

Department of Planning and Budget

2018 Fiscal Impact Statement

1. Bill Number: HB1617

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| House of Origin | <input checked="" type="checkbox"/> Introduced | <input type="checkbox"/> Substitute | <input type="checkbox"/> Engrossed |
| Second House | <input type="checkbox"/> In Committee | <input type="checkbox"/> Substitute | <input type="checkbox"/> Enrolled |

2. Patron: Cole

3. Committee: Privileges and Elections

4. Title: Campaign finance; prohibited personal use of campaign funds, civil penalty.

5. Summary: Adds a definition of "personal use of campaign funds" and prohibits the use of contributions, or conversion of items acquired using contributions, to a candidate or campaign committee for a strictly personal purpose with no intended, reasonable, or foreseeable benefit to the candidate's campaign or public office. Complaints of alleged violations may be made to the State Board of Elections (the State Board) by any person who contributed to the candidate or candidate's campaign committee. The subject of the complaint has 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 other evidence, the State Board shall review the response made by the subject of the complaint and determine whether the use of campaign funds had any intended, reasonable, or foreseeable benefit to the campaign or the candidate's public office. The State Board shall assess a civil penalty, in an amount not to exceed \$250, against a complaining party who is found to have filed a frivolous or politically motivated complaint. The bill amends the Freedom of Information Act to allow closed meetings for the State Board to review complaints related to the personal use of campaign funds. If the State Board determines that there were no intended, reasonable, or foreseeable benefits and the complained-of amount has not been reimbursed, it shall call a public hearing. If the complaining party declines to participate in the hearing, the complaint shall be dismissed. A person found by a unanimous vote of the State Board to have willfully and knowingly violated the prohibition on personal use of campaign funds must 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 and must return to the complaining party the full amount of the complaining party's contribution to the campaign. The State Board may also assess an additional civil penalty, in an amount not to exceed \$250. The person found to be in violation may seek review under the Administrative Process Act. The bill authorizes the Virginia Conflict of Interest and Ethics Advisory Council (the Council) to issue formal advisory opinions regarding the provisions governing the personal use of campaign funds pursuant to the Campaign Finance Disclosure Act of 2006 (§ 24.2-945 et seq.). A person who has relied on such an opinion in good faith after he provides full disclosure of the facts will not be subject to the penalties outlined in the bill. In addition, the Council will be required to develop and publish guidance on the provisions of the Campaign Finance Disclosure Act that prohibit the personal use of campaign funds. The bill has an effective date of July 1, 2020.

6. **Budget Amendment Necessary:** No.
7. **Fiscal Impact Estimates:** Indeterminate; see Item 8.
8. **Fiscal Implications:** The bill prohibits the use of campaign contributions for personal purposes that have no intended, reasonable, or foreseeable benefit to the candidate's campaign or public office and designates related responsibilities to the State Board of Elections and the Virginia Conflict of Interest and Ethics Advisory Council as follows:

State Board of Elections:

The bill allows persons who contributed to a campaign to file written complaints to the State Board of Elections (SBE) alleging violations of its provisions, subject to public hearing by the State Board of Elections and a civil penalty up to \$250. SBE does not currently conduct investigations involving campaign finance violations, as required in the proposed legislation. The impact of reviewing allegations of campaign finance violations is indeterminate and would depend upon the number of complaints. There is no existing data upon which the level of resources needed to carry out the functions outlined in the bill can be estimated. However, SBE and the Department of Elections (ELECT) currently have very limited capacity to absorb additional workload with its current staffing level. Therefore, additional staffing may be required in order to carry out the functions required in the bill, such as gathering documentation and notifying parties of complaints. For illustration purposes, if the workload were to warrant a full time position, the Department of Elections estimates the cost of a full time Hearing and Legal Services Manager I would be \$153,547.

Some ancillary costs to implement this legislation could be absorbed by ELECT, such as updating instructions and guidance documents to include translation, if needed, changes to the campaign finance reporting system, changes to web materials, printing and distribution of forms, additional support for staff to research Code sections and update forms impacted by the legislation, and training to assure candidates and voters are aware of any new requirements.

The proposed legislation also authorizes the State Board of Elections to assess and collect a civil penalty from anyone who has converted any contributed moneys, securities, or like intangible personal property to the personal use of a candidate or a member of the candidate's immediate family. The civil penalty shall be payable to the State Treasurer and deposited into the general fund. The proposed legislation may have a revenue impact; however, the number of the civil penalties assessed and collected as a result of the proposed legislation cannot be determined.

Virginia Conflict of Interest and Ethics Advisory Council:

The bill requires the Ethics Council, a component of the Division of Legislative Services, to develop and publish guidance on the provisions of the Campaign Finance Disclosure Act that prohibit personal uses of campaign funds and to provide Formal Opinions regarding the

provisions of law governing the personal use of campaign funds to lobbyists and members of the General Assembly and other public officials.

Because the bill does not authorize Ethics Council staff to provide any informal guidance or assistance on the subject of personal use of campaign funds and Formal Opinions can only be issued upon a vote of the full Council and may not be released beforehand, the Ethics Council believes that the additional number of Formal Opinions that may be required under this bill can be handled with existing resources.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Department of Elections, State Board of Elections, Virginia Conflict of Interest and Ethics Advisory Council, and the Division of Legislative Services.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** None.