

Department of Legislative Services
2013 Session

FISCAL AND POLICY NOTE

House Bill 259 (Delegate Bobo, *et al.*)
Ways and Means

Campaign Finance - Affiliated Business Entities - Attribution of Contributions

This bill modifies and expands an existing provision that requires campaign contributions by related corporations to be considered as being made by one contributor, limiting the total amount of contributions those corporations can make. The bill expands the limitation to apply to “business entities,” including general or limited partnerships, limited liability companies (LLC), and real estate investment trusts, as well as corporations, specifying that campaign contributions made by two or more business entities are considered to be made by a single contributor if (1) one business entity is a wholly owned subsidiary of another; or (2) the business entities are owned or controlled by at least 80% of the same individuals or business entities.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: General fund expenditures increase by \$58,100 in FY 2014 for the cost to hire a full-time investigator in the Office of the State Prosecutor (OSP) to handle additional investigations. Future year expenditures reflect an ongoing salary and operating costs. General fund revenues may increase to the extent investigations lead to penalties being imposed.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	-	-	-	-	-
GF Expenditure	\$58,100	\$74,300	\$77,800	\$81,400	\$85,300
Net Effect	(\$58,100)	(\$74,300)	(\$77,800)	(\$81,400)	(\$85,300)

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

Local Effect: Local government revenues may increase to the extent investigations lead to penalties being imposed in cases heard in the circuit courts.

Small Business Effect: None.

Analysis

Current Law: With the exception of contributions to ballot issue committees, transfers between campaign finance entities, and in-kind contributions of a political party central committee, a person may not make, directly or indirectly, aggregate contributions within a four-year election cycle of more than \$4,000 to any one campaign finance entity or \$10,000 to all campaign finance entities.

Contributions by a corporation and any wholly owned subsidiary of the corporation, or by two or more corporations owned by the same stockholders, are considered as being made by one contributor.

A knowing and willful violation of the contribution limits is a misdemeanor and can be subject to a fine of up to \$25,000 and/or imprisonment of up to one year. A person who violates the limits without knowing the act is illegal can be subject to a civil penalty of up to \$5,000.

Background: The issue of campaign contributions by LLCs and other noncorporation entities under common ownership and control has recently been addressed by both the Maryland Attorney General's Advisory Committee on Campaign Finance and the General Assembly's Commission to Study Campaign Finance Law.

In its January 4, 2011 report, the Attorney General's advisory committee discussed the unequal treatment of corporations and LLCs under the current law, where LLCs with common ownership are treated as unrelated entities for the purpose of campaign contribution limits, while corporate subsidiaries are treated as functionally part of one corporation. The committee also noted the fact that LLC owners are provided the means to far exceed the contribution limits that other Marylanders are subject to. The committee recommended that the General Assembly "enact a statute that treats LLC clusters and all other legal entities with common ownership or control as single entities for contribution limit purposes." The statute should also "similarly treat as a single contributor affiliated entities that are under common control or ownership."

The Commission to Study Campaign Finance Law (see **Appendix – Commission to Study Campaign Finance Law** for background information on the commission), in its December 2012 report, similarly recommended that for the purposes of the contribution limits, contributions from two or more business entities should be treated as being made by a single contributor if the entities are under common management or ownership. The commission also recommended that if the General Assembly were to define common management or ownership by a certain percentage of common ownership or control, the percentage be no less than 50%. The commission indicated that a higher percentage would limit application of the attribution rule to those cases in which the same person or small group of people actually control or are in a position to control the contribution decisions made by multiple entities.

Exhibit 1 shows the number of different types of business entities that had active accounts with the State Department of Assessments and Taxation as of January 2012. The numbers include both Maryland business entities and foreign (out-of-state) entities registered to do business in the State, but consist mostly of Maryland entities.

**Exhibit 1
Business Entities in Maryland
January 2012**

<u>Type of Entity</u>	<u>Number of Entities</u>
Corporations	179,761
Limited Liability Companies	170,176
Limited Partnerships	7,008
Limited Liability Partnerships	1,768
Statutory Trusts	646

Source: State Department of Assessments and Taxation

State Fiscal Effect: General fund expenditures increase by \$58,068 in fiscal 2014, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring one full-time investigator 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 that extensive investigative work would be required to gather evidence to prove the cases since records of the business entities generally would not be public. OSP indicates that existing staff would not be able to handle the additional cases based on the office's current workload.

Position	1
Salary and Fringe Benefits	\$53,022
Equipment	4,615
Ongoing Operating Expenses	<u>431</u>
Total FY 2014 OSP Expenditures	\$58,068

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

General fund revenues may increase to the extent investigations lead to penalties being imposed.

Additional Information

Prior Introductions: HB 602 of 2012 and HB 322 of 2011 received hearings in the House Ways and Means Committee, but no further action was taken on either bill. SB 339 of 2011 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. SB 663/HB 723 of 2011 received hearings in the Senate Education, Health, and Environmental Affairs and House Ways and Means committees, respectively, but no further action was taken on either bill. In addition, similar bills were introduced in the 2003 through 2010 sessions.

Cross File: None.

Information Source(s): State Board of Elections, Office of the State Prosecutor, State Department of Assessments and Taxation, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2013
ncs/hlb

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Appendix – Commission to Study Campaign Finance Law

The Commission to Study Campaign Finance Law was established by the General Assembly under Joint Resolution 1 of 2011. The commission was charged with studying the State's regulation of campaign finance, including a number of specific issues, and making recommendations for improvements. The commission convened in December 2011 and submitted an interim report in January 2012 and a final report in December 2012. A number of the commission's recommendations in its January 2012 interim report, which consisted largely of targeted changes to administrative requirements of the State Board of Elections and/or campaign finance entities, were considered and enacted during the 2012 regular session.

The commission's December 2012 final report – drawing on testimony from various sources, staff research, and extensive commission discussions over the course of 2012 – contains a more expansive set of recommendations, covering:

- the level of contribution limits;
- the treatment of contributions from business entities under common management or ownership, for purposes of the contribution limits;
- the law governing the use of slates;
- establishment of caucus committees for the use of General Assembly party caucuses;
- independent expenditures;
- enforcement of campaign finance laws;
- public financing of campaigns;
- disclosure of small contributions;
- the campaign finance reporting schedule;
- disclosure of contributions by government contractors; and
- the availability of Attorney General advice regarding campaign finance laws.

The commission's [interim report](#) and [final report](#) may be found on the Maryland General Assembly website (<http://mgaleg.maryland.gov>).