

SENATE BILL NO. 463

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections

on February 4, 2022)

(Patron Prior to Substitute--Senator Bell)

A BILL to amend and reenact §§ 2.2-3711, 24.2-946, and 24.2-948.4 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 9.3 of Title 24.2 sections numbered 24.2-948.5, 24.2-948.6, and 24.2-948.7, relating to relating to campaign finance; prohibited personal use of campaign funds; complaints, hearings, civil penalty, and advisory opinions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3711, 24.2-946, and 24.2-948.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 9.3 of Title 24.2 sections numbered 24.2-948.5, 24.2-948.6, and 24.2-948.7 as follows:

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

26 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
27 involve the disclosure of information contained in a scholastic record concerning any student of any public
28 institution of higher education in the Commonwealth or any state school system. However, any such
29 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be
30 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if
31 such student, parents, or guardians so request in writing and such request is submitted to the presiding
32 officer of the appropriate board.

33 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
34 disposition of publicly held real property, where discussion in an open meeting would adversely affect the
35 bargaining position or negotiating strategy of the public body.

36 4. The protection of the privacy of individuals in personal matters not related to public business.

37 5. Discussion concerning a prospective business or industry or the expansion of an existing
38 business or industry where no previous announcement has been made of the business' or industry's interest
39 in locating or expanding its facilities in the community.

40 6. Discussion or consideration of the investment of public funds where competition or bargaining
41 is involved, where, if made public initially, the financial interest of the governmental unit would be
42 adversely affected.

43 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
44 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
45 the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable
46 litigation" means litigation that has been specifically threatened or on which the public body or its legal
47 counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this
48 subdivision shall be construed to permit the closure of a meeting merely because an attorney representing
49 the public body is in attendance or is consulted on a matter.

50 8. Consultation with legal counsel employed or retained by a public body regarding specific legal
51 matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be

52 construed to permit the closure of a meeting merely because an attorney representing the public body is
53 in attendance or is consulted on a matter.

54 9. Discussion or consideration by governing boards of public institutions of higher education of
55 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
56 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
57 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
58 accepted by a public institution of higher education in the Commonwealth shall be subject to public
59 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
60 (i) "foreign government" means any government other than the United States government or the
61 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
62 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the
63 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
64 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under
65 the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or
66 national of the United States or a trust territory or protectorate thereof.

67 10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the
68 Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, the Fort Monroe Authority,
69 and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private
70 sources.

71 11. Discussion or consideration of honorary degrees or special awards.

72 12. Discussion or consideration of tests, examinations, or other information used, administered, or
73 prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

74 13. Discussion, consideration, or review by the appropriate House or Senate committees of
75 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
76 statement filed by the member, provided the member may request in writing that the committee meeting
77 not be conducted in a closed meeting.

78 14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or
79 to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
80 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position
81 of the governing body or the establishment of the terms, conditions and provisions of the siting agreement,
82 or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

83 15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
84 activity and estimating general and nongeneral fund revenues.

85 16. Discussion or consideration of medical and mental health records subject to the exclusion in
86 subdivision 1 of § 2.2-3705.5.

87 17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
88 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
89 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
90 information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3
91 and subdivision 11 of § 2.2-3705.7.

92 18. Those portions of meetings in which the State Board of Local and Regional Jails discusses or
93 discloses the identity of, or information tending to identify, any prisoner who (i) provides information
94 about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or
95 in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
96 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

97 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
98 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement
99 or emergency service officials concerning actions taken to respond to such matters or a related threat to
100 public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2,
101 where discussion in an open meeting would jeopardize the safety of any person or the security of any
102 facility, building, structure, information technology system, or software program; or discussion of reports
103 or plans related to the security of any governmental facility, building or structure, or the safety of persons
104 using such facility, building or structure.

105 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30,
106 or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
107 trustees of a trust established by one or more local public bodies to invest funds for postemployment
108 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2,
109 or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board
110 of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or
111 disposition of a security or other ownership interest in an entity, where such security or ownership interest
112 is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i)
113 concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared
114 by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings
115 Plan or provided to the retirement system, a local finance board or board of trustees, or the Virginia
116 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or
117 the future financial performance of the entity, and (ii) would have an adverse effect on the value of the
118 investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of
119 trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing
120 in this subdivision shall be construed to prevent the disclosure of information relating to the identity of
121 any investment held, the amount invested or the present value of such investment.

122 21. Those portions of meetings in which individual child death cases are discussed by the State
123 Child Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which
124 individual child death cases are discussed by a regional or local child fatality review team established
125 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
126 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
127 which individual adult death cases are discussed by the state Adult Fatality Review Team established
128 pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed
129 by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of
130 meetings in which individual death cases are discussed by overdose fatality review teams established
131 pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are

132 discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, and those portions of
133 meetings in which individual death cases of persons with developmental disabilities are discussed by the
134 Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-314.1.

135 22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern
136 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
137 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
138 Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary,
139 business-related information pertaining to the operations of the University of Virginia Medical Center or
140 Eastern Virginia Medical School, as the case may be, including business development or marketing
141 strategies and activities with existing or future joint venturers, partners, or other parties with whom the
142 University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed,
143 or forms, any arrangement for the delivery of health care, if disclosure of such information would
144 adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as
145 the case may be.

146 23. Discussion or consideration by the Virginia Commonwealth University Health System
147 Authority or the board of visitors of Virginia Commonwealth University of any of the following: the
148 acquisition or disposition by the Authority of real property, equipment, or technology software or
149 hardware and related goods or services, where disclosure would adversely affect the bargaining position
150 or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities
151 of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing
152 or operational strategies plans of the Authority where disclosure of such strategies or plans would
153 adversely affect the competitive position of the Authority; and members of the Authority's medical and
154 teaching staffs and qualifications for appointments thereto.

155 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee
156 within the Department of Health Professions to the extent such discussions identify any practitioner who
157 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

158 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
159 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by
160 or on behalf of individuals who have requested information about, applied for, or entered into prepaid
161 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
162 23.1 is discussed.

163 26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery
164 Subcommittee created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as
165 defined in § 56-484.12, related to the provision of wireless E-911 service.

166 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
167 Professional and Occupational Regulation, Department of Health Professions, or the Board of
168 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a
169 decision or meetings of health regulatory boards or conference committees of such boards to consider
170 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as
171 requested by either of the parties.

172 28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-
173 3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in
174 § 33.2-1800, or any independent review panel appointed to review information and advise the responsible
175 public entity concerning such records.

176 29. Discussion of the award of a public contract involving the expenditure of public funds,
177 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
178 discussion in an open session would adversely affect the bargaining position or negotiating strategy of the
179 public body.

180 30. Discussion or consideration of grant or loan application information subject to the exclusion
181 in subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

182 31. Discussion or consideration by the Commitment Review Committee of information subject to
183 the exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually
184 violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

185 32. Discussion or consideration of confidential proprietary information and trade secrets developed
186 and held by a local public body providing certain telecommunication services or cable television services
187 and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this
188 subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et
189 seq.).

190 33. Discussion or consideration by a local authority created in accordance with the Virginia
191 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade
192 secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6.

193 34. Discussion or consideration by the State Board of Elections or local electoral boards of voting
194 security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1 and review by the State Board
195 of Elections of complaints related to the personal use of campaign funds pursuant to § 24.2-948.6.

196 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
197 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal
198 investigative files.

199 36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of
200 information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and
201 meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and
202 consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or
203 recover scholarship awards.

204 37. Discussion or consideration by the Virginia Port Authority of information subject to the
205 exclusion in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the
206 Virginia Port Authority.

207 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
208 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
209 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
210 Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory

211 Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of
212 § 2.2-3705.7.

213 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-
214 3705.6 related to economic development.

215 40. Discussion or consideration by the Board of Education of information relating to the denial,
216 suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

217 41. Those portions of meetings of the Virginia Military Advisory Council or any commission
218 created by executive order for the purpose of studying and making recommendations regarding preventing
219 closure or realignment of federal military and national security installations and facilities located in
220 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
221 appointed by a local governing body, during which there is discussion of information subject to the
222 exclusion in subdivision 8 of § 2.2-3705.2.

223 42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
224 information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable
225 information of donors.

226 43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
227 information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information
228 contained in grant applications.

229 44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
230 of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or
231 charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain
232 proprietary information of a private entity provided to the Authority.

233 45. Discussion or consideration of personal and proprietary information related to the resource
234 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii)
235 subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records
236 that contain information that has been certified for release by the person who is the subject of the

237 information or transformed into a statistical or aggregate form that does not allow identification of the
238 person who supplied, or is the subject of, the information.

239 46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage
240 Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to
241 investigations of applicants for licenses and permits and of licensees and permittees.

242 47. Discussion or consideration of grant, loan, or investment application records subject to the
243 exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-
244 2351 et seq.) of Chapter 22.

245 48. Discussion or development of grant proposals by a regional council established pursuant to
246 Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and
247 Opportunity Board.

248 49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response
249 team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses
250 involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii)
251 individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to
252 §§ 15.2-1627.5 and 63.2-1605.

253 50. Discussion or consideration by the Board of the Virginia Economic Development Partnership
254 Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the
255 portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to
256 subdivision 33 of § 2.2-3705.7.

257 51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic
258 Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and
259 discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of
260 § 60.2-114.

261 52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership
262 Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the
263 Authority, of information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

264 53. Deliberations of the Virginia Lottery Board conducted pursuant to § 58.1-4105 regarding the
265 denial or revocation of a license of a casino gaming operator, or the refusal to issue, suspension of, or
266 revocation of any license or permit related to casino gaming, and discussion, consideration, or review of
267 matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

268 54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007
269 regarding the denial of, revocation of, suspension of, or refusal to renew any license or permit related to
270 sports betting and any discussion, consideration, or review of matters related to investigations excluded
271 from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

272 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
273 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
274 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
275 motion that shall have its substance reasonably identified in the open meeting.

276 C. Public officers improperly selected due to the failure of the public body to comply with the
277 other provisions of this section shall be de facto officers and, as such, their official actions are valid until
278 they obtain notice of the legal defect in their election.

279 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
280 more public bodies, or their representatives, but these conferences shall be subject to the same procedures
281 for holding closed meetings as are applicable to any other public body.

282 E. This section shall not be construed to (i) require the disclosure of any contract between the
283 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
284 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
285 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
286 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
287 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record
288 at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

289 **§ 24.2-946. Summary of election laws; forms; instructions.**

290 A. The State Board shall summarize the provisions of the election laws relating to the Campaign
291 Finance Disclosure Act of 2006 and provide for distribution of this summary and prescribed forms to each
292 candidate, person, or committee on request or upon their first filing with the State Board pursuant to this
293 chapter, whichever occurs first.

294 B. The State Board shall designate the forms required for complying with this chapter which shall
295 be the only such forms used in complying with the provisions of this chapter.

296 C. The State Board shall provide, with the summary required by this section, instructions for
297 persons filing reports pursuant to this chapter to assist them in completing the reports. The instructions
298 shall include directions for the reporting of filing fees for any party nomination method.

299 D. The State Board shall provide instructions for candidates who seek election for successive terms
300 in the same office for the filing of reports within each appropriate election cycle for the office and for the
301 aggregation of contributions within each election cycle.

302 E. The State Board, in consultation with the Office of the Attorney General, shall ~~provide, with~~
303 ~~the summary required by this section, to each candidate, person, or committee on request or upon their~~
304 ~~first filing with the State Board pursuant to this chapter, whichever occurs first, a copy of a written~~
305 ~~explanation prepared by the Attorney General of~~ develop and publish guidance on the provisions of the
306 Act that prohibit the personal use of campaign funds. ~~The explanation~~ Such guidance shall cover the
307 provisions that prohibit the personal use of campaign funds ~~and~~, shall delineate the differences between
308 prohibited personal uses of campaign funds and permitted uses of the funds, and shall include examples
309 of conduct that complies with and that violates such provisions. The State Board shall periodically update
310 such guidance to incorporate advisory opinions and additional examples.

311 **§ 24.2-948.4. Final report requirement; disbursement of surplus funds.**

312 A. A final report shall be filed by every campaign committee which sets forth (i) all receipts and
313 disbursements not previously reported, (ii) an accounting of the retirement of all debts, and (iii) the
314 disposition of all surplus funds as provided in subsection D. The final report shall include a termination
315 statement, signed by the candidate, that all reporting for the campaign committee is complete and final.

316 Once a campaign committee's final report has been filed, no further report relating to that election shall
317 be required.

318 B. A final report shall be required when (i) a candidate no longer seeks election to the same office
319 in a successive election, (ii) a candidate seeks election to a different office, or (iii) the candidate is
320 deceased.

321 C. If the candidate is deceased, the final report shall be filed and signed by the treasurer. If the
322 candidate was serving as his own treasurer, his executor shall file and sign the final report. Any excess
323 contributed funds shall be disposed of pursuant to the provisions of subsection D.

324 D. Amounts received by a candidate or his campaign committee as contributions that are in excess
325 of the amount necessary to defray his campaign expenditures or items acquired using campaign
326 contributions may be disposed of only by one or any combination of the following: (i) transferring the
327 excess or items acquired using campaign contributions for use in a succeeding election or to retire the
328 deficit in a preceding election; (ii) returning the excess or items acquired using campaign contributions to
329 a contributor in an amount not to exceed the contributor's original contribution; (iii) donating the excess
330 or items acquired using campaign contributions to any organization described in § 170(c) of the Internal
331 Revenue Code; (iv) contributing the excess or items acquired using campaign contributions to one or more
332 candidates or to any political committee that has filed a statement of organization pursuant to this chapter;
333 (v) contributing the excess or items acquired using campaign contributions to any political party
334 committee; and (vi) defraying any ordinary, nonreimbursed expense related to his elective office. ~~It shall~~
335 ~~be unlawful for any person to convert any contributed moneys, securities, or like intangible personal~~
336 ~~property to his personal use or to the use of a member of the candidate's "immediate family" as that term~~
337 ~~is defined in § 30-101.~~

338 **§ 24.2-948.5. Use of campaign funds.**

339 A. A contribution accepted by a candidate or his campaign committee may be used for the
340 following purposes:

341 1. For otherwise authorized expenditures in connection with the candidate's campaign.

342 2. For ordinary and necessary expenses incurred in connection with the duties of the individual as
343 an office holder.

344 3. For contributions to any organization described in § 170(c) of the Internal Revenue Code.

345 4. For transfers to any federal, state, or local political party committee.

346 5. For contributions to federal, state, and local candidates subject to the provisions of prevailing
347 law.

348 6. For dependent care expenses that are incurred as a direct result of the persons seeking, holding,
349 or maintaining public office.

350 7. For any other lawful purpose unless prohibited by subsection B.

351 B. Contributions to a candidate or candidate campaign committee shall not be converted by any
352 person to personal use. For the purpose of this subsection, a contribution shall be considered to be
353 converted to personal use if the contribution is used to fulfill any commitment, obligation, or expense of
354 a person that would exist irrespective of the person's seeking, holding, or maintaining public office, which
355 includes the following:

356 1. A home mortgage, rent, or utility payment.

357 2. A non-campaign-related automobile expense.

358 3. A country club membership.

359 4. A vacation or other non-campaign-related trip.

360 5. A tuition payment.

361 6. Admission to a sporting event, concert, theater, or other form of entertainment not associated
362 with an election campaign.

363 7. Dues, fees, and other payments to a health club or recreational facility.

364 **§ 24.2-948.6. Violations of the ban on personal use of campaign funds; complaint; notice;**
365 **hearing; penalty.**

366 A. A person who believes a violation of § 24.2-948.5 has occurred and (i) contributes to a candidate
367 or a candidate's campaign committee that has allegedly committed the violation or (ii) is qualified to vote
368 in the election for the office for which such candidate is running is qualified to file a complaint with the

369 Department of Elections. Such complaint shall be in writing on a form provided by the Department, signed
370 and sworn to by the person filing such complaint, notarized, and made under penalty of perjury and subject
371 to the provisions of § 24.2-1016. The complaint shall clearly identify the complainant and the person
372 against whom the complaint is addressed (the respondent) and contain (a) a credible allegation of a
373 violation of § 24.2-948.5 with regard to a specific use of campaign contributions by the candidate or
374 campaign committee, (b) attached documentation supporting the allegation, (c) the names and contact
375 information of any person the complainant knows to have knowledge of facts relating to the allegation,
376 and (d) any other information required by the Department. The Department shall provide a copy of the
377 complaint to the respondent within 24 hours of receipt. The Department shall complete its review of such
378 complaints and, within 10 days, transmit to the State Board any credible and complete complaint from a
379 qualified complainant and send written notice to the complainant and respondent of the Department's
380 ultimate determination of the complaint's disposition. The State Board shall not act upon any complaint
381 that does not meet the requirements of this subsection but shall be authorized to initiate an inquiry upon
382 its own motion.

383 B. Upon receipt of a complaint or upon its own motion, the State Board shall conduct a preliminary
384 investigation into the specific use of campaign contributions by the candidate. Such preliminary
385 investigation shall be conducted in closed meetings held pursuant to § 2.2-3711. The State Board shall
386 determine, during its preliminary investigation, whether the facts stated in the complaint or that serve as
387 the basis of the State Board's motion taken as true are sufficient to show a violation of § 24.2-948.5. If
388 such facts fail to give rise to such a violation, then the State Board shall dismiss the complaint. If the facts
389 give rise to such a violation, then the State Board shall request that the complainant appear and testify
390 under oath as to the complaint and the allegations therein. If the inquiry was initiated by the State Board's
391 own motion, the State Board may request that witnesses appear and testify under oath as to the allegations
392 raised by the State Board.

393 The State Board shall notify the respondent that a preliminary investigation has commenced within
394 24 hours of initiating such investigation. Before the State Board conducts any vote on the complaint, other
395 than a vote to dismiss, the respondent shall have 30 days to provide to the State Board documentation or

396 other evidence that no action should be taken against the respondent on the basis of the complaint or the
397 allegations brought by the State Board. If the respondent provides such documentation or such other
398 evidence, the State Board shall review the response and determine whether to proceed with the inquiry.

399 After hearing testimony and reviewing any other evidence provided by the complainant, witnesses,
400 or the respondent, the State Board shall dismiss the complaint if the State Board fails to find by a
401 preponderance of the evidence that such violation has occurred. If the State Board finds otherwise, it shall
402 proceed with the inquiry by calling for a public hearing.

403 If at any point prior to the State Board's call for a public hearing on the matter the respondent pays
404 back to the campaign committee from his personal funds the amount that was allegedly converted to his
405 personal use, the State Board shall dismiss the complaint or motion and end the inquiry into the matter.

406 Prior to the State Board's holding a public hearing on the matter, the complaint, the State Board's
407 written notice, and any related records shall not be subject to the provisions of the Virginia Freedom of
408 Information Act (§ 2.2-3700 et seq.) and shall not be made public, except by the respondent. However,
409 once the State Board has commenced a public meeting to further inquire into alleged conversion of
410 campaign funds to personal use, its materials, meetings, and hearings on the matter shall be open to the
411 public.

412 C. If after such preliminary investigation the State Board determines to proceed with an inquiry
413 into the specific use of campaign contributions by the respondent, the State Board (i) shall immediately
414 notify in writing the complainant and the respondent as to the fact of the inquiry and the allegations against
415 the respondent and (ii) shall schedule one or more hearings on the matter. The respondent shall have the
416 right to postpone the hearing if it is scheduled within the 30 days immediately preceding an election in
417 which the respondent is a candidate for office. If the complaining party declines to participate in the
418 hearing, the complaint shall be dismissed and no further action shall be taken.

419 The respondent shall have the right to access all records obtained during the investigation, present
420 evidence, cross-examine witnesses, face and examine the accuser, and be represented by counsel at any
421 hearings. In its discretion, the State Board may grant the respondent any other rights or privileges not
422 specifically enumerated in this subsection.

423 If at any time the State Board determines that the complaint is without merit, the State Board shall
424 dismiss the complaint, so advise the complainant and the respondent, and take no further action.

425 D. A decision to dispose of a complaint under this section shall require a vote of four members of
426 the State Board. Failure of the State Board to dispose of a complaint within 120 days of the Department's
427 transmission of the signed and sworn complaint shall result in the summary dismissal of the matter, after
428 which no further action shall be taken.

429 Within 120 days of the Department's transmission of the signed and sworn complaint to the State
430 Board or a motion to begin an inquiry, the State Board may dispose of the matter in one of the following
431 ways:

432 1. If for any reason the State Board dismisses the matter during its preliminary investigation and
433 prior to holding a public hearing on the matter, the State Board shall so advise the complainant and the
434 respondent and take no further action. In such case, the records and findings on the matter shall not be
435 subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be
436 made public unless the candidate under inquiry requests in writing that the records and findings be made
437 public.

438 2. If at any time after the commencement of the initial public hearing on the matter the State Board
439 dismisses the matter, the State Board shall so advise the complainant and the respondent and prepare a
440 written judgment stating the grounds for the dismissal.

441 3. If after a public hearing the State Board determines by a preponderance of the evidence that the
442 respondent has violated the provisions of § 24.2-948.5 but that the violation was not made willfully and
443 knowingly, the State Board may require the respondent to repay an amount not to exceed the amount
444 unlawfully converted to the personal use of the respondent. Respondents who claim an inability to repay
445 the amount the State Board has determined is owed may be asked to provide documentation as to their
446 financial condition. The State Board may negotiate a payment plan that enables a respondent to repay.
447 The procedure to enforce repayment under this section shall be as stated in § 24.2-946.3. The State Board
448 shall prepare a written judgment stating its determination of the matter, its recommended remedy, and

449 reasons therefor. A copy of the judgment shall be sent to each party and posted on the State Board's
450 website.

451 4. If the State Board determines by a preponderance of the evidence that the respondent willfully
452 and knowingly violated any provision of § 24.2-948.5, the respondent shall repay the amount unlawfully
453 converted to his personal use. The State Board may also assess an additional civil penalty, in an amount
454 not to exceed \$1,000 per itemized expenditure found to be in violation of any provision of § 24.2-948.5
455 and in no case greater than \$10,000. Respondents who claim an inability to pay an appropriate civil penalty
456 may be asked to provide documentation as to their financial condition. The State Board may negotiate a
457 payment plan that enables a respondent to pay an appropriate civil penalty. Any civil penalty collected
458 under this subdivision shall be payable to the State Treasurer for deposit into the general fund. The
459 procedure to enforce a civil penalty provided in this section shall be as stated in § 24.2-946.3. The State
460 Board shall prepare a written judgment stating its determination of the matter, its recommended remedy,
461 and reasons therefor. A copy of the judgment shall be sent to each party and posted on the State Board's
462 website.

463 E. A person found by the State Board to have violated the provisions of this section shall have a
464 right to the direct review of the finding by a court of competent jurisdiction as provided in the
465 Administrative Process Act (§ 2.2-4000 et seq.). The provisions of the Administrative Process Act shall
466 not otherwise apply, however, to the finding of a violation by the State Board pursuant to this section.

467 F. The State Board may, by a vote of four members, make a finding that a complaint is frivolous.
468 Such a finding shall be prima facie evidence of abuse of process by the complainant. The State Board shall
469 prepare a written judgment stating its determination of the matter and reasons therefor. A copy of the
470 judgment shall be sent to each party and posted on the State Board's website.

471 **§ 24.2-948.7. Advisory opinions.**

472 A. Any person subject to the provisions of § 24.2-948.5 may submit a complete written request for
473 an advisory opinion concerning the application of that section to a specific transaction or activity on a
474 form provided by the Department. The Department shall transmit any such complete written request for
475 an advisory opinion to the State Board.

476 B. The State Board shall, upon receipt, make public any request for an advisory opinion. Before
477 rendering an advisory opinion, the State Board shall accept written comments submitted by any interested
478 party within the 10-day period following the date the request is made public.

479 C. The State Board shall issue a written advisory opinion within 60 days of receipt of the request
480 for an advisory opinion. However, if an advisory opinion is requested by a candidate or candidate
481 campaign committee during the 60-day period before any election involving the requesting party, the State
482 Board shall render a written advisory opinion relating to such request no later than 20 days after the State
483 Board receives a complete written request.

484 D. Any advisory opinion rendered by the State Board under subsection C may be relied upon by
485 (i) any person involved in the specific transaction or activity with respect to which such advisory opinion
486 is rendered and (ii) any person involved in any specific transaction or activity that is indistinguishable in
487 all its material aspects from the transaction or activity with respect to which such advisory opinion is
488 rendered.

489 E. Notwithstanding any other provision of law, any person who relies upon any provision or
490 finding of an advisory opinion in accordance with the provisions of subsection D and who acts in good
491 faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any
492 such act, be subject to any sanction provided under § 24.2-948.6.

493 **2. That the State Board of Elections shall promulgate regulations to implement the provisions of**
494 **this act to be effective within 280 days of its enactment.**

495 **3. That the State Board of Elections shall publish an updated summary of the provisions of the**
496 **Campaign Finance Disclosure Act of 2006 (§ 24.2-945 et seq. of the Code of Virginia, as amended**
497 **by this act) required by subdivision E of § 24.2-946 of the Code of Virginia, as amended by this act,**
498 **and any regulations of the State Board of Elections promulgated pursuant to the second enactment**
499 **of this act within 30 days of the promulgation of such regulations.**

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