

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 72
 Ways and Means

(Delegate Luedtke)

Election Law - Fair Campaign Financing Fund

This bill establishes a process to, under specified circumstances, appropriate funding to the Fair Campaign Financing Fund (FCFF) in order to provide, under the Public Financing Act (PFA), a full public contribution for two gubernatorial tickets in the primary election and one gubernatorial ticket in the general election, each election cycle. The bill also establishes a process to subsequently repay the appropriated funding, if used, from a portion of the dedicated revenues that are directed to the fund under existing law, each fiscal year, until the full amount is repaid. The bill also modifies provisions governing distribution of a public contribution to a gubernatorial ticket for the general election.

Fiscal Summary

State Effect: General fund expenditures increase by \$5.0 million in FY 2022. Future year impacts are shown in **Appendix 1**. **This bill establishes a conditional mandated appropriation beginning in FY 2022 and recurring every four fiscal years.**

(\$ in millions)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	0	0	0	5.0
Net Effect	\$0.0	\$0.0	\$0.0	\$0.0	(\$5.0)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Appropriation for Fair Campaign Financing Fund

If the State Board of Elections (SBE) determines that the balance in FCFF on the last day of the third fiscal year preceding the fiscal year in which a gubernatorial general election will be held is insufficient to provide a full public contribution for two gubernatorial tickets in the primary election and one gubernatorial ticket in the general election, SBE must notify the Department of Budget and Management of the amount of the insufficiency by August 1 of the second fiscal year preceding the fiscal year in which the gubernatorial general election will be held. The Governor must include an appropriation for FCFF in the budget bill for the fiscal year immediately preceding the fiscal year in which the gubernatorial general election will be held that is equal to the amount of the insufficiency.

Repayment of Amount Appropriated

If the Governor makes an appropriation for FCFF, SBE must authorize repayment of the amount appropriated. If the appropriated funds were not used, the full amount must be repaid promptly after the gubernatorial general election. If the appropriated funds were used, an amount must be repaid annually equal to 50% of the aggregate amount credited to the fund in the preceding fiscal year from the dedicated revenue sources directed to the fund under existing law. The repayments begin in the fiscal year following the fiscal year in which the gubernatorial general election is held and continue in each fiscal year thereafter until the full amount of the appropriation is repaid. In computing whether part of a gubernatorial appropriation was used, all money credited to the fund from the dedicated revenue sources directed to the fund under existing law must be considered to have been used before any of the gubernatorial appropriation.

Distribution of Public Financing to Nominees for the General Election

Each eligible gubernatorial ticket that is a nominee must receive a public contribution in the form of a single payment. The amount of the public contribution to each eligible gubernatorial ticket must be (1) equal to the existing expenditure limit or (2) if the balance in the fund is insufficient to provide each eligible gubernatorial ticket a full public contribution equal to the expenditure limit, an equal share of the fund.

Current Law/Background:

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. Prior to 2014, the program had only been used by three gubernatorial tickets in 1994, and an earlier income tax checkoff that allowed an individual to contribute up to \$500 to the fund was repealed under the Budget Reconciliation and Financing Act of 2010 (Chapter 484) as money in the fund began to be authorized for other election-related purposes. In the 2014 elections, however, two gubernatorial tickets qualified for public financing under the program and collectively received a total of \$3.7 million. The following year, Chapter 312 of 2015 reinstated a tax checkoff on the individual income tax return form without a limit on the amount of contributions that may be made and established additional sources of revenue: (1) various penalties, fines, and fees imposed under State election law; (2) certain penalties, fines, and fees imposed under the Maryland Public Ethics Law; (3) contributions to the fund through SBE's website; (4) anonymous campaign contributions received by political campaigns (which the campaigns are prohibited from using); and (5) 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).

It does not appear, however, that FCFF's current, dedicated revenue sources will consistently generate enough revenue to quickly replenish its balance after an election in which disbursements are made to qualifying candidates. From July 1, 2015, the effective date of Chapter 312 of 2015, through December 2016, the fund has received approximately \$500,000, which translates to approximately \$330,000 annually. The revenue amounts may fluctuate considerably from year to year, if, for example, the amount of donations made to the fund or the amount of applicable penalties imposed (for which fine revenues are directed to the fund) vary considerably each year. Candidate filing fees and campaign finance report late fees will also be higher in fiscal years in which gubernatorial elections occur (due to the larger number of offices and candidates in gubernatorial election years as opposed to presidential election years).

The fiscal 2017 budget includes a \$1.0 million appropriation to replenish the fund for money disbursed over the years for other election-related purposes, contributing, along with the balance remaining following the 2014 elections (\$1.1 million) and the fund's dedicated revenue sources, to the current balance of \$2.7 million. The Governor's proposed fiscal 2018 budget includes another \$1.0 million for FCFF. In 2018, to provide full funding to two gubernatorial campaigns for the primary election and one campaign for the general election, approximately \$5.6 million is expected to be needed.

How the Public Financing Act Functions

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. Based on current population and inflation information, it appears the expenditure limit for the 2018 elections will be approximately \$2.8 million.

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. One-half of the money in FCFF is made available for public contributions for the primary election, and if that is not, or may not be, sufficient funding to provide a full public contribution to all eligible gubernatorial tickets, the gubernatorial tickets are allocated proportionate shares of the available funding.

Statute requires SBE to authorize distribution for the general election of all money remaining in FCFF, including money remaining from the half of the funding designated for the primary election. Each eligible gubernatorial ticket that is a nominee receives an equal share of the fund. There is no requirement to raise eligible private contributions to receive public funds for the general election. Eligible gubernatorial tickets are still subject to the expenditure limit for the general election, however. 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. Any part of a public contribution that is not spent must be repaid to FCFF within 60 days after the election for which the public contribution was made.

State Fiscal Effect: General fund expenditures increase by \$5.0 million in fiscal 2022 to appropriate funding for FCFF in accordance with the bill, assuming the appropriation is

made from the general fund. Appendix 1 illustrates the long-term impact of the bill. This estimate and the projections in the appendix are based on the following assumptions:

- annual revenues from FCFF's dedicated revenue sources are consistent with the revenue received by FCFF since Chapter 312 of 2015 took effect, but revenues moderately increase in fiscal years in which gubernatorial primary and general elections occur due to increased collection of candidate filing fees and campaign finance report late fees;
- two gubernatorial tickets receive public contributions for each primary election, and one gubernatorial ticket receives public contributions for each general election; and
- the participating gubernatorial tickets only use 75% of a full public contribution for the primary elections (to account for the campaigns potentially not raising enough matching eligible private contributions to use the full public contribution), and the participating gubernatorial ticket in the general election uses 100% of the full public contribution (which does not require matching private contributions).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2017
md/hlb

Analysis by: Scott D. Kennedy

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

Appendix 1 – Long-term Impact of the Bill¹

(\$ in Millions)

	<u>End of FY Balance</u>	<u>Apprs. Into the Fund</u>	<u>Dedicated Revenues</u>	<u>Disbursements</u>	<u>Appr. Repayments</u>	<u>Running Total of Amount Appr.'d under the Bill (Net of Repayments)</u>
FY 2017	\$2.8		\$0.3		\$0	\$0
FY 2018	2.4	\$1.0 ²	0.4	(\$1.9)	0	0
FY 2019	0.4		0.4	(2.4)	0	0
FY 2020	0.7		0.3		0	0
FY 2021	1.1		0.3		0	0
FY 2022	4.4	5.0	0.4	(2.1)	0	5.0
FY 2023	1.9		0.4	(2.9)	0	5.0
FY 2024	2.0		0.3		(0.2)	4.8
FY 2025	2.2		0.3		(0.2)	4.6
FY 2026	4.1	3.9	0.4	(2.2)	(0.2)	8.3
FY 2027	1.4		0.4	(2.9)	(0.2)	8.1
FY 2028	1.3		0.3		(0.4)	7.7
FY 2029	1.3		0.3		(0.3)	7.4
FY 2030	3.9	4.8	0.4	(2.3)	(0.3)	11.8
FY 2031	0.8		0.4	(3.0)	(0.4)	11.4
FY 2032	0.8		0.3		(0.4)	11.0
FY 2033	0.8		0.3		(0.3)	10.6
FY 2034	4.0	5.5	0.4	(2.3)	(0.3)	15.8
FY 2035	0.8		0.4	(3.1)	(0.4)	15.3
FY 2036	0.8		0.3		(0.4)	14.9

¹ Based on assumptions discussed under State Fiscal Effect, above.

² Amount included in the Governor's proposed fiscal 2018 budget (not an impact of the bill).