

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 465

(Delegates Cain and Rosenberg)

Ways and Means

Education, Health, and Environmental Affairs

Election Law - Campaign Material - Disclosure of the Use of Bots

This bill establishes a requirement that the use of a “bot” – by specified individuals or entities – to publish, distribute, or disseminate campaign material online be disclosed on the campaign material. **The bill takes effect June 1, 2020.**

Fiscal Summary

State Effect: General fund expenditures increase by \$7,000 annually, beginning in FY 2020. Special fund revenues may increase as a result of any monetary penalties imposed under the bill.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires that specified individuals or entities that use a bot to publish, distribute, or disseminate campaign material online to another person in the State for the purpose of influencing an election must disclose in a clear and conspicuous manner on the campaign material that the person is using a bot to publish, distribute, or disseminate the campaign material.

“Bot” is defined as an automated online account where all or substantially all of the actions or posts of that account are not the result of a person.

“Online” is defined as appearing on any public-facing Internet website, web application, or digital application, including a social network or publication.

The requirement applies to (1) any candidate; (2) any campaign finance entity; (3) any person required to register with the State Board of Elections (SBE) as a result of making independent expenditures or disbursements for electioneering communications; (4) any participating organization required to register with SBE as a result of making political disbursements; or (5) an agent of any of the preceding individuals or entities.

If a person violates the requirement, SBE may seek to remove the bot and may impose a civil penalty of up to \$500 for each violation. A person who violates the requirement is also guilty of a misdemeanor and subject to a fine of up to \$1,000 and/or imprisonment for up to one year. The bill does not impose a duty on service providers of online platforms, including webhosting and Internet service providers.

Current Law/Background:

Individuals or Entities Required to Register with the State Board of Elections

Persons who make independent expenditures or disbursements for electioneering communications of \$5,000 or more in a four-year election cycle must file a registration form with SBE within 48 hours and are subject to reporting requirements after spending \$10,000 or more. Independent expenditures and disbursements for electioneering communications are political spending by individuals or entities without coordination with a candidate.

Participating organizations that make aggregate political disbursements of more than \$6,000 in a four-year election cycle must file a registration form with SBE within 48 hours, and are subject to reporting/disclosure requirements after spending \$10,000 or more. A “participating organization” is an entity that is organized under §501(c)(4) or (6) or §527 of the Internal Revenue Code and makes political disbursements (contributions to a campaign finance entity, disbursements to persons making independent expenditures or disbursements for electioneering communications in the State, or disbursements to out-of-state political committees that make a disbursement in the State).

Campaign Material Requirements

“Campaign material” means any material that (1) contains text, graphics, or other images; (2) relates to a candidate, a prospective candidate, or the approval or rejection of a question or prospective question; and (3) is published, distributed, or disseminated. “Campaign material” includes (1) a qualifying paid digital communication; (2) any other material

transmitted by or appearing on the Internet or other electronic medium; and (3) an oral commercial campaign advertisement.

Each item of campaign material generally must contain an authority line that states (1) as to campaign material published, distributed, or disseminated by a campaign finance entity, the name and address of the treasurer of each campaign finance entity responsible for the campaign material and the name of each campaign finance entity for which each treasurer is acting and (2) as to campaign material published, distributed, or disseminated by any other person, the name and address of the person responsible for the campaign material. The authority line may omit an address that is on file with SBE or a local board.

Campaign material that is published or distributed in support of or in opposition to a candidate, but is not authorized by the candidate, must include the statement “This message has been authorized and paid for by (name of payor or any organization affiliated with the payor), (name and title of treasurer or president). This message has not been authorized or approved by any candidate.”

With the exception of billboards and signs, each campaign finance entity and each independent expenditure or electioneering communication registrant responsible for, publisher of, and distributor of an item of campaign material must keep a sample copy of the item for at least one year after the general election next following the date the item was published or distributed.

SBE is required to adopt (and has adopted) regulations governing the application of statutory campaign material requirements to campaign material transmitted through electronic media.

State Fiscal Effect: General fund expenditures increase by \$7,000 annually, beginning in fiscal 2020 (due to the need to begin enforcing the bill on the bill’s June 1, 2020 effective date), reflecting the cost for the Office of the State Prosecutor to purchase a license for advanced software and for ongoing training on the use of the software for the office’s election law investigator. In pursuing civil or criminal enforcement actions for violations of the bot requirement, the office will need to identify and establish the source of bots that are publishing, distributing, or disseminating campaign material online. The Department of Legislative Services notes that this estimate is based on the office’s experience with other types of software and training and that actual costs may vary from the estimate depending on the specific software/technology that would be needed for this purpose.

Special fund (Fair Campaign Financing Fund) revenues may increase from any monetary penalties imposed for violations of the disclosure requirement. The magnitude of any increase cannot be reliably estimated.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

Fiscal Note History: First Reader - February 9, 2020
an/hlb Third Reader - March 4, 2020

Analysis by: Scott D. Kennedy

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