

**Department of Legislative Services**  
 Maryland General Assembly  
 2015 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 485 (The Speaker, *et al.*) (By Request - Administration)  
 Ways and Means Budget and Taxation and Education, Health,  
 and Environmental Affairs

**Election Law - Fair Campaign Financing Fund - Income Tax Checkoff**

This Administration bill establishes revenue sources for the Fair Campaign Financing Fund (FCFF), including a checkoff on the individual income tax return form, and allows for a limited amount of administrative costs to be deducted from the fund. The bill also prohibits gubernatorial tickets that are seeking to qualify for, or are participating in, the public campaign financing program supported by FCFF from specified participation in political fundraising and spending outside of the public campaign financing program.

The bill takes effect July 1, 2015.

**Fiscal Summary**

**State Effect:** General fund revenues decrease by about \$29,000 annually beginning in FY 2016 due to the redistribution to FCFF of certain penalty, fine, and fee revenues. Special fund revenues to FCFF may increase by \$206,000 in FY 2016, reflecting the impact of donations and various penalties, fines, and fees allocated to the fund. Overall special fund revenues to other funds receiving contributions through income tax checkoffs may decrease minimally. General fund expenditures increase by \$81,000 in FY 2016 due to one-time computer programming expenses at the Comptroller’s Office and the redirection of late fees. Special fund expenditures increase by \$30,000 in FY 2016 due to implementation costs at the State Board of Elections (SBE).

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
GF Revenue	(\$29,000)	(\$29,000)	(\$29,000)	(\$29,000)	(\$29,000)
SF Revenue	\$206,000	\$187,000	\$324,000	\$254,000	\$206,000
GF Expenditure	\$81,000	\$33,000	\$100,000	\$100,000	\$33,000
SF Expenditure	\$30,000	\$0	\$0	\$0	\$0
Net Effect	\$66,000	\$125,000	\$195,000	\$125,000	\$144,000

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

**Local Effect:** Local government revenues will decrease by about \$44,000 in FY 2016 due to the redistribution to FCFF of certain criminal penalties and filing fees. No effect on expenditures.

**Small Business Effect:** The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill).

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## Analysis

### Bill Summary:

#### *Fair Campaign Financing Fund – Revenue Sources*

The revenue sources established under the bill, for FCFF, are:

- a “Fair Campaign Financing Fund Contribution” checkoff on the individual income tax return form;
- various penalties, fines, and fees imposed under State election law;
- certain penalties, fines, and fees imposed under the Maryland Public Ethics Law;
- contributions to the fund through SBE’s website;
- anonymous campaign contributions received by political campaigns (which the campaigns are prohibited from using); and
- voluntary contributions of surplus campaign funds by political committees that are closing down (added as an option for disposal of the funds among other existing options).

The Fair Campaign Financing Fund Contribution checkoff must state that the individual, or each spouse in the case of a joint return, may contribute to the fund an amount designated by the individual, if the individual or each spouse is a U.S. 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 FCFF. 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 FCFF.

### *Fair Campaign Financing Fund – Administrative Costs*

SBE may deduct from FCFF the administrative costs associated with administering the Public Financing Act. This amount may not exceed the lesser of 3% of the fund's balance on the last day of the immediately preceding fiscal year or \$100,000.

### *Prohibition on Outside Political Fundraising and Spending*

After filing a notice of intent to qualify for a public contribution under the Public Financing Act, a gubernatorial ticket or a person acting on behalf of the gubernatorial ticket may not, for the benefit of specified individuals or entities or for specified organizations, (1) solicit contributions, including the authorized use of the names or images of the gubernatorial ticket in the solicitation or (2) operate in coordination with any entity for fundraising activities. The specified individuals, entities, and organizations which contributions may not be solicited for and which may not be coordinated with are (1) any political committee; (2) any person required to register with SBE as a result of making independent expenditures or disbursements for electioneering expenditures; and (3) entities organized under § 501(c)(4) or (6) or § 527 of the Internal Revenue Code that fund political spending in the State.

After filing a notice of intent to qualify for a public contribution under the Public Financing Act, the members of a gubernatorial ticket also may not be a member of a slate that does not receive a public contribution. A gubernatorial ticket that qualifies to receive a public contribution may not make a transfer of funds to a political committee or an expenditure relating to fundraising activity by any other political committee organized under State election law.

Until a final campaign finance report is filed with SBE and any remaining funds of the public contribution distributed to a gubernatorial ticket are repaid to the Comptroller for redeposit in FCFF, any authorized candidate campaign committee organized on behalf of the members of a gubernatorial ticket may not engage in campaign finance activity.

### **Current Law/Background:**

#### *Existing Tax Checkoffs*

The Chesapeake Bay and Endangered Species Fund, Cancer Research Fund, and Developmental Disabilities Services and Support Fund Contribution are the three current checkoffs on the personal income tax form. In tax year 2013, taxpayers contributed a total of \$1.8 million to these funds.

### *Public Financing Act and FCFF*

The Public Financing Act 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. Until recently, the fund generated revenue from 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 in a similar manner as the checkoff established by the bill. The checkoff, however, was repealed in the Budget Reconciliation and Financing Act of 2010 (Chapter 484). Taxpayers donated about \$100,000 to the fund in the last year in which the checkoff was available.

With the exception of the 1994 gubernatorial election, the public financing program under the Public Financing Act 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. FCFF contains approximately \$1.1 million.

### *Election Law Penalties, Fines, and Fees*

State election law governs State, county, and Baltimore City elections held during statewide elections every two years. SBE ensures compliance with the requirements of Maryland and federal election laws by all persons involved in the election process. SBE is authorized to impose (1) late fees for the failure to timely file required reports; and (2) civil penalties with respect to violations of certain campaign finance law. Although Chapter 419 of 2013 provided additional enforcement authority to SBE, the State Prosecutor's Office has a significant role in enforcing election law by prosecuting election law violations that can result in both civil penalties and criminal fines.

Except as otherwise provided, if a campaign finance entity receives a contribution from an anonymous source, the campaign finance entity may not use the contribution for any purpose and must remit the contribution to the State Treasurer.

### *Maryland Public Ethics Law Penalties, Fines, and Fees*

A person who violates the lobbying provisions of the Maryland Public Ethics Law is subject to a fine of up to \$5,000 for each violation. A knowing and willful violation is also a misdemeanor and subject to a fine of up to \$10,000 and/or imprisonment for up to one year. Regulated lobbyists are subject to late fees for late filing of reports as are officials who file financial disclosure statements late.

## *Political Fundraising and Spending*

State campaign finance law regulates political committees, which are entities formed to promote the success or defeat of a candidate, political party, or question submitted to a vote at any election. Candidates generally must conduct their campaign fundraising and spending through a political committee. Two or more candidates can conduct joint campaign fundraising and spending through political committees called slates, and a political committee can transfer funds to another committee subject, in many cases, to a \$6,000 limit on transfers to any one political committee in an election cycle. Persons who make independent expenditures or disbursements for electioneering communications (political spending that is not coordinated with a candidate) are not regulated to the same extent as political committees but are subject to registration and reporting requirements. Entities organized under § 501(c)(4) or (6) or § 527 of the Internal Revenue Code similarly are subject to registration and reporting requirements if they make contributions or donations to political committees or persons making independent expenditures or disbursements for electioneering communications, for the purpose of causing political expenditures to be made in the State.

**State Revenues:** Special fund revenues to FCFF increase by \$206,000 in fiscal 2016, reflecting the impact of the income tax checkoff (\$100,000) and the redirection of penalties, fines, and fees (\$106,000).

The estimated revenue generated by the income tax checkoff is based on the amount of contributions previously received through the checkoff. Special fund revenues generated by the three existing checkoffs may decrease to the extent donations to this checkoff divert funds from the three existing checkoffs.

The amount of election law criminal fines and civil penalties collected in each fiscal year varies significantly. On average, it is expected that \$50,000 will be collected, of which half will be collected by SBE or in District Court. These revenues are currently deposited into the general fund. It is assumed that the remaining amount is collected as a result of criminal cases heard in circuit court and is distributed to the counties.

It is estimated that in fiscal 2016 SBE will collect a total of \$52,000 in filing and late fees, and these fees will also be deposited in FCFF. Special fund revenues increase from these fees by between \$33,000 and \$170,000, accounting for variations in fees collected in gubernatorial and presidential election years. It is expected that any revenues resulting from certain unspent campaign donations, voluntary contributions made through SBE's website, and the redirection of certain anonymous campaign contributions will be minimal.

The amount of penalties, fines, and fees collected under the Maryland Public Ethics Law and directed to FCFF under the bill is assumed to be approximately \$4,000 annually based on recent collections. These revenues are currently deposited into the general fund.

## **State Expenditures:**

### *General Funds*

General fund expenditures increase by \$81,000 in fiscal 2016 due to one-time programming costs and the redirection of late fees for campaign-finance related reports to FCFF as discussed below. Future year expenditures reflect the ongoing redirection of late fees to FCFF.

The Comptroller's Office reports that it will incur a one-time general fund expenditure of \$48,000 in fiscal 2016 to add the checkoff to the personal income tax forms. This includes data processing changes to the SMART income tax return processing and imaging systems and systems testing.

Late fees for campaign-finance related reports are currently applied to pay SBE expenses for fee collection and auditing of campaign finance reports. The redirection of these fees to FCFF is assumed to result in a corresponding increase in general fund expenditures to cover these expenses. Based on past fee collections and recent changes to the law regarding the fees, it is estimated that \$33,000 in fees will be collected in fiscal 2016 and other fiscal years in which presidential elections occur and that \$100,000 in fees will be collected in fiscal years in which gubernatorial elections occur.

### *Special Funds*

SBE reports that it will incur a one-time special fund expenditure increase of \$30,000 in fiscal 2016 to accept website contributions to FCFF. It is assumed that these expenses are deducted from FCFF. The bill also allows SBE to deduct certain administrative costs from FCFF. SBE advises that this generally codifies existing practice. The limitation on the amount of expenses that may be deducted is not currently expected to have an impact.

**Local Revenues:** The bill requires that criminal penalties resulting from violations of State election law and candidate filing fees must be deposited into FCFF. As a result, local revenues decrease by \$44,000 in fiscal 2016, \$25,000 in fiscal 2017, \$95,000 in fiscal 2018, \$25,000 in fiscal 2019, and \$44,000 in fiscal 2020.

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## **Additional Information**

**Prior Introductions:** HB 1401 of 2014, a similar bill, received a hearing in the House Ways and Means Committee, but no further action was taken.

**Cross File:** SB 593 (The President, *et al.*) (By Request – Administration) – Budget and Taxation and Education, Health, and Environmental Affairs.

**Information Source(s):** Comptroller’s Office, State Board of Elections, State Ethics Commission, State Prosecutor’s Office, Department of Legislative Services

**Fiscal Note History:** First Reader - March 2, 2015  
mar/jrb Revised - House Third Reader - March 30, 2015  
Revised - Enrolled Bill - May 13, 2015

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Analysis by: Robert J. Rehrmann  
and Scott D. Kennedy

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Election Law – Fair Campaign Financing Fund – Income Tax Checkoff

BILL NUMBER: SB593/HB485

PREPARED BY: Governor’s Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X\_ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

\_\_\_ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS