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**HOUSE BILL NO. 844**

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend the Code of Virginia by adding in Title 24.2 a chapter numbered 9.3, consisting of articles numbered 1 through 3, containing sections numbered 24.2-951 through 24.2-963, and to amend the Code of Virginia by adding a section numbered 58.1-344.3, relating to the establishment of the Virginia Clean Election Commission and the Virginia Clean Election Fund; enactment of the Virginia Clean Election Act; penalties; report.*

Patron—Baskerville

Referred to Committee on Privileges and Elections

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 24.2 a chapter numbered 9.3, consisting of articles numbered 1 through 3, containing sections numbered 24.2-951 through 24.2-963, and that the Code of Virginia is amended by adding a section numbered 58.1-344.3 as follows:**

**CHAPTER 9.3.****VIRGINIA CLEAN ELECTION ACT.****Article 1.****Virginia Clean Election Commission.****§ 24.2-951. Title.**

*This chapter may be known and cited as the "Virginia Clean Election Act." "Act" means the Virginia Clean Election Act.*

**§ 24.2-952. Virginia Clean Election Commission established.**

*The Virginia Clean Election Commission (the Commission) is established as a policy commission in the executive branch of state government. The purpose of the Commission is to administer the Act.*

**§ 24.2-953. Commission; membership; terms; chair; vacancies; compensation; expenses; staffing.**

*A. By October 1, 2004, and as needed thereafter, the Governor shall establish and publish a nomination period during which members of the public, groups, and organizations may nominate qualified individuals to the Governor for appointment to the Commission. The initial nomination period shall close by December 1, 2004.*

*B. The Commission shall have five members. The Governor shall appoint the members by January 1, 2005, and each appropriate year thereafter, taking into consideration nominations made during the nomination period. At least two members shall represent each of the two political parties having the highest vote in the last preceding gubernatorial election. Appointments made by the Governor shall be subject to confirmation by the General Assembly.*

*C. Two initial appointees shall be appointed for one-year terms; two initial appointees shall be appointed for two-year terms; and one initial appointee shall be appointed for a three-year term. Appointments thereafter shall be for four-year terms. All terms of service shall begin on February 1 and expire on January 31. No person shall serve more than two full four-year terms and one partial term.*

*D. The Commission members shall elect one member to serve as chairman and one member to serve as vice chairman, each for a two-year term. A majority of the voting members shall constitute a quorum.*

*E. A vacancy occurring during an unexpired term shall be filled as provided in this section for the unexpired portion of the term.*

*F. Members shall receive such compensation for the discharge of their duties as provided in § 2.2-2813. All members shall be reimbursed for reasonable and necessary expenses incurred in the discharge of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Commission.*

*G. The Commission shall employ staff sufficient to perform its duties. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.*

**§ 24.2-954. Duties of Commission.**

*A. The Commission shall administer and ensure the effective implementation of the Virginia Clean Election Act and administer the Virginia Clean Election Fund pursuant to Article 2 (§ 24.2-955 et seq.) of this chapter.*

*B. The Commission shall provide for enhanced monitoring and enforcement of election practices and monitor the electronic submission of reports and computerized tracking of campaign, election, and*

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59 lobbying information, in cooperation with the State Board of Elections and the Secretary of the  
60 Commonwealth.

61 Article 2.

62 Definitions; The Virginia Clean Election Fund.

63 § 24.2-955. Definitions.

64 "Certified candidate" means a candidate for the office of Governor, Lieutenant Governor, or Attorney  
65 General who chooses to participate in the Virginia Clean Election Act and who is certified as a  
66 Virginia Clean Election Act candidate under subsection E of § 24.2-958.

67 "Contribution" has the same meaning as in § 24.2-901.

68 "Fund" means the Virginia Clean Election Fund established in § 24.2-957.

69 "Nonparticipating candidate" means a candidate for the office of Governor, Lieutenant Governor, or  
70 Attorney General who does not choose to participate in the Virginia Clean Election Fund and who is  
71 not seeking to be certified as a Virginia Clean Election Act candidate under subsection E of § 24.2-958.

72 "Participating candidate" means a candidate for the office of Governor, Lieutenant Governor, or  
73 Attorney General who is seeking to be certified as a Virginia Clean Election Act candidate under  
74 subsection E of § 24.2-958.

75 "Qualifying contribution" means a donation of \$10, in the form of a check or money order payable  
76 to a candidate's campaign committee, that is:

77 1. Made by a voter registered to vote in the Commonwealth;

78 2. Made during the designated qualifying period and obtained with the knowledge and approval of  
79 the candidate; and

80 3. Acknowledged by a written receipt that identifies the name and address of the donor on forms  
81 provided by the Commission.

82 "Qualifying period" means the period that begins the November 1 immediately preceding the election  
83 year and ends at the deadline for filing declarations of candidacy for the June primary in the election  
84 year if the candidate seeks the nomination of a political party or ends at the deadline for filing  
85 declarations of candidacy by independent candidates for the election year if the candidate is an  
86 independent candidate who seeks to qualify for the general election ballot by voter petition.

87 "Seed money contribution" means a contribution of no more than \$100 per individual made to a  
88 candidate's campaign committee, including a contribution from the candidate or the candidate's family.  
89 To be eligible for certification, a participating candidate may collect and spend only seed money  
90 contributions subsequent to becoming a candidate and through the qualifying period. A candidate shall  
91 not collect and spend seed money contributions after certification as a Virginia Clean Election Act  
92 candidate. The primary purpose of a seed money contribution is to enable a participating candidate to  
93 collect qualifying contributions. Seed money contributions shall be reported according to procedures  
94 developed by the Commission.

95 § 24.2-956. Alternative campaign financing option.

96 This Act establishes an alternative campaign financing option available to candidates for the office  
97 of Governor, Lieutenant Governor, or Attorney General for elections to be held beginning in the year  
98 2005. Candidates participating in the Virginia Clean Election Act shall also comply with all other  
99 applicable election and campaign laws and regulations.

100 § 24.2-957. The Virginia Clean Election Fund established; sources of funding.

101 A. There is hereby created in the state treasury a special nonreverting fund to be known as the  
102 Virginia Clean Election Fund. The Fund shall be established on the books of the Comptroller. All  
103 sources of funding provided in subsection B shall be paid into the state treasury and credited to the  
104 Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any  
105 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert  
106 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the  
107 purposes of implementing the provisions of this Act. Expenditures and disbursements from the Fund  
108 shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed  
109 by the designee of the Commission.

110 B. The following shall be deposited in the Fund:

111 1. The qualifying contributions required under § 24.2-958 when those contributions are submitted to  
112 the Commission;

113 2. One million dollars from general fund revenues, transferred to the Fund by the Treasurer of  
114 Virginia on or before January 1 of each fiscal year, beginning with the fiscal year ending June 30,  
115 2005. These revenues shall be offset in an equitable manner by an equivalent reduction within the  
116 administrative divisions of the legislative branch and executive branch agencies;

117 3. Revenue from a tax checkoff program allowing a resident of the Commonwealth who files an  
118 individual income tax return to designate that \$3 of his taxes be paid into the Fund. If a husband and  
119 wife file a joint return, each spouse may designate that \$3 be paid, for a total of \$6. The amounts  
120 designated for the Fund shall be appropriated from the general fund and credited to the Fund;

121 4. Seed money contributions remaining unspent after a candidate has been certified as a Virginia  
122 Clean Election Act candidate;

123 5. Fund moneys that were distributed to a Virginia Clean Election Act candidate and that remain  
124 unspent after the candidate has lost a primary election or after the November general election;

125 6. Other unspent Fund moneys distributed to any Virginia Clean Election Act candidate who does  
126 not remain a candidate throughout a primary or general election cycle;

127 7. Voluntary donations made directly to the Fund; and

128 8. Civil penalties collected under the provisions of this Act.

129 C. By September 1 preceding each election year, the Commission shall publish an estimate of the  
130 moneys in the Fund available for distribution to certified candidates during the upcoming year's  
131 elections.

132 § 24.2-958. Terms of participation; qualifying contributions; Fund distribution.

133 A. A participating candidate shall file a declaration of intent to seek certification as a Virginia Clean  
134 Election Act candidate and to comply with the requirements of this Act. Except as provided in  
135 subsection K, the declaration of intent shall be filed with the Commission prior to or during the  
136 qualifying period, according to forms and procedures developed by the Commission. A participating  
137 candidate shall submit a declaration of intent prior to collecting qualifying contributions under this Act.

138 B. Subsequent to becoming a candidate and prior to certification, a participating candidate may not  
139 accept contributions, except for seed money contributions. A participating candidate shall limit the  
140 candidate's seed money contributions to the following amounts for each office:

141 1. Governor, \$100,000; and

142 2. Lieutenant Governor, or Attorney General, \$50,000.

143 The Commission may, by regulation, revise these amounts to ensure the effective implementation of  
144 this Act.

145 C. Participating candidates shall obtain qualifying \$10 contributions during the qualifying period  
146 from at least 2,500 verified registered voters of this Commonwealth. No person shall give any payment,  
147 gift, or anything of value in exchange for a qualifying contribution.

148 D. Except as provided under subsection K, a participating candidate shall submit qualifying  
149 contributions to the Commission during the qualifying period according to procedures developed by the  
150 Commission.

151 E. Upon receipt of a final submittal of qualifying contributions by a participating candidate, the  
152 Commission shall determine whether or not the candidate has:

153 1. Signed and filed a declaration of intent to participate in this Act;

154 2. Submitted the appropriate number of valid qualifying contributions;

155 3. Qualified as a candidate by petition or other means;

156 4. Accepted no contributions, except seed money contributions, and otherwise complied with seed  
157 money restrictions; and

158 5. Met all requirements for participation in this Act.

159 The Commission shall certify a candidate complying with the requirements of this section as a  
160 Virginia Clean Election Act candidate no later than three days after final submittal of qualifying  
161 contributions.

162 Upon certification, a candidate shall transfer to the Fund any unspent seed money contributions. A  
163 certified candidate shall comply with all requirements of this Act after certification and throughout the  
164 primary and general election cycles. Failure to do so is a violation of this Act.

165 F. After certification, a candidate shall limit his campaign expenditures and obligations, including  
166 outstanding obligations, to the moneys distributed to the candidate from the Fund and may not accept  
167 any contributions unless specifically authorized by the Commission. All moneys distributed to certified  
168 candidates from the Fund shall be used for campaign-related purposes. The Commission shall publish  
169 guidelines outlining permissible campaign-related expenditures.

170 G. The Commission shall distribute to certified candidates moneys from the Fund, in amounts  
171 determined under subsection H, in the following manner:

172 1. Within three days after certification, for candidates certified prior to the deadline for qualification  
173 of primary candidates, moneys from the Fund shall be distributed as if the candidates are in an  
174 uncontested primary election.

175 2. Within three days after the deadline for qualification of primary candidates, for primary election  
176 certified candidates, moneys from the Fund shall be distributed according to whether the candidate is in  
177 a contested or uncontested primary election, reduced by any amounts previously distributed under  
178 subdivision G 1.

179 3. Within three days after the primary election, for general election certified candidates, moneys from  
180 the Fund shall be distributed according to whether the candidate is in a contested general election.  
181 Funds may not be distributed for uncontested general elections.

182 Funds may be distributed to certified candidates under this section by any mechanism that is  
183 expeditious, ensures accountability, and safeguards the integrity of the Fund.

184 H. By May 1, 2005, and at least every four years after that date, the Commission shall determine the  
185 amount of funds to be distributed to participating candidates based on the type of election and office as  
186 follows:

187 1. For contested primary elections, the amount of moneys to be distributed is the average amount of  
188 campaign expenditures made by each candidate during all contested primary election races for the  
189 immediately preceding two primary elections for the office as reported in the initial filing period  
190 subsequent to the primary election for the respective offices of Governor, Lieutenant Governor, and  
191 Attorney General.

192 2. For uncontested primary elections, the amount of moneys distributed is the average amount of  
193 campaign expenditures made by each candidate during all uncontested primary election races, or for  
194 contested races if that amount is lower, for the immediately preceding two primary elections for the  
195 office as reported in the initial filing period subsequent to the primary election for the respective offices  
196 of Governor, Lieutenant Governor, and Attorney General.

197 3. For contested general elections, the amount of revenues distributed is the average amount of  
198 campaign expenditures made by each candidate during all contested general election races for the  
199 immediately preceding two general elections for the office as reported in the initial filing period  
200 subsequent to the general election for the respective offices of Governor, Lieutenant Governor, and  
201 Attorney General.

202 4. Funds shall not be distributed for uncontested general elections.

203 If the immediately preceding two election cycles do not contain sufficient electoral data, the  
204 Commission shall use information from the most recent applicable elections. For only the initial  
205 computations under subdivisions H 1, H 2, and H 3 that are conducted prior to May 1, 2005, the  
206 Commission shall reduce the amounts to be distributed by 25 percent.

207 I. When any campaign finance or election report shows that the sum of a candidate's expenditures or  
208 obligations, or funds raised or borrowed, whichever is greater, alone or in conjunction with independent  
209 expenditures reported under Article 3 (§ 24.2-963) of this chapter exceeds the distribution amount under  
210 subsection H, the Commission shall issue immediately to any opposing Virginia Clean Election Act  
211 candidate an additional amount equivalent to the reported excess. Matching funds are limited to two  
212 times the amount originally distributed under subdivision H 1 or H 3, whichever is applicable.

213 J. An independent candidate certified by the deadline for filing declarations of candidacy for the  
214 June primary is eligible for moneys from the Fund in the same amounts and at the same time as an  
215 uncontested primary election candidate and a general election candidate as specified in subsections G  
216 and H. For an independent candidate not certified by the deadline for filing declarations of candidacy  
217 for the June primary, the deadline for filing qualifying contributions is the deadline for filing  
218 declarations of candidacy by independent candidates for the election year. An independent candidate  
219 certified after the deadline for filing declarations of candidacy for the June primary is eligible for  
220 moneys from the Fund in the same amounts as a general election candidate, as specified in subsections  
221 G and H.

222 K. The Commission shall establish by regulation the procedures for qualification, certification,  
223 disbursement of Fund moneys and the return of unspent Fund moneys for races involving special  
224 elections, recounts, vacancies, withdrawals or replacement candidates.

225 L. Notwithstanding any other provision of law, participating and certified candidates shall report any  
226 moneys collected, all campaign expenditures and obligations, and related activities to the Commission  
227 according to procedures developed by the Commission. Upon the filing of a final report for any primary  
228 election in which the candidate was defeated and for all general elections, a candidate shall return all  
229 unspent Fund moneys to the Commission. In developing these procedures, the Commission shall utilize  
230 existing campaign reporting procedures whenever practicable. The Commission shall ensure timely  
231 public access to campaign finance data and may utilize electronic means of reporting and storing  
232 information.

233 M. The Commission shall not distribute moneys to certified candidates in excess of the total amount  
234 of moneys deposited in the Fund as set forth in § 24.2-957. Notwithstanding any other provisions of this  
235 Act, if the Commission determines that the moneys in the Fund are insufficient to meet distributions  
236 under subsection H or I, the Commission may permit certified candidates to accept and spend  
237 contributions, reduced by any seed money contributions, aggregating no more than \$500 per donor per  
238 election up to the applicable amounts set forth in subsections H and I according to regulations  
239 established by the Commission.

240 N. A candidate who has been denied certification as a Virginia Clean Election Act candidate or the  
241 opponent of a candidate who has been granted certification as a Virginia Clean Election Act candidate  
242 may challenge a certification decision by the Commission as follows:

243 1. A challenger may appeal to the full Commission within three days of the certification decision.

*The appeal shall be in writing and shall set forth the reasons for the appeal.*

*2. Within five days after an appeal is properly made and after notice is given to the challenger and any opponent, the Commission shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the Commission decision was improper. The Commission shall rule on the appeal within three days after the completion of the hearing.*

*3. A challenger may appeal the decision of the Commission in subdivision N 2 by commencing an action in the Circuit Court for the City of Richmond.*

*4. A candidate whose certification by the Commission as a Virginia Clean Election Act candidate is revoked on appeal shall return to the Commission any unspent moneys distributed from the Fund. If the Commission or Court finds that an appeal was made frivolously or to cause delay or hardship, the Commission or Court may require the appellant to pay the costs of the Commission, Court and opposing parties, if any.*

*§ 24.2-959. Commission to adopt regulations.*

*The Commission shall adopt regulations to ensure effective administration of this Act. These regulations include but are not limited to procedures for obtaining qualifying contributions, certification as a Virginia Clean Election Act candidate, circumstances involving special elections, vacancies, recounts, withdrawals or replacements, collection of moneys of the Fund, distribution of Fund moneys to certified candidates, return of unspent Fund disbursements, and compliance with the Virginia Clean Election Act.*

*§ 24.2-960. Accelerated reporting schedule.*

*In addition to other reports required by law, any candidate for the office of Governor, Lieutenant Governor, or Attorney General who receives, spends, or obligates more than one percent in excess of the primary or general election distribution amounts for a Virginia Clean Election Act candidate in the same race, shall file by any means acceptable to the Commission, within 48 hours of that event, a report with the Commission detailing the candidate's total campaign contributions, obligations, and expenditures to date. After this filing, the candidate shall comply with an expedited reporting schedule that the Commission shall establish by regulation. The Commission shall provide forms to facilitate compliance with the section.*

*§ 24.2-961. Violations; penalties.*

*A. In addition to any other penalties that may be applicable, a person who violates any provision of this Act is subject to a civil penalty not to exceed \$10,000 per violation payable to the Fund. This penalty is recoverable in a civil action. In addition to any fine, for good cause shown, a candidate found in violation of this Act may be required to return to the Fund all amounts distributed to him from the Fund. If the Commission makes a determination that a violation of this Act has occurred, the Commission shall assess a civil penalty or transmit the finding to the Attorney General for prosecution. Civil penalties paid under this section shall be deposited in the Fund. In determining whether or not a candidate is in violation of the expenditure limits of this Act, the Commission may consider as a mitigating factor any circumstances out of the candidate's control.*

*B. A person who willfully or knowingly violates this Act or regulations of the Commission is guilty of a Class 1 misdemeanor or who willfully or knowingly makes a false statement in any report required by this Act is guilty of a Class 5 felony and, if certified as a Virginia Clean Election Act candidate, shall return to the Fund all amounts distributed to the candidate.*

*§ 24.2-962. Study report.*

*By January 30, 2006, and every four years after that date, the Commission shall prepare for the Governor and the General Assembly an executive summary and report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of the Virginia Clean Election Act and the Virginia Clean Election Fund. The Commission's report shall be prepared for publication as a document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

### *Article 3.*

#### *Independent Expenditures.*

*§ 24.2-963. Independent expenditures; penalty.*

*A. For the purposes of this section, an independent expenditure is any contribution or expenditure by a person, political committee, or other entity aggregating in excess of \$100 in an election that expressly advocates the election or defeat of a clearly identified candidate, other than by a contribution to a candidate or his designated campaign committee.*

*B. Any person, political committee, or other entity that makes an independent expenditure shall file a report with the Commission. Reports required by this section shall be filed according to a reporting schedule that the Commission shall establish by regulation that takes into consideration existing campaign finance reporting requirements and matching fund provisions under subsection I of*

305 § 24.2-958.

306 *C. The report required by this section shall contain an itemized account of each contribution or*  
307 *expenditure in excess of \$100 in any election, the date and purpose of each, and the name of each*  
308 *payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be*  
309 *itemized. The report shall state whether the contribution or expenditure is in support of or in opposition*  
310 *to the candidate and shall include a statement whether the expenditure is made in cooperation,*  
311 *consultation, or concert with, or at the request or suggestion of, any candidate or any authorized*  
312 *committee or agent of the candidate. This statement shall be subject to felony penalties for making false*  
313 *statements pursuant to § 24.2-1016. The reports shall be on forms prescribed by the Commission.*

314 § 58.1-344.3. Virginia Clean Election Act checkoff.

315 *A. For all taxable years beginning on or after January 1, 2004, any individual taxpayer may*  
316 *designate at the time of filing his return that \$3 of his taxes shall be deposited to the Virginia Clean*  
317 *Election Fund in accordance with § 24.2-957.*

318 *B. The Tax Commissioner shall provide on the first page of the income tax form a space for the*  
319 *filing individual to indicate whether the filer wishes to pay \$3, or \$6 if filing a joint return, from the*  
320 *general fund of the Commonwealth to finance the Virginia Clean Election Fund.*

321 *C. The Tax Commissioner shall determine by June 30 of each year the total amount designated for*  
322 *the preceding taxable year. The Tax Commissioner shall report the total amount to the State Treasurer*  
323 *who shall pay the amount to the Virginia Clean Election Fund in accordance with the appropriation*  
324 *act.*

325 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
326 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
327 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**  
328 **periods of commitment to the custody of the Department of Juvenile Justice.**