



COMMITTEE TO RECOMMEND FUNDING
FOR THE
PUBLIC ELECTION FUND

January 15, 2016

Hon. Nancy Floreen, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: First Report of Committee to Recommend Funding for the Public Election Fund

Dear President Floreen and Councilmembers:

Our Committee has met monthly since April 2015 and researched the methods used in other jurisdictions to estimate public financing costs for future elections. We have received reports and information from Common Cause Maryland, Maryland, the Director of Campaign Finance at the Maryland Board of Elections, Jared DeMarinis, and the Campaign Finance Institute -- a non-profit think tank that specializes in analyzing public financing programs across the country.

As shown on the attached chart, we estimate the actual cost to Montgomery County of providing the matching funds promised to candidates under the current law will range between a high of \$9,875,000 to a low of \$6,645,000, depending on the number of candidates who choose to participate and their relative success in raising qualifying contributions.¹

In our view, however, more important than accurately guesstimating future payout is providing enough funding to assure the Montgomery County program will be able to meet its promises even if actual participation rates exceed our estimates. This is critical to gaining acceptance of the program by candidates and the public.

We find New York City's example compelling. Over seven election cycles, New York's public financing program has enjoyed wide and increasing public acceptance, and ever-increasing participation by candidates, and has evolved into a matching program very similar to ours.

For the 2013 election, the City's Campaign Finance Board, an independent agency created by referendum with the power to direct the Mayor how much money to put in the budget

¹ Even lower estimates appear on the chart; however, because they assume the number of qualifying contributions raised in 2014 (\$150 or less) will remain the same in 2018, and as the Committee expects the advent of a matching program will significantly increase candidates' efforts to raise matchable contributions, these lower estimates are not deemed realistic.

for public financing, estimated that the amount payable would be \$34 million; however, the Board decided to increase the budgeted amount to \$50 million 'just to be safe.' In fact, \$38.5 million was ultimately paid out. See the attached history provided by the Board.

This isn't "use it or lose it" budgeting. The amount a candidate can earn is capped at a specific dollar amount, so "over-budgeting" doesn't allow any candidate to spend more money, and any amount not actually earned by some candidate will simply roll over into the next election cycle. What's proposed is merely a cushion, acknowledging that estimates are just that - estimates -- but if it turns out the estimate of how many candidates will participate, or how successful they'll be in raising matchable contributions proves too low, the program will still be able to deliver.

The Committee therefore recommends that Montgomery County budget **\$10 million** for the 2018 election cycle, and that appropriation of this amount be completed by May 2017, so the State's Director of Campaign Finance, who must determine by July 2017 whether enough funds are available to meet estimated costs, will not have to mandate a pro rata reduction in the amounts that will be matched.

The Committee's original deadline for reporting was March 1. However, to respond to Councilmember concerns that our recommendations be available as the County Executive develops his operating budget, we agreed to submit our recommendations in January. Several members expressed a desire to continue gathering information, so it is possible the Committee could send supplemental recommendations.

In that connection, Committee Vice-Chair Sharon Cohen made a request during our voting session on January 11, for permission to append to our report her "dissenting view." Attached below, it raises issues that were discussed and decided at our meeting, but some of which, because we did not see the statement until the next day, our report did not specifically seek to address.

The Committee would be glad to provide supplemental information on, or meet with the Council to discuss, any matters of interest to the Council.

Thank you for the opportunity to participate in the development of this important program.

David Scull, Chair
Lee Annis
Margaret Greene
Paul Schwartz

Dissenting View Of Sharon Cohen, Committee Vice-Chair

The Committee did not come to unanimous agreement on a recommended funding amount for the Public Election Fund for the 2018 election. It is important for the County Council, the County Executive and the public to understand concerns raised about the extremely large \$10M figure referenced in this letter as well as the \$9,875,000 to \$6,645,000 range purported to reflect the high and low estimated allocations needed for the fund. First, the calculations for these figures were based on rough guesstimates of how many candidates running in 2018 would opt in to participate in public funding. It is likely that many candidates will choose NOT to participate because the thresholds to qualify and receive public funds are high. Candidates must forgo aggregate individual contributions in excess of \$150.00 as well as forgo contributions from PACs, corporations, unions, and other organizations such as state or local party organizations. It is unrealistic to assume incumbents accustomed to raising large dollar contributions from big money donors (individual, PAC, union, corporations, etc.) will forgo those funding sources. Additionally, to receive the maximum pay out from the fund, the amounts required to be raised are steep. Candidates for County Executive — for example — to receive the max pay out (\$750K) would have to raise approximately \$187,500 from individual County residents but no more than \$150.00 in the aggregate per individual. That's a lot to raise while at the same time forgoing other large dollar contributions as previously noted. Keep mind that our current County Executive raised just \$90K from individuals in Maryland (not explicitly from County residents) in the 2014 election.

There have been two independent analyses — one by Common Cause of Maryland and one by the Campaign Finance Institute (a non-profit think tanks that specializes in public financing). The Common Cause analysis presented to the Committee on July 8, 2015 estimated that program would have cost \$2.5M in the 2014 primary election cycle I the program existed. In a second report presented to us from the Campaign Finance Institute in late December which was also based on the 2014 election data estimated that the program would have cost \$3.272M. While the public campaign fund was not in effect in 2014 so these figures obviously are not entirely reflective of future campaign contributions, I believe that the majority's estimate of \$10M (which is three to four times the experts estimates for 2014) grossly over estimates the amount needed by the fund. This also doesn't take into account two other facts: 1) that incumbents in all Montgomery County elections raise almost all of their funding from PACs/unions/corporations and big dollar donors that they'd have to forgo under public financing; and 2) that all Republican candidate combined for all county positions in 2014 raised just over \$5K in individual contributions under \$150.00. Based on these facts and considerations I believe a range between \$2.5 (Common Cause as of July 2015) and \$3.5M (Campaign Finance Institute as of late December 2015) is a reasonable place to start for a new program as I believe many candidates won't choose to participate and of those that participate not all will receive the max pay out amounts.

This is a brand new program which is using tax payer funds to finance County elections based on "qualified contributions." There's already a concern about those contributions previously identified by Jared DeMarinis Director of Candidacy and Campaign Finance for the State Board of Elections: "told the Committee that the Board would not be able to verify County residence without using the records for registered voters. Therefore, moving beyond

registered voters to County residents would result in no verification of residency before the money is disbursed (emphasis added).” Therefore the first statutory requirement defining a “qualified contribution” for the County’s public campaign financing statute is NOT verifiable before the funds are disbursed according Mr. DeMarinis. This is a new start up program without the ability to verify the base contributions upon which matching funds will be calculated so it is prudent to fund the program at the lower level.

Finally, the majority points toward the New York City public financing program as a model for Montgomery County. After seven election cycles New York estimated a \$34M payout in 2013. New York City has a population of 8.1M people so on a per capita basis New York City is spending \$4.20 per person in tax payer funds. Montgomery County has approximately 1M residents and the majority on the Committee has recommended \$10M for the public campaign fund for the 2018 election. At the proposed \$10M appropriation for Montgomery County’s new program the tax payer expenditure would be \$10.00 per capita, more than double New York City’s expenditure. And of course New York City has the highest media costs in the country and is the most expensive market to campaign in the entire country. A \$10M allocation to this new fund seem extraordinarily excessive.

* Memo Agenda Item 6B, from September 30, 2014 from Robert Drummer and Josh Hamlin to the County Council regarding Bill 16-14 (page 10), Jared DeMarinis.

Cost Estimates for Montgomery County Public Funding Program Based on Various Candidate Scenarios

Summary	Cost
Cost based on 2014 Candidates Actual (In-state Individuals via Dec. 15th filer)	
County Executive (3 of 4)	\$1,601,995
County Council At-Large (5 of 6)	\$1,034,049
County Council District (6 of 17)	\$636,817
Total	\$3,272,861
Additional Cost if 2014 candidates who would not qualify, had raised the min.	
County Executive (1)	\$210,000
County Council At-Large (1)	\$72,500
County Council District (10)	\$362,500
Total	\$645,000
New total cost with additional candidates qualifying	\$3,917,861
Cost based on Max Out Scenario (Dec. 7th from memo)	
County Executive (2 P&G; 2P only)	\$4,500,000
County Council At-Large (5 P&G; 2 P only)	\$3,000,000
County Council District (8 P&G; 3 P only)	\$2,375,000
Total	\$9,875,000
Cost based on 50% Max, 25% Min, 25% mid-level	
County Executive (4 Candidates, 2 max, 1 mid, 1 low)	\$3,743,998
County Council At-Large (6 Candidates, 3 max, 2 mid, 1 low)	\$1,779,309
County Council District (16 Candidates, 8 max, 4 mid, 4 low)	\$2,654,452
Total	\$8,177,759
Cost based on variation of above distribution, fewer max out candidates	
County Executive (4 Candidates, 1 max, 2 mid, 1 low)	\$2,777,996
County Council At-Large (6 Candidates, 2 max, 2 mid, 2 low)	\$1,558,620
County Council District (16 Candidates, 6 max, 5 mid, 5 low)	\$2,318,065
Total	\$6,654,681

Note: Mid-level candidates are based on the 2014 average

Cost Points:

County Executive

Max. Public Funds (P&G)	\$1,500,000
Min. Public Funds for Qualifying Candidate ¹	\$210,000
Avg. of 2014 Candidates Actual Under New System	\$533,998
Max any 2014 candidate would have been eligible for	\$647,372
Avg. 2014 Actual w/additional small donors ²	\$656,398

County Council At Large

Max. Public Funds (P&G)	\$500,000
Min. Public Funds for Qualifying Candidate ¹	\$72,500
Avg. of 2014 Candidates Actual Under New System	\$206,810
Max any 2014 candidate would have been eligible for	\$304,590
Avg. 2014 Actual w/additional small donors ²	\$246,950

County Districts

Max. Public Funds (P&G)	\$250,000
Min. Public Funds for Qualifying Candidate ¹	\$36,250
Avg. of 2014 Candidates Actual Under New System	\$127,363
Max any 2014 candidate would have been eligible for	\$197,784
Avg. 2014 Actual w/additional small donors ²	\$155,863

1. Minimum amounts calculated from considering amount and number of contributions threshold. For example, County Executive candidates must raise \$40,000 from 500 qualifying contributions. Contributions would need to average \$80. This would generate \$210,000 in matching funds.

2. Under the assumption that the new system will lead to candidates raising additional dollars from small donors, this calculation adds in 50% more donors at the \$50 level.

History of the CFB

There have been many changes to the law since the CFB was established in 1988. Learn more about the evolution of the CFB and its mandates.

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- 1988** As a result of several corruption scandals, a series of ethics reforms is enacted, most notably the Campaign Finance Act. Through a city referendum, NYC voters approved a Charter revision establishing the Campaign Finance Board (CFB). The independent, nonpartisan agency is charged with limiting the role and influence of private money in the political process by providing public matching funds to candidates running for city office. The CFB is also mandated to publish a voter guide and provide public disclosure of campaign finance information.
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- 1989** The Board disburses \$4.5 million in public matching funds, matching private contributions from NYC residents at a rate of \$1-to-\$1 (up to the first \$1,000 per contributor), to 36 candidates in the citywide elections. The first Voter Guide is published in English and Spanish, and distributed to nearly 3 million households in NYC.
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- 1990** In response to feedback from candidates, the Candidate Services Unit (CSU) is created. CSU works closely with campaigns, explaining the way the Program works, and helps campaigns comply with the law.
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- 1993** Nearly \$6.5 million in public matching funds is paid to 65 participating candidates. The CFB creates software (C-SMART) to assist candidates in organizing and filing their financial disclosures electronically. The Voter Guide is expanded to include printings in Chinese. New York City voters approve term limits by referendum, limiting all city office holders to two terms (four years per term).
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- 1996** Legislation is enacted requiring Program participants running for citywide offices to participate in a series of public debates as a condition of receiving public matching funds.
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- 1997** Over \$6.9 million in public matching funds is distributed to 85 candidates. The CFB's website launches in July, providing instantaneous access to campaign finance disclosure and other candidate information.
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- 1998** Through legislation and a citywide referendum, contribution limits are reduced, a ban is placed on corporate contributions, and the public matching funds rate changes from \$1-to-\$1 for the first \$1,000 per contributor to \$4-to-\$1 for the first \$250 per contributor.
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- 2001** With term limits creating an unprecedented number of open seats, a historic number of candidates join the Program, taking advantage of the new, more generous matching rate. Over \$42 million in public matching funds is distributed to 199 participants. The attacks on the World Trade Center on September 11th force a postponement of primary elections and displace CFB employees from their office. Despite working from a temporary office at Fordham University, the CFB responds successfully to the needs of hundreds of first-time candidates. A searchable database is added to the CFB website, allowing the public and press to view and sort data on campaign fundraising and spending.
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- 2004** New legislation expands the CFB disclosure requirements to all candidates despite their participation status in the Program. All candidates are also subject to the CFB's contribution limits and ban on corporate contributions. The new law creates a category called "limited participant" for candidates who wish to participate in the Program, but fund their campaigns with personal money.
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- 2005** Over \$24 million in public matching funds is paid to 108 participants. The CFB makes significant changes to the Voter Guide, making it more accessible and easier to read. CFB debates are broadcast in Spanish, Chinese, and Korean for the first time.
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- 2006** New legislation establishes that contributions from lobbyists, their spouses, and domestic partners are no longer eligible to be matched with public funds.
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2007 New legislation severely restricts contributions from people who do business with the city and prohibits contributions from LLCs and partnerships. The public matching funds rate changes from \$4-to-\$1 up to the first \$250 per contributor to \$6-to-\$1 up to the first \$175 per contributor.

2009 In the 2009 elections, \$28.0 million is paid to 140 participating candidates. Despite the extension of term limits in 2008, the elections are very competitive, with a narrow general election margin in the mayor's race, vigorous open-seat races for public advocate and comptroller, and five Council challengers defeating incumbents in primaries.

2010 In *Citizens United vs. Federal Election Commission*, the U.S. Supreme Court rules that federal limits on political independent expenditures by corporations, associations, or labor unions are unconstitutional. Voters overwhelmingly approve an amendment to the NYC Charter that requires independent expenditures in city elections to be disclosed and reported to the CFB. The November 2010 Charter revision also reconstituted the independent Voter Assistance Commission (VAC) within the CFB as the Voter Assistance Advisory Committee (VAAC). The Voter Assistance Unit is created to implement the voter engagement mandates to the CFB by the Charter.

2011 The U.S. Supreme Court issues its decision in *McComish v. Bennett*. The decision finds that "bonus" matching funds provided to candidates in Arizona's public financing system who faced high-spending opponents or outside spending campaigns are unconstitutional. As a result, bonus funds in New York City's system are no longer available to candidates facing high-spending non-participants.

2012 After an unprecedented yearlong process of public comment, the CFB adopts rules implementing the mandate for disclosure of independent expenditures.

2013 Legislation enacted in early 2013 amends the Charter's requirement to disclose independent expenditures, exempting "membership communications" from disclosure. During the 2013 citywide elections, \$38.2 million is paid to 149 participating candidates. For the first time since the matching rate was increased in 1998, a participating candidate is elected mayor. The CFB unveils NYCVotes.org, a unique resource for civic engagement that allows New Yorkers to make contributions and access election information via their

smartphones. The printed Voter Guide is distributed in Bengali for the first time, and the CFB produces its first video Voter Guide, which is televised the week prior to the election as well as integrated into the online Guide.

2014

Legislation is adopted to strengthen the requirements for disclosure of independent expenditures in New York City elections. The new law requires spenders to list their top three contributors on their communications, and to disclose more details about their largest contributors, making it more difficult for the ultimate funders to shield their identity from public view. New legislation is passed requiring candidates to include "paid for by" notices on all their communications, which bans anonymous communications from city elections.