Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 219 (Delegate Morhaim, *et al.*)
Ways and Means

Independent Expenditures and Electioneering Communications - Registration and Reporting

This bill reduces the threshold amounts of aggregate independent expenditures or disbursements for electioneering communications which require registration with the State Board of Elections (SBE) and reporting of the independent expenditures or disbursements for electioneering communications to SBE.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The threshold amount of aggregate independent expenditures or disbursements for electioneering communications requiring registration with SBE is reduced from $5,000 in an election cycle to $1,000 in an election cycle. The threshold amount for filing an independent expenditures or electioneering communications report with SBE is reduced from $10,000 in an election cycle to $1,000 in an election cycle. Finally, the threshold amount for each subsequent report to SBE is reduced from $10,000 following the closing date of the person's previous report to $5,000 following the closing date of the person's previous report.

Current Law: For the purposes of Maryland's registration and reporting requirements for independent expenditures and disbursements for electioneering communications, independent expenditures are expenditures for public communications that are not made in coordination with a candidate or campaign finance entity and that expressly advocate the success or defeat of a clearly identified candidate or ballot question. Electioneering communications, on the other hand, do not expressly advocate the success or defeat of a candidate or ballot question, but refer to a clearly identified candidate or ballot question, are made within 60 days of an election, are capable of being received by a certain amount of individuals (with the amount depending on the type of communication) in the constituency where the candidate or ballot question is on the ballot, and are not made in coordination with a candidate or campaign finance entity.

Within 48 hours after a person makes aggregate independent expenditures or disbursements for electioneering communications of $5,000 or more in an election cycle, the person must file a registration form with SBE. Within 48 hours after a day on which a person makes aggregate independent expenditures or disbursements for electioneering communications of $10,000 or more in an election cycle, the person must file a report with SBE providing information on the person, the expenditures or disbursements, and persons who made cumulative donations of $6,000 or more to the person during the period covered by the report. Further, a person who files an independent expenditure or electioneering communication report must file an additional report within 48 hours after a day on which the person makes aggregate independent expenditures or disbursements for electioneering communications of $10,000 or more following the closing date of the person's previous report.

Background: Independent expenditures in general – 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 DC Circuit Court of Appeals in *SpeechNow.org v. FEC* (also in 2010). The Supreme Court and DC Circuit Court of Appeals 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."

While independent expenditures cannot be limited, courts have upheld requirements for disclosure of independent expenditures. Maryland first established reporting requirements for independent expenditures and disbursements for electioneering communications under

Chapter 575 of 2011 and amended the requirements under the Campaign Finance Reform Act of 2013 (Chapter 419 of 2013). The amendments under Chapter 419, among other things, (1) require more immediate reporting; (2) require reporting of the names of donors of $6,000 or more to persons making independent expenditures or disbursements for electioneering communications; and (3) increase the penalties for reporting violations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections, National Conference of State Legislatures, Department of Legislative Services

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