

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 1088
Ways and Means

(Delegate Ebersole, *et al.*)

Election Law - Campaign Finance - Coordinated Expenditures Between
Candidates and Outside Spending Organizations

This bill includes under the definition of “contribution,” in State election law, a payment made for a coordinated expenditure by specified persons or entities and establishes penalties for willingly and knowingly making a contribution that consists of a payment for a coordinated expenditure in excess of existing limits on contributions to campaign finance entities. Any penalties imposed and collected are credited to the Fair Campaign Financing Fund (FCFF).

Fiscal Summary

State Effect: Special fund revenues increase, potentially significantly, to the extent penalties are imposed and collected. Expenditures are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The definition of “contribution” is modified to include a payment for a coordinated expenditure by (1) a person other than a candidate; (2) any campaign account affiliated with a candidate; or (3) a political committee of a political party.

“Coordinated expenditure” means:

- an expenditure or a payment for a covered communication made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, any campaign accounts affiliated with a political committee of a political party, or agents of the candidate or committee; or
- a payment for any communication that republishes, disseminates, or distributes, in whole or in part, a video or broadcast, or a written, graphic, or other form of campaign material prepared by the candidate or by agents of the candidate or any campaign accounts affiliated with the candidate.

“Covered communication” is specifically defined, but generally covers public communications referring to the candidate or an opponent of the candidate.

The bill defines “coordinated spender” to include a person, other than a political committee of a political party, with one or more specified connections to the candidate, including fundraising by the candidate for the person, sharing of vendors of professional campaign services, and the person (entity) being formed or established at the request or suggestion of the candidate or being established, directed, or managed by a recent adviser or consultant of the candidate.

Payments for certain communications may not be considered coordinated expenditures: (1) certain media communications, unless the media facility is owned or controlled by a political party, political committee, or candidate; (2) specified internal membership communications; and (3) specified candidate debates or forums or promotion of a debate or forum. In addition, a payment may not be considered to be made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or committee (1) solely on the grounds of specified discussions of the person’s position on a legislative or policy matter and (2) if there is no communication of the candidate’s or committee’s campaign advertising, message, strategy, policy, polling, allocation of resources, fundraising, or other campaign activities.

A person may not willingly and knowingly make a contribution that consists of a payment for a coordinated expenditure in excess of the limits on contributions to campaign finance entities or fail to file a report with State Board of Elections (SBE) required under State campaign finance law. A person who violates this prohibition is guilty of a misdemeanor and subject to a penalty equal to 300% of the amount of the payment that exceeds the applicable contribution limit. SBE may also impose a civil penalty of up to 10% of the amount of the expenditure. Any penalty imposed and collected is credited to FCFF.

Current Law/Background: Independent expenditures – political spending by individuals or organizations without coordination with a candidate – have received a significant

amount of attention since the 2010 Supreme Court decision in *Citizens United v. FEC* and the subsequent decision of the D.C. Circuit Court of Appeals in *SpeechNow.org v. FEC* (also in 2010). The Supreme Court and D.C. Circuit held, respectively, that corporate independent expenditures could not be limited or prohibited and that contributions to political committees that make only independent expenditures (Super PACs) could not be limited. Limits on independent expenditures were differentiated from limits on contributions to candidates (which “have been an accepted means to prevent *quid pro quo* corruption”) based on the conclusion that, in the case of independent expenditures, “[t]he absence of prearrangement and coordination of an expenditure with the candidate ... alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.”

Maryland’s campaign finance law establishes limits on contributions to candidates and political committees and requires reporting of independent expenditures. Following the *Citizens United* and *SpeechNow.org* decisions, SBE guidance indicates that the board does not interpret the statutory contribution limits to apply to Super PACs. As previously stated in other SBE guidance, however, and as explicitly stated in statute beginning January 1, 2015 (pursuant to Chapter 419 of 2013), if coordination exists between a candidate and a person (including a political committee) making an expenditure benefitting the candidate, then the expenditure is *not* an independent expenditure and is instead a contribution subject to the statutory contribution limits. The statute does not define what constitutes coordination. In the absence of a statutory definition, SBE has issued guidance that lists factors it would consider in determining whether coordination has occurred. The list of eight factors includes “sharing of campaign material, strategies, or information that is not generally available to the public” and “the extent to which a candidate shares operations, responsible officers, staff, consultants and other third party vendors with another candidate or person.”

Currently a person is limited to contributing an aggregate amount of \$6,000 to any one campaign finance entity (a political committee through which a candidate’s campaign finance activity must be conducted) during a four-year election cycle. A State central committee of a political party and a legislative party caucus committee may make aggregated in-kind contributions to a single candidate during an election cycle of up to \$1 for every two registered voters in the State. For a local central committee, the limit is \$1 for every two registered voters in the county.

FCFF holds funding for public campaign financing of gubernatorial tickets under the Public Financing Act.

State Revenues: Special fund revenues increase to the extent penalties are imposed and collected for violations of the bill. The extent of any special fund revenues cannot be reliably estimated, but based on the penalties specified in the bill (criminal penalty of 300%

of the amount in excess of the contribution limit and civil penalty of up to 10% of the amount of the expenditure), significant penalties may be collected if there are violations.

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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md/hlb

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