

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1017 (Delegate Mosby)
 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.

Fiscal Summary

State Effect: General fund expenditures increase by \$145,200 in FY 2020 and by greater amounts in future years. Special fund expenditures and revenues also increase in FY 2022 and 2023, reflecting expenditures from the Fair Campaign Financing Fund (FCFF) and returned funds.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	\$0	\$0	-	-	\$0
GF Expenditure	\$145,200	\$234,100	\$303,700	\$314,100	\$324,900
SF Expenditure	\$0	\$0	-	-	\$0
Net Effect	(\$145,200)	(\$234,100)	(\$303,700)	(\$314,100)	(\$324,900)

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 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. 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:

- provide forms and electronic software as necessary to ensure compliance with the Act;
- 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, 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 immediately 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 SBE 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 SBE and (2) a campaign finance report containing all qualifying contributions received, and all expenditures made, by the candidate.

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 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 SBE. 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 FCFF, which holds funds for the existing public financing system for gubernatorial tickets under the Public Financing Act (PFA). 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. A participating candidate may collect an unlimited aggregate amount of eligible contributions but may only receive matching funds up to the limits shown in Exhibit 1.

A candidate who seeks to become a participating candidate, and a participating candidate, may not solicit, accept, or use any contribution other than a qualifying or eligible contribution.

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

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 an SBE action under the Act, 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 was \$2,798,370. Accordingly, the amount of seed money a qualifying ticket was required to raise in 2018 was \$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. The program has since been used, however, in the 2014 and 2018 elections.

The current balance in FCFF is \$3.1 million.

Public Campaign Financing

According to the National Conference of State Legislatures, 14 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 14 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, Howard County, and Prince George's County 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. 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.

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 – Administration of Public Financing System

General fund expenditures increase by \$145,152 in fiscal 2020, 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 in fiscal 2020 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	\$115,074
Software Programming	20,000
Operating Expenses	<u>10,078</u>
Total FY 2020 State Expenditures	\$145,152

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.

Special/General Fund Expenditures – Public Financing of Campaigns

Special/general fund expenditures increase, potentially significantly, in fiscal 2022 and 2023 to provide public financing to participating candidates. The extent of the overall expenditures depends on the amount of available money in FCFE 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, for the potential amounts spent per candidate (up to \$100,000 over the course of the primary and general elections for Senate candidates).

FCFF has a balance of \$3.1 million currently available for gubernatorial tickets for the 2022 elections. General funds may be needed to supplement the fund's other revenue sources for the 2022 elections to provide enough funding for both the gubernatorial and General Assembly programs.

Special Fund Revenues

Special fund revenues increase due to unspent or otherwise returned matching fund contributions being deposited in FCFF in accordance with the bill.

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: None.

Cross File: None.

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

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an/hlb

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