

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1037 (Delegate M. Fisher)
 Ways and Means

Election Law - Websites - Reporting of Political Censorship

This bill requires specified online social networks or search engines that practice political censorship to file reports with the State Board of Elections (SBE), providing specified information regarding the political censorship and the monetary value of it to each candidate, political party, or question that benefits from it. The bill authorizes SBE to assess a civil penalty for a failure to file a report.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$44,900 in FY 2022, with ongoing costs in future years. Special fund penalty revenues may increase.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	-	-	-	-	-
GF Expenditure	\$44,900	\$48,300	\$49,900	\$51,600	\$53,300
Net Effect	(\$44,900)	(\$48,300)	(\$49,900)	(\$51,600)	(\$53,300)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires a “covered website” that practices political censorship to file reports with SBE at specified times. A report must include (1) each candidate, political party, or question that benefits from the political censorship; (2) the dates that political censorship was practiced; (3) the campaign material or other content that users of the

covered website were prevented from viewing because of the political censorship; and (4) an estimate of the monetary value of the political censorship to each candidate, political party, or question that benefits from it.

A “covered website” is an online social network or search engine that has 50 million or more unique monthly visitors or users from the United States for a majority of months during the immediately preceding 12 months. “Political censorship” means hiding, banning, or censoring political speech relating to a candidate, political party, or question on the ballot at an election.

SBE may assess a civil penalty on a covered website that fails to file a report in an amount of up to \$50,000 for each violation. A penalty is the joint and several liability of the covered website and the person exercising direction or control over the activities of the covered website. Penalties are distributed to the Fair Campaign Financing Fund.

SBE may adopt regulations to implement the bill.

Current Law: Under State law, online political communications can be subject to various requirements for disclosure of those responsible for the communications. Among those requirements, campaign material (material that relates to a candidate, prospective candidate, or the approval or rejection of a question or prospective question), including campaign material transmitted through electronic media, must include a disclosure of those responsible for the material (an “authority line”). Chapters 833 and 834 of 2018 require that an online platform maintain specified information on those responsible for specified paid online campaign material. The online platform must make certain information publicly available and other information available to SBE on request. (The State is enjoined from enforcing those provisions of Chapters 833 and 834 against various media, broadcasting, and cable entities under a permanent injunction in *Washington Post v. McManus*.) Chapter 216 of 2020 requires that use of a “bot” (a specified automated online account) to publish, distribute, or disseminate campaign material online be disclosed in the campaign material.

State Expenditures: General fund expenditures increase by at least \$44,939 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring an SBE contractual investigator to ensure compliance with the bill. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1
Salary and Fringe Benefits	\$39,358
Operating Expenses	<u>5,581</u>
Total FY 2022 State Expenditures	\$44,939

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

General fund expenditures may further increase, to the extent that civil penalties are assessed under the bill by SBE and covered websites elect to stand trial, in which case the Office of the State Prosecutor (OSP) becomes responsible for prosecuting the violations. OSP has indicated that it would need an additional attorney and an additional investigator (at a cost of approximately \$170,000 in fiscal 2022, with ongoing costs in future years, reaching approximately \$225,000 by fiscal 2026), if it needs to litigate those cases. It is not clear, however, to what extent penalties will be imposed by SBE and to what extent those penalties will need to be litigated to a significant extent by OSP.

State Revenues: Special fund (Fair Campaign Financing Fund) revenues may increase to the extent penalties are collected under the bill. The extent of any increase cannot be reliably estimated.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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