SB 725

Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 725 (Senator Pinsky, *et al.*)
Education, Health, and Environmental Affairs

Election Law - Public Campaign Funding Act for Candidates for the General Assembly

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This bill establishes a Public Campaign Funding Act for Candidates for the General Assembly and 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 candidates 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: The PEF would receive revenues of $22.1 million in FY 2005. Out-years reflect additional annual surcharge revenue from new convictions for alcohol-related traffic offenses. Transportation Trust Fund (TTF) expenditures and PEF expenditures could increase by $354,700 and $800,000 respectively in FY 2005 for software reprogramming by the Motor Vehicle Administration (MVA) and administrative and personnel costs for both the MVA and the Election Financing Commission (EFC). Out-years reflect the ongoing cost of two new positions at the MVA, ongoing operational expenses for the newly created EFC, and candidate disbursements by EFC in FY 2009. General fund expenditures would increase in FY 2005 only for the one-time cost of software programming by the Comptroller.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
SF Revenue	$22,134,800	$31,520,800	$40,906,800	$40,906,800	$41,256,400
GF Expenditure	76,000	0	0	0	0
SF Expenditure	1,154,700	883,100	888,200	893,700	13,877,600
Net Effect	$20,904,100	$30,637,700	$40,018,600	$40,013,100	$27,378,800

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill creates a comprehensive system of fully funded election campaign financing for qualifying candidates for the General Assembly.

Election Financing Commission

The bill creates an Election Financing Commission 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 (PEF), 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 PEF on an individual tax return; (2) any amount that the Governor or 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; (9) proceeds from a 10% surcharge on each civil or criminal penalty imposed by a court in this State; (10) surcharges imposed by the MVA for traffic and alcohol-related violations; and (11) 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. A candidate must also submit two campaign finance reports listing all seed money contributions and expenditures and qualifying contributions received and forward any unspent or excess seed money and all qualifying contributions to the commission for deposit into the election fund.

Allowable contributions for a participating candidate are: (1) seed money contributions of up to $3,500 for a Senate candidate and $2,500 for a candidate for the House of Delegates; (2) personal contributions from the candidate and from the candidate's spouse of no more than $500 each; and (3) money or an in-kind contribution from a State or local central committee not to exceed 2.5% of the public contribution amount authorized for an election. Seed money may only be spent by a candidate for the purpose of obtaining qualifying contributions during the qualifying period.

To be eligible to receive public funds, a 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 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.

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:

Publicly Funded Expenditure Limits / Disbursement Amounts

	Primary	General	Voluntary Expenditure Limit
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

A 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. The bill also authorizes supplemental public funds in excess of the amounts listed above if a participating 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 participating candidates may not exceed 200% of the original disbursement amount.

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 to be 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.

Surcharges

The bill provides for a 10% surcharge on all civil and criminal fines and penalties assessed by a State court, a surcharge on driver's license renewals for individuals who have accumulated more than six points against their driver's license, and a surcharge on individuals convicted of an offense relating to driving under the influence, driving while impaired, failing to submit to a chemical test, or for a conviction in the U.S. or its possessions for comparable offenses that if committed in this State would be a violation of State law.

A surcharge of $100 for the first six points and $25 for each additional point is imposed for each individual who has accumulated six or more points against that individual's driver's license during the preceding 36-month period.

A surcharge of $1,000 each year is assessed for the first conviction of an individual for an alcohol-related traffic violation, $1,500 for a second conviction, and $2,500 for a third or subsequent offense.

The MVA is required to notify the holder of a driver's license of a surcharge assessed on that driver's license by first-class mail sent to the individual's most recent address. If an individual fails to pay a surcharge or enter into an installment agreement before the thirtieth day after the date the MVA sent the notice, that individual's license is automatically suspended. The MVA is authorized to file a judgment and receive interest according to court rules as well as assess an additional 20% surcharge on a judgment or $200, whichever is greater, if a surcharge remains unpaid following the issuance of a judgment.

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 the 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, the 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 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 of 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 commission did not specify a funding source other than the $5 income tax checkoff.

State Revenues: Net revenues to the PEF would be significant as a result of the bill's funding sources. The bulk of PEF revenues would come from several primary sources listed in the bill. The remaining sources are not expected to be a significant source of revenue. The sources are listed below:

Primary Sources

- $5 income tax checkoff;
- MVA driver's license point surcharge;
- MVA alcohol-related driving conviction surcharge;
- 10% surcharge on all civil and criminal fines; and
- qualifying contributions to the PEF.

Secondary Sources

- excess seed money contributions;
- unspent disbursements;
- fines levied by EFC;
- voluntary donations;
- interest generated by the fund; and
- general fund appropriations.

Income Tax Checkoff

Revenues could increase by an estimated $1,670,000 as a result of the bill's income tax checkoff. This figure is based on the assumption that 11% of filers would participate in the program. This participation rate is similar to the participation level for the Presidential Election Campaign Fund. The existing tax programs on the Maryland income tax form, the Chesapeake Bay Fund, and the FCFF, are add-on systems which increase a filer's tax liability, whereas the Presidential Election Campaign Fund and the PEF would not.

The addition of the PEF checkoff may also cause a decrease in FCFF revenues of an estimated $92,400 due to the subject matter similarity of the two options. The FCFF provides matching funds for Governor and Lieutenant Governor candidates, and filers that checkoff funds for the PEF are less likely to give funds to the FCFF. The estimate is based on a 40% reduction in revenue from total contributions to the fund in tax year 2002.

The MVA Driver's License Point Surcharge

There are currently 27,368 licensed drivers in the State with six or more points assessed on their driving record in the past three years. Of this total, 16,298 drivers have accrued between 6 and 11 points, while 11,070 have 12 or more points. Based on this information PEF revenues would increase by $5,652,000 in fiscal 2005. Because the risk of nonpayment of assessed fees increases with the number of points assessed, the initial revenue estimate is adjusted to $2,848,300 to account for a 60% collection rate among drivers between 6 and 11 points and 44% for drivers with 12 or more points. Title 16 of the Transportation Article requires an individual's license to be revoked upon obtaining 12 or more points in a two-year period, and it is assumed that individuals with revoked licenses will have a lower collection rate. The estimated collection rate for drivers with 12 or more points is based on historical information from the MVA accounting office.

Estimates for future years will be affected by constant changes in the point assessment system since some drivers in the initial estimate will have points removed and other drivers would have new points assessed. Assessed points on a driver's license remain for a period of two years. However, it is not anticipated that future year revenues will deviate greatly from fiscal 2005 revenues.

MVA Alcohol-related Driving Conviction Surcharge

Currently, there are 9,852 drivers with one alcohol-related conviction in the past three years, 687 with two convictions, and 82 with three convictions. In fiscal 2003, there were 9,386 convictions for alcohol-related driving offenses (circuit and District Court). Based on the number of convictions in fiscal 2003, fiscal 2005 revenues for the PEF would be $9,386,000. That number could increase to the extent that individuals receive second, third, or subsequent convictions in the same period. Future year revenues would increase by $18,772,000 in fiscal 2006, and $28,158,000 in fiscal 2007 through 2009. These estimates are based on the rate of convictions in fiscal 2003 and assume that each conviction is the first conviction. The estimates will most likely be higher to the extent that the pool of subsequent offenders becomes larger. Currently, individuals with second convictions make up 6.5% of convicted drivers and individuals with three convictions comprise less than 1% of the total.

Ten Percent Surcharge on Civil and Criminal Fines

While the exact amount of the revenue increase as a result of the 10% surcharge would depend on the annual total of fines and penalties collected by the courts which vary annually, based on total court (circuit and District Court) fines and penalties for fiscal 2003, PEF revenues would increase by an estimated $8,230,500 in fiscal 2005 through 2007. This estimate could decrease to the extent that a portion of the total amount of civil and criminal penalties is a result of motor vehicle violations that would be assessed the separate surcharge described above.

Qualifying Contributions to the Public Election Fund

PEF revenues could increase by an estimated $349,600 in fiscal 2009 for this funding source. This calculation is based on the total number of candidates for the General Assembly in the 2000 election according to the State Board of Elections and a participation rate of 35% among all candidates running for the Senate and 45% of all candidates running for the House of Delegates. The example assumes that all participating House candidates are running in three-member districts.

Revenue Estimate for SB 725 / HB 1317

	FY 2005	**FY 2006**	**FY 2007**	**FY2 008**	**FY 2009**
Comptroller	$1,670,000	$1,670,000	$1,670,000	$1,670,000	$1,670,000
MVA Points	2,848,300	2,848,300	2,848,300	2,848,300	2,848,300
MVA Alcohol	9,386,000	18,772,000	28,158,000	28,158,000	28,158,000
Court Surcharge	8,230,500	8,230,500	8,230,500	8,230,500	8,230,500
Qualifying Cont.					349,600
	$22,134,800	**$31,520,800**	**$40,906,800**	**$40,906,800**	**$41,256,400**

State Expenditures: General fund expenditures would increase by $76,000 in fiscal 2005 only for software changes by the Comptroller. TTF expenditures could increase by $354,734 for expenditures for printing, software reprogramming, and additional positions in fiscal 2005. Out-year expenditure increases reflect the cost of ongoing operating expenses. PEF expenditures would increase by an estimated $800,000 annually due to operating expenses for EFC. Fiscal 2009 expenditures include estimated disbursements to participating candidates in the 2010 primary election.

Expenditure Breakdown

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Comptroller (GF)	$76,000	$0	$0	$0	$0
MVA (SF)	354,734	83,140	88,219	93,698	99,615
EFC (SF)	800,000	800,000	800,000	800,000	13,778,000
Total	**$1,230,734**	**$883,140**	**$888,219**	**$893,698**	**$13,877,615**

Comptroller of the Treasury

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.

The MVA

TTF expenditures could increase by an estimated $354,734 in fiscal 2005, which accounts for a 90-day start-up delay due to the bill's July 1, 2004 effective date. This estimate reflects the cost of hiring two fiscal account technicians to implement the surcharge program at the MVA and computer programming costs totaling $238,050. It includes salaries, fringe benefits, one-time start-up costs, postage costs, printing costs for updated handbooks and brochures, and ongoing operating expenses.

The bill requires the MVA to track, assess, and collect surcharges from a substantial number of licensed drivers in the State. This would require an added back-office operation to support billing operations that could involve over 38,000 licensed drivers. Two additional employees would be required to answer inquiries about the fee assessment program, reconcile the database of affected drivers, track nonpayments, send notices, and process payments received.

The MVA would incur significant costs for software reprogramming to modify the electronic driver's license system point-of-service terminals to create additional SKU numbers for automatic fee assessment. An outside vendor would be required to make these modifications at an estimated cost of $101,250 in fiscal 2005. In-house computerized systems would also have to be modified including the creation of a new database for assessed drivers and a new report format for assessed drivers. Also, the drivers license renewal system would have to be updated to obtain the capability to identify assessed drivers and calculate the fee owed. It is estimated that this would cost $136,800 in fiscal 2005. The MVA would also be required to update and reprint four publications to include the surcharge assessment program's requirements at a cost of $23,800 in fiscal 2005.

Although other legislation that may pass requiring computer reprogramming changes would generally reduce the marginal cost associated with one bill due to economies of scale, the Department of Legislative Services advises that the changes required by this bill could have a significant impact on TTF expenditures due to the bill's establishment of a separate comprehensive system of surcharges.

Election Financing Commission

PEF expenditures could increase between $600,000 and $900,000 in fiscal 2005 and future years. This estimate represents the estimated administrative costs of EFC established by the bill. The estimate is based on the fiscal 2002 operating expenses of the Citizens Clean Election Commission in Arizona, which operates a similar public funding program.

In addition, expenditures would increase in fiscal 2009 as a result of candidate disbursements by EFC. The bill authorizes disbursements to participating candidates to begin on May 1, 2010. Fiscal 2009 would cover nearly the entire primary disbursement period (except for approximately 10 days). Thus, for simplicity the following estimates of candidate disbursements in fiscal 2009 will represent the entire primary disbursement period.

Legislative program cost is driven by two variables: (1) the number of candidates participating; and (2) the number of participating candidates who are eligible for supplemental funds. Therefore, the exact amount of primary election disbursements cannot be reliably estimated. For illustrative purposes, under the following assumptions PEF expenditures would increase by $13,778,000 in fiscal 2009:

- the total number of candidates for the General Assembly in the 2010 election is equal to the number of legislative candidates in the 2000 election according to the State Board of Elections;
- 35% of Senate candidates and 45% of House candidates will participate in the program;
- all participating candidates will receive the regular "contested" disbursement amount for both the primary and general election;

- all participating House candidates are running in three-member districts; and
- 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.

Total costs for the legislative program could increase as participation or eligibility for supplemental funds increase. In the example presented here, if the percentage of participating House and Senate candidates increased to 60%, primary disbursements from the fund increases to nearly $19,455,000. A comparable rise in the percentage of candidates eligible for supplemental funds could raise costs in a similar fashion.

While the number of participating candidates or the extent of supplemental disbursement eligibility cannot be reliably estimated, the commission anticipates that the total expenditures during the primary disbursement period will range from $10 million to $25 million. Similarly, fiscal 2010 expenditures, which would include the general election could fall within the same range.

Additional Information

Prior Introductions: None.

Cross File: HB 1317 (Delegate Hurson, *et al.*) – Ways and Means.

Information Source(s): Maryland State Board of Elections, Maryland Department of Transportation (Motor Vehicle Administration), Comptroller’s Office, Department of Legislative Services

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