



# Changes to Minnesota's Lobbying Laws

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# Legal Notice

- **This presentation is intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. An attorney-client relationship is not created through this presentation.**
- **This presentation is not lobbying.**

# Speaker Bio



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Brian assists clients in obtaining governmental approvals for controversial energy, natural resources, and urban development projects. As part of this work, Brian advocates for companies before local, state, and federal regulatory bodies and on judicial review. Brian also assists clients in transactions involving complex environmental issues.



# Agenda

- **Background**
- **Increased Detail Required for Lobbyist Reports**
- **Expansion of Local Government Lobbying Requirements**
- **Miscellaneous Changes**
  - **Definition of “legislative action”**
  - **Increased threshold for individual spending to trigger reporting obligations**

# Background

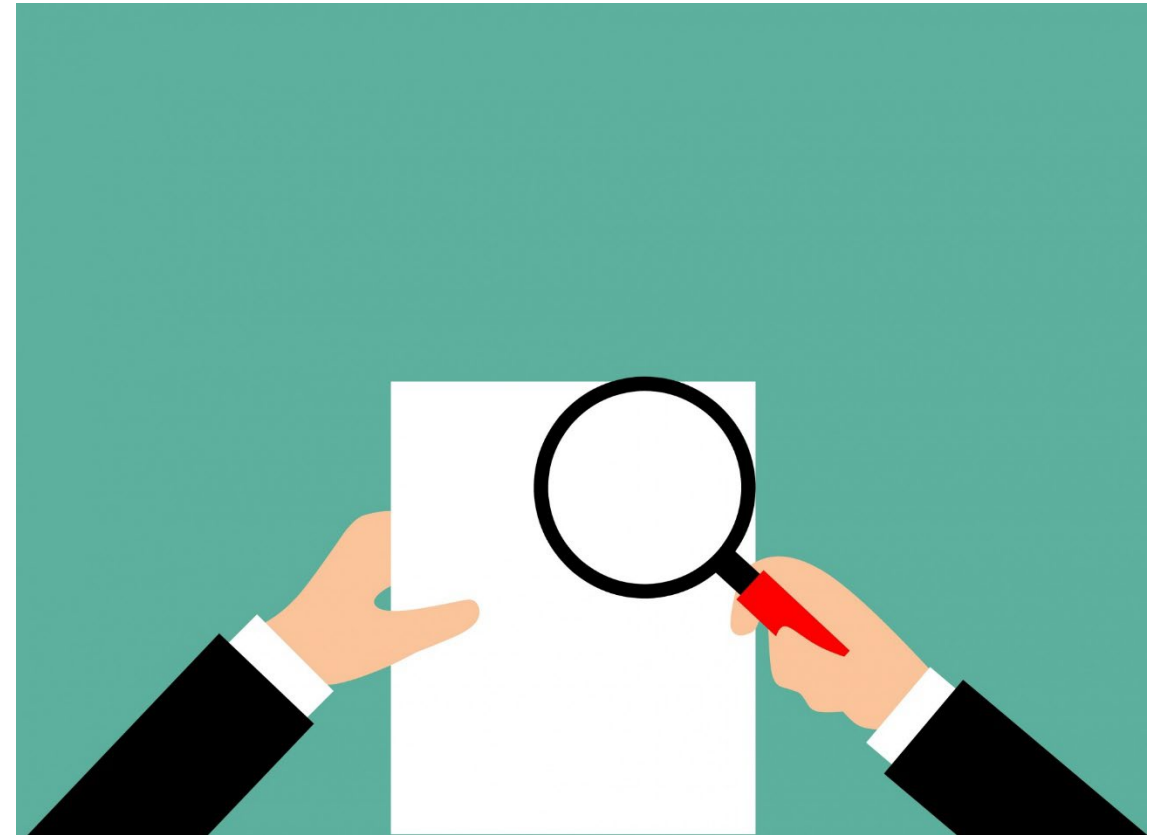
# Background

- **2023 Minn. Law ch. 62, art. 5 (H.F. 1830) (codified at Minn. Stat. ch. 10A)**
- **Rep. Nathan Coulter (DFL-Bloomington) was the bill's champion.**
- **The Campaign Finance and Public Disclosure Board (CFB):**
  - **Rulemaking**
  - **Advisory Op. 456, 457, 458, & 460**

# Increased Detail Required for Lobbyist and Principal Reports

# Lobbyist Reports (Minn. Stat. § 10A.04)

- **Previously lobbyist reports focus on disbursements on lobbying for different categories of lobbying (legislative, administrative, local government).**
- **Now lobbyist reports will focus on the topics on which the lobbyist lobbied.**
- **Lobbyists will no longer report administrative costs related to lobbying.**





# Lobbyist Disbursement Reports (Minn. Stat. § 10A.04)

- **Specific subjects of interest for an entity represented,**
- **All state agencies that had administrative action that the represented entity sought to influence and the subjects of the lobbying,**
- **Every political subdivision that considered official action that the represented entity sought to influence and the subjects of the lobbying,**
- **General and specific subjects of interest related to each general lobbying category on which the lobbyist attempted to influence legislative action, and**
- **Public Utilities Commission project name for each rate case, certificate of need, and route/site permit.**

# Lobbyist Disbursement Reports (Minn. Stat. § 10A.04)

- **The CFB will create general and specific lobbying categories.**
- **The CFB will also create a lobbyist disbursement form, which will be used beginning in January 2025.**

# Principal Reports (Minn. Stat. § 10A.04)

- **Principal must round to the nearest \$9,000, down from the current \$20,000.**
- **Must be broken down into four categories:**
  - **Legislative action;**
  - **Administrative action;**
  - **PUC rate case, site/route permit, or certificate of need; and**
  - **Official action of a political subdivision.**
- **Detail type of expenditure (e.g., salaries, direct expenses, and overhead) paid under type of lobbying**
- **Must report disbursements over \$2,000 paid for advertising to urge members of the public to contact public officials.**

# Expansion of Activities Considered Lobbying of Local Governments

# Local Government Lobbying: Pre-2024

- **Lobbyist includes individual paid to attempt to influence “the official action of a metropolitan governmental unit.”**
- **“Metropolitan governmental unit”**
  - **Seven-county metro area**
  - **A city with a population exceeding 50,000**
  - **Metropolitan Council and other metropolitan agencies (e.g., Metropolitan Airports Commission)**
- **No definition of “official action of a metropolitan government alunit”**



# Local Government Lobbying: Two Changes

- Expanded to include all political subdivisions
- Defined “official action”



# Political Subdivision

- **Lobbyist now includes individual paid to attempt to influence “the official action of a political subdivision”**
- **“Political subdivision”**
  - **County,**
  - **Town,**
  - **City,**
  - **Metropolitan Council,**
  - **Metropolitan Agency,**
  - **School district, and**
  - **“Other municipal corporation or political subdivision of the state.”**
- **Doesn’t include statewide agencies**



# Official Action of a Political Subdivision Minn. Stat. § 10A.01, subd. 26b

- **“Official action of a political subdivision” means any action that *requires a vote or approval by one or more elected local officials* while acting in their official capacity; or an action by an *appointed or employed local official* to make, to recommend, or to vote on as a member of the governing body, *major decisions regarding the expenditure or investment of public money.* (Emphasis added.)**





# Local Official

- **Elected Local Official v. Unelected Local Official**
- **“Local official” means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money. Minn. Stat. § 10A.01, subd. 22.**

# Elected v. Unelected Official

- **Elected Officials (broader):** anything that requires a vote or approval of the elected official
- **Unelected Local Official (narrower):** recommendation, decision or vote on “major decisions regarding the expenditure or investment of public money”



# Rulemaking

- **CFB Rulemaking Committee will consider amendments to lobbying rules to implement the new statute**
- **First meeting at 10am, Monday, January 29, 2024.**



# Proposed Rules: Miscellaneous Definitions

- **Added definitions**
  - **“Administrative overhead expenses”**
  - **“Pay or consideration for lobbying”**
  - **“State agency”**

# Proposed Rules: Action Requiring Vote (Minn. R. 4511.1000, subp. 1)

- **“An action that requires a vote of the governing body.** Attempting to influence the vote of an elected local official while acting in their official capacity is lobbying of that official’s political subdivision.”

# Proposed Rules: Approval of Elected Official (Minn. R. 4511.1000, subp. 2)

- **“Approval by an elected local official.** Attempting to influence a decision of an elected local official that does not require a vote by the elected local official is lobbying if the elected local official has discretion in their official capacity to either authorize or deny a government service or action.”
- Excludes:
  - Issuing a government license, permit, or variance;
  - Actions taken by the office of the elected official that does not require personal approval of the elected official; or
  - Prosecutorial discretion exercised by a county attorney

# Proposed Rules: Major Decision Regarding Expenditure (Minn. R. 4511.1100)

- **Relevant only to unelected local officials**
- **Fact-specific question that may change based on the political subdivision involved. Advisory Op. 457 at 3.**
- **Exhaustive definition**
  - **The development of budgets and budget requests,**
  - **Whether to apply for or accept public or private grants,**
  - **Selecting grant recipients, or**
  - **Expenditures on public infrastructure to support private housing or business developments**

# Proposed Rules: Major Decision Regarding Expenditure (Minn. R. 4511.1100)

- **Excludes**
  - Purchases with public funds that were already allocated,
  - Selecting an offer for services or goods submitted in response to an RFP
  - Collective bargaining





# Proposed Rules: Major Decision Regarding Investments

- **Relevant only to unelected local officials**
- **Decision regarding**
  - Investment options for government employee retirement plans or
  - Investment options or depositories for funds



# Advisory Opinions

- **CFB Advisory Opinions 456, 457, 458, & 460 demonstrate the breadth of the new law.**
- **Advisory Opinion 457 is particularly instructive for private municipal lawyers.**
- **Advisory opinions are generally binding on the board as to the person making or covered by the request and is a defense in a judicial proceeding brought against the person making or covered by the request**

**<https://cfb.mn.gov/citizen-resources/the-board/board-decisions/advisory-opinions/>**

# Advisory Op. 457: Zoning Amendments

- **Conveying proposed amendments to a comprehensive plan or zoning ordinance to city officials, even if the city requested comments.**
- **Yes**

# Advisory Op. 457: Interim Ordinance

- **Conveying objections to an interim ordinance prohibiting some or all development of land for a one-year period, taking the position on behalf of a real estate developer that the moratorium was adopted to impede a single project.**
- **Yes**

# Advisory Op. 457: City Parking Commission

- **Meeting with members of the city parking commission to discuss the construction of a new city parking ramp.**
- **It depends**
  - **Is the Commission elected?**
  - **Does the Commission make recommendations to the City Council?**
  - **Is construction of a city parking ramp a major decision regarding the expenditure of public funds?**



# Advisory Op. 457: Parcel Identification Number

- **Contacting the county auditor on behalf of a property owner to request a single parcel identification number for adjoining parcels**
- **It depends**
  - **Elected or unelected**
  - **Discretionary or ministerial**

# Advisory Op. 457: Redevelopment Agreement

- **Negotiating a development contract with city or county planning staff on behalf of a real estate developer that requires the expenditure of public money on public infrastructure.**
- **Yes.**



# Advisory Op. 457: Economic Assistance Grants

- **Representing a local business at a meeting of the civil rights commission, to promote economic development in the form of economic assistance to LGBTQIA+ businesses located in the city.**
- **It depends**
  - **Is the Commission elected?**
  - **Does the Commission make recommendations to the City Council?**
  - **Does the economic assistance constitute major expenditure of public funds?**



# Advisory Op. 458: Engineering Firm

- **If a developer asks an outside engineering firm that prepared the site plan to attend the planning commission meeting and answer questions (in order to obtain approval of the site plan), does the outside engineer become a lobbyist if he or she is paid \$3,000 or more for these services?**
- **No, assuming the engineer is just answering technical questions**



# Other Scenarios: Conduit Bond

- **Represent a nonprofit as a conduit borrower**
- **Conduit borrower borrows money from a financial institution through a bond issuer (e.g., municipality).**
- **City Council uses its tax-exempt status to issue bond to lender in exchange of loan given to conduit borrower.**
- **City Council must pass a resolution approving bond issuance.**
- **Is this lobbying?**
- **Yes, I think so.**

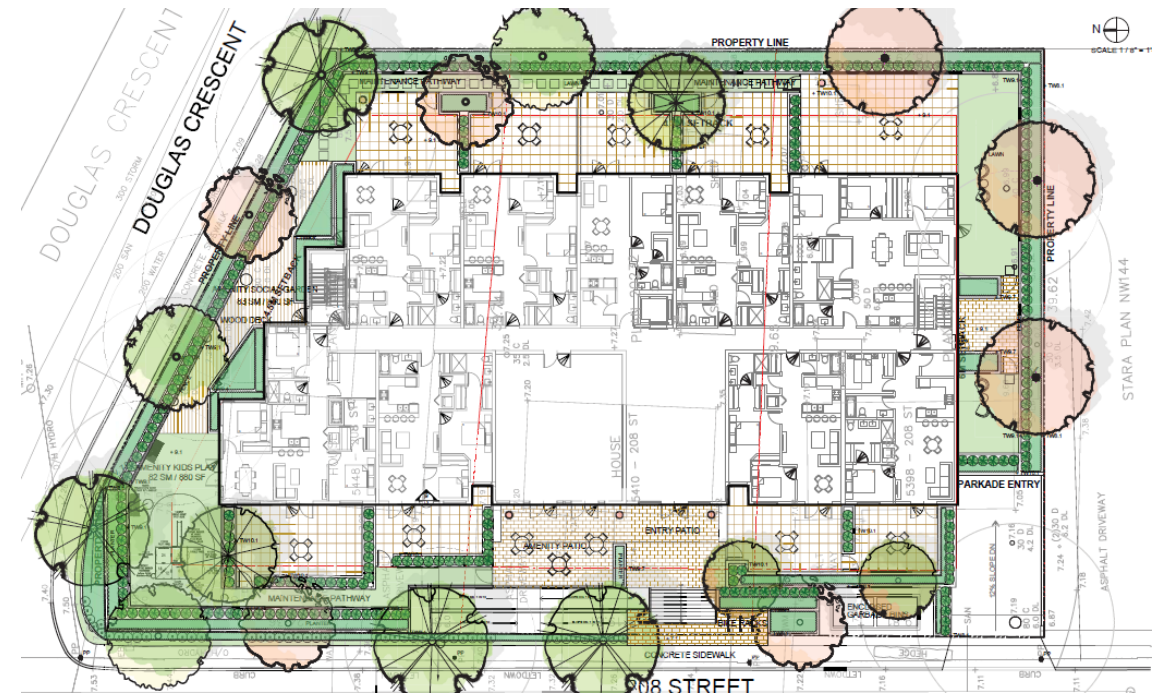


# Advisory Op. 457: Short-Term Rental License

- **Representing a group of neighbors at a city planning commission meeting who object to the issuance of a short-term rental license.**
- **It depends**
  - **Does the planning commission include elected officials?**
  - **Does the planning commission make the final decision or a recommendation?**

# Advisory Op. 458: Developer Site Plan Review

- If employees of a developer attend a planning commission meeting where a site plan for the developer's expansion is being considered, and the employees speak to the planning commission and encourage approval of the site plan, are these employees required to register as lobbyists (assuming they meet the \$3,000 threshold)
- It depends
  - Does the planning commission include elected officials?
  - Does the site plan involve major expenditure of public funds?



# Miscellaneous Changes

# New Definition of Legislative Action (Minn. Stat. § 10A.01, subd. 19a)

- **Lobbyist includes an individual paid over \$3,000 to attempt to influence legislative action.**
- **“Legislative Action”:**
  - **Development of bill or bill amendment;**
  - **Review, modification, adoption or rejection by legislator or staff of a bill, amendment, confirmation, or resolution;**
  - **Development of bill in conjunction with a constitutional officer or request to support; or**
  - **Action of governor in approving or vetoing legislation.**



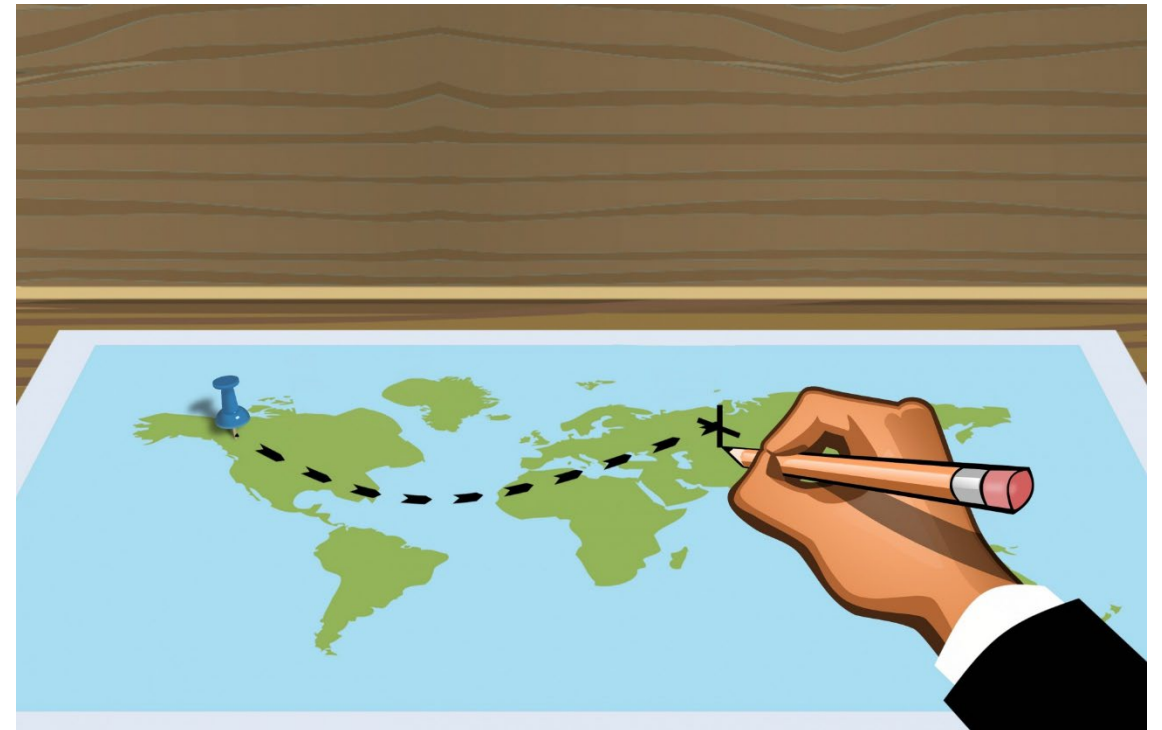
# Advisory Op. 458: Chamber of Commerce Meeting

- **Executive discusses legislative proposals at a chamber of commerce board or committee meeting, urging the chamber to communicate a company's position on a topic.**
- **Yes, because the executive is urging the chamber to communicate to members of the legislature proposals to amend legislation.**



# Advisory Op. 458: Trade Mission

- **An executive travels with the Governor on a trade mission to a foreign country. While traveling, the executive shares information with the Governor and staff and foreign business leaders about initiatives in the State of Minnesota. The executive provides candid feedback on what legislative initiatives are working and which ones need reform.**
- **It depends**
  - **Is the purpose of identifying initiatives that “need reform” to influence the Governor to support legislative action?**





# Increased Threshold for Hobbyist Lobbyist (Minn. Stat. § 10A.01, subd. 21)

- **Threshold for personal expenditures for non-hired lobbyist raised from \$250 to \$3,000**

# Questions?

# Contact Info.



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