

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 953 (Delegate Washington, *et al.*)
 Environment and Transportation

Public Ethics - Issue Lobbying Communications - Lobbyist Registration and
 Disclosure Requirements

This emergency bill defines “issue lobbying communication” under the Maryland Public Ethics Law, establishes disclosure requirements for issue lobbying communications, specifies that an entity that spends at least \$500 for issue lobbying communications is a regulated lobbyist for purposes of the Ethics Law, and sets forth various reporting requirements for specified regulated lobbyists that spend at least \$500 for issue lobbying communications.

Fiscal Summary

State Effect: General fund expenditures for the State Ethics Commission (SEC) increase by \$105,000 in FY 2020, as discussed below. State revenues are not materially affected, as discussed below.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	105,000	0	0	0	0
Net Effect	(\$105,000)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary:

Issue Lobbying Communication – Definition

“Issue lobbying communication” means any public communication that clearly refers to and expresses a view on the subject matter, description, or name of one or more clearly identified pending State legislative matters or executive actions.

“Issue lobbying communication” includes (1) a solicitation or encouragement to other persons to communicate directly with the Governor, Lieutenant Governor, Attorney General, Comptroller, or members of the General Assembly for the purposes of attempting to influence State legislative or executive action or (2) any solicitation, proposal, or appeal that may reasonably be interpreted as a request for any specified official to take State legislative or executive action.

“Issue lobbying communication” does *not* include:

- an electioneering communication as defined under the Election Law Article;
- a commercial advertisement;
- a communication made by a candidate or political committee as defined under the Election Law Article;
- an internal communication by a business entity, membership entity as defined under the Election Law Article, or other entity, as specified;
- a communication that identifies a candidate for elective State office for purposes of featuring the candidate’s endorsement, support, or opposition to another candidate or ballot measure;
- a communication directed to voters or potential voters as part of voter registration activities or activities encouraging or assisting persons to vote;
- a news story, a commentary, or an editorial communication that is an action of the news media, to the extent that the action is in the ordinary course of gathering and disseminating news or making editorial comment to the general public;
- a communication paid for or disseminated by a government agency; and
- any similar communication as defined by SEC in regulation.

Regulated Lobbyists – Registration and Reporting Requirements

An entity is a regulated lobbyist for purposes of the Ethics Law and must register with SEC if the entity spends at least \$500 for issue lobbying communications during the applicable reporting period.

In addition to meeting existing reporting requirements, a regulated lobbyist, other than an individual, that (1) is organized and operated for the primary purpose of attempting to influence legislative or executive action and (2) spends at least \$500 for issue lobbying communications during the reporting period must:

- report the name and permanent address of each entity that provided at least 5% of the regulated lobbyist's total receipts or donated at least \$500 in aggregate to the regulated lobbyist during the preceding 12 months; and
- within 48 hours after an entity makes an aggregate donation of at least \$5,000 to the regulated lobbyist, file a statement with SEC that includes the name and permanent address of the entity and other specified persons and the amount and date of each donation.

Solicited Donations – Required Statement

A regulated lobbyist specified above must also file a specified statement within 30 days after the regulated lobbyist receives a solicited donation, as defined under the bill. "Solicited donation" means a monetary or in-kind donation or series of donations by or attributed to a person for a principally legislative or governmental purpose (1) at the request, solicitation, or suggestion of an applicable State official or (2) made in cooperation, consultation, or coordination with or at the consent of an applicable State official. "Solicited donation" includes donations solicited by an applicable State official's agent or employee on the applicable State official's behalf. It does not include a donation made for a charitable purpose or charitable organization. "Applicable State official" means a State official holding the office of Governor, Lieutenant Governor, Attorney General, Comptroller, or member of the General Assembly.

The statement must include:

- the name of the regulated lobbyist that received a solicited donation during the specified reporting period and during the previous reporting period, if not previously reported;
- the name and office held by each applicable State official for whom the solicited donation was made;
- the name of the person who made the solicited donation and the relationship of that person to the regulated lobbyist filing the statement; and
- the aggregate solicited donations made attributable to each applicable State official and a brief description of the goods or services provided or purchased, if any.

Business Entities: If the person filing the statement is a business entity, a solicited donation made by an officer, a director, or a partner must be attributed to the business entity. In

addition, a solicited donation, regardless of amount, made at the suggestion of an officer, a director, a partner, an employee, an agent, or any other person must be attributed to the business entity. Each officer, director, or partner of the business entity who makes or causes to be made an applicable contribution must report the contribution to the chief executive officer. Applicable solicited donations made or caused to be made by a subsidiary of which the business entity owns or controls at least 30% must be attributed to the business entity.

However, a solicited donation made by an individual who serves as a trustee or member of the board of directors or as an officer of a nonprofit organization is not attributable to the organization, and the individual is not required to report the solicited donation to the chief executive officer, unless (1) the solicited donation is made on the recommendation of the nonprofit organization or (2) the individual who made the solicited donation is paid by the nonprofit organization. SEC must adopt regulations that define “officer” for purposes of this exception.

Issue Lobbying Communications – Required Disclosure

Each issue lobbying communication must contain, set apart from any other message, a disclosure that states “Ad paid for by” and the name and address of the entity responsible for the communication.

Current Law:

Definitions

Regulated Lobbyist: A “regulated lobbyist” is any person or entity required to register with SEC because the person or entity has, generally, incurred expenditures and/or received compensation to influence legislative or executive action, as set forth under General Provisions § 5-702. “Regulated lobbyist” includes an entity required to register with SEC because the entity spends at least \$2,000, including expenditures for salaries, contractual employees, postage, telecommunications services, electronic services, advertising, printing, and delivery services for the express purpose of soliciting others to communicate with an official to influence legislative or executive action.

Business Entity: “Business entity,” as it applies to the Ethics Law, means a person engaged in business, whether profit or nonprofit, regardless of form.

Electioneering Communication: “Electioneering communication,” as defined under the Election Law Article, means a broadcast television or radio communication, a cable television communication, a satellite television or radio communication, a mass mailing, an email blast, a text blast, a telephone bank, a qualifying paid digital communication, or an advertisement in a print publication that:

- refers to a clearly identified candidate or ballot issue;
- is made within 60 days of an election day on which the candidate or ballot issue is on the ballot; and
- is capable of being received by a specified minimum number of individuals in the constituency where the candidate or ballot issue is on the ballot; and
- is not made in coordination with or at the request or suggestion of a candidate, a campaign finance entity of a candidate, an agent of a candidate, or a ballot issue committee.

“Electioneering communication” does not include an independent expenditure, specified news and editorial content, a candidate debate or forum, specified internal communications, or a communication that proposes a commercial transaction.

“Political Committee,” as defined under the Election Law Article, means 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.

Regulated Lobbyists – Reporting Requirements

A regulated lobbyist must file semiannual activity reports with SEC that include specified total expenditures in connection with influencing executive or legislative action, in addition to any other reports as required under the Ethics Law.

Violations of the Ethics Law – Sanctions and Criminal Penalties

For a violation of the Ethics Law, SEC may issue an order of compliance, issue a reprimand, or recommend other appropriate discipline to the appropriate authority. For violations of specified lobbying provisions under the Ethics Law, SEC may (1) require a regulated lobbyist to file additional reports or information, as specified; (2) impose a fine of up to \$5,000 for each violation; or (3) suspend the registration of a regulated lobbyist. Monetary penalties are distributed to the Fair Campaign Financing Fund.

Except as specified, a person who knowingly and willfully violates the lobbying provisions of the Ethics Law is guilty of a misdemeanor and subject to a maximum fine of \$10,000 and/or imprisonment for up to one year.

Enforcement by the Court

SEC may petition the circuit court to compel compliance with an order or seek other relief authorized under State law. The court may compel compliance with an SEC order by issuing an order to cease and desist from the violation or granting other injunctive relief. The court may also impose a fine of up to \$5,000 for a violation of the Ethics Law, with each day that the violation occurs being a separate offense. Monetary penalties assessed by the court are deposited in the general fund. Under specified circumstances, the court may void an official act of an official or employee arising from a prohibited conflict of interest.

Electioneering Communications – Reporting Requirements

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 the State Board of Elections (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.

The Maryland Public Ethics Law, Generally

The Maryland Public Ethics Law sets out requirements, prohibitions, and procedures that affect officials in the Legislative, Executive, and Judicial branches of government for the purpose of maintaining people's trust in government and protecting against the improper influence and the appearance of improper influence of government.

The law is generally administered by SEC, with two statutory exceptions. First, the Joint Committee on Legislative Ethics must administer provisions related to conflicts of interest as they apply to members of the General Assembly. Second, the Commission on Judicial Disabilities, or another body designated by the Court of Appeals, must administer provisions related to conflicts of interest and financial disclosure as they apply to State officials of the Judicial Branch.

Background: Similar legislation defining “issue lobbying communication” and requiring certain disclosures for issue lobbying communications is under consideration in the California State Legislature.

State Fiscal Effect: SEC advises that the bill necessitates significant upgrades to its lobbyist registration and reporting system. SEC estimates related contractual costs of approximately \$100,000. In addition, SEC advises that it incurs an estimated \$5,000 in contractual costs to update its online training program for lobbyists. Accordingly, general fund expenditures for SEC increase by approximately \$105,000 in fiscal 2020 only.

To the extent that the new lobbyist registration category created under the bill results in additional registrations by entities that are not otherwise required to register as regulated lobbyists, special fund revenues increase minimally from registration fees. However, any such impact is not expected to materially affect Lobbyist Registration Fund revenues. The application of existing monetary penalties (that apply to violations of lobbying provisions under the Ethics Law) to the bill's provisions is also not anticipated to materially affect general fund or Fair Campaign Financing Fund revenues.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 927 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): State Ethics Commission; State of California; Department of Legislative Services

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