

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 93 (Delegate Terrasa)
 Ways and Means

Candidates for Offices of Municipalities and Common Ownership Communities -
 Reports of Donations and Disbursements

This bill requires municipalities, cooperative housing corporations, condominiums, and homeowners associations (HOAs) that require candidates for election to their respective bodies to file reports of donations and disbursements to transmit a copy of each report to the State Board of Elections (SBE) within five days after the filing deadline for each report. If the specified bodies do not require such reports, the candidate must file a report with SBE and establish an election committee. The bill is only applicable to municipalities with at least 5,000 residents and condominiums, cooperative housing corporations, and HOAs that contain at least 2,000 lots/units. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase by \$81,800 in FY 2023 for one-time programming costs and staff; future years reflect annualization and ongoing costs. Special fund revenues may increase, likely minimally, as a result of any monetary penalties (including late fees) imposed under the bill.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	-	-	-	-	-
GF Expenditure	\$81,800	\$59,700	\$61,400	\$63,100	\$64,800
Net Effect	(\$81,800)	(\$59,700)	(\$61,400)	(\$63,100)	(\$64,800)

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

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary:

In General

The bill establishes procedures for candidates for election to cooperative housing corporations, municipalities, condominiums, and HOAs meeting specified criteria to submit reports regarding donations and disbursements with SBE *if the cooperative housing corporation, municipality, condominium, or HOA does not require reports of donations and disbursements to be filed*. Those procedures are detailed below, and SBE may adopt implementing regulations. The bill also repeals existing provisions that require candidates in a municipal election who are required by the municipality to file campaign finance reports to submit a copy of the report to SBE within 10 days, as specified (regardless of the size of the municipality).

Selected Definitions

“Disbursement” means an expenditure, a gift, a transfer, or a promise of money or other thing of value by a candidate to promote the election of the candidate.

“Donation” means the gift, transfer, or promise of gift or transfer of money or other thing of value to a candidate to promote the election of the candidate.

Candidates and Election Committees

A candidate may accept a donation or make a disbursement only if the candidate establishes an election committee and discloses the donations and disbursements, as required under the bill. A candidate must establish an election committee by filing a statement of organization with SBE that includes the appointment of a treasurer and any other information that SBE requires. An election committee must deposit all donations received in a designated bank account and make all disbursements from the designated bank account. Disbursements of an election committee must (1) pass through the hands of the treasurer and (2) be in accordance with the purpose of the entity.

Records Retention and Report Filing

The treasurer of an election committee must maintain detailed and accurate records of all donations received by the election committee and disbursements made by the election committee. An election committee must retain the records for two years after filing a final report. The treasurer of an election committee must file the reports with SBE: (1) using an electronic format; (2) with the electronic signature of the treasurer; (3) under oath or

affirmation; and (4) subject to the penalties for perjury. SBE must make these reports (as well as reports submitted via a governing body or municipality) publicly available on its website.

A report filed by the treasurer of an election committee must include the information required by SBE with respect to all donations and disbursements of the election committee during the reporting period. SBE must, by regulation, establish the reporting periods for each of the specified reports.

An election committee must file a report (1) on or before the first day of each quarter of each calendar year and (2) on or before the day that is 14 days before the date of the election for the office the candidate is seeking. Instead of filing the report, an election committee may file an affidavit stating that the election committee has not raised or spent a cumulative amount of \$1,000 or more, regardless of the balance in the committee's account, since either establishing the election committee or filing the election committee's last report. The affidavit must be filed on or before the date on which a report is due to be filed.

If the treasurer of an election committee fails to provide all the information required on a report, SBE must notify the treasurer in writing of the particular deficiencies and the treasurer must file an amended report within 30 days after service of the notice.

Late Filing Fees

SBE must assess late filing fees for failure to properly file a report, as specified, up to a maximum fee of \$1,000. A late filing fee must be paid by the election committee. However, if the election committee has insufficient funds with which to pay the full amount of the late filing fee in a timely manner, after the account of the election committee is exhausted the balance of the fee is the liability of the treasurer. Late filing fees must be distributed to the Fair Campaign Financing Fund.

SBE must accept an overdue report that is submitted without payment of the late filing fee, but the report is not considered filed until the fee has been paid. After an overdue report is received, no further late filing fee is incurred. The treasurer of an election committee that fails to properly file a report may seek relief from a late filing fee for just cause from the State Administrator of Elections.

If SBE determines that there has been, for more than 30 days, a failure to file a report or pay a late filing fee, SBE must issue a notice to the treasurer of the election committee in violation. The notice must demand that, within 30 days after service of the notice, either (1) the failure to file be rectified and any late filing fee be paid or (2) the treasurer show cause why SBE should not ask the appropriate prosecuting authority to prosecute the

treasurer. In its discretion, the appropriate prosecuting authority may refer the matter to the Central Collection Unit within the Department of Budget and Management (DBM).

A treasurer who fails, without cause, to file the report and pay the late filing fee within 30 days after service of the notice is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a \$25,000 fine. A candidate whose election committee has failed to file a report or pay a late filing fee that is due may not, until the report is filed or the late filing fee is paid (1) be deemed to be elected to the office the candidate seeks; (2) take the oath or otherwise assume the duties of the office; or (3) if applicable, receive a salary or compensation for the office.

Civil Penalties and Other Responsibilities

SBE may impose a civil penalty on an election committee for the following violations (1) making a disbursement for a purpose not related to the election for the office the candidate seeks; (2) failure to dispose of surplus funds in a specified manner; (3) failure to maintain the records; or (4) failure to report all donations and disbursements.

A civil penalty imposed under the bill must be assessed in the amount and in the manner specified under existing provisions applicable to civil penalties SBE may impose on a campaign finance entity participating in State and county elections. A civil penalty imposed must be paid by the election committee unless insufficient funds are available, as specified.

Before filing a final report, an election committee must pay all outstanding obligations and dispose of all its remaining assets in accordance with existing provisions governing the disposition of surplus funds of a campaign finance entity.

Current Law: If a municipality requires candidates in a municipal election to file campaign finance reports, within 10 days after the filing deadline, each candidate in the municipal election must submit to SBE a copy of the campaign finance report filed by the candidate.

“Election committee” is not defined under current law.

State campaign finance laws set out provisions applicable to campaign finance entities participating in *State* and *county* elections that are similar to provisions within the bill. Those provisions include:

- *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). For each election in which a campaign finance entity participates, it generally must file campaign finance reports at various times prior to and after the primary and general elections, as well as an annual report. The reports must contain information required by SBE with respect to all contributions received and all expenditures made by or on behalf of the campaign finance entity during a reporting period.

- *Responsible Officers:* A campaign finance entity must have a chairman and a treasurer who are the responsible officers of a campaign finance entity. A campaign finance entity may not receive or disburse money or any other thing of value if there is a vacancy in the office of chairman or the office of treasurer. The chairman and treasurer are jointly and severally responsible for (1) filing all campaign finance reports in full and accurate detail and (2) except as otherwise provided under State campaign finance law, all other actions of the entity.
- *Exceptions to Filing Requirements:* Generally, a treasurer may file an affidavit stating that the campaign finance entity has not raised or spent a cumulative amount of \$1,000 or more, exclusive of the filing fee, and regardless of the balance of the campaign account since (1) establishing the campaign finance entity or (2) filing the campaign finance entity's last campaign finance report. The affidavit must be filed on or before the date a campaign finance report is due to be filed.
- *Late Filing Fees:* SBE must assess specified fees for each day or part of a day that a campaign finance report, an affidavit, or an amended campaign finance report is overdue.
- *Referral for Prosecution:* If SBE determines that there has been, for more than 30 days, a failure to file a campaign finance report, SBE must issue a notice to the responsible officers of the campaign finance entity in violation. In its discretion, the appropriate prosecuting authority may refer the matter for action to the Central Collection Unit within DBM. A responsible officer who fails, without cause, to file a report and pay the late filing fee within 30 days after service of the notice is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$25,000 or imprisonment not exceeding one year, or both.
- *Disqualification:* An individual who has failed to file a campaign finance report that is due from, or on behalf of, that individual, may not, until the individual corrects the failure to file (1) be deemed to be elected to a public or party office in

the State; (2) take the oath or otherwise assume the duties of the office; or (3) receive any salary or compensation for the office. An official of the State or any of its political subdivisions may not issue a commission or administer an oath of office to an individual until that official receives certification from SBE that all campaign finance reports due from, or on behalf of, that individual have been filed.

- *Civil penalties:* SBE may impose a civil penalty for specified violations, including (1) treasurers and campaign finance entities making unauthorized disbursements; (2) failure to dispose of surplus funds in a specified manner; (3) failure to maintain detailed and accurate account books and records; and (4) failure to report all contributions received and expenditures made, as specified.

Generally, the governance of each cooperative housing corporation, condominium, or HOA is determined by its applicable governing documents.

State Expenditures: General fund expenditures increase by \$81,832 in fiscal 2023, which accounts for a 30-day start-up delay from the bill’s June 1, 2022 effective date. This estimate reflects the cost of hiring one administrative aide to assist with the filings and uploading the bill’s required reports. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes a one-time expense of \$15,000 for computer changes at SBE to handle the creation of the new election committees, reporting schedule, notice of delivery, violations for failure to file, and a referral process to the Office of the State Prosecutor (OSP).

Position	1.0
Salaries and Fringe Benefits	\$59,224
One-time Programming Changes	15,000
Operating Expenses	<u>7,608</u>
Total FY 2023 State Expenditures	\$81,832

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

OSP can absorb the bill’s requirements with existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Municipal League; Office of the Attorney General (Consumer Protection Division); Secretary of State; State Prosecutor's Office; Maryland State Board of Elections; Department of Legislative Services

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