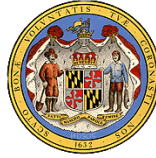


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SUPPORT FOR SENATE BILL 15

Mr. Chairman and Members of the Education, Health, and Environmental Affairs Committee:

We are writing to express the Office of the State Prosecutor's support for Senate Bill 15. The Office of the State Prosecutor is tasked with enforcement of Maryland election laws and believes that extending the statute of limitations from three years to four years on election law offenses would aid in the Office of the State Prosecutor's ability to enforce Maryland election laws and preserve the integrity of the electoral process. Further, SB 15 would fix a technical loophole in Title 14 of the election law article which prevents meaningful enforcement of violations under that provision.

The Office of the State Prosecutor

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of State government and elections by conducting thorough, independent investigations and, when appropriate, prosecutions of criminal conduct affecting the integrity of our State and local government institutions, officials, employees and elections.

Election Violations- Statute of Limitations

The current statute of limitations for state election law violations is three years. Election law violations can be reported in various ways, including: direct complaints to the Office of the State Prosecutor (from citizens or from a local State's Attorney or the Office of the Attorney General), investigations by the Office of the State Prosecutor as a result of failing to file reports, and referrals from the State Board of Elections.

The majority of the complaints come from the State Board of Elections. The State Board is often able to handle administrative violations of the election laws. If the crime is complex, however, requiring review of bank records and financial documents, or there is a failure to comply with the State Board of Elections, the case is referred to the Office of the State Prosecutor for civil or criminal enforcement action.

The State Board of Elections has two auditors to review thousands of campaign reports. The cases that are referred to the Office of the State Prosecutor are most often referred after a certain audit

cycle where an entity either failed to file or there was suspicious activity reflected on the campaign report. Due to the breadth of information involved, identifying suspicious activity is often limited to clear over contributions and other obvious violations, such as an anonymous donation or a donation from an inappropriate entity.

If an administrative violation is identified, the State Board of Elections spends months trying to bring the entity into compliance. It is usually only after initial detection and consequent months of remedial effort on the part of the State Board of Elections that the Office of the State Prosecutor begins our investigation. By the time the Office of the State Prosecutor is notified of an abnormality, it is routinely a year or in some cases years after the action in question.

For clear statutory violations, we initiate civil enforcement. For criminal enforcement of theft, straw contributions, and other significant violations, however, the detection and subsequent investigation can take years to resolve. Such cases will often not be caught by the auditors at the State Board of Elections. They come to light only through the review of bank records and other investigative tactics executed by the Office of the State Prosecutor. Oftentimes the suspicious behavior is intentionally designed to make detection difficult, if not impossible, within a three year cycle. Accordingly, we often have only one contested election cycle of information to review. This forecloses any proactive investigative actions by the Office, often precluding the prosecution of responsible individuals.

These cases are serious and undermine the transparency and fairness of our democracy. Voters should have the opportunity to truly see who is funding the campaigns of their elected representatives. Individuals who attempt to undermine the process can bolster their campaigns through reporting more fundraising than they have actually received and by misrepresenting the sources of their campaign fundraising.

The current statute of limitations is unfair to Maryland voters and unfair to the majority of elected officials and individuals who run for office and follow the rules. We encourage this Committee to issue a favorable report on Senate Bill 15.

Title 14

Title 14 mandates that business entities that have a single contract of at least \$200,000 with a governmental entity file statements with the State Board of Elections listing the business' applicable campaign contributions. Title 14 encourages transparency and seeks to avoid corruption in the award of State contracts.

The Office of the State Prosecutor was seemingly meant to have civil enforcement power over violations of Title 14, but a technical loophole is preventing us from exercising that power. SB 15 would close the loophole, affording the civil enforcement power that many assume we already have.

Title 14 has specific language for criminal enforcement.¹ However, Title 14 is silent as to civil enforcement. Limiting our enforcement power to situations that rise to the level of a crime renders Title 14 practically unenforceable and as a result significantly hinders compliance.

A criminal violation of Title 14 requires that it is a willful and knowing violation. As a practical matter, this means that to bring a criminal charge resulting from a business' failure to file a required statement, we would need evidence that a decision-maker at the company specifically directed the company not to file the disclosure. This type of evidence is simply not available in most cases. Instead, what we typically see is that the company was negligent in failing to file the disclosure, or there is no specific evidence regarding the reason the company failed to file the disclosure. Thus, the criminal *mens rea* requirement is not met.

Civil enforcement, on the other hand, would permit us to civilly cite the business entity when it has not complied with the requirements of Title 14. It does not require us to see into the minds of the individual officers or decision makers to evaluate why they did not file the required disclosure.

It is our understanding that the drafters of Title 14 intended the Office of the State Prosecutor to have both civil and criminal enforcement power. This intention is congruent with the fact that we have both civil and criminal enforcement power in the analogous Title 13, which regulates the filing of campaign finance reports.² In fact, the proposed language in section 14-108 of the bill mirrors the language from Title 13 discussing our civil enforcement power.³

Importantly, Title 14 provides that the State Board may impose late fees in the same amount and manner as provided under Title 13.⁴ The imposition of late fees necessitates a civil enforcement mechanism. As Title 14 currently stands, there is no ability take any enforcement action when late fees are not paid. As a result, fees go uncollected.

Title 14 is an important tool promoting transparency and integrity in government contracting. SB 15 provides a much needed fix which will enable Title 14 to be enforced in a meaningful way.

Sincerely,

CHARLTON T. HOWARD
MARYLAND STATE PROSECUTOR

¹ E.L. § 14-107.

² See E.L. § 13-603-604.

³ E.L. §13-604.

⁴ E.L. § 14-107 (c).