

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 529

(Chair, Ways and Means Committee)(By Request -
Departmental - State Board of Elections)

Ways and Means

Education, Health, and Environmental Affairs

Election Law - Political Parties, Candidacy, and Campaign Finance

This departmental bill makes various changes to State election law relating to a declaration of intent filed by candidates nominated by a nonprincipal political party (third party) or by petition, the number of registered voters who must sign a petition of a candidate who seeks nomination by petition, disclosure of campaign contributions by persons doing public business, defined terms, and modified and obsolete references.

Fiscal Summary

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

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: The State Board of Elections (SBE) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill makes the following changes:

- “Central committee” is defined as a political committee for a political party established under Title 4 of the Election Law Article, including one that engages in campaign finance activity subject to Title 13 of the Election Law Article (State campaign finance law).

- The definition of “independent expenditure” is modified to reference “a gift, transfer, disbursement, or promise of money or a thing of value” – rather than “an expenditure” – by a person expressly advocating the success or defeat of a clearly identified candidate or ballot issue if the “gift, transfer, disbursement, or promise of money or a thing of value” is not made in coordination, *cooperation, consultation, understanding, agreement, or concert* (terms in italics also added under the bill) with, or at the request or suggestion of, a candidate, a campaign finance entity of a candidate, an agent of a candidate, or a ballot issue committee.
- An obsolete reference to a political party required to nominate its candidates by petition is removed.
- The date and time by which candidates seeking to be nominated by petition or by a nonprincipal political party (third party) must file a declaration of intent, is modified, establishing the date and time as (1) the first Monday in July, rather than the date and time specified for a candidate to file a certificate of candidacy, or (2) for a special election, by the date and time specified in the Governor’s, or county, proclamation rather than the date and time specified for a candidate to file a certificate of candidacy in the Governor’s, or county, proclamation.
- A requirement that a candidate who seeks nomination by petition file, with the appropriate board of elections, petitions signed by not less than 1% of the total number of registered voters who are eligible to vote for the office (except that the petitions must be signed by at least 250 registered voters eligible to vote for the office) is modified to instead require that the petitions be signed by the lesser of 10,000 registered voters or 1% (but not less than 250) of the total number of registered voters eligible to vote for the office.
- Under Title 14 of the Election Law Article, which governs disclosure of certain campaign contributions by persons doing public business, a requirement that a governmental entity that has awarded a person a contract that causes the person to be doing public business must require the person to certify that the person has filed an initial disclosure statement with SBE and notify SBE if a person doing public business with the governmental entity fails to file the statement, is modified. An exception to those requirements for contracts for which notice of award has been posted on eMaryland Marketplace is repealed and, instead of notifying SBE if a person doing public business with the governmental entity fails to file the initial disclosure statement, the governmental entity must provide SBE with the name, address, and any other contact information required by SBE for each person to whom the governmental entity has awarded a contract that causes the person to be doing public business. A governmental entity may send the information in quarterly reports.
- Under the Public Financing Act, governing public campaign financing of gubernatorial tickets, a reference to a “form prescribed by the State Board” is

replaced with “campaign finance report” under a provision requiring a certification by the gubernatorial ticket’s treasurer regarding seed money raised by the ticket.

Current Law/Background:

“Central Committee” Definition

“Central committee” is not a defined term under the Election Law Article. The bill’s definition clarifies that central committees are governed by both Title 4, governing political parties, and Title 13, governing campaign finance activity.

“Independent Expenditure” Definition

Independent expenditures are spending that is independent of and not in coordination with a candidate or ballot issue committee and often are made by an individual or entity other than a campaign finance entity, yet the definition of independent expenditure uses the word “expenditure,” which is separately defined under the Election Law Article as “a gift, transfer, disbursement, or promise of money or thing of value by or on behalf of a campaign finance entity....” The bill eliminates the use of the word “expenditure” in the definition of “independent expenditure” to avoid any confusion or inconsistency.

Nomination of Candidates by a Third Party

Pursuant to Chapter 120 of 2006, nonprincipal political parties are able to nominate candidates according to a party’s adopted constitution and bylaws, no longer nominating candidates by petition. The bill removes an obsolete reference to a party nominating its candidates by petition.

Declaration of Intent Deadline for Candidates Nominated by a Third Party or by Petition

Candidates for public office who seek nomination by a nonprincipal political party or by petition must file a declaration of intent to seek nomination. The declaration of intent must be filed by the date and time specified for a candidate to file a certificate of candidacy. SBE received advice in 2016 from the Office of the Attorney General that, regardless of the intent of the General Assembly when it established the deadline for a declaration of intent to be filed in a presidential election year (Ch. 332 of 2015), the statute must be interpreted to refer to the deadline for nonprincipal political party and petition candidates to file a certificate of candidacy (August 1) – rather than the much earlier deadline for primary election candidates to file a certificate of candidacy – in order to avoid an unconstitutional result.

Candidates Who Seek Nomination by Petition – Number of Signatures Required

A candidate who seeks nomination by petition may not have the candidate's name placed on the general election ballot unless the candidate files with the appropriate board of elections petitions signed by not less than 1% of the total number of registered voters eligible to vote for the office, except that the petitions must be signed by at least 250 registered voters eligible to vote for the office. For a statewide office, the 1% threshold equals just over 40,000 registered voters.

In recent litigation involving SBE, the court, in a denial of SBE's motion to dismiss the lawsuit, indicated that the signature requirement for a statewide candidate is likely unconstitutionally burdensome in comparison to the ballot access requirements applicable to candidates of a nonprincipal political party. In order to form a new political party, a petition must be submitted containing the signatures of at least 10,000 registered voters, and, once formed, the nonprincipal political party may nominate candidates for public offices in accordance with the constitution and bylaws of the political party.

Government Entity Requirements under Title 14

Under Title 14 of the Election Law Article, persons that do public business (defined as making or having a single contract with a State or local governmental entity involving cumulative consideration of at least \$200,000) are required to submit statements to SBE regarding any applicable contributions. "Applicable contributions" are defined as contributions or donations to or for the benefit of a candidate for an office of a governmental entity with which the person is doing public business.

Except in cases where a notice of award for a contract has been posted on eMaryland Marketplace (the State's online procurement system), a governmental entity that has awarded a person a contract that causes the person to be doing public business must (1) require the person to certify that the person has filed an initial statement of contributions with SBE and (2) notify SBE if a person doing public business with the governmental entity fails to file the statement.

SBE indicates that the bill's change eliminating the eMaryland Marketplace exception is expected to increase compliance with the law.

Additional Comments: The enactment of the bill's provision modifying the number of signatures required for nomination by petition is expected to avoid both (1) future litigation involving SBE regarding the applicable existing law and (2) the possibility of SBE having to pay attorney's fees in the range of \$50,000 to \$100,000 associated with that litigation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Department of Budget and Management; Attorney General's Office; Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Election Law – Political Parties, Candidacy, and Campaign Finance

BILL NUMBER: HB 529

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PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed departmental legislation will not impact Maryland small businesses. The elimination of the eMaryland Marketplace exemption would assist Maryland small business doing public business to comply with the disclosure requirements of Title 14 of the Election Law Article.