

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 458

(Senator Kagan)

Education, Energy, and the Environment

Ways and Means

Campaign Finance - Political Organizations - Prohibitions and Disclosures

This bill prohibits certain persons that make political expenditures or disbursements from making expenditures or disbursements to specified entities. Such persons must also include specified disclosures on their website(s) that solicit contributions or donations. The State Administrator of Elections is authorized to investigate potential violations, and the State Board of Elections (SBE) may impose specified penalties for a violation. Existing civil and criminal penalties also apply to the bill’s provisions. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: General fund expenditures increase by \$216,300 in FY 2025; future years reflect annualization and ongoing costs. Special fund (Fair Campaign Financing Fund) revenues may increase annually, beginning in FY 2025.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	-	-	-	-	-
GF Expenditure	\$216,300	\$255,500	\$266,900	\$278,600	\$290,800
Net Effect	(\$216,300)	(\$255,500)	(\$266,900)	(\$278,600)	(\$290,800)

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

Local Effect: The bill is not anticipated to materially affect local government finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Applicability and Selected Definitions

The bill applies to persons that make independent expenditures or disbursements for electioneering communications, or participating organizations that make political disbursements, in amounts that require them to file reports with SBE. The bill also applies to a political action committee that (1) is not affiliated with a corporation or labor organization and (2) exclusively makes independent expenditures or disbursements for electioneering communications.

“Immediate family member” means a parent, mother-in-law, father-in-law, grandparent, child, son-in-law, daughter-in-law, grandchild, spouse, or sibling. “Solicitation” means a request for contributions or donations to a person disseminated through any medium.

Prohibition on Expenditures or Disbursements to Specified Entities

Persons subject to the bill’s provisions may not make expenditures or disbursements to an entity owned or controlled in whole or in part by an individual, or by an immediate family member of an individual, who is (1) authorized to carry out executive or managerial authority over the operation of the person; (2) authorized to solicit or disburse funds for or on behalf of the person; or (3) a paid or unpaid employee of the person and who provides the person with professional services, other than accounting or legal services, relating to the person’s campaign or fundraising strategy. Persons subject to the bill’s provisions may not employ or allow to volunteer on behalf of the person an individual who owns or controls an entity that has received such prohibited expenditures or disbursements.

Disclosure Requirements

Solicitation and Website Disclosures

Persons subject to the bill’s provisions that support or oppose a candidate or political party but are not authorized by the candidate or political party must include on each website operated by the person for purposes of soliciting contributions or donations the following statement in a clear and conspicuous manner: “This website is not the official website of (name of candidate or political party).” The statement must be included on (1) the website’s home page and (2) each webpage used for soliciting contributions or donations.

Persons subject to the bill’s provisions must include on each website operated by the person for purposes of soliciting contributions or donations a clear and conspicuous disclosure of

(1) the number of years the person has been in existence; (2) the 10 largest recipients of expenditures or disbursements made by the person in the most recently completed calendar quarter; and (3) the percentage of expenditures in the most recently completed calendar quarter that are disbursements made in furtherance of the candidate or ballot issue that the person supports or opposes.

Enforcement Provisions

The bill gives the State Administrator of Elections (or the administrator's designee) specified authority (including subpoena authority) to investigate potential violations of the bill's provisions. At the conclusion of an investigation, SBE must issue a public report of its findings and may (1) prohibit a person who violated the bill's provisions from soliciting contributions or donations for a period of time determined by SBE or (2) impose a civil penalty of up to \$10,000.

Pursuant to existing penalty provisions, the State Prosecutor may impose a civil penalty of up to \$5,000, for an unknowing violation of a provision of Title 13 of the Election Law Article (to which the bill's provisions are added), and a person who knowingly and willfully violates a provision of Title 13 is guilty of a misdemeanor and subject to a fine of up to \$25,000 and/or imprisonment for up to one year.

Current Law:

Campaign Finance Entities (Political Committees)

Unless otherwise expressly authorized by law, all campaign finance activity for an election under the Election Law Article must be conducted through a campaign finance entity (defined as a political committee established under Title 13 of the Election Law Article). An individual may not file a certificate of candidacy or a declaration of intent until the individual establishes, or causes to be established, an authorized candidate campaign committee (a campaign finance entity authorized by the candidate to promote the candidate's candidacy).

"Political committee" is defined as a combination of two or more individuals that has as its major purpose promoting the success or defeat of a candidate, political party, question, or prospective question submitted to a vote at any election.

"Political action committee" is defined as a political committee that is not a political party, a central committee, a slate, a legislative party caucus committee, an authorized candidate campaign committee, or a ballot issue committee.

Whether establishing and filing with SBE as an authorized candidate campaign committee or other campaign finance entity, a political committee must include with the filing a statement of organization that includes a statement of purpose specifying (1) each candidate or ballot question, if any, that the political committee was formed to promote or defeat; (2) the identity of each special interest, including any business or occupation, that the organizers of or contributors to the political committee have in common; and (3) whether the political committee will participate in presidential, gubernatorial, Baltimore City, or multiple elections.

For each election in which a campaign finance entity participates, it generally must file campaign finance reports at various times prior to and after the primary and general elections, as well as an annual report. The reports 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.

Subject to certain exceptions, a person may not make aggregate contributions of more than \$6,000 to any one campaign finance entity in a four-year election cycle, and a campaign finance entity may not make transfers in a cumulative amount of more than \$6,000 to any one other campaign finance entity in a four-year election cycle.

Independent Expenditures and Electioneering Communications

Independent expenditures in general – political spending by individuals or organizations without coordination with a candidate – cannot be limited or prohibited, pursuant to the 2010 Supreme Court decision *Citizens United v. FEC*. Requirements for disclosure of independent expenditures, however, have been upheld by courts. Under Maryland’s disclosure requirements, independent expenditures are expenditures for public communications that are not made in coordination with a candidate or campaign finance entity and that expressly advocate the success or defeat of a clearly identified candidate or ballot question. Electioneering communications, on the other hand, do not expressly advocate the success or defeat of 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 a certain amount of individuals (with the amount depending on the type of communication) 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.

Within 48 hours after a person makes aggregate independent expenditures or disbursements for electioneering communications of \$5,000 or more in an election cycle, the person must file a registration form with SBE. Within 48 hours after a day on which a person makes aggregate independent expenditures or disbursements for electioneering communications of \$10,000 or more in an election cycle, the person must file a report with SBE providing information on the person, the expenditures or disbursements, and persons who made

cumulative donations of \$6,000 or more to the person during the period covered by the report. Further, a person who files an independent expenditure or electioneering communication report must file an additional report within 48 hours after a day on which the person makes aggregate independent expenditures or disbursements for electioneering communications of \$10,000 or more following the closing date of the person's previous report.

Participating Organizations

A "participating organization" is an entity that is organized under § 501(c)(4) or (6) or § 527 of the Internal Revenue Code and makes political disbursements (contributions to a campaign finance entity, disbursements to persons making independent expenditures or disbursements for electioneering communications in the State, or disbursements to out-of-state political committees that make a disbursement in the State).

Participating organizations that make aggregate political disbursements of more than \$6,000 in a four-year election cycle must file a registration form with SBE within 48 hours and are subject to reporting/disclosure requirements after spending \$10,000 or more. The reports filed must include the amount and date of each political disbursement made in the State or to influence a State election and the identity of each person that made cumulative donations of \$10,000 or more to the participating organization.

Political Action Committees That Only Engage in Independent Spending

Consistent with legal authority on the issue, SBE indicates, in [Chapter 5](#) of its *Summary Guide to Maryland Candidacy and Campaign Finance Laws* that it does not interpret the limits applicable to contributions to most campaign finance entities to apply to contributions or donations to political action committees that make only independent expenditures or disbursements for electioneering communications (commonly referred to as "Super PACs"). SBE regulations establish that a person may make an unlimited contribution to a political action committee that is registered to make exclusively independent expenditures, disbursements for electioneering communications, or both.

A political action committee that exclusively makes independent expenditures or disbursements for electioneering communications, in addition to filing campaign finance reports required of all campaign finance entities, must file a disclosure report within 48 hours after a day on which the political action committee makes aggregate expenditures of \$10,000 or more on campaign material during the reporting period covered by its next campaign finance report, and must file additional disclosures for each subsequent \$10,000 or more spent on campaign material. A disclosure report must include information required by SBE with respect to all contributions received and all expenditures made by or on behalf of the political action committee during the reporting period.

Campaign Material

“Campaign material” means any material that (1) contains text, graphics, or other images; (2) relates to a candidate, a prospective candidate, or the approval or rejection of a question or prospective question; and (3) is published, distributed, or disseminated. “Campaign material” includes (1) a qualifying paid digital communication; (2) any other material transmitted by or appearing on the Internet or other electronic medium; and (3) an oral commercial campaign advertisement. [Chapter 12](#) of SBE’s *Summary Guide to Maryland Candidacy and Campaign Finance Laws* confirms that solicitations are campaign material.

Each item of campaign material generally must contain an authority line that states (1) as to campaign material published, distributed, or disseminated by a campaign finance entity, the name and address of the treasurer of each campaign finance entity responsible for the campaign material and the name of each campaign finance entity for which each treasurer is acting and (2) as to campaign material published, distributed, or disseminated by any other person, the name and address of the person responsible for the campaign material. The authority line may omit an address that is on file with SBE or a local board.

Campaign material that is published or distributed in support of or in opposition to a candidate, but is not authorized by the candidate, must include the statement “This message has been authorized and paid for by (name of payor or any organization affiliated with the payor), (name and title of treasurer or president). This message has not been authorized or approved by any candidate.”

SBE is authorized to impose a civil penalty of up to \$1,000 for a failure to include an authority line on campaign material. A person who violates the authority line requirements is also guilty of a misdemeanor and (1) subject to a fine of up to \$1,000 and/or imprisonment for up to one year and (2) ineligible to hold any public or party office for four years after the date of the offense.

State Expenditures: General fund expenditures increase by \$216,250 in fiscal 2025, which accounts for a 90-day start-up delay from the bill’s July 1, 2024 effective date. This estimate reflects the cost of (1) SBE hiring one administrator position to conduct investigations of violations of the bill’s provisions (that are expected to be resource intensive), produce the required public reports, and administer penalties and (2) the Office of the State Prosecutor (OSP) hiring one investigator and one paralegal to conduct similarly resource intensive investigations of violations of the bill’s provisions. SBE and OSP indicate that existing staff cannot absorb the potential workload that may result from the bill. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$194,482
Operating Expenses	<u>21,768</u>
Total FY 2025 State Expenditures	\$216,250

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

State Revenues: Special fund revenues increase, beginning in fiscal 2025, to the extent monetary penalties are collected for violations of the bill’s provisions. Penalties collected under the Election Law Article are deposited in the Fair Campaign Financing Fund, which holds funds for public campaign financing of gubernatorial tickets under the Public Financing Act.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 494 (Delegate Palakovich Carr) - Ways and Means.

Information Source(s): State Board of Elections; State Prosecutor’s Office; Department of Legislative Services

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