

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

House Bill 1029 (Delegate Carr, *et al.*)
 Ways and Means

Election Law - Independent Expenditures - Reporting and Disclosure
 Requirements

This bill requires a business entity or nonprofit organization that makes independent expenditures for campaign material to file an independent expenditures report generally at the same times, including the same information, and subject to the same sanctions for failure to file, as a campaign finance report required to be filed by a campaign finance entity. The report must be signed by the chief executive officer of the business entity or the executive director of the nonprofit organization. The bill also clarifies that campaign material published or distributed by a person that makes an independent expenditure for the campaign material must contain an authority line, set apart from any other message, that states the name and address of the person responsible for the campaign material.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: General fund expenditures increase by \$124,900 in FY 2011 for the cost of programming campaign finance software and to hire a contractual investigator in the Office of the State Prosecutor (OSP) to handle additional complaints. Future years reflect an ongoing salary and operating costs. General fund revenues may increase due to the criminal penalties from cases heard in District Court.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	-	-	-	-	-
GF Expenditure	\$124,900	\$56,700	\$59,100	\$61,700	\$64,400
Net Effect	(\$124,900)	(\$56,700)	(\$59,100)	(\$61,700)	(\$64,400)

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

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

Small Business Effect: None.

Analysis

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

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 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.

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. The reports must contain information required by the State Board of Elections (SBE) with respect to all contributions received and all expenditures made by or on behalf of the campaign finance entity during a reporting period. Annual reports generally must also be filed on the third Wednesday in January.

The responsible officers (chairman and treasurer) of a campaign finance entity are subject to late fees for failure to file a campaign finance report. In addition, a responsible officer of a campaign finance entity who, without cause, does not file a report and pay the late fee within 30 days of being served with a notice of a failure to file by SBE is guilty of a misdemeanor and subject to a fine of up to \$25,000 and/or imprisonment of up to one year.

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 Expenditures: General fund expenditures may increase by \$124,900 in fiscal 2011, which accounts for a 90-day start-up delay. This estimate reflects the cost of programming SBE campaign finance software to account for independent expenditure reporting and the cost of hiring a contractual investigator in OSP. The estimate includes a salary, fringe benefits, one-time programming costs (based on a vendor estimate provided to SBE), and ongoing operating expenses. The estimate assumes an increase in campaign finance violations will result from the bill, requiring an additional contractual investigator in OSP. OSP received 271 election law complaints in fiscal 2009 and closed 227 complaints. OSP indicates it currently has one contractual investigator devoting time to election law complaints.

Salary and Fringe Benefits	\$47,908
Software Programming	75,000
Operating Expenses	<u>2,000</u>
Total FY 2011 State Expenditures	\$124,908

Future year expenditures reflect a full salary with 4.4% annual increases and 6.8% employee turnover; and 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: SB 543 (Senator Harrington, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): State Board of Elections, Judiciary (Administrative Office of the Courts), State Prosecutor's Office, Attorney General's Office, National Conference of State Legislatures, Department of Legislative Services

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