


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: October 19, 2018

SUBJECT: Fiscal Impact Statement – Campaign Finance Reform Amendment Act of 2018

REFERENCE: Bill 22-107, Draft Committee Print as shared with the Office of Revenue Analysis on October 17, 2018

Conclusion

Funds are not sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The bill's implementation will cost approximately \$245,000 in fiscal year 2019 and \$4.2 million over the four-year financial plan period. The bill's implementation is subject to its inclusion in an approved budget and financial plan.

Background

The bill removes oversight of the Office of Campaign Finance from the Board of Elections and reestablishes it as an independent five-member Campaign Finance Board (CFB)¹ that will administer and enforce the District's campaign finance laws. The bill outlines the requirements a CFB member must meet to sit on the CFB and what types of political activities must be avoided. CFB members are appointed by the Mayor and the appointments are sent to the Council for approval. CFB members are eligible for compensation at a rate of \$40 per hour up to a maximum of \$12,500 for a member and \$26,500 for the CFB chairperson. The CFB should hold monthly meetings which will be subject to the requirements of the Open Meetings Act. The CFB, rather than the Board of Elections, will appoint the Director of Campaign Finance.

¹ No more than three of the CFB members can be of the same political party and each member serves six-year terms (with the exception of the initial CFB that will start with staggered terms).

The bill also establishes certain prohibitions on political contributions by entities and their principals² seeking or receiving contracts – defined in the bill as covered contractors – with the District valued at \$250,000 or more. Contracting authorities,³ in coordination with the CFB and the Director of Campaign Finance, will oversee these prohibitions. The chart below outlines the categories of covered contracts and the prohibited contribution periods:

Prohibited Period Commencement: the date of solicitation or other similar invitation or opportunity to contract; except that the prohibited period for tax exemptions or abatements begins at the introduction of required legislation.	
Contract Type	Prohibited Period Termination
(1) Rendition of services; (2) Furnishing of any goods, materials, supplies, or equipment; (3) Construction, alteration, or repair of District-owned or leased properties; (4) Acquisition or sale of District-owned properties.	(1) At the termination of negotiations for an unsuccessful solicitation; or (2) one year after the contract terminates if the solicitation is successful.
(1) Leases; (2) Licensing arrangements; (3) loans or loan guarantees.	(1) At the termination of negotiations for an unsuccessful solicitation; or (2) one year after successfully entering into the contract.
Surpluses and dispositions.	(1) Prior to the introduction of legislation before the Council or upon termination of negotiations for an unsuccessful solicitation; (2) at the end of the Council period if the solicitation is successful and legislation is pending or is disapproved; or (3) one year after the effective date of the legislation if the solicitation is successfully approved.
Tax exemption or abatement.	(1) At the end of the Council period if the legislation is pending or is disapproved; or (2) one year after the effective date of the legislation.

Recipients prohibited from receiving contributions will vary by contract, depending on who will approve the contract. Contracts with the Mayor or any Executive agencies prohibit contributions to the Mayor.⁴ Contracts with the Attorney General prohibit contributions to the Attorney General.⁵ Any contracts that require approval by the Council also prohibit contributions to any member of the

² Principals include members of a board of directors and senior officers, including presidents; executive directors; and chief executive, operating, and financial officers.

³ Contracting authorities include the Office of Contracting and Procurement and agencies that have independent contracting authority.

⁴ This includes candidates for Mayor, political committees affiliated with the Mayor or a candidate for Mayor, and a Mayor’s constituent services program.

⁵ This includes candidates for Attorney General and political committees affiliated with the Attorney General or a candidate for Attorney General.

Council.⁶ These restrictions apply both when a contractor holds a contract and when he or she is seeking a contract.

The bill bans all District government agencies and instrumentalities from entering into contracts with covered contractors that have made these prohibited contributions. To enforce these prohibitions, contracting authorities must make publicly available on their websites lists of all covered contractors, including their principals, and notify each one about which campaign finance activities are prohibited. The Director of Campaign Finance should cross-reference the lists of covered contractors with its contributor records and notify the contractor, the prohibited recipient, and the relevant contracting authority of any violations. If a covered contractor violates any of the prohibitions, contracting authorities are authorized, at their discretion, to terminate the contract, cancel any option periods, and ban the contractor from contracting with the District for four years. The CFB should publicly disclose the covered contractors who made, and the prohibited recipients who received, prohibited contributions.

Current law requires any contracts over \$1 million to be submitted to Council for approval.⁷ The bill requires contracting authorities to include additional information when submitting the contracting packages to Council. The additional information includes the identity of all principals affiliated with the contractor, a list of any other contracts the contractor holds or seeks, and a certification that the contractor is not in violation of prohibited contributions laws. If the contractor is in violation of these laws, the contracting authority must also submit a certification from the contractor attesting that it is in violation, but that it will come into compliance. The bill also requires the Chief Financial Officer to include in any tax abatement financial analysis (TAFAs) submitted to Council for a tax abatement over \$250,000 a list of the abatement recipients and principals and any contributions they have made to the Mayor or Councilmembers⁸ since the abatement legislation was introduced, through the date of the TAFAs.

The bill also makes several changes around campaign contributions and expenditures. The bill eliminates an \$8,500 maximum contribution amount to all candidates during an election cycle, requires contributors to identify employer information, and prohibits the bundling of contributions by registered lobbyists. The bill also reduces the bundled contribution limit to political committees from \$10,000 to \$5,000. The bill clarifies the definition of coordination to cover any contribution or expenditures made at the explicit or implicit direction, request, or suggestion of, or in cooperation, consultation, or concert with, a public official, a political committee, or an agent of either the official or committee. The bill shifts the dates that political committees need to report their contributions and expenditures during an election year to the 10th day of February, April, July, September, and December and eight days before a primary, general or special election.^{9,10} The new reporting dates during a non-election year are the 10th days of February, July, September, and December.¹¹ The

⁶ This includes candidates for Council, political committees affiliated with a Councilmember or a candidate for Council, and a Councilmember's constituent services program.

⁷ Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02).

⁸ This includes candidates for Mayor or Council and any affiliated political committees or constituent services programs.

⁹ Political action committees and independent expenditure committees must report by these dates in non-election years as well.

¹⁰ The current deadlines are the 10th day of March, June, August, October, and December in the 7 months preceding an election and eight days before a general or special election.

¹¹ The current non-election year deadline is July 31st.

Director of Campaign Finance will be required to keep all paper and electronic documents for ten years.

The bill expands the definition of political advertising to include bumper stickers, radio and television advertisements, text messages, telephone calls, and digital media advertisements so that each of these must include 'paid for by' language. The bill also requires advertisements paid for by independent expenditures¹² to include a list of the top five contributors when applicable.

The bill changes how many of the different campaign finance committees operate and how they must manage their residual funds. Principal campaign committees will be restricted to a six-month period to fundraise for and retire campaign debts using campaign funds. Candidates are also limited to repaying themselves up to \$25,000. The bill clarifies that any residual funds left in an exploratory committee can be donated to a non-profit organization in the District so long as that organization has been in operation for at least one year and is in good standing in the District. The bill reduces the maximum contribution amount to an inaugural committee from \$10,000 to \$2,000, prohibits the transfer of any residual funds to a constituent services program, restricts the Mayor to six months to fundraise for and retire any related debts, and increases the termination date of inaugural committees from forty-five days to six months. The bill increases the maximum contribution amount to a Council Chairperson or Attorney General transition committee from \$1,000 to \$1,500,¹³ prohibits the transfer of any transition committee residual funds to a constituent services program, restricts the Mayor, Attorney General, or Chairperson of the Council to six months to fundraise for and retire any related debts, and increases the termination date of transition committees from forty-five days to six months. The bill clarifies that expenditures from a legal defense committee must be related to a public official's campaign or government activities and duties, reduces the maximum contributions to these committees from \$10,000 to \$2,000, and prohibits the transfer of any residual funds to a constituent services program.

The bill also requires political action committees to establish segregated non-contribution accounts which are dedicated to making independent expenditures and excludes these accounts from the \$5,000 contribution limit to a political action committee per election. The bill expands the \$5,000 contribution limit during an election year from any one person to a political action committee's main account to be a restriction during non-election years as well. The bill also reduces from \$10,000 to \$5,000 the amount by which a political action committee must report bundled contributions.

The bill also prohibits the expenditure of funds from a constituent services program on year-long or season admissions to theater, sport, or cultural events.

The bill requires the Campaign Finance Board to include in its training for candidates and treasurers information on business contributions¹⁴ and the Fair Elections program.¹⁵

¹² Independent expenditures are those made for the purpose of promoting or opposing a nomination or election; political party; or initiative, referendum, or recall. These expenditures are not controlled or coordinated with a public official or agent operating on behalf of a public official.

¹³ This limit does not apply to any self-funding of transition efforts.

¹⁴ Campaign Finance Reform and Transparency Amendment Act of 2013, effective February 22, 2014 (D.C. Law 20-79; D.C. Official Code § 1-1161.01 et seq.).

¹⁵ Fair Elections Amendment Act of 2018, effective May 5, 2018 (D.C. Law 22-94; D.C. Official Code § 1-1163.32a et seq.).

The bill provides the Board of Elections authority to issue advisory opinions and sets forth the guidelines the Board must follow when doing so.¹⁶ The bill also gives the Board of Elections authority to issue civil penalties of up to \$2,000 depending on the infraction and whether the person directly violates or assists in a violation.

Current law allows a public official to designate one government employee who is authorized to solicit and accept contributions on behalf of a principal campaign committee, exploratory committee, or transition committee.¹⁷ The bill clarifies that the designated employee must use annual or unpaid leave when performing these activities and requires the Board of Ethics and Government Accountability to publicly disclose these designated employees on their website.

The bill's covered contractor prohibitions, Council package submission changes, and TAFE provisions apply effective November 4, 2020 and will not apply to any contracts entered into before that date.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The bill's implementation will cost approximately \$245,000 in fiscal year 2019 and \$4.2 million over the four-year financial plan period.

The bill requires, beginning on November 4, 2020, the new CFB and the Director of Campaign Finance to work with contracting authorities to ensure compliance with the bill's prohibition on contracting with covered contractors who violate the bill's prohibited contributions provisions. To successfully implement these activities, the Director will need to hire a new attorney, auditor, and technology specialist to work with the contracting authorities in reviewing covered contractor lists for violations, providing notice to covered contractors and prohibited recipients about violations, maintaining up-to-date information about prohibited recipients, and to provide certifications for Council contract packages. These personnel, which we expect would be hired in fiscal year 2020 to prepare for the fiscal year 2021 implementation, will cost approximately \$886,000 over the four-year financial plan period. The Director of Campaign Finance will also need to upgrade the electronic filing system to accommodate the reviews of covered contractors, as well as make other changes related to campaign contribution and expenditure filing deadlines. This will cost \$100,000 in fiscal year 2019. Finally, the CFB is eligible for compensation up to \$12,500 per board member and \$26,500 for the chairperson. The CFB requires \$76,500 annually to provide this compensation.

The CFB can implement the bill's provisions related to contribution limit changes, political committees, including political action committees, constituent services programs, and enhanced training with existing budgeted resources.

The Office of Contracting and Procurement (OCP) manages most of the contracting needs for the District's Executive agencies and will play a significant role in ensuring compliance with and enforcing the bill's covered contractor provisions. OCP will need to enhance its contracting

¹⁶ Requests for advisory opinions must be published in the DC Register for a 15-day comment period and final advisory opinions must be published in the DC Register within 30 days of issuance.

¹⁷ Prohibition on Government Employee Engagement in Political Activity Act of 2010, effective March 31, 2011 (D.C. Law 18-355; D.C. Official Code § 1-1171.02).

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database to be sure it captures information required in the bill, timelines can be tracked to ensure compliance with prohibited periods, and lists of covered contractors can be made publicly available. OCP also does not track information related to non-traditional contractors such as those tied to loans, leases, or dispositions. This database update will cost \$200,000 in fiscal year 2020 and \$25,000 annually thereafter for maintenance costs. OCP will also need to build a team of six contracting specialists to manage the new information that needs to be collected for the new database, work with agencies to gather data on non-traditional contractors, work with independent contracting authority agencies to gather data on enforcement actions they take, coordinate with CFB on contractors who have violated the bill's campaign finance prohibitions, and manage enforcement of contractors. This team will encompass six contracting specialists and will cost approximately \$2 million over the four-year financial plan period. Lastly, OCP will need to build a new training module and hire a campaign finance specialist to ensure the agency's team of contracting officers, specialists, and procurement staff are properly trained and can work with agency staff to comply with the bill's covered contractor provisions. The module will cost \$50,000 in fiscal year 2020 and the new trainer will cost \$281,000 over the four-year financial plan period. Our analysis assumes that OCP will need to begin planning for the bill's implementation in fiscal year 2020 to accommodate a November 4, 2020 start date for the covered contractor provisions.

Independent contracting authorities will also need to comply with the bill's requirements. Many of these agencies manage a fewer number of covered contractors and can implement the bill's provisions with existing budgeted resources, but without additional resources the activities required for compliance could lead to delays in processing procurements.

Other agencies that work with non-traditional contractors, such as those who receive loans or implement dispositions, will need to collect additional information and provide that to OCP, but they can manage those efforts with existing budgeted resources. The new OCP staff will also work with these agencies to ensure all the correct information is collected.

The Board of Elections requires an additional attorney to assist with issuing advisory opinions and management of the civil fine enforcement. This attorney will cost \$68,000 in fiscal year 2019 and \$289,000 over the four-year financial plan period.

The chart on the following page summarizes the bill's fiscal implications.

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Campaign Finance Reform Amendment Act of 2018					
Bill 22-107					
Implementation Costs					
Fiscal Year 2019 – Fiscal Year 2022					
(\$000s)					
	FY 2019	FY 2020^a	FY 2021	FY 2022	Total
Campaign Finance Board (CFB)					
Personnel	\$0	\$289	\$292	\$305	\$886
CFB Compensation	\$77	\$77	\$77	\$77	\$308
Filing System Update^b	\$100	\$0	\$0	\$0	\$100
Total CFB Costs	\$177	\$366	\$369	\$382	\$1,294
Office of Contracting and Procurement (OCP)					
Personnel	\$0	\$645	\$660	\$684	\$1,989
Database Updates and Maintenance	\$0	\$200	\$25	\$25	\$250
Training Module and Personnel^c	\$0	\$140	\$94	\$97	\$331
Total OCP Costs	\$0	\$985	\$779	\$806	\$2,570
Board of Elections Attorney	\$68	\$71	\$74	\$76	\$289
TOTAL BILL COSTS	\$245	\$1,422	\$1,222	\$1,264	\$4,153

Table Notes

^a Assumes CFB and OCP will need to begin implementation of the bill's covered contractor provisions in fiscal year 2020 to be prepared for the November 4, 2020 applicability date.

^b The filing system update accommodates more of the bill's provisions than covered contractors and thus will be needed in fiscal year 2019.

^c Includes \$50,000 in fiscal year 2020 to develop the training module.