

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 344 (Delegate Palakovich Carr)
 Ways and Means

Election Law - Campaign Finance - Contributions (Prohibiting Pay to Play Act of 2022)

This bill prohibits regulated lobbyists, and business entities doing State business (and their officers), from making specified contributions to candidates for specified offices. The bill also prohibits the candidates from accepting such contributions. **The bill takes effect January 1, 2023.**

Fiscal Summary

State Effect: General fund expenditures increase by \$109,200 in FY 2023 and by additional amounts in future years. Special fund revenues may increase annually, beginning in FY 2023.

| (in dollars) | FY 2023 | FY 2024 | FY 2025 | FY 2026 | FY 2027 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| SF Revenue | - | - | - | - | - |
| GF Expenditure | \$109,200 | \$102,800 | \$105,600 | \$108,300 | \$111,100 |
| Net Effect | (\$109,200) | (\$102,800) | (\$105,600) | (\$108,300) | (\$111,100) |

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 finances.

Small Business Effect: None.

Analysis

Bill Summary:

Regulated Lobbyists

“Regulated lobbyist” means an entity that is required to register with the State Ethics Commission (SEC) as specified under the Maryland Public Ethics Law (Title 5 of the General Provisions Article).

A regulated lobbyist, or a person acting on behalf of a regulated lobbyist, may not make a contribution from personal funds to a candidate for Governor, Lieutenant Governor, Attorney General, Comptroller, or member of the General Assembly if the regulated lobbyist is registered to lobby and influence action in the same branch of government to which the candidate seeks election. In addition, a candidate for any of those offices may not accept contributions from personal funds from a regulated lobbyist, or a person acting on behalf of a regulated lobbyist, if the regulated lobbyist is registered to lobby and influence action in the same branch of government to which the candidate seeks election. A contribution to a campaign finance entity of a candidate for any of those offices must be deemed to be a contribution to the candidate.

The prohibitions apply from the starting date of the regulated lobbyist's registration to the end of the calendar year in which the registration period ends. The prohibitions do not apply to contributions from the personal funds of a regulated lobbyist to a candidate for member of the General Assembly if the regulated lobbyist resides in the district that the candidate represents or seeks to represent. In addition, contributions or loans to a campaign finance entity of a candidate from the personal funds of the candidate or the candidate's spouse are not subject to these prohibitions.

Business Entities Doing State Business

“Doing State business” means making or having a single contract with the State involving cumulative consideration of at least \$200,000. “Doing State business” does not include (1) receiving a salary from a governmental entity or (2) making or having a contract with a county, a municipal corporation, or any other political subdivision of the State.

A business entity, or an officer of a business entity, that is doing State business may not make a contribution to a candidate for Governor, Lieutenant Governor, Attorney General, or Comptroller. In addition, a candidate for any of those offices may not accept contributions from a business entity, or an officer of a business entity, that is doing State business. A contribution to a campaign finance entity of a candidate for any of those offices must be deemed to be a contribution to the candidate.

Penalties

Violations of the bill's prohibitions are subject to existing civil penalties (for unknowing violations) and criminal penalties under Title 13 (Campaign Finance) of the Election Law Article. Those penalties are described below under Current Law.

Current Law:

Regulated Lobbyists

Under the Maryland Public Ethics Law, an entity (the definition of which includes an individual) is required to register with SEC and is a regulated lobbyist under the Maryland Public Ethics Law if the entity meets any of a number of criteria generally relating to minimum levels of spending or earnings associated with the entity's efforts to influence legislative or executive action, or the dollar amount of procurement contracts or business grants/loans that are the focus of the entity's efforts to influence executive action.

A regulated lobbyist must file semiannual activity reports electronically with SEC that include specified total expenditures in connection with influencing executive or legislative action. Subject to limited exceptions, regulated lobbyists must also electronically file a report, at the same time and in the same manner as the semiannual activity reports, disclosing any political contributions made (1) directly or indirectly by the regulated lobbyist; (2) during the reporting period; (3) under the Election Law Article; and (4) for the benefit of the Governor, Lieutenant Governor, Attorney General, Comptroller, or a member of the General Assembly, or a candidate for any of those offices.

Subject to limited exceptions, regulated lobbyists (and any person acting on their behalf) are prohibited from engaging in the following political activities for the benefit of the Governor, Lieutenant Governor, Attorney General, or Comptroller, or a member of the General Assembly, or a candidate for any of those offices: (1) soliciting or transmitting a political contribution from any person, including a political committee; (2) serving on a fundraising committee or a political committee; (3) acting as a treasurer for a candidate or an official or as a treasurer or chair of a political committee; (4) organizing or establishing a political committee for the purpose of soliciting or transmitting contributions from any person; or (5) forwarding tickets for fundraising activities or other solicitations for political contributions, to a potential contributor. Statute specifies that those prohibitions do not prohibit a regulated lobbyist from making a personal contribution and do not apply to a regulated lobbyist who is a candidate, with respect to the regulated lobbyist's own campaign.

SEC is required to provide a training course for regulated lobbyists and prospective regulated lobbyists on the provisions of the Maryland Public Ethics Law relevant to regulated lobbyists.

Persons Doing Public Business

Under Title 14 of the Election Law Article, persons that do public business (defined as making or having a single contract with a State or local governmental entity involving

cumulative consideration of at least \$200,000) are required to file statements with the State Board of Elections (SBE) regarding any applicable contributions of a cumulative amount of \$500 or more to a candidate during a reporting period. An initial statement is filed when a contract is awarded that causes the person to be doing public business and semi-annually thereafter as long as performance on the contract remains uncompleted.

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.

Contribution and Transfer Limits

Subject to certain exceptions, a person may not make aggregate contributions of more than \$6,000 to any one campaign finance entity in a four-year election cycle, and a campaign finance entity may not make transfers in a cumulative amount of more than \$6,000 to any one other campaign finance entity in a four-year election cycle. Contributions or loans to a campaign finance entity of a candidate from the personal funds of the candidate or the candidate's spouse are not subject to these contribution limits but must pass through the hands of the treasurer of the campaign finance entity and be included in the campaign finance reports submitted to SBE.

Penalties under State Campaign Finance Law

Under Title 13 of the Election Law Article, a person who knowingly and willfully violates a provision of the title is guilty of a misdemeanor and subject to a fine of up to \$25,000 and/or imprisonment of up to one year. A person who violates a provision of the title without knowing that the act is illegal is subject to a civil penalty of up to \$5,000. Fine/penalty revenues are deposited in the Fair Campaign Financing Fund, which holds funding for public campaign financing of gubernatorial tickets under the Public Financing Act.

State Expenditures: General fund expenditures increase by \$109,208 in fiscal 2023, which accounts for the bill’s January 1, 2023 effective date. This estimate reflects (1) the cost for the Office of the State Prosecutor (OSP), which prosecutes violations of State campaign finance laws, to hire an investigator to enforce the bill’s prohibitions and (2) one-time costs for SEC to make changes to its lobbying reporting system and training module. OSP indicates that its existing staff cannot absorb the additional investigative work required to enforce the bill, necessitating the additional investigator. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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|---|------------------|
| Positions | 1.0 |
| Salary and Fringe Benefits | \$50,500 |
| SEC System/Module Changes | 50,000 |
| Operating Expenses | <u>8,708</u> |
| Total FY 2023 State Expenditures | \$109,208 |

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

State Revenues: Special fund (Fair Campaign Financing Fund) revenues may increase annually, beginning in fiscal 2023, to the extent fine/penalty revenues are collected for violations of the bill’s prohibitions.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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