

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 123

(Senator Pinsky)

Education, Health, and Environmental Affairs

Ways and Means

Election Law - Coordinated Expenditures and Donations - Investigation

This bill authorizes the State Administrator of Elections or the State Administrator's designee to (1) investigate potential violations of "coordinated expenditure" provisions and (2) in furtherance of an investigation, issue a subpoena for the attendance of a witness to testify or for the production of records.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Under provisions that define the term "coordinated expenditure" and prohibit coordinated expenditures in excess of campaign contribution limits, the bill authorizes the State Administrator of Elections or the State Administrator's designee, in place of the State Board of Elections (SBE), to investigate a potential violation of the provisions. The bill correspondingly requires the State Administrator or the State Administrator's designee, in place of SBE, to provide specified notice and ample opportunity to be heard at a public meeting of SBE to a person, candidate, or political party that is subject to an investigation.

The bill also authorizes the State Administrator or the State Administrator's designee to, in furtherance of an investigation, issue a subpoena (in accordance with the

Maryland Rules) for the attendance of a witness to testify or for the production of records. In order for a subpoena to be issued, the State Administrator must make a finding that the subpoena is necessary to and in furtherance of an investigation. Any filing submitted to a court with respect to a subpoena must be sealed on filing. If a person fails to comply with an issued subpoena, on petition of the State Administrator, a circuit court of competent jurisdiction may compel compliance with the subpoena.

Current Law:

“Coordinated Expenditure” Provisions

Chapter 852 of 2017 established standards regarding when a disbursement, or an action to cause a disbursement, to promote the success or defeat of a candidate or a political party at an election is a “coordinated expenditure” subject to existing campaign contribution limits. Chapter 852 prohibits a person from making a coordinated expenditure in excess of the contribution limits or a donation to a person for the purpose of furthering a coordinated expenditure in excess of the contribution limits. A candidate or political party is also prohibited from being the beneficiary of a coordinated expenditure in excess of the contribution limits.

“Coordinated expenditure” is defined under Chapter 852 as a disbursement, or an action to cause a disbursement, that promotes the success or defeat of a candidate or a political party at an election and is made in cooperation, consultation, understanding, agreement, or concert with, or at the request or suggestion of, the candidate or political party that is the beneficiary of the disbursement. Additional provisions further clarify when a disbursement, or an action to cause a disbursement, to promote the success or defeat of a candidate or a political party at an election is a “coordinated expenditure.”

Investigation and Penalties

SBE is authorized to investigate a potential violation of the coordinated expenditures provisions and must provide specified notice and ample opportunity to be heard at a public meeting of the board to a person, candidate, or political party that is subject to an investigation. At the conclusion of the investigation and following the hearing, SBE must issue a public report of its findings and may impose a civil penalty for an unintentional violation or refer the matter for further investigation by the State Prosecutor if SBE has reasonable cause to believe the violation was willful and knowing.

A civil penalty must be assessed according to specified procedures for assessment of civil penalties by SBE. The civil penalty may be up to 100% of the amount by which the coordinated expenditure exceeded the contribution limit or, if applicable, up to 100% of

the amount of the donation made to a person for the purpose of furthering a coordinated expenditure in excess of the contribution limits.

A willful and knowing violation of the coordinated expenditure provisions is a misdemeanor and subject to a fine of up to 300% of the amount by which the coordinated expenditure exceeded the contribution limit or, if applicable, up to 300% of the amount of the donation made to a person for the purpose of furthering a coordinated expenditure in excess of the contribution limits.

Additional Information

Prior Introductions: None.

Cross File: HB 1025 (Delegate Mosby) – Ways and Means.

Information Source(s): State Board of Elections; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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