GO COMMITTEE #3
April 11, 2019
Worksession

MEMORANDUM

April 9, 2019

TO: Government Operations and Fiscal Policy Committee

FROM: Amanda Mihill, Legislative Attorney AMihill

SUBJECT: FY20 Operating Budget: NDA: Public Election Fund

PURPOSE: Make recommendations on the FY20 Operating Budget

Those expected to attend this worksession include:
Members of the Committee to Recommend Funding for the Public Election Fund
David Crow, Fiscal Projects Manager, Div. Fiscal Management, Department of Finance
Anita Aryeetey, Fiscal and Policy Analyst, Office of Management and Budget

Members of the Committee to Recommend Funding for the Public Election Fund are[1]:
David Scull, Chair
Sharon Cohen, Vice Chair
Lee Annis
Margaret Greene
Paul Schwartz

Relevant pages from the FY20 Recommended Operating Budget are attached on ©1.

Budget Summary:

- The Fund has a current balance of approximately $1.8 million.
- The Executive is not recommending additional appropriations for the Public Election Fund.
- The 2019 Report of the Committee to Recommend Funding for the Public Election Fund's majority recommended the County add $1.8 million to the Fund over the next 3 fiscal years.

Council Staff Recommendation:

- If Committee members support the Committee to Recommend Funding for the Public Election Fund's majority recommendation, then Council staff suggests adding $1.8 million to the Reconciliation List in the following increments: $800,000, $500,000, $500,000.

[1] The term of the current members of the Committee to Recommend Funding for the Public Election Fund end on April 30; the Council is in the midst of the appointment process for the next Committee.

Overview/FY20 Recommended Budget

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. Bill 16-14 also established a Committee to Recommend Funding for the Public Election Fund. This Committee is charged with reporting to the Council by March 1 each year estimating the funds necessary to implement the campaign finance system and recommending an appropriation to the Public Election Fund for the following year.

During the program's inaugural election cycle, 68 candidates ran for either County Executive or County Council. Of the 38 candidates that filed an intent to use public campaign financing for one of these offices, 23 candidates ultimately obtained public financing. 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).

The Fund has a remaining balance of approximately \$1.8 million. The Executive is not recommending any funds be added to this NDA for FY20.

Committee to Recommend Funding for the Public Election Fund

In its 2019 Report (©2), the Committee majority recommends the Council add \$1.8 million to the Public Election Fund for each of the next 3 years, bringing the total to \$7.2 million for the 2022 elections. The majority stated that it seems reasonable to expect there will be fewer open seats, fewer candidates, and smaller payouts in 2022 compared to 2019, though the 2018 response suggest that future participants may begin their campaigns earlier and have more time to achieve maximum payout. A minority of the Committee submitted a dissenting view urging the Council to fund \$1 million over the next 3 years, which would bring the total to \$4.8 million in the 2022 elections.

Council Staff Recommendation

Council staff recommendation: Although there is now some data regarding participation in the County program, the program is still very new. Additionally, the Council has begun outreach to the community – participants, non-participants, and interested individuals – seeking feedback on the program. The feedback may result in changes to the program that will impact the amount of funding necessary to appropriately implement the program during the next election cycle.

If Committee members support the Committee to Recommend Funding for the Public Election Fund's majority recommendation, then Council staff suggests adding \$1.8 million to the Reconciliation List in the following increments: \$800,000, \$500,000, \$500,000.

Additional anticipated future costs: Though not impacting the FY20 budget, Council staff wanted to ensure Committee members were aware that the State seems poised to implement House

Bill 830, County Public Campaign Financing – Administration, which would require the governing body of a county that exercises its authority to establish a system of public campaign financing to provide the funding and staff necessary for the operation, administration. As of the printing of this staff report, HB 830 was returned passed in the House, though not yet signed by the Governor. The Fiscal and Policy Note for HB 830 indicated that the fiscal impact for Montgomery County will increase beginning in 2021.

<u>This packet contains:</u>	<u>Circle</u>
FY20 Recommended Operating Budget	1
Committee to Recommend Funding for the PEF Report	2

F:\Mihill\Public Election Fund\Budget\FY20\FY 2020 GO Budget Worksession.Docx

- Medical treatment expenses covered by Workers' Compensation,
- Medical treatment expenses covered by personal medical insurance,
- Medical treatment expenses covered by the Federal Government,
- Medical treatment expenses covered by other appropriate and available outside resources.

The Department of Police manages this account with the assistance of the County Attorney. All bills are reviewed to determine the appropriateness of the medical expense reimbursement and to assess the responsible party for the medical expense.

FY20 Recommended Changes	Expenditures	FTEs
FY19 Approved	**20,000**	**0.00**
FY20 Recommended	**20,000**	**0.00**

✷ Public Elections Fund

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

FY20 Recommended Changes	Expenditures	FTEs
FY19 Approved	**0**	**0.00**
FY20 Recommended	**0**	**0.00**

✷ Public Technology, Inc.

Funds are budgeted each year to continue membership in Public Technology, Inc. (PTI) as the County's research and development link with the National Association of Counties. Annual dues cover research and development assistance for innovative projects; access to a computerized information-sharing network; and membership in the Urban Consortium. The County participates in, and has received grants as a result of, initiatives in task forces on energy, solid waste, and telecommunications. PTI, as an organization, specializes in the research and assessment of ideas of interest to local governments for increasing efficiency, reducing costs, improving services, and solving problems. A current emphasis is on public enterprise, toward helping local governments identify and capture potential sales from products and information that are outcomes of government investment.

FY20 Recommended Changes	Expenditures	FTEs
FY19 Approved	**20,000**	**0.00**
FY20 Recommended	**20,000**	**0.00**

✷ Retiree Health Benefits Trust

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

The County's approach to address retiree health benefits funding is to determine an amount which, if set aside on an annual basis and actively invested through a trust vehicle, will build up over time and provide sufficient funds to pay future retiree health benefits and any accrued interest on unfunded liability. This amount, known as an Actuarially Determined Contribution or "ADC", normally consists of two pieces - the annual amount the County would usually pay out for health benefits for current retirees (the pay-as-you-go amount), plus the additional amount estimated to fund retirees' future health benefits (the pre-funding portion). The pay-as-you-go amount can be reasonably projected based on known facts about current retirees, and the pre-funding portion is estimated on an actuarial basis.

The County's policy is to pay the full amount of ADC each year. In FY11, the County Council enacted Bill 17-11 which established the Consolidated Retiree Health Benefits Trust. The Bill amended existing law and provided a funding mechanism to pay for other post

COMMITTEE TO RECOMMEND FUNDING
FOR THE
PUBLIC ELECTION FUND

Hon. Nancy Navarro, President
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

Re: **2019 Report of Committee to Recommend Funding for the Public Election Fund**

Dear President Navarro and Councilmembers:

As you know, the $11 million appropriated to the Public Election Fund (PEF) for the 2018 election cycle accurately anticipated the amount payable by the Fund if all participating campaigns had earned the maximum payout. However, only 6 out of 47 did so, and the final payout was approximately $6 million.

After reallocations in 2018, **the amount remaining in the Fund today is $1.8 million**.

In 2013, New York City's similar matching program paid out $38 million. Based on that experience, the city's Campaign Finance Board (NYCCFB) prepared for a $35 million payout in 2017, but were taken by surprise when the actual payout was only $15 million.

What explained the 60% decline in demand from 2013 to 2017? In 2013, Mayor Bloomberg reached his 3-term limit, touching off hot contests for open citywide and boroughwide seats, with consequently high payouts. In 2017, by contrast, there wasn't a single open citywide or boroughwide seat.

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. It should also be noted that minority party participation in 2018 was lower than would normally be expected with public financing newly available -- a dynamic that could be absent four years from now.

The PEF limits matching to contributions received from County "residents," but there is presently no procedure for auditing whether those contributors were in fact County residents.

The County may wish to consider whether "resident" requires further definition, and whether auditing should be instituted.

The Committee recommends the County lean in the direction of somewhat overfunding the anticipated demand, both to assure that adequate funds will be available, and to avoid subjecting incumbents to criticism, in the heat of an election year, for votes on last-minute emergency appropriations that might be framed as benefitting themselves or disadvantaging their challengers.

The Committee **recommends that another $1.8 million be added to the Fund in each of the next three budget cycles, thus bringing the total to $7.2 million by the outset of 2022.**

Additional Recommendation – Staff and Software Support

The Committee would like to call attention to the efficiency with which the State Board of Elections and County Dept. of Finance administered the PEF's first cycle: a relative handful of employees, each shouldering other responsibilities besides the PEF, distributed $6 million. The NYCCFB, by comparison, has a staff of 120.

However, New York's program, enacted in 1988 and now having completed 8 election cycles, does offer services that Montgomery County might consider as it evaluates the PEF's performance. These include 1) a website that all campaigns can use as an easy way for supporters to make online contributions, rather than requiring each campaign to develop its own, and saves staff time by automatically generating the required campaign reports. There is also 2) an outreach effort by NYCCFB staffers, who go to individual campaign offices to explain the program and assist with using the software and forms. More detail is available at https://www.nyccfb.info/

The Committee believes Montgomery County's PEF program has made substantial progress toward its goals of levelling the financial playing field and fostering greater public participation in County politics, and has thus significantly strengthened our democracy.

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

Respectfully submitted,

David Scull, Chair
Sharon Cohen, Vice-Chair
Lee Annis
Margaret Greene
Paul Schwartz

3

Minority Statement
For the Committee to Recommend Funding for the Public Election Fund's 2019 Report to the County Council

The 2018 election for County Executive and County Council in Montgomery County was unique due to the combined impact of the County's new Term Limits provision and the opportunity for County-provided public election funding to qualifying candidates. These two dynamics will continue to play out in the years ahead in terms of how much funding is needed for the County's Public Election Fund (PEF). I argue that because more seats overall were term limited at the "higher maximum PEF payout" seats (County Executive and At Large Council Seats) in the 2018 election, PEF Funding needs for 2022 will NOT be as large because most term-limited seats will be at the lower Council PEF maximum payout levels, and for this reason I did not support the Committee's PEF 2019 funding recommendation to the Council.

Looking at the data from the 2018 election in terms of where the most candidates filed to run, it is clear the term-limited seats drew in the most candidates to run. In 2018, the County Executive seat was term limited and 9 candidates filed to compete for this seat. For At-Large Council seats, three of four seats were term limited and that drew in a whopping 38 candidates to run. Council District 1 – the only term-limited Councilmatic seat – drew in 9 candidates. The other 4 council seats -- none of which were term limited (Districts 2, 3, 4 and 5) -- had very limited competition with only two or three candidates all from the same party running only in the Primary against the incumbent. District 2 was the only non-term limited District seat that drew a challenger to the incumbent in the Primary and three Primary challengers from a different party.

Given how the public election fund is structured, the County Executive and At-Large County Council seats are those with the highest potential payout levels for qualifying PEF candidates. In 2018, the vast majority of qualifying PEF candidates ran and qualified for these higher maximum PEF payout categories. This scenario is NOT likely to be repeated in 2022 because more District Council seats at the lower maximum PEF payout levels will be term limited.

This points to the fact that an open seat created by term limits is more of a driving force in getting candidates to run for that office, rather than any potential for public financing. When determining the appropriate dollar amount for the public election fund in the next election, examining which category of seats in the next election (2022) are term limited, and where those seats line up (at higher or lower maximum payout levels) is a more accurate analysis to estimate PEF funding needs for the next election. Assuming a recurring number of candidates will file **AND** qualify across **ALL** PEF payout levels is not realistic.

Further, as seen in the 2018 election, many filed PEF candidates do NOT qualify. Others qualified but do NOT reach the maximum payout levels. This too puts downward pressure on PEF funding needs. In estimating PEF funding needs the majority on this Committee tends to assume all filed PEF candidates will qualify and ALL of them will receive the maximum matching fund payouts in BOTH the Primary and General Elections. This is simply NOT the case and the facts from the 2018 election bear this out.

In 2018, only one PEF County Executive candidate received the maximum payout ($750K), in both the Primary and General Elections. Two other Democratic PEF-County Executives candidates qualified, but did NOT receive the maximum PEF payout amount.

Among At-Large PEF candidates who qualified, only a third reached or came near the maximum PEF payout of $250K in the Primary, and while all four qualifying PEF candidates in the General Election received PEF matching funds NONE even came close to the maximum PEF payout amounts.

Of those running for Council District seats, only two qualifying PEF candidates reached the maximum PEF payout level ($125K), but only in the Primary Election. No Council District PEF candidate came close to the maximum PEF payout amount in the General Election.

The other lesson the 2018 PEF numbers tell us is that by far, PEF matching funds come into play in the Primary Election and do NOT play as significant a role (in terms of overall dollars match and spent) in the General Election. That means for the most part this taxpayer-financed program is one that funds challengers within the County's dominant party to compete against each other in the Primary Election rather than helping candidates from different parties compete against one another in the General Election.

The number of non-dominant party candidates running, qualifying and receiving maximum PEF payout amounts confirms this analysis. Very few non-dominant party candidates ran in the 2018 election regardless of term limits OR public financing. Of the 68 candidates overall, only nine were Republican candidates, the majority of whom were "ACLE or limited campaign fund candidates" meaning they did not attempt to raise or spend more than $1K. Two Republican candidates filed, qualified for PEF and received matching PEF funds. This was frankly more funding for Republican candidates combined than previously possible. Only three other "non-dominant" party candidates ran, two from the Green party (neither of whom qualified for PEF). The third, a so-called "unaffiliated" candidate actually was a Democrat who lost in Primary and then decided to change party affiliation in order to run in the General, obviously an outlier situation, not likely to be repeated. Meaning in reality there was no true unaffiliated candidate who ran for local office in 2018, yet they make up nearly a third of the electorate. Therefore the goal of PEF to encourage candidates from non-dominant, non-incumbent parties to run for office was not actually achieved in the county's inaugural run of pubic financing for local elections.

Even with the huge number of candidates running in 2018 -- many of who filed, qualified and received matching PEF funds -- the funding in the PEF pot greatly exceeded what was actually needed. So much so, the County Council choose to claw back millions from the PEF fund, as it was clear these dollars were needed for other County priorities.

The 2022 election is likely to have more candidates at the "lower PEF maximum payout levels" running for office due to which candidates are term limited. Therefore, less PEF funding overall is likely needed for 2022 relative to what was spent in 2018. The majority on the Committee, however, likes to err on the side of overfunding the PEF. Millions of unspent funds remain in the PEF fund NOW. Because the County budget is in a serious short fall (revenues are down), siphoning dollars from other priority County projects just to sit in the PEF funding pot and NOT be spent until 2022 is inappropriate. Further, additional funding could be added to the PEF in subsequent budget years if County revenues improve, OR if a large number of candidates file to run as PEF candidates for the 2022 election.

The minority on this Committee offered an amendment to reduce the recommended funding amount from $1.8M to $1M. That Amendment failed. Yes these amounts seem inconsequential compared to the County's multibillion dollar county budget; but why tie up nearly $2M dollars in a the PEF pot when those dollars might be more appropriately used elsewhere in the County budget? Overfunding a nice to have NOT a need to have program, in a time of revenue shortfall is irresponsible. The County Council should not adopt the PEF funding amount recommended by this Committee.

Submitted by
Sharon Cohen, Committee Vice-Chairman and Lee Annis, Committee Member