

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 424

(Delegate Feldmark)

Ways and Means

Education, Health, and Environmental Affairs

Public Financing Act - Matching Fund Revisions (Maryland Fair Elections Act)

This bill modifies the Public Financing Act (PFA), primarily by (1) modifying the qualifying requirements and matching contributions and (2) mandating appropriations to the Fair Campaign Financing Fund (FCFF) of \$4 million in fiscal 2023 and an amount sufficient to fully fund specified numbers of gubernatorial tickets under PFA in future elections. **The bill takes effect June 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$2.2 million in FY 2022, \$4.0 million in FY 2023, and an indeterminate amount in FY 2026, to appropriate money to FCFF. Special fund revenues for FCFF increase by \$2.2 million in FY 2022, \$4.0 million in FY 2023, and an indeterminate amount in FY 2026; and special fund expenditures for public campaign matching funds increase by up to \$10.0 million across FY 2022 and 2023, and by an indeterminate amount in FY 2026. **The bill establishes a mandated appropriation for FY 2023, FY 2026, and each subsequent fiscal year that includes a gubernatorial primary election.**

Local Effect: The bill does not materially affect local government finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Notice of Intent to Participate

Before receiving a “private contribution” under PFA, a gubernatorial ticket must (1) by the deadline to file a certificate of candidacy, file with the State Board of Elections (SBE) a notice of intent to participate as a publicly financed candidate for both the primary and general elections and (2) establish a campaign finance entity for complying with the requirements of PFA.

The campaign finance entity may accept only:

- a “private contribution” (a contribution or series of contributions from an individual that does not exceed \$250 in the aggregate in an election cycle);
- an “eligible private contribution” (a monetary private contribution from an individual who is a resident of the State that does not exceed \$250 in the aggregate in an election cycle that is accompanied by specified documentation of the donor attesting that the contribution is made with the personal funds of the donor);
- a public contribution; and
- contributions or loans from a member of a gubernatorial ticket or the spouse of a member of a gubernatorial ticket of not more than a combined total of \$50,000.

Qualifying for Public Financing

To qualify as an eligible gubernatorial ticket (eligible to receive a public contribution), a gubernatorial ticket must collect, within the qualifying period, at least (1) 1,500 eligible private contributions and (2) an aggregate total of \$120,000.

The qualifying period is from the first day of the election cycle for a gubernatorial election until (1) the first Monday in May of the election year, for principal political party candidates and (2) the first Monday in August of the election year, for all other participating candidates.

Public Contribution Matching Amounts

The public contribution matching amounts available to each gubernatorial ticket are shown in **Exhibit 1**. The total public contribution payable to a gubernatorial ticket for either a primary or general election may not exceed \$3.0 million. A gubernatorial ticket that is unopposed in a primary election receives one-third of the public contribution amount the

gubernatorial ticket would otherwise be entitled to receive. If a gubernatorial ticket withdraws from participation in the program after receiving a public contribution, the full amount of any public contribution received, with specified interest, must be repaid.

SBE must authorize distribution of money to gubernatorial tickets in accordance with the matching amounts, and regulations adopted by SBE, on a continuing basis, upon certification that a gubernatorial ticket has met the qualifying requirements. Distributions may not begin earlier than January 1 of the year of the election.

Exhibit 1
Public Contribution Matching Amounts

<u>Portion of Eligible Private Contribution (Maximum of \$250)</u>	<u>Public Contribution Matching Amount (Per Each Dollar of an Eligible Private Contribution)</u>
First \$50	\$8
Second \$50	6
Third \$50	2
Remaining \$100	0

Funding of the Public Financing Act

Under existing law and under the bill, PFA is supported by FCFF. The bill requires SBE, by June 30 of the third year immediately preceding a year of a gubernatorial election, to determine whether the balance of the fund is sufficient to provide for a full contribution for:

- in a primary election, two gubernatorial tickets; and
- in a general election, one gubernatorial ticket.

If the balance of the fund is determined to be insufficient to provide those public contributions:

- by August 1 of the third year immediately preceding a year of a gubernatorial election, SBE must send a notice to the Governor of the amount of money needed to provide the above-described public contributions; and
- the Governor must include in the annual budget bill for the appropriate fiscal year an appropriation in an amount equal to the amount submitted to the Governor by SBE.

Independent of those requirements, for fiscal 2023 only, the Governor must include in the annual budget bill an appropriation of at least \$4.0 million to the fund.

Except with respect to the \$4.0 million appropriated in fiscal 2023, if general funds are appropriated to the fund under the provisions above, after the gubernatorial election SBE must authorize repayment to the general fund of the amount that exceeds the amount necessary to provide for a full contribution for eligible candidates described above.

Civil Penalty Authority

Existing criminal penalties apply to violations of PFA, but the bill also authorizes SBE to impose civil penalties of up to \$1,000 per violation, for certain violations. The bill specifies various procedures applicable to imposing a civil penalty, including a right to a trial in the District Court, that are similar to those under SBE's existing civil penalty authority for certain violations under State campaign finance law. The civil penalties are distributed to FCFF.

Current Law: 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 2018, the expenditure limit was \$2,798,370. Accordingly, the amount of seed money a qualifying ticket was required to raise in 2018 was \$279,837.

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.

State Fiscal Effect:

Appropriations to the Fair Campaign Financing Fund

The current balance in FCFF is \$3.8 million. General fund expenditures increase by \$2.2 million in fiscal 2022 (supplementing the existing \$3.8 million in FCFF) and by \$4.0 million in fiscal 2023, in order to provide a sufficient amount in FCFF to provide a full contribution to two gubernatorial tickets in the 2022 primary election and to comply with the bill's mandated appropriation in fiscal 2023 (which is enough to provide a full contribution to one gubernatorial ticket for the general election). While appropriation of the funding in fiscal 2022 is not mandated, full funding for two gubernatorial tickets for the primary election is assumed, for the purposes of this fiscal and policy note, due to the bill's effective date.

General fund expenditures increase in fiscal 2026 by an indeterminate amount, pursuant to the bill's mandated appropriation, to supplement funding in FCFF that is unused after the 2022 elections (and funding generated from FCFF's other revenue sources between the 2022 and 2026 elections) to fully fund the program for the 2026 elections.

It is assumed, for the purposes of this fiscal and policy note, that enough money is disbursed to candidates during the 2022 elections so that, following the elections, there is not any amount in excess of the amount needed for full contributions (for the 2026 elections) that would need to be repaid to the general fund under the bill's general fund repayment provision.

Fair Campaign Financing Fund Revenues and Expenditures

FCFF revenues increase by \$2.2 million in fiscal 2022, \$4.0 million in fiscal 2023, and an indeterminate amount in fiscal 2026, reflecting the receipt of the general fund appropriations. FCFF expenditures increase over the course of fiscal 2022 and 2023, and in fiscal 2026, by an indeterminate amount, to make disbursements of public contributions to participating candidates for the 2022 primary and general elections and the 2026 primary election. FCFF revenues may also increase due to the collection of civil or criminal penalties.

Small Business Effect: To the extent the bill results in additional campaign spending that otherwise would not occur, small businesses providing campaign consulting services and materials may meaningfully benefit.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 415 (Senator Pinsky) - Education, Health, and Environmental Affairs and Budget and Taxation.

Information Source(s): State Board of Elections; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of the State Prosecutor; Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - February 1, 2021
an/hlb Third Reader - April 12, 2021
Revised - Amendment(s) - April 12, 2021

Analysis by: Scott D. Kennedy

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