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HOUSE BILL NO. 1617

House Amendments in [] — February 4, 2019

A BILL to amend and reenact §§ 2.2-3711, 24.2-946, 24.2-948.4, 30-355, and 30-356 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 a section numbered 24.2-948.5, relating to campaign finance; prohibited personal use of campaign funds; Virginia Conflict of Interest and Ethics Advisory Council; civil penalty.

Patron Prior to Engrossment—Delegate Cole

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3711, 24.2-946, 24.2-948.4, 30-355, and 30-356 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 a section numbered 24.2-948.5 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.

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

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

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

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

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

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

8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

9. Discussion or consideration by governing boards of public institutions of higher education of matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,

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59 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
60 accepted by a public institution of higher education in the Commonwealth shall be subject to public
61 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
62 (i) "foreign government" means any government other than the United States government or the
63 government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity
64 (a) created under the laws of the United States or of any state thereof if a majority of the ownership of
65 the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
66 membership of any such entity is composed of foreign persons or foreign legal entities or (b) created
67 under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a
68 citizen or national of the United States or a trust territory or protectorate thereof.

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

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

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

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

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

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

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

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

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

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

107 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
108 of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of
109 trustees of a trust established by one or more local public bodies to invest funds for postemployment
110 benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title
111 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the
112 Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition,
113 holding or disposition of a security or other ownership interest in an entity, where such security or
114 ownership interest is not traded on a governmentally regulated securities exchange, to the extent that
115 such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of
116 Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia
117 College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or
118 the Virginia College Savings Plan under a promise of confidentiality, of the future value of such
119 ownership interest or the future financial performance of the entity, and (ii) would have an adverse
120 effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a

121 local finance board or board of trustees, the board of visitors of the University of Virginia, or the
122 Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure
123 of information relating to the identity of any investment held, the amount invested or the present value
124 of such investment.

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

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
139 proprietary, business-related information pertaining to the operations of the University of Virginia
140 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
141 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
142 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
143 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
144 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
145 Medical School, as the case may be.

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

155 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within
156 the Department of Health Professions to the extent such discussions identify any practitioner who may
157 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
160 by or on behalf of individuals who have requested information about, applied for, or entered into
161 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.)
162 of Title 23.1 is discussed.

163 26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee
164 created pursuant to former § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act
165 (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
166 wireless E-911 service.

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

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

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

181 30. Discussion or consideration of grant or loan application information subject to the exclusion in

subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

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

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

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

34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1 *and review by the State Board of Elections of complaints related to the personal use of campaign funds pursuant to § 24.2-948.5.*

35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative files subject to the exclusion in subdivision B 1 of § 2.2-3706.

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

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

38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23.1-702 of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

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

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

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

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

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

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

45. Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to

investigations of applicants for licenses and permits and of licensees and permittees.

47. Discussion or consideration of grant or loan application records subject to the exclusion in subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1 or interviews of parties to an application by a reviewing entity pursuant to subsection D of § 23.1-3133 or by the Virginia Research Investment Committee.

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

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault team established pursuant to § 15.2-1627.4 or (ii) individual child abuse or neglect cases or sex offenses involving a child by a child abuse team established pursuant to § 15.2-1627.5.

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

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

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

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

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

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

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

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

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

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

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

~~E. The Board shall provide, with the summary required by this section, to each candidate, person, or committee on request or upon their first filing with the State Board pursuant to this chapter, whichever occurs first, a copy of a written explanation prepared by the Attorney General of the provisions of the Act that prohibit the personal use of campaign funds. The explanation shall cover the provisions that prohibit the personal use of campaign funds and shall delineate the differences between prohibited personal uses of campaign funds and permitted uses of the funds.~~

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

A. A final report shall be filed by every campaign committee which sets forth (i) all receipts and disbursements not previously reported, (ii) an accounting of the retirement of all debts, and (iii) the disposition of all surplus funds as provided in subsection D. The final report shall include a termination

statement, signed by the candidate, that all reporting for the campaign committee is complete and final. Once a campaign committee's final report has been filed, no further report relating to that election shall be required.

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

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

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

§ 24.2-948.5. Prohibited personal use of campaign funds; civil penalty.

A. For purposes of this section:

"Immediate family" means (i) a spouse or (ii) any other person who resides in the same household as the candidate or public officeholder and who is a dependent of the candidate or public officeholder.

"Personal use of campaign funds" means the use of contributions to a candidate or his campaign committee, or the use or conversion of items acquired using such contributions, for a strictly personal purpose that has no intended, reasonable, or foreseeable benefit to the candidate's campaign or public office.

B. It is unlawful for any person to make personal use of campaign funds. The following are not a violation under this section:

1. Reimbursements paid to the candidate or a member of his immediate family in accordance with § 24.2-947.2, if such reimbursement equals the amount expended by the candidate or a member of his immediate family [and such expenditure was not otherwise unlawful] ;

2. Reimbursements for lodging and mileage traveled that are paid to the candidate or an employee of or volunteer with the candidate's campaign or public office, provided that such [mileage] reimbursements are for mileage incurred to the benefit of the campaign or public office and are paid in accordance with the applicable provisions of the Internal Revenue Code;

3. Payments for goods and services actually provided to the campaign by a member of the candidate's immediate family if such payment does not exceed the fair market value of the goods or services actually provided;

4. The use of campaign funds to pay for the attendance or entry fee of the candidate, a member of the candidate's immediate family, or an employee of or volunteer with the candidate's campaign or public office at a community, professional, educational, fundraising, or political event, retreat, or meeting that has an intended, reasonable, or foreseeable benefit to the candidate's campaign or public office;

5. The use of campaign funds to purchase office supplies, personal property, equipment, food, gifts, or other incidentals that have an intended, reasonable, or foreseeable benefit to the candidate's campaign or public office;

6. The dual use of office space, personal property, equipment, electronic subscription services, or vehicles or the use of campaign or political materials, including clothing, pens, posters, flyers, toys, or other memorabilia, by the candidate's campaign and public office; and

7. Consumption of food or beverages by the candidate or a member of the candidate's immediate family that were purchased for a campaign or political event, whether consumed at the event or left over from such an event.

C. A person who contributes to a candidate or a candidate's campaign committee may file a written complaint with the State Board alleging a violation of this section by such candidate. The State Board shall not be authorized to act upon a complaint made by any other person.

The complaint shall contain the objections to a specific use of campaign contributions by the candidate or public officeholder, accompanied by the reasons the complainant believes such use is a

violation of this section. The complaint shall include a signed statement by the complainant that his complaint is based on a good faith belief that a violation of this section has occurred.

D. Upon receipt of a credible, written complaint, the State Board shall notify the subject of the complaint and forward to him a copy of the complaint. The subject of the complaint shall have 30 days to either (i) reimburse the campaign committee the complained-of amount or (ii) provide to the State Board documentation or other evidence that the use of the campaign funds had an intended, reasonable, or foreseeable benefit to the campaign or the candidate's public office. If the subject of the complaint provides such documentation or such other evidence, the State Board shall review, in a closed meeting held pursuant to § 2.2-3711, the response and determine whether the use of campaign funds had any intended, reasonable, or foreseeable benefit to the campaign or the candidate's public office. If the State Board finds that there were no intended, reasonable, or foreseeable benefits to such campaign or such public office and the complained-of amount has not been reimbursed, it shall call a public hearing. [Public notice shall be provided in accordance with the provisions of § 2.2-3707.] At least 10 days prior to such hearing, the State Board shall send notice by certified mail of the time and date of the hearing to the complaining party and to the subject of the complaint. If the complaining party declines to participate in the hearing, the complaint shall be dismissed. The subject of the complaint shall have the right to postpone the hearing if it is scheduled within the 30 days immediately preceding an election in which the candidate is running for office.

Prior to the public hearing by the State Board, the complaint and any related records shall not be subject to the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be made public, except by the subject of the complaint.

E. At the public hearing, the State Board shall determine whether to find a willful and knowing violation of this section. Such a finding shall require a unanimous vote by the State Board. A person found by the State Board to have willfully and knowingly violated this section shall repay to the campaign committee the amount unlawfully converted to the personal use of the candidate or a member of the candidate's immediate family. The State Board may also assess an additional civil penalty, in an amount not to exceed \$250. The determination to assess such a civil penalty shall be made at the public hearing and shall require a unanimous vote by the State Board. Any civil penalties collected under this section shall be payable to the State Treasurer for deposit into the general fund. The procedure to enforce the civil penalties provided in this section shall be as stated in § 24.2-946.3.

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

G. The State Board shall assess a civil penalty, in an amount not to exceed \$250, against a complaining party who is found by the Board to have filed a frivolous [~~or politically motivated~~] complaint. Such a finding shall require a unanimous vote by the State Board.

H. Any person subject to the provisions of this section may request from the Virginia Conflict of Interest and Ethics Advisory Council a formal advisory opinion regarding whether his use of contributions to the candidate or his campaign committee, or the use or conversion of items acquired using such contributions, would be a violation of this section. No person shall be subject to the penalties provided for in this section if his alleged violation resulted from his good faith reliance on a formal opinion of the Council, and the opinion was made after his full disclosure of the facts regardless of whether such opinion is later withdrawn, provided that the alleged violation occurred prior to the withdrawal of the opinion.

§ 30-355. Virginia Conflict of Interest and Ethics Advisory Council; membership; terms; quorum; expenses.

A. The Virginia Conflict of Interest and Ethics Advisory Council (the Council) is hereby created as an advisory council in the legislative branch to encourage and facilitate compliance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and the General Assembly Conflicts of Interests Act (§ 30-100 et seq.) (hereafter the Acts) and, the lobbying laws in Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2 (hereafter Article 3), and the provisions governing the personal use of campaign funds set out in the Campaign Finance Disclosure Act of 2006 (§ 24.2-945 et seq.).

B. The Council shall consist of nine members as follows: three members appointed by the Speaker of the House of Delegates, two of whom shall be members of the House of Delegates and one of whom shall be a former judge of a court of record; three members appointed by the Senate Committee on Rules, two of whom shall be members of the Senate and one of whom shall be a former judge of a court of record; and three members appointed by the Governor, one of whom shall be a current or former executive branch employee, one of whom shall be appointed from a list of three nominees submitted by the Virginia Association of Counties, and one of whom shall be appointed from a list of three nominees submitted by the Virginia Municipal League. In the appointment to the Council of

members of the House of Delegates made by the Speaker and members of the Senate made by the Senate Committee on Rules, equal representation shall be given to each of the political parties having the highest and next highest number of members elected to their respective body. All members of the Council are subject to confirmation by the General Assembly by a majority vote in each house of (i) the members present of the majority party and (ii) the members present of the minority party.

C. All appointments following the initial staggering of terms shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms in the same manner as the original appointment. No nonlegislative citizen member shall be eligible to serve for more than two successive four-year terms. However, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Legislative members and other state government officials shall serve terms coincident with their terms of office. Legislative members may be reappointed for successive terms.

D. The members of the Council shall elect from among their membership a chairman and a vice-chairman for two-year terms. The chairman and vice-chairman may not succeed themselves to the same position. The Council shall hold meetings quarterly or upon the call of the chairman. A majority of the Council appointed shall constitute a quorum.

E. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813, 2.2-2825, and 30-19.12, as appropriate. Funding for expenses of the members shall be provided from existing appropriations to the Council.

§ 30-356. Powers and duties of the Council.

The Council shall:

1. Prescribe the forms required for complying with the disclosure requirements of Article 3 and the Acts. These forms shall be the only forms used to comply with the provisions of Article 3 or the Acts. The Council shall make available the disclosure forms and shall provide guidance and other instructions to assist in the completion of the forms;

2. Review all disclosure forms filed by lobbyists pursuant to Article 3 and by state government officers and employees and legislators pursuant to the Acts. The Council may review disclosure forms for completeness, including reviewing the information contained on the face of the form to determine if the disclosure form has been fully completed and comparing the disclosures contained in any disclosure form filed by a lobbyist pursuant to § 2.2-426 with other disclosure forms filed with the Council, and requesting any amendments to ensure the completeness of and correction of errors in the forms, if necessary. If a disclosure form is found to have not been filed or to have been incomplete as filed, the Council shall notify the filer in writing and direct the filer to file a completed disclosure form within a prescribed period of time, and such notification shall be confidential and is excluded from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.);

3. Require all disclosure forms and lobbyist registration statements that are required to be filed with the Council to be filed electronically in accordance with the standards approved by the Council. The Council shall provide software or electronic access for filing the required disclosure forms and registration statements without charge to all individuals required to file with the Council. The Council shall prescribe the method of execution and certification of electronically filed forms, including the use of an electronic signature as authorized by the Uniform Electronic Transactions Act (§ 59.1-479 et seq.). The Council may grant extensions as provided in § 30-356.2 and may authorize a designee to grant such extensions;

4. Accept and review any statement received from a filer disputing the receipt by such filer of a gift that has been disclosed on the form filed by a lobbyist pursuant to Article 3;

5. Beginning July 1, 2016, establish and maintain a searchable electronic database comprising those disclosure forms that are filed with the Council pursuant to §§ 2.2-426, 2.2-3117, 2.2-3118, and 30-111. Such database shall be available to the public through the Council's official website;

6. Furnish, upon request, formal advisory opinions or guidelines and other appropriate information, including informal advice, regarding ethics, conflicts issues arising under Article 3 or the Acts, or a person's duties under Article 3 or the Acts, and *formal advisory opinions regarding the provisions governing the personal use of campaign funds set out in the Campaign Finance Disclosure Act of 2006 (§ 24.2-945 et seq.)*, to any person covered by Article 3 or the Acts or to any agency of state or local government, in an expeditious manner. The Council may authorize a designee to furnish formal opinions or informal advice. Formal advisory opinions are public record and shall be published on the Council's website; however, no formal advisory opinion furnished by a designee of the Council shall be available to the public or published until such opinion has been approved by the Council. Published formal advisory opinions may have such deletions and changes as may be necessary to protect the identity of the person involved or other persons supplying information. Informal advice given by the Council or the Council's designee is confidential and is excluded from the mandatory disclosure provisions of the

Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, if the recipient invokes the immunity provisions of § 2.2-3121 or 30-124, the record of the request and the informal advice given shall be deemed to be a public record and shall be released upon request. Other records relating to formal advisory opinions or informal advice, including records of requests, notes, correspondence, and draft versions of such opinions or advice, shall also be confidential and excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act;

7. Conduct training seminars and educational programs for lobbyists, state and local government officers and employees, legislators, and other interested persons on the requirements of Article 3 and the Acts, *and the provisions governing the personal use of campaign funds set out in the Campaign Finance Disclosure Act of 2006 (§ 24.2-945 et seq.)*, and provide ethics orientation sessions for legislators in compliance with Article 6 (§ 30-129.1 et seq.) of Chapter 13;

8. Approve orientation courses conducted pursuant to § 2.2-3128 and, upon request, review the educational materials and approve any training or course on the requirements of Article 3 and the Acts conducted for state and local government officers and employees;

9. Publish such educational materials as it deems appropriate on the provisions of Article 3 and the Acts;

10. *Develop and publish guidance on the provisions of the Campaign Finance Disclosure Act of 2006 (§ 24.2-945 et seq.) that prohibit the personal use of campaign funds. Such guidance shall delineate the differences between prohibited personal uses of campaign funds and permitted uses of campaign funds and shall include examples of conduct that complies with and that violates such provisions. The Council shall periodically update such guidance to incorporate advisory opinions and additional examples;*

11. Review actions taken in the General Assembly with respect to the discipline of its members for the purpose of offering nonbinding advice;

~~11.~~ 12. Request from any agency of state or local government such assistance, services, and information as will enable the Council to effectively carry out its responsibilities. Information provided to the Council by an agency of state or local government shall not be released to any other party unless authorized by such agency;

~~12.~~ 13. Redact from any document or form that is to be made available to the public any residential address, personal telephone number, or signature contained on that document or form; and

~~13.~~ 14. Report on or before December 1 of each year on its activities and findings regarding Article 3 and the Acts, including recommendations for changes in the laws, to the General Assembly and the Governor. The annual report shall be submitted by the chairman as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be published as a state document.

2. That the provisions of this act shall become effective on July 1, 2020.

3. That by July 1, 2020, the Virginia Conflict of Interest and Ethics Advisory Council shall develop and publish its initial guidance on the provisions of the Campaign Finance Disclosure Act of 2006 (§ 24.2-945 et seq. of the Code of Virginia) that prohibit the personal use of campaign funds, as required by subdivision 10 of § 30-356 of the Code of Virginia, as amended by this act.