

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
State Board of Elections**  
(DLS Control No. 15-208)

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**Overview and Legal and Fiscal Impact**

The regulations require that an anonymous contribution received by a campaign finance entity be remitted to the Fair Campaign Financing Fund. The regulations also alter certain procedures relating to the imposition of civil penalties for certain violations of election law.

The regulations present several legal issues of concern of which the State Board of Elections has been notified. Please see the Legal Issue and Special Notes sections of the Legal Analysis below for additional comments.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**State Board of Elections:**

Violations: Civil Penalties: COMAR 33.18.01.03 and .04

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**Legal Analysis**

**Background**

Chapter 312 of 2015 redirected many fines, fees, and revenues under the Election Law Article to the Fair Campaign Financing Fund, which finances the State's system of public campaign financing for gubernatorial tickets. State election law prohibits certain State officials from engaging in campaign fundraising activities during the legislative session.

**Summary of Regulations**

The regulations require that an anonymous contribution received by a campaign finance entity be remitted to the Fair Campaign Financing Fund. The regulations also require the State board to issue a civil citation for violations of § 13-235 of the Election Law Article, which prohibits campaign fundraising activities during the legislative session. Lastly, the regulations require the State board to allow a reduction in the amount of a civil penalty without issuing a civil citation if a candidate or political committee voluntarily reports a violation or agrees that a violation occurred.

## **Legal Issue**

Several provisions of these regulations are of doubtful legality. The provision requiring the issuance of a civil citation for a violation of the prohibition on campaign fundraising during the legislative session has no statutory support. Section 13-235(f)(2) of the Election Law Article provides that the State board “may institute a civil action in the circuit court for any county seeking the civil penalty provided in this subsection.” The statute makes no mention of the State board issuing a civil citation for a violation. In other instances where the Election Law Article establishes civil penalties for violations, the authority to issue a civil citation is expressly stated, and the contents of the citation and procedures for issuing and responding to the citation are specified (*See* § 13-604(b) and § 13-604.1(g)). This demonstrates the General Assembly’s concern for due process when civil citations are to be issued. The clear inference is that if the General Assembly had intended for the State board to issue civil citations under § 13-235(f), it would have stated that. Instead, the General Assembly intended the penalty to be assessed through the procedures of the circuit court.

The provision requiring the State board to reduce the amount of a civil penalty without issuing a civil citation if a violator reports the violation or agrees a violation occurred is also inconsistent with statute. The State board has no authority to determine the amount of a civil penalty under § 13-235(f)(3). The law states that the penalty for violating the prohibition on fundraising during session “shall” be equal to “the sum of \$1,000 plus the amount of the [improper] contribution.” The State board may not assess a lesser penalty. It is permissible, however, for the State board to impose a lesser civil penalty for a campaign finance law violation specified in § 13-604.1. The statute provides in § 13-604.1(d) that “The amount of a civil penalty imposed under this section may not exceed \$500 for each violation.”

Finally, the regulation allows a civil penalty to be assessed without the issuance of a civil citation to the violator. Section 13-604.1(b) states that “The State Board may impose a civil penalty in accordance with this section” for specified violations. The section only allows a civil penalty to be assessed if a civil citation is issued and specified procedures are followed. The State board may not dispense with the civil citation process and still assess a civil penalty. Otherwise, there is no reason the State board could not assess a civil penalty without issuing a citation in a case where the alleged violator disputes the charges. The General Assembly could not have intended this result.

## **Statutory Authority and Legislative Intent**

The State board cites §§ 2-102(b)(4), 13-235, and 13-604 of the Election Law Article as statutory authority for the regulations. Section 2-102(b)(4) requires the State board to adopt regulations to implement its powers and duties. Section 13-235 prohibits certain officials from engaging in campaign fundraising activities during a regular session of the General Assembly and authorizes the State board to institute a civil action seeking a civil penalty for a violation of this provision of law. Section 13-604.1 authorizes the State board to impose a civil penalty for specified violations and states that the civil penalty is in addition to any other sanction provided by law. Section 13-604.1 also authorizes the State board to issue a citation to any person that the State board believes is committing or has committed specified violations. Although not cited by the State board, § 13-239 requires that anonymous contributions be remitted to the Fair Campaign Financing Fund.

With the addition of § 13-239 of the Election Law Article, this authority is correct and complete for Regulations .03 and .04B and C, and these provisions comply with the legislative intent of the law. However, as discussed in the Legal Issue section, there is no statutory authority to support Regulation .04D or E, as it pertains to reducing the amount of a penalty imposed under § 13-235. Therefore, these provisions do not comply with the legislative intent of the law.

### **Technical Corrections and Special Notes**

The legal concerns with these regulations were discussed with State board staff. The staff does not agree with the above analysis and declines to make changes to address these concerns. However, the State board does agree to add § 13-239 of the Election Law Article as statutory authority for the regulations.

### **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The State Board of Elections advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs. The regulations in part implement Chapter 312 of 2015 by directing anonymous contributions and contributions without proper records to the Fair Campaign Financing Fund rather than the State Treasurer. The fiscal and policy note for House Bill 485 of 2015 (enacted as Chapter 312) indicated that the redirection of anonymous campaign contributions to the Fair Campaign Financing Fund was not expected to have a material fiscal impact. These regulations should not have any independent fiscal impact.

### **Impact on Budget**

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

### **Agency Estimate of Projected Small Business Impact**

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

### **Contact Information**

**Legal Analysis:** Stanford D. Ward – (410) 946/(301) 970-5350

**Fiscal Analysis:** Scott D. Kennedy – (410) 946/(301) 970-5510