

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 1499 (The Speaker, *et al.*) (By Request - Commission to Study Campaign Finance Law)

Ways and Means

Campaign Finance Reform Act of 2013

This bill makes various changes to the State’s campaign finance laws relating to campaign contribution limits, contributions by business entities, legislative party caucus committees, administrative accounts, slates, independent expenditures and electioneering communications, enforcement, disclosure of contributions by persons doing public business, local public campaign financing, and other issues.

The bill takes effect January 1, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$100,000 in FY 2014, \$344,000 in FY 2015, and \$432,900 in FY 2016 due to information technology (IT) and personnel costs. General fund revenues increase to the extent penalties and additional late fees are collected. Future years reflect annualization and inflation.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	-	-	-	-	-
GF Expenditure	\$100,000	\$344,000	\$432,900	\$452,500	\$473,000
Net Effect	(\$100,000)	(\$344,000)	(\$432,900)	(\$452,500)	(\$473,000)

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

Local Effect: Local government expenditures increase for any county that establishes a public campaign financing system. Revenues may also increase to the extent new funding is generated for a public campaign financing system and to the extent any additional criminal penalties are collected from cases heard in the circuit courts.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Contribution Limits

The bill increases contribution limits applicable to a four-year election cycle and requires the contribution limits and the transfer limit (applicable to transfers between campaign finance entities) to be adjusted each election cycle beginning in 2019 as shown in **Exhibit 1**. The adjustments are made based on the percentage growth in the Consumer Price Index.

Exhibit 1 Contribution/Transfer Limits* (During a Four-year Election Cycle)

	<u>Current Law</u>	<u>Under the Bill</u>
Contributions		
To any one campaign finance entity	\$4,000	\$6,000 (adjusted each election cycle beginning in 2019)
To all campaign finance entities	\$10,000	\$24,000 (adjusted each election cycle beginning in 2019)
Transfers (from one campaign finance entity to another)	\$6,000	\$6,000 (adjusted each election cycle beginning in 2019)

*These limits are subject to certain exceptions. The contribution limits, for example, do not apply to contributions to ballot issue committees and in-kind contributions of a central committee of a political party.

The bill specifies that in-kind contribution limits for a central committee of a political party (\$1 for every two registered voters in the State, for a State central committee, and \$1 for every two registered voters in the county, for a local central committee) apply to aggregate in-kind contributions to *a single candidate*. Based on voter registration as of December 2012, this allows for almost \$1.9 million in in-kind contributions to be made

by a State central committee to a single candidate. The same in-kind contribution limit applicable to State central committees applies to legislative party caucus committees authorized under the bill (discussed below). While “in-kind contribution” is not defined in statute, the State Board of Elections’ (SBE) *Summary Guide to Candidacy and Campaign Finance Laws* indicates that there are generally two types of in-kind contributions: (1) a contribution given to a political committee in nonmonetary form, such as services or property and (2) a coordinated expenditure made on behalf of a candidate where the candidate knows of and consents to the expenditure.

Business Entity Contributions

The bill modifies and expands an existing provision that requires campaign contributions by related corporations to be considered as being made by one contributor, limiting the total amount of contributions those corporations can make. The bill expands the limitation to apply to “business entities,” including sole proprietorships, general or limited partnerships, limited liability companies (LLC), and real estate investment trusts, as well as corporations, specifying that campaign contributions made by two or more business entities are considered to be made by a single contributor if (1) one business entity is a wholly owned subsidiary of another; or (2) the business entities are owned or controlled by at least 80% of the same individuals or business entities.

Legislative Party Caucus Committees

The bill authorizes each political party to establish one legislative party caucus committee for each house of the General Assembly and SBE must adopt regulations governing the establishment, structure, and operation of legislative party caucus committees. Transfers between or among a legislative party caucus committee and the authorized candidate campaign committees of the candidates the committee seeks to elect are not subject to the \$6,000 transfer limit. Legislative party caucus committees are subject to the in-kind contribution limit that is applicable to State central committees discussed above, allowing for in-kind contributions of almost \$1.9 million, based on voter registration as of December 2012, to be made to a single candidate. Legislative party caucus committees may also maintain administrative accounts as described below.

Administrative Accounts

Political party central committees and political action committees of corporations are currently allowed to maintain administrative accounts pursuant to Attorney General opinions and SBE policy. The bill codifies this practice with respect to central committees and also allows for legislative party caucus committees to maintain administrative accounts. Donations to an administrative account are not subject to the contribution limits, but disbursements from an administrative account may be made only

for nonelectoral purposes. SBE must adopt regulations that define permissible nonelectoral disbursements from an administrative account and require disclosure of donations to and disbursements from an administrative account.

Slates

The bill prohibits a candidate from remaining a member of a slate or joining a slate if the candidate has not filed a certificate of candidacy and is not an incumbent officeholder. The bill also repeals an exemption for transfers between or among a slate and the campaign finance entities of its members from the \$6,000 transfer limit, with the exception of a slate where the only members of the slate are a candidate for Governor and a candidate for Lieutenant Governor running on the same ticket, which continues to be exempt. However, a higher transfer limit of \$24,000 is established for cumulative transfers over the course of an election cycle *from a slate to* one or more authorized candidate campaign committees of any single member of the slate. This transfer limit is adjusted along with the \$6,000 generally applicable transfer limit beginning in 2019 based on growth in the Consumer Price Index.

Independent Expenditures and Electioneering Communications

The bill makes various changes with respect to reporting of independent expenditures and disbursements for electioneering communications, including (1) broadening the definitions of political communications that are subject to reporting requirements; (2) requiring more immediate reporting of independent expenditures and disbursements for electioneering communications; (3) requiring a person to register with SBE upon making aggregate independent expenditures or disbursements for electioneering communications of \$5,000 or more in an election cycle; (4) with certain exceptions, requiring reporting of donors of \$10,000 or more to a person making independent expenditures or disbursements for electioneering communications, regardless of whether the donation was made for the purpose of furthering independent expenditures or electioneering communications; and (5) authorizing SBE to assess civil penalties of not more than the greater of \$1,000 per day or part of a day a report is overdue or 10% of the amount of donations, independent expenditures, or disbursements for electioneering communications not reported in a timely manner.

The bill also establishes similar reporting requirements for political committees that make expenditures that are exclusively independent expenditures or disbursements for electioneering communications and authorizes SBE to assess civil penalties for failure to file reports or amended reports properly.

Campaign Finance Enforcement

In addition to the civil penalties with respect to independent expenditures and electioneering communications, SBE is also authorized under the bill to impose civil penalties of up to \$500 for specified campaign finance law violations, including unauthorized disbursements, failure to maintain a campaign bank account, failure to maintain detailed and accurate account books and records, failure to report all contributions received and expenditures made, and failure to include an authority line on campaign material or retain a copy of campaign material. A person issued a citation imposing a civil penalty may elect to stand trial in District Court, in which case the State Prosecutor assumes responsibility for prosecuting the violation.

The bill makes existing late fees for failure to file a campaign finance report or an affidavit of limited contributions or expenditures also applicable to a failure to file an amended report, where deficiencies are found by SBE. The bill makes the \$10-\$20 per day late fee applicable to weekend days and holidays, which are excluded under current law, and raises the maximum cumulative fee that can accrue from \$250 to \$500.

SBE's authority to audit campaign finance reports and independent expenditure and electioneering communication reports filed with the board is expanded to also apply to records kept by those filing reports.

Where applicable, the bill requires civil penalties and late fees to be paid by the campaign entity, unless insufficient funds are available, in which case the penalty or fee is the joint and several liability of the responsible officers of the campaign finance entity. In the case of a civil penalty, if a violation is committed by a person that is not acting on behalf of, or at the request or suggestion of, a candidate or a campaign finance entity, the penalty is paid by the person who committed the violation.

The statute of limitations for a misdemeanor under the State election laws is also increased from two to three years, applicable only to offenses committed after the bill's January 1, 2015 effective date.

Persons Doing Public Business

The bill revises Title 14 of the Election Law Article, which requires disclosure of campaign contributions by persons doing public business. The changes include (1) redefining "doing public business" to mean making a single contract with a single governmental entity of at least \$200,000; (2) only requiring disclosure of contributions to a candidate for an office of a governmental entity with which the person is doing public business; (3) requiring disclosure statements to be filed electronically with SBE and to be made publicly available by SBE on the Internet; (4) requiring specified records to be kept

by persons doing public business; (5) requiring a governmental entity to verify that a person doing public business has filed a disclosure statement before allowing the person to begin performance of the contract; (6) authorizing SBE to audit disclosure statements and records kept by those filing statements and to impose fees for late filings; and (7) authorizing SBE to adopt regulations to implement Title 14.

Authorization of Local Public Campaign Financing

The bill authorizes a county to establish a system of voluntary public campaign financing for elective offices in the executive or legislative branches of county government. The bill establishes various requirements applicable to such a system, including that the system must (1) provide for a public election fund administered by the chief financial officer of the county and (2) be subject to regulation and oversight by SBE to ensure conformity with State law and policy to the extent practicable. A system may provide for more stringent regulation of campaign finance activity by participating candidates than is provided for by State law.

Other Provisions

Other provisions of the bill:

- revise the definition of “political committee” to mean a combination of two or more individuals that *has as its major purpose* assisting or attempting to assist in promoting the success or defeat of a candidate, political party, or ballot question;
- require an individual to have established, or caused to be established, an authorized candidate campaign committee before filing a declaration of intent to seek nomination by petition or nomination by a political party that does not nominate its candidates by party primary;
- prohibit a political committee from receiving or disbursing money or any other thing of value if there is a vacancy in the office of chairman or treasurer of the committee;
- specify that SBE satisfies all notice requirements by sending notices to the addresses provided by the responsible officers of a campaign finance entity;
- limit, to \$25,000, the cumulative amount of contributions from contributors of \$50 or less that may be reported in an election cycle by a campaign finance entity of a candidate as a lump sum without providing the amount of each contribution and the name and address of each contributor;
- eliminate the ability of a campaign finance entity to not issue a receipt for, and report as part of a lump sum, a cumulative contribution of \$51 or more where the contribution consists of a purchase of tickets of not more than \$50 each and in the cumulative amount of not more than \$250;

- clarify that the \$100 limitation on cash contributions applies per election cycle;
- allow specified contributions made electronically prior to a General Assembly session to be deposited during the session;
- require out-of-state political committees to register with SBE within 48 hours of making cumulative transfers of \$6,000 or more in an election cycle to one or more Maryland campaign finance entities and to subsequently file expenditure reports with SBE for the election the committee is participating in by the deadlines for campaign finance reports filed by Maryland campaign finance entities;
- modify the campaign finance reporting schedule by adding an additional report prior to a presidential primary election and an additional report in late August before each regularly scheduled general election; and
- specify that an authorized candidate campaign committee of a candidate for election to a political party central committee must file (1) a campaign finance report by the third Tuesday after a gubernatorial election, (2) the annual January campaign finance report filed by all campaign finance entities, and (3) a final campaign finance report on termination of the authorized candidate campaign committee, but no other campaign finance reports.

Current Law/Background: Many of the bill's changes implement or are related to recommendations of the Commission to Study Campaign Finance Law. See the attached **Appendix – Commission to Study Campaign Finance Law** for background information on the commission.

State campaign finance law generally applies to each election conducted under State election law, but does not apply to campaign finance activity governed solely by federal law. Except for municipal elections outside Baltimore City, State election law generally applies to all primary, general, and special elections, including those for county offices.

State campaign finance laws regulate various aspects of campaign finance activity in the State, including actions of candidates and campaign finance entities (through which all campaign finance activity generally must be conducted) and the extent to which individuals and entities can contribute to campaigns.

A person is limited to contributing \$4,000 to any one campaign finance entity and \$10,000 to all campaign finance entities within a four-year election cycle. Contributions by a corporation and any wholly owned subsidiary of the corporation, or by two or more corporations owned by the same stockholders, are considered as being made by one contributor. Contributions to ballot issue committees (formed to support or defeat a ballot question) are not limited. A central committee of a political party may also make aggregate in-kind contributions during an election cycle of up to (1) for a State central committee, \$1 for every two registered voters in the State and (2) for a local central committee, \$1 for every two registered voters in the county.

A campaign finance entity can transfer up to \$6,000 to another campaign finance entity during an election cycle, with no limit on the aggregate amount transferred to all campaign finance entities. An out-of-state political committee is considered a “campaign finance entity” for purposes of the transfer limit. Certain transfers, however, are not subject to the \$6,000 limit, including transfers between or among a slate and the campaign finance entities of its members. A slate is defined as a political committee of two or more candidates who join together to conduct and pay for joint campaign activities. A candidate must have formed a campaign finance entity before joining a slate and must notify SBE that the candidate has joined the slate.

Pursuant to Chapter 575 of 2011 (HB 93), persons who make independent expenditures or disbursements for electioneering communications of over \$10,000 must report information relating to those expenditures or disbursements to SBE. In general, independent expenditures are those that are not made in coordination with a candidate or campaign finance entity and that expressly advocate for or against a candidate or ballot question. Electioneering communications, on the other hand, do not expressly advocate for or against 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 50,000 or more individuals 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.

A failure to file an independent expenditure or electioneering communication report is subject to the same sanctions applicable to a failure to file a campaign finance report, which include late fees assessed by SBE and eventual referral to the State Prosecutor if a person or campaign finance entity does not come into compliance. Enforcement of campaign finance laws is largely undertaken by the Office of the State Prosecutor, which acts on complaints received from SBE and elsewhere.

Reporting requirements under Maryland campaign finance law generally apply to campaign finance entities receiving contributions but not to individuals or entities contributing to the campaign finance entities. One exception is certain persons doing public business with the State or a local government who make campaign contributions. Title 14 of the Election Law Article requires a person who, during any 12-month period, makes one or more contracts with one or more State or local governmental entities involving cumulative consideration of at least \$100,000 to report to SBE campaign contributions totaling over \$500 within the two years prior to making the contracts and for the duration of the performance of the contracts that caused the person to be “doing public business.”

Public campaign financing is currently provided for under State law for gubernatorial campaigns, under the Public Financing Act. However, with the exception of the 1994 gubernatorial race, the program has not been used and has limited available funding.

State Expenditures: General fund expenditures increase by approximately \$100,000 in fiscal 2014, \$344,000 in fiscal 2015, and \$433,000 in fiscal 2016. This estimate accounts for one-time programming costs and associated increased IT operations and maintenance costs incurred beginning in fiscal 2014 and personnel costs in fiscal 2015 and future years, assuming additional personnel start on the bill's January 1, 2015 effective date. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

SBE's online campaign finance reporting system will need to be modified to allow for electronic filing of disclosure statements by persons doing public business and to account for other changes in the bill. It is also anticipated that SBE will need two additional auditors, an investigator, and a clerical position as a result of the bill. The costs for the additional positions total approximately \$250,000 on an annualized basis. SBE is given greater authority to enforce campaign finance laws under the bill through the ability to audit campaign finance entity, independent expenditure, and electioneering communication records and to impose civil penalties and will require additional personnel to utilize that authority. Ensuring the proper formation and membership of slates pursuant to the bill's requirements, auditing of statements filed by persons doing public business and related records, and regulation and oversight of any local public campaign financing systems will also require additional staff time. Costs of regulation and oversight of any local public campaign financing systems may potentially be billed to the applicable counties.

An additional investigator and prosecutor are anticipated to be needed in the Office of the State Prosecutor (OSP) due largely to the civil penalty process established under the bill and the requirements that certain business entity contributions be treated as being made by a single contributor. The costs for the additional positions total approximately \$163,000 on an annualized basis. OSP has limited resources to devote to election law complaints and has discretion to determine whether complaints warrant full investigation and prosecution. Under the civil penalty process established by the bill, however, OSP will be responsible for pursuing cases where SBE has assessed a penalty and a person elects to stand trial. In addition, OSP indicates that extensive investigative work will be required to gather evidence to prove violations of contribution limits by noncorporate business entities under common ownership or control since records of the business entities generally are not public.

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Positions (New)	0	6	0
Salaries and Fringe Benefits (Total)	\$0	\$195,409	\$409,415
Programming/Operations and Maintenance	100,000	120,000	20,000
Computer Equipment/Office Furniture	0	26,825	0
Other Operating Expenses	<u>0</u>	<u>1,742</u>	<u>3,519</u>
Total State Expenditures	\$100,000	\$343,976	\$432,934

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

State Revenues: General fund revenues increase to the extent penalties are collected (1) under the bill's new civil penalty provisions; (2) as a result of violations of new provisions of the bill; and/or (3) as a result of SBE's expanded auditing authority under the bill. The extent to which general fund revenues will increase cannot be reliably estimated, but could potentially be over \$100,000 in some years given the size of the civil penalties, with independent expenditure and electioneering communication reporting violations having the potential to generate relatively significant revenue if there are violations.

General fund revenues also increase as a result of changes to the late fee provisions, including applying the fees to amended reports and increasing the maximum in late fees that may accrue, as well as making disclosure statements filed by persons doing public business subject to late fees. Additional campaign finance reports required under the bill will also likely result in additional late fees. Based on the level of fees currently collected and the bill's changes, revenues may increase by over \$50,000 on average each year, with more late fees expected to be collected during gubernatorial elections. Pursuant to statute, fees related to campaign finance reports are paid to SBE and applied to pay expenses of fee collection and auditing of campaign finance reports. This fee revenue, while not deposited in the general fund, is treated as general fund revenue for the purposes of this fiscal note since SBE accounts for the revenue as a reduction to their general fund expenditures rather than as special fund revenue. It is unclear whether late fees for disclosure statements filed by persons doing public business will be treated in a similar manner. To the extent late fees for disclosure statements are not retained by SBE, it is assumed the fees will be deposited in the general fund.

Local Fiscal Effect: Local government expenditures increase for any county that establishes a public campaign financing system, to fund campaigns and administer the system (potentially involving reimbursement of SBE for its regulation and oversight). Local government revenues may correspondingly increase to the extent a new funding source is established for a public campaign financing system.

Local government revenues may also increase due to criminal penalties imposed in cases heard in the circuit courts resulting from violations of new provisions of the bill, SBE's expanded auditing authority, and/or the increased statute of limitations for misdemeanors.

Additional Information

Prior Introductions: None.

Cross File: SB 1039 (The President, *et al.*) (By Request - Commission to Study Campaign Finance Law) - Education, Health, and Environmental Affairs.

Information Source(s): State Board of Elections, Office of the State Prosecutor, Judiciary (Administrative Office of the Courts), State Ethics Commission, Office of the Attorney General, University System of Maryland, Maryland Department of Transportation, Department of General Services, Department of Budget and Management, Montgomery and Prince George's counties, Baltimore City, Department of Legislative Services

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Appendix – Commission to Study Campaign Finance Law

The Commission to Study Campaign Finance Law was established by the General Assembly under Joint Resolution 1 of 2011. The commission was charged with studying the State's regulation of campaign finance, including a number of specific issues, and making recommendations for improvements. The commission convened in December 2011 and submitted an interim report in January 2012 and a final report in December 2012. A number of the commission's recommendations in its January 2012 interim report, which consisted largely of targeted changes to administrative requirements of the State Board of Elections and/or campaign finance entities, were considered and enacted during the 2012 regular session.

The commission's December 2012 final report – drawing on testimony from various sources, staff research, and extensive commission discussions over the course of 2012 – contains a more expansive set of recommendations, covering:

- the level of contribution limits;
- the treatment of contributions from business entities under common management or ownership, for purposes of the contribution limits;
- the law governing the use of slates;
- establishment of caucus committees for the use of General Assembly party caucuses;
- independent expenditures;
- enforcement of campaign finance laws;
- public financing of campaigns;
- disclosure of small contributions;
- the campaign finance reporting schedule;
- disclosure of contributions by government contractors; and
- the availability of Attorney General advice regarding campaign finance laws.

The commission's [interim report](#) and [final report](#) may be found on the Maryland General Assembly website (<http://mgaleg.maryland.gov>).