

HF3190 - 0 - Campaign Finance; Miscellaneous Changes

Chief Author: **Jamie Long**
 Committee: **State Government Finance and Policy**
 Date Completed: **2/15/2022 9:24:47 AM**
 Lead Agency: **Campaign Finance Board**
 Other Agencies:
 Administrative Hearings

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Campaign Finance Board					
General Fund	-	-	5	-	-
State Total					
Administrative Hearings	-	-	-	-	-
General Fund	-	-	5	-	-
Total	-	-	5	-	-
Biennial Total			5		-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Campaign Finance Board					
General Fund	-	-	-	-	-
Total	-	-	-	-	-

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Joel Enders **Date:** 2/15/2022 9:24:47 AM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2	Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Campaign Finance Board					
General Fund	-	-	5	-	-
Total	-	-	5	-	-
Biennial Total			5		-
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	2	-	-
Campaign Finance Board					
General Fund					
Expenditures	-	-	61	15	-
Absorbed Costs	-	-	(56)	(15)	-
Total	-	-	7	-	-
Biennial Total			7		-
2 - Revenues, Transfers In*					
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	2	-	-
Campaign Finance Board					
General Fund	-	-	-	-	-
Total	-	-	2	-	-
Biennial Total			2		-

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State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	5	-	-	-
Total	-	-	5	-	-	-
Biennial Total			5			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details

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*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
General Fund		-	-	5	-	-
Total		-	-	5	-	-
Biennial Total				5		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund						
Expenditures		-	-	61	15	-
Absorbed Costs		-	-	(56)	(15)	-
Total		-	-	5	-	-
Biennial Total				5		-
2 - Revenues, Transfers In*						
General Fund						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

Section 1 expands the definition of “expressly advocating” to include communications that taken as a whole have no reasonable interpretation other than an appeal to elect or defeat a candidate. The definition is also expanded to include communications that “supports, criticizes, or opposes a candidate, regardless of whether the communication expressly advocates the election or defeat of a candidate”. The express advocacy definition is used to determine if a communication is an independent expenditure that is regulated by Chapter 10A. Independent expenditures for or against state candidates are reported to the Board by registered committees and funds. The definition of expressly advocating provided in this section will increase the number of communications that are regulated under Chapter 10A, and by extension will increase the number of associations that are required to register and report to the Board.

Section 2 modifies the campaign disclaimer required in Minnesota Statute 211B.04 for independent expenditures to include the top three contributors to the fund, committee, or party unit making the independent expenditure. The top three contributors are the individuals or associations that made the largest contributions to the fund, committee, or party unit making the independent expenditure within the 12 months prior to the first publication of the independent expenditure. Contributions segregated from funds used to make the independent expenditure are not required to be identified as a top three contributor.

Section 3 eliminates the current exemption from the campaign disclaimer requirement for online banners and similar electronic advertisements.

Section 4 requires the Board to adopt expedited administrative rules that will regulate campaign disclaimers on small electronic advertisements and social media.

Assumptions

1. The provisions of the bill will require updates to forms, handbooks, and training materials. Updates are routinely done by the agency and incorporating the new provisions into the materials will not have a separate identifiable fiscal impact.
2. The Board is required to adopt expedited administrative rules for the campaign disclaimers used on electronic communications as required in Section 4. The administrative rules are assumed to be a “Small Rule” as defined in the Minnesota Rulemaking Manual estimated costs for rulemaking (as revised in 2020). The Board assumes that the rules will be non-controversial, and in any event under the procedure for expedited rules the Board is not required to

hold a contested hearing on the proposed rules. Because of the technical nature of the social media and electronic advertisements regulated by the rules, the Board will establish an advisory committee to help draft the rules. The staff costs to draft and adopt a small rule is estimated by the Minnesota Rulemaking Manual as \$46,305. However, the Board has three attorneys on staff, and the executive director is experienced with the rule making process. The Board assumes that additional staffing will not be needed to develop and adopt the rules. The Board will absorb the estimated \$40,000 in staffing costs for the rules, and the Attorney General is required to provide legal services to the Board without cost (Minn. Stat. §10A.02, subd. 14). The estimated costs for review of the rules and a hearing conducted by the Office of Administrative Hearing (\$2,200), the publication of the request for comments and a notice of intent to adopt rules (\$1,500), and other miscellaneous mailing and duplication costs (\$1,370) cannot be easily absorbed by the Board. Total fiscal impact that cannot be absorbed is approximately \$5,000.

3. The Board investigates violations of the disclaimer provisions of Minn. Stat. §211B.04 for state level candidates and committees and funds registered with the Board. The change in the disclaimer for independent expenditures that requires a list of the three largest contributors to the committee or fund that made the independent expenditure will, invariably, cause inadvertent violations of the disclaimer requirement by committees and funds that were unaware of the change in statute. Additionally, the administrative rules adopted by the Board will also require new disclaimer requirements for social media and electronic communications. These new requirements are also very likely to lead to inadvertent violations by committees and funds that were unaware of the new requirements. Board investigations of disclaimer violations are typically straightforward and fact based, and are resolved quickly through the Board's conciliation process. Nonetheless, a staff investigation and the drafting of a conciliation agreement requires approximately 15 hours of staff time, at a staff cost of about \$1,000 for each additional violation. This fiscal note assumes that there will be ten additional disclaimer violations during each of the two years after the disclaimer requirements change. After committees become aware of the new requirements, which again is estimated to occur over a two-year period, this fiscal note assumes that the new disclaimer requirements will not in themselves create additional violations. The investigation and resolution of the additional violations represents approximately \$15,000 in additional staff costs for each of the two fiscal years after the new disclaimer requirements become law. However, the Board is already staffed with a compliance officer and legal analysts who conduct staff investigations. Additional staff will not be needed to enforce the changes to the disclaimer requirements, the additional workload can be absorbed by the Board.

Expenditure and/or Revenue Formula

Administrative Rules estimated cost table from 2020 Administrative Rule Handbook - shaded costs cannot be absorbed by the agency.

	Major <u>Rule</u>	Medium <u>Rule</u>	HF 9 Small <u>Rule</u>	Noncontroversial Procedural 1-2 page <u>Amendment</u>
Staffing Costs				
Program staff (\$40 w/fringe)	124,800	62,420	24,000	3,600
Rules staff (\$40 w/fringe)	124,800	41,600	12,000	2,400
Clerical support (\$26 w/fringe)	8,320	5,200	3,900	1,560
**Office of Attorney General				
Legal fees (\$133/hour)	11,438	7,182	1,330	798
**Office of Administrative Hearings				
Admin. Law Judge (\$215/hour)	29,025	10,750	2,150	860
Filing Fee	50	50	50	50
**State Register (\$135/page)				
Request for Comments	270	270	135	135
Notice of Intent to Adopt Rules (with rule text published)	7,560	3,375	1,350	810
Notice of Adoption (without rule text published)	60	60	20	20

Miscellaneous				
Mailings	925	694	370	333
Duplicating	1,500	825	500	250
Transcripts	1,000	750	500	
Committee costs, outstate meetings	500	200		
TOTAL Estimated Costs	\$310,248	\$133,376	\$46,305	\$10,816

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact: Jeff Sigurdson (651-539-1189)

Agency Fiscal Note Coordinator Signature: Jeff Sigurdson

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HF3190 - 0 - Campaign Finance; Miscellaneous Changes

Chief Author: **Jamie Long**
 Committee: **State Government Finance and Policy**
 Date Completed: **2/15/2022 9:24:47 AM**
 Agency: **Administrative Hearings**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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Administrative Hearings	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Administrative Hearings	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Joel Enders **Date:** 2/15/2022 9:24:06 AM
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State Cost (Savings) Calculation Details

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Administrative Hearings	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Administrative Hearings	-	-	2	-	-	-
Total	-	-	2	-	-	-
Biennial Total			2			
2 - Revenues, Transfers In*						
Administrative Hearings	-	-	2	-	-	-
Total	-	-	2	-	-	-
Biennial Total			2			

Bill Description

HF3190 provides for modifications to electronic campaign communication disclaimers and authorizes the Campaign Finance Board (CFB) to conduct rulemaking to implement the provisions of 211B.04, subd. 3a, Art. 5, Sec. 4, Subd. 3a, Certain electronic communications and advertisements

Assumptions

CFB assumes a small rulemaking at \$46,305 for the requirements of this fiscal note in FY23. Based on past practices, OAH assumes that a small rulemaking under chapter 14 will require an estimated 10 hours of ALJ time for activity related to rulemaking procedures. Of the estimated rulemaking amount of \$46,305, \$2,150 is for the estimated 10 hours of ALJ time for a small rulemaking.

OAH currently bills ALJ time for rulemaking at the MMB-approved billable rate of \$215 per hour (see Minn. Stat. § 16A.126, subd. 1 (2020)).

Expenditure and/or Revenue Formula

Estimated 10 hours of ALJ time @ \$215/hr = \$2,150 for the requirements related to implementing 211B.04, subd. 3a, Art. 5, Sec. 4, Subd. 3a, Certain electronic communications and advertisements.

Long-Term Fiscal Considerations

The estimated costs associated with the rulemaking activities are a one-time occurrence.

Local Fiscal Impact

References/Sources

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