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HOUSE BILL NO. 1065

Offered January 11, 2006

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A BILL to amend and reenact §§ 24.2-922 and 24.2-929 of the Code of Virginia, relating to campaign finance disclosure; reports as condition to qualify for office; penalties.

 Patron—Watts

 Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:**1. That §§ 24.2-922 and 24.2-929 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-922. Reports as condition to qualification for office.

A. No person shall be permitted to qualify for any office, enter upon the duties thereof, or receive any salary or emoluments therefrom until he has filed the reports required in subdivisions 3 through 9 of § 24.2-916; subdivisions 1, 2 and 3 of § 24.2-917; and subdivisions B 1 and B 3 of § 24.2-918, as applicable; and a final report if required by subsection C of § 24.2-906.1; *and has responded to a notice that additional information is required to complete a report in compliance with subsection B of § 24.2-929.* No officer authorized by the laws of the Commonwealth to issue certificates of election shall issue one to any person determined to be elected to any such office, until copies of the reports cited above have been filed as required in this article.

B. Notwithstanding the requirements of subsection A, a person who is elected to fill a vacancy at a special election held on a general election day may qualify for the office and be issued a certificate of election in advance of filing the postelection report required to be filed under subdivision 9 of § 24.2-916 in the case of a November election, or under subdivision 3 of § 24.2-917 in the case of a May election, upon the filing of a postelection report complete through the election day.

§ 24.2-929. Penalties for violations of chapter.

A. Any person who violates, or aids, abets, or participates in the violation of, this chapter shall be subject to a civil penalty not to exceed \$100, unless a greater penalty is imposed as follows:

1. In the case of a failure to file or late filing of the statement of organization for a candidate required by § 24.2-904, for a committee required by § 24.2-908, or for a committee required by subsection F of § 24.2-910.1, there shall be a civil penalty not to exceed \$500.

2. In the case of a violation of Article 4 (§ 24.2-914 et seq.) of Chapter 9 of this title that relates to the filing of an incomplete report due within the 120 days before or the 35 days after a November general election date, he shall be subject to a civil penalty not to exceed \$500.

3. In the case of a violation of Article 4 (§ 24.2-914 et seq.) of Chapter 9 of this title, that relates to the failure to file a required report by the deadline specified in Article 4, he shall be assessed a civil penalty not to exceed \$500. In the case of a second or any subsequent such violation pertaining to one election cycle, he shall be assessed a civil penalty of \$1,000 for each such failure to file. The State Board shall assess the civil penalty imposed by this subdivision and shall notify the public through the Internet of the violation and identity of the violator.

4. In the case of a willful violation, he shall be guilty of a Class 1 misdemeanor.

In the case of failure to file a complete report, the State Board or local electoral board shall consider the following factors in determining the civil penalty assessed: the number of omissions, the amount of money involved, and the proportion of contributions or expenditures containing omissions. The civil penalty assessed for filing an incomplete report shall be increased by \$500 every 60 days following the date for compliance established pursuant to subsection C and until compliance is complete, and the failure to comply shall create a rebuttable presumption that the violation was willful. The civil penalty assessed for filing any subsequent incomplete report that is filed within 20 days of notice being given of a violation shall be \$1,000. The State Board shall notify the public through the Internet of a failure to file a complete report by a candidate for statewide office or the General Assembly and the identity of the violator following the date for compliance established pursuant to subsection C.

In the case of a failure to file a required statement or report by the specified deadline, the length of the delinquency shall be a factor in determining the amount of the civil penalty assessed. The State Board shall notify the public through the Internet of any violation based on the failure to file a required report by a candidate for statewide office or the General Assembly and the identity of the violator.

Upon notice of a violation of this chapter, the State Board or the general registrar or local electoral board, as appropriate, shall within 90 days of the report deadline notify the attorney for the

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59 Commonwealth who shall initiate civil proceedings to enforce the civil penalties and penalties assessed
60 by the State Board or the local electoral board as provided herein. Any civil penalties collected pursuant
61 to action by the State Board shall be payable to the State Treasurer for deposit to the general fund; and
62 any civil penalties collected pursuant to action by a general registrar or local electoral board shall be
63 payable to the treasurer of the locality for deposit to its general fund. The statute of limitations
64 applicable to a violation of this chapter is stated in § 19.2-8. There shall be a rebuttable presumption
65 that the violation of this chapter was willful if the violation is based on a person's failure to file a report
66 required by this chapter and his failure to file continues for more than 60 days following his actual
67 receipt of written notice of his failure to file sent to him by certified mail, return receipt requested, by
68 the State Board or an electoral board. Such notice shall be sent to the most recent mailing address
69 provided by the candidate or committee.

70 B. Prior to assessing a penalty pursuant to this section for the filing of an incomplete report, the
71 Secretary of the State Board or the general registrar or secretary of the local electoral board, as
72 appropriate, shall notify, in writing, the candidate and treasurer, or person or political committee
73 required to file a report with that board, that a filed report has not been completed, citing the omissions
74 from the report. No penalty shall be assessed if the information required to complete the report is filed
75 within 10 days of the date of mailing the written notice.

76 C. If the information required to complete the report is not filed within the 10-day period, the
77 Secretary of the State Board or the general registrar or secretary of the local electoral board, as
78 appropriate, shall then assess against the candidate and treasurer, who shall be jointly and severally
79 liable, or person or political committee required to file a report, a civil penalty not to exceed \$500. The
80 Secretary of the State Board or the general registrar or secretary of the local electoral board may grant
81 an additional period for compliance, not to exceed two weeks, to permit the completion of a filed report
82 for good cause shown and in response to a request filed within the 10-day period. However, no
83 additional period shall be granted thereafter for compliance.

84 D. The additional periods for filing specified in subsections B and C shall apply only to the
85 completion of a timely filed report and not to any case of a failure to file a required report by the
86 deadline specified in this chapter. In the case of a failure to file a required report by the specified
87 deadline, the length of the delinquency shall be a factor in determining the amount of the civil penalty
88 assessed. The State Board shall notify the public through the Internet of any violation based on the
89 failure to file a required report by a candidate for statewide office or the General Assembly and the
90 identity of the violator.

91 E. In the case of a failure to file the report of any large pre-election contribution required by
92 § 24.2-919 or a large contribution report required by § 24.2-919.1, or the late or incomplete filing of
93 either such report, there shall be a rebuttable presumption that the violation was willful. The provisions
94 of subsections B and C of this section shall not apply to reports required by § 24.2-919, 24.2-919.1 or
95 subsection D of § 24.2-923.

96 F. In the case of any other violation of this title that is to be enforced under this section, the
97 electoral board for the locality in which the violation occurred, if the violation was by or on behalf of a
98 candidate for local office or to influence a local ballot issue, or the State Board if the violation was by
99 or on behalf of a candidate for any other office or to influence any other ballot issue, shall determine
100 whether a violation was committed and assess the appropriate civil penalty, if any. If it appears that a
101 criminal violation has occurred, the electoral board or State Board shall not assess a penalty but shall
102 forward the complaint to the appropriate attorney for the Commonwealth.

103 G. The State Board shall determine the schedule of fines required to be followed by its staff and
104 local electoral boards in assessing penalties under this section. No election official or staff may waive or
105 reduce such fines, except as provided above.