

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 111

(Senator Kagan)

Education, Energy, and the Environment

Ways and Means

**Election Law - Campaign Finance - Draft Committees and Exploratory
Committees**

This bill establishes draft committees and exploratory committees in State campaign finance law, (1) defining them; (2) making them subject to provisions that apply to political committees but establishing that a donation to a draft committee or exploratory committee is not subject to any limits; and (3) establishing additional requirements and limitations.

Fiscal Summary

State Effect: General fund expenditures increase by \$7,500 in FY 2024 only. Special fund (Fair Campaign Financing Fund) revenues may increase annually, beginning in FY 2024.

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

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines “draft committee” to mean an entity that is organized to encourage a potential candidate to run for office but is not authorized by the potential candidate. “Exploratory committee” means an entity established by a potential candidate for a public office to determine the potential candidate’s viability for that public office.

The bill establishes that specified provisions of Title 13 (Campaign Finance) of the Election Law Article of the Maryland Code that apply to a political committee also apply

to a draft committee or an exploratory committee; however, a donation to a draft committee or an exploratory committee is not subject to any limits.

“Donation” means the gift or transfer, or promise of gift or transfer, of money or other thing of value to a person that makes disbursements for a draft committee or an exploratory committee, subject to specified exceptions.

A person may establish a draft committee for a public office for an individual only if (1) the draft committee is not established in coordination or cooperation with the individual it intends to encourage to seek public office and (2) the individual the draft committee intends to encourage to seek public office is not a candidate for that public office. An individual who is a candidate may not establish a draft committee or an exploratory committee for a public office.

A draft committee or an exploratory committee for an individual may receive funds and make disbursements to determine the individual’s viability for a public office. Disbursements may be made only for the following activities: (1) conducting surveys or polls regarding the viability of the potential candidate for a public office; (2) direct mailings and other communications to potential voters; (3) employing staff; (4) establishing a website; (5) a qualifying paid digital communication; (6) renting or leasing office space; and (7) purchasing electronic equipment, including computers and telephones. A draft committee or an exploratory committee may not pay any expense in advance for goods or services to be used by the political committee of the potential candidate once the potential candidate registers an authorized candidate campaign committee.

“Qualifying paid digital communication” means any electronic communication that (1) is campaign material; (2) is placed or promoted for a fee on an online platform; (3) is disseminated to 500 or more individuals; and (4) does not propose a commercial transaction.

The bill modifies the definition of “campaign material” to refer to “a potential candidate” rather than “a prospective candidate”, so that the term means any material that (1) contains text, graphics, or other images; (2) relates to a candidate, a *potential* candidate, or the approval or rejection of a question or prospective question; and (3) is published, distributed, or disseminated. Existing statute, among other things, requires campaign material to contain an authority line identifying the person or campaign finance entity responsible for the campaign material.

If an authorized candidate campaign committee results from the draft committee or exploratory committee, any purchases made by the authorized candidate campaign committee of equipment from the draft committee or exploratory committee must be made at the fair market value of the equipment.

A draft committee or an exploratory committee must return any remaining funds within 120 days after (1) a potential candidate or an individual a draft committee encouraged to seek public office timely filing a certificate of candidacy for a public office or publicly announcing that the individual has declined to file a certificate of candidacy for public office or (2) the deadline for filing a certificate of candidacy.

A draft committee or an exploratory committee must return funds *pro rata* to the contributors, or pay the remaining funds to: (1) if the potential candidate or individual the draft committee encouraged to seek public office is a member of a political party, the State central committee of the political party or a local central committee of the political party; (2) if the potential candidate or individual the draft committee encouraged to seek public office establishes an authorized candidate campaign committee, the authorized candidate campaign committee, subject to the contribution limit (\$6,000) applicable to an authorized candidate campaign committee; (3) a nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code; or (4) the Fair Campaign Financing Fund (which holds funds for public campaign financing of gubernatorial tickets under the Public Financing Act).

Current Law:

Political Committees

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).

“Political committee” is defined as a combination of two or more individuals that has as its major purpose promoting the success or defeat of a candidate, political party, question, or prospective question submitted to a vote at any election.

Whether establishing and filing with the State Board of Elections (SBE) as an authorized candidate campaign committee or other campaign finance entity, a political committee must include with the filing a statement of organization that includes a statement of purpose specifying (1) each candidate or ballot question, if any, that the political committee was formed to promote or defeat; (2) the identity of each special interest, including any business or occupation, that the organizers of or contributors to the political committee have in common; and (3) whether the political committee will participate in presidential, gubernatorial, Baltimore City, or multiple elections.

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.

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.

“Candidate” Definition

“Candidate” is defined under the Election Law Article as an individual who files a certificate of candidacy for a public or party office, and includes an individual, prior to that individual filing a certificate of candidacy, if a campaign finance entity has been established on behalf of that individual.

Summary Guide Information on Draft and Exploratory Committees

[Chapter 4](#) of SBE’s [Summary Guide to Maryland Candidacy and Campaign Finance Laws](#) discusses draft committees and exploratory committees, and limitations applicable to them. The guide states that while there are no statutory provisions that expressly authorize exploratory committees, the Office of the Attorney General has indicated that some exploratory or “testing the waters” activities involving raising and spending funds for limited purposes, to determine if an individual would be a viable candidate, are permissible without needing to establish a political committee.

State Fiscal Effect: General fund expenditures increase by \$7,500 in fiscal 2024 only, for SBE to make changes to its campaign finance reporting system to incorporate draft and exploratory committee filings.

Special fund revenues increase to the extent monetary penalties are imposed for violations of the bill’s prohibitions (which are subject to existing civil and criminal penalty provisions). Penalty revenues are deposited in the Fair Campaign Financing Fund.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 441 (Delegate D. Jones, *et al.*) - Ways and Means.

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

Fiscal Note History: First Reader - February 12, 2023
km/sdk Third Reader - March 27, 2023
Revised - Amendment(s) - March 27, 2023

Analysis by: Thomas S. Elder

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