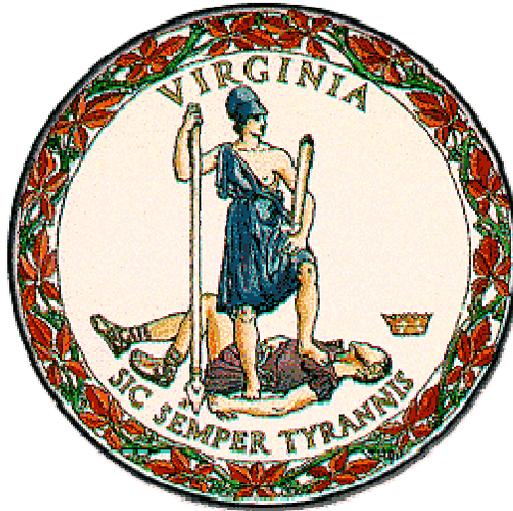


OUT-of-STATE POLITICAL COMMITTEES



Virginia's Campaign Finance Disclosure Act

Title 24.2, Chapter 9.3 of the *Code of Virginia*

Summary of Laws and Policies for Out-of-State Political Committees

*Revised April 3, 2013
Supersedes All Previous Versions*

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VIRGINIA STATE BOARD OF ELECTIONS
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CHAPTER 1 – General Information

Section 1.1 - Purpose of *Summary*

In accordance with §24.2-946, the Virginia State Board of Elections (SBE) has prepared this *Summary of Virginia's Campaign Finance Laws and Policies for Out-of-State Political Committees* (hereafter referred to as "*Summary*"), which will assist treasurers on how to file the required campaign finance reports and outlines the provisions of the Campaign Finance Disclosure Act (CFDA or the "Act"), Chapters 9.3 and 9.4 of Title 24.2 of the *Code of Virginia* and the policies adopted by SBE related to those laws.

It is important to understand that there is more to the law than just timely filing the required campaign finance reports. As a candidate or treasurer, you should familiarize yourself with this *Summary* for it will serve as a valuable resource.

SBE makes this *Summary* available on the Internet to all Out of State Committees, their treasurers and the general public. SBE will also mail a copy of this *Summary* upon request.

Section 1.2 - Campaign Finance Staff

SBE staff is available to assist you in preparing reports and interpreting the requirements of the CFDA. Should you have questions or require clarification, contact:

Chris Piper, Manager, Election Services: chris.piper@sbe.virginia.gov

Tina Edmonds, Compliance Specialist: tina.edmonds@sbe.virginia.gov

Rise Miller, Service Specialist: rise.miller@sbe.virginia.gov

Section 1.3 - Related Publications

If your committee is required to file its campaign finance reports electronically, or if you have chosen to file electronically, please refer to the *COMET* User Manual found online at SBE's website:
http://www.sbe.virginia.gov/cms/documents/CF/COMET_User_Manual.pdf

Candidates will also need to familiarize themselves with the appropriate candidate bulletin for the office they seek. These can be found online at SBE's website:
http://www.sbe.virginia.gov/cms/Cidate_Information/Cidate_Bulletins_Forms.html

Section 1.4 - Elections Not Covered

The provisions of CFDA do not apply to primaries and elections for:

- **Members of the United States Congress;**
- **President and Vice President of the United States;**

- **Town office in a town with a population of less than 25,000 and the town has not adopted an ordinance;**
 - **§24.2-945 allows, by adoption of an ordinance, the governing body of any town with a population of less than 25,000 may provide that the provisions of the Act shall be applicable to elections for town offices in the town.**
- **Directors of soil and water conservation districts; or**
- **Political Party Committee Officers.**

In addition, persons (defined below) that make contributions from their direct operating or personal funds are not subject to the requirements of CFDA. However, they are subject to reporting requirements if they make an Independent Expenditure in excess of \$1,000 for a statewide election or \$500 for any other election (see § 24.2-945.2).

Section 1.5 - Federal Candidates and Committees

A federal candidate is required to file campaign finance reports with the Federal Election Commission (FEC). The FEC (and *not* SBE) enforces federal campaign finance laws. The following are candidates who must file with the FEC, not SBE:

- **President of the United States;**
- **Vice-President of the United States;**
- **United States Senate;**
- **United States House of Representatives; or**
- **any political committee wishing to support or oppose these *federal candidates*.**

These committees must contact the Federal Election Commission (FEC) to obtain forms and information pertaining to federal campaign finance requirements and filing deadlines. You may contact the FEC at:

800-424-9530 (toll-free) or 202-694-1100 (within the Washington, D.C. area)

<http://www.fec.gov> – Internet address

999 E. Streets, NW, Washington, DC 20463-0002 – U.S. Mail

Federal Committees that are registered with SBE who file their reports with the FEC are not required to file campaign finance reports with SBE. Candidates for office in Virginia may accept contributions from these types of candidates or political committees. However, it is important for you to review the provisions of § 24.2-947.3:1 and Section 3.7 of this Summary prior to accepting contributions from these types of committees.

SBE has no authority to provide any guidance regarding federal tax laws. Please contact the Internal Revenue Service if you have questions regarding your committee's tax filing requirements. Their website address is <http://www.irs.gov/charities/political/index.html>.

Section 1.6 - Cash-Basis vs. Accrual-Basis Reporting

Virginia's campaign finance reporting system works on an accounting practice known as 'cash-basis' reporting rather than 'accrual-basis' reporting. Cash-basis and accrual-basis accounting use different criteria for determining when to recognize and record contributions and expenditures in your campaign finance records.

In an accrual-basis reporting system, contributions would be reported in the period in which it is earned (e.g., once contracted services are provided, grant provisions are met, etc.), regardless of when the cash from these contributions are received. Expenditures are recorded as they are owed (e.g. when supplies are ordered, the printer finishes your brochure, employees actually perform the work, etc.), instead of when they are paid.

In a cash-basis reporting system, contributions are reported when the cash is received. Expenditures are reported in the reporting period when the expenditures are paid. Therefore, it is important to remember that, in Virginia, contributions are reported on the dates when the funds are actually received (not deposited) and on the dates when the funds are actually expended. It is very similar to the method that most people use to balance their check books.

The exceptions to this rule apply only in cases where debts on material goods have been received or for in-kind contributions with regard to services or advertisements purchased on behalf of a candidate where coordination has also occurred (See Chapter 4). Since no money is actually changing hands in this type of contribution, the information should be reported on the same date that the service was provided or when the advertisement benefiting the candidate was disseminated.

Section 1.7 - Definitions

The following are definitions of the terms used in this *Summary* that are of principal importance to treasurers. Please keep in mind that some of the terms, while not specifically defined in CFDA, are useful in understanding this document. If you wish to read the exact definitions as they appear in CFDA, you may refer to § § 24.2-945.1, 24.2-955.1 or 24.2-101 or of the *Code of Virginia*.

Adjournment sine die – Adjournment on the last legislative day of the regular session (the regular session does not include the ensuing reconvened session or any special session following in the same year).

Advertisement – Any message appearing in the print media, on television, or on radio that constitutes a contribution or expenditure under Chapter 9 (§§ 24.2-945 et seq.) of this title. "Advertisement" does not include issue advocacy or novelty items authorized by a candidate including, but not limited to, pens, pencils, magnets, and buttons to be attached to wearing apparel.

Agent of the candidate or candidate's campaign committee – One empowered to act for or represent the candidate made through an agreement, verbal or otherwise, between the candidate and the person. The term shall not include unpaid volunteers.

Aggregate Contribution – The total amount of contributions made by an individual or other entity during an election cycle.

Authorization – Means the express approval or consent by the candidate, the candidate's campaign committee, or an agent of the candidate campaign committee after coordinating the expenditure with the candidate, the candidate's campaign committee, or an agent of the candidate campaign committee.

Candidate – as defined in §24.2-101. An individual who seeks nomination for election, or election to public office, in the Commonwealth of Virginia whether or not that person's name is on the ballot. The

definition includes ‘write-in’ candidates. An individual is considered, for campaign finance purposes only, a candidate seeking nomination for election or re-election under the provisions of the Act if they have:

- **Provided payment of a filing fee for any party nomination method;**
- **Submitted a Statement of Qualification form (see § 24.2-501) (whether or not funds or resources have been solicited, received or expended);**
- **Personally, or through another person, solicited or received funds or other things of value, or made expenditures, including expenditures from personal funds, for the purpose of bringing about such individual’s nomination or election to any office;**
- **Has been endorsed or nominated by a Political Party and is thus entitled to a position on the ballot at an election or primary (whether or not funds or resources have been solicited, received or expended);**
- **Has otherwise been qualified for placement on the ballot pursuant to the election laws (whether or not funds or resources have been solicited, received or expended);**
- **Has appointed a campaign treasurer, designated a campaign committee, or designated a campaign depository;**
- **Has not filed a final report for the previous election cycle prior to a new election cycle’s begin date. In this instance, an individual will be considered a candidate for the same office in the succeeding election for administrative purposes (see §24.2-947).**

Candidate Types:

- **Local Candidate – Candidate for a city, county or town’s local or constitutional offices.**
- **General Assembly Candidate – Candidate for Virginia State Senate or House of Delegates.**
- **Statewide Candidate – Candidate for Governor, Lieutenant Governor or Attorney General.**

Candidate’s Campaign Committee – The committee designated by a candidate to receive all contributions and make all expenditures for them or on their behalf in connection with their nomination or election. A Candidate’s Campaign Committee may not be established for multiple candidates.

Candidate’s Election Cycle – An election cycle begins on January 1 of the year that the candidate first seeks election for the office through December 31 immediately following the election for such office. The election cycle provides for the aggregation of contributions and expenditures for the candidate’s campaign finance reporting. A candidate with any activity to report in a new election cycle shall be presumed to be a candidate for reelection in the succeeding election solely for the purpose of filing campaign finance reports.

Conspicuous – So written, displayed, or presented that a reasonable person ought to have noticed it.

Contribution – Money or services of any amount, and any other thing of value, given, advanced, loaned, or in any other way provided to a candidate, campaign committee, political committee, inaugural committee or person for the purpose of influencing the outcome of an election or defraying the costs of the inauguration of a Governor, Lieutenant Governor or Attorney General. “Contribution” includes money, services or things of value in any way provided by a candidate to his own campaign and the payment by the candidate of any primary filing fee.

Coordinated or Coordination – An expenditure that is made (i) at the express request or suggestion of a candidate, a candidate’s campaign committee, or an agent of the candidate or his campaign committee or (ii) with material involvement of the candidate, a candidate’s campaign committee, or an agent of the candidate or his campaign committee in devising the strategy, content, means of dissemination, or timing of the expenditure.

Debt – Any and all outstanding financial obligations. The term does not refer to monies owed to utility companies for services rendered.

Depository – The account(s) in a designated financial institution established to maintain all monetary receipts of a committee.

Designated Contribution – Means a contribution that is designated specifically and in writing for a particular candidate or candidates and that is made using a political committee solely as a conduit.

Election – Any general, primary, special election or referendum.

Expenditure – Money or services of any amount, and any other thing of value, paid, loaned, provided or in any other way disbursed by any candidate, campaign committee, political committee, inaugural committee or person for the purpose of influencing the outcome of an election or for defraying the costs of the inauguration of a Governor, Lieutenant Governor or Attorney General.

Express Advocacy – A direct or indirect contribution, in-kind contribution or loan made to a candidate or political committee for the purpose of influencing the outcome of an election; an advertisement that refers to a party or candidate(s) by name and states “Vote for...”; “Support”; “Elect...”; “Smith for Congress”; “Send Him Home”; “Oppose”, etc.

Failure to File – Any required campaign finance report not received by the State Board or local electoral board within 60 days after official notification from the State Board or local electoral board. For candidates for Statewide Office, a report shall be considered *failure to file* if the report is not received within fourteen days after official notification from the Secretary of SBE.

Federal Political Action Committee – Any political action committee registered with the Federal Election Commission that makes contributions to candidates or political committees registered in Virginia.

Full-screen – The only picture appearing on the television screen during the oral disclosure statement that (i) contains the disclosing person, (ii) occupies all visible space on the television screen, and (iii) contains the image of the disclosing person that occupies at least fifty percent of the vertical height of the television screen.

Inaugural Committee – Any organization, person or group of persons that anticipate receiving contributions or making expenditures, from other than publicly appropriated funds, for the inauguration of the Governor, Lieutenant Governor, or Attorney General.

Incomplete report – A campaign finance report that does not include all required information.

Independent Expenditure – An expenditure made by any person or political committee that is not made to, controlled by, coordinated with, or made with the authorization of a candidate, his campaign committee, or an agent of the candidate or his campaign committee. It includes an expenditure made by a candidate campaign committee (i) that is not related to the candidate's own campaign and (ii) that is not made to, controlled by, coordinated with, or made with the authorization of a different candidate, his campaign committee, or an agent of that candidate or his campaign committee.

In-Kind Contribution – The donation of goods, services, property or anything else of value that is offered for free or less than the usual and normal charge; or payments by a third party for goods and services rather than money. The basis for arriving at the dollar value of an In-Kind gift is as follows: new items are valued at retail value; used items are valued at fair market value and services rendered are valued at the actual cost of service per hour. Services are not to include personal services (outside of the person's professional occupation) for which no compensation is asked or given.

Occurrence – One broadcast of a radio or television political campaign advertisement in violation of the expanded disclosure requirements for television and radio.

Out-of-State Political Committee – Means an entity subject to § 527 of the United States Internal Revenue Code that is not registered as a political committee or candidate campaign committee in Virginia and that does not have as its primary purpose expressly advocating the election or defeat of a clearly identified candidate. The term shall not include a federal political action committee.

"Primary purpose"- Means that 50% or more of the committee's expenditures made in the form of contributions shall be made to candidate campaign committees or political committees registered in Virginia. Administrative expenditures and the transfer of funds between affiliated or connected organizations shall not be considered in determining the committee's primary purpose. The primary purpose of the committee shall not be determined on the basis of only one report or election cycle, but over the entirety of the committee's registration

Person – Any individual or corporation, partnership, business, labor organization, membership organization, association, cooperative or other like entity who is influencing the outcome of a Virginia election. Persons are subject to independent expenditure reporting requirements.

Petty cash fund – Fund established by a campaign treasurer for the purpose of making expenditures or reimbursing verified credit card expenditures of less than \$200. The total must never exceed \$200 and if established, the treasurer must maintain complete records, as required by CFDA, of any expenditure less than \$200 (see § 24.2-947.2).

Political Action Committee (PAC) – Any organization, person, or group of persons, established or maintained in whole or in part to receive and expend contributions for the purpose of influencing the outcome of any election. The term shall not include a campaign committee, federal political action committee, out-of-state political committee, political party committee, referendum committee, or inaugural committee. **Note:** May also be referred to as Political Committee.

Political Committee – A general term referring to any political action committee, political party committee, referendum committee, or inaugural committee. The term does not include:

- **Federal Political Action Committee,**
- **Out-of-State Political Committee,**

- **Campaign Committee, or**
- **Person, which in making contributions does so out of their own personal funds or the entity's direct operating funds.**

Political Party Committee – Any state political party committee, congressional district political party committee, political party committee for a county or city, other election district political party committee, organized political party group of elected officials, which anticipates receiving contributions or making expenditures in whole or in part, for the purpose of influencing the outcome of an election. **Note:** May also be referred to as Political Committee.

Print Media – Billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, website, electronic mail, and outdoor advertising facilities.

Radio – Any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

Referendum Committee – Any organization, person, group of persons, or committee, that makes expenditures to advocate the passage or defeat of a referendum legally placed on the ballot.

Reporting Period – The beginning and ending activity dates for a particular campaign finance report.

Residence – Means and requires both domicile and a place of abode for all purposes of qualification to register and vote.

Scan Line – A standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

Solicit – To request a contribution, orally or in writing. This does not include a request for support of a candidate or their position on an issue.

Sponsor – A candidate, candidate campaign committee, political party committee, political action committee, individual, or other entity that purchases an advertisement.

Surplus funds – The funds remaining after the payment of all debts (including penalties owed) and expenses incurred by a committee. **Note:** May also be referred to as Excess Funds.

Television – Any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

Treasurer – The appointed bookkeeping officer of a candidate's campaign committee.

Un-obscured – Means that the only printed material that may appear on the television screen is a visual disclosure statement required by law and that nothing is blocking the view of the disclosing person's face.

CHAPTER 2 – Statement of Organization

Section 2.1 - Becoming an Out-of-State Political Committee

An out-of-state political committee is typically a § 527 organization not registered with the Federal Election Commission or a political committee that is filing campaign finance reports with another state. “Out-of-State” is not a geographical determinant. Instead, it refers to any political organization that was organized for purposes other than to influence the outcome of a non-federal Virginia election. The term does **not** include political action committees registered with the Federal Election Commission or organizations holding tax-exempt status under § 501(c)(4) or 501(c)(6) of the U.S. Internal Revenue Code.

To qualify as an out-of-state political committee, the organization must not have made contributions to non-federal candidates or political committees registered in Virginia totaling more than 50% of their total expenditures (as defined under primary purpose) during a calendar year. For example, if a committee has made \$100,000 in expenditures during the current year, and \$50,000 or more of those expenditures were contributions to candidates or political committees in Virginia, then the committee qualifies as a PAC under the definition of “primary purpose,” in Virginia. Committees of this nature should refer to the *Summary of Laws and Policies for Political Action Committees (PACs)*. Otherwise, the committee should consider itself an out-of-state political committee.

An out-of-state political committee is free to make contributions up to \$9,999.99 per calendar year, in the aggregate, to candidates and political committees registered in Virginia without having to register with the State Board of Elections. However, once the committee’s total aggregate contributions reach \$10,000 or more in a calendar year to Virginia candidates, then the committee must register with SBE and file a Statement of Organization for an Out of-State PAC. The threshold stated in this paragraph applies to **all** contributions and not just contributions to a single candidate or committee.

Corporations and unions that contribute from their direct operating funds are not subject to the requirements of the Act unless these organizations make an independent expenditure that benefit a non-federal Virginia candidate or political committee.

Contributions from Other Out-of-State Committees

Any § 527 organization which has contributed \$50,000 to the registered out-of-state committee is also required to register with SBE and file the required campaign finance reports.

Section 2.2 – Establishing an Out-of-State Political Committee

The committee must submit a *Statement of Organization* on or before the date in which the committee makes contributions to non-federal Virginia candidates or political committees total aggregate of \$10,000 or more in a calendar year.

The Statement of Organization

The following information is required on the committee’s *Statement of Organization*:

- ⇒ **The name of the committee and its address;**

- ⇒ **The names, addresses, and relationships of affiliated or connected organizations;**
- ⇒ **The area, scope, or jurisdiction of the political action committee;**
- ⇒ **The name and business address of the treasurer and his residence address who shall be deemed the agent of the political action committee for the purpose of service of process on the political committee;**
- ⇒ **The name, residence address, business address, and position of the custodian of the books and accounts, who works under the direction of the treasurer, and the address where the books are maintained;**
- ⇒ **The name, address, office sought, and party affiliation of each individual whom the political action committee is supporting or opposing for nomination or for election to any public office whatever or, if supporting the entire ticket of any party, the name of the party;**
- ⇒ **The designated depository to be used for the receipt and holding of funds and contributions received by the political action committee. The committee is not required to establish a depository account in a financial institution in the Commonwealth.**
- ⇒ **Its taxpayer identification number; and**
- ⇒ **A list of other federal and state agencies with which it is required to file financial disclosure information and registration numbers for the committee with each of these agencies.**

Mailing Address

The *Statement* must include the primary mailing address of the committee. Post office boxes are acceptable. This address will be SBE's primary mailing address and all official notifications will be sent to this address. It is the responsibility of the committee's treasurer to ensure that SBE has the most recent mailing address filed with us on the committee's Statement of Organization.

Affiliated Organizations

The committee must disclose any and all affiliated organizations on their *Statement of Organization*. An affiliated organization includes, but is not limited to: the affiliated federal PAC, corporation, membership association, union, etc.

Area, Scope or Jurisdiction

. The committee must disclose on its Statement of Organization if they intend to influence local (if so, which cities or counties), General Assembly or Statewide elections.

List of Candidates Supported

The committee must disclose, at its time of registration, the names, addresses and party affiliation of each candidate supported or opposed. If the committee intends to support a particular political party then the committee can simply list the name of the political party.

Treasurer Information

The name and residence as well as business mailing address of the treasurer must be disclosed.

Custodian of the Books

The name and mailing address of the custodian of the books as well as the address where the books are maintained must be disclosed.

Section 2.3 - Where to File the Statement of Organization

Committees must file an original, signed copy of their Statement of Organization with the State Board of Elections on or before the date that the committee makes contributions totaling \$10,000 or more to any registered candidate or political committee in Virginia in a calendar year.

Copied or faxed versions of the *Statement of Organization* will **not** be accepted and will **not** be considered timely filed. The form must be an original, signed copy unless otherwise stated above. All committees must maintain a copy of this form for their records.

Amending the Statement of Organization

The committee must file an amended *Statement of Organization* within 10 days of any change to the committee's information (e.g., a change in address) to SBE.

Committees have ten days from the date of any change to file an amended *Statement of Organization*. If all information remains the same the original *Statement of Organization* will continue in effect until a Final Report is filed or until a change in the information occurs.

CHAPTER 3 – Reporting Requirements

An out-of-state political committee must file a reporting of its contributors and a list of contributions made to candidates and political committees registered in Virginia on the same date in which it submits its *Statement of Organization* to SBE. Subsequent reports are due on the same date in which the committee makes additional contributions to candidates or political committees registered in Virginia. All out-of-state committee reporting is done online through the SBE website: www.sbe.virginia.gov/cms/Campaign_Finance_Disclosure/Large_Contribution_Reports/index.asp

Filers need their registration number and electronic signature PIN to login.

Section 3.1 – Schedule A: List of Direct Contributors

On its report, the committee must itemize all entities which have given to the committee an aggregate amount of \$2,500 since the immediately preceding January 1.

Contributions from Other Out-of-State Committees

Any § 527 organization which has given \$50,000 to the registered out-of-state committee is also required to register with SBE and file the required campaign finance reports.

Section 3.2 – Contributor’s Required Information

Name of the Contributor

The full name of the contributor is required to be reported, in alphabetical order by last name, on the campaign finance report. For businesses and other types of organizations, the name of the company should be listed in alphabetical order. The committee must report the full name of the organization. Acronyms are not acceptable.

Address of the Contributor

The full address of the contributor is required to be reported on the campaign finance report. Post office boxes are acceptable addresses in all instances.

Occupation of the Contributor (Individuals Only)

The occupation of the contributor must not state the title or position of the individual. The report should indicate the type of work of the individual is employed to do.

The following is a non-exhaustive list of acceptable occupations:

- **Construction;**
- **Marketing;**
- **Financial Advisor;**
- **Entrepreneur;**
- **Student;**

- **Retired;**
- **Homemaker/Housewife.**

Every person has an occupation even if that occupation is “retired” or “student.” In no case should a committee report the individual’s occupation as “N/A..”

Principal Type of Business (Non-Individuals Only)

The treasurer must enter the type of business for that organization. For example, a committee that received a contribution from an electric utility would enter “Electric Utility.”

Place of Employment (Individuals Only)

The treasurer must enter the city and state where the individual is employed.

Place of Business (Non-Individuals Only)

The treasurer must enter the city and state where the business is located. It is sufficient to list the city and state where the businesses headquarters are located.

Date Received

A contribution is considered received the date that it knowingly comes into the hands of an “agent” of the committee (“agent” is defined in Section 1.7). Contributions should never be reported as the date that the money is deposited unless the contribution was received on the same date that the contribution is received. Contributions should also not be reported as the date written on the check unless that is the same date that the check is received.

Contributions by Credit Card

If a contribution is provided by credit card on a website, the date that the contribution is considered received is the date that the contributor entered their information into the website. The treasurer should not report the contribution as being received on the date that the information is passed from the collecting agency to the committee. Contributions received via services such as PayPal should be reported when the funds are released to the committee’s account.

Section 3.3 – Soliciting Contributions

Best Efforts Policy

SBE strongly recommends that all committees make every effort possible to gather the required information at the time that a contribution is collected even if the contributor's donation is \$100 or less. Although this information is not required for contributors who contribute \$100 or less, their aggregate contribution may exceed \$100 in the future. If the information is obtained at the time of the first contribution, time and energy will be saved in the future.

Section 3.4 - Contributions from FEC PACs and Out-of-State Political Committees.

Prior to accepting contributions of \$10,000 or more in the aggregate in **any calendar year** from a political committee registered with the Federal Election Commission or from an out-of-state political committee, the committee must request the SBE supplied registration number from the committee and verify that number with SBE. This can be done by sending an email to SBE at cfda@sbe.virginia.gov.

Therefore, it is important that the treasurer verify the registration status of a political committee before the committee accepts a contribution from any political committee that aggregates to \$10,000 or more in the calendar year.

Best Efforts Policy

Most committees, at one time or another, will receive unsolicited contributions which do not include the required information necessary to comply with the Act. In such instances, the committee must make every effort to contact the contributor in order to gather the required information. SBE considers a “best effort” made by the committee to include sending a written request to the contributor asking for the required information.

If the campaign finance report is due and, after sending a written request, any of the required information of the itemized contributor is still unknown, it shall temporarily suffice to report “Unable to Obtain” or “Information Requested” in the field missing the required information. The committee is also required to submit, along with the committee's report, a copy of the written request to the contributor asking for the required missing information. SBE does not consider a report complete if more than 20% of the total number of contributors or other required itemized information is missing.

Section 3.5 – Schedule B: List of In-Kind Contributions

In-Kind Contribution vs. Independent Expenditures

An independent expenditure is an expenditure which is intended to benefit a candidate (either by showing support for the candidate, or by showing displeasure with the candidate's opponent(s)), but one which has not been coordinated with the candidate or an agent of the candidate's campaign committee. A candidate or an agent of their committee may have knowledge of an independent expenditure, but that does not necessarily mean that they have received an in-kind contribution.

To qualify as an in-kind contribution, the candidate or an agent of the candidate's campaign committee must have either expressly requested or suggested to the person or committee that the expenditure be

made, or the candidate or an agent of the candidate campaign committee must have material involvement in devising the strategy, content, means of dissemination, or timing of the expenditure.

Reporting In-Kind Contributions

It is the responsibility of the recipient of the in-kind contribution to obtain the information necessary to report the contribution. If the treasurer of the committee has coordinated with the person or committee providing the in-kind contribution, then the committee is responsible for accurately reporting the in-kind contribution.

The required contributor information for reporting in-kind contributors is the same as for reporting the list of direct contributions. A few differences are outlined below:

Date Received

In-kind contributions must be reported as being received on the same date that the good or service was received and **NOT** the date the committee is informed of the cost of the good or service.

Service or Goods Received

As stated above, in-kind contributions can be professional services or material goods offered for free, or for less than the usual and normal charges or payments for materials through a third-party. The committee is required to indicate the type of service or the good received on their campaign finance report.

Basis Used to Determine Value

All in-kind contributions have an attached value whether they are a service or a good. Therefore, the committee is required to report what basis was used in order to determine the value for the service or goods received. SBE recognizes only two bases for determining an in-kind contribution's value:

Actual Cost:

This basis must be used when the actual cost of a good or service was determined to be the value of the In-Kind Contribution. This is typically used when determining the value for goods bought by a third-party.

Fair Market:

This basis is used when an actual cost is not able to be determined.

Aggregate-to-Date

A contributor's cash contributions are aggregated with their in-kind contributions in cases where a contributor has given both directly and in-kind.

Section 3.6 - Schedule D: Contributions Made to Candidates or Political Committees Registered in Virginia

The report also must include a listing of all contributions made by the out-of-state political committee to candidates and political committees registered in Virginia.

Full Name of Candidate or Political Committee

The report must contain the full name of the candidate or political committee to which the contribution was made.

Mailing Address of Payee

The report must contain the full mailing address of the candidate or political committee to whom the contribution was made.

Date Paid

The report must list the expenditures in order by the date that the expenditure was made (earliest first). It is not acceptable to report the expenditure on the date that the expenditure cleared the bank account.

Section 3.7 - Filing a Final Report

The committee may choose to file a final report at any time. The report must clearly indicate that it is the final report for the committee and must be signed by an officer of the committee indicating as such

A final report should not be filed if the committee anticipates making contributions to candidates or political committees in the future.

CHAPTER 4 – Where and When to File Campaign Finance Reports

Section 4.1 - Filing Periods

Out-of-State political committees are required to file a report on the same day as when one of the following occurs:

- ⇒ **The committee makes contributions which place them above the \$10,000 threshold; or**
- ⇒ **When, after filing their first report, the committee makes additional contributions of any amount to candidates or political committees registered in Virginia.**

Section 4.2 - Where to File Reports

Upon the date of registration, SBE will provide the treasurer or custodian of the books the necessary committee code and security code to access the on-line form required to file the committee's reports. All Out-of-State Committees same day reporting is done on-line through the SBE's website: <http://www.sbe.virginia.gov/campaignfinance.html>

Section 4.3 - Extension of the Filing Deadline

The *Code of Virginia* authorizes SBE to grant an extension of a filing deadline in certain situations. SBE will not impose civil penalties if an appropriate written request is received by the report's due date describing any of the following situations:

- ⇒ **Death of treasurer or immediate family of either within 72 hours of report due date;**
- ⇒ **Personal Computer (PC) failure that prevents timely filing, if accompanied by documented statement from a computer company licensed to do business in Virginia;**
- ⇒ **Fire or natural disaster within 72 hours of the report due date, resulting in destruction of equipment or documents required for completing the report.**

The following excuses are not sufficient and will not be considered for granting an extension of the filing deadline. They include, but are not limited to:

- ⇒ **Inclement weather;**
- ⇒ **Treasurer or custodian of the books transition that may result in a "paper shuffle;"**
- ⇒ **Committee's lack of knowledge of how to file, the need to file or due date of filing; or**
- ⇒ **Committee's failure to have copies of necessary forms.**

The Secretary of the State Board of Elections has additional authority to extend an established filing deadline for filing during emergency situations that interfere with the timely filing of reports. The extension shall be limited in scope to the areas and times affected by the emergency. The emergency extensions can only be granted in the case of an emergency declared by the Governor pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 or declared by the President of the United States and confirmed by the Governor by executive order as an emergency.

Section 4.4 - Other Reporting Policies

- ⇒ It is the responsibility of the filer to ensure that they receive documentation that the statement or report has been received by SBE. All receipts should be maintained with the committee's records.
- ⇒ E-filers will be provided an automatic receipt at the time that they submit their report. No e-filing committee should consider SBE as having received the report until they press the confirm button and print the electronic receipt.
- ⇒ No report can be filed before the activity ending date which is required to be complete.
- ⇒ No report can include activity before or after the reporting period for the report.
- ⇒ The first report filed must include all activity for the entire period from the time the committee met the requirements for establishing the committee.
- ⇒ The security code used by the committee when filing electronically is considered the signature as long as the committee has indicated their intention to file electronically.
- ⇒ In order to close a committee, a Final Report must be filed for that committee or they will be required to file all required reports for that election cycle.

CHAPTER 5 – Campaign Finance Reporting Penalties

Section 5.1 – General Provisions

Any person who violates, or aids, abets, or participates in the violation of, the Act shall be subject to a civil penalty not to exceed \$100.

For purposes of establishing penalties, the *Code of Virginia* creates three categories of violations: (i) the failure to file reports (§24.2-953.1); (ii) the late filing of reports (§24.2-953.2); and (iii) incomplete reports (§24.2-953.3). In addition, a special category exists to provide for additional civil penalties that relate only to statewide campaigns (§24.2-953.4). Furthermore, the *Code* provides an additional category for penalties relating to out-of-state political committees (§24.2-953.5). As to each category, the Code provides for a specific range of civil penalties and, where appropriate, the type of notice that must be provided before a penalty may be imposed.

The sections relating to the failure to file reports (§24.2-953.1) and the late filing of reports (§24.2-953.2), do not require that notice be provided before the imposition of penalties. Thus, if the statutory filing deadline is missed, the penalty is automatically triggered.

The procedure to be filed for the assessment of penalties relating to incomplete reports is governed by §24.2-953.3. It provides, in part: “Prior to assessing a penalty ...for the filing of an incomplete report, the Secretary of the Board, or the general registrar or secretary of the local electoral board, as appropriate, shall notify, by certified mail, the candidate and treasurer, or person or political committee required to file a report...No penalty shall be assessed if the information required to complete the report is filed within 10 days of the date of mailing the written notice.”

In a similar fashion, §24.2-953.4, which provides for additional penalties relating to statewide races, also explicitly requires that a prior notice must be given before a penalty may be imposed. It provides, in relevant part: “Prior to assessing a penalty pursuant to this section the Secretary shall notify...the candidate and treasurer in writing that a report has not been filed or that a filed report has not been completed...No penalty shall be assessed pursuant to this section if the report or information required to complete the report is filed within seven days of the date of mailing the written notice.”

Furthermore, §24.2-953.5, which provides for additional penalties relating to out-of-state political committees, states that “Acceptance of contributions of \$10,000 or more in the aggregate in any calendar year from an unregistered federal political action committee or out-of-state political committee shall result in a civil penalty equal to the amount of the contributions made to a candidate campaign committee or political committee.”

The State Board has formally adopted the following schedules for the assessments of civil penalties. To ensure uniformity throughout the state, this schedule must be followed when the filing officer is assessing civil penalties.

“**Official Notification,**” or any variation of this phrase as stated within this chapter refers to the letter sent via United States Postal Service Certified Mail to the committee’s primary mailing address as reported on the committee’s most recently filed Statement of Organization. The date of “official notification” is either the date that the letter is received and signed for or the date on which the USPS returned the mail to SBE or the local electoral board. The notification is considered made even if the notification is not signed for so long as the notification was sent to the committee’s primary mailing address.

Section 5.2 - Procedure to Collect Civil Penalties for Campaign Finance Reports

Late Report = \$100 civil penalty automatically imposed after the conclusion of the report's filing deadline. The State Board or the local electoral board will notify the committee of civil penalty and collection procedures via email or regular postal mail. If the payment is not received within 60 days of the deadline, the matter is referred to the appropriate Attorney for the Commonwealth for collection.

Failure to File Report = if no report is filed within 60 days of the due date, the State Board or the local electoral board will notify the committee via certified mail. The penalty will increase to \$500 and the committee will be provided an additional 60 days to submit the report. If, after 60 days has passed, the committee has not filed the report, then the matter is sent to the appropriate Attorney for the Commonwealth for collection and determination as to whether the violation is willful. The penalty notification will increase from \$500 to \$1000 if second or subsequent violations.

If delivery of the certified letter to the committee's primary mailing address is returned undeliverable or the recipient refused to sign, then the matter shall immediately be referred to the appropriate Attorney for the Commonwealth.

The local electoral board of a county or city will notify the Commonwealth's Attorney for the county or city in which the electoral board has jurisdiction.

For candidates for the General Assembly, the State Board will notify the Commonwealth's Attorney of the county or city of the residence of the candidate in violation. For candidates for statewide office, the State Board will notify the Commonwealth's Attorney for the City of Richmond.

Candidates for the General Assembly or statewide office must make their checks payable to "Treasurer of Virginia" for deposit to the General Fund. Candidates for local office must make their checks payable to the treasurer of their locality for deposit to their General Fund.

Section 5.3 – Penalty Schedule for Incomplete Reports

Best Efforts Policy

Once reports are received, SBE is required to review the reports and provide requests for additional information to the committee within 21 days of the deadline. The committee's failure to file an amended report within 10 days of the mailing of the written notice of a required amended report will be assessed civil penalties.

In conducting its review, SBE and the local electoral board are required to review the following:

- The report is legible;
- There is no missing information in required fields or descriptions such as "N/A," "None," "Unknown," etc. In the fields where "requested" or "unable to obtain" is entered, verify that copies of letters to the contributors requesting this information have been filed;
- The beginning balance of the current report (Schedule H, Line 16) equals the ending balance of the previous period's report (Schedule H, Line 19).
- Verify that Line 19 and Line 29 on Schedule H match;
- Contributions are reported in alphabetical order on Schedule A and Schedule B as required by §24.2-947.4;
- Expenditures are reported in chronological order (earliest first) on Schedule D; and

- Expenditure descriptions are relevant.

If any required information is not included or the report is not completed properly, the report is deemed incomplete. However, SBE has determined that some missing information does not necessarily mean that a report should be considered incomplete. SBE has adopted this “Best Efforts” policy in order to comply with the requirements of § **24.2-953.3**.

Therefore, Campaign Finance reports should not be considered incomplete if:

- 1) Less than 20% of required information is on Schedule or Schedule B; or less than 20% of any other itemized information does not include the required information.

*For example, if there are 100 itemized contributors on Schedule A, then no more than 10 of those contributors can have missing information.

AND

- 2) Letters requesting the required information from those contributors is filed with the report.

If these conditions are not met, then the report is considered incomplete and a letter requesting an amended report will be mailed to the committee.

If the requested amended report is not filed within 120 days of the specific deadline then the violation is presumed willful and the matter will be forwarded to the appropriate Attorney for the Commonwealth.

Section 5.4 – Penalties for Accepting Contributions from Unregistered Out-of-State Political Committees or Federal Political Action Committees

As addressed above, It is unlawful for any committee registered in Virginia to accept contributions of more than \$10,000, in the aggregate during a calendar year, from an out-of-state political committee or federal political action committee which is not registered with SBE.

Accepting any contribution of \$10,000 or more, in the aggregate during a calendar year, without first verifying the committee's SBE registration status will result in a penalty equal to the amount of the contribution received pursuant to the provisions of §24.2-953.5.

SBE shall assess the penalty at the time that it becomes aware of the violation. If the penalty is not paid within five days after official notification of the penalty then SBE shall send the matter to the Commonwealth's Attorney for the city of Richmond to enforce its collection.

Section 5.5 – Additional Penalties for Out-of-State Political Committees Regarding the Failure to File Statement of Organization

Procedure to Collect Penalties for Statement of Organization Violations

SBE will officially notify the committee of the violation via certified mail. The committee will have five days to comply with the provisions of the Act. Failure to comply within five days of official notification will require SBE to forward the matter to the Attorney General's office, pursuant to the provisions of § 24.2-104, to enforce compliance and collect the assessed penalty.

Penalties for Statement of Organization Violations

The amount of the penalty will be equal to the amount of the contribution in which the committee made which required the committee to register with SBE.

Section 5.6 - Willful Violations

A willful violation occurs when the State Board or an investigation by an Attorney for the Commonwealth determines that the person intentionally attempted to subvert the provisions of the Act.

In the case of willful violation, a committee will be guilty of a Class 1 misdemeanor and the Attorney for the Commonwealth shall initiate civil proceedings to enforce any civil penalties prescribed. There will be a rebuttable presumption that the violation of the Act was willful if the violation is based on a committee's failure to file a report required and its failure to file continues for more than 60 days following the official notification by SBE or local electoral board.