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**SENATE BILL NO. 463**

Offered January 12, 2022

Prefiled January 11, 2022

*A BILL to amend and reenact §§ 2.2-3711, 24.2-946, and 24.2-948.4 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 sections numbered 24.2-948.5, 24.2-948.6, and 24.2-948.7, relating to relating to campaign finance; prohibited personal use of campaign funds; complaints, hearings, civil penalty, and advisory opinions.*

Patron—Bell

Referred to Committee on Privileges and Elections

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

**1. That §§ 2.2-3711, 24.2-946, and 24.2-948.4 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 sections numbered 24.2-948.5, 24.2-948.6, and 24.2-948.7 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

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SB463

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

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

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

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

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

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

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

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

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

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

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

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement system, a local finance board or board of trustees, or

the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of meetings in which individual death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, and those portions of meetings in which individual death cases of persons with developmental disabilities are discussed by the Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-314.1.

22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

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

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.

26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as defined in § 56-484.12, related to the provision of wireless E-911 service.

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

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

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

186 30. Discussion or consideration of grant or loan application information subject to the exclusion in  
187 subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

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

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

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

199 34. Discussion or consideration by the State Board of Elections or local electoral boards of voting  
200 security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1 *and review by the State Board*  
201 *of Elections of complaints related to the personal use of campaign funds pursuant to § 24.2-948.6.*

202 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee  
203 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative  
204 files.

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

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

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

219 39. Discussion or consideration of information subject to the exclusion in subdivision 3 of  
220 § 2.2-3705.6 related to economic development.

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

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

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

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

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

239 45. Discussion or consideration of personal and proprietary information related to the resource  
240 management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii)  
241 subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of  
242 records that contain information that has been certified for release by the person who is the subject of  
243 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, loan, or investment application records subject to the exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-2351 et seq.) of Chapter 22.

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 response team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, or (iii) individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to §§ 15.2-1627.5 and 63.2-1605.

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.

52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the Authority, of information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

53. Deliberations of the Virginia Lottery Board conducted pursuant to § 58.1-4105 regarding the denial or revocation of a license of a casino gaming operator, or the refusal to issue, suspension of, or revocation of any license or permit related to casino gaming, and discussion, consideration, or review of matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007 regarding the denial of, revocation of, suspension of, or refusal to renew any license or permit related to sports betting and any discussion, consideration, or review of matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

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 *State* 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 *State* 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 State 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 State Board, in consultation with the Office of the Attorney General, 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 develop and publish guidance on the provisions of the Act that prohibit the personal use of campaign funds. The explanation Such guidance 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, and shall include examples of conduct that complies with and that violates such provisions. The State Board shall periodically update such guidance to incorporate advisory opinions and additional examples.

**§ 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 items acquired using campaign contributions for use in a succeeding election or to retire the deficit in a preceding election; (ii) returning the excess or items acquired using campaign contributions to a contributor in an amount not to exceed the contributor's original contribution; (iii) donating the excess or items acquired using campaign contributions to any organization described in § 170(c) of the Internal Revenue Code; (iv) contributing the excess or items 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 items 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. Use of campaign funds.**

A. A contribution accepted by a candidate or his campaign committee may be used for the following purposes:

1. For otherwise authorized expenditures in connection with the candidate's campaign.
2. For ordinary and necessary expenses incurred in connection with the duties of the individual as an office holder.
3. For contributions to any organization described in § 170(c) of the Internal Revenue Code.
4. For transfers to any federal, state, or local political party committee.
5. For contributions to federal, state, and local candidates subject to the provisions of prevailing law.
6. For child care expenses that are incurred as a direct result of the persons seeking, holding, or maintaining public office.
7. For any other lawful purpose unless prohibited by subsection B.

B. Contributions to a candidate or candidate campaign committee shall not be converted by any person to personal use. For the purpose of this subsection, a contribution shall be considered to be converted to personal use if the contribution is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the person's seeking, holding, or maintaining public office, which includes the following:

1. A home mortgage, rent, or utility payment.
2. A clothing purchase.
3. A non-campaign-related automobile expense.

- 367 4. A country club membership.  
 368 5. A vacation or other non-campaign-related trip.  
 369 6. A household food item.  
 370 7. A tuition payment.  
 371 8. Admission to a sporting event, concert, theater, or other form of entertainment not associated with  
 372 an election campaign.

373 9. Dues, fees, and other payments to a health club or recreational facility.

374 **§ 24.2-948.6. Violations of the ban on personal use of campaign funds; complaint; notice;**  
 375 **hearing; penalty.**

376 A. A person who believes a violation of § 24.2-948.5 has occurred and (i) contributes to a candidate  
 377 or a candidate's campaign committee that has allegedly committed the violation or (ii) is qualified to  
 378 vote in the election for the office for which such candidate is running is qualified to file a complaint  
 379 with the Department of Elections. Such complaint shall be in writing on a form provided by the  
 380 Department, signed and sworn to by the person filing such complaint, notarized, and made under  
 381 penalty of perjury and subject to the provisions of § 24.2-1016. The complaint shall clearly identify the  
 382 complainant and the person against whom the complaint is addressed (the respondent) and contain (a) a  
 383 credible allegation of a violation of § 24.2-948.5 with regard to a specific use of campaign contributions  
 384 by the candidate or campaign committee, (b) attached documentation supporting the allegation, (c) the  
 385 names and contact information of any person the complainant knows to have knowledge of facts relating  
 386 to the allegation, and (d) any other information required by the Department. The Department shall  
 387 provide a copy of the complaint to the respondent within 24 hours of receipt. The Department shall  
 388 complete its review of such complaints and, within 10 days, transmit to the State Board any credible  
 389 and complete complaint from a qualified complainant and send written notice to the complainant and  
 390 respondent of the Department's ultimate determination of the complaint's disposition. The State Board  
 391 shall not act upon any complaint that does not meet the requirements of this subsection but shall be  
 392 authorized to initiate an inquiry upon its own motion.

393 B. Upon receipt of a complaint or upon its own motion, the State Board shall conduct a preliminary  
 394 investigation into the specific use of campaign contributions by the candidate. Such preliminary  
 395 investigation shall be conducted in closed meetings held pursuant to § 2.2-3711. The State Board shall  
 396 determine, during its preliminary investigation, whether the facts stated in the complaint or that serve as  
 397 the basis of the State Board's motion taken as true are sufficient to show a violation of § 24.2-948.5. If  
 398 such facts fail to give rise to such a violation, then the State Board shall dismiss the complaint. If the  
 399 facts give rise to such a violation, then the State Board shall request that the complainant appear and  
 400 testify under oath as to the complaint and the allegations therein. If the inquiry was initiated by the  
 401 State Board's own motion, the State Board may request that witnesses appear and testify under oath as  
 402 to the allegations raised by the State Board.

403 The State Board shall notify the respondent that a preliminary investigation has commenced within  
 404 24 hours of initiating such investigation. Before the State Board conducts any vote on the complaint,  
 405 other than a vote to dismiss, the respondent shall have 30 days to provide to the State Board  
 406 documentation or other evidence that no action should be taken against the respondent on the basis of  
 407 the complaint or the allegations brought by the State Board. If the respondent provides such  
 408 documentation or such other evidence, the State Board shall review the response and determine whether  
 409 to proceed with the inquiry.

410 After hearing testimony and reviewing any other evidence provided by the complainant, witnesses, or  
 411 the respondent, the State Board shall dismiss the complaint if the State Board fails to find by a  
 412 preponderance of the evidence that such violation has occurred. If the State Board finds otherwise, it  
 413 shall proceed with the inquiry by calling for a public hearing.

414 If at any point prior to the State Board's call for a public hearing on the matter the respondent pays  
 415 back to the campaign committee from his personal funds the amount that was allegedly converted to his  
 416 personal use, the State Board shall dismiss the complaint or motion and end the inquiry into the matter.

417 Prior to the State Board's holding a public hearing on the matter, the complaint, the State Board's  
 418 written notice, and any related records shall not be subject to the provisions of the Virginia Freedom of  
 419 Information Act (§ 2.2-3700 et seq.) and shall not be made public, except by the respondent. However,  
 420 once the State Board has commenced a public meeting to further inquire into alleged conversion of  
 421 campaign funds to personal use, its materials, meetings, and hearings on the matter shall be open to the  
 422 public.

423 C. If after such preliminary investigation the State Board determines to proceed with an inquiry into  
 424 the specific use of campaign contributions by the respondent, the State Board (i) shall immediately  
 425 notify in writing the complainant and the respondent as to the fact of the inquiry and the allegations  
 426 against the respondent and (ii) shall schedule one or more hearings on the matter. The respondent shall  
 427 have the right to postpone the hearing if it is scheduled within the 30 days immediately preceding an

election in which the respondent is a candidate for office. If the complaining party declines to participate in the hearing, the complaint shall be dismissed and no further action shall be taken.

The respondent shall have the right to access all records obtained during the investigation, present evidence, cross-examine witnesses, face and examine the accuser, and be represented by counsel at any hearings. In its discretion, the State Board may grant the respondent any other rights or privileges not specifically enumerated in this subsection.

If at any time the State Board determines that the complaint is without merit, the State Board shall dismiss the complaint, so advise the complainant and the respondent, and take no further action.

D. A decision to dispose of a complaint under this section shall require a vote of four members of the State Board. Failure of the State Board to dispose of a complaint within 120 days of the Department's transmission of the signed and sworn complaint shall result in the summary dismissal of the matter, after which no further action shall be taken.

Within 120 days of the Department's transmission of the signed and sworn complaint to the State Board or a motion to begin an inquiry, the State Board may dispose of the matter in one of the following ways:

1. If for any reason the State Board dismisses the matter during its preliminary investigation and prior to holding a public hearing on the matter, the State Board shall so advise the complainant and the respondent and take no further action. In such case, the records and findings on the matter shall not be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be made public unless the candidate under inquiry requests in writing that the records and findings be made public.

2. If at any time after the commencement of the initial public hearing on the matter the State Board dismisses the matter, the State Board shall so advise the complainant and the respondent and prepare a written judgment stating the grounds for the dismissal.

3. If after a public hearing the State Board determines by a preponderance of the evidence that the respondent has violated the provisions of § 24.2-948.5 but that the violation was not made willfully and knowingly, the State Board may require the respondent to repay an amount not to exceed the amount unlawfully converted to the personal use of the respondent. Respondents who claim an inability to repay the amount the State Board has determined is owed may be asked to provide documentation as to their financial condition. The State Board may negotiate a payment plan that enables a respondent to repay. The procedure to enforce repayment under this section shall be as stated in § 24.2-946.3. The State Board shall prepare a written judgment stating its determination of the matter, its recommended remedy, and reasons therefor. A copy of the judgment shall be sent to each party and posted on the State Board's website.

4. If the State Board determines by a preponderance of the evidence that the respondent willfully and knowingly violated any provision of § 24.2-948.5, the respondent shall repay the amount unlawfully converted to his personal use. The State Board may also assess an additional civil penalty, in an amount not to exceed \$1,000 per itemized expenditure found to be in violation of any provision of § 24.2-948.5 and in no case greater than \$10,000. Respondents who claim an inability to pay an appropriate civil penalty may be asked to provide documentation as to their financial condition. The State Board may negotiate a payment plan that enables a respondent to pay an appropriate civil penalty. Any civil penalty collected under this subdivision shall be payable to the State Treasurer for deposit into the general fund. The procedure to enforce a civil penalty provided in this section shall be as stated in § 24.2-946.3. The State Board shall prepare a written judgment stating its determination of the matter, its recommended remedy, and reasons therefor. A copy of the judgment shall be sent to each party and posted on the State Board's website.

E. 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 Administrative Process Act shall not otherwise apply, however, to the finding of a violation by the State Board pursuant to this section.

F. The State Board may, by a vote of four members, make a finding that a complaint is frivolous. Such a finding shall be prima facie evidence of abuse of process by the complainant. The State Board shall prepare a written judgment stating its determination of the matter and reasons therefor. A copy of the judgment shall be sent to each party and posted on the State Board's website.

#### **§ 24.2-948.7. Advisory opinions.**

A. Any person subject to the provisions of § 24.2-948.5 may submit a complete written request for an advisory opinion concerning the application of that section to a specific transaction or activity on a form provided by the Department. The Department shall transmit any such complete written request for an advisory opinion to the State Board.

B. The State Board shall, upon receipt, make public any request for an advisory opinion. Before rendering an advisory opinion, the State Board shall accept written comments submitted by any interested party within the 10-day period following the date the request is made public.



490 C. The State Board shall issue a written advisory opinion within 60 days of receipt of the request for  
491 an advisory opinion. However, if an advisory opinion is requested by a candidate or candidate  
492 campaign committee during the 60-day period before any election involving the requesting party, the  
493 State Board shall render a written advisory opinion relating to such request no later than 20 days after  
494 the State Board receives a complete written request.

495 D. Any advisory opinion rendered by the State Board under subsection C may be relied upon by (i)  
496 any person involved in the specific transaction or activity with respect to which such advisory opinion is  
497 rendered and (ii) any person involved in any specific transaction or activity that is indistinguishable in  
498 all its material aspects from the transaction or activity with respect to which such advisory opinion is  
499 rendered.

500 E. Notwithstanding any other provision of law, any person who relies upon any provision or finding  
501 of an advisory opinion in accordance with the provisions of subsection D and who acts in good faith in  
502 accordance with the provisions and findings of such advisory opinion shall not, as a result of any such  
503 act, be subject to any sanction provided under § 24.2-948.6.

504 2. That the State Board of Elections shall promulgate regulations to implement the provisions of  
505 this act to be effective within 280 days of its enactment.

506 3. That the regulations adopted pursuant to the second enactment of this act shall include  
507 regulations substantially similar to the regulations of the Federal Election Commission (the FEC)  
508 under 11 C.F.R. § 112 with respect to advisory opinions and 11 C.F.R. § 113 with respect to the  
509 prohibition on personal use of campaign funds. The regulations shall also include adoption of past  
510 closed matters under review and advisory opinions of the FEC on matters related to the  
511 prohibited personal use of campaign funds under federal law as precedent for any future decisions  
512 of the State Board of Elections with respect to analogous state law.

513 4. That the State Board of Elections shall publish an updated summary of the provisions of the  
514 Campaign Finance Disclosure Act of 2006 (§ 24.2-945 et seq. of the Code of Virginia, as amended  
515 by this act) required by subdivision E of § 24.2-946 of the Code of Virginia, as amended by this  
516 act, and any regulations of the State Board of Elections promulgated pursuant to the second  
517 enactment of this act within 30 days of the promulgation of such regulations.