

Maryland and North Dakota Adjust Campaign Finance Rules

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Maryland Adopts New IE Reporting Rules

On May 19, 2011, Maryland Governor Martin O'Malley approved former House Bill 93 Election Law-Independent Expenditures and Electioneering Communications-Reporting. The new law alters the definition of "independent expenditure," authorizes the State Board of Elections to audit specified independent expenditure reports, and requires corporations to file and make available an independent expenditure report after making aggregate expenditures of more than \$10,000 in an election cycle for campaign material that is a public communication. Effective December 1, 2011, this law makes several changes to Maryland's campaign finance laws; the important changes related to independent expenditures are discussed below.

First, the new law redefines "independent expenditure" as "an expenditure by a person expressly advocating the success or defeat of a clearly identified candidate or ballot issue if the expenditure is not made in coordination with, or at the request or suggestion of" a candidate, campaign finance entity of a candidate, an agent of a candidate or a ballot issue committee. The language "expressly advocating" replaces "to aid or promote." Also, "clearly identified" and "ballot issue" are added to the definition. For this provision, "clearly identified" means the name, photograph or drawing of the candidate appears, or the identity of the candidate or ballot issue is apparent by unambiguous reference.

Second, to ensure compliance, the State Board is given the authority to use its discretion to audit independent expenditure reports.

Third, the new law changes the deadlines for when reports are due, so that a corporation must file an independent expenditure report after making aggregate independent expenditures of \$10,000 or more in an election cycle for campaign material that is a public communication. The independent expenditure report must include the identity of the person making the independent expenditures as well as of any person exercising direction or control over the activities of the person making the independent expenditures; the business address of the person making the independent expenditures; the amount and date of each independent expenditure during the period covered by the report; the person to whom the expenditure was made; the candidate or ballot issue to which the independent expenditure relates; and whether the independent expenditure supports or opposes that candidate or ballot issue. Importantly, a person making

independent expenditures also must disclose the identity of each person who made cumulative donations in excess of \$51 to the person making the independent expenditures during the period covered by the report. Also, the new law defines electioneering communications separately from independent expenditures and lays out the reporting requirements for electioneering communications.

New Direct Expenditure Statement Required in North Dakota

On August 1, 2011, Senate Bill 2073, which addresses reporting requirements for corporate contributions, goes into force. North Dakota Governor Jack Dalrymple signed Senate Bill 2073 into law on April 27, 2011, which amends and reenacts Section 16.1-08.1 of the North Dakota Century Code. This law requires corporations making direct expenditures relating to ballot measures to file reports within 48 hours of making such expenditures.

The legislation adds "direct expenditure" as a new term to the definitions section of the code section on campaign contribution statements and defines it to include expenditures by corporations "for the specific purpose of promoting passage or defeat of an initiated or referred measure without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of a measure committee."

The code is amended so that corporations may make direct expenditures for the purpose of promoting the passage or defeat of initiated or referred measures. A direct expenditure statement must be filed with the secretary of state within 48 hours after making such an expenditure. This statement must include the name and address of the corporation; the name and phone number of the person completing the report; the title of the measure; whether the expenditure is made in support of or in opposition to the measure; the election date for the measure; the expenditure amount; the cumulative total amount of expenditures since the beginning of the calendar year in support of or in opposition to the measure; the printed name and signature of the person completing the report attesting to it being true; and the date on which the report was signed. Under this new law, the code also is amended so that corporations may make direct contributions to a measure committee for the purpose of promoting passage or defeat of initiated or referred measures.