

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 1498  
Ways and Means

(Delegates A. Washington and Tarlau)

Education, Health, and Environmental Affairs

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Campaign Finance - Political Organizations - Compliance and Disclosure

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This bill modifies, and adds to, provisions under State campaign finance law governing disclosure reporting by (1) “participating organizations”; (2) persons making independent expenditures; (3) persons making disbursements for electioneering communications; and (4) political action committees (PACs) that exclusively make independent expenditures or disbursements for electioneering communications. The bill also authorizes a PAC to establish a specified compliance account and modifies the definition of “contribution” under State campaign finance law.

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Fiscal Summary

**State Effect:** The bill is not expected to materially affect State finances.

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

**Small Business Effect:** None.

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Analysis

**Bill Summary:**

*Participating Organizations*

“Participating organization,” under its modified definition in the bill, is an entity that (1) is organized under § 501(c)(4) or (6) or § 527 of the Internal Revenue Code and (2) makes political disbursements. “Political disbursements” means (1) a contribution to a political committee organized under the laws of the State; (2) a disbursement to a person making an

independent expenditure or a disbursement for electioneering communications in the State; or (3) a disbursement to an out-of-state political committee that makes a disbursement in the State.

The bill modifies a registration requirement so that it applies when a participating organization makes *aggregate* political disbursements of more than \$6,000, rather than a contribution, donation, or disbursement of \$6,000 or more, in an election cycle. The registration form must include (1) a statement of whether the participating organization plans to disclose its disbursement and donation information by filing reports or by providing a link to the information on the homepage of its website and (2) the identity of the person exercising direction or control over the activities of the participating organization.

A participating organization may provide disclosure of its disbursement and donation information through a link on the homepage of its website, if the information is continually updated within 48 hours until the end of the election cycle. A participating organization that does not provide disclosure online is subject to a reporting schedule similar to the existing reporting requirements for persons making independent expenditures and disbursements for electioneering communications: (1) filing a report within 48 hours after making aggregate political disbursements of \$10,000 or more in an election cycle and (2) filing subsequent reports as needed, within 48 hours after making aggregate political disbursements of \$10,000 or more after the closing date of the participating organization's previous report. The report must include (1) the amount and date of each political disbursement made in the State or to influence a State election during the period covered by the report; (2) the identity of each person that made cumulative donations of \$10,000 or more to the participating organization during the period covered by the report; and (3) any other information required by the State Board of Elections (SBE) concerning the participating organization's political disbursements and donations. The first report filed by a participating organization must cover the period beginning two years before the date the report is filed, and any subsequent reports must cover the period after the closing date of the previous report.

The bill establishes requirements applicable to the treasurer or other individual designated by a participating organization to file a report.

Within 48 hours after a participating organization makes aggregate political disbursements of \$50,000 or more in an election cycle, the participating organization must identify a registered agent located in the State for service of process.

In addition to any other sanction provided by law, SBE may assess a civil penalty for failure to file properly a participating organization report or an amended participating organization report. The civil penalty may not be more than the greater of (1) \$1,000 for each day or

part of a day that a report or amended report is overdue or (2) 10% of the amount of the donations or political disbursements that were not reported in a timely manner. A participating organization may seek relief from a penalty for just cause. A civil penalty is the joint and several liability of the participating organization, the treasurer or other individual who signs and files the participating organization's reports, and the person exercising direction or control over the activities of the participating organization.

If a treasurer of a participating organization or a person exercising direction or control over the activities of the participating organization has failed to pay any civil penalty or late fee under State campaign finance law for which the individual is responsible, the individual may not (1) serve as the responsible officer of a political committee; (2) serve in any position of responsibility in any other entity subject to regulation under State campaign finance law; or (3) assist in the formation of a political committee or any other entity subject to regulation under State campaign finance law.

The bill establishes recordkeeping requirements for participating organizations and authorizes SBE to adopt regulations as necessary to implement the disclosure reporting requirements for participating organizations.

#### *Independent Expenditures and Electioneering Communications*

Certain additional provisions are added to disclosure reporting requirements applicable to persons making independent expenditures and disbursements for electioneering communications that are consistent with provisions added under the bill for participating organizations.

Within 48 hours after a person makes (1) aggregate independent expenditures for campaign material that is a public communication of \$50,000 or more or (2) aggregate disbursements for electioneering communications of \$50,000 or more in an election cycle, the person must identify a registered agent located in the State for service of process.

A civil penalty assessed for failure to file properly an independent expenditure report or an electioneering communication report is the joint and several liability of (1) the person making independent expenditures or disbursements for electioneering communications; (2) the treasurer or other individual who signs and files the reports for the person making independent expenditures or disbursements for electioneering communications; and (3) the person exercising direction or control over the activities of the person making independent expenditures or disbursements for electioneering communications.

If a treasurer of a person making independent expenditures or disbursements for electioneering communications or a person exercising direction or control over the activities of a person making independent expenditures or disbursements for electioneering

communications has failed to pay any civil penalty or late fee under State campaign finance law for which the individual is responsible, the individual may not (1) serve as the responsible officer of a political committee; (2) serve in any position of responsibility in any other entity subject to regulation under State campaign finance law; or (3) assist in the formation of a political committee or any other entity subject to regulation under State campaign finance law.

#### *Independent Expenditure/Electioneering Communication Political Action Committees*

Certain provisions are also added to disclosure reporting requirements applicable to PACs that exclusively make independent expenditures or disbursements for electioneering communications. The bill adds that a disclosure report must include the information required by SBE with respect to all contributions received and all expenditures made by or on behalf of the PAC during the reporting period.

If a responsible officer of a PAC that exclusively makes independent expenditures or disbursements for electioneering communications has failed to pay a civil penalty or late fee under State campaign finance law, the individual may not (1) serve as the responsible officer of any other political committee; (2) serve in any position of responsibility in any other entity subject to regulation under State campaign finance law; or (3) assist in the formation of a political committee or any other entity subject to regulation under State campaign finance law.

#### *Political Action Committee Compliance Accounts*

A PAC is authorized to establish one compliance account, disbursements from which may be made only for purposes of record keeping, reporting, and any other work necessary to comply with State campaign finance law, including accounting and legal services. A donation to a PAC compliance account may be made only if the donor is aware that the donation will be used for the allowed purposes of disbursements from a compliance account and consents to that use before making the donation. A donation to a compliance account also is not subject to contribution limits. A campaign finance entity may not make a transfer to a PAC compliance account. SBE must adopt regulations that define permissible donations to, and disbursements from, a compliance account and require disclosure of donations to, and disbursements from, a compliance account.

#### *Modification of "Contribution" Definition*

The bill modifies the definition of the term "contribution" under State campaign finance law to exclude costs associated with the establishment, administration, or solicitation of voluntary contributions to a PAC established by any of a number of specified business entities or organizations, as long as the PAC only solicits contributions from employees or members of the organization that established the PAC and the employees or members are

participating in a payroll deduction program established by the employer of the employee or member.

### **Current Law/Background:**

#### *Participating Organizations*

“Participating organization” is defined, under current law, as any entity that is organized under § 501(c)(4) or (6) or § 527 of the Internal Revenue Code and makes (1) a contribution to a campaign finance entity for the express purpose of causing the campaign finance entity to make a disbursement in the State; (2) a donation to a person for the express purpose of causing the person to make an independent expenditure or a disbursement for electioneering communications in the State; or (3) a donation to an out-of-state political committee for the express purpose of causing the political committee to make a disbursement in the State.

Within 48 hours after a participating organization makes a contribution, donation, or disbursement of \$6,000 or more in an election cycle, the participating organization must file a registration form with SBE. A participating organization must file reports with SBE in the year of the election for which it is participating and by the filing deadlines for campaign finance reports filed by campaign finance entities of candidates.

SBE has adopted regulations that provide more detail on the disclosure reporting requirements for participating organizations, including specific information the registration notice and filed reports must contain.

#### *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.

### *Independent Expenditure/Electioneering Communication Political Action Committees*

The D.C. Circuit Court of Appeals, in *SpeechNow.org v. FEC* (2010), held that contributions to political committees that make only independent expenditures (super PACs) could not be limited. Following the *Citizens United* and *SpeechNow.org* decisions, SBE guidance indicates that the board does not interpret the statutory contribution limits to apply to super PACs. Under Chapter 419 of 2013, which made various changes to State campaign finance law (including adjustments to independent expenditure and electioneering communication reporting and the addition of participating organization disclosure reporting), additional reporting requirements were established for PACs that exclusively make independent expenditures or disbursements for electioneering communications. The reporting is similar to what is required of persons making independent expenditures or disbursements for electioneering communications.

### *Political Action Committees*

PACs are political committees that are not associated with a candidate or other specific type of campaign finance activity. State law defines "political action committee" as "a political committee that is not (1) a political party; (2) a central committee; (3) a slate; (4) a legislative party caucus committee; (5) an authorized candidate campaign committee; or (6) a ballot issue committee." A "political committee" is 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.

### *"Contribution" Definition and Payroll Deduction Political Action Committees*

"Contribution" is defined, under State campaign finance law, as "the gift or transfer, or promise of gift or transfer, of money or other thing of value to a campaign finance entity (*i.e.*, a political committee established under State law) to promote or assist in the

promotion of the success or defeat of a candidate, political party, question, or prospective question. Generally, a person may not make aggregate contributions of more than \$6,000 to any one campaign finance entity, and a campaign finance entity must include in its campaign finance reports information on all contributions received.

State campaign finance law allows for employers to collect, through payroll deductions, voluntary employee campaign contributions to a PAC affiliated with the employer or an employee membership entity (*i.e.*, a union), or other political committee, subject to specified requirements and prohibitions.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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