



Montgomery
County Council

Committee: GO

Committee Review: At a future date

Staff: Amanda Mihill, Legislative Attorney

Purpose: To receive testimony – no vote expected

Keywords: #PublicCampaignFinancing

Search terms: campaign contributions, in-kind contributions

AGENDA ITEM #5
September 15, 2020
Public Hearing

SUBJECT

Bill 31-20, Public Campaign Financing - Amendments

Lead Sponsors: Councilmember Navarro, Council President Katz, and Councilmember Friedson (GO Committee)

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Public Hearing – no vote expected

DESCRIPTION/ISSUE

Bill 31-20 would:

- amend the County public campaign financing system;
- alter the maximum contribution limits;
- allow participating candidates to carryover certain funds under certain circumstances;
- require an audit of the public campaign financing system after the general election in an election cycle; and
- alter the penalties for willful violations of the public campaign financing system.

SUMMARY OF KEY DISCUSSION POINTS

- On September 30, 2014, the Council enacted, and the Executive later signed, Bill 16-14, Elections – Public Campaign Financing (2 amendments have also been enacted).
- The Program was first used in the 2018 election cycle. During 2019, the Council committed to review the Program in an effort to improve the Program where needed.
- The Council held a public forum on the Program on March 26, 2019 and then-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.
- The Government Operations and Fiscal Policy Committee met 3 times to review issues related to the implementation of the Program.
- During these meetings, the Committee recommended changes to the law, which were to incorporate into a draft bill that the Committee reviewed on July 10, 2020. The Committee approved the draft bill, which is Bill 31-20.

This report contains:

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MEMORANDUM

September 10, 2020

TO: County Council

FROM: Amanda Mihill, Legislative Attorney

SUBJECT: Bill 31-20, Public Campaign Financing - Amendments¹

PURPOSE: Public Hearing – no Council vote required

Summary

Bill 31-20, Public Campaign Financing - Amendments, sponsored by Lead Sponsors Councilmember Navarro, Council President Katz, and Councilmember Friedson (GO Committee), was introduced on July 21. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for September 30 at 9:30 a.m.

Bill 31-20 would:

- amend the County public campaign financing system;
- alter the maximum contribution limits;
- allow participating candidates to carryover certain funds under certain circumstances;
- require an audit of the public campaign financing system after the general election in an election cycle; and
- alter the penalties for willful violations of the public campaign financing system.

Background

On September 30, 2014, the Council enacted, and the Executive later signed, Bill 16-14, Elections – Public Campaign Financing. Bill 16-14 established a Public Election Fund to provide public campaign financing for a candidate for a County elective office. Two additional amendments to the law have been enacted. The program was first used in the 2018 election cycle. Some important facts regarding the inaugural election cycle:

- 68 candidates ran for either County Executive or County Council. Of the 38 candidates that filed an intent to use public financing program for one of these offices, 23 candidates ultimately obtained public financing.

¹#PublicCampaignFinancing

Search terms: campaign contributions, in-kind contributions

- Two-thirds of Councilmembers that won an elected office in 2018 chose public financing, as did the County Executive.
- The County ultimately spent approximately \$5.2 million during the 2018 elections on public financing (\$4.1 million during the primary election and \$1.1 million during the general election).
- During the primary election, 1 County Executive candidate, 2 Council At-Large candidates, and 2 Council District candidates obtained the maximum allowable in matching funds; during the general election, 1 County Executive candidate obtained the maximum allowable in matching funds.
- The County earned an achievement award from the National Association of Counties (NACo).

During 2019, the Council committed to review the Program in an effort to improve the Program where needed. The Council held a public forum on the Program on March 26, 2019 at which 11 speakers testified. Also in 2019, then-Council President Navarro sent a survey to participants in the program, non-participants in the program, and community groups seeking input as to their experiences during the inaugural cycle. An excerpt from the staff packet describing the hearing and survey is attached at ©15-19.

The Government Operations and Fiscal Policy Committee met 3 times to review issues related to the implementation of the Program. At its meetings on October 24² and December 9, 2019³, 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 the survey. During these meetings, the Committee recommended changes to the law, which were incorporate into a draft bill that the Committee reviewed on July 10, 2020.⁴ Links to the staff reports for those worksessions are in the footnotes of this memorandum. Copies are also available from Council staff.

Specifics of Bill 31-20

A summary about the Committee-recommended changes that are included in Bill 31-20 follows. A more detailed analysis of these specific issues are in the Committee staff reports referenced above.

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 Bill 31-20 on ©5, lines 92-98.

²https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20191024/20191024_GO3.pdf

³https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20191209/20191209_GO2.pdf

⁴https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2020/20200710/20200710_GO3.pdf

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 Bill 31-20 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 Bill 31-20 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 Bill 31-20 on ©3, lines 41-42. Councilmember Katz voiced his belief that in-kind contributions should count toward the required qualifying amount, but not matchable. Council staff committee to work with Executive staff to provide options on this issue during the Council's deliberations on Bill 31-20.

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 Bill 31-20 on ©10-11, lines 223-240.

6. *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 Bill 31-20 on ©11-12, lines 261-275.

7. *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 Bill 31-20 on ©11, lines 241-248.

8. *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 Bill 31-20 on ©6, lines 102-104.

9. *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 Bill 31-20 on ©12, line 279, ©13, line 290; and ©13, lines 300-301.

This packet contains:	<u>Circle #</u>
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Bill No. 31-20
Concerning: Public Campaign Financing
- Amendments
Revised: 1/29/2020 Draft No. 1
Introduced: July 21, 2020
Expires: January 21, 2022
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:

26 *Eligible contribution* means an aggregate donation in a 4-year election cycle of
 27 ~~[\$150]~~ \$250 or less from an individual, including an individual who does not
 28 reside in the County.

29 * * *

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

33 *Qualifying contribution* means an eligible contribution of at least ~~[\$5.00]~~ \$5 but
 34 no more than ~~[\$150.00]~~ \$250 in support of an applicant candidate that is:

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

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

43 **16-20. Collecting qualifying contributions.**

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

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

67 **16-21. Requirements for certification.**

68 * * *

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

77 **16-22. Board determination.**

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

82 (1) a declaration from the candidate agreeing to follow the regulations
83 governing the use of a public contribution;

84 (2) a campaign finance report that includes:

85 (A) a list of each qualifying contribution received;

86 (B) a list of each expenditure made by the candidate during the
87 qualifying period; and

88 (C) the receipt associated with each contribution and
89 expenditure; and

90 (3) a certificate of candidacy for a covered office.

91 (b) The decision by the Board whether to certify a candidate is final.

92 (c) A candidate may submit only one application for certification for any
93 election. A candidate may correct any mistakes in the application for
94 certification or supplement their application with additional qualifying
95 contributions within the earlier of:

96 (1) 10 business days after receiving notice that the Board denied the
97 application; or

98 (2) the end of the qualifying period.

99 (d) If the Board certifies a candidate, the Board must authorize the Director
100 to disburse a public contribution to the candidate's publicly funded
101 campaign account.

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

105 **16-23. Distribution of public contribution.**

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

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

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

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

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

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

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

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

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

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

- 129 (D) \$1 for each dollar of a qualifying contribution received for
 130 the remainder of each qualifying contribution.
- 131 (3) The total public contribution payable to a certified candidate for
 132 either a primary or a general election must not exceed:
- 133 (A) \$750,000 for a candidate for County Executive;
 134 (B) \$250,000 for a candidate for At Large Councilmember; and
 135 (C) \$125,000 for a candidate for District Councilmember.
- 136 (b) Non-matchable contributions. The Director must not distribute matching
 137 dollars from the Fund to a certified candidate for:
- 138 (1) a contribution from the candidate or the candidate's spouse; or
 139 (2) an in-kind contribution of property, goods, or services.
- 140 (c) Qualifying contribution limits. A certified candidate may continue to
 141 collect qualifying contributions and [receive] submit a request for a
 142 matching public contribution up to, and including, the day of a primary
 143 or a general election. A qualifying contribution must not exceed [~~\$150~~
 144 \$250] from any individual in the aggregate during a 4-year election cycle.
- 145 (d) Availability of funds for distribution. On or before July 1 of the year
 146 preceding the primary election, the Director must determine if the amount
 147 in the Fund is sufficient to meet the maximum public contributions
 148 reasonably expected to be required during the next election cycle. If the
 149 Director determines that the total amount available for distribution in the
 150 Fund is insufficient to meet the allocations required by this Section, the
 151 Director must reduce each public contribution to a certified candidate by
 152 the same percentage of the total public contribution.
- 153 (e) General election distributions. Within 3 business days after the County
 154 Board certifies the results of the primary election, the Board must
 155 authorize the Director to continue to disburse the appropriate public

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

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

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

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

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

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

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

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

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

196 **16-24. Use of public contribution.**

197 (a) [A] Except as provided in Section 16-27, a participating candidate may
 198 only use the eligible contributions and the matching public contribution
 199 for a primary or general election for expenses incurred for the election. A
 200 participating candidate must not pay in advance for goods and services to
 201 be used after certification with non-qualifying contributions received
 202 before applying for certification unless the expenditure is permitted by
 203 Executive regulation adopted under Section 16-21.

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

206 (c) A participating candidate must provide the Board with reasonable access
 207 to the financial records of the candidate's publicly funded campaign
 208 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:

- 236 (1) the retained funds do not exceed \$5,000;
 237 (2) the candidate files a new declaration of intent to participate in the
 238 public campaign financing system for the 4-year next election
 239 cycle by January 31 the year after the election; and
 240 (3) keep the same campaign finance entity open.

241 **16-28. Audit.**

- 242 (a) After a general election in an election cycle, the Executive must conduct
 243 an audit of the financial activity of the public campaign financing system,
 244 including publicly funded campaign accounts, to ensure publicly funded
 245 campaign accounts raised and spent funds in compliance with this
 246 Article.
 247 (b) The Executive must adopt regulations that specify the scope of the audit
 248 required by this Section.

249 **16-29. Regulations.**

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

- 252 (a) how and when receipts for qualifying contributions from contributors
 253 must be submitted to the Board;
 254 (b) the documents that must be filed with the Board for certification;
 255 (c) the allowable uses of money in a publicly funded campaign account;
 256 (d) the scope of the audit required in Section 16-28; and
 257 (e) other policies necessary to implement this Article.

258 **[16-28] 16-30. Penalties.**

- 259 (a) Civil Violations. Any violation of this Article is a Class A civil violation.
 260 Each day a violation exists is a separate offense.
 261 (b) Payment. A fine may be paid by the campaign only if all public
 262 contributions have been repaid to the Fund. Otherwise, the candidate or

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

265 (c) Additional penalties.

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

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

276 **[16-27. Committee to Recommend Funding for the] 16-31. Public Election Fund**
 277 **Committee.**

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

285 (b) Membership; officers.

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

288 (2) No more than 3 members [must be of] may be from the same
 289 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.

LEGISLATIVE REQUEST REPORT

Bill 31-20

Public Campaign Financing - Amendments

DESCRIPTION:	Bill 31-20 would: <ol style="list-style-type: none">(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.
PROBLEM:	The public campaign financing law was first used in the 2018 election cycle. By all accounts, the Program was a success; however, improvements are necessary.
GOALS AND OBJECTIVES:	To improve the public campaign financing law.
COORDINATION:	Department of Finance
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be researched.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Amanda Mihill, Legislative Attorney (240) 777-7815
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	See §16-30

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.

Economic Impact Statement

Office of Legislative Oversight

Bill 31-20

Public Campaign Financing – Amendments

SUMMARY

Overall, the Office of Legislative Oversight (OLO) expects the enactment of Bill 31-20 to have an insignificant impact on the Montgomery County economy.

BACKGROUND

The purpose of Bill 31-20 is to improve the public campaign financing law that governs the election for County elective offices. If enacted, the Bill would make the following changes to the law:

- “amend the County public campaign financing system;
- alter the maximum contribution limits;
- allow participating candidates to carryover certain funds under certain circumstances;
- require an audit of the public campaign financing system after the general election in an election cycle; [and]
- alter the penalties for willful violations of the public campaign financing system.”¹

In terms of altering the maximum contribution limits, the Bill, if enacted, would increase the limit from \$150 to \$250.² However, the limits on the total public contributions to candidates would remain the same.³

METHODOLOGIES, ASSUMPTIONS and UNCERTAINTIES

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on the judgment of OLO staff.

VARIABLES

Not applicable

IMPACTS

Businesses, Non-Profits, Other Private Organizations

OLO believes that enacting Bill 31-20 would have an insignificant impact on private organizations in the County in terms of the Council’s priority indicators, namely workforce, operating costs, property values, capital investment, taxation policy, economic development, and competitiveness.

¹ Montgomery County Council, Bill 31-20, Public Campaign Financing – Amendments, Introduced on July 21, 2020, Montgomery County, Maryland, 1.

² Ibid, 3.

³ Ibid, 8.

Economic Impact Statement

Office of Legislative Oversight

Workforce, operating costs, property values, capital investment, taxation policy, economic development, competitiveness, etc.

Residents

Workforce, property values, income, taxation policy, economic development, etc.

OLO believes that enacting Bill 31-20 would have an insignificant impact on County residents in terms of the Council's priority indicators, namely workforce, property values, income, taxation policy, and economic development.

WORKS CITED

Montgomery County Council. Bill 31-20, Public Campaign Financing – Amendments. Introduced on July 21, 2020. Montgomery County, Maryland.

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 the OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

This economic impact statement was drafted by Stephen Roblin (OLO).

Fiscal Impact Statement
Bill 31-20, Public Campaign Financing- Amendments

1. Legislative Summary

On September 30, 2014, the Council enacted, and the County Executive later signed, Bill 16-14, Elections – Public Campaign Financing. Bill 16-14 established a Public Election Fund to provide public campaign financing for a candidate for a County elective office. Two additional amendments to the law have been enacted. The program was first used in the 2018 election cycle.

Bill 31-20 would: (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.

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.

The program was first used in the 2018 election cycle. The following Table 1 shows:

- 23 candidates obtained public financing;
- two-thirds of Councilmembers that won an elected office in 2018 chose public financing, as did the County Executive; and
- the County ultimately spent approximately \$5.2 million during the 2018 elections on public financing (\$4.1 million during the primary election and \$1.1 million during the general election).

OMB extracted information from Public Campaign Financing (www.Campaignfinance.maryland.gov) of all the individual contribution with a matching funds request made to the 23 candidates who participated in public financing program.

Bill 31-20 proposed an increase in the matching amount from \$5, but no more than \$150, to \$5, but no more than \$250. Article 16-23 (s) (1) (D) \$1 for each dollar of a qualifying contribution received over \$150.

To measure the fiscal impact of the contribution maximum increase proposed by Bill 31-20, OMB extracted information for each of the 23 candidates, aggregated and filtered contributions for \$150 during the 2018 election cycle and calculated how much more the public fund would have contributed to each candidate had the maximum amount (\$250) proposed in the bill been available. The results show that this increase would represent a nine percent increase in the total County funding - from \$5.2M to \$5.7M – assuming that all \$150 contributors would have given an additional \$100 for a total of \$250 that the bill would allow.

Fiscal Impact Statement
Bill 31-20, Public Campaign Financing- Amendments

Table No. 1

Office and Candidate	Net Distribution	Net Distribution - General Election	Public Election Fund-total distribution	Number of contributor or of \$150	Bill 31-20 \$100 contribution increase impact	
County Executive						
Geroge Leventhal	\$495,744		\$495,744	490	\$49,000	
Marc Elrich	\$750,000	\$684,366	\$1,434,366	1,817	\$65,634	A
Rose krasnow	\$412,456		\$412,456	451	\$45,100	
Robin Ficker		\$255,345	\$255,345	125	\$12,500	
County Council-At-Large						
Hans Reimer	\$242,785	\$14,623	\$257,408	351	\$35,100	
Chris Wilhelm	\$155,398		\$155,398	154	\$15,400	
Bill Conway	\$219,683		\$219,683	351	\$35,100	
Hoan Dang	\$179,513		\$179,513	200	\$20,000	
Brady Brooks	\$116,768		\$116,768	108	\$10,800	
Danielle Meitiv	\$128,881		\$128,881	118	\$11,800	
Evan Glass	\$250,000	\$21,422	\$271,422	274	\$27,400	
Seth Grimes	\$100,896		\$100,896	97	\$9,700	
Will Jawando	\$250,000	\$52,674	\$302,674	371	\$37,100	
Mohammad Siddique	\$58,004		\$58,004	98	\$9,800	
Gabe Alborno	\$168,611	\$31,619	\$200,230	276	\$27,600	
Jill Ortman-Fouse	\$104,626		\$104,626	100	\$10,000	
County Council-District						
Ed Amatetti	\$44,850	\$19,548	\$64,398	71	\$7,100	
Nancy Navarro	\$37,275	(\$939)	\$36,336	42	\$4,200	
Reggie Oldak	\$123,013		\$123,013	202	\$20,200	
Sidney Katz	\$125,000	(\$741)	\$124,259	218	\$21,800	
Jim McGee	\$31,450		\$31,450	37	\$3,700	
Ana Sol Gutierrez	\$41,317		\$41,317	36	\$3,600	
Kevin Harris	\$43,267		\$43,267	44	\$4,400	
	\$4,079,537	\$1,077,917	\$5,157,454	6,031	\$487,034	
			\$5,644,488		9%	

A. County Executive (CE) would have received an additional \$181K in matching funds; however, the program limits public matching to \$1.5 million for CE candidates in an election cycle. Mr. Elrich would have only received an additional \$66K in matching funds rather than the \$181K listed.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The committee, as stated in its 2020 Report recommends \$6.3M for the Public Election Fund for 2022. If it is assumed that the new bill will increase funding by nine percent. Therefore, the balance in the Public Election Fund should be \$6.9M instead of \$6.3M.

Fiscal Impact Statement
Bill 31-20, Public Campaign Financing- Amendments

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.

It is anticipated that changes to the matching amounts and formulas used for each matching calculation may require the Maryland State Board of Election to update their software system (similar to the 2018 election cycle) to accommodate the Program structure. While these changes are to the State's software system, it is assumed that cost for the updates will be charged back to the County as they were in the 2018 election cycle. The Department of Finance anticipates these costs to be in the range of \$50k - \$150k.

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

Bill 31-20 does not authorize future spending.

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

Bill 31-20 proposes in article 16-29 Regulations, that the County Executive, after consulting with the Board, must adopt regulations 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. The amount of staff time estimated to draft and implement Executive Regulations (ER) required by Bill 31-20 is between 60-100 hours. Staff time associated with this bill will be absorbed within the existing workload.

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

Not applicable.

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

Bill 31-20 proposes in the Article 16-28 Audit, that after the general election cycle, the County Executive must conduct an audit of the financial activity of the public campaign financing system. The audit will most likely not have a fiscal impact for the County. However, if the audit were to be outsourced to a third-party, the County Executive will determine if additional funds would need to be appropriated depending on the nature and scope of the audit, and per Article 16-29 of the proposed bill, the County Executive must adopt regulations that specify the scope of the audit..

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

The number of candidates and the positions open for election will determinate the total amount of matching funds. The 2019 Report of Committee to Recommend Funding for the Public Election Fund states: "In Montgomery County in 2018, term limits opened 5 of the 10 county offices, including 4 of the 5 high-payout countywide offices. Those openings, and the advent of public financing, triggered record numbers of candidates and vigorous campaigns. In 2022, by contrast, although term limits will open another 3 offices including one council-at-large seat, it seems reasonable to expect there will be fewer open seats, fewer candidates and smaller payouts than in 2018. On the other hand, 2018's enthusiastic response suggests that future participants may begin their campaigns earlier, and therefore have longer to achieve maximum payout."

Fiscal Impact Statement
Bill 31-20, Public Campaign Financing- Amendments

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.

Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

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

Estela Boronat de Gomes, Office of Management and Budget
David Crow, Department of Finance



Jennifer Bryant, Acting Director
Office of Management and Budget

09/08/20

Date