

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 785 (Delegate Mosby, *et al.*)
 Ways and Means

Maryland Small Donor Incentive Act

This bill establishes the Maryland Small Donor Incentive Act, to provide public campaign financing for General Assembly candidates. The bill requires that the Governor include an appropriation of \$1 million in the State budget for fiscal 2020 and each fiscal year thereafter to provide public campaign financing to candidates under the Act. **The bill takes effect January 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by \$133,400 in FY 2019 and by greater amounts in future years (including the \$1 million annual appropriation beginning in FY 2020). Special fund revenues increase by \$1 million annually beginning in FY 2020 and special fund expenditures increase by indeterminate amounts in FY 2022 and 2023. **This bill establishes a mandated appropriation beginning in FY 2020.**

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
SF Revenue	\$0	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
GF Expenditure	\$133,400	\$1,148,000	\$1,231,100	\$1,300,600	\$1,311,400
SF Expenditure	\$0	\$0	\$0	-	-
Net Effect	(\$133,400)	(\$148,000)	(\$231,100)	(\$300,600)	(\$311,400)

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

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: Potential meaningful.

Analysis

Bill Summary: The Division of Candidacy and Campaign Finance (DCCF) in 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. DCCF 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.

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

- develop, as part of the Campaign Finance Database, an electronic database accessible to the public on the Internet that includes specified information, including contributions to and expenditures by participating candidates and matching funds 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 DCCF by February 15 of the year of the election and, before raising any contributions, establish a publicly funded campaign account for the purpose of receiving contributions and making expenditures in accordance with the requirements of State election law;
- a requirement that a candidate collect qualifying contributions, during a period beginning September 1 of the year preceding the primary election and ending 45 days before the date of the primary election, of (1) for a Senate candidate, at least \$15,000 from at least 200 individuals and (2) for a House of Delegates candidate, at least \$5,000 from at least 100 individuals; and
- a determination by DCCF (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 of

DCCF and (2) a campaign finance report containing all qualifying contributions and other contributions received, and all expenditures made, by the candidate.

DCCF must alter, by regulation, the amount of qualifying contributions required, for the election cycle beginning January 1, 2023, and for each subsequent election cycle, based on the rate of inflation in the just-concluded election cycle.

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. DCCF may have access at any time to the records and transactions of an account and may terminate an account in accordance with regulations adopted by DCCF. A participating candidate is prohibited from being a member of a slate unless all members of the slate are participating candidates.

The public financing system is funded through the Fair Campaign Financing Fund (FCFF), which holds funds for the existing public financing system for gubernatorial tickets under the Public Financing Act (PFA). Funds collected under the new public financing system for General Assembly candidates established by the bill are deposited in the fund and distributions of public financing to participating candidates are made from the fund. The bill requires SBE to adopt regulations regarding the distribution of funds to eligible gubernatorial tickets under PFA and General Assembly candidates participating under the Maryland Small Donor Incentive Act on a first-come, first-served basis. Beginning with fiscal 2020, and for each fiscal year thereafter, the Governor must include in the State budget an appropriation of \$1 million to FCFF to be distributed as public contributions under the Act.

A participating candidate receives public financing in the form of matching funds, only for a contested election, for eligible contributions received by the participating candidate, as shown in **Exhibit 1**. "Eligible contribution" means a contribution or series of contributions of up to \$250 from a single individual residing in a candidate's constituency. "Eligible 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.

Exhibit 1
Matching Funds Ratios and Limits

Matching Fund Ratios (Applicable to All Candidates)

<u>Eligible Contribution Amount</u>	<u>Matching Fund Ratio</u>
Up to \$50	3-to-1
\$50-\$150	2-to-1
Greater Than \$150	2-to-1 (but only for \$150 of the contribution)

Matching Fund Limits

<u>Candidate(s)</u>	<u>Primary</u>	<u>General</u>	<u>Total</u>
Senate	\$50,000	\$50,000	\$100,000
House of Delegates	\$35,000	\$35,000	\$70,000

DCCF must alter, by regulation, the matching fund limits for the election cycle beginning January 1, 2023, and for each subsequent election cycle, based on the rate of inflation.

Participating candidates may choose specified alternative apportionments of the total matching fund limit, between the primary and general election, to receive more matching funds for one election and less for the other.

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

The bill also specifies the procedure for a participating candidate to opt out of the public financing system, provides for judicial review of a DCCF 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.

Current Law/Background:

Public Financing Act and Fair Campaign Financing Fund

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. 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 was repealed under the Budget Reconciliation and Financing Act of 2010 (Chapter 484). Chapter 312 of 2015, however, reinstated a tax checkoff on the individual income tax return form without a limit on the amount of contributions that may be made and it also established certain other sources of revenue for the fund, including various penalties, fines, and fees imposed under State election law.

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 2018, the expenditure limit is \$2,798,370. Accordingly, the amount of seed money a qualifying ticket is required to raise in 2018 is \$279,837.

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.

As of October 2017, the balance in FCFF was \$2.92 million.

Public Campaign Financing

According to the National Conference of State Legislatures, 13 states provide some form of public financing option for campaigns. Those programs are voluntary and limit campaign spending by those who elect to receive public funds. In most of the 13 states, the participating candidates' campaigns are only partially funded with public funds. 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. 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. Montgomery County and Howard County have enacted, in 2014 and 2017, respectively, local laws establishing public campaign financing systems for county executive and county council offices, under the authority provided in Chapter 419. Montgomery County's system is in effect for the 2018 elections, and Howard County's system will be in effect for the 2022 elections.

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

State Fiscal Effect:

Administration of Public Financing System

General fund expenditures increase by \$133,411 in fiscal 2019, and by greater amounts in future years, to administer the public financing system established by the bill, which reflects:

- the cost of SBE hiring (1) one staff attorney and one administrative aide midway through fiscal 2019 to assist in the implementation and administration of the program and (2) two financial compliance auditors in fiscal 2021 to audit campaign finance activity under the program; 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	\$73,006
Software Programming	50,000
Operating Expenses	<u>10,405</u>
Total FY 2019 State Expenditures	\$133,411

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

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

Public Financing of Campaigns

General fund expenditures increase by \$1 million in fiscal 2020 and future fiscal years in accordance with the bill’s requirement that such funding be appropriated to FCFF. Special fund revenues increase correspondingly, reflecting receipt of that funding by FCFF. Special fund expenditures increase in fiscal 2022 and 2023, and in future years in which gubernatorial elections occur, to provide public financing to participating candidates. The extent of special fund 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 FCFF.

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.

Small Business Effect: To the extent the bill results in additional campaign spending that otherwise would not occur, small businesses providing campaign consulting services and materials may meaningfully benefit.

Additional Information

Prior Introductions: HB 1363 of 2017 received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: None.

Information Source(s): State Board of Elections; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; National Conference of State Legislatures; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2018
mm/hlb

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