

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 545

(Senator Frosh, *et al.*)

Judicial Proceedings

Judiciary

Legislative Immunity - Prosecutions for Bribery

This proposed constitutional amendment specifies that a provision establishing immunity for a senator or delegate from civil or criminal liability for words spoken in debate does not apply in a prosecution for demanding or receiving a bribe, fee, reward, or testimonial to influence the performance of, or to neglect or fail to perform, the senator's or delegate's official duties.

Fiscal Summary

State Effect: If the constitutional amendment is adopted, general fund expenditures of the Office of the State Prosecutor (OSP) may increase by \$71,900 in FY 2015 to hire an investigator and a part-time prosecutor. Future years reflect annualization and inflation. Any resulting penalties from additional bribery prosecutions are not expected to materially affect State finances.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	71,900	131,300	137,400	143,800
Net Effect	\$0	(\$71,900)	(\$131,300)	(\$137,400)	(\$143,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill is not expected to materially affect local government finances, as discussed below.

Small Business Effect: None.

Analysis

Current Law/Background: The Maryland Constitution, under Article III, § 18, specifies that no senator or delegate may be liable in any civil action, or criminal prosecution, for words spoken in debate. Under the Courts and Judicial Proceedings Article, § 5-501, of the Annotated Code, a civil or criminal action may not be brought against a city or town councilman, county commissioner, county councilman, or similar official by whatever name known, for words spoken at a meeting of the council or board of commissioners or at a meeting of a committee or subcommittee.

In a recent decision, *State v. Holton*, 420 Md. 530 (2011), the Maryland Court of Appeals affirmed the dismissal of an indictment of a local elected official based on the immunity provided by § 5-501 of the Courts and Judicial Proceedings Article. The indictment, alleging that bribery and other crimes were committed by the official, included various assertions of legislative actions taken by the official. In its opinion, the Court of Special Appeals described the legislative immunity or privilege of federal, State, and local legislative officials:

“[M]embers of legislative bodies – whether Congress, State legislatures or local councils – may be prosecuted for criminal behavior, including offenses such as bribery, misfeasance in office and criminal corruption. These legislators have no general immunity from criminal prosecution. Under what are often referred to as the “speech and debate” clauses in the Federal Constitution (Art. I, § 6) and the Maryland Constitution (Md. Decl. Of Rts. Art. 10 and Art. III, § 18), there is a caveat to that principle, however. Members of those bodies generally may not be compelled to answer for or defend, in a non-legislative governmental forum, what they say or do in the legislative process. C.J.P. § 5-501 provides the same level of protection to members of local legislative bodies.” (*See State v. Holton*, 193 Md. App. 322 (2010)).

State Fiscal Effect: If the constitutional amendment is adopted, general fund expenditures of OSP may increase by \$71,940 in fiscal 2015, which assumes expenditures increase beginning in January 2015, just after the 2014 general election. Potential general fund expenditure increases in fiscal 2016 and future years are over \$130,000, reflecting full annual costs. This estimate reflects the cost of hiring one investigator and one part-time prosecutor to investigate and prosecute allegations of bribery. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. OSP indicates that the bill allows the office to prosecute cases that would otherwise be closed after initial investigation because of legislative immunity. While bribery allegations may not arise frequently, OSP indicates that when they do arise, such investigations and prosecutions are very time-consuming and the office’s current staff cannot absorb the additional work.

Positions	1.5
Salaries and Fringe Benefits	\$62,275
Equipment	9,230
Supplies	<u>435</u>
Total FY 2015 State Expenditures	\$71,940

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Any resulting penalties from additional bribery prosecutions are not expected to materially affect State finances.

State costs of printing absentee and provisional ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). Any increase in costs, however, is expected to be relatively minimal, and it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001 (HB 1457), the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Fiscal Effect: Any resulting penalties from additional bribery prosecutions are not expected to materially affect local government finances.

Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on absentee and provisional ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

Additional Information

Prior Introductions: SB 284 of 2012 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 39 of 2012, a similar bill applicable to members of the General Assembly and local officials, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Office of the State Prosecutor, Judiciary (Administrative Office of the Courts), State Ethics Commission, Department of Legislative Services

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mc/kdm

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510