

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 592 (Senator Raskin, *et al.*)
Education, Health, and Environmental Affairs

Election Law - Independent Expenditures - Reporting

This bill requires a person who makes aggregate independent expenditures of \$10,000 or more in an election cycle for campaign material that is a specified public communication to file an independent expenditure report with the State Board of Elections (SBE). A person must also file additional reports for aggregate independent expenditures of \$10,000 or more on public communications made following the closing date of the person's previous report. The bill specifies the dates when such reports must be filed, the applicable reporting period for a report, and the required content of a report, and establishes sanctions for failure to file a complete report. The bill also requires specified entities to disseminate independent expenditure information to the entities' shareholders, members, or donors, and via the Internet. SBE may adopt implementing regulations.

The bill takes effect June 1, 2011, and applies retroactively to independent expenditures made on or after January 1, 2011.

Fiscal Summary

State Effect: General fund expenditures increase by \$52,600 in FY 2012 for the cost to hire a full-time investigator and by up to \$75,000 over the course of FY 2011 and 2012 (shown below in FY 2011) for programming and/or personnel costs. Special fund expenditures to implement an online campaign finance system may increase in FY 2012 by an indeterminate amount. General fund revenues may increase due to the bill's penalty provision. Future years reflect ongoing personnel costs and potential penalty revenues.

| (in dollars) | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 |
|----------------|------------|------------|------------|------------|------------|
| GF Revenue | - | - | - | - | - |
| GF Expenditure | \$75,000 | \$52,600 | \$69,500 | \$73,100 | \$76,900 |
| SF Expenditure | \$0 | - | \$0 | \$0 | \$0 |
| Net Effect | (\$75,000) | (\$52,600) | (\$69,500) | (\$73,100) | (\$76,900) |

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

Local Effect: Potential increase in revenues due to the bill’s penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Reporting Dates and Reporting Periods

A person who makes aggregate independent expenditures of \$10,000 or more in an election cycle for campaign material that is a public communication and relates to a candidate must file an independent expenditure report with SBE on the next date a campaign finance entity of a candidate is required to file a campaign finance report. If the campaign material instead relates to a ballot issue, the person must file an independent expenditure report on the next date a ballot issue committee is required to file a campaign finance report. The report must cover the period from the beginning of the election cycle through the last day of the reporting period specified in statute for the campaign finance report filed by a campaign finance entity.

A person who subsequently makes aggregate independent expenditures of \$10,000 or more for campaign material that is a public communication following the end of the reporting period of the person’s previous independent expenditure report, must file an additional independent expenditure report in the same manner, but with the reporting period beginning with the closing date of the previous independent expenditure report.

A person is considered to have made an independent expenditure if a person has executed a contract to make an independent expenditure.

Certain Definitions

“Public communication” is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term does not include a news story, a commentary, or an

editorial disseminated by a bona fide news media organization that is not controlled by a candidate or political party, nor does it include a candidate debate or forum.

“Person” is defined to include an individual, a partnership, a committee, an association, a corporation, a labor organization, or any other organization or group of persons. The term does not include a campaign finance entity organized under State campaign finance law.

The terms “mass mailing” and “telephone bank” are also defined by the bill.

Content of a Report

An independent expenditure report must include:

- (1) the identity of the person making the independent expenditures and any person exercising direction or control over the activities of the person making the independent expenditures;
- (2) the business address of the person making the independent expenditures;
- (3) the amount and date of each independent expenditure during the period covered by the report and the person to whom the expenditure was made;
- (4) the candidate or ballot issue to which the independent expenditure relates and whether it supports or opposes the candidate or ballot issue; and
- (5) the identity of each person who made a contribution to the person making the independent expenditures during the period covered by the report.

“Contribution” is defined as the gift or transfer, or promise of gift or transfer, of money or other thing of value to a person that is made for the purpose of furthering independent expenditures.

Sanctions for Failure to File

An individual who fails to properly file an independent expenditure report is subject to the sanctions that apply to the responsible officers of a campaign finance entity. Failure to provide all required information on an independent expenditure report is deemed a failure to file and renders the report overdue if SBE notifies the individual in writing of the deficiencies and a properly corrected report is not filed within 30 days after service of the notice.

The highest ranking official of an entity required to file an independent expenditure report must sign each report and is responsible for filing independent expenditure reports in full and accurate detail.

Dissemination of Information to Shareholders, Members, or Donors and via the Internet

An entity required to file an independent expenditure report that submits regular, periodic reports to its shareholders, members, or donors on its finances or activities must include in each regular, periodic report, in a clear and conspicuous manner, the information specified in numbers (3) through (5) in the above description of the required content of an independent expenditure report. Further, if such an entity maintains an Internet site, it must post on the site a hyperlink from its homepage to the Internet site where the entity's independent expenditure report information is public available. The hyperlink must be posted within 24 hours of the information being made publicly available on the Internet and remain posted until the end of the election cycle during which the entity filed an independent expenditure report.

Current Law:

Independent Expenditures

The Election Law Article does not require reporting of independent expenditures, but does define the term 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.” (The bill amends this definition to include references to a ballot issue and ballot issue committee.)

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.)

Campaign Material

“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.

Campaign Finance Reporting

For each election in which a campaign finance entity (including a ballot issue committee) 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 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. Fees relating to campaign finance reports are paid to SBE and applied to pay the expenses of collection and of audits of campaign finance reports. 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* (2010), invalidated federal restrictions on corporate independent expenditures in connection with certain qualified federal elections, causing many states with similar restrictions to consider legislation in 2010 to amend their laws. In addition to legislation introduced to repeal such restrictions, various states with and without restrictions (including Maryland) considered legislation in 2010 that would increase disclosure of independent expenditures. Since the *Citizens United* decision, at least 15 states have enacted laws or adopted regulations addressing independent expenditures, almost all of which focus, at least in part, on increased disclosure.

Disclosure of independent expenditures was also one of the subjects addressed by the Maryland Attorney General's Advisory Committee on Campaign Finance formed in the fall of 2010. The committee recommended in its January 4, 2011 report that the General Assembly enact legislation requiring individuals or groups not registered with SBE as a political committee (a term used interchangeably with "campaign finance entity" in the Election Law Article) that make an "independent expenditure" or an "electioneering communication" to file a disclosure report with SBE.

State Fiscal Effect:

Office of the State Prosecutor

General fund expenditures increase by \$52,627 in fiscal 2012, which accounts for a 120-day start-up delay. This estimate reflects the cost of hiring one full-time investigator

in the Office of the State Prosecutor (OSP) to investigate campaign finance violations associated with the bill's changes. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. OSP indicates the bill creates an entirely new set of reporting requirements and anticipates a substantial number of complaints requiring investigation and possible prosecution, particularly as the law is initially implemented. OSP indicates adequate investigation and enforcement is likely to require additional personnel as current staff is working at maximum capacity and will not be able to absorb the additional caseload.

| | |
|---|-----------------|
| Position | 1 |
| Salary and Fringe Benefits | \$50,752 |
| Computer Workstation | 1,500 |
| Supplies | <u>375</u> |
| Total Fiscal 2012 State Expenditures | \$52,627 |

Future year expenditures reflect a full salary with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

General fund revenues may increase as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Board of Elections

SBE is currently in the beginning stages of the procurement process for the development of an online campaign finance reporting system to replace the current software-based system. The 2010 Budget Reconciliation and Financing Act (Chapter 484) authorized the transfer in fiscal 2011 of \$500,000 of the balance in the Fair Campaign Financing Fund (FCFF) to SBE for the purpose of implementing the system. An amount of \$500,000 has been transferred out of the fund for that purpose. The 2010 BRFA requires that any of the funds not used for the system revert back to the fund.

The new online campaign finance reporting system is expected to be implemented subsequent to the 2011 Baltimore City elections and the ability for independent expenditures to be reported would be incorporated in the development of the new system. This may increase special fund expenditures for the development of the system, but presumably will not cause the cost of the system to exceed the \$500,000 maximum amount available from the FCFF transfer.

Because the bill takes effect June 1, 2011, until the new system is implemented, general fund expenditures may increase due to programming and/or personnel costs to accommodate reporting of independent expenditures associated with the Baltimore City elections. The general fund expenditure increase is not expected to be more than \$75,000

(a past vendor estimate for accommodating independent expenditure reporting) and may be considerably less.

Additional Information

Prior Introductions: SB 543/HB 1029 of 2010, similar bills, received hearings in the Senate Education, Health, and Environmental Affairs Committee and the House Ways and Means Committee, respectively, but no further action was taken on either bill.

Cross File: HB 93 (Delegate Cardin, *et al.*) - Ways and Means.

Information Source(s): State Board of Elections, State Prosecutor's Office, Maryland Attorney General's Advisory Committee on Campaign Finance, Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2011
mc/hlb

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510