

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 1056 (Senator Ferguson)
 Education, Health, and Environmental Affairs

Election Law - Independent Expenditures and Electioneering Communications - Disclosure

This bill makes various changes with respect to reporting of independent expenditures and disbursements for electioneering communications, relating to (1) the scope and timing of reporting requirements, (2) registration of persons making independent expenditures or disbursements for electioneering communications, (3) sanctions applicable to failures to file reports properly, and (4) political committees that only make independent expenditures or disbursements for electioneering communications.

The bill takes effect January 1, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$20,000 in FY 2015 for programming costs. General fund revenues may also increase in future years due to the bill's civil penalty provisions.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	\$0	\$0	-	-	-
GF Expenditure	\$0	\$20,000	\$0	\$0	\$0
Net Effect	\$0	(\$20,000)	\$0	\$0	\$0

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Communications Subject to Reporting Requirements

The definition of “public communication,” relating to independent expenditures, is clarified and added to. The portion of the definition of “public communication” that includes any broadcast, cable, or satellite communication is clarified to mean any broadcast television or radio communication, cable television communication, or satellite television or radio communication. In addition, email blasts and text blasts are added to the definition of “public communication.” An email or text blast is a transmission of email or text messages of an identical or substantially similar nature to 5,000 or more email accounts or telephone numbers simultaneously.

The definition of “electioneering communication,” relating to disbursements for electioneering communications, is clarified in a similar manner as “public communication,” with respect to broadcast, cable, or satellite communications. The definition of “electioneering communication” is also added to by including an email or text blast, a mass mailing, a telephone bank, and an advertisement in a print publication. A mass mailing or telephone bank consists of mailing or faxing more than 5,000 pieces of mail matter, or more than 5,000 telephone calls, of an identical or substantially similar nature within any 30-day period (these thresholds are higher than the thresholds under the definition of public communication of 500 pieces of mail matter or telephone calls).

The portion of the existing definition of “electioneering communication” that limits the scope of electioneering communications to those communications which are capable of being received by 50,000 or more individuals in the constituency where the candidate or ballot issue is on the ballot only applies, under the bill, to communications transmitted by television or radio. A communication that is a mass mailing, an email blast, a text blast, a telephone bank, or a print advertisement only must be capable of being received by 5,000 or more individuals in the constituency where the candidate or ballot issue is on the ballot.

Timing of Reporting

A person must report independent expenditures for campaign material that is a public communication, or disbursements for electioneering communications, within 48 hours after a day on which the person makes aggregate expenditures or disbursements of \$10,000 or more in a four-year election cycle, and within 48 hours after a day on which the person makes subsequent expenditures or disbursements of an aggregate of \$10,000 or more.

Registration

A person must file a registration form with the State Board of Elections (SBE) within 48 hours of making aggregate independent expenditures for campaign material that is a public communication, or disbursements for electioneering communications, in an election cycle, of \$5,000 or more.

Reporting of Donors

An independent expenditure or electioneering communication report must include the identity of each person who made cumulative donations of \$10,000 or more to the person making the independent expenditures or disbursements for electioneering communications, during the period covered by the report, regardless of whether the donations were made for the purpose of furthering independent expenditures or electioneering communications. "Donation," however, does not include any amount of money or any other thing of value (1) received by a person in the ordinary course of any trade or business conducted by the person or in the form of investments in the person's business or (2) that is expressly agreed in writing may not be used for independent expenditures or electioneering communications, and, in the case of a monetary donation, is deposited in a separate bank account never used for independent expenditures or electioneering communications.

Civil Penalties

In addition to any other sanction provided by law, a person that fails to file properly an independent expenditure or electioneering communication report, or an amended report, is subject to a civil penalty of not more than the greater of \$1,000 per day or part of a day a report is overdue or 10% of the amount of donations, independent expenditures, or disbursements for electioneering communications not reported in a timely manner.

Political Committee Reporting

A political committee which makes exclusively independent expenditures or disbursements for electioneering communications must, in addition to other campaign finance reporting requirements applicable to a political committee, file a campaign finance report within 48 hours after a day on which the political committee makes aggregate expenditures of \$10,000 or more in an election cycle. A campaign finance report must also be filed within 48 hours after a day on which the political committee makes aggregate expenditures of \$10,000 or more following the closing date of the previous campaign finance report.

In addition to any other sanction provided by law, a political committee that fails to file properly a campaign finance report or an amended campaign finance report pursuant to the 48-hour reporting requirement is subject to a civil penalty of not more than the greater of \$1,000 per day or part of a day a report is overdue or 10% of the amount of contributions or expenditures not reported in a timely manner.

Current Law: Pursuant to Chapter 575 of 2011 (HB 93), persons who make independent expenditures for campaign material that is a public communication, or disbursements for electioneering communications, of \$10,000 or more must report information relating to those expenditures or disbursements to SBE. In general, independent expenditures are those that are not made in coordination with a candidate or campaign finance entity and that expressly advocate for or against a candidate or ballot question. Electioneering communications, on the other hand, do not expressly advocate for or against a candidate or ballot question, but refer to a clearly identified candidate or ballot question, are made within 60 days of an election, are capable of being received by 50,000 or more individuals in the constituency where the candidate or ballot question is on the ballot, and are not made in coordination with a candidate or campaign finance entity.

A “public communication” means any communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising; excluding, however, a news story, commentary, or editorial on a medium not controlled by a candidate or political party or a candidate debate or forum. An “electioneering communication” is limited to a broadcast, cable, or satellite communication.

Reports must be filed by the next deadline for campaign finance reports filed by campaign finance entities after a person makes aggregate independent expenditures for campaign material that is a public communication, or disbursements for electioneering communications, of \$10,000 or more in an election cycle, and after subsequent aggregate expenditures or disbursements of \$10,000 or more. There are no current requirements for a person who makes independent expenditures for campaign material that is a public communication, or disbursements for electioneering communications, to register with SBE.

Among other information that must be included on an independent expenditure or electioneering communication report, a report must include the identity of each person who made cumulative donations in excess of \$51, for the purpose of furthering independent expenditures or electioneering communications, to the person making independent expenditures or disbursements for electioneering communications during the period covered by the report.

A failure to file an independent expenditure or electioneering communication report is subject to the same sanctions applicable to a failure to file a campaign finance report, which include late fees (of \$10-\$20 per day, up to a maximum of \$250) assessed by SBE and eventual referral to the State Prosecutor if a person or campaign finance entity does not come into compliance.

For each election in which a campaign finance entity (political committee) participates, it generally must file campaign finance reports at various times prior to and after the primary and general elections. The reports generally must contain information required by SBE with respect to all contributions received and all expenditures made by or on behalf of the campaign finance entity during a reporting period along with contributor employer and occupation information, to the extent practicable, for contributors of \$500 or more to a campaign finance entity. Annual reports generally must also be filed on the third Wednesday in January.

Background: The bill is consistent with certain recommendations of the Commission to Study Campaign Finance Law regarding independent expenditures and electioneering communications, but also makes additional changes. See the attached **Appendix – Commission to Study Campaign Finance Law** for background information on the commission.

The commission's recommendations regarding independent expenditures and electioneering communications included:

- that the definition of “electioneering communication” be expanded to include print advertisements, direct mail, and phone banks;
- that rapid reporting of large contributions and expenditures by independent expenditure political committees, other groups that make independent expenditures, and ballot issue committees be required;
- that reporting of contributions aggregating over \$10,000 to entities, other than political committees, making independent expenditures or electioneering communications be required; and
- that penalties for failure to file independent expenditure reports that are proportionate to the seriousness of the violation be established.

State Expenditures: General fund expenditures increase by approximately \$20,000 in fiscal 2015 for programming of SBE's online campaign finance reporting information system to allow for 48-hour reporting of independent expenditures and electioneering communications. This accounts for the bill's effective date of January 1, 2015.

The bill's changes are not expected to have a fiscal impact on the Office of the State Prosecutor (OSP). Legislative Services advises, however, that this bill modifies provisions enacted under Chapter 575 of 2011 (HB 93) and OSP has not received, through the annual budget process, the additional prosecutor and investigator included in the fiscal and policy note for HB 93.

State Revenues: General fund revenues may increase in future years to the extent penalties are collected under the bill's civil penalty provisions. The extent of any increase in revenues cannot be reliably estimated, but could be relatively significant if large expenditures or donations go unreported or if reports are significantly overdue.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections, Office of the State Prosecutor, State Ethics Commission, Department of Legislative Services

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mc/hlb

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Appendix – Commission to Study Campaign Finance Law

The Commission to Study Campaign Finance Law was established by the General Assembly under Joint Resolution 1 of 2011. The commission was charged with studying the State's regulation of campaign finance, including a number of specific issues, and making recommendations for improvements. The commission convened in December 2011 and submitted an interim report in January 2012 and a final report in December 2012. A number of the commission's recommendations in its January 2012 interim report, which consisted largely of targeted changes to administrative requirements of the State Board of Elections and/or campaign finance entities, were considered and enacted during the 2012 regular session.

The commission's December 2012 final report – drawing on testimony from various sources, staff research, and extensive commission discussions over the course of 2012 – contains a more expansive set of recommendations, covering:

- the level of contribution limits;
- the treatment of contributions from business entities under common management or ownership, for purposes of the contribution limits;
- the law governing the use of slates;
- establishment of caucus committees for the use of General Assembly party caucuses;
- independent expenditures;
- enforcement of campaign finance laws;
- public financing of campaigns;
- disclosure of small contributions;
- the campaign finance reporting schedule;
- disclosure of contributions by government contractors; and
- the availability of Attorney General advice regarding campaign finance laws.

The commission's [interim report](#) and [final report](#) may be found on the Maryland General Assembly website (<http://mgaleg.maryland.gov>).