

Department of Legislative Services  
 Maryland General Assembly  
 2024 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 872 (Delegate Kaiser, *et al.*)  
 Ways and Means

Election Law – Campaign Materials – Disclosure of Use of Synthetic Media

This bill requires specified persons (candidates, campaign finance entities, persons that make independent expenditures or disbursements for electioneering communications, participating organizations that make political disbursements, or agents of those persons/entities) that publish, distribute, or disseminate campaign material that is produced using, or contains “synthetic media” to include a specified disclosure of the synthetic media. **The bill takes effect January 1, 2025.**

Fiscal Summary

**State Effect:** General fund expenditures increase by \$57,000 in FY 2025; future years reflect annualization and inflation. Special fund revenues may increase minimally, as discussed below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	-	-	-	-	-
GF Expenditure	\$57,000	\$98,000	\$102,300	\$106,800	\$111,500
Net Effect	(\$57,000)	(\$98,000)	(\$102,300)	(\$106,800)	(\$111,500)

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

**Local Effect:** None.

**Small Business Effect:** Minimal.

## Analysis

### **Bill Summary:**

#### *Definition – Synthetic Media*

“Synthetic media” means an image, an audio recording, or a video recording that has been intentionally manipulated with the use of generative artificial intelligence (AI) or other digital technology to create a realistic but false image, audio recording, or video recording that (1) depicts a real individual, the individual’s speech, or the individual’s conduct or (2) produces a fundamentally different understanding or impression of an individual’s appearance, speech, or conduct than a reasonable individual would have from the unaltered, original version of the image, audio recording, or video recording.

#### *Applicability*

The bill applies to a candidate, a campaign finance entity, a person that makes independent expenditures or disbursements for electioneering communications in an amount that requires them to register with the State Board of Elections (SBE), a participating organization that make political disbursements in an amount that requires them to register with SBE, or an agent of those persons/entities.

#### *Disclosure Requirements*

A person subject to the bill’s requirements that publishes, distributes, or disseminates, or causes to be published, distributed, or disseminated to a person in the State campaign material that is produced using, or contains, synthetic media must include a disclosure of the synthetic media (described below) in addition to existing campaign material requirements.

For a still image, the disclosure must include the statement “This image has been altered or modified through the use of computer programs to display an event or image that did not occur.” The statement must be written in a type size that is (1) easily readable by the average viewer and (2) not smaller than the largest type size of other text appearing on the still image.

For media that is only an audio recording, the disclosure must include the statement “This audio has been altered or modified through the use of computer programs to display a sound that did not occur.” The statement must be read (1) in a clearly spoken manner at a pitch and speed that can easily be heard by the average listener and (2) at the beginning and end of the audio recording, and for audio recordings of two minutes or longer, interspaced throughout at intervals of not more than two minutes.

For a video recording, the disclosure must include the statement “This video has been altered or modified through the use of computer programs to display an event, a sound, or an image that did not occur.” The statement must be written in (1) text that remains visible to the viewer for the duration of the video recording and (2) a type size that is easily readable to the average viewer and placed in a conspicuous location in the frame of the video.

### *Enforcement*

A person who publishes, distributes, or disseminates, or causes to be published, distributed, or disseminated campaign material that violates the bill’s requirements is guilty of a misdemeanor and (1) subject to a fine of up to \$1,000 and/or imprisonment of up to one year and (2) ineligible to hold any public or party office for four years after the date of the offense.

### **Current Law:**

#### *Campaign Material*

“Campaign material” means any material that (1) contains text, graphics, or other images; (2) relates to a candidate, a prospective candidate, or the approval or rejection of a question or prospective question; and (3) is published, distributed, or disseminated. “Campaign material” includes (1) a qualifying paid digital communication; (2) any other material transmitted by or appearing on the Internet or other electronic medium; and (3) an oral commercial campaign advertisement.

Each item of campaign material generally must contain an authority line that states (1) as to campaign material published, distributed, or disseminated by a campaign finance entity, the name and address of the treasurer of each campaign finance entity responsible for the campaign material and the name of each campaign finance entity for which each treasurer is acting and (2) as to campaign material published, distributed, or disseminated by any other person, the name and address of the person responsible for the campaign material. The authority line may omit an address that is on file with SBE or a local board.

Campaign material that is published or distributed in support of or in opposition to a candidate, but is not authorized by the candidate, must include the statement “This message has been authorized and paid for by (name of payor or any organization affiliated with the payor), (name and title of treasurer or president). This message has not been authorized or approved by any candidate.”

SBE is authorized to impose a civil penalty of up to \$1,000 for a failure to include an authority line on campaign material. A person who violates the authority line requirements

is also guilty of a misdemeanor and (1) subject to a fine of up to \$1,000 and/or imprisonment for up to one year and (2) ineligible to hold any public or party office for four years after the date of the offense.

### *Artificial Intelligence-generated Audio or Visual Media*

Maryland law regulating political advertising (campaign material) does not explicitly address the use of AI generated audio or visual media. However, SBE adopted regulations in 2022 that require a campaign that uses a “deep fake” in campaign material to clearly indicate before and after the deep fake content that the content does not reflect a true recording of an action, sound, or image that occurred in reality. “Deep fake” is defined as an audio or video recording that appears to constitute a true recording of an action, sound, a vocalization, or an image, but (1) did not occur in the manner presented by the recording in reality and (2) was generated with the assistance of computer software to create apparently authentic images, vocalizations, or recordings.

Maryland law also does not explicitly address the potential use of AI in spreading misinformation about the election process, but the law does prohibit a person from willfully and knowingly influencing or attempting to influence through the use of fraud, a voter’s decision whether to go to the polls to vote or vote by other lawful means.

### *Campaign Finance Entities – Generally*

Unless otherwise expressly authorized by law, all campaign finance activity for an election under the Election Law Article 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). “Political committee” is defined as 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.

### *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.

#### *Participating Organizations*

A "participating organization" is an entity that is organized under § 501(c)(4) or (6) or § 527 of the Internal Revenue Code and makes political disbursements (contributions to a campaign finance entity, disbursements to persons making independent expenditures or disbursements for electioneering communications in the State, or disbursements to out-of-state political committees that make a disbursement in the State).

Participating organizations that make aggregate political disbursements of more than \$6,000 in a four-year election cycle must file a registration form with SBE within 48 hours and are subject to reporting/disclosure requirements after spending \$10,000 or more. The reports filed must include the amount and date of each political disbursement made in the State or to influence a State election and the identity of each person that made cumulative donations of \$10,000 or more to the participating organization.

**State Expenditures:** General fund expenditures increase by \$56,982 in fiscal 2025, which accounts for the bill's January 1, 2025 effective date. This estimate reflects costs for the Office of the State Prosecutor to hire one special investigator to conduct forensic computer investigations necessary to enforce the bill's requirements. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$49,996
Operating Expenses	<u>6,986</u>
<b>Total FY 2025 State Expenditures</b>	<b>\$56,982</b>

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

**State Revenues:** Special fund revenues increase, beginning in fiscal 2025, to the extent fines are collected for violations of the bill’s requirements. Fines for criminal violations of the Election Law Article are distributed to the Fair Campaign Financing Fund, which holds funds for public campaign financing of gubernatorial tickets under the Public Financing Act.

### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

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

**Fiscal Note History:** First Reader - February 25, 2024  
rh/sdk

Analysis by: Thomas S. Elder

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510