HB 1269

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1269 (Delegate Luedtke, *et al.*)
Ways and Means

Maryland Small Donor Incentive Act

This bill repeals the Public Financing Act (PFA) applicable to gubernatorial tickets and establishes the Maryland Small Donor Incentive Act applicable to gubernatorial tickets and Attorney General, Comptroller, and General Assembly candidates. The bill also transfers remaining funds as of December 31, 2014, in the Fair Campaign Financing Fund (FCFF) under PFA to the Public Campaign Financing Fund (PCFF) established under the Maryland Small Donor Incentive Act. An income tax return checkoff is also established, allowing for contributions to be made to PCFF on the individual income tax return.

The bill takes effect January 1, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by at least $818,700 in FY 2016 due to personnel and software development costs. Special fund expenditures increase by $48,000 in FY 2016 due to one-time computer programming costs related to the tax checkoff. While special fund revenues to PCFF increase by approximately $100,000 annually beginning in FY 2016, overall annual special fund revenues to PCFF and other funds receiving contributions through tax checkoffs may be unaffected or decrease. Future years reflect ongoing personnel and operating costs, hiring of additional personnel, and expenditures from PCFF.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
SF Revenue	$0	-	-	-	-
GF Expenditure	$0	$818,700	$820,200	$491,200	$545,000
SF Expenditure	$0	$48,000	$0	-	-
Net Effect	$0	($866,700)	($820,200)	($491,200)	($545,000)

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

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:

Maryland Small Donor Incentive Act

A Public Financing Administration Board (PFAB) is established to manage and supervise the system of public financing of elections established under the Maryland Small Donor Incentive Act. The board consists of five members (three appointed by the Governor, one appointed by the Speaker of the House, and one appointed by the President of the Senate). The board members may not hold any State or local elected office and serve no more than two 4-year terms beginning on July 1, not including any partial term. The members are not entitled to compensation but are entitled to reimbursement for expenses.

PFAB 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. The board must adopt implementing regulations as necessary.

PFAB 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 matching funds 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 PCFF to provide public campaign financing for qualifying candidates under the Act. The Comptroller administers the fund. The fund consists primarily of remaining funds in the former FCFF as of December 31, 2014; contributions to the fund through the newly established checkoff on the individual income tax return; and any money provided in the State budget for the purposes of the Act.

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 PFAB by February 15 of the year of the election and establish a publicly funded campaign account for the purpose of receiving contributions and making expenditures in accordance with the Act and the Election Law Article in general;
- a requirement that a candidate collect, during the period from September 1 in the year preceding the primary election to the day 45 days before the primary election, specified minimum totals of qualifying contributions (the part of a contribution or series of contributions from a single individual residing in a candidate's constituency that does not exceed $250) , as shown in **Exhibit 1**; and
- a determination by PFAB (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 of the board and (2) a campaign finance report that includes all qualifying contributions and other contributions received by the candidate and all expenditures made.

Exhibit 1
Minimum Qualifying Contribution* Requirements

Candidate(s)	Minimum Requirement
Gubernatorial Ticket	$250,000 from at least 1,000 individuals
Attorney General	$150,000 from at least 600 individuals
Comptroller	$150,000 from at least 600 individuals
Senate	$25,000 from at least 100 individuals
House of Delegates	$15,000 from at least 60 individuals

*The part of a contribution or series of contributions from a single individual residing in a candidate's constituency that does not exceed $250. "Qualifying contribution" does not include a contribution from a business entity, a political party, a regulated lobbyist, the campaign finance entity of a candidate, a political action committee, or any other political committee.

A candidate that is certified by PFAB as a participating candidate is eligible to receive matching funds for a contested election as specified in **Exhibit 2** and is subject to the expenditures limits shown in **Exhibit 3**. PFAB may alter the matching fund limits (though not the ratios) and expenditure limits, by regulation, for the election cycle beginning January 1, 2019, and for each subsequent election cycle.

Exhibit 2
Matching Funds Ratios and Limits

Matching Fund Ratios (applicable to all candidates)

Eligible Contribution* Amount	Matching Fund Ratio
up to $50	5-to-1
$50 - $100	4-to-1
$100 - $200	3-to-1
greater than $200	$200 matched 3-to-1

Matching Fund Limits

Candidate(s)	Primary	General	Total
Gubernatorial Ticket	$1 million	$1 million	$2 million
Attorney General	$500,000	$500,000	$1 million
Comptroller	$500,000	$500,000	$1 million
Senate	$75,000	$75,000	$150,000
House of Delegates			
Three Member	$50,000	$50,000	$100,000
Two Member	$35,000	$35,000	$70,000
Single Member	$20,000	$20,000	$40,000

*A contribution or series of contributions from a single individual residing in the constituency a candidate seeks to represent.

Exhibit 3
Expenditure Limits

Candidate(s)	Primary	General	Total
Gubernatorial Ticket	$4 million	$4 million	$8 million
Attorney General	$1 million	$1 million	$2 million
Comptroller	$1 million	$1 million	$2 million
Senate	$150,000	$150,000	$300,000
House of Delegates			
Three Member	$100,000	$100,000	$200,000
Two Member	$70,000	$70,000	$140,000
Single Member	$40,000	$40,000	$80,000

Participating candidates may choose specified alternative apportionments of the total matching fund limit and/or the total expenditure limit, between the primary and general election, to receive more matching funds and/or spend more for one election and less for the other.

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

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. PFAB is authorized to have access at any time to the records and transactions of an account and may terminate an account in accordance with board regulations. A participating candidate is also prohibited from joining a slate.

The bill also specifies the procedure for a participating candidate to opt out of the public financing system; provides for judicial review of a PFAB 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.

Tax Checkoff

The Comptroller must include a checkoff designated as the "Public Campaign Financing Fund Contribution" on the individual income tax return form. The checkoff must state that the individual, or each spouse in the case of a joint return, may contribute to PCFF an amount designated by the individual if the individual or each spouse is a United States citizen or admitted for permanent legal residence in the United States. The individual deducts the amount of the contribution from any refund to which the individual is entitled or, if the individual is not entitled to a refund, the individual adds the amount of the contribution to the income tax paid with the return. The Comptroller must include, with the individual income tax return package, a description of the purposes of PCFF and what it may be used for. From the contributions collected, the Comptroller distributes an amount necessary to administer the checkoff system to an administrative cost account and distributes the remainder to PCFF.

Current Law/Background:

Public Financing Act and FCFF

PFA provides for a system of public financing of elections for candidates for Governor and Lieutenant Governor. The Act established FCFF which is administered by the Comptroller. Until recently, the fund generated revenue from a "tax add-on" 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 in a similar manner as the checkoff established by the bill. The tax add-on, however, was repealed in the Budget Reconciliation and Financing Act of 2010 (Chapter 484). At the time the tax add-on was repealed, it was generating approximately $100,000 per year.

With the exception of the 1994 gubernatorial race, the gubernatorial public financing program under PFA had not been used until recently. Beginning in 2009, following multiple election cycles without use of the gubernatorial public financing program, the General Assembly authorized certain amounts of money in the fund to be used for other elections-related purposes, mostly through budget reconciliation legislation. As of early March 2014, however, one gubernatorial ticket in the 2014 elections has qualified for public financing under the program and others are seeking to qualify. FCFF contained approximately $4.6 million as of mid-February 2014.

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 is $2.59 million for the 2014 elections (applicable separately to each primary and general election).

Existing Tax Checkoffs

There are currently tax checkoffs on the income tax return form for the State Chesapeake Bay and Endangered Species Fund, the Maryland Cancer Fund, and the Developmental Disabilities Waiting List Equity Fund.

Public Campaign Financing

According to the National Conference of State Legislatures, 25 states have programs that provide public funds to candidates or political parties or provide tax incentives to encourage citizens to make political contributions (or a combination of these methods). Fourteen states have programs that provide public funding to candidates. Those programs are voluntary and limit campaign spending by those who elect to receive public funds. In most of the fourteen states, the participating candidates' campaigns are only partially funded with public funds, through matching grants or a fixed subsidy, and candidates also raise private funds, subject to the applicable spending limits. A few states provide full public financing to candidates, including, for legislative offices, Arizona, Connecticut, and Maine.

New York City has a public financing system similar to the system proposed under the bill, where matching funds are provided at a greater than one-to-one ratio for small contributions, increasing the value of smaller contributions to a campaign.

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 existing gubernatorial public financing program be maintained and 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.

For the commission's full discussion of public financing, see pages 22-25 of the commission's 2012 report: http://mgaleg.maryland.gov/Pubs/CommTFWorkgrp/2012-Campaign-Finance-Law-Final-Report.pdf.

State Fiscal Effect:

General Fund Expenditures – Administration of Public Financing System

General fund expenditures increase by at least $818,659 in fiscal 2016, which accounts for PFAB being appointed and established beginning July 1, 2015. This estimate reflects:

- the cost of PFAB hiring (1) one administrator, one attorney, one staff person, and one office secretary in fiscal 2016 to assist the board in establishing and developing the public financing program and subsequently implementing and administering the program; and (3) an investigator in fiscal 2018 to conduct auditing and investigations; and
- the cost of developing an electronic database accessible to the public on the Internet.

The estimate includes salaries, fringe benefits, and one-time and ongoing operating expenses and is expected to represent a minimum of potential operating costs of PFAB. Depending on the level of participation in the program, additional resources may be needed.

Positions	4
Salaries and Fringe Benefits	$388,586
Software Programming	400,000
Operating Expenses	30,073
Total FY 2016 State Expenditures	**$818,659**

Future year expenditures reflect full salaries with annual increases and employee turnover, the hiring of the investigator in fiscal 2018, remaining costs of electronic database development in fiscal 2017 ($400,000), and annual increases in 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 matching funds to participating candidates. The extent of the overall expenditures depends on the amount of available money in PCFF 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 2 above for the potential matching fund amounts provided per candidate.

As noted earlier, there is limited funding in FCFF and given the current participation in the gubernatorial public financing program, it is uncertain how much will remain in FCFF after the 2014 elections to be transferred to PCFF. While the establishment of the tax checkoff will generate some revenue, as described below, it appears general funds are required in order to capitalize PCFF.

Special Fund Expenditures – Implementation of Tax Checkoff

The Comptroller's Office will incur a one-time expenditure increase of $48,000 in fiscal 2016 for programming to implement the tax checkoff. While the programming costs will be incurred prior to receipt of contributions from the checkoff, it is assumed the programming costs can be accounted for with revenue from the tax checkoff contributions, assuming sufficient revenue is generated in fiscal 2016.

To the extent the Comptroller's Office will need to make the option to contribute to PCFF on forms for past tax years available to taxpayers, additional costs, which cannot be reliably estimated at this time, may be incurred.

Special Fund Revenues

Special fund revenues to PCFF increase by approximately $100,000 annually, assuming a similar level of contributions as were made through the pre-existing FCFF tax add-on when it was repealed in 2010. Overall special fund revenues, however, may be unaffected or decrease. The Comptroller's Office anticipates the addition of the checkoff resulting in either (1) no overall change in special fund revenue from the tax checkoffs collectively (based on an expectation that contributions to the PCFF checkoff will be contributions shifted from the other checkoffs) or (2) a decrease in overall special fund revenue to the checkoffs. The potential decrease in overall special fund revenue results from limited space on the existing income tax return form that will require the tax checkoffs to be moved to a supplemental form to accommodate the PCFF checkoff. The Comptroller's Office advises that adding a page to the income tax return form instead is prohibitively expensive. Moving the checkoffs to a supplemental form may make them less visible to taxpayers and generate fewer contributions. Contributions to the existing checkoffs for the 2011 tax year totaled approximately $1.5 million.

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: None.

Cross File: None.

Information Source(s): State Board of Elections, Comptroller's Office, Judiciary (Administrative Office of the Courts), National Conference of State Legislatures, New York City Campaign Finance Board, Department of Legislative Services

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