

M E M O R A N D U M

January 31, 2022

TO: Government Operations and Fiscal Policy Committee

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Expedited Bill 45-21, Elections – Public Campaign Financing – Restrictions

PURPOSE: Committee worksession – recommendation expected

Expected Attendees

Jared DeMarinis, Director - Division of Candidacy and Campaign Finance,
Maryland State Board of Elections
Kathleen Boucher, Deputy Director, Office of Intergovernmental Relations
Ed Lattner, Chief – Government Operations Division, Office of the County Attorney
David Crow, Acting Controller, Department of Finance

Expedited Bill 45-21, Elections – Public Campaign Financing – Restrictions, sponsored by Lead Sponsors Councilmembers Glass, Katz, and Riemer, and then-Council Vice-President Alborno, and Co-sponsors Councilmembers Navarro and Rice and then-Council President Hucker, was introduced on November 16, 2021. A public hearing took place on December 7, 2021.¹

Expedited Bill 45-21 would amend the County’s public campaign finance law to permit certain limited in-kind donations (equivalent to \$10,000 or less) from state or County central committees to publicly financed candidates.

PURPOSE

The underlying purpose of the bill is to permit the central committees to display or distribute the literature of publicly financed candidates under certain conditions. Currently, the central committees are precluded from displaying or distributing literature for publicly financed candidates, but they can and do display literature for traditionally financed candidates.

BILL DESCRIPTION

Under current County law, a publicly financed candidate must not accept a private contribution from any group or organization, including a political action committee, a corporation,

¹#CampaignFinance

a labor organization, or a State or local central committee of a political party. (County Code, Section 16-26).

Expedited Bill 45-21 would carve out a limited exception to this prohibition for “an in-kind contribution equal to or less than \$10,000 from a State or a Montgomery County central committee of a political party.” By creating this exception, a central committee would be permitted to display or distribute a publicly financed candidate’s literature – or otherwise make a limited in-kind contribution to a publicly financed candidate – as long as the contribution does not exceed \$10,000 in value. The bill also would prevent publicly financed candidates from fundraising for central committees.

State law generally authorizes the County to create a public campaign finance system, and to set eligibility and parameters of the program within certain limitations. *See* Md. Code Ann., Election Law Article Section 13-505. Expedited Bill 45-21 would be consistent with the limitations set forth in state law.

On November 16, 2021, Jared DeMarinis, Director of the Division of Candidacy and Campaign Finance for the State Board of Elections, communicated to Council staff: “Please inform the County Council that the State Board is also looking into this issue of coordinated in-kind contributions between a publicly financed candidate and the central committee. The next scheduled State Board meeting is currently scheduled for December 16.”

SUMMARY OF THE PUBLIC HEARING

At the public hearing on December 7, 2021, several speakers testified in favor of the bill.

The following written comments from Mr. DeMarinis were read into the record: “Coordinated in-kind contributions between central committees and candidates should exist. Public financing was not intended to cut off candidates from their political parties. However, in keeping with the spirit and integrity of the program certain restrictions need to be applied.” (©18).

Members of the public, including candidates for public office, testified in the support of the bill and discussed potential amendments. Ms. Whittaker, a campaign manager, stated support for the bill with an amendment to strike the bill’s \$10,000 limit for in-kind contributions, and to replace it with a limit on the specific types permitted activities. Mr. Grimes (©13) requested amendments to the bill to allow a pathway for individuals who start with traditional financing to switch to public financing. He suggested that candidates switching to public financing should be permitted to transfer funds from their traditional campaign finance entity, but only in amounts that would be consistent with public financing limitations (e.g., \$250 per individual donation).

Ms. Balcombe, a candidate for public office, stated that, historically, candidates of both parties use their central committees to distribute campaign information, without any assumption of endorsement by the central committee. She stated that using the central committees in this manner provided an efficient way to get information out. Under current law, however, publicly financed candidates are unfairly cut off from this method of information distribution.

Another candidate, Ms. Barrie, stated that the bill is consistent with her belief in grassroots fundraising and getting big money out of politics. She supports the bill with an amendment to remove the \$10,000 limitation. In addition, she believes that the individual donor amount for publicly financed candidates should be raised from \$250 to \$1,000.

ISSUES FOR THE COMMITTEE'S CONSIDERATION

1. Potential Amendments to Align the Bill with Proposed Regulations of the State Board of Elections

On December 16, 2021, the Maryland State Board of Elections (MSBE) approved proposed regulations (©15) regarding the same subject matter as Expedited Bill 45-21. Procedurally, these regulations will need to be published in the Maryland Register, undergo a public comment period, and return to MSBE for final adoption before they take effect. *See* Md. Code Ann., State Govt. Section 10-109 *et seq.*

Substantively, the proposed regulations are similar to Expedited Bill 45-21. Like the bill, the proposed regulations would permit in-kind contributions from central committees to publicly financed local candidates up to \$10,000 per election.

The proposed state regulations contain the following additional provision regarding the source of contributions from central committee; this restriction is not contained in Bill 45-21, as originally drafted:

C. Sources of Funds. Any monies spent by a central committee on a coordinated in-kind contribution to a candidate for elective office of county government participating in public financing must be raised from permissible sources for that candidate within the reporting period for which the coordinated in-kind contribution was made.

In order to align Bill 45-21 with this restriction under the pending state regulations, the Committee might wish to consider the following amendments.

Amend lines 3-9 as follows.

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, except that an applicant candidate or a participating candidate may, subject to subsection (b), accept an in-kind contribution [equal to or less than \$10,000] from a State or a Montgomery County central committee of a political party;

Add a new subsection:

- (b) An applicant candidate or a participating candidate may accept an in-kind contribution from a State or a Montgomery County central committee of a political party if:
- (1) the in-kind contribution is equal to or less than \$10,000; and
 - (2) the funds used by the central committee to make the in-kind contribution derive from individual contributions that do not exceed the public contribution limits established under Section 16-23.

Decision point: whether to recommend the amendments described above to align the bill with pending state regulations.

2. Additional Issues for Future Consideration

The Committee might wish to note and discuss the following issues related to the campaign finance law. These issues were raised by public testimony, but do not directly pertain to the limited subject matter of in-kind donations under Bill 45-21. These issues might warrant further research and input by stakeholders, and the Committee might wish to ask Mr. DeMarinis and other worksession participants for their general thoughts.

- **Limitation on individual contributions.** Some speakers suggested that the dollar limitations on contributions by individual donors should be raised. The current limitation is \$250 under Sections 16-20 and 16-23 of the County Code. The Committee might wish to note that, per Section 16-23(j), the limitation on individual donations will increase (beginning in July 2022) based upon the Consumer Price Index (CPI).
- **Transitioning to public financing from traditional financing.** Currently, Section 16-24 of the County Code provides: “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.” (Emphasis added). Mr. DeMarinis has stated: “more clarification on the pre-paid services would benefit candidates. This would prevent any potential ‘gaming’ of the system in the future. S[o] this could include cut off dates on spending from a traditional campaign finance entity, transitioning of services to a public financing committee and use of older campaign material. This is not to restrict candidates in the traditional financing method from ever joining the public financing program. But to provide a greater clarity.” (©18). The Committee might wish to ask Mr. DeMarinis to elaborate on his points, and to ask Executive staff whether clarifications are warranted and, if so, whether they should be accomplished by regulation or legislation.

- **Decertification of publicly financed candidates.** Mr. DeMarinis has stated: “Currently, only an impermissible expenditure not repaid is a violation of decertification. Other violations may raise to the same level. The Commission would serve a good vehicle to hear complaints on such violations.” Under current law, “A complaint alleging an impermissible receipt or use of funds by a participating candidate must be filed with the [State] Board [of Elections].” (Section 16-24). The Committee might wish to ask Mr. DeMarinis if he would elaborate on other types complaints that he believes should be adjudicated by the Board.

Next Step: Committee recommendation on whether to enact Expedited Bill 45-21, including the amendments described under Issue #1 of this memorandum.

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Expedited Bill No. 45-21
Concerning: Elections – Public
Campaign Financing - Restrictions
Revised: 10/21/2021 Draft No. 2
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Glass, Katz, and Riemer, and Council Vice-President Albornoz
Co-Sponsors: Councilmembers Navarro and Rice and Council President Hucker

AN EXPEDITED ACT to:

- (1) permit applicant candidates and participating candidates to accept certain in-kind contributions from a state or County central committee of a political party; and
- (2) generally amend campaign finance law.

By mending

Montgomery County Code
Chapter 16, Elections
Section 16-26

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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

Sec. 1. Section 16-26 is amended as follows:

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, except that an applicant candidate or a participating candidate may accept an in-kind contribution equal to or less than \$10,000 from a State or a Montgomery County 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) solicit funds for a State or a Montgomery County central committee of a political party; or
- (g) 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.

27 **Sec. 2. Expedited Effective Date.** The Council declares that this legislation
28 is necessary for the immediate protection of the public interest. This Act takes effect
29 on the date on which it becomes law.

LEGISLATIVE REQUEST REPORT

Bill 45-21

Elections – Public Campaign Financing – Restrictions

DESCRIPTION:	Bill 45-21 would amend the County's public campaign finance law to permit certain limited in-kind donations (equivalent to \$10,000 or less) from state or County central committees to publicly financed candidates.
PROBLEM:	Central committees are not permitted to display or distribute campaign literature for publicly financed candidates.
GOALS AND OBJECTIVES:	Permit limited, in-kind donations from central committees to publicly financed candidates.
COORDINATION:	
FISCAL IMPACT:	OMB
ECONOMIC IMPACT:	Office of Legislative Oversight (OLO)
RESJ IMPACT:	Office of Legislative Oversight (OLO)
EVALUATION:	To be done.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Christine Wellons, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A

Economic Impact Statement

Office of Legislative Oversight

Expedited Bill 45-21

Elections – Public Campaign Financing – Restrictions

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Expedited Bill 45-21 would have a minimal positive impact on economic conditions in the County.

BACKGROUND

Under current law, a State or Montgomery county central committee of a political party is prohibited from displaying or distributing campaign literature for publicly financed candidates. If enacted, Expedited Bill 45-21 would make an exception to this prohibition for “an in-kind contribution equal to or less than \$10,000 from a State or a Montgomery County central committee of a political party.” As a result, central committees would be allowed to either display or distribute a publicly financed candidate’s literature or make a limited in-kind contribution to a publicly financed candidate up to \$10,000 in value.¹

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

The claims made in subsequent sections assume that allowing central committees to display and distribute campaign literature for publicly financed candidates or to contribute to the candidates up to \$10,000 would result in a marginal net increase in goods and services provided to candidates or central committees from certain County-based businesses.

VARIABLES

The primary variables that would affect the economic impacts of enacting Expedited Bill 45-21 are the following:

- total campaign budgets for publicly financed candidates; and
- percentage of County-based businesses that provided goods and services to campaigns.

¹ Montgomery County Council, [Expedited Bill 45-21, Elections – Public Campaign Financing – Restrictions](#), Introduced on November 16, 2021.

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

If enacting Expedited Bill 45-21 results in a marginal net increase in goods and services provided to candidates or central committees, OLO anticipates that the change in law would have targeted, positive impacts to certain private organizations based in the County. Businesses that provided these goods and services would experience a net increase in revenues and thus business income, holding all else equal. However, given the \$10,000 limit, the Bill likely would not generate enough economic activity to significantly affect businesses that provide intermediate inputs to directly impacted businesses.²

Beyond these impacts, OLO does not anticipate that enacting Bill 40-21 would meaningfully affect private organizations in terms of the Council's other priority economic indicators.³

Residents

OLO does not anticipate that enacting Expedited Bill 45-21 would significantly affect residents in terms of the Council's priority economic indicators.

DISCUSSION ITEMS

Not applicable

WORKS CITED

Bea.gov. [What are intermediate inputs?](#) U.S. Bureau of Economic Analysis. March 10, 2006.

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements.](#)

Montgomery County Council. [Expedited Bill 45-21, Elections – Public Campaign Financing – Restrictions.](#) Introduced on November 16, 2021.

² The U.S Bureau of Economic Analysis defines intermediate inputs as “the goods and services (including energy, raw materials, semi-finished goods, and services that are purchased from all sources) that are used in the production process to produce other goods or services rather than for final consumption.” See Bea.gov, [What are intermediate inputs?](#), March 10, 2006.

³ Montgomery County Code, [Sec. 2-81B, Economic Impact Statements.](#)

Economic Impact Statement

Office of Legislative Oversight

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

Racial Equity and Social Justice (RESJ) Impact Statement

EXPEDITED ELECTIONS — PUBLIC CAMPAIGN FINANCING — BILL 45-21: RESTRICTIONS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates a minor positive impact of Expedited Bill 41-21 on racial equity and social justice in the County as this bill would provide additional, in-kind resources to publicly financed candidates that available data suggest are disproportionately Black, Indigenous, and Other People of Color (BIPOC).

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF EXPEDITED BILL 45-21

The purpose of Expedited Bill 45-21 is to amend the County's public campaign finance law to allow candidates to accept in-kind contributions valued at up to \$10,000 from a state or County central committee of a political party.³ Currently, central committees are prohibited from displaying or distributing literature for publicly financed candidates.⁴ Expedited Bill 45-21 would carve out an exception to this prohibition that would allow a central committee to display or distribute a publicly financed candidate's literature.⁵ Expedited Bill 45-21 would also allow a central committee to make another limited in-kind contribution to a publicly financed candidate if it is valued at \$10,000 or less.⁶

Expedited Bill 45-21 amends the County's Public Campaign Financing Law (Bill 16-14) that was first enacted during the 2018 election cycle.⁷ Bill 16-14 authorizes public campaign financing for candidates seeking a County elective office. The overall goals of Bill 16-14 are to encourage greater voter participation in County elections, to increase opportunities for more residents to run for office, and to reduce the influence of large contributions from businesses, political action groups, and other large corporations in County elections.⁸ Bill 16-14 has been amended twice since it was enacted with Bills 40-18 and 31-20.⁹ Expedited Bill 45-21 was introduced on November 16, 2021.

CAMPAIGN FINANCE, POLITICAL REPRESENTATION, AND RACIAL EQUITY

Understanding the impact of Expedited Bill 45-21 on racial equity and social justice requires understanding the historical context that shapes campaign finance and political representation today. To describe this historical context, this section describes the historical drivers of racial inequities in campaign finance and political representation and available data on disparities in political representation by race and ethnicity both nationally and locally.

RESJ Impact Statement

Inequities in Campaign Finance. The role of campaign finance in contributing to racial inequity is long-standing. Racial inequities in wealth and income created by government were historically used to disenfranchise BIPOC voters especially in the South via poll taxes and other Jim Crow laws. These wealth driven barriers to voting rights for BIPOC have diminished since the Voting Rights Act of 1965. However, the impact of wealth inequities as a driver of disenfranchising BIPOC voters continues today with the reliance on wealthy donors to fund campaigns for elected office.¹⁰

Candidates for public office must often rely on large donations from a small group of people to run and win competitive elections. In turn, the interests of large donors — of disproportionately White, wealthy, and male benefactors — are often represented by elected officials more than the interests of lower-income and BIPOC residents.¹¹ Research shows that 90 percent of campaign donors are wealthy, white, and male.¹²

Candidates backed by the rich may support policies that undermine progress on racial equity, like mass incarceration or bank deregulation that enables predatory lending.¹³ Conversely, the power of people without much money wanes as their interests are less represented among candidates disproportionately funded by wealthy White donors.¹⁴ BIPOC candidates without access to the rich donor networks are less likely to run; the candidates that do run and win are less responsive to the policies and priorities of BIPOC communities that include criminal justice reform and eliminating racial inequities in economic opportunity, health, housing, and education.¹⁵

In short, the political system's reliance on donations for campaigns entrenches political inequity for BIPOC residents. BIPOC candidates and residents are especially harmed because they are less likely to have the same resources to fund political campaigns as White candidates, residents, and corporations. As a result, lawmakers may be more responsive to the policy priorities of the donor class than they are to ordinary people, leaving unaddressed the priorities and policy concerns of BIPOC communities and low- and middle-income communities of any race or ethnicity.¹⁶

To limit the influence of wealth in campaign finance and elections, public campaign financing can help enhance the political voice and power of working-class people and people of color.¹⁷ Public campaign financing, also known as small donor financing, is a system in which public funds match and multiply small donations.¹⁸ Reducing the influence of special interests, empowering the average voter, incentivizing candidates to seek out many supporters rather than a few big donors, enabling candidates from more diverse backgrounds to run, and amplifying the voices of regular people have been identified as benefits of public campaign financing programs.¹⁹

Inequities in Political Representation. Since 1965, the number of elected officials of color has grown. African Americans went from holding fewer than 1,000 elected offices nationwide to more than 10,000, Latinos from a small number of offices to over 6,000, and Asian Americans from under one hundred documented cases to almost 1,000.²⁰ People of color, however, remain underrepresented in elected office due in part to the role of wealth in campaign financing. In turn, BIPOC power and interests are diminished in the political sphere and BIPOC despite the Voting Rights Act. The under-representation of BIPOC residents among elected officials is especially acute for Asian Americans. In 2020:²¹

- Asian Americans represented 0.9 percent of elected offices compared to 6.1 percent of the U.S. population.
- Latinx residents represented 3.3 percent of elected offices compared to 18.5 percent of the U.S. population.
- Native Americans represented 0.4 percent of elected offices compared to 1.3 percent of the U.S. population.
- African Americans represented 7.6 percent of elected offices compared to 13.4 percent of the U.S. population.
- White Americans represented 87.5 percent of elected offices compared to 60.1 percent of the U.S. population.

Of note, the over-representation of White people among elected officials in the U.S. is driven by the over-representation of White men in elected office. Whereas, in 2019,²²

RESJ Impact Statement

- White men accounted for 62 percent of elected officials compared to 30 percent of the U.S. population.
- White women accounted for 27 percent of elected officials compared to 31 percent of the U.S. population.
- Men of color accounted for 7 percent of elected officials compared to 19 percent of the U.S. population.
- Women of color accounted for 4 percent of elected officials compared to 20 percent of the U.S. population.

The representation of White men among elected officials varies by level of government: they accounted for 63 percent of members of Congress compared to 54 percent of statewide office holders in 2019.²³ The proportion of elected positions held by White women and BIPOC men and women also varied with the latter having the lowest levels of representation among County level offices. More specifically, representation among elected officials for:²⁴

- White women ranged from 15 percent (Congressional offices) to 30 percent (Statewide offices).
- Men of color ranged from 6 percent (County level offices) to 13 percent (Congressional offices).
- Women of color ranged from 4 percent (County level offices) to 9 percent (Congressional offices).

Because of the historical barriers faced by women and people of color in politics, most incumbent officeholders are White men.²⁵ The power of incumbency rather than electability is viewed as a driver of the current skew by race, ethnicity, and gender in political representation.²⁶ Of note, across all levels of office, 96 percent of incumbents won their 2020 primaries.²⁷ Moreover, in Congress, 97 percent of Congressional incumbents won their 2020 primaries.²⁸

Local Data on Public Financing and Representation. The demographics of Montgomery County Council members suggest that public financing has enhanced the representation of BIPOC residents among elected officials. Since the 2018 election, Montgomery County has offered a public campaign financing system for County Executive and Council candidates. Currently, contributions from County residents are eligible for matching funds as follows:²⁹

- County Executive candidates: \$6 for each dollar for the first \$50 of qualifying contributions received, \$4 for each dollar for the second \$50, and \$2 for each dollar for the third \$50.
- County Council candidates: \$4 for each dollar for the first \$50 of qualifying contributions received, \$3 for each dollar for the second \$50, and \$2 for each dollar for the third \$50.

The maximum limits on public funds for either the primary election or the general election are \$750,000 for a County Executive candidate, \$250,000 for a Council at-large candidate, and \$125,000 for a district Council candidate.³⁰ Of note, during the 2018 election cycle:³¹

- 68 candidates ran for either County Executive or County Council. Of the 38 candidates that indicated their intent to use public financing, 23 candidates obtained public financing.
- Two-thirds of Councilmembers that won an elected office in 2018 chose public financing.
- During the primary election, one County Executive Candidate, two Council At-Large candidates, and two Council District candidates obtained the maximum allowable in matching funds.

Like national norms, White men were over-represented among Council candidates, including those that received public financing in 2018. More specifically, among 19 Council candidates with public financing in 2018:³²

- White men accounted for 47 percent of candidates compared to 24 percent of County residents.³³
- White women accounted for 16 percent of candidates compared to 25 percent of County residents.³⁴
- Men of color accounted for 21 percent of candidates compared to 25 percent of County residents.³⁵

RESJ Impact Statement

- Women of color accounted for 16 percent of candidates compared to 26 percent of County residents.³⁶

But unlike national norms, there was racial parity in at-large Councilmembers elected in 2018 in Montgomery County with public campaign financing. In 2018, White residents accounted for half of the at-large members compared to 49 percent of the County's population in 2010, and BIPOC residents accounted for the other half of at-large members compared to 51 percent of County residents.³⁷ This compares to the 2014 election where White residents accounted for 100 percent of at-large members.³⁸ The shift in diversity among at-large members between 2014 and 2018 suggests that public financing has the potential to enhance the representation of BIPOC residents as elected in the County.

ANTICIPATED RESJ IMPACTS

If enacted, Expedited Bill 45-21 will bolster the support available to publicly financed candidates by enabling them to receive up to \$10,000 in kind contributions from central committees. While any publicly financed candidate will be able to receive this benefit, available data suggest that this change in the law could especially benefit BIPOC candidates since public financing may increase the racial and ethnic diversity of candidates seeking elected office.

Overall, Expedited Bill 45-21 may increase the competitiveness of publicly funded candidates relative to traditionally funded candidates. This bill may also help increase the number of candidates that seek office with public financing. Increasing the number of candidates seeking public financing, and potentially the number of BIPOC candidates seeking office, increasing the possibility that elected officials will be responsive to the needs of BIPOC residents and communities. As such, OLO finds that Expedited Bill 45-21 could potentially improve racial equity and social justice in the County because it could help increase the number of elected officials that are responsive to concerns of BIPOC residents and low- and middle-income residents more broadly.

Further, OLO finds that Expedited Bill 45-21 could especially improve RESJ if central committees awarded in-kind contributions enabled under this legislation to all publicly financed candidates rather than just to incumbents since historically, most incumbents have been White males. Yet, given the limited size of the in-kind contribution allowed under this bill, OLO anticipates an at best a minor impact of Expedited Bill 45-21 on RESJ in the County.

RECOMMENDED AMENDMENTS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.³⁹ OLO finds that Bill 45-21 could narrow racial and ethnic inequities in political representation, particularly if central committees made in-kind contributions to all publicly financed candidates, not solely incumbents. Consequently, this RESJ impact statement does not offer recommendations.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

RESJ Impact Statement

CONTRIBUTIONS

Dr. Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this RESJ impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.raciaequitytools.org/glossary>

² Ibid

³ Montgomery County Council, Expedited Bill 45-21, Elections – Public Campaign Financing – Restrictions – Introduced, November 16, 2021

⁴ Christine Wellons, Memorandum to County Council on Expedited Bill 45-21, November 10, 2021

⁵ Ibid

⁶ Ibid

⁷ Public Campaign Financing, Montgomery County Council

⁸ Ibid

⁹ Amanda Mihill, Memorandum to County Council on Bill 31-20, Public Campaign Financing – Amendments, October 1, 2020

¹⁰ Emily Badger, Why big spending on political campaigns makes racial inequality worse. The Washington Post, December 14, 2014

¹¹ Ibid

¹² Amshula Jayaram, How Can New York Advance the Cause of Racial Justice? Start with Fair Elections, Demos.org, February 13, 2018

¹³ Adam Lioz, Stacked Deck: How the Racial Bias in Our Big Money Political System Undermines Our Democracy and Our Economy, Demos

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Amshula Jayaram

¹⁷ Demos, Designing Public Financing Systems to Advance Equity and Independent Political Power, 2016

¹⁸ Brennan Center for Justice, Public Campaign Financing, Why It Matters?

¹⁹ Ibid

²⁰ Khalilah Brown-Dean, Zoltan Hajnal, Christina Rivers and Ismail White, 50 Years of the Voting Rights Act: The State of Race in Politics, Joint Center for Political and Economic Studies, 2015

²¹ Reflective Democracy Campaign, #Advance AAPI Power: Asian American Pacific Islander Leadership, May 2021

²² Reflective Democracy Campaign, The Electability Myth: The Shifting Demographics of Political Power in America, June 2019

²³ Ibid

²⁴ Ibid

²⁵ Reflective Democracy Campaign, System Failure: What the 2020 Primary Elections reveal about of democracy, May 2021

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹ Public Campaign Financing, Montgomery County Council

³⁰ Ibid

³¹ Amanda Mihill

³² See Fiscal Impact Statement for Bill 31-20 attached to Amanda Mihill memorandum for data.

³³ Candidates counted are Hans Riemer, Chris Wilhelm, Bill Conway, Evan Glass, Seth Grimes, Ed Amatetti, Sidney Katz, Jim McGee, and Kevin Harris.

³⁴ Candidates counted are Danielle Meitiv, Jill Ortman-Fouse, and Reggie Oldak.

³⁵ Candidates counted are Will Jawando, Hoan Dang, Mohammad Siddique, and Gabe Albornoz.

³⁶ Candidates counted are Brandy Brooks, Nancy Navarro, and Ana Sol Gutierrez.

³⁷ Evan Glass and Hans Riemer counted as White at-large members; Will Jawando and Gabe Albornoz counted as BIPOC at-large members

³⁸ In 2014, the elected at-large Council members were Nancy Floreen, George Leventhal, Marc Elrich, and Hans Riemer

³⁹ Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established

Expedited Bill 45-21, Elections - Public Campaign Financing - Restrictions

December 7, 2021

Seth Grimes: Support with Amendment: A Path to Public Finance

Councilmembers, please amend Expedited Bill 45-21 to create a path to public finance for candidates who start an election cycle with a conventional finance committee.

I'm a proponent of public campaign finance and used it myself in 2018. A challenge is that some candidates start an election cycle unsure which office they'll run for, so they start with a conventional finance committee to keep their options open. For example, former Delegate Bill Frick started the 2018 cycle fundraising to run for reelection to the House of Delegates. He then switched to a Montgomery County race but would have had to spend down or return a considerable sum in order to take advantage of Montgomery County public campaign finance.

The County Council should provide a path to public finance for candidates who enter a cycle with a conventional finance committee. Montgomery County should allow those candidates to benefit from the fundraising they've done – we all know the hard work involved – but within the strictures of the public system. Further, that path to public finance must be the only path so as to not disadvantage candidates who are not switching systems.

The mechanism: Add provisions to Expedited Bill 45-21 to allow a candidate to *transfer funds* from a conventional finance committee, to a public finance committee, *within the limits and strictures of the public-finance system*. These provisions must disallow creation of a public finance committee by a candidate who previously had a conventional finance committee within an election cycle, outside of this path.

Detail: Contributions within the public finance contribution limit and rules may be retained, and the unspent balance of those contributions may be transferred to the public-finance account. These earlier contributions within public finance rules, whether or not they have been spent, would count toward matching threshold requirements and would be eligible for county matching. However contributions not allowed by public finance (e.g., from corporations and PACs, transfers from another candidate's account, and any unspent balance from previous election cycles), and amounts above the public-finance contribution limit, must be returned and would not be eligible for matching or count toward matching requirements.

For example, if a candidate accepted a \$500 conventional finance contribution from an individual and wanted to switch within the same election cycle to public finance, the candidate would have to return \$250, the above-limit amount, to the donor. \$250 would be transferred to the public finance committee if not already spent, and that

amount would match-eligible whether or not already spent. If a candidate accepted a \$1,000 conventional finance contribution from a PAC or corporation and wanted to switch to public finance, the candidate would need to return the full \$1,000 to the donor because PAC and corporate contributions are ineligible.

This path to public finance would respond to a real-world scenario in order to expand the use of Montgomery County public campaign finance. Please give it your consideration.

Seth Grimes
Takoma Park, MD 20912

Title 33 STATE BOARD OF ELECTIONS
Subtitle 13 CAMPAIGN FINANCING
Chapter 14 Public Financing

Authority: Election Law Article, §§2-102(b)(4) and 13-505(b)(7), Annotated Code of Maryland

.07 Coordinated In-Kind Contributions.

A. In General. Coordinated expenditures by a State central committee of a political party with a candidate, or by the local central committee of a political party with a candidate who will appear only on the ballot in the county of the local central committee, are considered coordinated in-kind contributions.

B. Limits.

(1) A State central committee may not make a coordinated in-kind contribution in excess of \$10,000 per election to a candidate for elective office of county government participating in public financing in that election.

(2) A local central committee may not make a coordinated in-kind contribution in excess of \$10,000 per election to a candidate for elective office of county government participating in public financing in that election.

C. Sources of Funds. Any monies spent by a central committee on a coordinated in-kind contribution to a candidate for elective office of county government participating in public financing must be raised from permissible sources for that candidate within the reporting period for which the coordinated in-kind contribution was made.

D. Prohibitions. Except as provided in this regulation, all other coordinated in-kind contributions from other political committees are prohibited for a candidate for elective office of county government participating in public financing.

E. Disclosure. All coordinated in-kind contributions for candidates for elective office of county government participating in public financing are subject to the reporting requirements of COMAR 33.13.18.02.

.08 Electronic Signatures.

A. Definitions.

(1) "Contribution card" has the meaning stated in Election Law Article, § 15-102(c), Annotated Code of Maryland.

(2) "Electronic signature" has the meaning stated in Election Law Article, § 1-101(y), Annotated Code of Maryland.

B. Electronic signatures. An individual may place an electronic signature on the contribution card or the receipt of the contribution to the candidate for elective office of county government participating in public financing.

C. Electronic signatures—Process. An electronic signature:

(1) Shall be affixed or entered directly by the signer onto an electronic copy of the contribution card; and

(2) May not be pre-populated or otherwise entered by the signer by way of a check box, radio button, drop-down list, or other similar device, but instead must be entered or affixed by the signer by making affirmative marks into an empty field.

D. Electronic signatures—Restrictions. An individual may not sign a contribution card with an electronic signature unless that individual affirms that the contribution:

(1) Is being made from personal funds of the individual;

(2) Is not being reimbursed or is not intended to be reimbursed in any manner;

(3) Is not being made as a loan; and

(4) If applicable, in the case of a credit card contribution, is made from a personal credit card account of the individual that has no corporate or business affiliation.

.09 Transfers.

A. Prohibitions. Transfers from a publicly financed candidate committee to any other political committee are prohibited.

B. Voter Access Service. The purchase of the voter file access service from the State central committee is not considered a transfer and is a permissible expenditure.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

December 2, 2021

Mr. Jared DeMarinis
Executive Director, Maryland State Board of Elections

Dear Mr. DeMarinis,

Thank you for your guidance, stewardship and strong support for Montgomery County's groundbreaking public campaign finance law. Your office has done an excellent job ensuring the system's remarkable success to date.

On November 16, the Council introduced Bill 45-21, authored by Councilmember Evan Glass with the co-sponsorship of Councilmembers Sidney Katz, Hans Riemer and Gabe Albornoz (Councilmembers also presently using the public finance system). The legislation specifically addresses certain issues related to coordination of public election campaigns and traditional party campaign committees.

As the Executive Director of the Maryland State Board of Elections, we request your additional thoughts and any potential amendments you might have to improve the legislation and ensure the continued success of the program. We invite you to testify at the December 7 hearing and encourage you to work with Council Attorneys to draft amendments for our consideration.

Thank you.

Sincerely,

Handwritten signature of Evan Glass in black ink.

Evan Glass
Councilmember, At-Large

Handwritten signature of Gabe Albornoz in black ink.

Gabe Albornoz
Council Vice President

Handwritten signature of Sidney Katz in black ink.

Sidney Katz
Councilmember, District 3

Handwritten signature of Hans Riemer in black ink.

Hans Riemer
Councilmember, At-Large

From: [Jared DeMarinis -SBE-](#)
To: [Glass's Office, Councilmember](#)
Cc: [Albornoz's Office, Councilmember](#); [Carranza, Valeria](#); [Katz's Office, Councilmember](#); [Riemer's Office, Councilmember](#); [Wellons, Christine](#)
Subject: Re: Letter from Members of Montgomery County Council on Bill 45-21
Date: Tuesday, December 7, 2021 1:25:27 PM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)
[image.png](#)

[EXTERNAL EMAIL]

While I will write up my thoughts in a more complete fashion, I wanted to make sure you had something for today's hearing.

The first iteration of the public financing program in Montgomery County was very successful. As result, public financing programs have spread to other counties always using Montgomery County as the model. Even some elements have been incorporated to the New York City Public financing program. Additionally, I want to thank David Crow and Tagg Hutchinson for their part to help ensure the success of the program.

With that said, programs can always be improved. Coordinated in-kind contributions between central committees and candidates should exist. Public financing was not intended to cut off candidates from their political parties. However, in keeping with the spirit and integrity of the program certain restrictions need to be applied. For example, limits on the coordination and how those funds are to be raised if spent on behalf of a publicly financed candidate.

Moreover, there should be other violations to warrant being decertify. Currently, only an impermissible expenditure not repaid is a violation of decertification. Other violations may raise to the same level. The Commission would serve a good vehicle to hear complaints on such violations.

Finally, more clarification on the pre-paid services would benefit candidates. This would prevent any potential "gaming" of the system in the future. S this could include cut off dates on spending from a traditional campaign finance entity, transitioning of services to a public financing committee and use of older campaign material. This is not to restrict candidates in the traditional financing method from ever joining the public financing program. But to provide a greater clarity.

I welcome your questions and again look forward to working with the Council.

On Mon, Dec 6, 2021 at 2:47 PM Jared DeMarinis -SBE- <Jared.DeMarinis@maryland.gov> wrote:

Thank you for the request. I would be happy to offer my thoughts to improve the program. Looking forward to working with you.

Jared DeMarinis
Director - Division of Candidacy and Campaign Finance
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, MD 21401-0486

Phone: 410-269-2853

On Thu, Dec 2, 2021 at 2:39 PM Glass's Office, Councilmember
<Councilmember.Glass@montgomerycountymd.gov> wrote:

Good Afternoon Mr. DeMarinis,

Attached you can find a letter from myself and Council Vice President Albornoz, Councilmember Katz, and Council Riemer regarding the public financing legislation currently before the Council. We look forward to continue engaging with you further on this issue.

Please let me know if you have any questions about the bill or next week's public hearing, I would be happy to answer them.

In Service,

Evan Glass



Evan Glass

Montgomery County Councilmember, At-Large
100 Maryland Avenue
240.777.7966

www.montgomerycountymd.gov/glass



For COVID-19 Information and resources, visit:
www.montgomerycountymd.gov/COVID19

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Jared DeMarinis
Director of Candidacy and Campaign Finance
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, MD 21401
410-269-2853

Sent from mobile device.

ADDENDUM

GO Item #2
February 3, 2022
Worksession

M E M O R A N D U M

February 2, 2022

TO: Government Operations and Fiscal Policy Committee

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Expedited Bill 45-21, Elections – Public Campaign Financing – Restrictions

PURPOSE: Committee worksession – recommendation expected

This memorandum is an addendum to the staff report dated January 31, 2022 regarding Expedited Bill 45-21, Elections – Public Campaign Financing – Restrictions. The purposes of the addendum are to:

- (1) enclose the Fiscal Impact Statement, which estimates that the bill will have no effect on expenditures or revenues; and
- (2) identify clarifying amendments drafted by Council staff in response to staff discussions with the Office of the County Attorney.

The clarifying amendments for the Committee's consideration would be as follows. The differences between this set of amendments and the one identified in the original staff packet are highlighted in yellow.

Amend lines 3-9 as follows.

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, except that an applicant candidate or a participating candidate may, subject to subsection (b), accept **[[an]] in-kind contributions** **[[contribution equal to or less than \$10,000]] from a State **[[or]] central committee of a political party, and from** a Montgomery County central committee of a political party;**

* * *

Add a new subsection:

(b) Limitations on In-Kind Contributions.

- (1) An applicant candidate or a participating candidate may accept in-kind contributions from a State central committee of a political party if:
 - (A) the total amount of in-kind contributions from the central committee per election cycle are equal to or less than \$10,000; and
 - (B) the funds used by the central committee to make an in-kind contribution derive from individual contributions that do not exceed the public contribution limits established under Section 16-23.

- (2) An applicant candidate or a participating candidate may accept in-kind contributions from a Montgomery County central committee of a political party if:
 - (A) the total amount of in-kind contributions from the central committee per election cycle are equal to or less than \$10,000; and
 - (B) the funds used by the central committee to make an in-kind contribution derive from individual contributions that do not exceed the public contribution limits established under Section 16-23.

This addendum contains:
Fiscal Impact Statement

Circle #
A1

Fiscal Impact Statement
Bill 45-21: Elections – Public Campaign Financing - Restrictions

1. Legislative Summary

Bill 45-21 would amend the County's public campaign finance law to permit certain limited in-kind donations (equivalent to \$10,000 or less) from State or County central committees to publicly financed candidates.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

There are no estimated or anticipated changes in County revenues or expenditures since the proposed in-kind donations would be made from sources outside of the County and State governments.

3. Revenue and expenditure estimates covering at least the next six fiscal years.

There are no estimated or anticipated changes in County revenues or expenditures over the next six fiscal years since the proposed in-kind donations would be made from sources outside of the County and State governments.

4. An Actuarial analysis through the entire amortization period for each Bill that would affect retiree pension or group insurance costs.

Not Applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not Applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Bill 45-21 does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

Staff time required to administer the programmatic change would be minimal.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

No new staff would be required.

9. An estimate of costs when an additional appropriation is needed.

Not Applicable.

10. A description of any variable that could affect revenue and cost estimates.

Not Applicable.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not Applicable.

12. If a Bill is likely to have no fiscal impact, why that is the case.

The changes allow for State and Local Central Committees to contribute in-kind contributions to Public Election Fund participating candidates. No County or State funds are used due to this proposed programmatic change.

13. Other fiscal impacts or comments.

None.

14. The following contributed to and concurred with this analysis:

David Crow, Acting Controller; Fiscal Projects Manager, Department of Finance
Derrick Harrigan, Office of Management and Budget



Jennifer R. Bryant, Director
Office of Management and Budget

2-1-22
Date