

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 885
Ways and Means

(Delegate Platt, *et al.*)

Corporations - Political Expenditures - Stockholder Approval

This bill prohibits a Maryland corporation from using any money or other corporation property in connection with a political expenditure, as defined in the bill, unless the corporation's stockholders have authorized in advance the total amount of money or property that may be used for all political expenditures during a specific fiscal year of the corporation and directed that the money or property be used for specified purposes. The bill also requires a corporation to publish notice of political expenditures. The bill authorizes the Office of the Attorney General (OAG) to enforce the bill. Violations may result in civil penalties, injunctions, or other specified penalties.

Fiscal Summary

State Effect: OAG can handle enforcement with existing resources. Revenues are not materially affected.

Local Effect: Local government operations and finances are not likely affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines "political expenditure" as a contribution, gift, transfer, disbursement, or promise of money or a thing of value to promote or assist in the promotion of the success or defeat of a candidate, political party, or question in any State or federal election.

A corporation's stockholders, by an affirmative vote of a majority of all votes entitled to be cast, must both authorize in advance the total amount of money or property that may

be used for all political expenditures during a specific fiscal year of the corporation and direct that the money or property be used for (1) a specific candidate or candidates; (2) candidates of a specific political party or parties; (3) a specific political party or parties; (4) a specific political committee or committees; (5) a specific tax-exempt entity or entities; or (6) a specific question or questions.

Stockholder consideration of political expenditures must occur at an annual or special meeting of the stockholders.

Within 48 hours after making a political expenditure, the corporation must give electronic notice of the political expenditure to each stockholder that has requested notice and post notice of the political expenditure on the corporation's website. The notice must state the amount, recipient, date, and purpose of the political expenditure. The corporation's annual report must also contain a list of all political expenditures made by the corporation during the reporting period, including the amount, recipient, date, and purpose of each political expenditure.

OAG may bring an action against a person who has violated the bill's prohibitions. OAG may seek (1) a temporary restraining order; (2) a temporary or permanent injunction; (3) a civil penalty of up to three times the amount of the political expenditure (for an unauthorized political expenditure) or \$5,000 (for any other violation); (4) a declaratory judgment; (5) rescission; (6) restitution; and (7) any other appropriate relief.

Current Law: The business and affairs of a corporation are managed under the direction of a board of directors and all powers of the corporation may be exercised by or under the authority of the board of directors except as conferred on or reserved to the stockholders by law or by the charter or bylaws of the corporation. "Stockholder" is defined under the Corporations and Associations Article as a person who is a record holder of shares of stock in a corporation and includes a member of a corporation organized without stock.

A corporation generally must hold an annual meeting of its stockholders to elect directors and transact any other business within its powers. A special meeting may also be called by the president, board of directors, any other person specified in the corporation's charter or bylaws, or a certain percentage of the stockholders. Unless otherwise provided under State law or the charter of a corporation, the presence in person or by proxy of stockholders entitled to cast a majority of all votes entitled to be cast at a meeting constitutes a quorum, and a majority of all votes cast at a meeting at which a quorum is present is sufficient to approve a matter. Certain charter amendments and significant actions such as consolidations and mergers are among actions that require a two-thirds vote of all votes entitled to be cast.

Except as otherwise provided by law or its charter, a Maryland corporation has the general power to make gifts or contributions in cash, other property, or stock or other corporation securities to or for the use of (1) the United States, the State or another state, an institution, an agency, or a political subdivision of any of them and (2) any governmental or other organization, whether inside or outside the United States, for religious, charitable, scientific, civic, public welfare, literary, or educational purposes.

Background: In *Citizens United v. FEC*, the Supreme Court of the United States held that prohibiting or limiting independent expenditures by corporations and organizations using corporate funds violates the First Amendment.

In response to the *Citizens United* decision, the Brennan Center for Justice at the New York University School of Law recommended two reforms to corporate law: (1) require managers to report corporate political spending directly to shareholders; and (2) require managers to obtain authorization from shareholders before making political expenditures with corporate funds. According to a *Washington Post* article, an increasing number of shareholders across the country are submitting proposals to boards of directors to increase transparency in corporations' political spending. Since 2004, 217 companies have been urged by investors to make the disclosures, and 118 have adopted such policies. Proponents of disclosure claim that shareholders must know precisely how a company spends money on politics in order to assess if the spending exposes shareholders to reputational, business, or legal risks. Companies, however, maintain that political expenditures are already vetted internally to ensure the contributions are in the best interests of the company and its shareholders, and that proposed disclosure requirements are inefficient.

Additional Information

Prior Introductions: None.

Cross File: SB 153 (Senator Raskin, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): State Department of Assessments and Taxation, Office of the Attorney General, Brennan Center for Justice (New York University School of Law), *The Washington Post*, Department of Legislative Services

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