

M E M O R A N D U M

May 3, 2021

TO: Government Operations (GO) Committee

FROM: Naeem M. Mia, Legislative Analyst

SUBJECT: **Public Elections Fund (PEF) Non-Departmental Account (NDA) FY22 Operating Budget**

PURPOSE: Make Committee recommendations for Council Consideration

Expected Participants:

- Dale Tibbitts, Office of the County Executive (CEX)
- Eric Friedman, Director, Office of Consumer Protection (OCP)
- K. Samuel Bao, Office of Consumer Protection (OCP)
- David Crow, Department of Finance (FIN)
- Estela Boronat de Gomes, Office of Management and Budget (OMB)

Current¹ members of the Public Elections Fund Committee include:

1. David Scull, Chair
2. Nancy McMahan Farrar, Vice Chair
3. Lee Annis, Member
4. Stephen Whitted, Member
5. Vacant, Member
6. Vacant, Member
7. Vacant, Member

¹ Bill 31-20 expanded the number of members for the PEF Committee from five (5) to seven (7). A fifth member, Samuel Stadland, resigned in early 2021 from the PEF Committee in order to join the Redistricting Commission. The County is actively seeking applicants to fill the three vacant positions.

Summary of FY22 Recommended Budget and Key Discussion Issues

PEF NDA	FY21 Approved	FY22 CE Recommended	Change from FY21 Approved
General Fund	\$0	\$3,000,000	-
Operating Costs	\$0	\$3,000,000	-
Total Expenditures (All Funds)	\$0	\$3,000,000	-

Council Staff Recommends:

- Appropriation of **\$3,000,000** for the Public Elections Fund NDA, including **\$2,850,000** for public matching funds and **\$150,000** for contractual staff support and operating expenses.
- Addition of **\$179,305** and 1.5 FTE to the Office of Consumer Protection, including:
 - **\$100,086 and 1.0 FTE** for a *new* Grade 23 Project Manager I position to the Office of Consumer Protection’s FY22 budget to serve as the full-time Public Liaison.
 - **\$79,219 and 0.50 FTE** to *convert* an existing Grade 18 Administrative Specialist I position to in the Office of Consumer Protection’s FY22 budget from part-time to full-time to provide administrative support to the department for its expanded functions.

Legal Framework:

Under Maryland Election Law, Section 13-505, counties may establish their own system of public campaign financing. In September 2014, the Council unanimously enacted **Bill 16-14**, which established a Public Elections Fund to provide public campaign financing for County Executive and County Council candidates. In October 2020, the Council also unanimously enacted **Bill 31-20**, which increased the maximum contribution limits, increased close-out periods to 90 days after an election, established post-election audit requirements, clarifies that in-kind contributions cannot be counted as a qualified contribution eligible for public matches, and other changes.

The Maryland State Board of Elections is responsible for certifying candidates and generally administering the public campaign financing system. The Department of Finance is responsible for establishing, administering, distributing, and auditing funds. The County Council is responsible for appropriating funds.

Council staff has identified the following key issues for Council discussion:

1. Public Liaison Role in the Office of Consumer Protection (OCP) (\$179,305)

Bill 31-20 stipulates that the “County Executive must designate an employee to serve as a liaison between County government and the public, candidates, and potential candidates on issues related to the public campaign finance program.” In the past, Mr. David Crow from the Department of Finance as the fund administrator has fulfilled this function de facto and has coordinated extensively with the state Board of Elections to develop guidance materials and answer questions from interested members of the public.

Based on the Committee’s feedback at its budget worksession on April 29, 2021, Executive branch has agreed to transmit a budget amendment that creates a *new* position in OCP to fulfill the role of Public Liaison and to provide additional staff support to administer the office’s new duties. Altogether, OCP requests the following:

- a. Addition of \$100,086 and 1.0 FTE for a Grade 23 Project Manager I position to the FY22 budget to serve as the full-time Public Liaison. Existing staff within the department would serve as a *temporary* Public Liaison until this new position was recruited and on-boarded.
- b. Addition of \$79,219 and 0.50 FTE to convert an existing Grade 18 Administrative Specialist I position to in the Office of Consumer Protection’s FY22 budget from part-time to full-time to provide administrative support to the department for its expanded functions. The position is currently vacant and lapsed (unfunded) for FY21.

Job duties specifically related to the Public Liaison function is to assist as needed with answering questions from candidates/public on:

- Candidate qualification and certification
- Contribution requirements and limitations
- Reporting periods, mandatory reports, deadlines, the election cycle
- Allowable uses of funds and campaign expenditures, return of unspent funds

Council Staff Recommendation: Approve the addition of these staff resources to the Office of Consumer Protection (OCP) in FY22. As these resources are not included in the Executive’s recommended budget, staff recommends these items be added to Category 3.

2. Recommended FY22 Appropriation (CE & Council Staff: \$3,000,000)

The County Executive is recommending a total of \$3.0M in new appropriations for the Public Elections Fund in FY22. Of this amount, the Executive recommends that \$2.75M would be allocated for providing matching contributions to eligible candidates and \$250,000 is allocated for providing contractual support to the Department of Finance for administering the funds. The County Executive’s recommended appropriation for FY22 matches the recommendation of the Public Elections Fund Committee (see item #3 below). Relevant pages from the FY22 recommended operating budget publication can be found on ©1.

In addition, unspent appropriations in the Public Elections Fund generally carry over into future fiscal years. At the end of the 2018 general election, approximately \$1.8M remained in the fund. After accounting for interest earnings and return of unspent funds, the current balance is approximately \$2.1M.

Public Hearing/Testimony: There were no speakers or testimony related to the Public Elections Fund during the Council's April 2021 operating budget public hearings.

a. Operating Expenses for Department of Finance (CE: \$250,000; Council Staff: \$150,000)

The Executive's recommended budget identifies \$250,000 for staff support, including two (2) contractor positions in the Department of Finance to support the fund administrator and the Public Liaison.

After discussions and concurrence with Executive branch staff, Council staff recommends that the \$250,000 of requested staff support be reduced to \$150,000 to provide for an entry-level full-time contractor position to support the Department of Finance in administering the fund and to reflect the creation of dedicated resources in OCP. Finance staff is coordinating with the State Board of Elections to identify suitable contractors; cost estimates are approximately \$60-70 per hour for 2,000 hours (or \$120,000 to \$140,000).

The duties of the contractual support staff include, but are not limited to:

- Verify matching request reports meet legal and programmatic requirements
 - Recalculate amount requested for matching
 - Validate that a contribution is a qualifying contribution able to be matched
 - Ensure no duplicate contributions listed on report
 - Verify contributions do not exceed individual maximum amounts

- Revise and update Program materials throughout the election cycle:
 - FAQ document
 - Summary Guidebook
 - Program Webpage

In addition, Finance staff requests placeholder funds of approximately \$10,000 to \$30,000 for potential information technology expenses (such as purchasing software licenses or modifications to County systems) that may occur if the State updates or modifies its own IT systems.

b. Public Matching Funds (CE: \$2,750,000; Council Staff: \$2,850,000)

The County Executive recommended \$2.75M in FY22 to provide matching public funding for eligible candidates (in addition to the \$2.1M currently available in fund balance). Table 1 below

provides a funding history of appropriations and distributions since the establishment of the fund in FY16.²

Table 1. Funding History (estimated)

Fiscal Year	Prior-Year Fund Balance	Appropriations	Net Distributions*	Total Available Resources	Election Cycle
FY16	-	\$1.0M	-	\$1.0M	-
FY17	\$1.0M	\$5.2M	-	\$6.2M	-
FY18	\$6.2M	\$5.1M	(\$4.1M)	\$7.2M	2018 primary
FY19	\$7.2M	(\$4.0M)**	(\$1.4M)	\$1.8M	2018 general
FY20	\$1.8M	-	-	\$1.9M***	-
FY21	\$2.0M	-	-	\$2.1M	-
FY22	\$2.1M	\$3.0M	TBD	\$5.1M****	2022 primary

* Includes matching contributions only (and return of unspent funds); does not include administrative expenses.

** \$4.0M in available appropriations was transferred out of the fund for other County priorities in July 2018 after the 2018 primary elections.

*** Fund balance collects investment interest income, resulting in a slight increase each fiscal year.

****After netting out for administrative expenses of \$150,000, available resources for matching funds is \$4.95M.

Assuming the Council appropriates the \$3.0M recommended by the Public Elections Fund Committee and the County Executive in FY22, *this would result in total available resources for providing public matching contributions of \$4.95M* (netting out for the Department of Finance’s administrative expenses and including the available fund balance).³

As Council staff has noted in the past, estimating the actual cost necessary to implement the public financing program is difficult and depends on a number of factors including:

- the number of candidates that run and want to participate in the public financing program;
- whether there are open seats for which candidates could use the public financing program (open seats tend to, though not always, draw more candidates);
- whether candidates who want to participate are likely to meet the thresholds required in the law;
- if the minimum thresholds are met, whether candidates are likely to qualify for the maximum payout from the Fund; and
- For the 2022 election, the Redistricting Commission is developing/adjusting County election district boundaries; its recommendations to the Council are due by November 15, 2021. The Council then has up to 90 days (until February 21, 2022) to either adopt or recommend new boundaries; if no action is taken prior to the 90 days, the Commission’s

² Source: Department of Finance Program Reports, available here: https://www.montgomerycountymd.gov/BONDS/campaign_financing_2018.html

³ Finance staff notes that administrative expenses are allocated to the NDA while matching funds are transferred to a non-lapsing “sub-fund” for accounting purposes.

recommendations are automatically adopted. This lack of certainty about election district boundaries may affect the number of candidates that elect to run and opt into the public campaign financing program.

Appropriate funding must be provided for the program to be successful. The law requires that the Finance Director determine whether the amount in the Fund is sufficient to meet the maximum public contributions expected to be required during the election cycle. If insufficient funding is provided, participating candidates will only receive a fraction of what they would have otherwise received. The Council may consider supplemental appropriations to replenish the Public Elections Fund if it appears that funding is running low.

As a guide to determine an appropriate funding level for the 2022 election cycle, the Council may look at the most recent and only election cycle (2018). Tables 2 through 4 summarize the net distribution of funds for each contest and the number of open seats in both the most recent and upcoming elections (anticipated).

Table 2. 2018 Primary Elections – Use of Public Funds⁴

<u>Contest</u>	<u># of Qualified Candidates Electing Public Funds</u>	<u># Net Distributions</u>	<u># of candidates maximizing public funds</u>
County Executive	3	\$1.7M	1 (\$750,000)
Council – At-Large	12	\$2.0M	2 (\$250,000)
Council – District	7	\$446K	1 (\$125,000)
Totals:	22	\$4.1M	4

Table 3. 2018 General Elections – Use of Public Funds⁵

<u>Contest</u>	<u># of Qualified Candidates Electing Public Funds</u>	<u># Net Distributions</u>	<u># of candidates maximizing public funds</u>
County Executive	2	\$940K	1
Council – At-Large	4	\$120K	0
Council – District	3	\$18K	0
Totals:	9	\$1.1M	1

⁴ Source: Department of Finance Program Report, Primary Election, #14, available here: https://www.montgomerycountymd.gov/BONDS/Resources/Files/PEF_Distribution_Report_14.pdf

⁵ Source: Department of Finance Program Report, General Election, #6, available here: https://www.montgomerycountymd.gov/BONDS/Resources/Files/PEF_GE_Distribution_Report_6.pdf

Table 4. Open Seats (No Incumbent) – 2018 vs. 2022

<u>Contest</u>	<u>2018 Total Seats</u>	<u>2018 Open Seats</u>	<u>2022 Total Seats</u>	<u>2022 Anticipated Open Seats</u>
County Executive	1	1	1	0
Council – At-Large	4	3	4	1
Council – District	5	1	7	4
<u>Totals:</u>	<u>10</u>	<u>5</u>	<u>12</u>	<u>5</u>

A total of \$5.2M (net of returned funds) was expended from the Public Elections Fund for the 2018 election cycle, of which \$4.1M (or 79%) was spent on the primaries (10 total seats with 5 open).

Based on this history, \$4.95M in available resources for FY22 is reasonably sufficient to cover matching contributions for 12 total races (including 5 open) for the 2022 primary elections; additional appropriations will likely be needed in FY23 for the 2022 general election. However, Council may consider later supplemental appropriations in FY22 if the number of filing candidates (the filing period is from February 21, 2021 through February 22, 2022) increases and/or funding disbursements are projected to be depleted during FY22. The deadline to file a notice of intent with the Board of Elections to seek public financing is April 15, 2022.

Council Staff Recommendation: Appropriate \$3,000,000, including \$2,850,000 for public matching funds and \$150,000 for administrative staff support for the Department of Finance.

Monitor disbursements from the fund to determine whether an FY22 supplemental appropriation is necessary to replenish the fund.

Alternative Option: Consider adding up to \$1.0M (in \$250,000 increments or tranches) to the Public Elections Fund as a Category 3 item. Unspent funds may carry over into FY23 to be used to support the General Election in November 2022. Appropriation language should note that these additional funds may be used solely for providing matching funds and to fund public outreach efforts (once identified) by the Public Elections Fund Committee.

3. Public Elections Fund Committee Recommendations for FY22 and FY23

The Public Elections Fund (PEF) Committee, formerly known as the Committee to Recommend Funding for the Public Elections Fund, recommended a *total* funding level of \$7.5M for the 2022 election cycle. This amount includes the \$2.0M of available fund balance, \$3.0M of new appropriations recommended for FY22, and an additional \$2.5M recommended for FY23.

The Committee’s estimate of total costs for each contest is assumed as follows:

County Executive (1 seat)	\$3.0M
Council At-Large (4 seats)	\$1.5M

Open (4 seats) Council Districts	\$2.0M
Non-Open (3 seats) Council Districts	\$600,000
Additional administrative expenses	\$350,000
<u>Total:</u>	<u>\$7.45M</u>

After the approval of Question C in November 2020, the Council will expand from 9 seats (5 district, 4 at-large) to 11 seats (7 district, 4 at-large). As a result, the Public Elections Fund Committee has increased its recommendation in its 2020 report to \$7.5M. A copy of the 2020 report can be found at **©2-3**.

Council Staff Recommendation: Concur with the Public Elections Fund Committee.

4. Future Discussion/Review Items

- Review disbursements through the fall to determine whether a supplemental appropriation is likely in order to replenish the Public Elections Fund.
 - Review the Public Elections Fund Committee’s outreach and public awareness efforts for the 2022 election cycle. The Committee currently has three vacancies (out of a total of seven seats); recruitment efforts to fill the seats is currently underway. The Committee’s next meeting will likely be in June.
 - Examine the fiscal impacts of expanding the public campaign financing system for the offices of Clerk of the Circuit Court, Register of Wills, Sheriff, and State's Attorney, as *authorized* (but not required) by proposed Maryland House Bill HB 433.
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This report contains:

	<u>Circle Page #</u>
1. Publication Pages – Public Elections Fund NDA	©1
2. Public Elections Fund Committee’s 2020 Recommendation	©2-3

FY22 Recommended Changes	Expenditures	FTEs
FY21 Approved	20,000	0.00
FY22 Recommended	20,000	0.00

☀ Public Elections Fund

Article IV of Chapter 16 of the County Code requires the Director of Finance to create a Public Election Fund to provide public campaign financing for qualified candidates for County Executive or County Council. The law is intended to encourage more candidates who do not have access to large contributions from interest groups or individuals to run for County elective offices. This NDA provides for the distribution of public contributions to qualified candidates in a contested election. This funding level was recommended by the Committee to Recommend Funding for Public Election Fund.

FY22 Recommended Changes	Expenditures	FTEs
FY21 Approved	0	0.00
Increase Cost: Public Election- Funding FY22	2,750,000	0.00
Add: Administrative Expenses - One Time	250,000	0.00
Increase Cost: Group Insurance Adjustment	434	0.00
Decrease Cost: Negating Group insurance adjustment	(434)	0.00
FY22 Recommended	3,000,000	0.00

☀ Public Technology, Inc.

The Public Technology Institute (PTI) actively supports local government executives and elected officials through research, education, executive-level consulting services, and national recognition programs. As the only technology organization created by and for cities and counties, PTI works with a core network of leading local officials - the PTI membership - to identify research opportunities, provide thought leadership and professional development opportunities, share solutions, provide technology support services, recognize member achievements and address the many technology issues that impact local government.

Funds are budgeted each year to continue membership in PTI.

FY22 Recommended Changes	Expenditures	FTEs
FY21 Approved	20,000	0.00
Decrease Cost: Public Technology Annual Membership Cost Reduction	(15,000)	0.00
FY22 Recommended	5,000	0.00

☀ Retiree Health Benefits Trust

Consolidated Retiree Health Benefits Trust: Beginning in FY08, the County implemented a plan to set aside funds for retiree health benefits, similar to the County's 50 year-old practice of prefunding for retiree pension benefits. Due to exponential growth in expected retiree health costs, the County had determined the cost of funding these benefits, which were being paid out as the bills came due, would become unaffordable. Setting aside money now and investing it in a Trust Fund, which is invested in a similar manner as the pension fund, not only is a prudent and responsible approach but will result in significant savings over the long term.



**COMMITTEE TO RECOMMEND FUNDING
FOR THE
PUBLIC ELECTION FUND**

Hon. Tom Hucker, President
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

January 21, 2021

Re: 2021 Report of Committee to Recommend Funding for the Public Election Fund

Dear President Hucker and Councilmembers:

Last year we recommended funding of \$6.3 million for the 2022 election cycle. Since then, a successful ballot question (Question C) has increased the number of open seats from 3 to 5.

Also, with County government and community efforts to promote Racial Equity and Equality in the election process, we may have a larger pool of citizens running for office who will disproportionately apply for public funding to finance their campaigns.

Further, a new state law requires counties to pay the State Board of Election's costs for administering the county's public financing program.

And finally, the Committee notes that final action by the Council on the new district boundaries could come as late as Feb 21, 2022 – only a few days before the primary filing deadline on Feb 28, 2022 -- potentially leaving candidates with very limited time to decide where and whether to run, and if yes, then to get their campaigns organized. The Committee recommends the Council consider ameliorating this potential hardship by putting in place, as soon as practicable, a common fundraising website available to all candidates, similar to the one in use in New York City, which has proven very successful and is in fact used by all candidates (see: <https://www.nycvotes.org/>).

We therefore recommend a fund of \$7.5 million for the 2022 election cycle, primary and general combined, derived approximately, as follows:

County Executive	\$3.0 million
Council At Large	\$1.5 million
Open Council Districts (4, perhaps 5) x \$500,000	\$2.0 million (perhaps \$2.5 million)
Other Council District (5, perhaps 4) x \$150,000	\$750,000 (perhaps \$600,000)
Additional administrative expenses	\$350,000

Total: minimum of \$7.5 million (approx.)

Because there have been no additions to the Fund in the past two fiscal years, only \$2.02 million is currently available. To get to \$7.5 million in time to meet the demand (June 28, 2021 is the starting date for matching funds requests), the Committee recommends \$3.0 million be added in the current budget cycle (FY22, starting July 1, 2021) and \$2.5 million in the following cycle (FY23, starting July 1, 2022).

We thank the Council for the opportunity to assist in the development of this important program.

Respectfully submitted,

David Scull, Chair
Nancy McMahan Farrar, Vice Chair
Lee Annis
Sam Statland
Stephen Whitted

CC:

Hon. Marc Elrich, County Executive
David Crow, Department of Finance
Naeem Mia, County Council