

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 1343

(Delegate Luedtke, *et al.*)

Environment and Transportation and
 Health and Government Operations

Education, Health, and Environmental Affairs
 and Budget and Taxation

Major State Contractors - Donations to Advocacy Organizations - Disclosure

This bill requires specified State contractors to file statements with the State Board of Elections (SBE), regarding any donations to an advocacy organization that pays for public communications relating to a procurement contract or public-private partnership – involving cumulative consideration of at least \$1 million – in which the State contractor has a financial interest. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures may increase by up to \$257,200 in FY 2023 and by ongoing amounts in future years. Special fund revenues may increase minimally, beginning in FY 2023.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	-	-	-	-	-
GF Expenditure	\$257,200	\$227,800	\$234,100	\$240,100	\$246,300
Net Effect	(\$257,200)	(\$227,800)	(\$234,100)	(\$240,100)	(\$246,300)

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill, under State procurement law, requires a major State contractor to file a statement with SBE if at any time during a reporting period the contractor makes a covered disbursement.

“Major State contractor” means a person who enters into, or makes a bid or an offer for, a contract or an agreement to complete a major State project. “Major State project” means a single procurement contract (including all options, renewals, and other extensions) or a single public-private partnership with a single unit involving cumulative consideration of at least \$1 million. “Unit” means an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement contract.

“Covered disbursement” means a donation by a major State contractor, directly or indirectly, 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 due to being a party to, or a bidder or an offeror for, a procurement contract or public-private partnership agreement. “Public communication” is defined by an existing definition under Title 13 (Campaign Finance) of the Election Law Article and means a communication by means of any broadcast television or radio communication, cable television communication, satellite television or radio communication, newspaper, magazine, outdoor advertising facility, mass mailing, email blast, text blast, qualifying paid digital communication, or telephone bank to the general public, or any other form of general public political advertising. Certain communications are excluded from the definition of “public communication” including a news story, a commentary, or an editorial.

The statement filed by a major State contractor must be filed for the six-month reporting periods ending on April 30 and October 31 (filed by the last day of the month immediately following the day on which the reporting period ends). The statement must be made under oath and contain specified information on covered disbursements made, the advocacy organizations to which they were made, the related major State project(s), and the person who made a covered disbursement if it was made by another person but attributed to the major State contractor.

The bill requires covered disbursements made by an officer, director, or partner, or a subsidiary, of a major State contractor, or by specified others, to be attributed to the major State contractor. The bill also requires specified recordkeeping by major State contractors and authorizes SBE to audit records of an advocacy organization if necessary to ensure compliance.

SBE must (1) prepare and make available forms for the statement required by the bill; (2) retain each statement filed in the same manner and subject to the same standards of public access as a statement filed under Title 14 of the Election Law Article (discussed below under Current Law); and (3) report any violation of the bill to the State Ethics Commission. A statement must be filed in the manner required for statements filed under Title 14.

The bill establishes various sanctions for failure to comply with the bill, including (1) criminal penalties of a fine of up to \$10,000 and/or imprisonment for up to one year, for a knowing and willful violation; (2) penalties for perjury under the Criminal Law Article for a willfully false, fraudulent, or misleading statement or entry in a filing; (3) late filing fees imposed by SBE; and (4) a civil penalty of up to \$1,000 imposed by SBE, pursuant to procedures under the Election Law Article that include prosecution by the Office of the State Prosecutor (OSP) if the person issued a citation elects to stand trial. The civil penalty is distributed to the Fair Campaign Financing Fund (FCFF).

Current Law:

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 must retain each filed statement as a public record for at least two years and make the statements publicly available on the Internet.

“Applicable contribution” means a contribution or donation by a person or attributed to a person to or for the benefit of a candidate for an office of a governmental entity with which the person is doing public business.

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: It is unclear to what extent covered disbursements are made by major State contractors, but the enforcement authority established in the bill, including SBE’s ability to audit records of advocacy organizations to ensure compliance, may result in a considerable workload for SBE and OSP, which investigates and prosecutes civil citations issued by SBE if the person issued the citation elects to stand trial. SBE and OSP both indicate that existing staff do not have the capacity to handle the additional workload, which, for OSP, may include complex litigation to prove violations of the filing requirement.

Therefore, general fund expenditures may increase by up to \$257,247 in fiscal 2023, which accounts for a 30-day start-up delay from the bill’s June 1, 2022 effective date. This estimate reflects the cost of (1) hiring an auditor within SBE, to audit statements filed under the bill and any advocacy organization records necessary to ensure compliance with the bill; (2) one-time programming changes to SBE’s campaign finance reporting system (assumed to be used for filing and public disclosure of the statements); and (3) hiring a prosecutor within OSP to prosecute civil penalties imposed by SBE that go to trial. The

estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$228,291
SBE Programming Changes	10,000
Other Operating Expenses	<u>18,956</u>
Total Potential FY 2023 State Expenditures	\$257,247

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent that compliance with the bill's requirements does not result in a measurable increase in civil cases for OSP, the need for the additional prosecutor and related expenditures is less.

State Revenues: Special fund revenues may increase annually, beginning in fiscal 2023, to the extent civil penalties and late fees are imposed under the bill. Pursuant to the bill's provisions and an existing provision of Title 14 of the Election Law Article, civil penalty and late fee revenues are distributed to FCFF, which holds funds for public campaign financing under the Public Financing Act. Any increase is expected to be minimal, depending on compliance with the bill's requirements. General fund revenues are not expected to be materially affected.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the State Prosecutor; University System of Maryland; Department of General Services; Maryland Department of Transportation; State Board of Elections; State Ethics Commission; Department of Legislative Services

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