

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**

Senate Bill 562 (Senators Pinsky and Conway)  
 (Study Commission on Public Funding Campaigns in Maryland)  
 Education, Health, and Environmental Affairs

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

This bill establishes the Public Campaign Funding Act for candidates for the General Assembly statewide offices. It provides for a five-member Election Financing Commission (EFC) to administer the Act and a public election fund (PEF) to be administered by the Comptroller. Qualifying statewide candidates would be eligible to receive matching funds for the primary and general election. Qualifying candidates for the General Assembly would be eligible to receive full funding for primary and general election contests beginning with the four-year election cycle starting January 1, 2007.

The bill is effective July 1, 2004.

**Fiscal Summary**

**State Effect:** PEF would receive revenues of \$1.6 million in FY 2005 and in the out-years as a result of the \$5 income tax checkoff. PEF expenditures could increase annually by \$800,000 for ongoing operational expenses of EFC. General fund expenditures will increase in FY 2005 only for the one-time cost of software reprogramming by the Comptroller. General fund expenditures increase by \$60 million in FY 2008 as a result of the bill's mandatory appropriation requirements and subsequent candidate disbursements by EFC.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
SF Revenue	\$1,670,000	\$1,670,000	\$1,670,000	\$1,670,000	\$1,670,000
GF Expenditure	76,000	0	0	60,000,000	0
SF Expenditure	800,000	800,000	800,000	800,000	800,000
Net Effect	\$794,000	\$870,000	\$870,000	(\$59,130,000)	\$870,000

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

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The bill creates a comprehensive system of public matching funds for statewide candidates and fully funded election campaign financing for qualifying candidates for the General Assembly.

### *Election Financing Commission*

The bill creates an EFC consisting of five members appointed by the Governor with the advice and consent of the Senate. Each member must be a member of a principal political party and a registered voter in the State for the two years immediately preceding appointment. 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 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 levying fines for civil infractions.

### *Public Election Fund*

The bill creates a public election fund, 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 the public election fund on an individual tax return; (2) any amount that the Governor and the General Assembly may appropriate; (3) all qualifying contributions from candidates seeking to become certified; (4) excess seed money contributions of candidates seeking to become certified; (5) unspent public funds from a participating candidate; (6) fines levied by the commission against candidates; (7) voluntary donations made directly to the fund; (8) interest generated by the fund; and (9) any other source of revenue authorized by the General Assembly. The Governor is required to include funds in the fiscal 2008 budget that will be sufficient to carry out the requirements of the bill if the fund does not accumulate sufficient money by January 1, 2007.

### *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. Legislative candidates must submit a listing of all seed money contributions and expenditures and all candidates must submit campaign finance reports listing qualifying contributions received and forward any unspent or excess seed money and all qualifying contributions to the commission for deposit into the election fund.

### *Seed Money*

A legislative candidate may raise seed money contributions for the purpose of collecting the requisite amount of qualifying contributions, up to an aggregate limit of \$3,500 for a Senate candidate and \$2,500 for a candidate for the House of Delegates.

Other allowable contributions for a participating candidate are: (1) personal contributions from the candidate and from the candidate's spouse of no more than \$500 each; and (2) money or an in-kind contribution from a state or local central committee not to exceed 2.5% of the public financing amount for an office in the case of a legislative candidate and 1.5% of the public financing amount in the case of a statewide candidate.

### *Qualifying Contributions*

To be eligible to receive public funds, a legislative candidate must collect and submit qualifying contributions from one-quarter of 1% of the population of that candidate's district or subdistrict during the period beginning on April 15 in the year preceding the primary election for the office the candidate seeks and ending 45 days before that primary. A statewide candidate is required to submit aggregate qualifying contributions totaling \$30,000 or more from at least 70 contributors in each of five counties in the State. 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.

### *Public Fund Disbursements*

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:

## Legislative Office Publicly Funded Expenditure Limits / Disbursement Amounts

	<u>Primary</u>	<u>General</u>	<u>Voluntary Expenditure Limit</u>
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/Two-Member	6,000	4,000	10,000

## Statewide Office Public Match Amounts / Expenditure Limits

<u>Candidates</u>	<u>Public Funds Disbursed</u>	<u>Private Funds</u>	<u>Expenditure Limit</u>
<b>Statewide</b>			
Governor/Lt. Governor	\$5,200,000	\$10,400,000	\$15,600,000
Contested Statewide	\$825,000	\$825,000	\$1,650,000
Uncontested Statewide	\$137,500	\$137,500	\$275,000

### *Alternative Apportionment Election for Legislative Candidates*

A legislative 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.

### *Supplemental Public Fund Disbursements for Statewide and Legislative Candidates*

The bill also authorizes supplemental public funds in excess of the amounts listed above if a participating statewide or legislative candidate is opposed by a nonparticipating candidate who incurs expenditures that exceed the expenditure limit established for that contest. 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 a participating legislative candidate may not exceed 200% of the original disbursement amount. The aggregate amount of supplemental funds a statewide candidate may receive may not exceed 25% of the aggregate expenditure limit (listed in the chart above).

### *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 the State Board of Elections. 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 coordinated expenditures and must be attributed to each member of a slate on a pro rata basis.

### *Judicial Review*

The bill provides a right of civil action to individuals who believe that a candidate has violated the Act's provisions after a complaint has been filed with the commission and if a determination is not made within 30 days of filing the complaint. 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.

**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 (FCFF),” which is administered by the Comptroller. To become an eligible participant under PFA, a candidate must agree to limit campaign expenditures to 30 cents for each individual residing in the State. Currently, this limit equals approximately \$1,881,000. There are no provisions in State law that provide for public funding of candidates for the General Assembly.

**Background:** 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, 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-on system rarely reached a functional level. Accordingly, except for the 1994 gubernatorial campaign of one ticket, 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 nearly doubled from 33% in its inaugural year in 2000 to 62% in the 2002 election campaign. Similarly, in Arizona, the participation rate increased from 26% to 49%.

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 income tax checkoff was recommended as a revenue source.

**State Revenues:** PEF revenues could increase by an estimated \$1,670,000 in fiscal 2005 as a result of the \$5 income tax checkoff. Additional revenue increases would occur to the extent that the Governor or the General Assembly appropriates general funds as discussed below.

**State Expenditures:** The bill authorizes the Governor and the General Assembly to provide funds for the operating expenses of EFC. However, the bill mandates that the Governor include funds in the annual State budget for fiscal 2008 if PEF does not accumulate sufficient funds to carry out the requirements of the Act. It is anticipated that revenue from the income tax checkoff will provide an adequate source of funding for the commission's administrative expenses beginning in fiscal 2005. General fund expenditures could increase further should the Governor or the General Assembly appropriate additional funds for the commission's operation between fiscal 2005 and 2007. The tax checkoff, however, would not be a sufficient source of revenue for the fund's requirements during an election year. Thus, in fiscal 2008 general fund expenditures would increase significantly due to the bill's mandate that PEF be fully funded to make disbursements to participating candidates in the 2010 election.

The major costs of both the statewide and legislative program can be separated into two categories:

- *Regular disbursements:* the initial amount of public funds a qualifying participant in the program would receive; and
- *Supplemental disbursement:* additional funds each participating candidate would be eligible to receive in the event that a nonparticipating opponent were to spend in excess of the participating candidate's voluntary expenditure limit. Statewide candidates are eligible to receive 25% of their aggregate spending limit in supplemental funds, and legislative candidates may receive up to 100% of their spending limit.

The increase in fiscal 2008 general fund expenditures is estimated to be between \$50 and \$70 million. Actual costs will be determined by the number of candidates participating and the extent to which those candidates will require supplemental disbursements due to the overspending of their nonparticipating opponents.

The chart below provides two estimates for the statewide candidate matching program and the legislative program. The first column assumes that 35% of Senate candidates and 45% of House candidates will participate in the program while the second column reflects an increase in the rate of participation to 65% for both House and Senate candidates. The chart illustrates the possible increase in general fund expenditures that could occur as more candidates participate in the legislative funding program.

## Fiscal 2008 General Fund Expenditure Estimates

	<u>Moderate Participation</u>	<u>Higher Participation</u>
<b>Statewide Candidates</b>		
Total Regular Disbursements	\$20,550,000	\$20,550,000
Total Supplemental Disbursements	<u>5,137,500</u>	<u>5,137,500</u>
<b>Total Statewide</b>	<b>\$25,687,500</b>	<b>\$25,687,500</b>
<b>Legislative Candidates</b>		
Total Regular Disbursements	\$20,750,000	\$31,850,000
Total Supplemental Disbursements	<u>6,807,500</u>	<u>10,302,500</u>
<b>Total Legislative</b>	<b>\$27,557,500</b>	<b>\$42,152,500</b>
<b>Total</b>	<b>\$53,245,000</b>	<b>\$67,840,000</b>

The figures above are based on the following assumptions: (1) three candidates participating in the program for each of the three statewide offices receiving the full public fund match; (2) one gubernatorial candidate and three statewide candidates oppose a challenger who exceeds the voluntary spending limit for that office; (3) each statewide candidate receiving a supplemental disbursement does so for the maximum amount allowed; (4) the number of legislative candidates in the 2010 election will be comparable to the total number of candidates for the General Assembly in the 2000 election as reported by the State Board of Elections; (5) 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; (6) all participating House candidates are running in three-member districts; and (7) all participating candidates will receive the “contested” disbursement amount for both the primary and general election.

General fund expenditures for the Comptroller would increase an estimated \$52,000 in fiscal 2005 for software programming changes to its electronic filing, Internet filing, and statistical analysis and reporting programs. An additional \$24,000 is required to complete testing of those systems. This reprogramming would alter data systems to read check boxes on printed forms as well as include the new checkoff in its reporting databases.

**Additional Comments:** This bill repeals the Fair Campaign Financing Fund which provides matching payments to eligible candidates for Governor or Lieutenant Governor via a tax add-on system. As of January 1, 2004, the balance in the fund was \$3,701,100.



The bill does not specify how the Comptroller should treat these monies upon the fund's dissolution.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Board of Elections, Comptroller's Office, Department of Budget and Management, Department of Legislative Services

**Fiscal Note History:** First Reader - March 11, 2004  
lc/mdr

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