

Subd. 3. **WHAT MEETINGS MAY BE CLOSED.** (a) A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting.

(b) Meetings may be closed if the closure is expressly authorized by statute or permitted by the attorney-client privilege.

(c) A public body may close a meeting:

(1) to determine the asking price for real or personal property to be sold by the government entity;

(2) to review confidential or nonpublic appraisal data under section 13.44, subdivision 3; and

(3) to develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Before holding a closed meeting under this paragraph, the public body must identify on the record the particular real or personal property that is the subject of the closed meeting. The proceedings of a meeting closed under this paragraph must be tape recorded at the expense of the public body. The recording must be preserved for eight years after the date of the meeting and made available to the public after all real or personal property discussed at the meeting has been purchased or sold or the governing body has abandoned the purchase or sale. The real or personal property that is the subject of the closed meeting must be specifically identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. If an action is brought claiming that public business other than discussions allowed under this paragraph was transacted at a closed meeting held under this paragraph during the time when the tape is not available to the public, section 13D.03, subdivision 3, applies.

An agreement reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body's internal procedures, and the purchase price or sale price is public data.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Presented to the governor May 18, 2004

Signed by the governor May 28, 2004, 7:50 a.m.

## CHAPTER 277—S.F.No. 1907

*An act relating to elections; creating an administrative remedy for violations of fair*

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*campaign practices in state and local elections; repealing mandate that county attorney investigate violations of local election campaign finance reporting and fair campaign practices; amending Minnesota Statutes 2002, sections 10A.31, subdivision 4; 201.275; 211A.05, subdivision 2; 211A.08, by adding a subdivision; 211B.16, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 211B; repealing Minnesota Statutes 2002, sections 211A.08, subdivisions 1, 2; 211B.16, subdivisions 1, 2.*

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

Section 1. Minnesota Statutes 2002, section 10A.31, subdivision 4, is amended to read:

Subd. 4. **APPROPRIATION.** (a) The amounts designated by individuals for the state elections campaign fund, less three percent, are appropriated from the general fund; must be transferred and credited to the appropriate account in the state elections campaign fund, and are annually appropriated for distribution as set forth in subdivisions 5, 5a, 6, and 7. The remaining three percent must be kept in the general fund for administrative costs.

(b) In addition to the amounts in paragraph (a), \$1,500,000 for each general election is appropriated from the general fund for transfer to the general account of the state elections campaign fund.

Of this appropriation, \$65,000 each fiscal year must be set aside to pay assessments made by the Office of Administrative Hearings under section 211B.37. Amounts remaining after all assessments have been paid must be canceled to the general account.

Sec. 2. Minnesota Statutes 2002, section 201.275, is amended to read:

#### 201.275 INVESTIGATIONS; PROSECUTIONS.

A county attorney who is notified by affidavit of an alleged violation of this chapter shall promptly investigate. If there is probable cause for instituting a prosecution, the county attorney shall proceed by complaint or present the charge, with whatever evidence has been found, to the grand jury. A county attorney who refuses or intentionally fails to faithfully perform this or any other duty imposed by this chapter is guilty of a misdemeanor and upon conviction shall forfeit office. The county attorney, under the penalty of forfeiture of office, shall prosecute all violations of this chapter except violations of this section; if, however, a complainant withdraws an allegation under this chapter, the county attorney is not required to proceed with the prosecution.

Sec. 3. Minnesota Statutes 2002, section 211A.05, subdivision 2, is amended to read:

Subd. 2. **NOTICE OF FAILURE TO FILE.** If a candidate or committee fails to file a report on the date it is due, the filing officer shall immediately notify the county attorney of the county where the candidate resides or where the committee headquarters is located. The county attorney shall then immediately notify the candidate or committee of the failure to file. If a report is not filed within ten days after the

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notification is mailed, the county attorney filing officer shall proceed file a complaint under section 211A.08 211B.32.

Sec. 4. Minnesota Statutes 2002, section 211A.08, is amended by adding a subdivision to read:

Subd. 3. COUNTY ATTORNEY AUTHORITY. A county attorney may prosecute any violation of this chapter.

Sec. 5. Minnesota Statutes 2002, section 211B.16, is amended by adding a subdivision to read:

Subd. 3. COUNTY ATTORNEY AUTHORITY. A county attorney may prosecute any violation of this chapter.

Sec. 6. **[211B.31] DEFINITION.**

As used in sections 211B.32 to 211B.36, "office" means the Office of Administrative Hearings.

Sec. 7. **[211B.32] COMPLAINTS OF UNFAIR CAMPAIGN PRACTICES.**

Subdivision 1. ADMINISTRATIVE REMEDY; EXHAUSTION. A complaint alleging a violation of chapter 211A or 211B must be filed with the office. The complaint must be finally disposed of by the office before the alleged violation may be prosecuted by a county attorney.

Subd. 2. LIMITATION ON FILING. The complaint must be filed with the office within one year after the occurrence of the act or failure to act that is the subject of the complaint, except that if the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during that one-year period, the complaint may be filed with the office within one year after the fraud, concealment, or misrepresentation was discovered.

Subd. 3. FORM OF COMPLAINT. The complaint must be in writing, submitted under oath, and detail the factual basis for the claim that a violation of law has occurred. The office may prescribe the form of a complaint.

Subd. 4. PROOF OF CLAIM. The burden of proving the allegations in the complaint is on the complainant. The standard of proof of a violation of section 211B.06, relating to false statements in paid political advertising or campaign material, is clear and convincing evidence. The standard of proof of any other violation of chapter 211A or 211B is a preponderance of the evidence.

Subd. 5. FILING FEE; WAIVER; REFUND. (a) The complaint must be accompanied by a filing fee of \$50, unless filed by a filing officer under section 211A.05, subdivision 2.

(b) The office may waive the payment of the filing fee, if the individual seeking a waiver of the fee files with the office an affidavit stating that the individual is financially unable to pay the fee.

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(c) The office may refund the filing fee of a complainant who prevails on the merits.

Subd. 6. SERVICE ON RESPONDENT. Upon receipt of the filed complaint, the office must immediately notify the respondent and provide the respondent with a copy of the complaint by the most expeditious means available.

**Sec. 8. [211B.33] PRIMA FACIE REVIEW.**

Subdivision 1. TIME FOR REVIEW. The chief administrative law judge must randomly assign an administrative law judge to review the complaint. Within one business day after the complaint was filed with the office, when practicable, but never longer than three business days, the administrative law judge must make a preliminary determination for its disposition.

Subd. 2. RECOMMENDATION. (a) If the administrative law judge determines that the complaint does not set forth a prima facie violation of chapter 211A or 211B, the administrative law judge must dismiss the complaint.

(b) If the administrative law judge determines that the complaint sets forth a prima facie violation of section 211B.06 and was filed within 60 days before the primary or special election or within 90 days before the general election to which the complaint relates, the administrative law judge must conduct an expedited probable cause hearing under section 211B.34.

(c) If the administrative law judge determines that the complaint sets forth a prima facie violation of a provision of chapter 211A or 211B, other than section 211B.06, and that the complaint was filed within 60 days before the primary or special election or within 90 days before the general election to which the complaint relates, the administrative law judge, on request of any party, must conduct an expedited probable cause hearing under section 211B.34.

(d) If the administrative law judge determines that the complaint sets forth a prima facie violation of chapter 211A or 211B, and was filed more than 60 days before the primary or special election or more than 90 days before the general election to which the complaint relates, the administrative law judge must schedule an evidentiary hearing under section 211B.35.

Subd. 3. NOTICE TO PARTIES. The office must notify all parties of the determination made under subdivision 2. If the complaint is scheduled for hearing, the notice must identify the time and place of the hearing and inform all parties that they may submit evidence, affidavits, documentation, and argument for consideration by the administrative law judge.

Subd. 4. JOINDER AND SEPARATION OF COMPLAINTS. The chief administrative law judge may direct that two or more complaints be joined for disposition if the chief administrative law judge determines that the allegations in each complaint are of the same or similar character, are based on the same act or failure to act, or are based on two or more acts or failures to act constituting parts of a common scheme or plan. If one complaint contains two or more allegations, the chief

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administrative law judge may separate the allegations, if they are not of the same or similar character, if they are not based on the same act or failure to act, or if they are not based on two or more acts or failures to act constituting parts of a common scheme or plan. If the chief administrative law judge separates the allegations in a complaint, the assigned administrative law judge or judges may make separate recommendations under subdivision 2 for each allegation.

**Sec. 9. [211B.34] PROBABLE CAUSE HEARING.**

Subdivision 1. TIME FOR REVIEW. The assigned administrative law judge must hold a probable cause hearing on the complaint no later than three business days after receiving the assignment if an expedited hearing is required by section 211B.33, except that for good cause the administrative law judge may hold the hearing no later than seven days after receiving the assignment. If an expedited hearing is not required by section 211B.33, the administrative law judge must hold the hearing not later than 30 days after receiving the assignment.

Subd. 2. DISPOSITION. At the probable cause hearing, the administrative law judge must make one of the following determinations:

(a) The complaint is frivolous, or there is no probable cause to believe that the violation of law alleged in the complaint has occurred. If the administrative law judge makes either determination, the administrative law judge must dismiss the complaint.

(b) There is probable cause to believe that the violation of law alleged in the complaint has occurred. If the administrative law judge so determines, the chief administrative law judge must schedule the complaint for an evidentiary hearing under section 211B.35.

**Subd. 3. RECONSIDERATION BY CHIEF ADMINISTRATIVE LAW JUDGE.** (a) If the administrative law judge dismisses the complaint, the administrative law judge shall provide to the complainant written notice of the right to seek reconsideration of the decision on the record by the chief administrative law judge.

(b) A petition for reconsideration must be filed within two business days after the dismissal. The chief administrative law judge must make a decision on the petition within three business days after receiving the petition. If the chief administrative law judge determines that the assigned administrative law judge made a clear error of law and grants the petition, within five business days after granting the petition, the chief administrative law judge shall schedule the complaint for an evidentiary hearing under section 211B.35.

**Sec. 10. [211B.35] EVIDENTIARY HEARING BY PANEL.**

Subdivision 1. DEADLINE FOR HEARING. When required by section 211B.34, subdivision 2 or 3, the chief administrative law judge must assign the complaint to a panel of three administrative law judges for an evidentiary hearing. The hearing must be held within the following times:

(1) ten days after the complaint was assigned, if an expedited probable cause hearing was requested or required under section 211B.33;

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(2) 30 days after the complaint was filed, if it was filed within 60 days before the primary or special election or within 90 days before the general election to which the complaint relates; or

(3) 90 days after the complaint was filed, if it was filed at any other time.

For good cause shown, the panel may extend the deadline set forth in clause (2) or (3) by 60 days.

Subd. 2. DISPOSITION OF COMPLAINT. The panel must determine whether the violation alleged in the complaint occurred and must make at least one of the following dispositions:

(a) The panel may dismiss the complaint.

(b) The panel may issue a reprimand.

(c) The panel may find that a statement made in a paid advertisement or campaign material violated section 211B.06.

(d) The panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.

(e) The panel may refer the complaint to the appropriate county attorney.

Subd. 3. TIME FOR DISPOSITION. The panel must dispose of the complaint:

(1) within three days after the hearing record closes, if an expedited probable cause hearing was required by section 211B.33; and

(2) within 14 days after the hearing record closes, if an expedited probable cause hearing was not required by section 211B.33.

#### Sec. 11. [211B.36] PROCEDURES.

Subdivision 1. EVIDENCE AND ARGUMENT. The administrative law judge or panel may consider any evidence and argument submitted until a hearing record is closed, including affidavits and documentation, or may continue a hearing to enable the parties to submit additional testimony.

Subd. 2. WITHDRAWAL OF COMPLAINT. At any time before an evidentiary hearing under section 211B.35 begins, a complainant may withdraw a complaint filed under section 211B.32. After the evidentiary hearing begins, a complaint filed under section 211B.32 may only be withdrawn with the permission of the panel.

Subd. 3. COSTS. If the assigned administrative law judge or panel determines the complaint is frivolous, they may order the complainant to pay the respondent's reasonable attorney fees and to pay the costs of the office in the proceeding in which the complaint was dismissed.

Subd. 4. HEARINGS PUBLIC. A hearing under section 211B.34 or 211B.35 may be conducted by conference telephone call or by interactive television. All hearings must be open to the public.

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Subd. 5. JUDICIAL REVIEW. A party aggrieved by a final decision on a complaint filed under section 211B.32 is entitled to judicial review of the decision as provided in sections 14.63 to 14.69; however, proceedings on a complaint filed under section 211B.32 are not a contested case within the meaning of chapter 14 and are not otherwise governed by chapter 14.

**Sec. 12. [211B.37] COSTS ASSESSED.**

Except as otherwise provided in section 211B.36, subdivision 3, the chief administrative law judge shall assess the cost of considering complaints filed under section 211B.32 as provided in this section. Costs of complaints relating to a statewide ballot question or an election for a statewide or legislative office must be assessed against the appropriation from the general fund to the general account of the state elections campaign fund in section 10A.31, subdivision 4. Costs of complaints relating to any other ballot question or elective office must be assessed against the county or counties in which the election is held. Where the election is held in more than one county, the chief administrative law judge shall apportion the assessment among the counties in proportion to their respective populations within the election district to which the complaint relates according to the most recent decennial federal census.

**Sec. 13. REPEALER.**

Minnesota Statutes 2002, sections 211A.08, subdivisions 1 and 2; and 211B.16, subdivisions 1 and 2, are repealed.

**Sec. 14. EFFECTIVE DATE.**

This act is effective July 1, 2004, and applies to violations committed on or after that date.

Presented to the governor May 18, 2004

Signed by the governor May 28, 2004, 7:15 a.m.

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**CHAPTER 278—S.F.No. 1790**

*An act relating to public administration; increasing the flexibility of local government contracting; increasing the purchasing authority of city managers in plan B cities; increasing the competitive bidding threshold for small cities; authorizing the use of reverse auction and electronic bidding and selling; clarifying the division of proceeds of state bond financed property; permitting Ramsey County to collect and retain up to a \$1 criminal surcharge in order to fund Ramsey County's petty misdemeanor diversion program; amending Minnesota Statutes 2002, sections 16A.695, subdivision 3; 373.01, subdivision 1; 412.691; 429.041, subdivisions 1, 2; 469.015, subdivisions 1, 3; 471.345, subdivisions 3, 4, by adding subdivisions; Minnesota Statutes 2003 Supplement, section 357.021, subdivisions 6, 7.*

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

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