

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 616
(Delegate Ali)
Ways and Means

Independent Campaign Expenditures Restriction Act

This emergency bill requires a business entity or nonprofit organization that makes an independent expenditure of \$10,000 or more for campaign material to (1) disclose specified information regarding the independent expenditure and campaign material to the State Board of Elections (SBE) within 12 hours of the independent expenditure being made; and (2) for a business entity that has stockholders, receive the approval of a majority of its stockholders or members before making the independent expenditure. SBE must post the information on its web site within 12 hours of receiving the information. The bill also prohibits a person doing public business from making an independent expenditure for campaign material that supports or opposes a candidate or political party.

Fiscal Summary

State Effect: General fund expenditures may increase by \$54,000 to \$100,000 in FY 2010 to develop an online filing system. Enforcement of the bill's provisions can be handled with existing resources assuming the number of complaints of violations is minimal. General fund revenues may increase minimally due to criminal/civil penalties from any cases heard in District Court.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	-	-	-	-	-
GF Expenditure	\$54,000 – 100,000	\$0	\$0	\$0	\$0
Net Effect	(\$54,000 – 100,000)	\$0	\$0	\$0	\$0

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

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

Small Business Effect: Potential minimal.

Analysis

Bill Summary: “Business entity” means a corporation, general or limited partnership, limited liability company, or real estate investment trust. “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.

Current Law: “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 generally must contain an authority line that states the name and address of the person responsible for the campaign material. In addition, 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.” A 1995 Attorney General opinion indicated that this provision is not enforceable against an individual acting independently.

Title 14 of the Election Law Article requires a person or entity doing public business to file statements with SBE semiannually 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.

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 indicates the decision 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. The court, in the same case, however, affirmed the validity of federal disclosure requirements applicable to certain “electioneering communications.” Under the requirements, a person who spends more than \$10,000 on electioneering communications in a calendar year must file a disclosure statement with the Federal Election Commission.

Maryland does not limit independent expenditures in connection with elections or require disclosure of those expenditures. Maryland law did briefly require certain independent expenditures to be reported to SBE; specifically, those totaling more than \$10,000 to promote the success or defeat of the constitutional amendment authorizing video lottery terminals in the State, which was voted on at the 2008 general election. (See Chapter 620 of 2008.)

State Fiscal Effect: General fund expenditures may increase by \$54,000 to \$100,000 in fiscal 2010 to develop an online filing system that will allow disclosure of independent expenditures and posting of that information by SBE to its website, within a 24-hour period, as required by the bill. This estimate is based on vendor estimates provided to SBE.

Enforcement of the bill’s provisions 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.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mlm/mwc

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