

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 681 (Senator Pinsky, *et al.*)

Education, Health, and Environmental Affairs
and Judicial Proceedings

Public Funding and Small Donor Act for General Assembly Elections

This bill repeals the Public Financing Act (PFA) applicable to gubernatorial tickets and establishes the Public Funding and Small Donor Act for General Assembly Elections. The bill also amends campaign finance contribution and transfer limits and authorizes counties to enact laws to regulate public campaign finance activity for county offices.

The bill takes effect January 1, 2011.

Fiscal Summary

State Effect: Special fund revenues for the Public Election Fund (PEF) increase by \$3.7 million in FY 2011 from a one-time transfer of \$3.4 million from the Fair Campaign Financing Fund (FCFF) and \$253,300 from a newly established surcharge. PEF expenditures may total up to \$560,300 in FY 2011. General fund expenditures increase by \$155,000 in FY 2011 and by \$30,400 in FY 2015 for District Court programming costs associated with the surcharge. General fund expenditures may further increase in future years for the costs of regulating county public campaign financing laws and to fund the public financing system beyond the 2014 elections.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	\$253,300	\$506,600	\$506,600	\$506,600	\$253,300
GF Expenditure	\$155,000	-	-	-	\$30,400
SF Expenditure	\$560,300	\$122,700	\$215,800	\$300,700	\$315,500
Net Effect	(\$462,000)	\$383,900	\$290,800	\$205,900	(\$92,600)

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

Local Effect: The bill is not expected to materially affect local government finances. Counties have the option of enacting public campaign financing laws under the bill and the State Board of Elections will be responsible for regulating public campaign finance activity under those laws.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Public Funding and Small Donor Act for General Assembly Elections

The State Board of Elections (SBE) is responsible for managing and supervising the system of public financing of elections established under the Act and adopting necessary regulations. SBE must ensure that the system of public financing of elections (1) accommodates qualifying candidates on a first-come, first-served basis; (2) establishes an initial limit on the number of participating candidates during an election cycle; and (3) allows for an increase or decrease in the number of participating candidates during the election cycle in correlation to the amount of available funding.

SBE is given specified authority with regard to its management and supervision of the public financing system and is required to, among other things:

- develop an electronic database accessible to the public on the Internet that includes specified information, including contributions to and expenditures by participating candidates and public contributions that are disbursed to participating candidates;
- develop an education program that includes informational materials and compliance manuals to inform candidates and the public about the purpose and effect of the Act; and
- report to the General Assembly after each election cycle regarding the Act and contributions and expenditures under it.

The bill establishes a Public Election Fund (PEF) to provide, beginning with the general election cycle that begins on January 1, 2011, public financing for participating candidates in a primary or general election and to pay for SBE's administrative and enforcement costs related to the Act. The Comptroller administers the fund and, to support a pilot program for the election cycle from January 1, 2011 to December 31, 2014, its primary sources of funding include:

- a \$75 surcharge added to fines imposed for convictions of alcohol and/or drug-related driving offenses (the bill establishes the surcharge temporarily, from January 1, 2011 to December 31, 2014); and
- the balance of money in the Fair Campaign Financing Fund (established under the Public Financing Act) on January 1, 2011.

For the election cycle that begins January 1, 2015, and each subsequent election cycle, funding for the public financing system is as provided in the State budget.

The bill establishes a process for candidates to qualify for public financing under the Act that generally consists of:

- a requirement that a candidate seeking to qualify file notice of the candidate's intent with SBE by April 15 of the year of the election and establish a publicly funded campaign account in conjunction with SBE, for the purpose of receiving contributions and making expenditures in accordance with the Act;
- authorization of candidates seeking to qualify to accept seed money of up to \$3,500 (with no contributions of more than \$250 from each donor) to spend during the qualifying contributions period (from November 1 in the year preceding the primary election to the day 45 days before the primary election);
- a requirement that a candidate collect, during the qualifying contributions period, at least 350 qualifying contributions (contributions of at least \$5 from registered voters in the legislative district or subdistrict of the candidate) and additional contributions totaling at least \$1,000; and
- a determination by SBE (which is final and not subject to judicial review) whether to certify a candidate as a participating candidate no later than 15 days after receipt of (1) a declaration that the candidate will abide by the regulations and policies prescribed by SBE, and (2) a campaign finance report containing a list of qualifying contributions and a statement of all expenditures made by the candidate during the campaign.

A participating candidate, or a person acting on behalf of the candidate, is prohibited from making a campaign expenditure for the candidate other than from the candidate's publicly funded campaign account, with the exception of maintaining a petty cash fund. SBE is authorized to gain access at any time to the records and transactions of an account, and, in accordance with SBE regulations and guidelines, may terminate an account. A participating candidate is also prohibited from joining a slate.

Participating candidates are subject to the expenditure limits shown in **Exhibit 1**.

Exhibit 1
Publicly Funded Expenditure Limits

	<u>Primary</u>	<u>General</u>	<u>Expenditure Limit</u>
Contested Senate	\$50,000	\$50,000	\$100,000
Uncontested Senate	8,000	4,000	12,000
Contested House (Three-member)	50,000	50,000	100,000
Two-member	35,000	35,000	70,000
Single-member	20,000	20,000	40,000
Uncontested House (Three-member)	8,000	4,000	12,000
Two-member	6,000	3,500	9,500
Single-member	5,000	3,000	8,000

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 who is opposed by a nonparticipating candidate in a primary or general election may raise up \$10,000 in supplemental private contributions of not more than \$100 per contributor.

The bill requires nonparticipating candidates that exceed the expenditure limit for a participating candidate for the office being sought to file biweekly campaign finance reports of all of the candidate's expenditures through and including the week after the election. In addition, during the 30 days preceding an election, a nonparticipating candidate must notify SBE within 48 hours of each expenditure over \$500 made or obligated.

The bill also specifies the procedure for a participating candidate to opt out of the public financing system; prohibits a participating candidate from accepting a contribution from a State or local central committee of a political party; provides for judicial review of an SBE action under the Act (with the exception of a determination whether a candidate is eligible for public financing); and specifies prohibited actions and related penalties and sanctions.

Commission to Study Public Financing of Elections in Maryland

The bill establishes a 10-member Commission to Study Public Financing of Elections in Maryland staffed by SBE and the State Ethics Commission. The commission must convene following the November 2014 general election, receive testimony as appropriate, and on or before December 31, 2015, report specified findings and recommendations, including any proposed statutory changes to Maryland election law, to the Governor and the General Assembly. Provisions establishing the commission take effect July 1, 2014, and terminate June 30, 2016.

Contribution/Transfer Limits

The bill increases existing campaign contribution and transfer (contribution from one campaign finance entity to another) limits as shown in **Exhibit 2**. The bill also specifies that contributions made by a sole proprietor are considered as being made by one contributor regardless of the number of sole proprietorships owned by the individual.

Exhibit 2
Contribution/Transfer Limits*
(during a four-year election cycle)

	<u>Current Law</u>	<u>SB 681</u>
Contributions		
To any one campaign finance entity	\$4,000	\$4,400
To all campaign finance entities	\$10,000	\$15,000
Transfers	\$6,000	\$6,600

*These limits are subject to certain exceptions. The contribution limits do not apply to contributions to ballot issue committees and in-kind contributions of a central committee of a political party. The transfer limits do not apply to a transfer by a campaign finance entity to a ballot issue committee or transfers between or among State or local central committees of the same political party, a slate and the campaign finance entities of its members, and the campaign finance entities of a candidate.

Regulation of Local Campaign Finance Activity

The bill authorizes a county to enact laws to regulate public campaign finance activity for county elective offices and candidates for election to those offices who choose to accept public campaign financing. The bill establishes various requirements applicable to those laws, including that a law must require that the system for public campaign finance activity for county elective offices be regulated by SBE in accordance with State law.

A county law may be more stringent than any applicable State law and modified to the extent necessary to make the provisions relevant to the county, but may not conflict with any applicable State or federal law.

Current Law:

Public Financing Act

PFA provides for a system of public financing of elections for candidates for Governor and Lieutenant Governor. The Act established FCFF which is administered by the Comptroller. The fund generates revenue from a “tax add-on” on State personal income tax returns that allows an individual to contribute up to \$500 to the fund on the individual’s tax return.

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 \$2.1 million for the 2006 elections (applicable separately to each primary and general election). State law does not provide for public funding of candidates for the General Assembly.

State Preemption of Campaign Finance Regulation

State campaign finance law applies to each election conducted under State election law, but does not apply to campaign finance activity governed solely by federal law. Except for municipal elections outside Baltimore City, State election law generally applies to all primary, general, and special elections, including those for county offices.

In *County Council for Montgomery County, Maryland v. Montgomery Association, Inc.*, 274 Md. 52, 333 A.2d 596 (1975), the Court of Appeals held that three Montgomery County ordinances designed to regulate the campaign finance activities of candidates for county offices were invalid because the General Assembly “had preempted the field of election financing practices” through the enactment of detailed State campaign finance laws.

Background: According to the National Conference of State Legislatures (NCSL), limits on campaign contributions, public financing of election campaigns, and disclosure of campaign finance activity are the main avenues by which states seek to regulate campaign finance. Contribution limits vary widely from state to state and from office to office within a state, according to NCSL, with 5 states placing no limits on contributions. NCSL indicates that half the states operate programs that provide public funds to candidates or political parties (or both), with 16 offering public funds to candidates. According to NCSL, 7 of those 16 states provide full public financing of candidate campaigns, with the remaining states providing partial public financing.

Maryland law, under PFA, currently provides for public financing of gubernatorial campaigns, but with the exception of the 1994 gubernatorial race, the program has not been used. A 2004 report by the Study Commission on Public Financing of Campaigns in Maryland found that the gubernatorial FCFF, from which public contributions are distributed, had rarely reached a functional level and that the expenditure limit that

participating gubernatorial tickets are subject to under the law is more than likely “far below the minimum amount of funds needed to launch a credible campaign effort[.]”

The current campaign contribution limits shown in Exhibit 2 were set in 1991.

State Revenues:

Special Fund Revenues

PEF revenues will increase over the course of fiscal 2011 to 2015 primarily due to the collection of the \$75 surcharge added to fines imposed for convictions of alcohol and/or drug-related driving offenses and the transfer of the remaining balance in FCFF in fiscal 2011. Under one set of assumptions, PEF revenues from the surcharge and the fund balance transfer increase by \$3.7 million in fiscal 2011 and by \$5.5 million total over the course of the pilot program from January 1, 2011 to December 31, 2014. Other sources of revenue for PEF, including candidate qualifying contributions and excess seed money presumably will be smaller sources of revenue for PEF. Potential fund revenue through fiscal 2015 generated from the surcharge and fund transfer and fund expenditures for personnel and software development are shown in **Exhibit 3**.

Surcharge Revenue

Based on fiscal 2009 District Court statistics of guilty dispositions of cases involving the applicable alcohol/drug-related driving offenses, a total of \$2 million in revenue may be generated over the course of the four calendar years (2011 to 2014) in which the surcharge will be imposed (\$506,600 annually; \$253,320 in fiscal 2011, accounting for the January 1, 2011 effective date of the surcharge). The estimate is based on the following information/assumptions:

- approximately 8,500 cases involving the applicable offenses resulted in guilty dispositions in fiscal 2009;
- it is assumed that the number of such cases that will result in guilty dispositions in fiscal 2011 through 2015 will be equal to the number in fiscal 2009; and
- it is also assumed that the surcharge would be added to a fine and collected in 80% of those cases each year (accounting for fines not being imposed and/or collected in some cases).

Fair Campaign Financing Fund Balance Transfer

As of February 19, 2010, the balance in FCFF is \$5.4 million. The proposed fiscal 2011 State budget assumes availability of \$2 million from FCFF for use through the Maryland Election Modernization Fund (MEMF) to pay for a portion of capital lease payments for e-pollbooks. The Budget Reconciliation and Financing Act of 2009 (Chapter 487)

authorized a transfer of \$2 million to the Maryland Information Technology Development Project Fund (MITDPF) to fund the purchase of a new voting system. The proposed fiscal 2011 State budget, however, does not include funding for a new voting system, and under Chapter 487 of 2009, any funds transferred to MITDPF not used for the purchase of a new voting system are to be transferred to MEMF.

Assuming that \$2 million will be transferred from FCFF prior to January 1, 2011, to eventually be used through MEMF, a minimum of \$3.4 million will otherwise remain in FCFF on January 1, 2011, if funding is not utilized under PFA during the 2010 elections. The remaining amount may also be somewhat higher due to additional collection of contributions from tax returns filed in 2010.

Exhibit 3
Public Election Fund Revenues and Expenditures*

	<u>FY 2011**</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Annual Revenues:					
Surcharge	\$253,320	\$506,640	\$506,640	\$506,640	\$253,320
FCFF Transfer	3,436,604	0	0	0	0
Total	3,689,924	506,640	506,640	506,640	253,320
Annual Expenditures:					
Personnel	60,277	122,723	215,795	300,721	315,511
Software Development	500,000				
Candidate Distributions				Undetermined	Undetermined
Total***	560,277	122,723	215,795	300,721	315,511
Annual Surplus/ (Deficit)***	3,129,647	383,917	290,845	205,919	(62,191)
PEF Balance***	3,129,647	3,513,564	3,804,409	4,010,328	3,948,137

*These figures are based on various assumptions described in the text and attempt to account for the majority, but not all special fund revenues and expenditures associated with the public financing system.

**The surcharge and personnel figures account for the bill's January 1, 2011 effective date (in the middle of fiscal 2011).

***Does not account for distribution of funds to candidates.

General Fund Revenues

General fund revenues may decrease to the extent District Court judges reduce fine amounts for the applicable alcohol/drug-related offenses in consideration of the surcharge; however, the extent of any decrease in general fund revenue cannot be reliably estimated.

State Expenditures:

Special Fund Expenditures – Administration of Public Financing System

Special fund expenditures will increase for SBE to administer the public financing system. Special fund expenditures may increase by up to \$560,277 in fiscal 2011 and by up to \$1.5 million over the course of fiscal 2011 to 2015 for personnel and software development costs. Other costs, such as those associated with developing an education program, have not been quantified.

Personnel

SBE expects that four additional staff will be needed to administer the public financing system, including an attorney, investigator, office secretary, and an additional staff person, hired over the course of fiscal 2011 – 2014. As a result, special fund expenditures increase by \$60,277 in fiscal 2011, which accounts for the bill's January 1, 2011 effective date. A significant portion of the personnel costs associated with administering the public financing system will be incurred in later fiscal years, however, as an attorney is hired in fiscal 2013 and an investigator is hired in fiscal 2014. Special fund expenditures for personnel may total \$300,721 in fiscal 2014.

Database

The total cost over the course of fiscal 2011 through 2015 for software development and maintenance may be as high as \$500,000. SBE indicates that developing an online campaign finance system that would both meet the bill's requirements and account for all campaign finance reporting (upgrading from SBE's current electronic campaign finance reporting software) would likely be the most cost effective manner of implementing the bill's requirements. SBE has gathered information regarding costs that other states have incurred to develop online campaign finance reporting systems and costs have varied widely from relatively minimal amounts to up to \$1 million.

Since an online system would account for overall campaign finance reporting as well as the reporting requirements under the public financing system, it is assumed for the purposes of this fiscal and policy note, that PEF expenditures would not account for more than half of the development cost of the system. PEF software development costs, therefore, are assumed to not be more than \$500,000 (based on the \$1 million high end of the range of other states' costs).

Maintenance costs associated with a new online campaign finance reporting system are expected to be relatively minimal in comparison to the development cost and maintenance may be handled with existing SBE information technology staff in many cases.

General Fund Expenditures

District Courts

General fund expenditures increase by \$155,042 in fiscal 2011 for programming costs expected to be incurred by the District Courts to account for the surcharge added to fines imposed for convictions of alcohol and/or drug-related driving offenses. Expenditures also increase by \$30,385 in fiscal 2015 to revert programs back after the expiration of the surcharge.

State Board of Elections

General fund expenditures may increase for additional SBE personnel in future years to handle regulation of any county-level public financing programs established. Any increase in expenditures would depend on the extent to which counties enact laws regulating public campaign financing and cannot be reliably estimated at this time. Presumably, regulation of public campaign financing activity in a limited number of counties may be handled within existing resources.

Future Funding of Public Financing System

General fund expenditures may increase significantly beginning in fiscal 2015 to fund SBE's administrative and enforcement costs associated with the public financing system and to provide public financing for future elections beyond 2014. The bill indicates that for the election cycle that begins on January 1, 2015, and each subsequent election cycle, funding for the Public Funding and Small Donor Act for General Assembly Elections will be as provided in the State budget. Absent other funding sources, it is assumed general funds will need to be appropriated to support the public financing system.

Additional Information

Prior Introductions: SB 663 of 2009, a similar bill, was favorably reported with amendments by the Senate Education, Health, and Environmental Affairs Committee, but was recommitted. HB 1353 of 2009, also a similar bill, received a hearing in the House Ways and Means Committee, but no further action was taken. In addition, similar bills were introduced in the 2004 through 2008 sessions.

Cross File: None.

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

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