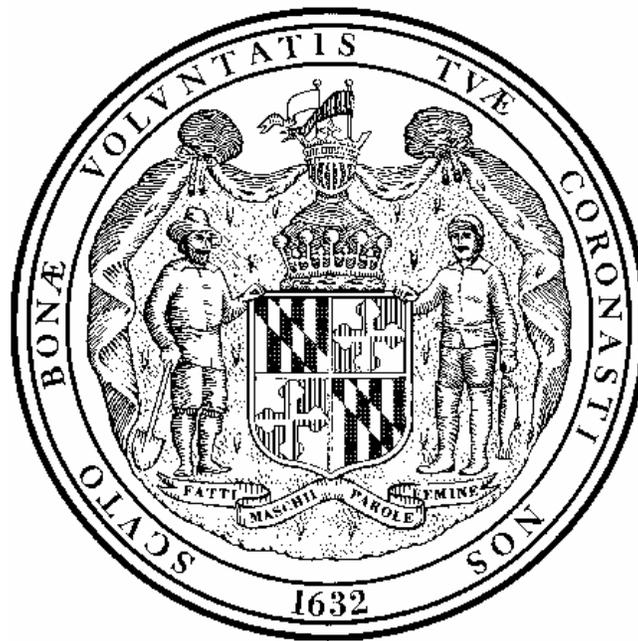


Study Commission on Public Funding of Campaigns in Maryland

Final Report



Annapolis, Maryland
February 2004

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February 11, 2004

The Honorable Robert L. Ehrlich, Jr., Governor
The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House
Members of the General Assembly

Ladies and Gentlemen:

On behalf of the Study Commission on Public Funding of Campaigns in Maryland, I am pleased to transmit to you the commission's final report.

The commission was established in the summer of 2002 pursuant to Chapter 169 of the Laws of Maryland (2002). As you know, the commission was established for the purpose of analyzing campaign finance practices in Maryland and making any recommendations for changes in the current system. Specifically, the commission's charge was to consider the effects of public funding of election campaigns and determine the need in Maryland for public funding of all state election campaigns. In fulfilling this charge, the commission has met nearly twenty times; heard over ten guest speakers; and reviewed hundreds of documents, reports, and analyses of existing public financing systems across the country.

Throughout its deliberations the commission remained cognizant of the challenging fiscal outlook that the State must manage in upcoming years. However, commission members are of the opinion that the commission's charge is to look beyond the practical dimensions of public funding and recommend the most effective system for conducting election campaigns in Maryland. To this end, the commission's final report recommends a system of public funding that it believes most appropriately addresses the unique campaign financing environment for statewide and legislative candidates in Maryland.

The Honorable Robert L. Ehrlich, Jr., Governor
The Honorable Thomas V. Mike Miller, Jr., President of the Senate
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Members of the General Assembly
February 11, 2004
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The commission's recommendations reflect the importance of disengaging the growing influence of private contributions in election campaigns from the democratic process, and fostering greater opportunity for interested citizens to participate in representative government. In total, the commission calls for a system of public matching funds for the statewide offices of Comptroller and Attorney General and a system of full public funding for candidates seeking office in the Maryland General Assembly. Participation in either program would be voluntary. A majority of commission members believe that the proposed system of public funding for candidates would meet the goals mentioned above as well as provide an alternative to the current scheme of electoral finance that many individuals believe is marked by an unhealthy dependence on well-monied special interests. We base our recommendations on the various successful public funding programs around the country from Arizona to New York City and have included with our proposal, a comprehensive legislative package for your review.

Significant appreciation should be extended to the various scholars, administrators, advocacy groups, legal advisors, elected officials, and members of the public who testified before the commission or who supplied various services to assist in the commission's fact gathering. Their contribution was invaluable and helped the commission arrive at the recommendations reflected in its final report. I also wish to express my sincere appreciation to my fellow commissioners for the time and effort they devoted to the work of the commission. Extensive work sessions, and the need to read and absorb the many background documents produced by the commission's excellent staff did not deter them as they worked tirelessly to extrapolate the data from experiences in other states into meaningful information for Maryland.

I trust that the enclosed report will serve as a useful tool for further deliberations and policy action regarding the public funding of campaigns in Maryland. My colleagues and I are grateful for the opportunity you gave us to participate in this important endeavor. We believe that the commission's recommendations, if implemented, will gain Maryland a place at the forefront of innovation in electoral campaign financing.

Sincerely,

Carl Stenberg
Chairman

CS/MHD:TEK/snr

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Executive Summary

The commission believes that the voluntary approach to campaign finance reform is the most effective way to encourage lasting change in a democratic process that is so vital to our system of representative government. The main components of the commission's proposal are derived from proven programs in other states and localities which have engendered more trust and less cynicism among all participants in the political process. The reform package presented here, encourages more grassroots campaigning, transparency through disclosure, and financial accountability among candidates for State elected office in Maryland. In making these recommendations, the commission hopes to offer a path to the improvement of governmental ethics as an evolving tradition in State politics.

Commission Recommendations

The proposal of the Study Commission on Public Funding of Campaigns in Maryland offers the following key recommendations regarding the public financing of election campaigns in Maryland.

Recommendation I

Establish a voluntary system of contribution and expenditure limitations on candidates for statewide and legislative office in the State.

To receive public funds, candidates must agree to abide by contribution and expenditure limits as follows:

Candidates	Voluntary Expenditure Limit
Statewide	
Governor/Lieutenant Governor	\$ 15,600,000
Attorney General/Comptroller	1,650,000
Legislative	
Senate (contested)	\$ 200,000
House (contested)	160,000

Recommendation II

Establish a special fund for the financing and administration of the public funding of elections program for all legislative and statewide candidate/participants.

All participating candidates receive public funds from the Public Election Fund (PEF) administered by the Comptroller of the Treasury. Public disbursements are deposited into the individual public campaign accounts of participating candidates.

Recommendation III

Require prospective candidates and participants to collect small contributions from a moderate number of registered voters in a legislative district (in the case of candidates for the General Assembly) or from a limited number of counties (in the case of statewide candidates) to indicate an adequate level of community support.

Prospective legislative candidates must raise qualifying contributions of \$5 or more each from 0.25 percent of the individual registered voters in the candidate's legislative district. The contributions must be submitted to the PEF and accompanied by a receipt that includes the contributors name, address, signature, and a signed statement demonstrating their knowledge of the intended purpose of the contribution.

Candidates for statewide office must collect qualifying contributions from registered voters in at least five local jurisdictions in the State. Individual contributions must be \$20 or more and total at least \$30,000.

Recommendation IV

Allow each prospective legislative candidate or participant to finance the collection of qualifying contributions with moderate amounts of private contributions from individuals residing anywhere inside or outside of the state.

Legislative candidates seeking certification as a publicly financed candidate may accept contributions from private donors of \$250 or less without restriction on that donor's residence or voter registration status. These funds can be used by a candidate to raise qualifying contributions. Senate candidates may collect a total of \$3,500 in seed money during a four-year election cycle, and House candidates may collect up to \$2,500.

Recommendation V

Require each prospective legislative and statewide candidate or participant to submit additional disclosure reports detailing seed money and qualifying contributions received for purposes of qualifying that candidate to receive disbursements under the program.

Participating candidates would be required to submit two additional disclosure reports. Legislative candidates must disclose all seed money received and both legislative and statewide candidates are required to disclose all qualifying contributions received for deposit into the PEF.

Recommendation VI

Establish an independent agency to carry out the provisions of the public financing law and make disbursements to candidates.

The commission's proposal establishes the Election Financing Commission (EFC), which consists of five members appointed by the Governor with the advice and consent of the Senate. The EFC will have the power to implement and enforce the provisions of the Public Financing Act through the issuance of rules, advisory opinions, and fines.

Recommendation VII

Establish penalties for violations of the contribution and expenditure limitations and other requirements of the program.

Violations of the Act's provisions could result in a fine in amounts up to \$25,000 or \$5,000 per violation in some cases, two years imprisonment, or both.

This report proposes a fully funded system of public finance for State legislative candidates and a system of public matching funds for all statewide candidates. The commission's rationale for this mixed system of full funding and matching funds stems from its belief that statewide races in Maryland involve significant costs, – especially in the case of the gubernatorial election – and that the Attorney General and Comptroller races have been historically uncompetitive. Thus, a system of matching funds can be implemented at a reasonable cost, and would act to spur more competition for statewide offices in general. The commission believes that full public financing is a viable option for legislative election campaigns in light of the significantly lower cost of campaigning for these types of races and the need to expand the pool of potential candidates for office. The commission further believes that both programs will loosen the relationship between candidates and interest groups, and thereby reduce the overall influence of money on the State's elected decision-makers.

The proposed legislation would create a five-member EFC appointed by the Governor and approved by the Senate. The EFC would administer the public financing provisions proposed by the commission and would be responsible for authorizing disbursements of public monies from the public election fund (Fund). In proposing the creation of a separate commission to implement the proposed public financing provisions, the commission acknowledges the need

for a strong administrative agency to continue the ongoing process of refining the public finance program and educating the public about the program's role in the State's political process.

The Legislative Plan

The commission's proposal puts forward a system of full public financing for State legislative candidates. To be eligible for public funds, a legislative candidate must collect qualifying contributions from a specified number of registered voters within the candidate's corresponding senatorial or legislative district or subdistrict of \$5 or more (up to the contribution limits specified under State election law). All qualifying contributions are made for deposit into the Public Election Fund. Senate candidates and House of Delegate candidates collect qualifying contributions from a percentage of registered voters. Participating candidates must also agree to the following conditions and requirements:

- additional disclosure reports under the Act;
- submission of all qualifying contributions and receipts, and all unused seed money to the Fund;
- a ban on private contributions, unless allowed under the Acts' provisions; and
- statutory limits on expenditures under the Act.

Seed Money

Participating candidates may also use seed money contributions in amounts up to \$250 from any individual donor, up to an aggregate limit of \$3500 for Senate candidates and \$2500 for House candidates. Seed money supplies the start-up money necessary to gain the requisite amount of public support needed to successfully collect qualifying contributions from eligible donors.

Limitations on Contributions

<u>Type</u>	<u>Individual Limit</u>	<u>Aggregate Limits</u>
Seed Money	\$250	\$2500 (House)/\$3500 (Senate)
Qualifying Contributions	\$5 Minimum	No Limit
Personal Funds	\$500	\$500
Political Party Funds	N/A	\$2000

Public Fund Disbursements

The amount of public funds a participating legislative candidate is eligible to receive will depend on the house of the legislature for which the candidate is running and whether or not the

race will be contested. The following chart displays the commission's recommendations for the public funding amount in each category.

	Primary	General	Voluntary Expenditure Limit
Contested Senate	\$50,000	\$50,000	\$100,000
Uncontested Senate	10,000	6,000	16,000
Contested House (Three-Member)	40,000	40,000	80,000
Two-Member	35,000	35,000	70,000
Single-Member	20,000	20,000	40,000
Uncontested House (Three-Member)	10,000	6,000	16,000
Two-Member	8,000	5,000	13,000
Single-Member/Two-Member	6,000	4,000	10,000

Candidates may also elect to receive a higher or lower ratio of funds in the primary election to respond to highly competitive or uncompetitive primaries and general elections.

The Statewide Plan

The commission's proposal also contemplates a system of public matching funds for statewide candidates for Governor/Lieutenant Governor, Attorney General, and State Comptroller. To be eligible for matching funds, a participating candidate must collect qualifying contributions of \$20 or more (up to the contribution limits specified under the State election law) from a minimum of 70 registered voters in each of at least five local jurisdictions across the State, for an aggregate total of at least \$30,000. These qualifying contributions are made in the name of the candidate for the purpose of funding campaign activity in that election cycle. Participating statewide candidates must also agree to the following conditions and requirements:

- additional disclosure reports for receipt of matching funds and reporting purposes;
- aggregate contribution and expenditure limits under the Act; and
- program restrictions limiting contributions from political parties to one-half of 1 percent of the aggregate expenditure limit.

	Private Contributions	Public Fund Match	Voluntary Expenditure Limit
Contested Statewide	\$ 825,000	\$ 825,000	\$ 1,650,000
Uncontested Statewide	137,500	137,500	275,000
Governor/Lieutenant Governor	10,400,000	5,200,000	15,600,000

Additional Public Funds

The aggregate expenditure limit for both statewide and legislative candidates will be increased in the event that there is excess spending by nonparticipating opponents of publicly funded candidates. Additional public funds will be made available to a participating candidate in a legislative contest with a nonparticipating candidate if the nonparticipating candidate's total expenditures exceed the public fund disbursement amount specified under the Act for the participating candidate for that election.

A nonparticipating candidate that exceeds the disbursement amount must report all excess expenditures to the EFC on a weekly or, in some cases, daily basis. The EFC will then disburse additional funds from the Fund in an amount equal to the excess expenditure to participating legislative candidates up to an amount not to exceed 100 percent of the original public disbursement amount specified for that race. Similarly, statewide candidates may receive additional matching funds in an amount equal to 25 percent of the voluntary expenditure limit for an election.

Introduction

As early as 1966, the legislature grappled with the ever increasing costs of campaigning for public office in the State. That year, a special committee was appointed by the General Assembly to make recommendations on this issue. Thirty-six years later, in 2002, legislation was enacted to create the Study Commission on Public Funding of Campaigns in Maryland. The commission was charged with exploring public financing of election campaigns in other states and determining if Maryland could benefit from an expansion of its own public financing program. The commission was authorized to propose any recommendations it may have for modifying Maryland's current public financing provisions in accordance with its findings.

Since its creation, the commission has held 19 meetings over the past 18 months, conducted extensive research, and received testimony from various elected officials, administrators, academics, public interest organizations, and other interested members of the community. The list of guests invited to provide testimony to the commission included individuals from Common Cause, the Campaign Finance Institute, University of Maryland College Park, the New York City Campaign Finance Board, the New Jersey Election Law Enforcement Commission, Progressive Maryland, Massachusetts Institute of Technology, and the Maine Legislature.

After considerable discussion and analysis of public finance systems in other states as well as current trends in campaign spending in Maryland, the commission resolved that the State's current public financing system should be modified and expanded to include the statewide offices of Governor, Lt. Governor, Comptroller, and Attorney General as well as State legislative candidates.

Maryland's Current Public Financing Program

Maryland currently provides public funds for the offices of Governor and Lieutenant Governor under the Fair Campaign Financing Act, first enacted in 1974 (FCFA) (Title 15 of the Election Law Article of the Annotated Code of Maryland). In its original form, the FCFA provided a public fund match for all statewide, legislative, and local candidates in the general election. Subsequent revisions to the Act, primarily in 1986, narrowed the scope of its provisions to include only gubernatorial candidates. Throughout the Act's history, the special fund that was created by the Act rarely reached a functional level. This is primarily because a tax add-on system was used as the sole source of funding. Accordingly, except for the 1994 gubernatorial campaign of one ticket, the fund has remained essentially unused to date.

To become an eligible participant under FCFA, a candidate must agree to limit campaign expenditures to just 30 cents for each individual residing in the state. Currently, this limit equals approximately \$1,881,000. The commission found that this aggregate expenditure limit is extraordinarily low in comparison to states of similar population in the mid-Atlantic region.

North Carolina's limit was \$2.6 million in 1996, and New Jersey caps total spending at approximately \$14 million for each participating gubernatorial candidate. In comparison, the 2002 gubernatorial election in Maryland resulted in the candidates for the two major political parties spending approximately \$16 million each. Thus, the current statutory limit on total campaign expenditures under FCFA is significantly lower than both the current level of campaign spending and limits in other states with similar programs. More than likely, FCFA's limit is far below the minimum amount of funds needed to launch a credible campaign effort for the office in Maryland.

Campaign Spending Trends in Maryland

The commission also found that campaign spending in Maryland is increasing at a rapid rate. Dr. Paul Herrnson of the University of Maryland College Park reported to the commission that total campaign spending by State legislative candidates in Maryland has nearly doubled since the previous election cycle. In 1998, General Assembly candidates spent \$16.7 million; by the 2002 election, that amount had increased to \$28 million. The average winner of a seat in the House of Delegates during the 2002 election spent \$68,000, which is a third more than the average losing candidate. Similarly, the average winning senatorial candidate spent \$160,000, or nearly two times the average spent by the losing candidate.

The commission believes that this data indicates an ever-increasing difficulty for many prospective candidates to mount a credible campaign for office given the substantial fundraising required to be competitive.

Data has also revealed that contributions from interest groups comprised the largest category of contributors during the previous election cycle, amounting to 40 percent of all contributions received by legislative candidates. Moreover, business political action committees (PACs) were the single largest source of these interest group contributions. They accounted for 87 percent of the total amount raised from interest groups. These types of data prompted the commission to explore whether or not Maryland's current campaign finance system has the potential for corrupting influences, whether real or apparent.

Maryland Public Opinion on Campaign Finance

In the fall of 2002, the commission surveyed Marylanders for their opinions on the State's current campaign finance system and potential reforms. The poll confirmed that a substantial majority of State residents believe that fundraising is a major source of corruption, that officials spend too much time fundraising, and that political donors routinely pressure officials. Indeed, 53 percent of the individuals surveyed agreed that political campaigns should be publicly financed. However, the same survey respondents also expressed considerable concern over whether to use taxpayer monies to fund it.

In light of the commission's findings, a majority of the commission members determined that Maryland's current system of campaign finance was in a condition that would benefit from a robust public campaign financing alternative. The commission then looked to existing systems in jurisdictions around the country.

Public Financing in the States

The most comprehensive and successful state programs were found in Maine and Arizona. Participation in the public finance program in Maine nearly doubled from 33 percent in its inaugural year in 2000 to 62 percent in the 2002 election campaign. Similarly, in Arizona, the participation rate increased from 26 to 49 percent. Maine Delegate Marilyn Canavan testified before the commission that 96 percent of the candidates who use the system in Maine report satisfaction with the program.

Chellie Pingree of Common Cause informed the commission that public funding has been well received in Maine. Elected officials have no qualms over funding it, the business community supports it, and the program has encouraged individuals across a broad spectrum of the state's population to run for office. In addition, the U.S. General Accounting Office (GAO) reported that the Arizona public financing program reduced the number of uncontested races in 2000 and in 2002.

The Study Commission's Goals

When crafting its proposal for public financing in Maryland, the commission articulated the following goals;

- to reduce a candidate's need to raise large sums of money;
- to expand the pool of potential candidates; and
- to reduce the appearance of, and the actual potential for, corruption in the electoral process.

The commission's proposal is in large part, a tool with which to address the concerns about Maryland's current campaign finance system that were so clearly expressed in the survey as well as by various elected officials, organizations, and members of the community. The commission is well aware of the debate over the efficacy of using public monies to fund political campaigns but is of the opinion that the benefits of providing a public funding alternative substantially outweigh its cost. The cost of the commission's proposal is estimated to be less than one-half of one percent of the current State budget, an amount that the commission believes

is a small price to pay for providing an opportunity for candidates of moderate means to engage in public policymaking, spend less time fundraising, and rely less on large private donors.

Perhaps the timing of this commission's formation and its ensuing report is prescient. As state governments contemplate significant reductions in yearly budget spending to account for very tight fiscal times, special interests may be especially influential at the expense of less well-monied individuals. Thus, voluntary public funding programs, such as the one proposed by the commission, give legislative decision-makers an opportunity to remain free from undue influence when making crucial policy decisions.

Background

The Genesis of Public Financing of Elections

Comprehensive public financing programs that provide full funding of candidate campaigns is a relatively new concept at the state level. The genesis of full funding systems is the Federal Election Campaign Act of 1971 (as amended in 1974). That law provided partial public funding for eligible presidential primary candidates and full funding for the major parties' general election candidates.¹ That program had been the result of a series of scandals in the world of campaign finance climaxing with Watergate. Observers however, had long complained well before Nixon and Watergate, about the ever-growing cost of campaigning in industrial America. They warned that this would result in an increasing dependence of candidates on a small set of wealthy interests. The concept of public financing was first raised in 1904, interestingly, by a Tammany Hall official. The idea was one among many, some of which had already been tried in the hopes of counteracting the corrupting influences permeating election campaigns at that time. These measures, such as state antibribery laws and disclosure requirements had been intended to restore public confidence, but none seemed to separate the close relationship between candidates and well-monied interests.²

Public Financing in the States: Two Approaches

As of May 2002, 11 states had established partial public financing programs for gubernatorial or legislative elections, or both.³ In these states, public funds are only one component of a candidate's contributions. Candidates are allowed to continue to raise and spend private funds up to a specified limit stipulated by law. The rationale for partially funded systems runs the gamut from the practical to the academic. Practically speaking, partial public funding systems are more affordable for fiscally conscious states. Matching programs may also be seen as a compromise for proponents of more extensive full funding systems. In the academic context, professor Michael Malbin explained to the commission that partially funded systems are most effective at spurring competition in electoral contests, while full public funding is effective at changing the method of campaigning in election races as well as weakening the connection between monied interests and elected officials by excluding all private money from campaigns.

Indeed partial public financing has existed at the state and local government level for decades. As early as 1976 in Minnesota, and 1977 in Wisconsin, certain statewide and state legislative candidates received partial public funding.⁴ Ironically, it is a local government that can lay claim to the largest matching fund program in the country: the New York City public financing program. Established in 1988, New York City's public campaign financing law provides participating candidates a \$4 match to every \$1 raised privately.⁵ The program is commonly referred to as one of the most successful public funding programs in the U.S. It is credited with substantially increasing the racial and gender diversity of the city's elected officials, astonishingly high levels of participation among candidates, and generally increasing electoral competition.⁶

Full Public Financing

Full public funding of election campaigns is the next step beyond a system of partial public funding for candidates. Maine and Arizona, in 1996 and 1998, respectively, established such systems by referenda, becoming the first states to establish a full system of public financing. With the exception of the presidential public financing fund at the national level, no large-scale program of full funding existed before those two systems were implemented.

Full funding was supported in these two states in response to several commonly held beliefs about the electoral system. First, many individuals believed that campaign spending had gotten out of control. Secondly, elected officials spent an inordinate amount of time fundraising as opposed to representing constituents.⁷ Indeed, the case 'For' full public funding is instructive: the principles of an elected official should never be compromised by his or her need to finance relations with the public. Instead, a candidate should be emboldened by the ability to campaign without accruing obligations that may lead to undue pressure from monied interests. However, the nature of the relationship between candidates and well financed interests is the subject of dispute in the public policy arena. What follows is a brief discussion of the various points of view on the subject and the Commission's findings regarding public financing in the states.

Differing Perspectives

Incumbency

Many opponents of public funding believe that such programs actually strengthen an incumbent's ability to remain in office, making them the primary beneficiaries of public campaign funds. They maintain that incumbents would have a great incentive to participate in publicly funded programs, since despite having less campaign money than nonparticipating candidates, these individuals generally can rely on historically strong victory margins. Indeed incumbency advantage has been a persistent one throughout history. On the state level alone, incumbent reelection rates for lower house candidates and senatorial candidates have been measured at 92 and 88 percent respectively.⁸ There is a general belief that this advantage stems from the public name recognition achieved through media attention and regular contact with voters through constituency service.

Evidence of the incumbency advantage appears in some of the statistical data that has emerged from the public funding programs in Maine and Arizona. A GAO report found that incumbent reelection rates remained unchanged in Maine and Arizona after public financing was introduced.⁹ During the 2000 election in Maine, those districts having at least one publicly financed candidate were more likely to have incumbents running than in districts without publicly funded candidates.

Despite this advantage however, publicly funded candidates were responsible for a substantial number of the incumbent losses that do occur. For example, in Maine 40 percent of House incumbents defeated in 2000 and 71 percent of those defeated in 2002 lost to publicly financed candidates. The GAO study also did show a decrease in incumbent reelection rates in Maine and Arizona's lower houses, but these statistics were nullified by strong incumbent reelection rates in the senate. Public Campaign, an active public financing advocacy group, theorizes that the reason for this disparity is because house seats are comparatively easier for a political novice to win, and that house seats are generally considered as an entry-level position. Thus, these factors would explain increased competition for house offices as opposed to the senate.

Political Participation

One prominent view on political finance considers contributions of private money to be a form of political participation.¹⁰ This school of thought considers political contributions to be a form of consumption as opposed to an investment.¹¹ This idea stems from the fact that, at least on the national level, the majority of campaign contributions still comes from individual donors in amounts under \$200.¹² Some of these adherents argue that because these individual donors cannot expect to receive any measurable return on their investment, their motive must instead be ideological in nature, based on a desire to participate in the political process.¹³ Proponents of this view discount the sharp rise in campaign spending over the last century and insist that the growth in spending is closely pegged to income levels.¹⁴ At least one study has shown that, historically, campaign spending has indeed grown in tandem with national income.¹⁵

If private contributions of money to election campaigns are a form of political participation, public financing would only operate to redirect this form of participation to the grassroots level by allowing individuals to give limited amounts of contributions to candidates in the form of seed money and qualifying contributions. This form of contributing is perhaps the most effective, considering that a substantial amount of individual contributions currently are not made directly to candidates in private systems, but rather to party committees, interest groups, and PACs.

Competition

One of the main goals of public financing has been to increase electoral competition as measured by the number of close margin victories and the participation of so-called grassroots candidates. Advocates believe that electoral competition fosters more diverse representation and responsiveness among elected officials.¹⁶ This is accomplished by providing challengers with the minimum resources needed to wage competitive campaigns, in many instances against entrenched incumbents. Thus, an increased number of challengers encourages more grassroots campaign activity, higher voter turnout, and ultimately, more competitive races.

It is expected that the pool of candidates participating in publicly-financed races will include a greater percentage of minority candidates who would not otherwise have the financial backing needed to make a successful run for office. The core concept underlying publicly financed elections is the Jeffersonian notion of a "citizens' legislature," in which elected officials are less likely to be professional politicians and more likely to be civic-minded representatives who devote their talents to public service only for short expanses of time.

Corruption

In addition to lack of competition in election campaigns, proponents of public funding schemes are most concerned about the influences of private funding that often leave many candidates beholden to wealthy donors. While the academic literature has generally failed to find an actual link between campaign contributions and public policy, the mere appearance of impropriety can and does often lead to heightened public cynicism of the political process.¹⁷

A survey of Marylanders conducted for the commission jointly by the Schaefer Center for Public Policy at the University of Baltimore and the Center for American Politics and Citizenship at University of Maryland College Park revealed that most of the individuals surveyed (75 percent) believe that political fundraising is a major source of corruption, that contributors have greater access to officials (83 percent), and that donors actively pressure legislators (80 percent). These findings indicate that the public has a distinct impression that some substantial level of corruption exists in politics.

While it is virtually impossible to measure the affect of public financing systems on the level of corruption in a particular state with any degree of accuracy, many public financing advocates rely on the appearance of corruption – loosely defined as the degree of dependence that candidates and elected officials have on special interest contributors. This type of dependence on campaign contribution sources often reveals campaign donors that appear to have an undue amount of influence on the policy decisions of an elected official.

Despite the lack of more objective evidence, there is considerable public belief in the notion that public funding will make elections work better. There is also antidotal evidence among publicly financed candidates themselves that corruption by special interests has been stopped or greatly reduced as a result of public campaign systems. Indeed, 83 percent of Marylanders who were surveyed by the commission's pollster believe contributors have greater access to officials and 70 percent believe public funding will succeed to alleviate this problem.

Constituency Service

Public funding of elections has also been touted as a solution to the ever-increasing amount of time that legislators contend they spend raising money to keep pace with the costs of campaigning. A recent survey of 2002 Maine "clean election" (public funding) candidates revealed a high level of satisfaction with the amount of time they saved by not engaging in what one respondent called "the incessant money chase."¹⁸ Proponents of public financing contend

that the time spent fundraising by traditional candidates is better spent researching public policy issues, attending public forums, and meeting voters face-to-face.¹⁹

Findings

The introduction of comprehensive state level public financing programs will afford the public policy arena the opportunity to examine the veracity of many of the premises upon which both proponents and opponents of public financing base their points of view. Over time, exploration of publicly financed election statistics will yield telling information about trends in campaign spending, voter participation, time spent fundraising, incumbency advantage, electoral competition, and perceived corruption.

To date, there have only been two elections from which to observe these trends at the state level. A comprehensive GAO study of Maine and Arizona warned that it is too early to draw causal linkages to changes that resulted from public financing.²⁰ On the other hand, proponents of public financing believe that the 2000 and 2002 election results are a clear indicator of positive changes in several areas of concern.

One crucial indicator for proponents is the rate of new challengers in an election, especially with respect to their status as a member of a minority group. The data show that both Maine and Arizona experienced a small to moderate increase in women challengers: 7 and 20 percent, respectively. Election results have not shown a measurable increase in the number of ethnic or racial minority candidates.²¹ In Maine only one candidate of color ran for office; and in Arizona there was no measurable increase in the number of candidates of color between the 1998 and 2000 elections. Advocates of public financing warn, however, that the data from Maine and Arizona is insufficient to draw any conclusion regarding the ultimate affect of public financing on minority participation as candidates.²² Both Maine and Arizona experienced a moderate increase in the total number of candidates running for state legislative office from 1998 to 2000, at 31 and 26 percent, respectively.

Fundraising and Constituency Service

At least one comprehensive study has shown that fully publicly financed candidates reduced their time spent fundraising by 17 percent.²³ In Maine, publicly financed candidates estimated that 11 percent of their time was spent raising seed money and qualifying contributions; conversely, privately-funded candidates were estimated to have spent nearly 30 percent of their time engaged in fundraising.²⁴

The GAO study also found that a majority of publicly funded candidates affirmed that using the system changed the way they campaigned. The most noted differences were more voter contact and less interaction with special interest groups.²⁵ One candidate for Maine legislature succinctly put it when he reported:

[Public financing] has absolutely changed the way I [campaign]. I spent more time on issues and I budgeted better as well, since I [knew] how much [money] I could count on. It totally changed the focus – it was no longer on money. I did a lot of door-to-door and phone banking. (Maine State Rep. Boyd Marley)²⁶

As public financing begins to emerge as a model for campaign finance systems at the state and local level, the debate continues over whether such programs actually restore public confidence or if they are merely a subsidy for elected officials. As the collective experience of states with public financing continues to grow, it has become more apparent that the former is most likely true. It is certainly indisputable that full public financing programs create a disconnect between candidates and well-monied interests. At the same time, such programs work to connect candidates with the individual voter.

¹ Holman, Craig B., *The Nuts and Bolts of Public Financing of State Candidate Campaigns*, National Civic Review, Vol. 92, No. 1 (Spring 2003) : 21.

² Holman, 21.

³ National Conference of State Legislatures (NCSL), *Overview of Public Financing of Election Campaigns*, (May 2002).

⁴ GAO, 8.

⁵ Ryan, Paul S., *A Statue of Liberty: How New York City's Campaign Finance Law is Changing the Face of Local Elections*, Center for Governmental Studies, (2003) : ix.

⁶ GAO, 9.

⁷ GAO, 9.

⁸ U. S. General Accounting Office (GAO), *Campaign Finance Reform; Early Experiences of Two States That Offer Full Public Funding for Political Candidates*. (May 2003) : 36.

⁹ GAO, 29.

¹⁰ Ansolabehere, Stephen et. al, *Why is There so Little Money in U.S. Politics?* Journal of Economic Perspectives, Vol. 17, No. 1 (Winter 2003) : 117.

¹¹ Ansolabehere, 117.

¹² Ansolabehere, 108.

¹³ Ansolabehere, 118.

¹⁴ Ansolabehere, 119.

¹⁵ Ansolabehere, 119.

¹⁶ Peter L. Francia and Paul S. Herrnson, *The Impact of Public Finance Laws on Fundraising in State Legislative Elections*. (2002) : 5.

¹⁷ Francia, 5.

¹⁸ Smith, Alison, *Clean Elections at Work: The Second Cycle of Public Funding in Maine; A Survey of Maine Clean Election Act Legislative Candidates, Maine Citizen Leadership Fund* (April 2003) : 16.

¹⁹ Francia, 5.

²⁰ U. S. General Accounting Office (GAO), *Campaign Finance Reform; Early Experiences of Two States That Offer Full Public Funding for Political Candidates*. (May 2003)

²¹ Marc Breslow, Janet Groat, and Paul Saba, *Revitalizing Democracy: Clean Election Reform Shows the Way Forward*, Money & Politics Implementation Project, (January 2002) : 25.

²² Revitalizing Democracy, 25.

²³ Revitalizing Democracy, 25.

²⁴ Revitalizing Democracy, 25.

²⁵ GAO, 104.

²⁶ Revitalizing Democracy, 27.

Costs of the Public Financing Program

The major costs of both the statewide and legislative program can be separated into two categories:

- *Regular disbursements:* which represent the initial amount of public funds a qualifying participant in the program would receive (as noted below); and
- *Supplemental disbursements:* which represent additional funds that each participating candidate would be eligible to receive in the event that a nonparticipating opponent were to spend in excess of the participating candidate's voluntary expenditure limit. Statewide candidates are eligible to receive 25 percent of their aggregate spending limit in supplemental funds and legislative candidates may receive up to 100 percent of their spending limit.

The chart below displays the initial public fund disbursement for contested candidates in each office and the maximum amount available in supplemental funds for eligible candidates. The total column represents the maximum amount of public funds that can be disbursed to a candidate, and the voluntary expenditure limit indicates the initial expenditure limit each candidate must agree to as a condition to receipt of public funds.

Candidates	Public Fund Disbursement	Supplemental Disbursement	Total Public Funds Disbursed	Voluntary Expenditure Limit
Statewide				
Governor/Lt. Gov.	\$ 5,200,000	\$ 3,900,000	\$ 9,100,000	\$ 15,600,000
Atty. Gen./Comptroller	825,000	412,500	1,237,500	1,650,000
Legislative				
Senate (contested)	100,000	100,000	200,000	100,000
House (contested)	80,000	80,000	160,000	80,000

The voluntary expenditure limit is raised when supplemental funds are disbursed, thus if a candidate receives the maximum amount of supplemental funds, total campaign expenditures would exceed the voluntary expenditure limit and equal the aggregate expenditure limits as indicated below.

Candidates	Total Public Funds Disbursed	Private Funds	Aggregate Expenditure Limit
Statewide			
Governor/Lt. Gov.	\$ 9,100,000	\$10,400,000	\$ 19, 500,000
Atty. Gen./Comptroller	1,237,500	825,000	2,062,500
Legislative			
Senate (contested)	200,000		200,000
House (contested)	160,000		160,000

The cost of the commission's proposal is estimated to be near \$60 million. Actual costs will be determined by the number of candidates participating and the extent to which those candidates will require supplemental disbursements due to the overspending of their nonparticipating opponents. The charts below provide a cost estimate for the statewide matching program and the legislative program.

The Statewide Program

The statewide program, which includes the offices of Governor/Lieutenant Governor, Attorney General, and Comptroller, are eligible to receive regular public matching funds of up to \$5,200,000 for Governor and \$825,000 for Attorney General and Comptroller. This example assumes that three candidates participated in the program in all three contests.

Gubernatorial candidates would receive \$1 for every \$2 received in private contributions while the remaining statewide candidates would receive a 1-to-1 match. The commission's proposal also provides for additional matching funds in the event that a nonparticipating challenger spends an amount exceeding the voluntary expenditure limits established for each office, which are: \$15.6 million; \$1.65 million; and \$1.65 million, respectively.

This example assumes that one gubernatorial candidate and three of the remaining statewide candidates had a challenger who exceeded the voluntary spending limit for that office. The example further assumes that each candidate receiving a supplemental disbursement, received the maximum amount allowed under the proposal. The total program disbursement amount represents the sum of regular and supplemental disbursements for all participants.

Statewide Office	Funds
<i>Public Fund Disbursement</i>	
Gubernatorial (Expenditure Limit \$15,600,000)	\$5,200,000
Attorney General (Expenditure Limit \$ 1,650,000)	825,000
Comptroller (Expenditure Limit \$ 1,650,000)	825,000
<i>Candidate Participation</i>	
Gubernatorial Candidates	3
Attorney General Candidates	3
Comptroller Candidates	3
<i>Total Statewide Disbursements</i>	
Gubernatorial Disbursement (2-to-1 match)	\$15,600,000
Atty. Gen. Disbursement (1-to-1 match)	2,475,000
Comptroller Disbursement (1-to-1 match)	2,475,000
<i>Candidates Qualifying for Supplemental Disbursement</i>	
Gubernatorial Supplemental Distributions	1
Statewide Supplemental Distributions	3
<i>Total Supplemental Disbursements</i>	
Gubernatorial Supplemental Disbursements	\$3,900,000
Attorney General Supplemental Disbursements	\$825,000
Comptroller Supplemental Disbursements	\$412,500
<i>Total Disbursements</i>	
Total Statewide Disbursements	\$20,550,000
Total Supplemental Funds	\$5,137,500
Total Program Cost	\$25,687,500

The Legislative Program

The legislative program provides public funds for the entirety of a General Assembly candidate's election campaign. Initial disbursement amounts vary depending on which house of the legislature a candidate is running for, the number of members to be elected in a district, and whether the race is contested. Supplemental disbursements are distributed to eligible candidates up to a maximum of 100 percent of the initial disbursement amount.

The chart below shows initial disbursement amounts for legislative candidates by district size and in contested and uncontested races. Supplemental disbursements are displayed as a range since this amount depends on whether a candidate was in an uncontested or contested race in the primary and general election. The lower end of the range represents the maximum amount of supplemental funds available for a candidate running uncontested in both the primary and general elections, while the upper range represents a candidate running in a contested primary and general election.

	Primary		General		Supplemental Funds (Range)
	Uncontested	Contested	Uncontested	Contested	
Senate	\$10,000	\$50,000	\$6,000	\$50,000	\$16,000 - \$100,000
House					
3-Member	10,000	40,000	6,000	40,000	16,000 - 80,000
2-Member	8,000	35,000	5,000	35,000	13,000 - 70,000
Single-Member	6,000	20,000	4,000	20,000	10,000 - 40,000

The chart below is an estimate of the total cost of the legislative funding program. The figures are based on the total number of candidates for the General Assembly in the 2000 election according to the State Board of Elections. The example assumes that (1) 35 percent of Senate candidates and 45 percent of House candidates will participate in the program; (2) all participating candidates will receive the "contested" disbursement amount for both the primary and general election; and (3) all participating House candidates are running in three-member districts.

Supplemental disbursement estimates are based on the assumption that 25 percent of Senate candidates and 35 percent of House candidates participating in the program become eligible to receive the maximum allowable supplemental disbursement as a result of challenger spending in excess of the initial public fund disbursement amount. The total program disbursement amount represents the sum of regular and supplemental disbursements for all participants.

Legislative Office	Disbursements	Candidates
<i>Public Fund Disbursement Limits (contested)</i>		
Senate	\$100,000	
House	80,000	
Avg. No. Senate Candidates	130	
Avg. No. House Candidates	450	
<i>Candidate Participation in Program</i>		
Senate Participation Rate	35%	46
House Participation Rate	45%	203
<i>Total Legislative Disbursements</i>		
Senate Disbursement	\$ 4,550,000	
House Disbursement	16,200,000	
<i>Candidates Qualifying for Supplemental Disbursement</i>		
% of Senate Candidates Qualifying	25%	11
% of House Candidates Qualifying	35%	71
<i>Total Supplemental Disbursements</i>		
Senate Candidates	\$1,137,500	
House Candidates	5,670,000	
<i>Total Disbursements:</i>		
Total Legislative Disbursements	\$20,750,000	
Total Supplemental Funds Disbursed	6,807,500	
Total Program Cost	\$27,557,500	

Based on this model, moderate participation levels in both the statewide matching and fully funded legislative programs would result in a total cost of approximately \$53.3 million in each four-year election cycle. This total reflects an estimated \$3,200,000 in annual administrative costs to implement the program.

Legislative program cost is driven by two variables: (1) the number of candidates participating; and (2) the number of participating candidates who are eligible for supplemental funds. Total costs for the legislative program could increase as participation or eligibility for supplemental funds increase. In the example presented here, if the percentage of participating House and Senate candidates increased to 70 percent, total program cost increases to nearly \$39 million. A comparable rise in the percentage of candidates eligible for supplemental funds could raise costs in a similar fashion.

While the number of participating candidates or the extent of supplemental disbursement eligibility cannot be reliably estimated, the commission anticipates that the total cost of both programs in each four-year election cycle will range from \$40 million to \$80 million.

Revenue Sources

The commission examined a variety of revenue sources to cover the cost of the public financing provisions in its proposal. In general, tax check-off programs were found to be the most common funding mechanisms for public financing programs. Tax check-offs allow an individual to redirect a portion of the individual's income tax liability to a special fund. Thus, the filer does not increase the amount of taxes owed or experience a decrease in any tax refund by participating in a tax check-off. In contrast, a tax add-on does increase an individual's taxes owed and decreases the amount of any tax refunded. Thus, in the case of a tax-add-on system, participants are directly contributing money to a special fund that is over and above the amount of taxes owed. As indicated previously, the Maryland's Fair Campaign Financing Fund receives funds from State residents via the tax add-on method. As might be expected, tax check-offs are far more popular among tax filers than tax-add-ons. This explains the comparatively low participation rate for the program in Maryland, which now averages slightly more than one-half of 1 percent as compared to the relatively healthy rate of the New Jersey tax check-off program at 17 percent.

Eight of the eleven states with some type of public financing program for elections use an income tax check-off to divert tax funds directly into a public election fund. However, participation rates in these programs have been falling dramatically over the years. Some state programs that initially relied on income from a tax check-off, have found themselves at or near a point at which a general fund appropriation would be necessary to keep the public election fund in the black. However, it should be noted that tax check-off programs are not substantially different from direct appropriations. Income tax revenue is a primary component of most states' general fund. When tax check-off participants designate a dollar amount to a special fund, that money is simply appropriated from the general fund to the special fund. Thus, the only

significant difference between a tax check-off and a direct appropriation is the entity initiating the transfer.

The comprehensive full public financing systems of Maine and Arizona require more reliable sources of funding as a consequence of the sheer scope of their programs. Arizona relies completely on a 10 percent surcharge on all civil and criminal fines. This approach avoids the need to appropriate money from the general treasury. The use of the 10 percent surcharge was vigorously litigated in state courts as a violation of the First Amendment. In *May v. Bayless*, the Arizona Supreme Court upheld the surcharge and the U. S. Supreme Court denied a writ of certiorari. Free from legal challenge, the Arizona Clean Election Fund has become a healthy source of revenue for the program.

The Arizona Clean Elections Fund collected \$ 6.2 million in 2002 from the civil and criminal surcharge. It disbursed approximately \$ 12.8 million in public funds in that same year, from a total fund balance of about \$ 21 million.

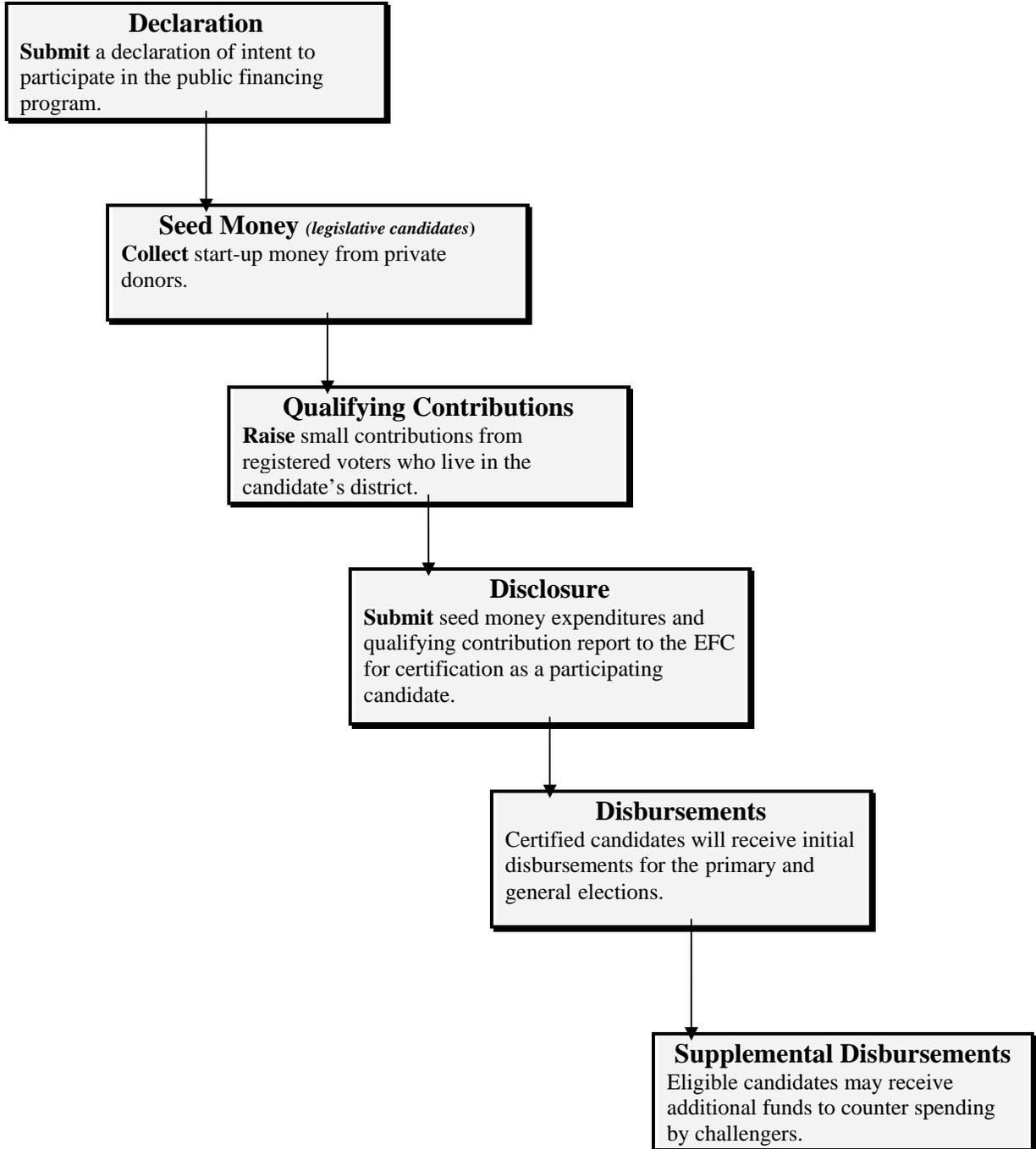
The commission estimates that a similar amount of funds could be raised if such a surcharge were implemented in Maryland given the similarity in the characteristics of the two states in terms of population and state court case volume. However, in the end, the commission decided that it is best to leave the decision on whether to create new sources of funding to the General Assembly, given its central role in determining how any public financing program that might be implemented would be funded. Moreover, any type of broad-based surcharge based on the Arizona model likely will be met with legal challenge, the outcome of which is uncertain.

The most common way of ensuring a fully-funded public financing program for elections is with a general fund appropriation. Eight states and nine localities with public financing programs receive most operating revenue from a direct appropriation of the legislature or have statutory provisions requiring direct appropriations in the event of a shortfall. The commission believes that a direct appropriation is the only way to ensure the success of any comprehensive public financing program such as the one it has proposed.

The commission's research has shown that the success of any public funding program will depend on a steady and reliable revenue source. Voluntary contributions to the program, whether they be in the form of qualifying contributions or the tax check-off, will not be sufficient to make public financing a viable alternative to private fundraising. Therefore, the commission recommends that the Governor and the General Assembly appropriate the general funds required to maintain the program that the commission has proposed and continued study be done to identify other possible dedicated streams of revenue for the future.

The Commission's Proposal

The Study Commission's Public Funding Proposal for Statewide and Legislative Candidates: How It Works



Definitions

Aggregate

Expenditure Limit: The maximum amount of funds a participating candidate may spend in a statewide primary and general election including supplemental disbursements.

Certified

Candidate: A candidate who is otherwise eligible to receive public funds and further agrees to (1) adhere to the voluntary expenditure and contribution limits; (2) comply with additional disclosure requirements; and (3) submit the required qualifying contributions to the Election Financing Commission for deposit in the Public Election Fund.

Initial

Disbursement: A sum disbursed from the public election fund to a certified legislative candidate up to the voluntary expenditure limit; or, in the case of a certified statewide candidate, the sum of public matching funds disbursed to that candidate up to the voluntary expenditure limit for the statewide office.

Initial

**Disbursement
Period:** A period beginning May 1 in the year of a statewide primary and general election and ending no later than the day of the general election.

Participating Candidate:

A candidate who has signed and submitted a written declaration of the candidate's intent to participate in the public financing program.

Qualifying Contribution:

A minimum \$5 contribution from a registered voter who resides in the district of a legislative candidate; or, in the case of a statewide candidate, a minimum \$20 contribution from a registered voter residing in the State.

Qualifying Contribution Period:

A period beginning April 15 in the year before a statewide primary and general election and ending no later than 45 days before a statewide primary election.

Seed Money: Private contributions raised by a participating legislative candidate in an amount not exceeding \$250 per donor.

Seed Money Period: A period beginning at the start of the four-year election cycle and ending no later than May 1, in the year of the statewide primary election.

Supplemental Disbursement: An additional sum beyond the initial public fund disbursement that is allocated to an eligible candidate in an election contest because the nonparticipating challenger in that election contest spends an amount exceeding the voluntary expenditure limit applicable to the participating candidate.

Supplemental Disbursement Period: A period that is contemporaneous with the initial disbursement period.

Voluntary Expenditure Limit: The maximum sum that a participating candidate agrees to spend in a statewide primary and general election to be eligible for public funds.

Contribution and Expenditure Limits

Public Funds Aggregate Expenditure Limit

The maximum aggregate amount of public funding a participating legislative candidate shall receive, including additional funding to match excess expenditures of nonparticipating candidates shall be 200 percent of the applicable voluntary expenditure limit for a participating candidate in a primary and/or general election campaign.

The maximum aggregate amount of public funding a participating candidate for Attorney General or Comptroller shall receive, including additional funding to match excess expenditures by nonparticipating candidates, shall be 75 percent of the applicable voluntary expenditure limit, where regular matching funds shall not exceed 50 percent of the applicable voluntary expenditure limit and additional funding to match excess spending of nonparticipating candidates shall not exceed 25 percent.

The maximum aggregate amount of public funding a participating candidate for Governor/Lieutenant Governor shall receive, including additional funding to match excess expenditures by nonparticipating candidates, shall be 58 percent of the applicable voluntary expenditure limit, where regular matching funds shall not exceed 33 percent of the applicable voluntary expenditure limit and additional funding to match excess spending of nonparticipating candidates shall not exceed 25 percent.

Prohibition on Private Contributions and Expenditures

Private Contributions

Participating and certified legislative candidates shall not accept private contributions from any source with the following exceptions:

- Seed money contributions from individual donors in an amount not to exceed \$250 per donor, or the following aggregate limits:
 - Senate candidates – \$3,500; and
 - House candidates – \$2,500.
- Personal contributions from the candidate in an amount not to exceed \$500 in aggregate, including the sum of any seed money and/or qualifying contributions contributed.

- Monetary or in-kind contributions from a State or local central committee in an amount not to exceed 2.5 percent (\$2,000) of the total “contested” public financing disbursement amount for that office in the case of legislative candidates.

During the election cycle, a participating legislative candidate may not receive contributions or maintain a separate campaign account for any reason, including for use in future election cycles or as future seed money funds or qualifying contributions.

Expenditure Limitations

A participating candidate shall (1) spend seed money contributions up to the aggregate limit, only for the purpose of obtaining qualifying contributions during the qualifying contribution period; (2) withhold all qualifying contributions received for deposit into the fund; and (3) make all expenditures during the primary and general disbursement periods, from the publicly funded campaign account established by the commission for the candidate, except for petty cash expenditures during the primary and general disbursement periods in an amount not to exceed \$500.

Obligations of Participating Candidates

Qualifying Contributions

A participating candidate must submit a minimum amount of qualifying contributions from individual registered voters in the candidate’s senatorial or legislative district or subdistrict in the case of candidates for the House of Delegates, or from registered voters within the State, in the case of candidates for statewide office.

To be eligible towards obtaining certification, qualifying contributions submitted to the commission from individual voters shall be:

- equal to an amount not less than \$5 in the case of legislative candidates, and \$20 in the case of statewide candidates;
- made by cash, check, or money order. Checks should be made payable to the fund *in the case of legislative candidates*;
- accompanied by a receipt that includes:
 - the printed name and signature of the contributor;
 - the address of the contributor; and

- a signed statement indicating that the contributor fully understands the purpose of the contribution and the contribution is made without coercion or reimbursement;
- collected during a period beginning on April 15 in the year preceding the primary election and ending 45 days before the primary election. Members of the General Assembly must suspend fundraising activity during the legislative session according to the Election Code;
- collected from a minimum number of individual registered voters in the amounts specified below; and
- for statewide candidates, contributions must be received from at least 70 eligible contributors in each of at least five counties across the state for a total of \$30,000:
 - Senate candidates – $1/4$ of 1 percent of district population
 - House candidates – $1/4$ of 1 percent of district or subdistrict population.

Certification

To obtain certification for disbursement of public funds, participating candidates must submit the following to the commission:

- a declaration consenting to the commission's rules, regulations, and policies;
- a disclosure report of all seed money contributions and expenditures in a format provided by the commission;
- a disclosure report of all qualifying contributions received during the qualifying period;
- any unused seed money contributions; and
- all qualifying contributions and accompanying receipts.

Results of Certification

Legislative Candidates

Certified legislative candidates are eligible to receive public funds disbursements in an amount equal to the applicable public funding disbursement total for an office.

Statewide Candidates

Certified statewide candidates are eligible to receive \$1 in public matching funds for every \$1 in private contributions received from State residents, up to \$500 in public funds per contributor.

Additional Disclosure Requirements

Participating Candidates

In addition to reporting requirements in § 13-309(a) of the Election Code, participating legislative candidates must submit two additional reports: (1) a listing of all seed money contributions and expenditures; and (2) a listing of all qualifying contributions received during the qualifying period.

Statewide Candidates

Statewide candidates must submit to the commission a listing of eligible contributions at times established by the commission during the primary and general election disbursement periods.

Nonparticipating Candidates

- In the event that a nonparticipating candidate's total expenditures exceed the amount of public funding allocated to any participating candidate running for the same office, the nonparticipating candidate shall make weekly reports of all campaign expenditures to the Election Financing Commission in an electronic format pursuant to § 13-324 of the Election Law Article of the Maryland Annotated Code.
- During the last 30 days before the end of the relevant campaign period, a nonparticipating candidate shall declare to the commission each excess expenditure amount over \$500 within 24 hours of when the expenditure is made or obligated to be made.
- Weekly and/or daily expenditure reports may be discontinued when each participating candidate in a race has received the maximum amount of public funds allowable under this statute.
- The commission may make its own determination as to whether excess expenditures have been made by nonparticipating candidates in accordance with explicit and published guidelines to be formulated by the Election Financing Commission.

State Board of Elections (SBE)

The SBE shall forward all reports of disclosures filed under § 13-309(a) 1-3 to the Election Financing Commission within 48 hours of receipt.

The SBE and the Election Financing Commission shall issue findings and recommendations to the general assembly no later than one year after the effective date of these provisions regarding guidelines for coordination between the two agencies and whether modifications are needed to the disclosure requirements for participating and or nonparticipating candidates.

Public Election Fund

A special, dedicated, nonlapsing fund shall be established by the General Assembly for the purpose of:

- providing public financing for the election campaigns of certified participating candidates during the primary and general campaign periods; and
- paying for the administrative and enforcement costs of the Election Financing Commission related to this Act.

Continued Administration of the Fund by the Comptroller

The fund shall be administered by the Comptroller of the Treasury in accordance with the provisions of this title.

Sources of Revenue for the Fund

(A) Tax Check-Off

For the taxable year beginning January 1 after enactment of this Act and each taxable year thereafter, the Comptroller shall include on the individual tax return form a check-off designated as the “Elections Fund” to fund this Act.

The check-off shall state that \$5 will be contributed to the Elections Fund from the State general fund if the box is checked.

The Comptroller shall include, with the individual income tax return package, a description of the purposes for which the Elections Fund was established and the purposes for which the fund may be used.

(B) Other Sources of Revenue to Be Deposited in the Fund

- **qualifying contributions** required of candidates seeking to become certified as participating candidates according to the provisions of this Act, subsequently transferred by each participating candidate into the participating candidate's account;
- **excess qualifying contributions** raised by candidates seeking to become eligible for public funding;
- **excess seed money contributions** of candidates seeking to become certified as participating candidates, as defined by this Act;
- **unspent funds** distributed to any participating candidate who does not remain a candidate until the primary or general election for which they were distributed, or such funds that remain unspent by a participating candidate following the date of the primary or general election for which they were distributed;
- **finances** levied by the commission against candidates for violation of election laws;
- **voluntary donations** made directly to the fund;
- **interest** generated by the fund; and
- any **other sources** of revenue determined necessary by the General Assembly.

General Fund Appropriation

Appropriate additional funds shall be included in the annual budget which, when added to the revenue outlined in paragraphs (A) and (B) of this section, will be sufficient to fully carry out the activities outlined in this Act. Such appropriated monies shall be deposited in the fund.

In the event that the fund does not have sufficient funds to fully implement this Act by January 1, 2007, as determined by the commission, the Comptroller will authorize the transfer of sufficient funds to implement the Act.

Administration and Dispersal of Money from the Fund

- (C) Upon determination that a candidate has met all the requirements for becoming a participating candidate as provided for in this Act, the commission shall establish a "Publicly Funded Campaign Account" for the participating candidate, and the commission will place all public funds for the candidate in that account. The Comptroller of the Treasury shall disburse funds into a participating candidate's publicly

funded campaign account within five business days after receiving direction from the commission.

- (D) Neither a participating candidate nor a candidate's treasurer shall pay campaign costs by cash, check, money order, loan, or by any other financial means besides the Publicly Funded Campaign Account, except as provided for in paragraph C of this section.
- (E) Cash amounts of **\$300** or less per week may be drawn on the Publicly Funded Campaign Account and used to pay expenses of no more than **\$100** each. Records of all such expenditures shall be maintained and reported to the commission in compliance with the reporting requirements in § 13-304 of the Election Law Article.
- (F) The participating candidate and the candidate's committee have a right to utilize the Publicly Funded Campaign Account only in accordance with this Act. The commission maintains complete access to all records and transactions of Publicly Funded Campaign Accounts, and the participating candidate's interest in the account is terminable at the will of the commission according to explicit and published guidelines to be formulated by the commission.

Disbursement of Funds

Candidate Disbursements

The commission shall authorize candidate disbursements for the primary election to all participating candidates who have been certified by the commission beginning on May 1 of the election year. Any unused public funds for the primary must be returned to the commission within 15 days after the primary election. Disbursements may continue until the end of the qualifying period (45 days before the primary election). The commission shall authorize general election disbursements 72 hours after certification of the primary results. Any unused public funds must be returned to the commission within 45 days after the general election.

Statewide Candidates

Certified statewide candidates shall receive matching funds upon submission of a contribution report in accordance with a schedule determined by the commission, which shall include at least two disbursement dates each month beginning in May of the election year through October of the election year.

Legislative Petition Candidates

Certified petition candidates or candidates who are members of a political party that does not have a statewide primary, are eligible to receive public funding for the general election after May 1 of the election year upon ballot certification by the SBE.

Statewide Petition Candidates

Certified statewide petition candidates or candidates who are members of a political party that does not have a primary are eligible to receive public funding for the general election after May 1 of the election year upon ballot certification by the SBE.

Disbursement Amounts

	Primary	General	Total Public Funds
Contested Senate	\$50,000	\$50,000	\$100,000
Uncontested Senate	10,000	6,000	16,000
Contested House	40,000	40,000	80,000
Single-member/Two-member.	20,000/35,000	20,000/35,000	40,000/70,000
Uncontested House	10,000	6,000	16,000
Single-member/Two-member.	6,000/8,000	4,000/5,000	10,000/13,000
Contested Statewide			825,000
Uncontested Statewide			137,500
Governor/Lt. Gov.			5,200,000

Alternate Apportionment Election: Legislative Candidates

Certified legislative candidates who will be in contested a primary and general election may elect an alternative apportionment of public funds between the primary and general election campaign periods by electing to receive a primary or general disbursement of up to 70 percent of the applicable expenditure limit.

Certified legislative candidates in uncontested primaries may elect an alternative apportionment of public funds between the primary and general election campaign periods by electing to receive a general election disbursement of up to 70 percent of the applicable expenditure limit.

Supplemental Fund Disbursements

Supplemental funds may be disbursed to each participating candidate in a contest with a nonparticipating opponent that makes expenditures in an amount that is in excess of the participating candidate's voluntary expenditure limit. Candidates for Governor/Lieutenant Governor, Attorney General, and Comptroller are eligible to receive 25 percent of their voluntary expenditure limit in supplemental funds and legislative candidates may receive up to 100 percent.

Candidates	Public Fund Disbursement	Supplemental Disbursement	Total Public Funds Disbursed
Statewide			
Governor/Lt. Gov.	\$ 5,200,000	\$ 3,900,000	\$ 9,100,000
Atty. Gen./Comptroller	825,000	\$ 412,500	1,237,500
Legislative			
Senate (contested)	100,000	100,000	200,000
House (contested)	80,000	80,000	160,000

Election Financing Commission

The Commission

Members

The Election Financing Commission will consist of five members appointed in the following fashion:

- *all* members appointed by the Governor with the advice and consent of the Senate (five-year term); two members of which shall be from a principal political party that is not the party of the Governor;
- a chair shall be elected *annually* by commission members to serve a *one-year* term;
- the terms of the members shall be staggered; and
- a member may serve no more than two consecutive five-year terms.

Commissioner Requirements

Each commission member shall:

- be a registered voter in the State of Maryland for two years;
- not hold an elected or appointed office or be an employee of or candidate for any:
 - local, State, or federal office, or participate in any capacity in a campaign of a candidate for any statewide or legislative office;
 - political party; or

- lobbyist required to file a statement of registration with the State Ethics Commission.

Compensation

Commission members shall receive \$100 per day for attendance at regular quarterly meetings and for up to three additional meetings per calendar year.

Meeting Regularity

The commission shall meet at least once on a quarterly basis.

Removal

Commission members shall be removed from office for neglect of duty, misconduct in office, disability, or violation of this title. Before removing a member, the Governor shall give the member written notice of the charges and an opportunity to reply to the charges.

Powers and Duties

The commission has the power to:

- **employ** necessary staff, including an executive director and general counsel, subject to removal by the commission for cause. The executive director of the commission shall have hiring authority for commission staff, subject to the commission's approvals for all staff directors;
- **investigate** all matters relating to the performance of its functions and any other matter concerning the enforcement of the public financing statute;
- **publicize**, as it deems appropriate, the names of candidates for nomination or election to statewide and legislative offices who violate the provisions of the public financing statute;
- render **advisory opinions** with respect to questions arising under the public financing statute upon written request of a candidate, an officer of a political committee, or member of the public. The commission shall make these advisory opinions public;
- **promulgate rules and regulations** in accordance with the State Government Article § 10-101 et. seq., and provide such forms and electronic software as necessary for compliance with the additional disclosure reports required;
- **conduct annual random audits** of candidates *as it deems necessary* to ensure compliance with the Act;

- **subpoena** any and all documents from any campaign committee or candidate, regardless of whether the candidate participates in the public financed system;
- **levy fines** for civil infractions of the law in accordance with this Act. Collected fines shall be deposited into the fund;
- refer criminal violations to the Attorney General for prosecution; and
- participate fully in any actions filed under this section.

The commission has the authority to **seek injunctions** if:

- there is a substantial likelihood that a violation of this Act is occurring or is about to occur;
- the failure to act expeditiously will result in irreparable harm to a party affected by the potential violation;
- expeditious action will not cause undue harm or prejudice to the interests of others; and
- the public interest would be best served by the issuance of an injunction.

The commission may conduct administrative hearings regarding civil violations of this Act in accordance with the Administrative Procedure Act in § 10-201 et. seq. of the State Government Article.

Citizens who believe a candidate has violated the law may pursue a civil action in a court of relevant jurisdiction, provided that:

- they have previously filed a complaint regarding the same alleged violation with the commission;
- the commission or Office of Administrative Hearings, under § 10-201 of the State Government Article, has failed to make a *written* determination within **90** days of the filing of the complaint; and
- any party that wins a civil action charging any violation of this Act shall be entitled to receive reasonable attorney's fees and court costs from the defendant party or parties.

Commission actions may be reviewed by a proper circuit court as described in State Government, § 10-222(c) of the Maryland Annotated Code. Petitions for review must be filed within 60 days after the commission action.

Commission Duties

To enforce this statute, the commission shall:

- develop a **computer database** that shall contain all information necessary for the proper administration of the public financing statute, including information on contributions to and expenditures by candidates and their authorized committees, and distribution of monies from the fund. This database shall be accessible to the public on the Internet;
- develop an **education program** for informing candidates and the public as to the purpose and effect of the provisions of the Act, by preparing and making available educational materials, including compliance manuals, summaries, and explanations of the purposes of the Public Financing Election Act;
- develop a system for the use of **debit cards** to access public campaign accounts by participating candidates;
- the commission shall **regularly report** fully to the General Assembly after each election cycle on all pertinent aspects of how the public finance system performed with respect to both participating and nonparticipating candidates and make recommendations on how the administration of the program can be improved. The report should include a detailed report on all seed money, qualifying contributions received, benefits received by participating candidates, as well as expenditures made by participating and nonparticipating candidates; and
- develop an official seal, logo, or other designation for the voluntary use of participating candidates.

No later than one year after the end of the first election cycle in which the publicly financed system is used, the commission shall issue a report to the General Assembly concerning:

- the need for **additional disclosure** requirements in the administration of the Act;
- the role of **independent expenditures** and recommend whether participating candidates should receive additional public funds to match independent spending on behalf of opposing candidates or against participating candidates; and
- whether the use of a ballot designation for candidates who receive public funding is a violation of state or federal law.

Penalties

It is a violation of the law for candidates to knowingly accept more benefits than those to which they are entitled, spend more than the amount of public funding they have received, or misuse such benefits or public funding.

- If it is determined that the violation was intentional or knowing and involved an amount greater than 4 percent over the permissible amount of expenditures, the candidate may be fined personally three times the amount of the illegal contribution, illegal expenditure, or incorrect disclosure up to \$25,000, imprisoned for up to two years, or both.
- If it is determined that the violation was intentional or knowing and involved an amount greater than 4 percent over the permissible amount of expenditures, and if, in the judgment of the commission, the violation is believed to have contributed to the violator winning the election, the commission may recommend to the General Assembly that the results of the election be nullified and a new election called.
- Any violation of this Act may, in the discretion of the commission, disqualify the violator from future participation in the publicly financed system.
- It is a violation to provide false information to the commission and to conceal or withhold information from the commission. The penalty is a personal fine on the candidate of three times the amount of the illegal contribution, illegal expenditure, or incorrect disclosure up to \$5,000 per violation, imprisonment for two years, or both.

Political Party Contributions and Expenditures

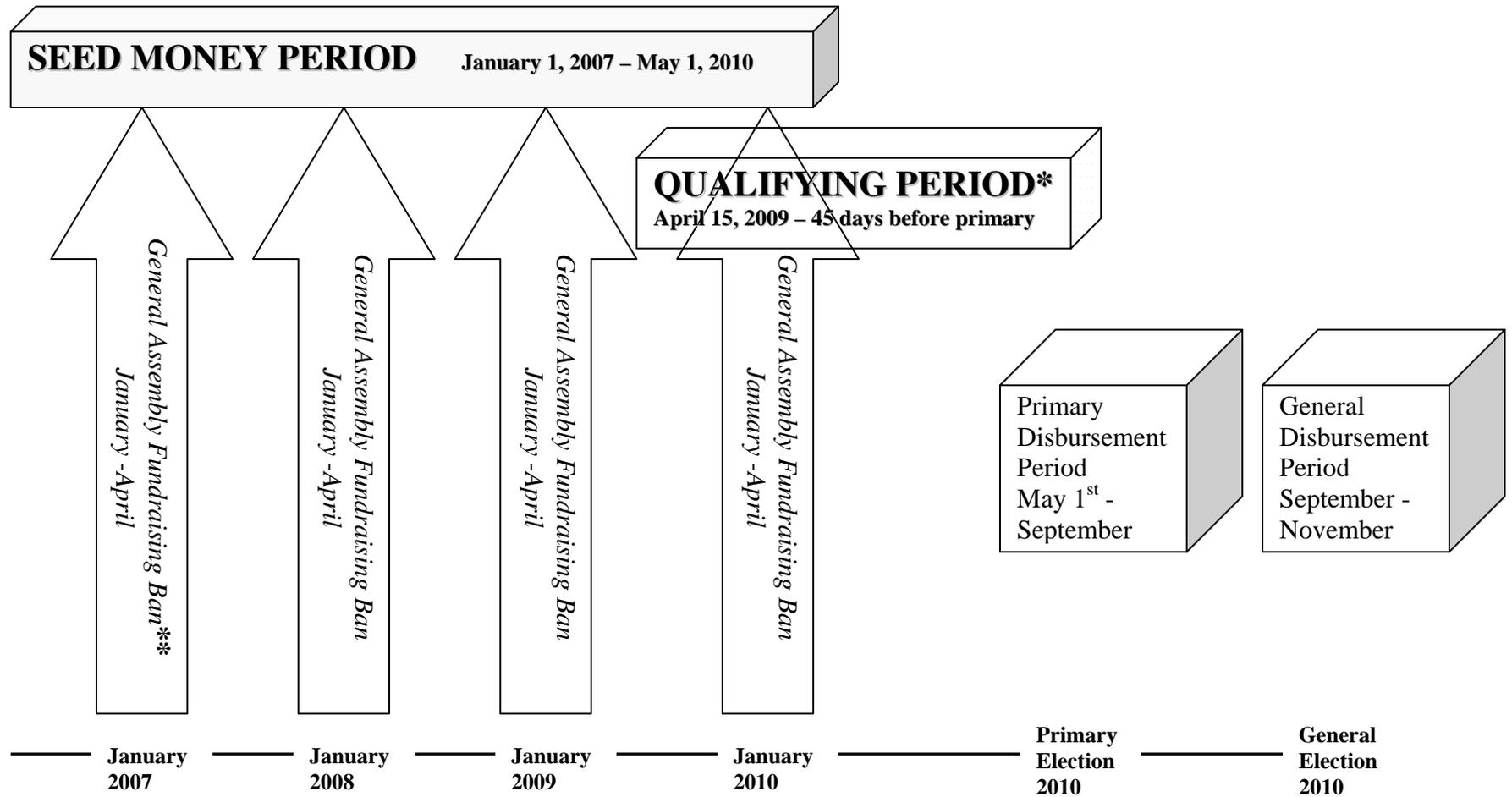
- A participating candidate may accept monetary or in-kind contributions from a state or local central committee provided that the aggregate amount of such contributions from all political party committees combined does not exceed the equivalent of 2.5 percent of the public financing amount for that office in the case of legislative candidates, and one-half of one percent of the aggregate expenditure limit in the case of statewide candidates. Monetary contributions must be placed in the Publicly Financed Campaign Account.
- Contributions made to, and expenditures made by, political parties during primary and general campaign periods shall be reported to the commission in accordance with its rules.
- Nothing in this section or this Act should be construed to prevent political party funds from being used for general operating expenses of the party; conventions; nominating and endorsing candidates; identifying, researching, and developing the party's positions on issues; party platform activities; noncandidate-specific voter registration;

noncandidate-specific get-out-the-vote drives; travel expenses for noncandidate party leaders and staff; and other non-candidate-specific party building activities.

Coordinated Expenditures

- Any coordinated expenditures made by or on behalf of a participating legislative candidate shall be made completely with public funding.
- Nonparticipating candidates shall declare every coordinated expenditure which, in the aggregate, is more than \$250 to the commission.
- During the last 30 days before the end of the relevant campaign period, a nonparticipating candidate shall declare to the commission each coordinated expenditure over \$250 within 48 hours of when the expenditure is made or obligated to be made.
- The commission may make its own determination as to whether coordinated expenditures have been made by participating or nonparticipating candidates according to explicit and published guidelines formulated by the commission.
- Upon receiving a coordinated expenditure declaration that puts the benefiting nonparticipating candidate over the amount of money made available to a participating candidate running for the same office, and beyond what any other candidate running for the same office has spent or obligated to spend, or upon making an independent determination thereof, the commission shall immediately release additional public funds to the opposing participating candidate or candidates equal to the amount of the coordinated expenditure, subject to the limitation of the public fund aggregate expenditure limit in the Act.
- An expenditure made by a political campaign committee for a slate which includes a participating candidate shall be considered a coordinated expenditure and subject to the expenditure limit applicable to that participating candidate under the Act on a pro rata basis calculated by dividing the entire expenditure by the number of candidates on the slate.

Timeline for Proposed Public Financing Program



* Candidates may qualify to receive public funds up to 45 days before the statewide primary election.

** Title 13 of the Election Article prohibits members of the Maryland General Assembly from fundraising during the regular session of the General Assembly

Concurring Opinion with Reservations

Study Commission Statement by Herbert E. Alexander and Marcia J. Mills

I believe the Study Commission on Public Funding of Campaigns in Maryland has rushed to a conclusion that is unwarranted. The system of full public financing at the State legislative level goes too far in involving the State by fully funding campaigns for State Senator and State Delegates, while failing the historic goal of involving citizens financially in the election of Senators and Delegates in ways beyond voting. Giving is a form of political participation that should be encouraged, not discouraged.

On the other hand, I subscribe fully to the system of the State providing matching funds. The Study Commission has adopted matching funds for statewide candidates – those running for Governor, Lieutenant Governor, Attorney General and Comptroller. I do not understand why this model is good for statewide candidates but not good for State legislative candidates. The combination of the two systems will only confuse candidates as well as volunteers and citizens, and jettisons widespread views that government should help candidates financially but not take over entirely their funding of campaigns.

The majority of members of the study commission base their proposal on meager evidence from two states – Arizona and Maine in only two elections, one without statewide elections – without enough experience to justify moving Maryland in a similar direction. Under a mandate from Congress, the U.S. General Accounting Office studied the results in Arizona and Maine, and reported mixed and inclusive experience to say that the systems of full public funding are producing positive results in terms of goals claimed by its proponents – candidate participation, helping women to run as candidates and win in a competitive system.

The GAO report to congressional committees states:

“In sum, with only two elections from which to observe legislative races and only one election from which to observe statewide races, it is too early to draw causal linkages to changes, if any, that resulted from the public financing programs in the two states.”

An analysis by a prominent newsletter editor, Edward Zuckerman, goes further by stating:

In 2000 and 2002, GAO said 227 out of 480 tax-funded candidates won election in Arizona and Maine, a success rate of 47 percent. However, the report failed to acknowledge that 105 of the winners were incumbents, meaning tax-funded challengers actually won 122 contests, a success rate of 33 percent.

The analysts also state that had appropriate contests been classified as “open seat” races, the success rate would have dropped to as low as 10 percent.

The bottom-line question to be asked is why put candidates on the government payroll even before being elected.

There is ample evidence that matching funds work and are flexible in terms of serving the purposes of public funding – not to give candidates a “free lunch” but to supplement amounts that candidates raise from their supporters. The States of Michigan, Minnesota, New Jersey and Wisconsin, among others, have had almost 30 years of experience with matching funds.

Matching funds are flexible in two regards: (1) the amounts that can be matched can be lower than the contribution limit but sufficient, say up to \$500, as is being proposed in this report for statewide candidates, to give incentive to candidates to seek out smaller contributions by matching acceptable levels of citizen contributions; and (2) matching funds can be calibrated to an acceptable match, on the basis of \$1 public for each limited private dollar, up to \$2 public for one private, as in New Jersey, or even \$4 public for \$1 private as in New York City. This leaves a lot of discretion as to how much the program will cost the State, and how much candidates actually need.

I believe such a system of matching funds would work well in Maryland for legislative candidates as well as statewide candidates, where candidates can aim their fundraising at acceptable matching levels, and citizens can be brought to recognize their responsibility to give, with the promise by the State to match at one to four times as much in public funds.

Realistic contribution limits also are necessary, along with realistic matching amounts. Realistic expenditure limits may be a vital part of the system. But neither contribution limits nor expenditure limits should be so low as to starve candidates of needed money, nor to limit spending at such low levels that highly competitive campaigns for challengers as well as for incumbents are not possible.

Disclosure is the keystone of regulation, with electronic filing encouraged, and a State commission adequately funded is needed to administer.