

CHARLTON T. HOWARD, III
STATE PROSECUTOR



OFFICE OF
THE STATE PROSECUTOR

Suite 410
Hampton Plaza
300 East Joppa Road
Towson, MD 21286-3152

Telephone (410) 321-4067
1 (800) 695-4058
Fax (410) 321-3851

SUPPORT FOR HB 951

Madam Chair and Members of the Ways and means Committee:

We are writing to express the Office of the State Prosecutor's support for House Bill 951, which enhances our ability to effectively enforce Title 14 of the election law Article by providing civil enforcement power.

The Office of the State Prosecutor

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of state government and elections by conducting thorough, independent investigations, and when appropriate, employing our criminal and civil enforcement power to prosecute conduct affecting the integrity of our government institutions, officials, employees, and elections. One of the duties of The Office of the State Prosecutor is to enforce Maryland's election laws.

Title 14

Title 14 mandates that business entities that have a single contract of at least \$200,000 with a governmental entity file statements with the State Board of Elections listing the business' applicable campaign contributions. Title 14 encourages transparency and seeks to avoid corruption in the award of State contracts.

It is clear that the Office of the State Prosecutor was meant to have civil enforcement power over violations of Title 14, and a technical loophole is preventing us from exercising that power. HB 951 closes the loophole, affording the civil enforcement power that many assume we already have.

Title 14 has specific language for criminal enforcement.¹ However, Title 14 is silent as to civil enforcement. Limiting our enforcement power to situations that rise to the level of a crime renders Title 14 practically unenforceable and as a result significantly hinders compliance.

A criminal violation of Title 14 requires that it is a willful and knowing violation. As a practical matter, this means that to bring a criminal charge resulting from a business' failure to file a required statement, we would need evidence that a decision-maker at the company specifically directed the company not to file the disclosure. This type of evidence is simply not applicable in most cases. Instead, what we typically see is that the company was negligent in failing to file the disclosure,

¹ E.L. § 14-107.

or there is no specific evidence regarding the reason the company failed to file the disclosure. Thus, the criminal *mens rea* requirement is not met.

Civil enforcement, on the other hand, would permit us to civilly cite the business entity when it has not complied with the requirements of Title 14. It does not require us to see into the minds of the individual officers or decision makers to evaluate why they did not file the required disclosure.

It is our understanding that the drafters of Title 14 intended the Office of the State Prosecutor to have both civil and criminal enforcement power. This intention is congruent with the fact that we have both civil and criminal enforcement power in the analogous Title 13, which regulates the filing of campaign finance reports.² In fact, the proposed language in section 14-107.1 of the bill mirrors the language from Title 13 discussing our civil enforcement power.³

Importantly, Title 14 provides that the State Board may impose late fees in the same amount and manner as provided under Title 13.⁴ The imposition of late fees necessitates a civil enforcement mechanism. As Title 14 currently stands, there is no ability take any enforcement action when late fees are not paid. As a result, fees go uncollected.

Title 14 is an important tool promoting transparency and integrity in government contracting. HB 951 provides a much needed fix which will enable Title 14 to be enforced in a meaningful way.

Sincerely,

CHARLTON T. HOWARD
STATE PROSECUTOR

² See E.L. §§ 13-603-04.

³ E.L. §13-604.

⁴ E.L. § 14-107 (c).