

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 260
Ways and Means

Election Law - Campaign Finance Violations - Injunctive Relief

This bill authorizes the chairman or the vice chairman of the State Board of Elections (SBE), in place of the Secretary of State, to seek an immediate injunction against any violation of State campaign finance laws under Title 13 of the Election Law Article. The bill also authorizes a candidate to seek an immediate injunction against any violation of those laws by (1) the campaign finance entity supporting the candidacy of any candidate for the same office or (2) any person required to file an independent expenditure or electioneering communication report if a public communication or electioneering communication relates to the candidate. Existing penalties for a violation of an injunction apply.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background:

Enforcement of State Campaign Finance Laws

The Secretary of State is authorized to seek an immediate injunction against any violation of State campaign finance laws under Title 13 of the Election Law Article. A person who violates such an injunction is in criminal contempt and is guilty of a misdemeanor and subject to a fine of up to \$250 and/or imprisonment for up to 30 days.

Varying criminal and civil penalties apply to violations of State campaign finance laws under Title 13. The State Prosecutor generally handles prosecutions of violations, and SBE is authorized to impose civil penalties for certain violations.

Campaign Finance Entities

Unless otherwise expressly authorized by law, all campaign finance activity for an election under the Election Law Article of the Annotated Code must be conducted through a campaign finance entity. An individual may not file a certificate of candidacy or a declaration of intent until the individual establishes, or causes to be established, an authorized candidate campaign committee (a campaign finance entity authorized by the candidate to promote the candidate's candidacy).

Independent Expenditures and Electioneering Communications

Independent expenditures in general – political spending by individuals or organizations without coordination with a candidate – cannot be limited or prohibited, pursuant to the 2010 Supreme Court decision *Citizens United v. FEC*. Requirements for disclosure of independent expenditures, however, have been upheld by courts. Under Maryland's disclosure requirements, 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.

Additional Information

Prior Introductions: HB 174 of 2016 received an unfavorable report from the House Ways and Means Committee. HB 1265 of 2015 was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: SB 226 (Senator West) - Education, Health, and Environmental Affairs.

Information Source(s): State Board of Elections; Department of Legislative Services

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sb/hlb

Analysis by: Scott D. Kennedy

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