

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 340

(Delegate D. Jones)

Ways and Means and Judiciary

Rules

Election Law - Campaign Finance - Enforcement

This bill makes several changes, to Title 13 and Title 14 of the Election Law Article and to the Maryland Public Ethics Law, largely related to enforcement, including (1) altering the time within which a prosecution for misdemeanor State election law offenses, or to impose specified civil fines, must be instituted; (2) increasing the maximum civil penalty that can be imposed by the State Board of Elections (SBE) for specified violations and establishing additional sanctions for a failure to pay a civil penalty imposed by SBE; (3) adding or increasing penalties and enforcement authority under the law governing disclosure of campaign contributions by persons doing public business; and (4) broadening the applicability of, adding recordkeeping requirements to, and adding or increasing penalties and enforcement authority under provisions requiring disclosure of contributions by persons providing compensation to lobbyists. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures may increase, in FY 2023 only, as discussed below. Special fund (Fair Campaign Financing Fund) revenue may increase annually, beginning in FY 2023.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Statute of Limitations for Specified Prosecutions

The bill changes – from three years after an offense was committed to four years after an offense was committed – the time within which a prosecution must be instituted for (1) the commission or attempted commission of a misdemeanor violation of the State election laws or (2) the imposition of a civil fine for an unknowing violation of campaign finance laws and certain other State election laws. The bill establishes that a prosecution must also be instituted within four years after an offense was committed for the imposition of other specified civil fines for violations of campaign finance laws and laws governing disclosure of campaign contributions by persons doing public business.

Increased Civil Penalties – Campaign Finance Entities

The bill increases the maximum civil penalty SBE may impose on a campaign finance entity for specified violations from \$500 for each violation to \$1,000 for each violation.

Candidates and Treasurers –Eligibility and Disqualification

An individual may not become a candidate for any public or party office in the State or become a treasurer for a campaign finance entity if the individual has failed to pay any SBE-imposed civil penalties due from, or on behalf of, the individual during the immediately preceding five calendar years.

A candidate may not be issued a certificate of nomination for the general election if, on or before the deadline for declining the nomination, the candidate has failed to pay a civil penalty imposed by SBE. Not later than 20 days before the deadline for a candidate to decline the nomination, SBE must send a written notice to each candidate who was successful in the primary election and has failed to pay a civil penalty imposed by SBE, that the candidate will be deemed to have declined the nomination if the candidate does not rectify the failure, as specified.

An individual who has an unpaid civil penalty imposed by SBE may not, until the individual pays the penalty, be deemed to be elected to office, take the oath or otherwise assume the duties of the office, or receive any salary or compensation for the office. An official of the State or any of its political subdivisions may not issue a commission or administer an oath of office to an individual until that official receives certification from SBE that the individual has no unpaid SBE-imposed civil penalties.

Late Filing Fees – Persons Doing Public Business

The bill expands existing authority to impose late filing fees on persons doing public business if they fail to file required statements of campaign contributions with SBE. The expanded authority allows for (1) referral to the Central Collection Unit within the Department of Budget and Management after a specified period of time; (2) criminal prosecution for a failure to file a statement and pay a late filing fee after a specified period of time; and (3) relief, for just cause, from late filing fees or other sanctions for a failure to file a statement or pay a late filing fee.

Civil Penalties – Persons Doing Public Business

The bill establishes a civil penalty of up to \$5,000 (and procedures for the State Prosecutor to impose the penalty) for unknowing violations of the law governing disclosure of campaign contributions by persons doing public business. The civil penalty must be distributed to the Fair Campaign Financing Fund.

The bill also separately authorizes SBE to impose a civil penalty of up to \$1,000 for the following violations related to disclosure of campaign contributions by persons doing public business: (1) failure to report all applicable contributions made; and (2) failure to maintain detailed and accurate records and reports. The bill establishes procedures for imposing the penalty, and penalties collected must be distributed to the Fair Campaign Financing Fund.

Increased Criminal Penalties – Persons Doing Public Business

The bill also increases the maximum monetary criminal penalty applicable to violations of the law governing disclosure of campaign contributions by persons doing public business from \$1,000 to \$25,000.

The bill also establishes that a person may not willfully make a false, fraudulent, or misleading statement or entry in any filing that is under oath and is required under provisions governing disclosure of campaign contributions by persons doing public business. A person may not make an electronic submission of a required statement or any other required document on behalf of another person without that person's express consent. A person who violates these provisions is guilty of perjury and on conviction is subject to the penalty provided under the Criminal Law Article (imprisonment for up to 10 years).

Persons Providing Compensation to Lobbyists

Under the Maryland Public Ethics Law, the bill modifies provisions that require persons – who, within a specified six-month reporting period, spend at least \$500 to provide

compensation to one or more regulated lobbyists and contribute \$500 or more to specified State elected officials or candidates for those elected offices – to file statements with SBE regarding the contributions.

The bill makes the filing requirement instead applicable to any person who spends at least \$500 during a specified six-month reporting period to provide compensation to one or more regulated lobbyists (without the additional criteria that they also made applicable contributions of \$500 or more). In addition, a person required to file a statement must maintain detailed and accurate records of (1) contracts made by the person or attributed to the person that cause the person to provide compensation to the lobbyist and (2) applicable contributions made by the person or attributed to the person. A person required to keep such records must retain the records for three years after the creation of the record.

The bill increases the maximum monetary criminal penalty applicable to violations of these provisions from \$1,000 to \$25,000 and authorizes SBE to impose a civil penalty of up to \$1,000 for (1) failure to report all applicable contributions made or (2) failure to maintain detailed and accurate records. The civil penalty is imposed in the same manner and method as the bill establishes for civil penalties imposed by SBE for violations related to disclosure of campaign contributions by persons doing public business.

Similar to the bill's changes to the law governing disclosure of campaign contributions by persons doing public business, a person may not willfully make a false, fraudulent, or misleading statement or entry in any required filing that is under oath. A person may not make an electronic submission of a required statement or any other required document on behalf of another person without that person's express consent. A person who violates these provisions is guilty of perjury and on conviction is subject to the penalty provided under the Criminal Law Article (imprisonment for up to 10 years).

Current Law:

Statute of Limitations for Specified Prosecutions

Varying criminal and civil penalties apply to violations of campaign finance and other provisions of the State election laws. The State Prosecutor generally handles prosecutions of violations, including those referred by SBE, and SBE is authorized to impose civil penalties for certain campaign finance violations. A prosecution must be instituted within three years after an offense was committed (1) for the commission of or for the attempt to commit a misdemeanor constituting a criminal offense under the State election laws or (2) to impose a civil fine for an unknowing violation of campaign finance laws and certain other State election laws.

Civil Penalties Imposed by SBE

SBE is authorized to impose civil penalties on campaign finance entities for specified violations: (1) making a disbursement in an unauthorized manner or by an unauthorized method; (2) failure to maintain a campaign bank account; (3) failure to maintain detailed and accurate account books and records; (4) fundraising during the General Assembly session in an unauthorized manner; (5) failure to sufficiently report all contributions received and expenditures made on a campaign finance report; (6) failure to include an authority line on campaign material; (7) failure to retain a copy of campaign material; and (8) failure to disclose the use of a bot to publish, distribute, or disseminate online campaign material.

The maximum civil penalty is \$500 for each violation with the exception of fundraising during the General Assembly session in an unauthorized manner, which is subject to a penalty of up to \$1,000 plus the amount of the contribution received.

Candidates and Treasurers – Eligibility and Disqualification

Unless otherwise expressly authorized by law, all campaign finance activity for an election under the Election Law Article of the Annotated Code must be conducted through a campaign finance entity (defined as a political committee established under Title 13 of the Election Law Article). An individual may not file a certificate of candidacy or a declaration of intent until the individual establishes, or causes to be established, an authorized candidate campaign committee (a campaign finance entity authorized by the candidate to promote the candidate's candidacy). For each election in which a campaign finance entity participates, it generally must file campaign finance reports at various times prior to and after the primary and general elections, as well as an annual report. The reports must contain information required by SBE with respect to all contributions received and all expenditures made by or on behalf of the campaign finance entity during a reporting period. A campaign finance entity must have a chairman and a treasurer who are the responsible officers of a campaign finance entity.

The additional sanctions established in the bill for a failure to pay a civil penalty imposed by SBE (ineligibility to become a candidate or treasurer, receive a certificate of nomination, or take office) are applicable under current law to a failure to file a campaign finance report and/or pay a late filing fee.

Persons Doing Public Business

Under Title 14 of the Election Law Article, persons who do public business (defined as making or having a single contract with a State or local governmental entity involving cumulative consideration of at least \$200,000) are required to file statements with SBE

regarding any applicable contributions of a cumulative amount of \$500 or more to a candidate during a reporting period. An initial statement is filed when a contract is awarded that causes the person to be doing public business and semi-annually thereafter as long as performance on the contract remains uncompleted.

SBE is authorized to impose fees for late filing of a statement or amended statement in the same amounts and manner as late filing fees imposed on campaign finance entities under Title 13 of the Election Law Article for a failure to file a campaign finance report, affidavit, or amended campaign finance report.

A person who knowingly and willfully violates Title 14 is guilty of a misdemeanor and subject to a fine of up to \$1,000 and/or imprisonment for up to one year. An officer or partner of a business entity who knowingly authorizes or participates in a violation of Title 14 by the business entity is subject to those penalties.

Persons Providing Compensation to Lobbyists

Under the Maryland Public Ethics Law, a person must file a statement with SBE if at any time during a specified six-month reporting period the person (1) spent at least \$500 to provide compensation to one or more regulated lobbyists and (2) made or caused to be made an applicable contribution in the cumulative amount of \$500 or more. The statement must contain specified information on the contribution(s), the contributor, the recipient(s), and the employed or retained lobbyist(s).

“Applicable contribution” means a political contribution or donation or series of political contributions or donations by a person or attributed to a person made to or for the benefit of an applicable recipient.

“Applicable recipient” means a candidate for, or an official holding, the office of Governor, Lieutenant Governor, Attorney General, Comptroller, or member of the General Assembly.

A person who knowingly and willfully fails to comply with the filing requirement is guilty of a misdemeanor and subject to a fine of up to \$1,000 and/or imprisonment of up to one year. If a person is a business entity, each officer or partner of the business entity who knowingly authorized or participated in violating the requirement is subject to those penalties. SBE is also authorized to impose fees for the late filing of a statement.

State Expenditures: General fund expenditures may increase, in fiscal 2023 only, to make programming changes to the Judiciary’s cash register systems and case management systems to incorporate the bill’s requirements, if those changes are not handled by existing staff/resources. The Judiciary indicates the programming changes have an approximate cost of \$64,000.

The Office of the State Prosecutor and SBE can implement the bill's provisions with existing resources.

State Revenues: Special fund (Fair Campaign Financing Fund) revenues may increase annually, beginning in fiscal 2023, to the extent additional late fee and/or civil/criminal penalty revenues are collected as a result of the bill's changes.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 15 (Senator Jackson) - Education, Health, and Environmental Affairs.

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

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