

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 358 (Senator Pinsky, *et al.*)

Education, Health, and Environmental Affairs
and Budget and Taxation

Public Financing Act – State Senate and House of Delegates

This bill modifies the Public Financing Act (PFA), primarily by (1) including candidates for State Senator and member of the House of Delegates as candidates eligible to participate in the public campaign financing program; (2) establishing qualifying contribution amounts, matching contribution amounts, and maximum public contribution amounts for those candidates; and (3) increasing a mandated appropriation to the Fair Campaign Financing Fund (FCFF) to fully fund specified numbers of candidates for State Senator and member of the House of Delegates under PFA. **The bill takes effect January 1, 2023.**

Fiscal Summary

State Effect: General fund expenditures increase by \$39.5 million in FY 2026 to appropriate money to FCFF. Special fund revenues for FCFF increase by \$39.5 million in FY 2026 reflecting receipt of the general funds. Special fund expenditures from FCFF for public campaign matching funds increase by an indeterminate amount in FY 2026 and 2027. State expenditures for administrative costs increase by \$15,000 in FY 2025, \$352,000 in FY 2026, and \$329,000 in FY 2027. **This bill increases a mandated appropriation in FY 2026 and each subsequent fiscal year that includes a gubernatorial primary election.**

Local Effect: The bill does not materially affect local government finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Eligible Candidates

The bill modifies PFA so that it applies to candidates for State Senator and candidates for member of the House of Delegates in addition to gubernatorial tickets. Under the modified PFA, “eligible candidate” is defined as a gubernatorial ticket, a candidate for State Senator, or a candidate for member of the House of Delegates that qualifies to receive a public contribution.

Notice of Intent to Participate

Before receiving a private contribution under PFA, a candidate for State Senator or member of the House of Delegates must (1) by the deadline to file a certificate of candidacy, file with the State Board of Elections (SBE) a notice of intent to participate as a publicly financed candidate for both the primary and general elections and (2) establish a campaign finance entity for complying with the requirements of PFA.

The campaign finance entity may accept only:

- a “private contribution” (a contribution or series of contributions from an individual that does not exceed \$250 in the aggregate in an election cycle);
- an “eligible private contribution” (a monetary private contribution from an individual who is a resident of the State that does not exceed \$250 in the aggregate in an election cycle that is accompanied by specified documentation of the donor attesting that the contribution is made with the personal funds of the donor);
- a public contribution; and
- contributions or loans from a member of a gubernatorial ticket or the spouse of a member of a gubernatorial ticket of not more than a combined total of \$50,000.

Qualifying for Public Financing

To qualify as an eligible candidate (eligible to receive a public contribution):

- A candidate for State Senator must collect, within the qualifying period, at least (1) 250 eligible private contributions and (2) an aggregate total of \$15,000.

- A candidate for member of the House of Delegates must collect, within the qualifying period, at least 150 eligible private contributions and (2) an aggregate total of \$7,500.

Public Contribution Matching Amounts

The public contribution matching amounts available to eligible candidates for State Senator and member of the House of Delegates are shown in **Exhibit 1**. The total public contribution payable to an eligible candidate for either a primary or general election may not exceed (1) \$150,000 for a candidate for State Senator and (2) \$90,000 for a candidate for member of the House of Delegates. An eligible candidate that is unopposed in a primary election receives one-third of the public contribution amount the eligible candidate would otherwise be entitled to receive. If a candidate withdraws from participation in the program after receiving a public contribution, the full amount of any public contribution received, with specified interest, must be repaid.

SBE must authorize distribution of money to eligible candidates in accordance with the matching amounts, and regulations adopted by SBE, on a continuing basis, upon certification that a candidate has met the qualifying requirements. Distributions may not begin earlier than January 1 of the year of the election.

Exhibit 1
Public Contribution Matching Amounts (State Senator or Delegate)

Portion of Eligible Private Contribution (Maximum of \$250)	Public Contribution Matching Amount (Per Each Dollar of an Eligible Private Contribution)
First \$50	\$6
Next \$100	2
Remaining \$100	0

Funding of the Public Financing Act

Under existing law and under the bill, PFA is supported by FCFF. The bill adds to an existing mandated appropriation process that involves SBE making a determination whether the balance of FCFF is sufficient to provide full contributions to specified numbers of gubernatorial tickets (two tickets in a primary election and one in a general election), by expanding that determination to include specified numbers of candidates for State Senator and member of the House of Delegates. Under that expanded determination, SBE, by

June 30 of the third year immediately preceding a year of a gubernatorial election, must determine whether the balance of the fund is sufficient to provide for a full contribution for:

- in a primary election (1) two gubernatorial tickets; (2) 47 candidates for State Senator; and (3) 141 candidates for member of the House of Delegates; and
- in a general election (1) one gubernatorial ticket; (2) 47 candidates for State Senator; and (3) 141 candidates for member of the House of Delegates.

Consistent with the existing process for gubernatorial tickets, if the balance of the fund is determined to be insufficient to provide those public contributions:

- by August 1 of the third year immediately preceding a year of a gubernatorial election, SBE must send a notice to the Governor of the amount of money needed to provide the above-described public contributions; and
- the Governor must include in the annual budget bill for the appropriate fiscal year an appropriation in an amount equal to the amount submitted to the Governor by SBE.

Current Law: 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. Chapter 733 of 2021 modified the qualifying requirements and matching contributions under PFA and established a mandated appropriation to FCFF of \$4.0 million for fiscal 2023 and additional mandated appropriations to the fund in future years.

Generally, to qualify as an eligible gubernatorial ticket (eligible to receive a public contribution), a gubernatorial ticket must collect, within the qualifying period, at least (1) 1,500 eligible private contributions and (2) an aggregate total of \$120,000. The public contribution matching amounts available to each gubernatorial ticket are shown in **Exhibit 2**. The total public contribution payable to a gubernatorial ticket for either a primary or general election may not exceed \$3.0 million. A gubernatorial ticket that is unopposed in a primary election receives one-third of the public contribution amount the gubernatorial ticket would otherwise be entitled to receive. If a gubernatorial ticket

withdraws from participation in the program after receiving a public contribution, the full amount of any public contribution received, with specified interest, must be repaid.

Exhibit 2
Public Contribution Matching Amounts for Gubernatorial Tickets

Portion of Eligible Private Contribution (Maximum of \$250)	Public Contribution Matching Amount (Per Each Dollar of an Eligible Private Contribution)
First \$50	\$8
Second \$50	6
Third \$50	2
Remaining \$100	0

SBE, by June 30 of the third year immediately preceding a year of a gubernatorial election, determines whether the balance of the fund is sufficient to provide for a full contribution for:

- in a primary election, two gubernatorial tickets; and
- in a general election, one gubernatorial ticket.

If the balance of the fund is determined to be insufficient to provide those public contributions:

- by August 1 of the third year immediately preceding a year of a gubernatorial election, SBE must send a notice to the Governor of the amount of money needed to provide the above-described public contributions; and
- the Governor must include in the annual budget bill for the appropriate fiscal year an appropriation in an amount equal to the amount submitted to the Governor by SBE.

Independent of those requirements, for fiscal 2023 only, the Governor must include in the annual budget bill an appropriation of at least \$4.0 million to the fund. Except with respect to the \$4.0 million appropriated in fiscal 2023, if general funds are appropriated to the fund under the provisions above, after the gubernatorial election SBE must authorize repayment to the general fund of the amount that exceeds the amount necessary to provide for the full contribution to gubernatorial tickets described above.

State Fiscal Effect:

Appropriations to Fair Campaign Financing Fund

General fund expenditures increase by \$39.5 million in fiscal 2026, pursuant to the bill's increase in the existing mandated appropriation under PFA, to fully fund the program for the 2026 elections, for candidates for State Senator and member of the House of Delegates. SBE advises that as of January 31, 2022, the balance of FCFF is approximately \$4.2 million, and the Governor's proposed fiscal 2023 budget includes \$4.0 million for FCFF. Any remaining funding after the 2022 elections is assumed to reduce the existing mandated appropriation necessary to fully fund gubernatorial tickets for the 2026 elections and does not affect the funding needed to fulfill the expansion of the mandated appropriation under the bill.

Fair Campaign Financing Fund Revenues and Expenditures

FCFF revenues increase by \$39.5 million in fiscal 2026, reflecting the receipt of the general fund appropriation in fiscal 2026. FCFF expenditures increase over the course of fiscal 2026 and 2027 by an indeterminate amount, to make disbursements of public contributions to participating candidates for State Senator and member of the House of Delegates for the 2026 primary and general elections. FCFF revenues may also increase due to the collection of civil or criminal penalties associated with increased participation in the program.

State Board of Elections Administrative Costs

General/special fund expenditures increase by \$15,000 in fiscal 2025, \$221,110 in fiscal 2026, and \$201,420 in fiscal 2027. SBE is authorized to use up to the lesser of 3% of the FCFF balance or \$100,000 for administrative costs under PFA. It is assumed, for the purposes of this fiscal and policy note, that SBE's expenditures resulting from this bill, up to \$100,000 each fiscal year, are covered by special funds from FCFF and the remainder is covered by general funds.

The estimate reflects the cost of:

- computer programming (\$15,000 in fiscal 2025) – SBE's campaign finance reporting system will need to be modified to allow for reporting under PFA to be expanded to candidates for State Senator and member of the House of Delegates; and
- four contractual auditors (\$221,110 in fiscal 2026, and \$201,420 in fiscal 2027) – SBE will need to hire four contractual auditors to handle auditing of the expanded number of campaigns participating under PFA and to pursue civil penalties if

needed. Depending on the number of participating candidates in the 2026 elections, the number of contractual auditors may be able to be reduced for future election cycles, or the contractual auditors may need to be converted to full-time positions, based on the level of candidate participation during the 2026 elections.

Office of the State Prosecutor (OSP) Costs

General fund expenditures increase by \$130,877 in fiscal 2026, and by ongoing amounts in future years. This reflects the cost of hiring a prosecutor within OSP to handle additional campaign finance violation cases resulting from an expanded number of General Assembly candidates. The office's existing staff cannot absorb that additional work.

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: SB 416 of 2021, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 536, received a hearing in the House Ways and Means Committee, but no further action was taken. SB 947 of 2020 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1351, received a hearing in the House Ways and Means Committee, but no further action was taken.

Designated Cross File: None.

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

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