

MEMORANDUM

July 21, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Expedited Bill 25-17, Elections – Public Campaign Financing - Amendments

Government Operations and Fiscal Policy Committee recommendation (3-0): approve the Bill as introduced.

Expedited Bill 25-17, Elections – Public Campaign Financing - Amendments, sponsored by Councilmember Navarro, Vice President Riemer, and Councilmembers Katz, and Elrich, was introduced on July 11. A public hearing was held on July 18 and a Government Operations and Fiscal Policy Committee worksession was held on July 20.

Bill 25-17 would:

- (1) permit a candidate to correct a mistake in an application for certification within a certain time;
- (2) clarify that a candidate may receive a matching public contribution during the general election for certain unmatched qualifying contributions received during the primary election; and
- (3) permit a candidate to use unspent funds returned to the County after an election as a credit against any repayment required for a public contribution mistakenly received.

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 public campaign finance system for County elections in Maryland.¹ 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

¹ On July 3, 2017, the Howard County Council overrode the Executive's veto of a public campaign financing law that will take effect for the 2022 elections.

public contributions to certified candidates. The Council has appropriated approximately \$11 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.

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. 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

The Council's website contains information about the public campaign system at:
http://www.montgomerycountymd.gov/COUNCIL/public_campaign_finance.html

The County Attorney's Office found no legal issues with the Bill. See ©14.

Government Operations and Fiscal Policy Committee Worksession

On June 22, 2017, the Government Operations and Fiscal Policy Committee received an update on the status of the public campaign finance system from David Crow, Finance, and Jared DeMarinis, Director - Division of Candidacy and Campaign Finance for the State Board of Elections. See ©6-7. The Committee discussed several issues that have arisen as the system goes through its initial election. The Committee decided to introduce legislation to resolve these outstanding issues for the 2018 election cycle. Expedited Bill 25-17 would resolve these outstanding issues.

Public Hearing

The lone speaker, Sharon L. Cohen, opposed the Bill. See ©8-13. Ms. Cohen is the Vice-Chair of the Committee to Recommend Funding for the Public Election Fund, but she testified as an individual. Ms. Cohen argued that it is inappropriate to change the rules in the middle of the game and that the Bill would benefit those candidates seeking public campaign financing. Ms. Cohen also alleged that Councilmembers who are running for a County office in the next election have a conflict of interest.

Issues

1. Is it appropriate to enact changes to the public campaign finance system after candidates have already entered the system?

A significant change to the system at this late date would be unfair to candidates. For example, any change in the number of qualifying contributions required, the amount of the match, or the limits on the amount of contributions received would be significant changes to the system that should not be made for the 2018 election. However, the Bill would not make a significant change to the system that is likely to unduly help or hurt a candidate. Each issue was raised by the State Board of Elections or the Department of Finance at the GO Committee discussion on June 22. Each of these issues was subject to different interpretations under the current law that can either be resolved by a Court or by legislative amendment. Resolution of each issue by a legislative amendment is preferable because speed of clarification is important. **Committee recommendation (3-0):** clarify these issues by legislation.

2. Does a Councilmember who plans to run for County office in 2018 have a conflict of interest in acting on this Bill?

The County Ethics Law governs conflicts of interest. Section 19A-11 provides:

Sec. 19A-11. Participation of public employees.

- (a) *Prohibitions. Unless permitted by a waiver, a public employee must not participate in:*
 - (1) *any matter that affects, in a manner distinct from its effect on the public generally, any:*
 - (A) *property in which the public employee holds an economic interest;*

- (B) *business in which the public employee has an economic interest; or*
- (C) *property or business in which a relative has an economic interest, if the public employee knows about the relative's interest;*
- (2) *any matter if the public employee knows or reasonably should know that any party to the matter is:*
 - (A) *any business in which the public employee has an economic interest or is an officer, director, trustee, partner, or employee;*
 - (B) *any business in which a relative has an economic interest, if the public employee knows about the interest;*
 - (C) *any business with which the public employee has an active application, is negotiating, or has any arrangement for prospective employment;*
 - (D) *any business that is considering an application from, negotiating with, or has an arrangement with a relative about prospective employment, if the public employee knows about the application, negotiations, or the arrangement;*
 - (E) *any business or individual that is a party to an existing contract with the public employee or a relative, if the contract could reasonably result in a conflict between private interests and official duties;*
 - (F) *any business that is engaged in a transaction with a County agency if:*
 - (i) *another business owns a direct interest in the business;*
 - (ii) *the public employee or a relative has a direct interest in the other business; and*
 - (iii) *the public employee reasonably should know of both direct interests;*
 - (G) *any business that is subject to regulation by the agency with which the public employee is affiliated if:*
 - (i) *another business owns a direct interest in the business;*
 - (ii) *the public employee or a relative has a direct interest in the other business; and*
 - (iii) *the public employee reasonably should know of both direct interests; or*
 - (H) *any creditor or debtor of the public employee or a relative if the creditor or debtor can directly and substantially affect an economic interest of the public employee or relative.*
- (b) *Exceptions.*
 - (1) *If a disqualification under subsection (a) leaves less than a quorum capable of acting, or if the disqualified public employee is required by law to act or is the only person authorized to act, the disqualified public employee may participate or act if the public employee discloses the nature and circumstances of the conflict.*

* * *

Section 19A-11 prohibits participating in a matter that would provide a financial benefit to the public employee. It prohibits acting on a matter that would financially benefit the employee

or a close relative or a business owned by the employee or a close relative. These provisions do not easily apply to voting on a Bill that governs the public financing system for the next election because running for office is not a business. In fact, voting on the original Bill raised a similar potential issue for each Councilmember. Even if §19A-11 could be interpreted to raise a conflict of interest with this vote, the exception would apply because Councilmembers are the only public employees authorized to vote on legislation. **Council staff recommendation:** Councilmembers who are candidates for County elected office in 2018 are eligible to act on this Bill.

3. Should a candidate be permitted to correct a mistake in an application for certification within a certain time?

Section 16-22(c) permits a candidate to submit only one application for certification. For example, if a candidate for Executive submits 505 qualifying contributions for certification and the State Board disqualifies 6 due to errors in the name or residence, the candidate would be barred from receiving any matching contributions. The Bill would avoid this harsh result by permitting a candidate to correct a mistake within the earlier of 10 business days or the end of the qualifying period.

The potential loss of the right to participate in the system due to an easily correctible mistake in the submission is too harsh a punishment that would discourage candidates from using the public campaign financing system. **Committee recommendation (3-0):** approve the amendment.

4. Should a candidate receive a matching public contribution during the general election for an unmatched qualifying contribution received after reaching the maximum contribution during the primary election?

Once a certified candidate receives the maximum public contribution for the primary, the candidate may receive additional qualifying contributions before the primary election. Since the candidate has already received the maximum public contribution, these additional qualifying contributions would not be matched. It is unclear if the candidate is eligible to receive matching public contributions for these unmatched qualifying contributions during the general election campaign if the candidate wins the primary election. Bill 25-17 would clarify that the candidate would receive matching public contributions during the general election campaign for these unmatched qualifying contributions if otherwise eligible.

A certified candidate can choose to save some of his or her public contributions received for the primary for later use in the general election under current law. This amendment would be consistent with that option. Without the right to use these unmatched qualifying contributions if the candidate wins the primary, a candidate would be forced to either turn down additional qualifying contributions after reaching the cap until the general election campaign or forgo a possible match for them. Although one can argue that a resident who gives a candidate a qualifying contribution during the primary election campaign may not choose to support that candidate in the general election, the candidate can use that qualifying contribution for the general election campaign even if it is not matched. Permitting the candidate to use these unmatched qualifying

contributions to receive a public contribution during the general election campaign, if otherwise eligible, encourages candidates to use the public campaign financing system. **Committee recommendation (3-0):** approve the amendment.

5. Should a candidate be permitted to use unspent funds returned to the County after an election as a credit against any repayment required for a public contribution mistakenly received?

The regulations require a candidate who receives matching public contributions in error to return these funds. The law also requires a candidate to return unspent money to the Public Election Fund after the election. It is unclear if a candidate who received money in error can pay this money back with unspent money the candidate would otherwise be required to return. Bill 25-17 would clarify that the candidate would receive a credit for returned unspent funds against any repayment required for a public contribution received in error.

This amendment would result in full reimbursement to the Public Election Fund for money disbursed in error without penalizing a candidate for the erroneous disbursement. **Committee recommendation (3-0):** approve the amendment.

Committee recommendation (3-0): approve the Bill as introduced.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 25-17
Concerning: Elections – Public Campaign
Financing - Amendments
Revised: June 26, 2017 Draft No. 1
Introduced: July 11, 2017
Expires: January 11, 2019
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmember Navarro, Vice President Riemer and Councilmembers Katz and Elrich

AN EXPEDITED ACT to:

- (1) permit a candidate to correct a mistake in an application for certification within a certain time;
- (2) clarify that a candidate may receive a matching public contribution during the general election for certain unmatched qualifying contributions received during the primary election;
- (3) permit a candidate to use unspent funds returned to the County after an election as a credit against any repayment required for a public contribution mistakenly received; and
- (4) generally amend the law concerning public campaign financing for County elections.

By amending

Montgomery County Code
Chapter 16, Elections
Section 16-22 and 16-23

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

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

1 **Sec. 1. Sections 16-22 and 16-23 are amended as follows:**

2 **16-22. Board determination.**

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

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

9 (2) a campaign finance report that includes:

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

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

13 (C) the receipt associated with each contribution and
14 expenditure; and

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

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

17 (c) A candidate may submit only one application for certification for any
18 election. A candidate may correct any mistakes in the application for
19 certification within the earlier of:

20 (1) 10 business days after receiving notice that the Board denied the
21 application; or

22 (2) the end of the qualifying period.

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

26 **16-23. Distribution of public contribution.**

27 * * *

- 1 (h) A participating candidate must submit a receipt for each qualifying
 2 contribution to the Board to receive a public contribution. The Director
 3 must deposit the appropriate public contribution into a participating
 4 candidate's publicly funded campaign account within 3 business days
 5 after the Board authorizes the public contribution.
- 6 (i) A candidate may receive a matching public contribution during the
 7 general election for an unmatched qualifying contribution received
 8 during the primary election after the candidate has received the maximum
 9 public contribution for the primary election if the candidate is otherwise
 10 eligible to receive matching public contributions during the general
 11 election.
- 12 (j) If the Director mistakenly distributes a public contribution to a candidate
 13 greater than the candidate was entitled to receive, the candidate must
 14 repay the funds mistakenly distributed within 5 business days after being
 15 notified of the mistake. Any unspent funds returned to the County after
 16 an election may be used as a credit against any repayment required for a
 17 public contribution mistakenly received.
- 18 (k) *Consumer Price Index adjustment.* The Chief Administrative Officer
 19 must adjust the public contribution limits established in Subsection (a)(3)
 20 and the eligible contribution limit established in Subsection (c), effective
 21 July 1, 2018, and July 1 of each subsequent fourth year, by the annual
 22 average increase, if any, in the Consumer Price Index for the previous 4
 23 calendar years. The Chief Administrative Officer must calculate the
 24 adjustment to the nearest multiple of 10 dollars, and must publish the
 25 amount of this adjustment not later than March 1 of each fourth year.

26 **Sec. 2. Expedited Effective Date.**

27 The Council declares that this legislation is necessary for the immediate

1 protection of the public interest. This Act takes effect on the date on which it becomes
2 law.

3 *Approved:*

4 _____
Roger Berliner, President, County Council Date

5 *Approved:*

6 _____
Isiah Leggett, County Executive Date

7 *This is a correct copy of Council action.*

8 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 25-17 *Elections – Public Campaign Financing - Amendments*

DESCRIPTION: Bill 25-17 would:

- (1) permit a candidate to correct a mistake in an application for certification within a certain time;
- (2) clarify that a candidate may receive a matching public contribution during the general election for certain unmatched qualifying contributions received during the primary election; and
- (3) permit a candidate to use unspent funds returned to the County after an election as a credit against any repayment required for a public contribution mistakenly received.

PROBLEM: The issues addressed in the Bill arose during the initial implementation of the Public Campaign Financing Law.

GOALS AND OBJECTIVES: To resolve the outstanding issues in the Law.

COORDINATION: Finance, County Attorney

FISCAL IMPACT: Office of Management and Budget, Finance

ECONOMIC IMPACT: To be determined.

EVALUATION: N/A

EXPERIENCE ELSEWHERE: N/A

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable

PENALTIES: N/A

STATE BOARD OF ELECTIONS

P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840

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Deputy Administrator

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.

11

**Testimony from Sharon L. Cohen
Resident of Potomac, MD
Before The Montgomery County Council on
Expedited Bill 25-17 – Public Campaign Finance Amendments
July 18, 2017**

Good afternoon my name is Sharon Cohen. I am a life long county resident from Potomac, Maryland. By way of background, I am a Member of the Montgomery County Republican Central Committee from Legislative District 15, and also serve as the Vice-Chair of the Council's Committee to Recommend Funding for the Public Election Fund (PEF). Having spent over two years examining the PEF program along side other PEF Committee members, I have a broad understanding of this new program. But today I testify solely on my on behalf, and I am speak in strong opposition to Expedited bill 25-17. I ask that my full written statement be included in the record.

I will be brief and to the point. Changing the PEF law when we are three-quarters through the current the election cycle is unfair and the law changes under consideration today creates a potential conflict of interest on the Council's part.

As you know, 2018 candidates for county elected office have already filed. Some candidates choose to file and qualify as PEF candidates. Others choose NOT to qualify for PEF. PEF and non-PEF candidates both have already started collecting campaign contributions for the 2018 election, and at least one current Councilmember started collecting qualifying PEF contributions as far back as the fall of 2016.

Perhaps non-PEF candidates looked at the law and the legally strict requirements -- including the potential for disqualification and other workability issues -- and determined the risks and challenges were too high for the benefit of receiving matching funds. Perhaps because there was so little public information on the MD Board of Elections website, or the County's website for that matter, about the PEF program until early 2017, such candidates did not have easy public access or the correct information about the law, the regulations, FAQs, how to file and required forms for the program. Lacking that information, perhaps it was just easier to file as a non-PEF candidate. Who knows?

Regardless of the reasons, 2018 candidates have ALREADY made decisions to run as PEF candidates or NOT. Candidates are ALREADY collecting campaign

contributions. Further, perhaps some prospective candidates decided to NOT run at all once they looked at the detailed legal rules and regulations for running as a PEF candidate.

The primary election is now less than one year away and the filing deadline is about 6 months from now. Actually, we are in the final quarter of the 2018 election cycle that began on January 1, 2015. Changing the PEF law mid-stream goes against the rules of fair play. Changing the PEF law now in the third quarter of the 2018-election cycle creates unfair advantage for PEF candidates!

Expedited bill 25-17 would:

- 1) permit a candidate to correct a mistake when filing for certification
- 2) "clarify" that a candidate may receive matching public contribution during the general election for certain unmatched qualifying contributions received during the primary election; and
- 3) permit a candidate to use unspent funds returned to the County after an election as a credit against any repayment required for a public contribution mistakenly received

Each of these law changes weakens the PEF law and its regulations as currently enacted. Let's remember first and foremost the PEF program spends taxpayer funds! At this time, the Council has allocated \$11 million in taxpayer funds to the PEF pot, and more funds could be added by the Council next year in the 2018 budget process or via a supplemental appropriation at any time. Spending taxpayer money on county elections MUST include strict rules and clear consequences – such as disqualification from the program – otherwise funds could be disbursed inappropriately.

Keeping the high bar consequence of disqualification from the program is a must. Candidates receiving taxpayer dollars in matching funds must have this penalty of disqualification placed on them so that each campaign establishes adequate auditing procedures in order to validate campaign contributions BEFORE they are submitted to the Maryland Board of Elections. Candidates should not be given a pass for sloppy record keeping.

More importantly, when the Council considered and passed the PEF program in 2014 the original text of the PEF bill limited qualifying contributions from individuals to those that were registered County voters. At that time, the

Maryland Board of Elections advised the Council it had no way to verify residency because their only source of information is the voter rolls. Instead, the Council ignored the advice of the Board of Elections to keep the "registered voter limitation" and went with the term resident, which I point out is not defined in statute. This means that if the Maryland Board of Elections cannot verify residency, then each PEF campaign MUST assume this responsibility; otherwise the PEF program is potentially ripe for fraud. And the consequence of disqualification from the PEF program is the ONLY insurance policy taxpayers have that the candidates themselves will take the necessary steps to validate residency of those contributing, as well as assure individual contributions are validly collected, aggregated, and reported.

The aggregation of an individual's contributions is another key accounting and records keeping issue that PEF candidates MUST address before submitting to qualify. The PEF matching ratios are tied to the amount contributed, with a higher matching rate for lower dollar contributions. For County Executive, for example, contributions \$50.00 and under are matched at 6 to one or \$300.00 is matched for one \$50.00 contribution. Between \$50.00 and \$100.00 the match rate is 4 to 1 and the match rate is 2 to 1 for amounts between \$100.00 to \$150.00. If an individual gave \$150.00 the total match would be \$600.00 for a County Executive candidate that qualified. If however, that individual contributed in three installments of \$50.00 each under the names: Bobby Smith, then Robert Smith and then Rob Smith without proper aggregation of all three separate contributions, and if this error was NOT caught by the Maryland Board of Elections, the matching pay out would be \$900.00 or 50 percent MORE than the candidate should have received. To prevent these errors from the outset, each campaign MUST have record-keeping systems in place and verification procedures to properly add up/aggregate contributions from the same individual.

Yes this is not easy, but in my opinion the verification process is necessary. If candidates expect to receive taxpayer funds for their elections then they have a fiduciary responsibility to make sure their campaigns can validly collect, aggregate and report such contributions. Indeed honest mistakes will be made and some contributions will be disqualified and NOT matched. Therefore, each candidate should collect above and beyond the mere threshold limit to qualify to handle simple errors.

This is done in other arenas. For example, when collecting signatures on a petition to add a question to the ballot everyone knows you have to collect

significantly more signatures than required as some will be disqualified. Further in the signature petition process after such signatures are submitted, if there are not enough due to disqualification, the petition sponsors cannot go back after filing and “cure or edit” what was submitted. What is submitted is final and either there are sufficient signatures to put the question on the ballot OR not! The same clear approach, should apply to the PEF program. We should think of this like a final exam, once you submit your answers (in the case file to qualify) that should be it and there should be no post-submission redo.

The second law change under consideration – to “clarify” that a candidate may receive matching public contribution during the general election for certain unmatched qualifying contributions received during the primary election – is NOT a clarification. This is a major policy change and one that benefits well-established candidates, major party candidates and incumbents. If adopted this law change would allow PEF candidates to collect and spend qualifying contributions in the primary election beyond those that could be matched because the upper pay out limit was reached, and then “bank the value” those contributions for matching in the general election.

This significant policy change, if adopted ignores the difference between the primary and general elections. In the primary election, one runs to be elected as the nominee of one’s party. Lesser-known or established parties may have fewer candidates running in the primary, fewer that qualify for PEF in the primary. Consequently, it’s doubtful that many would have sufficient “carry forward contributions,” compared to well known, established, or incumbents candidates. This so-called “clarification” thereby substantially disadvantages candidates in the general election who did not come close to receiving the max pay out in the primary.

If the Council really wants to “increase opportunities for more residents to run for office,” as noted as one of the goals of the PEF program on the County’s website, then the general election should be a new race between nominees of various parties and NOT put one party’s nominee ahead of the gate because they were able to bank and carry forward primary contributions into the general for PEF matching.

The final law change sought at this time -- permitting a candidate to use unspent funds returned to the County after an election as a credit against any repayment required for a public contribution mistakenly received – is wholly inappropriate.

The law requires unspent funds to be returned to the PEF program within 30 days post election. Those funds returned obviously include matching funds. But allowing those returned funds -- that include matching funds -- to be a credit against any repayment required for a public contribution mistakenly received, smacks of allowing ill-gotten gains to pay for a fine.

During the June 22nd Government Operations Committee hearing on the PEF program, this matter was discussed. Staff to the County Executive noted that one should not be able to use matched funds to pay back funds received in excess of what should have been paid/matched because the original error must be remedied, and "public dollars cannot be sent back to pay for your mistake." But this law change would do just that, the language in Expedited bill 25-17 would allow public dollars to cover a campaign's mistake. So again, the Council wants to reduce the onus put on PEF candidates to have systems in place to validly collect, aggregate, and report qualifying PEF contributions before they are submitted.

Keeping the onus on PEF candidates is critical to protecting taxpayers \$11 million that goes to pay for County elections because there is no required audit under the PEF law. Further, there are no funds or staffing at the County level to audit post election or, more importantly, in real time during the election when matching funds are dispersed. Other than the Maryland Board of Elections finding an error here and there OR if citizens groups examine every contribution, such mistakes may not be found at all.

Further, I ask if the Council identifies additional problems or challenges with the PEF law, how many more expedited bills will the Council attempt to move between now and the 2018 Primary or General Election? Why just these changes before us today? Where does this end?

Many of you seek to qualify as PEF candidates for re-election or election to higher office in the County and are undoubtedly now confronted with some of the challenges of the PEF program that you yourselves created and enacted into law in 2014. Now you want a redo. You want to make it easier on yourselves as PEF candidates to qualify for matching funds -- which I point out are taxpayer dollars to the tune of \$11 million.

I argue the time for a redo is after the 2018 election and NOT when we are three-quarters through the election cycle. Making changes mid-cycle is unfair pure and simple. The Council's move to enact law changes now that that benefit your own

campaigns as PEF candidates -- making it easier for you receive matching funds from \$11 million pot of tax payer funds -- creates a conflict of interest on your part.



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Alex Espinosa, Director
Department of Finance

FROM: Edward B. Lattner, Chief *EBL*
Division of Government Operations

DATE: July 19, 2017

RE: Bill 25-17E, Elections - Public Campaign Financing - Amendments

This Council-sponsored bill amends the Public Campaign Financing Law enacted by Bill 16-14 on September 30, 2014. Bill 25-17E would:

- (1) permit a candidate to correct a mistake in an application for certification within a certain time;
- (2) clarify that a candidate may receive a matching public contribution during the general election for certain unmatched qualifying contributions received during the primary election; and
- (3) permit a candidate to use unspent funds returned to the County after an election as a credit against any repayment required for a public contribution mistakenly received.

I see no legal issues.

cc: Bonnie Kirkland, Assistant CAO
Marc P. Hansen, County Attorney
Robert H. Drummer, Senior Legislative Attorney

17-022005
OCA bill review