

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 690  
Ways and Means

(Delegate Cardin, *et al.*)

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Election Law - Persons Doing Public Business - Independent Expenditures

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This bill prohibits a person doing public business from making an independent expenditure for campaign material that supports or opposes a candidate or political party. "Doing public business" means making, during any 12-month period, one or more contracts with one or more governmental entities involving cumulative consideration of at least \$100,000, but does not include receiving a salary from a governmental entity.

The bill takes effect June 1, 2010.

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Fiscal Summary

**State Effect:** Enforcement of the bill's prohibition can be handled with existing resources assuming the number of complaints of violations is minimal. To the extent a more significant number of complaints are received, additional resources in the Office of the State Prosecutor may be needed. General fund revenues may increase minimally due to criminal/civil penalties from any cases heard in District Court.

**Local Effect:** Local government revenues may increase minimally due to criminal penalties from any cases heard in circuit courts.

**Small Business Effect:** None.

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Analysis

**Current Law:** State law does not limit independent expenditures in connection with elections. "Independent expenditure" is defined under the Election Law Article as an expenditure by a person to aid or promote the success or defeat of a candidate if the

expenditure is not made in coordination with, or at the request or suggestion of, the candidate, a campaign finance entity of the candidate, or an agent of the candidate.

“Campaign material” is defined as 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; and (3) is published or distributed. Campaign material includes material transmitted by or appearing on the Internet or other electronic medium and an oral commercial campaign advertisement. Campaign material published or distributed by persons other than a campaign finance entity must include an authority line, set apart from any other message, that states the name and address of the person responsible for the campaign material.

Title 14 of the Election Law Article requires a person or entity doing public business to file statements with the State Board of Elections semi-annually regarding political contributions of over \$500 (or a series of contributions with a cumulative amount of over \$500) made by the person or entity doing public business.

Except as otherwise provided for specific offenses, a person who knowingly and willfully violates a provision of Title 13 (“Campaign Finance”) of the Election Law Article (within which the bill’s prohibition is included) is guilty of a misdemeanor and on conviction is subject to a fine of up to \$25,000 and/or imprisonment for up to one year. An unknowing violation is subject to a civil penalty of up to \$5,000. The Secretary of State may also seek an immediate injunction against a violation of Title 13.

**Background:** The U.S. Supreme Court, in *Citizens United v. Federal Election Commission*, recently invalidated federal restrictions on corporate independent expenditures in connection with certain qualified federal elections. The National Conference of State Legislatures (NCSL) indicates that, while not directly affecting state laws, the ruling will have a significant effect on laws governing corporate political activity in nearly half the states, likely causing laws in those states to not be enforced and/or repealed or modified. According to NCSL, there are at least 23 states (not including Maryland) that currently prohibit or restrict corporate and union spending on candidate elections.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** Although SB 691 (Senator Raskin, *et al.* – Education, Health, and Environmental Affairs) is designated as a cross file, it is not identical.

**Information Source(s):** State Board of Elections, State Prosecutor's Office, National Conference of State Legislatures, Department of Legislative Services

**Fiscal Note History:** First Reader - March 7, 2010  
ncs/mwc

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