



Montgomery  
County Council

**Committee:** GO

**Committee Review:** At a future date

**Staff:** Amanda Mihill, Legislative Attorney

**Purpose:** To introduce agenda item – no vote expected

**Keywords:** #PublicCampaignFinancing

Search terms: campaign contributions, in-kind contributions

AGENDA ITEM #12A

July 21, 2020

**Introduction**

## 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

- To introduce Bill – 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**

July 16, 2020

TO: County Council

FROM: Amanda Mihill, Legislative Attorney

SUBJECT: Bill 31-20, Public Campaign Financing - Amendments<sup>1</sup>

PURPOSE: Introduction – 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), is scheduled to be introduced on July 21. A public hearing is tentatively scheduled for September 15 at 1:30 p.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.

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<sup>1</sup>#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 24<sup>2</sup> and December 9, 2019<sup>3</sup>, 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.<sup>4</sup> 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.

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<sup>2</sup>[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20191024/20191024\\_GO3.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20191024/20191024_GO3.pdf)

<sup>3</sup>[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20191209/20191209\\_GO2.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2019/20191209/20191209_GO2.pdf)

<sup>4</sup>[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2020/20200710/20200710\\_GO3.pdf](https://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

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

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**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:*

1           **Sec. 1. Sections 16-18, 16-20, 16-21, 16-22, 16-23, 16-24, 16-25, 16-27, 16-**  
2 **28, 16-29, 16-30, and 16-31 are amended as follows:**

3 **16-18. Definitions.**

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

5   \*           \*           \*

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

8   \*           \*           \*

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

11   \*           \*           \*

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

18   \*           \*           \*

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

23   \*           \*           \*

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



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*

<b>DESCRIPTION:</b>	Bill 31-20 would: <ol style="list-style-type: none"><li>(1) amend the County public campaign financing system;</li><li>(2) alter the maximum contribution limits;</li><li>(3) allow participating candidates to carryover certain funds under certain circumstances;</li><li>(4) require an audit of the public campaign financing system after the general election in an election cycle;</li><li>(5) alter the penalties for willful violations of the public campaign financing system; and</li><li>(6) generally amend the law governing elections for County elective offices.</li></ol>
<b>PROBLEM:</b>	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.
<b>GOALS AND OBJECTIVES:</b>	To improve the public campaign financing law.
<b>COORDINATION:</b>	Department of Finance
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be researched.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Amanda Mihill, Legislative Attorney (240) 777-7815
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	N/A
<b>PENALTIES:</b>	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?**

<b>Statement</b>	<b>Number of candidates agreeing with statement</b>
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?**

<b>Statement</b>	<b>Number of candidates agreeing with statement</b>
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.