

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 832 (Senator Pinsky, *et al.*)
 Education, Health, and Environmental Affairs

Public Funding and Small Donor Act for General Assembly Elections

This bill establishes the Public Funding and Small Donor Act for General Assembly Elections and a Commission to Study Public Financing of Elections in Maryland.

The bill takes effect June 1, 2017, and the provisions that establish the study commission terminate June 30, 2019.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$376,700 in FY 2018 due to personnel and software programming costs. Special fund revenues and expenditures also increase in FY 2018, reflecting transfers to and from the Fair Campaign Financing Fund (FCFF). Future years reflect ongoing personnel and operating costs, and transfers to and from FCFF in FY 2019 and future fiscal years in which a gubernatorial election occurs.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	-	-	\$0	\$0	-
GF Expenditure	\$376,700	\$346,600	\$331,700	\$346,800	\$395,100
SF Expenditure	-	-	\$0	\$0	-
Net Effect	(\$376,700)	(\$346,600)	(\$331,700)	(\$346,800)	(\$395,100)

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

Local Effect: It is assumed the bill’s penalty provisions and other provisions authorizing court action will not materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary:

Public Funding and Small Donor Act for General Assembly Elections

The State Board of Elections (SBE) is responsible for managing and supervising the system of public financing of elections established under the Act and adopting regulations implementing the Act on or before October 1, 2017. SBE must ensure that the system of public financing of elections (1) accommodates qualifying candidates on a first-come, first-served basis; (2) establishes an initial limit on the number of participating candidates during an election cycle; and (3) allows for an increase or decrease in the number of participating candidates during the election cycle in correlation to the amount of available funding.

SBE is given specified authority with regard to its management and supervision of the public financing system and is required to, among other things:

- develop an electronic database accessible to the public on the Internet that includes specified information, including contributions to and expenditures by participating candidates and public contributions that are disbursed to participating candidates;
- develop an education program that includes informational materials and compliance manuals to inform candidates and the public about the purpose and effect of the Act; and
- report to the General Assembly after each election cycle regarding the Act and contributions and expenditures under it.

The bill establishes a process for candidates to qualify for public financing under the Act that generally consists of:

- a requirement that a candidate seeking to qualify file notice of the candidate's intent with SBE by February 15 of the year of the election and establish a publicly funded campaign account in conjunction with SBE for the purpose of receiving contributions and making expenditures in accordance with the Act;
- authorization of candidates seeking to qualify to accept seed money of up to \$3,500 (with no contributions of more than \$250 from each donor) to spend during the qualifying contributions period (from September 1 in the year preceding the primary election to the day 45 days before the primary election);
- a requirement that a candidate collect, during the qualifying contributions period, at least 350 qualifying contributions (contributions of at least \$5 from registered voters in the legislative district or subdistrict of the candidate); and

- a determination by SBE (which is final and not subject to judicial review) whether to certify a candidate as a participating candidate no later than 15 days after receipt of (1) a declaration that the candidate will abide by the regulations and policies prescribed by SBE and (2) a campaign finance report containing a list of qualifying contributions and a statement of all expenditures made by the candidate during the campaign.

A participating candidate, or a person acting on behalf of the candidate, is prohibited from making a campaign expenditure for the candidate other than from the candidate’s publicly funded campaign account, with the exception of maintaining a petty cash fund. SBE is authorized to gain access at any time to the records and transactions of an account and, in accordance with SBE regulations and guidelines, may terminate an account. A participating candidate is also prohibited from joining a slate.

The public financing system is funded through FCFF, which holds funds for the existing public financing system for gubernatorial tickets under the Public Financing Act (PFA). Funds received from candidates participating in the new public financing system for General Assembly candidates established by the bill (such as qualifying contributions and unspent or excess seed money) are deposited in the fund and distributions of public financing to participating candidates are made from the fund. The bill repeals specified provisions of PFA regarding distributions of public contributions under the Act and requires SBE to adopt regulations regarding the distribution of funds to eligible gubernatorial tickets under PFA and General Assembly candidates participating under the Public Funding and Small Donor Act for General Assembly Elections on a first-come, first-served basis.

Participating candidates are subject to the expenditure limits shown in **Exhibit 1**.

Exhibit 1			
Publicly Funded Expenditure Limits			
	<u>Primary</u>	<u>General</u>	<u>Expenditure Limit</u>
Contested Senate	\$50,000	\$50,000	\$100,000
Uncontested Senate	8,000	4,000	12,000
Contested House (Three-member)	50,000	50,000	100,000
Two-member	35,000	35,000	70,000
Single-member	20,000	20,000	40,000
Uncontested House (Three-member)	8,000	4,000	12,000
Two-member	6,000	3,500	9,500
Single-member	5,000	3,000	8,000

Participating candidates in a contested primary and general election or an uncontested primary election may choose a specified alternative apportionment of the overall limit, between the primary and general election, to spend more money for one election and less for the other.

The bill specifies times and procedures for disbursements from FCFF to participating candidates prior to the primary and general elections and the subsequent return of any unspent funds.

A participating candidate who is opposed by a nonparticipating candidate in a primary or general election may raise supplemental private contributions in addition to the public contribution received. The aggregate amount of supplemental private contributions received from a contributor may not exceed \$100 and the candidate may not raise an aggregate amount of more than \$10,000 in supplemental private contributions.

The bill requires nonparticipating candidates that exceed the expenditure limit for a participating candidate for the office being sought to file biweekly campaign finance reports of all of the candidate's expenditures through and including the week after the election. In addition, during the 30 days preceding an election, a nonparticipating candidate must notify SBE within 48 hours of each expenditure over \$500 made or obligated.

The bill also specifies the procedure for a participating candidate to opt out of the public financing system; prohibits a participating candidate from accepting a contribution from a State or local central committee of a political party; provides for judicial review of an SBE action under the Act (with the exception of a determination whether a candidate is eligible for public financing); and specifies prohibited actions and related penalties and sanctions.

Commission to Study Public Financing of Elections in Maryland

The bill establishes a 10-member Commission to Study Public Financing of Elections in Maryland staffed by SBE and the State Ethics Commission. The commission must receive testimony as appropriate, and on or before December 31, 2019, report specified findings and recommendations, including any proposed statutory changes to Maryland election law, to the Governor and the General Assembly. Provisions establishing the commission terminate June 30, 2019.

Current Law/Background:

Public Financing Act and Fair Campaign Financing Fund

PFA provides for a system of public financing of elections for candidates for Governor and Lieutenant Governor. The Act established FCFF and the fund is administered by the Comptroller. An income tax checkoff on the individual income tax return form that allowed an individual to contribute up to \$500 to the fund on the individual's tax return was repealed under the Budget Reconciliation and Financing Act of 2010 (Chapter 484). Chapter 312 of 2015, however, reinstated a tax checkoff on the individual income tax return form without a limit on the amount of contributions that may be made and it also established certain other sources of revenue for the fund, including various penalties, fines, and fees imposed under State election law.

To qualify for public funding under PFA, a gubernatorial ticket must raise "seed money" equal to 10% of the expenditure limit for eligible tickets in the election. The expenditure limit is calculated for each election using a formula based on the population of the State and inflation. The limit applies separately to each primary and general election. For 2014, the expenditure limit was \$2,586,124. Accordingly, the amount of seed money a qualifying ticket was required to raise in 2014 was \$258,612.

Seed money must be raised in the form of "eligible private contributions," which are contributions of \$250 or less from individuals. Contributions from business entities or political committees do not qualify as eligible private contributions. Once a ticket has qualified by raising seed money, public funds are disbursed for the primary election on a matching basis. For a ticket with opposition, the ticket receives \$1 in public funds for each \$1 in eligible private contributions it raises. For a ticket without opposition, the ticket receives \$1 in public funds for each \$3 in eligible private contributions it raises. A participating ticket may accept contributions of more than \$250 or contributions from business entities or political committees, but these funds are not seed money, may not be matched with public funds, and count toward the ticket's expenditure limit for the election.

If a participating ticket wins the primary election, it is entitled to receive public funds for the general election equal to the expenditure limit for the election. There is no requirement to raise eligible private contributions to receive public funds for the general election. Any private contributions a participating ticket raises in the general election will count toward its expenditure limit for the election and correspondingly reduce the amount of public funds the ticket may spend. Expenditures by the State or local central committee of a political party that are coordinated with a participating ticket do not count toward the expenditure limit.

With the exception of the 1994 gubernatorial election, the public financing program under PFA had not been used until recently. Beginning in 2009, following multiple election cycles without use of the public financing program, the General Assembly authorized certain amounts of money in the fund to be used for other election-related purposes. In the 2014 election, two gubernatorial tickets qualified for public financing under the program and collectively received a total of approximately \$3.69 million.

As of late January 2017, the balance in FCFF is \$2.67 million.

Public Campaign Financing

According to the National Conference of State Legislatures, 13 states provide some form of public financing option for campaigns. Those programs are voluntary and limit campaign spending by those who elect to receive public funds. In most of the 13 states, the participating candidates' campaigns are only partially funded with public funds. A few states, however, provide full public financing to candidates.

Commission to Study Campaign Finance Law

The Commission to Study Campaign Finance Law, formed by the General Assembly in 2011, addressed the issue of public campaign financing in its December 2012 report. With respect to public financing of General Assembly candidates, while some members of the commission supported establishing at least a pilot program, agreement could not be reached on how to fund such a program. The commission agreed instead to recommend that the General Assembly authorize the counties (including Baltimore City) to establish public financing programs for county offices to foster possible further exploration of public financing in the State outside of the current gubernatorial program. Chapter 419 of 2013, the Campaign Finance Reform Act of 2013, includes such an authorization, effective January 1, 2015. Montgomery County became the first county to exercise the authority when it enacted a law in October 2014 that establishes a system that provides matching funds for county executive and county council candidates.

For the commission's full discussion of public financing, see pages 22-25 of the commission's [2012 report](#).

State Fiscal Effect:

General Fund Expenditures – Administration of Public Financing System

General fund expenditures increase by at least \$376,674 in fiscal 2018, and by similar amounts in future years, which reflects:

- the cost of SBE hiring (1) one staff person and one office secretary in fiscal 2018 to staff the study commission and assist in the implementation and administration of the program; (2) an attorney in fiscal 2018 to develop educational materials and enforcement and auditing procedures; and (3) an investigator, mid-way through fiscal 2018, to conduct auditing and investigations;
- the cost of a contractual accountant in the Comptroller’s Office during the 2018 election year to handle disbursements to candidates; and
- software programming to accommodate the new public financing program in the State’s online campaign finance reporting system.

The estimate includes salaries, fringe benefits, and one-time and ongoing operating expenses.

Positions	5
Salaries and Fringe Benefits	\$301,564
Software Programming	50,000
Operating Expenses	<u>25,110</u>
Total FY 2018 State Expenditures	\$376,674

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

Other costs, such as those associated with developing an education program, have not been quantified.

Special/General Fund Expenditures – Public Financing of Campaigns

Special/general fund expenditures increase, potentially significantly, in fiscal 2018 and 2019 to provide public financing to participating candidates. The extent of the overall expenditures depends on the amount of available money in FCFF and the level of participation in the program. The bill requires an initial limit on the number of participating candidates during an election cycle to be established, but the system also must allow for an increase or decrease in the number of participating candidates in correlation to the amount of money in the fund. See Exhibit 1, for the potential amounts spent per candidate (up to \$100,000 over the course of the primary and general elections for some candidates).

FCFF currently has a balance of \$2.7 million (but potentially only a portion of the fund’s balance may be available to General Assembly candidates, as opposed to gubernatorial tickets under PFA) and general funds may be needed to supplement the fund’s other revenue sources.

Special Fund Revenues

Special fund revenues increase due to money being deposited in FCFF in accordance with the bill, including unspent and excess seed money collected by candidates and qualifying contributions collected by candidates. These revenues, however, are likely significantly less than the public financing amounts distributed to candidates from FCFF. Candidates are limited to raising \$3,500 in seed money and any unspent or excess seed money presumably would consist of relatively limited amounts per candidate. Candidates must collect 350 qualifying contributions of at least \$5 to qualify for public financing. Therefore, the revenue from qualifying contributions collected by a successful candidate could be less than \$2,000.

Penalty Provisions

It is assumed, for the purposes of this fiscal and policy note, that the bill's penalty provisions and other provisions authorizing court action will not materially affect State finances.

Additional Information

Prior Introductions: SB 428 of 2016 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1248, received a hearing in the House Ways and Means Committee, but no further action was taken. SB 519 of 2015 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. In addition, similar bills were introduced in the 2004 through 2012, and 2014, sessions.

Cross File: None.

Information Source(s): State Board of Elections; Comptroller's Office; Judiciary (Administrative Office of the Courts); State Prosecutor's Office; State Ethics Commission; National Conference of State Legislatures; Department of Legislative Services

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Analysis by: Scott D. Kennedy

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