

Fiscal Impact Review

2024 General Assembly Session

Bill number: HB 40 (Amended), Prohibition on personal use of campaign funds

Review requested by: Chair Price; House Privileges and Elections

Date: January 24, 2024

JLARC Staff Fiscal Estimates

JLARC staff do not concur with the fiscal impact statements that HB 40 would result in a total estimated cost of approximately \$317,000. JLARC estimates the fiscal impact of the bill would be negligible.

HB 40 would prohibit the personal use of contributions to a candidate or his campaign committee. The bill would also establish a process for the Department of Elections (ELECT) and the State Board of Elections to receive and investigate complaints of violations, and for the Board to issue advisory opinions to candidates on allowable uses of campaign funds.

JLARC staff estimate a negligible fiscal impact for HB 40 because two other states with similar personal use prohibitions receive very few complaints of violations, resulting in a negligible workload impact and no incarceration.

An explanation of the JLARC staff review is included on the pages that follow.

Bill summary

HB 40 would prohibit the conversion of contributions to a candidate or his campaign to personal use. Current law only prohibits conversions of contributions to personal use with regard to surplus funds at the dissolution of a campaign or political committee. The bill would establish a process for individuals who believe a violation has occurred to submit a complaint to the Department of Elections (ELECT); complaints would be made under the penalty of perjury. HB 40 would establish a process for ELECT and the State Board of Elections (State Board) to review and investigate complaints. The bill would also require the State Board and the Office of the Attorney General (OAG) to publish guidance on the prohibition on personal use of campaign funds, and would establish a process for candidates to request advisory opinions from the State Board related to the prohibition.

Fiscal implications

JLARC estimates the cost of HB 40 to be negligible based on the experience of other states with similar laws. This compares to the combined cost of \$317,339 annually reflected in the Department of Planning and Budget (DPB) FIS and the Virginia Criminal Sentencing Commission (VCSC) FIS.

Fiscal impact on ELECT

HB 40 would establish new processes at ELECT and the State Board for 1) reviewing and investigating complaints of personal use of campaign funds, and 2) providing advisory opinions to candidates on the application of the prohibition on the personal use of funds. The cost to ELECT would depend on the increase in workload resulting from these new processes. The DPB FIS indicates that the impact is indeterminate and would depend on the number of complaints, which is unknown. However, for illustrative purposes, ELECT estimates a full-time Hearing and Legal Services Manager I and a full-time Administrative Support person would be needed at a combined cost of \$267,339. (A cost is not provided for the issuance of advisory opinions.)

JLARC staff obtained information from two states, Georgia and Tennessee, which already have similar laws prohibiting personal use of campaign funds and similar processes for 1) allowing public complaints of violation of the personal use prohibition, and 2) issuing advisory opinions to candidates regarding the personal use prohibition.

Investigations of violations of the personal use prohibition

Both Georgia and Tennessee report very few reviews or investigations of violations of personal use of campaign funds. Staff at the Georgia Transparency and Campaign Finance Commission estimated an average of three personal use cases annually over the past nine years. Staff at the Tennessee Registry of Election Finance reported that there have been only two personal use cases in total over the past five years. Both states indicated that personal use cases rarely, if ever, come through public complaints; instead they are identified during staff audits of campaign finance reports. Neither state has dedicated staff to review and investigate personal use cases due to the low number of cases. In Tennessee, the staff responsible for the audits of campaign finance reports conduct the investigations when they occur.

As a result of the low number of personal use cases in Georgia and Tennessee, JLARC staff estimate the fiscal impact on ELECT of HB 40 to be negligible. Moreover, in 2022 legislation was passed requiring ELECT to review a percentage of campaign finance reports annually. ELECT is in the process of establishing this new function, and reviews or investigations of personal use could likely be subsumed as part of this new function, at least initially. If ELECT were to receive a significant number of public complaints or a high number of potential violations were identified by staff reviews of campaign finance reports, additional staff could be needed in the future.

Issuances of advisory opinions regarding the personal use prohibition

Both Georgia and Tennessee issue advisory opinions for candidates regarding their personal use prohibition. Georgia has a more formal advisory opinion process and receives approximately 1-3 requests per year. Tennessee has a very informal process and receives approximately 20 requests per year. For both states, existing staff with legal expertise issue the advisory opinions. There are no staff dedicated to this purpose.

Based on the experience of Georgia and Tennessee, JLARC staff estimate the fiscal impact of issuing advisory opinions under HB 40 would be negligible. The process laid out in the bill would likely lead to an experience more similar to Georgia's. ELECT staff indicate that they would work with the OAG's office to issue the advisory opinions, with the OAG's office providing the legal expertise. HB 40 would also require the State Board and the OAG to publish guidelines on the prohibition of personal use of campaign funds which delineate the differences between prohibited personal uses and permitted uses and include examples of conduct that complies with and violates the provisions. Such guidance would likely help reduce the number of requests for advisory opinions.

Therefore, JLARC staff estimate the fiscal impact on ELECT and the OAG's office of issuing advisory opinions to be negligible.

Fiscal Impact on Department of Corrections

Under HB 40, an individual who knowingly makes a false complaint of personal use of campaign contributions could be convicted of a Class 5 felony under Virginia's general perjury law (§ 18.2-434) and or the perjury law related to elections and campaigns (§ 24.2-1016). The VCSC FIS indicates that existing data in Virginia is not sufficient to estimate the number of additional felony convictions under HB 40, so reports the statutorily required minimum fiscal impact of \$50,000 for DOC.

JLARC staff estimate the fiscal impact on DOC to be negligible. As indicated above, based on the experience of Georgia and Tennessee, there are expected to be very few public complaints of violations of the personal use prohibition in general. Further, the VCSC FIS states that there were seven convictions between FY2018 and FY2023 (an average of 1.2 annually) where the primary, or most serious, offense in the sentencing event was a false statement under § 24.2-1016 (which is the more directly relevant elections perjury provision). All defendants received probation without an active term of incarceration.

Budget amendment necessary? No

Agencies affected: Department of Elections, Office of the Attorney General, Department of Corrections

Patron: Delegate Simon

Prepared by: Kimberly Sarte