


**MEMORANDUM**

June 20, 2017

TO: Government Operations and Fiscal Policy Committee  
FROM: Robert H. Drummer, Senior Legislative Attorney   
SUBJECT: **Update 2:** Public Financing for 2018 Election Cycle

**Expected attendees:** David Crow, Department of Finance & Jared DeMarinis, State Board of Elections.

The Department of Finance and the State Board of Elections are expected to update the Committee on the implementation of the new public campaign finance system for the 2018 election cycle.

**Background**

Bill 16-14, Elections – Public Campaign Financing, was enacted on September 30, 2014 and signed into law on October 6, 2014. Bill 16-14 established the first and only public campaign finance system for County elections in Maryland.<sup>1</sup> The law designates the Maryland State Board of Elections to certify candidates and generally administer the public campaign financing system. The Director of Finance is responsible for establishing a Public Election Fund and distributing the public contributions to certified candidates. The Council has appropriated approximately \$6 million to date for the Public Election Fund.

A candidate needs to obtain a specific number of small contributions from a County resident of between \$5 and \$150 to qualify for public funding. Each of these qualifying contributions must be received during the qualifying period. Section 16-18 defines the qualifying period as:

*Qualifying period means the period of time beginning on January 1 following the last election for the office the candidate seeks and ending 45 days before the date of the primary election. The qualifying period for a special election under Section 16-17 must be set by Council resolution.*

A candidate for Executive must collect at least 500 qualifying contributions and an aggregate total of at least \$40,000 to qualify. A candidate for At-Large Councilmember must collect at least 250 qualifying contributions and an aggregate total of at least \$20,000. A candidate for District Councilmember must collect at least 125 qualifying contributions and an aggregate total of at least \$10,000.

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<sup>1</sup> A Charter amendment that would authorize the Howard County Council to enact a public campaign financing law was approved by the voters in 2016.

A candidate for Executive certified to receive public funding will be eligible for a matching contribution of \$6 for each dollar of a qualifying contribution for the first \$50 of the contribution; \$4 for each dollar of the second \$50; and \$2 for each dollar of the third \$50. The match for a candidate for Councilmember is \$4 for each dollar of the first \$50, \$3 for each dollar of the second \$50, and \$2 for each dollar of the third \$50. For example, a candidate for Executive who collects 3 qualifying contributions of \$50 will receive \$900 in matching funds and a candidate who collects 1 qualifying contribution of \$150 would receive \$600 in matching funds. The maximum public contribution for a candidate for Executive is \$750,000 for the primary and \$750,000 for the general election. The maximum public contribution for each election for At-Large Councilmember is \$250,000 and the maximum public contribution for each election for District Councilmember is \$125,000.

A candidate who voluntarily accepts a public contribution must pay for all campaign expenses with the qualifying contributions, the matching public contributions, and a personal loan from the candidate and the candidate's spouse of no more than \$6000 from each.

The Executive adopted regulations implementing this law that were approved by the Council on October 6, 2015. A copy of these regulations are at ©1-6. The State Board of Elections Summary Guide for candidates can be found at:

[https://www.campaignfinance.maryland.gov/PEF\\_Summary\\_Guide\\_EDITION\\_MAY\\_2017\\_final.pdf](https://www.campaignfinance.maryland.gov/PEF_Summary_Guide_EDITION_MAY_2017_final.pdf)

The Council's website contains information about the public campaign system at:

[http://www.montgomerycountymd.gov/COUNCIL/public\\_campaign\\_finance.html](http://www.montgomerycountymd.gov/COUNCIL/public_campaign_finance.html)

### **November 3, 2016 GO Worksession**

Councilmembers Tom Hucker and George Leventhal attended the worksession in addition to the Committee members. Robert Hagadoorn, Finance, and David Crow, Finance, represented the Executive Branch. Robert Drummer, Senior Legislative Attorney, represented the Council staff. Finance updated the Committee on their progress in implementing the Public Campaign Financing Law and answered questions about the law. Chair Navarro indicated that she wanted another update in 2017 after Finance has been able to work out additional details with the State Board of Elections.

### **Current Status**

Jared DeMarinis, State Board of Elections, provided a status update for the public campaign financing system. See ©7-8. Seventeen candidates have filed a declaration of intent to participate in the system. The State Board's Digital Signature Acceptance Policy for Public Financing is at ©9. Including the appropriation for FY18, the Public Campaign Finance Trust Fund has \$11 million.

This packet contains:

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**COMCOR 16.21.01 Public Election Fund**

**16.21.01.01 General Provisions**

A. Authority. In accordance with the authority conferred under Chapter 16, Article IV, Public Campaign Financing of the Montgomery County Code, the County Executive hereby promulgates this regulation to administer and implement the Public Election Fund (“Fund”) in Montgomery County, Maryland.

B. Applicability. The Fund provides public campaign financing to a candidate for a County elective office. The legislation establishing the Fund regulates certain campaign finance activity of a candidate for County elective office who voluntarily accepts public campaign financing; authorizes the Maryland State Board of Elections (“Board”) to administer and enforce the public campaign financing system; and provides for penalties for violations of the public campaign financing system.

**16.21.01.02 Definitions**

For purposes of this regulation, the following words and phrases have the following meanings unless the context clearly indicated otherwise:

A. Distribution period is the period during which the County distributes a public contribution from the Fund to a certified candidate, and begins 365 days before the primary election and ends 15 days after the date of the general election.

B. Interest on distributions returned to the Fund must be computed using the prime lending rate as of January 1 in the year in which the distribution is repaid to the Fund. The prime lending rate is published by the Federal Reserve Board and is the rate posted by a majority of top 25 insured U.S. chartered commercial banks.

C. Notification period is the period during which the Board may notify the Director that a distribution must be made from the Fund to an eligible candidate, and begins 365 days before the primary election and ends 5 days after the general election.

D. Public Election Fund is administered by the Director of Finance (“Director”).

E. Qualifying period is the period during which candidates may submit Receipts to become a certified candidate, and begins on January 1 following the last election and ends 45 days before the date of the primary election. Receipts must be submitted to the Board with any regularly scheduled campaign finance report or may be submitted to the Board on the first and third Tuesday of each month during the Qualifying period.

F. Receipts (“Receipts”) are a documented acknowledgment of a contribution that must identify the full name of the candidate for a County elective office, the contributor’s

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name and residential property address in Montgomery County, Maryland, amount of the contribution, date of receipt, and be signed by the contributor directly or by a digital signature using a method approved by the Board.

G. Receipts submission period is the period during which certified candidates may submit receipts for qualifying contributions to receive public contributions from the Fund, and begins 365 days before the primary election and ends the date of either the primary election or the general election. Receipts must be submitted to the Board with any regularly scheduled campaign finance report or may be submitted to the Board on the first and third Tuesday of each month during the Receipts submission period.

### **16.21.01.03 How and When Receipts Must be Submitted**

A. Receipts for qualifying contributions from contributors must be submitted to the Board.

B. Receipts must be submitted with a summary sheet made available by the Board that lists each receipt by contributor name, property address of the contributor, date of receipt, and amount of the contribution. The summary sheet must show the name of the candidate, elective office, date of submission to the Board, and both total number and total amount of Receipts.

C. Receipts and accompanying summary sheet may be submitted either in person or by certified mail.

D. To qualify as a certified candidate, the submission of Receipts must show a sufficient number and aggregate amount of qualifying contributions based on the formula for the respective County elective office: County Executive and either At-Large or District County Councilmember.

E. To qualify as a certified candidate, Receipts must be submitted during the qualifying period.

F. For certified candidates, Receipts may only be submitted during the receipts submission period which begins 365 days before the primary election and ends the date of either the primary or the general election.

### **16.21.01.04 Documents for Certification**

A. All documents to determine certification of a participating candidate for a County elective office must be filed with the Board.

B. Receipts must be the original signed documented acknowledgement of a contribution.

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**16.21.01.05 Allowable Uses of Money**

- A. The allowable uses of money in a publicly funded campaign account are limited to expenses directly related to election campaign related activities and incurred during the specific time period for either the primary or general election.
- B. Expenses incurred prior to the time that the candidate was certified by the Board as a participating candidate, are not permissible and therefore not allowable uses of public funds.
- C. Prohibited expenses of public campaign funds include, but are not limited to, personal use or expenses related to holding office; paying for a personal endorsement; and paying late filing fees.
- D. Prohibited expenses include contributions to current or future candidates for any elective office different than the one the participating candidate is currently seeking, and contributions to any entity or organization, such as a political party.
- E. Under all circumstances pertaining to questions and disputes of permissible campaign expenditures, the Board determines which expenses are permissible and which expenses are not permissible, and that determination is final.
- F. Upon the Board's determination that an expense is not permissible for campaign financing, the prohibited expense may not be paid by the participating candidate from the public campaign fund and, if already made, the public campaign fund must be repaid within 10 business days from the date of notification by the Board.
- G. The participating candidate must submit documentation to the Board within 15 business days from the date of notification that the prohibited expense was repaid to the public campaign fund within the time required.
- H. As a final remedy, if the prohibited expense is not repaid to the public campaign fund within the required time, the Board shall notify the Director that, until further notice from the Board, no distributions from the Fund will be made to the participating candidate.
- I. If the Board's decision regarding the prohibited expense is not accepted by the participating candidate and the public campaign fund is not repaid in full for the prohibited expense, the participating candidate must be de-certified by the Board as a participating candidate and all distributions made during either the primary or general election from the Fund must be repaid by the participating candidate within 30 days of notification by the Board.
- J. If, after de-certification of the participating candidate, the repayment of all distributions to the Fund is not made within 30 days of notification by the Board, the

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delinquency accrues interest charges as of the date of notification by the Board.

**16.21.01.06 Other Policies**

A. Distributions from the Fund will be made only during the distribution period which begins 365 days before the primary election and ends 15 days after the date of the general election.

B. The Board must notify the Director within 5 business days from the date that the Board determines that a participating candidate is no longer in a contested election due to the other candidate or all other candidates withdrawing from the election.

C. A participating candidate who withdraws from an election, must repay to the Director all distributions from the Fund received during the election cycle plus interest computed from the date of the distribution(s).

D. If a participating candidate is no longer in a contested election, no further distributions to the participating candidate from the Fund can be made starting with the date the Board determined that there is no longer a contested election for that County elective office for either the primary or general election. Any distribution from the Fund that was made for a contribution after the Board determined that the election is no longer contested, must be repaid by the participating candidate to the Director.

E. Within 30 days after the County Board certifies the results of the general election, a participating candidate must repay to the Fund any unspent money in the candidate's publicly funded campaign account. If a candidate does not repay the unspent money to the Fund as specified, the delinquency accrues interest charges from the date the County Board certified the results of the general election.

F. If a participating candidate seeks a County elective office different from the one the candidate was certified for during the same election cycle, that candidate must withdraw from the election, must repay to the Director all distributions from the Fund received during the election cycle plus interest computed from the date of the distribution(s), and apply for certification by the Board for the new County elective office. The Board's previously approved contributions for the County elective office from which the candidate has withdrawn can be used towards the certification for the new County elective office.

G. The Board must determine the amount of a public contribution that each participating candidate is eligible for, based on the amount reflected on the Receipts as presented to the Board and the formula for the respective County elective office: County Executive and either At-Large or District County Councilmember.

H. The Board must compute and authorize the amount of public contribution, notify the Director of the amount of public contribution for each participating candidate in writing, and the Director must process the authorized public contributions and deposit the

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amount into a participating candidate's publicly funded campaign account within 3 business days from the date the Director receives notification that the Board authorized the public contribution if there are sufficient funds in the Fund for a full distribution.

I. If the Director determines that there are insufficient funds in the Fund for the full distribution authorized by the Board, the Director must deposit the adjusted amount of authorized public contributions into a participating candidate's publicly funded campaign account within 5 business days from the date the Director receives notification that the Board authorized the public contribution.

J. Payments will be made as direct deposit to the candidate's bank checking account through Automated Clearing House (ACH) and all candidates must furnish certain banking information to the Director at the time of filing notice of intent with the Board.

K. The Director must process all authorized public contributions by date and in the order of the earliest date first to the latest date last and based on the date they were authorized by the Board. After the Director processed and deposited all authorized public contributions for the earliest date, the Director must process and deposit all authorized public contributions for any subsequent date authorized by the Board.

L. The Board must not authorize the Director to distribute a public contribution from the Fund to a participating candidate that in aggregate would exceed the public contribution limit for either a primary or general election for that County elective office as authorized in Bill 16-14.

M. In the event that the Board authorized and the Director distributed a public contribution that exceeded the public contribution limit for that County elective office, the Board must notify the participating candidate within 5 business days from the date of that determination in writing, and the participating candidate must repay the Fund within 5 business days from the date of the notification letter.

N. If, after notification by the Board to the participating candidate of an erroneous public contribution, the amount is not repaid to the Fund within 5 business days, the delinquency accrues interest charges as of the date of notification by the Board.

O. If the Director determined that the amount of the Fund is insufficient to distribute the public contributions authorized by the Board for that date, each public contribution to a participating candidate must be reduced by the same percentage of the total public contribution authorized by the Board on that date.

P. After the Director determines that the Fund is insufficient to distribute any or all public contributions authorized by the Board, no subsequent claim may be made by a participating candidate based on a public contribution authorized by the Board on a date prior to the determination of Fund insufficiency but not received by the Director until after the date of

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determination of Fund insufficiency.

Q. If the Director determined that the Fund has a zero balance, the Director must notify the County Executive, County Council President, and Board within 3 business days from the date of that determination.

R. If the Director determined that the Fund has a zero balance but the Board determined that the public contribution limits for the respective County elective offices have not been reached, the Board may continue to authorize public contributions and notify the Director, and the Director must hold these authorized public contribution notifications until such time that the Fund has a balance greater than zero. At such time, the Director must process authorized public contributions in the following order: (1) in the event that a portion of previously authorized public contributions was not paid due to insufficient funds, and (2) authorized public contributions that were held must be processed by date and in the order of the earliest date first to the latest date last and based on the date they were authorized by the Board.

S. If the Director determined that the Fund has a zero balance on the day following the end of the Distribution period, but holds authorized public contributions that were not processed due to insufficient funds, the Director must notify the Board detailing the amounts not paid by date authorized and by candidate.

T. The Board, upon notification from the Director that certain authorized public contributions have not and will not be remitted to the public campaign funds and that the distribution period is closed, must notify the participating candidate(s) within 10 business days from the date of notification from the Director in writing.

(Administrative History: Reg. No. 12-15 (Method 1); Dept.: Finance)



**STATE BOARD OF ELECTIONS**

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June 22, 2017  
Montgomery County Council  
Government Operations and Fiscal Policy Committee

**Montgomery County Public Election Fund**

**Current Status of the Program:**

- The Montgomery law was the model for Howard County to implement its public financing program.
- 17 candidates have filed a declaration of intent to participate.
- The first day to file a report for certification is July 4.
- Software changes have been made and implemented to receive the additional requirements necessary to receive reports and calculate the public contribution.
- A Summary Guide has been published detailing the program requirements and including a "how to" on filing reports.
- A webinar is scheduled for July 11- a powerpoint slideshow will be provided. Additionally, the webinar will be recorded and published for others to watch at their own convenience.

**Resources:**

- Current resources are spread thin.
- The county should provide for sufficient personnel to administer and implement outreach, coordinate between the Committee to Recommend Funding for the Public Election Fund, SBE and the Department of Finance, and answer questions from candidates and the public.
- Additional resources are needed for any post-election audit. The Department of Finance should be the lead in conducting any audit of public finances received.

**Legislative Fixes:**

- As the program gains more and more participants, new issues have arisen that require legislative action for the next election to provide clarity.
- Here are some of the issues that the Department of Finance and SBE have identified:
  - What is the definition of a county resident? Is there a time limit needed to reside in-County in order be considered a county resident?
  - Are there any violations that would remove a candidate from the program or can a candidate remedy the violation and remain a certified candidate?
    - Who determines what these violations are and when one is committed?

- Do qualifying contributions received and used in a primary election but not matched due to a candidate achieving the maximum threshold remain eligible for matching for the general election?
- Do contested elections include write-in candidates or only candidates listed on the ballot?
- Personal liability for candidates, treasurers, and chairs and whether there are any penalties for violations committed by contributors.

# Digital Signature Acceptance Policy for Public Financing

Maryland State Board of Elections

June 19, 2017

The purpose of this policy is to provide the requirements for a digital signature to be accepted by a county who has adopted a system of public financing for elective offices in the executive or legislative branches of that county government.

A digital signature shall meet the same requirements for an electronic signature accepted by the State Board. Pursuant to Election Law Article §1-101(y), an electronic signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Therefore, a contribution receipt submitted by the candidate seeking public financing with a digital signature from the contributor means a document provided to the State Board where the donor made an affirmative action acknowledging the contribution to a publicly financed candidate. This is more than checking a box but an affirmative action by the contributor executing his or her intent to sign. For example, the submission could include the donor affirmatively typing his or her name or initials in the text box.

In order to be accepted as a qualifying or eligible contribution, the supporting documentation of the digital signature must include the name, address, county of residence for qualifying contributions, time stamp of the transaction, amount of the contribution and transaction method.

Any contribution with a digital signature that does not meet the policy requirements set forth in this document shall be rejected and not accepted as qualifying.