

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

Senate Bill 691 (Senator Pinsky, *et al.*)
 Education, Health, and Environmental Affairs

Public Funding and Small Donor Act for General Assembly Elections

This bill establishes the Public Funding and Small Donor Act for General Assembly Elections and a Commission to Study Public Financing of Elections in Maryland.

The bill takes effect June 1, 2014, with the exception of provisions that establish the study commission, which take effect July 1, 2015, and terminate June 30, 2017.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$193,700 in FY 2016 due to personnel and software programming costs. Future years reflect ongoing personnel and operating costs, hiring of additional personnel, and transfers to and from the Fair Campaign Financing Fund (FCFF) in FY 2018 and 2019.

| (in dollars) | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
|----------------|---------|-------------|-------------|-------------|-------------|
| SF Revenue | \$0 | \$0 | \$0 | - | - |
| GF Expenditure | \$0 | \$193,700 | \$243,200 | \$302,000 | \$347,700 |
| SF Expenditure | \$0 | \$0 | \$0 | - | - |
| Net Effect | \$0 | (\$193,700) | (\$243,200) | (\$302,000) | (\$347,700) |

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

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

Small Business Effect: None.

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 regulations implementing the Act on or before October 1, 2014. 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 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.

The public financing system is funded through FCFF, which holds funds for the existing public financing system for gubernatorial tickets under the Public Financing Act. Funds received from candidates participating in the new public financing system for General Assembly candidates established by the bill (such as qualifying contributions and unspent or excess seed money) are deposited in the fund and distributions of public financing to participating candidates are made from the fund. The bill specifies that SBE must adopt regulations regarding the distribution of funds to eligible gubernatorial tickets under the Public Financing Act and General Assembly candidates participating under the Public Funding and Small Donor Act for General Assembly Elections on a first-come, first-served basis.

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 FCFF 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, 2016, 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, 2015, and terminate June 30, 2017.

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 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 of 2010 (Chapter 484). Since 2009, following multiple election cycles without use of the gubernatorial public financing program, the General Assembly has authorized certain amounts of money in the fund to be used for other elections-related purposes, mostly through budget reconciliation legislation.

To become an eligible participant under the Public Financing Act, a candidate must agree to limit campaign expenditures to an amount based on the population of the State, which is \$2.59 million for the 2014 elections (applicable separately to each primary and general election). State law does not provide for public funding of candidates for the General Assembly.

Background:

Public Campaign Financing

According to the National Conference of State Legislatures (NCSL), 25 states have 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). Fourteen states have programs that provide public funding to candidates. Those programs are voluntary and limit campaign spending by those who elect to receive public funds. In most of the fourteen states, the participating candidates’ campaigns are only partially funded with public funds, through matching grants or a fixed subsidy, and candidates also raise private funds, subject to the applicable spending limits. A few states provide full public financing to candidates, including, for legislative offices, Arizona, Connecticut, and Maine.

Public Financing Act and the Fair Campaign Financing Fund

Maryland law, under the Public Financing Act, currently provides for public financing of gubernatorial campaigns, but with the exception of the 1994 gubernatorial race, the program had not been used until recently. As of early February 2014, however, one candidate in the 2014 gubernatorial elections has qualified for public financing under the program.

FCFF contains approximately \$4.6 million (as of early February 2014). Of that amount, \$1.45 million has been appropriated from the fund through the fiscal 2014 budget bill and a later budget amendment for planning the State's transition to an optical scan voting system and conducting elections-related studies required under Chapters 157 and 158 of 2013. Due to the recent participation in the gubernatorial public financing program, however, the \$1.45 million may not be spent for those purposes and instead retained in FCFF for the gubernatorial public financing program.

Commission to Study Campaign Finance Law

The Commission to Study Campaign Finance law, formed by the General Assembly in 2011, addressed the issue of public campaign financing in its December 2012 report. With respect to public financing of General Assembly candidates, while some members of the commission supported establishing at least a pilot program, agreement could not be reached on how to fund such a program. The commission agreed instead to recommend that the General Assembly authorize the counties (including Baltimore City) to establish public financing programs for county offices to foster possible further exploration of public financing in the State outside of the current gubernatorial program. Chapter 419 of 2013, the Campaign Finance Reform Act of 2013, includes such an authorization, effective January 1, 2015.

For the commission's full discussion of public financing, see pages. 22-25 of the commission's 2012 report: <http://mgaleg.maryland.gov/Pubs/CommTFWorkgrp/2012-Campaign-Finance-Law-Final-Report.pdf>.

State Fiscal Effect:

General Fund Expenditures – Administration of Public Financing System

General fund expenditures increase by at least \$193,661 in fiscal 2016 and by at least \$347,703 in fiscal 2019, which accounts for the timing of when personnel will be needed to staff the study commission and begin developing the public financing program in advance of the 2018 elections. This estimate reflects:

- the cost of SBE hiring (1) one staff person and one office secretary in fiscal 2016 to staff the study commission and subsequently assist in the implementation and administration of the program; (2) an attorney in fiscal 2017 to develop educational materials and enforcement and auditing procedures; and (3) an investigator in fiscal 2018 to conduct auditing and investigations; and
- software programming to accommodate the new public financing program in the State's online campaign finance reporting system.

The estimate includes salaries, fringe benefits, and one-time and ongoing operating expenses.

| | |
|---|------------------|
| Positions | 2 |
| Salaries and Fringe Benefits | \$134,609 |
| Software Programming | 50,000 |
| Operating Expenses | <u>9,052</u> |
| Total FY 2016 State Expenditures | \$193,661 |

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Other costs, such as those associated with developing an education program, have not been quantified.

Special/General Fund Expenditures – Public Financing of Campaigns

Special/general fund expenditures increase, potentially significantly, in fiscal 2018 and 2019 to provide public financing to participating candidates. The extent of the overall expenditures depends on the amount of available money in FCFF and the level of participation in the program. The bill requires an initial limit on the number of participating candidates during an election cycle to be established but the system also must allow for an increase or decrease in the number of participating candidates in correlation to the amount of money in the fund. See Exhibit 1 above for the potential amounts spent per candidate (up to \$100,000 over the course of the primary and general elections for some candidates).

As noted earlier, there is limited funding in FCFF and given the current participation in the gubernatorial public financing program, it is uncertain how much will remain in FCFF after the 2014 elections. Following the elimination of the “tax add-on,” there is currently no source of revenue for the fund. General funds may be required to replenish the balance in FCFF.

Special Fund Revenues

Special fund revenues increase due to money being deposited in FCFF in accordance with the bill, including unspent and excess seed money collected by candidates, qualifying contributions collected by candidates, and fines levied by SBE against candidates for violations of the election law. These revenues, however, are likely significantly less than the public financing amounts distributed to candidates from FCFF. Candidates are limited to raising \$3,500 in seed money and any unspent or excess seed money presumably would consist of relatively limited amounts per candidate. Candidates must collect 350 qualifying contributions of at least \$5 to qualify for public financing. Therefore, the revenue from qualifying contributions collected by a successful candidate could be less than \$2,000. Revenues from fines levied by SBE against candidates under the Public Funding and Small Donor Act for General Assembly

Elections are not expected to be significant. It is assumed, for the purposes of this fiscal and policy note, that the bill will not cause late fees for late filing of campaign finance reports outside of the public financing program and civil penalties for campaign finance violations imposed by SBE outside of the program to be directed to FCFF. The disposition of those fees/penalties is specified elsewhere in State law.

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.

Additional Information

Prior Introductions: SB 584 of 2013 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1044 of 2013, 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 2012 sessions.

Cross File: HB 418 (Delegate Cardin, *et al.*) - Ways and Means.

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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ncs/hlb

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