

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 192
Ways and Means

(Delegate Palakovich Carr, *et al.*)

Education, Energy, and the Environment

Currency - Campaign Finance Prohibitions - Disclosures by Financial
Institutions

This bill establishes prohibitions against specified use of any currency other than United States currency in the financing of election campaigns, independent expenditures, and electioneering communications. The bill authorizes the State Administrator of Elections to investigate potential violations and authorizes the State Board of Elections (SBE) to impose civil penalties for violations or make referrals to the State Prosecutor to investigate potential criminal violations. The bill also allows for the Comptroller to request information and assistance from a virtual currency money transmitter in enforcing State tax laws and to direct a virtual currency money transmitter to seize, attach, and forward to the Comptroller property of an account holder that is subject to a tax lien. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: General fund and special fund (Fair Campaign Financing Fund) revenues may increase annually, beginning in FY 2024, as discussed below. SBE and the Comptroller can handle any additional enforcement activities that may arise as a result of the bill with existing budgeted resources.

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Prohibitions Against Use of Any Currency Other Than United States Currency in Campaign Finance

The bill prohibits a person from making a monetary contribution to a campaign finance entity, or a monetary donation to specified persons making independent expenditures or disbursements for electioneering communications (those required to register with SBE), using any currency other than United States currency. The bill also prohibits a campaign finance entity from accepting a monetary contribution made using any currency other than United States currency and prohibits specified persons making independent expenditures or disbursements for electioneering communications from accepting a monetary donation made using any currency other than United States currency. In addition, the bill prohibits a campaign finance entity, or a person acting on its behalf, from making a monetary expenditure using any currency other than United States currency.

The bill gives the State Administrator of Elections (or the administrator's designee) specified authority to investigate potential violations of these prohibitions and authorizes SBE, at the conclusion of an investigation, to (1) impose a civil penalty of up to \$1,000 for each violation or (2) refer the matter for further investigation by the State Prosecutor if SBE has reasonable cause to believe that a person willfully and knowingly violated a prohibition, which is a misdemeanor and subject to a fine of up to \$25,000 and/or imprisonment for up to one year (under an existing penalty provision).

Enforcement of Tax Laws

The bill includes a virtual currency money transmitter, that is regulated under Title 12 of the Financial Institutions Article of the Maryland Code, among financial institutions from which the Comptroller may request information and assistance to enable the Comptroller to enforce the tax laws of the State and which the Comptroller may direct to seize, attach, and forward to the Comptroller (pursuant to procedures set out in statute) property of an account holder that is subject to a tax lien.

Current Law:

Campaign Accounts, Contributions, and Disbursements/Expenditures

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).

Each campaign finance entity must designate one or more campaign accounts. Each designated campaign account must (1) be in a financial institution and (2) be registered in a manner that identifies it as the account of a campaign finance entity. A campaign finance entity must deposit all funds received in a designated campaign account.

A contribution of money to a campaign finance entity may be made only by check, credit card, cash (if the contribution does not exceed \$100 in an election cycle), or an electronic method that SBE authorizes by regulation.

A campaign finance entity may not directly or indirectly make a disbursement except from a designated campaign account. A disbursement may only be made by check or an electronic method that SBE authorizes by regulation. However, a campaign finance entity, or a person authorized by the campaign finance entity, may pay an expense of the campaign finance entity from funds other than a campaign account if (1) the expense is supported by a receipt that is provided to the campaign finance entity and (2) the campaign finance entity reimburses the person who paid the expense from the campaign account and reports the expense as an expenditure of the campaign finance entity.

Independent Expenditures and Electioneering Communications

Independent expenditures in general – political spending by individuals or organizations without coordination with a candidate – cannot be limited or prohibited, pursuant to the 2010 Supreme Court decision *Citizens United v. FEC*. Requirements for disclosure of independent expenditures, however, have been upheld by courts. Under Maryland's disclosure requirements, independent expenditures are expenditures for public communications that are not made in coordination with a candidate or campaign finance entity and that expressly advocate the success or defeat of a clearly identified candidate or ballot question. Electioneering communications, on the other hand, do not expressly advocate the success or defeat of a candidate or ballot question, but refer to a clearly identified candidate or ballot question, are made within 60 days of an election, are capable of being received by a certain amount of individuals (with the amount depending on the type of communication) in the constituency where the candidate or ballot question is on the ballot, and are not made in coordination with a candidate or campaign finance entity.

Within 48 hours after a person makes aggregate independent expenditures or disbursements for electioneering communications of \$5,000 or more in an election cycle, the person must file a registration form with SBE. Within 48 hours after a day on which a person makes

aggregate independent expenditures or disbursements for electioneering communications of \$10,000 or more in an election cycle, the person must file a report with SBE providing information on the person, the expenditures or disbursements, and persons who made cumulative donations of \$6,000 or more to the person during the period covered by the report. Further, a person who files an independent expenditure or electioneering communication report must file an additional report within 48 hours after a day on which the person makes aggregate independent expenditures or disbursements for electioneering communications of \$10,000 or more following the closing date of the person’s previous report.

Enforcement of Tax Laws

The Comptroller is given specified authority to (1) request from a financial institution information and assistance to enable the Comptroller to enforce the tax laws of the State and (2) direct a financial institution to seize, attach, and forward to the Comptroller property of an account holder that is subject to a tax lien, after following specified procedures including notice to the account holder and an opportunity for the account holder to challenge the actions of the Comptroller in court.

“Financial institution” is defined as (1) a depository institution, as defined in the Federal Deposit Insurance Act; (2) a federal credit union or State credit union, as defined in the Federal Credit Union Act; (3) a State credit union regulated under Title 6 of the Financial Institutions Article of the Maryland Code; or (4) a benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity doing business in the State that holds property or maintains accounts reflecting property belonging to others.

State Revenues: General fund revenues may increase annually, beginning in fiscal 2024, to the extent the Comptroller is able to satisfy tax liens that otherwise would not have been satisfied, by collecting property from accounts with virtual currency money transmitters. The extent of any increase cannot be reliably estimated.

Special fund (Fair Campaign Financing Fund) revenues may increase annually, beginning in fiscal 2024, to the extent civil or criminal penalty revenues are collected as a result of the bill’s penalty provisions.

Additional Information

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

Designated Cross File: SB 269 (Senator Rosapepe, *et al.*) - Education, Energy, and the Environment.

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

Fiscal Note History: First Reader - January 30, 2023
rh/sdk Third Reader - March 17, 2023
Revised - Amendment(s) - March 17, 2023

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