

State Board of Elections Policy 2025-001

A meeting of the Virginia State Board of Elections (SBE) was held on May 27, 2025, during which the following policy was proposed by the Department of Elections (ELECT) and approved by the SBE:

CAMPAIGN FINANCE PENALTY APPEAL PROCEDURES

WHEREAS, the 2025 Acts of Assembly Chapter 360, effective July 1, 2025, amends the Code of Virginia by adding in Article 8 of Chapter 9.3 of Title 24.2 a section numbered 24.2-953.6, relating to campaign finance; appeal of penalties (see attached); and

WHEREAS, Va. Code § 24.2-953.6(A) provides any person or committee assessed a penalty pursuant to Chapter 9.3 of Title 24.2 of the Code of Virginia (Chapter 9.3) the opportunity to file a petition to appeal a campaign finance penalty to the SBE;

WHEREAS, Va. Code § 24.2-953.6(B) provides that the SBE shall develop procedures to conduct a public hearing to consider facts and supporting documentation presented by the petitioner as part of an appeal; and

WHEREAS, Va. Code § 24.2-953.6(C) provides the SBE discretion to provide relief from penalties for good cause shown by the petitioner and found by the SBE sufficient to justify the relief requested.

NOW, THEREFORE, BE IT RESOLVED, by the SBE as directed by Va. Code § 24.2-953.6(B) and under its authority to issue rules and regulations to promote the proper administration of election laws and obtain uniformity in the administration of elections pursuant to Va. Code § 24.2-103(A), that the following policy applies to campaign finance penalty appeal proceedings conducted pursuant to Va. Code § 24.2- 953.6.

Penalty Notices

- Penalty notices issued pursuant to the provisions of Chapter 9.3 must include information about the right to an appeal and the method by which such appeals may be filed.
- For penalties issued by general registrars, ELECT shall direct general registrars to provide the penalty:
 - via certified mail (general registrars must retain all documentation related to the mailing); and
 - electronically with confirmation of receipt (when there is an email address on file for the penalized individual/committee).

Petitions

- To file an appeal, an individual or committee issued a penalty under Chapter 9.3 of Title 24.2 must submit a petition on a form prescribed by the SBE.¹
- Petitions must be filed with the Department of Elections (ELECT) electronically or by

¹ Va. Code § 24.2-953.6(A).

- certified mail, pursuant to instructions from ELECT.²
- Petitions must be received by ELECT within 60 days of the date of actual receipt of written notice of a penalty.³
 - For penalties issued by ELECT, the actual date of receipt is the next business day after the date notice is sent electronically.
 - For penalties issued by general registrars, the actual date of receipt is the earlier of the date of delivery via certified mail and the date of receipt electronically.
 - To submit an appeal, a petition must contain the following:⁴
 - The name and committee code of the penalized committee or, in the case of a penalized individual, the name of the individual.
 - Information about the individual filing the petition, including first and last name, role in the penalized committee (if applicable), and email address;
 - Information about the campaign finance report related to the penalty, including the start and end dates of the filing period and the filing deadline;
 - Information about the issued penalty, including the issuing entity, the date of the penalty, the amount of the penalty, and the date of receipt of the penalty notice;
 - The grounds upon which an appeal is being made; and
 - The relief sought.
 - A petitioner should include all relevant information, evidence, and documents necessary to support the stated grounds for appeal.
 - ELECT will conduct a facial review of submitted petitions and provide a response in one of the following manners:
 - If the petition contains all required information, issue a notice of hearing; or
 - If the petition does not contain the necessary information to file an appeal or is otherwise improperly filed, issue a notice stating that the appeal has not been properly filed, a hearing has not been scheduled, and that a new/amended petition must be filed by the deadline for a hearing to be scheduled.

Notice of Hearing

Method

- If a petitioner properly files an appeal, ELECT shall provide notice to the petitioner electronically and via certified mail not later than 10 days before the date on which a hearing on the matter will be held.⁵
 - Electronic notice shall be sent to the email addresses (where available/applicable) of the petitioner, candidate, treasurer, custodian of books, and COMET account administrators.
 - Notice via certified mail shall be sent to the address provided by the petitioner.⁶

Contents

- Each notice shall include:

² *Id.*

³ *Id.*

⁴ Va. Code § 24.2-953.6(A).

⁵ Va. Code § 24.2-953.6(B).

⁶ *Id.*

- The time, date, and place of the hearing;⁷
- The basic law under which the SBE contemplates its possible exercise of authority; and
- Contact information consisting of the name, phone number, and government email address of the person designated by the SBE to respond to questions or otherwise assist a named party.

Hearings

Rights of petitioner

- A petitioner shall be entitled to:
 - Be accompanied by and represented by counsel;
 - Submit oral and documentary evidence; and
 - Have a written opinion containing the SBE's decision issued not later than 21 days after the hearing.⁸

Rights of the SBE

- The SBE may:
 - Administer oaths and affirmations;
 - Receive oral and documentary evidence;
 - Exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs; and
 - Regulate and expedite the course of the hearing.

Continuance

- A scheduled hearing shall not be delayed by the inability of the petitioner to attend the hearing unless a request for a continuance is made in writing to ELECT not less than 7 days before the scheduled hearing date.
- A continuance shall not be granted unless the request is received in the required time and, in the opinion of the Chair, sets forth good and sufficient cause for the continuance.
- If a continuance is granted, ELECT staff shall notify all relevant parties of the date to which the proceedings are continued.

Interpreter services

If an interpreter is required, ELECT will make appropriate arrangements to ensure an interpreter is present during the hearing. The petitioner shall provide ELECT reasonable notice before the hearing that an interpreter is required.

Presentation of appeal background by ELECT

- With respect to each appeal, ELECT shall present information to assist the SBE in determining whether relief should be granted.
- In presenting each appeal, ELECT shall provide the factual background related to the issuance of the penalty and the filing of the appeal, and any other information to allow the SBE to review the merits of the appeal, including:

⁷ *Id.*

⁸ Va. Code § 24.2-953.6(D).

- The name of the penalized committee/individual;
- The name of the petitioner (if different);
- The provision(s) of Chapter 9.3 violated;
- Penalty information, including date of violation, amount, date issued, and date received by committee/individual;
- Date of receipt of the petition;
- The relief requested by petitioner;
- The grounds provided by petitioner for relief;
- The evidence submitted supporting the petition; and
- Mitigating/aggravating factors, including but not limited to:
 - Penalty history for the penalized committee/individual;
 - COMET account activity, or attempted activity, of penalized committee/individual within a reasonable time prior to the filing deadline;
 - Attempts by individual/committee to contact ELECT within a reasonable time prior to the filing deadline if experiencing technical difficulties; and
 - Whether a purported technical issue was widespread in nature.

Petitioner testimony

- After presentation of the appeal background by ELECT, the SBE shall invite the petitioner to present relevant testimony and additional supporting evidence.
- Each member of the SBE shall have the opportunity to question the petitioner, ELECT staff, and any other participant in the hearing on all matters related to the petition and testimony and evidence received.

Decision

- At the conclusion of petitioner testimony and SBE questions, the SBE shall:
 - Carry out further deliberation as necessary; and
 - Conduct a vote(s) deciding whether to provide relief to the petitioner.
- To provide relief, the SBE must find that the petitioner has demonstrated good cause to justify such relief.
 - To demonstrate good cause, petitioner must establish either:
 - Facts of circumstances present within a reasonable amount of time of the filing deadline that made filing or requesting an extension impracticable⁹; or
 - An administrative error in the assessment of the penalty.¹⁰
- Relief granted by the SBE:
 - May include forgiveness of all or a portion of an assessed civil penalty, the retroactive extension of a deadline, or other appropriate remedy.¹¹
 - May not include an exemption from filing a report that is otherwise required to be filed pursuant to Chapter 9.3.¹²
- The SBE may consider mitigating/aggravating factors presented in determining the extent to which relief is justified.

⁹ Va. Code § 24.2-953.6(B)(i).

¹⁰ Va. Code § 24.2-953.6(B)(ii).

¹¹ Va. Code § 24.2-953.6(C).

¹² *Id.*

Written opinion

- Upon reaching a decision, the SBE shall direct ELECT to draft a written opinion for the SBE's review and issuance.
- The written opinion shall state:
 - The facts put before the SBE;¹³
 - The SBE's decision;¹⁴ and
 - The SBE's rationale for its decision.¹⁵
- The SBE shall issue the final written opinion not later than 21 days after the conclusion of the hearing.¹⁶ The opinion shall be immediately distributed by ELECT in the following manners:
 - Posting on ELECT's website;¹⁷ and
 - By mail to the petitioner.¹⁸

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Va. Code § 24.2-953.6(D).

¹⁷ *Id.*

¹⁸ *Id.*

VIRGINIA ACTS OF ASSEMBLY - 2025 SESSION

CHAPTER 360

An Act to amend the Code of Virginia by adding in Article 8 of Chapter 9.3 of Title 24.2 a section numbered 24.2-953.6, relating to campaign finance; appeal of penalties.

[S 945]

Approved March 21, 2025

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 8 of Chapter 9.3 of Title 24.2 a section numbered 24.2-953.6 as follows:

§ 24.2-953.6. Appeal of penalties.

A. Any person or committee shall have the right to appeal a civil penalty assessed to it pursuant to this chapter by filing a petition of appeal with the State Board, on a form prescribed by the State Board, within the 60 days following its actual receipt of written notice of such penalty. The petition shall state the grounds upon which the appeal is being made in addition to any additional information required by the State Board.

B. The appeal shall be adjudicated by the State Board in a public hearing. The State Board shall develop procedures for the conduct of such hearing. At least 10 days prior to such hearing, the State Board shall send notice by certified mail to any person whose petitions of appeal will be reviewed at such hearing. Notice shall include the time, date, and place of the hearing.

Consideration on appeal shall be limited to whether the petition and any supporting documents submitted by the petitioner establish (i) facts of circumstances present within a reasonable amount of time of the filing deadline that made filing or requesting an extension impracticable or (ii) an administrative error in the assessment of the penalty.

C. The State Board shall be authorized to provide relief for good cause shown by the petitioner and found by the Board sufficient to justify the relief requested. Such relief may include forgiveness of all or a portion of an assessed civil penalty, the retroactive extension of a deadline, or other appropriate remedy. Such relief shall not include an exemption from filing a report that is otherwise required to be filed pursuant to this chapter.

D. For each appeal that it hears, the State Board shall issue a written opinion, which shall include the facts put before the State Board, the State Board's decision, and the State Board's rationale for reaching such decision. The State Board's opinion shall be published on the Department of Elections website and a copy of the opinion shall be mailed to the petitioner as notice of the State Board's decision not later than 21 days after the conclusion of the appeal hearing. The decision on appeal shall be final and not subject to further appeal.

E. The time for notifying an attorney for the Commonwealth of a violation of this chapter pursuant to subsection F of § 24.2-946.3 shall be tolled from the time the State Board receives a petition of appeal until notification to the petitioner by the State Board of its decision on such petition.