

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 613 (Senator Pinsky, *et al.*)
Education, Health, and Environmental Affairs
and Budget and Taxation

Public Financing Act – Candidate and Matching Fund Revisions
(Maryland Fair Elections Act)

This bill modifies the Public Financing Act (PFA), primarily by (1) including candidates for Attorney General of the State and for Comptroller, along with gubernatorial tickets, as candidates eligible to participate in the public campaign financing program; (2) modifying the qualifying requirements and matching contributions; and (3) mandating an appropriation to the Fair Campaign Financing Fund (FCFF) sufficient to fully fund specified numbers of candidates under PFA.

Fiscal Summary

State Effect: General fund expenditures increase by \$8.5 million in FY 2022 to appropriate money to FCFF. Special fund revenues for FCFF increase by \$8.5 million in FY 2022, and special fund expenditures for public campaign matching funds increase by up to \$12.0 million across FY 2022 and 2023. State expenditures for administrative costs increase by approximately \$25,000 annually over a four-year period (FY 2021 to 2024.) **The bill establishes a mandated appropriation for 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:

Eligible Candidates

The bill modifies PFA so that it applies to candidates for Attorney General and candidates for Comptroller in addition to gubernatorial tickets. Under the modified PFA, “eligible candidate” is defined as a gubernatorial ticket, a candidate for Attorney General of the State, or a candidate for Comptroller that qualifies to receive a public contribution.

Notice of Intent to Participate

Before receiving a “private contribution” under PFA, a gubernatorial ticket or candidate for Attorney General or Comptroller 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 monetary contribution or series of monetary contributions from an individual that does not exceed \$250 in the aggregate in an election cycle);
- an “eligible private contribution” (a private contribution from a registered voter 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 the eligible candidate or the spouse of the eligible candidate of not more than a combined total of \$50,000.

Qualifying for Public Financing

To qualify as an eligible candidate (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.
- A candidate for Attorney General or Comptroller must collect, within the qualifying period, at least (1) 1,000 eligible private contributions and (2) an aggregate total of \$80,000.

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.

The bill expands an existing exception – to the prohibition against fund-raising during a regular session of the General Assembly – that allows for acceptance of eligible private contributions and distributions from SBE under PFA during the General Assembly session, during the year of the election only. The bill expands the exception so that it applies to candidates for Attorney General or Comptroller as well as gubernatorial tickets.

Public Contribution Matching Amounts

The public contribution matching amounts available to eligible candidates are shown in **Exhibit 1**. The total public contribution payable to an eligible candidate for either a primary or general election may not exceed (1) \$3.0 million for a gubernatorial ticket and (2) \$750,000 for a candidate for Attorney General or Comptroller. An eligible candidate that is unopposed in a primary election receives one-third of the public contribution amount the eligible candidate would otherwise be entitled to receive. If a candidate 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 eligible candidates in accordance with the matching amounts, and regulations adopted by SBE, on a continuing basis, upon certification that a candidate 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

	Portion of Eligible Private Contribution (Maximum of \$250)	Public Contribution Matching Amount (Per Each Dollar of an Eligible Private Contribution)
Gubernatorial Ticket		
	First \$50	\$9
	Second \$50	5
	Third \$50	2
	Remaining \$100	0
Attorney General or Comptroller		
	First \$50	\$8
	Second \$50	4
	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 (1) two gubernatorial tickets; (2) one candidate for Attorney General; and (3) one candidate for Comptroller; and
- in a general election (1) one gubernatorial ticket; (2) one candidate for Attorney General; and (3) one candidate for Comptroller.

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 Department of Budget and Management (DBM) 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 DBM.

If general funds are appropriated to the fund, 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, if the person who commits the violation does so without knowing that the act is illegal. 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/Background:

Public Financing Act and 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. 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.

With the exception of the 1994 gubernatorial election, the public financing program under PFA 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. The program has since been used, however, in the 2014 and 2018 elections.

The current balance in FCFF is \$3.5 million.

County-level Public Campaign Financing

Montgomery, Howard, and Prince George's counties and Baltimore City have enacted in 2014, 2017, 2018, and 2020, respectively, local laws establishing public campaign financing systems for executive and legislative offices, under the authority provided in Chapter 419 of 2013. Montgomery County's system was in effect for the 2018 elections, Howard County's system will first be in effect for the 2022 elections, and Prince George's County's system will first be in effect for the 2026 elections. Baltimore City's program was just recently enacted, in January 2020 (taking effect January 1, 2021), after Baltimore City voters approved a charter amendment during the November 2018 election authorizing the mayor and city council to establish a public campaign financing program. Baltimore County voters will vote on a charter amendment during the 2020 general election that would require the county council to establish a system of public campaign financing, beginning with the 2026 general election.

Public Campaign Financing in Other States

According to the National Conference of State Legislatures, 14 states provide some form of public financing option for campaigns. Those programs are voluntary and limit campaign spending by those who elect to receive public funds. In most of the 14 states, the participating candidates' campaigns are only partially funded with public funds. A few states, however, provide full public financing to candidates.

State Fiscal Effect:

Appropriation to Fair Campaign Financing Fund

General fund expenditures increase by \$8.5 million in fiscal 2022 to supplement the existing \$3.5 million in FCFF, in order to provide a sufficient amount in FCFF to provide a full contribution to (1) two gubernatorial tickets, one candidate for Attorney General, and one candidate for Comptroller, in the 2022 primary election; and (2) one gubernatorial ticket, one candidate for Attorney General, and one candidate for Comptroller, in the 2022 general election. While appropriation of that funding in fiscal 2022 is not mandated,

due to the bill's effective date, it is assumed, for the purposes of this fiscal and policy note, that the Governor chooses to make that appropriation in fiscal 2022.

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 the above-described full contributions (for the next 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 \$8.5 million in fiscal 2022, reflecting the receipt of the general fund appropriation. FCFF expenditures increase over the course of fiscal 2022 and 2023, by an indeterminate amount, to make disbursements of public contributions to participating candidates for the 2022 primary and general elections. FCFF revenues may also increase due to the collection of civil or criminal penalties.

State Board of Elections Administrative Costs

Special fund expenditures increase by \$15,000 in fiscal 2021, \$25,997 in 2022, \$43,376 in 2023, and \$22,415 in 2024. SBE is authorized to use up to the lesser of 3% of the FCFF balance or \$100,000 for administrative costs under PFA. SBE currently does not use special funds from FCFF for the administration of PFA. It is therefore assumed, for the purposes of this fiscal and policy note, that SBE's expenditures resulting from this bill, up to \$100,000 each fiscal year, are covered by special funds from FCFF.

The estimate reflects the cost of:

- Computer programming (\$15,000 in fiscal 2021) – SBE's campaign finance reporting system will need to be modified to allow for reporting under PFA to be expanded to candidates for Attorney General and Comptroller.
- Contractual auditor (\$25,997 in fiscal 2022, \$43,376 in fiscal 2023, and \$22,415 in fiscal 2024) – SBE will need to hire a contractual auditor to handle auditing of the expanded number of campaigns participating under PFA and to pursue civil penalties if needed.

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: HB 1125 (Delegate Feldmark, *et al.*) - Ways and Means.

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

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