a political subdivision on their behalf, must register and report as lobbyist principals.

The Minnesota Campaign Finance and Public Disclosure Board (the "CF Board") has already issued several advisory opinions to help clarify the application of the lobbying rules to attempting to influence the actions of local officials. While helpful, these advisory opinions emphasize the expansive scope of this new law. For example, Advisory Opinion 457 illustrates how lawyers attempting to influence an action of a local official may often be lobbying, such as by representing a client in a contract negotiation with the local unit of government. Advisory Opinion 458 discusses perhaps surprising situations in which a CEO, or other executive, of a company may be engaged in lobbying—such as by urging the staff of a membership association to communicate with members of the Legislature regarding proposed legislation. Whether the CEO needs to register as a lobbyist, and assuming the corporation does not engage in other lobbying activities, whether the corporation needs to register as a principal, depends on whether the CEO receives more than $3,000 in compensation for activities that count as lobbying.

b. Expansion of the gift ban to local officials

The expansion of the definition of "lobbyist" to include someone who attempts to influence the official actions of a local political subdivision also expands the ban on gifts from lobbyists. Now, that ban prohibits all gifts from lobbyists and principals to public officials (including local officials)—regardless of whether the lobbyist has attempted to influence the actions of the local official.[2] The gift ban prohibits lobbyists and principals from giving anything of value to a public official, now including a local official, unless an exception applies. For example, if a nonprofit is a lobbyist principal because its staff engage in public policy advocacy at the legislature, it is now prohibited from providing a meal without charge to local officials attending a community event hosted by the nonprofit unless the official speaks or answers questions as part of the program.[3] Instead, the lobbying nonprofit must charge a fee to attending officials which covers the cost of food and drink provided at the meeting.

Significant changes to the lobbyist reporting requirements

a. Subject matter reporting will now be required

Beginning with the lobbyist reports due in June 2024 (for activity occurring between January and May 2024), the focus of the reports will be on the topics and specific subjects on which the lobbyist worked. Lobbyists will no longer need to track and report the administrative costs of lobbying—however, organizations that engage lobbyists (which are called "principals") will need to report the amount they spend on lobbying as discussed below.

Lobbyists working to influence legislative action must report each "general lobbying category" on which the lobbyists attempted to influence legislative action and up to four "specific subjects of interest" related to each general lobbying category.[4] The general categories will include topics like "agriculture" and "education" and the specific subjects will include things like "avian flu" and "school start times."

Lobbyists that attempt to influence the administrative rulemaking by state agencies or an official action of a political subdivision must report similar information (including the agencies and/or political subdivision at issue and the specific subjects of interest). The CF Board will develop lists of "general lobbying categories" and "specific subjects of interest."[5]

b. Principal reporting of paid ads for grassroots lobbying

A significant change is that the 2025 lobbyist principal reports must disclose all disbursements and obligations incurred of more than $2,000 for paid ads (including on social media) used for grassroots lobbying (i.e., urging the public to contact public officials to influence official actions).[6] The report must provide the date that the advertising was purchased, the name and address of the vendor, a description of

the advertising purchased, and any specific subjects of interest addressed by the advertisement.[7]

c. Other changes to lobbyist principal reports

The principal reports due on March 15, 2025 (for activity in 2024) must be significantly more detailed than in the past. Historically, principals could round the amount spent to influence legislative or administrative action to the nearest $20,000, and the reports were not detailed. Now, principals must report their spending, rounded to the nearest $9,000, on each of the following types of lobbying: (1) lobbying to influence legislation; (2) lobbying to influence administrative action (other than relating to the Public Utilities Commission); (3) lobbying regarding the Public Utilities Commission; and (4) lobbying to influence official action of a political subdivision.[8] In addition, for each type of lobbying, principals will need to break down their total expenditures into several categories.[9]

New Regulation of Electioneering Communications

a. Explanation of new rules

Certain communications that mention a candidate (or an elected official who is also a candidate) but do not advocate regarding candidacy must now be reported. Specifically, as of January 1, 2024, Minnesota law mirrors the federal disclaimer and reporting rules regarding "electioneering communications." Minnesota did not previously regulate electioneering communications. Like the federal definition, the new law defines an "electioneering communication" as a—broadcast, cable, or satellite— communication that (1) refers to a clearly identified candidate for state office; (2) is publicly distributed within 60 days before the general election or 30 days before a primary or party convention or caucus for the office sought by that candidate; and (3) is "targeted to the relevant electorate" (meaning it is viewable by 10,000 or more individuals in the district that the candidate seeks to represent).[10] These requirements do not apply to internet communications.[11] In addition, a communication is *not* an "electioneering communication" if it is paid for by a candidate or is an independent expenditure or expenditure that is required to be reported under Minnesota Statutes Chapter 10A (relating to legislative and state-wide candidates).[12]

Any person or organization that makes electioneering communications of more than $10,000 during a calendar year must file a statement with the CF Board before *midnight on the day following the "disclosure date*" of the electioneering communication.[13] The statement must include extensive information including "the identification of any individual sharing or exercising direction or control over the activities of the person who made the disbursement or who executed a contract to make a disbursement" and information about certain donors (often, those who donated $1,000 or more since the first day of the prior year "*for the purpose of furthering electioneering communications"*).[14] Political committees and political funds do not need to file these separate reports regarding electioneering communications but must report those

communications on their regular reports to the CF Board.[15]

Electioneering communications also must include a "paid for by" disclaimer.[16]

b. Implications for organizations making issue advocacy communications

501(c)(3) and 501(c)(4) organizations—and other groups that are not political committees or political funds—need to carefully consider these new electioneering communication rules before making radio or TV ads that reference a candidate shortly before a convention or caucus, primary, or general election.

Because Minnesota's party caucuses are held during the legislative session, these electioneering rules could apply to ads attempting to influence legislation—if they specifically identify a legislator who is also a candidate.

For example, a TV ad criticizing an incumbent's policy position on a legislative issue made within 30 days of a party caucus will trigger the 24-hour report requirements if the direct cost of the ads exceeds $10,000. As noted above, the reports require significant disclosure about the organization's leadership and, potentially, its donors. However, if the organization making an electioneering communication is a corporation (including a nonprofit corporation), it will only need to disclose "the name and address of each person who made a donation aggregating $1,000 or more to [the organization], aggregating since the first day of the preceding calendar year, which was made *for the purpose of furthering electioneering communications*."[17] Thus, if donor disclosure is not desired, corporations and nonprofits generally should not solicit donations specifically for the purpose of furthering electioneering communications (but rather should solicit unrestricted donations).

By contrast, if a political fund or a standalone political committee makes an electioneering communication, then the fund or committee will just reflect the electioneering communication on its regular reports.

Minnesota Campaign Finance and Campaign Communications Changes

In 2023, the Minnesota legislature made several significant changes to Minnesota's campaign finance laws, most of which took effect on January 1, 2024 or earlier.

a. Expanded Definition of "Expressly Advocating"

"Express advocacy" is a key concept in election law. Under both state and federal law, communications that "expressly advocate" for a clearly identified candidate generally trigger registration and reporting requirements and must include a "paid for by" disclaimer.

Under prior law, Minnesota defined "expressly advocating" narrowly to only include "words or phrases of express advocacy" (such as "vote for," "vote against," etc.).[18] Now, like the federal definition, the Minnesota definition will also include communications that:

> when taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because:
>
> (i) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
>
> (ii) reasonable minds could not differ as to whether the communication encourages actions to elect or defeat one or more clearly identified candidates or encourages some other kind of action.[19]

This expanded definition may require groups to register with the CF Board when they previously might have been able to avoid registration and reporting by refraining from the "magic words." It also may require groups that previously made hard-hitting issue advocacy communications outside of a political committee or political fund to now make those communications through a committee or fund that reports to the CF Board (as those communications may now qualify as "independent expenditures," given that term's reference to express advocacy).[20]

b. Significant Increase to Potential Late Fees

The new legislation significantly increases the potential fees for a late-filed campaign finance report.

Under prior law, the maximum late fee was generally $1,000 plus a potential civil penalty of up to $1,000. Now, if an organization fails to timely file its campaign finance reports (including the large contribution reports due shortly before an election) or electioneering communication reports and the total receipts received during the reporting period or the total electioneering communication expenditures exceed $25,000, then the CF Board may impose a late filing fee of up to two percent of the amount that should have been reported per day, not to exceed 100 percent of the amount that should have been reported.[21] If the organization has been assessed a late fee during the prior four years, the CF Board may impose a late filing fee of up to twice the amount otherwise authorized.

Accordingly, it will be very important to submit the required reports on time!

c. Amendments to the Prohibition on Contributions During the Legislative Session

There were two amendments to the existing law that bans political contributions from lobbyists, PACs, and unregistered associations during the legislative session. The first change prohibits contributions from

lobbyists or political committees/political funds ("PACs")—at any time—in order to attend an event that occurs during the legislative session and that is held by a legislative or statewide candidate's committee or by a "political party organization within a body of the legislature."[22] This amendment closed a loophole that allowed party organizations to hold events featuring elected officials.

The second change is to prohibit contributions—regardless of when made—from lobbyists or PACs for membership or access to a facility operated during the regular session of the legislature by a legislative or statewide candidate's committee or by a political party organization within a body of the legislature.[23] This overrules a CF Board advisory opinion that would have permitted a legislative party unit from creating a private membership club open to lobbyists for a fee.[24]

These changes do not appear to prohibit a lobbyist or PAC from paying fair market value to attend an event held during the legislative session or to use such a facility (because a fair market value payment is not a "contribution").

d. Prohibition on use of "Deep Fakes" to Influence Elections

A new law makes it a crime, punishable by imprisonment, fines, or both, to disseminate a "deep fake" video, image, or sound within 90 days of an election with the intent to injure a candidate or influence the result of an election.[25] The use of political deep fakes has already become a significant problem in the 2024 election.[26]

The new Minnesota law defines "deep fake" to mean videos, images, or sounds that are (1) "so realistic that a reasonable person would believe it depicts speech or conduct of an individual who did not in fact engage in such speech or conduct; and (2) the production of which was substantially dependent upon technical means, rather than the ability of another individual to physically or verbally impersonate such individual."[27]

Organizations that distribute videos or images of candidates should of course avoid altering them in a way that suggests the candidates did or said something they did not. In addition, organizations should consider maintaining records of the source of legitimate videos or images of candidates used in election-related advocacy materials in the event they face "deep fake" allegations.

e. Virtual Currency

The new law clarified that candidates, parties, and other political committees and political funds may accept contributions of virtual currency (like Bitcoin). The contribution must be "made and received through a virtual currency payment processor based in the United States that is registered with the United States Department of Treasury and which utilizes protocols to verify the identity of the contributor for all contributions." The virtual currency must be sold within five business days.[28]

f. Limitations on "Foreign-Influenced Corporations" - Currently Enjoined

New legislation would have prohibited "foreign-influenced corporations" from contributing to candidates, political parties, or political committees; making independent expenditures regarding candidates; or making expenditures to promote or defeat a ballot question.[29] The term "foreign-influenced-corporation" is broadly defined to include corporations and limited liability companies with a very low percentage of foreign ownership.[30] The term does not include nonprofit corporations.[31]

On December 20, 2023, a federal judge entered a preliminary injunction prohibiting enforcement of this law, finding that it likely violates the First Amendment.[32]

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For assistance navigating these lobbying and campaign finance changes, contact the authors listed above.

These materials are intended for general educational and informational purposes only, and readers are urged to consult with an attorney licensed to practice in their state concerning their own situations and any specific legal questions they may have.

[1] Minn. Stat. § 10A.01, Subd. 21. There are other activities that require lobbyist registration. Those activities now include payment of more than $3,000 from "a business whose primary source of revenue is derived from facilitating government relations or government affairs services if the individual's job duties include offering direct or indirect consulting or advice that helps the business provide those services to clients." *Id.*

[2] *See* Minn. Stat. § 10A.071.

[3] Minn. Stat. § 10A.071.

[4] Minn. Stat. § 10A.04, Subd. 4.

[5] Minn. Stat. § 10A.01, Subd. 17d & Subd. 35c.

[6] Organizations that pay a lobbyist more than $500 or spend more than $50,000 in a calendar year on lobbying are "principals" that must file annual reports with the CF Board.

[7] Minn. Stat. § 10A.04, Subd. 6(d).

[8] Minn. Stat. § 10A.04, Subd. 6(b)-(c).

[9] Minn. Stat. § 10A.04, Subd. 6.

[10] Minn. Stat. § 10A.201. The term "state office" is not defined, but it presumably includes the legislature and does not include local offices.

[11] *See* Minn. Stat. § 10A.201, Subd. 2 & 6(b)(1).

[12] *Id.* (to be codified as Minn. Stat. § 10A.201, Subd. 6(b)).

[13] Minn. Stat. § 10A.202, Subd. 1.

[14] Minn. Stat. § 10A.202, Subd. 2(9).

[15] Although Minnesota Statutes § 10A.202, Subd. 1 only refers to "political committees," "political funds" are also exempt from the electioneering communication reporting requirements. *See* Minn. Stat. § 10A.201, Subd. 6(b)(3) (providing that a communication is not an electioneering communication if it "constitutes an expenditure or independent expenditure, provided that the expenditure or independent expenditure is required to be reported under this chapter"). Thus, expenditures by either a political fund or a political committee that reports to the CF Board do not need to be reported as electioneering communications. See footnote 20 for an explanation of the difference between political committees and political funds.

[16] Minn. Stat. § 10A.202, Subd. 4.

[17] Minn. Stat. § 10A.202, Subd. 2(9). If organizations maintain a segregated bank account that excludes corporate donors, then the organization must disclose all donors of more than $1,000 to the segregated bank account. Accordingly, most organizations will want to avoid making electioneering communications from a segregated bank account.

[18] *See, e.g.*, CF Board AO 428 (revoked July 6, 2023).

[19] Minn. Stat. § 10A.01, Subd. 16a. The revised definition aligns with the definition of "expressly advocating" in the FEC's regulations. 11 C.F.R. § 100.22(b).

[20] In Minnesota, organizations that are primarily operated for other purposes but make independent expenditures (or expenditures to support or oppose a ballot measure) must establish a "political fund" to report those expenditures. Minn. Stat. § 10A.12. A "political fund" is a reporting mechanism and is not a separate legal entity. Alternatively, organizations may contribute to a standalone "political committee,"—which is a separate legal entity the major purpose of which is to influence elections—and that political committee may make independent expenditures and communications advocating for or against ballot measures. Minn. Stat. § 10A.01, Subd. 27.

[21] Minn. Stat. § 10A.20, Subd. 12.

[22] Minn. Stat. § 10A.273, Subd. 1(c).

[23] Minn. Stat. § 10A.273, Subd. 1(d).

[24] *See* AO 454.

[25] Minn. Laws 2023, Ch. 58 (H.F. No. 1370), Sec. 2 (to be codified as Minn. Stat. § 609.771).

[26] https://www.pbs.org/newshour/politics/ai-robocalls-impersonate-president-biden-in-an-apparent-attempt-to-suppress-votes-in-new-hampshire.

[27] *Id.* A related section of the new law also prohibits nonconsensual dissemination of a deep fake depicting intimate parts or sexual acts.

[28] Chapter 62 Art. 5, Sec. 28 (to be codified as Minn. Stat. § 10A.15, Subd. 8).

[29] Subject to narrow exceptions, all corporations (including nonprofits) were already prohibited from making *contributions* to candidates, parties, or PAC (other than independent-expenditure-only political committees or funds). Minn. Stat. § 211B.15. A new reference to this prohibition has been added to Minnesota Statutes § 10A.27.

[30] Specifically, a "foreign-influenced corporation" includes a corporation or LLC in which a "foreign investor" owns or controls *one percent* or more of the ownership interests of the corporation or two or more foreign investors own or control five percent or more of the ownership interests of the corporation, directly or indirectly. Minn. Stat. § 211B.15, subd. 1(d).

[31] Minn. Stat. § 211B.15, subd. 1(d).

[32] *Minnesota Chamber of Commerce v. Choi*, 0:23-cv-02015-ECT-JFD (D. Minn. 2023) (ECF No. 109). The court held that the statute is not "narrowly tailored" to achieve the state's compelling interest in preventing foreign influence in Minnesota elections.