

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 573 (Delegate Luedtke, *et al.*)
 Ways and Means

Fair Elections Act

This bill repeals the Public Financing Act (PFA) applicable to gubernatorial tickets and, in its place, establishes the Fair Elections Act applicable to gubernatorial tickets. The bill transfers remaining funds in the Fair Campaign Financing Fund (FCFF) to a Fair Elections Fund. An income tax return checkoff is established for contributions to the Fair Elections Fund. An income tax subtraction modification for contributions to the fund is also established. Specified elections-related fees and penalties are redirected to the Fair Elections Fund and a campaign finance entity that is closing down is authorized to pay any remaining balance in the entity’s account to the fund.

The bill takes effect January 1, 2016, with the exception of the income tax checkoff and subtraction modification provisions, which take effect July 1, 2015, and are applicable to taxable years beginning after December 31, 2014.

Fiscal Summary

State Effect: General fund expenditures increase by \$182,300 in FY 2016 and general fund revenues decrease by \$29,800 annually. Special fund revenues increase by \$177,000 in FY 2016. Future years reflect ongoing redirection of fee and penalty revenues to the Fair Elections Fund, tax checkoff contributions, and revenue losses from the subtraction modification.

| (in dollars) | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
|----------------|------------|------------|------------|------------|------------|
| GF Revenue | (\$29,800) | (\$29,800) | (\$29,800) | (\$29,800) | (\$29,800) |
| SF Revenue | \$177,000 | \$158,000 | \$295,000 | \$225,000 | \$177,000 |
| GF Expenditure | \$182,300 | \$33,000 | \$100,000 | \$100,000 | \$33,000 |
| SF Expenditure | \$0 | \$0 | - | - | \$0 |
| Net Effect | (\$35,100) | \$95,300 | \$165,300 | \$95,300 | \$114,300 |

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

Local Effect: Local government revenues decrease by \$22,000 in FY 2016 due to the income tax subtraction modification and redirection of candidate filing fees to the Fair Elections Fund. Future year revenue decreases vary from \$3,000 to \$73,000 due to violation in filing fee revenue from year to year.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Fair Elections Act

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 as necessary to effect the purposes of the Act. SBE must issue a report one year before the date of a gubernatorial general election stating the amount of money in the Fair Elections Fund and the number of participating tickets capable of being funded in the upcoming election. If there are insufficient funds to provide full matching funds to participating tickets in an election, SBE must proportionally reduce the amount of matching funds participating tickets may receive and authorize participating tickets to accept larger private contributions than otherwise would be permitted, pursuant to regulations adopted by SBE.

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 contains specified information, including contributions to and expenditures by participating tickets and matching funds that are disbursed to participating tickets;
- develop an education program that includes informational materials and compliance manuals to inform gubernatorial tickets and the public about the purpose and effect of the Act; and
- report to the General Assembly after each election cycle, evaluating the Act and its effect on participating tickets, and making any recommendations to improve it.

The bill establishes the Fair Elections Fund to provide public campaign financing for participating tickets under the Act. The Comptroller administers the fund. The fund consists primarily of remaining funds in the former FCFE as of December 31, 2015; contributions to the fund through the newly established checkoff on the individual income tax return; contributions made electronically through SBE's website; elections-related fees

and penalties allocated to the fund; and any money provided in the State budget for the purposes of the Act.

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

- a requirement that a gubernatorial ticket seeking to qualify file notice of the gubernatorial ticket's intent with SBE by the deadline for filing a certificate of candidacy and establish a publicly funded campaign account for the purpose of receiving contributions and making expenditures in accordance with the Act and the Election Law Article in general;
- a requirement that a gubernatorial ticket raise seed money (a total of at least \$250,000 from at least 1,250 individuals residing in the State who each contribute more than \$5 but not more than \$200) to qualify as a participating ticket and be eligible for matching funds; and
- a determination by SBE whether to certify a gubernatorial ticket as a participating ticket not later than 15 days after receipt of (1) a declaration that the gubernatorial ticket will abide by the regulations and policies of SBE and (2) a campaign finance report that includes all seed money and other contributions received by the gubernatorial ticket and all expenditures made.

SBE must authorize the disbursement of matching funds to participating tickets as shown in **Exhibit 1**. A participating ticket may not receive a total amount of matching funds in an election cycle that exceeds the product of multiplying \$1, adjusted annually beginning on July 1, 2022, based on the Consumer Price Index, and the total number of registered voters in the State.

Exhibit 1
Matching Fund Ratios

| <u>Portion of Eligible Private Contribution*</u> <u>that...</u> | <u>Matching Fund Ratio</u> |
|--|-----------------------------------|
| does not exceed \$50 | 6-to-1 |
| exceeds \$50 but does not exceed \$100 | 4-to-1 |
| exceeds \$100 but does not exceed \$150 | 2-to-1 |
| exceeds \$150 but does not exceed \$200 | 1-to-1 |

*A monetary contribution or series of monetary contributions from a single individual residing in the State that is more than \$5 but not more than \$200.

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

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.

With the exception of specified contributions from members of a participating ticket and each member's spouse, a participating ticket may not accept a contribution other than a "private contribution," which is defined as a contribution or series of contributions from a single individual that does not exceed \$200 in an election cycle. A "private contribution" does not include a contribution from a business entity, a political party, a regulated lobbyist, the campaign finance entity of a candidate, a political action committee, or any other political committee.

SBE is authorized to have access at any time to the records and transactions of an account and may terminate an account in accordance with regulations adopted by SBE. A gubernatorial ticket that files a notice of intent to qualify for public financing or a participating ticket is also prohibited from being a member of a slate.

The bill also specifies the procedure for a participating ticket to opt out of the public financing system; provides for judicial review of an SBE action under the Act; and specifies prohibited actions and related penalties and sanctions.

Tax Checkoff

The Comptroller must include a checkoff designated as the "Fair Elections Fund Contribution" on the individual income tax return form. The checkoff must state that the individual, or each spouse in the case of a joint return, may contribute to the Fair Elections Fund an amount designated by the individual if the individual or each spouse is a U.S. citizen or admitted for permanent legal residence in the United States. The individual deducts the amount of the contribution from any refund to which the individual is entitled or, if the individual is not entitled to a refund, the individual adds the amount of the contribution to the income tax paid with the return. The Comptroller must include, with the individual income tax return package, a description of the purposes of the Fair Elections Fund and what it may be used for. From the contributions collected, the Comptroller distributes an amount necessary to administer the checkoff system to an administrative cost account and distributes the remainder to the Fair Elections Fund.

Subtraction Modification

The bill creates a subtraction modification against the State income tax for the amount contributed by an individual during the taxable year to the Fair Elections Fund. The subtraction may not exceed \$1,000 for any taxable year (with each spouse treated separately on a joint return).

Redirection of Fees and Penalties

The bill allocates existing candidate filing fees, late fees for campaign finance-related reporting, and campaign finance civil penalties to the Fair Elections Fund.

Remaining Balances of Closing Campaign Finance Entities

The bill authorizes a campaign finance entity, after all campaign finance expenditures have been made and before filing a final campaign finance report, to pay any remaining balance in the account of the campaign finance entity to the Fair Elections Fund.

Current Law/Background:

Public Financing Act and FCFF

PFA provides for a system of public financing of elections for candidates for Governor and Lieutenant Governor. The Act established FCFF and the fund is administered by the Comptroller. Until recently, the fund generated revenue from an income tax checkoff on the individual income tax return form that allowed an individual to contribute up to \$500 to the fund on the individual's tax return. The checkoff, however, was repealed in the Budget Reconciliation and Financing Act of 2010 (Chapter 484). Taxpayers donated about \$100,000 to the fund in the last year in which the checkoff was available.

To qualify for public funding under PFA, a gubernatorial ticket must raise "seed money" equal to 10% of the expenditure limit for eligible tickets in the election. The expenditure limit is calculated for each election using a formula based on the population of the State and inflation. The limit applies separately to each primary and general election. For 2014, the expenditure limit was \$2,586,124. Accordingly, the amount of seed money a qualifying ticket was required to raise in 2014 was \$258,612.

Seed money must be raised in the form of "eligible private contributions," which are contributions of \$250 or less from individuals. Contributions from business entities or political committees do not qualify as eligible private contributions. Once a ticket has qualified by raising seed money, public funds are disbursed for the primary election on a matching basis. For a ticket with opposition, the ticket receives \$1 in public funds for each

\$1 in eligible private contributions it raises. For a ticket without opposition, the ticket receives \$1 in public funds for each \$3 in eligible private contributions it raises. A participating ticket may accept contributions of more than \$250 or contributions from business entities or political committees, but these funds are not seed money, may not be matched with public funds, and count toward the ticket's expenditure limit for the election.

If a participating ticket wins the primary election, it is entitled to receive public funds for the general election equal to the expenditure limit for the election. There is no requirement to raise eligible private contributions to receive public funds for the general election. Any private contributions a participating ticket raises in the general election will count toward its expenditure limit for the election and correspondingly reduce the amount of public funds the ticket may spend. Expenditures by the State or local central committee of a political party that are coordinated with a participating ticket do not count toward the expenditure limit.

With the exception of the 1994 gubernatorial election, the public financing program under PFA had not been used until recently. Beginning in 2009, following multiple election cycles without use of the public financing program, the General Assembly authorized certain amounts of money in the fund to be used for other election-related purposes. In the 2014 election, two gubernatorial tickets qualified for public financing under the program and collectively received a total of approximately \$3.69 million.

Existing Tax Checkoffs

The Chesapeake Bay and Endangered Species Fund, Cancer Research Fund, and Developmental Disabilities Services and Support Fund Contribution are the three current checkoffs on the personal income tax form. In tax year 2013, taxpayers contributed a total of \$1.8 million to these funds.

Public Campaign Financing

According to the National Conference of State Legislatures, 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 14 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, however, provide full public financing to candidates.

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. The commission addressed, among other things, the challenge of funding a public financing program and the viability of PFA and whether it should be retained. The commission did not reach agreement on a solution for funding a public financing program, but determined overall that PFA should be retained, with the hope that in the future State finances would allow for the system to be more fully financed.

The commission also made a recommendation that counties be authorized to establish public financing programs for county offices, which was included in the Campaign Finance Reform Act of 2013 (Chapter 419). Montgomery County became the first county to exercise the authority when it enacted a law in October 2014 that establishes a system that provides matching funds for county executive and county council candidates in a similar manner as this bill does for gubernatorial tickets, providing greater matching amounts for smaller contributions.

For the commission's full discussion of public financing, see pages 22-25 of the commission's [2012 report](#).

State Fiscal Effect:

General Fund Expenditures

General fund expenditures increase by \$182,336 in fiscal 2016 due to one-time programming costs and the redirection of late fees for campaign finance-related reports to the Fair Elections Fund. Future years reflect ongoing redirection of late fees.

To implement the Fair Elections Act, programming changes must be made by (1) SBE, to modify the State's online campaign finance reporting system to accommodate the new program and to accept website contributions to the Fair Elections Fund (\$60,000); (2) the Comptroller's Office, to implement the tax checkoff and subtraction modification (\$80,160); and (3) the Judiciary, to distribute collected fees and penalties to the fund (\$9,176).

Late fees for campaign finance-related reports are currently applied to pay SBE expenses of fee collection and auditing of campaign finance reports. The redirection of these fees to the Fair Elections Fund is assumed, for the purposes of this fiscal and policy note, to result in an increase in general fund expenditures of an equivalent amount to cover those expenses. Based on past fee collections and recent changes to the law regarding the fees, this estimate assumes that \$33,000 in fees is collected in fiscal 2016 and other fiscal years

in which presidential elections occur and that \$100,000 in fees is collected in fiscal years in which gubernatorial elections occur (when there is a greater amount of State- and local-level campaign finance reporting).

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 gubernatorial tickets. The extent of the overall expenditures depends on the level of participation in the program. The limit on matching funds a gubernatorial ticket may receive in an election cycle is approximately \$3.7 million, based on current voter registration. When taking into account the new special fund revenues deposited in the Fair Elections Fund (discussed below) and the remaining funds in FCFF (\$1.1 million) that are transferred to the Fair Elections Fund under the bill, available public financing for the 2018 elections will likely be below the maximum matching amount for one participating ticket and general funds may be needed to sufficiently capitalize the fund.

Special Fund Revenues

Special fund revenues increase by \$177,000 in fiscal 2016 due to money deposited in the Fair Elections Fund in accordance with the bill, accounting for contributions through the tax checkoff (\$100,000, consistent with annual contributions under the previous tax checkoff) and redirection of fees and penalties (\$77,000). Special fund revenues increase by between \$150,000 and \$300,000 in future fiscal years, accounting for variations in fees collected in gubernatorial vs. presidential election years. Special fund revenues under the existing income tax checkoffs may decrease minimally to the extent the addition of the Fair Elections Fund checkoff diverts money from them.

General Fund Revenues

General fund revenues decrease by \$29,800 annually, beginning in fiscal 2016, due to the income tax subtraction modification and the redirection of civil penalties to the Fair Elections Fund.

Local Revenues: Local government revenues decrease by \$22,000 in fiscal 2016 due to the income tax subtraction modification and the redirection of candidate filing fees to the Fair Elections Fund. Future year revenue decreases vary from \$3,000 to \$73,000 due to variation in filing fee revenue from year to year. Pursuant to statute, local governments currently receive the revenue from filing fees.

Additional Information

Prior Introductions: None.

Cross File: SB 518 (Senator Pinsky) - Education, Health, and Environmental Affairs and Budget and Taxation.

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

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