**SB 546**

**Department of Legislative Services**
Maryland General Assembly
2007 Session

# FISCAL AND POLICY NOTE

Senate Bill 546 (Senator Pinsky, *et al.*)
Education, Health, and Environmental Affairs

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**Election Law - Public Campaign Financing Act for Candidates for the General Assembly**

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This bill establishes public campaign financing for candidates for the General Assembly.

The bill is effective July 1, 2007.

## Fiscal Summary

**State Effect:** The Public Election Fund (PEF) would receive revenues of $13.5 million in FY 2008, which includes a one-time $4.5 million transfer from the Fair Campaign Financing Fund and annual revenues of $9.0 million from abandoned property revenue and a tax checkoff. General fund revenues would decrease correspondingly by $9.0 million annually beginning in FY 2008. PEF expenditures would be $488,000 in FY 2008 for administrative and personnel costs for the Election Financing Commission (EFC), reflecting a start-up delay. General fund expenditures would also increase by $159,000 in FY 2008 only for one-time software programming and web site development costs of the Comptroller and State Board of Elections. Qualifying contributions to the PEF as well as disbursements from the PEF in FY 2010 and 2011 cannot be reliably estimated and are not reflected in the chart below.

| (in dollars) | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|---|---|---|---|---|---|
| GF Revenue | ($8,952,600) | ($8,952,600) | ($8,952,800) | ($8,952,800) | ($8,952,800) |
| SF Revenue | 13,464,200 | 8,952,800 | 8,952,800 | 8,952,800 | 8,952,800 |
| GF Expenditure | 159,000 | 0 | 0 | 0 | 0 |
| SF Expenditure | 487,500 | 672,300 | 695,600 | 720,100 | 745,800 |
| Net Effect | $3,865,100 | ($672,100) | ($695,600) | ($720,100) | ($745,800) |

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

**Local Effect:** None.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The bill creates a comprehensive system of fully funded election campaign financing for qualifying candidates for the General Assembly. The bill provides for a five-member EFC to administer the Act and the PEF to be administered by the Comptroller. Qualifying candidates are eligible to receive full funding for primary and general election contests beginning with the 2010 statewide primary and general election.

*Election Financing Commission*

The bill creates an Election Financing Commission consisting of five members, four of which are appointed by the Governor with the advice and consent of the Senate. The four appointed members elect the fifth member. Each member must be a registered voter in the State for the two years immediately preceding appointment and each member appointed by the Governor must be a member of a principal political party. Two members must be of the majority party and two must be of the principal minority party. The bill provides for staggered four-year terms. The commission is responsible for the administration of the bill's provisions, and duties generally include responsibility for • authorizing public contributions to participating candidates; • developing an electronic database accessible to the public on the Internet containing information on contributions and expenditures by participating and other candidates and public contributions disbursed to the candidates; • developing educational programs and materials; • developing an official seal or logo; • investigating matters relating to the public financing program's operation or enforcement of the program's rules; • adopting regulations; • conducting random audits of participating candidates; • issuing advisory opinions; and • imposing fines for civil infractions.

*Public Election Fund*

The bill creates a PEF, a special, nonlapsing fund administered by the Comptroller of the Treasury and used to provide public financing to qualified candidates beginning with the election cycle that begins on January 1, 2007. The fund will also provide for the administrative and enforcement costs of EFC. The fund consists of the following funds: (1) proceeds from a checkoff system that allows a taxpayer to direct $5 of tax liability to PEF on an individual tax return; (2) $7.5 million appropriated to the fund annually from the disposition of abandoned property in the State; (3) any amount that the Governor may include in the annual State budget and the General Assembly may appropriate; (4) all qualifying contributions from candidates seeking to become certified; (5) excess seed money and qualifying contributions of candidates seeking to become certified; (6) unspent public funds from a participating candidate; (7) fines levied by the commission against candidates; (8) voluntary donations made directly to the fund; (9) interest generated by the fund; and (10) any other source of revenue authorized by the General Assembly. The Governor is required to include funds in the fiscal 2009 budget that will be sufficient to carry out the requirements of the bill if the fund does not accumulate sufficient money by January 1, 2008.

*Participating Candidates*

To be certified by the commission as a participating candidate and qualify for a public contribution, a candidate must file a declaration that the candidate will abide by the commission's regulations and policies. A candidate must also submit two campaign finance reports listing all seed money contributions and expenditures and qualifying contributions received and forward any unspent or excess seed money and all qualifying contributions to the commission for deposit into the election fund.

Allowable contributions for a participating candidate are: (1) seed money contributions of up to $3,500 for a Senate candidate and $2,500 for a candidate for the House of Delegates; (2) personal contributions from the candidate and from the candidate's spouse of no more than $500 each; and (3) money or an in-kind contribution from a State or local central committee not to exceed 2.5% of the public contribution amount authorized for an election. Seed money may only be spent by a candidate for the purpose of obtaining qualifying contributions during the qualifying period. A participating candidate may retain additional private contributions, but generally may not spend private money during the primary and general election periods.

To be eligible to receive public funds, a candidate must collect and submit at least 350 qualifying contributions of at least $5 each from registered voters of the candidate's legislative district or subdistrict and additional contributions totaling at least $6,750 during the period beginning on August 1 in the year preceding the primary election for the office the candidate seeks and ending August 1 in the year of the primary. A receipt must be issued to each contributor that includes the name and address of the contributor and a signed statement by the contributor attesting that the contributor understands the purpose of the contribution and was not coerced or reimbursed.

The commission is required to establish a publicly funded campaign account for eligible candidates and authorize the disbursement of a public contribution from the public election fund for deposit into the account starting on May 1 of an election year in the following amounts:

**Exhibit 1**
**Publicly Funded Expenditure Limits/Disbursement Amounts**

| | Primary | General | Voluntary Expenditure Limit |
|---|---|---|---|
| Contested Senate | $50,000 | $50,000 | $100,000 |
| Uncontested Senate | 10,000 | 6,000 | 16,000 |
| Contested House (Three-member) | 40,000 | 40,000 | 80,000 |
| Two-member | 35,000 | 35,000 | 70,000 |
| Single-member | 20,000 | 20,000 | 40,000 |
| Uncontested House (Three-member) | 10,000 | 6,000 | 16,000 |
| Two-member | 8,000 | 5,000 | 13,000 |
| Single-member | 6,000 | 4,000 | 10,000 |

A candidate in a contested primary and general election or in an uncontested primary may choose to receive an alternative apportionment of the public funds disbursed so that a candidate may receive up to 70% of the total disbursement of public funds in a contested primary or contested general election. The bill also authorizes supplemental public funds in excess of the amounts listed above if a participating candidate is opposed by a nonparticipating candidate who incurs expenditures that exceed the expenditure limit established for the participating candidate. A nonparticipating candidate must disclose on a weekly basis all expenditures that exceed the publicly funded expenditure limit for that office. During the 30 days preceding an election, the disclosure must be filed within 24 hours of each expenditure over $500. The aggregate amount of public funds disbursed to participating candidates may not exceed 200% of the original disbursement amount.

*Express Advocacy Independent Expenditures*

A participating candidate is also entitled to a supplemental disbursement of public funds equal to the amount by which an opponent's own expenditures plus the value of "express advocacy independent expenditures" in support of the opponent or opposing the participating candidate exceeds the public expenditure limit applicable to the participating candidate. An "express advocacy independent expenditure" is one that expressly advocates the election or defeat of a candidate to the public within 90 days before the primary or general election and is of a cumulative value of $250. Express advocacy independent expenditures made in the State must be reported to the State Board of Elections (SBE) within 48 hours of release to the public and SBE must develop an Internet site for expenditure reporting.

*Coordinated Expenditures*

Coordinated expenditures are allowed by or on behalf of a participating candidate, but must be made exclusively with public funds. A nonparticipating candidate must report each coordinated expenditure made on behalf of a publicly funded candidate in a cumulative amount of more than $250 to SBE. During the 30 days immediately preceding the election, reports must be made within 48 hours after the expenditure is made or obligated to be made. Expenditures made by a slate that includes a participating candidate are deemed to be coordinated expenditures and must be attributed to each member of a slate on a pro rata basis.

*Citizen Actions*

An individual who believes a candidate has violated a public campaign finance law may pursue a civil action in court, provided the individual has first filed a complaint with the commission regarding the alleged violation and the commission does not make a determination and issue written findings within 30 days. The individual is entitled to reasonable attorney's fees and court costs if the individual prevails.

*Judicial Review*

The circuit court has jurisdiction to review actions of the commission upon petition within 60 days after the commission action. A participating candidate that knowingly or intentionally receives a contribution, makes an expenditure, or fails to disclose either, in violation of the Act that is more than 4% of the applicable expenditure limit is guilty of a misdemeanor and is subject to a fine not exceeding three times the amount of the excess contribution or expenditure or imprisonment for not more than two years or both. If such a violation contributed to a participating candidate's victory in an election, the commission may recommend to the General Assembly that the results of the election be nullified. The commission may also at its discretion, bar a candidate who violates the Act's provisions from further participation in the public funding program.

A person who provides false information to or conceals or withholds information about a contribution or expenditure from the commission is guilty of a misdemeanor and is subject to a fine not exceeding three times the amount of the illegal contribution, expenditure, or false disclosure to a maximum of $5,000 for each violation, or imprisonment for two years or both.

*Fund Transfer*

The Comptroller must transfer any remaining funds in the Fair Campaign Financing Fund (FCFF) as of July 1, 2007 to PEF.

**Current Law:** The Public Financing Act (PFA) provides for a system of public financing of elections for candidates for Governor and Lieutenant Governor. The Act established the Fair Campaign Financing Fund which is administered by the Comptroller.

To become an eligible participant under PFA, a candidate must agree to limit campaign expenditures to an amount based on the population of the State, which was approximately $2,087,000 for the 2006 elections. There are no provisions in State law that provide for public funding of candidates for the General Assembly.

*Abandoned Property*

Abandoned property proceeds are credited by the Comptroller to a special fund. An amount not to exceed $50,000 is maintained in the fund each fiscal year to pay any claims to property or sale proceeds, and after deducting the administrative costs of accepting and disposing of abandoned property, $500,000 is distributed to the Maryland Legal Services Corporation. The balance of the remaining funds is paid into the General Fund.

**Background:**

*Public Financing*

Comprehensive public financing programs that provide full funding of candidate campaigns is a relatively new concept at the state level. The genesis of full funding systems is the Federal Election Campaign Act of 1971 (as amended in 1974). That law provided partial public funding for eligible presidential primary candidates and full funding for the major parties' general election candidates. In Maryland, the PFA provided a public fund match for all statewide, legislative and local candidates in the general election. However, subsequent revisions to the Act primarily in 1986, narrowed the scope of its provisions to include only gubernatorial candidates. Throughout the Act's history, the special fund that was created by the Act and funded by a tax-add system rarely reached a functional level. Accordingly, with the exception of the 1994 gubernatorial race, the fund has remained essentially unused to date.

Full public funding of election campaigns at the state level was first established in Maine and Arizona, in 1996 and 1998 respectively, by referenda. With the exception of the presidential public financing fund at the national level, no large-scale program of full funding existed before those two systems were implemented. Participation in the public finance program in Maine has increased from 33% in its inaugural year in 2000 to 80% in the 2006 election campaign, with 83% of candidates elected in 2006 participating. Similarly, in Arizona the participation rate increased from 26% to 60% between 2000 and 2006, with 45% of candidates elected in 2006 participating. A number of states, including Minnesota and New Jersey, operate partial public funding programs, in which a candidate generally agrees to a spending limit and receives State matching funds for private contributions the candidate raises.

Chapter 169 of 2002 created the Study Commission on Public Financing of Campaigns in Maryland. The commission was required to: (1) collect information regarding public funding of State legislative campaigns in other jurisdictions in the U.S.; (2) identify the changes in the State election code necessary for public funding of State campaigns; (3) analyze current practices in Maryland relating to the financing of campaigns; (4) receive testimony where suitable; and (5) if appropriate, propose recommendations for a public campaign financing system in Maryland. The commission reported its findings and recommendations in February 2004 and supported the establishment of a system of publicly funded campaigns for the statewide offices of Governor/Lieutenant Governor, Comptroller, Attorney General, and candidates for the General Assembly. The commission recommended partial funding for statewide candidates and full funding for candidates to the General Assembly. The commission did not specify a funding source other than the $5 income tax checkoff.

**State Revenues:** Net revenues to the PEF would be significant as a result of the bill's funding sources. The bulk of PEF revenues would come from the following primary sources listed in the bill. The remaining sources are not expected to be a significant source of revenue:

*Primary Sources*

- abandoned property revenues;
- $5 income tax checkoff;
- transfer from FCFF; and
- qualifying contributions to the PEF.

*Secondary Sources*

- excess seed money contributions;
- unspent disbursements;

- fines levied by EFC;
- voluntary donations; and
- interest generated by the fund.

*Abandoned Property Revenues*

PEF revenues would increase annually by $7.5 million due to the annual distribution from abandoned property revenues, beginning in fiscal 2008. General fund abandoned property revenues are estimated to be $80 million in both fiscal 2007 and 2008.

General fund revenues would correspondingly decrease by $7.5 million annually.

*Income Tax Checkoff*

PEF revenues could increase annually by an estimated $1.45 million as a result of the bill's income tax checkoff, beginning in fiscal 2008. This figure is based on the assumption that 9% of filers would participate in the program. This participation rate is similar to the participation level for the Presidential Election Campaign Fund. The existing tax programs on the Maryland income tax form, the Chesapeake Bay Fund, the Maryland Cancer Fund, and the FCFF, are add-on systems which increase a filer's tax liability, whereas the Presidential Election Campaign Fund and the PEF would not. Instead filers would be able to direct up to $5 of their tax liability to the PEF. Thus, general fund revenues would decrease to the extent that filers used the checkoff to increase PEF revenues.

The addition of the PEF checkoff may also decrease FCFF revenues. Due to the subject matter similarity of the two options, filers that checkoff funds for the PEF may be less likely to give funds to the FCFF. Assuming, *for illustrative purposes only*, a 40% reduction in revenue from FCFF contributions of $127,000 accruing to the fund in fiscal 2006, FCFF revenues would decrease by $50,800.

*Fair Campaign Financing Fund Transfer*

PEF revenues would increase in fiscal 2008 by roughly $4.5 million due to the transfer of the unspent funds remaining in FCFF.

*Qualifying Contributions to the Public Election Fund*

Revenues raised by the PEF through minimum qualifying contributions of $8,500 per participating candidate cannot be reliably estimated since the number of participating candidates is unknown. *For illustrative purposes only,* if 35% of Senate and 45% of

House candidates who ran for office in the 2006 statewide primary participated in the program, PEF revenues would increase by approximately $2.3 million.

The annual revenues received by EFC will be accumulated in the PEF until candidate disbursements are made. Not accounting for qualifying contributions from candidates, revenue from other sources identified in the bill, and operating expenses of EFC, the fund could have $31.4 million in fiscal 2010 solely from abandoned property revenue, the FCFF transfer, and the tax checkoff. Should expenditures for candidate disbursements during the 2010 statewide election exceed the accumulated amount, the bill requires the Governor to include funds in the fiscal 2009 budget.

**Exhibit 2**
**Public Election Fund Revenues**

| | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|---|---|---|---|---|---|
| Annual Revenues: | | | | | |
| Abandoned Property | $7,500,000 | $7,500,000 | $7,500,000 | $7,500,000 | $7,500,000 |
| FCFF Transfer | 4,512,000 | 0 | 0 | 0 | 0 |
| Tax Checkoff | 1,453,000 | 1,453,000 | 1,453,000 | 1,453,000 | 1,453,000 |
| Annual Revenue Total | 13,464,000 | 8,953,000 | 8,953,000 | 8,953,000 | 8,953,000 |
| **Public Election Fund Balance** | **$13,464,000** | **$22,417,000** | **$31,369,000** | **$40,322,000** | **$49,275,000** |

**State Expenditures:** General fund expenditures would increase by $159,000 in fiscal 2008 only, for software changes by the Comptroller and software changes and web site development by SBE. PEF expenditures could increase by at least $650,000 annually due to operating expenses for EFC. Expenditures for disbursements in fiscal 2010 and fiscal 2011 cannot be reliably estimated and would depend on candidate participation.

*Comptroller of the Treasury*

General fund expenditures for the Comptroller would increase by an estimated $34,000 in fiscal 2008 for software programming changes to its electronic filing, Internet filing, integrated tax system, and related interfaces. This reprogramming would alter data systems to read check boxes on printed forms as well as include the new checkoff in its reporting databases. Inclusion of a description of the fund in the income tax return package would not result in an expenditure increase.

*Election Financing Commission*

PEF expenditures could be roughly $650,000 annually ($487,500 in fiscal 2008 if adjusted for a start-up delay), due to the administrative costs of EFC. This estimate is based on the 2005 and 2006 enforcement and administrative expenses of the Citizens Clean Election Commission (CCEC) in Arizona, which operates a similar public funding program.

EFC would also experience increased expenditures, presumably in fiscal 2008 and/or fiscal 2009, due to the cost of developing an electronic database of candidate expenditure and contribution information, accessible on the Internet, as well as an education program for candidates and the public about the EFC, PEF, and overall program. These costs cannot be reliably estimated at this time.

Expenditures would increase in fiscal 2010 as a result of candidate disbursements by EFC. The expenditure level would be driven by two variables: (1) the number of candidates participating; and (2) the number of participating candidates who are eligible for supplemental funds, neither of which can be predicted. *For illustrative purposes*, if 35% of Senate and 45% of House candidates participate in the program for the 2010 primary election, PEF expenditures for disbursements to candidates would increase by $14,104,000 in fiscal 2010.

Disbursements to participating candidates would begin on May 1, 2010. The above estimate assumes, for simplicity, that all disbursements would be made in fiscal 2010. The estimate also assumes:

- the total number of candidates for the General Assembly in the 2010 election is equal to the approximate number of legislative candidates in the 2006 election according to the State Board of Elections;
- all participating candidates will receive the regular "contested" disbursement amount for the primary election;
- 68% of House candidates are running in three-member districts, 17% in two-member districts, and 15% in one-member districts (according to current distribution of delegates among one-, two-, and three-member districts).
- 25% of Senate candidates and 35% of House candidates participating in the program become eligible to receive the maximum allowable supplemental disbursement as a result of challenger spending in excess of the initial public fund disbursement amount.

If the percentage of participating House and Senate candidates increased to 60%, primary disbursements from the fund increase to $20,439,000, while if the participation rate in both houses was 25%, disbursements for the primary would total $8,516,000.

Using the assumption of 35% and 45% Senate and House participation and the approximate number of candidates for the 2006 general election, PEF expenditures for the general election in fiscal 2011 would be $7,284,000.

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## Additional Information

**Prior Introductions:** HB 1054 of 2006, a similar bill, passed the House but no action was taken in the Senate. SB 569 of 2006, a similar bill with different funding provisions, received a favorable with amendments report from the Senate Education, Health, and Environmental Affairs Committee, was recommitted to the committee. SB 725 of 2005, another similar bill with different funding provisions, received a hearing in Education, Health, and Environmental Affairs, but no further action was taken. HB 1031 of 2005, another similar bill with different funding provisions, received a favorable with amendments report from the House Ways and Means Committee and was recommitted to Ways and Means.

**Cross File :** HB 731 (Delegate Cardin, *et al.*) – Ways and Means.

**Information Source(s):** Somerset County, Montgomery County, Prince George's County, Charles County, State Board of Elections, Comptroller's Office, Frederick County, Maine Commission on Governmental Ethics and Election Practices, Arizona Citizens Clean Election Commission, Department of Legislative Services

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Analysis by: Scott D. Kennedy

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