Executive Summary

Joint Subcommittee to Study Comprehensive Campaign Finance Reform

DRAFT
October 1, 2021

House Joint Resolution 526, enacted by the 2021 General Assembly, established the Joint Subcommittee to Study Comprehensive Campaign Finance Reform. The resolution authorized the appointment of 10 legislative members and four non-legislative members. The joint subcommittee was tasked with examining the costs of campaigning in the Commonwealth, the effectiveness of the Commonwealth’s present disclosure laws and their enforcement, the constitutional options available to regulate campaign finances, and the desirability of specific revisions in the Commonwealth’s laws, including the implementation of contribution limits, all with the aim of promoting the integrity of, and public confidence in, the Commonwealth’s campaign finance system.

This report satisfies the requirement of HJR 526 for the joint subcommittee chair to submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than November 1, 2021.

(1) Joint Subcommittee Meetings

The joint subcommittee met four times. In recognition of the limited number of meetings authorized by HJR 526 and the delay in appointing members due to COVID-19, the joint subcommittee decided to focus its efforts on issues concerning transparency and accountability. The following topics were discussed:

August 23, 2021
- Presentation by the National Conference of State Legislature; Overview of State Campaign Finance Law
- Recent Personal Use Legislation

September 17, 2021
- Discussion with David Poole, Executive Director of the Virginia Public Access Project
- Proposed Personal Use Legislation
- Discussion with Institutional Principals: Stuart Petoe, Executive Director, Virginia Conflict of Interest and Ethics Advisory Council; Chris Piper, Commissioner, Virginia Department of Elections; and, Robert Brink, Chair, Virginia State Board of Elections
- Current Campaign Finance Reporting Practices and Potential Reforms

September 23, 2021
- Update from the Department of Elections Chris Piper, Commissioner, Virginia Department of Elections
• Comments Provided by the Campaign Legal Center
• Items to be Included in the Report to the General Assembly

October 1, 2021
• Proposed Campaign Finance Report Review Legislation
• Discussion of Recommendations

The subcommittee received public testimony at each of its meetings. In addition, subcommittee members were presented with three reports developed by advocacy groups, including “Best Practices on Campaign Finance” and “A Citizens’ Report on the Need for Comprehensive Campaign Finance Reform in Virginia” from the Virginia Chapter of American Promise and a memorandum from the Campaign Legal Center.

(2) Discussion and Recommendations

Continuation of Joint Subcommittee

The joint subcommittee recommends that the General Assembly continue the work of the subcommittee for an additional year. While progress was made in areas of transparency and accountability, there was not sufficient time to focus on other potential reforms identified in the resolution, including but not limited to implementation of contribution limits. The resolution should allow current members to continue to serve.

Personal Use of Campaign Funds

The joint subcommittee recommends the adoption of legislation banning the personal use of campaign funds. Draft language is contained in the appendices as 22100286D.

The draft is based on federal law, which is well vetted and already required for federal candidates. Federal law uses the “irrespective test” to differentiate legitimate campaign and office holder expenses from personal use. Under the test, an expense is considered personal if it is used to fulfill a commitment, obligation, or expense that would exist irrespective of the candidate’s campaign responsibilities.

The FEC has developed guidance for use in determining whether an expense is considered personal (https://www.fec.gov/help-candidates-and-committees/making-disbursements/personal-use/). Under the draft legislation, the Virginia Department of Elections would adopt substantially similar guidance for state and local candidates.

Record Retention and Review of Campaign Finance Reports

The joint subcommittee recommends the adoption of legislation establishing record retention requirements and a system for reviewing the accuracy and completeness of campaign finance disclosure reports. Draft language is contained in the appendices as XXXXXX.
While Virginia law provides for fines for late reports, there is no systematic oversight to ensure the completeness or accuracy of those reports. Bills establishing record retention and review of financial disclosure reports have been introduced on a bi-partisan basis in the past (HB1465, 2004, J Scott and SC Jones; HB1137, 2000, SC Jones, Landes, Rerras).

The following concepts were generally agreed to by the subcommittee:

- All candidates, including those standing for general elections and nominating contests should be subject to potential review.
- All state-wide candidates should be reviewed each election cycle.
- 10% of General Assembly races should be reviewed at random each election cycle, and possibly larger localities over a certain population threshold.
- 1% of local and other races should be reviewed each election cycle.

While the joint subcommittee discussed the potential for additional penalties, the consensus was that the State Board of Election’s current authority is sufficient. This should be reviewed and monitored based on the results of the first few review cycles.

Finally, the joint subcommittee recognized that staffing needs would vary greatly depending on the election cycle and that the Department of Elections should be authorized to contract review to a third party.

**Independent Expenditures**

The joint subcommittee recommends requiring electronic filing of independent expenditures in the same manner as state-level campaigns.

Further, the joint subcommittee recommends further exploration of concepts identified by the Campaign Legal Center to strengthen accountability and transparency with regard to independent expenditures. These include the following:

- Require multi-level reporting of large contributions so that it is possible to trace the original source. Maryland, for example, requires multi-level reporting for any source giving more than $10,000 in donations.
- Expand the types of independent expenditures subject to reporting to include advertisements that “promote, attack, support, or oppose” candidates. Current Virginia law limits disclosure to expenditures “expressly advocating the election or defeat of a clearly identified candidate.” However, the intent of the law can be circumvented by attacking a candidate while avoiding words such as “elect” or “defeat.”
- Require top donor identification on political advertising. Current Virginia law requires ads to include a paid-for-by statement with the name of the sponsor. However, the use of generic names can be used to mask the actual groups behind a particular political advertisement.
While the joint subcommittee did not have time to develop specific language for these recommendations, there was recognition that these are topics of concern, and that further discussion is warranted.

**Electronic Filing for Local Candidates**

The joint subcommittee recommends that all local candidates be required to file forms electronically. Local candidates must already file their conflict-of-interest forms electronically in accordance with §2.2-3117 of the Code of Virginia.

**Staffing and Budget**

The joint subcommittee discussed and acknowledged the need for additional staffing to implement the afore mentioned recommendations and to more effectively implement existing Virginia law and regulations. For example, the Department of Elections recognized that there is little to no enforcement of stand-by-your-ad requirements when it comes to digital media because of lack of staffing.

The joint subcommittee had a robust discussion about whether there should be a filing fee to help support the Department’s staffing needs, with a focus on any new campaign finance disclosure form review program. While no consensus was reached, this is an issue that merits continued discussion.

(3) **Attachments**

The following supporting materials are attached:

- Agendas
- Draft personal use bill
- Federal Election Commission personal use criteria
- Draft record retention and review of campaign finance reports bill
- NCSL presentation
- American Promise papers
- Campaign Legal Center recommendations