

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 1044 (Delegate Cardin, *et al.*)
 Ways and Means

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 June 1, 2013, 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 \$3.7 million in FY 2014 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 \$336,900 in FY 2014 and \$299,200 in FY 2015, due to personnel and software development costs. PEF expenditures further increase due to disbursements to candidates in later years. General fund expenditures may also further increase in future years due to costs of regulating county public campaign financing laws and to fund the public financing system beyond the 2014 elections.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	-	-	-	-	-
SF Expenditure	336,900	299,200	313,200	327,900	343,300
Net Effect	(\$336,900)	(\$299,200)	(\$313,200)	(\$327,900)	(\$343,300)

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

Local Effect: Local government expenditures increase for any county that establishes a public campaign financing system. Revenues may also increase to the extent new funding is generated for a program.

Small Business Effect: None.

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, 2013. 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, 2013. 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 February 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 September 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
- 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>Under the Bill</u>
Contributions		
To any one campaign finance entity	\$4,000	\$4,400
To all campaign finance entities	10,000	11,000
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 (1) provide for a public election fund administered by the chief financial officer of the county and (2) 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 (Chapter 484, SB 141). The BRFA of 2009 (Chapter 487, HB 101), the BRFA of 2010, and Chapters 292 and 293 of 2011 (SB 806/HB 740) have each 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 four states placing no limits on contributions. NCSL indicates that approximately half of 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).

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 and Chapters 292 and 293 of 2011 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.” The Governor’s proposed fiscal 2014 budget includes \$1.2 million from FCFF to begin planning for the transition to an optical scan voting system.

The Commission to Study Campaign Finance law, formed by the General Assembly in 2011, recommended in its December 2012 report that the existing structure for public financing of gubernatorial campaigns should be maintained, with the hope that there will

come a point in time when State finances are such that the State has the ability to more fully finance a public financing system for candidates seeking election to State offices.

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 fall 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.

More recently, the Commission to Study Campaign Finance Law recommended in its December 2012 report that the General Assembly consider increasing the limit on the amount that a single donor may contribute to any one campaign finance entity to an amount between \$5,000 and \$7,000 per election cycle and consider increasing the limit on aggregate contributions to all campaign finance entities to an amount as high as \$25,000 per election cycle. The commission also recommended the General Assembly consider (1) indexing the contribution limits; (2) using some other method to trigger automatic increases in the contribution limits over time without the General Assembly having to revisit them; or (3) prescribing in law that the General Assembly review and consider at prescribed intervals revisions to the contribution limits, taking into account changes in the Consumer Price Index, any increases in the contribution limits in other states, and the economic climate of the State. The commission noted, however, that any adjustment in contribution limits should be made effective as of the beginning of a four-year election cycle, rather than being introduced in the middle of an election cycle.

The commission did not make a specific recommendation regarding a change in the amount of the transfer limit. However, it did suggest that if the General Assembly decides to make changes to the individual and aggregate contribution limits, it ought to at least consider whether a similar or corresponding change should be made to the transfer limit.

Local Government Public Campaign Financing

The Commission to Study Campaign Finance Law recommended in its December 2012 report that counties be authorized to establish public financing programs for county offices as the preferred option to foster possible further exploration of public financing in the State outside of the current gubernatorial program.

State Revenues:

Special Fund Revenues

PEF revenues will increase in fiscal 2014 due to the transfer of the remaining balance in FCFF to PEF. As of February 2013, the balance in FCFF is \$4.9 million. Assuming that the balance is reduced by the \$1.2 million included in the Governor's proposed budget for a new voting system, but that the money in FCFF is otherwise preserved until July 1, 2013, PEF revenues will increase by at least \$3.7 million in fiscal 2014 (not accounting for interest generated through June 2013), reflecting the transfer of the balance of FCFF to PEF on July 1, 2013.

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 in fiscal 2014 and 2015.

Exhibit 3 **Public Election Fund Revenues and Expenditures***

	<u>FY 2014</u>	<u>FY 2015</u>
Annual Revenues:		
FCFF Transfer	\$3,680,154	
Other Revenues	-	-
Total	-	-
Annual Expenditures:		
Personnel	286,914	299,163
Software Development	50,000	
Candidate Distributions	-	-
Total**	336,914	299,163
Annual Surplus/(Deficit)**	3,343,240	(299,163)
PEF Balance**	3,343,240	3,044,077

*These figures are based on assumptions described in the text and do not account for all special fund revenues and expenditures associated with the public financing system.

**Does not account for other revenues 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 \$286,914 in fiscal 2014 and by \$586,077 over the course of fiscal 2014 and 2015, covering the duration of the pilot program, for personnel costs. 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. Special fund expenditures will also increase by \$50,000 in fiscal 2014 to incorporate public finance-related reporting and information management into the State's online campaign finance reporting system. Other costs, such as those associated with developing an education program, have not been quantified.

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 and other provisions authorizing court action will not materially affect State finances.

Local Fiscal Effect: Local government expenditures increase for any county that establishes a public campaign financing system, to fund campaigns and potentially reimburse SBE for administrative costs of the program. Local government revenues may correspondingly increase to the extent a new funding source is established for a program.

It is assumed the bill's penalty provisions and other provisions authorizing court action will not materially affect local government finances.

Additional Information

Prior Introductions: SB 270 of 2012 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 195 of 2012, 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 2011 sessions.

Cross File: SB 584 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): State Board of Elections, Office of the State Prosecutor, Comptroller's Office, Judiciary (Administrative Office of the Courts), State Ethics Commission, Maryland State Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Montgomery and Wicomico counties, Baltimore City, National Conference of State Legislatures, Department of Legislative Services

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