

Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Board of Elections
(DLS Control No. 14-195)

Overview and Legal and Fiscal Impact

These regulations implement a recently amended statute requiring that campaign contributions by business entities under common ownership or control be treated as one contributor. The regulations specify criteria for determining when business entities are under common ownership or control and describes how the law will apply in certain situations. The regulations also prohibit a business entity that is under common ownership or control with a business entity that has an interest in a video lottery facility from making campaign contributions.

While the regulations are generally supported by a broad grant of statutory authority, one provision of the regulations is arguably inconsistent with legislative intent.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Board of Elections:

Campaign Financing: Contributions by Business Entities:
COMAR 33.13.16.01 and .02

Legal Analysis

Background

The Campaign Finance Reform Act of 2013 (Chapter 419) altered the treatment of campaign contributions made by business entities under common ownership or control. Effective January 1, 2015, business entities “owned or controlled by at least 80% of the same individuals or business entities” are considered to be one entity for purposes of campaign contribution limits. Also, a business entity and any wholly owned subsidiary of the business entity are considered to be one entity. Under current law, only a corporation and any wholly owned subsidiary of the corporation or two or more corporations owned by the same stockholders are considered to be a single entity for purposes of the campaign contribution limits.

Summary of Regulations

These regulations specify criteria for determining when business entities are under common ownership or control for purposes of the limitations on campaign contributions. The regulations focus on such factors as control of beneficial ownership or equity, voting shares or rights, and membership or partnership interests. Another factor is whether the same individuals direct the political spending of the business entities or have day-to-day responsibility for operating the business entities.

Business entities are required to notify a political committee in writing at the time of making a contribution if an affiliated business entity has made a prior contribution to the political committee during the election cycle.

The treatment of business entities that come under common ownership or control during the election cycle is also addressed. Contributions made prior to the business entities coming under common ownership or control are not attributed to another affiliated entity, but contributions made after the entities come under common ownership or control are attributed to the other affiliated entities. Once business entities come under common ownership or control, they are considered to be affiliated for the remainder of the election cycle.

The regulation provides that a business entity that is under common ownership or control with another business entity that is prohibited from making campaign contributions is also prohibited from making campaign contributions. Business entities that are prohibited from making campaign contributions include (1) entities that derive a majority of their operating funds from the State and (2) entities that apply for or hold a video lottery operation license or own at least a 5% interest in the operation of a video lottery facility in the State.

Finally, the regulations prohibit a change or alteration of the ownership or control of a business entity for the purpose of circumventing campaign contribution limits.

The regulations take effect January 1, 2015.

Legal Issue

The regulations prohibit a business entity that is under the same ownership or control as an entity that has an interest in a video lottery facility from making campaign contributions. It is not clear that the General Assembly intended this result when it amended § 13-226(e) of the Election Law Article in Chapter 419 of 2013 to state that contributions by two or more business entities shall be considered as being made by one contributor if they are “owned or controlled by at least 80% of the same individuals or business entities.” The purpose of altering the treatment of contributions by affiliated business entities was to prevent one or more persons from making campaign contributions through multiple businesses under their control, thereby exceeding the campaign *contribution limits* that would otherwise apply to them as individuals; it does not appear that the statute was intended to also apply to existing campaign contribution *prohibitions*, as the application of the rule to contribution bans was not discussed. For example, this language on affiliated business entities is codified in the section of law (and the part of the Campaign Finance Organization and Activity Subtitle) dealing with contribution limits, which suggests that it was intended to apply in that context. The prohibition on contributions by video lottery interests is codified in a different section and part of the same subtitle.

Nevertheless, the language of § 13-226(e) does not expressly limit the application of the affiliated business entities rule to the context of contribution limits. And § 13-237 prohibits a person with an interest in a video lottery facility from “directly *or indirectly*” (emphasis added) making a contribution. Thus, it may be reasonable to interpret that a contribution made by a business entity under 80% or more of the same ownership or control as an entity with an interest in a video lottery facility would be an “indirect” contribution and prohibited under § 13-237. Therefore, while the regulations’ application of the affiliated business entity provisions are likely beyond the scope of what was intended by the General Assembly when it passed the Campaign Finance Reform Act of 2013, it is unclear whether the regulations are an unreasonable interpretation of the authority of the State Board of Elections (SBE).

Statutory Authority and Legislative Intent

SBE cites several sections of the Election Law Article as authority for the regulations. Under § 2-102(b)(4), SBE has broad authority to “adopt regulations to implement its powers and duties.” The statutory language governing contributions by affiliated business entities is codified in § 13-226(e). And the prohibition on campaign contributions by persons with an interest in a video lottery facility is codified in § 13-237. The regulations implement these statutory provisions. However, as noted above, the regulations may not be entirely consistent with the legislative intent of Chapter 419 of 2013.

Technical Corrections and Special Notes

SBE originally cited only § 2-102(b)(4) of the Election Law Article as authority for the regulation. SBE subsequently agreed to also cite §§ 13-226 and 13-237 as authority.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

SBE advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs. While the fiscal and policy note for HB 1499 of 2013 (enacted as Chapter 419) identified additional costs and penalty/fee revenues associated with implementing various parts of the bill, these regulations implement only one part of the bill (attribution of contributions by business entities) and, regardless, should not have any fiscal impact independent of the impacts identified in the HB 1499 fiscal and policy note.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

SBE advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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