

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 676
Ways and Means

(Delegate Washington)

Campaign Finance – Judges of the Circuit Court

This bill establishes a public campaign financing system for candidates for the office of a judge of the circuit court. It also prohibits a lawyer or a law firm from directly or indirectly making a contribution to (1) the campaign finance entity of a candidate for the office of circuit court judge or (2) a slate that includes a member who is a candidate for the office of circuit court judge.

Fiscal Summary

State Effect: General fund expenditures increase, potentially by at least \$200,000 in FY 2020 and future years in which a primary election occurs. General fund revenues may increase annually due to returned, unused public contributions.

Local Effect: Local government expenditures are not expected to be materially affected.

Small Business Effect: None.

Analysis

Bill Summary: The State Board of Elections (SBE) must manage and supervise the system of public campaign financing and adopt regulations as necessary. Funding for the system of public campaign financing must be as provided by the Governor in the State budget. SBE must distribute available funds to qualifying judicial candidates on a first-come, first-served basis.

Qualifying for Public Campaign Financing

A judicial candidate who wishes to qualify for public campaign financing must submit to SBE a petition containing the signatures of at least 5,000 registered voters in the county where the judgeship is located. A petition must be filed on or before the deadline for filing a certificate of candidacy and is subject to existing State election law provisions governing petitions. A qualifying judicial candidate must receive public contributions if SBE certifies the candidate's petition.

A qualifying judicial candidate must receive public contributions of \$25,000 for the primary election and, if nominated in the primary election, \$25,000 for the general election. A qualifying judicial candidate who is nominated by petition or by political party must receive a public contribution of \$25,000 for the general election. However, a qualifying candidate must receive a public contribution of \$10,000 for any election in which the candidate is uncontested. An uncontested election is one in which only one candidate qualifies to run for nomination or election, or one in which the number of candidates who qualify to run for multiple judgeships equals the number of judgeships.

A qualifying judicial candidate may not be a member of a slate unless all members of the slate are qualifying judicial candidates.

Use of Public Campaign Funding

Prior to receiving a public contribution, a qualifying judicial candidate must establish a publicly funded campaign account for the exclusive purpose of receiving public contributions and making expenditures to promote the nomination or election of the candidate. A candidate or a person acting on the candidate's behalf may not make an expenditure for the candidate other than from the publicly funded campaign account. However, a candidate may maintain a specified petty cash fund. A public contribution may not be used for any purpose other than to promote the nomination or election of a qualifying judicial candidate. The publicly funded campaign account may not make or receive a transfer to or from another campaign finance entity. A candidate or a person acting on the candidate's behalf may not solicit, receive, or use any contribution other than a public contribution unless the candidate withdraws from the system of public campaign financing.

The qualifying candidate must, within 10 days after an election for which a candidate received a public contribution, return to SBE any amount of the public contribution that was not expended on the election. A qualifying judicial candidate and the responsible officers of the candidate's campaign finance entity are jointly and severally personally liable for repaying any part of a public contribution that is not spent or is spent for any purpose other than to promote the nomination or election of a qualifying judicial candidate.

Withdrawal from System

An individual who has been certified as a qualifying judicial candidate but elects to opt out of the system must file a statement of withdrawal with SBE and, within seven days, repay to SBE the full amount of any public contributions the candidate received, along with the interest and penalty prescribed by SBE by regulation.

Penalties

An person who violates the bill's provisions is guilty of a misdemeanor and subject to maximum penalties of a \$5,000 fine and/or one year of imprisonment for each violation. SBE may bar an individual who violates the provisions from further participation in the public campaign financing system for circuit court judges.

Current Law/Background:

Judicial Elections

Most judges within the State are appointed and retained through a hybrid process. At all four court levels (the Court of Appeals, the Court of Special Appeals, circuit courts, and the District Court), the Governor appoints a qualified member of the Maryland Bar in the case of a vacancy or the creation of a new judgeship. For both appellate courts, these appointments must be confirmed by the Senate, and the judge holds the office until the next general election following the expiration of one year from the date of the occurrence of the vacancy. At the general election, the incumbent judge's name is placed on the ballot without opposition, and citizens vote for or against the retention of the judge for a 10-year term. For the District Court, judges are appointed by the Governor and serve 10-year terms upon confirmation by the Senate.

In contrast to the other judges in the State, circuit court judges face a different process. Judges of the circuit courts are elected at the general election by the qualified voters of the respective county or Baltimore City in which the circuit court sits. However, this is a "contested" election, in which any challenger who meets the constitutional requirements may run. Because any member of the Maryland Bar who meets the minimum constitutional requirements may challenge the incumbent judges by filing as a candidate, judges at the circuit court level are the only judges in the State who may face a contested election in order to retain their appointment.

Public Campaign Financing in Maryland

Public Financing Act

The Public Financing Act (PFA) provides a system of public financing of elections for candidates for Governor and Lieutenant Governor, funded by the Fair Campaign Financing Fund, which receives revenue from a tax checkoff on the individual income tax return as well as other sources, including various penalties, fines and fees imposed under State 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 was \$2,798,370. Accordingly, the amount of seed money a qualifying ticket was required to raise in 2018 was \$279,837.

County Public Campaign Financing

Pursuant to Chapter 419 of 2013, the governing body of a county may establish, by law, a system of public campaign financing for elective offices in the executive and legislative branches of county government. When establishing such a system, the governing body of a county must specify the criteria for determining whether an individual is eligible for public campaign financing. Various requirements apply to a system established by a governing body of a county, including that it must (1) be strictly voluntary; (2) not regulate candidates who choose not to participate in public campaign financing; and (3) be subject to regulation and oversight by SBE to ensure conformity with State law and policy to the extent practicable.

Montgomery, Howard, and Prince George’s counties have enacted, in 2014, 2017, and 2018, respectively, local laws establishing public campaign financing systems for county executive and county council offices, under the authority provided in Chapter 419 of 2013. Montgomery County’s system was in effect for the 2018 elections, Howard County’s system will first be in effect for the 2022 elections, and Prince George’s County’s system will first be in effect for the 2026 elections. In addition, Baltimore City voters approved a charter amendment during the November 2018 election authorizing the mayor and city council to establish a public campaign financing program.

State Fiscal Effect: General fund expenditures increase, potentially by at least \$200,000 annually in fiscal 2020, and future years in which a primary election occurs, to fund the public campaign financing system for circuit court judge candidates. This estimate assumes that at least a small, pilot program is established, providing enough funding for at least four candidates running in contested elections to participate (\$25,000 for each candidate

for the primary elections and \$25,000 to be distributed to each candidate shortly after the primary election, for the general election, if each candidate is nominated; with potentially some portion of that funding instead reserved for third party or petition candidates, for the general election). The estimate also assumes that the funding for the primary election and general election is provided in the fiscal year in which the primary election occurs, though some portion of the funding may need to be provided instead in the subsequent fiscal year (in which the general election occurs). The program is expected to be administered by SBE with existing resources.

General fund revenues increase annually due to returned, unused public contributions.

The bill's penalty provision is not expected to materially affect State finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Judiciary (Administrative Office of the Courts); Montgomery and Carroll counties; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2019
mm/hlb

Analysis by: Scott D. Kennedy

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