


MEMORANDUM

July 14, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

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

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 Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for July 20 at 10:30 a.m.

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 public contributions to certified candidates. The Council has appropriated approximately \$11 million to date for the Public Election Fund.

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.

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

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.

The Amendments

1. Permit a candidate 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.

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.

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.

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.

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 packet contains:

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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

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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 to 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.