

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

Senate Bill 657 (Senator Pinsky, *et al.*)
 Education, Health, and Environmental Affairs

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, authorizes counties to enact laws to regulate public campaign finance activity for county offices, and establishes a Commission to Study Public Financing of Elections in Maryland.

The bill takes effect July 1, 2011, with the exception of provisions that establish the study commission, which take effect July 1, 2014, and terminate June 30, 2016.

Fiscal Summary

State Effect: Special fund revenues for the Public Election Fund (PEF) increase by \$5.0 million in FY 2012 from the transfer of the balance of the funding in the Fair Campaign Financing Fund (having no net effect). PEF expenditures may total at least \$92,000 in FY 2012, increasing to \$293,000 in FY 2014 due to personnel costs. PEF expenditures further increase due to potential costs for an online campaign finance system and disbursements to candidates in later years. General fund expenditures may 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 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	-	-	-	-	-
SF Expenditure	92,000	209,800	293,000	308,200	324,200
Net Effect	(\$92,000)	(\$209,800)	(\$293,000)	(\$308,200)	(\$324,200)

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:

Repeal of Public Financing Act

The bill repeals PFA and requires the Comptroller to transfer the money in the Act's Fair Campaign Financing Fund (FCFF) to PEF under the Public Funding and Small Donor Act for General Assembly Elections established by the bill.

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 on or before October 1, 2011. 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 PEF to provide, beginning with the general election cycle that began 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. To support a pilot program for the election cycle that began on January 1, 2011, and ends on December 31, 2014, the fund consists primarily of the balance of money transferred from FCFF on its termination on July 1, 2011. The fund also receives the contributions raised by participating candidates to qualify for public financing. For the election cycle that begins on January 1, 2015, and each following election cycle, funding for the Public Funding and Small Donor Act for General Assembly Elections 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 supplemental private contributions in addition to the public contribution received. The aggregate amount of supplemental private contributions received from a contributor may not exceed \$100 and the candidate may not raise an aggregate amount of more than \$10,000 in supplemental private contributions.

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 657</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 FCFE which is administered by the Comptroller. Until recently, the fund generated revenue from a “tax add-on” on State personal income tax returns that allowed an individual to contribute up to \$500 to the fund on the individual’s tax return. The tax add-on, however, was repealed in the Budget Reconciliation and Financing Act (BRFA) of 2010. Both the BRFA of 2009 and the BRFA of 2010 authorized use of money in the fund for other purposes, indicating that the General Assembly had found that the fund could not operate as originally contemplated (*see Background*).

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 \$2.3 million for the 2010 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:

Regulation of Campaign Financing by States

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 five states placing no limits on contributions. NCSL indicates that half the states operate programs that provide public funds to candidates or political parties or provide tax incentives to encourage citizens to make political contributions (or a combination of these methods), 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.

A challenge to Arizona’s public campaign financing law, the Citizen’s Clean Election Act, is currently before the U.S. Supreme Court (*Arizona Free Enterprise v. Bennett; McComish v. Bennett*), with oral argument scheduled in March 2011. The challenge is to a specific part of the law which allows a participating candidate to receive public matching funds when nonparticipating opposing candidates make expenditures beyond the amount of the initial public funding the participating candidate receives.

Public Financing Act and Use of the Fair Campaign Financing Fund

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 authorizations of the use of money in FCFF for other purposes in the BRFA of 2009 and 2010 were made after advice was given by the Attorney General that if the General Assembly finds that the fund cannot function as originally contemplated, it may constitutionally spend the money in the fund for other purposes that “as nearly as possible fulfill the general intent of the contributors to enhance the electoral process.”

Maryland Campaign Contribution Limits

The current campaign contribution limits shown in Exhibit 2 were set in 1991. The contribution limits were recently addressed by the Maryland Attorney General's Advisory Committee on Campaign Finance, formed in the fall of 2010 to examine and develop recommendations regarding the State's campaign finance laws. The committee concluded that the limits should be reexamined, in light of changed circumstances since 1991. The committee urged SBE, in collaboration with other interested groups, to collect and disseminate data on contributions and costs of campaigning that would help legislators and the public determine whether an adjustment of the limits is warranted and what the appropriate adjustment should be, based on the data.

State Revenues:

Special Fund Revenues

PEF revenues will increase in fiscal 2012 due to the transfer of the remaining balance in FCFF to PEF. As of February 2011, the balance in FCFF is \$5,005,871. The BRFA of 2010 (Chapter 484) authorized \$150,000 and \$500,000 to be transferred out of FCFF in fiscal 2011 for a voting system study and implementation of an online campaign finance reporting system. Those transfers have already occurred. Assuming the money in FCFF is preserved until July 1, 2011, PEF revenues will increase by at least \$5,005,871 in fiscal 2012, reflecting the transfer of the balance of FCFF to PEF on July 1, 2011.

Other sources of revenue for PEF, including candidate qualifying contributions and excess seed money presumably will be smaller sources of revenue for PEF and will depend in part on the number of candidates that seek to qualify for public financing. **Exhibit 3** shows projected revenues (reflecting only the FCFF transfer and not all revenues) and expenditures of PEF from fiscal 2012 through 2015.

Exhibit 3
Public Election Fund Revenues and Expenditures*

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Annual Revenues:				
FCFF Transfer	\$5,005,871			
Other Revenues	-	-	-	-
Total	5,005,871	-	-	-
Annual Expenditures:				
Personnel	91,980	209,787	293,045	308,215
Software Development	-			
Candidate Distributions			-	-
Total**	91,980	209,787	293,045	308,215
Annual Surplus/(Deficit)**	4,913,891	(209,787)	(293,045)	(308,215)
PEF Balance**	4,913,891	4,704,104	4,411,059	4,102,844

*These figures are based on 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.

**Does not account for other revenues, potential software development costs, or distribution of funds to candidates.

Note: “-” = undetermined

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 \$91,980 in fiscal 2012 and by \$903,027 over the course of fiscal 2012 to 2015, covering the duration of the pilot program, for personnel costs. Special fund expenditures may also increase by an indeterminate amount (discussed below) to incorporate public finance-related reporting into the planned development of an online campaign finance reporting system. 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 2012 to 2014. As a result, special fund expenditures increase by \$91,980 in fiscal 2012, which accounts for a 90-day start-up delay. 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 \$293,045 in fiscal 2014, when all personnel have been hired.

The Office of the State Prosecutor (OSP) has also indicated the possibility of increased general fund expenditures due to additional investigative personnel costs. However, to the extent investigation of violations of the bill's provisions can be handled by SBE staff, presumably prosecution of any violations may be able to be handled by OSP with existing resources.

Reporting and Publicly Accessible Database

SBE is currently in the beginning stages of the procurement process for the development of an online campaign finance reporting system to replace the current software-based system. The 2010 BRFA (Chapter 484) authorized the transfer in fiscal 2011 of \$500,000 of the balance in FCFF to SBE for the purpose of implementing the system. An amount of \$500,000 has been transferred out of the fund for that purpose. The 2010 BRFA requires that any of the funds not used for the system revert back to FCFF.

Incorporating the capability to accommodate public finance-related reporting in the new system, to meet the bill's requirement of a publicly accessible electronic database of public financing information and to handle the bill's other reporting requirements, is expected to increase the overall cost, potentially beyond the \$500,000 transferred from FCFF for the system. Funds from PEF may therefore be required to cover the additional costs. SBE has gathered information in the past regarding costs that other states have incurred to develop online campaign finance reporting systems, which have varied widely from relatively minimal amounts to up to \$1 million. If the total cost does go beyond \$500,000, it is expected to be on the lower end of the range between \$500,000 and \$1 million.

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

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. Costs of regulating any county-level public financing programs may also be billed to the applicable counties in place of the use of State general funds.

Penalty Provisions

It is assumed, for the purposes of this fiscal and policy note, that the bill's penalty provisions will not materially affect State finances.

Local Effect: The bill is not expected to materially affect local government finances, since counties have the option of enacting public campaign financing laws for county elective offices under the bill and SBE will be responsible for regulating public campaign finance activity under those laws. As mentioned above, however, if a county chooses to enact public campaign financing laws, cost of regulation of public campaign finance activity in the county may be billed to the counties by SBE.

Additional Information

Prior Introductions: HB 1251 of 2010, a similar bill, received a hearing in the House Ways and Means Committee, but no further action was taken. SB 681 of 2010, also a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. In addition, similar bills were introduced in the 2004 through 2009 sessions.

Cross File: HB 159 (Delegate Cardin, *et al.*) - Ways and Means.

Information Source(s): State Board of Elections, State Ethics Commission, Office of the Comptroller, Office of the Attorney General, Office of the State Prosecutor, Montgomery and Baltimore counties, National Conference of State Legislatures, Maryland Attorney General's Advisory Committee on Campaign Finance, Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2011
mc/hlb

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510