

April 5, 2022

Testimony on House Bill 1343

**Major State Contractors - Donations to Advocacy Organizations – Disclosure
Senate Education, Health, and Environmental Affairs Committee**

Position: Unfavorable

Maryland Nonprofits is a statewide association of more than 1300 nonprofit organizations and institutions. We understand the purpose of House Bill 1343, but as passed by the House lacks clarity in many important provisions making the scope and effect unclear.

Even though charitable organizations are clearly allowed by the IRS to lobby within limits, and that educating the public about how policies affect the communities they serve is important to their missions, many nonprofit boards are still hesitant to become involved in advocacy. There are still many funders who shy away from advocacy groups. Anything likely to dissuade nonprofits' boards of directors, donors, or public foundations from their willingness to support advocacy efforts must be avoided. Any lack of clarity in how a law may affect their organization or its donors can have a "chilling effect".

We have been discussing our concerns with the sponsor's staff and appreciate that the proposed amendments we have seen do make improvements. But the bill still lacks clarity regarding several important provisions, and it appears to affect and may deter nonprofits from doing advocacy with public messaging on policy issues or legislation where the decisions may generate procurement contracts.

Critical terms in the bill, including "Donation" and "disbursement" aren't defined and have raised questions such whether 'disbursement' includes payments for costs such as staff salaries or other internal costs of generating public communications in-house or does it only refer to payments to third parties such as public relations or media services.

Covered disbursements, required to be reported, are donations "made by a major state contractor directly or indirectly (in the reporting period that they are made) to an advocacy organization that makes disbursements for public communications relating to a major state project in which the major state contractor has a financial interest."

The definition of "covered disbursement" encompasses several elements that may not occur in any particular order in real life, and it includes interests or actions that may not exist or have occurred until well after a donation is made, and in fact may not be certain to ever occur. This can confuse the donor/contractor as to when the requirement to file really occurs.

It includes provisions requiring certain state contractors to disclose contributions to ‘advocacy organizations’ that “make disbursements” for “public messaging’ and provides for enforcement purposes, the authority to audit the records (presumably including of donors and communications) of advocacy organizations that do public messaging “relating to a major state project”. “Major State Project” is defined as a procurement contract with a cumulative value of \$1 million or more.

Critically, what messaging would be considered “relating to” that procurement is not clear. We think the intention is include messaging or lobbying regarding a bill that is related to that procurement – such as being the cause of that procurement.

We appreciate that the amendments would remove the treatment of required reports as public records. But on its face the bill still leaves an advocacy organization in a position where it could unknowingly make a donor subject to a civil penalty. There is no requirement for any causal connection between a donation and communications by the advocacy organization, or that the advocacy organization be aware of a particular possible procurement contract.