

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1014 (Delegate Mosby)
Ways and Means

Campaign Finance - Disclosure of Donations - Reporting Requirements

This bill makes various changes related to (1) the content and distribution of the State Board of Elections' (SBE) campaign finance law summary; (2) the definitions of "donation" under provisions governing reporting by persons making independent expenditures, persons making disbursements for electioneering communications, and participating organizations; (3) notification of a participating organization that the participating organization may be required to register with SBE; and (4) the threshold dollar amount of aggregate political disbursements in an election cycle at which a participating organization must register with SBE.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

State Board of Elections Campaign Finance Law Summary

The bill requires the summary of campaign finance law prepared by SBE to specifically address compliance and reporting requirements for each campaign finance entity and each person required to register or report under State campaign finance law. SBE also must

provide a copy of the summary and applicable forms that are required to be filed under State campaign finance law to a campaign finance entity or person when (1) a certificate of candidacy is filed; (2) a statement of organization is filed to establish a campaign finance entity; or (3) a registration form is filed by an out-of-state political committee, a person who makes independent expenditures, a person who makes disbursements for electioneering communications, or a participating organization.

Definitions of “Donation”

The bill modifies the definitions of “donation” under separate provisions governing reporting by persons making independent expenditures, persons making disbursements for electioneering communications, and participating organizations. The definitions are modified so that a donation is a gift or transfer, or promise of gift or transfer, of money or other thing of value which (1) was accepted subject to a condition, an agreement, or an understanding with the donor that all or a portion of it may be used for [making independent expenditures, making disbursements for electioneering communications, or political disbursements] or (2) after it was accepted, an agreement or understanding was reached with the donor that all or a portion of it may be used for [making independent expenditures, making disbursements for electioneering communications, or political disbursements].

The bill’s modifications replace provisions that exclude from those definitions of “donation” any amount of money or other thing of value (1) that the donor and the person who makes independent expenditures or disbursements for electioneering communications, or the participating organization, expressly agree in writing may not be used for [independent expenditures, electioneering communications, or political disbursements] and (2) in the case of a monetary donation, is deposited in a separate bank account that is never used for [independent expenditures, electioneering communications, or political disbursements].

Notice to a Participating Organization

The bill requires a political committee or a person to, within 14 days after receiving aggregate political disbursements of \$5,000 or more in an election cycle from a participating organization, notify the participating organization that the participating organization may be required to register with SBE. SBE must prescribe the content and other requirements for the notice and a political committee or person must maintain a record of each notice.

The bill also modifies a portion of the definition of “political disbursements” to refer to “a donation to a person making an independent expenditure in the State” and “a donation to a person making disbursements for electioneering communications in the State” instead of

“a disbursement to a person making an independent expenditure or a disbursement for electioneering communications in the State.”

Threshold Dollar Amount for Participating Organization Registration

The bill increases – from “more than \$6,000” to “more than \$10,000” – the amount of aggregate political disbursements made by a participating organization during an election cycle at which the participating organization must file a registration form with SBE within 48 hours.

Current Law/Background:

State Board of Elections Campaign Finance Law Summary

SBE must prepare a summary of campaign finance law and provide for distribution of the summary. When a certificate of candidacy is filed, the board receiving the certificate must provide the candidate with (1) a copy of the summary and (2) each form the candidate is required to file.

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 (defined as a political committee established under Title 13 of the Election Law Article). 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).

Out-of-state Political Committees

An “out-of-state political committee” is a nonfederal political committee organized under the law of another state. An out-of-state political committee is required to register with SBE within 48 hours after directly or indirectly making transfers in a cumulative amount of \$6,000 or more in an election cycle to one or more campaign finance entities and must subsequently file specified reports with SBE regarding the out-of-state political committee’s expenditures in the State.

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.

Participating Organizations

"Participating organization" means any entity that is organized under § 501(c)(4) or (6) or § 527 of the Internal Revenue Code and makes political disbursements. "Political disbursements" means (1) a contribution to a political committee organized under the laws of the State; (2) a disbursement to a person making an independent expenditure or a disbursement for electioneering communications in the State; or (3) a disbursement to an out-of-state political committee that makes a disbursement in the State.

Within 48 hours after a participating organization makes aggregate political disbursements of more than \$6,000 in an election cycle, the participating organization must file a registration form with SBE. Within 48 hours after making aggregate political disbursements of \$10,000 or more in an election cycle, the participating organization must file a report with SBE, and additional reports after making subsequent cumulative expenditures of \$10,000 or more. The reports must include, among other information, the identity of each person that made cumulative donations of \$10,000 or more to the participating organization during the period covered by the report. Instead of filing reports,

a participating organization may include a link to the information on the homepage of its website, with the information updated within 48 hours.

Definitions of “Donation”

Under provisions governing reporting by persons making independent expenditures, persons making disbursements for electioneering communications, and participating organizations, “donation” is defined as the gift or transfer, or promise of gift or transfer, of money or other thing of value to a [person making independent expenditures, person making disbursements for electioneering communications, or participating organization], with the exception of any amount of money or other thing of value:

- received by a [person making independent expenditures, person making disbursements for electioneering communications, or participating organization] in the ordinary course of any trade or business conducted by the [person making independent expenditures, person making disbursements for electioneering communications, or participating organization], whether for profit or not for profit, or in the form of investments in the business of the [person making independent expenditures, person making disbursements for electioneering communications, or participating organization]; or
- (1) that the donor and the [person making independent expenditures, person making disbursements for electioneering communications, or participating organization] expressly agree in writing may not be used for [independent expenditures, electioneering communications, or political disbursements] and (2) in the case of a monetary donation, is deposited in a separate bank account that is never used for [independent expenditures, electioneering communications, or political disbursements].

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Anne Arundel, Baltimore, Garrett, and Montgomery counties; Department of Legislative Services

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