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HOUSE BILL NO. 275

Offered January 10, 2018

Prefiled January 3, 2018

A *BILL to amend the Code of Virginia by adding in Title 24.2 a chapter numbered 9.6, containing articles numbered 1 through 4, consisting of sections numbered 24.2-961 through 24.2-964.3, relating to voluntary public financing of certain campaigns.*

Patron—Rasoul

Referred to Committee on Rules

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 9.6, containing articles numbered 1 through 4, consisting of sections numbered 24.2-961 through 24.2-964.3 as follows:

CHAPTER 9.6.**VIRGINIA FAIR ELECTIONS ACT OF 2017.****Article 1.****General Provisions.****§ 24.2-961. Definitions.**

For the purposes of this chapter:

"Base amount" means the amount participating candidates are eligible to receive as a lump sum allocation from the Elections Fund under subsection A of § 24.2-962.

"Contested election" means an election in which two or more candidates for the same covered office have (i) raised or spent the amount of money specified in § 24.2-963.1 with regard to the respective covered office, (ii) filed a statement of qualification with the State Board in accordance with § 24.2-501, or (iii) qualified for the ballot.

"Covered office" means the office of Governor, Lieutenant Governor, Attorney General, a member of the Virginia House of Delegates, or a member of the Senate of Virginia.

"Election cycle" means the period beginning January 1 immediately following the most recent general election for the covered office and ending on December 31 immediately following the general election for the covered office.

"Elections Fund" means the fund established by § 24.2-961.2 to distribute to participating candidates base amount allocations, matching payments, and any other payment provided pursuant to this chapter.

"Immediate family" means, with respect to a candidate, (i) the candidate's spouse; (ii) the child, stepchild, parent, grandparent, sibling, or half-sibling of the candidate or the candidate's spouse; or (iii) the spouse of any individual described in (ii).

"Matching payments" means payments provided to participating candidates for qualified small-dollar contributions as provided in § 24.2-962.1.

"Participating candidate" means a candidate for a covered office who is certified under § 24.2-963.3 as eligible to receive base amount allocation and matching payments.

"Qualified small-dollar contribution" means a contribution by an individual who resides in the Commonwealth that, when aggregated with all other contributions received by a candidate from that individual within an election cycle, does not exceed \$400 for Governor, \$200 for Lieutenant Governor or Attorney General, or \$100 for either house of the General Assembly.

"Qualifying period" means the period beginning on the first day of the election cycle for the covered office that a candidate is seeking and ending upon certification by the Department of Elections of the primary ballot for partisan elections and the general election ballot for all others.

"Solicit or direct" means to ask, request, or recommend that another person make a contribution or donation, or to guide a person who has expressed an intent to make a contribution or donation, by identifying a candidate, political committee, or organization for the receipt of such funds or things of value. "Solicit or direct" includes speaking or being a featured guest at a fundraising event at which contributions other than qualified small-dollar contributions or contributions from a committee that only accepts contributions from individuals that do not exceed \$500 per individual per calendar year are raised.

"Uncontested election" means an election for a covered office in which only one candidate has (i) raised or spent the amount of money specified in § 24.2-963.1 with regard to the respective covered office, (ii) filed a statement of qualification with the State Board of Elections in accordance with § 24.2-501, or (iii) qualified for the ballot.

INTRODUCED

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§ 24.2-961.1. Establishment of the Fair Elections Program.

A. There shall be established within the Department of Elections a Fair Elections Program.

B. The Department shall administer all laws and regulations governing the Fair Elections Program and shall establish procedures for the auditing and verifying of qualified small-dollar contributions to ensure that such contributions meet the requirements of the Fair Elections Program.

C. The Department shall review and evaluate the effect of this chapter upon the conduct of election campaigns in the Commonwealth and shall submit a report to the Governor and the General Assembly containing the following:

1. The number and names of candidates who qualify for and choose to receive public funds pursuant to this act, and of candidates failing to qualify or otherwise not choosing to receive such funds, in each election during the four preceding calendar years;

2. The amount of funds provided to the campaign committee of each candidate pursuant to this chapter and the contributions received and expenditures made by each candidate's campaign committee in each election during the four preceding calendar years;

3. The number and names of nonparticipating candidates in each election during the four preceding calendar years, together with the expenditures made by each candidate and the authorized committees of the candidate in each election;

4. An analysis of the effect of this chapter on political campaigns, including its effect on the sources and amounts of private financing, the level of campaign expenditures, voter participation, the number of candidates, and the candidates' ability to campaign effectively for public office;

5. A review of the procedures utilized in providing public funds to candidates; and

6. Any recommendations by the Department for changes to this chapter as the Department deems appropriate.

This report shall be made within the two months following any primary or general election. The Governor or the General Assembly may request, and the Department shall submit, a report at any time. The Department may submit a report on its own initiative at any time it deems appropriate.

D. On the basis of the review and evaluation required by this section, the Department, with approval from the State Board, shall adjust the following amounts within three months of the submission of its report to the Governor and the General Assembly:

1. The number and dollar amount of qualifying small-dollar contributions a candidate must receive under § 24.2-963.1 to qualify as a participating candidate;

2. The base amount participating candidates are eligible to receive under § 24.2-962; and

3. The maximum amount of matching payments a candidate may receive under subsection B of § 24.2-962.1.

§ 24.2-961.2. Elections Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Elections Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. Any (i) unspent funds distributed to any participating candidate who does not remain a candidate until the election for which they were distributed, or any unspent distributed funds that remain unspent and unobligated by the participating candidate following the date of the election for which they were distributed; (ii) funds appropriated for such purpose; and (iii) gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of administering the provisions of this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner of Elections.

B. In time for inclusion in the Governor's annual budget, and at other times as the Department of Elections deems necessary, the Department of Elections shall submit to the Governor and the General Assembly its estimate of the amount of public funds that will be necessary to provide candidates with sufficient financing (i) for elections in the next year in which elections are scheduled; (ii) for elections to fill vacancies to be held prior to that year, and (iii) for a reserve for contingencies. The estimates shall be submitted in a manner and at such times as to ensure that appropriations may be allocated in full by the beginning of the fiscal year prior to the year in which elections are scheduled and to allow additional amounts to be appropriated if necessary.

§ 24.2-961.3. Rulemaking.

The State Board, pursuant to its authority under § 24.2-103, shall issue rules and regulations to implement the provisions of this act.

Article 2.

Provision of Public Funds.

§ 24.2-962. Allocations from the Elections Fund.

A. Except as provided in subsections B and C, participating candidates shall be eligible to receive the base amount upon certification by the Department of Elections under § 24.2-963.3 The base amount for the first election cycle under this chapter shall be \$2,000,000 for the office of Governor, \$500,000 for the office of Attorney General, \$250,000 for the office of Lieutenant Governor, and \$35,000 for an office in either house of the General Assembly. After the first election cycle that occurs after the effective date of this chapter and after each subsequent election cycle, the base amounts set forth in this subsection shall be adjusted by the percentage change in average expenditures over the last two election cycles by the winning candidates for each covered office, as determined by the Department of Elections.

B. If there is a recount of an election, a participating candidate shall be eligible to receive 25 percent of the base amount for the covered office for expenses related to the recount.

C. If a participating candidate is running in an uncontested election, the candidate shall not receive the base amount allocation provided in subsection A. The candidates shall be eligible to receive matching payments pursuant to § 24.2-962.1. In the event an uncontested election becomes a contested election, the participating candidate shall receive the base amount.

D. Allocations under subsections A through C shall be made:

1. Not later than four business days after the candidate is certified as a participating candidate under § 24.2-963.3;

2. For a recount, not later than four business days after a court orders the holding of the recount; or

3. For candidates running in an uncontested election that becomes contested, not later than four business days after the election becomes contested.

E. Funds shall be distributed to participating candidates through the use of an electronic funds exchange or a debit card.

§ 24.2-962.1. Matching payments for qualified small-dollar contributions.

A. Qualified small-dollar contributions received by a participating candidate from individuals who are residents of the Commonwealth shall be eligible for the following matching payments:

1. Qualified small-dollar contributions received through the final day of the qualifying period shall be matched at 200 percent of the amount of the qualified small-dollar contributions, except that once a candidate qualifies for the ballot, qualified small-dollar contributions received before the candidate qualified for the ballot shall be matched by an additional 300 percent of the amount of the small-dollar contributions.

2. Qualified small-dollar contributions received after the final day of the qualifying period shall be matched at 500 percent of the amount of the qualified small-dollar contributions.

B. The maximum amount participating candidates may receive under this section shall be:

1. For the office of Governor, the number of registered voters in the Commonwealth as of January 1 following the most recent November general election, multiplied by \$4;

2. For the office of Attorney General, the number of registered voters in the Commonwealth as of January 1 following the most recent November general election, multiplied by \$1;

3. For the office of Lieutenant Governor, the number of registered voters in the Commonwealth as of January 1 of the year of the election, multiplied by \$0.50; and

4. For an office in either house of the General Assembly, the number of registered voters in the district in which the candidate is seeking office as of January 1 of the year of the election, multiplied by \$10.

C. Payments under this section shall be made not later than four business days after the receipt of a report made under subsection D, or as soon thereafter as practicable. The Department of Elections shall schedule a minimum of three payment dates within the 30-day period immediately preceding a covered election.

D. Each participating candidate shall file reports of qualified small-dollar contributions at the times and in the manners as prescribed by the State Board.

E. A written explanation shall be provided with respect to any denial of any payment under this section and shall provide for the opportunity for review and reconsideration within five business days of the denial.

F. Funds shall be distributed to participating candidates under this section through the use of an electronic funds exchange or a debit card.

Article 3.

Program Qualifications.

§ 24.2-963. Eligibility for certification.

A. A candidate is eligible to be certified as a participating candidate with respect to an election if candidate meets the following requirements:

1. During the qualifying period, the candidate files with the Department a statement of intent to seek certification as a participating candidate;

2. The candidate meets the qualifying requirements of § 24.2-963.1; and

3. Not later than the last day of the qualifying period, the candidate files, with the Department of Elections, an affidavit signed by the candidate and the treasurer of the candidate's campaign committee declaring that the candidate (i) has complied with and, if certified, will continue to comply with the contribution limits and all other requirements of this act; (ii) if certified, will comply with the debate requirements of § 24.2-964.1; (iii) if certified, will run only as a participating candidate for all elections for the office that the candidate is seeking during the election cycle; and (iv) has either qualified or will take steps to qualify to be on the ballot.

B. Notwithstanding subsection A, a participating candidate shall not be eligible to receive any payment from the Elections Fund after the primary election unless the candidate's party nominated the candidate to be placed on the ballot for the general election or the candidate is otherwise qualified to be on the ballot.

§ 24.2-963.1. Fair Elections Program qualifying requirements.

A candidate meets the requirements of this section if, during the qualifying period, the candidate obtains the following number of qualified small-dollar contributions from individuals who have a primary residence in the Commonwealth and are otherwise not prohibited from making a contribution under law:

1. For the office of Governor, qualified small-dollar contributions from at least 5,000 individuals, the total amount of which is at least \$200,000;

2. For the office of Attorney General, qualified small-dollar contributions from at least 2,000 individuals, the total amount of which is at least \$80,000;

3. For the office of Lieutenant Governor, qualified small-dollar contributions from at least 1,000 individuals, the total amount of which is at least \$40,000;

4. For an office in the Senate of Virginia, qualified small-dollar contributions from at least 125 individuals, the total amount of which is at least \$5,000; or

5. For an office in the Virginia House of Delegates, qualified small-dollar contributions from at least 75 individuals, the total amount of which is at least \$3,000.

§ 24.2-963.2. Qualified small-dollar contributions requirements.

A. Each qualified small-dollar contribution shall be acknowledged by a physical or digital receipt to the contributor, with a copy retained by the candidate. The receipt shall include:

1. The contributor's digital or physical signature, printed name, home address, telephone number, occupation, if any, and the name of the candidate on whose behalf the contribution is made; and

2. A written and signed oath declaring that the contributor (i) is making the contribution in his own name and from his own funds; (ii) has made the contribution willingly, without coercion; (iii) has not received anything of value in return for the contribution; and (iv) is a resident of the Commonwealth.

B. Each qualified small-dollar contribution may be made by means of a personal check, credit card, cash, or electronic payment.

C. A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified small-dollar contribution.

§ 24.2-963.3. Fair Elections Program certification.

A. Not later than five days after a candidate files an affidavit under subdivision A 3 of § 24.2-963, the Department of Elections shall:

1. Determine whether the candidate meets the requirements for certification as a participating candidate;

2. If the requirements are met, certify the candidate as a participating candidate; and

3. Notify the candidate of the Department's determination.

B. If the Department of Elections certifies a candidate as a participating candidate with respect to the first election of the election cycle involved, the Department shall be deemed to have certified the candidates and a participating candidate with respect to all subsequent elections of the election cycle.

C. The Department of Elections may revoke a certification under subsection A if a candidate:

1. Fails to qualify to appear on the ballot at any time after the date of certification (other than a candidate certified as a participating candidate with respect to a primary election who fails to qualify to appear on the ballot for a subsequent election in that election cycle);

2. Otherwise fails to comply with the requirements of this act, including any regulatory requirements prescribed by the Department of Elections; or

3. Withdraws as a candidate.

D. If certification is revoked under subsection C, the candidate shall repay to the Elections Fund an amount equal to the value of benefits received under this chapter with respect to the election cycle involved plus interest, at a rate determined by the Department of Elections, on any such amount received.

Article 4.

Program Requirements

§ 24.2-964. Limitations on fundraising, contributions, expenditures, and use of public funds.

A. Except as provided in subsection C, a participating candidate shall not accept, solicit, or direct contributions in connection with any election other than:

1. Qualified small-dollar contributions;
2. Contributions from a political committee that only accepts contributions from individuals that do not exceed \$500 per individual per calendar year not exceeding \$3,000 per committee;
3. Base amount allocations under § 24.2-962;
4. Matching payments under § 24.2-962.1; and
5. Contributions from individuals.

B. Except as provided in subsection D, a participating candidate shall, with respect to all elections occurring during the election cycle for the office involved, make no expenditures from any amounts other than:

1. Qualified small-dollar contributions;
2. Contributions from a political committee that only accepts contributions from individuals that do not exceed \$500 per individual per calendar year;
3. Base amount allocations under § 24.2-962;
4. Matching payments under § 24.2-962.1; and
5. From personal funds or the funds of any immediate family member of the candidate, other than funds received through qualified small-dollar contributions.

C. A candidate who has accepted contributions that are not qualified small-dollar contributions or contributions described in subdivision A 2 before the date the candidate files a statement of intent under subdivision A 1 of § 24.2-963 is not in violation of subsection A, but only if all contributions are:

1. Returned to the contributor;
2. Submitted to the Department of Elections for deposit in the Elections Fund; or
3. Spent in accordance with subsection D.

D. If a candidate has made expenditures prior to the date the candidate files a statement of intent under subdivision A 1 of § 24.2-963 that the candidate is prohibited from making under subsection B, the candidate shall not be in violation of subsection B if the aggregate amount of the prohibited expenditures does not exceed 20 percent of the base amount the candidate would be eligible to receive under § 24.2-962.

E. Notwithstanding subsection C, unexpended contributions received by the candidate or the candidate's campaign committee with respect to a previous election may be retained, but only if the candidate places the funds in escrow and refrains from raising additional funds for or spending the funds from that account during the election cycle in which a candidate is a participating candidate.

F. Contributions received and expenditures made by the candidate or an authorized committee of the candidate prior to the effective date of this chapter shall not constitute a violation of subsection A or B. Unexpended contributions shall be treated the same as campaign surpluses under subsection E, and expenditures made shall count against the limit in subsection D.

G. A participating candidate shall not use the base amount allocation or matching payments for the costs of legal defense in any election law-enforcement proceeding, or for indirect campaign purposes. Indirect campaign purposes include (i) the candidate's personal support or compensation to the candidate or a member of the candidate's immediate family; (ii) clothing and other items related to the candidate's personal appearance; (iii) capital assets having a value in excess of \$500 and useful life extending beyond the end of the current election period, as determined in accordance with generally accepted account principles; (iv) contributions or loans to the campaign committee of another candidate or to a party committee or other political committee; (v) independent expenditures; or (vi) any payment or transfer for which compensating value is not received.

§ 24.2-964.1. Debate requirement.

A participating candidate shall, during an applicable election cycle, participate in at least:

1. One public debate before the primary election, if the primary election is not an uncontested election, with other participating candidates and other candidates from the same party seeking the same nomination as the participating candidate; and
2. Two public debates before the general election, if the general election is not an uncontested election, with other participating candidates and other willing candidates seeking the same office as the participating candidate.

§ 24.2-964.2. Remitting unspent funds after election.

A. Not later than 30 days after the last election in an election cycle for which a participating candidate qualifies to be on the ballot, the participating candidate shall remit to the Department of Elections, for deposit in the Elections Fund, an amount equal to the lesser of the following:

1. The amount of money in the participating candidate's campaign account; or
2. The sum of the base amount allocations received by the participating candidate and the matching

305 *payments received by the candidate.*

306 *B. A participating candidate may withhold from the amount required to be remitted under*
307 *subdivision A 1 the amount of any authorized expenditures that were incurred in connection with the*
308 *participating candidate's campaign but that remain unpaid as of the deadline applicable to the*
309 *participating candidate under subsection A.*

310 *C. A participating candidate may withhold an amount of expenditure pursuant to subsection B only if*
311 *the participating candidate submits documentation of the expenditure and the amount to the Department*
312 *of Elections not later than the deadline applicable to the candidate under subsection A.*

313 ***§ 24.2-964.3. Violations and penalties.***

314 *A. If a participating candidate accepts a contribution or makes an expenditure prohibited under*
315 *§ 24.2-964, the State Board shall assess a civil penalty against the candidate in an amount that is not*
316 *more than three times the amount of the contribution or expenditure. Any amounts collected under this*
317 *subsection shall be deposited into the general fund.*

318 *B. If the Department of Elections determines that any benefit made available to a participating*
319 *candidate was not used as provided for in this chapter or that a participating candidate has violated*
320 *any of the dates for remittance of funds contained in this act, the Department shall notify the candidate,*
321 *and the candidate shall pay to the general fund an amount equal to:*

322 *1. The amount of benefits used or not remitted, as appropriate; and*

323 *2. Interest on any amounts at a rate determined by the Department.*

324 *C. Civil penalties under this provision shall be assessed in accordance with the procedures set forth*
325 *in § 24.2-946.3.*