

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 986
Ways and Means

(Delegate Rosenberg, *et al.*)

Corporations - Campaign Material - Stockholder Approval

This bill specifies that a corporation may not publish or distribute campaign material in the State unless (1) the campaign material is true; (2) the board of directors has determined that the expenditure of funds for the campaign material is in the best interests of the corporation; and (3) the content of the campaign material and the expenditure of funds has been approved by the stockholders of the corporation by an affirmative vote of two-thirds of all votes entitled to be cast. Requirements applicable to the content of notice of a stockholder vote are established and the bill specifies that stockholder consideration of campaign material and the expenditure of funds may occur at an annual or special meeting of the corporation. A stockholder alleging a violation of the bill's requirements may bring a civil action directly against the directors of the corporation, and the fact that a director acted in accordance with the general standard of care required of a director is not a defense to an action.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: None. The bill does not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: The business and affairs of a corporation are managed under the direction of a board of directors and all powers of the corporation may be exercised by or under the authority of the board of directors except as conferred on or reserved to the stockholders by law or by the charter or bylaws of the corporation. “Stockholder” is defined under the Corporations and Associations Article as a person who is a record holder of shares of stock in a corporation and includes a member of a corporation organized without stock.

A director must perform his or her duties as a director in good faith; in a manner he or she reasonably believes to be in the best interests of the corporation; and with the care that an ordinarily prudent person in a like position would use under similar circumstances. A director that performs his or her duties in accordance with that standard has no liability by reason of being or having been a director of a corporation.

A corporation generally must hold an annual meeting of its stockholders to elect directors and transact any other business within its powers. A special meeting may also be called by the president, board of directors, any other person specified in the corporation’s charter or bylaws, or a certain percentage of the stockholders. Unless otherwise provided under State law or the charter of a corporation, the presence in person or by proxy of stockholders entitled to cast a majority of all votes entitled to be cast at a meeting constitutes a quorum, and a majority of all votes cast at a meeting at which a quorum is present is sufficient to approve a matter. Certain charter amendments and significant actions such as consolidations and mergers are among actions that require a two-thirds vote of all votes entitled to be cast.

Under the Election Law Article, “campaign material” is defined as 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; and (3) is published or distributed. Campaign material includes material transmitted by or appearing on the Internet or other electronic medium and an oral commercial campaign advertisement.

Campaign material published or distributed by persons other than a campaign finance entity must include the name and address of the person responsible for the campaign material. In addition, 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.” A 1995 Attorney General opinion indicated that this provision is not enforceable against an individual acting independently.

Background: The U.S. Supreme Court, in *Citizens United v. Federal Election Commission*, recently invalidated federal restrictions on corporate independent expenditures in connection with certain qualified federal elections. The court notably rejected one of the government's arguments that corporate independent expenditures could be limited because of the government's interest in protecting dissenting shareholders from being compelled to fund corporate political speech.

The National Conference of State Legislatures (NCSL) indicates that, while not directly affecting state laws, the ruling will have a significant effect on laws governing corporate political activity in nearly half the states, likely causing laws in those states to not be enforced and/or repealed or modified. According to NCSL, there are at least 23 states (not including Maryland) that currently prohibit or restrict corporate and union spending on candidate elections. Maryland does not prohibit corporate independent expenditures.

Additional Information

Prior Introductions: None.

Cross File: SB 570 (Senator Frosh, *et al.*) - Judicial Proceedings.

Information Source(s): State Department of Assessments and Taxation, State Board of Elections, Judiciary (Administrative Office of the Courts), National Conference of State Legislatures, Department of Legislative Services

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