

M E M O R A N D U M

July 7, 2020

TO: Government Operations and Fiscal Policy Committee

FROM: Amanda Mihill, Legislative Attorney

SUBJECT: Public Election Fund

PURPOSE: Discussion – no vote expected

Those expected to attend today's discussion include:

- David Crow, County Department of Finance

Background

This is the Committee's third discussion on the County's public campaign finance program. At its meetings on October 24¹ and December 9, 2019,² the Committee reviewed the program, including its use during the 2018 election cycle, and received information concerning issues raised at the Council's March 26, 2019 public forum and in responses to a survey then-Council President Navarro sent to participants in the program, non-participants in the program, and community groups. Links to the staff reports for those sessions are in the footnotes of this memorandum. An excerpt from the staff packet describing the hearing and survey is attached at ©24-28.

Draft bill

At the conclusion of the December 9 GO worksession, the Committee requested Council staff to draft a bill incorporating the changes to the public financing program recommended by the Committee. A draft bill is on ©1-13.

The Committee's recommendations were as follows:

¹https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20191024/20191024_GO3.pdf

²https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20191209/20191209_GO2.pdf

1. *Reconsider the "one bite at the apple" rule?* County Code §16-22(c) provides that a potential candidate may only submit 1 application for certification to participate in the Program for an election and that a candidate can correct any mistake in the application for certification within either 10 business days or the end of the qualifying period (45 days before the primary).

Committee recommendation: provide for a 10-day period after a candidate submits for qualification where a candidate can cure or supplement their initial submission. This recommendation is incorporated into the draft bill on ©5, lines 92-98.

2. *When is reimbursement cut off deadline?* County Code § 16-23 specifies that a certified candidate can continue collecting contributions and receive a matching contribution "up to" a primary or general election. This language is a bit ambiguous in practice because County regulations allow candidates to submit for matching fund requests each first and third Tuesday. This language could be clarified by expanding the reimbursement deadline to 30 days after the election and make clear that contributions that are submitted up to, and including, election day are matchable.

Committee recommendation: expand the reimbursement deadline to 30 days after the election and make clear that contributions that are submitted up to, and including, election day are matchable. This recommendation is incorporated into the draft bill on ©2, line 20 and ©7, lines 140-144.

3. *Should a person be able to contribute the maximum during both the primary and general?* County Code §§ 16-23 and 16-26 make clear that an individual must not contribute more than \$150 in the aggregate during a 4-year election cycle. Seven campaigns that responded to the survey indicated that donors who gave the maximum in the primary election should be allowed to donate up to the maximum allowable (\$150) in the general election.

Committee recommendation: The Committee unanimously recommended amending the public financing law to increase the maximum contribution limit to \$250 per election cycle. A majority of the Committee, Councilmember Friedson dissenting, recommended amending the law to provide for a match to the maximum. This recommendation is incorporated into the draft bill on ©3, lines 27 and 34; ©4, line 53; ©6-7, lines 106-130; and ©7, line 144.

4. *Should the law be clarified regarding the treatment of in-kind contributions?* County Code §16-23 specifies that the Director cannot distribute matching dollars for an in-kind contribution of property, goods, or services. There was confusion, however, as to whether in kind contributions counted toward the initial qualifying contribution requirements. County law could be clarified in this respect.

Committee recommendation (2-1, Councilmember Katz dissenting): clarify that in kind donations cannot be counted toward the initial qualifying contribution requirements. This recommendation is incorporated into the draft bill on ©3, lines 41-42.

5. *When should a participant be required to close their public funding account?* County Code §16-23(f) requires a participating candidate to return unspent money on the candidate's publicly funded campaign account to the Public Election Fund within 30 days of the primary (if the candidate was not a primary winner) or the general election. Council staff has heard that this deadline can be burdensome and that publicly financed candidates continue to have ongoing expenses after the close of the election.

Committee recommendation: Following the recommendations of Mr. Jared DeMarinis, State Board of Elections, the Committee recommended amending the law to increase the close-out period to 90 days post election and allow carryover funds with the following criteria:

- Limit the funds to \$5,000;
- Candidates must sign a new declaration of intent to participate in the program for the next election cycle by January 31 following the election; and
- Keep the same committee open.

This recommendation is incorporated into the draft bill on ©10-11, lines 223-240.

6. *When does the election end?* Although the answer to this question may seem obvious, there were questions during this past election cycle regarding whether funds could be used in a recount. County law could be clarified so that it is clear when an election ends and whether public funds are available for use in a recount situation. Committee members may recall that Mr. DeMarinis suggested that this situation should be handled with a special account with its own disclosure deadlines and limits. Mr. DeMarinis recommended against the use of public funds for this account. This would still allow a candidate to raise funds to account for this situation.

Committee recommendation: The Committee requested that Council staff reach out to other Councilmembers on this topic. After doing so, a majority of Councilmembers supported a special account for recount situations. As Committee members may recall, this requires state legislation; therefore, this recommendation is not reflected in the draft bill. Council staff will work with the Office of Intergovernmental Relations to implement this recommendation.

7. *Should there be a more severe penalty for campaigns that intentionally undermine the Program's requirements and intent?* County Code §16-28 specifies that a violation of the public campaign financing program is a Class A violation. A Class A criminal violation is \$ 1,000 maximum fine and maximum of 6 months in jail; a Class A civil violation is \$500 for an initial offense and \$750 for a repeat offense.

Committee recommendation: provide for more severe penalties for campaigns that intentionally undermined the Program's requirements and intent. This recommendation is incorporated into the draft bill on ©11-12, lines 261-275.

8. *Should there be a requirement for an end-of-election audit?* There is currently no audit requirement in County law.

Committee recommendation: require an end of election audit. This recommendation is incorporated into the draft bill on ©11, lines 241-248.

9. *Should the law address what happens to a campaign that fails to qualify for the program?* During the inaugural election cycle, several candidates filed an intent to participate in the Program, but did not qualify. It is assumed that in this situation, the candidate is not prohibited from running, but the effect of not qualifying "converts" their campaign into a traditional campaign (i.e., not constrained by the Program's requirements).

Committee recommendation: clarify that a campaign that fails to qualify for the program converts to a traditional campaign. This recommendation is incorporated into the draft bill on ©6, lines 102-104.

10. *What should the duties be for the Committee to Recommend Funding/or the Public Election Fund?* County Code § 16-27 establishes a Committee for the sole purpose of estimating the funds necessary to implement the public campaign finance system and recommending an annual appropriation to the Public Election Fund.

Committee recommendation: expand the duties of the Committee to Recommend Funding for the Public Election Fund to include: public education and engagement; increase the number of Committee members; and add language to ensure that the Committee reflects the diversity of the County. This recommendation is incorporated into the draft bill on ©12, line 279, ©13, line 290; and ©13, lines 300-301.

This packet contains:

Draft bill

PEF law

October 24 staff report excerpt

Circle #

1

14

24

F:\Mihill\Public Election Fund\Outreach 2019\July 10 Session.Docx

Bill No. xx-20
Concerning: Public Campaign Financing
- Amendments
Revised: 1/29/2020 Draft No. 1
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Navarro, Council President Katz, and Councilmember Friedson
(Government Operations and Fiscal Policy Committee)

AN ACT to:

- (1) amend the County public campaign financing system;
- (2) alter the maximum contribution limits;
- (3) allow participating candidates to carryover certain funds under certain circumstances;
- (4) require an audit of the public campaign financing system after the general election in an election cycle;
- (5) alter the penalties for willful violations of the public campaign financing system; and
- (6) generally amend the law governing elections for County elective offices.

By amending

Montgomery County Code

Chapter 16, Elections

Sections 16-18, 16-20, 16-21, 16-22, 16-23, 16-24, 16-25, 16-27, 16-28, 16-29, 16-30, and 16-31

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 16-18, 16-20, 16-21, 16-22, 16-23, 16-24, 16-25, 16-27, 16-28, 16-29, 16-30, and 16-31 are amended as follows:

16-18. Definitions.

In this Article, the following terms have the meanings indicated:

* * *

Campaign finance entity means a political committee established under Title 13 of the [State] Election Law Article of the Maryland Code [, as amended].

* * *

[*Committee to Recommend Funding for the Public Election Fund* means the Committee established in Section 16-27.]

* * *

Contribution means the gift or transfer, or promise of gift or transfer, of money or other thing of value to a campaign finance entity to promote or assist in the promotion of the success or defeat of a candidate, political party, or question. *Contribution* includes proceeds from the sale of tickets to a campaign fundraising event as defined in Section 101 of the Election Law Article of the Maryland Code[, as amended].

* * *

Distribution period means the period of time beginning 365 days before the primary election for the office the candidate seeks and ending [15] 30 days after the date of the general election. The distribution period for a special election under Section 16-17 must be set by Council resolution.

* * *

Election cycle means the primary and general election for the same term of a covered office.

Eligible contribution means an aggregate donation in a 4-year election cycle of [§150] §250 or less from an individual, including an individual who does not reside in the County.

* * *

Publicly funded campaign account means a campaign finance account established by a candidate for the exclusive purpose of receiving eligible contributions and spending funds in accordance with this Article.

Qualifying contribution means an eligible contribution of at least [§5.00] §5 but no more than [§150.00] §250 in support of an applicant candidate that is:

- (1) made by a County resident;
- (2) made after the beginning of the designated qualifying period, but no later than the respective election; and
- (3) acknowledged by a receipt that identifies the contributor's name and residential address and signed by the contributor directly or by a digital signature using a method approved by the Board.

Qualifying contribution does not include an in-kind contribution of property, goods, or services.

16-20. Collecting qualifying contributions.

- (a) Before raising any contribution governed by this Article, an applicant candidate must:
 - (1) file notice of intent with the Board on or before April 15 of the year of the election on a form prescribed by the Board; and
 - (2) establish a publicly funded campaign account for the candidate for the purpose of receiving eligible contributions and spending funds in accordance with this Article.

- (b) Other than a contribution from an applicant candidate or the candidate's spouse, an applicant candidate must not accept an eligible contribution from an individual greater than [~~\$150~~] \$250.
- (c) An applicant candidate must not accept a loan from anyone other than the candidate or the candidate's spouse. An applicant candidate and the candidate's spouse together must not contribute or lend a combined total of more than \$12,000 to the candidate's publicly funded campaign account.
- (d) *Consumer Price Index adjustment.* The Chief Administrative Officer must adjust the contribution limit established in Subsection (b), effective July 1, [~~2018~~] 2022, and July 1 of each subsequent fourth year, by the annual average increase, if any, in the Consumer Price Index for the previous 4 calendar years. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of [~~10 dollars~~] \$10, and must publish the amount of this adjustment not later than March 1 of each fourth year.

16-21. Requirements for certification.

* * *

- [(d) The Executive, after consulting with the Board, must adopt regulations under Method 1 that specify:
- (1) how and when receipts for qualifying contributions from contributors must be submitted to the Board;
 - (2) the documents that must be filed with the Board for certification;
 - (3) the allowable uses of money in a publicly funded campaign account; and
 - (4) other policies necessary to implement this Article.]

16-22. Board determination.

- (a) The Board must certify an applicant candidate if the Board finds that the candidate has received the required number of qualifying contributions and the required aggregate total dollars for the office no later than 10 business days after receiving:
- (1) a declaration from the candidate agreeing to follow the regulations governing the use of a public contribution;
 - (2) a campaign finance report that includes:
 - (A) a list of each qualifying contribution received;
 - (B) a list of each expenditure made by the candidate during the qualifying period; and
 - (C) the receipt associated with each contribution and expenditure; and
 - (3) a certificate of candidacy for a covered office.
- (b) The decision by the Board whether to certify a candidate is final.
- (c) A candidate may submit only one application for certification for any election. A candidate may correct any mistakes in the application for certification or supplement their application with additional qualifying contributions within the earlier of:
- (1) 10 business days after receiving notice that the Board denied the application; or
 - (2) the end of the qualifying period.
- (d) If the Board certifies a candidate, the Board must authorize the Director to disburse a public contribution to the candidate's publicly funded campaign account.

- (e) A candidate that submits a notice of intent under Section 16-20, but fails to qualify as a certified candidate is deemed a non-participating candidate and is not bound by the requirements of this Article.

16-23. Distribution of public contribution.

- (a) Matching amounts. The Director must distribute a public contribution from the Fund to each certified candidate in a contested election only during the distribution period as follows:

- (1) for a certified candidate for County Executive, the matching dollars must equal:

(A) \$6 for each dollar of a qualifying contribution received for the first \$50 of each qualifying contribution;

(B) \$4 for each dollar of a qualifying contribution received for the second \$50 of each qualifying contribution; [and]

(C) \$2 for each dollar of a qualifying contribution received for the [remainder] third \$50 of each qualifying contribution; and

(D) \$1 for each dollar of a qualifying contribution received for the remainder of each qualifying contribution.

- (2) for a certified candidate for County Council, the matching dollars must equal:

(A) \$4 for each dollar of a qualifying contribution received for the first \$50 of each qualifying contribution;

(B) \$3 for each dollar of a qualifying contribution received for the second \$50 of each qualifying contribution; [and]

(C) \$2 for each dollar of a qualifying contribution received for the [remainder] third \$50 of each qualifying contribution; and

(D) \$1 for each dollar of a qualifying contribution received for the remainder of each qualifying contribution.

(3) The total public contribution payable to a certified candidate for either a primary or a general election must not exceed:

(A) \$750,000 for a candidate for County Executive;

(B) \$250,000 for a candidate for At Large Councilmember; and

(C) \$125,000 for a candidate for District Councilmember.

(b) Non-matchable contributions. The Director must not distribute matching dollars from the Fund to a certified candidate for:

(1) a contribution from the candidate or the candidate's spouse; or

(2) an in-kind contribution of property, goods, or services.

(c) Qualifying contribution limits. A certified candidate may continue to collect qualifying contributions and [receive] submit a request for a matching public contribution up to, and including, the day of a primary or a general election. A qualifying contribution must not exceed [\$150] \$250 from any individual in the aggregate during a 4-year election cycle.

(d) Availability of funds for distribution. On or before July 1 of the year preceding the primary election, the Director must determine if the amount in the Fund is sufficient to meet the maximum public contributions reasonably expected to be required during the next election cycle. If the Director determines that the total amount available for distribution in the Fund is insufficient to meet the allocations required by this Section, the Director must reduce each public contribution to a certified candidate by the same percentage of the total public contribution.

(e) General election distributions. Within 3 business days after the County Board certifies the results of the primary election, the Board must authorize the Director to continue to disburse the appropriate public

contribution for the general election to each certified candidate who is certified to be on the ballot for the general election.

(f) [Within 30 days after the County Board certifies the results of the primary election, a participating candidate who is not certified to be on the ballot for the general election must return any unspent money in the candidate's publicly funded campaign account to the Fund. Within 30 days after the County Board certifies the results of the general election, a participating candidate must return any unspent money in the candidate's publicly funded campaign account to the Fund.

(g) Petition candidates. A certified candidate nominated by petition may receive a public contribution for the general election if:

- (1) the candidate's nomination is certified by the County Board; and
- (2) the candidate did not participate in a primary election.

[(h)] (g) Receipts required. A participating candidate must submit a receipt for each qualifying contribution to the Board to receive a public contribution. The Director must deposit the appropriate public contribution into a participating candidate's publicly funded campaign account within 3 business days after the Board authorizes the public contribution.

[(i)] (h) General election public contributions. A candidate may receive a matching public contribution during the general election for an unmatched qualifying contribution received during the primary election after the candidate has received the maximum public contribution for the primary election if the candidate is otherwise eligible to receive matching public contributions during the general election.

[(j)] (i) Mistaken public contributions. If the Director mistakenly distributes a public contribution to a candidate greater than the candidate was entitled to receive, the candidate must repay the funds mistakenly distributed

within 5 business days after being notified of the mistake. Any unspent funds returned to the County after an election may be used as a credit against any repayment required for a public contribution mistakenly received.

[(k)] (j) *Consumer Price Index adjustment.* The Chief Administrative Officer must adjust the public contribution limits established in Subsection (a)(3) and the eligible contribution limit established in Subsection (c), effective July 1, [2018] 2022, and July 1 of each subsequent fourth year, by the annual average increase, if any, in the Consumer Price Index for the previous 4 calendar years. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of [10 dollars] \$10, and must publish the amount of this adjustment not later than March 1 of each fourth year.

16-24. Use of public contribution.

- (a) [A] Except as provided in Section 16-27, a participating candidate may only use the eligible contributions and the matching public contribution for a primary or general election for expenses incurred for the election. A participating candidate must not pay in advance for goods and services to be used after certification with non-qualifying contributions received before applying for certification unless the expenditure is permitted by Executive regulation adopted under Section 16-21.
- (b) A complaint alleging an impermissible receipt or use of funds by a participating candidate must be filed with the Board.
- (c) A participating candidate must provide the Board with reasonable access to the financial records of the candidate's publicly funded campaign account, upon request.

209 [(d) Within 30 days after the County Board certifies the results of the general
 210 election, a participating candidate must return to the Fund any unspent
 211 money in the candidate's publicly funded campaign account.]

212 **16-25. Withdrawal.**

213 (a) A certified candidate may withdraw an application for a public
 214 contribution any time before the public contribution is received by the
 215 candidate's publicly funded campaign account.

216 (b) A participating candidate may withdraw from participation if the
 217 candidate:

218 (1) files a statement of withdrawal with the Board on a form prescribed
 219 by the Board; and

220 (2) repays to the Fund the full amount of the public contribution
 221 received, together with the applicable interest established by
 222 regulation.

223 **16-27. Return of unspent funds; retention of funds.**

224 (a) Except as provided in subsection (b):

225 (1) within 90 days after the County Board certifies the results of the
 226 primary election, a participating candidate who is not certified to
 227 be on the ballot for the general election must return any unspent
 228 money in the candidate's publicly funded campaign account to the
 229 Fund; and

230 (2) within 90 days after the County Board certifies the results of the
 231 general election, a participating candidate must return any unspent
 232 money in the candidate's publicly funded campaign account to the
 233 Fund.

234 (b) A certified candidate may retain funds to pay for post-election expenses
 235 if:

(1) the retained funds do not exceed \$5,000;

(2) the candidate files a new declaration of intent to participate in the public campaign financing system for the 4-year next election cycle by January 31 the year after the election; and

(3) keep the same campaign finance entity open.

16-28. Audit.

(a) After a general election in an election cycle, the Department must conduct an audit of the financial activity of the public campaign financing system, including publicly funded campaign accounts, to ensure publicly funded campaign accounts raised and spent funds in compliance with this Article.

(b) The Executive must adopt regulations that specify the scope of the audit required by this Section.

16-29. Regulations.

The Executive, after consulting with the Board, must adopt regulations under Method 1 that specify:

(a) how and when receipts for qualifying contributions from contributors must be submitted to the Board;

(b) the documents that must be filed with the Board for certification;

(c) the allowable uses of money in a publicly funded campaign account;

(d) the scope of the audit required in Section 16-28; and

(e) other policies necessary to implement this Article.

[16-28] 16-30. Penalties.

(a) Civil Violations. Any violation of this Article is a Class A civil violation. Each day a violation exists is a separate offense.

(b) Payment. A fine may be paid by the campaign only if all public contributions have been repaid to the Fund. Otherwise, the candidate or

officer found to be responsible for the violation is personally liable for the fine.

(c) Additional penalties.

(1) In addition to the penalty specified in Subsection 16-30(a), a certified or participating candidate must withdraw from the public campaign financing system if the candidate intentionally or knowingly provides falsified information, misrepresents a material fact, or conceals relevant information to the Board or Director under this Article.

(2) A candidate that must withdraw from the public campaign financing system under (c)(1) must abide by the withdrawal requirements in Section 16-25, including the repayment of any public contribution received.

[16-27. Committee to Recommend Funding for the] 16-31. Public Election Fund Committee.

(a) Committee established. The [Committee to Recommend Funding for the] Public Election Fund Committee [consists of 5] is 7 members appointed by the County Council for a [four] 4-year term beginning on May 1 of the first year of the Council's term of office. A vacancy occurring before the end of a term must be filled by appointment for the remainder of the term. The Council must ask the County Executive to recommend within 30 days one or more qualified applicants before making any appointment.

(b) Membership; officers.

(1) Each member must be a resident of the County while serving on the Committee.

(2) No more than 3 members [must be of] may be from the same political party.

- 290 (3) The members should reflect the diversity of the County.
- 291 (4) The Council must designate the chair and vice-chair.
- 292 (c) Compensation. Each member must serve without compensation, but may
- 293 be reimbursed for [reasonable expenses] travel and dependent care
- 294 expenses.
- 295 (d) Duties. The Committee must[issue a report to the Council on or before
- 296 March 1 of each year estimating];
- 297 (1) estimate the funds necessary to implement the public campaign
- 298 finance system [and recommending an appropriation to the Public
- 299 Election Fund for the following fiscal year]; and
- 300 (2) conduct public outreach and education activities to raise awareness
- 301 of the public campaign financing system.
- 302 (e) Annual report. The Committee must issue a report to the Council on or
- 303 before January 30 each year that:
- 304 (1) identifies the estimated funds necessary to implement the public
- 305 campaign financing system;
- 306 (2) recommends an appropriation to the Public Election Fund for the
- 307 following fiscal year; and
- 308 (3) the public outreach and education activities undertaken in the prior
- 309 calendar year.
- 310 (f) Staff support. The Council Administrator must provide staff support for
- 311 the Committee.

ARTICLE IV. PUBLIC CAMPAIGN FINANCING.

Sec. 16-18. Definitions.

In this Article, the following terms have the meanings indicated:

Applicant candidate means a person who is running for a covered office and who is seeking to be a certified candidate in a primary or general election.

Board means the Maryland State Board of Elections.

Campaign finance entity means a political committee established under Title 13 of the State Election Law, as amended.

Certified candidate means a candidate running for a covered office who is certified as eligible for public campaign financing from the Fund.

Committee to Recommend Funding for the Public Election Fund means the Committee established in Section 16-27.

Consumer Price Index means the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Arlington-Alexandria Core Based Statistical Area (CBSA), as published by the United States Department of Labor, Bureau of Labor Statistics, or a successor index.

Contested election means an election in which there are more candidates for an office than the number who can be elected to that office. Contested election includes a special election held to fill a vacancy in a covered office under Section 16-17.

Contribution means the gift or transfer, or promise of gift or transfer, of money or other thing of value to a campaign finance entity to promote or assist in the promotion of the success or defeat of a candidate, political party, or question. Contribution includes proceeds from the sale of tickets to a campaign fund-raising event as defined in Section 101 of the Election Law Article of the Maryland Code, as amended.

County Board means the Montgomery County Board of Elections.

Covered office means the office of County Executive or County Councilmember.

Director means the Director of the Department of Finance or the Director's designee.

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Distribution period means the period of time beginning 365 days before the primary election for the office the candidate seeks and ending 15 days after the date of the general election. The distribution period for a special election under Section 16-17 must be set by Council resolution.

Election cycle means the primary and general election for the same term of a covered office.

Eligible contribution means an aggregate donation in a 4-year election cycle of \$150 or less from an individual, including an individual who does not reside in the County.

Fund means the Public Election Fund.

Noncertified candidate means a person who is running for a covered office who either:

- (1) chooses not to apply to be a certified candidate; or
- (2) applies to be a certified candidate but fails to qualify.

Non-participating candidate means a person who is running for a covered office who is either a noncertified candidate or a certified candidate who declines to accept a public contribution.

Participating candidate means a certified candidate who has received a public contribution from the Fund for a primary or general election.

Public contribution means money disbursed from the Fund to a certified candidate.

Publicly funded campaign account means a campaign finance account established by a candidate for the exclusive purpose of receiving eligible contributions and spending funds in accordance with this Article.

Qualifying contribution means an eligible contribution of at least \$5.00 but no more than \$150.00 in support of an applicant candidate that is:

- (1) made by a County resident;
- (2) made after the beginning of the designated qualifying period, but no later than the respective election; and
- (3) acknowledged by a receipt that identifies the contributor's name and residential address and signed by the contributor directly or by a digital signature using a method approved by the Board.

Qualifying period means the period of time beginning on January 1 following the last election for the office the candidate seeks and ending 45 days before the date of the primary election. The qualifying period for a special election under Section 16-17 must be set by Council

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resolution.

Slate means a political committee of two or more candidates who join together to conduct and pay for joint campaign activities. (2014 L.M.C., ch. 28, § 2; 2018 L.M.C., ch. 3, §1.)

Sec. 16-19. Public Election Fund established.

(a) The Director must create a Public Election Fund. This Fund is continuing and non-lapsing.

(b) The Fund consists of:

- (1) all funds appropriated to it by the County Council;
- (2) any unspent money remaining in a certified candidate's publicly funded campaign account after the candidate is no longer a candidate for a covered office;
- (3) any public contribution plus interest returned to the Fund by a participating candidate who withdraws from participation;
- (4) all interest earned on money in the Fund; and
- (5) voluntary donations made directly to the Fund. (2014 L.M.C., ch. 28, § 2.)

Sec. 16-20. Collecting qualifying contributions.

(a) Before raising any contribution governed by this Article, an applicant candidate must:

- (1) file notice of intent with the Board on or before April 15 of the year of the election on a form prescribed by the Board; and
- (2) establish a publicly funded campaign account for the candidate for the purpose of receiving eligible contributions and spending funds in accordance with this Article.

(b) Other than a contribution from an applicant candidate or the candidate's spouse, an applicant candidate must not accept an eligible contribution from an individual greater than \$150.

(c) An applicant candidate must not accept a loan from anyone other than the candidate or the candidate's spouse. An applicant candidate and the candidate's spouse together

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must not contribute or lend a combined total of more than \$12,000 to the candidate's publicly funded campaign account.

(d) *Consumer Price Index adjustment.* The Chief Administrative Officer must adjust the contribution limit established in Subsection (b), effective July 1, 2018, and July 1 of each subsequent fourth year, by the annual average increase, if any, in the Consumer Price Index for the previous 4 calendar years. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of 10 dollars, and must publish the amount of this adjustment not later than March 1 of each fourth year. (2014 L.M.C., ch. 28, § 2; 2017 L.M.C., ch. 33, § 1; 2018 L.M.C., ch. 3, § 1.)

Sec. 16-21. Requirements for certification.

- (a) To qualify as a certified candidate:
 - (1) a candidate for Executive must collect from County residents at least:
 - (A) 500 qualifying contributions; and
 - (B) an aggregate total of \$40,000;
 - (2) a candidate for At-Large Councilmember must collect from County residents at least:
 - (A) 250 qualifying contributions; and
 - (B) an aggregate total of \$20,000; and
 - (3) a candidate for District Councilmember must collect from County residents at least:
 - (A) 125 qualifying contributions; and
 - (B) an aggregate total of \$10,000.
- (b) An applicant candidate must deposit all eligible contributions received into the candidate's publicly funded campaign account. An applicant candidate must deliver to the Board a copy of a receipt for each qualifying contribution.
- (c) A candidate must apply to the Board for certification during the qualifying period.
- (d) The Executive, after consulting with the Board, must adopt regulations under Method 1 that specify:
 - (1) how and when receipts for qualifying contributions from contributors must

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be submitted to the Board;

- (2) the documents that must be filed with the Board for certification;
- (3) the allowable uses of money in a publicly funded campaign account; and
- (4) other policies necessary to implement this Article. (2014 L.M.C., ch. 28, § 2.)

Editor's note—2014 L.M.C., ch. 28, § 2 Initial Regulations, states: The County Executive must submit the initial regulations required by Subsection 16-21(d) to the Council for approval not later than 180 days after this Act becomes law.

Sec. 16-22. Board determination.

(a) The Board must certify an applicant candidate if the Board finds that the candidate has received the required number of qualifying contributions and the required aggregate total dollars for the office no later than 10 business days after receiving:

- (1) a declaration from the candidate agreeing to follow the regulations governing the use of a public contribution;
 - (2) a campaign finance report that includes:
 - (A) a list of each qualifying contribution received;
 - (B) a list of each expenditure made by the candidate during the qualifying period; and
 - (C) the receipt associated with each contribution and expenditure; and
 - (3) a certificate of candidacy for a covered office.
- (b) The decision by the Board whether to certify a candidate is final.
- (c) A candidate may submit only one application for certification for any election. A candidate may correct any mistakes in the application for certification within the earlier of:
- (1) 10 business days after receiving notice that the Board denied the application; or
 - (2) the end of the qualifying period.
- (d) If the Board certifies a candidate, the Board must authorize the Director to disburse a public contribution to the candidate's publicly funded campaign account. (2014

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L.M.C., ch. 28, § 2; 2017 L.M.C., ch. 23, § 1.)

Sec. 16-23. Distribution of public contribution.

(a) The Director must distribute a public contribution from the Fund to each certified candidate in a contested election only during the distribution period as follows:

(1) for a certified candidate for County Executive, the matching dollars must equal:

(A) \$6 for each dollar of a qualifying contribution received for the first \$50 of each qualifying contribution;

(B) \$4 for each dollar of a qualifying contribution received for the second \$50 of each qualifying contribution; and

(C) \$2 for each dollar of a qualifying contribution received for the remainder of each qualifying contribution.

(2) for a certified candidate for County Council, the matching dollars must equal:

(A) \$4 for each dollar of a qualifying contribution received for the first \$50 of each qualifying contribution;

(B) \$3 for each dollar of a qualifying contribution received for the second \$50 of each qualifying contribution; and

(C) \$2 for each dollar of a qualifying contribution received for the remainder of each qualifying contribution.

(3) The total public contribution payable to a certified candidate for either a primary or a general election must not exceed:

(A) \$750,000 for a candidate for County Executive;

(B) \$250,000 for a candidate for At Large Councilmember; and

(C) \$125,000 for a candidate for District Councilmember.

(b) The Director must not distribute matching dollars from the Fund to a certified candidate for:

(1) a contribution from the candidate or the candidate's spouse; or

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(2) an in-kind contribution of property, goods, or services.

(c) A certified candidate may continue to collect qualifying contributions and receive a matching public contribution up to a primary or a general election. A qualifying contribution must not exceed \$150 from any individual in the aggregate during a 4-year election cycle.

(d) On or before July 1 of the year preceding the primary election, the Director must determine if the amount in the Fund is sufficient to meet the maximum public contributions reasonably expected to be required during the next election cycle. If the Director determines that the total amount available for distribution in the Fund is insufficient to meet the allocations required by this Section, the Director must reduce each public contribution to a certified candidate by the same percentage of the total public contribution.

(e) Within 3 business days after the County Board certifies the results of the primary election, the Board must authorize the Director to continue to disburse the appropriate public contribution for the general election to each certified candidate who is certified to be on the ballot for the general election.

(f) Within 30 days after the County Board certifies the results of the primary election, a participating candidate who is not certified to be on the ballot for the general election must return any unspent money in the candidate's publicly funded campaign account to the Fund. Within 30 days after the County Board certifies the results of the general election, a participating candidate must return any unspent money in the candidate's publicly funded campaign account to the Fund.

(g) A certified candidate nominated by petition may receive a public contribution for the general election if:

- (1) the candidate's nomination is certified by the County Board; and
- (2) the candidate did not participate in a primary election.

(h) A participating candidate must submit a receipt for each qualifying contribution to the Board to receive a public contribution. The Director must deposit the appropriate public contribution into a participating candidate's publicly funded campaign account within 3 business days after the Board authorizes the public contribution.

(i) A candidate may receive a matching public contribution during the general election for an unmatched qualifying contribution received during the primary election after the candidate has received the maximum public contribution for the primary election if the candidate is otherwise eligible to receive matching public contributions during the general election.

(j) If the Director mistakenly distributes a public contribution to a candidate greater than the candidate was entitled to receive, the candidate must repay the funds mistakenly distributed within 5 business days after being notified of the mistake. Any unspent funds

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returned to the County after an election may be used as a credit against any repayment required for a public contribution mistakenly received.

(k) *Consumer Price Index adjustment.* The Chief Administrative Officer must adjust the public contribution limits established in Subsection (a)(3) and the eligible contribution limit established in Subsection (c), effective July 1, 2018, and July 1 of each subsequent fourth year, by the annual average increase, if any, in the Consumer Price Index for the previous 4 calendar years. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of 10 dollars, and must publish the amount of this adjustment not later than March 1 of each fourth year. (2014 L.M.C., ch. 28, § 2; 2017 L.M.C., ch. 23, § 1.)

Sec. 16-24. Use of public contribution.

(a) A participating candidate may only use the eligible contributions and the matching public contribution for a primary or general election for expenses incurred for the election. A participating candidate must not pay in advance for goods and services to be used after certification with non-qualifying contributions received before applying for certification unless the expenditure is permitted by Executive regulation adopted under Section 16-21.

(b) A complaint alleging an impermissible receipt or use of funds by a participating candidate must be filed with the Board.

(c) A participating candidate must provide the Board with reasonable access to the financial records of the candidate's publicly funded campaign account, upon request.

(d) Within 30 days after the County Board certifies the results of the general election, a participating candidate must return to the Fund any unspent money in the candidate's publicly funded campaign account. (2014 L.M.C., ch. 28, § 2.)

Sec. 16-25. Withdrawal.

(a) A certified candidate may withdraw an application for a public contribution any time before the public contribution is received by the candidate's publicly funded campaign account.

(b) A participating candidate may withdraw from participation if the candidate:

(1) files a statement of withdrawal with the Board on a form prescribed by the Board; and

(2) repays to the Fund the full amount of the public contribution received,

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together with the applicable interest established by regulation. (2014 L.M.C., ch. 28, § 2.)

Sec. 16-26. Applicant and participating candidate restrictions.

An applicant candidate or a participating candidate must not:

- (a) accept a private contribution from any group or organization, including a political action committee, a corporation, a labor organization, or a State or local central committee of a political party;
- (b) accept private contributions from an individual in an aggregate greater than \$150 during a 4-year election cycle, or the maximum amount of an eligible contribution, as adjusted by Section 16-23(i);
- (c) pay for any campaign expense after filing a notice of intent with the Board to seek public funding with any campaign finance account other than the candidate's publicly funded campaign account;
- (d) be a member of a slate in any election in which the candidate receives a public contribution;
- (e) accept a loan from anyone other than the candidate or the candidate's spouse; or
- (f) transfer funds:
 - (1) to the candidate's publicly funded campaign account from any other campaign finance entity established for the candidate; and
 - (2) from the candidate's publicly funded campaign account to any other campaign finance entity. (2014 L.M.C., ch. 28, § 2; 2018 L.M.C., ch. 3, § 1.)

Sec. 16-27. Committee to Recommend Funding for the Public Election Fund.

- (a) The Committee to Recommend Funding for the Public Election Fund consists of 5 members appointed by the County Council for a four-year term beginning on May 1 of the first year of the Council's term of office. A vacancy occurring before the end of a term must be filled by appointment for the remainder of the term. The Council must ask the County Executive to recommend within 30 days one or more qualified applicants before making any appointment.
- (b) Each member must be a resident of the County while serving on the Committee. No more than 3 members must be of the same political party. The Council must designate the

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chair and vice-chair.

(c) Each member must serve without compensation, but may be reimbursed for reasonable expenses.

(d) The Committee must issue a report to the Council on or before March 1 of each year estimating the funds necessary to implement the public campaign finance system and recommending an appropriation to the Public Election Fund for the following fiscal year.

(e) The Executive Director of the Office of the County Council must provide staff support for the Committee. (2014 L.M.C., ch. 28, § 2; 2019 L.M.C., ch. 23, §1.)

Sec. 16-28. Penalties.

Any violation of this Article is a Class A civil violation. Each day a violation exists is a separate offense. (2014 L.M.C., ch. 28, § 2.)

Hearing

The Council held a public forum on the program on March 26 at which 11 speakers testified (see written testimony at ©28-47). Most speakers supported the Program generally and provided specific recommendations. A sampling of recommendations appear below:

- Allow an unaffiliated candidate or a candidate who runs unopposed in a primary to apply for certification at a later date (under current law, a candidate must apply for certification no later than 45 days before the primary election).
- Change single certification (one bite at the apple) rule.
- Audit the program.
- Allow only contributions from registered voters to count for matching funds.
- Clarify whether in kind contributions could toward the threshold amount required to qualify for public financing.
- Increase the maximum individual contribution limit/lower qualifying threshold/change matching funds.
- Increase in-kind donation limits/allow ticket fees as an in-kind donation.
- Informal slates should not be allowable.
- Committee conversation – or allow contributions up to the traditional funding limit without penalty.
- Simplify the reporting system.

In addition to the hearing testimony, Common Cause Maryland submitted recommendations (©48-49) to:

- expand the responsibilities of the Committee to Recommend Funding to the Public Election Fund to include public education and engagement;
- increasing the number of seats on the Committee or ensure the Committee reflects the diversity of the County;
- allocate funds needed in the next budget cycle to implement House Bill 830, which mandates that jurisdictions that establish public campaign financing programs provide the necessary funding to staff the program; and
- support the PEF Committee's recommendation that \$7.2 million be provided for the 2022 election cycle.

Survey

Council President Navarro sent a survey to participants in the program, non-participants in the program, and community group seeking input as to their experiences during the inaugural cycle.

Participants

The survey the Council President sent to each campaign that participated in the program asked the following questions (see ©50-52):

1. Why did you choose to participate in the program (with multiple choice responses)?

2. Would you participate in the program in the future?
3. What problems, if any, did your campaign experience with the program (with multiple choice responses)?
4. Did the availability of the program influence your decision to run for office?
5. Was the availability of the program a positive or negative influence?
6. What changes do you feel would improve the process for the next election (with multiple choice responses)?

The Council received responses from 11 campaigns. A summary follows; the entirety of responses is on ©53-64.

Question: Why did you choose to participate in the PEF Program?

Statement	Number of candidates agreeing with statement
Places a greater emphasis on small donors in the election process	10
Discourages special interest financing of elections	7
It is a step toward good government	8
Provides greater funding for campaigns	7
Other	3

Three candidates indicated other reasons they choose to participate in the PEF program:

- It was the most viable and accessible way for a low-income person to raise enough funds for a county-wide campaign.
- It was an opportunity to tap into networks and communities that might not have any interest in donating or had reservations about donating.
- Lacked network of large donors.

Question: What problems, if any, did your campaign experience with the PEF Program?

Statement	Number of candidates agreeing with statement
Computing matching amounts	5
Tallying small donations from the same individual	3
Burdensome standard of proof of residency	55
Administratively burdensome to upload individual donor forms/receipts and link the documents in the transaction	8
State online program was not user friendly	6
State staff were unavailable to timely answer inquiries	4
No problems	1
Other	5

Five candidates indicated other problems that they faced:

- State staff were sometimes unavailable, though they were trying hard to respond.
- The program was not written to be user friendly.
- Matching donors with pdfs could have been much easier if the pdfs were listed last in first.
- The program didn't account for addendums properly.
- State staff incorrectly calculated matching funds, resulting in the campaign needing to correct the total matching amount requests. This was due to a flaw in the online system.
- The applicability of in-kind donations to reaching the \$20,000 threshold was not documented in the summary guide.

Question: What changes do you feel would improve the process for the next election?

Statement	Number of candidates agreeing with statement
Lower threshold to qualify for matching funds	0
Increase the public matching amount	3
Increase the maximum donation amount	2
Allow participants the ability to correct their initial qualifying report	7
Provide participants a second opportunity during the cycle to qualify for public funding (i.e., reconsider the "one bite at the apple" rule)	5
Allow donors who gave the maximum in the primary to donate up to the maximum allowable in the general	7
Do not require publicly funded candidate to "shut down" their public campaign account or return unused funds	1
Additional training on the state software	2
Candidates in uncontested races should be eligible for some matching funds	3
Other changes	2

Two candidates indicated “other changes”, but only 1 provided a written explanation: extend the time needed for candidates to close their public campaign account. It was not enough time to pay bills and meet the deadline.

Other survey insights

- 6 candidates stated that the availability of the program influenced their decision to run for office; 5 candidates stated that the program did not influence their decision to run.
- 10 candidates stated that they would participate in the program in the future; 1 candidate would not.

Other thoughts from participants

The questionnaire had a space allowing for other thoughts about the program. Candidates that had a response for this question and indicated a specific program change stated:

- The County should provide software to compute matching funds while accounting for a donor’s previous donation.
- Donations from a candidate and candidate’s spouse should be matchable.
- Do not lower the threshold to qualify.
- The public matching amount could be increased for Council at-large because it is a county-wide race (like the Executive race) and is expensive.
- Do more to inform County residents about the program and encourage them to participate.

Non-participants

The survey the Council President sent to each campaign that did not participate in the program asked the following questions (see ©65-66):

1. Why did you choose not to participate in the PEF Program?
2. Did the availability of the PEF Program influence your decision to run for office?
3. Was it a positive or negative influence?
4. What changes to the Program would make it more likely for you to participate in the PEF Program in the future?

The Council heard from one non-participant who indicated that they did not participate in the program because they did not think they could reach the \$20,000 minimum in donations. This candidate recommended that the minimum threshold be much lower than \$20,000 in donations.

Policy groups

The survey the Council President sent to various policy groups asked the following questions (see ©67-69):

- What worked well during this past election cycle as it relates to the PEF Program?
- What did not work well during this past election cycle as it relates to the PEF Program?
- Do you recommend any changes to the law to improve the PEF Program? What changes do you recommend?

- Do you recommend any non-law changes (staffing, software, funding) to improve the PEF Program? What changes do you recommend?

The Council received 28 responses to this survey. A sampling of responses follows; the entirety of responses is on ©70-75.

Question: What worked well during this past election cycle as it relates to the PEF Program?

- Many candidates raised more money than in previous election cycles without bowing to special interests.
- More candidates that normally would not run for office because of funding ran because of the Program.
- Brought more people, with diverse ideas, into politics.
- Appealing and comforting to choose from candidates who declined to seek big dollar backers.
- More diverse group of candidates.

Question: What did not work well during this past election cycle as it relates to the Program?

- It is better if all candidates use it.
- Playing field not level because wealthy candidates who opted out of the program could spend as much as they wanted, while those who opted in were hobbled by restrictions.
- Too many candidates.
- Unfair delays in funding.
- Program could have been more aggressively advertised and/or promoted.
- Candidates who won the primary were hurt that they did not get new money for the general election.

Question: Do you recommend changes to the law? What changes?

- The individual contribution limit should reset if a candidate is victorious in the primary.
- Make it more self-explanatory.
- To get wider participation, it should be included as an item on the property tax form.
- Brand candidates who are using the program. Make it more visible who is running a fair campaign.

Question: Do you recommend any non-law changes? What changes?

- Put together a “mistakes made” guide.
- A website that serves as a dashboard for all candidates and lists whether campaign contributions were following public finance, whether large donations disqualified them, or whether they failed to meet the participation threshold.
- Funding and more marketing to explain the program.