SB 593

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 593 (Senator Pinsky, *et al.*)
Education, Health, and Environmental Affairs

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

This bill establishes public campaign financing for candidates for the General Assembly.

The bill takes effect July 1, 2009, or at a later date as specified in the bill, contingent on the enactment of specified revenue measures.

Fiscal Summary

State Effect: The Public Election Fund could receive revenues of $14.1 million in FY 2010 from a one-time transfer of $4.9 million from the Fair Campaign Financing Fund and annual revenues of $9.2 million from abandoned property revenues and a tax checkoff. General fund revenues would decrease correspondingly by $9.2 million annually beginning in FY 2010, assuming the tax checkoff affects only State and not local income tax revenues. PEF expenditures could be up to $14.1 million in FY 2010 and $9.2 million in FY 2011 for costs of the Election Financing Commission and candidate disbursements, assuming full use of available revenues. Future year PEF expenditures would reflect ongoing EFC costs and election-year candidate disbursements that cannot be reliably estimated at this time. General fund expenditures would also increase by $137,500 in FY 2010 for one-time costs of the Comptroller and State Board of Elections. Qualifying contributions to PEF in FY 2010 and 2014 cannot be reliably estimated and are not reflected in the chart below. **This bill establishes a mandated appropriation beginning in FY 2010.**

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	($9,185,800)	($9,185,800)	($9,185,800)	($9,185,800)	($9,185,800)
SF Revenue	9,185,800	9,185,800	9,185,800	9,185,800	9,185,800
GF Expenditure	137,500	0	0	0	0
SF Expenditure	14,089,200	9,185,800	-	-	-
Net Effect	($14,226,700)	($9,185,800)	$-	$-	$-

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

Local Effect: None; however, to the extent a portion of the $5 income tax checkoff is directed to PEF from filers' local income tax liability, local revenues would decrease.

Small Business Effect: None.

Analysis

Bill Summary: The bill creates a system of fully funded election campaign financing for qualifying candidates for the General Assembly. The bill establishes a specified, five-member Election Financing Commission to manage and supervise the system of public funding of elections and specifies various powers and responsibilities of EFC, including specified reporting requirements. PEF is created to provide financing for participating candidates, beginning with the election cycle that begins on January 1, 2008, and to pay for the administrative and enforcement costs of EFC.

PEF consists primarily of • revenues from a specified income tax checkoff; • at least $7.5 million each fiscal year from the disposition of abandoned property; • qualifying contributions from participating candidates; and • a transfer, upon the bill taking effect, of the remaining monies in the Fair Campaign Financing Fund (containing funding for the public financing of gubernatorial tickets under the existing Public Financing Act – see Current Law). It also includes any funds appropriated in the State budget.

To qualify as a participating candidate and be eligible for a public contribution from the fund, a candidate has to collect and submit to the commission, along with specified campaign finance reports and receipts, at least 350 qualifying contributions of at least $5 each from registered voters in the candidate's legislative district or subdistrict and additional contributions totaling at least $6,750. The qualifying contributions must be collected during the period beginning November 1 of the year before the primary election for the office the candidate is seeking and ending 45 days before the date of the primary. Candidates may accept specified, limited private seed money contributions to be used solely for the purpose of obtaining qualifying contributions.

During an election year, participating candidates are exempt from the prohibition on specified campaign finance activities during a regular General Assembly session with respect to accepting seed money and qualifying contributions and disbursement of funds by EFC.

Participating candidates are subject to the following expenditure limits:

Exhibit 1
Publicly Funded Expenditure Limits

	Primary	General	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	6,000	4,000	10,000

Participating candidates in a contested primary and general election or an uncontested primary election may choose a specified alternative apportionment of the overall limit, between the primary and general election, to spend more money for one election and less for the other.

The bill specifies times and procedures for disbursements from PEF to participating candidates prior to the primary and general elections, and the subsequent return of any unspent funds.

A participating candidate may retain private contributions, but may not receive or spend private contributions during the primary or general election period, with specified exceptions, including limited private contributions from a State or local central committee. During those election periods, with the exception of disbursements from a specified petty cash fund, a participating candidate may only make disbursements from the candidate's publicly funded campaign account.

The bill allows for disbursements to participating candidates in excess of the above expenditure limits for the following reasons/purposes:

- Up to one-half of specified electioneering communications expenditures by the participating candidate within 60 days prior to the election.

- Supplemental funding to match specified receipts or expenditures of an opposing, nonparticipating candidate, or coordinated expenditures by a nonparticipating candidate on behalf of a participating candidate, that are in excess of the expenditure limits for a participating candidate (up to 200% of the established public contribution amounts for the primary and general elections).

- Supplemental funding to match the total of a participating candidate's specified principal opponent's expenditures and express advocacy independent expenditures supporting the opponent or opposing the participating candidate that is in excess of the expenditure limits for the participating candidate (up to 200% of the established public contribution amounts for the primary and general elections).

The bill establishes specified reporting requirements for • political parties that make contributions authorized under the bill to participating candidates; • nonparticipating candidates; and • express advocacy independent expenditures.

The bill also provides for specified judicial review, civil actions, and prohibited actions and related penalties and sanctions.

Current Law: The Public Financing Act provides for a system of public financing of elections for candidates for Governor and Lieutenant Governor. The Act established the Fair Campaign Financing Fund which is administered by the Comptroller.

To become an eligible participant under PFA, a candidate must agree to limit campaign expenditures to an amount based on the population of the State, which was approximately $2,087,000 for the 2006 elections. State law does not provide for public funding of candidates for the General Assembly.

Abandoned Property

Abandoned property proceeds are credited by the Comptroller to a special fund. A limited amount (no more than $50,000) is maintained in the fund each fiscal year to pay any claims to property or sale proceeds, and after deducting the administrative costs of accepting and disposing of abandoned property, $500,000 is distributed to the Maryland Legal Services Corporation. In addition, unclaimed money from specified judgments of restitution is distributed to the State Victims of Crime Fund. The balance of the remaining funds is paid into the general fund.

Background: Comprehensive public financing programs that provide full funding of candidate campaigns are 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 capitalized by a tax-add system rarely reached a functional level. Accordingly, with the exception of the 1994 gubernatorial race, 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 for the 2006 election campaign was 80%, with 83% of candidates elected in 2006 participating. In Arizona, 60% of candidates participated in 2006, with 45% of candidates elected participating. A number of states, including Minnesota and New Jersey, operate partial public funding programs, in which a candidate generally agrees to a spending limit and receives state matching funds for private contributions the candidate raises.

Chapter 169 of 2002 created the Study Commission on Public Financing of Campaigns in Maryland. The commission was required to • collect information regarding public funding of state legislative campaigns in other jurisdictions in the United States; • identify the changes in the State election code necessary for public funding of State campaigns; • analyze current practices in Maryland relating to the financing of campaigns; • receive testimony where suitable; and • 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 commission did not specify a funding source other than the $5 income tax checkoff.

State Revenues: Net revenues to PEF would be significant and would come from the primary sources listed below; the remaining sources are not expected to be a significant source of revenue:

Primary Sources

- abandoned property revenues;
- $5 income tax checkoff;
- transfer from the Fair Campaign Financing Fund; and
- qualifying contributions to PEF.

Secondary Sources

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

Abandoned Property Revenues

PEF revenues would increase annually by $7.5 million due to the annual distribution from abandoned property revenues, beginning in fiscal 2010. The Comptroller advises abandoned property revenues are about $80 million annually.

General fund revenues would correspondingly decrease by $7.5 million annually.

Income Tax Checkoff

PEF revenues could increase annually by an estimated $1.69 million as a result of the bill's income tax checkoff, beginning in fiscal 2010. This assumes the checkoff would be allowed for both spouses on a joint return. This figure is based on the assumption that 9% of filers would participate in the program, similar to the participation level for a checkoff for presidential election campaigns on the U.S. individual income tax return. The existing tax programs on the Maryland income tax form, the Chesapeake Bay Fund, the Maryland Cancer Fund, and FCFF, are add-on systems which increase a filer's tax liability, whereas PEF, as with the federal checkoff, would not. Instead, filers would be able to direct up to $5 of their tax liability to PEF.

The bill does not specify whether the $5 is directed to PEF from filers' State tax liability or a proportionate amount of filers' State and local tax liability. Assuming $5 is directed to PEF from filers' State tax liability, general fund revenues would decrease correspondingly with any PEF revenue increase as a result of the checkoff. To the extent the $5 is directed from both the filers' State and local tax liability, the general fund revenue loss would be less.

The addition of the PEF checkoff may also decrease FCFF revenues. Due to the subject matter similarity of the two options, filers that checkoff funds for PEF may be less likely to give funds to FCFF. Contributions of $118,000 accrued to FCFF in fiscal 2007.

Fair Campaign Financing Fund Transfer

PEF revenues would increase in fiscal 2010 by roughly $4.9 million due to the transfer of the unspent funds remaining in FCFF.

Qualifying Contributions to the Public Election Fund

Revenues raised by PEF through minimum qualifying contributions of at least $8,500 per participating candidate cannot be reliably estimated since the number of participating candidates cannot be predicted. *For illustrative purposes only,* if 45% of Senate and House candidates who ran for office in the 2006 statewide primary participated in the program, PEF revenues would increase by approximately $2.5 million in fiscal 2010.

Exhibit 2 shows potential revenues and expenditures of the fund, exclusive of qualifying contributions.

Exhibit 2
Public Election Fund Revenues and Expenditures

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Annual Revenues:					
Abandoned Property	$7,500,000	$7,500,000	$7,500,000	$7,500,000	$7,500,000
FCFF Transfer	4,903,000	0	0	0	0
Tax Checkoff[1]	1,686,000	1,686,000	1,686,000	1,686,000	1,686,000
Annual Revenue Total	14,089,000	9,186,000	9,186,000	9,186,000	9,186,000
Expenditures:					
Disbursements/EFC Costs[2]	14,089,000	9,186,000	---[3]	---[3]	---[3]
Public Election Fund Balance	**$0**	**$0**	**---**	**---**	**---**

[1] Based on participation rate for federal income tax checkoff for presidential election campaigns.
[2] Assumes all available revenues after administrative costs would be disbursed in fiscal 2010 and 2011 for the primary and general elections, though returns of unspent disbursements or insufficient participation could result in balances left in the fund at the end of those fiscal years.
[3] EFC costs in fiscal 2012 through 2014 and fiscal 2014 candidate disbursements prior to the 2014 primary election cannot be reliably estimated at this time.
Note: Revenues received from qualifying contributions in fiscal 2010 and 2014, return of unspent disbursements, and any other potential revenues are not accounted for.

State Expenditures:

Comptroller and State Board of Elections

General fund expenditures for the Comptroller would increase by an estimated $37,500 in fiscal 2010 for software programming changes to its electronic filing, Internet filing, integrated tax system, and related interfaces. Inclusion of a description of the fund in the income tax return package would not result in an expenditure increase.

General fund expenditures for SBE would increase by an estimated $100,000 in fiscal 2010 for one-time software programming and web site development expenses associated with accepting and monitoring reports of coordinated and express advocacy independent expenditures as specified in the bill.

Election Financing Commission

PEF expenditures for the personnel and operating costs of EFC (including an annual CPA audit); the cost of developing an electronic database of candidate expenditure and contribution information, accessible on the Internet; and the cost of developing an education program for candidates and the public about EFC, PEF, and overall program cannot be reliably estimated at this time. The Citizens Clean Election Commission in Arizona, which operates a similar public funding program spent just over $650,000 in 2006 on personnel and other primarily administrative/enforcement costs.

Expenditures would increase in fiscal 2010, 2011, and 2014 as a result of candidate disbursements by EFC. The expenditure levels would be driven by • the number of candidates participating; and • the extent to which participating candidates are eligible for supplemental funds. The bill requires EFC to establish an initial limit on the number of participating candidates and allow for that number to increase or decrease in correlation to the amount of money in the fund. Based on the potential revenues and expenditures in Exhibit 2, the cumulative total of disbursements and administrative and other costs of EFC could be up to $14.1 million and $9.2 million in fiscal 2010 and fiscal 2011, assuming there is adequate candidate participation for the 2010 primary and general elections.

Additional Information

Prior Introductions: SB 546 of 2007, a similar bill, received a favorable with amendments report from Education, Health, and Environmental Affairs, but was not passed by the Senate. HB 731 of 2007, also a similar bill, had a hearing in Ways and Means, but no further action was taken. HB 1054 of 2006, a similar bill, passed the

House but no action was taken in the Senate. SB 569 of 2006, a similar bill with different funding provisions, received a favorable with amendments report from Education, Health, and Environmental Affairs, but was recommitted to the committee. SB 725 of 2005, another similar bill with different funding provisions, received a hearing in Education, Health, and Environmental Affairs, but no further action was taken. HB 1031 of 2005, another similar bill with different funding provisions, received a favorable with amendments report from Ways and Means and was recommitted to the committee.

Cross File: HB 971 (Delegate Cardin, *et al.*) – Ways and Means.

Information Source(s): State Board of Elections, Comptroller's Office, U.S. Department of the Treasury (Internal Revenue Service), Maine Commission on Governmental Ethics and Election Practices, Arizona Clean Elections Commission, Howard County, Baltimore City, Department of Legislative Services

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