

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
 First Reader

Senate Bill 87 (Senator Lam)
 Education, Health, and Environmental Affairs

Campaign Finance - Contributions, Expenditures, or Donations by Foreign-Influenced Corporations or Foreign Principals

This bill prohibits specified foreign, or foreign-influenced, campaign finance-related contributions, expenditures, communications, or donations. The bill also requires a corporation that makes a specified campaign finance-related contribution, expenditure, communication, or donation to subsequently file a statement with the State Board of Elections (SBE) certifying that it was not a foreign-influenced corporation when the contribution, expenditure, communication, or donation was made. **The bill takes effect January 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$46,900 in FY 2021 and by additional amounts in future years. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	46,900	81,000	82,900	85,800	88,700
Net Effect	(\$46,900)	(\$81,000)	(\$82,900)	(\$85,800)	(\$88,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Prohibition on Foreign or Foreign-influenced Contributions, Expenditures, Communications, or Donations

The bill prohibits a foreign-influenced corporation or foreign principal from (1) making a contribution to a campaign finance entity; (2) making an independent expenditure or electioneering communication; or (3) making a donation to a person that makes independent expenditures or electioneering communications.

If the treasurer of a campaign finance entity knowingly receives a contribution as a result of a violation of the above prohibition, the campaign finance entity (1) may not use the contribution for any purpose and (2) must return the contribution to the contributor. The treasurer acts knowingly when the treasurer:

- has actual knowledge that the contribution has come from a foreign-influenced corporation or foreign principal;
- is aware of facts that would lead a reasonable person to believe that there is a substantial probability that the contribution is from a foreign-influenced corporation or foreign principal; or
- was aware of facts that should have prompted a reasonable inquiry into whether the source of the contribution is a foreign-influenced corporation or foreign principal.

Corporations Required to File Statement

The bill requires a corporation – within seven days after making a contribution, an independent expenditure, an electioneering communication, or a donation to a person that makes independent expenditures or electioneering communications – to file a statement with SBE:

- signed by the chief executive officer of the corporation under oath; and
- certifying that, after due inquiry, the corporation was not a foreign-influenced corporation on the date the contribution, independent expenditure, electioneering communication, or donation was made.

“Foreign-influenced Corporation,” “Foreign Principal,” and “Corporation”

“Foreign-influenced corporation” is defined as a corporation of which:

- a single foreign owner holds, owns, controls, or otherwise has direct or indirect beneficial ownership of 1% or more of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation;
- two or more foreign owners, in aggregate, hold, own, control, or otherwise have direct or indirect beneficial ownership of 5% or more of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation; or
- a single foreign owner participates directly or indirectly in the corporation’s decision making process with respect to the corporation’s political activities in the United States.

“Foreign principal” is defined to include:

- a government of a foreign country;
- a foreign political party;
- a person outside the United States, unless (1) the person is an individual, is a citizen of the United States, and is domiciled within the United States or (2) the person is not an individual and is organized under or created by the laws of the United States or any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
- a partnership, an association, a corporation, an organization, or any other combination of persons organized under the laws of or having its principal place of business in a foreign country.

“Foreign principal” does not include any individual who is a citizen of the United States.

“Corporation” includes a corporation, a sole proprietorship, a general partnership, a limited partnership, a limited liability company, a real estate investment trust, or any other entity.

The bill also defines “chief executive officer,” “foreign investor,” and “foreign owner.”

Current Law/Background: Federal law prohibits a foreign national from making, directly or indirectly, a contribution or donation of money or other thing of value, or making an express or implied promise to make a contribution or donation, in connection with a federal, State, or local election. A foreign national also may not make, directly or indirectly, a contribution or donation to a committee of a political party, or an expenditure, independent expenditure, or disbursement for an electioneering communication. “Foreign

national” is defined as (1) a foreign principal, as defined under federal law governing foreign agents and propaganda (22 USC §611), with the exception that “foreign national” does not include any individual who is a citizen of the United States, or (2) an individual who is not a citizen of the United States or a national of the United States and who is not lawfully admitted for permanent residence.

Pursuant to Chapter 282 of 2017, Maryland law prohibits a foreign principal from (1) making a contribution to a ballot issue committee or (2) making a donation to a person that makes independent expenditures or electioneering communications relating to a ballot issue. “Foreign principal” is defined by reference to 22 USC §611. That definition is the same as the definition in the bill, with the exception that the definition under 22 USC §611 does not exclude from the definition any individual who is a citizen of the United States.

State Fiscal Effect: General fund expenditures increase by \$46,903 in fiscal 2021, which accounts for the bill’s January 1, 2021 effective date. This estimate reflects the cost for the Office of the State Prosecutor, which handles prosecutions of State election law violations, to hire an investigator to perform investigative work needed to enforce the bill. Investigating violations of the bill is expected to take a relatively significant amount of time and effort, particularly determining whether corporations that are potentially in violation of the bill’s requirements are foreign-influenced. The estimate includes a salary (for only half of a fiscal year in fiscal 2021, due to the bill’s effective date), fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Salaries and Fringe Benefits	\$41,695
Operating Expenses	<u>5,208</u>
Total FY 2021 State Expenditures	\$46,903

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 34 (Delegate Palakovich Carr) - Ways and Means.

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

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md/hlb

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